12-2436

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

BRUCE TASSONE,

Plaintiff-Appellant,

v.

FOXWOODS RESORT CASINO,

MASHANTUCKET PEQUOT INDIAN TRIBE,

Defendants-Appellees.

On Appeal from the United States District Court

For the District of Connecticut

Brief of Appellant Bruce Tassone

Bruce Tassone, Pro Se

PO Box 433

North Adams, Ma 01247

(413) 664-9420

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Statement of Subject Matter and Appellate Jurisdiction(FRAP 28(a)(4))

Docket No. 12-2436

Pursuant to F.R.A.P. 3, 4 and 44, Appellant exercised his right to appeal judgment dated May 23rd, 2012, for Docket No. 11-cv-1718, entered by District Court of Connecticut, Bridgewater, on behalf of the ruling by the Honorable Warren W. Eginton, Senior United States District Judge, in favor of the Defendant, Foxwoods Resort Casinos' Motion to Dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). Defendant claimed Sovereign Immunity.

Appellant's request for appeal was received by The United States Court of Appeals for the Second Circuit and docketed on June 19th, 2012.

Appellant gave Notice of Appeal pursuant to F.R.A.P. 3(a)(3) and requested the district clerk serve notice of this filing of appeal pursuant to F.R.A.P. 3(d)(1). Appellant is requesting relief from this judgment pursuant

to F.R.C.P. 60(b)(6). Pursuant to F.R.A.P. 4(a)(1), Appellant filed within the 30 day time requirements and a date of September 7th, 2012 was set for submittal of brief/joint appendix pursuant to the Court's Local Rule 31.2.

The United States Court of Appeals has "exclusive jurisdiction" of this complaint pursuant to 28 U.S.C. § 1291, 1292(c) and (d), and 1295(a)(1).

Appellant is requesting relief from District Court's judgment granting Defendant's Motion to Dismiss. Appellant is requesting relief pursuant to F.R.C.P. 60(b)(6); Defendant's Motion To Dismiss, denied; case remanded back to District Court; and original complaint docketed for Trial. Pursuant to F.R.A.P. 44(a), Appellant, in this brief, has challenged the District Court's ruling on grounds of constitutionality.

Appellant further asserts that venue is proper in this judicial district, pursuant to 28 U.S.C. § 1391(b) and (c); because Plaintiff resides and is a resident of The United States; because a portion of the alleged events occurred outside of the reservation on United States soil; and because Appellant has no other true recourse but to bring suit in this court.

All or a substantial part of the events or omissions giving rise to Appellant's claims occurred adjoining this judicial district, including but not limited to, mail delivered within and outside this district, banking transactions performed within and outside this district, but wholly within United States Territory and therefore, as argued within this brief, this is the correct venue.

As such, the Court has jurisdiction over the subject matter of Count I of this proceeding pursuant to 28 U.S.C. § 1331. The Court has jurisdiction over the subject matter of the remaining Counts of this action pursuant to 28 U.S.C. § 1367, as the claims set forth in each of those Counts are so related to the claims set forth in Count I that they form part of the same case or controversy under Article III of the United States Constitution.

Further This Court has subject matter jurisdiction granted by 28 U.S.C. § 1332, "Diversity of Citizenship", subsection (a)(4), and 28 U.S.C. § 1603, "Definitions", subsections (a), (b), (c), (d) and (e).

If in fact as Defendant has argued, they have the same power of immunity granted to a sovereign state by the United States Government,

that state would be "foreign" inasmuch as it is not part of the United States, thereby subject to suit per 28 U.S.C. § 1603(definition) (a), which includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state. And thereby subject to suit per 28 U.S.C. § 1332 (a)(4) as a foreign state, as defined in 1603(a) of this title, as plaintiff and citizen of a State or of different States. Even as a "domestically dependent state", Appellant argues this fits the definition of "foreign" within the context of 28 U.S.C. § 1332 (a)(4).

To follow further, the Compact between the Mashantucket Tribe and The State of Connecticut, is a treaty by definition and in and of itself, governed by United States Law and therefore subject to suit per 28 U.S.C. § 1331 where the district courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Defendant is either a domestic or foreign state as defined by 28 U.S.C. § 1603(a) and therefore Appellant argues Federal Jurisdiction is correct under 28 U.S.C. § 1332(a)(4). Furthermore, The Compact between the State of Connecticut and The Mashantucket Tribe, Defendant, is a

treaty governable by 28 U.S.C. § 1331, where federal district courts have original jurisdiction.

Moreover, Appellant is entitled to jurisdictional remedy in Federal Court as argued in this brief because three(3) of the four(4) exceptions to the "Tribal Exhaustion Rule" apply.

Finally, Defendant claims "absolute sovereign immunity" that can only be repealed by the United States Congress. Defendant claims it is immune from Governmental or United States citizen interference when it comes to Defendant's violations of Federal Law and/or RICO violations and breaches of contract. If that were true, there would be no need for State Compacts, taxation on Indian revenue, the FBI overseeing criminal affairs of Indians, on Indian territories or for the Defendant to adhere to any provisions of its Compact, State Gaming Procedures or State or Federal laws.

The abrogation and waiver of Defendant's sovereign immunity is expressed in the Compact and Indian Gaming Regulatory Act and implied every time Defendant violated Federal Law or breached State Compacts.

Statement of the Issues Presented for Review(FRAP 28(a)(5))

Docket No. 12-2436

The question before this Court, The United States Court of Appeals for the Second Circuit, is one of jurisdiction. Is Defendant, The Mashantucket Pequot Indian Tribe, entitled to sovereign immunity under Fed. R. Civ. P. 12(b)(1) against suit of any kind in Federal Court, where Appellant has claimed breach of contract, breach of duty of care and premise liability, violation of Federal RICO laws and abrogation of Compact with the State of Connecticut?

