

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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CURTIS EDWARDS and VICTORIA EDWARDS,

**Plaintiffs, CV-17-05869
(JMA) (SIL)**

-against-

**FOXWOODS RESORT CASINO, MASHANTUCKET
PEQUOT TRIBAL NATION; MASHANTUCKET
PEQUOT TRIBAL POLICE DEPARTMENT; JOHN
DOE, being the Security Agent employed by Foxwoods
Resort Casino and the individual who detained Plaintiff,
Curtis Edwards and POLICE OFFICERS JOHN DOES 1-10
And JANE DOES 1-10, MASHANTUCKET PEQUOT
TRIBAL POLICE DEPARTMENT, being the individuals
who detained and arrested Plaintiff, Curtis Edwards,**

Defendants.

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**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS**

Submitted By

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PRELIMINARY STATEMENT

Plaintiffs, Curtis Edwards and Victoria Edwards, brought this action pursuant to 28 U.S.C. Sections 1331,1343 and 42 U.S.C. Section 1983 against Foxwoods Resort Casino, Mashantucket Pequot Tribal Nation, Mashantucket Pequot Police Department and their various officers and agents.

Specifically, Plaintiffs seek legal redress for the violation of their rights by security officers employed at the Foxwoods Resort Casino and by officers of the Mashantucket Pequot Police Department.

Defendants move to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6) asserting that this Court lacks subject matter jurisdiction and that Plaintiffs have failed to state a claim upon which relief can be granted.

Plaintiffs submit this Memorandum of Law in opposition to Defendants' Motion to Dismiss.

RELEVANT FACTUAL ALLEGATIONS

The relevant factual allegations clearly point to the gravamen of the complaint centering around the acts and omissions of the security guards employed by the Foxwoods Resort Casino which resulted in the injuries to plaintiffs incident to the commission of an assault and battery, unlawful detainment, false arrest, false imprisonment, negligent hiring, and discrimination based upon the color of plaintiffs' skin. See Paragraphs 1-54 of the Complaint.

Most of the causes of action are against the security officers employed at the Foxwoods Resort Casino, based upon their assault and battery of plaintiffs, their wrongful and illegal detainment of plaintiff Curtis Edwards and discriminatory treatment of Curtis Edwards, based

upon the color of his skin, Black (. Paragraphs 13-54) wherein he was falsely accused, detained, and arrested for credit card fraud. Id.

The wrongful acts of the security agents of the Foxwoods Resort Casino were compounded by the wrongful and negligent acts of the Mashantucket Pequot Police Department which resulted in injury to plaintiffs. Third Cause of Action; Fourth Cause of Action and Fifth Cause of Action.

THE STANDARD OF REVIEW

1. Fed. R. Civ. P. 12(b)(1) - Subject Matter Jurisdiction

In reviewing a motion to dismiss for lack of subject matter jurisdiction, the court must determine if it has statutory or constitution power to adjudicate the case. In conducting this analysis, the court must accept as true all material factual allegations in the complaint.

J.S. ex. Rel. N.S. v. Attica Cent. Schs. 386 F. 3d 107, 110 (2d. Cir. 2004)

2. Fed. R. Civ. P. 12(b)(6) –Failure to Sufficiently Plead

In reviewing a motion to dismiss under Rule 112(b)(6), the court must accept the factual allegations as true and draw all reasonable inferences in favor of the non-moving party. The plaintiff must satisfy a flexible plausibility standard, which obliges the pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim plausible on its face. *Iqbal v. Hasty* , 490 F.3d 143, 157-58 (2d. Cir. 2007)

The primary reason for the defendants' 12(b)(1) and 12(b)(6) motions is the assertion of tribal sovereign immunity. In so doing, defendants mistakenly apply this argument as an exclusive bar to any action against the Foxwoods Resort Casino and its employees and the Mashantucket Police Department and its Police Officers. police

As more fully set forth herein, Plaintiffs submit that this Court does have subject matter jurisdiction and that the complaint further plausibly states factual allegations against the

defendants, as to pass the Rule (b)(6) test.

ARGUMENT

POINT I- THIS COURT HAS SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIMS

The thrust of Defendants' argument under Rule 12(b)(1) is that the Court does not have subject matter jurisdiction due to the application of the doctrine of tribal sovereign immunity in this case.

