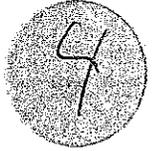


No. A09-684

STATE OF MINNESOTA  
IN COURT OF APPEALS



Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise,

Appellant,

vs.

Leonard Prescott, individually, and as current and former officer and/or director of Little Six, Inc.,

Respondent

BRIEF OF APPELLANT  
SHAKOPEE MDEWAKANTON SIOUX GAMING ENTERPRISE

Brian B. O'Neill, Minn. Bar No. 82521  
Richard A. Duncan, Minn. Bar No. 192983  
Collette L. Adkins Giese, Minn. Bar No.  
35059X  
**FAEGRE & BENSON LLP**  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
(612) 766-7000

David Keller, Minn. Bar No. 124734  
**GRANNIS & HAUGE, P.A.**  
1260 Yankee Doodle Road  
Suite 200  
Eagan, MN 55121  
Telephone: (651) 456-9000

**Attorney for Respondent Leonard  
Prescott**

and

Kurt V. Bluedog, Minn. Bar No. 9143  
**BLUEDOG, PAULSON & SMALL**  
5001 American Boulevard West, Suite 500  
Bloomington, MN 55437  
(952) 893-1813

**Attorneys for Appellant Shakopee  
Mdewakanton Sioux Gaming  
Enterprise**

## TABLE OF CONTENTS

LEGAL ISSUES .....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS.....	4
A.    The Parties .....	4
B.    The First Proceeding: Prescott’s Gaming License Revocation .....	5
C.    The Second Proceeding: Little Six’s Action Against Prescott Based On His Alleged Misconduct (Court File No. 048-94) (“1994 Misconduct Action”) .....	6
D.    The Third Proceeding: The Indemnification Action That Led To The Tribal Court Judgment (Court File No. 436-00).....	9
E.    The Fourth, And Instant, Proceeding: Recognition And Enforcement Of The Tribal Court Judgment In Scott County .....	11
ARGUMENT .....	11
I.    THE DISTRICT COURT ERRED BY BASING ITS REFUSAL TO RECOGNIZE THE TRIBAL COURT JUDGMENT ON ONE FACTOR FROM A NON-BINDING ACT WHEN ALL FACTORS IN RULE 10.02 POINT TOWARD RECOGNITION .....	12
A.    The Law Governing Recognition And Enforcement Of Tribal Court Judgments Is Based On The Doctrine Of Comity .....	12
B.    The District Court Must Consider The Factors Enumerated In Rule 10.02 .....	15
C.    All Of The Relevant Factors Point Toward Recognition .....	17
1.    Prescott Was Afforded Due Process.....	17
2.    That Prescott’s Per Capita Payments From The Tribe Cannot Be Directly Applied Toward The Judgment Is Irrelevant To The Comity Analysis .....	20

3.	The District Court Failed To Analyze Six Relevant Rule 10.02 Factors, Which All Point Toward Recognition .....	22
II.	THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO RECOGNIZE THE TRIBAL COURT JUDGMENT BASED ON A PURPORTED CONFLICT WITH ANOTHER JUDGMENT .....	25
A.	Prescott’s Obligation To Repay The Enterprise Was Triggered When The Tribal Appellate Court Affirmed The Gaming Commission’s Decision To Revoke His License .....	26
B.	The Judgment In The 1994 Misconduct Action Did Not Alter Prescott’s Obligation To Indemnify The Enterprise .....	27
C.	The District Court Ignored The Explicit Direction Of The Tribal Appellate Court .....	30
	CONCLUSION .....	33

## TABLE OF AUTHORITIES

Page(s)

### STATE CASES

<i>Brosseau v. Ranzau</i> , 81 S.W.3d 381 (Tex. Ct. App. 2002) .....	32
<i>Byblos Bank Europe, S.A. v. Sekerbank Turk Anonym Syrketi</i> , 2008 NY Slip Op. 2501 (N.Y. 2008) .....	32
<i>CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.</i> , 743 N.Y.S.2d 408 (N.Y. App. Div. 2002) .....	18
<i>Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n</i> , 358 N.W.2d 639 (Minn. 1984).....	15
<i>Lemke ex rel. Teta v. Brooks</i> , 614 N.W.2d 242 (Minn. Ct. App. 2000).....	1, 18
<i>Nicol v. Tanner</i> , 256 N.W.2d 796 (Minn. 1976).....	16
<i>Nussbaumer v. Fetrow</i> , 556 N.W.2d 595 (Minn. Ct. App. 1996) .....	22
<i>Vandenheuvel v. Wagner</i> , 690 N.W.2d 753 (Minn. 2005).....	13

### FEDERAL CASES

<i>Iowa Mut. Ins. Co. v. LaPlante</i> , 480 U.S. 9 (1987) .....	22
<i>Prescott v. Little Six, Inc.</i> , 387 F.3d 753 (8th Cir. 2004).....	17
<i>Seeman v. Philadelphia Warehouse Co.</i> , 274 U.S. 403 (1927) .....	22
<i>Soc'y of Lloyd's v. Turner</i> , 303 F.3d 325 (5th Cir. 2002).....	21
<i>Society of Lloyd's v. Ashenden</i> , 233 F.3d 473 (7th Cir. 2000).....	17, 18
<i>Wilson v. Marchington</i> , 127 F.3d 805 (9th Cir. 1997).....	13

**TRIBAL CASES**

*Cannon v. Prescott*, 4 Shak. Rep. 144 (2002) .....24

*In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*,  
No. 015-97, 1 Shak. A.C. 146 (SMSC Ct. App. July 30, 1999).....passim

*Little Six, Inc. v. Prescott*,  
No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004) .....passim

*Little Six v. Prescott*,  
No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157 (SMSC Ct. App. Feb. 1, 2000)...passim

*Prescott v. Little Six*,  
No. 027-01, 1 Shak. A.C. 190 (SMSC Ct. App. Oct. 26, 2001) .....9

*Shakopee Mdewakanton Sioux Gaming Enterprise v. Prescott*,  
No. 032-05 (SMSC Ct. App. Aug. 9, 2006) .....10, 24

*Wright v. Prescott*, 4 Shak. Rep. 153 (2002) .....24

**STATE STATUTES**

Uniform Foreign Country Money-Judgments Recognition Act, Minn. Stat. §  
548.35 .....passim

**FEDERAL STATUTES**

28 U.S.C. § 455 .....20

28 U.S.C. §§ 1738B (a), (b) .....12

**STATE RULES**

Minnesota General Rules of Practice, Rule 10 .....1, 11, 13, 14

Minnesota General Rules of Practice, Rule 10.01 .....12

Minnesota General Rules of Practice, Rule 10.02 .....passim

**TRIBAL RULES**

Court of the Shakopee Mdewakanton Sioux Community, Rule 32 .....20

Court of the Shakopee Mdewakanton Sioux Community, Rule 34 .....24

**FEDERAL REGULATIONS**

70 Fed. Reg. 71194, 71196 (Nov. 25, 2005) .....4

**OTHER AUTHORITIES**

Minnesota General Rules of Practice, Rule 10.02, comm. cmt. (2007) ....12, 13, 14, 15, 16

Minnesota American Indian Bar Association, *Tribal Courts*,  
<http://www.maiba.org/tribalCourts.html#shakopee> (last visited on May 26,  
2009).....23

