DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

SEMINOLE TRIBE OF FLORIDA,
d/b/a **SEMINOLE GAMING,**
Appellant,

v.

JOSE WEBSTER,
Appellee.

No. 4D2022-3448

[September 13, 2023]

Appeal of a nonfinal order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Martin J. Bidwill, Judge; L.T. Case No. CACE-20-003799.

Mark D. Schellhase, Jordan S. Kosches, and Emily L. Pineless of GrayRobinson, P.A., Boca Raton, for appellant.

Michael Gonzalez of Gonzalez Law Group, Tampa, for appellee.

WARNER, J.

The Seminole Tribe of Florida ("the Tribe") appeals an order denying its motion to dismiss based on sovereign immunity. The trial court rejected the Tribe's contention that appellee did not comply with the terms of the sovereign immunity waiver contained in the 2010 Gaming Compact (the Compact). The Compact required, among other conditions, that the Tribe and its insurance carrier have one year to resolve a claim after a Patron gives notice of the claim, and if the claim is not settled in that time, the Patron may file suit. The Tribe asserted in the motion to dismiss that appellee failed to comply with that condition, because he filed his complaint against the Tribe within one year of having given written notice of the underlying claim. The trial court denied the motion, because it could not conclude that the Tribe was sued within one year, as appellee had filed an original and two amended complaints which the court found named different defendants, and the last complaint filed would have complied with the Compact. We reverse, because the Tribe was named as a defendant in the first and second amended complaints. The first amended complaint was filed within one year of appellee giving notice of his claim.

Thus, the court should have determined whether the Compact's terms regarding a sovereign immunity waiver were satisfied.

"As a federally recognized Indian tribe, the Seminole Tribe is entitled to sovereign immunity over all claims unless such immunity is abrogated by Congress or waived by the Seminole Tribe." *Seminole Tribe of Fla. v. Manzini*, 361 So. 3d 883, 884 (Fla. 4th DCA 2023); *see also Lewis v. Edwards*, 815 So. 2d 656, 657 (Fla. 4th DCA 2002). Waivers must be "clear, explicit, and unmistakable." *Miccosukee Tribe of Indians v. Napoleoni*, 890 So. 2d 1152, 1153 (Fla. 1st DCA 2004). Further, a waiver "must be strictly construed with any ambiguities being resolved against waiver." *Dep't of Fin. Servs. v. Barnett*, 262 So. 3d 750, 754 (Fla. 4th DCA 2018), *approved*, 303 So. 3d 508 (Fla. 2020).

The parties agree that this case is governed by Part VI, Section D of the 2010 Gaming Compact between the Tribe and the State of Florida, which creates a limited immunity waiver for a Patron's tort claims against the Tribe and defines the procedure for bringing such claims. The Compact reads, in pertinent part, as follows:

> D. Tort remedies for Patrons.
>
> 1. A Patron who claims to have been injured . . . is required to provide written notice to the Tribe's Risk Management Department or the Facility, in a reasonable and timely manner, but in no event later than three (3) years after the date of the incident giving rise to the claimed injury occurs, or the claim shall be forever barred.
>
> 2. The Tribe shall have thirty (30) days to respond to a claim made by a Patron. **If the Tribe fails to respond within thirty (30) days, the Patron may file suit against the Tribe. When the Tribe responds . . . the Tribe shall provide a claim form to the Patron. The form must . . . provide notice of the Tribe's administrative procedures for addressing Patron tort claims, including notice of the relevant deadlines that may bar such claims if the Tribe's administrative procedures are not followed** . . . .
>
> 3. Upon receiving written notification of the claim, the Tribe's Risk Management Department shall forward the notification to the Tribe's insurance carrier . . . .

> 4. The insurance carrier will handle the claim to conclusion. **If the Patron and the Tribe and the insurance carrier are not able to resolve the claim in good faith within one (1) year after the Patron provided written notice to the Tribe's Risk Management Department or the Facility, the Patron may bring a tort claim against the Tribe** . . . . A Patron's notice of injury to the Tribe pursuant to Section D.1. of this Part and the fulfillment of the good faith attempt at resolution pursuant to Sections D.2. and 4. of this Part are conditions precedent to filing suit.
>
> 5. For tort claims of Patrons made pursuant to Section D. of this Part, the Tribe agrees to waive its tribal sovereign immunity to the same extent as the State of Florida waives its sovereign immunity, as specified in sections 768.28(1) and (5), Florida Statutes . . . .
>
> 6. **Notices explaining the procedures and time limitations with respect to making a tort claim shall be prominently displayed in the Facilities, posted on the Tribe's website, and provided to any Patron for whom the Tribe has notice of the injury or property damage** giving rise to the tort claim. **Such notices shall explain the method and places for making a tort claim, including** where the Patron must submit the form, that the process is the exclusive method for asserting a tort claim arising under this section against the Tribe, **that the Tribe and its insurance carrier have one (1) year from the date the Patron gives notice of the claim to resolve the matter and after that time the Patron may file suit in a court of competent jurisdiction**, that the exhaustion of the process is a pre-requisite to filing a claim in state court, and that claims which fail to follow this process shall be forever barred.

(Emphasis supplied).

Appellee was a patron at the Seminole Hard Rock Hotel & Casino-Hollywood (the "Casino") in September 2019. He claims the Tribe was negligent in failing to protect him from criminal acts which allegedly occurred at the Casino during his visit.

In January 2020, appellee timely provided written notice of his claim to the facility. Two months later, appellee filed suit against "Seminole Hard Rock Entertainment, Inc. d/b/a Seminole Hard Rock Casino." Seminole

Hard Rock filed a motion to dismiss, noting that it was not the proper party, and that the proper defendant would have been the "Seminole Tribe of Florida d/b/a Seminole Hard Rock Hotel & Casino-Hollywood." That motion was not brought up for hearing.

