

Stone v LRCR --- #16096GC

Summary: Mr. Stone was terminated for failing a reasonable suspicion drug test given by the employer. Later, Mr. Stone applied for a dealer level 2 position. 14 days after receiving his application, LRCR denied his application for employment. LRCR alleged that Mr. Stone did not meet the minimum qualification of the job post. Mr. Stone filed suit claiming violation of the Indian Preference in Employment Law.

Decision and Order: Defendant LRCR responded with a Motion to Dismiss for failure to state a claim for which relief can be granted. After Oral Arguments, the court granted the Motion to Dismiss. The Court agreed the Indian Preference in Employment Ordinance did not apply to Mr. Stone because he did not meet the minimum qualification for the job post.

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

PLAINTIFF:
LEVI STONE

V.

CASE NUMBER: 16096GC
HON. DANIEL BAILEY

DEFENDANT:
LITTLE RIVER CASINO RESORT

Defendant:
Little River Casino Resort
2700 Orchard Highway
Manistee, Michigan 49660

Plaintiff:
Levi Stone
In Pro Per
5683 N. Tyndall Road
Branch, Michigan 49402

At a session of said Court on July 18, 2016
In the Reservation Boundaries of the
Little River Band of Ottawa Indians
PRESENT: HON. DANIEL BAILEY

ORDER OF JUDGMENT AFTER MOTION TO DISMISS HEARING

On January 29, 2016, Mr. Stone was terminated for failing a reasonable suspicion drug test given by his employer, the Little River Casino Resort ("LRCR"). On March 18, 2016, Mr. Stone applied for a dealer level 2 position at LRCR. On April 7, 2016, fourteen business days after receiving his application, LRCR denied his application for employment. In his denial of employment letter, LRCR alleged Mr. Stone did not meet the minimum qualifications of the job post, specifically, LRCR alleged Mr. Stone had integrity issues and that his re-hire would constitute a negligent hire in violation of the job post requirements. Similarly, in the filed brief, LRCR noted Mr. Stone's application indicated he did not meet the minimum requirements of a dealer level 2, which were 1 year dealing blackjack and 6 months dealing poker or successful completion of an accredited Poker Dealer training and all specialty games offered at LRCR. Mr. Stone's application indicated he only had 2 months of experience dealing blackjack. He cited no other dealer experience.

On April 21, 2016, Mr. Stone filed suit alleging two violations (1) violation of the Indian Preference in Employment Law and (2) willful and knowing delay in the hiring process in order to deny due process. Defendant LRCR responded on May 25, 2016 with an Answer, Affirmative Defenses, and a Motion to dismiss for failure to state a claim for which relief can be granted.

On June 20, 2016, the court held a pre-trial conference. Mr. Stone was present, as was legal counsel for LRCR. LRCR requested a motion date be scheduled to present their motion to dismiss in oral argument form. Mr. Stone requested a continuance to seek an attorney. At this appearance, Mr. Stone was informed that LRCR's motion to dismiss would be heard at the next court date whether or not he had an attorney. Mr. Stone asked for two weeks and the Court granted his request. A new court date was set for July 12, 2016. The Court provided a list of the attorneys who practice in Tribal Court, in an effort to assist Mr. Stone.

On July 5, 2016, Mr. Stone wrote the Court and requested a one week continuance to continue to seek legal representation. Over the request for denial made by LRCR, the Court granted the request. A new court date was set for July 18, 2016.

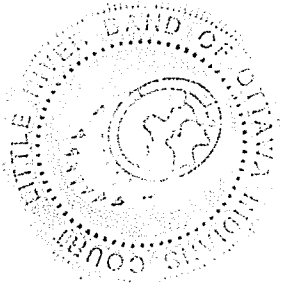
On July 18, 2016, both parties were present. LRCR requested to present its motion to dismiss. After oral argument by both parties, the Court granted LRCR's motion to dismiss based on the brief filed and oral arguments made. Specifically, the Court agrees the Indian Preference in Employment Ordinance did not apply to Mr. Stone because he did not meet the minimum qualifications for the job post, which is a necessary pre-requisite in order for the Preference Ordinance to apply. Likewise, the Court finds there was no delay in processing his application for employment.

For the aforementioned reasons, this Court grants the Defendant's request for a motion to dismiss for failure to state a claim for which relief can be granted, with prejudice. No costs are awarded to either party.

SO ORDERED:


Judge Daniel Bailey

7/25/16
Date



**Israel Stone, No.: 16206GC Consolidated with Tribal Ogema No.: 16308GC vs.
Little River Band Tribal Council**

Summary: Count I – Administrative Procedures Act. Plaintiff argues there was no emergency and that the Constitution does not provide Council with the legislative power to adopt and/or create an ordinance that provides Council with direct supervision and control of an enterprise.

Decision and Order: Both parties asked the Court to rule on the Motions. The Court disagrees with the Defendant that there was imminent danger. The Plaintiff's Motion for Summary Disposition on Count I is granted and that the Tribal Council violated the Administrative Procedures Act.

Order signed on: October 15, 2018*****

**Israel Stone, No.: 16206GC Consolidated with Tribal Ogema No.: 16-308 vs.
Little River Band Tribal Council**

Summary: Count II – Gaming Compact. Plaintiff alleges violation of the Gaming Compact. Defendant asserts that under the Gaming Compact, Section 7, Dispute Resolution, defines a specific procedure for allegations of non-compliance.

