

LOWER BRULE SIOUX TRIBAL COURT ) IN TRIBAL COURT  
LOWER BRULE SIOUX TRIBE )SS  
LOWER BRULE SIOUX TRIBE JURISDICTION ) CIVIL DIVISION

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LOWER BRULE SIOUX TRIBAL MEMBERS,  
Gail Ziegler, Janice Larsen, Cathy Grubs,  
Sheryl Scott, Janet Traversie, Maria Sexton,  
George Estes

Plaintiffs,

CIV: 15-8-0101

vs.

ORDER

2012-2014 LOWER BRULE TRIBAL COUNCIL,  
Boyd Gorneau, Darrell Middletent,  
Orville Langdeau Jr, John McCauley,  
Shawn LaRoche,  
Defendants

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The Plaintiffs are Lower Brule Sioux Tribal members who filed this suit against the tribal elected leaders who were in office from 2012-2014 when the Tribe entered into a business transaction Plaintiffs refer to as the "Westrock Loan." The Plaintiffs claim that the Council at that time failed to properly advise the membership of the details regarding this transaction and that they have been stonewalled since in trying to obtain information from the Tribe and the BIA. The Plaintiffs also claim that they have been denied access to financial information from the Tribe during that term regarding its expenditures of the "Salazar" settlement with the United States for the government's breach of trust to the Tribe.

The Defendants filed a general answer in which they assert that, with the exception of Defendants Langdeau and McCauley, they are no longer on the Tribal Council and thus no longer have access to any records regarding either transaction. Defendant Landgdeau further claims that he was not on the Council during the

relevant times alleged in the lawsuit and that he is thus improperly joined as a Defendant.

Hearing was held on the 2<sup>nd</sup> day of October 2015 with the Plaintiffs appearing through lead Plaintiff Sheryl Scott and through Gail Ziegler. All of the Defendants appeared except for Shawn LaRoche and all were provided the opportunity to testify.

Ms. Scott provided most of the testimony for the Plaintiffs. She testified that concerned tribal members started a South Dakota non-profit organization, Lakota Oyate Ho, designed to be a grass roots organization to ensure honest and transparent leadership for the Lower Brule Sioux Tribe. She further testified to concerns the Plaintiffs had during the 2012-2014 council when membership learned of a Department of Interior guaranteed loan, which Plaintiffs refer to as the "Westrock" loan, the Tribe allegedly received to purchase a company in New York. This loan and business transaction have apparently been the subject of much scrutiny, including a report from a group called the "Human Rights Watch", which came out with a publication called "Secret and Unaccountable: The Tribal Council at Lower Brule and its Impact on Human Rights" that has stirred much controversy and concern amongst the membership. That report essentially accuses former members of the Lower Brule Tribal Council of corruption, although the report does not detail what records the organization had accessed and reviewed to justify painting with such a broad accusatory brush.

Ms. Scott also testified that she and members also feel that they were denied tribal records and information regarding how the Tribe had expended its Salazar

settlement monies received from the United States. She acknowledged that a partial per capita payment of \$750 was made to each member, but she claimed that no information was provided membership regarding how the balance was expended. She also testified that she and others felt stonewalled in obtaining information on the Tribal Farm and Ranch operation, as well as obtaining tribal council resolutions. She acknowledged however that she personally had never requested to see original resolutions archived and maintained by Scott Jones. Nor did she testify to any particular attempts to request information from the Treasurer during the 2012-2014 term.

Ms. Scott did however provide the Court with a copy of a letter from the Internal Revenue Service indicating that the IRS is currently investigating the Tribe, although it is not clear what the purpose of the IRS audit of the Tribe is. Ms. Scott also testified to efforts her group as made to make FOIA requests to federal agencies to obtain records regarding the transactions they seek information on and her group feels stymied in their attempts there. They have thus turned to the Court to claim that they have a right under the Lower Brule Sioux Tribal Constitution, Article VII, Section 2 and its By-laws at Article I, Section 3, to all of the information from the 2012-2014 term. They ask this Court to order the Defendants to turn over this information.

Defendants Gorneau and Middletent testified that they have no information since they left the Council and they testified as to their knowledge as to the transactions in question. The same appears true for Defendant LaRoche. Defendant Langdeau asserted that he was not on the Council during the 2012-2014 term.