## LEGAL ISSUES

- I. To determine what effect to give a tribal court order, the Minnesota courts must apply the doctrine of comity pursuant to Rule 10.02 of the Minnesota General Rules of Practice. Although not binding legal authority, the Advisory Committee Comments to Rule 10 explain that the Uniform Foreign Country Money-Judgments Recognition Act may guide Minnesota courts in considering recognition of foreign money judgments. Did the district court err when it refused to recognize and enforce the Tribal Court Judgment against Leonard Prescott by basing its decision on just one factor from the Uniform Foreign Country Money-Judgments Recognition Act and failing to analyze each of the Rule 10.02 factors, all of which point to recognition?**

The district court treated as “determinative” one factor from the Uniform Foreign Country Money-Judgments Recognition Act. District Court Order Dated February 23, 2009 (“Opinion”), Appellant’s Addendum at 21. The district court considered only two of the factors enumerated in Rule 10.02 and included them in the Opinion “to the extent that they support the Court’s decision and/or assist in putting this matter into proper perspective.” *Id.*

- Uniform Foreign Country Money-Judgments Recognition Act, Minn. Stat. § 548.35<sup>1</sup>
- Rule 10 of the Minn. Gen. Rules of Practice<sup>2</sup>
- *Lemke ex rel. Teta v. Brooks*, 614 N.W.2d 242, 245 (Minn. Ct. App. 2000)

- II. The Uniform Foreign Country Money-Judgments Recognition Act provides that a foreign judgment need not be recognized if the judgment conflicts with another final and conclusive judgment. The district court found that the Tribal Court Judgment against Prescott conflicted with another tribal court judgment that presented a different issue and involved a different legal standard and a different factual record. Did the district court abuse its discretion when it based its refusal to recognize and enforce the Tribal Court Judgment against Prescott on this purported conflict?**

The district court found that the Tribal Court Judgment conflicted with a tribal court judgment in an earlier case. Opinion, Addendum at 21. In the earlier case, the tribal appellate court granted summary judgment to Prescott on a claim that Prescott breached his fiduciary duty to the Shakopee Mdewakanton Sioux Community because it found that his misrepresentation of his prior felony

---

<sup>1</sup> Included in the attached Addendum at 35-37.

<sup>2</sup> Included in the attached Addendum at 30-34.

conviction was insufficient proof of bad faith. See *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 165-66 (SMSC Ct. App. Feb. 1, 2000), Appellant's Appendix ("App.") at A-32 to A-33. The district court held that the tribal appellate court's conclusion in the earlier case "raise[s] questions about the reliability of the judgment [under review] and the findings upon which it is based." Opinion, Addendum at 21.

- Uniform Foreign Country Money-Judgments Recognition Act, Minn. Stat. § 548.35
- *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-40
- *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 165-66 (SMSC Ct. App. Feb. 1, 2000), App. at A-32 to A-33

### STATEMENT OF THE CASE

Leonard Prescott signed a document promising to indemnify the Shakopee Mdewakanton Sioux Gaming Enterprise ("Enterprise") for legal costs incurred on his behalf.<sup>3</sup> After Prescott's obligation to pay the Enterprise was triggered and Prescott refused to pay, the Shakopee Mdewakanton Sioux Community Court entered judgment against him (hereinafter, the "Tribal Court Judgment") in the amount of \$516,871.46, plus interest and attorneys' fees.<sup>4</sup> This case seeks recognition and enforcement of the Tribal Court Judgment in Scott County.

On December 5, 2005, the Enterprise docketed the Tribal Court Judgment in Scott County District Court.<sup>5</sup> Prescott initially did not contest recognition and enforcement of

---

<sup>3</sup> See *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-53 to A-54.

<sup>4</sup> *Id.* at A-74; *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. Oct. 27, 2005), App. at A-75.

<sup>5</sup> Opinion, Addendum at 7.

the Tribal Court Judgment, and the Enterprise sought and received a writ of execution in the amount of \$1,120,510.42 (inclusive of interest and fees) upon Prescott's property and assets located in Scott County.<sup>6</sup> The Enterprise collected a small amount of money in partial satisfaction of the Tribal Court Judgment.<sup>7</sup> After Scott County District Court issued a second writ of execution in the same amount, Prescott filed a motion for injunctive relief challenging *inter alia* the validity of the Tribal Court Judgment.<sup>8</sup>

Nearly three years later, after an appeal to this Court addressing a procedural matter, the parties requested that the Scott County District Court decide whether the Tribal Court Judgment against Prescott should be recognized and enforced in Scott County.<sup>9</sup> In his memorandum submitted prior to a hearing on the request, Prescott raised the following grounds for non-recognition: lack of due process (lack of a neutral magistrate), lack of reciprocity, and "other factors" as provided in Rule 10.02(a)(10) of the Minnesota General Rules of Practice.<sup>10</sup> In its supporting memorandum, the Enterprise offered analysis of those factors.<sup>11</sup> At a hearing held on November 13, 2008, the district court indicated its intention not to be limited by the grounds for non-

---

<sup>6</sup> *Id.*; Writ of Execution (first), App. at A-76.

<sup>7</sup> Opinion, Addendum at 7; Writ of Execution (first), App. at A-76.

<sup>8</sup> Opinion, Addendum at 7; Notice of Motion and Motion for Relief and Temporary Restraining Order, App. at A-78; Memorandum in Support of Defendant's Motion for Immediate Injunction Relief, App. at A-80.

<sup>9</sup> Opinion, Addendum at 10.

<sup>10</sup> Defendant Leonard Prescott's Hearing Brief, App. at A-90, A-99.

<sup>11</sup> *See generally* Plaintiff's Pre-hearing Reply Brief, App. at A-104.

recognition briefed by the parties.<sup>12</sup> The district court received additional submissions by the parties on November 20, 2008, and then took the matter under advisement.<sup>13</sup>

On February 17, 2009, Scott County District Judge Diane M. Hanson issued an Order that the Tribal Court Judgment shall not be recognized or enforced in Scott County District Court.<sup>14</sup> On February 23, 2009, the district court issued its findings of fact and conclusions of law in support of the Order of February 17, 2009.<sup>15</sup> The district court did not base its decision on the factors raised in Prescott's submissions. Rather, the district court based its decision upon a finding that the Tribal Court Judgment conflicted with another decision from the tribal court in a separate lawsuit.<sup>16</sup> This appeal followed.<sup>17</sup>

### **STATEMENT OF THE FACTS**

#### **A. The Parties**

The Shakopee Mdewakanton Sioux Community (the "Tribe") is a federally-recognized Indian tribe, with a Reservation near Prior Lake, Minnesota.<sup>18</sup> In an exercise of its retained inherent sovereignty, the Tribe operates the Mystic Lake Casino on the Reservation. From 1991 through the end of 2004, a Tribal-chartered corporation, Little

---

<sup>12</sup> District Court Oral Argument Transcript at 12 (Nov. 13, 2008), App. at A-129.

<sup>13</sup> Opinion, Addendum at 12.

<sup>14</sup> District Court Order Dated February 17, 2009, Addendum at 1.

<sup>15</sup> Opinion, Addendum at 4.

<sup>16</sup> *Id.* at 21.

<sup>17</sup> Notice of Appeal and Statement of the Case, App. at A-267.

<sup>18</sup> See 70 Fed. Reg. 71194, 71196 (Nov. 25, 2005) (listing federally-recognized Indian tribes), App. at A-159.

