UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KEWADIN CASINOS GAMING AUTHORITY,

Plaintiff,

v.

HON. JOYCE DRAGANCHUK, et al.,

Defendants.
_____/

Case No. 2:22-cv-27

Hon. Hala Y. Jarbou

ORDER

Defendants JLLJ Development, LLC and Lansing Future Development II, LLC (collectively, "Developers") brought an action seeking declaratory judgment and alleging contract, quasi-contract, and tort claims against Plaintiff Kewadin Casinos Gaming Authority in state court after a similar action filed in this district was dismissed for lack of subject matter jurisdiction. Kewadin brings this motion for a temporary restraining order (TRO) and preliminary injunction to enjoin the state court from proceeding in that matter. (ECF No. 2.) For the reasons herein, the Court will deny the motion.

I. BACKGROUND

Kewadin is the gaming and casino operation department of the Sault St. Marie Tribe of Chippewa Indians ("Tribe"), a federally recognized Indian tribe. In 2011, Kewadin entered into separate contracts with the Developers for the purpose of developing two tribal casinos on two parcels of land in Michigan's Lower Peninsula. In March of 2020, the Developers brought suit against Kewadin in this district for claims arising under state law. Kewadin moved to dismiss based on tribal sovereign immunity. The federal district court dismissed the case on March 20, 2021, for lack of subject matter jurisdiction, without deciding the issue of sovereign immunity.

(*JLLJ Dev., LLC v. Kewadin Casinos Gaming Auth.*, No. 1:20-cv-231, ECF No. 39 (W.D. Mich. Mar. 30, 2021).) The Developers subsequently refiled the case in state court the next day. Defendant Honorable Joyce Draganchuk is the Michigan Circuit Court judge handling the state case.

A hearing is scheduled in state court on February 9, 2022, where Kewadin is to show cause why it should not be held in civil contempt for failing to comply with the state court's discovery order and why sanctions should not be imposed. This TRO seeks to enjoin state court proceedings until this Court has ruled on whether there is a waiver of sovereign immunity such that the state court can hear the case against Kewadin.

II. STANDARD

Under Rule 65(b) of the Federal Rules of Civil Procedure, the Court may issue a TRO only if the Court finds that "specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A).

In addition, the Court considers the following factors when determining whether to grant a TRO:

> (1) whether the movant has a strong likelihood of success on the merits, (2) whether the movant would suffer irreparable injury absent a [TRO], (3) whether granting the [TRO] would cause substantial harm to others, and (4) whether the public interest would be served by granting the [TRO].

Ne. Ohio Coal. for Homeless & Serv. Emps. Int'l Union, Local 1199 v. Blackwell, 467 F.3d 999, 1009 (6th Cir. 2006).

Like a preliminary injunction, a TRO "'is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.'" *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quoting 11A C. Wright, A. Miller, & M. Kane,

Federal Practice and Procedure § 2948 (2d ed. 1995)). Moreover, "a finding that there is simply no likelihood of success on the merits is usually fatal." *Gonzales v. Bd. of Med. Examiners*, 225 F.3d 620, 625 (6th Cir. 2000).

III. ANALYSIS

The Developers have filed a response and so, have had an opportunity to respond. However, Defendant Honorable Joyce Draganchuk has not. Although Plaintiff asks for a TRO, Plaintiff's complaint is unverified and Plaintiff has not submitted any affidavits to show that immediate and irreparable injury, loss or damage will result before the adverse party can be heard in opposition. But even without that defect, Kewadin would not be entitled to relief.

A. Likelihood of Success

Kewedin argues that as an arm of the Tribe, the state lacks jurisdiction over it unless it has consented to suit. Kewadin argues that the state court has repeatedly refused to rule on whether it has subject matter jurisdiction, and without deciding whether Kewadin has waived sovereign immunity, the state court and its orders violate the Tribe's federally protected rights.

