

Fla. Court Won't Revive \$250M Contract Suit Against Tribe

A Florida appeals court on Wednesday affirmed the dismissal of a South Florida marketing company's \$250 million suit over a lucrative contract with a corporation controlled by the Seminole Tribe, ruling that the tribe never waived its sovereign immunity.

Florida's Fourth District Court of Appeal said the trial court did not err in tossing the suit, filed by Mobile Mike Media Group LLC and Mobile Mike Promotions Inc., because the tribe's sovereign immunity under the Indian Reorganization Act's Section 17, through which a tribe can create a corporation, was never waived in the contract.

"It is undisputed that [the Seminole Tribe of Florida Inc.'s] charter contains no 'sue and be sued' clause or other waiver of sovereign immunity," the appeals court said. "We agree with those courts concluding that absent such waiver, Section 17 entities like STOFI are protected by sovereign immunity, a position that coincides with the policy behind granting immunity to tribal organizations."

The marketing companies, which sued in 2014, alleged that after they entered into an operating agreement with the tribe to set up a joint-venture advertising firm to market the tribe and its casinos, certain officials and tribe members acted together to break the contract and award the work to a firm owned by a tribal board member's sister.

Broward County Circuit Judge Carlos A. Rodriguez on Dec. 15 dismissed all nine claims the Mobile Mike firms brought against the tribe, as well as six of the nine claims against individual tribe members. The lower court also ruled that if it can determine that the individuals acted within the scope of their official duties, then sovereign immunity would also bar the remaining claims against them.

The trial court found that there is no distinction drawn by courts between sovereign immunity for the commercial activity of the Seminole corporation and the tribe itself, and therefore, the corporation is entitled to sovereign immunity absent a waiver in its charter, valid waiver in the contract or an act of Congress waiving immunity.

The appeals court also agreed with Judge Rodriguez that even if corporation President Tony Sanchez Jr. signed an operating agreement that included a waiver provision, he lacked the authority to agree to such language.

The tribe's attorney **Edward Guedes of Weiss Serota Helfman Cole & Bierman** said the decision is one of the strongest rulings from a state court that upholds tribal immunity and is the only one to explicitly do so with a Section 17 tribal entity.

"While federal decisions were very supportive of our client's position, the plaintiff insisted those cases should all be disregarded in favor of state common law end-runs around tribal immunity," Guedes said.

An attorney for the plaintiffs could not immediately be reached for comment Wednesday.

The parties entered into the operating agreement in January 2012, establishing MMMG LLC, with the tribe to receive 51 percent of the profit and Mobile Mike Promotions getting the rest, according to the original complaint and attached documents.

The tribe also agreed to designate MMMG as agency of record for the tribe and all related entities for 10 years, with an automatic renewal provision. As such, MMMG was to receive standard agency commission rates of 15 percent of all advertising sales, as well as monthly retainers worth hundreds of thousands of dollars for each of the Seminoles' seven gaming venues, including the Seminole Hard Rock Hotel & Casino in Hollywood, Florida, the complaint said.

The tribe and Seminole Gaming started to take steps to transfer advertising work to MMMG in early 2012, but in May and June 2012, Sally Tommie, a tribe member who owned an advertising agency and whose brother, Larry Howard, was a tribal board member, held meetings with tribal leaders in an effort to kill the deal with MMMG, according to the suit.

Ultimately, in June 2013, MMP was informed that the Seminole corporation would not honor the operating agreement, according to the complaint.

Judges Robert M. Gross, Dorian K. Damoorgian and Mark W. Klingensmith sat for the Fourth District.

MMMG and MMP are represented by Gary S. Phillips of Phillips Cantor Shalek Rubin & Pfister PA.

The tribe is represented by Edward G. Guedes and Alicia H. Welch of Weiss Serota Helfman Cole Bierman & Popok.

The case is MMMG LLC et al. v. Seminole Tribe of Florida Inc., case number 4D15-235, in the Fourth District Court of Appeal of Florida.