

**TURTLE MOUNTAIN TRIBAL COURT
TURTLE MOUNTAIN JURISDICTION**

**BELCOURT, ND.
CIVIL DIVISION**

Mike Malaterre

Loren Jay

Cindy Malaterre

Elmer Davis

Acting in their

Capacity as Tribal Council Members)

Plaintiff(s),)

VS.)

COMPLAINT and PETITION
For a PRELIMINARY
INJUNCTION

CASE # 12-1045

AGAMENV, LLC, aka, Dakota)

Gaming, LLC, Associated Investors,)

Ray Brown, Steven Haynes,)

386 Decareo Court, Henderson, NV)

89014)

Respondent(s)

COMPLAINT

COMES NOW, the above named Plaintiff's in the above identified proceeding and files this, its Complaint, against the above named Defendants for a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction pursuant to and in compliance with:

CONSTITUTION AND BYLAWS OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, NORTH DAKOTA

(INCLUDING 1962, 1975, 1990, 1992, 1995, 1997, 2000, 2001 and 2005 AMENDMENTS)

ARTICLE XIV - SEPARATION OF POWERS

(Amendment XI approved November 3, 1992)

Judiciary

Section 3. Powers:

- a) The Judicial Branch of government of the Turtle Mountain Band of Chippewa Indians shall have jurisdiction, as determined by legislative action pursuant to Chapter 1.05 and Chapter 2.01 of the Turtle Mountain Tribal Code and applicable federal law, to adjudicate actual cases an

controversies that arise under the Turtle Mountain Constitution, statutes, resolutions, civil and criminal causes of action and legal decisions, and to ensure due process, equal protection, and protection of rights arising under the Indian Civil Rights Act of 1968, as amended, for all persons and entities subject to the criminal and civil jurisdiction on the Turtle Mountain Tribe.

In support thereof would show unto the Court the following matters and facts:

1. That Plaintiffs are duly elected members of the Turtle Mountain Band of Chippewa Indians, 4180 Highway 281, Belcourt, North Dakota 58136.
2. That Defendant/s are identified and described as an LLC which states that its address is 386 Decareo Court, Henderson, Nevada 89014, and whose primary members of the LLC are listed as Ray Brown and Steve Haynes.
3. That the Plaintiffs as members of the Turtle Mountain Band of Chippewa Indians, were elected in order to fulfill the Powers stated in the Turtle Mountain Constitution at Article IX as identified below and attached as Exhibit A:

ARTICLE IX - POWERS OF THE TRIBAL COUNCIL

The Tribal Council shall exercise the following powers, subject to any limitations imposed by this Constitution and Bylaws or the laws and regulations of the Federal Government: (a)

Governmental Powers. Section 1 – 6; (b) Administrative Powers. Section 7 – 9, and (c) Business Powers, Section 10 – 14, which when read together the Tribal Council has the authority to protect the interest of the Turtle Mountain Band of Chippewa and that in order to act in the best interest of the Turtle Mountain Band the Constitution requires the following to occur:

That in order for official actions to be legally taken by the Turtle Mountain Tribal Council the following must occur as is specified in the Turtle Mountain Band of Chippewa Constitution, as stated below, and identified in Exhibit A:

ARTICLE VII - TRIBAL COUNCIL PROCEDURES

Section 1. All Tribal Council meetings shall be open to the public and held in a publicly accessible place. A published agenda will be noticed to the Tribal membership at least three (3) days prior to the meeting time. A 30 day comment period must be provided prior to the adoption of any ordinances or amendments to the Tribal Code, whether proposed by resolution or otherwise. Adoption must occur through a roll call vote of the Tribal Council at a publicly held meeting. Special closed meetings of the Tribal Council may be held without public attendance for matters regarding protected personnel privacy considerations and governmental contract concerns that require confidentiality. The Chairman or any three (3) members of the

Section 2. A quorum shall consist of five (5) members and no business shall be conducted in the absence of a quorum.