Decision and Order: The Court does not have the authority to hear this count as the decision maker for terms under the Gaming Compact and therefore cannot hear this count nor grant any relief.

Order signed on: October 15, 2018*****

**Israel Stone, No.: 16206GC Consolidated with Tribal Ogema No.: 16-308 vs.
Little River Band Tribal Council**

Summary: Both parties had presented Motions for Summary Disposition. The First Order on Count I is STAYED as to Count I until the conclusion of Count I on case number: 16308GC. Count IV regarding Separation of Powers, cannot be decided until Count I is concluded.

Count III alleges violations of the Unified Legal Department Act of 2015 as it relates to hiring outside counsel.

Decision and Order: The Defendant's Motion for Summary Disposition as to Count III is DENIED.

Order signed on: October 15, 2018*****

**Israel Stone, No.: 16206GC Consolidated with Tribal Ogema No.: 16-308 vs.
Little River Band Tribal Council**

Summary: Counts IV and V are both Separation of Powers issues relating to the Gaming Enterprise Oversight Act. The Ogema argues that the GEOS, in creating the OTA, makes Council “primary management officials” which is a power designated to the Ogema by the Constitution.

The second part of the separation of powers argument involves Article IV, Section 4.05c, of the GOA, which imposes a duty upon the General Manager to provide a plan to the Tribal Council Recorder. Plaintiff’s allege that the section violates the Constitution at Article IV, by enabling Council to micromanage the operation of the Gaming Enterprise.

Decision and Order: The language in the GOA, Article IV, Section 4.05c violates the Tribal Constitution. Additionally, imposing a duty upon the General Manager to report directly to Tribal Council is a violation of the separation of powers. Tribal Council does not have the Constitutional authority to manage the affairs of the enterprises.

Tribal Council has violated the separation of powers by giving itself the power to remove members of the Oversight Task Force and is managing the affairs of the gaming enterprise and usurping the Ogema’s power.

Order signed on: March 20, 2020*****

**Israel Stone, No.: 16206GC Consolidated with Tribal Ogema No.: 16-308 vs.
Little River Band Tribal Council**

Summary: Tribal Council requested a STAY of the Fourth Order because of “the uncertainty in the over a dozen ordinances with similar language,...” “...the fact that no LRBOI Trial Court or Court of Appeals decision has ever held the Tribal Council in violation of the separation of powers...”

Decision and Order: The Ordinances are not in front of the court and will not be considered. The Council is incorrect in stating neither of the Tribal Courts has made a determination of the separation of powers. Council has failed to show good cause why a STAY should be issued.

Order signed on: May 22, 2020*****

Appeal has been filed.



TRIBAL COURT
Little River Band Of Ottawa Indians
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ISRAEL STONE,

Case No. 16-206-GC

LARRY ROMANELLI,
TRIBAL OGEMA,

Case No. 16-308 GC
Hon. Angela Sherigan

Plaintiffs.

v.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COUNCIL,
Defendant

Craig W. Elhart
Attorney for Israel Stone
329 South Union
Traverse City, MI 49684

John Petoskey
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Peshawbestown, MI 49682

Dennis Swain
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P.O. Box 288
Beulah MI 49617

**FIRST ORDER REGARDING MOTIONS FOR SUMMARY DISPOSITION
UNDER CASE NO. 16-206-GC**

These matters having come before the court both regarding the Gaming Enterprise Board of Directors Act of 2010, the Court consolidated the cases and various Motions for Summary Disposition, Briefs, and Supplemental Briefs were filed, and hearings were held on all motions. The Court has decided the Motions and is issuing three separate Orders as identified below.

The first case, initiated by Israel Stone, Case No.16-206-GC, seeks declaratory judgment whether or not the Tribal Council improperly adopted emergency amendments to the Gaming Enterprise Board of Directors Act of 2010, by violating the Administrative Procedures Act in enacting Resolution #16-810-228, (Count I), violated the Gaming Compact and Indian Gaming Regulatory Act (Count II), violated the Elected Officials Ethics Ordinance (Count III), seeks whistleblower protection under the Fair Employment Practices Code Count IV), and subsequently Amended his Complaint to add Count V, seeking declaratory judgment on whether or not the Council violated the Constitutional Separation of Powers.

Case No. 16-308-GC was initiated by Ogema Romanelli, and seeks declaratory judgment on whether or not the Tribal Council violated: the Administrative Procedures Act in the enacting Resolution #16-810-250 (Count I); the Gaming Compact (Count II); the Unified Legal Department Act of 2015 (Count IV); the constitutional separation of powers by enactment of Resolution #18-810-250, and Resolution #17- 011-002 which implemented the Gaming Enterprises Oversight Act.

In Case No. 16-206-GC, both parties filed a Motion for Summary Disposition.¹ Plaintiff's Motion was brought under LRBOI CR 4.116(c)10, no genuine issue as to any material fact exists, and Defendant's Motion was brought under LRBOI CR 4.116(c)(10), and 4.116(c)(8), the opposing party has failed to state a claim upon which relief can be granted.²

¹ At the time of filing the Motion for Summary Disposition by the Tribal Council, the Tribal Council was represented by the Tribe's Unified Legal Department.

