SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

COURT OF APPEALS

Lexington Insurance Company; Liberty Mutual Insurance Company, and Ironshore Specialty Insurance v. Kewadin Casino and Sault Ste. Marie Tribe of Chippewa Indians

APP-2022-01

Decided: May 15, 2026

BEFORE: BIRON, CORBIERE, and DIETZ Appellate Judges.

Opinion and Order

Biron, Karrie Chief Appellate Judge, who is joined by Appellate Judge Corbiere, and Dietz.

For the reasons explained below, the Sault Ste. Marie Tribe of Chippewa Indians Tribal Court ("Tribal Court") Order Denying Defendant's Motion to Dismiss is affirmed but on different grounds, as indicated below. This matter is remanded for further proceedings consistent with that jurisdiction.

Administrative Note

This interlocutory appeal was argued and submitted in December 2022. This Court's decision issues after a longer-than-usual interval due to circumstances affecting the Court's ability to render a decision with a properly constituted panel and to do so in a manner that conserves Tribal judicial resources. During and after the 2022 election cycle, the Tribal government experienced substantial institutional change, and the Court's docket and administrative priorities necessarily shifted while the 'dust settled' and judicial assignments stabilized[12]. More recently, the Tribal Court has undergone additional leadership and staffing transitions that required careful and cautious consideration in managing remands and case flow.[3] No party has requested expedited resolution or inquired regarding status. Notwithstanding the passage of time, the Court has reviewed the full record and the parties' briefs and issues this Opinion and Order to resolve the jurisdictional questions presented and to provide guidance for further proceedings on remand. Nevertheless, this Opinion is supported by a majority of the panel that heard the original appeal. Given the pending resignation of the Chief Appellate Judge effective June 5, 2026, this Court must dispose of this matter now lest there be no one from the original panel remaining.

[1] Appellate Judge Feleppa's end on January 2023 and was not renewed.
[2] Appellate Judge Jump resigned on May 17, 2023.
[3] Tribal Court Chief Judge Jocelyn Fabry was disciplined for judicial opinion in August 2023 who ultimately resigned in May 2024. Since Chief Judge Fabry's resignation no long term Tribal Court Chief Judge has replaced her.

Procedural History

On July 21, 2021, Appellees, Kewadin Casino and the Sault Ste. Marie Tribe of Chippewa Indians filed a Complaint (Jury Trial Requested), against AIG, Tribal First Insurance, Alliant Specialty Insurance Services ("*Complaint*") in the Sault Ste. Marie Tribal Court ("Tribal Court") alleging causes of action for breach of contract and declaratory judgment. The *Complaint* was amended on September 13, 2021 ("*Amended Complaint*"). 9/13/21 First Amended Complaint.

On December 20, 2021, Appellant Lexington Insurance filed a Motion to Dismiss by Limited Special Appearance ("*Motion to Dismiss*") arguing the Tribal Court lacked subject matter and personal jurisdiction to adjudicate the *Amended Complaint*. 12/20/21 Defendant's Motion to Dismiss by Limited Appearance. Appellants, Ironshore Specialty Insurance Company and Liberty Mutual Fire Insurance Company, joined in the *Motion to Dismiss* also by Limited Special Appearance.

On January 20, 2022, Appellees filed their Response to Motion to Dismiss ("*Response*") asserting that Appellants arguments related to Tribal Court subject matter and personal jurisdiction fail as "Defendants entered into a consensual relationship with [the Appellees] for insurance of tribal trust property located on the Reservation." 1/20/22 Plaintiff's Response to Motion to Dismiss at 2-11. The Appellees further argue that the Tribal Court is a court of competent jurisdiction and that Sault Tribe Code, Chapter 81 §§ 81.103(2, 3, 59(b) and (c) clearly provide this Court with subject matter jurisdiction over the Appellants. Id.

The Tribal Court heard oral arguments on February 15, 2022.

On April 2, 2022, the Tribal Court denied the *Motion to Dismiss* finding that Sault Tribe Code Chapter 81, at minimum, clearly provides for subject matter jurisdiction and that it could not yet discern from the record whether an exception to such jurisdiction would be applicable. *April 2, 2022 Order Denying Defendants' Motion to Dismiss* at 2.

