

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.

REPLY BRIEF OF APPELLANT
SHAKOPEE MDEWAKANTON SIOUX GAMING ENTERPRISE

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REPLY STATEMENT OF THE FACTS

To begin, Respondent Leonard Prescott's Statement of the Facts contains numerous inaccuracies that should be corrected so that the Court is not misled about the context of the tribal court proceedings that led ultimately to the judgment dated October 27, 2005 ("Tribal Court Judgment") that the Appellant Shakopee Mdewakanton Sioux Gaming Enterprise ("Enterprise") seeks to enforce in Scott County District Court.

A. The Parties And The Context For The Litigation

To engage in Indian gaming, the Shakopee Mdewakanton Sioux Community (the "Tribe") must comply with the requirements of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* ("IGRA"). For example, IGRA requires tribes that engage in gaming to adopt a gaming ordinance that includes, among other things, standards that prohibit the employment of "any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming" ¹ IGRA also requires that a tribe have its gaming ordinance approved by the National Indian Gaming Commission and have an ordinance governing any per capita distribution of gaming proceeds approved by the Secretary of the Interior through the Bureau of Indian Affairs. ²

¹ 25 U.S.C. § 2710(b)(2)(F)(ii)(II); *see also* 25 C.F.R. § 558.2.

² 25 U.S.C. § 2710(b)(1)(B) (requiring that the tribe adopt an ordinance or resolution that is approved by the Chairman); *id.* § 2710(b)(3) (requiring per capita distribution plan to be approved by Secretary of the Interior).

In April 1993, following the 1992 election of Stanley Crooks as Chairman, the General Council of the Tribe, which consists of all adult members, adopted a Gaming Ordinance that meets the requirements of federal law.³

Later that year, in September 1993, the Tribe elected members to serve on the Gaming Commission, a tribal governmental agency tasked with overseeing gaming on the Tribal reservation.⁴ The members of the General Council were previously notified to submit their names if they wanted to be a candidate for the Gaming Commission.⁵ Six members identified themselves and were offered as candidates.⁶ Of these six candidates, Cherie Crooks-Bathel, Stanley Crooks's daughter, received the most votes⁷ and, as such, she became the Chair of the newly formed Gaming Commission. Respondent's statement that the new Chairman, Stanley Crooks, simply "presented" the General Council with the Gaming Ordinance and his daughter as Gaming Commission Chair is false.⁸

The Gaming Commission's involvement in conducting background checks on key casino employees such as Prescott was also mandated by federal law. In November

³ Reply App. at RA-1 (Resolution 04-19-93-001).

⁴ Reply App. at RA-5 (Letter from Secretary/Treasurer Darlene Matta dated Sept. 8, 1993).

⁵ Reply App. at RA-7 (Letter from Secretary/Treasurer Darlene Matta dated July 8, 1993).

⁶ Reply App. at RA-8 to RA-14 (SMSC Document Imaging System, SMSC General Council 1993 Binder, pages 273-279); Reply App. at RA-6 (Certification of Regular General Council Meeting Sept. 14, 1993).

⁷ Reply App. at RA-6 (Certification of Regular General Council Meeting Sept. 14, 1993).

⁸ Respondent's Brief at 4.

1993, the National Indian Gaming Commission (“NIGC”) approved the Tribe’s Gaming Ordinance.⁹ In a letter to Chairman Crooks, the Chairman of the National Indian Gaming Commission explained that the Tribe must now conduct background investigations on its key employees involved in gaming:

[T]he Community is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).¹⁰

At the time, Respondent Prescott was Chief Executive Officer and Chairman of the Board of Directors of Little Six, Inc., which was the Tribally chartered corporate organization that owned Mystic Lake Casino before ownership was transferred to the Enterprise on January 1, 2005.¹¹ As CEO and Chairman, Prescott was a key employee and federal law required him to submit to a background investigation.¹² Given these requirements of federal law, Prescott is incorrect to suggest that the Gaming Commission unfairly targeted him for investigation.

The Gaming Commission issued Prescott a temporary license pending the processing of his gaming license application.¹³ Respondent asserts that “the first act” of

⁹ Reply App. at RA-15 (Letter from National Indian Gaming Commission dated Nov. 2, 1993).

