LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
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GEORGE R. PUFLETT, JR., AND
CANDACE M. CHAPMAN,
Plaintiffs

v.

LRBOI HOUSING DEPARTMENT, and
LRBOI HOUSING COMMISSION,
Defendants

Honorable Caroline LaPorte

Case No. 23-115-GC

GEORGE R. PUFLETT, JR.,
CANDACE M. CHAPMAN
Plaintiffs
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ORDER DISMISSING CASE FOR LACK OF SUBJECT MATTER JURISDICTION

THIS CAUSE came before the Little River Band of Ottawa Indians Tribal Court on January 3, 2024 on Defendant Ogema's Motion for Summary Disposition and Defendant Tribal Council's Motion to Dismiss (for lack of subject matter jurisdiction). Plaintiff Candace Chapman is an Elder and a Tribal Member and her husband George Puflett, Jr. is a Co-Plaintiff. All parties appeared, with Tribal Council represented by Mr. Pitchlynn and the Ogema by Mr. Swain.

Both Defendants' motions are dispositive to the matter at hand. The issue for this Court to resolve is whether or not this suit is barred by tribal sovereign immunity. To do that there is a clear analysis any court must work through, as subject matter jurisdiction is always a threshold question for the court to address.

For Tribal Members, the Court explains the following: sovereign immunity is an inherent feature of tribal sovereignty. For any plaintiff to succeed in overcoming a motion to dismiss such as those that have been filed by Tribal Council and the Ogema, that plaintiff **MUST** show that there has been a waiver of that immunity. This waiver can be found by a Court in one of two ways: the United States Congress can pass express/clear/explicit legislation stating that a law is a waiver of tribal sovereign immunity OR (in LRBOI's case) Tribal Council may pass a resolution or ordinance waiving that immunity. There is a limited waiver found in Article XI of the LRBOI Constitution that allows suits for *declaratory and injunctive relief.* The suit that the Plaintiffs' brought in the present case was for *monetary damages* in the amount of $25,000.00.

I. The Plaintiffs' Complaint

This action arises from the Plaintiffs' request for assistance under the Little River Band of Ottawa Indians Emergency Home Repair Program. These funds, which are federal grant dollars, are part of the American Rescue Plan funding that was created during the height of the Covid-19 pandemic. Because this is federal money, the Tribe is limited in its use of these funds, and there are consequences for improper use. Improper use is not at issue here but is relevant to the overall understanding of the implications of the use of these dollars for assistance to Tribal Members. At its simplest, there are rules that accompany the receipt of these funds by any Tribe. Under the LRBOI Emergency Home Repair Program Plaintiffs submitted their application for Emergency Home Repairs. The Plaintiffs requested assistance for the following issues within their home:

- Windows
- Water issues
- Imminent Structural Collapse
- Septic pump out

The award of these funds for emergency use were subject to the discretion of the Housing Director as well as the Emergency Home Repair Regulations, which were provided as part of the application. The funding of this program, which was a grant of federal dollars was only to be used for "emergency repairs," which were defined as: No heat, no hot water, electrical hazards, plumbing, mold, roof, windows, entry doors, imminent structural collapse (foundation, floor, wall, roof that is determined by LRBOI Housing Department as ready to collapse.)

It is critical to note that Regulation No. 4 provided "[n]o more than $15,000 will be accessed by any homeowner for this program." For the Court's analysis, this is critical for two reasons: 1. This is not a replenished pot of funding. The amount available is subject first and foremost to what the federal government provided via the contract funds provided from the Department of the Interior that the Tribe received. Even if every Tribal Member had emergency repairs needed that fit the definitions provided for in the regulations, it is highly unlikely that every Tribal Member would have been able to receive assistance and certainly unlikely that they would be able to receive the full $15,000.00. In fact, only around ten (10) Tribal Members would have been able to receive the full amount. This is why the discretion of the Housing Department is critical to the implementation of these funds.

Mrs. Chapman and her husband did receive assistance under this program for $2,400.00 (for pluming repairs) and $2,842.00 (for roofing and siding). Plaintiffs' request for water remediation, foundational repairs, and replacement of windows and doors had been preliminary denied by the Housing Department. Plaintiffs were notified of this *verbally*. Plaintiffs then responded to this preliminary denial in a letter to the Housing Department requesting reconsideration. On March 10, 2024, the Plaintiffs received an official letter from the Housing Department. Plaintiffs appealed this decision on March 16, 2023, to the Housing Commission. An appeal hearing was held by the Housing Commission on April 6, 2023, and on April 17, 2023, the appeal was denied.