² Defendant's attorneys incorporated its answer to Plaintiff's Motion and Defendant's Motion for Summary Disposition in one document, as well as "incorporated, by reference, all previously filed pleadings"..."in an

In Case No. 16-308-GC, both parties filed Motions for Summary Disposition. Plaintiff's Motion was brought under LRBOI CR 4.116(C)(10) and the Defendant's Motions was brought under LRBOI CR 4.116(C)(8), failure to state a claim upon which relief can be granted on Count II, and under 4.116(c)(10), no genuine issue as to any material fact as to Counts I, III, IV, and V.

The Court is issuing three separate orders, the "First Order Regarding Motions for Summary Disposition", a "Second Order Regarding Motions for Summary Disposition – Count II", and a "Third Order Regarding Motions for Summary Disposition – Counts I, III, IV, and V, which are being issued simultaneously. This is the First Order Regarding Motions for Summary Disposition and deals with those Motions filed in Case No. 16-206-GC.

COUNT I - ADMINISTRATIVE PROCEDURES ACT

On August 10, 2016, the Tribal Council held a meeting pursuant to the Administrative Procedures Act, Ordinance #04-100-01, (hereinafter referred to as the APA) in which it adopted emergency amendments to the Gaming Enterprise Board of Directors Act of 2010, Ordinance #10-800-03, (hereinafter referred to as the GBDA), under Resolution #16-810-228.

Plaintiff argues that the enactment of Resolution #16-810-228, which was adoption of the amendments, was done in violation of Article 4 of the APA, arguing that there was no emergency, and that the Constitution does not provide Council with legislative power to adopt and/or create an ordinance that provides Council with direct

effort to save the Court from having to review the same writing more than once." This however, did not help and created additional work for the Court.

supervision and control of an enterprise. Arguing that the Constitution merely provides Council with the authority to create commissions or subordinate organizations and authorize that commission or organization the power to manage the enterprises.

Specifically, Plaintiff argues that Article V, Section 5.01, of the APA was violated.

That section states:

"In the interest of protecting the health, safety, or welfare of the Tribe, its members or the community, the Tribal Council make take emergency action to amend or adopt an ordinance for a six month period. An emergency must be imminent and not allow the normal rule making process to be conducted without causing or resulting in danger to the health, safety or welfare of the Tribe, its members or the community. Such emergency action may include injury to person, property, business or finances."

Additionally, Section 5.02 of the APA states "Such Resolution shall clearly state the nature of the emergency and the potential harm that could be caused by failure to act, and clearly stated amendments or directions which will be taken to avoid or lessen the potential harm"

The Plaintiff argues that the Resolution states only that the Tribe has been engaged in litigation with the National Labor Relations Board and that due to an adverse ruling to the Tribe, changes to the structure of the Gaming Enterprise was necessary, and that waiting to clarify the status of the Gaming Enterprise presents an ongoing risk that third parties and courts will treat the Gaming Enterprise as a commercial enterprise rather than an arm of the Tribal Government, and that "litigation of the National Labor Relations Board v. LRBOI as the basis of proof that third parties may challenge the Gaming Enterprises sovereignty and thus the possible harm".

Plaintiff argues that this does not identify an imminent danger or harm that may happen if the resolution is not passed on an emergency basis and fails to specifically identify any potential threat of further litigation by anyone in particular.

Defendant argues that in addition to that above, that “lack of growth at the Resort will lead to a decrease in services provided to members and a decrease in per-capita allotments, the Resort is behind on 2016 distribution to the Tribe, possible financial harm, concerns about sovereign immunity, concerns about financial integrity of the Resort, and concerns over the lack of consistent and manageable oversight of the Resort” and that any one of those could constitute imminent harm. Defendants also use this same argument for its Motion for Summary Disposition.

LRBOI CR 4.116(C)10 states that except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. 4.116 (G)(3)(b) states that affidavits, deposition, admission, or other documentary evidence in support of the grounds asserted are required when judgment is sought under sub-rule (C)(10).

Defendant argues that since the Plaintiff did not provide any affidavits or other supporting evidence and thus Plaintiff’s motion must fail. The Court notes that Defendant’s own motion also lacks the same support attached to the motion.³ Additionally, the parties through their attorneys both stated in open court on September 26, 2016 that there are no facts in dispute, and only that the interpretation of those facts according to the law is what is in dispute, and that both parties were going to submit

³ Affidavits, depositions, admission, or other documentary evidence must be attached to a Motion for Summary Disposition brought under 4.116(C)(10). They cannot be incorporated by reference from a prior pleading.

Motions for Summary Disposition, and that they wanted the Court to rule on the Motions instead of having the hearing on the injunction and subsequent hearing on the declaratory action.⁴

As both parties agree that there are no genuine issues of material fact in conflict, and neither submitted supporting documentation, under a strict interpretation of the court rules, both Motions should fail. However, since the parties also agreed that they wished the Court to make a declaration after the filing of the motions, and the importance of the issues presented, the Court will do so.

The Court disagrees with the Defendant, that there was imminent danger. “Imminent” means, about to happen or occur, something that is to take place very soon. It is a certainty, not a possibility. There was no showing that litigation against the Tribe was forthcoming. The other reasons stated by defendant as imminent also fail, as they were ongoing concerns that had started some time before the enactment of the Resolution. The Court finds that there was no emergency, and thus the Tribal Council violated the APA by enacting the Resolution under the emergency provisions of the APA instead of the normal rule making process.

THEREFORE, Plaintiff’s Motion for Summary Disposition on Count I is GRANTED, and the Court DECLARES, that the Tribal Council violated the Administrative Procedures Act. Defendant’s Motion for Summary Disposition on Count I is DENIED.

