

ST. REGIS MOHAWK TRIBAL COURT
IN AND FOR THE ST. REGIS MOHAWK TRIBE

ANDREW THOMAS,)
)
 Plaintiff,)
)
 v.)
)
 SAINT REGIS MOHAWK TRIBE)
 And)
 SAINT REGIS MOHAWK TRIBAL)
 POLICE DEPT. BOARD OF)
 COMMISSIONERS,)
)
 Defendants.)

Case No.: 14-CIV-00025
DECISION AND ORDER

Procedural History

On September 24, 2014, Andrew Thomas (hereinafter plaintiff) filed with this Court a verified complaint in the above matter, requesting that the “determination” of the St. Regis Mohawk Police Commission and the St. Regis Mohawk Tribal Council made July 15, 2014, be “vacated and annulled”; that he be paid the sum of One thousand eight hundred eighty-two Dollars (\$1,882.00) [an amount deducted from his final paycheck]; and that he be awarded the sum of Fifty thousand Dollars (\$50,000.00) together with costs and disbursements of this action.

On September 29, 2014, proofs of service on September 29, 2014, of a summons and said complaint upon defendants were filed with the Court.

On October 21, 2014, defendants filed a motion to dismiss said complaint.

On October 28, 2014, plaintiff filed a cross motion seeking dismissal of defendants' motion and seeking default judgment on his complaint, and requesting that an inquest be scheduled to determine plaintiff's damages. On November 3, 2014, plaintiff filed a supplemental affidavit to his cross motion.

On November 19, 2014, defendants filed a response to plaintiff's supplemental affidavit.

The matter came on to be heard on said motion and cross motion on January 16, 2015. The Court heard oral arguments of counsel and reserved decision.

Factual Background

Plaintiff is the former Chief of Police of the St. Regis Mohawk Tribe. By letter dated July 7, 2014, the Saint Regis Mohawk Tribal Police Department Board of Police Commissioners (hereinafter Commissioners) advised plaintiff of a formal disciplinary charge against him which consisted of four (4) alleged, specified violations/charges. In the letter plaintiff was advised that he would, according to the Saint Regis Mohawk Tribal Police Commission Act of 2014, [adopted March 4, 2014] be provided a "hearing to challenge" the charges against him. The date and time (July 15, 2014, at 6:00 PM) and place of the hearing were provided.

On July 15, 2014, a hearing, at which plaintiff was present with counsel and given the opportunity to cross-examine witnesses and present evidence, was held. Plaintiff was also granted an adjournment until July 17, 2014, for the purpose of

submitting, in writing, responses to the disciplinary charges against him. Plaintiff submitted a response dated July 17, 2014.

On July 24, 2014, a Final Decision and Order was made by the said Commission (1) terminating plaintiff from his position as Chief of Police " 'for cause' "; (2) requiring plaintiff to "reimburse the Saint Regis Mohawk Tribe (hereinafter SRMT) for all expenditures that were not properly documented," said funds to be withheld from any amounts owed to plaintiff by the SRMT.

Discussion

Plaintiff first argues that defendants' motion to dismiss the complaint should be dismissed because it was not served within twenty (20) days of the service of the complaint upon defendants. Defendants argue that plaintiff's cross motion for default judgment and for dismissal of defendants' motion must be denied because defendants' motion to dismiss was filed prior to the motion for default judgment. On this issue, the Court agrees with defendants. SRMT Rules of Civil Procedure, Section XIII [Rule10]

(A) provides in pertinent part:

Failure of a defendant to file and serve an answer upon the Plaintiff within twenty (20) days after the complaint was served shall provide grounds for judgment against the defendant. . . No judgment of default shall be made, however, unless the plaintiff makes a written motion for a default judgment. . . If defendant files an answer to the complaint at or before the time that the motion is to be argued to the Judge, no default judgment shall be granted. . . .

Here, plaintiff did not file his cross motion for default judgment until after defendants filed their motion to dismiss the complaint. Although it seems plaintiff argues that said

motion is not an “answer” to the complaint, and he is, therefore, entitled to default judgment, the Court disagrees.

Next, defendants assert that this Court lacks jurisdiction over the SRMT and the Commission to award monetary relief because both defendants are protected by sovereign immunity. Plaintiff claims defendants waived sovereign immunity in the creation of the SRMT police department citing New York Indian Law Section 114. This Court disagrees with plaintiff’s assertions under said Indian Law Section 114. The waiver of sovereign immunity under Section 114(1)(a) provides:

The St. Regis Mohawk Tribe hereby waives its sovereign immunity from liability and action in New York state and federal courts, and hereby assumes liability and consents to have the same determined in accordance with the same rules of law as applied to actions against municipalities of the state of New York; provided that this waiver applies to liability for acts or omissions of officers . . . and other police department employees occurring while the officer or employee was acting within the scope of his or her employment or duties. . . .

The Tribe’s waiver of sovereign immunity under Section 114 applies specifically to those police officers with the ability to enforce New York State law, and does not apply to the facts of this case.

