

JIM THORPE: ONE STEP CLOSER TO HOME From Page 1 by Sandra Massey Historic Preservation Officer

“NAGPRA is among other important Indian civil rights laws passed by Congress to give Indian people and tribes a legal tool not only to help prevent a repeat of past abuses of their rights, but also to undo past injustices,” Ward said. “In essence, Jim Thorpe’s Sac and Fox family was told, ‘Your traditions, culture, and religion don’t matter. All that matters is that a town in Pennsylvania wants to use your dad as a tourist attraction.’ They were ignored at the time and were not in a position to take legal action until after NAGPRA was enacted.

“NAGPRA was intended to give Indian people and tribes a legal means to

make certain their wishes are respected. It basically means the law recognizes that what Indian people and tribes want and believe matters.”

“It was the right thing to do,” said Thurman of the tribe joining the lawsuit.

The Borough of Jim Thorpe has 30 days from the date the Order was issued to initiate an appeal to the United States Court of Appeals for the Third Circuit.

If the Borough does not appeal, the repatriation process can begin.

Under NAGPRA’s definitions, the Borough is considered a “museum” because it is an entity that houses Native American human remains and that also received federal funds. Museums and

other holding institutions must notify first the lineal descendants, if known, and second, the tribe with which the remains are affiliated.

Jim Thorpe’s identity and his tribal affiliation were not in dispute.

“Dad always identified himself as Sac and Fox,” the late Jack Thorpe once said.

New Cultural Center Grand Opening From Page 1

Wakolee.

Jacob Manatowa Bailey gave the opening prayer in Sauk and Jamie Barse did “The Lord’s Prayer” in Indian Sign Language.

Chief Thurman again spoke and commended the ICDBG Team, Architects, Engineers and Maska Builders for making the new facility

a reality. BC members Stella Nullake, Jackie Williams, Carla Reed and Orvena Gregory addressed those in attendance as well.

Jellene Morehead, ICDBG team leader, also spoke about the project and praised team members Vickie Benham, Jerry Martin, Donna Rodgers and J. Paul Wilson on a job well done.

Chief’s Address to the Nation From Page 1

decided as a matter of law. This summary judgment effectively will end the litigation in the United States District Court possibly several months sooner than if there had been a trial.

It also prevents us from having to incur the expense of a trial in Scranton, Pennsylvania. Once a final judgment is entered in this case the Borough will have 30 days to file a notice of appeal to the United States Court of Appeals for the Third Circuit, if it decides to appeal the ruling. Likewise, we will have 30 days to appeal the Court’s earlier dismissal of our claim under 42 U.S.C. Section 1983, which would have permitted an award of attorney fees and costs. We will be preparing some recommendations concerning a possible appeal of the dismissal of the Section 1983 claim.

The Sac and Fox Nation is to be congratulated for sponsoring this litigation, which not only is the right thing to do, but which also is makes a contribution to the law under NAGPRA to the benefit of all Indian people and tribes. The Nation’s NAGPRA program is a leader nationally in an area that is very important to tribes and American Indians.

(2) New Gaming Systems, Inc., Plaintiff V. Sac and Fox Nation and Sac and Fox Nation Business Enterprises, Defendants.

Congratulations! We have won again!

April 1, 2013, Judge Darrell Dowty, Chief District Judge in the District Court of the Sac and Fox Nation of Oklahoma entered the following order:

ORDER

Case History

1. This matter was commenced by the Plaintiff NGS filing of a Petition on February 24, 2005, alleging breach of an equipment lease and promissory note dated August 8, 2003. Prior to this filing, The Nation had opened a casino in August, 2003 and on August 8, 2003, had entered into the above-cited agreements with NGS as a part of that venture.

The Nation on August 14, 2003, submitted the agreements to the National Indian Gaming Commission, (hereinafter NIGC) for determination of whether they required NIGC approval. After a year’s operation of the Casino, the NIGC finally responded to the Nation on August 11, 2004 by the letter of General Counsel Penny J. Coleman, advised that the agreements were a “management agreement” requiring NIGC approval. Whereupon, the Nation terminated the agreements and demanded that NGS remove its machines from the casino.

2. After protracted litigation before this Court, the Sac and Fox Supreme Court and the NIGC, this Court on October 16, 2008, found that the lease agreement and one promissory note met the definition of a “management contract” as defined under 25 C.F.R. 502.15 requiring approval of the NIGC. Since the agreements were not approved by the NIGC, this Court found that they were void including the limited waiver of sovereign immunity found in the agreements, and granted the Nation’s motion to dismiss.

