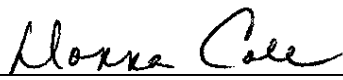


CERTIFICATE OF AUTHENTICITY OF COURT RECORD

STATE OF NEW YORK     )  
COUNTY OF FRANKLIN    )

I, Donna Cole, am Clerk of the St. Regis Mohawk Tribal Court. I do hereby attest and certify that I am the officer having custody of the records of the St. Regis Mohawk Tribal Court and that the document attached to this Certificate of Authenticity is a true and correct copy of the original on file and of record in my office in the case of Arquette et al. v. Park Place Entertainment Corporation et al. (Case No. 00-CI-0133GN). The original of this document is part of the proceedings in the St. Regis Mohawk Tribal Court in the cause just identified.

In proof of the facts set out in this Certificate, I have signed this certificate this 12<sup>th</sup> day of June, 2007, at Akwesasne, New York.

  
\_\_\_\_\_  
Donna Cole, Clerk  
St. Regis Mohawk Tribal Court

CHIEF JUDGE'S AUTHENTICATION OF CLERK'S CERTIFICATE

STATE OF NEVADA        )  
MINERAL COUNTY        )

I, Wes Williams, Jr., am the Chief Judge of the St. Regis Mohawk Tribal Court. I certify that the certification and attestation set out by the Clerk of the St. Regis Mohawk Tribal Court is authorized and in proper form.

As proof of the facts just stated, I have signed this Certificate this 19<sup>th</sup> day of June, 2007, at Schurz, Nevada.

  
\_\_\_\_\_  
Wes Williams, Jr.  
Chief Judge of the St. Regis Mohawk Tribal Court



**ST. REGIS MOHAWK TRIBAL COURTS**

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CARRIE E. GARROW  
CHIEF JUDGE

PATRICK J. SOLOMON  
ASSOCIATE JUDGE

ROSEBUD COOK  
COURT CLERK

**PLAINTIFFS:**

Marlene Arquette, Dick Peters, Bennette White,  
Louis Gray, Roy Tarbell, David Lazore, Troy Lazore,  
Henry Gibson, Matt David, Randy Connors,  
Patty Lazore Mancuso, Noel White,  
Carolyn Tarbell, Ellene Herne, Glenn Hill Sr.,  
Barbara Lazore, Phil Tarbell, Kerney Cole,  
Mary Dianne Lazore, Russell Lazore,  
Joanne King, Rena Smoke, Charlie Terrance,  
Erma White Moore, Lois Thomas, and Carol Herne,  
On Behalf of Themselves, and all Others  
Similarly Situated,

ENDORSED  
FILED IN OFFICE OF COURT CLERK THIS

DATE: 3/30/01

*Rosebud Cook*  
COURT CLERK (or) AUTHORIZED SIGNATURE

Case No. 00CI0133GN  
Default Judgment  
ORDER

vs.

**DEFENDANTS:**

Park Place Entertainment Corporation, Clive  
Cummins, Paul Thompson, Hilda Smoke and Alma  
Ransom,

**JURISDICTION**

The Court retains jurisdiction through the Judiciary Act of 1994 and the Civil  
Judicial Code. Section 5 of the Judiciary Act grants the Court "original jurisdiction over  
all controversies arising under the laws, ordinances, regulations, customs and judicial

decisions of the Saint Regis Mohawk Tribe.” (1995 Judiciary Act § 5(a).) The Saint Regis Mohawk Civil Judicial Code also grants the Court civil jurisdiction for:

disputes arising in, connected with, or substantially affecting Mohawk Indian Country; disputes involving contracts (i) negotiated, executed, or performed in Mohawk Indian Country, or (ii) whose subject matter substantially involves Mohawk Indian Country, or (iii) under which substantial performance would occur in Mohawk Indian Country, or (iv) in which the Saint Regis Mohawk Tribe or any of its subordinate entities, agencies, or agents is a party. (St. Regis Mohawk Civil Judicial Code § 2(a) 1-2.)