¹⁰ *Id.*

¹¹ Opinion, Addendum at 5.

¹² 25 C.F.R. § 556.5.

¹³ *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.

the Gaming Commission was to deny him his gaming license.¹⁴ To the contrary, the Gaming Commission revoked Prescott's temporary license in July 1994, nearly one year after the Tribe elected the Gaming Commission and after the Gaming Commission had taken several actions authorized under the Gaming Ordinance, including hiring a compliance officer, creating applications for employment, setting up a fingerprinting process for all employees, and hiring an auditor.¹⁵

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

After holding several hearings on the gaming license of Prescott, the Gaming Commission issued Findings of Fact on July 1, 1994, in which it found that Prescott had engaged in negligence, fraud, and misconduct.¹⁶ Specifically, the Gaming Commission found that in 1990 and 1991 Prescott submitted two sworn applications for gaming-related licenses in which he falsely averred that he had no criminal history,¹⁷ even though Prescott was convicted in Minnesota state court of a felony in 1971 for burglary.¹⁸ After Prescott completed his probation in 1972, the charge was reduced to a misdemeanor by

¹⁴ Respondent's Brief at 4.

¹⁵ Gaming Commission Finding of Fact, File No. 94-0024 (July 1, 1994), App. at A-207; Reply App. at RA-30, RA-32 to RA-39 (Gaming Ordinance).

¹⁶ 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.

¹⁷ Shakopee Mdewakanton Sioux Community Gaming Commission Findings of Fact, File No. 94-0024 (July 1, 1994), App. at A-193 to A-195, A-203.

¹⁸ *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.

operation of Minnesota law.¹⁹ It was not until 1992 – after he submitted the gaming license applications at issue – that the conviction was expunged.²⁰

Prescott appealed the revocation of his gaming license to the tribal court. The tribal court rejected Prescott's argument that he was denied procedural due process.²¹ But the tribal court found that two Gaming Commission members should have recused themselves to avoid the appearance of bias.²² The tribal court remanded to the Gaming Commission for further proceedings.²³ While Respondent stresses this trial court decision in his favor, the tribal appellate court reversed it.²⁴ The tribal appellate court upheld the Gaming Commission's decision to revoke Prescott's gaming license.²⁵

C. The Second Proceeding: Little Six's 1994 Misconduct Action Against Prescott (Court File No. 048-94)

In the second relevant proceeding, which was brought by Little Six in 1994, the tribal appellate court found that Prescott did not breach his fiduciary duty to the Tribe.²⁶ 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

¹⁹ *Id.* at A-32 to A-33.

²⁰ *Id.* at A-33.

²¹ *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 041-94 (SMSC Tr. Ct. Feb. 20, 1997), Respondent's App. at 108.

²² *Id.* at 110.

²³ *Id.* at 111.

²⁴ *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 148 (SMSC Ct. App. July 30, 1999), App. at A-208.

²⁵ *Id.* at A-216.

²⁶ *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.

was convicted of a felony in 1971.²⁷ The tribal appellate court held that this misrepresentation did not prove that Prescott breached his fiduciary duty to the Tribe.²⁸

Prescott omits from his Statement of Facts the important point that the tribal appellate court made clear: nothing in its opinion in the 1994 misconduct action 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.²⁹ The tribal appellate court explained that the two cases "involve completely different legal standards and different factual records."³⁰

D. The Third Proceeding: The 2000 Indemnification Action That Led To The Tribal Court Judgment (Court File No. 436-00)

Prescott asserts in his Statement of Facts that Little Six improperly relitigated the issue of Prescott's duty to indemnify Little Six for the legal fees expended on his behalf by bringing a second complaint against him in 2000.³¹ Prescott has already made this very argument to the tribal appellate court and the tribal appellate court has rejected it.³² The tribal appellate court explicitly found that the 2000 indemnification action (the proceeding that ultimately led to the Tribal Court Judgment at issue in this appeal) was

²⁷ *Id.*

²⁸ *Id.* at A-33.

²⁹ *Id.* at A-33 n.6.

³⁰ *Id.*

³¹ Respondent's Brief at 5.

