

THE COMMONWEALTH OF MASSACHUSETTS
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December 2, 2013

BY HAND

Maura S. Doyle, Clerk
Supreme Judicial Court
for Suffolk County
John Adams Courthouse
One Pemberton Square, Suite 1-300
Boston, MA 02108-1707

Re: Commonwealth of Massachusetts v. The Wampanoag Tribe of Gay Head (Aquinnah), the Wampanoag Tribal Council of Gay Head, Inc., and The Aquinnah Wampanoag Gaming Corporation, No. SJ-2013-

Dear Ms. Doyle:

Enclosed for filing in the above-referenced matter please find the Complaint and Motion for Appointment of Special Process Server. Because the plaintiff is the Commonwealth, I understand that the filing fee will be waived.

Thank you for your attention to this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Juliana deHaan Rice", written over a circular stamp.

Juliana deHaan Rice
Assistant Attorney General
(617) 727-2200, ext. 2583

JDR/sc



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. 2013-0479

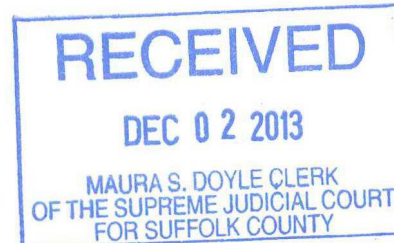
THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

THE WAMPANOAG TRIBE OF GAY HEAD
(AQUINNAH), THE WAMPANOAG TRIBAL
COUNCIL OF GAY HEAD, INC., and THE
AQUINNAH WAMPANOAG GAMING
CORPORATION,

Defendants.



MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER

Pursuant to MASS. R. CIV. P. 4(c), the undersigned hereby moves for the appointment of Kevin McCarthy, Director of Investigations for the Office of the Attorney General, or his designee, as special process server in the above-captioned action. Mr. McCarthy and the individuals in his Division are over 18 years of age and are not parties to this action.

COMMONWEALTH OF MASSACHUSETTS,
By its attorneys,

MARTHA COAKLEY
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Juliana deHaan Rice", written over a horizontal line.

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Dated: December 2, 2013

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT IN AND FOR SUFFOLK COUNTY

No. SJ-2013-0479

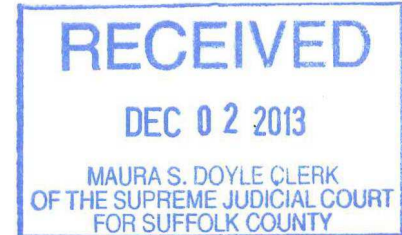
THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

THE WAMPANOAG TRIBE OF GAY HEAD
(AQUINNAH), THE WAMPANOAG TRIBAL
COUNCIL OF GAY HEAD, INC., and THE
AQUINNAH WAMPANOAG GAMING
CORPORATION,

Defendants.



COMPLAINT

1. The Wampanoag Tribe of Gay Head (Aquinnah) is a federally recognized Indian Tribe located on lands at the western tip of Martha's Vineyard.¹ On its lands, the Aquinnah Tribe may do as it wishes, so long as it acts consistently with State and local law. The Aquinnah Tribe is entitled to, and receives, the respect and deference of the Commonwealth of Massachusetts with regard to its lawful actions.

2. What the Aquinnah Tribe may not do, however, is operate a gaming (i.e., gambling) establishment on its lands, unless that establishment is licensed and permitted under both State and local law.

3. This matter has been settled since November 1983, when the

¹ As used herein, the terms "Aquinnah Tribe" and "Tribe" shall refer to the defendants Wampanoag Tribe of Gay Head (Aquinnah) and the Wampanoag Tribal Council of Gay Head, Inc.

Commonwealth, the Aquinnah Tribe, the Town of Aquinnah (the “Town”), and the Taxpayers’ Association of Gay Head, Inc. (the “Taxpayers’ Association”) negotiated and entered into an agreement (the “Settlement Agreement”) (attached as **Exhibit A**) to resolve a lawsuit brought by the Aquinnah Tribe claiming aboriginal property rights to certain tracts of land in the Town.