And did District Court commit reversible error when it denied Appellant's Motion To Protect and Preserve all Discovery material. Appellant was concerned that Defendant might destroy video evidence that was central to his complaint and was evidence of RICO violations. A ruling to preserve this material, would not have jeopardized subsequent rulings by the District Court. However, since this motion was denied, Defendant was given sufficient notice to destroy potential evidence as it routinely does with all video security, as it was under no obligation to preserve material that may incriminate itself.

Statement of the Case(FRAP 28(a)(6)), L.R. 28.1

Docket No. 12-2436

Appellant filed a complaint for breach of contract, breach of duty of care and premise liability which was docketed by The United States District Court for the District of Connecticut on November 7th, 2011. Incorporated into the complaint were several Counts of both Federal and State Racketeering violations.

On December 5th, 2011, Appellant filed a Motion Compelling Defendant to Protect and Preserve Discovery Material. On December 14th, 2011, the case was transferred to Judge Warren W. Eginton. Defendant was served, an extension of time was granted for Motion to Dismiss and on February 22nd, 2012, Defendant submitted Motion to Dismiss for lack of jurisdiction, Fed.R.Civ.P. 12(b)(1).

Appellant filed two Memorandum's in opposition to Motion to Dismiss and on May 23rd, 2012, Judge Eginton granted Defendant's Motion to Dismiss for lack of jurisdiction and found Motion to Compel, moot.(docket entries 24 and 25, Case 3:11-cv-01718-WWE).

On June 11th, 2012, Appellant filed Notice of Appeal with The United States Court of Appeals for the Second Circuit.

Statement of the Facts(FRAP 28(a)(7))

Docket No. 12-2436

--Appellant filed a complaint for breach of contract, breach of duty of care and premise liability which was docketed by The United States District Court for the District of Connecticut on November 7th, 2011.

--Incorporated into the complaint were several Counts of both Federal and State Racketeering violations.

--Appellant listed the alleged violations in the complaint including over 100 instances of bank, wire and mail fraud.

--Appellant attached Exhibit "D", to the original complaint which was "the self-exclusion" contract.

--On December 5th, 2011, Appellant filed a Motion Compelling Defendant to Protect and Preserve Discovery Material as Appellant was worried Defendant would destroy this material vital to his case.

--On December 14th, 2011, the case was transferred to Judge Warren W. Eginton.

--on January 4th, 2012, Appellant's Motion to Protect was denied until after Defendants were served.

--On February 1st, Defendant's attorney submitted Notice of Appearance.

--On February 2nd, Defendant was granted Extension of Time for Motion to Dismiss even before Waiver of Service was acknowledged by The District Court(2/7/12)

--On February 16th and 22nd, Appellant filed Motions to begin discovery and his Rule 26f report.

--On February 22nd, Appellant refilled his Motion to Protect and Preserve.

--On February 22nd, 2012, Defendant submitted Motion to Dismiss for lack of jurisdiction, Fed.R.Civ.P. 12(b)(1).

--On February 23rd, 2012, The District Court denied Appellants Motion to Begin Discovery.

--Appellant filed two Memorandum's in Opposition to Motion to Dismiss and on May 23rd, 2012, Judge Eginton granted Defendant's Motion to Dismiss for lack of jurisdiction and found Motion to Compel, moot.(docket entries 24 and 25, Case 3:11-cv-01718-WWE)

--The District Court offered no remedy or relief to Appellant in its decision

to grant Defendant's Motion to Dismiss. Appellant argued in his brief to The United States Court of Appeals for the Second Circuit, that this constituted a violation of his Fifth and Fourteenth Amendment due process rights'

--Appellant filed Notice of Appeal and it was received and docketed by Court of Appeals on June 11th, 2012.

--Appellant argued in its brief to The United States Court of Appeals that Federal Jurisdiction does apply to RICO violations and cited Supreme Court case law confirming such.

--Appellant argued in its brief that the Defendant abrogated its sovereignty expressly and impliedly in Compact with State of Conn. when it violated RICO.

--Appellant argued in brief to The United States Court of Appeals that reversible error was committed when District Court denied Motion to Protect and Preserve Discovery Material.

-- Appellant argued in brief to The United States Court of Appeals that exceptions to "Tribal Exhaustion Rule" apply to this case.

--Appellant provided statutory argument for reversing District Court decision and remanding complaint back to District Court for trial.

--Appellant filed brief to The United States Court of Appeals for the Second Circuit on September 4th, 2012.

Summary of the Argument(FRAP 28(a)(8))

Docket No. 12-2436

Appellant argues that Defendant tortiously breached its contract of self-exclusion; failed to uphold the minimal duty of care standards; breached its premise liability requirements and violated not only Federal RICO Law but Connecticut State Law breaching its Compact with the State of Connecticut and abrogating Defendant's sovereign immunity.

Appellant further argues that Defendant's sovereign immunity is superseded by Appellant's due process rights as a United States citizen and non-tribe member; and that Appellant is entitled to statutory relief since a portion of the violations alleged occurred off reservation and within the structure of the United States banking and postal system. Appellant's argument rests on current case law that supports state jurisdiction where non-members are partially involved. Finally, Appellant presents argument that Federal Jurisdiction is the only true recourse and consistent with Appellant's statutory relief, as this complaint meets 3 of the 4 exceptions to "The Tribal Exhaustion Rule".

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRUCE E. TASSONE,	) UNITED STATES COURT OF APPEALS
	) DOCKET: 12-2436cv
Appellant,	)
	)
vs.	)
	) August 29th, 2012
FOXWOODS RESORT CASINO, and MASHANTUCKET PEQUOT INDIAN TRIBE	)
Defendant.	)

BACKGROUND

The question before This Court, United States Court of Appeals for the Second Circuit, is one of jurisdiction: Can Appellant bring suit in Federal Court for tortious breach of contract, breach of duty of care and premise liability where there are RICO violations involved and where Defendant is the Mashantucket Indian Tribe which has claimed absolute sovereign immunity from suit of any kind in Federal Court, including a suit alleging RICO violations.

