

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

Grand Traverse Band of Ottawa and  
Chippawa Indians, a federally  
recognized Indian Tribe,

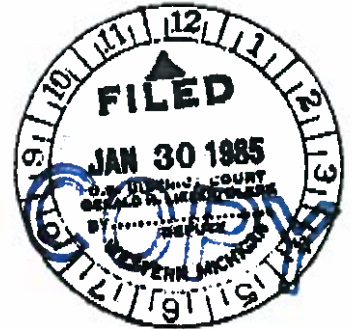
Plaintiff and  
Counter Defendant,

v

File No. G 83-834

Leelanau Indians, Inc., a Michigan  
non-profit coproration,

Defendant and  
Counter Plaintiff.



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OPINION AND ORDER

Plaintiff filed the Complaint in this action on July 27, 1983, seeking declaratory relief and requesting that the Court retain jurisdiction over this action until federal trust status is effectuated for the Indian community trust lands which are the subject matter of this controversy. On August 29, 1984, the Court issued an oral Opinion denying Plaintiff's Motion for Summary Judgment filed May 3, 1984, and Defendant Leelanau County's Motion for Summary Judgment filed May 4, 1984, on the ground that genuine issues of material fact remained unsettled. Since then, the Court issued an Order on October 29, 1984, dismissing Defendant Leelanau County pursuant to Plaintiff's stipulation of voluntary dismissal filed October 1, 1984. This matter is now before the Court on Plaintiff's renewed Motion for Summary Judgment against the remaining Defendant, Leelanau Indians, Inc., filed October 1, 1984, in response to the final pretrial order as amended by the Court and filed on September 4, 1984.

In its renewed motion, Plaintiff seeks summary judgment as to Count 1 of the Complaint. On August 29, 1984, the Court amended the pretrial order to

allow the Plaintiff to submit a document to be simultaneously used as a list of proposed stipulations of fact, requests for admissions, and proposed findings of fact. The Court also amended the pretrial order to allow the parties to submit cross Motions for Summary Judgment. Pursuant to this amendment, Plaintiff submitted the instant motion, as well as requests for admissions and proposed findings of fact. Defendant has submitted no Motion for Summary Judgment and has not responded to Plaintiff's request for admissions.

Pursuant to Federal Rule of Civil Procedure (FRCP) 36, Plaintiff's requests for admissions, filed September 14, 1984, were effectively admitted upon the Defendant's failure to answer or object within 30 days of their filing. Accordingly, I adopt as part of this opinion these requests for admissions, also submitted as Plaintiff's Proposed Findings of Fact Re: Count 1, and enter them on the record this date as the Court's findings of fact. This adoption effectively eliminates any genuine issues of material fact which previously existed. I also adopt and make a part of this Opinion Plaintiff's Proposed Conclusions of Law Re: Count 1, submitted together with the proposed findings of fact and enter them this date as the Court's conclusions of law.

Based on these findings and conclusions, the Court hereby Orders that Plaintiff's Motion for Summary Judgment be granted, and DECLARES that:

1. The Grand Traverse Band is the political successor to Leelanau Indians, Inc. and the Grand Traverse Band is the only legitimate government of the descendants of the Ottawa and Chippewa Indians who received allotments to the land in Leelanau County pursuant to Article 1, Clause 5th of the Treaty of 1805; and

2. The Grand Traverse Band has succeeded Leelanau Indians, Inc., as the beneficial owner and trustee of the leasehold interest created in the lease

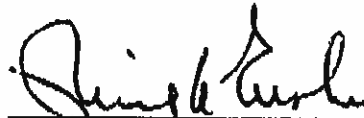
to Leelanau Indians, Inc., and its successors in interest executed by Leelanau County on November 7, 1978.

The Court retains jurisdiction over this action until federal trust status is effectuated for the Indian community trust lands which are the subject matter of this controversy.

IT IS SO ORDERED.

