

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE STATE OF MICHIGAN,

Plaintiff,

v

No. 1:12-cv-00962-RJJ

Hon. Robert J. Jonker

AARON PAYMENT, LANA CAUSELY,
CATHY ABRAMSON, KEITH MASSAWAY,
DENNIS MCKELVIE, JENNIFER
MCLEOD, DEBRA ANN PINE, D.J.
MALLOY, CATHERINE HOLLOWELL,
DARCY MORROW, DENISE CHASE,
BRIDGETT SORENSON and JOAN
ANDERSON,

Defendants.

Kelly Drake (P59071)
Nate Gambill (P75506)
Assistant Attorneys General
Louis B. Reinwasser (P37757)
Special Assistant Attorney General
Attorneys for Plaintiff
Michigan Department of Attorney General
Environment, Natural Resources
and Agriculture Division
525 W. Ottawa Street
P.O. Box 30755
Lansing, MI 48909
Phone: (517) 373-7540
Fax: (517) 373-1610

AMENDED COMPLAINT

Plaintiff State of Michigan brings the following Amended Complaint for
declaratory and injunctive relief:

JURISDICTION

1. The Court has federal subject matter jurisdiction of this action pursuant to:
 - a) 28 U.S.C. § 1331, as this Complaint alleges violations of a tribal-state gaming compact executed pursuant to the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2701, *et seq.*, and violations of federal common law; and
 - b) 28 U.S.C. § 1367, as this Complaint alleges violations of State common law; and
 - c) 28 U.S.C. § 2201, as this Complaint also seeks a declaratory judgment.

PARTIES

2. Plaintiff is the State of Michigan (State).
3. Aaron Payment is Chairman of the Board of Directors for the Sault Ste. Marie Tribe of Chippewa Indians (Sault Tribe or Tribe), and is a member of the Sault Tribe’s Tribal Gaming Commission and Tribal Gaming Authority.
4. Lana Causley is Vice-Chairwoman of the Board of Directors for the Sault Tribe, and is a member of the Sault Tribe’s Tribal Gaming Commission and Tribal Gaming Authority.
5. Cathy Abramson is Secretary of the Board of Directors for the Sault Tribe, and is a member of the Sault Tribe’s Tribal Gaming Commission and Tribal Gaming Authority.

6. Keith Massaway is Treasurer of the Board of Directors for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

7. Dennis McKelvie is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

8. Jennifer McLeod is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

9. Debra Ann Pine is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

10. D.J. Malloy is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

11. Catherine Hollowell is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

12. Darcy Morrow is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

13. Denise Chase is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

14. Bridgett Sorenson is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

15. Joan Anderson is a Director for the Sault Tribe, and is a member of the Sault Tribe's Tribal Gaming Commission and Tribal Gaming Authority.

16. The Sault Tribe Board of Directors are duly elected by eligible members of the Sault Tribe and are authorized by the Tribe's constitution and Tribal Code to take lawful actions on behalf of the Tribe.

VENUE

17. The Sault Tribe has its Tribal offices and all of its reservation in the Upper Peninsula of Michigan. Defendant Tribal Officers all conduct relevant business activities at the Tribal offices. Venue is therefore appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(1).

GENERAL ALLEGATIONS

18. On or about August 20, 1993, then Michigan Governor John Engler, entered into a tribal-state gaming compact (the Sault Tribe compact or compact) with the Sault Tribe pursuant to IGRA. Congress specifically authorized states and tribes to enter into gaming compacts in IGRA, and the Sault Tribe compact was approved by the United States Secretary of the Interior (Secretary) on November 19, 1993. A true and correct copy of this compact is attached as Exhibit A.

19. Pursuant to the Sault Tribe compact, the Sault Tribe has successfully conducted Class III gaming (which is defined in IGRA, 25 U.S.C. § 2703(8), and is commonly known as casino gaming) in one or more casinos it operates on Indian lands in Chippewa, Alger, Schoolcraft and Mackinac Counties in the Upper Peninsula. The Tribe currently operates a total of five separate casinos in these locations.

