

Justin D. Leonard, OSB 033736
Direct: 971.634.0192
Email: jleonard@LLG-LLC.com

LEONARD LAW GROUP LLC

111 SW Columbia, Ste. 1100
Portland, Oregon 97201
Fax: 971.634.0250

Counsel for Ch. 7 Trustee Joseph M. Charter

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

**Curtis Vale Womelsdorf &
LaVonne Mae Womelsdorf,**

Debtors.

Case No. 12-62075-fra7

**TRUSTEE'S OBJECTION TO
CORPORATION'S MOTION TO
RECONSIDER ORDER DENYING
EMERGENCY MOTION TO VACATE
FRBP 2004 ORDER**

The chapter 7 trustee, Joseph M. Charter, by and through his counsel, previously obtained from this Court an order (Doc. 287) (the "**Order**") directing that Seven Feathers Casino Resort (the "**Casino**") produce certain documents regarding pre- and post-petition gambling activity of debtor LaVonne Mae Womelsdorf (the "**Debtor**") under Rule 2004 of the Federal Rules of Bankruptcy Procedure ("**FRBPs**").

On March 13, 2015, the Umpqua Indian Development Corporation (the "**Corporation**") specially appeared and moved to vacate the Court's Order, challenging the Court's jurisdiction. After extensive briefing and a hearing, the Court denied the Corporation's Motion to Vacate, and the Court entered the form of order requested by the Corporation.

The Corporation now requests the Court reconsider that order because (1) The Corporation is not a "governmental unit" subject to 11 U.S.C. § 106(a); (2) 11 U.S.C. § 106(a) does not include FRBP 2004 examinations; and (3) the Order failed to name the true party in interest. *See* Corporation's Motion to Reconsider (Doc. 307).

Each of these issues was previously raised, discussed by counsel at the hearing, and then ruled upon by the Court. Therefore, the Trustee only supplements the arguments as follows:

1. **The Section 17 Corporation is either a “corporation” or else a “governmental unit” as the terms are defined by the Bankruptcy Code and Ninth Circuit case law – either way, the Bankruptcy Code authorizes the Court to require it to produce business records pertaining to a Debtor’s transactions.**

The Trustee has considered the Casino as a business of Seven Feathers Hotel & Casino Resort Corp., based on registrations and related documents filed with the Oregon Secretary of State and presented to the Court in the Trustee’s prior briefings. However, in its filings before this Court, the Corporation represents that the Casino is an assumed business name of the Corporation (contrary to the representations made by Seven Feathers Hotel & Casino Resort Corp. to the Oregon Secretary of State).

Therefore, based on the representations of the Corporation, the Trustee arranged for service of the Court’s Subpoena and Order on the Corporation’s registered agent, as a corporation would normally be served under the FRBPs. In addition, based on the argument that the Corporation is to be treated as the tribe itself – *i.e.*, of the Cow Creek Band of Umpqua Tribe of Indians (the “**Tribe**”) – the Trustee has also served the Court’s Subpoena and Order pursuant to Section 3-220(a) of the Tribe’s Tribal Legal Code, through personal service effected by the Tribe’s Court Clerk. Such service has been described in the “Trustee’s Notice of Completion of Service” and the tribal court’s Return of Service attached thereto. This Notice is being filed concurrently with this Response.

The Casino is a business open to the general public. Therefore, as a matter of public policy, its corporate entity – which is entitled to certain privileges as a corporation – should be subject to this Court’s jurisdiction as a “corporation” in regards to the production of business records solely pertaining to a customer’s transactions at the business. The Trustee, who stands in the shoes of the Debtors, is entitled to the information regarding the Debtor’s

transactions. In fact, much of the requested data regarding the Debtor's winnings and losses has already been disclosed to the Internal Revenue Service. Therefore, this is not a request for "highly confidential tribal financial documents" as characterized by the Corporation. The documents at issue pertain to the Debtor only, and should be obtainable by the Trustee as they would be by the Debtor. As noted by the Trustee previously, in addition to the Trustee's rights under FRBP 2004, the Trustee has the right to seek turnover from the Casino under 11 U.S.C. § 542(e) of the Debtor's transaction record, which is "recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs."

In its original subpoena, the Trustee treated the Casino's owner as a true "corporation" as defined under Section 101(9) of the Bankruptcy Code, which includes any "association having a power of privilege that a private corporation, but not an individual or partnership, possesses." 11 U.S.C. § 101(9)(i). The Court's Subpoena and Order was therefore originally served on the registered agent for the Casino's corporation according to the Oregon Secretary of State's records.

After the Court's ruling on the Motion to Vacate, service of the Subpoena and Order has now been completed on the registered agent of the Corporation. Now it is undisputed that, to the extent the Corporation is an "association having a power of privilege that a private corporation, but not an individual or partnership, possesses," the Corporation has been served by the Court's Subpoena and Order, establishing personal jurisdiction under FRBP 7004.

