
**FORT PECK COURT OF APPEALS
FORT PECK INDIAN RESERVATION
ASSINIBOINE AND SIOUX TRIBES
WOLF POINT, MONTANA**

POPLAR COMMUNITY ORGANIZATION,
Appellant,

vs.

Appeal No. 144

LARRY MARTIN, d/b/a MARTIN
RENOVATION
Appellee.

THIS MATTER comes before the Appeals Court on a Notice of Appeal filed by Poplar Community Organization, Appellant, from an order of the Fort Peck Tribal Court, Honorable A.T. Stafne presiding, which denied Appellant's Motion to Dismiss on the grounds that "Poplar Community Organization is not a legal subdivision of the Fort Peck Tribes and therefore not immune to suit based on sovereign immunity".

We granted an interlocutory appeal pursuant to 1 CCOJ §202(c); briefs have been submitted by Appellant and Appellee and an Amicus Curiae brief filed by Fort Peck Tribes on leave of Court.

APPEARING FOR APPELLANT Poplar Community Organization: LAURA CHRISTOFFERSEN, Attorney at Law, P.O. Box 997, Wolf Point, Montana 59201.

APPEARING FOR APPELLEE Larry Martin d/b/a Martin Renovation: Mary L. Zemyan, Attorney at Law, P.O. Box 1094, Wolf Point, Montana 59201.

AMICUS CURIAE Fort Peck Tribes: Marvin J. Sonosky and James K. Kawahara, Sonosky, Chambers, Sachse & Enderson, Attorneys at Law, 1250 Eye Street, NW, Washington, D.C. 20005

ISSUE ON APPEAL: WHETHER THE POPLAR COMMUNITY ORGANIZATION IS A TRIBAL ENTITY WHICH IS ENTITLED TO SOVEREIGN IMMUNITY.

OPINION BY: Gerard M. Schuster, Chief Justice, joined by Debra A. Johnson, Associate Justice. Gary James Melbourne, Associate Justice, dissented. Decided April 13, 1992.

HELD: POPLAR COMMUNITY ORGANIZATION IS A TRIBAL ENTITY AND THEREFORE IMMUNE FROM SUIT. THE ORDER OF THE FORT PECK TRIBAL COURT DENYING APPELLANT'S MOTION TO DISMISS IS REVERSED; POPLAR COMMUNITY ORGANIZATION IS DISMISSED FROM THIS SUIT ON THE GROUNDS OF SOVEREIGN IMMUNITY.

FACTS:

The procedural facts of the issue on interlocutory appeal are basically agreed upon by the parties. Larry Martin d/b/a Martin Renovation sought to recover a money judgment from Poplar Community Organization (PCO) under a contract. PCO denied the allegations of the complaint; sought dismissal on the basis of sovereign immunity and filed a counterclaim. The interlocutory appeal followed, and was granted pursuant to 1 CCOJ §202(c).

The substantive facts regarding the status of PCO vis-à-vis the Fort Peck Tribes are at issue. After review of the Court file, the briefs of counsel and amicus brief, we find these facts:

1. The Tribal Executive Board created Poplar Community Organization. **REF. Tribal Resolution No. 1117-88-7**. The Tribal Executive Board retains control over invested funds of PCO. **REF. Tribal Resolution No. 1794-83-1**. The Constitution and by-laws of PCO are subject to approval by the Tribal Executive Board. **REF. Tribal Resolution 1558-88-10**. Further, the Tribal Executive Board clearly has the authority to create and delegate authority to the PCO.
2. We find that the PCO serves many functions which are governmental in nature. Basically, the primary function is to "promote the general welfare of the members residing within the Poplar community". **Constitution. Article II, Section 1.**
3. The PCO did not either consent to suit or waive its sovereign immunity in the present action. **REF. Pleadings**. Transcript. Waiver of sovereign immunity must be expressly stated and must be unequivocal. **American Indian Agricultural Credit Consortium, Inc. vs. Standing Rock Sioux Tribe**. 780 F.2d. 1374 at 1378 (1985). Similarly, we find no facts here indicating a specific waiver of sovereign immunity. **Santa Clara Pueblo vs. Martinez**, 436 U.S. 49 (1978).

Based on the foregoing findings of fact, we reach the following conclusions and opinion:

1. The Fort Peck Tribal Executive Board created PCO. The Tribal Executive Board has the authority to create and delegate authority to the PCO.
2. The PCO serves governmental functions for the Tribal Executive Board.

3. Indian Tribes and their delegated entity possess sovereign immunity and any waiver of the immunity must be expressly stated and must be unequivocal.

THEREFORE,

1. THE ORDER OF THE FORT PECK TRIBAL COURT DENYING APPELLANT'S MOTION TO DISMISS IS REVERSED.

2. POPLAR COMMUNITY ORGANIZATION IS DISMISSED FROM THE ACTION ON THE GROUNDS OF SOVEREIGN IMMUNITY.

DATED this _____ day of _____, 1992.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, CHIEF JUSTICE

DEBRA A. JOHNSON, ASSOCIATE JUSTICE