Six, Inc. ("Little Six"), owned the Casino.<sup>19</sup> On January 1, 2005, the Tribe transferred ownership to the Appellant, a non-corporate tribal entity called the Shakopee Mdewakanton Sioux Gaming Enterprise.<sup>20</sup>

Respondent Leonard Prescott served as Chief Executive Officer and Chairman of the Board of Directors for Little Six from 1991 to 1994.<sup>21</sup> Prescott was also Chairman of the Tribe from 1987 to 1992.<sup>22</sup>

**B. The First Proceeding: Prescott's Gaming License Revocation**

In 1993, the Tribe, as required by the Indian Gaming Regulatory Act, adopted a Gaming Ordinance that established licensing requirements for key employees.<sup>23</sup> The licensing requirements are administered through a separate tribal governmental agency, the Gaming Commission.<sup>24</sup> As a key employee of Little Six, Prescott was required to obtain a gaming license under the Gaming Ordinance.<sup>25</sup>

The Gaming Commission issued Prescott a temporary license pending the processing of his gaming license application.<sup>26</sup> In May 1994, the Gaming Commission

---

<sup>19</sup> See Shakopee Mdewakanton Sioux Community Gaming Ordinance § 102, App. at A-163.

<sup>20</sup> See *id.*

<sup>21</sup> Opinion, Addendum at 5.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 147 (SMSC Ct. App. July 30, 1999), App. at A-207.

suspended Prescott's temporary gaming license on an emergency basis.<sup>27</sup> In July 1994, the Gaming Commission revoked Prescott's temporary license, finding that he had engaged in negligence, fraud, and misconduct.<sup>28</sup> Specifically, the Gaming Commission found that Prescott submitted two sworn applications for gaming-related licenses in which he averred that he had no criminal history, when in fact he was convicted of burglary in 1971, a felony conviction that had not been expunged at the time that he submitted the applications.<sup>29</sup> Prescott appealed the Gaming Commission's findings to the tribal court, and after five years of litigation, the tribal appellate court upheld the Gaming Commission's 1994 order revoking his temporary gaming license.<sup>30</sup>

**C. The Second Proceeding: Little Six's Action Against Prescott Based On His Alleged Misconduct (Court File No. 048-94) ("1994 Misconduct Action")**

During the same time period that Prescott's appeal of the revocation of his gaming license was proceeding through the tribal courts, Prescott was defending himself in a separate tribal court lawsuit for money damages for alleged instances of misconduct by him (and William Johnson, another officer of Little Six).<sup>31</sup> The lawsuit was initiated in

---

<sup>27</sup> *Id.*

<sup>28</sup> Opinion, Addendum at 5; *see* Gaming Commission Finding of Fact, File No. 94-0024 (July 1, 1994), App. at A-186, A-204 to A-205.

<sup>29</sup> Shakopee Mdewakanton Sioux Community Gaming Commission Findings of Fact, File No. 94-0024 (July 1, 1994), App. at A-132 to A-134.

<sup>30</sup> Opinion, Addendum at 5; *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 154-56 (SMSC Ct. App. July 30, 1999), App. at A-214 to A-216.

<sup>31</sup> Opinion, Addendum at 6; *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157 (SMSC Ct. App. Feb. 1, 2000), App. at A-24.

1994 by Little Six, members of its Board of Directors, and the Tribe.<sup>32</sup> The complaint included eight counts and numerous subcounts.<sup>33</sup> In general, the plaintiffs alleged that Prescott and Johnson, while employed by Little Six, engaged in a pattern of behavior in which they expended Tribal money for improper purposes and without authorization.<sup>34</sup> One claim alleged that Prescott breached his fiduciary duty to the Tribe by misrepresenting information on his application for a gaming license.<sup>35</sup>

In response to the allegations, Prescott and Johnson filed motions for summary judgment claiming among other things that they were entitled to official immunity.<sup>36</sup> After an interlocutory appeal on the immunity question, the tribal appellate court concluded that Prescott and Johnson could raise a defense of qualified immunity.<sup>37</sup> On remand, the tribal court concluded that Prescott and Johnson were entitled to qualified immunity on some counts, they were entitled to summary judgment on some others, and the parties would proceed to trial on two specific subcounts.<sup>38</sup>

On the subcount relating to Prescott's misrepresentation of information on his gaming license, the tribal court concluded that Prescott was not entitled to qualified

---

<sup>32</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157 (SMSC Ct. App. Feb. 1, 2000), App. at A-24.

<sup>33</sup> *Id.* at A-26.

<sup>34</sup> Opinion, Addendum at 6; *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 159 (SMSC Ct. App. Feb. 1, 2000), App. at A-26.

<sup>35</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 165 (SMSC Ct. App. Feb. 1, 2000), App. at A-32.

<sup>36</sup> *Id.* at A-25.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at A-25 to A-26.

immunity and that the matter should proceed to trial.<sup>39</sup> The tribal appellate court reversed and concluded that Prescott was entitled to summary judgment on that subcount.<sup>40</sup> The tribal appellate court found that it was undisputed that Prescott asserted in his gaming license application that he had no previous felony convictions even though he was convicted of a felony in 1971.<sup>41</sup> But the tribal appellate court held that this fact did not prove that Prescott breached his fiduciary duty to the Tribe.<sup>42</sup> The tribal appellate court reasoned that Prescott may have held an incorrect view of the law or an incorrect view of his responsibility to disclose his earlier criminal problems.<sup>43</sup>

The tribal appellate court noted, however, that nothing in its opinion should be construed as expressing disapproval of its previous conclusion that the Gaming Commission's decision to revoke Prescott's gaming license was not erroneous.<sup>44</sup> The tribal appellate court explained that the cases "involve completely different legal standards and different factual records."<sup>45</sup>

---

<sup>39</sup> *Id.* at A-32.

<sup>40</sup> *Id.* at A-32 to A-33.

<sup>41</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 165-66 (SMSC Ct. App. Feb. 1, 2000), App. at A-32 to A-33.

<sup>42</sup> *Id.* at A-33.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at A-33 n.6.

<sup>45</sup> *Id.*

**D. The Third Proceeding: The Indemnification Action That Led To The Tribal Court Judgment (Court File No. 436-00)**

In May 1994, the Board of Directors of Little Six entered into a contract with Prescott to pay the legal costs associated with his challenge to the revocation of his gaming license (“Indemnification Agreement”).<sup>46</sup> Under the terms of the Indemnification Agreement, Prescott agreed to reimburse Little Six for all amounts advanced for his representation if he was adjudged to be liable for negligence, fraud or misconduct.<sup>47</sup>

In 2000, after the final confirmation by the tribal appellate court of the Gaming Commission’s decision to revoke Prescott’s gaming license, Little Six initiated litigation in tribal court that demanded reimbursement under the Indemnification Agreement for the legal fees it paid on Prescott’s behalf.<sup>48</sup> Prescott filed a motion to dismiss the complaint under the doctrine of *res judicata*, or in the alternative, because he was shielded by official immunity.<sup>49</sup> The tribal court denied Prescott’s motion,<sup>50</sup> and on October 26, 2001, the tribal appellate court affirmed.<sup>51</sup>

---

<sup>46</sup> See *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-53 to A-54.

<sup>47</sup> See *id.* at A-54.

<sup>48</sup> See Opinion, Addendum at 5-6; *Prescott v Little Six*, No. 027-01, 1 Shak. A.C. 190 (SMSC Ct. App. Oct. 26, 2001), App. at A-217.

<sup>49</sup> See Opinion, Addendum at 6; *Prescott v Little Six*, No. 027-01, 1 Shak. A.C. 190, 191 (SMSC Ct. App. Oct. 26, 2001), App. at A-218.

<sup>50</sup> See Opinion, Addendum at 6; *Prescott v Little Six*, No. 027-01, 1 Shak. A.C. 190, 191 (SMSC Ct. App. Oct. 26, 2001), App. at A-218.

