

**Appellate Case No. 19-APP-02
Tribal Court No. 2019-cv-09**

Appellate Court of the Red Cliff Band of Lake Superior Chippewa

Red Cliff Band of Lake Superior Chippewa Indians,

Plaintiff - Appellee,

vs.

CenturyTel of the Midwest-Kendall, LLC,

Defendant - Appellant.

ADDENDUM TO APPELLANT'S WRITTEN BRIEF

September 3, 2019

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IN THE TRIBAL COURT OF
THE RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA

FILED
JUL 19 2019

RED CLIFF BAND OF LAKE SUPERIOR
CHIPPEWA,

Plaintiff,

Red Cliff Tribal Court
Naah Delegh
Clerk of Court

Vs.

Case No. 2019 – CV – 09

CENTURY LINK OF THE MIDWEST-
KENDALL, LLC,

Defendant.

ORDER

A motion to dismiss this action was brought before the Court by the Defendant. The Plaintiff has filed a response opposed to the motion to dismiss. The Defendant has filed a response to the Plaintiff's brief opposed to the motion to dismiss filed by the defendant, supporting the motion to dismiss this action.

In consideration to these documents I am finding that the Red Cliff Tribe has a trespass ordinance and that CenturyTel has physical facilities located within the boundaries of the Red Cliff Reservation. In that light I am denying the motion to dismiss. The issues raised within the documents filed can be raised at the trial phase.

In this light I want the parties to meet with the Clerk of Court to establish a schedule on how this matter will proceed from here.

IT IS SO ORDERED

Dated this 19th day of July, 2019

BY THE COURT

Steven E. Boulley

Honorable Steven E. Boulley
Chief Judge
Red Cliff Tribal Court

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RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA TRIBAL COURT

RED CLIFF BAND OF LAKE SUPERIOR
CHIPPEWA INDIANS,

Case No. 2019-cv-09

Plaintiff,

v.

CENTURYTEL OF THE MIDWEST-
KENDALL, LLC

Defendant.

FIRST AMENDED COMPLAINT

Plaintiff Red Cliff Band of Lake Superior Chippewa Indians ("Plaintiff" or "Tribe"), by and through its attorneys, Godfrey & Kahn, S.C., hereby files its First Amended Complaint and demands judgment against Defendant CenturyTel of the Midwest-Kendall, LLC (hereafter "CenturyTel") and as grounds therefor states as follows:

NATURE OF ACTION

1. The Tribe brings this action for injunctive and monetary relief pursuant to Red Cliff Code of Laws ("RCCL") §§ 25.15, 25.16-21 and 16.10.6 to enjoin the Defendant's trespasses on tribal land and to recover money damages for trespasses and unpaid property taxes.

JURISDICTION

2. The Court has jurisdiction under RCCL §§ 4.1.1, 25.15.1, 25.21.2 and pursuant to the Tribe's inherent sovereign authority over its territory. Jurisdiction is further supported by the circumstances that (i) the Defendant, while present on the Tribe's Reservation, has entered into consensual relationships with the Tribe and its members, through commercial dealings, contracts

and other arrangements, cf. *Montana v. United States*, 450 U.S. 544, 565, 101 S.Ct. 1245 (1981) (hereafter “*Montana*,”) (ii) the Defendant, while present on the Tribe’s Reservation, has engaged in conduct that threatens the political integrity, economic security and welfare of the tribe, cf. *Montana*, at 566, and (iii) the Tribe’s right to exclude the Defendant from Tribal lands includes the right to regulate the Defendant’s activities on those lands and to exercise adjudicative jurisdiction over claims arising from such activities. Cf. *Knighton v. Cedarville Rancheria of Northern Paiute Indians*, 2019 WL 1145150 (9th Cir. 2019).

PARTIES

3. Plaintiff is a sovereign Indian tribe exercising governmental authority over its citizens and territory pursuant to its aboriginal sovereignty and a Constitution adopted under the Indian Reorganization Act of 1934, 48 Stat. 984, as codified at 25 U.S.C. §§ 5101 et seq. (“IRA”).

4. The Tribe is acknowledged by the United States “to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes.” 84 Fed. Reg. 1203, February 1, 2019. The Tribe’s government offices are located at 88455 Pike Road, Bayfield, Wisconsin, which lies within Bayfield County.

5. Defendant CenturyTel is a limited liability company registered in Wisconsin as a foreign corporation and organized under the laws of Delaware with its principal place of business at 100 Centurylink Drive, Monroe, Louisiana, 71203.

