

No. 24-1801
(Judge Schwartz)

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LARIO OIL AND GAS COMPANY,
Plaintiff,
v.

UNITED STATES,
Defendant.

**REPLY IN SUPPORT OF DEFENDANT’S MOTION
TO DISMISS PLAINTIFF’S COMPLAINT**

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Plaintiff,	)	
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v.	)	No. 24-1801
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UNITED STATES,	)	
	)	
Defendant.	)	

**REPLY IN SUPPORT OF DEFENDANT’S MOTION
TO DISMISS PLAINTIFF’S COMPLAINT**

Pursuant to Rule 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully submits this reply brief in support of our request that the Court dismiss the complaint of plaintiff, Lario Oil and Gas Company (Lario).

ARGUMENT

I. Lario Cannot State A Claim Because The Lease Is Void

Lario argues that the Department of Interior’s Bureau of Land Management (BLM) breached a contract with Lario by cancelling a portion of a lease. Our motion showed that the cancelled portion of the lease was issued in violation of the Indian Mineral Leasing Act (IMLA), because the land conveyed by the cancelled portion of the lease belonged to the Mandan, Hidatsa, Arikara Nation (MHA Nation). Lario is thus left to argue that, notwithstanding its conceded illegality, the lease should be enforced. The Court should reject Lario’s argument and hold the lease void *ab initio* to the extent it purported to convey an interest in tribal land to Lario.

A. As Federal Circuit Precedent Has Recognized, Government Contracts Can Be Invalidated Even When There Is No Fraud

Our motion argued that, under this Court’s precedent, contracts should be invalidated when they violate a statute and invalidating the contract is necessary to achieve the public policy reflected in the contravened statute. Mot. 14-15.

In response, Lario begins by arguing that the elements for a contract are established. Opp. 10-11. In light of the standard of review for this motion, we will accept this assertion as true at this stage of the case. Even taking this as true, though, it misses the point that, even when the elements of a contract are present, there are circumstances that warrant invalidating that contract. As our motion showed, where a statute or regulation has been contravened, courts should look to whether the invalidation of a Government contract “is consistent with and essential to effectuating the public policy in” the statute or regulation. *American Tel. & Tel. Co. v. United States*, 177 F.3d 1368, 1374 (Fed. Cir. 1999) (*en banc*) (*AT&T*) (quoting *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 563 (1961)); *see also Seh Ahn Lee v. United States*, 895 F.3d 1363 (Fed. Cir. 2018).

Lario next argues that only in cases of fraud can a Government contract be invalidated. Opp. 11-12. It does not attempt to square this position with the next section of its brief, which quotes Supreme Court and Federal Circuit precedent acknowledging that, even absent fraud, Government contracts can be invalidated. Opp. 13-14 (quoting *AT&T*, 177 F.3d at 1374; *Mississippi Valley Generating*, 364 U.S. at 563). If Lario were correct, the analysis in the Federal Circuit’s *en banc* decision in *AT&T*, where the contract at issue had no indicia of fraud, would have proceeded much differently. Instead of the painstaking analysis of the circumstances giving rise to the contract, the *en banc* Court would have simply held that there is no allegation of fraud and thus no prospect of invaliding the contract. *AT&T*, 177 F.3d at 1374-77. To similar

effect, in *Seh Ahn Lee*, the Federal Circuit could have easily disposed of appellants' theory on the basis that they had not alleged fraud. 895 F.3d at 1372. But the panel instead followed the lead of *AT&T* and engaged in an analysis of the applicable statutory and regulatory framework, along with the circumstances of the contracts at issue, before ultimately deciding that the contracts should not be invalidated. *Id.*; see also *Fluor Enterprises, Inc. v. United States*, 64 Fed. Cl. 461, 495 (2005) (where contract contravened statutory limitation on fees for architectural and engineering services, deeming contract unenforceable without any allegation of fraud based upon consideration of legislative intent and statutory purpose).

To be sure, fraud can be a basis for invalidating a government contract. *Long Island Sav. Bank, FSB v. United States*, 503 F.3d 1234, 1246 (Fed. Cir. 2007); *J.E.T.S, Inc. v. United States*, 838 F.2d 1196, 1201 (Fed. Cir. 1988). But the Federal Circuit's precedent, taken in its totality, cannot be read to say that *only* fraud can invalidate a Government contract. Lario's argument to the contrary relies primarily upon language from *Godley v. United States*, 5 F.3d 1473, 1476 (Fed. Cir. 1993), for the proposition that only fraud can lead to a Government contract being invalidated. Opp. 11-12. But to the extent that *Godley* purports to craft a rule governing all situations in which a party alleges that a contract is void rather than simply addressing the facts before the Court, the applicable language in *Godley* is dicta that was subsequently overtaken by the analysis of the *en banc* Court in *AT&T*. See *National American Ins. Co. v. United States*, 498 F.3d 1301, 1306 (Fed. Cir. 2007) (holding that Court of Federal Claims did not err by departing from principles from Federal Circuit case that were "unnecessary to the decision" and thus constituted dicta). Lario also relies upon a case quoting *Godley* to analyze the required showing for an affirmative fraud claim, an issue that has no bearing upon the separate issue of when a Government contract can be invalidated. *Kellogg Brown & Root Servs. v. United States*, 728

F.3d 1348, 1371 (Fed. Cir. 2013). And Lario relies upon a case interpreting the Federal conflict of interest statute that, if anything, undermines its position. *See Oracle America, Inc. v. United States*, 975 F.3d 1279, 1295 (Fed. Cir. 2020). Even as *Oracle America* quotes dicta from *Godley* about fraud, it also articulates a rule that would allow for Government contracts to be invalidated absent fraud: “Contrary to Oracle’s contention, the *Mississippi Valley* case is best read as providing that conflicts of interest invalidate government contracts only if the conflicts materially affect the contracts.” *Id.* Finally, Lario relies heavily on *Griffin & Griffin Exploration, LLC v. United States*, 116 Fed. Cl. 163 (2014), which we addressed at length in our opening brief. But, in addition to being factually distinguishable, *Griffin & Griffin* starts from the premise that “a finding of fraud or other wrongdoing is a necessary predicate to a finding that the leases were void ab initio for purposes of government contract law.” *Id.* at 173 (citing *Kellogg Brown*, 728 F.3d at 1371). As we demonstrated above, this does not account for the framework set out in *Mississippi Valley*, *AT&T*, and *Seh Ahn Lee*.

Finally, Lario challenges our reliance upon two Court of Claims cases holding that contracts were void *ab initio*. Opp. 15; Mot. 14 (discussing *Prestex, Inc. v. United States*, 320 F.2d 367 (Ct. Cl. 1963); *Schoenbrod v. United States*, 410 F.2d 400 (Ct. Cl. 1969)). But these cases remain good law and were cited favorably by the en banc Court in *AT&T*. 177 F.3d at 1375. They demonstrate that contrary to Lario’s narrow focus on fraudulent inducement, there is a history of invalidating Government contracts absent fraud when necessary to achieve Congress’s policy objectives. *See also Gray v. Johnson*, 395 F.2d 533, 537 (10th Cir. 1968) (invalidating lease approved by BIA that was contrary to regulations and not in the best interest of the Indian lessors).

The Court should thus apply the test set out in binding precedent from the Supreme Court and Federal Circuit and decide whether, to achieve Congress's purposes, the lease must be invalidated to the extent that it purported to convey tribal land.

B. The Cancelled Portion Of The Lease Must Be Invalidated To Achieve The Purposes Of The Indian Mineral Leasing Act And Other Statutes Governing The Relationship Between Tribes And The Federal Government

Our motion relied upon Federal Circuit precedent to argue that, to the extent that it purported to convey tribal land, the lease was an illegal contract that must be invalidated to vindicate Congress's policy objective of protecting tribal land. Lario's argument that invalidation is not necessary to achieve the purpose of the IMLA and other statutes defining the contours of the Federal Government's relationship with Indian tribes does not adequately account for the long history of Congressional enactments about the disposition of tribal land and the precedent interpreting those enactments.

Deeming enforceable a lease in which the United States purports to lease Indian-owned land to a third party for the benefit of the U.S. treasury would run counter to the exacting standards set out by Congress for dealings between the Federal Government and Indian tribes. As the Supreme Court explained it in a case in which the United States sought to invalidate conveyances of Cherokee land executed in violation of restraints on alienation: "Congress was solicitous to conserve the interests of the Indians and to fulfill the national obligation, not simply by assuring an equitable apportionment of the property, but by safeguarding the individual ownership of allottees through suitable restrictions which were designed to secure them in their possession and to prevent their exploitation." *Heckman v. United States*, 224 U.S. 413, 432-33 (1912). This same policy concern is evident in the IMLA and the litany of other statutes governing the disposition of tribal land.

In enacting the IMLA, Congress was specifically focused upon concerns about ensuring that tribes were involved in the issuance of leases. This is demonstrated by the IMLA’s legislative history, which should be considered when a court decides whether to invalidate a contract. *AT&T*, 177 F.3d at 1374 (looking to “legislative intent,” as reflected in legislative history, in deciding whether to invalidate a contract). The IMLA’s legislative history explains that, under the laws pre-dating the IMLA, “un-allotted Indian lands” within certain states were placed “upon the same basis for prospecting and leasing for metalliferous minerals as lands of the public domain, after such Indian reservation lands ha[d] been declared opened by the Secretary of the Interior.” S. Rep. No. 75-985, at 2 (1937). The Secretary of the Interior had “no discretion” regarding “granting a lease to an applicant who has properly located his claim and complied with the laws and regulations of the Department [of the Interior.]” *Id.* As a result, “in several instances, it [was] necessary to grant the lease notwithstanding the fact that the Indians of the reservation were opposed to leasing the lands.” *Id.* As the report summarized, “under that law, neither [the Department of the Interior] nor the Indian Tribal Council [was] in a position to prevent the acquisition of a lease after the lands ha[d] been declared open to prospecting and lease, and the Indians at no time ha[d] any voice in the granting of such leases.” *Id.* This system was “not adequate to give the Indians the greatest return from their property.” *Id.* What happened here—the MHA Nation lacking “any voice in the granting” of leases—is exactly what the drafters of the IMLA sought to avoid.

Congressional intent can also be discerned from the many other enactments, dating back to the origin of the United States, in which Congress has spoken to the conveyance of tribal property. In the Northwest Ordinance of 1787, the Confederation Congress recognized that “[t]he utmost good faith shall always be observed towards the Indians; *their land and property*

shall never be taken from them without their consent...” Northwest Ordinance of 1787, ch. 8, art. III, 1 Stat 50, 52 (1787) (emphasis added). Then, among the first statutes the first Congress enacted was the Indian Trade and Intercourse Act, ch. 33, 1 Stat. 137, which it enacted in a more expanded form in 1793, Act of March 1, 1793, 1 Stat. 329, 330, § 8, and which survives to this day as the Nonintercourse Act, 25 U.S.C. § 177. The Nonintercourse Act “prohibits the ‘grant, lease, or other conveyance of lands, or of any title thereto’ from an Indian tribe unless approved by Congress.” *See Chemehuevi Indian Tribe v. Jewell*, 767 F.3d 900, 906 (9th Cir. 2014); *see also Oneida Cnty., N.Y. v. Oneida Indian Nation of New York State*, 470 U.S. 226, 234 (1985) (Nonintercourse Act reflects the principle that “no one could purchase Indian land or otherwise terminate aboriginal title without the consent of the sovereign.”). Here, Congress specified in the IMLA that Indian lands could be leased for mineral development, but only pursuant to the terms of that statute. BLM’s issuance of a lease that did not comply with the terms of that statute is unenforceable.

This point is reinforced by the fact that, more recently, Congressional enactments have repeatedly emphasized the trust relationship between Indian tribes and the Federal Government. As our motion explained, it is widely recognized that there is an “undisputed existence of a general trust relationship between the United States and the Indian people.” *United States v. Mitchell*, 463 U.S. 206, 225 (1983). In particular, Congress has recognized that this trust relationship extends to the administration of tribal property. For example, in connection with the Federal Oil and Gas Royalty Management Act, Congress identified the purpose of the statute as “to fulfill the trust responsibility of the United States for the administration of Indian oil and gas resources;” 30 U.S.C. § 1701(b)(4); and found that “the Secretary should aggressively carry out his trust responsibility in the administration of Indian oil and gas.” 30 U.S.C. § 1701(a)(4); *see*

Pawnee v. United States, 830 F.2d 187, 190 (Fed. Cir. 1987) (concluding, based upon those provisions, among others, that “the United States has a general fiduciary obligation toward the Indians with respect to the management of those oil and gas leases.”).

The Supreme Court has similarly recognized the special responsibilities that the United States has with respect to tribal land. In *Heckman*, the United States asked the Court to declare void thousands of conveyances of land from Cherokee Indians to third parties that violated statutory restrictions on alienation. 224 U.S. at 437-39. The primary question before the Court was whether the United States had capacity to bring suit, and the Court answered in the affirmative. Although the title to the land was held by the Cherokee rather than the United States, the Court held that the United States could sue in equity to ensure the rights of the Cherokee were vindicated. The Court’s analysis eschewed technical legal categories created by property law: “This national interest is not to be expressed in terms of property, or to be limited to the assertion of rights incident to the ownership of a reversion or to the holding of a technical title in trust.” *Id.* at 437. Even though the United States had granted the land to the Cherokee, “its relinquishment made it no less a matter of national concern that the restrictions designed to protect the Indian allottees should be enforced.” *Id.* It is true, the Court wrote, that the “conveyances obtained in violation of restrictions would be void[,]” but invalidating the conveyances would not, by itself, be enough to protect the Cherokee. *Id.* Instead, “[i]t was the intent of Congress that, for their sustenance, and as a fitting aid to their progress, they should be secure in their possession during the period specified, and should actually hold and enjoy the allotted lands.” *Id.* The United States was thus permitted to invoke the courts’ equity jurisdiction to protect Cherokee use of tribal lands. *Id.*

