

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



Additional Employment Orders: 2016 COURT OPINIONS

Gibson v. Little River Band and William Willis ---- # 16219GR

Summary: Mr. Gibson was suspended without pay for five (5) business days after receiving a third disciplinary action. This was for failure to ensure Department adherence to safe working practices. Mr. Gibson brought his grievance to the Tribal court. The Ogema sanctioned the suspension leaving the Tribal Court as the next supervisory level for the employee.

Decision and Order: The time between the written disciplinary action and when Mr. Gibson filed was a period of 14-days. Mr. Gibson did not adhere to the Employment Relations Act of 2005, Ordinance #05-600-01: "Appeal Deadline. An employee must file an appeal within ten calendar days of receipt of the final decision." The case was dismissed.

Sedelmaier v. Little River Band and Ogema Romanelli --- #16249GR

Summary: Ms. Sedelmaier was off work on a leave of absence. She was unable to return after her first extended leave had expired. Her doctor could not say with any surety when she would be able to return. Ms. Sedelmaier received a letter from the Human Resource Department denying her request for an additional extended leave and the cancellation of her employment contract.

Decision and Order: Plaintiff did not return to work upon the expiration of her approved leaves of absence and could not give a return-to-work date. The Government

Operations Personnel Manual, Sec. 6.12 states that when a leave of absence is granted, the employee must return to work immediately at the expiration of the leave period. Plaintiff did not return to work and the court upheld the termination.

Gibson v. Little River Band, Ogema Romanelli and Willis ---- # 16289GR

Summary: The Petitioner Gibson was terminated from his employment. He appealed his termination with the Tribal Court following the steps of the Personnel Policy regarding grievances. The Petitioner alleged that he was unaware that termination would be the next step upon receiving another Performance Improvement Plan.

Additional Employment Orders: 2016 COURT OPINIONS

Decision and Order: The Court took into consideration all employment records, other written documents and testimony from the hearing on January 9, 2017. The Court found the preponderance of evidence was presented by the Respondent and upheld the termination.

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

V.

CASE NUMBER: 16219GR
HON. DANIEL BAILEY

DEFENDANT:
LITTLE RIVER BAND OF OTTAWA INDIANS
AND
WILLIAM WILLIS

Defendant:
Little River Band of Ottawa Indians
and William Willis
Attorneys for Defendant:
Caitlin Rollins (P79900)
Rebecca Liebing (6318200)
2608 Government Center Drive
Manistee, Michigan 49660

Plaintiff:
Brian Gibson
In Pro Per
1623 Olson Road
Manistee, Michigan 49660

At a session of said Court on September 12, 2016
In the Reservation Boundaries of the
Little River Band of Ottawa Indians
PRESENT: HON. DANIEL BAILEY

ORDER OF JUDGMENT AFTER MOTION FOR SUMMARY DISPOSITION HEARING

On August 4, 2016, Mr. Gibson attended a meeting with Human Resources and the Operations Support Lead, William Willis in order to receive a written disciplinary action. The Government Employment Relations Act of 2005, Ordinance #05-600-01 provides: "Appeal Deadline. An employee must file an appeal within ten calendar days of receiving a written disciplinary action." [Section 4.05] The Employment Division of Tribal Court Code, Ordinance #08-300-04, provides: "A[n] grievance matter filing...must be filed within ten days of receipt of the final decision." [Section 5.02] Mr. Gibson filed his complaint in Tribal Court on August 18, 2016.

Tribal Court Rule 4.116(C)(7), states, "[t]he claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statue of frauds, an agreement to

arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim on which relief can be granted." (emphasis added).

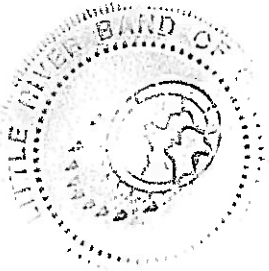
The time between Mr. Gibson's written disciplinary action and when he filed his matter was 14 calendar days. As a result, Mr. Gibson's claim is barred as a matter of law because he filed it after the statute of limitations had lapsed.