4. In the Settlement Agreement, the Town and its Taxpayers’ Association conveyed title to over 400 acres of land on Martha’s Vineyard to the Aquinnah Tribe. In return, the Aquinnah Tribe agreed that those lands would remain subject to the Commonwealth’s (and local) laws and jurisdiction, and that the Tribe had no authority or jurisdiction to act in contravention of those laws.

5. The Commonwealth’s laws prohibit any person or entity from operating a gaming establishment without a gaming license issued under State law. Under the terms of the Settlement Agreement, that prohibition applies to the Aquinnah Tribe, just as it would to any other entity that sought to open a gaming establishment in the Commonwealth. In addition, Massachusetts law grants only one entity (i.e., the Massachusetts Gaming Commission) authority to issue the requisite gaming license.

6. Because the Aquinnah Tribe does not have a gaming license issued by the Massachusetts Gaming Commission, the Tribe may not operate a gaming establishment on its lands.

7. Nonetheless, the Aquinnah Tribe recently adopted a Tribal ordinance purporting to permit the Tribe to: license, open, and operate gaming establishments on its lands, all in contravention of Massachusetts law. Moreover, the Tribe has expressed its intent to open a gaming establishment “as soon as possible,” and has acted on that intent

as described in this complaint. Those actions have violated the Settlement Agreement.

8. Accordingly, the Commonwealth brings this action based upon breach of contract and G.L. c. 231A. The Commonwealth seeks judgment declaring that the Aquinnah Tribe must follow the terms of the Settlement Agreement by, among other things, abiding by all laws of the Commonwealth, including those laws that prohibit gaming without a State-issued license.

PARTIES

9. The Commonwealth of Massachusetts is a sovereign state of the United States.

10. Defendant the Wampanoag Tribe of Gay Head (Aquinnah) is a federally recognized Native American Tribe. 25 U.S.C. § 1771(7).

11. The Wampanoag Tribe of Gay Head (Aquinnah) includes the Defendant Wampanoag Tribal Council of Gay Head, Inc., an entity formerly organized as a Massachusetts non-profit corporation whose incorporation was deemed revoked under the laws of the Commonwealth effective June 18, 2012.

12. The Wampanoag Tribe of Gay Head (Aquinnah) and the Wampanoag Tribal Council of Gay Head, Inc. maintain their principal and usual places of business at 20 Black Brook Road, Aquinnah, Massachusetts.

13. Defendant the Aquinnah Wampanoag Gaming Corporation is, on information and belief, a wholly-owned subsidiary of either or both the Wampanoag Tribe of Gay Head (Aquinnah) and the Wampanoag Tribal Council of Gay Head, Inc.

14. Upon information and belief, the Aquinnah Wampanoag Gaming Corporation maintains its principal and usual place of business at 20 Black Brook Road, Aquinnah, Massachusetts.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this action in accordance with G.L. c. 214, §§ 1, 2, 8.

16. This Court has personal jurisdiction over the Wampanoag Tribe of Gay Head (Aquinnah) pursuant to G.L. c. 223A, § 2, because the Tribe maintains its principal and usual place of business in the Commonwealth.

17. This Court has personal jurisdiction over the Wampanoag Tribal Council of Gay Head, Inc. pursuant to G.L. c. 223A, § 2, because the Tribe maintains its principal and usual place of business in the Commonwealth.

18. This Court has personal jurisdiction over the Aquinnah Wampanoag Gaming Corporation pursuant to G.L. c. 223A, § 2, because that entity, on information and belief, maintains its principal and usual place of business in the Commonwealth.