³² *Prescott v. Little Six*, No. 027-01, 1 Shak. A.C. 190, 191 (SMSC Ct. App. Oct. 26, 2001), App. at A-218.

not barred by *res judicata* because Little Six could not have brought its claim based on the indemnification agreement earlier.³³

In the 2000 indemnification action, the tribal court held that Prescott owed legal fees to Little Six pursuant to the indemnification letter that Prescott signed on May 9, 1994.³⁴ After a trial to determine the dollar amounts paid by Little Six for work done to defend Prescott's gaming license, the tribal court decided the amount that Prescott should reimburse Little Six pursuant to his agreement.³⁵ There is no further justiciable controversy over the amount of fees due, contrary to Prescott's suggestion to this Court.³⁶ The Tribal Court Judgment was entered on October 27, 2005,³⁷ and the amount of damages was affirmed on appeal.³⁸ The Tribal Court Judgment provides that the Enterprise is entitled to \$516,871.46 in damages (i.e., reimbursed fees paid on Prescott's behalf) and \$185,810.08 for the Enterprise's legal fees and costs, plus pre-judgment and post-judgment interest.³⁹

³³ *Id.*

³⁴ *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-45, A-47.

³⁵ See *Shakopee Mdewakanton Sioux Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-51, A-74.

³⁶ Respondent's Brief at 3, 11.

³⁷ *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. Oct. 27, 2005), App. at A-75.

³⁸ *Shakopee Mdewakanton Sioux Gaming Enterprise v. Prescott*, No. 032-05 (SMSC Ct. App. Aug. 9, 2006), App. at A-231.

³⁹ *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. Oct. 27, 2005), App. at A-75.

E. The Fourth, And Instant, Proceeding: 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.⁴⁰ Prescott asserts in his Statement of Facts that the Enterprise violated Rule 34 by failing to provide notice to him.⁴¹ Rule 34 is a rule of the Shakopee Mdewakanton Sioux Community Court that governs enforcement of foreign judgments in tribal court.⁴² It has no relevance for the docketing of judgments in Minnesota state court, and there is no analog in the Minnesota Rules of Civil Procedure. Moreover, Prescott did receive notice of the docketing of the judgment, as reflected by the Notice of Docketing of Judgment issued by Scott County District Court.⁴³

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.⁴⁴ In his Statement of the Case, Respondent makes the point that there is no judgment of record for \$1,120,510.42.⁴⁵ This is a consequence of the fact that the Tribal Court Judgment provides for an award of post-judgment interest, which continues to accrue.

⁴⁰ Reply App. at RA-16 (Amended Notice of Docketing of Judgment).

⁴¹ Respondent's Brief at 6; *see also* Respondent's Brief at 3.

⁴² Rule 34, App. at A-0245.

⁴³ Reply App. at RA-16 (Amended Notice of Docketing of Judgment).

⁴⁴ Writ of Execution (first), App. at A-76.

⁴⁵ Respondent's Brief at 3.

Ultimately, the district court refused to recognize and enforce the Tribal Court Judgment, and the Enterprise initiated this appeal.

ARGUMENT

Respondent asks the Minnesota state courts to act as a sort of super tribal court of appeals and in effect reverse the reasoned decisions of the tribal courts that led to the judgment at issue. But in determining whether to recognize and enforce a tribal court judgment, the state court's discretion is confined to engaging in a comity analysis by applying the factors in Rule 10.02 of the Minnesota General Rules of Practice. Nothing in the Rule empowers the state court to readjudicate the merits of the tribal court decisions that resulted in the judgment at issue, and decisional law at both the federal and state level preclude such action.

The district court's decision should be reversed. The district court refused to analyze the majority of factors enumerated in Rule 10.02 and based its decision on one factor from the Uniform Foreign Country Money-Judgments Recognition Act, Minn. Stat. § 548.35. As the Enterprise explained in its opening brief, all of the factors in Rule 10.02 point toward recognition. And the one factor from the Uniform Foreign Country Money-Judgments Recognition Act upon which the district court relied does not provide a basis for non-recognition because the Tribal Court Judgment, per the explicit direction of the tribal appellate court, 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. Contrary to the Respondent's arguments, the district court does not have "total discretion" under the Rule.⁴⁶

A. The District Court Must At Least Consider Each Of The Factors Enumerated In Rule 10.02

Respondent Prescott asserts that the district court does not need to consider all of the factors enumerated in Rule 10.02 because the Rule gives the state court "total discretion" as to whether to recognize and enforce a tribal court judgment.⁴⁷ The Minnesota Supreme Court adopted Rule 10.02 to facilitate the state courts' comity analysis in deciding what effect to give tribal court judgments.⁴⁸ There would have been no need to enumerate nine factors in the Rule if the district court had "total discretion." A well-accepted canon of statutory interpretation provides that a statute should be

⁴⁶ Respondent's Brief at 6, 7.

