

NO. A09-684

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State of Minnesota  
**In Court of Appeals**

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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.*

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**RESPONDENT'S BRIEF AND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## LEGAL ISSUES

- I. The recognition of tribal court orders and judgments is discretionary in cases other than these governed by Rule 10.01(a). In exercising its discretion, the Court may consider ten (or more) factors that are very broadly stated in Rule 10.02 of the General Rules of Practice. Did the District Court properly exercise its discretion?**

The District Court properly concluded that the Indian Tribe is not a “foreign state” as defined by the Uniform Foreign Country Money-Judgments Recognition Act and properly exercised its discretion pursuant to Rule 10.02.

- *Rule 10 of the Minn. Gen. Rules of Practice*

- 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. Did the District Court abuse its discretion when it refused to recognize the February 17, 2004 Tribal Court judgment conflicting with the same Court’s judgment of February 1, 2000 finding Respondent had not engaged in any misrepresentation or misconduct, negligent or intentional?**

The District Court found this factor determinative and supported its decision with findings regarding due process, public policy and justifiable controversy.

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

## STATEMENT OF THE CASE

On May 9, 1994, Leonard Prescott, then chairman of the board of Little Six, Inc. (LSI), signed an indemnification letter for legal fees in regard to his appeal of the Gaming Commissions denial of a gaming license should he be ultimately adjudged “liable for negligence, fraud or misconduct in the performance of his duties”...<sup>1</sup>

In a Tribal Court Order filed February 20, 1997, In re: Leonard Louis Prescott Appeal from July 1, 1994 Gaming Commission’s Final Order, Court File No. 041-94,<sup>2</sup> Judge Henry M. Buffalo, Jr. found: that Respondent and the current Tribal Chairman are bitter political rivals; that Respondent’s substantive due process rights were violated by the new Gaming Commission chaired by the Tribal Chairman’s daughter; that she should have recused herself; and that she and another Commissioner were recused from hearing any further matter relating to the Respondent’s gaming license.

On July 30, 1999, the Tribal Court of Appeals, Judges John E. Jacobson and Robert Grey Eagle without the participation of Judge Buffalo, reversed Judge Buffalo finding that while Respondent may have done nothing wrong, “reasonable minds” could reach a different conclusion as to Respondent’s alleged criminal record. Therefore, the Gaming Commission had not been arbitrary or capricious in denying a gaming license to the Respondent, who was not only a protected agent, employer or executive of LSI, pursuant to Rule 1073<sup>3</sup> but had brought modern gaming to the Community.

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<sup>1</sup> District Court Order dated February 23, 2009, Respondent’s Appendix, p. 5

<sup>2</sup> Appendix, p. 38

<sup>3</sup> Appendix, p. 48

Shortly after the new Gaming Commission made findings regarding Respondent's license, LSI sued Respondent with a multi-count Complaint for damages.<sup>4</sup> After several hearings and an appeal, the tribal court of appeals found in favor of Respondent on February 1, 2000. No attorney fees were awarded. On February 10, 2000, Appellant stated a new action eventually succeeding in obtaining a judgment against Respondent for \$516,871.46.

On December 2005, the Enterprise docketed the Tribal Court Judgment in Scott County District Court without notice to the Respondent pursuant to Rule 34.<sup>5</sup> There is no Judgment of record for \$1,120,510.42. Respondent filed a Motion for Injunctive Relief as soon as he became aware of Appellant's actions.

After over three years of motions, arguments and submissions to Scott County District Court, the parties agreed that Judge Diane Hansen could rule based upon all of the record, submissions, and arguments whether the Court should recognize the Judgment docketed by the Appellant. The District Court requested and never received a Judgment for the amount docketed by Appellant.

On February 17, 2009, Scott County District Court Judge Diane M. Hansen issued an Order that the Tribal Court Judgment shall not be recognized or enforced in Scott County District Court. 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>6</sup> This appeal followed.

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<sup>4</sup> LSI's First Complaint Appendix, pp. 61-71

<sup>5</sup> Appendix, p.72

<sup>6</sup> Appendix, p. 1-26

## STATEMENT OF THE FACTS

### **A. The Parties**

The Appellant, the Shakopee Mdewakanton Sioux Gaming Enterprise is the operational arm of the Casino (formerly Little Six, Inc. – LSI) of the Shakopee Mdewakanton Sioux Community (the “Community”) a federally recognized dependant sovereign nation, with a reservation near Prior Lake, Minnesota.