This suit falls squarely within the jurisdiction of the Court. The dispute substantially affects Mohawk Indian Country because it concerns a casino management contract entered into by Defendants Ransom, Smoke, Thompson and Defendants Park Place Entertainment and Clive Cummins for a tribally owned casino in Sullivan County, New York. According to the Plaintiffs, if the Defendants Park Place and Clive Cummins had not induced Defendants Ransom, Smoke, and Thompson into entering this contract, previous contracts between the Tribe and Mohawk Management and Monticello Raceway Development would have moved forward and a tribally owned casino in Monticello would be underway, creating a wealthy gaming venture for the Tribe. Furthermore, this dispute involves alleged interference with two contracts and the formation of a third contract, whose subject matter, a tribally owned casino, substantially involves Mohawk Indian Country. By entering into a contract concerning a tribally owned casino with Defendants Ransom, Smoke, and Thompson, Defendants Park Place and Clive Cummins have subjected themselves to the jurisdiction of the Court as directed by Civil Judicial

Code § 2 (a) 1-2. Accordingly, the Court retains the jurisdiction for the class action suit and default judgment.<sup>1</sup>

### FINDINGS OF FACTS AND LAW

#### A. Standard for Default Judgment

The St. Regis Mohawk Tribe Rules of Civil Procedure are very clear about the standard to be used for default judgment. Rule 10 states:

If the 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, and the matter shall proceed as though answered on time. **If the defendant does not answer by that time, a default judgment shall be entered.**

In granting a default judgment, the Judge may refuse to grant relief requested by plaintiff if granting the relief would be contrary to tribal law or would be unjust. The judge may not grant plaintiff greater relief on default than was requested in the complaint.  
(Emphasis added. St. Regis Mohawk Rules of Civil Procedure, Rule 10 (A-B).)

A default judgment is a tool used by this Court to prevent parties from deliberately dragging out cases and clogging the courts calendar. Although there is an inherent tension between the ability of a Court to maintain control of its calendar and the right of a litigant to be heard, the default judgment is a necessary tool to prevent parties using a flagrant disregard for tribal justice and deliberately failing to appear in Court. In this suit, the Defendants never filed an answer or appeared before the Court and Rule

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<sup>1</sup> Normally the Court would lose jurisdiction once a final judgment, such a default judgment, is entered. However, since this is a class action, which has proceeded as a default judgment, all of the requirements of CPLR Article 9 have not been completed, namely notification. Article 9 clearly states the Court must be involved in the notification process. Thus, the Court will retain jurisdiction of this matter after this order is issued for notification purposes only.

10 makes it very clear that the Court must grant a default judgment, unless one of the two exceptions are present.

The Court takes this opportunity to make a few points. Throughout this case, the Defendants have had numerous opportunities to file an answer or make an appearance before the Court. A perusal of the record illustrates that at least four pretrial conferences or hearings have been held and numerous motions and notices have been served upon each Defendant. Moreover, it is clear Defendants Park Place and Clive Cummins are very aware of this hearing as they are seeking an injunction in federal court to halt the Tribal Court proceedings. The Court has done everything within its power to protect and respect the Defendants' rights. Nonetheless, they have failed to present themselves before the Court, attack the complaint and prevent a default judgment. Clearly, their failure to appear and answer the claims within the complaint is willful and wanton disregard of this Court and its authority. Such disregard is not taken lightly, and their actions force the Court to consider a default judgment.

Critics of the Court may judge the Court harshly if the Court grants the Plaintiffs' motion for default judgment and awards the requested damages. Those critics need to realize that the Court is bound by the law not political rhetoric. And this Court will not succumb to the political pressure that has been present throughout this case. Any blaming or finger pointing should be directed at the Defendants who will have no one to blame for a default judgment but themselves. It was their choice to refuse to appear before the Court and as a result must risk the consequences. Accordingly, as the Court has previously granted an Entry of Default and it will now use the standard delineated by tribal law to assess the default judgment.

## **B. The Plaintiffs' Requested Relief**

In the complaint and the default judgment hearing held on February 20, 2001, the Plaintiffs requested four forms of relief; equitable relief or a finding that the casino management contract between Defendants Park Place, Clive Cummins and Defendants Ransom, Smoke, and Thompson is null and void and unenforceable; actual damages in the amount \$1.782 billion; attorney costs; and punitive damages as the Court sees fit.