For the aforementioned reasons, this Court grants the Defendant's request for a motion of summary disposition as a matter of law.

SO ORDERED:


Judge Daniel Bailey


Date





TRIBAL COURT
LITTLE RIVER BAND OF OTTAWA INDIANS
3031 Domres Road
Manistee, MI 49660
Tel: (231) 398-3406

AMY SEDELMAIER
Plaintiff,

V.

LRBOI and OGEMA ROMANELLI
Defendants

CASE NUMBER: 16-249-GC

HON. Angela Sherigan

Dan O'Neil
Attorney for Petitioner
309 E Front St
Traverse City, MI 49684

Caitlin Rollins
Rebecca Liebing
Attorneys for Respondents
2608 Government Center Dr.
Manistee, MI 49660

OPINION AND ORDER AFTER GRIEVANCE HEARING

This matter having come before the Court as an Employment Grievance pursuant to Chapter VIII of the Government Operations Personnel Manual and the Government Employees Relations Act of 2005. This Court has jurisdiction under Section 601 of the Employment Division of Tribal Court Code, Ord. #08-300-04, and by the terms set forth in the employment agreement between LRBOI and Amy Sedelmaier. A full hearing was held in the matter in which all parties, and/or their attorneys appeared, in accordance with procedures listed in Article 5 of the Employment Division of Tribal Court Code.

FINDING OF FACTS:

Ms. Sedelmaier was hired as the Director of Human Resources on May 13, 2013 under an employment agreement/contract, under the supervision of the Ogema.

The agreement/contract was to be effective for four years, however, the agreement contained a term regarding termination, stating the agreement may be terminated by either party with or without cause by giving 60 days written notice to the other party.

Plaintiff was approved for a leave of absence under the Family Medical Leave Act from May 13, 2016 to August 5, 2016. She then requested and was approved for an additional 30 days leave, with the new return to work date being September 6, 2016, then until September 9, 2016, and then until September 16, 2016. She requested an additional 30 days from September 4, 2016. Defendants began on September 1, 2016 to secure a return to work date, seeking medical documentation, and then again on September 9, 2016 requesting a return to work date from Plaintiff's care provider.

On September 15, 2016, a letter was received from Plaintiff's care provider stating it was impossible to determine a return to work date, and Plaintiff's second request to extend her leave was denied.

On September 16, 2016 Plaintiff was sent a letter, denying her second request to extend the leave of absence and notice that the Tribe was terminating her contract, and that she would be compensated for the 60 days that she would not be able to work, as the contract required 60 days notice of termination.

On May 24, 2016, Plaintiff filed a Fair Employment Practices Code complaint.

LAW AND ARGUMENTS:

The Plaintiff brought this Grievance under Chapter VIII of the Government Operations Personnel Manual and the Government Employment Relations Act of 2005 and argues that her employment was terminated in retaliation of her filing a whistle-blower complaint against the Ogema, and a complaint of discrimination under the Fair Employment Practices Code.¹ She also argues that she is a "just-cause" employee.

Defendants' argue that Plaintiff is a contract employee and that she is not a just cause employee because of the language of the contract and the Government Employment Relations Act, and that she could be terminated by giving 60 days written notice, and ask that this matter be dismissed. They have also argued, in the alternative that Plaintiff's contract was terminated with just cause.

The Government Employees Relations Act states in Article IV, at Section 4.01 states:
Unless specifically stated otherwise, all employees shall be considered to have a just cause employment relationship with the employer as specifically defined and limited within this ordinance

And at Section 4.01 b1-4 as follows:

The rights created in this ordinance shall permit employees to file an Appeal in Tribal Court which alleges that the employee is aggrieved only By one or more of the following actions:

1. The employee has been terminated without just cause;
2. The employee has been suspended without just cause;
3. The employee has been demoted without just cause;
4. The employee was terminated, suspended, or demoted as a result of Unlawful employment practices under the Fair Employment Practices Code, which shall be brought under the procedures of the Fair Employment Practices Code.