3. On October 31, 2008, the Nation filed a verified application for attorney fees including fees for representation of these Defendants in this Court, the Sac and Fox Supreme Court, and in collateral litigation before the NIGC. The latter action, initiated by the Nation, resulted in a determination adverse to NGS by the NIGC Chairman on March 26, 2008, that the submitted documents were a management agreement. A final Agency Order affirming the Chairman’s determination was entered on May 22, 2008.

4. On November 5, 2008, NGS filed a Notice of Appeal of this Court’s Order of October 16, 2008 which the Sac and Fox Supreme Court affirmed by Order on June 16, 2011 in case no. APL-08-01.

5. On November 10, 2008, NGS filed Objection to the Nation’s Application for Attorney Fees and the Nation filed Reply to Plaintiff’s Objection on November 14, 2008.

6. On July 10, 2008, NGS filed an action in the Federal District Court for the Western District of Oklahoma in case no. CIV-08-0698-HE, seeking review of the NIGC Final Order of May 22, 2008.

7. On July 20, 2011, the Defendant Nation filed its Amended Verified Application for Attorney Fees to include fees, expenses and costs incurred through the date thereof including those incurred in the Federal District Court.

8. On September 13, 2012, the Federal District Court issued its Order affirming the final determination of the NIGC that the equipment lease and promissory notes between NGS and the Sac and Fox Nation constituted a management contract under the Indian Gaming Regulatory Act, 25 U.S.C., §§ 2701-2721.

9. The Nation claims that it is entitled to recover attorney fees as a prevailing party upon two grounds, the first statutory and the second inherent based upon vexatious litigation and bad faith prosecution. The Nation properly cites the priority of application of laws in this matter found at SFC, Title 6, § 11, the first being the Constitution, Statutes and common law of the Tribe. This Court finds no basis for award of attorney fees in the common law or traditions of the Nation and none is suggested by the parties. However, the Nation has spoken through ‘the passage of Title 6, §990(a) 1 of the Sac and Fox Code and that is where this analysis must begin.

10. The Nation in its Amended Application, argues the applicability of this Section and the corresponding similar language of Title 12 Oklahoma Statutes, §936.

Specifically, the Nation argues that this Court, the Sac and Fox Supreme Court, the NIGC and the Federal District Court have determined and agreed that the agreements sued on between the parties constituted a management contract which characterizes the litigation as one for recovery for labor and services. The Nation also cites NGS language in its pleadings regarding performance of its obligations under the agreement in support of the “services” argument, and cites the action brought for recovery on the promissory notes as supporting the application of the statute for recovery on a “note”.

1 Title 6 SFC, §990. Attorney Fees Taxable as Costs

(a) In any civil action to recover on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, or for labor or services, unless otherwise provided by law or the contract which is the subject of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxes and collected as costs.

11. NGS claims that the Nation’s Application for Attorney Fees is itself filed in bad faith and frivolous. NGS cites provisions of the “Equipment Lease” and “Promissory Notes” providing for the parties to bear their own attorney fees, costs and expenses as grounds for denial of Nation’s request for attorney fees. NGS argues the inapplicability of 12 O.S., §936 and 6 SFC,

§990(a) because the bearing of attorney fees by the respective parties is “otherwise provided by .. the contract which is the subject of the action”.

12. This Court agrees with the Nation that the attorney fee provisions of the equipment lease and the promissory notes cannot be relied upon by NGS inasmuch as they were found to be void by this Court. Nor can the Nation seek recovery of attorney fees under §990(a) premised the NGS suit upon the promissory notes. The Nation paid the notes in full during the pendency of the litigation and was not a prevailing party as contemplated in the Nation’s Code.

13. However, this Court is bound by the pronouncements of the Nation’s Supreme Court, and specifically, the findings of that Court in this matter which relate to the issue under consideration. In the Opinion filed in APL-08-01 on June 16, 2011) at page 25, the Court stated:

“The evidence establishes that the parties did enter into a void contract of which both should have known at the time of signature. The fact that Appellant, which is in the gaming business, proceeded without NIGC approval establishes, in our view, that it knowingly intended to assume the risk of entering into a void agreement. Moreover, the intent of the parties is not as issue here, the plain language of the equipment lease establishes a management contract with management duties of planning, organizing, directing, coordinating, and control of a non-tribal entity over a gaming operation requiring NIGC approval”.