Landgdeau and McCauley further testified that Richard Thompson Sr. was operating the Tribal Ranch/Farm and that the Plaintiffs had never formally requested information about the operation.

They also testified that the Tribe has successfully created a corporate entity under Section 17 of the Indian Reorganization Act, Sec 25 U.S.C. §461-494(a) to operate its business ventures and that this entity existed separate and apart from its governmental entity. The purpose of this was to allow Tribes to expand their economic opportunities while not implicating the tribal government in the day-to-day operations of the Tribe's business ventures. The Lower Brule Sioux Tribe is operating its government pursuant to Section 16 of the IRA, permitting Tribes to create federally-recognized governmental entities. Many Courts have held that in situations where Tribes create these two entities their transactions and rights are completely separate. *See, e.g., Veeder v. Omaha Tribe of Neb.*, 864 F. Supp. **889, 898 (N.D. Iowa 1994)**; *GNS, Inc. v. Winnebago Tribe of Neb.*, 866 F. Supp. **1185, 1188 (N.D. Iowa 1994)**. They pointed to a lawsuit decided by this Court in which the Court held that it had no authority over the Section 17 entities of the Tribe. The Court reviewed that lawsuit and finds that it does not paint with such a broad brush, but in it Judge Miner had merely ruled that the Court lacked the authority to upset an arbitration award tangentially involving a tribal business interest.

The Plaintiffs point to provisions of the Tribal Constitution as grounds for their claim they are entitled to all information on the economic enterprises of the Tribe. Article VII, Section 2 of the Tribal Constitution guarantees to all member the "equal opportunity to participate in the economic resources and activities of the reservation without prejudice." This right, which appears in many tribal Constitutions but is not mirrored in

the United States Constitution , appears quite broad and theoretically could be used to argue that tribal members have an absolute right to employment with the Tribe or could perhaps be invoked to prohibit the Tribe from terminating an employee. The Plaintiffs argue that this provision guarantees to them the right of access to all information pertaining to the economic enterprises of the Tribe including those records pertaining to Westrock, the Tribal Farm and the Salazar settlement monies.

Although the Court agrees that Article VII, Section 2 is a source of rights of tribal membership, this Court recognizes that an unlimited interpretation of this section may impinge upon other rights. Such an interpretation of the Constitution could compromise proprietary rights, trade secrets or private information about individuals that are entitled to protection under consumer protection or medical protection laws. In addition, this argument ignores the limiting language of that section “without prejudice.” This means that in determining who can participate in the economic activities the Tribe cannot act with prejudice towards a particular group. The Tribe could not therefore discriminate against a tribal member based upon sex, religion, political affiliation, blood quantum, disability or any other classification that is deemed suspect under the law. The Plaintiffs make no such claim in this case, although they intimate that they are being politically targeted because they support tribal officials who are trying to make government more transparent for the people of the Tribe.

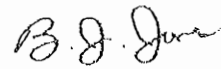
The Court therefore concludes that the Plaintiffs have sued former elected officials who are not in possession of the documents they seek and have also not cited a claim of “prejudice” based upon a suspect group as required under Article VII, Section 2

of the Constitution. They may file a new complaint alleging such and naming the custodians of the records they seek, but the instant complaint is legally deficient.

Wherefore, it is hereby

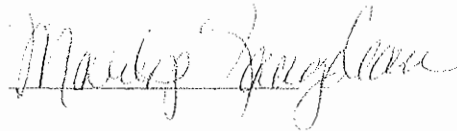
ORDERED, ADJUDGED, AND DECREED that the request for injunctive relief is hereby DENIED without prejudice to the right of the Plaintiffs to file an appropriate complaint alleging "prejudice" in the denial of their requests for information and against the proper custodians of the records they seek. Only then can the Court address what records, if any, they may be entitled to.

Dated this 23<sup>rd</sup> day of October 2015.



B.J. Jones  
Lower Brule Sioux Tribe  
Special Judge

ATTEST:



LOWER BRULE SIOUX TRIBAL COURT }  
LOWER BRULE, SD } ss.  
COUNTY OF LYMAN }

I hereby certify that I have carefully examined this within instrument and compared the same with the original now on file and of record in this office and that it is a true and correct copy of the same and the above is a correct copy of the filing thereon.

  
Clerk of Courts

By \_\_\_\_\_ Deputy