GOVERNMENT OPERATIONS PERSONNEL MANUAL

The Government Operations Personnel Manual, Section 6.12 states that all requests for leaves of absence must in writing and approved by the Director and Human Resources Director, and if approved, the leave of absence shall not exceed 30 days. Section 6.12 also states that

¹ An investigation was conducted under the Fair Employment Practices Code, and completed, and Plaintiff was given a "right to sue" decision under that code. As of this date, no action has been filed under that code with this Court.

when a leave of absence is granted, the employee agrees to return to work immediately at the expiration of the leave period. Failure to return to work shall be considered a resignation from employment.

ANALYSIS:

For a Plaintiff to bring a grievance action under the Government Employee Relations Act, it must fall within one of the four allegations contained in Section 4.01 b of the Act. In this case, this Plaintiff must use b1 or b4. The court must determine 1) if the Plaintiff had a "just cause" employment relationship, and 2) if she was terminated as a result of unlawful employment practices under the Fair Employment Practices Code.

1) The employment contract/agreement at paragraph 6 states "This Agreement can be terminated by either party with or without cause by giving 60 days notice to the other party." This language, specifically "without cause", exempts Plaintiff from enjoying a just cause employment relationship. Plaintiff is not a "just cause" employee. She was given 60 days written notice on September 16, 2016 of termination of the employment agreement/contract.

2) The purpose of the Fair Employment Practices Code, as stated at Section 1.02 of the code, is to prevent and remedy discrimination in employment, unless in furtherance of Indian employment preferences, on the basis of sex, race, color, national origin, religion, age, disability, veteran, marital status, or sexual orientation; and establish standards for fair and safe working conditions

Article XII of the Fair Employment Practices Code at 12.01, and 12.03 gives employees protections against retaliation for whistleblower claims. Specifically, 12.01 states: The purposed of this article is to protect employees who report violations of law from employment discrimination.

Ms. Sedelmaier stated she filed a whistleblower complaint on either May 10th or May 11th of 2016². The Court is unaware of what the allegations are other than a general allegation of "harassment, verbal abuse and discrimination", as no evidence was presented. There was some mention of disability, but it was not identified or expanded upon, and thus the court cannot determine which protected class she is claiming she should receive protection under.

Her argument that she was treated differently than other employees in that it is the practice of the Tribe to grant additional leave of absence request extensions up to 3, also fails, as the Defendant presented evidence, and testimony was given that this is not true.

The only evidence presented regarding a filing of a whistle-blower complaint being filed or related to or presented to the tribal prosecutor is an Affidavit from William Gregory, which was contained in the Defendants' Answer. In the affidavit, the Tribal Prosecutor, he states that on or about the week of September 12, 2016 he communicated with Ms. Sedelmaier regarding whistleblower protection relating to her extended leave request, and that Ms. Sedelmaier informed him that it was common practice of the HR department to extend employee requests for extended disability up to six months, and he informed her that the Whistleblower Act must be based on a violation of tribal law not practice, and therefore there was no violation of her Whistleblower complaint.

² No evidence was presented that a whistle blower complaint was filed, other than Plaintiff's statement that she filed on in May.

On May 24, 2016, Plaintiff did file a Fair Employment Practices Code complaint, and was protected under that code, specifically from any retaliation being taken against her during from time of that filing until the investigation and following required procedures after the investigation were taking place. An investigation was completed and she received a "right to sue" letter from the investigator, and the mediation, albeit unsuccessful, was conducted and completed.

While the court has stated that Plaintiff was an at-will employee, as evidenced by the agreement/contract, the court will also address the Defendant's alternative argument that Plaintiff was terminated with just cause.