19. Venue is proper in this Court pursuant to G.L. c. 223, § 5, because this action is brought by the Commonwealth.

FACTS

The Aquinnah Tribe Received Title to Settlement Lands in Return for Its Agreement to Abide by the Laws of the Commonwealth

20. The Town of Aquinnah is located on the western tip of Martha's Vineyard, Massachusetts.

21. Incorporated in 1870 as Gay Head, Massachusetts, the Town formally changed its name to Aquinnah in 1997.

22. Throughout its history, the Town has been home to a community of Wampanoag Native Americans named the Aquinnah.

23. In February 1987, the United States Secretary of the Interior formally recognized the Aquinnah as an Indian Tribe.

24. Previously, in 1974, the Aquinnah Tribe sued the Town claiming aboriginal title to certain tracts of land in Martha's Vineyard. *Wampanoag Tribal Council of Gay Head, Inc. v. Town of Gay Head*, No. 74-5826-G (D. Mass.).

25. On September 28, 1983, the Commonwealth, the Aquinnah Tribe, the Town, and the Town Taxpayers' Association entered into a "Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts Indian Land Claims" (the Settlement Agreement) to resolve the *Wampanoag* lawsuit.

26. The Settlement Agreement was the capstone to nine years of litigation and was a carefully struck, negotiated contract among sophisticated parties represented by legal counsel.

27. The Settlement Agreement conferred benefits and placed obligations on all parties to that agreement.

28. The Town and the Taxpayers Association agreed to convey title to more than 400 acres of public and private lands (the "Settlement Lands") to a specially created, state-formed corporation created by the Aquinnah Tribe "for the purpose of acquiring, managing, and permanently holding lands, including the lands defined in this settlement as the Settlement Lands." Settlement Agreement ¶ 3. On information and belief, the United States Department of the Interior took the Settlement Lands at issue in this action into trust for the Tribe's benefit in December 1988 and March 1993.

29. In return, the Aquinnah Tribe agreed to relinquish all claims of any kind to lands and waters in the Commonwealth. Settlement Agreement ¶ 8(d).

30. In numerous provisions of the Settlement Agreement, the Aquinnah Tribe also agreed that the Settlement Lands would remain under the Commonwealth's jurisdiction and be subject to all State and local laws. In short, the Aquinnah Tribe expressly agreed that it had no authority whatsoever to act in contravention of State and local laws, and conceded that it would be subject to State enforcement power if it did so.

A. Paragraph 3 of the Settlement Agreement states:

The Tribal Land Corporation shall hold the Settlement Lands, and any other land it may acquire, *in the same manner, and subject to the same laws, as any other Massachusetts corporation*, except to the extent specifically modified by this agreement and the accompanying proposed legislation. *Under no circumstances*, including any future recognition of the existence of an Indian tribe in the Town of Gay Head, *shall the civil or criminal jurisdiction of the Commonwealth of Massachusetts, or any of its political subdivisions, over the settlement lands, or any land owned by the Tribal Land Corporation in the Town of Gay Head, or the Commonwealth of Massachusetts, or any other Indian land in Gay Head, be impaired or otherwise altered*, except to the extent modified in this agreement and in the accompanying proposed legislation.

(emphasis added).

B. Paragraph 11 of the Settlement Agreement states:

The Settlement Land shall be subject to an express federal statutory restriction against alienation. This statutory provision against alienation shall state explicitly that (a) *no Indian tribe or band shall ever exercise sovereign jurisdiction as an Indian tribe other than to the extent agreed herein, over all or part of the*

Settlement lands, or over any other land that may now or in the future be owned by or held in trust for, any Indian entity, but (b) the absence of such sovereignty shall not in any way prejudice Gay Head Indians in their efforts to obtain federal benefits available to Indians or the achieve recognition as a tribe.

(emphasis added).

- C. Paragraph 13 of the Settlement Agreement states: “All Federal, State and Town laws shall apply to the Settlement Lands” subject only to certain narrow restrictions not relevant here.
- D. Paragraph 16 of the Settlement Agreement subjects the Settlement Lands to the Town’s Land Use Plan and to the Town’s zoning laws.

31. The Settlement Agreement was duly executed by authorized individuals on behalf of the Commonwealth, the Aquinnah Tribe, the Town, and the Town Taxpayers’ Association.

32. Both the Massachusetts Legislature and the United States Congress subsequently enacted legislation ratifying the Settlement Agreement.