Briefly, Appellant is a non-Indian, pathological gambler, who served time in prison for a crime committed to fund his gambling addiction. Pathological gambling is defined by the *Diagnostic and Statistical Manual of Mental Disorders, (4th Ed.)* as a persistent and recurrent maladaptive gambling behavior… indicated by five (or more) of the following: a person

(1) is preoccupied with gambling;

(2) needs to gamble with increasing amounts of money in order to achieve the desired excitement;

(3) has repeated unsuccessful efforts to control, cut back, or stop gambling;

(4) is restless or irritable when attempting to cut down or stop gambling;

(5) gambles as a way of escaping from problems or of relieving a dysphoric mood;

(6) after losing money gambling, often returns another day to get even;

(7) lies to family members, therapist, or others to conceal the extent of involvement with gambling;

(8) has committed illegal acts such as forgery, fraud, theft, or embezzlement to finance gambling;

(9) has jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling;

(10) relies on others to provide money to relieve a desperate financial situation caused by gambling.

From 2000 until 2004, Appellant made his residence The Foxwoods Casino Resort while working full-time in Boston, Massachusetts. Every morning he would leave his room at the casino and drive to work and every night he would return and gamble, most nights all night long. When he lost his job in 2003, he seldom left the casino. The fact that not one casino member intervened; not one casino member asked him to leave; not one casino staff during that four year period assisted him in getting help, is at the heart of this suit.

And while Appellant had gambled previously at Foxwoods, from 1993 until 2000,

he never had lost more than a few thousand dollars and he never stayed more than two days in any six month period. From 2000 until 2004, Appellant gambled with and lost millions of dollars—almost 3 million according to his presentencing report, all while residing permanently in Defendant's casino. Late in 2003 while Appellant was being investigated and later placed on pre-trial probation, Defendant was informed of the legal and criminal actions against Appellant, yet allowed him to continue to stay at the casino and gamble. Appellant received hundreds of wires into his account at Foxwoods that Appellant has alleged Defendant knew were unlawful. Defendants were therefore complicit, and in fact actively aided Appellant in the improper securing of such sums by allowing these illegal wire transactions to take place on Defendant's premises' and with their knowledge as Defendant knew that they were likely to be spent at Defendant's Casino.

On March 12th, 2004, Appellant while in his room at Defendant's casino, ingested 32(thirty-two) Trazadone pills and was rushed to New London Hospital where he spent 3 days in the emergency room and 11 days in the hospital's lock-down psyche ward. From there Appellant was transferred to The Harbour Center in Baltimore, Maryland, a treatment center for pathological gamblers where he received the help he needed and, during his forty-five day stay there, was required to and eventually sent a letter to Defendant (Exhibit "D", docket entry 1), requesting self-exclusion.

Appellant was sentenced and incarcerated in 2005 and released in 2006. He remained free from gambling for over six years. In 2010, after receiving a tournament advertisement from Defendant, Appellant returned to Foxwoods Casino where he was welcomed back, and for more than one year, gambled and frequently stayed at the Hotel without Defendant

questioning his presence or enforcing the self-exclusion contract. During this time, he used his sister's credit card, a card with printed card-owner name, Susan Daugherty. Appellant presented this card many times at the Casino cage where again Defendant gave Appellant money to gamble and later accepted payment from Banks and Credit Card Companies for these transactions.

Appellant alleges that Defendant, by failing to uphold and enforce the self-exclusion contract between Appellant and Defendant, and by encouraging such persons to gamble even when it knows that the behavior is addictive for a certain percentage and will inevitably cause harm to them and their families, together with the alleged RICO violations, is sufficient legal grounds for Appellant's complaint. As stated above, pathological gambling is a recognized addiction—similar to alcoholism or heroin addiction---that contains physiological elements which, for a certain segment of the population(estimates run between 3 and 6 percent of the adult population according to studies run by the Massachusetts Council on Compulsive Gambling and Dr. Howard Shaffer, Ph.D., Division on Addiction, Harvard) can be difficult if not impossible for them to control. Appellant, like tens of thousands of others throughout the United States, has battled this disease since adolescence. And aside from gambling "junkies" themselves, no one knows better the habits, needs, and proclivities of compulsive gamblers better than the very casinos---one might realistically say "the pushers"---which monitor, solicit, and then service the junkies habit. Appellant maintains that is precisely what occurred during his multi-year victimization by this large and powerful institutional Defendant which had, in the very least, a reasonable duty of care to protect him(a United States citizen) from the well-known destructive and frequently life-ruining effects of its money-making enterprise.

Furthermore, Appellant is alleging that Defendant engaged in tortious conduct,

a. By allowing Appellant to write checks payable to Foxwoods without obtaining sufficient information to know whether Appellant had sufficient funds to cover the amounts of the checks;

b. By threatening Appellant with the prospect of collecting treble damages based upon allegations of a crime, even though Foxwoods would be a co-conspirator if there were such a crime

c. By offering enticements to gamble, such as free hotel rooms, meals, limousine transportation, and alcohol;

d. By actually paying Appellant to come to the casino to gamble, with the knowledge of the very high probability that such payments would be money well-invested;

e. By extending lines of credit to Appellant in amounts and by methods that no reputable business would allow, much less actively facilitate;

f. By the notable failure to train its employees as to the proper actions to commence to avoid taking advantage of Appellant who is addicted to gambling, when it instead encourages such employees to take advantage of such patrons. Appellant was often shaken awake at the gambling tables and encouraged to make another bet;

and tortiously breached its contract of self-exclusion; failed to uphold the minimal duty of care standards; breached its premise liability requirements and violated not only Federal RICO Law but Connecticut State Law. All of this, including citation of law, standards of care and premise liability, was outlined and defined in the original complaint in District Court.