4. That various documents were entered into by a quorum of the Turtle Mountain Tribal Council, with the defendants, on or around November 10, 2011 which included a Development Agreement, a Consent to Enter Trust Land, a Control Agreement, a Security Agreement, a Loan Agreement, a Disbursing Agreement, a Depository Agreement (All Agreements are identified as Exhibit B) and the resolution for said approval of said documents is identified as TMBC 586-11-11, Exhibit C which were entered into by the Turtle Mountain Tribal Council in relation to retaining an LLC identified as AGAMENV to assist with the development of a Class II gaming facility at a site identified as the Robinson Property/Trenton location, and an Amended and Restated Development Agreement was entered into on or around February 22, 2012 which assigned all the above Agreements identified as Exhibit B to Dakota Gaming, a named Defendant.
5. That Plaintiffs have been unable to locate an applicable Resolution as is required by the Turtle Mountain Constitution to verify the approval of the Development Agreement that assigned all responsibilities, duties and covenants from AGAMENV (entered into on or around 11-11-11) to Dakota Gaming LLC.
6. That Plaintiffs have been unable to locate a Declination Letter from NIGC that would identify that the above Agreements Exhibit B were determined not to be considered Management Agreements and/or do not violate the "sole proprietor" requirement in the Indian Gaming Regulatory Act (IGRA).
7. That Defendants have failed to comply with the Turtle Mountain Tribal Gaming Code **Exhibit D** by failing to complete and submit applicable vendor's license applications as is required by the Gaming Code **Section 25-1-16 Commission's Powers and Duties**, (b), (c) and have failed to provide access to the Tribal Gaming Commission so as to identify who the primary management officials are, and who is to be employed at the Trenton site so that Gaming licenses can be issued, in compliance with **Section 25-1-16** (e) and (f), and the Turtle Mountain Gaming Commission has not been allowed to view and approve the expenditures of any tribally operated Class II gaming enterprises in compliance with **Section 25-1-16** (h) of said Gaming Code. The following section of the Gaming Code provides the Authority and Enforcement Powers in respect to Licenses:

Section 25-1-17. Specific Authority with Respect to Licenses; Enforcement Powers

- (a) The commission shall exercise its gaming oversight and shall issue, renew or disapprove any application, or limit, suspend or revoke gaming licenses and work permits on an annual basis and in accordance with the procedures set forth in Sections 25-2-07 and 25-3-05. Any license or work permit granted under this Title is a revocable privilege, and no licensee or permittee holds any vested right to such license.
- (b) The commission is authorized to carry out

investigations of all prospective and existing gaming licensees, to initiate hearings and to conduct or cause to be conducted announced or unannounced inspections of all gaming premises in order to ensure compliance with tribal and federal law. All licensees are obligated to comply immediately to such commission requests for information and review of all licensee papers, books and records, or inspection of premises on an announced or unannounced basis...

8. That said Defendants cease the wrongful conduct of failing to comply with Tribal Law And that they respond to the Gaming Commission for licensing purposes and that they cease performing responsibilities as identified in the Development Agreement until all applicable Tribal laws are complied with as is stated in the in the letter referred to as **Exhibit E** from the National Indian Gaming Commission (NIGC) General Counsel, Larry Roberts.
9. The wrongful conduct of Defendant, unless restrained and enjoined by and order of the this Court, will cause great and irreparable harm to Plaintiff's by jeopardizing the ability of the Turtle Mountain Tribe to seek funding in the future for purposes of economic development for the benefit of Tribal members, it could be issued notices of violation from the NIGC should the Tribal Gaming Code not be complied with as identified in the **Exhibit E** from the General Counsel of the NIGC, to lose the trust of the Tribal membership should all processes not be followed in the Constitution when the Assets of the Tribe are put at risk and there is no assurance that said entity Dakota Gaming LLC is reputable because it has failed to comply with the Gaming Code and complete and submit a background licensing application to the Turtle Mountain Gaming Commission, or required its potential employees to submit to background licensing to be performed by the Tribal Gaming Commission.
10. That should Defendants be allowed to open and implement the play of the Class II games and allow patrons to begin the play of the gaming devices would cause irreparable harm to the Turtle Mountain Tribe due to the amount of funds that the Tribe would have to pay as is stated below in the following terms:

Gaming Participation Agreement (Exhibit F)

"D. Commencement and Termination of Agreement

Post Termination Obligations of TRIBE. Under termination of this Agreement by TRIBE, TRIBE is obligated to purchase all of LESSOR's equipment, unless LESSOR, at its sole option decides to take back the equipment. In the case that the Tribe is obligated to buy the equipment the purchase price of the equipment will be set by, multiplying the

Should the Painted Pony be allowed to open for one day, the remaining term on the 83 month contract would be 2525 days @ 125/day (as listed in the proposal provided to the Tribe at the September 10, 2011 meeting) for 142 machines (according to machine list of 5/1/12). Total due would be \$44,818,750.00”

