

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

LEGEND LAKE PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR,

DEB HAALAND, in her official capacity as
United States Secretary of the Interior,

Case No. 2023CV480

BUREAU OF INDIAN AFFAIRS,

TAMMIE POITRA, in her official capacity as
the Midwest Regional Director, Bureau of Indian
Affairs,

ACTING MIDWEST REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS, and

INTERIOR BOARD OF INDIAN APPEALS,

Defendants.

COMPLAINT

1. This is an action under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701, *et seq.*, seeking judicial review of a March 24, 2023 decision issued by the Interior Board of Indian Appeals (“IBIA”), which arose from the appeal of two decisions by the Midwest Regional Director, Bureau of Indian Affairs, and one decision from the Acting Midwest Regional Director, Bureau of Indian Affairs, to accept lands into trust by the United States for the Menominee Indian Tribe of Wisconsin (“Tribe”).

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the Constitution and laws of the United States, namely, the Menominee Restoration Act, Pub. L. No. 97-197, 87 Stat. 770 (December 22, 1973) (“MRA”); the APA, 5 U.S.C. § 701, *et seq.*; and 28 U.S.C. §§ 2201–2202.

3. The March 24, 2023 decision of the IBIA constitutes final agency action and no further agency appeal is available.

4. The sovereign immunity of the United States has been waived with respect to the subject matter of this action and the relief requested herein by 5 U.S.C. § 702.

5. Venue is proper in this Court under 28 U.S.C. § 1391(e) in that this is a civil action against the United States, an agency of the United States, and officials and employees thereof, and a substantial part of the events or omissions giving rise to this action occurred within the Eastern District of Wisconsin, Green Bay Division. Moreover, a substantial part of the property that is the subject of this action is situated within the Eastern District of Wisconsin, Green Bay Division.

PARTIES

6. Plaintiff Legend Lake Property Owners Association, Inc. (“Plaintiff” and “LLPOA”) is a corporation existing under the laws of the State of Wisconsin and is an association of property owners for properties in and around Legend Lake in the County of Menominee, State of Wisconsin.

7. Defendant United States Department of the Interior is an executive agency of the United States government, established pursuant to 43 U.S.C. § 1451, *et seq.*

8. Defendant Deb Haaland is the United States Secretary of the Interior, an office established by 43 U.S.C. § 1451.

9. Defendant Bureau of Indian Affairs (“BIA”) is a United States federal agency within the Department of the Interior.

10. Defendant Tammie Poitra is the Midwest Regional Director of the Bureau of Indian Affairs, and is responsible for two of the adverse decisions issued.

11. Defendant Acting Midwest Regional Director, Bureau of Indian Affairs, is a vacant office within the BIA, and is responsible for one of the adverse decisions issued.

12. Defendant Interior Board of Indian Appeals (“IBIA”) is an appellate review body within the United States Department of the Interior that exercises delegated authority of the Secretary of the Interior to issue final decisions for the Department of the Interior in appeals involving Indian matters. Thomas A. Blaser is the Chief Administrative Judge of the IBIA, and Kenneth A. Dalton and James A. Maysonett are both Administrative Judges of the IBIA.

GENERAL ALLEGATIONS

13. The Legend Lake area, located in Menominee County, Wisconsin, was initially developed in the late 1960s.

14. LLPOA was created in 1972 through the filing of articles of incorporation with the State of Wisconsin and the Menominee County Register of Deeds.

15. Per the articles, LLPOA’s period of existence was deemed perpetual, and membership was deemed mandatory for all record owners.

16. Membership in LLPOA was declared appurtenant to, and inseparable from, lot ownership.

17. Since its inception, LLPOA's principle purpose has been the collective and efficient management, maintenance, preservation, and operation of properties within Legend Lake, which are carried out by LLPOA's bylaws.

18. On June 13, 2009, LLPOA, via an amendment to its bylaws, adopted Restrictive Covenants, constituting covenants, conditions, and restrictions running with the land as to any plot of land designated as a lot or outlot as set forth on the plat of Legend Lake and any additions or amendments thereto. The Restrictive Covenants are attached hereto as **EXHIBIT A**.

19. The Restrictive Covenants were recorded with the Menominee County Register of Deeds on June 18, 2009, as Document No. 29803, and were intended to maintain the property values of Legend Lake properties by ensuring compliance with state and local governance and with the membership responsibilities of LLPOA, as well as to preserve the tax base of Menominee County.

20. All Legend Lake properties subject to the Restrictive Covenants could only be held, sold, or conveyed in accordance with the Restrictive Covenants, and the Restrictive Covenants are binding upon all parties that acquire or hold any right, title, or interest in the properties, along with their heirs, personal representatives, successors or assigns.