The Plaintiffs' requested relief in this case is **$25,000.00 in monetary damages**.

While the crux of the Plaintiffs' complaint centers on the denial of some of their repairs, and hence the monetary damages, Plaintiffs also felt they were treated unfairly and without respect. During the hearing, Mrs. Chapman raised valid points about what Tribal Members should be able to expect from these processes. The Court understood Mrs. Chapman's reference to processes to mean the following: the establishment of the program/fund itself, the application process, the oversight of the application process and the reviews of the applications, the process of receiving a preliminary denial verbally, receipt of the official letter after Mrs. Chapman had already written the Housing Department for reconsideration, the information available to Tribal Members regarding contact information for Housing Commissioners, the appeal itself, and how the decision was made on appeal by the Housing Commission. What occurred within these processes does not overcome a sovereign immunity defense, but it does not make them any less real or impactful for individuals who experience them. The Court addresses this in its conclusion.

II. The Defendants' Arguments

Mr. Swain argued in his Motion that because the Plaintiffs are suing for monetary damages that the Plaintiffs' burden to establish an explicit waiver of sovereign immunity must be met. The Plaintiffs, per Mr. Swain, had not stated a claim that alleged such a waiver, and therefore, failed to state a claim upon which relief could be granted.

Mr. Pitchlynn argued in his motion that due to the nature of the Plaintiffs' requested relief (monetary damages), the Court lacked subject matter jurisdiction to hear the suit. Mr. Pitchlynn also argued that Defendants' denial of the Plaintiffs' application for emergency home repairs, was not in violation of any law of the Little River Band of Ottawa Indians and therefore, the Plaintiffs failed to state a claim upon which relief could be granted.

Mr. Pitchlynn's third argument addressed the Plaintiffs' assertion that their procedural due process rights had been violated. Mr. Pitchlynn argues that this also fails a sovereign immunity analysis and that because the Plaintiffs do not have a property right in the award of federal grant dollars, Plaintiffs' due process rights were not violated.

III. Legal Standard and the Court's Analysis

The question of whether a court lacks subject matter jurisdiction over a claim barred by tribal sovereign immunity is a threshold question that is properly presented by way of a motion to dismiss. Once sovereign immunity is raised, Plaintiff bears the burden of establishing subject matter jurisdiction, and must prove an explicit waiver of sovereign immunity. This waiver, as the Court stated earlier in this order can travel via one of two rivers: The United States Congress, via its plenary authority over Indian Country matters (Article 1 Section 8 of the United States Constitution), can enact a law authorizing it (which cannot be implied: the authorization must be explicit) OR via a resolution/ordinance by LRBOI Tribal Council (which must also be clear and unambiguous).

The doctrine of tribal sovereign immunity is well established and is "a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes of the Ft. Berthold Reservation v. Wold Eng'g. P.C.*, 467 U.S. 877, 890 (1986). See also *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S.Ct. 1670 (1978), which held that Indian Tribes have long been recognized as possessing common-law immunity from suit traditionally enjoyed by sovereign powers. Without congressional authorization, Indian Nations are exempt from suit. *Id.* This immunity extends to tribal commercial and governmental activity, including activities outside of Indian Country. *Kiowa Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 759 (1978). The U.S. Supreme Court has "time and again treated the 'doctrine of tribal immunity [as] settled law' and dismissed any suit against a tribe absent congressional authorization (or a waiver)." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 789 (2014) (alteration in original) (quoting *Kiowa*, 523 U.S. at 756, 118 S.Ct. 1700). **This is complete immunity from suit,** otherwise the sovereign immunity inherent to the Tribe is illusory if the Tribe is required to defend an action barred by the doctrine. Any waiver of a tribe's sovereign immunity, whether by Congress or by the tribe itself, "cannot be implied but must be unequivocally expressed." *Martinez*, at 1677 (citing *United States v. Testan*, 424 U.S. 392, 399 (1976).

