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IN RE: LITTLE TRAVERSE BAY BANDS OF OTTAWA INDIANS, Petitioner,**File No. G87-118****UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
MICHIGAN***1988 U.S. Dist. LEXIS 17960***January 4, 1988, Decided****January 5, 1988, Filed****JUDGES:** [*1] ENSLEN**OPINION BY:** RICHARD A. ENSLEN**OPINION***OPINION*

This case is before the Court on Motions to Dismiss filed by the United States of America and by three Indian tribes: the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians, and the Grand Traverse Band of Ottawa and Chippewa Indians (hereinafter "Tribes"). For the reasons stated below, I will grant the United States' motion and dismiss the complaint without prejudice. Further, I will grant the Tribes' motion to dismiss with prejudice.

Facts

On February 4, 1987, the petitioner, Little Traverse Bay Bands of Ottawa Indians (hereinafter "petitioner") filed its petition seeking declaratory relief. The petition names no defendants or respondents. Apparently, petitioner seeks a declaratory judgment that it is an Indian tribe and "a political successor to the Indian signatories to the treaties of 1836 and 1855." The only relief sought in the petition is a declaration by this Court that the Court "will use the criteria set forth in 25 C.F.R. § 83.7 in any future petition by petitioner for treaty rights and accordingly declare that petitioner is the political successor to the signatories of the Treaties of 1836 and 1855." [*2] Apparently, petitioner then served the petition, together with summonses, upon the following

entities: the Tribes, the United States of America and the State of Michigan.

On July 17, 1987 the United States filed a Motion to Dismiss or For a More Definite Statement. The motion alleges that the petition fails to state a claim on which relief may be granted, that it fails to comply with the requirements of *F.R.Civ.P. 8(a)* because it fails to state the basis of the Court's jurisdiction or a waiver of the government's sovereign immunity, and that it fails to state a justiciable case or controversy within the meaning of Art. III, § 2 of the United States Constitution. The United States further contends that the petition was improperly served upon it because petitioner did not serve copies of it on the Attorney General or on the Agency against which relief is apparently sought. See, *F.R.Civ.P. 4(d)(4)*.

On July 20, 1987 the Tribes filed a Motion to Dismiss alleging that their sovereign immunity precluded the suit against them. On July 23, 1987 the State of Michigan responded to the petition, informing the Court that it did not oppose the recognition of petitioner as an Indian tribe [*3] but that it supported the United States' request for a more definite statement of the petitioner's claim.

On October 9, 1987 the petitioner filed its responses to the above motions pursuant to the Court's Order of September 29, 1987. In its response, the petitioner informed the Court that it had not intended to pursue a claim against the Tribes but had served the Tribes with copies of the petition only for notice purposes. Petitioner further agreed to the dismissal of the Tribes from this action. In addition, petitioner agreed to file a more

definite statement of its claim, but to date, more than sixty days after filing its response, has failed to do so.

Discussion

The Court will first address the Tribes' Motion to Dismiss. Since the petitioner has agreed to dismiss the Tribes from this action, the Court will do so without discussion. The Tribes' Motion to Dismiss is granted.

Next, the Court will address the United States' Motion to Dismiss. *Rule 8 of the Federal Rules of Civil Procedure* requires every complaint to include three basic elements: (1) a statement of the Court's jurisdiction; (2) a statement of the claim entitling the plaintiff to relief; and (3) a demand [*4] for judgment. This complaint, or petition, is deficient in all three respects.

First, the petition fails to allege the grounds for the Court's jurisdiction over the subject matter at issue. For that matter, as I will discuss later, the petition fails to define the subject matter at issue. Petitioner states that jurisdiction is based upon Article III of the Constitution and upon the Declaratory Judgment Act, 28 U.S.C. § 2201-02. Presumably, petitioner means to state a federal question, cognizable under 28 U.S.C. § 1331, but the petition does not so state. It is not for the Court to guess at what the petitioner intends to plead. The petitioner must inform the Court of the basis for its jurisdiction before this matter can proceed.

Second, the petition fails to contain a clear statement of the claim entitling petitioner to relief. It names no defendants. The Court is at a loss to determine against whom the petitioner seeks relief. It alleges no facts, but only conclusory allegations that the petitioner is entitled to recognition as an Indian tribe and that it has rightfully refused to seek such recognition from the Department of Interior. The Court is not informed as to why [*5] the petitioner may be considered an Indian tribe or why it has failed to pursue recognition by the Department in the usual course provided for under 25 C.F.R. § 83.7. Finally, the Court is not informed whether anyone has ever denied petitioners the relief they appear to seek. These failures lead the Court to conclude that petitioner has failed to comply with *Rule 8* because the petition does not contain a statement of the claim showing that petitioner is entitled to relief.

Finally, the petition fails to clearly establish the relief sought by petitioner. The final paragraph of that

document is absolutely incomprehensible. It states:

WHEREFORE, PETITIONER PRAYS that this Honorable Court declare that it will use the criteria set forth in 25 C.F.R. § 83.7 in any future petition by petitioner for treaty rights and accordingly declare that petitioner is the political successor to the signatories of the Treaties of 1836 and 1855.

Does Petitioner seek the recognition referred to in this paragraph now, or at some later date when it files a petition for treaty rights? If petitioner means to plead the former, then the Court might have subject matter jurisdiction over this case. [*6] If it means to plead the latter, then jurisdiction is clearly lacking since the petition seeks an advisory opinion. It is axiomatic that the Court cannot tell petitioner what it will do so at some future date. Article III mandates that the Court decide only those live "cases or controversies" presented to it through appropriate pleadings. It is equally obvious that the Court cannot define the legal standard for a decision it may, or may not be called upon to render in the future.

The defects referred to above are so glaring and so basic that the Court has no choice but to grant the United States' Motion to Dismiss. It appears, however, that petitioner may be able to state a claim upon which relief may be granted. Therefore, I will dismiss the complaint without prejudice and allow petitioner thirty (30) days in which to file an amended complaint or petition with the Court. This petition will remedy the defects mentioned above by setting forth: (1) the grounds for this Court's subject matter over the controversy in question; (2) the facts showing that a controversy exists and that petitioner is entitled to relief; and (3) the relief which petitioner seeks, and particularly the [*7] party or parties against whom the petitioner seeks that relief.

Finally, the Court notes its agreement with the United States' argument that the petitioner failed to properly serve the summons and petition upon the United States pursuant to *F.R.Civ.P. 4(d)(4)*. Petitioner may remedy this defect by properly serving the amended complaint upon the United States Attorney for this district, the Attorney General of the United States and the Agency or Bureau involved.

DATED in Kalamazoo, MI: January 4, 1988

RICHARD A. ENSLEN, U.S. District Judge

ORDER

In accordance with the opinion dated January 4, 1988;

IT IS HEREBY ORDERED that the Motion to Dismiss by the Grand Traverse Bank of Ottawa and Chippewa Indians, the Sault Ste. Marie Tribe of Chippewa Indians and the Bay Mills Indian Community is GRANTED with prejudice;

IT IS FURTHER ORDERED that the Motion to

Dismiss by the United States is GRANTED without prejudice;

IT IS FURTHER ORDERED that petitioner shall have thirty (30) days from the date of this Order in which to file an amended complaint with this Court. Should the petitioner fail to file an amended complaint within thirty (30) days, the Court will dismiss this action [*8] with prejudice.

DATED in Kalamazoo, MI: January 4, 1988

RICHARD A. ENSLEN, U.S. District Judge