⁴⁷ *Id.*

⁴⁸ Minn. Gen. R. Prac. 10.02, comm. cmt. (2007).

interpreted to give effect to all of its provisions.⁴⁹ This canon should apply with equal force to Rule 10.02.

Contrary to the characterization by Respondent, Appellant is not asserting that Rule 10.02 requires the district court to “write a dissertation” and base its decision on every factor listed in the Rule.⁵⁰ But the district court must at least consider each of the Rule 10.02 factors.⁵¹ Certainly, the district court may properly determine as a result of an analysis that one or two factors do not apply to the factual scenario before it. In this case, however, the court 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 without any explanation as to why those factors were not relevant to the analysis.

Whether the district court must consider each of the Rule 10.02 factors when it engages in the comity analysis is a purely legal issue for this Court to decide. Because how to interpret Rule 10.02 is a purely legal issue, the standard of review is *de novo* and the district court decision is entitled to no deference.⁵² This legal issue in one of first impression; the Enterprise has identified no cases that interpret Rule 10.02. Even if the standard of review were abuse of discretion (which is what Respondent appears to be

⁴⁹ *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (“Whenever possible, no word, phrase, or sentence should be deemed superfluous, void, or insignificant.”).

⁵⁰ Respondent’s Brief at 8.

⁵¹ *See, e.g., Belize Telecom, Ltd. v. Gov’t of Belize*, 528 F.3d 1298, 1307-08 (11th Cir. 2008) (“[W]e find that all of the international comity factors clearly favor deference to the Belizean decision.”) (emphasis added).

⁵² *See Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008) (“[T]he interpretation of statutes . . . are questions of law that we review *de novo*.”).

arguing), the Enterprise has demonstrated that the district court abused its discretion by ignoring most of the Rule 10.02 factors.⁵³

As the Enterprise explained in its opening brief, each of those seven factors are relevant and point toward recognition and enforcement of the Tribal Court Judgment.⁵⁴ Importantly, Prescott does not explain how seven of the nine enumerated factors, which the district court completely ignored, need not be considered. He also fails to dispute that those factors point toward recognition and enforcement.

B. Prescott Was Afforded Due Process

The only two Rule 10.02 factors that the district court considered were due process and public policy. Respondent seeks to defend the district court's application of those two factors, but that analysis fails.

The district court found that the sixth factor, which asks whether the judgment was obtained through a fair process, supported its decision to refuse to recognize and enforce the Tribal Court Judgment.⁵⁵ The district court concluded that Commissioner Crooks-Bathel, who presided over the Gaming Commission's hearing on Prescott's license renewal, was biased against Prescott and should have recused herself.⁵⁶

⁵³ To be clear, the issue of how to properly interpret Rule 10.02 is separate from the issue of whether the district court properly found that the Tribal Court Judgment conflicted with another tribal court judgment. The question of whether the district court erred when it found conflicting tribal court judgments, which is discussed in Section II of this Reply Brief, is reviewed for abuse of discretion.

⁵⁴ Brief of Appellant at 22-25.

⁵⁵ Opinion, Addendum at 21-23.

⁵⁶ *Id.*

The tribal appellate court has already squarely rejected Prescott's argument that his gaming license was improperly revoked because Commissioner Crooks-Bathel was biased.⁵⁷ Prescott had a full and fair opportunity to present his case for bias to the tribal courts. Although he had success at the tribal court level, the tribal appellate court reversed. Rule 10.02 does not provide a state forum for relitigating the merits of these tribal court proceedings. As this Court has explained, "[S]tate courts do not have jurisdiction to conduct even limited review of tribal court decisions." *Lemke ex rel. Teta v. Brooks*, 614 N.W.2d 242, 245 (Minn. Ct. App. 2000).

