

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE STATE OF MICHIGAN,

Plaintiff,

v

THE BAY MILLS INDIAN COMMUNITY,

Defendant.

1:10-cv-1273

**Paul L. Maloney, Chief Judge
United States District Court**

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COMPLAINT

Plaintiff State of Michigan brings the following Complaint for declaratory and injunctive relief:

JURISDICTION

1. The Court has federal subject matter jurisdiction of this action pursuant to:
 - a) 28 U.S.C. § 1331, as this Complaint alleges violations of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701, *et seq.*;
 - b) 25 U.S.C. § 2710(d)(7)(A)(ii), as Plaintiff is a State which seeks to enjoin

- gaming activity conducted in violation of a tribal-state compact; and
- c) 28 U.S.C. § 2201, as this Complaint also seeks a declaratory judgment.

PARTIES

2. Plaintiff is the State of Michigan (State).
3. Defendant Bay Mills Indian Community (Bay Mills) is a federally recognized Indian tribe.

VENUE

4. Defendant Bay Mills has its Tribal offices and reservation in Chippewa County, in the Upper Peninsula of Michigan. Venue is therefore appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(1).

GENERAL ALLEGATIONS

5. On or about August 20, 1993, John Engler, the Governor of the State of Michigan at that time, entered into a tribal-state gaming compact (the "Bay Mills compact") with Bay Mills. A true and correct copy of this compact is attached as Exhibit A.

6. The Bay Mills compact permits Bay Mills to operate casino games, also known as "Class III gaming" (which is defined in IGRA, 25 U.S.C. § 2703(8)), on "Indian lands" as defined in Section 2(B) of the compact.

7. Since the Bay Mills compact was signed, Bay Mills has conducted Class III gaming in one or more casinos it operates on Indian lands in Chippewa County in the Upper Peninsula.

8. On or about November 3, 2010, Bay Mills began operating a casino in a renovated building located in or near the village of Vanderbilt (the "Vanderbilt casino") in Otsego County in the Lower Peninsula of Michigan.

9. The land on which the Vanderbilt casino is being operated is not part of the Bay Mills reservation.

10. The land on which the Vanderbilt casino is being operated was acquired by Bay Mills after October 17, 1988.

11. The land on which the Vanderbilt casino is being operated was not contiguous to the boundaries of the Bay Mills reservation on October 17, 1988.

12. The Vanderbilt casino is approximately 100 miles by road from the Bay Mills reservation.

13. The title to the land on which the Vanderbilt casino is being operated has not been taken into trust by the United States for the benefit of Bay Mills.

14. The land on which the Vanderbilt casino is being operated is not subject to restriction by the United States against alienation.

15. Bay Mills does not exercise governmental power over the land on which the Vanderbilt casino is being operated.

16. After consultations between Bay Mills and the State of Michigan failed to resolve this dispute, the State sent a letter on December 16, 2010 to Bay Mills demanding that Bay Mills immediately cease the operation of all Class III gaming at the Vanderbilt casino. A true and correct copy of this letter is attached as Exhibit B.

17. Despite this demand, Bay Mills has refused to cease Class III gaming at the Vanderbilt casino.

18. By entering into the Tribal-State compact, Bay Mills waived its sovereign immunity for purposes of this legal action which seeks injunctive and declaratory relief to remedy violations of the Bay Mills compact and federal law.

COUNT I—VIOLATION OF COMPACT SECTION 4(H)

19. Plaintiff incorporates paragraphs 1-18 above as if fully stated in Count I.

20. Section 4(H) of the Bay Mills compact states: "The Tribe shall not conduct any Class III gaming outside of Indian lands."

21. Section 2(B) of the Bay Mills compact defines "Indian lands" to mean: "(1) all lands currently within the limits of the Tribe's Reservation; (2) any lands contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; and (3) any lands title to which is either held in trust by the United States for the benefit of the Tribe or individual or held by the Tribe or individual subject to restriction by the United States against alienation and over which the Tribe exercises governmental power."

22. For the reasons stated in paragraphs 9-15 above, the land on which the Vanderbilt casino is situated is not "Indian lands" as defined in the Bay Mills compact.

23. The operation of Class III gaming at the Vanderbilt casino therefore violates and is a breach of the Bay Mills compact.

24. As the Class III gaming conducted at the Vanderbilt casino in violation of the Bay Mills compact violates the laws of the State of Michigan, including but not limited to M.C.L. 750.301 *et seq.* (see Count II below), and federal anti-gambling statutes (18 U.S.C. § 1955), it harms the public interest and the balance of harm caused by this Class III gaming weighs heavily in favor of the State.

25. There is no adequate remedy at law for this violation by Bay Mills of its compact which causes the State irreparable injury.

26. IGRA vests jurisdiction with this Court to enjoin Class III gaming activities conducted in violation of any Tribal-State compact. 25 U.S.C. § 2710(d)(7)(A)(ii).

WHEREFORE, Plaintiff respectfully requests that the Court enter its Order: (1) declaring that the gaming at the Vanderbilt casino violates the Bay Mills compact, (2) permanently enjoining Bay Mills from conducting Class III gaming at the Vanderbilt casino and (3) granting Plaintiff such other relief as the Court deems appropriate.