The Supreme Court once again addressed the Federal Government’s responsibilities with respect to tribal lands in *Lane v. Pueblo of Santa Rosa*, 249 U.S. 110, 111 (1919). Plaintiff, a town comprised of Pueblo Indians, brought “suit to enjoin the Secretary of the Interior and the Commissioner of the General Land Office from offering, listing, or disposing of certain lands in southern Arizona as public lands of the United States.” *Id.* Plaintiff sued based upon two contentions: “One that under the laws of Spain and Mexico it had, when that region was acquired by the United States, and under the provisions of the treaty it now has, a complete and perfect title to the lands in question; and the other, that in disregard of its title the defendants are threatening and proceeding to offer, list and dispose of these lands as public lands of the United States.” *Id.* The United States argued that, because the Pueblo Indians are “wards of the United States . . . the disposal of their lands is not within their own control, but subject to such regulations as Congress may prescribe for their benefit and protection.” *Id.* at 113. The Supreme Court rejected this argument. Even assuming that the Pueblo Indians are “wards of the United States,” the Court wrote, “it would not justify the defendants in treating the lands of these Indians—to which, according to the bill, they have a complete and perfect title—as public lands of the United States and disposing of the same under the public land laws.” *Id.* “That,” the Court wrote, “would not be an exercise of guardianship, but an act of confiscation.” *Id.*

These authorities support the view that the leasing of trust land for the benefit of the United States without tribal involvement falls so far outside both the letter and the intent of the statutory scheme as to require invalidation. The appropriate outcome here, consistent with Congress’s longstanding focus upon protecting tribal lands, and courts’ use of their jurisdiction to ensure that Congress’s purposes are achieved, is to hold the lease void *ab initio*.

C. Given The Special Status Of Federal-Tribal Relations, Congress’s Demonstrated Commitment To Protecting Tribal Lands Overrides The Policy Objective Of Upholding The Validity Of Government Contracts

Instead of meaningfully engaging with the distinctive history of Federal-tribal relations, Lario focuses upon the general predisposition of courts to enforce Government contracts. Opp. 13-16. Its argument does not overcome the showing in our motion.

To begin, although Lario points to the policy of respecting the integrity of fully performed contracts, the concerns implicated by this policy objective do not apply here in the way they might in other contexts. The United States has refunded the amounts paid by Lario, so the United States has obtained no unfair benefit (or, indeed, any benefit at all) from the lease. *See Prestex*, 320 F.2d 373 (“However, the basic fact of legal significance charging the Government with liability in these situations is its retention of benefits in the form of goods or services.”). In addition to obtaining a refund of the amounts paid to the United States, Lario has been permitted to negotiate with the Indian tribe based on IMLA statutory rates—that is, the rates that Lario would have been required to pay if it had negotiated with the Indian tribe in the first instance—and has come to an agreement based on those rates. Compl. ¶¶ 31-34. If the Court deems this contract enforceable, and awards the damages Lario is seeking, Lario will be put in a position where it is effectively paying MLA rates for tribal land that is governed by the different (and higher) rates set out for IMLA-governed leases. Compl. ¶¶ 37 (identifying damages sought by Lario, which seek the difference between the payments that Lario must make under its current IMLA-governed lease with a hypothetical world in which the lease was governed by the MLA); *compare* 25 C.F.R. § 211.41 (rates for leases issued under the IMLA) *with* 30 U.S.C. § 226(f) (rates for leases issued under the MLA). If Lario prevails, then, it will

be in an improved position as compared to if it had negotiated the lease with the MHA Nation in the first instance.