Kewadin has not shown that it has a strong likelihood of success on the merits for several reasons: (1) the state court ruled on whether there is a waiver of sovereign immunity; (2) the *Rooker-Feldman* doctrine likely bars the Court from reviewing the state court's ruling; and (3) the Anti-Injunction Act (AIA), 28 U.S.C. § 2283, bars Kewadin's request for equitable relief.[1]

1. State Subject Matter Jurisdiction and Waiver of Sovereign Immunity

The bulk of Kewadin's argument for a TRO and preliminary injunction focuses on its claim that the state court has not decided and has repeatedly refused to decide whether it has subject

[1] *Younger* abstention may also apply in this case as "*Younger* pertains to 'civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions,' such as contempt orders." *Doe v. Univ. of Ky.*, 860 F.3d 365, 369 (6th Cir. 2017). However, no party has addressed this argument.

matter jurisdiction. Kewadin's main argument that the state court lacks subject matter jurisdiction (which it repeatedly claims the court has not decided) is that Kewadin is protected from suit by sovereign immunity. (Br. in Support of Pl.'s Mot. for TRO, ECF No. 3, PageID.215. ("A tribe's sovereign immunity is a threshold jurisdictional issue under both federal and Michigan law.").) However, it is clear even from the limited excerpt of the state court transcript that Kewadin provides that the state court ruled on whether Kewadin waived its sovereign immunity.

The state court addressed Kewadin's motion to dismiss on the basis of sovereign immunity as a motion for summary disposition. (6/23/2021 State Ct. Tr., ECF No. 10-3, PageID.276, 293-294.) The state court explained that while the motion was brought under subject matter jurisdiction, it did not consider the motion based on subject matter jurisdiction because there was no briefing on that issue. Rather, the motion was briefed as a motion for summary disposition. Whether the motion was discussed as one for subject matter jurisdiction or summary disposition does not matter, because the court analyzed the same question at issue—whether Kewadin waived its sovereign immunity. Doing so, the court found that "in fact, [] there has been an express and unlimited, irrevocable waiver of sovereign immunity." (*Id.*, PageID.303.) Therefore, this issue was resolved on the merits before the court proceeded to other issues in the case.

Kewadin makes much about the fact that the state court did not decide the issue of subject matter jurisdiction. This argument is unavailing because Kewadin does not raise any other arguments[2] in its moving brief regarding the state court's subject matter jurisdiction except the issue of sovereign immunity, which the state court ruled on. In other words, Kewadin has not supplied an argument for why the state court lacks jurisdiction and therefore, there is no

[2] Kewadin's Reply brief lists five reasons, other than the issue of sovereign immunity, why it believes it will prevail on its claim that the state court lacks jurisdiction. (Reply in Supp. of Mot. for TRO, ECF No. 11, PageID.423.) However, those reasons are not issues of subject matter jurisdiction.

jurisdiction issue for the state court to address as all the claims against Kewadin are state law claims.

2. *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine provides that lower federal courts do not have subject matter jurisdiction to review final judgments from state court. *See Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983). Appeals from state courts of last resort go only to the Supreme Court of the United States. *See RLR Invs., LLC v. City of Pigeon Forge*, 4 F.4th 380, 385 (6th Cir. 2021) (citing *Rooker*, 263 U.S. at 416). Further, "lower federal courts possess no power whatsoever to sit in direct review of state court decisions." *Feldman*, 460 U.S. at 482 n.16. And more recently, the Sixth Circuit has held that *Rooker-Feldman* applies to interlocutory orders from lower state courts. *See Pieper v. Am. Arb. Ass'n, Inc.*, 336 F.3d 458, 462 (6th Cir. 2003). This rule was reaffirmed in *RLR Investments* after the logic in *Pieper* was called into question by the Supreme Court's decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corporation*, 544 U.S. 280 (2005). *See RLR Inv.* at 387 ("[W]e determine that *Exxon* and *Pieper* can comfortably coexist[.]").

The state court has already ruled on whether there is a waiver of sovereign immunity in the contracts between the Developers and Kewadin. Kewadin's request that this Court decide this question anew is a request to review the state court's decision. This Court lacks subject matter jurisdiction to decide this question. That the state court did not explicitly decide the question of its subject matter jurisdiction is immaterial because after the decision on sovereign immunity, Kewadin has not provided any other basis to question the state court's subject matter jurisdiction. The proper route for review of the state court decision is the state appellate court.