### **1. The Park Place Management Contract**

A default based upon well-pleaded allegations in a complaint establishes a defendant's liability. (See Trans World Airlines, Inc. v. Hughes, 449 F.2d 51 (2d Cir. 1971).)<sup>2</sup> If the Court is presented with a well-pleaded complaint, then the facts are deemed as true and the Defendants' liability is established. At this point, the Court can no longer question the Defendants' liability, as the Defendants have forfeited their right to attack the complaint and the facts contained within.

The facts within this complaint establish the following:

1. The Defendant Park Place Entertainment Corporation is a corporation organized under the laws of the state of New Jersey.
2. Defendant Clive Cummins is counsel for Defendant Park Place.
3. Defendants Thompson, Ransom, and Smoke are the alleged Tribal Council of the Saint Regis Mohawk Tribe.

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<sup>2</sup> Federal law concerning default judgments is not binding upon this Court. It is merely persuasive authority. However, the Court finds their reasoning for establishing a defendant's liability in a default judgment sound and chooses to adopt this standard on this issue only.

4. Any purported term of election, which is questionable,<sup>3</sup> for Defendants Ransom, Smoke, and Thompson, expired on July 1, 1999. They held no elected powers as representatives of the St. Regis Mohawk Tribe and possessed no authority to enter into the Agreement dated April 14, 2000 with Defendants Park Place and Cummins.
5. On or about April 14, 2000, Defendants Park Place and Clive Cummins entered into a course of conduct that was intended to and did fraudulently induce Defendants Ransom, Smoke, and Thompson to enter into a management contract with Park Place.
6. On or about April 14, 2000, Defendants Park Place and Clive Cummins represented to Defendants Ransom, Smoke, and Thompson that the existing management agreements entered into on behalf of the St. Regis Mohawk Tribe were unenforceable; that Defendants Park Place and Clive Cummins would produce a St. Regis Mohawk Casino in Sullivan County within four months and more quickly than the existing developer and management team; and that the St. Regis Mohawk Tribal Council would still be able to utilize the property subject to the existing Trust Land Application located in Monticello.
7. These representations were false and misleading and Defendants Park Place and Clive Cummins knew they were false and misleading and were made with intention to deceive Defendants Ransom, Smoke, and Thompson.
8. Defendants Ransom, Smoke, and Thompson believed Defendants Park Place and Clive Cummins representations to be true and acted in reliance upon Defendants' representations and undue influence.
9. Defendants Park Place and Clive Cummins knew or should have known that the St. Regis Mohawk Tribe had, as late as November 24, 1999, executed an Amended and Restated Gaming Facility Management Agreement with Mohawk Management LLC, which involved the proposed St. Regis Mohawk Gambling Casino at Monticello Raceway to be located in the village of Monticello, Sullivan County, New York.
10. Defendants Park Place and Clive Cummins knew or should have known that the St. Regis Mohawk Tribe, on or about November 24, 1999, signed an Amended and Restated Gaming Facility Development and Construction Agreement, dated July 31, 1996, which was also signed by Monticello Raceway Development Company LLC.

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<sup>3</sup> This Court has previously ruled that Defendants Ransom, Smoke, and Thompson are not the valid government of the St. Regis Mohawk Tribe. However, the Defendants have held themselves out as the St. Regis Mohawk Tribal Council throughout the duration of the contract in dispute and this case. Thus, they are liable for the contract in dispute.

11. The actions by Defendants on or about April 14, 2000, amounted to an attempt by Defendants to prevent the Plaintiffs from proceeding with their existing application to the U.S. Department of Interior to receive lands in trust for the St. Regis Mohawk Tribe of New York for the purpose of conducting the only legal gaming casino in New York which is not located on ancestral reservation land.
12. Due to Defendants Park Place and Clive Cummins tortuous interference with the previous contract with Mohawk Management and Monticello Raceway Development the Plaintiffs are entitled to damages.