For there to be a valid waiver of tribal sovereign immunity, the Tribal Council's approval of the waiver would need to be embodied in an ordinance or resolution duly enacted by the Tribal Council or the United States Congress itself would have to abrogate it via federal legislation. Congressional abrogation has not occurred in this case or with the appropriation of these funds. So, the Court turns to focus on whether or not Council has waived immunity via resolution or ordinance or other duly enacted law of the Tribe. Plaintiffs' Complaint did not allege that the Tribe has consented to this suit, nor have they alleged that the Defendants' waived their sovereign immunity. And the Court took care to ensure that no acceptance of the funds had contractually waived in whole or part any sovereign immunity, which would have been highly unlikely even with the emergency appropriations here from Congress. However, during the hearing, the Plaintiffs raised the issue of whether the establishment of an appeals process constituted a waiver. The Court wants to be clear in its analysis here because the Court also heard Mrs. Chapman's request for it to be communicated to Tribal Membership. So, the narrower question the Court will resolve is this: does the creation of an appeal process constitute a of waiver of sovereign immunity when the aggrieved party is requesting monetary damages? The answer is no.

Article XI of the Little River Band of Ottawa Indians Tribal Constitution addresses the Tribe's sovereign immunity. Section 1 clearly states that Tribal Council shall not waive or limit the right

of the Little River Band of Ottawa Indians to be immune from suit, except as authorized by Tribal ordinance or resolution in furtherance of tribal business enterprises. Section I further states that except as authorized by tribal ordinance or resolution, the provisions of Article III of the Constitution shall not be construed to waive or limit the right of the Little River Band to be immune from suit for damages. This is an important provision that is relevant to Mr. Pitchlynn's third argument. Article XI Section 2 details which suits are authorized in Tribal Court. It specifically states that the Tribe, Council, the Ogema and other Tribal Officials, acting in their official capacity, shall (ARE) subject to suit for declaratory or injunctive relief in the Tribal Court system for the purposes of enforcing rights and duties established by the LRBOI Constitution and by the ordinances and resolutions of this Tribe. Section b goes on to state that people shall NOT be entitled to an award of damages, as a form of relief, against the Tribe, its Tribal Council members, the Ogema, or other Tribal officials acting in their official capacities. Furthermore, Tribal Council may via ordinance waive the right of the Tribe or Tribal officials to be immune from damages in such suits only in specified instances when such a waiver would promote the best interests of the Band or the interests of justice. *Id.*

Article XI of the LRBOI Constitution is a limited/partial waiver of the Tribe's sovereign immunity for certain types of requested relief (declaratory/injunctive). But it is clear that an individual cannot sue for **damages** absent a waiver in the form of a resolution or ordinance. And while certainly Mr. Swain and Mr. Pitchlynn are correct regarding the burden that shifts to the Plaintiff alleging a waiver of sovereign immunity, because Mrs. Chapman is first an Elder and second pro se, the Court wanted to be certain that no such waiver exists.

The Court finds that there is no waiver in the regulations or ordinances of the Housing Commission or Housing Department or more generally from Tribal Council that would constitute a waiver for monetary damages. The Court additionally reviewed the resolution language regarding the acceptance of the funds titled Resolution 23-0125-012 "Approval for the Bureau of Indian Affairs Emergency Home Repair Program (HER), in the amount of $161,134.00, to be implemented through the Housing Department." There is no waiver within that language either (which again would be unlikely, but the Court wanted to confirm).

Here, Mrs. Chapman "appealed" (not in a legal sense) to the Housing Department via letter for them to reconsider their decision, which was clearly established via the processes outlined as a part of the program. At this point her "appeal" was not for monetary damages, but rather for a second look at her application under the Housing Director's discretion. She then received written notification of the denial. She then ***formally appealed*** to the Housing Commission as established via the Housing Commission regulations. The Commission held a hearing, and the appeal was denied. This case arrives to Tribal Court as a review of the Commission's decision. However, because the Plaintiffs are requesting relief only in the form of monetary damages (and not declaratory or injunctive relief), their suit is absolutely barred by sovereign immunity. As stated in Mr. Pitchlynn's Motion, the Housing Commission Regulations make it clear that "[n]othing in this regulation shall be interpreted as a waiver of sovereign immunity from suit of the Tribe or any of its governmental officers and/or agents." See §9-5 of the Housing Commission's Regulations. The Court can hold an appeal review of an administrative decision by the Housing Commission, but that review does not constitute a separate case. *See* §6.03 of the Housing Commission Ordinance. Nothing here authorizes a suit for monetary damages, and in fact the

regulation makes it clear that no provision can be interpreted as a waiver of sovereign immunity to that effect. The establishment of an appeals process cannot be broadly read to authorize suit for monetary damages in the absence of an ordinance or resolution enacted by Tribal Council clearly and unambiguously stating so.