Finally, Respondent states in his Brief that members of the Community receive per capita gaming proceeds "often at the Chairman's whim."⁵⁸ The Tribe's allocation plan for per capita payments (the Gaming Revenue Allocation Amendments to Business Proceeds Distribution Ordinance) has received approval from the Secretary of the Interior.⁵⁹ Under that plan, if a tribal member's per capita payments are unlawfully withheld that tribal member may be entitled to treble damages.⁶⁰ Prescott has no basis for his assertion that Chairman Crooks distributes the money as he pleases. In any event, it is difficult to understand how the process for distribution of per capita payments is relevant

⁵⁷ *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.

⁵⁸ Respondent's Brief at 8.

⁵⁹ *See Smith v. Babbitt*, 100 F.3d 556, 558 (8th Cir. 1996).

⁶⁰ Reply App. at RA-25 (Gaming Revenue Allocation Amendments to Business Proceeds Distribution Ordinance).

to whether Prescott received due process in the proceedings over his gaming license and his indemnification obligations that led to the Tribal Court Judgment.

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

The district court and Respondent reason that, because the Tribe's current law does not allow direct collection of this kind of judgment from per capita payments from the Tribe, there is a Minnesota public policy objection to enforcing the Tribal Court Judgment.⁶¹ The district court characterizes the Enterprise's desire to have the Tribal Court Judgment enforced in state court as "forum shopping,"⁶² and Prescott argues that the Enterprise seeks to have the state "do its dirty work."⁶³ Both conclusions are meritless.

The Enterprise seeks collection of Prescott's assets in another jurisdiction because his attachable assets in the jurisdiction that issued the judgment are insufficient. All actions for enforcement of a foreign judgment are similarly motivated. If this is impermissible forum shopping, then Minnesota's courts would never be allowed to recognize and enforce a foreign judgment.

In addition, the fact that the state and tribal laws may differ does not make enforcement of the Tribal Court Judgment contrary to public policy. As the United States Court of Appeals for the Fifth Circuit explained, "[E]nforcement of a judgment of a

⁶¹ Opinion, Addendum at 24; Respondent's Brief at 9.

⁶² Opinion, Addendum at 24.

⁶³ Respondent's Brief at 9.

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”⁶⁴ This is particularly true where, as here, the judgment is based on a routine breach of contract action.⁶⁵

Finally, there is no authority for Respondent’s assertion that the proposed amendments to tribal law to permit direct collection of judgments from per capita payments have been called “get Leonard Prescott” amendments.⁶⁶ The Enterprise’s predecessor in interest, Little Six, lent a significant amount of money to Prescott to cover his legal fees, conditioned upon the outcome of his gaming license revocation proceeding. The Enterprise simply wants Prescott to keep his promise and repay the money. If Prescott did not want to be bound to such a promise, he could have paid his attorney out of his own pocket at the time.

⁶⁴ *Soc’y of Lloyd’s v. Turner*, 303 F.3d 325, 332 (5th Cir. 2002).

⁶⁵ *See, e.g., Soc’y of Lloyd’s v. Reinhart*, 402 F.3d 982, 995 (10th Cir. 2005) (holding that enforcement of a foreign judgment based on a breach of contract was not contrary to public policy and explaining that “slight differences between [the] laws do not trigger the public policy exception”); *see also Arab Monetary Fund v. Hashim (In re Hashim)*, 213 F.3d 1169, 1172 (9th Cir. 2000) (“The exception should be interpreted narrowly, however, for ‘few judgments fall in the category of judgments that need not be recognized because they violate the public policy of the forum.’”).

⁶⁶ Respondent’s Brief at 9. Respondent points the Court to his Appendix at page 23, but nothing in his Appendix provides authority for this assertion.