A reading of the complaint and the above facts establishes the complaint is well pleaded. The complaint lays out how the Defendants engaged in conduct that interfered with two existing contracts regarding a Monticello casino and establish the Defendants' liability. There is nothing within tribal law that would direct to the Court to deny these facts. Some may argue it is unjust for the Court to accept a one-side interpretation of the facts. But the Defendants have chosen to give the Court no other recourse. Moreover, it would be unjust to the Plaintiffs, who have faithfully attended every hearing and respectfully complied with the Court's every request. The Plaintiffs have asked for their day in Court and complied with every rule to ensure the Defendants' rights are protected. To then have the Court fail to follow the law and refuse to accept these facts and the Defendants' liability as true would be unjust.

Accordingly, the Court accepts the facts contained within the complaint as true and finds the following; Defendants Ransom, Smoke, and Thompson did not have authority to act as representatives of the St. Regis Mohawk Tribe or the authority to enter into an agreement with Defendants Park Place and Clive Cummins on or about April 14, 2000 regarding management of casino in Sullivan County, New York. Defendants Park Place and Clive Cummins knew of the existing agreements between Mohawk



Management and Monticello Raceway Development Company LLC. Clearly they had to know about the existing contracts to represent to Defendants Ransom, Smoke, and Thompson that the existing contracts were invalid. This conduct by Defendants Park Place and Clive Cummins constitutes willful and wrongful interference in the contracts the St. Regis Mohawk Tribe had with Mohawk Management and Monticello Raceway Development and the Tribe's application to the U.S. Department of Interior for the placement of land into trust. (*See for example, Texaco, Inc. v. Pennzoil Co.* 729 S.W.2d 768.) It is unclear why Defendants Ransom, Smoke, and Thompson fell for these fraudulent representations and allowed this interference. Regardless, Defendants Park Place and Clive Cummins wrongfully interfered with the Tribe's contracts with Mohawk Management and Monticello Raceway Development, thus their liability for this interference has been established. Furthermore, the Court finds that the contract between Defendants Park Place, Clive Cummins and Defendants Ransom, Smoke, and Thompson is invalid and unenforceable because Defendants Ransom, Smoke, and Thompson did not have the authority to enter into the contract and the contract was based upon wrongful interference with pre-existing contracts.

## **2. Actual Damages**

In the hearing on February 20, 2001 Plaintiffs specifically stated they are only seeking damages from Defendants Park Place and Clive Cummins. No money damages or costs are sought from Defendants Ransom, Smoke, or Thompson. The Plaintiffs are requesting actual damages for the value of the seven-year contract with Mohawk Management and Monticello Raceway Development and the worth of the proposed

casino at the end of the contracts had the contracts not been interfered with by Defendants.

During the default judgment hearing, Plaintiffs introduced a letter dated April 6, 2000 from Kevin Gover, Assistant Secretary of Indian Affairs, to New York State Governor Pataki concerning the Tribe's application to acquire 29.31 acres in Monticello for the purpose of developing a Class III gaming establishment. (Plaintiffs' Exhibit 1.) Barbara Lazore stated in her testimony that she received this letter from Monticello Raceway Development and the letter had not been released to the community. Among other things, the letter establishes two crucial points. The first point goes directly to the Defendants Park Place and Clive Cummins' liability. Secretary Gover states in the letter that the casino on the Monticello property was in the best interest of the Tribe and this was based partially upon the assumption that National Indian Gaming Commission (NIGC) would approve the management contract between the Tribe and Mohawk Management. This proves not only that a contract existed with Mohawk Management as late as April 6, but also that the Bureau of Indian Affairs recognized the contract as valid.<sup>4</sup> It appears from the letter that the approval by NIGC was a formality and any interference or termination of the existing contract would slow down or halt the placement of the land into trust and result in a delay of developing the casino. The Court merely points out this evidence to further support the facts contained within the complaint that proves the Defendants' liability.

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<sup>4</sup> Moreover, the Court takes judicial notice that the Bureau of Indian Affairs is well aware of the governmental dispute within the Tribe and yet still conveyed to Governor Pataki that the application for land should be accepted, with the understanding that Mohawk Management was under a contract with the Tribe. This casts an even darker shadow upon Defendant Park Place's representations to Defendants Ransom, Smoke, and Thompson that the contract was invalid. Although pure speculation, it seems highly unlikely that the Bureau of Indian Affairs, a well-layered governmental bureaucracy, would sign off on an

Secondly, the letter included factual findings from the Bureau of Indian Affairs regarding the development of the casino. According to the findings, the Bureau of Indian Affairs had engaged in numerous studies of the 29.31 acres and projections for the Monticello casino. The best case money projections found that the Net Tribal Share at the end of the seven-year contract between the Tribe, Mohawk Management, and Monticello Raceway Development, would be \$582,812,000. Barbara Lazore testified that the 1999 tribal budget was approximately \$17 million and this income would have immensely helped tribal programs. Barbara Lazore further testified that community members would have received per capita payments of around \$20,000 a year.