DATED in Kalamazoo, MI:

*Jan 30, 1985*



RICHARD A. ENSLEN  
US District Judge



Bureau of Indian Affairs, United States Department of the Interior (hereinafter "B.I.A."), pertaining to the federal acknowledgment of Plaintiff Grand Traverse Band of Ottawa and Chippewa Indians. The documents include: (1.) "Petition For Federal Recognition of the Grand Traverse Band of Ottawa and Chippewa Indians" (hereinafter "Petition"), including the Tribe's original Constitution and all appendix materials submitted with the Petition; and (2.) the B.I.A.'s official records justifying the determination to federally acknowledge Plaintiff Tribe, including the October 3, 1979 memorandum containing the recommendation/summary of evidence supporting the proposed finding for federal acknowledgment as well as four reports (anthropological, historical, genealogical and demographic) prepared by B.I.A. staff which were relied upon in making the determination to federally acknowledge Plaintiff Tribe.

3. Representatives of the historic Grand Traverse bands were signatories to the Treaty of Washington, executed March 28, 1836 (7 Stat. 491), and to the Treaty of Detroit, executed July 31, 1855 (11 Stat. 621).

4. In exchange for ceding their aboriginal ownership of territory which now comprises approximately two-thirds of the State of Michigan, reservations of land were set aside for the various Ottawa and Chippewa bands which were signatories to the Treaties of 1836 and 1855.

5. (a.) Article Second of the Treaty of 1836 set aside lands for the Grand Traverse bands described as "twenty thousand acres to be located on the north shores of Grand Traverse Bay."

(b.) Article I, clause Fifth of the Treaty of 1855 reserved: "For the bands who usually assemble for payment at Grand Traverse, townships 29, 30 and 31 north, range 11 west, and townships 29, 30 and 31 north, range

12 west, and the east half of township 29 north, range 9 west."

(c.) The preceding description includes the Indian community trust lands currently owned by Leelanau County which are the subject matter of this controversy.

6. (a.) The subject-matter Indian community trust lands were acquired by Leelanau County from the State of Michigan by deeds dated June 21, 1944 and March 17, 1970.

(b.) Leelanau County holds fee title to the approximately 147.4 acres described in these two deeds subject to the restriction that they be used solely for Indian community purposes.

7. Notwithstanding the fact that approximately 87,000 acres were reserved for selection by the historic Grand Traverse bands in the townships designated in Article I, clause Fifth of the Treaty of 1855, by the time of the Great Depression in the 1930s most of these "reserved" lands had passed from the ownership of the descendants of the original allottees. Much of this acreage reverted to the ownership of the State of Michigan due to failure to pay property taxes.

8. Leelanau County's acquisition of the Indian community trust lands was premised upon a provision of state law which authorizes the Department of Natural Resources (formerly the Department of Conservation) of the State of Michigan to deed tax-reverted lands to local units of government.

9. Because of the failure of the federal government to assist Plaintiff Tribe in becoming organized under the Indian Reorganization Act of 1934, during the late 1930s and early 1940s officials of the State of Michigan and Leelanau County made efforts (a) to assist Plaintiff Tribe in achieving federal status, and (b) to secure a land base for tribal members

in the area originally set aside for the historic Grand Traverse bands in the Treaty of 1855.

10. Leelanau County's action in originally acquiring ownership of the Indian community trust lands was prompted by the failure of the B.I.A. to extend the benefits of the Indian Reorganization Act to Plaintiff Tribe subsequent to the I.R.A.'s enactment in 1934, despite several requests made by and on behalf of tribal members.

11. Defendant/Counter Plaintiff Leelanau Indians, Inc. (hereinafter "L.I.I.") originally incorporated in 1972 as a non-profit corporation under Michigan law, and subsequently L.I.I. qualified for federal tax-exempt status as a Section 501(c)(4) social welfare organization.

12. During the period 1976 through May 27, 1980, L.I.I. functioned in an additional capacity as the governing body of the members/tribal affairs of Plaintiff Tribe.

