

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NORTH DAKOTA**

AGAMENV, LLC, aka Dakota Gaming,
LLC, Ray Brown, Steven Haynes,

Plaintiff,

VS.

Andrew Laverdure, purporting to act in his capacity as Associate Judge for Turtle Mountain Tribal Court, and Mike Malaterre, Lorne Jay, Cindy Malaterre, Elmer Davis, purporting to act in their capacity as Tribal Council Members,

Defendants.

Case No. _____

COMPLAINT

Plaintiffs bring this action for declaratory and injunctive relief to prevent the unlawful exercise of jurisdiction over them by the defendant members of the Turtle Mountain Tribal Council and the Turtle Mountain Tribal Court.

INTRODUCTION

1. On February 22, 2012, Plaintiffs AGAMENV, LLC and Dakota Gaming, LLC entered into various agreements with the Turtle Mountain Band of Chippewa Indians (“Tribe”). Pursuant to those agreements, Plaintiffs arranged financing for the Tribe and agreed to serve as developer for the Painted Pony Casino (“Casino”), located in Trenton, North Dakota.

2. The Tribe and AGAMENV and Dakota Gaming also executed a Dispute Resolution Agreement, which provides: “the Tribe expressly acknowledges and agrees that all Claims . . . shall be resolved by binding arbitration . . . and any claim pending in the tribal courts of the Tribe shall be submitted for resolution in binding arbitration.” (*See* Dispute Resolution Agreement, attached as Ex. 1 to Declaration of Jane E. Maschka (“Maschka Dec.”)).

3. Defendants are members of the Tribe who seek to thwart the Tribe’s plans for the Casino. Acting without the authority of the Tribe, Defendants have, and are continuing to, abuse their official positions within the Tribe to accomplish this goal. As a result of Defendants’ actions, the Turtle Mountain Tribal Court (“Tribal Court”) issued an Ex Parte Temporary Restraining Order and Preliminary Injunction (“Ex Parte Order”) against Plaintiffs. In addition, the Tribal Court on June 7, 2012, entered ex parte orders to force the closure of the Casino (“June 7 Order”) and set a show cause hearing for June 15, 2012, on the basis that Plaintiffs are in contempt of the Ex Parte Order.

4. The Turtle Mountain Tribal Council (“Tribal Council”), the Tribe’s governing body, has renounced the Ex Parte Order and the actions of the Defendants. But Defendant Andrew Laverdure, an Associate Judge of the Turtle Mountain Tribal Court, refuses to dismiss the Ex Parte Order or the Defendants’ action against Plaintiffs upon which it is based.

5. Plaintiffs therefore bring this action for declaratory and injunctive relief to stop Defendant Laverdure and the Turtle Mountain Tribal Court from unlawfully asserting jurisdiction over Plaintiffs.

PARTIES, VENUE, AND JURISDICTION

6. Plaintiff AGAMENV, LLC (“AGAMENV”) is a Nevada limited liability company.

7. Plaintiff Dakota Gaming, LLC (“Dakota Gaming”) is a Nevada limited liability company.

8. Plaintiff Ray Brown is a Nevada resident, and a primary member of AGAMENV and Dakota Gaming.

9. Plaintiff Steven Haynes is a resident of Dallas, Texas, and a primary member of AGAMENV and Dakota Gaming.

10. Defendants Mike and Cindy Malaterre, Lorne Jay, and Elmer Davis (“Minority Council Defendants”) are, upon information and belief, all residents of North Dakota. Minority Council Defendants are representatives on the nine-person Tribal Council. The Tribe is a federally recognized Indian tribe and Native American sovereign nation with its tribal headquarters located in Belcourt, North Dakota.

11. Defendant Andrew Laverdure is, upon information and belief, a resident of North Dakota. Defendant Laverdure is an Associate Justice for the Tribal Court.

12. Venue is properly laid in this District pursuant to 28 U.S.C. § 1391(b) because this is the judicial district in which Defendants reside, and because this is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

13. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the Constitution, laws, or treaties of the United States, raising the federal

question of the scope of the Tribal Court's adjudicative jurisdiction over Plaintiffs. *See Plains Commerce Bank v. Long Family Land & Cattle Co., Inc.*, 554 U.S. 316, 324 (2008) ("whether a tribal court has adjudicative authority over nonmembers is a federal question").

