

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE STATE OF MICHIGAN,

Plaintiff,

Case No. 1:10-cv-01273-PLM

Case No. 1:10-cv-01278-PLM

v.

THE BAY MILLS INDIAN COMMUNITY, BAY MILLS INDIAN COMMUNITY TRIBAL GAMING COMMISSION, INDIVIDUAL UNKNOWN MEMBERS OF THE BAY MILLS INDIAN COMMUNITY TRIBAL GAMING COMMISSION in their official capacity, JEFFREY PARKER, CHAIRMAN in his official capacity, TERRY CARRICK, VICE CHAIRMAN, in his official capacity, RICHARD LEBLANC, SECRETARY in his official capacity, JOHN PAUL LUFKINS, TREASURER in his official capacity and BUCKO TEEPLE, COUNCIL PERSON in his official capacity.

Honorable Chief Judge Paul L. Maloney

AMENDED COMPLAINT

Defendants.

AMENDED COMPLAINT

Plaintiff State of Michigan brings the following Amended Complaint for declaratory and injunctive relief, and for an accounting and forfeiture:

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.*, and federal common law;
 - 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;

- c) 28 U.S.C. § 1367 as this Complaint alleges violations of State anti-gambling and other laws; and
- d) 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.
- 4. Defendant Bay Mills Indian Community Tribal Gaming Commission (Tribal Commission) is a governmental subdivision and arm of Bay Mills created by Section 4 of the Bay Mills Gaming Ordinance (Gaming Ordinance) (excerpt from most recent version of amended Gaming Ordinance as approved by the National Indian Gaming Commission on September 15, 2010, attached as Exhibit C) to operate for the sole benefit and interest of Bay Mills.
- 5. Individual unknown Members of the Bay Mills Indian Community Tribal Gaming Commission are officials of Bay Mills appointed by the Bay Mills Executive Council pursuant to the Gaming Ordinance, § 4.11(A) (Tribal Officials). Plaintiff does not know the names of the individuals who have been on the Gaming Commission during times relevant to this action, but will substitute those names as they become known through discovery.
- 6. Jeffrey Parker is Chairman of the Executive Council for Bay Mills.
- 7. Terry Carrick is Vice-Chair of the Executive Council for Bay Mills.
- 8. Richard LeBlanc is Secretary of the Executive Council for Bay Mills.
- 9. John Paul Lufkins is Treasurer of the Executive Council for Bay Mills.

10. Bucko Teeple is a Council Person on the Executive Council for Bay Mills (Messrs. Parker, Carrick, LeBlanc, Lufkins and Teeple referred to collectively as “Council Members.”)

VENUE

11. 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

12. 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.

13. 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)), only on "Indian lands" as defined in Section 2(B) of the compact. See Exhibit A.

14. The Gaming Ordinance permits Bay Mills to conduct Class III gaming only on “Indian lands” as defined in Section 2.30 of the Gaming Ordinance. See Exhibit C.

15. The Gaming Ordinance only permits the operation of casinos owned by Bay Mills. Exhibit C, § 5.3(C).

16. Bay Mills created the Tribal Commission when it adopted its Gaming Ordinance which authorizes the Tribal Commission to approve and regulate all casinos operated by Bay Mills.

17. The Tribal Commission has the authority to close Tribally owned casinos that violate federal and/or Tribal law.

18. 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.

19. On or about November 3, 2010, ostensibly with the approval of the Tribal Commission, 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.

20. The Bay Mills Executive Council is authorized to take certain actions on behalf of Bay Mills.

21. The Bay Mills Executive Council, through the Tribal Council Members, made the decision to open and operate the Vanderbilt Casino.

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

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

24. 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.

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

26. 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.

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

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

29. After consultations between Bay Mills and the State of Michigan failed to resolve the dispute giving rise to this action, 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.

30. Despite this demand, Defendants have refused to cease Class III gaming at the Vanderbilt casino.

31. 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.

32. Bay Mills' sovereign immunity was abrogated by Congress for purposes of this legal action when Congress adopted IGRA.