⁴ Transcript of Preliminary Injunction hearing of 09/06/2016, pages 1-3.

HOWEVER, this First Order Regarding Motions for Summary Disposition must be read in conjunction with the Third Order Regarding Motions for Summary Disposition.

COUNT II – GAMING ORDINANCE, GAMING COMPACT

Plaintiff's Complaint at Count II alleges violation of the Gaming Compact between the State of Michigan and the Little River Band of Ottawa Indians. Both parties frame their Motions for Summary Disposition on issues that have more to do with Gaming Ordinance #10-400-01, which provides for licensing requirements to follow the Indian Gaming Regulatory Act, and the Tribal-State Compact.

Since the Amended Complaint does not specifically make an allegation of violation of the Gaming Ordinance, but rather a violation of the Gaming Compact and the Indian Gaming Regulation Act, the Court cannot decide the issue as stated in the Motions. The Defendants in their Motion for Summary Disposition argue that the Plaintiff has failed to establish that the Tribal Council violated the Gaming Compact by not having gaming licenses, "for the reasons listed in Section II(A) of this brief". However, Section II(A) does not state reasons, and appears to deal with the issue of injunctive relief, and thus the Court cannot make a decision as the argument is not fully developed. Thus both Motions fail, and because neither party had developed an argument, the Court cannot make a declaratory ruling on this Count. However, this issue and the arguments were fully developed in Case No. 16-308-GC, and the Second Order Regarding Motions for Summary Disposition, read in conjunction with this Order regarding the same issue, this Count is dismissed.

THEREFORE, Plaintiff's and Defendant's Motion for Summary Disposition on Count II are DENIED. Plaintiff's Count II is DISMISSED for the reasons set forth in the Second Order Regarding Motions for Summary Disposition.


COUNT III – ELECTED OFFICIALS ETHICS ORDINANCE

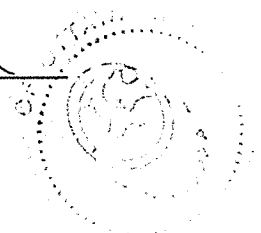
Plaintiff has argues that Defendant has violated the Elected Official Ethics Ordinance #14-100-10, Article 4.03, 4.09, and 4.10. Defendant argues that no specific action has been supported, and that a mere statement of conclusions, unsupported by factual allegations, is not sufficient to state a cause of action. The Court agrees with the Defendant. Without any specific facts or allegation, the court cannot make a ruling.

THEREFORE, Plaintiff's Motion for Summary Judgment on Count III is DENIED. Defendant's Motion for Summary Judgment on Count II is GRANTED, and Count III is hereby dismissed.

This case will proceed on Counts IV and V of Plaintiff's Amended Complaint.

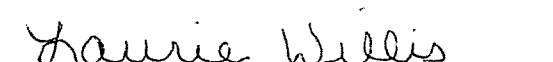
Dated: October 15, 2018


Hon. Angela Sherigan



CERTIFICATION OF MAILING

I certify a copy of this order was placed in the outgoing mail to be taken to the Manistee Branch of the United States Post Office for mailing to the parties or the attorney for plaintiff and attorney for defendant on this day.


Court Clerk/Court Administrator

10/15/18
Date



TRIBAL COURT

Little River Band Of Ottawa Indians
3031 Domres Road
Manistee, MI 49660
Tel: (231) 398-3406
Fax: (231) 398-3404

ISRAEL STONE,

Case No. 16-206-GC

LARRY ROMANELLI,
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Case No. 16-308 GC
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Plaintiffs.

v.

LITTLE RIVER BAND OF OTTAWA INDIANS
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2848 Setterbo Road
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Dennis Swain
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P.O. Box 288
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SECOND ORDER REGARDING MOTIONS FOR SUMMARY DISPOSITION UNDER CASE NO. 16-206-GC

These matters having come before the court both regarding the Gaming Enterprise Board of Directors Act of 2010, the Court consolidated the cases, and various Motions for Summary Disposition, Briefs, and Supplemental Briefs were filed, and hearings were held on all motions. The Court has decided the Motions and is issuing three separate Orders as identified below.

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In Case No. 16-206-GC, both parties filed a Motion for Summary Disposition.¹ Plaintiff's Motion was brought under LRBOI CR 4.116(c)10, no genuine issue as to any material fact exists, and Defendant's Motion was brought under LRBOI CR 4.116(c)(10), and 4.116(c)(8), the opposing party has failed to state a claim upon which relief can be granted.²

¹ At the time of filing the Motion for Summary Disposition by the Tribal Council, the Tribal Council was represented by the Tribe's Unified Legal Department.

² Defendant's attorneys incorporated its answer to Plaintiff's Motion and Defendant's Motion for Summary Disposition in one document, as well as "incorporated, by reference, all previously filed pleadings"... "in an effort to save the Court from having to review the same writing more than once." This however, did not help and created additional work for the Court.

In Case No. 16-308-GC, both parties filed Motions for Summary Disposition. Plaintiff's Motion was brought under LRBOI CR 4.116(C)(10) as to Counts II, IV, and V, and the Defendant's Motions was brought under LRBOI CR 4.116(C)(8), failure to state a claim upon which relief can be granted on Count II, and under 4.116(c)(10), no genuine issue as to any material fact as to Counts I, III, IV, and V.