Defendant's knowledge of the foreseeability of the harm to pathological gamblers such as Appellant, created a duty on the part of Defendant to exercise reasonable care under those circumstances, and to avoid affirmative actions to take advantage of such a patron.

Defendant intentionally, recklessly, and/or negligently breached the duty of care it owed to Appellant by failing, *inter alia*, to:

a. acknowledge his pathological gambling infirmities when they were well-known to it;

b. deny him access to the Casino;

c. ban him from the Casino by notification to Defendant's security personnel to deny him entry and/or to remove him from the premises upon learning of his presence, as it does –or is supposed to do---for those who place themselves on the self-exclusion list;

d. train Defendants' personnel to recognize individuals who exhibit signs of pathological gambling behavior and to take appropriate steps to prevent such individuals from gambling.

Defendant intentionally, recklessly, and/or negligently breached the duty of care it owed to Appellant, *inter alia*:

a. by enticing him to gamble, through the postal system and otherwise, even though Defendant knew that Appellant did not have the capabilities as a pathological gambler to resist such enticements;

b. by a scheme in which it allowed him to use a credit card that was obviously not his, (a card with the printed card-owner name of Susan Daugherty), to

gamble by obtaining funds from a bank account which it knew, or should have known, was not his.

In tortiously breaching its above-described duties with respect to Appellant, by luring him to the Casino and taking his money with its knowledge that he was helplessly addicted to gambling, Defendant knowingly, intentionally, or recklessly inflicted severe emotional distress on Appellant. All of this was perfectly foreseeable to Defendant and occurred over a period of not days or weeks, but months and years.

While the gambling took place on Indian-held reservation land, or more accurately stated: Government-held land for The Mashantucket Tribe, the acts of bank, wire, and mail fraud occurred outside of Defendant's reservation land. From 2004 until 2011, Defendant solicited Appellant with advertisements through the mail despite his request for self-exclusion, right up until November of 2011 when Appellant filed Complaint in Federal District Court, Connecticut.

In May of 2012, the District Court, solely on the basis of a broad definition of sovereign immunity, granted Defendant's Motion to Dismiss.

DEFENDANT'S ARGUMENT

In its motion to dismiss, Defendant argued that, "The court lacks subject matter jurisdiction due to tribal immunity from suit"(docket entries 17 and 22). Defendant argued that the final Compact with State of Connecticut was not a Compact at all but a mere list of "gaming procedures" which does not abrogate that immunity and that, "Indian Tribes have long been recognized as possessing the common law immunity from suit traditionally enjoyed by sovereign powers." Defendant went on to state in its motion to dismiss, "The United States Supreme Court has consistently reaffirmed tribal sovereign immunity from suit..."

Defendant apparently believes that the only thing governing their actions was the "regulations promulgated by the Secretary of the Interior pursuant to 25 U.S.C. 2710(d)(7)(B)(vii)."(docket entry 22) and that Appellant's remedy, if any at all, was to be in Defendant's very own Tribal Court.

APPELLANT'S ARGUMENT

INTRODUCTION

Appellant has alleged that Defendant violated United States RICO Laws as they pertain to bank, wire, and postal fraud, thereby breaching Defendant's Compact with the State of Connecticut and abrogating or waiving Defendant's sovereign immunity in Federal Court. Appellant has further alleged that Defendant's sovereign immunity is superseded by Appellant's due process rights as a United States citizen and non-tribe member; and that Appellant is entitled to statutory relief since a portion of the violations alleged occurred off reservation and within the structure of the United States banking and postal system. Finally Appellant notes that most recent case law suggests that the " majority of Supreme Court Justices seem to support the assertion of state jurisdiction when non-members are at least partially involved and none of the Justices ever seem to support tribal inherent jurisdiction over non-members?"1

As stated in the background section of this brief, Appellant has alleged that Defendant:

A) Accepted and processed over 100 wire transaction from Appellant into its Casino after it knew Appellant was a pathological gambler.

B) Accepted and processed over 10 wire transactions after being informed by the Department of Justice that Appellant was being criminally investigated by Postal Inspectors, Connecticut State Police and Department of Justice.

1 (2006 North Dakota Law Review, 82 N. Dak. Law Rev.777, Author Alex Skibine)

C) Processed more than three credit card transactions for Appellant at Defendant's Casino, after Appellant entered into a self-exclusion contract with Defendant.

D) The credit card was in a females name, Susan Daugherty, and Appellant is a male named Bruce.

E) Sent by United States postal service, solicitous advertisements to Appellant after he had requested self-exclusion as a pathological gambler, in an effort to persuade Appellant to gamble at Defendant's Casino.

F) Failed to report to the United States Treasury from 2000 until 2004, that Appellant had been gambling in excess of $10,000 per day. This is a potential violation of the Money Laundering/Bank Secrecy Act.

Appellant is entitled to a presumption of the facts alleged. The Court must accept as true all factual allegations in the complaint and must draw inferences in a light most favorable to the Appellant. "Although a complaint does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all allegations in the complaint are true (even if doubtful in fact). A plaintiff must plead only enough facts to state a claim to relief that is plausible on its face. The function of a motion to dismiss is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof. The issue is not whether a plaintiff will prevail

but whether he is entitled to offer evidence to support his claims." ***Flemming and Martinez v Goodwill Mortgage Services, LLC et al. 3:2007cv00803(2007)***

And while **Flemming and Martinez v. Goodwill Mortgage**, is less about a Rule 12(b)(1) jurisdictional dismissal , Appellant argues that "he is entitled to offer evidence to support his claims…and relief is plausible on its face…" And moreover, that relief can only be in Federal Court because of the RICO allegations, criminal under Federal Law and subject to Federal Jurisdiction, and breach of State Compact abrogating Defendant's sovereignty. As Appellant will argue later within this brief, the exceptions to "The Tribal Exhaustion Rule" apply to this complaint leaving Appellant with his only true recourse in Federal Court. By allowing Defendant's motion to dismiss, The District Court violated Appellants' right to due process.