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 not to recognize the Tribal Court Judgment.⁶⁷ The district court found that the Tribal Court Judgment conflicts with the final judgment in the 1994 case relating to Prescott's misconduct.⁶⁸

The district court abused its discretion when it concluded that these judgments conflict because the outcome of the 1994 misconduct action cannot alter the basis for the Tribal Court Judgment. The two cases presented different legal questions and were decided on different legal standards.⁶⁹ Respondent is incorrect in his assertion that the tribal courts found that he "did nothing wrong" and that he therefore owes nothing under the indemnification agreement.⁷⁰

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 2000 indemnification action, which was a breach of contract action based on a written agreement made by Prescott on May 9, 1994. In this letter Prescott made the following promise:

Re: Shakopee Mdewakanton Sioux Community Gaming Commission File No. 94-0024

⁶⁷ Opinion, Addendum at 21.

⁶⁸ Opinion, Addendum at 15-21.

⁶⁹ *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.

⁷⁰ Respondent's Brief at 4-5, 9, 10; *see also* Respondent's Brief at 11, 12, 13.

...

I agree to repay the Corporation all amounts advanced in connection with any part [of] the defense of the above proceeding for which I am finally adjudged to be liable for negligence, fraud or misconduct in the performance of my duties to the Corporation.⁷¹

In the 2000 indemnification action, the tribal court granted summary judgment to Little Six on the issue of liability, concluding that Prescott was obligated to repay funds expended on his behalf during appeal of his gaming license revocation.⁷² Relying on the conclusions of the tribal appellate court in the Gaming Commission proceedings, 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.⁷³

As an initial matter, Respondent asserts that his duty to repay Little Six (and now its successor, the Enterprise) was not triggered because “the conclusion of the tribal court of appeals in the gaming license case was that Prescott did nothing wrong.”⁷⁴ His argument is wrong for two independent reasons.

First, the tribal appellate court did not conclude in the gaming license case that Prescott “did nothing wrong.”⁷⁵ In affirming the revocation of his gaming license, the tribal appellate court explained:

⁷¹ See *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-54.

⁷² *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-47.

⁷³ *Id.* at A-45.

⁷⁴ Respondent’s Brief at 10.

⁷⁵ Respondent’s Brief at 4-5, 9, 10; see also Respondent’s Brief at 11, 12, 13.

Before the Gaming Commission and the Court, Prescott argued that these documents [his gaming license applications] were prepared by others and simply signed by him, and that he had no intent to deceive. But clearly it is the responsibility of a person who signs a document prepared by others, particularly a document like an affidavit, sworn to under oath, to ensure that the statements made therein are accurate.⁷⁶

The tribal court went on to find that there was sufficient evidence in the record to demonstrate “that Prescott stood in conviction of a felony at the time of his application for three gaming distributor licenses in Minnesota” and that “Prescott misrepresented the evidence of such a conviction in applying for Minnesota gaming licenses.”⁷⁷

Based on these findings, the tribal appellate court affirmed the decision of the Gaming Commission to revoke Prescott’s license. The tribal appellate court explained,

From our review of the case law of other gaming jurisdictions in the United States, it is clear, first, that a felony conviction is a common ground for revocation of a gaming license. And misrepresenting or not revealing the existence of such a conviction brings into question the character of the licensee sufficiently to permit a denial or revocation of the license on the grounds of misrepresentation, as considered separately from the underlying conviction. . . . Thus, we believe that the Commission reasonably could base a revocation decision on the fact that the licensee misrepresented to other licensing bodies the existence of a felony conviction.⁷⁸

In short, the tribal appellate court affirmed the finding of the Gaming Commission that Prescott misrepresented his felony conviction. Given this final order of the tribal appellate court, Prescott has no basis for his continued assertion that the tribal appellate court in the gaming license case found that he did nothing wrong.

⁷⁶ *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 154 (SMSC Ct. App. July 30, 1999), App. at A-214.

⁷⁷ *Id.* at A-215 (emphasis added).

⁷⁸ *Id.* at A-214 to A-215 (emphasis added).

Second, Minnesota state courts have no ability to readjudicate the tribal court decision that led to the Tribal Court Judgment. The tribal court concluded that Prescott's duty to indemnify the Enterprise was triggered by the outcome of the gaming license case.⁷⁹ If Prescott wished to dispute this conclusion, he should have appealed this finding of liability to the tribal court of appeals.