The Court is issuing three separate orders, the "First Order Regarding Motions for Summary Disposition", a "Second Order Regarding Motions for Summary Disposition – Count II", and a "Third Order Regarding Motions for Summary Disposition – Counts I, III, IV, and V, which are being issued simultaneously. This is the Second Order Regarding Motions for Summary Disposition – Count II and deals with those Motions filed in Case No. 16-308-GC.

COUNT II – GAMING COMPACT

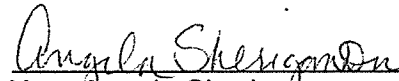
Plaintiff's Complaint at Count II alleges violation of the Gaming Compact. Defendant's Motion for Summary Disposition of this Count is brought under 4.116(C)(8), for failure to state a claim upon which relief can be granted. Under 4.116(G)(5), only the pleadings can be considered. 4.116(C)(8) tests the legal sufficiency of a claim and is granted when a claim is clearly unenforceable that no factual development could justify recovery. The State of Michigan and the LRBOI entered into a Class III Gaming Compact in 1988, with the U.S. Secretary of the Interior being an interested party. Defendant asserts that under the Gaming Compact, under Section 7, Dispute Resolution, a defined specific procedure for allegations of breach/non-compliance of any provision of the Compact, and the procedure for resolution, including the body

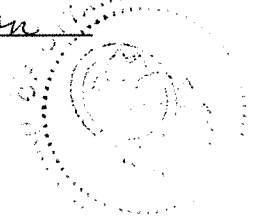
which will make the decision. The decision maker, under the terms of the Gaming Compact is not this Court, nor are the proper parties to the Compact in front of it. As such, this Court does not have the authority to hear this count and thus cannot grant any relief.

THEREFORE, Defendant's Motion for Summary Disposition is GRANTED.

Count II is DISMISSED.


Dated: October 15, 2018


Hon. Angela Sherigan



CERTIFICATION OF MAILING

I certify a copy of this order was placed in the outgoing mail to be taken to the Manistee Branch of the United States Post Office for mailing to the parties or the attorney for plaintiff and attorney for defendant on this day.


Court Clerk/Court Administrator

10/16/18
Date



TRIBAL COURT
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ISRAEL STONE,

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LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COUNCIL,
Defendant

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Dennis Swain
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**THIRD ORDER REGARDING MOTIONS FOR SUMMARY DISPOSITION
UNDER CASE NO. 16-308-GC**

These matters having come before the court both regarding the Gaming Enterprise Board of Directors Act of 2010, the Court consolidated the cases, and various Motions for Summary Disposition, Briefs, and Supplemental Briefs were filed, and hearings were held on all motions. The Court has decided the Motions and is issuing three separate Orders as identified below.

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In Case No. 16-206-GC, both parties filed a Motion for Summary Disposition.¹ Plaintiff's Motion was brought under LRBOI CR 4.116(c)10, no genuine issue as to any material fact exists, and Defendant's Motion was brought under LRBOI CR 4.116(c)(10), and 4.116(c)(8), the opposing party has failed to state a claim upon which relief can be granted.

In Case No. 16-308-GC, both parties filed Motions for Summary Disposition. Plaintiff's Motion was brought under LRBOI CR 4.116(C)(10) and the Defendant's

¹ At the time of filing the Motion for Summary Disposition by the Tribal Council, the Tribal Council was represented by the Tribe's Unified Legal Department.

Motions was brought under LRBOI CR 4.116(C)(8), failure to state a claim upon which relief can be granted on Count II, and under 4.116(c)(10), no genuine issue as to any material fact as to Counts I, III, IV, and V.

The Court is issuing three separate orders, the “First Order Regarding Motions for Summary Disposition”, a “Second Order Regarding Motions for Summary Disposition – Count II”, and a “Third Order Regarding Motions for Summary Disposition – Counts I, III, IV, and V, which are being issued simultaneously. This is the Third Order Regarding Motions for Summary Disposition and deals with those Motions filed in Case No. 16-308-GC.

COUNT I - ADMINISTRATIVE PROCEDURES ACT

On August 10, 2016, the Tribal Council held a meeting pursuant to the Administrative Procedures Act, Ordinance #04-100-07, (hereinafter referred to as the APA) in which it adopted emergency amendments to the Gaming Enterprise Board of Directors Act of 2010, Ordinance #10-800-03, under Resolution #16-810-228. On August 29, 2018, the Tribal Council adopted Resolution #16-829-250², adopting emergency amendments. This was also done under the emergency provisions of the APA. Both Resolutions state that they were adopted pursuant to the APA, specifically Sections 5.01 and 5.02.

Both parties filed a Motion for Summary Disposition under LRBOI CR 4.116(c)(10) which states that except as to the amount of damages, there is no genuine

² This resolution is listed as Resolution #16-810-250 in Plaintiff's complaint, and in both parties' Motions and Briefs. The correct resolution number is 16-829-250. When reading resolution numbers, the first two numbers are the year, the next numbers are the month and day of the adoption, and the last number is the count of the resolution since the beginning of the year in ascending order.

issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

Plaintiff argues that the enactment of Resolution #16-810-228, and Resolution #16-829-250, were done in violation of Article 5, at Sections 5.01 and 5.02 of the APA, specifically, that :

1. neither resolution state facts that support a finding that an emergency was imminent as required by 5.01;
2. neither states a clear emergency as required by 5.02; and
3. neither resolution states the potential harm that could be caused by a failure to act as required by 5.02.