<sup>51</sup> *Prescott v Little Six*, No. 027-01, 1 Shak. A.C. 190, 195 (SMSC Ct. App. Oct. 26, 2001), App. at A-222.

On remand from the tribal appellate court, the parties engaged in extensive discovery, at the conclusion of which Little Six moved for summary judgment.<sup>52</sup> The tribal court awarded summary judgment on the issue of liability to Little Six in February 2004, finding that Prescott was obligated to repay Little Six for funds expended on his behalf during the proceedings on his gaming license revocation.<sup>53</sup> Because the tribal court denied Little Six's motion for summary judgment on the amount of damages, the parties went to trial on the subject of the amount Prescott owed.<sup>54</sup> A trial was held in August 2004.<sup>55</sup> The tribal court ruled in favor of Little Six in the amount of \$516,871.46,<sup>56</sup> and issued a judgment for this amount, plus interest and attorneys fees in the amount of \$185,810.08.<sup>57</sup> The Tribal Court Judgment was entered on October 27, 2005.<sup>58</sup> The amount of damages was affirmed on appeal.<sup>59</sup>

---

<sup>52</sup> See *Shakopee Mdewakanton Sioux Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-50.

<sup>53</sup> *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-45, A-47.

<sup>54</sup> See *Shakopee Mdewakanton Sioux Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-51.

<sup>55</sup> See *id.* at A-51.

<sup>56</sup> *Id.* at A-74.

<sup>57</sup> See *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. Oct. 26, 2005), App. at A-229.

<sup>58</sup> *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. Oct. 27, 2005), App. at A-75.

<sup>59</sup> *Shakopee Mdewakanton Sioux Gaming Enterprise v. Prescott*, No. 032-05 (SMSC Ct. App. Aug. 9, 2006), App. at A-231.

**E. The Fourth, And Instant, Proceeding: Recognition And Enforcement Of The Tribal Court Judgment In Scott County**

Prescott has steadfastly refused to pay the Tribal Court Judgment. In 2005, the Gaming Enterprise initiated a foreign-judgment enforcement action in Scott County District Court seeking to satisfy Prescott's debts by collecting against his off-Reservation assets.<sup>60</sup> The district court, in the Opinion and Order now on appeal, refused to recognize the Tribal Court Judgment.<sup>61</sup> The district court found that the Tribal Court Judgment conflicted with the outcome of the 1994 misconduct action, which concluded that Prescott had not breached his fiduciary duty to the Tribe.<sup>62</sup> Thereafter, the Enterprise initiated this appeal.<sup>63</sup>

**ARGUMENT**

To determine whether to recognize and enforce a tribal court judgment, the district court is required to engage in a traditional comity analysis under Rule 10.02 of the Minnesota General Rules of Practice. Rather than apply the factors enumerated in Rule 10.02, the district court based its decision on one factor from the Uniform Foreign Country Money-Judgments Recognition Act, Minn. Stat. § 548.35. This is a significant legal error because all of the factors in Rule 10.02 point toward recognition. Even the one factor from the Uniform Foreign Country Money-Judgments Recognition Act upon

---

<sup>60</sup> Opinion, Addendum at 7.

<sup>61</sup> *Id.* at 25.

<sup>62</sup> *Id.* at 21.

<sup>63</sup> Notice of Appeal and Statement of the Case, App. at A-267.

which the district court relied does not provide a basis for non-recognition because the Tribal Court Judgment does not conflict with another judgment.

**I. THE DISTRICT COURT ERRED BY BASING ITS REFUSAL TO RECOGNIZE THE TRIBAL COURT JUDGMENT ON ONE FACTOR FROM A NON-BINDING ACT WHEN ALL FACTORS IN RULE 10.02 POINT TOWARD RECOGNITION**

In refusing to recognize the Tribal Court Judgment, the district court relied upon one factor in the Uniform Foreign Country Money-Judgments Recognition Act. The district court should have engaged in traditional comity analysis by applying the factors listed in Rule 10.02 of the Minnesota General Rules of Practice, all of which point toward recognition.

**A. The Law Governing Recognition And Enforcement Of Tribal Court Judgments Is Based On The Doctrine Of Comity**

Rule 10.01 of the Minnesota General Rules of Practice provides for the mandatory recognition and enforcement of tribal court orders and judgments in state courts where required by state or federal law.<sup>64</sup> For example, federal law mandates recognition and enforcement of tribal court judgments and orders in cases involving child support.<sup>65</sup> When state or federal law does not mandate the outcome, recognition and enforcement of tribal court judgments and orders is governed by the doctrine of comity.<sup>66</sup> Rule 10.02(a) is intended to facilitate the court's comity analysis in deciding what effect to give tribal

---

<sup>64</sup> Minn. Gen. R. Prac. 10.01(a).

<sup>65</sup> 28 U.S.C. §§ 1738B (a), (b).

<sup>66</sup> See Minn. Gen. R. Prac. 10.02, comm. cmt. (2007).

court judgments.<sup>67</sup> As the Advisory Committee Comments to Rule 10 explain,<sup>68</sup> “Rule 10.02(a) does not create any new or additional powers but only begins to describe in one convenient place the principles that apply to recognition of orders and judgments by comity.”<sup>69</sup>

Because no state or federal law requires the recognition and enforcement of the Tribal Court Judgment against Prescott, the decision of whether to recognize and enforce the judgment must be based on the doctrine of comity.<sup>70</sup> Rule 10.02 provides ten factors that courts consider when engaging in this comity analysis. These factors are:

- (1) whether the party against whom the order or judgment will be used has been given notice and an opportunity to be heard or, in the case of matters properly considered *ex parte*, whether the respondent will be given notice and an opportunity to be heard within a reasonable time;
- (2) whether the order or judgment appears valid on its face and, if possible to determine, whether it remains in effect;
- (3) whether the tribal court possessed subject-matter jurisdiction and jurisdiction over the person of the parties;
- (4) whether the issuing tribal court was a court of record;
- (5) whether the order or judgment was obtained by fraud, duress, or coercion;

---

<sup>67</sup> *Id.*

<sup>68</sup> Although not binding, the advisory committee comments to a rule may aid courts in the rule’s interpretation. See *Vandenheuevel v. Wagner*, 690 N.W.2d 753, 756 (Minn. 2005).

<sup>69</sup> Minn. Gen. R. Prac. 10.02, comm. cmt. (2007).

<sup>70</sup> See, e.g., *Wilson v. Marchington*, 127 F.3d 805, 809-10 (9th Cir. 1997) (“In absence of a Congressional extension of full faith and credit, the recognition and enforcement of tribal judgments in federal court must inevitably rest on the principles of comity.”).

- (6) whether the order or judgment was obtained through a process that afforded fair notice, the right to appear and compel attendance of witnesses, and a fair hearing before an independent magistrate;
- (7) whether the order or judgment contravenes the public policy of this state;
- (8) whether the order or judgment is final under the laws and procedures of the rendering court, unless the order is a non-criminal order for the protection or apprehension of an adult, juvenile or child, or another type of temporary, emergency order;
- (9) whether the tribal court reciprocally provides for recognition and implementation of orders, judgments and decrees of the courts of this state; and
- (10) any other factors the court deems appropriate in the interests of justice.<sup>71</sup>

Rule 10.02(a) does not attempt to define all of the factors that may be appropriate for consideration by a court.<sup>72</sup> Rule 10.02(a)(10) provides that the court may look to any other factor it “deems appropriate in the interests of justice.”<sup>73</sup>

The Advisory Committee Comments to Rule 10 provide that the Minnesota Uniform Foreign Country Money-Judgments Recognition Act, Minnesota Statutes § 548.35, may guide Minnesota courts in considering whether to recognize and enforce money judgments.<sup>74</sup> In the proceedings before the district court, the parties disputed whether Rule 10.02 or the Uniform Foreign Country Money-Judgments Recognition Act is the relevant basis for recognition of a tribal court judgment. For the purposes of this

---

<sup>71</sup> Minn. Gen. R. Prac. 10.02(a).