20. The Sault Tribe's reservation is located entirely in the Upper Peninsula.

21. After learning from media reports that the Tribe intended to build and operate a casino in Lansing, the State sent a letter on February 7, 2012 to the Sault Tribe warning it that the operation of gaming at a casino in Lansing would be unlawful. A true and correct copy of this letter is attached as Exhibit B.

22. Nevertheless, on or about June 10, 2014, the Defendants caused an application to be submitted to the Secretary to have two parcels of land in Lansing, Michigan (Lansing parcels) totaling about 2.7 acres, taken into trust for the sole purpose of making it possible for the Tribe to operate one or more casinos on the Lansing parcels. (Lansing Trust Application attached as Exhibit C (without exhibits).)

23. On or about June 10, 2014, the Defendants also caused an application to be submitted to the Secretary to have a 71-acre parcel of land in Huron Charter Township, Michigan (Huron parcel) taken into trust for the sole purpose of making it possible for the Tribe to operate one or more casinos on the Huron parcel. (Huron Trust Application attached as Exhibit D (without exhibits).)

24. The submission of these applications to the Secretary, along with other events alleged in this Complaint, occurred outside Indian country.

25. Both the Lansing parcels and the Huron parcel are more than 200 miles by road from the Sault Tribe's reservation.

COUNT I— FEDERAL AND STATE COMMON LAW BREACH OF CONTRACT/COMPACT (§9)

26. Plaintiff incorporates paragraphs 1-25 above as if fully stated in Count I.

27. Section 9 of the Sault Tribe compact states:

Off-Reservation Gaming.

An application to take land in trust for gaming purposes pursuant to § 20 of IGRA (25 U.S.C. § 2719) shall not be submitted to the Secretary of the Interior in the absence of a prior written agreement between the Tribe and the State's other federally recognized Indian Tribes that provides for each of the other Tribes to share in the revenue of the off-reservation gaming facility that is the subject of the § 20 application.

28. Section 20 of IGRA prohibits gaming on land taken into trust after October 17, 1988 unless the gaming satisfies one or more of four exceptions listed in subsections (b)(1) of § 20.

29. Since the applications submitted by the Defendants to take land into trust for gaming purposes occurred after October 17, 1988, these applications were made pursuant to § 20 of IGRA and are governed by § 9 of the Sault Tribe compact.

30. Any gaming that would occur in Lansing or Huron Township will be off-reservation gaming.

31. The Defendants did not obtain a revenue sharing agreement with the State's other federally recognized Indian Tribes before submitting the applications to the Secretary to have the parcels in Lansing and Huron Township taken into trust.

32. Without such a revenue sharing agreement, the applications submitted by the Defendants to take land into trust are a breach of § 9 of the Sault Tribe compact and violate state and/or federal common law of contracts and compacts.

33. The Defendants do not have, and the Tribe cannot give them, the authority to violate the congressionally approved compact between the Sault Tribe and the State of Michigan.

34. The purpose of Section 9 of the compact was to benefit the State primarily by limiting the expansion of casino gaming in the State by prohibiting any trust application for off-reservation gaming unless the stated conditions were met.

35. While the State has sent a letter to the Secretary outlining its objections to the trust applications, the State is unaware of any formal legal administrative process in which it can participate as a party for the purpose of opposing – prior to a final determination by the Secretary of the Interior – the applications to have the Lansing and Huron parcels taken into trust.

36. The State will lose the benefit of its bargain and will be injured if the Defendants are allowed to pursue and obtain trust status for the Lansing and Huron parcels for the purpose of conducting gaming on these properties in violation of the Compact.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order 1) declaring that the submissions of applications to the Secretary to have property taken into trust in Lansing and Huron Township violate the Compact, 2) requiring Defendants to withdraw the applications submitted to the Secretary until such time as the Tribe has complied with § 9 of its compact, and 3) granting Plaintiff such other relief as the Court deems appropriate.

COUNT II— FEDERAL AND STATE COMMON LAW BREACH OF CONTRACT/COMPACT (§4(C))

37. Plaintiff incorporates paragraphs 1-36 above as if fully stated in Count II.

38. Section 4(C) of the Sault Tribe compact states:

The Tribe shall license, operate, and regulate all Class III gaming activities *pursuant to this Compact*, tribal law, IGRA, and all other applicable federal law. This shall include but not be limited to the licensing of the consultants (except legal counsel with a contract approved under 25 U.S.C. §§ 81 and/or 476), primary management officials, and key officials of each Class III gaming activity or operation. *Any violation of this Compact*, tribal law, IGRA, or other applicable federal law *shall be corrected immediately* by the Tribe. (Emphasis added.)