Next, plaintiff argues that the Tribe’s sovereign immunity does not extend to the Commission. As this Court stated in *Wood v. Terrance*, Case No. 11-CIV-00019 (2011), page 8:

Tribal governments possess sovereignty, which is not derived from the federal government, for it is an inherent power. Here, because those Indians of the Village of Saint Regis predate the creation of the United States, therefore sovereignty of ‘those Indians’ is recognized

as being inherent, and not legislatively created or bestowed by another sovereign, e.g., the United States. . . . The Supreme Court has stated that tribal immunity "is a necessary corollary to Indian sovereignty and self governance." (*Three Affiliated Tribes of the Ft. Berthold Reservation v Wold Eng'g, P.C.*, U.S. 877,890 (1986)). Tribal sovereign immunity protects tribal officials and tribal employees acting within the scope of their authority. . . . Further, Tribal Nations enjoy immunity from suit, unless they consent to suit, or where waived by Congress. (See, *C & L Enters., Inc. v. Citizen Band, Potawatomi Indian Tribe of Okla.*, 532 U.S. 411 (2001); *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998); *Okla. Tax Comm'n v. Citizen Band, Potawatomi Indian Tribe of Okla.*, 498 U.S. 505 (1991); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Puyallup Tribe, Inc. v. Dep't of Game of State of Wash.*, 433 U.S. 165 (1977); *United States v. US. Fidelity & Guar. Co.*, 309 U.S. 506 (1940); *Turner v. United States*, 248 U.S. 354 (1919). See also *Oneida Indian Nation of NY v. Madison Cnty.*, 605 F.3d 149, 156 (2d Cir. 2010), cert. granted, 131 S. Ct. 459, vacated and remanded, 131 S. Ct. 704 (2011) (per curiam)). . . . As such it is unquestionable that Tribal governments, such as the SRMT, have the right to extend its sovereign immunity to its Tribal officials and employees.

Therefore, the Tribe's sovereign immunity extends to the Commission.

Also, pursuant to federal law, Indian Tribes have immunity from suit pursuant to each Tribe's sovereign status. See Indian Civil Rights Act of 1968 (hereinafter ICRA). And, while this immunity may be waived by a Tribe, (as recognized by this Court in *Wood, Id*), or Congress may abrogate it through clear and unequivocal legislative action, generally an American Indian Tribe may not be sued in court. The SRMT Civil Code Section II, in addressing the issue of jurisdiction of the SRMT Tribal Court, specifically addresses the issue of non-waiver of sovereign immunity with regard to claims before the Court, including claims for monetary damage or monetary relief of any

kind. SRMT Civil Code Section IV, in addressing the issue of SRMT's sovereign immunity, states that such sovereign immunity may be waived ". . .only under such circumstances as the (SRMT) finds to be in the interests of the Tribe. . . .Any such specific waivers of sovereign immunity as may from time to time be executed must be clear, explicit and in writing;. . . ." SRMT Civil Code Section IV(D). "The filing of a claim or complaint by the (SRMT) or any of its subordinate entities, officers, agents or employees does not waive, and shall not be interpreted as waiving, sovereign immunity in any manner or fashion" SRMT Civil Code Section IV(E). SRMT Civil Code Section IV does not, in any way whatsoever, waive the Tribe's immunity for money damages or monetary relief, nor has the SRMT waived the sovereign immunity of the Commission for purposes of claims for monetary relief. Plaintiff, in this instance, has brought action against SRMT and the Commission seeking in his complaint, in part, \$1882.00 reimbursement and \$50,000.00 pecuniary damages. Plaintiff in his motion for default judgment seeks an inquest for a determination of "damages." Clearly this Court lacks jurisdiction over any claim against SRMT or the Commission for monetary damages.

Plaintiff further seeks to have this Court "vacate and annul" the Final Decision and Order of the Commission dated July 24, 2014. The SRMT Police Commission Act of 2014 establishes the procedure for appointment, supervision, and discipline of the Chief of Police. Sections 13(D)(1-9) specifically address issues of disciplinary charges

against the Chief of Police and the procedure to be followed. The said Act further provides that "The decision of the Commission is final." *Id.* Section 13(D)(7). The SRMT Civil Code, Section II, as indicated, sets out the matters over which the Tribal Court is granted jurisdiction. Nowhere is the SRMT Tribal Court granted jurisdiction to review the Commission's decisions.

Plaintiff claims that he was denied his Constitutional right to due process as required by ICRA. SRMT Civil Code grants jurisdiction for claims against the Tribe under ICRA for the granting of equitable relief only. SRMT Civil Code Section II(E); SRMT Civil Code Section IV(F). In his complaint, plaintiff seeks no equitable relief other than seeking vacation and nullification of the Commission's final determination/decision, which topic has been discussed hereinabove. However, upon oral argument, plaintiff's counsel requested this Court to reinstate plaintiff in his capacity as Chief of Police. For that reason, the Court will consider plaintiff's due process claim. As stated previously, the SRMT Police Commission Act of 2014 (hereinafter the Act) establishes the procedure for appointment, supervision, and discipline of the Chief of Police. Section 13(D)(1) of the said Act requires that:

"Written notice of the charges shall be given. . . along with notice of a hearing in front of the Commission. The notice shall include the right to cross examine witnesses, the right to present evidence, and the right to an attorney at his/her own expense.