33. Bay Mills waived any sovereign immunity of the Tribal Commission for actions not in respect of lands within the exterior boundaries of Bay Mills' Reservation when it adopted the Gaming Ordinance, including specifically §§ 4.7 and 4.18(Y).

34. The Tribal Commission and Bay Mills are alter egos, as evidenced in part by Bay Mills' absolute control over the Tribal Commission (see Gaming Ordinance generally); therefore this waiver also extends to Bay Mills.

COUNT I—VIOLATION OF COMPACT SECTION 4(H)

35. Plaintiff incorporates paragraphs 1-34 above as if fully stated in Count I.

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

37. 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."

38. For the reasons stated in paragraphs 22-28 above, the land on which the Vanderbilt casino is situated is not "Indian lands" as defined in the Bay Mills compact.

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

40. As the Class III gaming conducted at the Vanderbilt casino in violation of the Bay Mills compact violates Tribal laws (see Count II below), the laws of the State of Michigan, including but not limited to M.C.L. 750.301 *et seq.* (see Count II below), M.C.L. 432.201 *et seq.* (see Count V 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.

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

42. IGRA vests this Court with jurisdiction 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 Defendants from permitting and 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)

43. Plaintiff incorporates paragraphs 1-42 above as if fully stated in Count II.

44. 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.)

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

46. 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.

47. 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.

48. Operation of the Vanderbilt casino violates Michigan's anti-gambling statutes, including M.C.L. 750.301 *et seq.* and M.C.L. 432.201 *et seq.*

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

50. Before it was closed by Order of this Court, the Vanderbilt casino was in business more than 30 days.

51. 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.

52. Section 5.5(A) of the Gaming Ordinance restricts operation of any Tribal casino to Indian lands which are defined in Section 2.30 of the Gaming Ordinance to mean: "(A) all lands within the limits of the Reservation of the Bay Mills Indian Community; and (B) all lands title to which is either held in trust by the United States for the benefit of the Bay Mills Indian Community or held by the Bay Mills Indian Community subject to restriction by [the] United States against alienation and over which the Tribe exercises governmental power."

53. Section 5.5(A) of the Gaming Ordinance also restricts operation of any Tribal casino to Indian lands that comply with Section 20 of IGRA, 25 U.S.C. § 2719.

54. For the reasons stated in paragraphs 22-28 above, the land on which the Vanderbilt casino is situated is not "Indian lands" as defined in the Gaming Ordinance.

55. For the reasons set forth in paragraph 66 below, the Vanderbilt casino does not comply with the requirements of 25 U.S.C. § 2719.

56. The operation of Class III gaming at the Vanderbilt casino therefore violates the Gaming Ordinance which is Tribal law and therefore violates Section 4(C) of the Bay Mills compact.

57. As the Class III gaming conducted at the Vanderbilt casino in violation of the Bay Mills compact violates Tribal laws, 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.

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

59. 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 Defendants from permitting and 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

60. Plaintiff incorporates paragraphs 1-59 above as if fully stated in Count III.

61. 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" and only if authorized by a Tribal ordinance that meets the requirements of IGRA [25 U.S.C. § 2710(d)(1)(A)].

62. 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."

63. Based on the facts alleged in paragraphs 22-28 above, the Class III gaming conducted by Bay Mills at the Vanderbilt casino is not being conducted on Indian lands and therefore violates IGRA.

64. The Class III gaming conducted by Defendants 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.

65. The Class III gaming conducted by Defendants at the Vanderbilt casino also violates IGRA because, for the reasons stated in Count II of this Complaint, this gaming is not authorized by a duly enacted Tribal ordinance.

66. 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).

67. There is no adequate remedy at law for this violation by Defendants 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.

68. 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 Defendants from permitting and conducting Class III gaming at the Vanderbilt casino; and (4) granting Plaintiff such other relief as the Court deems appropriate.

COUNT IV—VIOLATION OF FEDERAL COMMON LAW

69. Plaintiff incorporates paragraphs 1-68 above as if fully stated in Count IV.

70. As set forth above, because it is not on Indian lands, operation of the Vanderbilt casino violates State anti-gambling laws.

71. The Defendants did not have authority under federal law to approve and operate a casino that does not conform with the requirements of IGRA and that violates State anti-gambling laws.