39. The violation of § 9 of the compact described above is also a breach of § 4(C) of that compact and a violation of state and/or federal common law of contracts and compacts.

40. The failure to correct the violation of § 9 “immediately” is also a violation of § 4(C) of the compact.

41. The Defendants do not have, and the Sault Tribe cannot give them, the authority to violate the congressionally approved compact between the Sault Tribe and the State of Michigan.

42. The State will lose the benefit of its bargain and will be injured if the Defendants are allowed to pursue and obtain trust status for the Lansing and Huron parcels property for the purpose of conducting gaming on these properties in violation of the Compact.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order 1) declaring that the submissions of applications to the Secretary to have property taken into trust in Lansing and Huron Township violate the Compact, 2) requiring Defendants to correct these violations by withdrawing the applications submitted to the Secretary immediately and until such time as the Tribe has complied with § 9 of its compact, and 3) granting Plaintiff such other relief as the Court deems appropriate.

COUNT III—CONSPIRACY TO BREACH COMPACT

43. Plaintiff incorporates paragraphs 1-42 above as if fully stated in Count III.

44. The Defendants acted in concert with the City of Lansing and others to cause the submission of the trust applications described above that violate §§ 9 and 4 of the Compact.

45. For example, the Defendants passed an official resolution (attached as Exhibit E) authorizing the execution of a Comprehensive Development Agreement with the City that required the Tribe to obtain “all necessary approvals, including but not limited to the United States,” for the conduct of gaming on the Lansing parcels. Comprehensive Development Agreement, ¶4.4.1, attached as Exhibit F.

46. Obtaining federal trust status for the Lansing parcels is necessary before any gaming can occur on those parcels.

47. The Comprehensive Development Agreement was negotiated and executed in furtherance of the conspiracy to violate § 9 of the compact.

48. On information and belief, the State believes Defendants authorized the execution of one or more similar agreements with third parties requiring the Tribe to seek federal approvals in violation of the Compact for gaming on the Huron Parcels, and that such agreements were executed by such third parties.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order 1) requiring Defendants to withdraw the applications submitted to the Secretary until such time as the Tribe has complied with § 9 of its compact, and 2) granting Plaintiff such other relief as the Court deems appropriate.

COUNT IV—INTENTIONAL INTERFERENCE WITH COMPACT

49. Plaintiff incorporates paragraphs 1-48 above as if fully stated in Count IV.

50. The Defendants intentionally caused the Tribe to breach its compact with the state by causing the submission of the trust applications described above that violate §§ 9 and 4 of the compact.

51. The instigation of the breach of the compact was not justified.

52. The Defendants do not have, and the Sault Tribe cannot give them, the authority to violate the congressionally approved compact between the Sault Tribe and the State of Michigan, and thus causing the submission of the trust applications was outside the scope of Defendants' authority.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order 1) requiring Defendants to withdraw the applications submitted to the Secretary until such time as the Tribe has complied with § 9 of its compact, and 2) granting Plaintiff such other relief as the Court deems appropriate.

Plaintiff further requests that it be awarded its costs and attorney fees incurred in bringing this action.

Respectfully submitted,

Bill Schuette
Attorney General

/s/ Louis B. Reinwasser

Kelly Drake (P59071)
Nate Gambill (P75506)
Assistant Attorneys General
Louis B. Reinwasser (P37757)
Special Assistant Attorney General
Attorneys for Plaintiff
Environment, Natural Resources
and Agriculture Division
525 W. Ottawa Street
P.O. Box 30755
Lansing, MI 48909
Phone: (517) 373-7540
louis.reinwasser@gmail.com
drakek2@michigan.gov
gambilln@michigan.gov

Dated: February 3, 2015

LF: Michigan v Sault Ste Marie Tribe (Lansing Casino)\2012-0002261-B\Amended Complaint 2015-02-03