NO. 25-12912-AA

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NICOLAS A. MANZINI

PLAINTIFF-APPELLANT

VS.

TALBERT CYPRESS AND LUCAS K. OSCEOLA

DEFENDANTS-APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

DISTRICT COURT DOCKET NO. 1:24-CV-24670-RAR

APPELLANT'S REPLY BRIEF

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PRO SE APPELLANT

No. 25-12912-AA
Nicolas A. Manzini v. Talbert Cypress, et al.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Cir. R. 26.1-1(a)(1) and other applicable rules, appellant Nicolas A. Manzini states that the following persons and entities have (or may have) an interest in the outcome of this proceeding:

Ajizian, Christopher Ara, Esq., *Attorney for Defendants (Appellees)*

Cypress, Talbert, *Defendant-Appellee*

Friedman, Todd Rapp, Esq., *Attorney for Defendants (Appellees)*

Kula, Elliot B., Esq., *Attorney for Appellees*

Manzini, Nicolas A., *Plaintiff-Appellant (pro se)*

Materi, Jennifer B., *Gen. Couns.*, *Miccosukee Tribe of Indians of Florida*

Miccosukee Tribe of Indians of Florida, *Non-Party*

National Indian Gaming Commission, *Non-Party*

Osceola, Lucas K., *Defendant-Appellee*

Ruiz, Hon. Rodolfo Armando II, *U.S. District Judge*

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Introduction

Manzini has satisfied his duty as appellant to establish reversible error.

From its outset, appellees' Answer Brief is replete with half-truths and misstatements. Beginning with their "Statement Regarding Oral Argument," appellees would have the Court believe that Manzini's claim involves an isolated incident with a casino's cashout voucher that he could have avoided by simply taking the voucher to the cashier window. This is inexorably false.

As comprehensively explained in his Opening Brief, Manzini was tricked by appellees' deception on *multiple* instances before he discovered their scheme to defraud him and other casino patrons, and he attempted to resolve his claim against the appellees prior to resorting to litigation. See Appellant's Opening Brief at pages 18-22.

Moreover, Manzini readily *conceded* that there is consensus among the courts that have weighed in on the matter that the Indian Gaming Regulatory Act (IGRA) does not provide a private right of action per se. See Appellant's Opening Brief at pages 26-27 . Thus appellees' belabored discussion of that issue in their Answer Brief is simply for naught.

What is relevant but scantily discussed in appellees' Answer Brief is the fact that the district court did *not* address the rationale of the Cayuga

Nation decision in its order denying Manzini's post-dismissal motion [ECF No. 44] choosing instead an intellectual shortcut, to-wit, that the holding in Cayuga Nation does not apply to an individual like Manzini who seeks equitable relief under IGRA but only to an Indian tribe. That flawed legal conclusion is expressly dispelled at page 14 of Manzini's Opening Brief, by simple statutory construction, and by logic itself.

I.

Actually, what does defy logic is why appellees have devoted so much space in their Answer Brief to two *non-issues* on appeal: 1) whether Manzini can prove personal damages; and 2) whether his state law claims as alleged in his *Amended Complaint* are barred by tribal sovereign immunity.

In his Opening Brief, Manzini plainly *conceded* that his personal damages are de minimis and are not recoverable against appellees Cypress and Osceola, so that going forward he will seek *only* equitable relief, and also that the state law claims in his *Amended Complaint* are not actionable.

Understandably, throughout their Answer Brief, appellees' oft-repeated refrain is that the district court's orders under review were "thoughtfully" written and should not be disturbed. Appellees obviously hope the adage that inertia favors the status quo holds true. But here the status quo is a distortion

of justice that should not be allowed to stand. In sum, the Answer Brief is mostly irrelevant and unresponsive to Manzini's argument for reversal.

II.

Appellees also turn a blind eye to this Court's role as an error-correcting court. Under true de novo review (which the parties agree is the applicable standard) it was error for the district court to dismiss the *Amended Complaint* with prejudice given Manzini's request therein (albeit inartfully pled) for equitable relief which relief is ***not*** foreclosed by IGRA.

To be sure, in arriving at some of its stated legal conclusions, the district court's was myopic, its language at times even snarky, e.g., order denying Manzini's Rule 59 post-dismissal motion [ECF No. 44] ("Plaintiff's primary argument *even misunderstands* the Court's ruling, which is not that he failed to state a claim as a factual matter but that no claim can be stated under the law on which he relies")(emphasis added).

De novo review, which the Answer Brief does not squarely address, authorizes this Court to *re-examine* the district court's decision anew and from the beginning without giving *any* deference to the district court's conclusions of law. See Wheatley v. CNA Insurance Co., 189 F. 3d 1310, 1313 (11th Cir. 1999). Indeed, in reviewing Manzini's action below, this Court applies the same standards as did the district court. Id.

The second cause of action alleged in Manzini's *Amended Complaint* sought equitable relief in the form of declaratory and injunctive relief requiring Cypress and Osceola to comply with the provision of IGRA that mandates the fair and honest operation of tribal casinos by their operators. In enacting IGRA, Congress did *not* foreclose district courts from granting equitable relief to enforce the Act as explained in the Cayuga Nation decision. See Appellant's Initial Brief at page 24. Unfortunately, the briefing before the district court was concluded and the dismissal order had already been entered *before* the Cayuga Nation decision was released, which is why Manzini raised it for the first time in his post-dismissal motion.