The July 7, 2014, notice to plaintiff of a "Formal Disciplinary Charge" provided him with notice of each of the charges against him, as well as notice of the hearing date, time

and place, notice of his right "to examine any witness, to present (his) own evidence and (his right to be) represented by an attorney." See July 7, 2014, letter/notice to Andrew Thomas. Section 13(D)(2) of the Act requires that the hearing be held "within thirty (30) days of the filing of the disciplinary charges." The hearing was held on July 15, 2014, well within that time period. Plaintiff attended the hearing with counsel; he, upon his request, was provided with additional information and was given another two (2) days after the hearing in which to present any written evidence he wished; and he did so. Although plaintiff claims that he was denied a "meaningful opportunity" to confront and cross-examine witnesses against him or to contest the proceedings against him, the Court disagrees. A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U. S. 385, 234 U. S. 394. (1914). It is an opportunity which must be granted at a meaningful time and in a meaningful manner.' *Armstrong v. Manzo*, 380 U.S. 545, 552, (1965). See also *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The principle that under the Due Process Clause an individual must be given an opportunity for a hearing before he is deprived of any significant property interest, requires "some kind of hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his employment. Due process requires some sort of pretermination hearing, the formality of which depends upon the importance of the interest and the nature of the subsequent proceedings. In *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d

494 (1985) , the Supreme Court held, specifically, that a pretermination proceeding is required, but a full evidentiary hearing is not required prior to termination. Rather, the pretermination hearing is to provide an initial check against mistaken conclusions “essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. . . The essential elements required for due process are notice and an opportunity to respond, either in writing or in person. *Id.* at 542-546. In his claim that he was denied “meaningful” due process, plaintiff argues, in effect, that he was ambushed at the hearing; that there were two witnesses “loaded” for testimony against him leaving him in no position to counter the alleged facts presented. Sometime prior to May 23, 2014, a community member inquired about the police department’s policy of accepting cash only payments for towing and storage fees for impounded vehicles. An investigation ensued, and plaintiff was involved in, and participated in, the investigation over a period of time. Subsequently, on July 7, 2014, notice of the formal charges was presented to plaintiff as set out above. Here, the Commission afforded plaintiff a full hearing with regard to the charges against him. Plaintiff appeared at the hearing represented by counsel. Plaintiff could have, but chose not to, confront and cross-examine witnesses against him; he could have, but chose not to, present evidence on his own behalf; he could have, but chose not to, participate in the July 15 hearing. Upon his request, however, he was presented with additional information and was granted an adjournment

and opportunity to present written responses and evidence to the Commission, which he did.

Lastly, plaintiff alleges there was an “abject lack of impartiality and a predetermined outcome” of the hearing, and that the decision of the Commission was based on “speculative, arbitrary, and capricious alleged investigatory conclusions” but he presents no facts to support his allegations. Even upon oral argument, counsel merely reiterated those conclusory allegations and asserted that there was a significant violation of plaintiff’s rights under ICRA, but provided no specific facts for the Court to determine whether such assertions were valid. Absent a showing of actual bias, this Court must presume the Commission, acting in accordance with the provisions of the SRMT Police Commission Act of 2014, sat as an unbiased and neutral body.

Conclusions

1. Plaintiff’s cross motion for a default judgment on the basis that defendants failed to answer timely must be dismissed.
 2. Defendants have not waived sovereign immunity under New York Indian Law Section 114.
 3. Defendants have not waived sovereign immunity under the SRMT Civil Code or the Indian Civil Rights Act of 1968.
 4. Sovereign immunity extends to the SRMT Police Commission.
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5. The SRMT Court lacks jurisdiction over the Tribe and the Police Commission to award monetary relief because both defendants are protected by sovereign immunity.

6. The SRMT Court lacks jurisdiction to vacate or annul the Final Decision and Order of the SRMT Police Commission, which is deemed final under the SRMT Police Commission Act of 2014.

7. The SRMT Police Commission Act provides all due process procedure required prior to an employee's termination.

8. Plaintiff was not denied his Constitutional right to due process under the Indian Civil Rights Act of 1968.

9. Plaintiff has otherwise failed to state a claim for which relief may be granted.

10.. Defendants' motion to dismiss plaintiff's complaint must be granted.

NOW, THEREFORE, upon the foregoing, it is

ORDERED that the complaint of Andrew Thomas, plaintiff, filed September 24, 2014, be, and the same hereby is, **DISMISSED**.

Entered by my hand this 2nd day of March, 2015.

Barbara R. Potter

HON. BARBARA R. POTTER, JUDGE