21. Article 1 of the Restrictive Covenants contain the following restrictions on transfer:

B. Without the express written consent of the Association, which to be effective must be duly voted upon and approved by the Association's membership by amendment to the bylaws, no owner of any interest in the Subject Real Estate (or any part thereof) shall transfer any interest in the Subject Real Estate to any individual, entity (whether corporation, limited liability company, limited partnership, limited liability partnership, general partnership or otherwise), organization, or sovereign or dependent sovereign nation, or during the period of ownership take any action, the result of which could or would

(1) remove or eliminate the Subject Real Estate (or any part thereof) from the tax rolls of Menominee County, Wisconsin,

(2) diminish or eliminate the payment of real estate taxes duly levied or assessed against the Subject Real Estate (or any part thereof),

(3) remove the Subject Real Estate (or any part thereof) from the zoning authority and general municipal jurisdiction of Menominee County, Wisconsin,

(4) remove the Subject Real Estate (or any part thereof) from the general municipal jurisdiction of the State of Wisconsin, to include administrative regulations duly adopted,

and/or

(5) remove the Subject Real Estate (or any part thereof) from the obligations and/or restrictions imposed on the Subject Real Estate (or any part thereof) by the duly adopted bylaws and resolutions of the Association, to include, without limitation, the obligation to pay all dues and assessments properly levied by the Association.

C. This Restriction on Transfer of Paragraph 1 shall apply to the transfer of an interest in an entity that is an owner of the Subject Real Estate if, as a result of the transfer, any of items (1) — (5) above could or would occur This restriction shall, among other things, expressly apply to any application to have the Subject Real Estate (or any part thereof) placed into federal trust pursuant to the Indian Reorganization Act.

D. Any owner of an interest in the Subject Real Estate (or any part thereof) shall at all times comply with any and all municipal and Association laws, rules, regulations and obligations as set forth in the foregoing restrictions, to include, without limitation, the property tax collection laws set forth in Chapters 74 and 75 of the Wisconsin Statutes **The Subject Real Estate remains subject to said municipal and Association laws, rules, regulations and obligations, in rem, notwithstanding a transfer to an owner not otherwise subject to them.**

E. Any purported transfer of any interest in the Subject Real Estate (or any part thereof) in violation of these restrictions shall be null and void.

(emphasis in original).

22. Sometime after 2017, Guy F. Keshena acquired title to 40 parcels (“Properties”), and is the current title owner of the Properties within the Legend Lake development.

23. Guy F. Keshena was aware of the Restrictive Covenants at the time he acquired the Properties.

24. Pursuant to a Tribal authorization, Mr. Keshena took title to those Properties as “Guy F. Keshena, a single person for and on behalf of the Menominee Indian Tribe of Wisconsin.”

25. Mr. Keshena took title to the Properties after the Restrictive Covenants were duly recorded with the Menominee County Register of Deeds, for the express purpose of further conveyance of the properties to the United States of America in trust for the Menominee Indian Tribe of Wisconsin.

26. Notwithstanding the Restrictive Covenants, the Menominee Indian Tribe of Wisconsin requested that the Properties be accepted into trust pursuant to the MRA.

27. Shortly thereafter, the Midwest Regional Director of the BIA issued determinations accepting the Properties into trust pursuant to 25 C.F.R. Part 151.

28. Those determinations were dated June 12, 2018, June 14, 2018, and August 22, 2018, respectively. The public notice confirming these determinations are attached hereto as **EXHIBIT B.**

29. On December 11, 2018, LLPOA filed a notice of appeal with the IBIA, seeking review of the Midwest Regional Director’s determinations to accept the Properties into trust.

30. The notice of appeal, among other things, argued that the acceptance of the Properties into trust would violate the Restrictive Covenants, as more fully set forth in **EXHIBIT A.**

31. On March 24, 2023, the IBIA issued its decision and affirmed the determinations of the Midwest Regional Director. *See* 68 IBIA 285. A copy of the IBIA’s decision is attached hereto as **EXHIBIT C**.

32. With respect to the acceptance of the Properties into trust, the IBIA determined that the Midwest Regional Director did not err, because Section 6(c) of the Menominee Restoration Act compelled the Midwest Regional Director to do so, notwithstanding the Restrictive Covenants.

33. After holding that the Properties must be accepted into trust due to the mandatory nature of Section 6(c), the IBIA nonetheless went on to hold that the Restrictive Covenants are preempted by federal law, because the Restrictive Covenants purportedly “directly interfere with and are contrary to both the terms and objectives of the MRA.”