The Plaintiffs also introduced a report by Salomon Smith Barney, which was part of the application to take land into trust submitted to the Bureau of Indian Affairs. (Plaintiffs' Exhibit 2.) The projections by Salomon Smith Barney valued the actual enterprise, after the expiration of the seven-year contract, at \$1.2 billion. Salomon Smith Barney also valued the seven-year contract and projected a lesser value of \$465 million. However, Plaintiffs argued that the factual findings by the Bureau of Indian Affairs was much more accurate. A close reading of the factual findings supports this argument, as it is clear the Bureau of Indian Affairs did their homework in assembling the factual findings. Moreover, the Bureau of Indian Affairs has more expertise in the field of Indian gaming and it seems more than likely that a letter submitted to Governor Pataki would contain figures the Bureau of Indian Affairs felt were reliable.

The evidence is quite persuasive and none of it was countered at the hearing. If the contract with Mohawk Management and Monticello Raceway Development had been

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application for New York's only gaming facility on non-ancestral land that included a management contract if there were any questions about its validity.

free from interference the Tribe and community members would have profited immensely. Therefore, the Court finds the net Tribe's value of the seven-year contract between the St. Regis Mohawk Tribe, Mohawk Management, and Monticello Raceway Development for the Monticello casino to be \$582,812,000 and the value of the casino, which the Tribe would own, at the end of the seven-year contract to be \$1.2 billion.

The remaining question is whether it would be contrary to tribal law or unjust to award the Plaintiffs this amount in damages. There is no tribal law governing contracts, thus the Court looks to the fairness of awarding the said amount of damages to the Plaintiffs. We have a situation in which individuals purposely interfered in a contract that would have resulted in enormous profit to the Tribe and its members. Traditionally, when a Mohawk committed a wrongful act against another, the offender's family would attempt to restore the victim to their original status, apologize, and request forgiveness of the offender. Many years later, justice still requires that a wrongdoer restore the victim to their original position. In the present case, the members of the class action are the victims. And based upon the facts, it is abundantly clear the Tribe and its members would be well on their way with a profitable venture. Moreover, the unenforceable agreement between Defendants Park Place, Clive Cummins and Defendants Ransom, Smoke, and Thompson stated a casino would be underway four months from April 2000 and the Court takes judicial notice that such a casino does not exist nearly one year later. The Court chooses not to speculate as to why this is the case. Regardless, the Tribe and its members have been deprived of a profitable gaming venture worth \$1.782 billion. Furthermore, these damages only assess the net tribal profit, not the jobs or other benefits that would have accrued due to the Monticello casino. To allow individuals to interfere

with a contract of this monumental importance and walk away without paying the beneficiaries of this contract would truly be an injustice. Thus, the Court awards the Plaintiffs actual damages in the amount of \$1.782 billion to be paid by Defendants Park Place and Clive Cummins.

### 3. Attorney Costs

The Plaintiffs have also requested attorney costs be awarded. The Plaintiffs have no doubt gone to create expense to bring this case to Court and will continue to incur expenses as the federal court case is dragged on. Regarding the awarding of costs, Rule 21 states:

Upon judgment, the Judge shall order the losing party to pay to the winning party the costs of the lawsuit, unless the applicable law provides otherwise or the Judge determines that such an order be unjust. Costs shall not be imposed on the Tribe or any branch of the Tribe unless specifically permitted by an applicable law or agreement.

Costs shall include civil filing fees, any costs for delivering documents required by these Rules to be delivered, postage for court notice sent to the parties, and fees and expenses paid to witnesses and jurors, but shall not include counsel fees unless Tribal law so provides in a particular type of case. (St. Regis Mohawk Tribe Rules of Civil Procedure, Rule 21 A-B.)