In its Motion to Vacate the Order, the Corporation argued that the Court does not have subject matter jurisdiction or personal jurisdiction over the Corporation because of the Tribe's immunity as a sovereign nation. The Corporation argued that "corporations organized under Section 17 of the IRA enjoy sovereign immunity just as tribes themselves do" and that "[t]hese entities thus remain fully protected by the tribe's sovereign immunity." *See* Motion to Vacate, at 3-4. Basically, the Corporation contended that the corporation was not a true corporation subject to the Court's jurisdiction, but rather an arm of the Tribe.

The Corporation explained to the Court and the Trustee that “it is black-letter law that ‘tribal corporations acting as an arm of the tribe enjoy the same sovereign immunity granted to a tribe itself’” *Id.*, quoting *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 725 (9th Cir. 2008). The Corporation added, “This is in part because a Section 17 corporation is an ‘arm of the tribal nation.’” *Id.*, quoting *Memphis Biofuels, L.L.C. v. Chickasaw Nation Indus., Inc.*, 585 F.3d 917 (6th Cir. 2009). Now the Corporation argues that, while 11 U.S.C. § 106(a) waives sovereign immunity as to the tribes under Ninth Circuit law, the Corporation should no longer be considered an arm of the Tribe.

Under Section 17 of the Indian Reorganization Act of 1934, the Secretary of the Interior can issue a charter of incorporation to a tribe allowing the tribe to form corporate entities and conduct business:

The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe. . . . Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefore interests in corporate property, and such further powers as may be incidental to the conduct of business, not inconsistent with law. . . .

25 U.S.C. § 477 (codifying Section 17 of the Indian Reorganization Act of 1934; emphasis added).

This charter thus incorporates the tribe, which is then able to act through the Section 17 corporation structure. However, the tribe is not somehow severed from the corporation.

As the statutory language states, the tribe becomes incorporated – *i.e.*, an “incorporated tribe.” *See Memphis Biofuels v. Chickasaw Nation Indus.*, 585 F.3d 917, 921 (6th Cir. 2009) (concluding that “the language of Section 17 itself—by calling the entity an ‘incorporated tribe’—suggests that the entity is an arm of the tribe”). This conclusion is exactly the point that the Corporation made originally, when contending that the Tribe’s immunity as a sovereign nation protected the Corporation except when that immunity is waived. As the Court correctly

ruled, to the extent the Corporation is not a “corporation” but rather a “governmental unit” (as an arm of the Tribe), then the Corporation’s immunity as a sovereign is partially waived under 11 U.S.C. § 106(a).

The Trustee made an additional argument in support of the Court’s ruling. Besides the waiver by Congress under Section 106(a) of the Bankruptcy Code, the Casino’s gambling operation exists based on the Tribe’s own waiver of sovereign immunity. This waiver is based on the October 2006 “Tribal-State Compact for Regulation of Class III Gaming Between the Cow Creek Band of Umpqua Tribe of Indians and the State of Oregon,” which was attached as Exhibit A to the Supplemental Declaration of Justin D. Leonard (Doc. 302).

In the Tribal-State Compact, the Tribe partially waived its rights of sovereign immunity and allows significant regulatory authority over the Casino’s operations, to allow for gaming in the State of Oregon. The Tribe’s waivers include obligations referenced in the Supplemental Declaration at ¶4 – including as applicable here, to maintain and disclose customer records as a non-tribal business would have to do in the State of Oregon. Therefore, even if 11 U.S.C. § 106(a) did not exist, the Trustee contends that he would still have the right to obtain the records of the Debtor’s gambling activity that took place in the Casino during the pendency of the chapter 11 bankruptcy case.

According to the Corporation’s argument in the pending Motion to Reconsider, the Corporation – being the separate entity that reportedly owns and operates the Casino – should not be bound by the Tribal-State Compact. Based on the Corporation’s current contention, the gaming compact should only bind the Tribe itself and not the Tribe’s Corporation – which did not sign the Tribal-State Compact. It is unlikely that the State of Oregon would agree with this logic. If it was accurate, the Casino would be operating illegally.

The more appropriate approach is the one taken by the Court, that to the extent the Corporation wants to be treated not as a typical “corporation” but rather as a “governmental

unit” (as an arm of the Tribe), then as an arm of the sovereign, the Corporation’s immunity has been partially waived by Congress under 11 U.S.C. § 106(a).