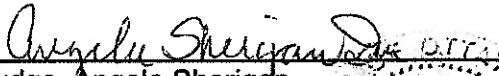
Under the Government Employment Relations Act, Article IV Section 4.02 defines "just cause" as:

[A] termination undertaken as the result of actions or omissions of the employee which violate employment rules and responsibilities of the employer, violate a federal grant restriction requirement, or failure to carry out, in workmanlike manner, the responsibilities of the position for which the individual is employed. Employment rules and responsibilities are those requirements of the department and/or program which are specifically identified to the employee by the supervisor, listed in personnel manuals, as required under Tribal law, or as required under applicable federal law. Employees, as part of their working environment, shall be presumed to be aware of and know the laws and regulations of the Tribe, to be aware of and know the applicable federal laws and regulations regarding department and/or program activities, and to be aware of and know the personnel laws, regulations and policies of the Tribe without requiring documentation of having been presented copies of these documents.

Plaintiff did not return to work upon the expiration of her approved leaves of absence, and could not give a return to work date. The Human Resources director is a key position within the Tribe. Testimony was presented that there are functions and responsibilities of the Human Resources Director that cannot be delegated to other Human Resources Department employees. Thus, Plaintiff was unable to carry out, in a workmanlike manner, the responsibilities of the position for which she was hired.

Additionally, the Government Operations Personnel Manual, Section 6.12 states that when a leave of absence is granted, the employee agrees to return to work immediately at the expiration of the leave period. Failure to return to work shall be considered a resignation from employment. Plaintiff did not return to work at the expiration of the leave period.

It is important to note that this is a grievance matter only. For the reasons stated above, the Employment Division of the Court hereby UPHOLDS the termination.


Judge Angela Sherigan



2-27-17
Date

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

PETITIONER:
BRIAN GIBSON

V.

CASE NUMBER: 16289GR
HON. DANIEL BAILEY

RESPONDENT:
LITTLE RIVER BAND OF OTTAWA INDIANS,
OGEMA LARRY ROMANELLI, AND
WILLIAM WILLIS, LEAD STAFF

Attorney for Petitioner:
Laura A. Van Hyfte
160 East State Street, Ste. 203
Traverse City, MI 49684

Attorney for Respondent:
Rebecca Liebing
Caitlin Rollins
2608 Government Center Drive
Manistee, MI 49660

At a session of said Court on January 9, 2017
In the Reservation Boundaries of the
Little River Band of Ottawa Indians,
PRESENT: HON. DANIEL BAILEY

An informal hearing was held regarding a Grievance/Appeal of Termination matter involving the Petitioner and Respondents. The Petitioner was terminated as the Maintenance Supervisor for the Little River Band of Ottawa Indians on November 3, 2016.

Mr. Gibson alleged that the termination violated the progressive discipline policy of the Tribal Ordinance 05-600-01 (4.03a) which describes Progressive Discipline. The Petitioner stated in his written appeal "This employee was in the process of completing the final steps of a previously issued PIP, (Performance Improvement Plan) and the employee was not warned termination was the outcome for the [sic] any future discipline."

The Court may take into consideration all Employment Division records, except confidential documents. They may consider all other written documents and testimony of the parties and any witnesses at the hearing. *Article VI. Authority – Matters Heard and Decisions...* "the Employment Division may review the record for prior progressive disciplinary actions in making a determination regarding the appealed grievance matter." (Ord. #05-300-04)

A copy of the Performance Improvement Plan from August 4, 2016, has a clearly "checked" box that says: Disciplinary Suspension (Third Notice.) It appears to the Court that the Petitioner had yet to complete the criteria required of him in that PIP prior to receiving the fourth Disciplinary Action/PIP. On all PIP forms that were developed in April 2012, the Termination box may be checked with the fourth or fifth notice.

The PIP issued on November 3, 2016 has a clearly "checked" box that says: Termination (Fourth or Fifth notice)

The Termination Notice was based on the actions of the employee on two separate occasions. The first one was an Auction that was held on Friday, October 7, 2016 by the Tribe. The Petitioner was there to help participants load items purchased. Mr. Gibson bid on and won eleven (11) items during the course of the auction that lasted approximately four hours.

Petitioner wrote in his complaint: "This employee was and has been required to assist in moving the surplus items, assisting purchasers with loading items, and providing general labor during the sales. There for, it is reasonable that this employee would expect that he is to remain "on the clock" while in attendance, for those work related duties that have been required of him in the past."