Respondent Leonard Prescott served as Chief Executive Officer and Chairman of the Board of Directors for LSI from 1991 to 1994. From 1987 to 1992 Mr. Prescott was Chairman of the Community. The current Chairman was elected in 1992 and has directed legal counsel during the entire 15 years of litigation against Respondent.

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

Within a year of being elected, the new Chairman and the Business Council (the Chairman and two other individuals) presented the General Council (all members of the Community) with a Gaming Ordinance creating the Gaming Commission with the Community Chairman’s daughter as the Gaming Commission Chairman. The first act of the new commission was to deny Respondent his newly required gaming license. Respondent appealed. In a Tribal Court Order filed on February 20, 1997,<sup>7</sup> Judge Henry M Buffalo, Jr. found that Respondent was denied due process of a substantive right and that two of the five members, including the Chairman of the Gaming Commission and the new Community Chairman’s daughter, should have recused themselves and ordered they recuse themselves in the future. The Tribal Court, without Judge Buffalo’s participation, ruled the Gaming Commission was not arbitrary or capricious as “reasonable minds” could differ on whether Respondent had failed to report a felony conviction, which was

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<sup>7</sup> Appendix, pp 27-46

not only expunged but actually a misdemeanor.<sup>8</sup> The revocation stands although Respondent had done nothing wrong.

**C. The Second Proceeding Little Six's Action Against Prescott Based On His Alleged Misconduct (Court File No. 098-94) ("1994-Misconduct Action")**

Immediately after Respondent started his appeal of the Gaming Commission revocation, the Gaming Commission attorney, Steven F. Olson, then with the Bluedog firm, commenced an action for money damages on behalf of LSI, his new client. A copy of the Complaint<sup>9</sup> attached hereto clearly claims damages in paragraph 43 based on legal fees expended to pay for Respondent's appeal of the Gaming Commission decision. On February 1, 2000, the Tribal Court of Appeals ruled in Respondent's favor finding that neither party was to be awarded attorney fees.<sup>10</sup>

**D. The Third Proceeding**

On February 10, 2000, ten days after the Tribal Court of Appeals had ruled against LSI, its attorney, Steven F. Olson, filed a new complaint<sup>11</sup> against Respondent alleging that Respondent owed legal fees to LSI pursuant to the indemnify letter dated May 9, 1994, wherein Respondent agreed "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."

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<sup>8</sup> Appendix, pp. 73-82

<sup>9</sup> Appendix, pp. 61-72

<sup>10</sup> Appendix, pp. 83-90

<sup>11</sup> Appendix, pp. 92-103

The Tribal court ruled in favor of LSI in the amount of \$516,871.46 and issued a Judgment plus interest and attorney fees of \$185,810.08. This was confirmed on appeal.

**E. The Fourth Proceeding: Recognition and Enforcement Of The Tribal Court Judgment In The Third Proceeding In Scott County**

In 2005, the Gaming Enterprise, represented by Steven F. Olson, registered its Tribal Court Judgment in Scott County District Court without notice to Respondent as required by Rule 34.

The District Court refused to recognize the judgment. Therefore, the Gaming Enterprise initiated this appeal.

**ARGUMENT**

Tribal Court adjudications that are not entitled to be equivalent of full faith and credit under a specific state or federal statute, are governed by Rule 10.02 of the Minnesota Rules of General Practice. Rule 10.02 gives the state court total discretion and it can consider whatever aspects of the foreign court proceedings it deems relevant. There is no simple standard or requirement to apply all of factors. *See Minnesota Rules of General Practice 10 (Advisory Committee)*.

**I. The District Court Correctly Refused To recognize The Tribal Court Judgment Based On Several Factors**

In refusing to recognize the Tribal Court Judgment, the District Court relied on several factors, which in its discretion and determination of the facts in the record if found determinative.

**A. The Law Governing Recognition And Enforcement Of Non-Mandated Tribal Court Judgments Is found In Rule 10.02**

Appellant acknowledges on pages 13 and 14 of its brief that 10.02 provides 10 factors for the court to consider including (10) “any other factors the court deems appropriate in the interest of justice.”

Rule 10.02 (a) does not attempt to define all of the factors that may be appropriate for consideration by the court. The court may look to any factor it deems appropriate in the interest of justice. The Tribal Court did exactly what it was supposed to do finding conflicting judgments to be determinative supported by a lack of due process, violation of public policy and justifiable controversy.

**B. The District Court Considered The Factors Enumerated For Rule 10.02**

Appellant’s argument is totally misplaced and perhaps frivolous. First, Appellant states that the District Court ruled by allowing its decision to be controlled by one factor and then admits that the Court applied several factors. Appellant also admits that District Court is not required to base its decision on every factor in 10.02.