<sup>72</sup> See Minn. Gen. R. Prac. 10.02, comm. cmt. (2007).

<sup>73</sup> Minn. Gen. R. Prac. 10.02(a)(10).

<sup>74</sup> Minn. Gen. R. Prac. 10.02, comm. cmt. (2007).

appeal, Appellant does not dispute the district court's conclusion that the recognition issue in this case must be decided under Rule 10.02, with reference to the Uniform Foreign Country Money-Judgments Recognition Act "for guidance as appropriate."<sup>75</sup>

**B. The District Court Must Consider The Factors Enumerated In Rule 10.02**

Although the district court explicitly held that the Uniform Foreign Country Money-Judgments Recognition Act does not control,<sup>76</sup> it nevertheless found one factor listed in that Act "determinative" in its decision to refuse to recognize and enforce the Tribal Court Judgment against Prescott.<sup>77</sup> The district court erred by allowing its decision to be controlled by one factor in a non-binding Act while largely ignoring the factors enumerated in Rule 10.02. The district court's decision on this purely legal issue is entitled to no deference from this Court and should be reviewed *de novo*.<sup>78</sup>

The district court should have engaged in a traditional comity analysis by applying the factors described in Rule 10.02. As explained above, the purpose of Rule 10.02 is to establish factors for determining the effect of tribal court adjudications where federal or state statutory law does not do so.<sup>79</sup> Importantly, not all of the factors must be present in order for a court to recognize and enforce a tribal court order. For example, reciprocity is

---

<sup>75</sup> Opinion, Addendum at 15.

<sup>76</sup> *Id.* at 14-15.

<sup>77</sup> *Id.* at 21.

<sup>78</sup> See *Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984).

<sup>79</sup> Minn. Gen. R. Prac. 10.02, comm. cmt. (2007).

not a pre-condition to enforceability generally, even though it may be a relevant consideration in some circumstances.<sup>80</sup>

The district court did not consider most of the factors enumerated in Rule 10.02. Indeed, the district court addressed just two of the nine factors listed in Rule 10.02: due process and public policy.<sup>81</sup> The district court explained, “While the Court finds the above factor [from the Uniform Foreign Country Money-Judgments Recognition Act] to be determinative, the Court also considered the following [two] factors and includes them to the extent that they support the Court’s decision and/or assist in putting this matter into proper perspective.”<sup>82</sup>

Appellant does not assert that Rule 10.02 requires the district court to base its decision on every factor listed in the Rule. The Advisory Committee Comments explain, “[i]t is possible in any given case that one or more of these factors will not apply.”<sup>83</sup> But this is not a case where the district court engaged in a thorough analysis of the Rule 10.02 factors and subsequently determined that one or two factors did not apply. In this case, the district court erred because it looked first to a factor not even included in Rule 10.02, and then completely ignored seven of the nine specific Rule 10.02 factors.

---

<sup>80</sup> See *Nicol v. Tanner*, 256 N.W.2d 796, 800-02 (Minn. 1976).

<sup>81</sup> Opinion, Addendum at 21, 23.

<sup>82</sup> *Id.* at 21.

<sup>83</sup> Minn. Gen. R. Prac. 10.02, comm. cmt. (2007).

### C. All Of The Relevant Factors Point Toward Recognition

The only two factors from Rule 10.02 that the district court considered were due process and public policy. As explained below, the district court reached the wrong conclusion as to those two factors and failed to address the remaining factors. All of the Rule 10.02 factors point toward recognition.

#### 1. Prescott Was Afforded Due Process

The sixth factor enumerated in Rule 10.02 asks whether the judgment was obtained through a process that afforded fair notice, the right to appear and compel attendance of witnesses, and a fair hearing before a neutral magistrate.<sup>84</sup> State and federal courts have repeatedly recognized that the court system of the Shakopee Mdewakanton Sioux Community is a competent judicial forum.<sup>85</sup> No court has taken the position that the court system of the Shakopee Mdewakanton Sioux Community fails to afford litigants procedural due process. But without identifying any problems with the tribal court proceedings, the district court concluded that this factor supports non-recognition of the Tribal Court Judgment.<sup>86</sup>

---

<sup>84</sup> Minn. Gen. R. Prac. 10.02(a)(6).

<sup>85</sup> See, e.g., *Prescott v. Little Six, Inc.*, 387 F.3d 753 (8th Cir. 2004) (holding that the tribal court was competent and was the final forum for determining whether Little Six created an ERISA-qualified plan).

<sup>86</sup> Although Appellant has identified no cases that interpret Rule 10.02, several cases have interpreted the due process factor in the Uniform Foreign Country Money-Judgments Recognition Act. Few cases deny recognition of a foreign money judgment on this basis because the due process standard is not a demanding one. See, e.g., *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000). Only extreme outliers such as Cuba, North Korea, Iran, Iraq, and Congo are examples of jurisdictions whose “adherence to the rule of law and commitment to the norm of due process are open to

(footnote continued)

The district court asserted that Commissioner Cherie Crooks-Bathel, who presided over the Gaming Commission's hearing on Prescott's license renewal, was biased against Prescott and should have recused herself.<sup>87</sup> Relying on this alleged bias, the district court concluded that there were "significant questions regarding the reliability of the evidence and findings that provided the basis for the judgment . . . ."<sup>88</sup> The district court's conclusion is baseless.

First, the tribal courts already rejected the argument that Commissioner Crooks-Bathel was biased. Prescott appealed the Gaming Commission's revocation of his license to the tribal court, and he argued that the Commission's hearings should be set aside because of bias. The tribal appellate court disagreed with Prescott and concluded that Prescott failed to submit evidence that Commissioner Crooks-Bathel was biased against him.<sup>89</sup> Rule 10.02 does not provide a state forum for relitigating the merits of these tribal court proceedings.<sup>90</sup> The district court has no basis to make an assessment regarding an alleged influence of internal tribal politics, and should not have replaced the reasoned conclusion of the tribal appellate courts with its own speculation.

---

(footnote continued from previous page)

serious question." *Id.* at 477; *see also CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 743 N.Y.S.2d 408, 414 (N.Y. App. Div. 2002) (summarizing cases).

<sup>87</sup> Opinion, Addendum at 21-23.

<sup>88</sup> *Id.* at 23.

<sup>89</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 120, 124 (SMSC Ct. App. Apr. 30, 1998), App. at A-239.

<sup>90</sup> *See Lemke ex rel. Teta v. Brooks*, 614 N.W.2d 242, 245 (Minn. Ct. App. 2000) ("[S]tate courts do not have jurisdiction to conduct even limited review of tribal court decisions.").

Second, an alleged bias of a member of the Gaming Commission is not a legitimate basis upon which to refuse to recognize the Tribal Court Judgment. Rule 10.02 asks whether the judgment was obtained through fair process.<sup>91</sup> Commissioner Crooks-Bathel presided over the administrative hearing before the Gaming Commission on whether to revoke Prescott's gaming license. The Gaming Commission's decision is not equivalent to the Tribal Court Judgment. The Tribal Court Judgment arises from a separate action, the indemnification action initiated in 2000.

