

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHRISTOPHER STANLEY FRALICK,

Petitioner,

v.

CHIPPEWA VALLEY BANK,
CARL EDWARDS and
LAC DU FLAMBEAU BAND OF LAKE
SUPERIOR CHIPPEWA INDIANS,

Respondents.

OPINION AND ORDER

09-cv-131-slc¹

This is a proposed civil action for injunctive relief. Petitioner Christopher Stanley Fralick alleges that respondents Chippewa Valley Bank and Carl Edwards have engaged in an illegal mortgage of tribal fee land belonging to respondent Lac du Flambeau Band of Lake Superior Chippewa Indians. On March 25, 2009, I stayed a decision on petitioner's request for leave to proceed without prepayment of fees and costs under 28 U.S.C. § 1915 because

¹Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. For the purpose of issuing this order, I am assuming jurisdiction over this case.

it was unclear from his complaint whether he had standing to sue or had a viable cause of action. I gave petitioner an opportunity to supplement his complaint to address how respondents' actions injured him in a concrete and personal way and to provide any additional information regarding the organization and rights of members of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

Petitioner has submitted his response. As I am required to do under 28 U.S.C. § 1915(e)(2), I will screen his complaint to determine whether petitioner's proposed action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a respondent who is immune from such relief. In addition, if the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action and it may do so on its own motion. Fed. R. Civ. P. 12(h)(3).

In his supplement, petitioner has added no factual allegations regarding the actions that gave rise to his complaint. This supplement contains mostly a recitation of certain provisions of the Lac du Flambeau Constitution and the United States Code. Petitioner cites (1) passages from the Lac du Flambeau constitution and the United States Code, 25 U.S.C. § 177, that restrict the sale or mortgage of tribal land; (2) sections of the United States Code that authorize the creation of constitutions to govern tribal lands and prescribe the method of amending tribal constitutions and by-laws; (3) a provision of the criminal code for bank fraud, 18 U.S.C. § 1344; and (4) excerpts from the Lac du Flambeau Tribal

Code that prohibit elected or appointed officials from engaging in unauthorized commitments on behalf of the tribal government. In addition, he dismisses his claim against respondent Lac du Flambeau Band of Lake Superior Chippewa Valley Indians.

Despite the opportunity to supplement his complaint to allege facts suggesting the particular harm respondents' actions caused him, petitioner has failed to advise the court or respondents how he has suffered any particularized harm caused by respondents. Lujan v. Defenders of Wildlife, 504 U.S. 555, 581 (1992) (to demonstrate standing to sue, “the party bringing suit must show that the action injures him in a concrete and personal way”). As I stated in the previous order, standing is an essential element of jurisdiction; a party bringing suit must allege facts from which a plausible inference may be drawn that respondents' actions have injured him. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)(petitioner must allege enough facts to raise his right to relief above the speculative level). With respect to his alleged injuries, petitioner makes the following conclusory statements in his supplement:

[Respondent] Carl Edwards, acting alone and outside the authority of his elected position, knowingly and deliberately disregarded our Constitutional rights and privileges under the laws, which deprived me and other adult members of our Tribe, our U.S. and Constitutional rights to a Secretarial Election, the right to vote, the protections and “First” preference to our tribal lands, and put in jeopardy our on[-]reservation hunting, fishing and gathering territory, all of which are secured and protected under our Constitution, and U.S. laws.

Supplement, dkt. #4, at 3.

From this passage, I understand that petitioner believes that respondents' actions have harmed him in three separate ways: (1) denied him a right to vote in a Secretarial Election to amend the Lac du Flambeau constitution to allow tribal land to be mortgaged; (2) deprived him of protections and "First" preference to tribal lands; and (3) diminished his right to hunt, fish and gather on tribal lands. In addition, I understand that petitioner is alleging that this court has jurisdiction because federal law prohibits the sale or conveyance of tribal land without a treaty or convention. 25 U.S.C. § 177.

Petitioner's complaint suffers from a fatal jurisdictional defect: he lacks standing to sue. Under 25 U.S.C. § 177, individual tribe members are barred from bringing suit to bar transfer of tribal lands. United States v. Dann, 873 F.2d 1189, 1195-96 (9th Cir. 1989) ("individual Indians do not even have standing to contest a transfer of tribal lands on the ground that the transfer violated . . . statute"); James v. Watt, 716 F.2d 71, 72 (1st Cir. 1983) ("the [Indian Nonintercourse Act] granted a cause of action to tribes; and . . . individual Indians could not assert [Indian Nonintercourse Act] rights on their own behalf"); see also United States ex rel. Harlan v. Bacon, 21 F.3d 209, 212 (8th Cir. 1994) (recognizing that 25 U.S. § 177 creates no private right of action). Moreover, petitioner's injuries are far too speculative and highly unlikely. Federal law prohibits the sale or conveyance of Indian tribal land unless approved by treaty or convention. 25 U.S.C. § 177

(“No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.”). This express restriction on the sale of tribal lands makes it very unlikely that petitioner will lose his right to vote on the allocation of tribal lands or his right to hunt, fish or gather. Because petitioner is precluded from suing under 25 U.S.C. § 177, he will be denied leave to proceed on his claims that respondents Carl Edwards and Chippewa Valley Bank violated his rights under the Lac du Flambeau tribal code and constitution and federal law.

In addition, petitioner cannot bring a claim for bank fraud under 18 U.S.C. § 1344. Again, this statute is one that does not provide a private right of action to enforce its provisions. Park National Bank of Chicago v. Michael Oil Co., 702 F. Supp. 703 (N.D. Ill. 1989) (recognizing that § 1344 does not provide private right of action to enforce its criminal penalties); see also Milgrom v. Burstein, 374 F. Supp. 2d 523, (E.D. Ky. 2005) (“this Court finds no private cause of action arising from the fraud statutes relied upon herein”). The statute contains no suggestion that Congress intended to create an implied right of action to enforce its terms. Northwest Airlines, Inc. v. Transport Workers, 451 U.S. 77, 94 (1981) (“unless this congressional intent can be inferred from the language of the statute, the statutory structure, or some other source, the essential predicate for implication of a private remedy simply does not exist.”). In any event, individuals cannot sue to enforce

criminal statutes. Sahagian v. Dickey, 646 F. Supp. 1502, 1506 (W.D. Wis. 1986) (“Authority to initiate a criminal complaint rests exclusively with state and federal prosecutors; whether to bring such a complaint is generally within the discretion of the prosecutor”). This court does not have jurisdiction to order that a criminal complaint be filed against respondents. Id. Therefore, petitioner’s request for leave to proceed on his claim that respondents Carl Edwards and Chippewa Valley Bank violated his rights under 18 U.S.C. § 1344 will be denied and this claim will be dismissed for failure to show that he has standing to sue.

ORDER

IT IS ORDERED that:

1. Petitioner Christopher Stanely Fralick’s request for leave to proceed in forma pauperis on his claims that respondents Chippewa Valley Bank and Carl Edwards violated federal and tribal law by entering into a mortgage of tribal fee land and engaging in criminal bank fraud is DENIED and these claims are DISMISSED for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(h)(3).

2. Petitioner's claim against respondent Lac du Flambeau Band of Lake Superior Indians is DISMISSED without prejudice pursuant to Fed. R. Civ. P. 41(a)(1).

The clerk of court is directed to close this case.

Entered this 30th day of April, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge