

STATE OF MICHIGAN
INGHAM COUNTY CIRCUIT COURT

JLLJ DEVELOPMENT, LLC, A MICHIGAN
LIMITED LIABILITY COMPANY, AND
LANSING FUTURE DEVELOPMENT II, LLC,
A MICHIGAN LIMITED LIABILITY COMPANY,

PLAINTIFFS,

vs.

Case No. 21-189-CB
Hon. Joyce Draganchuk

KEWADIN CASINOS GAMING AUTHORITY,
A DULY AUTHORIZED ENTITY CREATED
UNDER THE LAWS OF THE SAULT STE.
MARIE TRIBE OF CHIPPEWA INDIANS,

DEFENDANT.

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**DEFENDANT'S RESPONSES TO PLAINTIFFS' FIRST
INTERROGATORIES AND DOCUMENT REQUESTS TO DEFENDANT**

Defendant, by and through its undersigned attorneys, respond to Plaintiffs' First Interrogatories and Document Requests as follows.

Interrogatories

INTERROGATORY 1: To the extent that the Gaming Authority is alleging that the Plaintiffs failed to perform any obligation under the terms and conditions contained in the Turn-Key Agreements or any other of the Transaction Documents, please:

(a) Identify each fact upon which the Defendant relies in in alleging that either Plaintiff has failed to perform any duty or obligation called for under the Turn-Key Agreements or other Transaction Documents.

(b) Identify each person having knowledge of any fact or communication which relates to, refers to, or supports, your answer to Interrogatory 1 (a) above.

(c) Identify each document referring or relating to, or supporting, your answers to Interrogatory No. 1 (a) and (b) above or the information sought through this discovery.

RESPONSE:

Kewadin objects to the interrogatory based upon this Court's lack of jurisdiction over this case and based upon sovereign immunity from suit. As discussed in detail in Kewadin's briefs in support of its pending motion to dismiss this case, sovereign immunity includes immunity from claims and from discovery on claims and bars Court jurisdiction over this suit. The motion to dismiss is based upon the material documents and arguments stated in that motion. Kewadin's immunity applies under the current posture, where Kewadin's motion is pending. While Kewadin does not anticipate that an appeal will be required, the immunity would also continue under the Collateral Order Doctrine if Kewadin were to appeal from a denial of its motion to

dismiss. Plaintiff has not interposed any defense to that motion which provides for discovery on the issues presented in that motion.

Kewadin also objects to interrogatory 1 because it is premature, because it is an improper interrogatory that does not fall within the scope of Michigan Rule 2.309 because it seeks irrelevant and immaterial information and information not reasonably calculated to lead to the discovery of admissible evidence, because it is overbroad, and because the contracts speak for themselves.

Kewadin further objects in part that that the broadly worded interrogatory seeks information protected as work product and attorney-client privilege, and Kewadin further asserts that providing a privilege log would, itself, violate the privilege.

Kewadin further objects to the attempt to obtain discovery from the Tribe or to make claims based upon actions of the Tribe. The Tribe is not a party to this suit, and it has sovereign immunity from this suit. Further, under SSM law, Kewadin lacks legal authority to disclose information from the Tribe, a non-party to this suit.

Kewadin objects that the interrogatory is impermissibly vague or overbroad because “transaction document” is defined by reference to a section of a contract that does not contain a specific or clear definition of the term.

Kewadin further objects to Plaintiffs’ attempt to define document more broadly than the definition contained in Rule 2.310.

ANSWER:

Without waiving the objections, Kewadin has not asserted any counterclaim at this time. It has previously provided Plaintiffs with documents which discuss Plaintiffs’ breaches of the contract and abandonment of the contract. The Turn-Key agreements and notices of breach have

already been submitted and are of record in this case and further identification is therefore not required.

INTERROGATORY 2: Identify each instance, during the period from December 19, 2011 to the present, in which the Defendant, or any member of its Management Board or other agents of the Defendant, or any member of the Tribe acting on behalf of the Defendant, talked with, met with, or corresponded with, potential developers or investors to take over the duties and responsibilities of the Plaintiffs under the Turn-Key Agreements (identified in Definition E, above), or to replace the Plaintiffs as the developers or investors of the casino projects. As part of your answer to this Interrogatory, provide the date of each instance, the parties to the communication, the telephone number and address of the person (or persons) contacted, provide a summary of the communication, and identify each person having knowledge of such matters and each document referring or concerning such matters.

RESPONSE:

Kewadin objects to the interrogatory based upon lack of jurisdiction and sovereign immunity from suit, as discussed in response to interrogatory 1.