72. When a Tribe and/or Tribal representatives permit and operate a casino which exceeds the scope of their authority, they violate federal common law governing Indian Tribes.

73. As the Class III gaming conducted at the Vanderbilt casino in violation of federal common law also violates Bay Mills compact (see Counts I and II above), Tribal law (see Count II), the laws of the State of Michigan, including but not limited to M.C.L. 750.301 *et seq.* (see Count II), M.C.L. 432.201 *et seq.* (see Count V below), and federal anti-gambling statutes (18 U.S.C. § 1955) (see Count II), it harms the public interest and the balance of harm caused by this Class III gaming weighs heavily in favor of the State.

74. There is no adequate remedy at law for this violation by Defendants of federal common law which causes the State irreparable injury.

75. Because the licensing and continued operation of the Vanderbilt Casino violated the Gaming Ordinance which requires that licenses be issued only to gaming establishments that are located on Indian lands, Council Members that authorized and operate the casino, and the Tribal Officials that approved the license for the Vanderbilt Casino and allowed its continuing operation exceeded their authority under Tribal law and they are therefore subject to prospective relief Ordered by this Court.

WHEREFORE, Plaintiff respectfully requests that the Court enter its Order: (1) declaring that the gaming at the Vanderbilt casino exceeds the scope of Defendants' authority under federal law; (2) permanently enjoining Defendants from permitting and conducting Class III gaming at the Vanderbilt casino; and (3) granting Plaintiff such other relief as the Court deems appropriate.

COUNT V—VIOLATION OF MICHIGAN GAMING CONTROL AND REVENUE ACT

76. Plaintiff incorporates paragraphs 1-75 above as if fully stated in Count V.

77. M.C.L. 432.220 states in relevant part:

In addition to other penalties provided for under this act, a person who conducts a gambling operation without first obtaining a license to do so . . . is subject to a civil penalty equal to the amount of gross receipts derived from wagering on the gambling games, whether unauthorized or authorized, conducted on that day as well as confiscation and forfeiture of all gambling game equipment used in the conduct of unauthorized gambling games.

78. Defendants did not first obtain a State-issued license before operating the Vanderbilt casino.

79. On information and belief, Defendants derived gross receipts from wagering at the Vanderbilt casino on some or all of the days it was operated before being closed by Order of this Court, in a total amount that Plaintiff believes is in the range of at least hundreds of thousands of dollars.

80. Gambling game equipment was used in the conduct of unauthorized gambling games at the Vanderbilt casino.

81. The violation of M.C.L. 432.220 subjects the above-described gross receipts and gambling game equipment to forfeiture.

WHEREFORE, Plaintiff respectfully requests that the Court enter its Order requiring (1) an accounting and forfeiture of all gross receipts obtained and gambling game equipment

used by Defendants in violation of M.C.L. 432.220 and (2) granting Plaintiff such other relief as the Court deems appropriate.

COUNT VI—NUISANCE

82. Plaintiff incorporates paragraphs 1-81 above as if fully stated in Count VI.

83. As set forth above, any continued operation of the Vanderbilt casino is proscribed by law.

84. Any continued operation of the Vanderbilt casino would therefore be a public nuisance.

85. Defendants do not have authority to operate the Vanderbilt casino.

86. Any continued operation of the Vanderbilt casino harms the public interest and the balance of harm caused by such operation weighs heavily in favor of the State.

87. There is no adequate remedy at law for the continued operation of the Vanderbilt casino which causes the State irreparable injury.

WHEREFORE, Plaintiff respectfully requests that the Court enter its Order: (1) declaring that the gaming at the Vanderbilt casino is a public nuisance, (2) permanently enjoining Defendants from permitting and conducting Class III gaming at the Vanderbilt casino and (3) 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,

Bill Schuette
Attorney General

/s/ Louis B. Reinwasser

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Dated: July 15, 2011

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2011, I electronically filed the foregoing document with the Clerk of the court using the ECF system which will send notification of such filing to counsel of record. I hereby certify that I have mailed by United States Postal Service the same to any non-ECF participants.

/s/ Louis B. Reinwasser

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