CLAIM (TRESPASS)

6. The Tribe incorporates paragraphs 1 through 5 herein.

7. The Tribe is a successor-in-interest to the La Pointe Band of Lake Superior Chippewa that signed the Treaty of September 30, 1854 with the United States made at LaPointe, Wisconsin (“La Pointe Treaty”), 10 Stat. 1109, United States (“La Pointe Treaty”), in particular the portion of the La Pointe Band led by Chief Ke-Che-Waishke (“Buffalo”).

8. The Tribe’s reservation (“Reservation”) on the shores of Lake Superior, located on lands that the Tribe has occupied from time immemorial, was established and guaranteed to the Tribe by the La Pointe Treaty and encompasses approximately 14,540 acres, most of which is owned by the Tribe or its members in trust status (“Tribal Lands”).

9. The Tribe has an inherent right to exclude any non-member and to eject trespassers from Tribal Lands.

10. Under federal law, utilities may enter and operate facilities on Tribal Lands only pursuant to right-of-way (ROW) agreements approved by the Bureau of Indian Affairs, with the consent of the Tribe. 25 U.S.C. § 323, 25 C.F.R. Part 169 (“Part 169 Regulations.”)

11. Pursuant to its inherent right to exclude, the Tribe enacted RCCL Chapter 25, which prescribes the conditions upon which utilities may operate on Tribal Lands and provides that an entry on to tribal lands is a trespass subject to the remedies set forth at RCCL § 25.28.5.

12. CenturyTel has entered onto Tribal Lands and installed and maintained an extensive network of facilities for the delivery of telecommunication services, including, but not limited to, pedestals, buried fiber optic cable, buried copper cables, aerial fiber cables, poles and wires (“CenturyTel Facilities”).

13. Under both tribal and federal law, an applicant for a ROW must provide a legal description and survey map depicting the definite location of the proposed ROW, which provide the basis for the required environmental reviews, valuation, bond determination, negotiation of

ROW Agreement and, potentially, issuance of the ROW. RCCL § 25.4.2, 25.9, 25.12, Cf. 25 C.F.R. §§169.2, 169.102.

14. Under both tribal and federal law, CenturyTel bears the burden of proving that it has the legal right to maintain the CenturyTel Facilities on Tribal Land.

15. By a letter dated December 21, 2017, the Tribe (i) requested that CenturyTel furnish the Tribe with copies of Rights-of-Ways (“ROW”) or other documents evidencing CenturyTel’s legal right to install and maintain the CenturyTel Facilities on Tribal Land; (ii) informed CenturyTel that it could not maintain its Facilities on Tribal lands without complying with RCCL Chapter 25 and (iii) directed CenturyTel to apply for a ROW under Chapter 25 and the Part 169 Regulations.

16. In an effort to assist CenturyTel in complying with federal and tribal law, the Tribe (i) provided maps of the Reservation, (ii) issued an access permit to allow CenturyTel to prepare the legal description and survey map required by tribal and federal law and (iii) provided a ROW application form, approved by BIA, that minimizes duplication of effort and facilitates processing of a ROW application by both the Tribe and the BIA.

17. CenturyTel has filed an initial ROW application with the Tribe but has failed to produce copies of ROWs or other evidence of its legal right to maintain any of the CenturyTel Facilities on Tribal lands, has failed to file a ROW application with the Bureau of Indian Affairs and has failed to provide the Tribe or the BIA with the survey that is required in order to process a ROW application under federal and tribal law.

18. CenturyTel’s continued maintenance and operation of the CenturyTel Facilities constitutes an intentional and deliberate trespass under tribal and federal law.

19. Subject to the disclosure of information within the possession of CenturyTel, the Tribe estimates that the trespassing CenturyTel Facilities extend for at least 25 miles and crosses at least 20 parcels of tribal land.


REQUEST FOR RELIEF

WHEREFORE, pursuant to RCCL § 25.18.5(c), the Plaintiff respectfully requests damages in an amount equal to the greater of

- i. CenturyTel's rents, profits and any avoided costs derived from the trespassed property;
 - ii. Damages equal to not less than \$100 and not more than \$5000, as determined by the Court, for each day of trespass, multiplied by 1095 days (three years) multiplied by the number of parcels trespassed or;
 - iii. Three times the property tax due pursuant to RCCL § 16.10.8 for the entire period of the trespass; and
- b. Such other relief as the Court deems just and proper.

The Tribe does not seek a court order that would have the effect of condemning any right-of way, granting the Defendant any right-of-way interest, or otherwise authorizing the Defendant to continue to maintain its facilities, upon payment of compensation to the Tribe.

Dated this 7th day of June, 2019.

A handwritten signature in black ink, appearing to read 'D. Ujke', is written over a horizontal line.

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