

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE STATE OF MICHIGAN,
Plaintiff,

v

THE SAULT STE. MARIE TRIBE OF
CHIPPEWA INDIANS, AARON PAYMENT,
CHAIRMAN in his official capacity, LANA
CAUSELY, VICE CHAIRWOMAN, in her
official capacity, CATHY ABRAMSON,
SECRETARY in her official capacity, KEITH
MASSAWAY, TREASURER in his official
capacity, DENNIS MCKELVIE, DIRECTOR
in his official capacity, JENNIFER
MCLEOD, DIRECTOR, in her official
capacity, DEBRA ANN PINE, DIRECTOR, in
her official capacity, D.J. MALLOY,
DIRECTOR, in her official capacity,
CATHERINE HOLLOWELL, DIRECTOR, in
her official capacity, DARCY MORROW,
DIRECTOR, in her official capacity, DENISE
CHASE, DIRECTOR, in her official capacity,
BRIDGETT SORENSON, DIRECTOR, in her
official capacity and JOAN ANDERSON,
DIRECTOR, in her official capacity,
Defendants.

NO. 1:12-cv-962

HON.

MAG.

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COMPLAINT

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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.*, and federal common law; and
 - 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 common law; 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 the Sault Ste. Marie Tribe of Chippewa Indians (Sault Tribe or Tribe) is a federally recognized Indian tribe.
4. Aaron Payment is Chairman of the Board of Directors for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

5. Lana Causley is Vice-Chairwoman of the Board of Directors for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

6. Cathy Abramson is Secretary of the Board of Directors for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

7. Keith Massaway is Treasurer of the Board of Directors for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

8. Dennis McKelvie is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

9. Jennifer McLeod is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

10. Debra Ann Pine is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

11. D.J. Malloy is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

12. Catherine Hollowell is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

13. Darcy Morrow is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

14. Denise Chase is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

15. Bridgett Sorenson is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

16. Joan Anderson is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

17. The Sault Tribe Board of Directors are duly elected by eligible members of the Sault Tribe and are authorized by the Tribe's constitution and Tribal Code to take lawful actions on behalf of the Tribe.

VENUE

18. Defendant Sault Tribe has its Tribal offices and all of its reservation in the Upper Peninsula of Michigan. Venue is therefore appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(1).

GENERAL ALLEGATIONS

19. On or about August 20, 1993, pursuant to IGRA, John Engler, the Governor of the State of Michigan at that time, entered into a tribal-state gaming compact ("the Sault Tribe compact" or "compact") with the Sault Tribe. The compact was approved by the U.S. Secretary of the Interior on November 19, 1993. A true and correct copy of this compact is attached as Exhibit A.

20. Also in accordance with the requirements of IGRA, the Tribe adopted a Gaming Ordinance. Exhibit B.

21. The Tribe's Gaming Ordinance only permits the operation of casinos owned by the Sault Tribe itself. Exhibit B, § 42.301.

22. Pursuant to the Sault Tribe compact, the Sault Tribe has conducted Class III gaming (which is defined in IGRA, 25 U.S.C. § 2703(8), and for all practical purposes can be considered casino gaming) in one or more casinos it operates on Indian lands in Chippewa, Alger, Schoolcraft and Mackinac Counties in the Upper Peninsula.

23. The Sault Tribe's reservation is located entirely in the Upper Peninsula.

24. On or about January 24, 2012 the Sault Tribe Board of Directors approved Resolution 2012-11 (copy attached as Exhibit C) which stated that the Tribe intended to open a casino in the City of Lansing.

25. On or about January 23, 2012, the Sault Tribe and the City of Lansing, Michigan (the City), executed a Comprehensive Development Agreement (CDA) in which the Tribe and the City agreed that the City and/or the Lansing Economic Development Commission (LEDC) will sell and the Tribe will buy certain parcels of property in the City on which the Tribe will build and operate two casinos (Casino property), citing the Tribe's alleged authority to do so under federal law. Copy of CDA attached as Exhibit D.

26. On information and belief, no Casino property has yet been purchased by the Sault Tribe, but the CDA indicates that the first such purchase will occur no

later than August 1, 2012, Exhibit D, § 2.2, although this date has apparently been extended by 90 days by mutual agreement of the City and the Sault Tribe.

27. The Casino property is more than 200 miles by road from the Sault Tribe's reservation.

28. The CDA states that the Sault Tribe will seek to have title to the Casino property taken into trust by the United States for the benefit of the Sault Tribe, and that it will have five years after the Tribe begins "the application process" to make this happen. Exhibit D, §4.8(b)(i) and (iii).

29. The State sent a letter on February 7, 2012 to the Sault Tribe warning it that the operation of Class III gaming at a casino in Lansing would be unlawful. A true and correct copy of this letter is attached as Exhibit E.