In support of his argument, Plaintiff states that nineteen (19) days passed between the enactment of Resolution #16-810-228 and the removal of the Board of Directors following the adoption of Resolution #16-829-250, and offers affidavits of Ron Pete and Gary DiPiazza and deposition testimony of himself, all stating that no emergency existed.

Plaintiff also asks the court to follow “precedent” created by *LRBOI Tribal Ogema v. LRBOI Tribal Council*, Case No. 08-116-GC.

Defendant, in its response to the Plaintiff’s Motion, argues that there was an emergency, and that it is the Tribal Council that decides what an emergency is, whether primarily legal or factual, under 5.01 and 5.02 of the APA, and it did so stating the primary reason for the emergency was the decision in *NLRB v. Little River Band of Ottawa Indians*, 788 F.3d 537 (6th Circ. 2015). As a secondary rationale for the emergency, it argues that the gaming enterprise was being mismanaged financially and operationally. Defendant makes the same argument in its Motion for Summary Disposition.

Defendant also argues that Case No. 08-116-GC does not set precedent, as the ruling is from the trial court, not a higher court, and that "horizontal precedent" is complicated and debatable.

The Court agrees with the defendant that this Court is not bound by horizontal precedent, as this judge has stated before. Horizontal precedent is dangerous and may be unconstitutional if it requires the Court to adhere to an erroneous reading of the Constitution. Case No. 08-116-GC will only be considered as persuasive.

The Court disagrees with the Council that it is the final authority on whether or not an emergency exists. The APA clearly gives them authority to decide if an emergency exists that triggers Article 5 of the APA. However, if the decision is such that it becomes part of a resolution, that resolution is subject to review by the Tribal Court pursuant to Article XI, Section 8 of the LRBOI Constitution. More specifically at Sec. 8 (b), which states as follows: Section 8 – *Jurisdiction and Powers of the Tribal Courts*. The jurisdiction and judicial powers of the Little River Band of Ottawa Indians shall extend to all cases and matters in law and equity arising under the Tribal Constitution or under the laws and ordinances applicable to the Little River Band of Ottawa Indians. Such powers shall include, but are not limited to, . . . (b) To review ordinances and resolutions of the Tribal Council or General Membership to ensure that they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution., . . . (j) To preside over all suits for declaratory or injunctive relief as provided for an[d] in accordance with Article XI of this Constitution. Article XI – *Sovereign Immunity*, states: Section 2 – Suits against the Little River Band in Tribal Courts Authorized. (a) The Little River Band, its Tribal Council

members, Tribal Ogema, and other Tribal officials, acting in their official capacities, shall be subject to suit for declaratory or injunctive relief in the Tribal Court system for the purpose of enforcing rights and duties established by this Constitution and by the ordinances and resolutions of the Tribe.

The Tribal Government is structured as three separate, but equal, branches. This structure creates a “checks and balances” system in which the various branches have powers that affect or control other divisions, so that no division becomes too powerful, and to minimize error. This Court has the power to review the APA and rule on its provisions, including if, in fact, an emergency or imminent danger existed.

Whether or not an emergency existed is a question of fact. In a Motion for Summary Disposition under 4.116(C)10, if a question of fact exists, then the motion must fail. Here, Plaintiff is arguing that there was no emergency, and the Defendant is arguing that there was an emergency.

THEREFORE, both Motions for Summary Disposition of Count I are DENIED. Additionally, the First Order Regarding Motions for Summary Disposition, which is being issued simultaneously with this Order, is STAYED as to Count 1 until the conclusion of Count 1 on Case No. 16-308-GC³.

³ The First Order Regarding Motions for Summary Disposition deals with, in part, Count I of the Complaint that was filed in Case No. 16-206-GC, which is similar to Count I of the Complaint filed in Case No. 16-308-GC. While the First Order makes a “Declaration” regarding Count I as it relates to Case No. 16-206-GC, it needs to be Stayed until the conclusion of Count 1 in this case for the following reasons: 1. The allegations contained in this case are more developed, as are the arguments in the motions; 2. Case No. 16-208-GC asked the Court to make a declarations on the Motions as referenced in the First Order Regarding Motions for Summary Disposition, Case No. 16-308-GC did not.; and 3. There is the possibility that conclusion in this case may have a different ruling, thus resulting in confusion.

COUNT IV – FIRST SEPARATION OF POWERS CAUSE OF ACTION

Both parties filed Motions for Summary Disposition under 4.116(c)(10) as to Count IV – Separation of Powers. The Gaming Oversight Act is a product of the Resolutions that are subject to the claims in Count I. The Court must decide Count I before it can address Count IV. Both parties have plead their case as to Count IV in their Motions and Briefs, as well as at the hearing and be decided, as presented, upon the conclusion of Count I.

COUNT III – UNIFIED LEGAL DEPARTMENT ACT OF 2015

Defendant filed a Motion for Summary Disposition as to Count III of the Complaint. Count III alleges violations of the Unified Legal Department Act of 2015, as it relates to the hiring of outside counsel. Defendant argues that the court cannot hear this Count as neither party has waived the attorney-client privilege with regard to the engagement of outside counsel. In support of its Motion, Defendant offered an Affidavit of Kathleen Bowers stating that she is the Executive assistant for the Tribal Council and that the Tribal Council has not waived attorney-client privilege, and that it is her understanding that the Ogema has also declined to waive the privilege. However, in the Amended Complaint, there is also an allegation that the Ogema did not negotiate a contract pertaining to outside counsel, whether or not he negotiated a contract for the counsel listed in the complaint is not specifically addressed, neither is what is covered under attorney client privilege. This issue is not fully developed and cannot be decided at this time.