COMPACT AND RICO

While Defendant has argued the Compact between the State of Connecticut and the Mashantucket Tribe is not a "Compact" but "a list of gaming procedures", and hence no agreement, both the Connecticut Department of Consumer Protection and the Connecticut Gaming Division refer to the agreement as a "Compact". In fact, the NIGC refers to the agreement as a "Compact." Additionally there is a Civil Action No. attached to the Compact (H89-717) displayed on the State of Connecticut's website.

> Enforcement authority of the State gaming agency. (From Compact)
>
> If the State gaming agency determines that the Tribal gaming operation is not in compliance with the provisions of this Compact the State gaming agency shall deliver a notice of non-compliance to the Tribal gaming agency and the Tribal gaming operation setting forth the nature of such non-compliance and the action required to remedy such non-compliance. In the event that the Tribal gaming operation fails to

> comply with any provision of this Compact following receipt of a valid notice from the State gaming agency requesting correction of such non-compliance, ***the United States District Courts shall have jurisdiction pursuant to 25 U.S.C. §2710(d) (7) (A) (iii) over any cause of action initiated by the State gaming agency to enjoin a class III gaming activity located on the Reservation and conducted in violation of this Compact. The Tribe hereby waives any defense which it may have by virtue of its sovereign immunity from suit with respect to any such action in the United States District Courts to enforce the provisions of this Compact, and consents to the exercise of jurisdiction over such action and over the Tribe by the United States District Courts with respect to such actions to enforce the provisions of this Compact.***

"The United States District Court shall have jurisdiction pursuant to 25 U.S.C. §2710(d) (7) (A) (iii)..." and the " Tribe hereby waives any defense which it may have by virtue of its sovereign immunity from suit with respect to any such action in the United States District Courts to enforce the provisions of this Compact."(emphasis added)

Even though the State Gaming Agency has not enforced this Compact or levied State sanctions, Appellant argues that he should not be penalized for lack of oversight or of acknowledgment of this malfeasance by the Agency. Appellant further argues that once the facts and weight of his evidence are brought to light in This Court, the State Gaming Agency may in fact enforce and enjoin Defendant's Gaming activities in United States District Court. Here Appellants' choices are limited: A) bringing suit against Defendant or B) bringing suit against the State for failing to bring suit against Defendant . Appellant has chosen the former, and, being himself a member of the State, would like to avoid the latter.

Additionally, within the Department of the Interior is the (NIGC) National Indian Gaming Commission whose job is to oversee and promulgate rules and regulations for Indian Gaming activities. This from the Indian Gaming Regulatory Act:

"(3) (A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to--

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

And finally:

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect."(NIGC—Indian Gaming Regulatory Act)

There is nothing that denotes absolute sovereignty. The NIGC has mandated that Indian Laws have to be consistent with the State and that there is an "allocation of criminal and civil jurisdiction between the State and in this case, the Defendant." Further reading within the regulations states, "... ***regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect."(emphasis added)***

Defendant is inherently unequipped to decide a case wherein they have violated United States Federal and State Law. There exists no Indian Statutes for RICO violations of bank and mail fraud. United States Law applies because both the banking system and Post Office are used by the Defendant but regulated by the United States Government.

In the ***United States v. Baker, Nos. 94-30125, 94-30138, 94-30144(1995),*** Shoalwater Indian Tribe member, Kenneth Baker, argued that RICO violations did not apply to Tribe members as they pertained to the Contraband Cigarette Trafficking Act(CCTA). Baker and Hale were convicted of all crimes against them, including the RICO violations, despite arguing that RICO did not apply to sovereign Indians. The decision of the Lower Court was upheld on appeal by The United States Court of Appeals, Ninth Circuit:

> "Federal laws of general applicability are presumed to apply with equal force to Indians. United States v. Farris, 624 F.2d 890, 893 (9th Cir.1980), cert. denied sub nom, Baker v. United States, 449 U.S. 1111, 101 S.Ct. 919, 920, 66 L.Ed.2d 839 (1981). See also United States Dep't of Labor v. OSHRC, 935 F.2d 182, 184 (9th Cir.1991) (quoting FPC v. Tuscarora Indian Nation, 362 U.S. 99, 116, 80 S.Ct. 543, 553, 4 L.Ed.2d 584 (1960))."

Further within the opinion, the Appellate Court clarified the statute relative to mental state and intent essentially stating that whether the act is willful or negligent, it is still a crime:

> "Similarly, a defendant can be guilty of conspiring to violate RICO if he possesses the mental state necessary for conviction of the substantive RICO offense. See Roselli, 432 F.2d 879. The mens rea element necessary for a substantive RICO conviction is the same as is required for the predicate crime, in this case violation of the CCTA. United States v. Scotto, 641 F.2d 47, 55-56 (2d Cir.1980), cert. denied, 452 U.S. 961, 101 S.Ct. 3109, 69 L.Ed.2d 971 (1981). Because the CCTA does not require proof of intent to violate the law, the defendants can be guilty of conspiring to violate RICO even if they were not aware their actions were illegal." ***United States v. Baker, Nos. 94-30125, 94-30138, 94-30144(1995),***

The ruling by the Ninth Circuit, upholding the Lower Courts decision, suggests that there is no such thing as "absolute sovereignty" and that The Federal and State Courts indeed have every right to hear cases such as this especially when it comes to RICO violations.

Remedy in Tribal Court is impossible because of the breadth of the charges and the inherent conflict of interest this would pose for Tribal Court to rule outside of their jurisdiction. Is Defendant going to criminally and civilly "sanction itself?" These are matters that pertain to United States banking, wire and mail codes. While the Defendant makes use of these services, Tribal Court has not been the decided forum to rule on issues of violations of Banking or Postal Code laws. Therefore, the "Tribal Court Exhaustion Rule" has no applicability here.