After Prescott appealed the Gaming Commission's revocation of his gaming license to the tribal courts, the tribal appellate court held that the Gaming Commission's administrative decision to revoke Prescott's license was supported by substantial evidence in the record, the relevant standard of review.<sup>92</sup> The liability determination in the indemnification action was based on this conclusion from the tribal appellate court.<sup>93</sup> The tribal court explained, "I think it is clear that Prescott was found by the Court of Appeals to have been guilty of negligence with respect to his duties to both the State of Minnesota and [Little Six]."<sup>94</sup> The tribal appellate court's finding of negligence on the part of Prescott triggered his promise to repay the legal fees advanced under the indemnification agreement.<sup>95</sup>

---

<sup>91</sup> Minn. Gen. R. Prac. 10.02(a)(6).

<sup>92</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 153-56 (SMSC Ct. App. July 30, 1999), App. at A-213 to A-216.

<sup>93</sup> *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-45.

<sup>94</sup> *Id.* at A-45.

<sup>95</sup> *Id.*

Because the tribal court in the indemnification action relied on the conclusion from the tribal appellate court for its finding of negligence -- and did not simply incorporate the finding of the Gaming Commission -- any alleged bias on the part of one of the Commissioners is not determinative as to whether the Trial Court Judgment was obtained through fair process. The district court did not suggest that the tribal court members were biased against Prescott, and it would have had no basis to do so. Moreover, Rule 32 of the Shakopee Mdewakanton Sioux Community Court provides for recusal of tribal judges; this rule is substantively similar to the federal counterpart codified at 28 U.S.C. § 455.<sup>96</sup> Prescott did not bring a motion to recuse any of the tribal court judges in either the trial or appellate proceedings which underlie the Tribal Court Judgment.

In short, the Tribal Court Judgment was obtained through a process that afforded fair notice, the right to appear and compel attendance of witnesses, and a fair hearing before a neutral magistrate.<sup>97</sup> Contrary to the district court's conclusion, this factor points towards recognition.

**2. That Prescott's Per Capita Payments From The Tribe Cannot Be Directly Applied Toward The Judgment Is Irrelevant To The Comity Analysis**

The seventh factor in Rule 10.02 considers whether the judgment contravenes the public policy of this state.<sup>98</sup> The district court concluded that the Enterprise's decision to

---

<sup>96</sup> Shakopee Mdewakanton Sioux Community Court Rule 32, App. at A-246.

<sup>97</sup> See Minn. Gen. R. Prac. 10.02(a)(6).

<sup>98</sup> Minn. Gen. R. Prac. 10.02(a)(7).

pursue collection off the Reservation could be viewed as forum shopping because the Tribe's current law does not allow collection of judgments from per capita payments from the Tribe.<sup>99</sup> The district court surmised that "the Community has expressed what appears to be at least some disinterest in the collection."<sup>100</sup> Again, the district court's speculations about an internal tribal matter falls short of justifying non-recognition of the Tribal Court Judgment.

Prescott owes a significant amount of money to the Tribe, and the Tribe would like to collect that money, which is why the Enterprise docketed the judgment in Scott County. Just as in any other case seeking enforcement of a foreign judgment, the Enterprise seeks collection of assets in another jurisdiction because the attachable assets in the jurisdiction from which the judgment arose are insufficient. There is nothing about the facts of this case that converts this action for enforcement of a foreign judgment into some sort of impermissible forum shopping.<sup>101</sup> The district court has no legal basis to assume to understand why the Tribe made its decision regarding collection from per capita payments. The district court should not have inferred that the Tribe's decision somehow reflects disinterest in collection from Prescott.

---

<sup>99</sup> Opinion, Addendum at 24.

<sup>100</sup> *Id.*

<sup>101</sup> *See Soc'y of Lloyd's v. Turner*, 303 F.3d 325, 332-333 (5th Cir. 2002) ("[E]nforcement of a judgment of a foreign court based on the law of the foreign jurisdiction does not offend the public policy of the forum simply because the body of foreign law upon which the judgment is based is different from the law of the forum . . .").

Contrary to the district court's conclusion, the public policy factor supports recognition of the judgment. Public policy considerations necessitate substantial deference to tribal courts. The United States Supreme Court has repeatedly recognized the federal government's longstanding policy of encouraging tribal self-government.<sup>102</sup> Tribal courts play a vital role in tribal self-government, and the federal government has encouraged their development.<sup>103</sup> As such, it is good public policy for the Minnesota state court to refrain from second-guessing the tribal court on internal tribal matters, as the district court did here. Moreover, public policy considerations favor the finality of judgments and the ability of parties to rely on court orders.<sup>104</sup> They also favor upholding contractual obligations assumed in good faith.<sup>105</sup>

The Enterprise obtained a valid judgment against Prescott in the tribal court and now simply seeks to enforce the Tribal Court Judgment in a jurisdiction where Prescott is believed to have significant assets.<sup>106</sup> This factor points toward recognition.

### **3. The District Court Failed To Analyze Six Relevant Rule 10.02 Factors, Which All Point Toward Recognition**

The district court completely ignored six of the factors enumerated in Rule 10.02, even though all of these point toward recognition. The first factor addresses whether the

---

<sup>102</sup> See, e.g., *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 (1987).

<sup>103</sup> *Id.* at 14-15.

<sup>104</sup> See *Nussbaumer v. Fetrow*, 556 N.W.2d 595, 599 (Minn. Ct. App. 1996).

<sup>105</sup> See *Seeman v. Philadelphia Warehouse Co.*, 274 U.S. 403 (1927).

<sup>106</sup> The district court commented that "there is no evidence that Prescott has any collectable assets in Scott County at this time," and therefore questioned whether this action is a justiciable controversy. Opinion, Addendum at 24-25. To the contrary, the Enterprise could provide evidence of Prescott's assets in Scott County, if necessary.

party against whom the judgment will be used has been given notice and an opportunity to be heard.<sup>107</sup> Prescott participated fully in the tribal court case -- which involved extensive discovery, numerous hearings, an appeal, and a trial as to damages -- that resulted in the Tribal Court Judgment.

The second factor considers whether the judgment appears valid and enforceable on its face.<sup>108</sup> The validity of the judgment has never been questioned, nor would there be any basis to do so.

The third factor asks whether the tribal court possessed subject matter and personal jurisdiction.<sup>109</sup> The tribal court had subject matter jurisdiction to enforce the Indemnification Agreement, which was executed on the Reservation and relates to payment of attorneys' fees arising from proceedings before the Tribe's Gaming Commission. The tribal court has personal jurisdiction over Prescott, who is a tribal member.

The fourth factor asks whether the issuing tribal court was a court of record.<sup>110</sup> The court system of the Shakopee Mdewakanton Sioux Community is a court of record. It has been operating since 1988.<sup>111</sup>

---

<sup>107</sup> Minn. Gen. R. Prac. 10.02(a)(1).

<sup>108</sup> Minn. Gen. R. Prac. 10.02(a)(2).

<sup>109</sup> Minn. Gen. R. Prac. 10.02(a)(3).

<sup>110</sup> Minn. Gen. R. Prac. 10.02(a)(4).

<sup>111</sup> See Minnesota American Indian Bar Association, *Tribal Courts*, <http://www.maiba.org/tribalCourts.html#shakopee> (last visited on May 26, 2009).