14. This action is not barred by the doctrine of sovereign immunity because Plaintiffs seek prospective relief to enjoin tribal officials from enforcing orders and exercising authority in contravention of controlling federal law. *See Ex parte Young*, 209 U.S. 123 (1908); *N. States Power Co. v. Prairie Island Mdewakanton Sioux Indian Cmty.*, 991 F.2d 458, 460 (8th Cir. 1993) ("*Ex parte Young* applies to the sovereign immunity of Indian tribes, just as it does to state sovereign immunity.")

FACTUAL BACKGROUND

I. The Tribe and Plaintiffs Execute The Agreements.

15. On February 22, 2012, AGAMENV entered a Gaming Equipment Participation Agreement ("Participation Agreement") and Development Agreement with the Tribe. (Maschka Dec., Exs. 2-3.) On the same day, Dakota Gaming entered a Loan Agreement with the Tribe ("Loan Agreement," and with associated documents, "Loan Documents"). (Maschka Dec., Ex. 4.) This Complaint refers to these agreements, taken together, as the "Agreements."

16. Pursuant to the Agreements, Dakota Gaming arranged \$1,076,499 in financing for the Tribe. AGAMENV, in turn, incurred costs and expenses associated with the design and development of the Casino.

17. In the Agreements, the Tribe waived its sovereign immunity with regard to

the terms of the agreement and consented to suit in the United States District Court of North Dakota. (Ex. 2, § IX.B; Ex. 3, § 12.1; Ex. 4, § 8.26.)

II. The Tribal Mountain Constitution Requires Five Tribal Council Members For a Quorum.

18. Only the Tribal Council itself, acting in accordance with the Turtle Mountain Band of Chippewa Indians Constitution (“Tribal Constitution”), may exercise the powers of the Tribal Council and regulate the business of the Tribe. (*See* Maschka Dec., Ex. 5, Article IX, (a) § 1 and 3 and (c) § 11.)

19. The Tribal Constitution provides that only the Tribal Council has authority “to engage in any business that will further the economic well-being of the members of the tribe, or to undertake any programs or projects designed for the economic advancement of the people” (*Id.*, Article IX, (c) § 11.)

20. Four individuals, even if they are Tribal Council Members, cannot represent the Tribe without a resolution that is validly passed by a Quorum of the Tribal Council and then signed into law. (*Id.*) The Tribal Constitution provides that a “Quorum shall consist of five (5) members and no business shall be conducted in the absence of a quorum.” (*Id.*)

III. Defendants Abuse Positions To Thwart Casino Development Without Authority.

a. Two Non-Defendant Gaming Inspectors Harass Plaintiffs Without Tribal Authority.

21. Non-Defendants Marty Davis and Lorraine Laverdure are Gaming Inspectors for the Tribe who, upon information and belief, engage in regulatory activities at another Tribal Casino, the SkyDancer Casino. Plaintiffs initially submitted an authorization to release information and a vendor application, with associated documents, to Ms. Davis, Ms.

Laverdure and counsel for the Tribe but Ms. Davis informed Plaintiffs that the application submitted was incorrect and a new one would need to be filled out and submitted.

22. On April 12, 2012, Tribal Gaming Commissioner Jeff Baker, Tribal Chairman Merle St. Claire, Tribal Councilman BJ Delorme, Tribal Gaming Inspector Frank Keplin, and counsel for the Tribe had a conference call with Plaintiffs in which they informed Plaintiffs that Mr. Keplin had been appointed gaming inspector for the Painted Pony Casino Project and that all regulatory and compliance submissions, questions, and issues should be addressed directly to Mr. Keplin and copied to Commissioner Baker. Accordingly, Plaintiffs submitted corrected forms to Mr. Keplin and confirmed their receipt on April 19, and 21, 2012.