THEREFORE, Defendant's Motion for Summary Disposition as to Count III is DENIED.

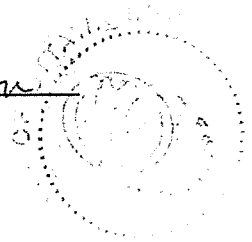
COUNT V – SECOND SEPARATION OF POWERS CAUSE OF ACTION

Defendant also brought a Motions for Summary Disposition under 4.116(c)(10) as to Count V – Second Separation of Powers Cause of Action. The Gaming Oversight Act is a product of the Resolutions that are subject to the claims in Count I. The Court must decide Count I before it can address Count V. Both parties have plead their case as to Count V in their Motions and Briefs, if filed, as well as at the hearing and it will be decided, as presented, upon the conclusion of Count I.

A full hearing on Count I and Count III will be scheduled. Upon conclusion, the Court will enter a Fourth Order Regarding Motions for Summary Disposition regarding Counts IV and V.

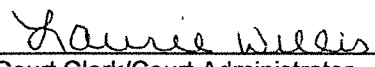
Dated: October 15, 2018


Hon. Angela Sherigan



CERTIFICATION OF MAILING

I certify a copy of this order was placed in the outgoing mail to be taken to the Manistee Branch of the United States Post Office for mailing to the parties or the attorney for plaintiff and attorney for defendant on this day.


Court Clerk/Court Administrator

10/16/18
Date



TRIBAL COURT
Little River Band Of Ottawa Indians
3031 Domres Road
Manistee, MI 49660
Tel: (231) 398-3406
Fax: (231) 398-3404

ISREAL STONE,

Case No. 16-206-GC

LARRY ROMANELLI,
TRIBAL OGEMA,

Case No. 16-308 GC
Hon. Angela Sherigan

Plaintiffs.

v.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COUNCIL,
Defendant.

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Traverse City, MI 49684

Michael Novotny
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1404 Fort Crook Rd. South
Bellevue, NE 68005

Dennis Swain
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**FOURTH OPINION AND ORDER
REGARDING MOTIONS FOR SUMMARY DISPOSITION
AND DECLARATORY JUDGMENT**

These matters having come before the court both regarding the Gaming Enterprise Board of Directors Act of 2010, the Court consolidated the cases, and various Motions for Summary Disposition, Briefs, and Supplemental Briefs were filed, and hearings were held on all motions. The Court has decided the Motions and previously issued separate Orders on Counts I, II, and III, however the Court could make a decision on the Motion for Summary Disposition on Count IV and Count V until

the conclusion of Counts I and III. A full hearing has been held on those two counts and an Order was recently issued.

The first case, initiated by Israel Stone, Case No.16-206-GC, seeks declaratory judgment whether or not the Tribal Council improperly adopted emergency amendments to the Gaming Enterprise Board of Directors Act of 2010, by violating the Administrative Procedures Act in enacting Resolution #16-810-228, (Count I), violated the Gaming Compact and Indian Gaming Regulatory Act (Count II), violated the Elected Officials Ethics Ordinance (Count III), seeks whistleblower protection under the Fair Employment Practices Code Count IV), and subsequently Amended his Complaint to add Count V, seeking declaratory judgment on whether or not the Council violated the Constitutional Separation of Powers.

Case No. 16-308-GC was initiated by Ogema Romanelli, and seeks declaratory judgment on whether or not the Tribal Council violated: the Administrative Procedures Act in the enacting Resolution #16-810-250 (Count I); the Gaming Compact (Count II); the Unified Legal Department Act of 2015 (Count IV); the constitutional separation of powers by enactment of Resolution #16-810-250, and Resolution #17- 011-002 which implemented the Gaming Enterprises Oversight Act.

In Case No. 16-206-GC, both parties filed a Motion for Summary Disposition. Plaintiff's Motion was brought under LRBOI CR 4.116(c)10, no genuine issue as to any material fact exists, and Defendant's Motion was brought under LRBOI CR 4.116(c)(10), and 4.116(c)(8), the opposing party has failed to state a claim upon which relief can be granted.

In Case No. 16-308-GC, both parties filed Motions for Summary Disposition. Plaintiff's Motion was brought under LRBOI CR 4.116(C)(10) and the Defendant's Motions was brought under LRBOI CR 4.116(C)(8), failure to state a claim upon which relief can be granted on Count II, and under 4.116(c)(10), no genuine issue as to any material fact as to Counts I, III, IV, and V.

This Fourth Order decides Count IV in Case No. 16-308-GC, and Count V in Case No. 16-206-GC, which both are Separation of Powers issues relating to the Gaming Enterprises Oversight Act (GEOA). Both cases claim the same allegations; specifically:

1. That Article IX provides the Tribal Council with the authority to manage and operation of the gaming enterprise by removing members contrary to Article V, Section 8 of the Constitution.

2. That Article IV Section 4.05 (c) imposes a duty upon the General Manger to provide a corrective action plan to the Tribal Council Recorder within 3 days of default so the matter can be placed upon the next available Tribal Council closed session agenda for discussion. That Article IV enables Tribal Council to micromanage the operation of the gaming enterprise and that Article IV Section 6(d) of the Constitution does not authorize a closed session for the purpose stated in the GOA.

