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Tribe Can't Build Martha's Vineyard Casino, Mass. Judge Says

By **Vidya Kauri**

Law360, New York (November 16, 2015, 1:36 PM ET) -- A Native American tribe's bid to build a casino on Martha's Vineyard was quashed on Friday when a Massachusetts judge ruled that the tribe had not established enough governmental authority over its settlement lands on the island.

U.S. District Judge F. Dennis Saylor said that although the Wampanoag tribe of Gay Head (Aquinnah) has limited jurisdiction over 485 acres of land held in trust by the federal government, the tribe failed to show that it has authority over those lands by providing services such as a full-fledged police department, public schools, housing and a wide range of health services in order for the federal Indian Gaming Regulatory Act to be triggered on those lands.

"The tribe has not met its burden of demonstrating concrete manifestations of its governmental power through law enforcement and public safety services," Judge Saylor said. "Instead, it appears that the town [of Aquinnah] exercises governmental power over the settlement lands by providing those services. ... IGRA therefore does not apply to the settlement lands."

The Commonwealth of Massachusetts sued the tribe in December 2013 to prevent it from converting an unfinished community center on the western edge of the island into a Class II gambling facility, saying that the tribe must first obtain a license from the state, per a **1983 agreement** that conveyed the settlement lands, subject to local zoning laws and regulations, to the tribe in exchange for the tribe relinquishing all claims to other lands and waters in the state. The town of Aquinnah and a local community association joined the suit on the state's side in July 2014.

The tribe, which had earlier failed in its efforts to negotiate a gambling compact with the state, argued that it should be allowed to forge ahead with construction, saying that the IGRA gives it the go-ahead to do so without needing permission from local or state governments, and that its members will be **irreparably harmed** by roadblocks from the town of Aquinnah because revenue from the proposed casino is meant to provide essential tribal government services that are "desperately underfunded."

However, Judge Saylor said in his opinion that the tribe does not have a tax system in place to fund future governmental services.

Judge Saylor, relying heavily on a 1994 ruling from the First Circuit in *Rhode Island v. Narragansett Indian Tribe*, said that a tribe must be able to demonstrate jurisdiction as well as the exercise of governmental power to invoke the IGRA, and that mere assertions of power or theoretical authority are not enough.

The judge went on to say that the plain meaning of the IGRA, passed in 1988, and the 1983 Massachusetts Settlement Act, as well as Congress' intent to regulate gambling while approving the two statutes, mean that the IGRA did not repeal the 1983 agreement and that the agreement controls gambling on the settlement lands.

Tribe Chairman Tobias Vanderhoop said in a statement on behalf of the tribe and its gambling corporation that the tribe will pursue an appeal of the court's decision before the First Circuit.

"The decision is a terrible mistake and demonstrates a complete lack of understanding of the history of all tribes in this country and their status as sovereign governments," Vanderhoop said. "Before the great Wampanoag nation met the invading pilgrims and offered them amnesty, they were a government, as they remain today. The decision a government makes to work collaboratively with another government is the very definition of exercise of governmental authority."

Cyndi Roy Gonzalez, a spokeswoman for the state attorney general's office, said in a statement to Law360 that the judge made the right decision in his "thoughtful, careful ruling."

Representatives for the town of Aquinnah and its community association could not immediately be reached for comment on Monday.

Massachusetts is represented by Attorney General Maura Healey and Assistant Attorneys General Juliana deHaan Rice, Carrie Benedon and Bryan Bertram.

The town is represented by Ronald H. Rappaport and Michael A. Goldsmith of Reynolds Rappaport Kaplan & Hackney LLC.

Intervenor Aquinnah/Gay Head Community Association is represented by Felicia H. Ellsworth, Oramel H. Skinner and James L. Quarles III of Wilmer Hale LLP.

The Wampanoag Tribe is represented by Scott Crowell of Tribal Advocacy Group LLP, John J. Duffy of Steptoe & Johnson LLP, Lael Echo-Hawk of Garvey Schubert Barer, and Bruce Singal and Elizabeth McEvoy of Donoghue Barrett & Singal PC.

The case is Commonwealth of Massachusetts et al. v. The Wampanoag Tribe of Gay Head (Aquinnah) et al., case number 1:13-cv-13286, in the U.S. District Court for the District of Massachusetts.

--Editing by Stephen Berg.

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