23. On April 24, 2012, Ms. Laverdure contacted Dakota Gaming and requested revised applications. Plaintiffs contacted Mr. Keplin and Tribal counsel, who advised them to respond to Ms. Laverdure that Plaintiffs would be submitting all applications to Mr. Keplin. Plaintiffs sent Ms. Laverdure an email the same day to that effect. (Maschka Dec., Ex. 6.)

24. On May 2, 2012, Plaintiffs received a letter from Ms. Laverdure, dated April 30, 2012, stating that the Tribal Gaming Office had not yet received Dakota Gaming's application. The letter continued: "[t]herefore, you will not be allowed to continue business with the Painted Pony Casino in Trenton, North Dakota." (Maschka Dec., Ex. 7 ("L. Laverdure Letter".))

b. Minority Council Members Bring Suit and Defendant Laverdure Grants Baseless TRO.

25. Like Defendant Davis, Minority Council Member Defendants Mike and Cindy Malaterre, Lorne Jay, and Elmer Davis oppose the development and operation of the Painted Pony Casino.

26. On May 2, 2012, the same day Plaintiffs received the L. Laverdure Letter, the Minority Council Members filed a Petition in Turtle Mountain Tribal Court against Plaintiffs. (“Tribal Court Petition”) (Maschka Dec., Ex. 8, Complaint and Petition For a Preliminary Injunction, *Mike Malaterre et. al. v. AGAMENV, LLC et. al*, Case No. INJ 12-1045 (“Tribal Court Matter”)).

27. In the Tribal Court Petition, the Minority Council Member Defendants purported to be acting in their capacity as Tribal Council Members. (Ex. 8.) The Tribal Court Petition alleged: (1) Defendants had not located a Resolution approving the Development Agreement’s assignment of responsibilities, duties and covenants from AGAMENV to Dakota Gaming LLC; (2) Defendants had not located a declination letter from the National Indian Gaming Commission stating that the Agreements did not require NIGC review; and that (3) Plaintiffs did not complete and submit applicable vendor license applications required by the Tribe’s Gaming Code. (Ex. 8 at ¶¶ 5-7.)

28. The Tribal Court Petition asks the Tribal Court to: (1) issue a temporary restraining order enjoining defendants from acting as developers or performing on the Agreements and to be stopped from opening the Casino; (2) issue a preliminary injunction enjoining Defendants from providing any services or acting as a developer

with respect to the casino; and (3) issue a permanent injunction permanently enjoining Plaintiffs from being a party to the development of the Casino. (Ex. 8 at 6.)

29. Defendant Andrew Laverdure is an Associate Judge of the Turtle Mountain Tribal Court. On May 10, 2012, Defendant Andrew Laverdure granted a Temporary Restraining Order in response to the Tribal Court Petition. (Maschka Dec., Ex. 9 (“Ex Parte Order”).) The Ex Parte Order purported to restrain Plaintiffs from performing on the Agreements, attempting to open the Casino, or from being a party to the development of the Casino. (Ex. 9.) Plaintiffs did not receive the Ex Parte Order until May 15, 2012. The Tribal Court Order set a show cause hearing to be held on June 8, 2012 at the Turtle Mountain Tribal Courthouse in Belcourt, North Dakota (“June 8th Hearing”). (*Id.*)

c. The Tribe Agrees to Submit All Claims Related to the Agreements to Arbitration and Disavows Defendants’ Actions.

30. On May 12, 2012, the entire Tribal Council held a meeting that included all Council Members, including Minority Council Member Defendants. At that meeting, the Tribal Council adopted, by a five-to-four vote, a Dispute Resolution Agreement with AGAMENV and Dakota Gaming. (Ex. 1.) The Tribe and Plaintiffs executed the Dispute Resolution Agreement on May 25, 2012.

31. The Dispute Resolution Agreement provides that the Tribe expressly agrees that any claims related to the Agreements shall be submitted to binding arbitration. The Tribe further agreed in the Dispute Resolution Agreement that any dispute relating to the Agreements pending in tribal courts “shall be submitted for resolution in binding arbitration.” (Ex. 1.)