Though declaratory and injunctive relief is not part of this suit, it is worth discussing why injunctive/declaratory requests for relief would have also likely failed in this instance. Mr. Pitchlynn argued before the Court that Mrs. Chapman and her husband had no property interest here. That is not to say, as Mr. Pitchlynn clarified, that Mrs. Chapman and her husband do not have a property interest in their home. They simply do not have one in the award of discretionary grant funds. Thus, even if Mrs. Chapman could find a waiver of sovereign immunity, her and her husband still cannot establish a legal interest in these dollars or even in the repair of their home. The creation of a program to distribute federal grant dollars does not create an actionable right in which the Plaintiffs could have requested injunctive/declaratory relief.

Therefore, the Court agrees with Mr. Pitchlynn and Mr. Swain regarding the following arguments:

1. Plaintiff has not met their burden to establish a waiver of tribal sovereign immunity and therefore fails to state a claim upon which relief can be granted.
2. Due to the nature of the Plaintiffs' requested relief in the form of monetary damages, the Court lacks subject matter jurisdiction as there has been no waiver of tribal sovereign immunity.
3. The denial of the Plaintiffs' application for emergency home repairs, was not in violation of any law of the Little River Band of Ottawa Indians and therefore, the Plaintiffs failed to state a claim upon which relief could be granted.
4. Plaintiffs do not have a property interest in discretionary grant funds and therefore, there can be no violation of due process rights.

The Court does not address the general assertion that a claim based on a violation of due process rights that are found in the Tribe's Constitution (specifically Article III section h) would not survive a sovereign immunity claim, though certainly acknowledges the valid points regarding *Plains Commerce* as well as the Indian Civil Rights Act. The Court read the argument from Tribal Council to be specific to this case because of the foundational premise that the Plaintiffs lacked a property interest in the funds themselves. And regardless, as stated in Mr. Pitchlynn's Motion, the requested relief for monetary damages is barred by the sovereign immunity of the Little River Band of Ottawa Indians.

IV. Conclusion

The Court lacks subject matter jurisdiction over this matter because the Plaintiffs' requested relief is for monetary damages and the Court has found that there has been no waiver of sovereign immunity authorizing a suit for the form of relief requested.

However, while the sovereign immunity argument was legally straightforward in this matter, the issue of how to provide any resolution for Mrs. Chapman was still something the Court weighed.

Culturally, Mrs. Chapman can expect at least some consideration of what felt deeply unfair to her: the processes and the engagement she experienced prior to getting to Court. That is not a legal basis for fashioning a remedy, but how we see, treat, and speak to each other needs to matter, even if not in a western legal sense. The property the Plaintiffs requested assistance for is *their home*, and the Court feels that much of this suit could have been avoided had Mrs. Chapman been treated like an Elder. The Court found her to be credible regarding how she experienced these processes. Section c of Mr. Pitchlynn's Motion was particularly helpful in combing through some of the issues that Plaintiffs felt were unfair regarding the Commission's Hearing (starting on page 12). The motion addresses each claim and provides the relevant law establishing why the process unfolded as it did. Some of what was carefully explained in the motion could be proactively communicated in non-legalese to Tribal Members prior to the Commission's hearings. For example, a simple notification that as a part of the appeals process, Tribal Members may not contact individual members of the Housing Commission (with a citation to the rule) might have been responsive to the needs of this Tribal Elder. A proactive measure such as this might have helped create the space needed for this Tribal Elder to trust the process that the Housing Commission implements via its regulations. Again, that does not create a legal duty or an actionable right, but it might help Tribal Members feel more secure when navigating these spaces. Regarding the Housing Department on the other hand, the Court feels more that Mrs. Chapman felt disrespected. This is perhaps why Council and the Ogema's attorneys suggested peacemaking at an earlier stage of this case. Mrs. Chapman is owed respect as an Elder of this Tribe, and it was clear during the pendency of this case that she did not feel like she had been heard or spoken to in line with our Seven Grandfather Teachings. When members of our community have experiences such as this, we have an opportunity to reflect on how to better our relations with one another.

This matter is **DISMISSED with prejudice** for lack of subject matter jurisdiction.

IT IS SO ORDERED this 15th Day of February 2024.

DocuSigned by:
Caroline LaPorte
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Caroline B. LaPorte, J.D.
Associate Judge

CERTIFICATE OF SERVICE

I certify that a copy of this document was mailed to all parties and/or their attorneys via email and USPS on the below date.

2-15-24
Date

Laurie L. Willis
Court Clerk/Administrator