30. Despite this demand, on information and belief, Defendants are continuing with their plans for the Sault Tribe to purchase land in the City on which to operate a casino, and to have that land taken into trust by the United States for the benefit of the Tribe.

31. Given the contractual requirement in the CDA to purchase the Casino property, or a part of it by the end of 2012, Plaintiff believes that the Tribe will submit an application to have the purchased land taken into trust in the very near future.

32. By its operation of casinos pursuant to its Tribal-State compact, the Sault Tribe waived its sovereign immunity for purposes of this legal action which seeks injunctive relief to remedy violations of the Sault Tribe compact and IGRA.

33. The Sault Tribe's sovereign immunity was abrogated by Congress for purposes of this legal action when Congress adopted IGRA.

34. Because submission of an application to take land into trust in violation of §§ 9 and 4(C) of the Sault Tribe compact violates the Sault Tribe's gaming ordinance as set forth in Count II below, any Directors or their designees who caused such an application to issue would exceed their authority and they are therefore subject to prospective relief Ordered by this Court.

COUNT I—VIOLATION OF COMPACT SECTION 9/IGRA

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

36. 25 U.S.C. § 2710(d)(7)(b)(ii) states:

The United States district courts shall have jurisdiction over—
* * * (ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect . . .

37. Section 2710(d)(1) of IGRA permits Class III gaming activities 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)].

38. Section 9 of the Sault Tribe compact states:

Off-Reservation Gaming.

An application to take land in trust for gaming purposes pursuant to § 20 of IGRA (25 U.S.C. § 2719) shall not be submitted to the Secretary

of the Interior in the absence of a prior written agreement between the Tribe and the State's other federally recognized Indian Tribes that provides for each of the other Tribes to share in the revenue of the off-reservation gaming facility that is the subject of the § 20 application.

39. Section 20 of IGRA prohibits gaming on land taken into trust after October 17, 1988 unless the gaming satisfies one or more of four exceptions listed in subsections (b)(1) of § 20.

40. Since the CDA contemplates acquisition of the Casino property and an application to take it into trust for gaming purposes after October 17, 1988, such application will necessarily be made pursuant to § 20 of IGRA and will be governed by § 9 of the Sault Tribe compact.

41. Any gaming that would occur on the Casino property in Lansing would be off-reservation gaming.

42. On information and belief, the Sault Tribe has not entered into a written agreement with the State's other federally recognized Indian Tribes that provides for each of the other Tribes to share in the revenue that would be generated by a casino operated off its reservation by the Sault Tribe in the City of Lansing.

43. Without such a revenue sharing agreement, any application submitted by the Sault Tribe to take land into trust as described in the CDA would be a violation of § 9 of the Sault Tribe compact, which would in turn be a violation of IGRA (25 U.S.C. §2710(d)(1)).

44. By executing the CDA, the Sault Tribe contractually committed itself to seek trust status for the Casino property.

45. In its press releases and on its web page (<http://lansingkewadin.wordpress.com/>), the Sault Tribe has stated that it intends to file an application with the federal government for the purpose of having the Casino property taken into trust.

46. The sole purpose of Section 9 of the Sault Tribe compact was to benefit the State primarily by limiting the expansion of casino gaming in the State by prohibiting the Tribe from even applying to have land taken into trust for off-reservation gaming unless the stated conditions were met.

47. The State is unaware of any formal administrative process in which it can participate for the purpose of opposing – prior to a final determination by the Secretary of the Interior – the Sault Tribe’s application to have the Casino property taken into trust.

48. The State will lose the benefit of its bargain and will be injured if the Sault Tribe is allowed to pursue and obtain trust status for the Casino property for the purpose of conducting Class III gaming on this property in violation of its Compact and IGRA.

WHEREFORE, Plaintiff respectfully requests that the Court enter its Order

- 1) declaring that any submission by Defendants of an application to the United States to have the Casino property taken into trust violates the Compact and IGRA,
- 2) enjoining Defendants from submitting such an application until such time as the Tribe has complied with § 9 of its compact, and
- 3) granting Plaintiff such other relief as the Court deems appropriate.

COUNT II—VIOLATION OF COMPACT SECTION 4(C)/IGRA

49. Plaintiff incorporates paragraphs 1-48 above as if fully stated in Count II.

50. Section 4(C) of the Sault Tribe 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.)

51. Section 42.713 of the Sault Tribe's Gaming Ordinance states:

Compliance with Federal Law and Regulations.

The Director, the Commission, and each Commissioner, licensed gaming establishment, licensee and management contractor shall comply with all provisions of the IGRA, NIGC regulations, the Tribal-State Compact, and any other applicable provision of federal law or regulations related to gaming.