13. In 1978 the United States Department of the Interior, Bureau of Indian Affairs, promulgated regulations establishing the procedures and policy (see 25 C.F.R. §83.2) governing official federal acknowledgment of Indian tribes. 43 Fed. Reg. 39361 (September 5, 1978). These regulations were formerly designated as 25 C.F.R. Part 54, and are now designated as 25 C.F.R. Part 83, see 47 Fed. Reg. 13327 (March 30, 1982).

14. (a.) In 1978 L.I.I. determined to seek federal acknowledgment for Plaintiff Tribe as the political successor in interest to the historic Grand Traverse bands which received reservations of land in the Grand Traverse Bay area pursuant to the Treaties of 1836 and 1855.

(b.) On May 19, 1978, the Board of Directors of L.I.I. enacted a Resolution which stated in pertinent parts:

NOW, WHEREAS, we the descendants of the Grand Traverse Band of Ottawa and Chippewa Indians desire to seek a better condition of life for ourselves and our posterity,

\* \* \*

NOW, THEREFORE, BE IT RESOLVED, that, we, the Board of Directors of Leelanau Indians, Incorporated, governing council of the members of the Grand Traverse Band of Ottawas and Chippewas now residing or whose ancestors resided in Leelanau County, declare our intention to petition for federal recognition.

15. (a.) A land base is one of the criterion which must be satisfied in order to accomplish federal acknowledgment as an Indian tribe, see 25 C.F.R. §83.7(b).

(b.) In order to satisfy this criterion, in 1978 L.I.I. entered into negotiations with officials of Leelanau County for the purpose of acquiring a lease to the county-owned Indian community trust lands so that L.I.I. could administer the trust lands as the government of the Indian community whose ancestors were reserved said lands in the Treaty of 1855.

(c.) On November 7, 1978, Leelanau County executed a lease of the Indian community trust lands to "Leelanau Indians, Inc. and its successors in interest," subject to the restriction that the lands "be occupied for Indian Community Purposes only whose ancestors received said lands under the Treaty of 1855."

16. (a.) L.I.I. obtained this leasehold interest in its capacity as the governing body for Plaintiff Tribe, subject to the understanding that federal trust status would be sought for these county-owned Indian community trust lands once federal acknowledgment of Plaintiff Tribe became effective.

(b.) Plaintiff Tribe's original Constitution approved by the L.I.I. Board of Directors on November 6, 1978, and submitted to the B.I.A.



as part of the Petition, contained this provision at Article IX, Section 2:


The Tribal Council will negotiate with such federal, state or county agencies as are concerned to transfer present lands, held in trust for Indian community purposes, to tribal ownership and will seek to have all said lands taken into trust for the Band by the Secretary of the Interior.

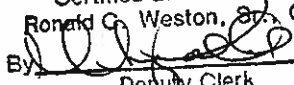
17. In December, 1978, L.I.I. formally petitioned the United States Department of the Interior (B.I.A.) for federal acknowledgment of the Grand Traverse Band of Ottawa and Chippewa Indians as an Indian tribe. A copy of this document ("Petition") with appended materials is a matter of record in this litigation.

18. (a.) During September - October, 1979, the United States Department of the Interior (B.I.A.) found that Plaintiff Tribe met the criteria prescribed at 25 C.F.R. §54.7 (now redesignated as §83.7) for federal acknowledgment as an Indian tribe, see 44 Fed. Reg. 60171 (October 18, 1979). Copies of the B.I.A.'s records justifying this determination are a matter of record in this litigation.

(b.) Federal acknowledgment of Plaintiff Tribe became effective May 27, 1980, see 45 Fed. Reg. 18321-18322 (March 25, 1980). On this date Plaintiff Tribe's Tribal Council succeeded L.I.I. as the governing body of the members/tribal affairs of Plaintiff Tribe.