In ***Nevada v Hicks***, The Supreme Court further clarified "the Tribal Court Exhaustion Rule" prescribed in ***National Farmers Union Insurance Companies v Crow Tribe of Indians et al(471 U.S. 845, No. 84-320):***

"The Supreme Court has outlined four exceptions to the exhaustion rule: (1) when an assertion of tribal court jurisdiction is "motivated by a desire to harass or is conducted in bad faith"; (2) when the tribal court action is "patently violative of express jurisdictional prohibitions"; (3) when "exhaustion would be futile because of the lack of an adequate opportunity to challenge the [tribal] court's jurisdiction"; and (4) when it is "plain" that tribal court jurisdiction is lacking, so that the exhaustion requirement "would serve no purpose other than delay." ***Nevada v. Hicks, 533 U.S. 353, 369, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001).***

Appellant argues that both (2) and (4) apply fully and (3) applies indirectly. As cited earlier in this brief, both the Compact with Connecticut and the Indian Gaming Regulatory Act as well as United States Law regarding RICO violations expressly prohibit violations of State and Federal Law by tribes: "...***except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations...***

Jurisdictionally, Appellant is unaware of Indian Statutes for RICO violations. How would Appellant challenge a ruling from Tribal Court that is not based upon United States banking, wire and postal laws? And to item (4), why begin the exercise other than delay? Defendant is alleged to have violated its compact with the state; violated federal law; and violated the NIGC Regulatory Act—each of which abrogated Defendant's sovereign immunity from suit. Moreover a portion of the charges occurred off-reservation land against Appellant, a non-tribal member. While some of the purported complaint occurred on reservation land, the RICO violations, (18 U.S.C. §§ 1961 *et seq.*, 18 U.S.C. § 1343, 18 U.S.C. § 1344, and 18 U.S.C. § 1341) including the banking wires and mail fraud/illegal enticements to gamble after Appellant's self-exclusion, occurred off reservation land thereby allowing a Federal Jurisdiction

claim. When Defendant violated Federal Law, it abrogated its sovereign immunity and Tribal Court has neither jurisdiction nor subject matter precedent, to rule here.

Moreover the RICO violations are a substantive part of Appellant's complaint. "How far will Defendant go to take advantage of pathological gamblers?" The RICO violations address Defendant's propensity for fraud and without them, this is just another tort complaint. But the RICO violations moved this to a different level: "A case arises under federal law if a well-pleaded complaint establishes either that federal law creates the cause of action or that within plaintiffs... claim is embedded a substantial question of federal law, the resolution of which is necessary to plaintiffs right to relief...."(***Empire Healthchoice Assurance, Inc. v. McVeigh, 547 U.S. 677 689-690, 126 S. Ct. 2121,165 L. Ed. 2d, 131 (2006)***

"NO SUCH THING AS ABSOLUTE SOVEREIGN IMMUNITY FROM SUIT"

In ***Montana v. United States, Atkinson Trading Co., Inc. v. Shirley et al, MacArthur v. San Juan County, and Strate et al v. A-1 Contractors et al,*** The Supreme Court made clear that the "inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe...:"

> (From Atkinson) "In *Montana* v. *United States*, 450 U.S. 544, this Court held that, with two limited exceptions, Indian tribes lack civil authority over the conduct of nonmembers on non-Indian land within a reservation..." ***(Atkinson Trading Co., v. Shirley et al, No.(00-454),532 U.S., 645 (2001), 210 F.3d, 1247)***
>
> (From MacArthur v San Juan) "The leading case defining the scope of tribal inherent civil authority is Montana v. United States. Montana articulates the general rule that "exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional

> delegation." ... Generally, "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." Id. at 565., 101 S.Ct. 1245***(MacArthur v. San Juan County, No. 01-4001, 309 F. 3d 1216)***

The question before The Court in ***Strate v. A-1 Contractors, and later Plains Commerce Bank v. Long Family Land and Cattle Company, Inc. et al***, cases most similar to Appellant's, was whether or not a tribal court had jurisdiction over a civil action against an allegedly negligent driver who was also a non-tribe member. An accident occurred on a public highway, maintained by the State, but under a federally granted right of way over Indian reservation land.

> ***(Strate)***We reversed the Court of Appeals' judgment and held that federal courts have authority to determine, as a matter "arising under" federal law, see 28 U.S.C. §1331 whether a tribal court has exceeded the limits of its jurisdiction. See 471 U. S., at 852-853..... But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self government or to control internal relations." 450 U. S., at 564. Neither regulatory nor adjudicatory authority over the state highway accident at issue is needed to preserve "the right of reservation Indians to make their own laws and be ruled by them." *Williams,* 358 U. S., at 220. The *Montana* rule, therefore, and not its exceptions, applies to this case.(***Strate et al v. A-1 Contractors et al,((95-1872)520 U.S. 438,(1997))***

What followed ***MacArthur and Atkinson and Strate, was Plains Commerce Bank v. Long Family Land and Cattle Company, Inc. et al.***, a case where at issue was:

> Issue: Whether Indian tribal courts have subject-matter jurisdiction to adjudicate civil tort claims as an "other means" of regulating the conduct of a nonmember bank owning fee-land on a reservation that entered into a private commercial agreement with a member-owned corporation?
> Held: According to precedents, "a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction." *Id.*, at 453. We reaffirm that principle today and hold that the Tribal Court lacks jurisdiction to hear the Longs' discrimination claim because the Tribe lacks the civil authority to regulate the Bank's sale of its fee

land.."(***Plains Commerce Bank v. Long Family Land and Cattle Company, Inc. et al., No. 07-411, 491 F.3d, 878, reversed***)

In each of these cited cases, from ***Montana v. United States, through Plains Commerce Bank,*** The Supreme Court found against Indian Tribal interests, more specifically as they pertain to non-Indians on, adjacent to, and off reservation land. Appellant argues that his complaint falls into these categories of non-tribal member, off reservation land, with both the bank and mail fraud occurring off reservation land.