3. AIA

"The AIA provides that '[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.'" *Cheyenne & Arapaho Tribes v. First Bank & Tr. Co.*, 560 F. App'x 699, 705 (10th Cir. 2014) (quoting 28 U.S.C. § 2283). "Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy. The explicit wording of § 2283 itself implies as much, and the fundamental principle of a dual system of courts leads inevitably to that conclusion." *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Engineers*, 398 U.S. 281, 297 (1970). Kewadin argues that this matter fits within the first and second exceptions to the AIA, as well as a fourth exception recognized in case law, that the AIA "does not apply at all when it is the United States that seeks to stay proceedings in a state court." 17A Wright & Miller Fed. Prac. & Proc. Juris. § 4222 (3d ed.).

Kewadin argues that this injunction comes within the first exception under the Non-Intercourse Act and 28 U.S.C. § 1362 but does not provide any argument or support for how these statutes apply.

> Under the "expressly authorized" exception, there is no requirement that Congress specifically mention § 2283; rather, statutory language permitting federal court injunctions to issue against state court proceedings can create an "express authorized" exception. Where statutory language does not directly address the matter, we look for relevant legislative history before concluding that Congress expressly authorized the federal court to enjoin state court proceedings.

In re Parker, 499 F.3d 616, 626 (6th Cir. 2007) (internal citations omitted).

Section 1362 is a specific grant of jurisdiction to district courts over civil actions brought by an Indian tribe "wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1362. There is no statutory language here permitting federal

court injunctions to issue against state court proceedings. Kewadin points only to *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 472 (1976) for its statement that "we find an indication of a congressional purpose [in § 1362] to open the federal courts to the kind of claims that could have been brought by the United States as trustee." There is no explanation as to how this applies to exceptions in the AIA.

Similarly, Kewadin points to the Non-Intercourse Act, 25 U.S.C. § 177. Kewadin has not shown how this statute is an expressly authorized exception by Congress to the AIA, and the statute does not permit federal court injunctions against state court proceedings on its face.

Kewadin further argues that this matter falls within the second exception because the injunction is necessary in aid of this Court's jurisdiction to protect the Tribe's rights. However, "a federal court does not have inherent power to ignore the limitations of § 2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area pre-empted by federal law, even when the interference is unmistakably clear." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 149 (1988).

Lastly, Kewadin cites *Cayuga Indian Nation of New York v. Fox*, 544 F. Supp. 542, 551 (N.D.N.Y. 1982) for the fourth exception. Kewadin does not explain how the injunction that it seeks is one that the United States could have sought. Therefore, the Court is not persuaded that exceptions to the AIA apply here.

B. Irreparable Harm

Kewadin brings this TRO particularly to enjoin the state court's upcoming hearing on civil contempt, arguing that a tribe's sovereign immunity grants it the right to be free from judicial proceedings before a court that lacks jurisdiction over the tribe. Courts have recognized that "'an invasion of tribal sovereignty can constitute irreparable injury.'" *Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Utah*, 790 F.3d 1000, 1005 (10th Cir. 2015) (quoting *Wyandotte Nation v.*

Sebelius, 443 F.3d 1247, 1255 (10th Cir. 2006)). This factor weighs in favor of Kewadin as it has alleged that the Tribe's sovereign immunity is in danger of being violated, and therefore has made a showing of irreparable harm in the absence of an injunction.

C. Balance of Harms and Public Interest

These factors weigh against granting a TRO because the doctrines of abstention and general principles of comity between state and federal courts, as applied through the *Rooker-Feldman* doctrine and the AIA, are meant to prevent this type of action. There is little public interest in the district court interfering in an active state court case, particularly one where the state court is actively attempting to enforce its contempt power. Further, Kewadin is entitled to seek appellate review from Michigan's appellate courts.

On balancing these factors, the Court is not persuaded that granting a TRO is appropriate.

Accordingly,

IT IS ORDERED that Kewadin's motion for a TRO and preliminary injunction (ECF No. 2) is **DENIED**.

Dated: February 8, 2022

/s/ Hala Y. Jarbou
HALA Y. JARBOU
UNITED STATES DISTRICT JUDGE