Kewadin also objects to interrogatory 1 because it does not fall within the scope of Michigan Rule 2.309 because it seeks irrelevant and immaterial information and information not reasonably calculated to lead to the discovery of admissible evidence and because it is overbroad.

Kewadin further objects in part that that the broadly worded interrogatory seeks information protected as work product and attorney-client privilege, and Kewadin further asserts that providing a privilege log would, itself, violate the privilege.

Kewadin further objects to Plaintiffs' attempt to define document more broadly than the definition contained in Rule 2.310.

Kewadin also objects to the form of the interrogatory because Plaintiff has wrongly combined multiple separate interrogatories into a single interrogatory.

Kewadin further objects that any communication with others, if such occurred, would be confidential and non-discoverable; or alternatively would not be discoverable without a confidentiality order.

Kewadin further objects to the attempt to obtain discovery from the Tribe or to make claims based upon actions of the Tribe. The Tribe is not a party to this suit, and it has sovereign immunity from this suit. Further, under SSM law, Kewadin lacks legal authority to disclose information from the Tribe, a non-party to this suit.

INTERROGATORY 3. Identify each parcel of real estate which at any time was acquired either by the Gaming Authority or the Tribe in connection with the Turn-Key Agreements (referred to in Definition E, above). For purposes of this particular Interrogatory, "identify" includes providing the address and legal description of the parcel, the date it was acquired, from whom it was acquired, the amount paid to acquire it, the source of the funds used to acquire the parcel, whether the parcel is still owned by the Gaming Authority or the Tribe, and if the parcel is no longer owned by the Gaming Authority or the Tribe, identification of when its ownership ended, the reason for the divestiture of ownership, and identification of any funds or anything of value which the Gaming Authority or Tribe received in connection with divestiture of the parcel.

RESPONSE:

Kewadin objects to the interrogatory based upon lack of jurisdiction and sovereign immunity from suit, as discussed in response to interrogatory 1.

Kewadin objects to the form of the interrogatory because Plaintiff has wrongly combined multiple separate interrogatories into a single interrogatory. Kewadin also objects that the interrogatory's use of the terms "at any time" and "acquired. . .in connection with" renders the interrogatory vague, in addition to rendering the interrogatory overbroad.

Kewadin further objects that any information not already in the possession of Plaintiffs, if it exists would be confidential and non-discoverable; or alternatively would not be discoverable without a confidentiality order.

Kewadin also objects to the interrogatory because it seeks irrelevant and immaterial information and information not reasonably calculated to lead to the discovery of admissible evidence and because it is overbroad.

Kewadin further objects to the attempt to obtain discovery from the Tribe or to make claims based upon actions of the Tribe. The Tribe is not a party to this suit, and it has sovereign immunity from this suit. Further, under SSM law, Kewadin lacks legal authority to disclose information from the Tribe, a non-party to this suit.

Kewadin further objects that the interrogatory is immaterial and irrelevant to any issue presented in this case.

ANSWER

To the extent there is any such property, it is owned by the Tribe, and Kewadin lacks authority to disclose any information that is not already in Plaintiffs' possession.

INTERROGATORY 4. Identify each payment or advance of funds from each of the Plaintiffs (or in JLLJ's case, from JLLJ or its predecessor) to the Gaming Authority or the Tribe, and provide this information: the date and amount of each payment or advance, the recipient of the advance, what the recipient understood was the purpose of the payment or advance, specifically

how the funds were used, whether the Gaming Authority or the Tribe executed a promissory note in favor of either and amount of the promissory note (if one was executed).

RESPONSE:

Kewadin objects to the interrogatory based upon sovereign immunity from suit, as discussed in response to interrogatory 1.

Kewadin further objects that any information not already in the possession of Plaintiffs, if it exists would be confidential and non-discoverable; or alternatively would not be discoverable without a confidentiality order.

Kewadin further objects to the attempt to obtain discovery from the Tribe or to make claims based upon actions of the Tribe. The Tribe is not a party to this suit, and it has sovereign immunity from this suit. Further, under SSM law, Kewadin lacks legal authority to disclose information from the Tribe, a non-party to this suit.

Kewadin objects to the form of the interrogatory because Plaintiff has wrongly combined multiple separate interrogatories into a single interrogatory.

Kewadin also objects to the interrogatory because it seeks irrelevant and immaterial information and information not reasonably calculated to lead to the discovery of admissible evidence and because it is overbroad.

Kewadin further objects to the request to identify payments that Plaintiffs made, as any such payments are already known to the Plaintiffs.

Documents Requested

Request 1. Produce all documents that you identified in your answers to Interrogatories No.1-4 above

RESPONSE:

Kewadin objects to Plaintiffs' attempt to define document more broadly than the definition contained in Rule 2.310.