In June 2020, appellee filed his first amended complaint naming the "Seminole Tribe of Florida d/b/a Seminole Hard Rock Hotel & Casino-Hollywood" as a defendant. The first amended complaint included the same allegations as the initial complaint.

After the trial court sent a notice of lack of prosecution, appellee moved to file a second amended complaint. The court granted the motion, and, in January 2022, appellee filed his second amended complaint naming the "Seminole Tribe of Florida d/b/a Seminole Gaming" as the sole defendant. In that complaint, appellee alleged one count for negligence and one for violation of the Compact. The complaint asserted that "all conditions precedent" to filing suit under the Compact had been made, "including but not limited to attempting a good faith effort in resolution of this cause."

The Tribe moved to dismiss the second amended complaint, arguing, in pertinent part, that appellee had failed to strictly comply with the Compact provisions related to the sovereign immunity waiver. Specifically, because appellee's initial complaint and first amended complaint were both filed before one year had passed from the date on which he provided written notice of his claim, suit was premature, and appellee's claim was "forever barred" under the terms of the Compact.

At a hearing on the motion, the trial court denied the Tribe's motion to dismiss without prejudice on this issue.[1] The court concluded it could not determine that the three complaints named the Tribe as a defendant "all along." For that reason, the court decided that appellee had complied with the Compact, because the second amended complaint was filed more than one year after the date on which appellee had provided notice of the claim.

This appeal follows. We have jurisdiction pursuant to Fla. R. App. P. 9.130(a)(3)(F)(iii).

We find that the trial court erred in denying the motion to dismiss based upon its conclusion that it could not determine whether the entities sued were the same. The first amended complaint and second amended

[1] The trial court granted the motion to dismiss with prejudice as to appellee's count alleging a violation/breach of the gaming Compact, but that decision is not the subject of this appeal.

complaint named the Tribe, albeit each stating a different fictitious name. Those complaints alleged the same tort cause of action against the Tribe.

Even if the fictitious name may be in error, the fact remains that the real party in interest, and the proper defendant, is the Tribe, just as a corporation is the party to be sued, even if it uses a fictitious name.

> Corporations are legal entities and should sue and be sued in their corporate name. 19 Am.Jur.2d Corporations § 2216 (1986). In pleadings, the corporate name must be strictly used. *Id.*

RHPC, Inc. v. Gardner, 533 So. 2d 312, 314 (Fla. 2d DCA 1988). "The purpose of the fictitious name statute is to provide notice to one dealing with a business of the real party in interest." *Roth v. Nautical Eng'g Corp.*, 654 So. 2d 978, 980 (Fla. 4th DCA 1995). The Tribe is the party which must be sued, regardless of the fictitious name which is used. Both the first and second amended complaints named the Tribe as a defendant. Therefore, the court should have determined whether appellee complied with the Compact's procedures for tort claims based upon the first amended complaint.

The Tribe contends that appellee failed to comply with the Compact's Section VI.D.4. by filing the first amended complaint within the one-year pre-suit period set by the Compact, and appellee's failure to strictly follow the Compact's procedures bars his claim.[2] Therefore, the Tribe asks this court to determine that the first amended complaint was premature under the Compact, because appellee filed the first amended complaint within one year of the date on which appellee gave notice of his claim. While matters outside the four corners of the complaint may be considered in deciding the issue of sovereign immunity, *Manzini*, 361 So. 3d at 888, the record before us is still insufficient to determine whether appellee's complaint was premature.

The Compact's Section VI.D.2. provides that, once a Patron gives notice of their claim, "[t]he Tribe shall have thirty (30) days to respond." If the Tribe fails to do so, "the Patron may bring a tort claim against the Tribe" at that time. When the Tribe responds, it "shall provide a claim form to the Patron," which must include, in part, "notice of the relevant deadlines that may bar such claims if the Tribe's administrative procedures are not followed."

---

[2] The Tribe acknowledges that, in accordance with Section VI.D.1. of the Compact, appellee provided adequate written notice of his claim.

The Compact's Section VI.D.6. further provides that such notices shall explain:

> where the Patron must submit the form, that the process is the exclusive method for asserting a tort claim arising under this section against the Tribe, **that the Tribe and its insurance carrier have one (1) year from the date the Patron gives notice of the claim to resolve the matter and after that time the Patron may file suit in a court of competent jurisdiction**, that the exhaustion of the process is a pre-requisite to filing a claim in state court, and **that claims which fail to follow this process shall be forever barred**.

(Emphasis supplied).

Our record does not include proof that that the Tribe responded to appellee's claim within thirty days of his written notice.[3] Failure to do so would have allowed appellee to file suit, sometime in February 2020, bringing the June 2020 first amended complaint into compliance with the Compact's filing procedures. Moreover, the record does not show any evidence that the Tribe's response, if any, included the requisite claim form or adequately explained the Compact's procedural requirements.

Therefore, although appellee's first amended complaint commenced suit against the Tribe within one year of his notice of claim, we need not address in this appeal whether the claim was prematurely filed in contravention of the Compact.

For the foregoing reasons, we reverse the order denying sovereign immunity and remand for further proceedings.

Reversed and remanded.

---

[3] At the hearing on the Tribe's motion to dismiss, the trial court acknowledged that the Tribe had forwarded appellee's claim to their insurance carrier, and the carrier later denied the claim. Further, the Tribe asserted that it "confirmed receipt" of appellee's claim notice approximately one week after he had sent it. However, the record does not show any evidence that the Tribe formally responded to appellee's claim within 30 days of notice and attached the requisite claim form explaining the Compact's procedural requirements.

DAMOORGIAN and FORST, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.