11. That Plaintiff's are likely to win on the merits of the case herein, because of the fact that the Defendants have failed to comply with the Gaming Commission Conditional License as stated above and that Defendants have failed to comply with the Turtle Mountain Gaming Code as stated above, and because there has not been a Resolution produced or located for the most recent Development and Associated Agreements (Exhibit B) pursuant to Constitutional requirements as identified above, and there has been no production of a Declination letter from the NIGC which would protect the borrower and the lender in the event the documents identified as Exhibit B, were found to be invalid and said agreement needed to be terminated.
12. That Plaintiffs would suffer irreparable harm in the absence of preliminary relief because of the Gaming Equipment Participation Agreement, which states that in the event the Agreement is consummated by the facility being open for one day, and then the Agreements are terminated subsequent to the opening of the facility (Painted Pony), the Tribe would be required to pay the Defendants supplying said gaming equipment as follows:

“Should the Painted Pony be allowed to open for one day, the remaining term on the 83 month contract would be 2525 days @ 125/day (as listed in the proposal provided to the Tribe at the September 10, 2011 meeting) for 142 machines (according to machine list of 5/1/12). Total due would be \$44,818,750.00;”

And the Tribe would be subject to paying \$44,818,750.00 for equipment without the benefit of receiving any revenue for the equipment they were paying for. In addition if the termination after the opening occurs, litigation is imminent. A restraining order and injunction would avoid the risk of the funds being taken from the Tribe and its members.

13. That the balance of equities clearly tips to the Plaintiffs favor in that, if the Tribe is required to pay for gaming equipment, it should be receiving the benefit of said equipment by means of revenues, but if said Agreements are terminated after only one day of play and the Painted Pony is allowed to open as a gaming facility, the Tribe would be required to pay for gaming equipment it is unable to receive the benefit of for 83 months as identified in the questionable agreements. The fairness and equity of this situation can be enhanced by stopping the opening of the facility immediately and allowing the Plaintiffs to be assured all laws are or will be adhered to. To allow the facility to open up and then encourage the Plaintiffs to terminate the Agreement would only

14. That an injunction which would stop the opening of the Painted Pony would clearly be in the interest of the public in light of the fact that the Indian Gaming Regulatory Act and the Turtle Mountain Gaming Code were both implemented in order to protect the public and patrons from those who would have the propensity to steal or participate in illegal activities, as well as to provide the public with the assurance that the games that the Tribes were offering were held to the highest degree of integrity and were being conducted in a fair manner. It is apparent that an entity that fails to provide a Vendor's Background Licensing Application, which would prohibit the Tribal Gaming Commission from performing its due diligence in regard to investigating the background of those who would do business with the Tribal Gaming Operations would be in contravention to the interest of the public. In addition all employees of the Painted Pony have not been licensed by the Tribal Gaming Commission which is in violation of the Tribal Gaming Code and the due diligence that the Gaming Commission is attempting to complete and perform is being hampered and only an injunction would protect the public so it is assured that the integrity of the Tribal Gaming Operations is being maintained as was intended by the Indian Gaming Regulatory Act and the Tribal Gaming Code.

WHEREFORE PLAINTIFF requests:

- 1 Issuance of a Temporary Restraining Order, restraining Defendant from acting as Developer and performing the the actions identified in Exhibit B, the Agreements that Defendant would be responsible for and to be enjoined from continuing to violate the Turtle Mountain Gaming Code, and to be cease an attempt to open the Trenton property;
- 2 Issuance of a Preliminary Injunction enjoining Defendant from providing any services or operating as developer in regard to the Trenton property during the pendency of this action;
- 3 And on a final hearing, Defendant be permanently enjoined from being a party to this development so long as any applicable Turtle Mountain Tribal Laws or Regulations are not complied with.
- 4 Plaintiff requests such other and further relief as the Court deems proper.

Witness my signature this the 2nd day of May, 2012.

Mike Malatraso Plaintiff
Tom Jay Plaintiff
Gregory Malatraso Plaintiff
Chris O Plaintiff

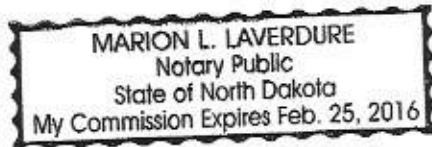
Sworn to and subscribed and
personally appeared before me on this the 2nd day of May 2012,

Marion L. Laverdure

Notary Public

My Commission Expires

Feb. 25, 2016



RECEIVED
2012 MAY 2 PM 12 32
JAL
TURTLE MOUNTAIN
TRIBAL COURT