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IN THE SUPREME COURT
CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA
CONCHO, OKLAHOMA

CHEYENNE-ARAPAHO
SUPREME COURTS OF OKLA.
FILED
IN THE SUPREME COURT

AUG 17 2007

IN RE: The EXECUTION OF CASINO)
GAMING MANAGEMENT CONTRACTS)
with Southwest Casino and Hotel Corp.)

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Governor Darrell Flyingman,)
Plaintiff/Appellant,)

Southwest Casino & Hotel Corp.)
Intervenor/Appellee)

Case No: CNA-SC-07-07

Cheyenne and Arapaho Tribal Legislature)
Intervenor/Appellee)

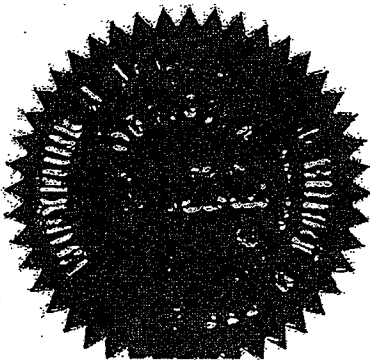
Cheyenne and Arapaho Tribal Council)
Intervenor/Appellee)

BEFORE: Chief Justice Ryland L. Rivas, Associate Justice Dennis W. Arrow,
Special Justice Karen Eby, and Special Lindsay G. Robertson

JUDGMENT REVERSING DECISION OF THE TRIAL COURT
OF THE CHEYENNE AND ARAPAHO TRIBES

NOW COMES the Court Clerk for the Supreme Court, Patty Bell, pursuant to
Section 461 of the Appellate Procedure Code of the Cheyenne and Arapaho Tribes of Oklahoma,
and hereby enters judgment in this action in accordance with the decision of the Cheyenne and
Arapaho Supreme Court filed August 17, 2007.

DONE this 17th day of August, 2007.



Patty Bell
Patty Bell
Court Clerk
Cheyenne and Arapaho Supreme Court

AUG 17 2007

In the Supreme Court
of the Cheyenne-Arapaho Tribes

CONCHO, OKLAHOMA

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Cheyenne and Arapaho Tribal Council,)
Intervenor/Appellee.)

Case No. CNA-SC-07-07

ON APPEAL FROM THE MAY 18, 2007 ORDERS OF THE
TRIAL COURT IN CASE NO. CNA-CIV-07-27

OPINION AND ORDER

BEFORE: Chief Justice Ryland L. Rivas
Associate Justice Dennis W. Arrow
Special Justice Karen Eby
Special Justice Lindsay G. Robertson

PER CURIAM.

This Court is of the opinion that the issues herein have been thoroughly briefed, that oral argument would not assist the Court in making its decision, and that undue delay would be caused were the Court to schedule oral argument on this matter.

I. BACKGROUND

The Tribes' Lucky Star casinos at Concho and Clinton are managed by Southwest Casino and Hotel Corp. ["Southwest"] pursuant to a gaming management agreement that was set to expire by its own terms on May 19, 2007. The efforts of members of three branches of government regarding the Tribes' relationship with Southwest beyond that date are at issue in this case.

The Tribes' Constitution provides that the Tribal Council, the Governor, and the Legislature are involved in the process of binding the Tribes to important governmental agreements such as treaties, compacts, and gaming management contracts. The most complete explanation of the process is found in Article VII, the article establishing the powers of the Executive Branch. Article VII, section 4(c) provides:

The Governor shall have the power to negotiate and sign a treaty, compact, or gaming management contract which has been previously and specifically authorized by the Tribal Council. No treaty, compact, or gaming management contract shall be valid which has not been previously authorized by the Tribal Council. Any treaty, compact, or gaming management contract signed by the Governor shall be subject to ratification by the Legislature.

In October 2006, Governor Darrell Flyingman sent out requests for proposals [RFPs] for a three-year gaming management contract to manage the Concho and Clinton casinos to five gaming management companies. The RFPs required development of a training program for tribal members. Although its management-fee terms are sketchy, it appears to provide for 12.5% of some unspecified number in the first year, 9% in the second year, and 6% in the third year. A separate RFP concerning a proposed casino in Elk City, Oklahoma was also sent. Southwest was among the companies to which the Governor sent the RFPs.

In a letter dated November 13, 2006, Southwest's Chief Executive Officer informed the Governor that the company was "pleased to accept your proposal" about the Concho and Clinton casinos. The letter stated that "[w]e agree to all of its terms" and that "[t]his includes, if desired by the Tribes, the expansion of the facilities at both Concho and Clinton." The letter generally outlines expansion ideas, and it also proposes the construction of a health clinic and office building. The letter concludes by expressing the company's willingness to "consider as an alternative, if you and the Tribes prefer, a one-year extension of our current agreement, on its current terms, to provide continuing management of the Concho and Clinton facilities until any issues associated with the Tribes adoption of its new constitution have been resolved."