34. Contradictorily, the IBIA noted later in its decision that its jurisdiction is limited to “determining whether the Regional Director had statutory authority to approve the acquisition, and whether he made any legal or factual error in doing so,” meaning that the IBIA’s consideration of the preemption question went beyond its limited jurisdiction.

35. Therefore, the IBIA should not have issued a decision on anything beyond its conclusion that the Properties should be accepted into trust.

36. Moreover, the IBIA considered, and decided, the issue of preemption despite not being empowered to issue decisions on constitutional issues.

37. The IBIA’s decision on preemption was also contradictory, arbitrary, vague, and failed to consider the plain language of the MRA.

38. For example, the IBIA acknowledged that the MRA mandates that any property being taken into trust be “subject to all valid existing rights including, but not limited to, liens, outstanding taxes (local, State, and Federal), mortgages, and any other obligations.”

39. And while the IBIA opined that the Restrictive Covenants did not fall within the meaning of “valid existing rights,” the IBIA failed to consider whether the Restrictive Covenants constituted “any other obligations” under the MRA when arbitrarily determining, without any evaluation or explanation, that such “reservation would not help” LLPOA.

40. The decision also concluded that the Restrictive Covenants were not “existing” rights, despite the fact that the Restrictive Covenants not only predated the acceptance of the Properties into trust by several years, they also predated Guy F. Keshena’s purchase of the Properties.

41. The IBIA also failed to explain why the entirety of the Restrictive Covenants were preempted, as opposed to merely those provisions that purportedly conflicted with the MRA, despite the existence of a valid severability clause within the Restrictive Covenants.

42. The IBIA concluded its decision by holding that it lacked jurisdiction to hear LLPOA’s contract claims against Keshena and the Tribe.

43. A related matter between LLOPA, Keshena, and the Tribe, is pending in District III of the Wisconsin Court of Appeals and is captioned as *Legend Lake Property Owners Association, Inc. v. Guy Keshena, et. al.*, Appeal No. 2022AP937. That appeal, however, does not arise from the decision of the Regional Director or IBIA.

44. The decisions of the Regional Director and Acting Regional Director, along with the decision of the IBIA affirming those decisions, have harmed LLPOA.

45. The IBIA's decision ensures that LLPOA and its members will experience reduced property values, be prevented from enforcing the terms of its Restrictive Covenants as contractual agreements, and render LLPOA a paper tiger, or ultimately meaningless, because non-trust property owners in the Legend Lake area would be left without mutual owner protections.

COUNT I

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

46. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 45 of this Complaint.

47. The IBIA's March 24, 2023 decision is final agency action of the department and is reviewable pursuant to 5 U.S.C. §§ 704 & 706.

48. The IBIA's March 24, 2023 decision is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

49. The IBIA's March 24, 2023 decision is contrary to constitutional right, power, privilege or immunity.

50. The IBIA's March 24, 2023 decision is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

51. The IBIA's March 24, 2023 decision is without observance of procedure required by law.

COUNT II

DECLARATORY JUDGMENT

52. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 51 of this Complaint.

53. An actual controversy has arisen and exists between Plaintiff and Defendants regarding their respective rights, duties, and obligations because Plaintiff contends that Defendants have violated the APA and that this unlawful agency action has injured Plaintiff and its members.

54. Plaintiff seeks a declaratory judgment the IBIA's March 24, 2023 decision violates the APA and should be vacated and/or remanded.

REQUESTED RELIEF

WHEREFORE, Plaintiff prays that this Court:

- A. Vacate and/or remand the March 24, 2023 decision of the IBIA;
- B. Issue a declaratory judgment that the March 24, 2023 decision of the IBIA violates the APA;
- C. Stay the March 24, 2023 decision of the IBIA pending the resolution of this dispute;
and
- D. Such other further relief as this Court may deem just and proper.

Dated: April 12, 2023.

VON BRIESEN & ROPER, S.C.

s/ Frank W. Kowalkowski

Frank W. Kowalkowski, SBN 1018119

VON BRIESEN & ROPER, S.C.

300 N. Broadway, Suite 2B

Green Bay, Wisconsin 54303

T: (920) 713-7800

F: (920) 232-4897

frank.kowalkowski@vonbriesen.com

Derek J. Waterstreet, SBN 1090730

VON BRIESEN & ROPER, S.C.

411 E. Wisconsin Avenue, Suite 1000

Milwaukee, Wisconsin 53202

T: (414) 287-1519

F: (414) 238-6434

derek.waterstreet@vonbriesen.com

*Attorneys for Plaintiff,
Legend Lake Property Owners Association, Inc.*

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