On May 12, 2022, Appellants, Lexington, Ironshore and Liberty, timely filed an appeal of the Order Denying Defendants' Motion to Dismiss ("*Notice of Appeal*"). 5/*12/2022 Notice of Appeal from Order Denying Defendants' Motion to Dismiss ("Notice of Appeal")*. Of even date of the filing of the *Notice of Appeal*, Appellants, Lexington, Ironshore and Liberty, filed Defendants' Motion to Stay Pending Appeal. The Tribal Court heard oral arguments and granted Defendants Motion to Stay on June 6. 2022. 6/6/22 Order Granting Defendants' Motion to Stay.

On August 9, 2022 briefing on the Appellant's *Notice of Appeal* concluded. Oral argument was held before this Court in December 16, 2022.

Jurisdictional Facts

Plaintiffs/Appellees are the Sault Saint Marie Tribe of Chippewa Indians ("Tribe"), a federally recognized Indian tribe and Kewadin Casino ("Kewadin"), the gaming operation owned by the Tribe located on the Tribe's Reservation. *Amended Complaint* ¶ 1, at 1. Defendants, Lexington Insurance ("Lexington"), Liberty Mutual Insurance (sic) ("Liberty") and Iron Shore Specialty Insurance Company ("Iron Shore") are insurance companies. Id. ¶ 2, at 1. The Tribe and Kewadin maintain insurance policies through Lexington Insurance and Ironshore Specialty Insurance Company. Id. ¶¶ 3 and 6, at 1-2. The insurance policies are "for the on-Reservation casino and other on-Reservation property. Id. ¶ 12, at 2.

Lexington is organized under the laws of Delaware and is physically located in Massachusetts. 12/20/21 Declaration of Matthew A. Hoffman in Support of Defendant Lexington Insurance Company's Motion to Dismiss by Limited Special Appearance ("*Hoffman Declaration*") ¶2, at 2. An agent of Lexington, Tribal First Alliant Underwriting Solutions, and largest provider of insurance solutions to Native American issued the insurance policies[4] in which Lexington and Additional A Rated and Non Admitted Carriers are named insurers and the Tribe and Kewadin (and other Tribal enterprises) are named insureds for the coverage term of July 1, 2019 to July 1, 2020. Id. ¶¶ 3-7 at 2; Ex. 4 at 3, 13 and 14. Premiums due to Lexington are equal to or greater than $686,778 for the coverage term. Id., Ex. 4 at 10. The Lexington policy describes Named Insureds under Section 1, General Provisions, coverage related to Property Damage in Section II and coverage related to Business Interruption in Section III. Id., Ex. 4 at 49, 53 and 63. Section V of the Lexington policy contains a Service of Suit clause in which Lexington agreed "to submit to the jurisdiction of a Court of competent jurisdiction within the United States." Id. at 83.

Jurisdiction and Standard of Review

This appeal challenges the Tribal Court's April 12, 2022 Order Denying Defendants' Motion to Dismiss by Limited Special Appearance. An appeal is properly before this Court when it involves a final decision or an order affecting a substantial right that determines the action and prevents a judgment from which an appeal might be made. STC §82.111(1), (3). A jurisdictional ruling that compels parties to litigate in a forum they contend lacks authority affects a substantial right and is reviewable on interlocutory appeal.

Chapter 82 "establishe[s] the procedures by which appeals are taken . . . ." Tribal Code Section 82.101. Tribal Code Section 82.109 sets forth that this Court possesses exclusive

[4] Policy Nos. 017471589, 038412453, 038412468. Amended Complaint at ¶ 3.

jurisdiction to review the decisions of the Tribal Court. Pursuant to Tribal Code Section 82.111, an appeal is properly before this Court if it is an appeal from a final decision of the Tribal Court. Neither party appears to allege that the tribal court made a factual error. The issues before this Court are strictly issues of law, and as such are reviewed de novo. STC § 82.124(5). "A matter which is within the discretion of the Tribal Court shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority; applied the appropriate legal standard to the facts; and did not abuse its discretion." *In the Matter of JK,* APP-06-02, p.5 (January 9, 2009). A matter committed to the discretion of the Tribal Court shall not be subject to the judgment of the Court of Appeals. STC § 82.124 (8). Matters on appeal involving a conclusion of law are reviewed *de novo*. STC § 82.124(5). Matters on appeal involving a finding of fact shall be sustained unless clearly erroneous. STC § 82.124(1).