The District Court had total discretion pursuant to 10.02. The District Court made its findings of fact based upon the record as agreed by the parties. Appellant incorrectly states this is a purely legal issue subject to “de novo” review. Frost-Benco Electric Association v. Minnesota Public Utilities Commission, 358 N.W. 2d 639, 642 (Minn. 1984) as well as Nicol v. Tamer, 256 N.W. 2d 796, 800-02 (Minn. 1976) have absolutely no application to the case and Appellant fails to even attempt to explain their relevance.

The District Court made its findings based on the record before it as stipulated by the parties.

**C. The Only Relevant Factors Point Toward Non-Recognition**

Again, Appellant suggest, erroneously, that the Trial Court must write a dissertation regarding all of the potential factors in Rule 10.02 in order to reach a reasoned decision. Appellant provides no authority for its position. (See footnote 86 page 17 of Appellant's Brief)

**1. Prescott Was Not Offered Due Process**

The District Court very eloquently describes how Leonard Prescott was denied due process. There are approximately 200 members of the Community who receive, often at the Tribal Chairman's whim, a Per Capita from Casino proceeds unimaginable to the average person. Appellant has called this a "pure democracy" in its pleadings before the District Court.

The tribal court even found that Respondent was denied due process in its decision of February 20, 1997.<sup>12</sup> How does one prove bias? A deposition is the strongest possibility. However, the Gaming Commission chose to hide behind the shield of quasi-judicial and sovereign immunity in an appeal of an early District Court decision where the court suggested that Respondent had been denied the protection of Rule 107 of the Gaming Enterprise Order.<sup>13</sup> Appellant should never have been allowed to sue Respondent.

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<sup>12</sup> Included in Addendum at Appendix, p. 26

<sup>13</sup> Appendix, p. 48

On February 1, 2000 the Tribal Court of Appeals found for Respondent in regard to damages claims of LSI. More importantly, on July 30, 1999 the Tribal Court of Appeals found that while Leonard Prescott had done nothing wrong (no felony conviction) the Gaming Commission was not arbitrary or capricious.

Leonard Prescott did nothing wrong in regard to the Gaming License. There is no basis for his being liable for attorney fees under the terms of the indemnity letter. The conflicting Tribal Court Orders clearly support the District Court's findings of lack of due process.

## **2. Prescott's Protected Per Capita Payments Go To The Issue Of Public Policy**

Leonard Prescott has tried to protect his Community during the 15 years litigation by those in power. He has shown restraint and respect.

The District Court shows the same restraint and respect for the Community in finding that the Appellant's actions, including the attempt to have Minnesota do its dirty work, is a violation of public policy. The three man business council initiated at least two code amendments to take a member's Per Capita basically calling it the "get Leonard Prescott" amendment.<sup>14</sup> The General Council, consisting of all members, declined to adopt the "get Leonard" amendment that would have put all disgruntled members at risk. The District Court found that Appellant's forum shopping was offensive and clearly contrary to the Committee's wishes as explained in its vote regarding the taking of Per Capita. These actions are contrary to Public Policy and to the detriment of the Community.

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<sup>14</sup> Appendix, p. 23

### 3. The District Court Analyzed its Decision Per Rule 10.02

Again, the District Court is not required to write a dissertation. It did not find the same factors relevant as Appellant based on the District Court's interpretation of the stipulated facts, submissions and arguments.

#### II. The District Court Exercised Its Discretion When It Refused To Recognize The Tribal Court Judgment Based On Conflicting Judgments

The District Court did find at least two tribal court cases in conflict with the order relied upon by Appellant. For the reasons described herein, the decision resulted in the judgment making absolutely no sense whether described as a conflict, inconsistency or *res judicata*. This "conflicting judgments" issue is one of the several factors addressed by the District Court and falls with the indicators of 10.02(a)(6) and (10). It is appropriate for the District Court to reinforce its analyses with the fact that this issue was also addressed in the UFCMJRA.

Two admissions by Appellant in this part of its brief at pages 25 and 26 are representative of Appellant's misplaced argument. First, in the gaming license case Appellant admits the Tribal Court found Leonard Prescott's failure to disclose an alleged felony conviction that was enough to support the Gaming Commission's denial of his gaming license on a rational basis. However, the Tribal Court "concluded that this misrepresentation was insufficient to prove a breach of fiduciary duty..."<sup>15</sup> In other words, the conclusion of the tribal court of appeals in the gaming license case was that Leonard Prescott did nothing wrong. Therefore, under the terms of this indemnify letter he owes nothing.