Defendant presented the argument in its Motion to Dismiss, that "The United States Supreme Court has consistently reaffirmed tribal sovereign immunity from suit..."(docket entries 17 and 22) In the seven most recent decisions handed down by the United States Supreme Court, including their most recent ruling of ***Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak et al, (No.11-246 and 11-247, June 18th, 2012)*** it appears that the case law suggests otherwise. Increasingly, "..majority of Supreme Court Justices seem to support the assertion of state jurisdiction when non-members are at least partially involved and none of the Justices ever seem to support tribal inherent jurisdiction over non-members?"2(emphasis added)

In ***Patchak***, The Secretary of the Interior attempted to acquire land, the Bradley Property, for the Band of Pottawatomi Indians to develop a casino and was challenged by a United

2 Ibid.

States citizen, David Patchak, through the Quiet Title Act(QTA) that morphed into an action involving the Administrative Procedure Act(APA) §465:

> "If the Government had violated a statute specifically addressing how federal land can be used, no one would doubt that a neighboring landowner would have prudential standing to bring suit to enforce the statute's limits. The difference here, as the Government and Band point out, is that §465 specifically addresses only land acquisition. But for the reasons already given, decisions under the statute are closely enough and often enough entwined with considerations of land use to make that difference immaterial. As in this very case, the Secretary will typically acquire land with its eventual use in mind, after assessing potential conflicts that use might create. See 25 CFR §§151.10(c), 151.10(f), 151.11(a). And so neighbors to the use (like Patchak) are reasonable—indeed, predictable—challengers of the Secretary's decisions: Their interests, whether economic, environmental, or aesthetic, come within §465's regulatory ambit.
>
> * * *
>
> The QTA's reservation of sovereign immunity does not bar Patchak's suit. Neither does the doctrine of prudential standing. We therefore affirm the judgment of the D. C. Circuit, and remand the case for further proceedings consistent with this opinion." ***Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak et al, (No.11-246 and 11-247, June 18th, 2012)***

Ultimately it is The United States Government, Secretary of the Interior, that places land in trust for Native American Indians, "reservation land", and in our system of law, sovereignty is based upon land and because tribes do not own land, they are not "absolutely sovereign".

Appellant argues that the sovereign immunity granted to the Tribes and in this case, the Defendant, is not absolute at all. The Federal Government recognizes tribal nations as "domestic dependent nations" and has established these laws as an attempt to clarify the relationship between the federal, state, and tribal governments. The Constitution and later federal

laws grant local sovereignty to tribal nations, yet do not grant full sovereignty equivalent to foreign nations, hence the term "domestic dependent nations."

In ***Krystal Energy Company v. Navajo Nation(No. 02-17047),*** The Ninth Circuit Court of Appeals ruled that because Indian tribes are domestic governments, Congress has abrogated their sovereign immunity in 11 US.C. § 106(a)(Bankruptcy code):

> "We are well aware of the Supreme Court admonitions to "tread lightly" in the area of abrogation of tribal sovereign immunity....But the Supreme Court's decisions do not require Congress to utter the magic words "Indian tribes when abrogating tribal sovereign immunity...Congress speaks unequivocally when it abrogates the sovereign immunity of "foreign and domestic governments."... ***Krystal Energy Company v. Navajo Nation(No. 02-17047)***

Krystal Energy Company v. Navajo Nation, Rice v Rehner, and Bittle v. Bahe, all show that the United States has regulated and ruled in an ever increasing manner, towards further definition and legislation of Indian activities such as liquor sale and distribution, tort liability, bankruptcy codes, and land ownership as they pertain to Indian businesses.

Defendant continues to imply that Appellant's constitutional rights to due process are trumped by Defendant's "absolute sovereignty". We are in this venue, because it is not Congress that decides this case, but This Court. In the Foreign Sovereign Immunities Act of 1976(28 U.S.C.A. §§ 1 note, 1330, 1332, 1391, 1441, 1602-1611), Congress codified the theory of sovereign immunity, listing exceptions for certain types of acts such as commercial acts, and granted exclusive power to decide sovereign immunity issues to The Courts, rather than the State Department.

REVERSIBLE ERROR BY LOWER COURT

Appellant argues that the District Court erred when deciding Defendant's Motion to Dismiss under *Fed. R. Civ. P. 12(b)(1).* Defendant made no attempt to dispute the facts or allegations of the complaint. If they had, presumably Defendant would have also filed a F.R.C.P. 12(b)(6) Motion to Dismiss. Therefore it must be presumed that the facts stated in the complaint are correct and uncontested by Defendant, and by virtue of this, Defendant has abrogated its sovereign immunity.

Additionally Appellant argues that The District Court committed reversible error when it denied Appellant's Motion To Protect and Preserve all Discovery material. Appellant was concerned that Defendant might destroy video evidence that was central to his complaint and was evidence of RICO violations. A ruling to preserve this material, would not have jeopardized subsequent rulings by the District Court. However, since this motion was denied, Defendant was given sufficient notice to destroy potential evidence as it routinely does with all video security, as it was under no obligation to preserve material that may incriminate itself. The District Court, by failing to Compel Defendant to Protect and Preserve Discovery Material, committed reversible error by precluding Appellant from having opportunity to use said material in whatever venue becomes appropriate. Furthermore, The District Court offered no remedy or relief for Appellant in the decision violating Appellant's Fifth and Fourteenth Amendment Due Process Rights'.

Since the District Court allowed a complaint by The Defendant against the Town of Ledyard,***(Mashantucket Pequot Tribe v. Town of Ledyard, No. 3:06cv1212)*** to proceed to summary judgment, again there was no jeopardy attached to forcing Defendant to comply with

Preservation of Discovery request. Appellant argues that he should have been afforded the same prospective relief.