Respondent suggests that there was something improper about the Enterprise's timing in bringing the 2000 indemnification action.⁸⁰ But there was nothing improper. Prescott's promise to repay the legal fees advanced to him was dependant on the outcome of the gaming license proceedings. Indeed, the letter signed by Prescott explicitly refers to "Shakopee Mdewakanton Sioux Community Gaming Commission File No. 94-0024."⁸¹ Prescott appealed the decision of the Gaming Commission, and the case continued on for several years. It was not until July 30, 1999, that the tribal appellate court issued its final order affirming the Gaming Commission's decision to revoke Prescott's license.⁸² It would not have made sense for Little Six to bring the 2000 indemnification action back in 1994 because Prescott's duty to repay the attorneys' fees

⁷⁹ *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-45.

⁸⁰ Respondent's Brief at 11-12.

⁸¹ *See Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-53.

⁸² *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), App. at A-206.

advanced to him required that Prescott be “finally adjudged” with wrongdoing,⁸³ which did not happen until the appeal was concluded in 1999.

Respondent emphasizes his position that the 2000 indemnification action should have been barred under the doctrine of *res judicata* because it has some overlap with the 1994 misconduct action. The problem with this argument is that Prescott has already made it before the tribal court and lost, and he cannot collaterally relitigate that claim in state court. The tribal appellate court explicitly found that the 2000 indemnification action was not barred by *res judicata* because Little Six could not have brought its claims earlier.⁸⁴

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

The district court concluded that the judgment in the 1994 misconduct action qualified as a conflicting judgment sufficient to justify its refusal to recognize and enforce the Tribal Court Judgment. Prescott attempts to defend that decision by arguing that the tribal appellate court in the 1994 misconduct action ultimately held that he did not do anything wrong. But again, Prescott mischaracterizes the outcome of the proceedings.

The tribal appellate court in the 1994 misconduct action did not absolve Prescott of wrongdoing. Rather, the tribal appellate court found that it was undisputed that

⁸³ See *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-54.

⁸⁴ *Prescott v. Little Six*, No. 027-01, 1 Shak. A.C. 190, 191 (SMSC Ct. App. Oct. 26, 2001), App. at A-218.

Prescott asserted in his gaming application that he had no previous felony convictions even though he was convicted of a felony in 1971.⁸⁵ This fact, however, was insufficient, according to the tribal appellate court, to prove that Prescott breached his fiduciary duty to the Tribe, as defined by § 36 of the Corporation Ordinance.⁸⁶

Again, there is nothing inconsistent about the tribal appellate court deciding in one case (the gaming license case decided on July 30, 1999) that the Gaming Commission's decision to revoke his license was based on substantial evidence in part because he misstated his criminal record on his gaming license application,⁸⁷ and in a different case (the 1994 misconduct action decided on February 1, 2000), deciding that this misrepresentation alone was insufficient to prove that Prescott breached his fiduciary duty to the Tribe.⁸⁸ The tribal appellate court made this distinction explicit by stating, "Nothing in this opinion should be construed as expressing disapproval of any of our conclusions in *In re Leonard Prescott [Gaming License] Appeal*, No. 015-97 (SMS(D)C Ct. App. July 30, 1999)."⁸⁹

The district court abused its discretion by refusing to defer to this explicit direction from the tribal appellate court. The district court should have respected the outcomes of

⁸⁵ *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.

⁸⁶ *Id.* at A-33.

⁸⁷ *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.

⁸⁸ *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.

⁸⁹ *Id.*

the tribal court proceedings instead of attempting to readjudicate them. Indeed, the United States Supreme Court has explained that “proper deference to the tribal court system precludes relitigation of issues . . . resolved in the Tribal Courts.” *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 19 (1987).

To find a conflict between the two tribal court judgments, the district court interpreted the Uniform Foreign Country Money-Judgments Recognition Act in a way that no other court has done. Appellant searched for all cases interpreting the “conflict” factor in the Uniform Foreign Country Money-Judgments Recognition Act and found just two cases that refused to recognize a foreign judgment on this basis. These cases involved judgments that reached opposite outcomes based on the same set of facts and legal claims.