Jurisdiction is a threshold matter that must be determined before proceeding to the merits of any case. *Hoffman v. Sault Ste. Marie Tribe if Chippewa Indians Board of Directors, et. al.*, APP-2022-05 (December 7, 2022).

In every matter before this Court, our Anishinaabe teachings of *nibwaakaawin* (wisdom-use of good sense), *zaagi'idiwin* (practice absolute kindness), *minadendmowin*, (respect – act without harm) as well as *ayaangwaamizi* (careful and cautious consideration) must guide this Court's decision-making. *Payment v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-2022-02 (December 5, 2022).

In applying all of the principles set forth herein, this Court is required to give special deference to those matters that are left to the discretion of the Tribal Court, such as fact finding, and will not substitute its judgment for that of the Tribal Court unless such determinations are clearly erroneous. STC § 82.124(8). Both our Anishinaabe teachings of *ayaangwaamizi* (careful and cautious consideration) as well as federal law, instruct this Court to view the facts alleged in jurisdictional questions in the light most favorable to the plaintiff. *E.g., Burlington Northern and Santa Fe R. Co. v. Vaughn*, 509 F. 3d 1085, 1088 (9th Cir. 2007)

Discussion

I. Subject Matter Jurisdiction

Appellees bring contract and declaratory claims arising from insurance policies issued to insure on-Reservation tribal trust property and operations. The dispute centers on coverage for losses allegedly sustained during the COVID-19 pandemic. Appellants moved to dismiss on the ground that the Tribal Court lacked subject matter and personal jurisdiction. The Tribal Court denied the motion as premature, explaining that the record at that stage was not sufficiently developed to determine whether the Montana exceptions applied.

On appeal, this Court reviews jurisdiction *de novo* on the record before it. The record includes the pleadings and the policy materials establishing that Appellants participated in a tribally marketed insurance program, issued policies covering on-Reservation property and business-interruption risks, collected substantial premiums, and agreed to a Service of Suit clause providing that, upon request of the insured, Appellants would submit to the jurisdiction of a 'Court of competent jurisdiction within the United States.' These undisputed facts are sufficient to resolve the jurisdictional questions presented.

A. Federal-Law Framework (Montana and Subsequent Authority)

Federal law supplies the governing framework for tribal civil jurisdiction over nonmembers. Under *Montana v. United States*, 450 U.S. 544 (1981), a tribe may exercise civil authority over nonmembers who enter consensual relationships with the tribe or its members through commercial dealing or contracts, and over certain conduct on fee lands that threatens or directly affects the political integrity, economic security, or health or welfare of the tribe. *Montana*, 450 U.S. at 565–66. Where a tribe has authority to regulate the activity at issue, the tribal court has adjudicatory authority over disputes arising out of that activity. *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997).

1. Consensual-Relationship Exception

Appellants knowingly entered a commercial relationship to insure the Tribe's on-Reservation trust property and operations. The claims asserted—breach of the insurance contract and declaratory relief regarding coverage—arise directly from and bear a nexus to that consensual relationship. Federal case law requires that nexus. See *Philip Morris USA, Inc. v. King Mountain Tobacco Co.*, 569 F.3d 932, 942 (9th Cir. 2009) (claim must have a nexus to the consensual relationship); *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 656 (2001) (same).