DATED: Jan 30, 1985  
~~September 25, 1984~~

  
RICHARD A. ENSLEN, District Judge  
United States District Court

Certified as a True Copy  
Ronald G. Weston, Sr. Clerk  
By   
Deputy Clerk  
U. S. District Court  
Western Dist. of Michigan  
Date 12/22/88

SEP 14 1984

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

GRAND TRAVERSE BAND OF OTTAWA AND )  
 CHIPPEWA INDIANS, a federally )  
 recognized Indian Tribe, )  
 )  
 Plaintiff and )  
 Counter Defendant, )  
 v. )  
 )  
 LEELANAU INDIANS, INC., a Michigan )  
 non-profit corporation, and LEELANAU )  
 COUNTY, a municipal corporation of )  
 the State of Michigan, )  
 )  
 Defendants, )  
 and )  
 )  
 LEELANAU INDIANS, INC., )  
 )  
 Counter Plaintiff. )



FILE NO. G 83-834

CONCLUSIONS OF LAW RE: COUNT I

1. In the absense of any evidence to the contrary, the determination of the United States Department of the Interior, Bureau of Indian Affairs, is conclusive as to the issue regarding which party to this litigation is the current political successor to the historic Grand Traverse bands which pursuant to Article I, clause Fifth of the Treaty of 1855 were reserved lands in present-day Leelanau County, Michigan. United States v. Holliday, 70 U.S. 407, 419 (1865); and City of Sault Ste. Marie v. Andrus, 458 F. Supp. 465, 473 (D.C. D.C. 1978).

2. Defendant/Counter Plaintiff Leelanau Indians, Inc. (hereinafter "L.I.I.") functioned as the governing body of Plaintiff Grand Traverse Band of Ottawa and Chippewa Indians (hereinafter "Tribe") for purposes of petitioning the federal government for acknowledgment as an Indian tribe and served as the vehicle through which federal acknowledgment was accomplished. [Vol. II,

Federal Documents, Findings re: 25 C.F.R. §54.7(c), p. 6; Recommendation and Evidence Summary, p. 3; Anthropological Report, pp. 15-16; Historical Report, p. 9; and Demographic Report, p. 1.]

3. Effective May 27, 1980, governmental functions over the affairs and members of the descendants of the historic Grand Traverse bands transferred from Defendant/Counter Plaintiff L.I.I. to Plaintiff Tribe's Tribal Council, its constitutional governing body. 45 Fed. Reg. 19321 (March 25, 1980). See 44 Fed. Reg. 60171 (October 18, 1979); and Affidavit of Ardith E. Harris dated May 2, 1984, paragraph 7 at pp. 3-4. See also "Tribal Self-Government and the Indian Reorganization Act of 1934," 70 Michigan Law Review 955 (1972); and Cohen's Handbook of Federal Indian Law (1982 edition), pp. 231-32. Cf. United States v. Wheeler, 435 U.S. 313, 328, 98 S. Ct. 1079, 1088 (1978).

4. The leasehold interest to the Indian community trust lands created by the November 7, 1978 lease from Leelanau County to Defendant/Counter Plaintiff L.I.I. was the culmination of the following factors:

(a.) The descendants of the Ottawa and Chippewa Indians who received allotments to land in Leelanau County pursuant to Article I, clause Fifth of the Treaty of 1855 (i.e., the descendants of the historic Grand Traverse bands) desired to exercise the federally-declared policy of self-determination for Indian people and to govern themselves.

(b.) These descendants determined to seek federal acknowledgment as an Indian tribe in order to achieve self-determination and self-government, pursuant to the regulations promulgated in 1978 by the United States Department of the Interior, Bureau of Indian Affairs (25 C.F.R. Part 83, formerly designated as 25 C.F.R. Part 54).

(c.) The leasehold interest was sought because these descendants understood that a tribal-controlled land based was a predicate for federal acknowledgment pursuant to 25 C.F.R. Part 54.

(d.) The leasehold interest was acquired by L.I.I. in its capacity as governing body of Plaintiff Tribe, and it was understood by these descendants that title to these Indian community trust lands would be transferred to the United States to be held in trust for Plaintiff Tribe once federal acknowledgment became effective.