The Ogema argues that the GEOA, in creating the OTA, makes Council "primary management officials", which is a power designated to the Ogema under the Tribal Constitution at Article V, Section 5(a)8. Council presented evidence that members of Tribal Council were never required to have gaming licenses since the inception of the GOA in 2010, and the Council argues that the Ogema's objection to the OTA about

primary management officials is a “red herring because it is the LRBOI Gaming Ordinance that controls and defines who is required to have a gaming license to be a primary management official not the GOA”. However, the GOA states at d. “All Members of the Oversight Task Force are hereby designated as Primary Management Officials, and shall possess and maintain a valid primary management official Gaming License...”. Additionally, the Gaming Ordinance #10-400-01 at Section 10.10 states that all primary management officials of any gaming enterprise must have an employee gaming license.

The GOA creates an Oversight Task Force (OTF) which is made up of 3 elected officials, and 4 members at large, appointed by the Ogema. It also allows for the Ogema to decline a seat on the OTF.¹

Evidence was presented that the Oversight Task Force (OTF) has not been appointed and therefore, the Council members are acting in the place of the OTF, usurping the Ogema’s power.

Additionally the Court finds that giving itself the power to remove members of the OTF is managing the affairs of the gaming enterprise, and a violation of the separation of powers.

The second part of the separation of powers arguments involves Article IV, Section 4.05(c) of the GOA, which imposes a duty upon the General Manger to provide a corrective action plan to the Tribal Council Recorder within 3 days of default so the matter can be placed upon the next available Tribal Council closed session agenda for discussion. Plaintiffs allege that the section violates the constitution at Article IV,

¹ The question of whether or not the Tribal Council can delegate/legislate away a Constitutional duty of the Ogema is not at issue in either of these cases.

Section 6(d) by enabling Tribal Council to micromanage the operation of the gaming enterprise and that Article IV Section 6(d) of the Constitution does not authorize a closed session for the purpose stated in the GOA.

Article IV, Section 6(d) of the Constitution states

(d) *Open Meetings; Closed Sessions.* All meetings of the Tribal Council shall be open to the Tribal Membership. However, the Council may meet in closed session for the following purposes:

1. Personnel Matters, provided the employee in question did not request a public meeting, or
2. Business matters involving consideration of bids or contracts which are privileged or confidential, or
3. Claims by and against the Tribe.

Minutes shall be maintained relating to all business conducted in open or closed session. The general reason for a determination to meet in closed session shall be placed on the record in open session. The minutes of business conducted in closed session shall be maintained in a closed file in perpetuity; however, such minutes of closed sessions may be opened to the public upon a vote of the majority of the Tribal Council, upon final disposition of the matter concerned or upon order of the Tribal Judiciary. Upon conclusion of a closed session, announcement of the resumption of open session shall be made before adjournment.

The language of the GOA Article IV Section 4.05 (c) providing for the GM to provide a corrective action plan to the Tribal Council Recorder so that the matter can be placed upon the next available Tribal Council closed session agenda does not fall within the parameters of Article IV, Section 6 (d) of the Constitution, that therefore violates the Constitution. Additionally, imposing a duty upon the GM to make a report directly to the Tribal Council, cuts out the Ogema and the OTF, and is a violation of the separation of powers. Tribal Council does not have the Constitutional authority to manage the affairs of the enterprises.

THEREFORE, the Court DECLARES that:

1. Tribal Council has violated the separation of powers by giving itself the power to remove members of the Oversight Task Force (OTF), and that as the OTF has not been established, the Council is acting in the place of the OTF, and is managing the affairs of the gaming enterprise and usurping the Ogema's power.

2. Article IV Section 4.05(c) of the GOA violates Article IV, Section 6 (d) of the Constitution, and is a violation of the separation of powers.

3/2/2020

Angela Sherigan

Hon. Angela Sherigan





TRIBAL COURT
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ISREAL STONE,

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ORDER REGARDING MOTION TO STAY

Tribal Council has requested a Stay of the Fourth Order in this matter, and the Ogema has filed a response.

Council states in its Motion that there is good cause for the Stay the Fourth Order because "the uncertainty in the over a dozen ordinances with similar language, the cooperative purpose of the Gaming Enterprise(s) Oversight Task Force, the fact that no LRBOI Trial Court or Court of Appeals decision has ever held the Tribal Council in

violation of the separation of powers thus it is an issue of first impression, and gaming enterprise management interruptions that could occur pending outcome on appeal".

The Court will address each of these arguments.

1. The ordinances sited in Council's Motion, are not in front of the Court and therefore will not be considered.

2. Council and or it's attorney are incorrect in stating that no LRBOI Trial Court or Court of Appeals decision has ever held the Tribal Council in violation of the separation of powers". It is not an issue of first impression. Even if it was an issue of first impression, this alone is insufficient to issue a stay.

3. There has been no showing that the gaming enterprise management would be interrupted. Additionally, Council has had since March 2, 2020 to devise a plan for the alleged disruption of gaming enterprise management.

Council has failed to show good cause why a Stay should issue.

Additionally, Council's argument of "maintaining the status quo" flies in the face of justice. This Court will not allow a violation of the Constitution to be the status quo.

THEREFORE, the Motion to Stay is hereby DENIED.

5-22-2020


Hon. Angela Sherigan