33. In 1985, the Massachusetts Legislature enacted Chapter 277 of the Acts of 1985, entitled “An Act to Implement the Settlement of the Gay Head Indian Land Claims” (“the Commonwealth Act”). The Commonwealth Act implemented the terms of the Settlement Agreement and incorporated the Settlement Agreement into State law.

34. The Commonwealth Act also reaffirmed the parties’ contractual agreement that the Settlement Lands would be under the Commonwealth’s jurisdiction and subject to the laws of both the Commonwealth and Town. Section 4 of the

Commonwealth Act states that “All federal, state, and town laws shall apply to the settlement lands” subject to certain exceptions not applicable in this action. Section 5 of the Commonwealth Act provides:

Except as provided in this act, all laws, statutes and bylaws of the commonwealth, the town of Gay Head, and any other properly constituted legal body, shall apply to all settlement lands and any other lands owned now or at any time in the future by the Tribal council or any successor organization.

35. On August 18, 1987, the United States Congress enacted the Massachusetts Indian Land Claims Settlement Act (the “Federal Settlement Act”) to implement the Settlement Agreement.

36. As with the Commonwealth Act, the Federal Settlement Act reaffirmed the parties’ contractual agreement that the Settlement Lands would remain subject to the Commonwealth’s (and local) laws and jurisdiction—including those laws governing gaming—and that the Aquinnah Tribe would not exercise jurisdiction over those lands.

[S]ettlement lands and any other land that may now or hereafter be owned or held in trust for any Indian tribe or entity in the town of Gay Head, Massachusetts shall be subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head, Massachusetts (including those laws and regulations which prohibit or regulate the conduct of bingo or any other game of chance).

25 U.S.C. § 1771g.

37. The Federal Settlement Act further reaffirmed the parties’ contractual agreement that the Aquinnah Tribe may not exercise any jurisdiction inconsistent with Massachusetts law governing the Settlement Lands: the Tribe “*shall not exercise any jurisdiction over any part of the settlement lands in contravention of this subchapter, the civil regulatory and criminal laws of the Commonwealth of Massachusetts, the town of*

Gay Head, Massachusetts, and applicable Federal laws.” 25 U.S.C. § 1771e(a) (emphasis added).

The Aquinnah Tribe Has Not Obtained a License to Open a Gaming Establishment Pursuant to Massachusetts Law

38. Massachusetts law prohibits any person or entity from opening or operating a gaming establishment without a gaming license issued by the Massachusetts Gaming Commission pursuant to the statutory process set forth in Chapter 23K of the General Laws and regulations promulgated thereunder.

39. The Settlement Agreement subjects the Aquinnah Tribe and the Settlement Lands to the jurisdiction of the Commonwealth and to the Commonwealth’s criminal and civil laws.

40. Accordingly, the Aquinnah Tribe—like any other entity subject to Massachusetts law—cannot operate a gaming establishment without first obtaining a gaming license issued by the Massachusetts Gaming Commission pursuant to Chapter 23K and regulations promulgated thereunder.

41. The Aquinnah Tribe does not presently hold and has never held a gaming license issued by the Massachusetts Gaming Commission.

42. Nor would the Aquinnah Tribe be currently eligible to receive a gaming license.

43. The Chapter 23K licensing process requires an entity to apply for a gaming license, and the application process involves an extensive determination whether an applicant is suitable to operate a gaming establishment. *E.g.*, G.L. c. 23K, §§ 9-18.

44. Among other requirements, an applicant must have reached an agreement with its host community and “received a certified binding vote on a ballot question at an election in the host community in favor of such license.” G.L. c. 23K, § 15.

45. The Aquinnah Tribe has not reached any agreement with the Town, nor has it received the approval of the Town’s voters to open a gaming establishment.

46. The Aquinnah Tribe is therefore currently prohibited from opening a gaming establishment because it does not possess a gaming license issued by the Massachusetts Gaming Commission.

47. Accordingly, any actions taken by the Aquinnah Tribe to open or operate a gaming establishment would violate Massachusetts law.

