

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STATE OF ALABAMA, ex rel ASHLEY RICH,
District Attorney for the
Thirteenth Judicial Circuit of
Alabama (Mobile County)

v. CIVIL ACTION NO. 14-00066-CG-B

50 SERIALIZED JLM GAMES, INC.
gaming devices, et al.,

MOTION TO REMAND

COMES NOW the State of Alabama and files this motion to remand this case to the Circuit Court of Mobile County on the ground that there is no federal jurisdiction over this proceeding. In support of this motion, the State would show the Court as follows:

Introduction

1. On November 7, 2013 as part of a criminal investigation into gambling offenses under 13A-12-20 et seq., the State of Alabama, through the Mobile County Sheriff's Office, executed a search warrant at the Choctaw Entertainment Center located on Red Fox Road in Mt. Vernon, Alabama, which is within Mobile County, Alabama.
2. In executing the search warrant, law enforcement authorities seized 50 illegal gambling devices and associated paraphernalia, as well as documents and currency from the establishment.
3. On December 6, 2013 the State of Alabama filed a suit *in rem* to forfeit the property seized under 13A-12-30 (forfeiture of gambling devices and gambling proceeds).

4. Notice of this *in rem* forfeiture proceeding was served upon the Choctaw Entertainment Center, Framon Weaver who was identified as a person promoting the gaming activity, and JLM Games, Inc., an entity believed to have supplied the gaming devices to the Choctaw Entertainment Center and to have an interest in the devices which the State seeks to have forfeited.

Notice of Removal

5. On February 7, 2014, the Choctaw Entertainment Center and Framon Weaver filed a motion in the Circuit Court of Mobile County to dismiss the forfeiture proceeding claiming sovereign immunity from suit.

6. JLM Games, Inc., Framon Weaver, and an association of persons identifying themselves as the "MOWA Band of Choctaw Indians" ("MOWA band"), who were neither named nor intervened in the State proceeding, have sought to remove the forfeiture proceeding from the Circuit Court of Mobile County to the U.S. District Court for the Southern District of Alabama under Section 28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1441 (removal of civil actions) and 28 U.S.C. 1446 (procedure for removal of civil actions). (Notice of Removal paragraph p.1).

7. The notice of removal is based on the implied statements that the group operating the gaming enterprise is a *tribe* and that it has *sovereign immunity* from State suit. The removing parties contend that, for this reason, only the federal courts can assert jurisdiction over the State's forfeiture suit. They contend that because the Indian Commerce Clause and Congress are the only sources of authority "over tribes and other sovereigns" the federal court's jurisdiction is exclusive and the Indian Gaming Regulatory Act pre-empts any state laws on the subject. (Notice of Removal paragraphs 12, 14, 15, 16).

8. Sam Hill, the attorney submitting the removal notice is also identified in the media as the MOWA band tribal judge.

Grounds for Remand

9. There is no federal question here and therefore this case is due to be remanded to the Circuit Court of Mobile County for the following reasons:

10. The MOWA band is not a federally recognized tribe. (Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs, 77 Fed. Reg. 47868-47873 (August 10, 2012) (Notice)).

11. As such, the MOWA band does not come within the Indian Gaming Regulatory Act's (IGRA) definition of an Indian Tribe. 25 U.S.C. 2701 et seq.; 25 U.S.C. 2703.

12. IGRA was enacted by Congress in 1988 to regulate the conduct of gaming on Indian Lands and established the National Indian Gaming Commission as well as the regulatory structure for Indian gaming. In order to come within the purview of IGRA's protection and its regulation of Indian gaming, and to be exempted from the prohibitions of the Johnson Act, 15 U.S.C. 1711 et seq., against manufacturing, possession, use, sale or transportation of any gambling device, the group seeking its protection must be a federally recognized tribe. 25 U.S.C. 2701 et seq.; 25 U.S.C. 2703.

13. Only the United States government has to power to recognize a native American tribe, make treaties with it, confer tribal status on it and negotiate limitations on its power. U.S. Const. Art. I, §8, Cl.3; Art. I, §10.

14. The MOWA band have unsuccessfully sought tribal status and recognition administratively through the Bureau of Indian Affairs and the Department of the Interior. See In re Federal Acknowledgment of the Mobile-Washington County Band of Choctaw Indians of South Alabama, 34 IBIA 63, 1999 WL 980169 (August 4, 1999) (In this proceeding attorney Sam Hill represented the MOWA band).

15. The Department of the Interior's decision became final on November 26, 1999. See MOWA Band of Choctaw Indians of Choctaw Indians v. United States, 2008 WL 2633967 (S.D. Ala. 2008). In July 2007, the MOWA band filed a suit in the U.S. District Court for the Southern District of Alabama, *this same court*, "seeking a declaration that it is an Indian Tribe to be recognized by the Bureau of Indian Affairs". That suit was dismissed as barred by the six year statute of limitations. MOWA Band of Choctaw Indians v. United States, 2008 WL 2633967 (S.D. Ala. 2008) (1:07cv00508).

16. The MOWA band are random group of individuals who have an ethnically similar heritage, but, not being a federally recognized tribe, they cannot claim to be sovereign, and they have failed to show that this court has removal jurisdiction based on a federal question or based on a case or controversy arising out of federally conferred rights. To the extent that the MOWA may claim recognition under provisions of State law, interpretation of their rights or status remains a question of State law.

WHEREFORE the State requests that this case be remanded to the Circuit Court of Mobile County.

Respectfully Submitted,

/s/ Martha Tierney
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon all parties by and through their attorney of record Sam Hill, by email and by U.S. Mail postage prepaid this date February 20, 2014.

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