32. The day after Plaintiffs received the Tribal Court Order, May 16, 2012, the Tribal Council held another meeting. The May 16 meeting again included all Council members, including Minority Council Member Defendants. At that meeting, the Tribal Council adopted a resolution officially withdrawing the Tribal Court Petition and disavowing the actions of the Minority Council Member Defendants. (*See* Ex. 10 (“May 16 Tribal Resolution” attached to Tribe’s Motion).)

33. On May 17, the Tribe submitted a Motion to Withdraw the Tribal Court Petition and to Vacate the Tribal Court Order. (Maschka Dec., Ex. 10 (“Tribe’s Motion”).) The Tribe’s Motion explains that the Minority Council Member Defendants had no authority to act on behalf of the Tribal Council or the Tribe, are not a party to the Agreements, and that the Tribal Council passed the May 16 Resolution disavowing Defendants’ actions and withdrawing the Tribal Petition.

34. Despite the Tribe’s Motion and the Tribal Council’s adoption of the Dispute Resolution Agreement, the Tribal Court has not dismissed the Tribal Petition and Matter. Instead, on June 7, 2012, the Tribal Court issued Orders (“June 7th Orders”) to Plaintiffs directing the immediate closure of the Casino. (Maschka Dec., Exs. 11, 12.) Plaintiffs do not have authority to open, operate or close the Casino.

35. The June 7th Orders also set a show cause hearing for June 15, 2012 (“June 15th Hearing”), demanding that Plaintiffs appear in Tribal Court to demonstrate why they are not in contempt of Tribal Court for allegedly violating the Ex Parte Order.

36. The Tribal Court has no jurisdiction over the Tribal Petition or Matter pursuant to the requirement in the Dispute Resolution Agreement that all claims related

to the Agreements be submitted to binding arbitration. (Ex. 1.) Likewise, Minority Council Member Defendants purport to act upon Tribal Authority, but do not have such authority.

37. Upon information and belief, the Turtle Mountain Tribal Court and Defendants continue to purport to exercise jurisdiction unlawfully over the Plaintiffs. Therefore, Plaintiffs seek emergency injunctive relief from this Court.

**FIRST CAUSE OF ACTION—
DECLARATORY JUDGMENT
(ALL DEFENDANTS)**

38. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37 of this Complaint.

39. Plaintiffs bring this claim for declaratory judgment under 28 U.S.C. §§ 2201-02 and Fed. R. Civ. P. 57. A dispute has arisen between Plaintiffs and Defendants over the jurisdiction of the Tribal Court. Such dispute constitutes a justiciable controversy between the parties.

40. For the reasons stated above, Plaintiffs request the Court to enter judgment declaring that: (1) Plaintiffs are not subject to the jurisdiction of the Tribal Court in the Tribal Court Matter, and cannot be made subject to any penalties and remedies issued by Tribal Court in the Tribal Court Matter; (2) Minority Council Member Defendants have not acted with the authority of the Tribe, and do not have authority to act on behalf of the Tribe absent a resolution passed consistent with the Tribal Constitution; (3) the issues raised and relief requested in the Tribal Petition are matters for binding arbitration pursuant to the Dispute Resolution Agreement; and (4) any order or decision of the Tribal

Court granting in whole or in part any of the relief requested in the Tribal Petition or otherwise in the Tribal Court Matter shall be null and void, including, but not limited to, any order to stop work under the Agreements or any order that has the effect of acting as a delay, hindrance, or impediment to the opening and operation of the Casino.

**SECOND CAUSE OF ACTION—
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
(DEFENDANT LAVERDURE)**

41. Plaintiffs reallege and incorporate by reference paragraphs 1 through 40 of this Complaint.

42. Plaintiffs seek a temporary restraining order and preliminary injunction preserving the status quo by enjoining the Tribal Court and Defendant Andrew Laverdure from issuing any further orders, holding the June 8th Hearing, the June 15th Hearing or any other Tribal Court hearing in connection with the Tribal Petition or the Matter, or in any way acting on the Tribal Petition, during the pendency of this lawsuit.