CONCLUSION

The United States Court of Appeals has "exclusive jurisdiction" of this complaint pursuant to 28 U.S.C. § 1291, 1292(c) and (d), and 1295(a)(1).

Appellant is requesting relief from District Court's judgment granting Defendant's Motion to Dismiss. Appellant is requesting relief pursuant to F.R.C.P. 60(b)(6) and requesting original complaint be docketed for Trial; and pursuant to F.R.A.P. 44(a), Appellant, in this brief, has challenged the District Court's ruling on grounds of constitutionality.

Appellant further asserts that venue is proper in this judicial district, pursuant to 28 U.S.C. § 1391(b) and (c); because Plaintiff resides and is a resident of The United States; because a portion of the alleged events occurred outside of the reservation on United States soil; and because Appellant has no other true recourse but to bring suit in this court.

All or a substantial part of the events or omissions giving rise to Appellant's claims occurred adjoining this judicial district, including but not limited to, mail delivered within and outside this district, banking transactions performed within and outside this district, but wholly within United States Territory and therefore, as argued within this brief, this is the correct venue.

As such, the Court has jurisdiction over the subject matter of Count I of this

proceeding pursuant to 28 U.S.C. § 1331. The Court has jurisdiction over the subject matter of the remaining Counts of this action pursuant to 28 U.S.C. § 1367, as the claims set forth in each of those Counts are so related to the claims set forth in Count I that they form part of the same case or controversy under Article III of the United States Constitution.

Further This Court has subject matter jurisdiction granted by 28 U.S.C. § 1332, "Diversity of Citizenship", subsection (a)(4), and 28 U.S.C. § 1603, "Definitions", subsections (a), (b), (c), (d) and (e).

If in fact as Defendant has argued, they have the same power of immunity granted to a sovereign state by the United States Government, that state would be "foreign" inasmuch as it is not part of the United States, thereby subject to suit per 28 U.S.C. § 1603(definition) (a), which includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state. And thereby subject to suit per 28 U.S.C. § 1332 (a)(4) as a foreign state, as defined in 1603(a) of this title, as plaintiff and citizen of a State or of different States. Even as a "domestically dependent state", Appellant argues this fits the definition of "foreign" within the context of 28 U.S.C. § 1332 (a)(4).

To follow further, the Compact between the Mashantucket Tribe and the State of Connecticut, is a treaty by definition and in and of itself, governed by United States Law and therefore subject to suit per 28 U.S.C. § 1331 where the district courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Defendant is either a domestic or foreign state as defined by 28 U.S.C. § 1603(a) and therefore Appellant argues Federal Jurisdiction is correct under 28 U.S.C. § 1332(a)(4). Furthermore, The Compact between the State of Connecticut and The Mashantucket Tribe,

Defendant, is a treaty governable by 28 U.S.C. § 1331, where federal district courts have original jurisdiction.

Moreover, Appellant is entitled to jurisdictional remedy in Federal Court as argued in this brief because three(3) of the four(4) exceptions to the "Tribal Exhaustion Rule" apply.

Finally, Defendant claims "absolute sovereign immunity" that can only be repealed by the United States Congress. Defendant claims it is immune from Governmental or United States citizen interference when it comes to Defendant's violations of Federal Law and/or RICO violations and breaches of contract. If that were true, there would be no need for State Compacts, taxation on Indian revenue, the FBI overseeing criminal affairs of Indians, on Indian territories or for the Defendant to adhere to any provisions of its Compact, State Gaming Procedures or State or Federal laws.

The abrogation and waiver of Defendant's sovereign immunity is expressed in the Compact and Indian Gaming Regulatory Act and implied every time Defendant violated Federal Law or breached State Compacts.

And if that is not clear, if This Court of Appeals is willing to dismiss this case without hearing the weight of the evidence as is Appellant's right, if we are saying that Defendant can violate Federal Law and get away with it; that Defendant can use and violate the laws of the United States banking system and Postal Service without interference; then we are allowing two rules of law within our land: one law for United States citizens and another separate but unequal law for Indians, and that is wholly unfair.

WHEREFORE, Appellant, Bruce E. Tassone, represented pro see, requests The

Second Circuit United States Court of Appeals reverse the Motion to Dismiss granted by District Court and to remand this complaint back to the District Court for docketing, discovery and trial.

Respectfully submitted,

Bruce Tassone, Appellant

/s/

Post Office Box 433
North Adams, Ma 01247
Phone: (413) 664-9420

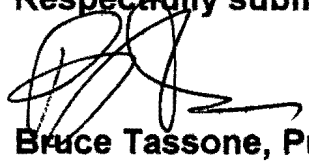
DATED this 29th day of August, 2012.

Conclusion(FRAP 28(a)(10))

Docket No. 12-2436

I therefore respectfully ask this Court, The United States Court of Appeals for the Second Circuit, to overturn the judgment of the District Court and remand this case for trial.

Respectfully submitted,



Bruce Tassone, Pro Se

Plaintiff-Appellant

Certificate of Compliance

Docket No. 12-2436

I, Bruce Tassone, Pro Se Appellant, certify that this brief contains 14,000 words or less.

United States Court of Appeals for the Second Circuit

CAPTION:

Bruce Tassone v.

Foxwoods Resort Casino, and Mashantucket Pequot Ind. Tribe

CERTIFICATE OF SERVICE
Docket Number: 12-2436

I, Bruce Tassone (name), hereby certify under penalty of perjury that on September 4, 2012 (date), I served a copy of Brief and Appendix of Appellant Bruce Tassone (list all documents)

by (select all applicable)*

- [X] United States Mail
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on the following parties (complete all information and add additional pages as necessary):

Name	Address	City	State	Zip Code
David S. Williams, Esq.,	Brown Jacobson,	22 Courthouse Sq.,	Norwich	CT 06360

9-4-12
Today's Date

Bruce Tassone
Signature

*If different methods of service have been used on different parties, please indicate on a separate page, the type of service used for each respective party.