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<sup>15</sup> Appendix, p. 82

Second, in the first action against Respondent for money damages that included specific allegations regarding the use of LSI funds on May 9, 1994 (See paragraph 43 of the complaint), the tribal court eventually found for Respondent and awarded no attorney fees on February 1, 2000.<sup>16</sup>

On February 1, 2000 both cases had been concluded and the tribal court found there was absolutely no basis for awarding attorney fees against Respondent. It was then that Appellant, through its attorney, Steven F. Olson who handled the Gaming Commission hearings, represented LSI, later represented the Enterprise, represents the Business Council and represents the General Council, filed a new action for damages again describing the funds used by LSI to defend Leonard Prescott in the Gaming License case and again referring to the indemnify letter of May 9, 1994.

**A. The Obligation To Repay LSI Was Never Triggered Or May Have Been Temporarily Triggered At The Tribal Court Level**

Leonard Prescott agreed on May 9, 1994 to pay the part of LSI's attorney fees expended on his behalf as to the license revocation if he was found "liable for negligence, fraud or misconduct." Appellant tries to avoid addressing what the indemnify letter means by stating "in other words, Prescott agreed to repay the funds advanced to him if he did not prevail in the Gaming Commission proceeding" (page 27 of Appellant's Brief). In other words, Appellant's position is that Prescott must pay if he doesn't get his license back. That is not what the agreement says.

Appellant claims its right to repayment was "triggered" by the July 30, 1999 Tribal Court of Appeal Order a decision that fails to describe any liability on the part of Leonard Prescott. Why not make the demand after the Gaming Commission won at the

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<sup>16</sup> Appendix, p. 90

tribal trial court level? Why start an action 10 days after losing the case for attorney fees in the 1994 separate damages action?

No action was “triggered.” Appellant simple forced its way back into tribal court to get a different result. It is the Appellant who brings disrespect to the Community and its tribal court system.

**B. The Judgment In The 1994 Misconduct Action Eliminated Prescott’s Obligation to Indemnify The Enterprise**

In sub-count M of the 1994 Complaint it was alleged that Prescott breached his fiduciary duty to the Tribe by misrepresenting information about his criminal record on his application for a state gaming license. Prescott thought it had been expunged, which it was shortly after. It ended up a misdemeanor under law anyway.<sup>17</sup> The tribal appellate court concluded that Prescott was entitled to summary judgment on that count. See Appellant’s Brief page 28 referring to the February 1, 2000 Tribal Court of Appeal decision.

Appellant misstated the inconsistency concern of the district court between the July 30, 1999 and the February 1, 2000 decisions compared to the February 17, 2004 decision. At page 29 of the Appellant’s brief it stated, “There is nothing inconsistent...” The Tribal Appellant Court upheld the Gaming Commission, because their decision was arguably not arbitrary or capricious. That decision does not say Leonard Prescott did anything wrong. Appellant admits in the February 1, 2000 decision that Prescott’s actions were “insufficient to prove that Prescott breached his fiduciary duty to the Tribe, as defined by the Corporation Ordinance.”

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<sup>17</sup> Appendix, pp. 1-26

**C. The District Court Found The Tribal Appellate Court's Decision Inconsistent**

The inconsistency of the three Tribal Court decisions are inescapable as stated by the District Court. It has been addressed above.

Appellant again intentionally misstates the indemnification agreement on page 31 of its brief citing the tribal court of appeals for apparently having the same misunderstanding. "As stated in the plain language of the indemnification agreement, his obligation to pay was triggered by the outcome in the Gaming Commission proceeding."

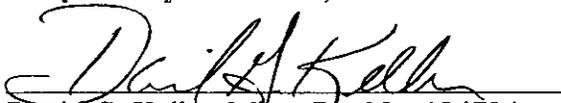
As stated above, nowhere in the Indemnification Agreement does it say Leonard Prescott pays if he doesn't get his license. Saying it repeatedly doesn't make it true. Leonard Prescott agreed to pay part of the legal fees related to his wrongdoing. None was ever attributed to him.

**CONCLUSION**

For all the reasons explained above, this Court should reaffirm the District Court's memorandum opinion and order.

Dated: July 16, 2009

**Respectfully submitted,**



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**RESPONDENT'S CERTIFICATE OF COMPLIANCE WITH WORD  
COUNTY LIMITATIONS**

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The undersigned, counsel of record for Respondent certifies, pursuant to Minn. R. App. Proc. 132.01(subd. 3), that this Brief complies with the following requirements:

- (i) There are 3,086 words in this Brief;
- (ii) The name and version of the word processing software used to prepare the Brief is Microsoft Office Word 2003.

Dated: July 16, 2009

  
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