As defendants herein acknowledge, the Mashantucket tribe is a sovereign nation: The Court's authority to exercise jurisdiction over this sovereign is defined by the sovereign's own consent to be sued, or by a Congressional provision to be sued. *Kiowa Tribe v. Mfg. Techs.*, 523 U.S. 751 (1998) However, an issue arises as to the application of this tribal immunity doctrine to the Foxwoods Resort Casino and its security agents, as well as the Mashantucket Pequot Police Department. As to the latter, defendants raise no argument as to the applicability of the tribal doctrine to the Foxwoods Resort Casino, only arguing the applicability of the doctrine to the Mashantucket Pequot Tribe. However, as the complaint clearly establishes, the focus of plaintiffs' claims is against the casino security staff, and actually raises issues against the entity that manages the casino, the Mashantucket Pequot Gaming Enterprise. plaintiff respectfully requests leave to add the Gaming Enterprise as a party to this action

Upon consideration of the Mashantucket Pequot Gaming Enterprise's authority and the application of the Sovereign Immunity Waiver Ordinance to it, both subject matter jurisdiction and the plaintiffs' assertion of plausible claims against casino security and the police

department are established.

Plaintiffs present for the court's consideration the Sovereign Immunity Waiver Ordinance number 011092-01 adopted by the Mashantucket Tribe on January 10, 1992, which waives the immunity of the Mashantucket Tribe in limited fashion. This waiver is cited by Supreme Court of Connecticut in *Mashantucket Pequot Gaming Enter. V. CCI, Inc.* 1994 Conn. Super. LEXIS 1755 (.Supreme Court of Conn., Judicial District of New London, at Norwich, January 11, 1994) In this case, the Court acknowledges the waiver of tribal immunity in limited instances as set forth in the Sovereign Immunity Waiver Ordinance number 011092-01

The waiver states in relevant part as follows:

The Sovereign Immunity Waiver Ordinance number 011092-01 adopted January 10, 1992 waives the immunity of the Mashantucket Pequot Tribe in a limited fashion for injuries resulting from the operation of the Gaming Enterprise so long as, inter alia, the injury caused by the act of an employee of the Enterprise occurred within the scope of his or her authority on the Gaming Enterprise site.

(c) The sovereign immunity of the Gaming Enterprise is waived in the following instances:

- (1) Injuries proximately caused by the negligent acts or omissions of the Gaming Enterprises;
- (2) Injuries cause by the negligent acts or omissions of tribal security officers arising out of the performance of their duties during the course of their employment.

In the instant case, Plaintiffs allege in each Cause of Action that they sustained injuries as a result of the acts and omissions of the casino security officers and the police officers.

The doctrine of tribal immunity is waived by the aforementioned provisions of the Sovereign

Immunity Waiver Ordinance number 011092-01 which addresses the types of actions found herein. .

POINT II- PLAINTIFFS DO RAISE A FEDERAL QUESTION

Plaintiffs sufficiently allege federal question as to raise a federal question for the Court's review. Plaintiffs' constitutional claims are against the casino security agents and the police officers, not the tribe.

Plaintiff sufficiently raises issues of racial profiling and constitutional violations of his rights to be free from unlawful detainment and arrest, at the hands of resort security and police officers as to place these actions under the Sovereign Immunity Waiver Ordinance Number 011092-01 (Second, Third, Fourth and Sixth Cause of Action)

POINT III- THE DEFENDANTS HAD SUFFICIENT CONTACTS WITH THE STATE

Plaintiffs, in paragraph 25 of the complaint plausibly state defendants' contact with Plaintiffs in the State of New York to establish sufficient involvement or transaction of business in the State of New York. Plaintiffs received an e-mail from the head of security at the Casino, acknowledging the incident of plaintiff's detention and arrest, offering an apology .

In addition, since the filing of the complaint, the security department has again made contact with plaintiffs and has also sent plaintiffs solicitations by mail advising them of the casino partnering with the Hampton Jitney to provide transportation from Long Island, New York and Foxwoods.

LEAVE TO AMEND

In the event the motions are granted, plaintiffs respectfully request leave to file An amended complaint to specifically name the Gaming Enterprise and to further allege the casino's contact with plaintiffs in the state of New York

CONCLUSION

For all of the aforementioned reason, plaintiffs respectfully request that defendants' motions be denied.

Dated: Riverhead, New York
June 12, 2018

/s/ Harriet A. Gilliam

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