2. Subsection 106(a) authorizes this Court to issue orders under the FRBPs, including Rule 2004 examinations.

The Corporation argues that 11 U.S.C. § 106(a) does not enumerate FRBP 2004 examinations. However, as the Court expressly noted on the record, that provision specifically provides in subsection (a)(3) that “The court may issue against a governmental unit an order, process, or judgment under such sections [referring to the enumerated sections of the Bankruptcy Code from (a)(1), as cited by the Corporation] or the Federal Rules of Bankruptcy Procedure.” 11 U.S.C. § 106(a)(3) (emphasis added). This provision necessarily includes FRBP 2004, which authorized the Court to issue the Order.

3. The Order properly named the Casino, and the Trustee served the true party in interest.

The Corporation also argues that the Order failed to name the true party in interest, because the Order was issued directing the Casino to produce the documents. In fact, the Order directing production by “Seven Feathers Casino” was not only appropriate but necessary.

The Trustee’s Application to the Court, which resulted in the Order, referenced the Casino’s name – not the name of the entity that owned the Casino. The Corporation’s relevance was not known at the time (and remains contrary to the Oregon Secretary of State’s records).¹ The Trustee had no other name to use. Nowhere is the Corporation’s name – nor any

¹ At the time of the Application, the Trustee and his counsel had received select bank statements of the Debtors (which showed a “Seven Feathers” directly withdrawing large sums of money from the Debtors’ accounts). The Trustee and his counsel had also received copies of IRS W-2G Forms issued to the IRS and to the Debtor by “Seven Feathers Casino.” The issuer “Seven Feathers Casino” had its own EIN, and it used the address 146 Chief Miwaleta Lane, Canyonville, OR 97417, which is the address that received service of the Trustee’s Application. (Those federal tax filings by the Casino unfortunately only disclose the Debtor’s significant “winnings” and not the losses.) “Resort” was added to “Seven Feathers Casino” because the tribe’s recent press releases and its website had actually referred to the operation as “Seven Feathers Casino Resort.” Therefore, that was the name was used in the Trustee’s Application.

other entity name – mentioned in the Casino’s website at www.sevenfeathers.com. The Corporation itself was disclosed on the Tribe’s separate website as the “Cow Creek Tribe’s primary economic development engine.” See <http://www.cowcreek.com/economic-development>. However, the Tribe’s website specifically (and apparently incorrectly) states that “Each organization listed is a legally separate entity.” On that list, immediately below the Corporation, is “Seven Feathers Hotel & Casino Resort” (followed by a number of other businesses). According to the facts presented to the Court, the Casino is in fact not a “legally separate entity” from the Corporation.

There is no dispute that the business Seven Feathers Casino, which pulled money directly from the Debtor’s bank accounts and which itself issued statements of the Debtor’s winnings to the IRS, is now obligated under the Court’s order to produce documents regarding those transactions. There is also no dispute that under the FRBPs and under the Cow Creek Tribal Code, the Court’s Subpoena and Order have now been served – including on the Corporation’s registered agent, and on the Custodian of Records for the Casino’s Player’s Club. See Trustee’s Notice of Completion of Service, filed concurrently. Therefore, the Corporation and its Custodian of Records for the Casino should comply timely with the Order and produce the requested documents to the Trustee.

For these reasons, the Corporation’s Motion to Reconsider should be denied. If the Court upholds and does not vacate its original Order, the Trustee hereby requests that the Corporation propose a reasonable deadline for the production of the subpoenaed documents, now that service of the Subpoena and Order has been completed.

DATED: April 28, 2015.

LEONARD LAW GROUP LLC

By: /s/ Justin D. Leonard
Justin D. Leonard, OSB 033736
Counsel for Trustee Joseph Charter

CERTIFICATE OF SERVICE

I certify that on the date below, I caused notice of the filing of this **TRUSTEE'S OBJECTION TO CORPORATION'S MOTION TO RECONSIDER ORDER DENYING EMERGENCY MOTION TO VACATE FRBP 2004 ORDER** to be served on interested parties requesting notice through the Court's CM/ECF system and the following parties by U.S. Mail:

GABRIEL S GALANDA on behalf of Interested Party Umqua Indian Development
Corporation d/b/a Seven Feathers Casino Resort
Galanda Broadman PLLC
PO Box 15146
Seattle, WA 98115

RONALD C BECKER
405 E 8th Ave #1100
Eugene, OR 97401

Rob L Cockburn
Moss Adams LLP
221 Stewart Ave #301
Medford, OR 97501

Ellie George
1575 E McAndrews Rd #200
Medford, OR 97504

Krista Lacis
4088 Hampshire Ln
Eugene, OR 97404

ODR Bkcy
955 Center St NE
Salem, OR 97301-2555

Gary Rhinehart, MBA, LTC
Jackson County Accounting & Tax Svc Inc
1128 W Main St
Medford, OR 97501

DATED: April 28, 2015.

By: /s/ Justin D. Leonard
Justin D. Leonard, OSB 033736