14. When NGS commenced this litigation on February 24, 2005, it had the additional knowledge that the NIGC through the “Coleman letter” had made an initial determination that the submitted documents constituted a management agreement and was void. Nevertheless, NOS sought to enforce the agreements previously determined to be a management contract including the duties of planning, organizing, directing, coordinating and exercising control over the casino gaming operations.

15. Therefore, this Court FINDS: That the Defendant Sac and Fox Nation is the prevailing party in this litigation initiated by the Plaintiff New Gaming Systems for enforcement of agreements, the plain language of which constituted a management contract required the provision of labor and services bringing the action under the provisions of Title 6 SFC, §990(a). The Defendant is entitled to reasonable attorney fees as a matter of law, the amount thereof to be determined by this Court.

16. Having found the Nation may recover fees under the Sac and Fox Code, the Court finds it unnecessary to address the issue of entitlement thereto upon the grounds of vexatious litigation and bad faith prosecution. The Court reserves consideration of this issue as to the reasonableness of fees and costs incurred.

IT IS THEREFORE ORDERED that this matter is set down for further hearing on the 16th day of April, 2013 at 10:00 a.m.

IT IS FURTHER ORDERED that within 10 days of receipt of this Order, the Plaintiff is directed to provide to the Court and to opposing counsel, separate summations as to the amounts requested as the result of representation of the Plaintiff before the NIGC, the Courts of the Sac and Fox Nation, and the Federal District Court for the Western District of Oklahoma

IT IS SO ORDERED.

The grand total of litigation which includes: Sac and Fox District Court, Sac

and Fox Supreme Court, National Indian Gaming Association, and Western District of Oklahoma is \$505,692.08 and has extended over eight years in three different court systems.

SHORT TAKES

*On April 23rd we had the Grand Opening of our new Cultural Center, located at our tribal Capitol grounds. This building is the result of funding from a Housing and Urban Development (HUD) Indian Community Development Block Grant (ICDBG).

*The new gymnasium floor funded from our Revenue Allocation Plan (RAP) will be installed soon. The new all purpose flooring will enable us to utilize the Youth Activity Center for many more functions such as banquets, dances, community meetings, and Governing Councils, in addition to playing basketball and volleyball.

*We have developed plans for new paved parking lots at the Court House and Community Building and project completion in early 2014. The funding for these projects comes from our Indian Reservation Roads monies.

*Our casino located in Shawnee, Oklahoma plans to renovate the front of the building and inside, remove the former smaller casino buildings to provide more parking, and erect a new, much taller sign easily viewed from Interstate 40.

*Our Black Hawk Health Center at the Capitol grounds has a new look after restructuring existing office space and expanding the pharmacy, which now has a robotic medicine dispenser.

*We have installed a new telephone system that is more user friendly and was designed to accommodate our clients in their contacts with our tribal government.

*Our Sac & Fox Police Department recently spearheaded the formation of a new group of tribal law enforcement agencies, Tribal Law Enforcement Association, to which any tribal agency can belong and collaborate on ways to help each other in addition to other law enforcement agencies statewide.

I extend an invitation to everyone to attend the 50th Anniversary of our Sac & Fox Nation Celebration to be held July 11th through the 14th, Thursday to Sunday. This event will take place at our tribal headquarters located 5 1/2 miles south of Stroud, Oklahoma on Highway 99. The Celebration starts on the Thursday evening of our pow wow with our traditional dances. Each night of our pow-wow features talented dancers from all areas of the United States and the opportunity to witness more Native American dancing. The Northeast Oklahoma Junior Rodeo Association for contestants 18 years old and younger will be competing at a sanctioned rodeo with performances on Friday and Saturday nights at the rodeo grounds. Other activities and events during the weekend include Native American arts and crafts, a Veteran’s meal honoring all Veterans will be held Saturday afternoon, a Sauk Business Enterprises Share Holder’s Meeting Saturday morning, church services Sunday morning, a Health Fair on Thursday, and camping is free. An RV Park and swimming pool are located at the campgrounds. In addition, we have a casino for those who wish to play the machines. The Celebration is geared to family fun and the public is invited.

I offer the tribe’s condolences to all the families that have lost loved ones this year and pray that God will comfort you during your time of mourning.

I once again thank you for the opportunity to serve you as Chief and with your continued prayers, may God Bless our Nation.

Sincerely, George Thurman, Principal Chief