52. The Sault Tribe is a "licensee" under § 42.713 of its Gaming Ordinance because it is the owner of the casinos licensed and operated by it in the Upper Peninsula of Michigan.

53. The violation of § 9 of the Sault Tribe compact described above violates the Tribe's own Gaming Ordinance, as well as the Compact, and is therefore a breach of § 4(C) of the Sault Tribe compact.

54. The violation of IGRA, 25 U.S.C. § 2710(d)(1), set forth in Count I, also violates Section 4(C) of the Sault Tribe compact.

55. The State will lose the benefit of its bargain and will be injured if the Sault Tribe is allowed to pursue and obtain trust status for the Casino property for the purpose of conducting Class III gaming on this property in violation of its Compact and IGRA.

WHEREFORE, Plaintiff respectfully requests that the Court enter its Order 1) declaring that any submission by Defendants of an application to the United States to have the Casino property taken into trust violates the Compact and IGRA, 2) enjoining Defendants from submitting such an application until such time as the Tribe has complied with § 9 of its compact, and 3) granting Plaintiff such other relief as the Court deems appropriate.

COUNT III— FEDERAL AND STATE COMMON LAW BREACH OF CONTRACT

56. Plaintiff incorporates paragraphs 1-55 above as if fully stated in Count III.

57. The Sault Tribe Board of Directors (Directors) adopted Resolution 2012-11 which approved the CDA and authorized the Chairman of the Board to take whatever steps were necessary to purchase the Casino property and have it taken into trust.

58. Submission of an application to have land taken into trust when the Sault Tribe has not entered into revenue sharing agreements with the State's other federally recognized tribes will violate §§ 9 and 4(C) of the Sault Tribe compact and will be a breach of that compact.

59. There will be no adequate remedy at law for this violation of the compact by the Directors which will deprive the State of the benefit of its bargain and cause the State irreparable injury.

WHEREFORE, Plaintiff respectfully requests that the Court enter its Order 1) declaring that any submission by Defendants of an application to the United States to have the Casino property taken into trust violates federal and state common law, 2) enjoining Defendants from submitting such an application until such time as the Tribe has complied with § 9 of its compact, and 3) granting Plaintiff such other relief as the Court deems appropriate.

COUNT IV—VIOLATION OF IGRA (25 U.S.C. §2719)

[The State includes Counts IV, V, and VI at this time for the purpose of ensuring they are preserved, while understanding that they may not yet be ripe for adjudication.]

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

61. IGRA prohibits Class III gaming on lands taken into trust for the benefit of a tribe after October 17, 1988 unless the lands come within certain stated exceptions. 25 U.S.C. §2719.

62. Even if the Tribe is successful in obtaining trust status for some or all of the Casino property, such property will not come within any of the exceptions listed in 25 U.S.C. §2719(b).

63. If the Tribe operates Class III gaming on the Casino property it will therefore violate 25 U.S.C. §2719.

WHEREFORE, Plaintiff respectfully requests that the Court declare that it is unlawful for the Tribe to operate Class III gaming on the Casino property and enter an Order enjoining the operation of such games on that property.

COUNT V—VIOLATION OF MICHIGAN GAMING CONTROL AND REVENUE ACT

64. Plaintiff incorporates paragraphs 1-63 above as if fully stated in Count V.

65. 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.

66. Defendants are not eligible to obtain a State-issued license for operating a casino on the Casino property.

67. On information and belief, Defendants intend to derive gross receipts from wagering at the proposed Lansing casino(s).

68. Gambling game equipment would be used in the conduct of unauthorized gambling games at the Lansing casino(s).

69. 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 declaring that any Class III gaming conducted at a Lansing casino by Defendants would be a violation of M.C.L. 432.220 and enter an Order enjoining the operation of such games on that property.

COUNT VI—NUISANCE

70. Plaintiff incorporates paragraphs 1-69 above as if fully stated in Count VI.

71. As set forth above, any operation of a casino by Defendants on the Casino property would be proscribed by law.

72. Any continued operation of a casino by Defendants on the Casino property would therefore be a public nuisance.

73. Defendants do not have authority to operate a casino on the Casino property.

74. Any continued operation of a casino by Defendants on the Casino property would harm the public interest and the balance of harm caused by such operation weighs heavily in favor of the State.

75. There is no adequate remedy at law for the continued operation of a casino by Defendants on the Casino property which causes the State irreparable injury.

WHEREFORE, Plaintiff respectfully requests that the Court enter its Order
1) declaring that any Class III gaming conducted at a Lansing casino by Defendants
would be a nuisance and 2) enjoining the operation of such games on that property.

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

Respectfully submitted,

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/s/ Louis B. Reinwasser

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Dated: September 7, 2012

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