**Mashpee Wampanoag Tribal Court**

483Great Neck Rd. South

P.O. Box 480Mashpee, MA02649

Phone (508) 477-0208 Fax (508) 477-1218

FOR COURT USE ONLY

DOCKET NO:  **CV-15-003**

Brad Bacon o/b/o Alexander Bacon )

PLAINTIFF(S))

)

V. )

)

MWT Enrollment Committee )

DEFENDANT

**ORDER ON DEFENDANT’S MOTION FOR RECONSIDERATION AND MOTION TO STRIKE**

BACKGROUND

Following a hearing in this Court on October 28, 2015 the Court issued an Order denying Defendant’s Motion to Dismiss the above referenced matter. The hearing was held to hear the Parties after Plaintiff, acting Pro Se, filed an appeal of denial by the Mashpee Wampanoag Enrollment Committee of an application for enrollment of Alexander Bacon. As a self-represented litigant, the Court sought an accommodation from Defendant that would not hold Plaintiff in strict conformity with the Mashpee Wampanoag District Court Rules of Civil Procedure (MWDC R. Civ. P.) Rule #17 that sets forth time standards for parties receiving a Motion to Dismiss and subsequent reply. The Court was clear in its statements at the hearing of its desire to provide such an accommodation to the self-represented litigant. At no time during the course of the hearing did defense counsel raise an objection to the Court’s stated accommodation. The Court ruled accordingly. Subsequent to Defendant’s receipt of the Court’s finding, Defendants filed two motions styled as: 1) Motion for Reconsideration; and 2) Motion to Strike Plaintiff’s Submission to the Court dated November 10, 2015.

DISCUSSION

Motion for Reconsideration:

The Defendant in its filing cites various deviations by this Court from the Mashpee Wampanoag District Court (MWDC R. Civ. P.) as a basis for its motion. The Court will treat the Motion for Reconsideration as being filed pursuant to Federal Rules of Civ. P. (FRCP) 59(e), See Holsworth v. Berg 322 F. Appx. 143, 146(3d Cir. 2009); Raulin v. Heckler, 761 F2d 936, 942(3d Cir. 1985) “Regardless of how it is styled, a motion filed within ten days of entry of a [Order] questioning the correctness of the [Order] may be treated as a motion to amend or alter the [Order] under Rule 59(e) .” Rule 59(e) is a device to relitigate the issue decided by the District Court, and [it is] used to allege legal error. U.S. v. Fiorelli, 337 F3d 282(3d Cir. 2003).

Motions for Reconsideration allowed under FRCP 59(e) should be granted sparingly, reserving them for instances when: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to prevent manifest injustice or correct a clear error of law or fact. See e.g., General Instrument Corp. v. Nutek Electronics, 3FSupp. 2d 602,606 (E.D. Pa. 1998) Environ Prods., Inc. v. Total Containment, Inc. 951 F. Supp. 57, 62 n.l (E.D. Pa. 1996). Dissatisfaction with the Court’s ruling is not a proper basis for reconsideration, Burger King Corp. v. New England Hood and Duct Cleaning Co.; No. 98-3610, 2000 WL 133756 at \*2(E.D. Pa. Feb 4, 2000).

Defendant’s Motion for Reconsideration informs the Court that despite Defendant’s lack of objection to the Court’s desire to accommodate Plaintiffs status as a self-represented litigant during the October 28th hearing they seek to hold the Court to the rules of the Court as written. This is obviously within their right. The Court cannot, despite its desire to recognize Plaintiff’s self-represented litigant status, deviate from its rules over objection of a party to an action.

Motion to Strike Plaintiff’s Submission to the Court dated November 10, 2015:

Quoting from Belt v. Tribal Enrollment Committee, MWTC CV-10-11 (July 1, 2010) at 4: “Plaintiff … submitted a lengthy affidavit as part of his motion … Defendant Enrollment Committee also submitted an affidavit … Neither of these two affidavits was part of the administrative record … and neither will be considered or relied upon by the Court. Because they were both submitted after the record was closed, they can form no part of the Court’s consideration.”

Similarly, documents submitted by Plaintiff on November 10, 2015 were not, as far as the Court can discern at this time, a part of the administrative record. The administrative record of Plaintiff’s application for enrollment is the primary evidence to be reviewed by this Court as it considers Plaintiff’s Complaint.

Motion to Dismiss:

When deciding a Motion to Dismiss the District Court must accept the factual allegations as true and resolve all doubt for sufficiency of the claim in the Plaintiff’s favor. Vulcan Materials Co. v. City of Tehuacana 238 F3d 382,387 (5th Cir. 2001). Although the Complaint need not contain detailed factual allegations it must include “more than labels and conclusions, and formulaic recitation of the elements of a course of action will not do.” Bell Atl. Corp. v. Twombly 550 U.S. 544, 545 (2007).

Plaintiff’s original Complaint as filed, though deficient in citing a detailed statement of a case against Defendant Enrollment Committee, does state a basis for consideration by the Court i.e. denial by Defendant of Alexander Bacon’s enrollment application. Article III, Section 4 of the Constitution of the Mashpee Wampanoag Tribe states:

“Any person whose application for membership in the Tribe is rejected by the Enrollment Committee shall have the right to appeal such adverse decision to the Tribal Judiciary…”

This Court, in consideration of Plaintiff’s self-represented litigant status would ordinarily give deference to the “sparseness” of Plaintiff’s Complaint and allow the action to move forward. However, as Defendant has stated in its motion, Plaintiff has not provided proof of timely service of his Complaint on Defendant. Without proof of timely service as specified in the Court rules the Court is not able to consider Plaintiff’s action.

A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that defendant is liable for the misconduct alleged. Ashcroft v. Iqbal 129 S. Ct. 1937, 1949 (2009) citing Twombly, 550 U.S. Ct. at 556. Even under this diminished standard Plaintiff is still required to provide proper notice of his claim and present proof of compliance, within the rules established by the Tribal Council and adopted by the Court. Plaintiff’s submission to the Court is deficient in this respect.

**ORDER**

AND NOW this 10th day of December, 2015 in consideration of the Motion for Reconsideration filed by Defendant on November 17, 2015 it is ORDERED:

1. That Defendant’s Motion for Reconsideration is ***ALLOWED***; and
2. That Defendant’s Motion to Strike Plaintiff’ submission to the Court dated November 10, 2015 is ***ALLOWED***; and
3. That Defendant’s Motion to Dismiss is ***GRANTED*** without prejudice and Plaintiff is urged to resubmit a Complaint under MWDC R. Civ. P. 9(f).

By the Court,

Dated:

Jeffrey L. Madison, J. Mashpee Wampanoag District Court

JLM/mcf