Kewadin objects to the request based upon sovereign immunity from suit, as discussed in response to interrogatory 1; and because it assumes facts that are inapplicable. Kewadin incorporates by reference its objections to the interrogatories.

Request 2. Produce all documents which concern, refer or relate to any of the following real estate: (a) the "Sibley Parcel", (b) the "Lansing Parcel", or (c) the approximate 7 acres of land acquired by Defendant or the Tribe in Huron Township. Your production should include, but not be limited to, any closing documents (e.g., closing statements, deeds, source of funds to pay the consideration for each parcel, affidavit of consideration, title commitment, etc.), any other documents that relate to a transfer of, or ownership interest in, either parcel from the date of the original purchase through the date you respond to these Interrogatories and Document Requests, and any resolutions adopted by either the Defendant (or its Management Board) or the Tribe's Board of Directors concerning, relating to, or referring to the "Sibley Parcel" or the "Lansing Parcel" or the approximate 7 acres of land in Huron Township. For identification purposes, see, in part, footnote 9 and paragraph 110 of the Plaintiffs' Complaint (which refer to some of these parcels).

RESPONSE:

Kewadin objects to Plaintiffs' attempt to define document more broadly than the definition contained in Rule 2.310.

Kewadin objects to the request based upon sovereign immunity from suit, as discussed in response to interrogatory 1.

Kewadin further objects that the request for discovery is vague, based upon its use of terms “Lansing Parcel” and “Sibley Parcel” (the latter in particularly inconsistently referenced in Plaintiffs’ complaint), and “the approximately 7 acre parcel . . .” without defining those terms and that the discovery is vague and overbroad by its reference to all documents which “refer to” or “relate to” the undefined parcels.

Kewadin further objects to the attempt to obtain discovery from the Tribe or to make claims based upon actions of the Tribe. The Tribe is not a party to this suit, and it has sovereign immunity from this suit. Further, under SSM law, Kewadin lacks legal authority to disclose information from the Tribe, a non-party to this suit.

Kewadin also objects to the request because it seeks irrelevant and immaterial information and information not reasonably calculated to lead to the discovery of admissible evidence and because it is overbroad.

ANSWER

To the extent there is any such property, it is owned by the Tribe, and Kewadin lacks authority to disclose any information that is not already in Plaintiffs’ possession.

REQUEST 3. Produce all documents in your files or in your possession, or in the files or possession of your employees, agents, and attorneys (except for privileged documents) involving the subject matter of this litigation, *including but not limited to*: all emails and other written communications between the parties to this litigation (or their representatives); all contracts between the parties to this litigation; all documents involving the purchase of real estate contemplated by the Turn-Key Agreements (described in Definite E, above); all funds paid by JLLJ (or its predecessor) or by Lansing Future to the Defendant; all resolutions of the Defendant or of the Tribe, concerning either the Turn-Key Agreements, the funds to be paid by the Plaintiffs

(or their predecessors) to the Defendant or to the Tribe, or any other matters involving the subjects described in the Turn-Key Agreements, promissory notes, or other documents comprising or in any way relating to the Transaction Documents. To avoid doubt, for purpose of this Request, the term “documents” is defined in Definition A, above.

RESPONSE:

Kewadin objects to Plaintiffs’ attempt to define document more broadly than the definition contained in Rule 2.310.

Kewadin objects that the request is impermissibly vague or overbroad because “transaction document” is defined by reference to a section of a contract that does not contain a specific or clear definition of the term.

Kewadin objects to the request based upon sovereign immunity from suit, as discussed in response to interrogatory 1.

Kewadin further objects to the attempt to obtain discovery from the Tribe or to make claims based upon actions of the Tribe. The Tribe is not a party to this suit, and it has sovereign immunity from this suit. Further, under SSM law, Kewadin lacks legal authority to disclose information from the Tribe, a non-party to this suit.

Kewadin further objects that Request No. 3 seeks information subject to privilege and/or tribal privacy laws or requirements, because it is vague, ambiguous, and overbroad in its use of the terms “agents,” “involving,” “contemplated by,” “any other matters involving the subjects described in,” and “comprising or in any way relating to.”

DATED September 20, 2021.

PATTERSON EARNHART REAL BIRD &
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CERTIFICATE OF SERVICE

The undersigned certifies that on September 20, 2021, he served a copy of **Defendant's Response to Plaintiffs' First Interrogatories and Document Requests to Defendant**, by emailing the same to Plaintiffs' counsel of record.



Jeffrey S. Rasmussen