He also says: "Given the past practices regarding sales and this specific employee's responsibilities to attend the sale and assist with the surplus property, the employee was not forewarned that he had to change his method and take personal time to attend."

As an *employee* and a supervisor for 15 years, he should have known that conducting personal business on the clock while working is prohibited.

The second reason for the last Performance Improvement Plan, was the alleged falsification of his time records on October 28, 2016.

The Petitioner told Mr. Willis that he was going to Menards in Traverse City on the day in question, to acquire quotes for some ongoing projects for the Housing Department. Based on the Disciplinary Action Form, and the written statement of the Lead, William Willis, it appears that Mr. Gibson did not inform his supervisor that he was taking his own vehicle to Traverse. (He said he "thought he did.") He did not inform his supervisor that his wife had a doctor appointment in Traverse that he knew about four days prior and that he was her transportation. (Gibson also "thought he did.") The Petitioner emailed Mr. Willis at 3:34 p.m. on October 28th saying: "Bill will you punch me out for the day [?]" He did not go to Menards as he informed Mr. Willis and there was no mention of his wife or her doctor appointment.

Since all employees know or should know that one has to inform one's supervisor that they will be using personal time prior to utilizing it. It appears that the Petitioner's personal business got in the way of his professional responsibility and he opted not to follow the policy or act in an ethical manner.

Based on the fact that Mr. Gibson, as Maintenance Supervisor, was under a prior Performance Improvement Plan at the time of the other two violations; the fact that he was told to improve his management skills; the fact that he didn't act in the manner of a responsible supervisor, the Court finds for the Respondent. The termination is upheld.

SO ORDERED.



Judge Daniel Bailey

1/16/17

Date



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

Summary: Entitled: *First Order Regarding Motions for Summary Disposition Under Case No. 16-206-GC* 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. Defendant's Motion for Summary Judgment on Count II are denied and dismissed. The case will proceed on Counts IV and V of the Plaintiff's Amended Complaint.

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

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

Summary: Entitled: *Second Order Regarding Motions for Summary Disposition Under Case No. 16-206-GC* This order deals with Motions filed in Case No. 16-308-GC 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. Therefore, Defendant's Motion for Summary Disposition is granted and Count II is dismissed.

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

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

Summary: Entitled: *Third Order Regarding Motions for Summary Disposition Under Case No. 16-308-GC* 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.

ADDITIONAL 2016 COURT OPINIONS

Decision and Order: The Defendant's Motion for Summary Disposition as to Count III is DENIED. Count V – Second Separation of Powers Cause of Action. Upon conclusion of a full hearing on Count I and Count II the Court will enter a Fourth Order Regarding Motions for Summary Disposition on Counts IV and V.

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

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

Summary: Entitled: *Opinion and Order Regarding Count I and Count II* Both cases seek Declaratory Judgment regarding the Gaming Enterprise Board of Directors Act of 2010 and Resolutions # 16-810-228, # 16-810-250 and # 17—011-02, adopting the Gaming Enterprises Oversight Act. The Court disagreed with the Defendant that there was imminent danger to the Tribe.

Count III alleged that the Ogema signed off on a contract to hire outside Counsel. Defendant argued that because the Ogema signed the contract he agreed with the contract.

Decision and Order: The Court finds that the Unified Legal Department Act was violated. The Court states that the Ogema did not negotiate the contract as he should have according to the Unified Legal Department Act. "Contracts for all outside Counsel shall be negotiated by the Ogema and approved by Tribal Council."

Order signed on: February 3, 2020*****

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

Summary: Entitled: *Fourth Opinion and Order Regarding Motions for Summary Disposition and Declaratory Judgment* 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.