In *Byblos Bank Europe, S.A. v. Sekerbank Turk Anonym Syrketi*, 2008 NY Slip Op. 2501, 4 (N.Y. 2008), the appellate court affirmed a lower court’s refusal to recognize a judgment from a Belgian court that confirmed an attachment of assets based on a breach of loan agreements because a Turkish court had already dismissed on its merits an action based on the same breach. The conflicting judgments were based on the same cause of action: a breach of loan agreements. And the courts reached opposite outcomes: one court dismissed the action and another court confirmed an attachment of assets based on the breach. This is a true conflict. Similarly, in *Brosseau v. Ranzau*, 81 S.W.3d 381, 390 (Tex. Ct. App. 2002), the appellate court affirmed the lower court’s refusal to recognize a Mexican judgment holding that the defendant did not own the stock in question because the trial court had already found that he did own the stock. The court

properly identified a conflict because two courts reached opposite conclusions as to the same factual question.

The conflicts in *Byblos Bank Europe, S.A.* and *Brosseau* are distinguishable from the situation here, where the two tribal court decisions at issue are based on different causes of action with different standards of review. The gaming license case was an appeal of the decision of the tribal Gaming Commission under a deferential administrative law standard of review that required affirmance of the Gaming Commission's decision to revoke Prescott's license if there was substantial evidence in the record to support the Gaming Commission's administrative decision.⁹⁰ The 1994 misconduct action related to the duties of loyalty Prescott owed to the Tribe, and Little Six bore the burden of proof of any breach of those duties under a tort law standard.⁹¹ There is no conflict in the judgments.⁹²

Moreover, the district court erred by looking to the outcome of the 1994 misconduct action as a basis for questioning the judgment in the 2000 indemnification action. Prescott's obligation to repay his legal costs was in no way dependant on the

⁹⁰ *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 155 (SMSC Ct. App. July 30, 1999), App. at A-215.

⁹¹ *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.

⁹² An analogous situation would be presented if a corporate board indemnified a corporate officer for attorneys' fees incurred to defend a civil securities law action, subject to repayment if the officer was found civilly liable, but the corporate officer herself had to pay for the defense of a criminal fraud action based in part on the same conduct. If civil liability in the securities action were established, but no conviction obtained in the criminal action, the outcome in that latter action, determined under the

(footnote continued)

outcome in the 1994 misconduct action. The indemnification letter signed by Prescott provides that he will repay the money spent on his legal fees for “the defense of the above proceeding for which I am finally adjudged to be liable for negligence, fraud, or misconduct in the performance of my duties to the Corporation.”⁹³ The “above proceeding” refers to the proceeding described in the subject line of the letter: “Shakopee Mdewakanton Sioux Community Gaming Commission File No. 94-0024.”⁹⁴ Appellant cannot understand Respondent’s argument that the trigger to repay was based on something other than the outcome of the Gaming Commission proceedings. Appellant agrees with Respondent that “saying it repeatedly doesn’t make it true.”⁹⁵ But it is nevertheless true. It is what the written agreement says in black and white.

In the 2000 indemnification action, the tribal court simply asked whether Prescott’s obligation to repay had been triggered.⁹⁶ The tribal court looked to the final adjudication of the Gaming Commission proceedings, which is the July 30, 1999 decision of the tribal appellate court. Based on the tribal appellate court’s conclusion in the Gaming Commission proceedings, the tribal court in the 2000 indemnification action reasoned, “I think it is clear that Prescott was found by the Court of Appeals to have been

(footnote continued from previous page)

criminal law standard of proof, would not be a defense to the corporate officer’s obligation to repay fees advanced to defend the civil action in which liability was found.

⁹³ See *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-54.

⁹⁴ *Id.* at A-53.

⁹⁵ Respondent’s Brief at 13.

⁹⁶ *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-45.

guilty of negligence with respect to his duties to both the State of Minnesota and LSI.

And I think his negligence to LSI triggers his promise to repay the funds he was given for his legal costs.”⁹⁷ This finding of liability led to the Tribal Court Judgment. Prescott did not appeal that tribal court conclusion to the tribal appellate court and cannot collaterally relitigate it here.

There is no judgment that conflicts with the Tribal Court Judgment. If there were 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 judgments, and as such, there is no conflict.

⁹⁷ *Id.*

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,



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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.

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,634 words. This brief was prepared using Microsoft Word 2003 software.

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