

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

NEWTOK VILLAGE, and NEWTOK
VILLAGE COUNCIL

- Petitioners,

vs.

ANDY T. PATRICK, JOSEPH TOMMY,
and STANLEY TOM,

- Defendants.

Case No. _____

PETITION FOR INJUNCTIVE RELIEF

COMES NOW, Petitioners, NEWTOK VILLAGE, and NEWTOK VILLAGE COUNCIL (hereinafter referred to as “Newtok”, by and through undersigned counsel, to petition the Court to for an order to enjoin the Defendants to 1) cease any representation that they are the governing body of Newtok Village, or otherwise represent Newtok Village, 2) turn over all records and property of the Newtok Village, and 3) other relief as may be appropriate.

I. THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Newtok Village is a federally recognized Indian Tribe, and Alaska Native village located in the community of Newtok, Alaska.
2. Newtok Village Council is the governing body of Newtok Village recognized as such by the Secretary of the Interior, and State of Alaska.
3. Stanley Tom is a natural person who resides in the community of Newtok, Alaska.
4. Andy T. Patrick is a natural person who resides in the community of Newtok, Alaska.
5. Joseph Tommy is a natural person who resides in the community of Newtok, Alaska.
6. The Court has jurisdiction over the subject matter of this complaint under the terms of 28

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USC §1331 (Federal Questions), and §1362 (Indian Tribe Plaintiff).

7. Venue of this matter is properly before the U.S. District Court for the District of Alaska.

II. FACTS

8. As a federally recognized Indian tribe, Newtok Village (hereinafter referred to as the “Tribe”) entered into contracts with the Bureau of Indian Affairs (“BIA”) pursuant to the Indian Self-Determination Act, (P.L. 93-638, as amended; 25 USC § 450 et. seq.) (“638”), as well as other state and federal contracts and grants.

9. Prior to 2012, the governing body of the tribe was Newtok Traditional Council, which was composed of President Moses Carl and other tribal members.

10. Mr. Stanley Tom was the tribal administrator for the Newtok Traditional Council which was the governing body of the Newtok Village, and in that capacity was in possession and maintained all the tribe's financial and other records.

11. In the fall of 2012, a tribal election dispute arose, out of which two groups emerged each claiming to be the *bona fide* tribal governing body of the Tribe.

12. The “New Council” claimed to have been elected in a tribal election held on October 12, 2013 and was composed of President Paul Charles and other tribal members.

13. The “Old Council”, led by Carl Moses, claimed to have been elected in a different election.

14. In October, 2013, the Old Council submitted a '638 contract proposal to the BIA, and the New Council objected to the Old Council receiving any funds on behalf of the tribe.

15. On June 14, 2013, the Old Council held a community meeting, submitting the dispute to the tribal membership.

16. At the meeting, the Defendant Stanley Tom proposed that the tribal leadership dispute be submitted to the tribal membership to resolve, and the tribal membership confirmed the

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election of the “New Council” led by Mr. Paul Charles to be the legitimate governing body of the Tribe.

17. On July 11, 2013, the Juneau Area Director for the BIA recognized the “New Council” to be the legitimate governing body of Newtok Village with the authority to act as the governing body of the Tribe.

18. On August 8, 2013, the Defendants filed an appeal with the Interior Board of Indian Appeals (IBIA), (Docket No. IBIA 13-134) which had the effect of staying implementation of the Area Director's July 11, 2013 decision.

19. On August 21, 2013 the Director of the Division of Community and Regional Affairs, Department of Commerce, Community and Economic Development, State of Alaska, issued a letter decision recognizing the “New Council” as the legitimate governing body of Newtok Village for the purposes of administering all state grants and contracts with the Tribe.

20. The above referenced Director's letter decision was final and unappealable.

21. On May 27, 2014, the Interior Board of Indian Appeals issued an Order Granting Motion to Lift Stay, which had the effect of making the Area Director's July 11, 2013 decision fully effective.

22. As a result of the BIA Area Directors decision, the “New Council” is now the federally recognized governing body of Newtok Village.

23. The “New Council” has changed its name to Newtok Village Council to avoid confusion.

24. Since May 27, 2014, the Defendants have repeatedly made representations to various federal, state and private agencies seeking money and misrepresenting that they are the legitimate governing body of Newtok Village.

25. the Defendants have retained records equipment and other property belonging to Newtok

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Village.

26. Since May 27, 2014, the Plaintiffs have made repeatedly requests for the Defendants to transfer records, equipment and other property belonging to the Newtok Village in order to carry out contractual obligations of the Tribe under various federal, state and other contracts and grants.

27. The Defendants have refused to transfer such records, equipment and property belonging to Newtok Village to the Plaintiffs.

COUNT I

INJUNCTIVE RELIEF

28. The Defendants have engaged in a pattern and practice of misrepresenting themselves as the legitimate tribal governing body for Newtok in the solicitation of funds and contracts to which Newtok Village is rightfully eligible.

29. Such misrepresentations by the Defendants are illegal.

30. The Defendants actions have created confusion and impeded efforts by the tribe to conduct the business of the Tribe as well as other harms to be proven at trial.

31. The Court should enjoin the Defendants from making such misrepresentations in the future.

COUNT II

MANDAMUS RELIEF

32. Various state and federal agencies have questioned various claimed costs incurred by the Tribe on prior grants and contracts, and if such questioned costs are not addressed, such agencies may disallow such costs under the various grants and contracts, possibly rendering the Tribe liable for such costs.

33. The continued wrongful retention of the Tribe's financial records impedes the ability of

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the Tribe to address the above referenced questioned costs.

34. The Tribe has certain property retention obligation under its prior grants and contracts for property purchased under such grants and contracts.
35. The wrongful retention of the Tribes equipment and other property violates outstanding property retention obligations of the Tribe, possibly rendering the Tribe liable to such granting and contracting agencies.
36. Newtok Village is entitled to receive its financial records and property, and is entitled to an order from this Court directing the Defendants to transfer such records and property to the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court to issue orders:

1. Enjoining the Defendants from misrepresenting that they are the legitimate governing body, agent or representative of Newtok Village to any federal, state or private agency or person.
2. Directing the Defendant to turn over all records, equipment and property owned by Newtok Village to the Newtok Village Council.
3. Such other relief as may be appropriate.

Respectfully submitted this 17th day of April, 2015.



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