ADDITIONAL 2016 COURT OPINIONS

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 2, 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
 3031 Domres Road
 Manistee, MI 49660
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 Fax: (231) 398-3404

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

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 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

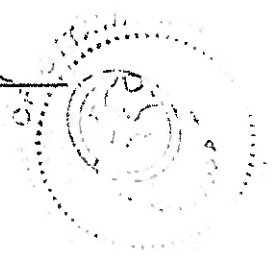
Plaintiff has argues that Defendant has violated the Elected Official Ethics Ordinance #14-100-10, Article 4.03, 4.09, and 4.10. Defendant argues that no specific action has been supported, and that a mere statement of conclusions, unsupported by factual allegations, is not sufficient to state a cause 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,
TRIBAL OGEMA,
Plaintiffs.

Case No. 16-308 GC
Hon. Angela Sherigan

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
Attorney for Tribal Council
2848 Setterbo Road
Peshawbestown, MI 49682

Dennis Swain
Attorney for Tribal Ogema
P.O. Box 288
Beulah MI 49617

**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.

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 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

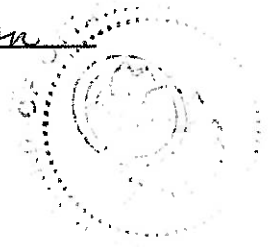
which will make the decision. The decision maker, under the terms of the Gaming Compact is not this Court, nor are the proper parties to the Compact in front of it. As such, this Court does not have the authority to hear this count and thus cannot grant any relief.

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,

Case No. 16-206-GC

LARRY ROMANELLI,
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LITTLE RIVER BAND OF OTTAWA INDIANS
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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.

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.

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.

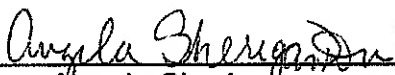
THEREFORE, Defendant's Motion for Summary Disposition as to Count III is
DENIED.

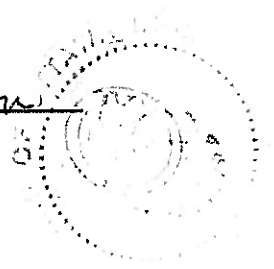
COUNT V – SECOND SEPARATION OF POWERS CAUSE OF ACTION

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
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Tel: (231) 398-3406
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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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OPINION AND ORDER REGARDING
COUNT I AND COUNT III

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, a full final hearing was held and all subsequent pleadings have been filed.

Both cases seek Declaratory Judgment regarding the Gaming Enterprise Board of Directors Act of 2010, and Resolutions #16-810-228, #16-810-250, and Resolution #17-011-02, adopting the Gaming Enterprises Oversight Act.

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. Counts II, III, and IV have previously been decided.

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 III); the constitutional separation of powers by enactment of Resolution #16-810-250, and Resolution #17- 011-002 which implemented the Gaming Enterprises Oversight Act (Count IV). Count II has previously been decided.

This Opinion and Order will address and Counts I and III in Case No. 16-308-GC.¹ Count I in Case No. 16-208-GC was previously decided, but was stayed pending the outcome of Count I in 16-308-GC.²

COUNT 1 - 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, 2016, the Tribal Council adopted Resolution #16-829-250³, 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.

Plaintiff argued 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 states 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

¹ Count V in Case No. 16-208-GC, and Count IV in Case No. 16-308 will be decided after this Opinion and Order and will be titled "Fourth Order Regarding Motions for Summary Disposition".

² 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.

³ 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.

3. neither resolution states the potential harm that could be caused by a failure to act as required by 5.02.

Testimony was presented by Ogema Romanelli, Ron Pete and Gary DiPiazza , all stating that no emergency existed, and that 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. Ogema Romanelli also testified that there was no imminent danger to the Tribe and that no lawsuits were filed against the Tribe during this time period.

Defendant, 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.

The Court previously ruled that the Council is not the final authority on whether or not an emergency exists. While the APA clearly gives them authority to decide if an emergency exists which triggers Article 5 of the APA, if that 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.

Plaintiff argues that the enactment of Resolutions, were adopted in violation of Article 4 of the APA, arguing that there was no emergency, and there was no imminent danger.

Article V, Section 5.01 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.”

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 Resolutions state 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 service 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.

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.