Southwest subsequently presented proposals to the Tribal Council at a November 18, 2006 meeting, corresponded with Governor Flyingman, and engaged in discussions with members of the

Legislature. These efforts did not result in an accord about a gaming management contract with the Governor. The Governor eventually took the position that the Tribes should manage its own gaming operations, and did not need to employ any gaming management company.

However, several members of the Legislature wanted the Tribes to have a contract with Southwest, and they were aware that the existing contract would expire on May 19, 2007. On February 24, 2007, a Special Meeting of the Tribal Council took place at which a Tribal Council resolution concerning Southwest was purportedly passed.¹ Due perhaps to perceived alleged procedural irregularities in the calling of that meeting, the Legislature later called a special meeting of the Tribal Council for March 31, 2007 for purposes including the consideration of a contract or contracts with Southwest.

Out of the March 31 special Council meeting emerged a Tribal Council Resolution "authoriz[ing] the Governor to enter into" agreements with Southwest, "which contract(s) or extension(s) shall be in accordance with the 5-year management proposal presented by Southwest immediately following the Special Tribal Council meeting on November 18, 2006," with certain specific revisions or additions stated in the Resolution. The Resolution then:

- "authorizes and directs" the Governor to sign the agreements "within 5 (five) days following passage of this resolution";
- "authorizes and directs" the Legislature to ratify the agreements within five days after the Governor signs them; and
- provides that "if the Governor fails to sign and enter into the contract(s) or extension(s) as directed in these resolutions, the Tribal Council . . . authorizes and directs the Legislature to ratify the gaming management [sic] no later than 10 (ten) days following the date of this resolution and the legislature [sic]."²

The March 31 Council Resolution does not refer to any attachments or refer to any proposed agreements by name, other than the reference to the "proposal presented . . . immediately following the November 18, 2006 Special Tribal Council meeting."

The next development reflected in the record is the delivery of then-Acting Tribal Council Coordinator David Bearshield's letter to Governor Flyingman dated April 5, 2007 (five days after the March 31 meeting). That letter states that it encloses nine agreements made in accordance with the March 31 Resolution "for your negotiation and/or signature." Although the nine agreements enclosed with the letter were not included in the record, the author of the letter did list their titles, and

¹ The record does not contain the resolution that was purportedly passed at the February 24, 2007 Council meeting, and no party appears to rely on the action taken at that meeting. Moreover, we recently held the attempted February 24 meeting invalid in *Lynn v. Bearshield*, No. CNA-SC-07-04, 10 Okla. Trib. ___ (Cheyenne & Arapaho S.Ct., Aug. 15, 2007).

² This portion of the Resolution appears to be have extra language in places and to be missing some language in others. No party has attempted to explain the wording of the provision.

described their contents as follows:

- "Amendment No. 11" to the existing Gaming Management Agreement with Southwest;
- a "Gaming Management Agreement" and an "Expansion Agreement" regarding the existing Concho and Clinton casinos;
- a "Gaming Management Agreement" and a "Development and Expansion Agreement" regarding the existing Watonga and Canton casinos;
- a "Gaming Management Agreement" and a "Development Agreement" regarding new casinos to be developed at Seiling, Colony, and Hammon; and
- a "Gaming Management Agreement" and a "Development Agreement" regarding a new casino to be developed at Elk City.

Mr. Bearshield's letter also states that "the enclosed agreements were prepared in accordance with the resolutions of the Tribal Council adopted on February 24, 2007, after which an attorney selected by the Tribal Council negotiated and approved the terms of each of the attached agreements," and that "on March 31, 2007, the Tribal Council again authorized and directed you to enter into the enclosed [nine agreements]."

The Governor brought suit challenging the constitutionality of the Tribal Council's resolution on April 3, 2007. Southwest obtained permission to intervene in the litigation on April 13.

The Governor did not sign the agreements that Mr. Bearshield provided him. Thus, a document dated April 14, 2007, and titled "Amendment No. 11 to Third Amended and Restated Gaming Management Agreement," was executed by Ida Hoffman, the Speaker of the Legislature,³ and by a representative of Southwest. It appears that this is the same "Amendment No. 11" that Mr. Bearshield enclosed with his letter to the Governor. Amendment No. 11 provides that the current agreement between Southwest and the Tribes shall remain in force, with two modifications. The two modifications relate to the term of the agreement and the management fee. The term of the agreement is extended for a period commencing May 19, 2007 and ending on the earlier of (a) National Indian Gaming Commission [NIGC] approval of the "New Management Agreement," which Amendment No. 11 recites is "pending," or (b) May 19, 2009. The stated management fee is 10% of Total Net Revenues of \$28 million or below, and 15% of Total Net Revenues above \$28 million.

Also on April 14, 2007, the Legislature passed "Administrative Resolution No. A01/2007-04-01 Ratifying Governor's Signature of Southwest Casino Gaming Management Contract." As a recital in that "administrative resolution" states, the Governor had not in fact signed any such contract.

³ The lines and blanks in Amendment No. 11 where the title of the Tribes' representative was to be written were left blank.