There is no tribal law governing class actions or contract disputes. Since the Rule 21 is very specific that only *tribal law* can provide for attorney fees, the Court cannot look to New York or federal law. Accordingly, Defendants Park Place and Clive Cummins are ordered to pay the costs of the lawsuit, which do not include attorney fees. The Defendants are ordered to pay the filing fees, costs for delivering documents required by the Rules to be delivered, and postage for court notice sent to the parties. The Court Clerk is ordered to submit to the Plaintiffs and Defendants a list of the any court expenses for delivering

documents and postage. These costs incurred by the Court are in addition to any of the above costs incurred by the Plaintiffs.

#### **4. Punitive Damages**

Tribal law is silent on the subject of punitive damages. Traditionally when an individual committed a wrongful act, the family of the wrongdoer compensated the victim or made them whole. Punitive damages, which are damages construed to punish the wrongdoer, were more than likely not a normal part of life. However, it is doubtful that families ever had to even contemplate conduct that interfered with multi-million dollar gaming contracts.

The purpose of punitive damages is to punish the wrongdoer and deter him from similar acts in the future. In Anglo courts punitive damages are normally awarded when there is deliberate misconduct, including fraud, which has caused substantial damage to the plaintiffs. In New York, punitive damages are awarded in cases involving gross, wanton, or willful fraud. (Borkowski v. Borkowski, 39 N.Y.2d 982 (1976).)

The facts contained in the complaint and presented at the default hearing demonstrate that Defendants Park Place and Clive Cummins purposely misrepresented to Defendants Ransom, Smoke, and Thompson that their development and management contracts were invalid. The Bureau of Indian Affairs, who was involved in the government dispute, approved of these contracts and held them out as valid. Yet, Defendants Park Place and Clive Cummins proceeded forward and made fraudulent representations that interfered with profitable contracts and the Tribe's application to the Department of Interior. Clearly the only purpose in making these representations was to induce Defendants Ransom, Smoke, and Thompson to break the previous contracts and

sign a deal with Park Place. There is no doubt that this is deliberate misconduct and willful fraud that caused substantial damage. It is difficult to define the enormous damage done by the Defendants Park Place and Clive Cummins with a monetary amount. Defendants interfered with a very profitable gaming venture. These contracts were not part of gaming venture that possessed a remote possibility to produce enormous gain for the Tribe. The Mohawk Management and Monticello Raceway Development contracts were part of a gaming venture that, according to the facts presented to the Court, held vast potential for the Tribe and the Monticello casino was as close to a sure thing as one could get. At the time of the Park Place deal, the Tribe had nearly completed the arduous process to take land into trust for the purpose of gaming. This is not a process the Bureau of Indian Affairs takes lightly; it is time consuming and contains many obstacles that tribes must overcome. And from the facts presented to the Court, Defendants Park Place and Clive Cummins did not interfere in this process for the Tribe's benefit. Rather, the Tribe has suffered a loss of \$1.782 billion due to their interference.

Accordingly, the Court finds that Defendants Park Place and Clive Cummins engaged in deliberate misconduct and willful fraud by interfering with the Mohawk Management and Monticello Raceway Development contracts and the Tribe's application to the Department of Interior and punitive damages are warranted. Thus, Defendants Park Place and Clive Cummins are ordered to pay \$5 million in punitive damages to the Plaintiffs.

ORDER

Based upon the above findings of facts and law, the Court orders the following:

1. The Plaintiffs' motion for default judgment is granted.
2. The Park Place management contract between Defendants Park Place and Clive Cummins, and Defendants Ransom, Smoke, and Thompson is null and void.
3. Defendants Park Place and Clive Cummins are ordered to pay the Plaintiffs \$1.782 billion in actual damages.
4. Defendants Park Place and Clive Cummins are ordered to pay the Plaintiffs costs and the Court Clerk is ordered to supply the parties with a list of court expenses for process servers and postage.
5. Defendants Park Place and Clive Cummins are ordered to pay the Plaintiffs \$5 million in punitive damages.

IT IS SO ORDERED,



Carrie E. Garrow  
Chief Judge

Dated: March 20, 2001