43. Plaintiffs will suffer irreparable harm absent the temporary restraining order and preliminary injunction. Among other things, without an injunction, Plaintiffs will be deprived of their right to have disputes related to the Agreements resolved by a panel of neutral decision-makers in an arbitration proceeding. In addition, Plaintiffs will be forced to expend unnecessary time, money, and effort defending itself before the Tribal Court, which lacks jurisdiction over Plaintiffs. Should the Tribal Court issue a contempt order against Plaintiffs on June 15, 2012, even absent any jurisdiction or authority to do so, the order has the possibility of impeding Plaintiffs' further work with Indian Tribes because,

upon information and belief, Plaintiffs may have to report such an order in applications for gaming licenses to tribal and non-tribal gaming commissions.

44. As set forth above, there is a substantial likelihood that Plaintiffs will prevail on the merits and that this Court will determine that Plaintiffs are not subject to the jurisdiction of the Tribal Court and cannot be made subject to the penalties and remedies referred to in the Tribal Petition.

45. The harm faced by Plaintiffs and set forth above far outweighs any harm that would be sustained by the Defendants if the preliminary injunction were granted.

46. The requested injunction will not be adverse to the public interest, which instead will be served by preventing the excessive wrongful exercise of tribal jurisdiction over non-members.

**THIRD CAUSE OF ACTION—
APPLICATION FOR PERMANENT INJUNCTION
(DEFENDANT LAVERDURE)**

47. Plaintiffs reallege and incorporate by reference paragraphs 1 through 46 of this Complaint.

48. As set forth above, the improper exercise of jurisdiction by the Tribal Court has caused, and is continuing to cause, substantial and irreparable injury to Plaintiffs for which there is no adequate remedy at law.

49. Plaintiffs therefore request the Court to permanently enjoin the Tribal Court and Defendants from holding any hearings or in any way acting on the Tribal Petition.

**FOURTH CAUSE OF ACTION—
APPLICATION FOR PERMANENT INJUNCTION
(MINORITY COUNCIL MEMBER DEFENDANTS)**

50. Plaintiffs reallege and incorporate by reference paragraphs 1 through 49 of this Complaint.

51. The improper exercise of jurisdiction by the Minority Tribal Council Members has caused, and is continuing to cause, substantial and irreparable injury to Plaintiffs for which there is no adequate remedy at law. Among other things, absent an injunction, Plaintiffs will be forced to expend unnecessary time, money and effort litigating the Tribal Petition.

52. Plaintiffs therefore request that the Court to permanently enjoin the Minority Council Member Defendants from enforcing any order from the Tribal Court regarding the Agreements, or in any other way proceeding on the Tribal Petition, and from taking any action based on purported Tribal authority that would further hinder, delay, or impede the opening or operation of the Casino.

WHEREFORE, Plaintiffs request the Court to enter:

(a) a declaratory judgment that: (1) Plaintiffs are not subject to the jurisdiction of the Turtle Mountain Tribal Court in *Mike Malaterre et. al. v. AGAMENV, LLC et. al.*, CV No: Inj 12-1045, and cannot be made subject to any penalties and remedies issued by Turtle Mountain Tribal Court in the Matter; (2) Minority Council Members do not have authority to act on behalf of the Tribe absent a Tribal Resolution approved consistent with the Tribal Constitution; (3) any order or decision of the Turtle Mountain Tribal Court granting in whole or in part any of the relief requested in the Tribal Petition shall

be null and void, including, but not limited to, any order to stop work under the Agreements or any order that otherwise has the effect of delaying, hindering or impeding the opening and operation of the Casino.

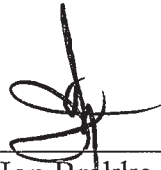
(b) a temporary restraining order and preliminary injunction preserving the status quo by enjoining Defendant Laverdure from holding the June 8th Hearing, the June 15th Hearing, or any court hearing regarding the Tribal Petition, or in any way acting on the Tribal Petition, during the pendency of this lawsuit.

(c) a permanent injunction enjoining the Minority Council Member Defendants from enforcing any order from the Turtle Mountain Tribal Court regarding the Agreements, or in any other way proceeding on Minority Council Members' Petition, and from taking any action based on purported Tribal authority that would further hinder, delay, or impede the opening or operation of the Casino.

(d) costs incurred by Plaintiffs in bringing this action; and

(e) any such relief as this Court may deem proper.

Dated: June 7, 2012



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