COUNT II—VIOLATION OF COMPACT SECTION 4(C)

27. Plaintiff incorporates paragraphs 1-26 above as if fully stated in Count II.

28. Section 4(C) of the Bay Mills compact states:

The Tribe shall license, operate, and regulate all Class III gaming activities pursuant to this Compact, tribal law, *IGRA*, and *all other applicable federal law*. This shall include but not be limited to the licensing of the consultants (except legal counsel with a contract approved under 25 U.S.C. §§ 81 and/or 476), primary management officials, and key officials of each Class III gaming activity or operation. Any violation of this Compact, tribal law, *IGRA*, or *other applicable federal law* shall be corrected immediately by the Tribe. (Emphasis added.)

29. The violation of IGRA, 25 U.S.C. § 2710(d)(1), set forth in Count III below, also violates Section 4(C) of the Bay Mills compact.

30. 18 U.S.C. § 1955 makes it illegal for any person to conduct, finance, manage, supervise or own all or part of an illegal gambling business.

31. An illegal gambling business is defined in 18 U.S.C § 1955 as a gambling business which is a violation of state law in which it is conducted, involves five or more persons and remains in business for more than 30 days, and grosses more than \$2,000 in any single day.

32. Operation of the Vanderbilt casino violates Michigan's anti-gambling statute, MCL 750.301 *et seq.*

33. On information and belief, the Vanderbilt casino involves more than five people and grosses more than \$2,000 in a single day.

34. Representatives of Bay Mills have stated that the Tribe intends to keep operating the Vanderbilt casino indefinitely.

35. Operation of the Vanderbilt casino therefore violates applicable federal anti-gambling laws, including 18 U.S.C. § 1955, and therefore violates Section 4(C) of the Bay Mills compact.

36. As the Class III gaming conducted at the Vanderbilt casino in violation of the Bay Mills compact violates the laws of the State of Michigan and federal anti-gambling statutes, it harms the public interest and the balance of harm caused by this Class III gaming weighs heavily in favor of the State.

37. There is no adequate remedy at law for this violation by Bay Mills of its compact which causes the State irreparable injury.

38. IGRA vests jurisdiction with this Court to enjoin Class III gaming activities conducted in violation of any Tribal-State compact. 25 U.S.C. § 2710(d)(7)(A)(ii).

WHEREFORE, Plaintiff respectfully requests that the Court enter its Order: (1) declaring that the gaming at the Vanderbilt casino violates the Bay Mills compact; (2) permanently enjoining Bay Mills from conducting Class III gaming at the Vanderbilt casino; and (3) granting Plaintiff such other relief as the Court deems appropriate.

COUNT III—VIOLATION OF IGRA

39. Plaintiff incorporates paragraphs 1-38 above as if fully stated in Count III.

40. Section 2710(d)(1) of IGRA permits Class III gaming only on "Indian lands" as that term is defined in IGRA, and only if conducted "in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) [25 U.S.C. §2710(d)(3)] that is in effect."

41. IGRA defines "Indian lands" to mean: "(A) all lands within the limits of any Indian reservation; and (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power."

42. Based on the facts alleged in paragraphs 9-15 above, the Class III gaming conducted by Bay Mills at the Vanderbilt casino is not being conducted on Indian lands and therefore violates IGRA.

43. The Class III gaming conducted by Bay Mills at the Vanderbilt casino also violates IGRA because, for the reasons stated in Counts I and II of this Complaint, this gaming is not being conducted "in conformance with" the Bay Mills compact.

44. Finally, Class III gaming is prohibited pursuant to 25 U.S.C. § 2719 on the land on which the Vanderbilt casino is located, even if it is Indian lands, because it was acquired by Bay Mills after October 17, 1988 and does not qualify for any of the exceptions described in 25 U.S.C. § 2719(b).

45. There is no adequate remedy at law for this violation by Bay Mills of IGRA which causes the State irreparable harm; since the operation of the Vanderbilt casino violates IGRA it cannot be in the public interest and the balance of harm of its continued operation weighs heavily in favor of the State.

46. IGRA vests jurisdiction with this Court to enjoin Class III gaming activities conducted in violation of any Tribal-State compact. 25 U.S.C. § 2710(d)(7)(A)(ii).

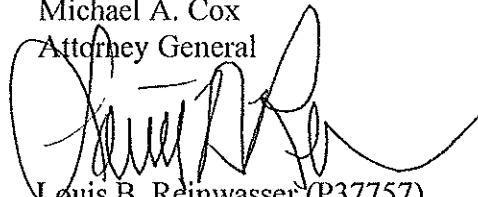
WHEREFORE, Plaintiff respectfully requests that the Court enter its Order: (1) declaring that the gaming at the Vanderbilt casino violates the Bay Mills compact; (2) declaring that the

gaming at the Vanderbilt casino violates IGRA; (3) permanently enjoining Bay Mills from conducting Class III gaming at the Vanderbilt casino; and (4) granting Plaintiff such other relief as the Court deems appropriate.

Plaintiff further requests that it be awarded its costs and attorney fees incurred in bringing this action.

Respectfully submitted,

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Dated: _____

12/21/2010