**The Aquinnah Tribe Adopted a Tribal Gaming Ordinance in
Violation of Massachusetts Law**

48. The Aquinnah Tribe has taken actions to license, open, and operate gaming establishments on Settlement Lands in violation of Massachusetts and local law and in breach of the Settlement Agreement’s provisions requiring the Aquinnah Tribe to abide by that law.

49. On February 4, 2012, the Aquinnah Tribe passed Resolution 2012-04 (“Resolution Adopting Wampanoag Tribe of Gay Head (Aquinnah) Gaming Ordinance No. 2011-01”) adopting a Tribal gaming ordinance, Gaming Ordinance No. 2011-01 (attached as **Exhibit B**).

50. Among other things, Gaming Ordinance No. 2011-01 purportedly:

- A. Authorizes gaming to be conducted on Settlement Lands;²
- B. Establishes an Aquinnah Tribal Gaming Commission;³ and

² Gaming Ordinance No. 2011-01, §§ 1.5 and 1.6.

C. Authorizes that Commission to issue gaming licenses and Tribal work permits in furtherance of gaming activities.⁴

51. In other words, Gaming Ordinance No. 2011-01 purportedly authorizes the Aquinnah Tribe to license, open, and operate gaming establishments *without* first obtaining a Chapter 23K license from the Massachusetts Gaming Commission. Gaming Ordinance No. 2011-01 also purportedly establishes a governing body for such unlawful gaming separate from and outside of the very same laws the Aquinnah Tribe agreed to follow in the Settlement Agreement: the laws of the Commonwealth.

52. The Aquinnah Tribe's adoption of Gaming Ordinance No. 2011-01 violates Massachusetts law, is void, and breaches the Aquinnah Tribe's contractual obligation to abide by Massachusetts law as set forth in the Settlement Agreement.

The Aquinnah Tribe Has Taken Further Actions Aimed at Opening a Gaming Establishment in Violation of Massachusetts Law

53. After adopting Gaming Ordinance No. 2011-01, the Aquinnah Tribe has taken additional actions violating the Commonwealth's gaming laws.

54. The Aquinnah Tribe submitted its Gaming Ordinance No. 2011-01 to the National Indian Gaming Commission ("NIGC") for review and approval. By letter dated February 21, 2012, the NIGC approved Gaming Ordinance No. 2011-01 for gaming on Indian Lands as defined by the Federal Indian Gaming Regulatory Act ("IGRA").

³ *Id.* at § 2.

⁴ *Id.* at § 3.

55. The Aquinnah Tribe subsequently re-submitted Gaming Ordinance No. 2011-01 to the NIGC accompanied by a new Tribal resolution making the ordinance specific to the Settlement Lands.⁵

56. On August 29, 2013, NIGC wrote to the Aquinnah Tribe that the NIGC once again considered Gaming Ordinance No. 2011-01—now site-specific to the Settlement Lands—“to be approved to the extent that it is consistent with the provisions of IGRA.”

57. The Aquinnah Tribe requested a legal opinion from NIGC stating that the Tribe may conduct gaming on Settlement Lands. On October 25, 2013, NIGC informed the Tribe by letter of its legal opinion that the Settlement Lands are Indian Lands under IGRA and that those lands are eligible for gaming under Gaming Ordinance No. 2011-01.

58. Neither the Aquinnah Tribe nor the NIGC informed the Commonwealth that the Tribe had submitted gaming ordinances for NIGC’s approval or that the Tribe had requested legal opinions from the NIGC concerning eligibility for gaming on Settlement Lands.

59. The Commonwealth only first learned of these matters in a letter from the Aquinnah Tribe dated November 12, 2013—after NIGC approved the Aquinnah Tribe’s gaming ordinance and after NIGC issued its legal opinion.

60. The Aquinnah Tribe has publicly and repeatedly expressed its intent to license, open, and operate one or more gaming establishments under Gaming Ordinance No. 2011-01 “as soon as possible.”⁶

⁵ Resolution 2012-23, “Identification of Indian Lands for the Purposes of the Wampanoag Tribe of Gay Head (Aquinnah) Gaming Ordinance 2011-11,” Apr. 7, 2012.