Appellants emphasize their lack of physical presence on the Reservation. Physical presence is not a categorical prerequisite to the first *Montana* exception where the nonmember deliberately creates continuing obligations directed to the forum and the dispute arises from those obligations. *Burger King Corp. v. Rudzewicz*, 471 U.S. 461, 476 (1985). Persuasive tribal appellate authority applying *Montana* to materially identical Tribal Property Insurance Program policies has held that insurers who knowingly contract to insure tribal trust property and businesses located on reservation lands should reasonably anticipate tribal-court jurisdiction over disputes arising from those policies, notwithstanding the insurers' lack of physical presence. *Suquamish Tribe v. Lexington Ins. Co., et al.*, No. 200601-C (Suquamish Tribal Court of Appeals Oct. 7, 2021) (amended).

We find the reasoning of *Suquamish* persuasive. Here, as there, the contractual relationship was directed to on-Reservation property and operations, and the dispute arises directly from the insurers' obligations under the policies. These facts satisfy *Montana's* first exception.

2. Second Montana Exception

Because the first exception applies, the Court need not decide whether the second exception independently supports jurisdiction.

B. Tribal-Law Basis and the Tribe's Sovereign Interests

Tribal law provides the Tribal Court with broad civil authority over actions involving the Tribe, tribal enterprises, and tribal property, subject to applicable federal law. The claims here concern the Tribe's own contracts insuring tribal trust property and operations. Exercising jurisdiction over such disputes advances the Tribe's sovereign interests in regulating and protecting its lands, enterprises, and economic security.

III. Personal Jurisdiction

A. Consent through the Service of Suit Clause

Personal jurisdiction protections may be waived. Where a party consents to personal jurisdiction as part of a freely negotiated agreement, enforcement of that agreement does not offend due process. *Burger King*, 471 U.S. at 472 n.14. The policies' Service of Suit clause provides that, upon the insured's request, the underwriters will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Because we conclude the Tribal Court has subject matter jurisdiction over this dispute, it is a court of competent jurisdiction for purposes of that clause. See *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 560 (2017) (a court of competent jurisdiction is one with subject matter jurisdiction).

B. Minimum Contacts and Reasonableness

Even absent waiver, the record supports personal jurisdiction under due process principles applied through the Indian Civil Rights Act. 25 U.S.C. §1302(a)(8). A defendant need not be physically present in the forum where its conduct is purposefully directed to the forum and it creates continuing obligations with the forum resident, and the claim arises out of those forum-related activities. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Burger King*, 471 U.S. at 476. Appellants purposefully entered a commercial arrangement to insure on-Reservation tribal property and operations, collected premiums for that coverage, and the Tribe's claims arise directly out of that relationship. Exercising jurisdiction is reasonable given the locus of the insured property and operations and the Tribe's strong sovereign interest in disputes concerning coverage for losses on its Reservation.

IV. Affirmance of Denial of Motion to Dismiss; Remand

For these reasons, the Tribal Court correctly denied Defendants' Motion to Dismiss. Although the Tribal Court characterized the motion as premature due to an undeveloped record, the

appellate record is sufficient to confirm that jurisdiction exists as a matter of law under *Montana's* consensual-relationship exception and under due process principles supporting personal jurisdiction. Accordingly, we affirm the denial on the alternative grounds set forth in this Opinion.

This case returns to the Tribal Court for proceedings on the merits. Our disposition is limited to jurisdiction; we do not decide coverage, damages, or any defenses unrelated to jurisdiction. On remand, the Tribal Court shall establish an appropriate schedule and proceed with further proceedings consistent with this Opinion and Order, including factual development relevant to the merits.

ORDER

For the reasons stated in this Opinion and Order, the Sault Ste. Marie Tribe of Chippewa Indians Tribal Court's April 12, 2022 Order Denying Defendants' Motion to Dismiss is AFFIRMED. The denial is affirmed on the alternative grounds set forth herein, including that the Tribal Court has subject matter jurisdiction over Appellees breach-of-contract and declaratory-judgment claims arising from insurance coverage for on-Reservation tribal trust property and operations, and that the Tribal Court has personal jurisdiction over Appellants by consent under the policies' Service of Suit clause and, alternatively, through sufficient minimum contacts consistent with due process. This matter is REMANDED to the Tribal Court for further proceedings on the merits consistent with this Opinion and Order.

It is SO ORDERED.