Defendant relied mostly on their argument that this Casino was being mismanaged and was losing revenue. Testimony was presented from Ron Pete, the Casino General Manager during the time period that Council was concerned about, that renovations were being done at the Casino and that caused a lowering of the revenue, but the Casino was still profitable. Testimony was also presented by the Ogema that the opening of the Gun Lake Casino during that time period also caused profits to drop.

The Court finds that there was no emergency, no imminent danger, 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. Additionally, the Resolutions failed to state what actions will be taken to avoid the harm.

THEREFORE, THE COURT DECLARES that Resolution #16- 810-228, and Resolution #16-829-250 were adopted in violation of the Administrative Procedures Act, and are thus void, and the Stay in Order One is hereby lifted.

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. Testimony was presented that Dykema-Gossett, outside counsel, was hired to draft the ordinance that is the subject of this action. There was testimony presented that Ogema Romanelli was not involved in negotiating the contract, nor was the Unified Legal Department, but rather Attorney Tom St. Dennis, who is not part of the Unified Legal Department, negotiated the contract, in violation of the Unified Legal Department Act of 2015.

Article VI, Section 6.01 states: "Contracts for all outside counsel *shall* be negotiated by the Ogema and approved by the Tribal Counsel. Contracts, letters or engagement, or retainers for legal services of any kind shall be administered through the Unified Legal Department."

The Defendant argues that because the Ogema "signed off" on an invoice/request for payment, that he acquiesced to the contract. The Ogema testified that he did not and that work was already performed and money was due. The Court is not persuaded that is acquiescing to the contract. Furthermore, it ignores the fact that he did not negotiate the contract.

THEREFORE, THE COURT DECLARES that Unified Legal Department Act was violated.

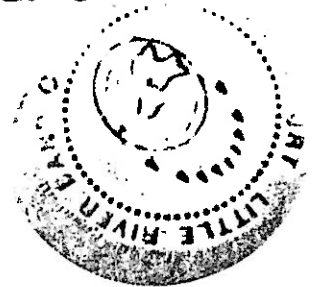
During the hearing confidential documents were submitted and testimony about those documents and issues surrounding them were discussed. The Court held part of the hearing in closed court and on the record, sealed the documents.

THEREFORE, IT IS HEREBY ORDERED:

1. All records regarding the Moss-Adams Report are hereby sealed;
2. All invoices regarding Dykema-Gossett are hereby sealed;
3. Any transcripts requested must first be examined by this Judge to ensure that the portions held in closed court have been omitted.

2-3-2020
Date

Angela Sherigan
Hon. Angela Sherigan





TRIBAL COURT
Little River Band Of Ottawa Indians
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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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**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 Manager 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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Plaintiffs.

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TRIBAL COUNCIL,

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ORDER REGARDING MOTION TO STAY

Tribal Council has requested a Stay of Enforcement of Orders and to Stay Proceedings¹ in this matter, and the Ogema has filed a response.

Council states in its' Motion that there is good cause for the Stay to Issue. However, other than generalized disagreement with the decision of the Court, the Motion fails to specifically state the good cause. Stating that "Tribal Council's ability to effectively manage the affairs and enterprises of the Tribe could be disrupted" is very general and is *exactly* what the issue is in these cases, which branch has the Constitutional power to manage the affairs and enterprises of the Tribe.

¹ The issuance of the Fourth Order

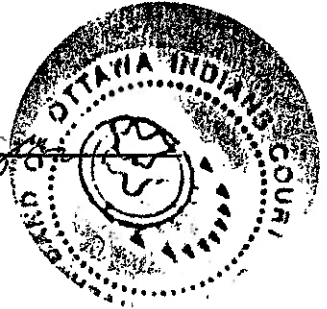
The suggestion that if the stay does not issue, there will be unnecessary inconsistency and uncertainty with the management of the Tribe's gaming enterprise assumes that the Council will prevail on appeal, and is not grounds for a Stay to issue in this matter.

Council's request to Stay proceedings is moot, as the Fourth Order has already issued.

THEREFORE, the Motion to Stay is hereby DENIED.

3/2/2020

Angela Sherigan
Hon. Angela Sherigan





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

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 cited 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