5. The November 7, 1978 lease from Leelanau County "to Leelanau Indians, Inc., and its successors in interest," containing the restriction that the lands therein described shall "be occupied for Indian Community Purposes only whose ancestors received said lands under the Treaty of 1855," was obtained by Defendant/Counter Plaintiff L.I.I. subject to a fiduciary responsibility on behalf of the members of Plaintiff Tribe.

6. Pursuant to the doctrine of equitable estoppel or estoppel in pais, Defendant/Counter Plaintiff L.I.I. is estopped from denying that: (a.) Plaintiff Tribe is its successor government effective May 27, 1980; and (b.) Plaintiff Tribe succeeded L.I.I. as the beneficial owner and trustee of the leasehold interest created in the lease executed November 7, 1978 between L.I.I. and Leelanau County. Bickerson v Colgrove, 100 U.S. 578, 580-82 (1879); Casey v. Galli, 94 U.S. 673 (1877); Apponi v. Sunshine Biscuits, Inc., 652 F. 2d 643, 649-50 (6th Cir. 1981); and Oxley v. Ralston Purina Company, 349 F. 2d 328, 335 (6th Cir. 1965). See United States v. Georgia-Pacific Company, 421 F. 2d 92, 95-97 (9th Cir. 1970).

7. Effective May 27, 1980, Plaintiff Tribe succeeded Defendant/Counter Plaintiff L.I.I. as the beneficial owner and trustee of the leasehold

interest to the Indian community trust lands leased by Leelanau County to L.I.I. and its successors in interest on November 7, 1978, pursuant to the common law constructive trust doctrine. Butler v. Attwood, 369 F. 2d 811, 819 (6th Cir. 1966); and Kent v. Klein, 352 Mich. 652, 656, 91 N.W. 2d 11, 14 (1958). See Chisholm v. Western Reserves Oil Company, 655 F. 2d 94, 96-97 (6th Cir. 1981); see also Bogert, The Law of Trusts and Trustees, §471 (revised second edition, 1978); and Scott, The Law of Trusts, §504, p. 3557 (third edition, 1967).

8. The failure to effectuate federal trust status for the subject-matter Indian community trust lands has: (a) prevented Plaintiff Tribe from fully enjoying the benefits, immunities and privileges bestowed by the Indian Reorganization Act, 25 U.S.C. §§461 et seq.; (b) interfered with the Plaintiff Tribe's exercise of its sovereignty as an Indian tribe; (c) deprived tribal members of their welfare by precluding the Plaintiff Tribe from participating in programs and receipt of funding; and (d) continues to cause irreparable harm to the Plaintiff Tribe and its members. See Affidavits of Joseph C. Raphael and Ardith E. Harris dated May 2, 1984. See also Wisconsin Potawatomes of the Hannahville Indian Community v. Houston, 393 F. Supp. 719, 728-30 (W.D. Mich. 1973); City of Sault Ste. Marie v. Andrus, supra, 458 F. Supp. at 472-73; and Cohen's Handbook of Federal Indian Law, supra, at pp. 250 and 257. Cf. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 98 S. Ct. 1670 (1978); United States v. Mazurie, 419 U.S. 554, 557, 95 S. Ct. 710, 717-18 (1975); and Williams v. Lee, 358 U.S. 217, 79 S. Ct. 269 (1959).

9. Effective May 27, 1980, Plaintiff Tribe succeeded Defendant/Counter Plaintiff L.I.I. as the governing body for the descendants of the Ottawa and Chippewa Indians who received allotments to land in Leelanau

County pursuant to Article I, clause Fifth of the Treaty of 1855. (See citations at paragraph 3, supra.)

DATED:

Jan 30, 1985

*Richard A. Enslin*

RICHARD A. ENSLEN, District Judge  
United States District Court

Certified as a True Copy  
Ronald C. Weston, Sr. Clerk  
By *[Signature]*  
Deputy Clerk  
U.S. District Court  
Western Dist. of Michigan  
Date 12/22/88