Importantly, too, Lario is seeking to be put in a better position than it would be if the lessor were a private party rather than the United States. As our opening brief pointed out, without any response from Lario, the Federal Circuit has held that a conveyance of tribal land to a private party in violation of the IMLA was void. *See Shoshone Indian Tribe of the Wind River Rsrv. v. United States*, 672 F.3d 1021, 1038 (Fed. Cir. 2012). If the lessor here had been a private party rather than the United States, the precedent in *Shoshone Indian Tribe* would dictate that the lease is void on account of the undisputed violation of the IMLA. Accordingly, by asking this Court to hold the lease enforceable, Lario is seeking a more favorable rule that would apply if it had entered into a lease with a private party instead of the United States. But such an outcome would be illogical. It is not justified by a comparison of the facts of this case to the facts in *Shoshone Indian Tribe*, which addressed a situation where (unlike here) the tribe had consented to the issuance of the lease in question. *Shoshone Indian Tribe*, 672 F.3d at 1037. And, although the Nonintercourse Act applied to the transfer in *Shoshone Indian Tribe*, *see id.*, but does not specifically apply to the BLM's actions here, *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 120 (1960), the other sources of law identified above have repeatedly recognized the responsibilities of the United States when it comes to the administration of tribal land.

Lario also argues that our position could add “additional impediments to the leasing of Indian minerals” by encouraging future lessees to contest the United States's ownership determinations. Opp. 15. Even taking this argument on Lario's terms, the legal principle that it advocates would essentially penalize the United States for uncovering this issue and correcting it.

It would thus have the effect of discouraging the United States from seeking to correct similar errors to the extent they arise in the future. Conversely, the rule urged by Lario would discourage lessees from performing diligence on whether land is owned by a tribe or the Federal Government. Lessees in Lario's position could effectively obtain a windfall by leasing tribal lands under the MLA at the lower rates called for under the MLA until somebody figures out the mistake—in which case, if the Court accepts Lario's theory, the lessee could sue to recover damages. Lario thus fails to appreciate the incentives created by its position. Even more fundamentally, Lario's line of argument is divorced from the reasoning of cases that have invalidated illegal conveyances of tribal land without attempting to divine the consequences of the decision. *Shoshone Indian Tribe*, 672 F.3d at 1037 (in rejecting Government's argument that violation of IMLA was harmless error, holding that "the statutory requirements regarding the transfer of Indian lands may not be waived or ignored.").

The policy concerns supporting the integrity of Government contracts are undoubtedly important. Here, though, as evidenced in centuries of enactments Congress plainly intended that tribal land be administered in a way that protects tribal interests. The lease should be held void *ab initio* to the extent that it conveyed tribal land without tribal involvement for the benefit of the U.S. Treasury.

II. Lario Is Not Entitled To Any Remedy Beyond The Refund It Has Already Received

Alternatively, should the Court deem the lease enforceable, the Court should nevertheless dismiss the complaint for failure to state a claim. Mot. 19-21.

Our motion explained that Congress has set out a remedy for lessee like Lario whose lease is cancelled due to an administrative error. *See id.* They are allowed to seek a refund of the overpaid amounts. *See id.* We set forth, in detail, the statutory provisions through which

Congress sought to remedy the issue of amounts overpaid by lessors. *See id.* We further explained that, in an analogous case considering oil and gas royalties, another judge on this Court held that a lessor's remedies relating to allegedly unpaid royalties were governed by the statutory scheme set out by Congress governing royalties. *See BP Expl. & Prod., Inc. v. United States*, 142 Fed. Cl. 579, 599 (2019).

Lario does not address our explanation of the legislative history of section 1734 or reckon with the indicia in the legislative history that Congress was not interested in creating the expansive remedy sought by Lario here. Instead, Lario argues that the refund established by Congress “does not provide a remedial scheme at all.” Opp. 17. This is incorrect. The administrative scheme allows the lessee to request a refund from the Secretary. If the refund request is denied, the lessee can appeal to the Interior Board of Land Appeals. *Emery Energy, Inc.*, 90 IBLA 70, 76 (1985); *J. V. McGowen*, 9 IBLA 133 (1973). In adjudicating such appeals, the IBLA has distinguished between situations in which the cancellation has occurred through no fault of the lessee, in which case a refund is warranted; and situations in which “the cancellation of the lease is due to some fault of the lessee himself or if he stands to benefit through any arrangement with parties seeking the cancellation of the lease,” in which case a refund is not warranted. *Emery Energy, Inc.*, 90 IBLA at 77. To the extent that the lessee is dissatisfied with the IBLA's deposition, it is free to seek judicial review.

Ultimately, as our motion explained, the sweeping remedies sought by Lario here would undermine this statutory framework in a way that is contrary to the history of these provisions. Lario has already received the refund contemplated by Congress as a remedy. It thus is not entitled to anything else.

CONCLUSION

For these reasons, and those set forth in our motion, we respectfully request that the Court dismiss Lario's complaint.

Respectfully submitted,

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