**Mashpee Wampanoag Tribal Court**

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Daniel D. Tavares, )

Plaintiff(s) )

)

v. )

) **DECISION**

)

Mashpee Wampanoag Tribal Council, )

Defendant(s) )

Daniel D. Tavares v. Mashpee Wampanoag Tribal Council, Inc.

This matter comes before this Court on a complaint filed by Plaintiff wherein he seeks this Court to order the Mashpee Wampanoag Tribe to file suit against various entities for the return of all lands within the Town of Mashpee. Plaintiff contends that the land-to-trust document allows the Tribe to file such an action. The Tribe, in defense of the complaint, has filed a motion to dismiss asserting lack of jurisdiction as a result of the tribal sovereign immunity.

Issue Presented:

Whether sovereign immunity of the Mashpee Wampanoag Tribe extends to actions of the Mashpee Wampanoag Tribal Council, Inc.?

Discussion:

The complaint against the Mashpee Wampanoag Tribal Council, Inc. (“the Corporation”) as named defendant (in actuality the name of the Corporation is the Mashpee Wampanoag Indian Tribal Council, Inc.) was defended by the Mashpee Wampanoag Tribe (“the Tribe) as successor in interest to the Corporation. On June 28, 2004 members of the Board of Directors of the Corporation adopted a Constitution that included By-laws that replaced any prior by-laws governing operation of tribal affairs. *See Constitution of the Mashpee Wampanoag Tribe By-laws of the Mashpee Wampanoag Tribal Council, Inc. at p. 15 (06/28/2004).* *See also Annual Report to Secretary of Commonwealth (11/01/2004*). “Pursuant to 25 CFR 83.10(1)(2) notice was given that the Department of the Interior (Department) has determined that the Mashpee Wampanoag Indian Tribal Council, Inc. . . . is an Indian tribe within the meaning of Federal law.” *See Federal Register Volume 72, No. 35 (Feb. 22, 2007) at 8007*.

The Tribe has filed a Motion to Dismiss the Complaint citing lack of jurisdiction as a result of the Tribe’s sovereign immunity. This Court agrees.

Sovereign Immunity:

The Tribal Constitution states: “this Constitution is established for the self-governance of the Mashpee Wampanoag Tribe as is our inherent right to do. [Further] “the Tribal members being a sovereign native people . . . do establish and adopt this Constitution to govern, protect and advance the common good of the Tribe for its future generations” *See Constitution of the Mashpee Wampanoag Tribe Preamble at 2.*

Tribal sovereign immunity “predates the birth of the Republic.” *Nuey v. Mashpee Wampanoag Tribe CV-08-001 (2010) citing Rhode Island v. Narragansett Indian Tribe 19 F.3d 685,694 (1st Cir. 1994).*

“The suability of the United States and the Indian nations . . . depends on affirmative statutory authority. Consent alone gives jurisdiction to adjudge against a sovereign. Absent that consent, the attempted exercise of judicial power is void.” *Marie A. Stone v. Cedric Cromwell et.al. Wampanoag Tribe CV-12-001 at 6 citing Nuey, supra*, and *United States v. Fidelity & Guaranty Corp. 309 U.S. 506, 512 (1940*).

Once a sovereign has established its affirmative defense of sovereign immunity, the claimant assumes the burden of establishing that the claim falls within a legislative waiver of immunity. *Stone v. Cromwell, supra citing Hwal’Bay Ga: Enterprises, Inc, v. Beattie No. 2008-AP-007 (Hualapai 04/02/09*).

Conclusion:

In the instant case Plaintiff has brought a claim against the Tribe seeking a Court order to bring suit. A sovereign has the right and power to state when and how it may be sued and must be free from interference from unconsented litigation. Tribal immunity extends to claims for declaratory and injunctive relief. *See Stone v. Cromwell, supra at 11*. The Tribe has not consented to a waiver of its sovereign immunity. Absent such a waiver this Court lacks jurisdiction over this matter.

Absent jurisdiction in the case the Court makes no findings on subsequent filings on this matter by the Plaintiff.

Order:

Therefore, it is hereby **ORDERED** on this twenty-eighth day of September, 2016 that Plaintiff’s Complaint is hereby **DISMISSED** with prejudice.

BY THE COURT

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Jeffrey L. Madison, District Court Judge September 28, 2016