The fifth factor considers whether the judgment was obtained by fraud, duress, or coercion.<sup>112</sup> The tribal court entered the Tribal Court Judgment after the conclusion of an adversarial process in which Prescott was represented by an attorney. There is no legitimate basis to suggest that the Tribal Court Judgment was obtained by fraud, duress, or coercion.

The eighth factor is whether the judgment is final.<sup>113</sup> The finality of the Tribal Court Judgment is not in question. Prescott appealed the final judgment as to the amount of damages, which the tribal appellate court affirmed on August 9, 2006.<sup>114</sup>

The ninth factor considers whether the tribal court reciprocally provides for recognition and implementation of orders of this state.<sup>115</sup> Shakopee Mdewakanton Sioux Community Court Rule 34, which was adopted in 1997, provides a procedure for recognition of orders of this state, and the standard by which to determine enforceability.<sup>116</sup> For example, at least two Minnesota State Court orders against Prescott have been recognized by the tribal court.<sup>117</sup>

---

<sup>112</sup> Minn. Gen. R. Prac. 10.02(a)(5).

<sup>113</sup> Minn. Gen. R. Prac. 10.02(a)(8).

<sup>114</sup> *Shakopee Mdewakanton Sioux Gaming Enterprise v. Prescott*, No. 032-05 (SMSC Ct. App. Aug. 9, 2006), App. at A-231.

<sup>115</sup> Minn. Gen. R. Prac. 10.02(a)(9).

<sup>116</sup> *Shakopee Mdewakanton Sioux Community Court Rule 34*, App. at A-245.

<sup>117</sup> *See Cannon v. Prescott*, 4 Shak. Rep. 144 (Nov. 25, 2002), App. at A-249; *Wright v Prescott*, 4 Shak. Rep. 153 (Nov. 25, 2002), App. at A-258.

The above discussion of the Rule 10.02 factors is not intended to be sufficient for the Court to determine whether to recognize and enforce the Tribal Court Judgment. Appellant does not seek an order from this Court that Tribal Court Judgment must be recognized and enforced. The district court erred by basing its decision on just one factor from the Uniform Foreign Money-Judgments Recognition Act, and the proper remedy is to remand to the district court with direction that it apply the traditional comity analysis, as described in Rule 10.02.

## **II. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO RECOGNIZE THE TRIBAL COURT JUDGMENT BASED ON A PURPORTED CONFLICT WITH ANOTHER JUDGMENT**

Conflict with another judgment was the determinative factor in the district court's decision to not recognize the Tribal Court Judgment.<sup>118</sup> Although the existence of conflicting judgments is not one of the factors enumerated in Rule 10.02, the Uniform Foreign Country Money-Judgments Recognition Act provides that a foreign judgment "need not be recognized" if "the judgment conflicts with another final and conclusive judgment."<sup>119</sup>

The district court found that the Tribal Court Judgment conflicts with the final judgment in a different action, the case relating to Prescott's misconduct, which was brought by the Enterprise and other plaintiffs in 1994.<sup>120</sup> The district court abused its discretion when it concluded that these judgments conflict because the outcome of the

---

<sup>118</sup> Opinion, Addendum at 21.

<sup>119</sup> See *supra* p. 14-15; Minn. Stat. § 548.35, subd. 4(b)(4).

<sup>120</sup> Opinion, Addendum at 15-21.

1994 misconduct action did not alter the basis for the Tribal Court Judgment. Indeed, the tribal appellate court stated that its decision in the 1994 misconduct action should not be interpreted to express disapproval of its prior decision affirming the Gaming Commission's revocation of Prescott's license, which is the finding of misconduct that triggered Prescott's obligation to repay the Enterprise.<sup>121</sup> The tribal appellate court found that it was undisputed that Prescott stated on his gaming license applications that he never had a felony conviction even though he was convicted of a felony in 1971.<sup>122</sup> It concluded that this misrepresentation was insufficient to prove breach of fiduciary duty, even though it was sufficient to uphold the Gaming Commission's revocation of his license. The district court should have respected the well-reasoned conclusion of the tribal appellate court.

**A. Prescott's Obligation To Repay The Enterprise Was Triggered When The Tribal Appellate Court Affirmed The Gaming Commission's Decision To Revoke His License**

The Tribal Court Judgment arose from the indemnification action, which was a standard breach of contract case. Prescott signed a written agreement in which he promised:

I agree to repay the Corporation all amounts advanced in connection with any part [of] the defense of the above proceeding [Prescott's challenge to the Gaming Commission's revocation of his gaming license] for which I am finally adjudged to be liable for negligence, fraud or misconduct in the performance of my duties to the Corporation.<sup>123</sup>

---

<sup>121</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 166 (SMSC Ct. App. Feb. 1, 2000), App. at A-33 n.6.

<sup>122</sup> *Id.* at A-32 to A-33.

<sup>123</sup> *See Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-54.

In other words, Prescott agreed to repay the funds advanced to him if he did not prevail in the Gaming Commission proceedings. He did not prevail. After years of litigation, the tribal appellate court on July 30, 1999 affirmed the Gaming Commission's decision.<sup>124</sup>

After the Gaming Commission's order was affirmed on appeal, Prescott refused to comply with his repayment obligation. In 2000, Little Six initiated litigation to enforce Prescott's promise. The tribal court granted summary judgment to Little Six on the issue of liability, concluding that Prescott was obligated to repay the Gaming Enterprise for funds expended on his behalf during appeal of his gaming license revocation.<sup>125</sup> The tribal court reasoned that Prescott owed a duty to Little Six to be licensed and to be truthful on his license applications, and that Prescott breached that duty when he misrepresented the status of his felony conviction in the state.<sup>126</sup> Prescott did not appeal this finding of liability.

**B. The Judgment In The 1994 Misconduct Action Did Not Alter Prescott's Obligation To Indemnify The Enterprise**

The decision in the 1994 misconduct action said nothing about Prescott's obligation to repay the Enterprise. In the 1994 misconduct action, plaintiffs generally alleged that Prescott and another Little Six officer, William Johnson, expended Tribal

---

<sup>124</sup> *In re: Prescott*, No. 015-97, 1 Shak. A.C. 146, 154-55 (SMSC Ct. App. July 30, 1999), App. at A-214 to A-215.

<sup>125</sup> *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-47.

<sup>126</sup> *Id.* at A-45.

money for improper purposes and without authorization.<sup>127</sup> One subcount (Subcount M) alleged that Prescott breached his fiduciary duty to the Tribe by misrepresenting information on his application for a gaming license.<sup>128</sup> The tribal appellate court concluded that Prescott was entitled to summary judgment on that subcount.<sup>129</sup> The tribal appellate court found that it was undisputed that Prescott asserted in his gaming application that he had no previous felony convictions even though he was convicted of a felony in 1971.<sup>130</sup> This fact, however, was insufficient, according to the tribal appellate court, to prove that Prescott breached his fiduciary duty to the Tribe.<sup>131</sup>

In analyzing whether Prescott breached his fiduciary duty to the Tribe, the tribal appellate court looked to § 36 of the Corporation Ordinance.<sup>132</sup> That ordinance requires officers to act in the best interest of the Tribe, to act in good faith, and to act as an ordinary prudent person would under the circumstances.<sup>133</sup> The tribal appellate court reasoned that Prescott may have held an incorrect view of the law or an incorrect view of

---

<sup>127</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 158 (SMSC Ct. App. Feb. 1, 2000), App. at A-25.

<sup>128</sup> *Id.* at A-32.

<sup>129</sup> *Id.* at A-33.