In his *Amended Complaint,* Manzini also sought the equitable remedy of disgorgement from Cypress and Osceola of their ill-gotten gains, i.e., the sum of unredeemed casino cash-out and change vouchers by which they have been unjustly enriched since their deceptive practices were implemented. This is relief that is generally authorized by federal courts to redress violations of federal statutes, and it is *not* to be confused or conflated with any purported demand for personal damages in the *Amended Complaint* which Manzini has acknowledged he may not recover. See Appellant's Opening Brief at pages 24-25.

Moreover, the relief of disgorgement as pled in the *Amended Complaint* is an issue that the district court ***never*** broached or addressed in its dismissal order or its order denying the post-dismissal motion.

The Answer Brief also skews its "Course of Proceedings" by pointing out that the district court ordered Manzini to show cause early in the case that a basis for federal question jurisdiction existed, yet omits mention of two salient and more relevant facts: a) federal question jurisdiction *does* exist, as the district court expressly found; and b) the district court *misled* Manzini to squander his one opportunity to amend his complaint as a matter of course when it erroneously referred to appellees Cypress and Osceola as "foreign defendants" prompting Manzini to allege diversity of citizenship as an alternative jurisdictional basis. See Appellant's Opening Brief at page 10.

In an ironic twist, the district court's dismissal order treats Manzini's assertion of diversity of citizenship in his *Amended Complaint* as though the idea emanated entirely from him rather than acknowledge that it was the *district court itself* that invited that error.

Then at page 10 of their Answer Brief, appellees boldly assert that there is "no indication that the district court's dismissal was based on Manzini's *Amended Complaint* being a shotgun pleading." Presumably, this statement is intended to defeat Manzini's argument that the district court is

required to allow an amendment of the complaint. Bailey v. Janssen Pharmaceutica, Inc., 288 Fed. Appx. 597, 603* (11th Cir. 2008) ("When faced with a shotgun complaint, we have encouraged defendants to make motions for more definite statements or courts to demand repleader--and not, as the case were, to dismiss a complaint with prejudice").

Appellees have obviously overlooked footnote 8 at page 17 of the district court's dismissal order [ECF No. 40] which states: "Plaintiff does not separately delineate the federal and state-law claims in his ***Amended Complaint which bears many of the hallmarks of a 'shotgun pleading***.'" (emphasis added). In short, the district court should have allowed repleader.

"Dismissal pursuant to Rule 12(b)(6) is not appropriate *unless it appears beyond doubt* that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." See Opening Brief at page 27. Applying the rationale of the Cayuga Nation decision to this case, it is clear that the district court's judgment of dismissal falls below that standard.

III.

The Answer Brief similarly ignores the fact that this Court is an error-correcting court and that Manzini's post-dismissal motion expressly sought leave to amend his complaint to seek equitable relief *only* applying the rationale of the belatedly released Cayuga Nation opinion, therefore the fact

that Manzini's post-dismissal motion was not based upon "newly discovered evidence" is, and was, of no moment in this case.

The district court palpably misapprehended the purpose for which Manzini's post-dismissal motion was made pursuant to Fed. R. Civ. P. 59, to-wit, that rehearing may be granted *"for any reason"* for which rehearing has been granted in a suit in equity and that the district court "*may open the judgment, amend findings of fact and conclusions of law or make new ones"* and treat the post-dismissal motion as a *"device to relitigate the original issue"* decided by the district court. See Opening Brief at page 29.

IV.

Finally, while a district court has broad discretion to grant or deny equitable relief, this circuit ruled long along that discretion is ***not*** unfettered. See Alabama ex rel. Siegelman v. United States EPA, 925 F. 2d 385 (11th Cir. 1991). This is especially so where, as here, a) Manzini has alleged that appellees are violating a federal statute (IGRA) resulting in their unjust enrichment, b) the district court misapprehended material facts that support Manzini's claim in arriving at its flawed conclusion that no "actual controversy" exists, i.e., that there is no on-going violation because appellees have banned Manzini from their casino, and c) there has been no clear showing that appellees' violations have ceased and will not recur.

In the landmark case of Hecht Corp. v. Bowles, 321 U.S. 321 (1944), whose holding was reaffirmed in the last decade in Kansas v. Nebraska, 574 U.S. 445 (2015), the Supreme Court made clear that violations of federal law where legal remedies are inadequate are especially susceptible to equitable relief including the equitable remedy of disgorgement. A district court may not simply turn a deaf ear to such statutory violations especially where the statute at issue (IGRA) does not expressly foreclose equitable remedies.

Here, the district court's finding that no "actual controversy" exists was expressly predicated on a blatantly false premise: that the Declaratory Judgment Act is merely procedural and does not apply to Manzini's claims because of the prevailing rule that IGRA does not afford litigants with a private right of action, period.

However, neither the district court's dismissal order [ECF No. 40] nor its order denying Manzini's post-dismissal motion [ECF No. 44] addressed in any way, shape or form the fact that in enacting IGRA Congress did ***not*** foreclose the right of litigants to seek equitable relief in its many variations to enforce the Act's provisions, as a sister district court carefully reasoned in the Cayuga Nation decision.

Based upon *that* refusal alone, the district court abused its discretion in dismissing Manzini's *Amended Complaint* with prejudice.

CONCLUSION

The district court's order of dismissal should be reversed and this action remanded to the district court with directions to permit the filing of a *Second Amended Complaint* seeking only equitable relief and concomitant or related equitable remedies.

By: */s/ Nicolas A. Manzini*
Nicolas A. Manzini
Appellant, In Propria Persona

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December, 2025, the foregoing document was filed with the Court using the CM/ECF system and true and correct copies thereof were served electronically upon all persons listed in the CM/ECF service list.

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