61. Consistent with its expressed intent, the Aquinnah Tribe has, on information and belief, submitted notice to the NIGC that it will license a gaming facility on its Settlement Lands. On information and belief, the NIGC received the Aquinnah Tribe's notice—together with a proposed license—on or about August 5, 2013.

**COUNT I:
BREACH OF CONTRACT**

62. The allegations set forth in paragraphs 1 through 61 are incorporated by reference as if set forth herein.

63. The Settlement Agreement is a valid and enforceable contract that created obligations on the part of the Aquinnah Tribe to observe and comply with the Commonwealth's laws, including those regulating gaming establishments.

64. The Aquinnah Tribe may not license, open, or operate gaming establishments on Settlement Lands without a gaming license issued by the Commonwealth.

65. The Aquinnah Tribe's actions, as alleged in this complaint, have breached the terms of the Settlement Agreement.

66. The Commonwealth has suffered and will continue to suffer injury resulting from the Aquinnah Tribe's breach of the Settlement Agreement.

67. The Aquinnah Tribe's actions, as alleged in this complaint, are so considerable that they go to the very essence of the parties' contractual bargain in the Settlement Agreement.

⁶ See, e.g., Mark Arsenault, "Tribe Says it Will Open Small Casino on Vineyard," *The Boston Globe* A1 (Nov. 12, 2013).

68. The Aquinnah Tribe's actions, as alleged in this Complaint, are anticipatory breaches of the Tribe's contractual obligations to the Commonwealth.

69. The Commonwealth has suffered and will continue to suffer injury resulting from the Aquinnah Tribe's anticipatory breaches of the Settlement Agreement.

70. Relief in the form of damages or restitution is not adequate to remedy the injury the Aquinnah Tribe has inflicted upon the Commonwealth through its actual and anticipatory breaches of the Settlement Agreement.

**COUNT II:
DECLARATORY JUDGMENT (G.L. c. 231A)**

71. The allegations set forth in paragraphs 1 through 70 are incorporated by reference as if set forth herein.

72. Under General Laws c. 231A, § 2, this Court is authorized to determine the rights, duties, status, or other legal relations of parties under written contracts, such as the Settlement Agreement, and under the laws of the Commonwealth.

73. The Aquinnah Tribe's actions, as alleged in this Complaint, are actual or anticipatory breaches of the Settlement Agreement and actual violations or contemplated and impending violations of Massachusetts law.

74. As a party to the Settlement Agreement, the Commonwealth may seek to enforce the terms of the Settlement Agreement.

75. The Commonwealth is also responsible for the enforcement of laws prohibiting gaming without a gaming license.

76. An actual controversy has therefore arisen between the Aquinnah Tribe and the Commonwealth concerning the Tribe's actual or anticipatory breaches of the

Settlement Agreement and actual violations or contemplated and impending violations of Massachusetts law.

77. No administrative remedies exist to terminate this controversy.

78. A judgment of this Court concerning those actions would terminate the uncertainty giving rise to this controversy.

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PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully asks this Court enter judgment:

- a. In favor of the Commonwealth and against the Aquinnah Tribe on all Counts;
- b. Declaring that the Aquinnah Tribe has no right to license, open, or operate a gaming establishment on the Settlement Lands without complying with all laws of the Commonwealth pursuant to the terms of the Settlement Agreement;
- c. Declaring that Gaming Ordinance No. 2011-01, and any action taken by the Aquinnah Tribe pursuant to Gaming Ordinance No. 2011-01, are illegal and void because the Ordinance and any actions taken pursuant to the Ordinance are in irreconcilable conflict with the Settlement Agreement and with Massachusetts law; and
- d. Awarding the Commonwealth such other and further relief as the Court deems just and proper.

Respectfully submitted,

THE COMMONWEALTH OF
MASSACHUSETTS,

By and through its attorney,

MARTHA COAKLEY
ATTORNEY GENERAL



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Dated: December 2, 2013