<sup>130</sup> *Id.* at A-32 to A-33.

<sup>131</sup> *Id.* at A-33.

<sup>132</sup> Corporation Ordinance § 36, App. at A-266; *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 166 (SMSC Ct. App. Feb. 1, 2000), App. at A-33.

<sup>133</sup> Corporation Ordinance § 36, App. at A-266; *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 166 (SMSC Ct. App. Feb. 1, 2000), App. at A-33.

his responsibility to disclose his earlier criminal problems in Minnesota, and that being “mistaken” is not necessarily the same as failing to act in good faith.<sup>134</sup>

The appellate court did not question its previous decision that affirmed the Gaming Commission’s decision. In a footnote, the appellate court explained:

We note, however, that this analysis only pertains to our holding on subcount M of the Community’s Complaint alleging that Prescott breached a fiduciary duty he owed to the Community. Nothing in this opinion should be construed as expressing disapproval of any of our conclusions in *In re Leonard Prescott Appeal*, No. 015-97 (SMS(D)C Ct. App. July 30, 1999). In that case we concluded that the Gaming Commission’s decision to revoke Leonard Prescott’s gaming license was not in error. That case and this case involve completely different legal standards and different factual records, and nothing in this opinion should be interpreted as questioning or undermining this Court’s conclusion in *In re Leonard Prescott Appeal*.<sup>135</sup>

The tribal appellate court properly emphasized that the cases involve “different legal standards and different factual records.”<sup>136</sup> In the 1994 misconduct action, the issue before the tribal appellate court was whether Prescott breached his fiduciary duty to the Tribe by misstating information on his gaming license.<sup>137</sup> There is nothing inconsistent about the tribal appellate court deciding in one case that the Gaming Commission’s decision to revoke his license was based on substantial evidence in part because he misstated information on his gaming license application,<sup>138</sup> and in different case, deciding

---

<sup>134</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 166 (SMSC Ct. App. Feb. 1, 2000), App. at A-33.

<sup>135</sup> *Id.* at A-33 n.6.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at A-32 to A-33.

<sup>138</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 153-54 (SMSC Ct. App. July 30, 1999), App. at A-213 to A-214.

that this fact alone is insufficient to prove that Prescott breached his fiduciary duty to the Tribe, as defined by the Corporation Ordinance.<sup>139</sup> The two cases presented different questions, each of which the tribal court decided distinctly and without contradiction.

**C. The District Court Ignored The Explicit Direction Of The Tribal Appellate Court**

The district court acknowledged that the appellate court “took pains to state” that its decision should not be construed as expressing disapproval with its previous decision affirming the Gaming Commission.<sup>140</sup> Nevertheless, the district court ignored the explicit direction of the tribal appellate court and concluded that “the inconsistency is inescapable.”<sup>141</sup> Again, the district court failed to give the tribal court proper deference.

The district court stated that “the evidence on February 1, 2000 [holding in the 1994 misconduct action that Prescott did not breach his fiduciary duty to the Tribe], is insufficient to prove that Prescott engaged in any misrepresentation or misconduct, negligent or intentional, while the same evidence led to a different conclusion by the same Court on July 30, 1999 [affirming the Gaming Commission’s revocation of his temporary gaming license] and on February 17, 2004 [holding Prescott liable in the indemnification action].”<sup>142</sup> The district court’s analysis misunderstands the proceedings.

---

<sup>139</sup> *Little Six v Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 166 (SMSC Ct. App. Feb. 1, 2000), App. at A-33.

<sup>140</sup> Opinion, Addendum at 20.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 20-21.

The tribal appellate court's decision in the 1994 misconduct action did not hold that the evidence was "insufficient to prove that Prescott engaged in any misrepresentation or misconduct, negligent or intentional."<sup>143</sup> The tribal appellate court narrowly held that Prescott did not breach his fiduciary duty to the Tribe, as defined by § 36 of the Corporation Ordinance, when Prescott misrepresented information on his gaming license.<sup>144</sup> The tribal appellate court expressly acknowledged that Prescott stated on his gaming license applications that he never had a felony conviction even though he was convicted of a felony in 1971.<sup>145</sup> This misrepresentation -- while sufficient to uphold the Gaming Commission's revocation of his license -- was insufficient to prove breach of fiduciary duty. There is no conflict.

Moreover, setting aside the district court's overly broad reading of the tribal appellate court's decision in the 1994 misconduct action, the district court erred by looking to the outcome of the 1994 misconduct action as a basis for questioning the judgment in the indemnification action. Prescott's obligation to repay his legal costs was in no way dependant on the outcome in the 1994 misconduct action. As stated in the plain language of the Indemnification Agreement, his obligation to pay was triggered by the outcome in the Gaming Commission proceedings.<sup>146</sup> In the indemnification action,

---

<sup>143</sup> *See id.*

<sup>144</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 166 (SMSC Ct. App. Feb. 1, 2000), App. at A-33.

<sup>145</sup> *Id.* at A-32 to A-33.

<sup>146</sup> *See Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-53 to A-54.

the tribal court simply asked whether his obligation to repay had been triggered.<sup>147</sup> This finding of liability led to the Tribal Court Judgment. If there was another tribal court judgment holding that Prescott's obligation to repay was not triggered, or that he was obligated to pay a different amount, then there would be conflicting judgments. But there are no such cases, and as such, there is no conflict.

To be sure, the only cases where courts have refused to recognize a foreign judgment under the Uniform Foreign Country Money-Judgments Recognition Act based on conflicts involve judgments that reached opposite outcomes based on the same set of facts and legal claims.<sup>148</sup>

The district court's disagreement with the tribal appellate court cannot serve as a basis to refuse to recognize a valid tribal court judgment. The case underlying the Tribal Court Judgment involves a dispute that occurred on the Reservation between a tribal gaming enterprise and a tribal member. This case has already been litigated and brought to judgment in an appropriate jurisdiction. The district court should have respected the outcomes of the tribal court proceedings instead of attempting to relitigate them. There is

---

<sup>147</sup> *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-45.

<sup>148</sup> See *Byblos Bank Europe, S.A. v Sekerbank Turk Anonym Syrketi*, 2008 NY Slip Op. 2501, 4 (N.Y. 2008) (affirming lower courts refusal to recognize judgment from a Belgian court that confirmed an attachment of assets based on a breach of loan agreements when a Turkish court had already dismissed on its merits the action based on the breach of loan agreements); *Brosseau v. Ranzau*, 81 S.W.3d 381, 390 (Tex. Ct. App. 2002) (affirming lower courts refusal to recognize a Mexican judgment holding that the defendant did not own the stock in question because the trial court found that he did own the stock).

no conflict between these judgments, and thus no basis for non-recognition of the Tribal Court Judgment.

**CONCLUSION**

For all the reasons explained above, this Court should vacate the district court's memorandum opinion and order and remand for proper analysis under Rule 10.02.

Respectfully submitted,

Dated: June 17, 2009

*Collette L. Adkins Giese*

Brian B. O'Neill, Minn. Bar No. 82521  
Richard A. Duncan, Minn. Bar No. 192983  
Collette L. Adkins Giese, Minn. Bar No. 35059X  
**FAEGRE & BENSON LLP**  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
(612) 766-7000

Kurt V. Bluedog, Minn. Bar No. 9143  
**BLUEDOG, PAULSON & SMALL**  
5001 American Boulevard West, Suite 500  
Bloomington, MN 55437  
(952) 893-1813

**Attorneys for Plaintiff Shakopee Mdewakanton  
Sioux (Dakota) Gaming Enterprise**