STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: January 20, 2015)

CGI-NIT, LLC, **Plaintiff**	:	
v.	:	**C.A. No. WC-2006-0571**
NARRAGANSETT INDIAN TRIBE, **Defendant**	:	

DECISION

THUNBERG, J. This matter is before the Court for decision, after a trial without the intervention of a jury, upon the construction of certain provisions in a promissory note (Note) executed by the litigants on April 2, 2001. The parties have stipulated to both the factual background and material attendant exhibits, which the Court fully incorporates by reference herein. (See Attachment A.)

The Note, in the principal sum of ten million dollars ($10,000,000), specifies the terms under which the Defendant/obligor, Narragansett Indian Tribe (Tribe), must commence payments on the principal to Plaintiff/payee, CGI-NIT, LLC (CGI). The initial portion of the language in controversy,

contained in Paragraph 1.1 of the Note, provides, in pertinent part, that payments shall commence "after the opening of any gaming, casino or similar facility, project or enterprise, whether on Tribal land, Settlement Act land, trust land or commercial land, and/or any such substituted facility, project, or enterprise, and any expansion thereof, wholly or partially within the State of Rhode Island ("Casino Project") as to which the Tribe . . . is owner, controller, sponsor or is otherwise involved, directly or indirectly . . ." (Ex. 3.) Paragraph 1.4 of the Note specifies that "the obligation to pay such debt shall be limited as source to revenues, dividends, or other payments payable or due to the Tribe . . . arising from or in connection with any Casino Project."

CGI avers that the enactment by the Rhode Island legislature of a law which resulted in the receipt by the Tribe of gaming proceeds from video lottery terminals (VLT) at Twin River Casino in Lincoln triggered the Tribe's payment obligations under the Note. CGI additionally complains that the Tribe breached the Note by "its failure to keep CGI informed of key events" regarding "any casino related developments [and] legislation." (Pl.'s Closing Mem. 2.) The Tribe counters that "the Narragansetts have never owned, opened or operated a casino or other gaming facility either directly or indirectly. Under the Promissory Note, there is actually no

affirmative duty or obligation that the Tribe even make any effort to open a casino or other gaming facility." (Def.'s Post Trial Mem. 8.)

The funds at issue represent a sum in excess of $5.7 million, which the Tribe received from Rhode Island Lottery revenue pursuant to G.L. 1956 § 42-61.2-7 for the purposes stated within § 42-61.2-7(a)(5), which specifies, in relevant part, that the Tribe is to receive:

> "0.17% of net terminal income of authorized machines at Lincoln Park, up to a maximum of ten million dollars ($10,000,000) per year, that shall be paid to the Narragansett Indian Tribe for the account of a Tribal Development Fund to be used for the purpose of encouraging and promoting: home ownership and improvement; elderly housing; adult vocational training; health and social services; childcare; natural resource protection; and economic development consistent with state law. Provided, however, such distribution shall terminate upon the opening of any gaming facility in which the Narragansett Indians are entitled to any payments or other incentives; and provided further, any monies distributed hereunder shall not be used for, or spent on, previously contracted debts…" Sec. 42-61.2-7(5)(Emphasis supplied.)

The Director of the Rhode Island Lottery, Gerald S. Aubin, testified compellingly, credibly and clearly that the Tribe does not participate in the operation of the state lottery in any fashion, he does not know Chief Sachem Thomas personally, the Tribe has no management role at all, nor has any advisory role. (Tr. 23-24.) As Mr. Aubin succinctly observed, "[t]here is no

relationship whatsoever." Id. at 24. Chief Sachem Thomas's completely credible testimony reinforced this conclusion.

The relevant, material and believable testimonies of Mr. Aubin and Chief Sachem Thomas compel the conclusion that the conferral of the benefit of VLT revenue upon the Tribe was the unilateral act of our State's legislature. The record is bereft of any evidence that any tribal member or representative initiated the discussion with the then-Governor for same, or lobbied for, or testified in support of such an enactment.

In no way, in this Court's conclusion, is the enactment and resultant receipt of revenue by the Tribe tantamount to the Tribe's "involvement," "directly or indirectly," in a casino project. Moreover, this point is eclipsed by the preceding language of Paragraph 1.1 of the Note, which states that payment obligations are triggered after the "opening" of a casino facility. This Court is guided by its Supreme Court's declaration that there is no need to "stretch [one's] imagination to read ambiguity into a contract where none exists." Sturbridge Home Builders, Inc. v. Downing Seaport, Inc., 890 A.2d 58, 63 (R.I. 2005). Similarly, "[w]hen the language of a statute is unambiguous and expresses a clear and sensible meaning, there is no room for statutory construction or extension, and we must give the words of the

statute their plain and obvious meaning." Wayne Distrib. Co. v. R.I. Comm'n for Human Rights, 673 A.2d 457, 460 (R.I. 1996).

The VLT enactment clearly provides that (1) the revenue payments to the Tribe would terminate "upon the opening of any gaming facility in which the Narragansett Indians [would be] entitled to any payments or other incentives"; and (2) no "monies distributed [pursuant to the act could be] used for, or spent on, previously contracted debts." Sec. 42-61.2-7(5) (emphasis supplied). Accordingly, the legislature's intent was to provide funds for the welfare and advancement of the tribal community until, if ever, the Tribe had the lawful ability to "open" its own facility.

CGI's additional allegation is that "[t]he Tribe breached paragraph 2.3 of the Note by failing to provide any information to CGI about developments concerning Casino Projects (proposed or actual), about related legislation, or about the Tribe's role and financial prospects in connection with any such Casino Projects and related legislation." (Pl.'s Closing Mem. 17, ¶ 21.) CGI maintains that even if such alleged breach was not material, it remains entitled to nominal damages. (Pl.'s Closing Mem. 18, ¶ 24.) CGI emphasizes, in its reply memorandum,[1] that its precise argument is that "the

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[1] By happenstance, the Court did not receive this document until October 30, 2014 after inquiring of counsel of its status. (The Court had approved of its filing in June 2014, over objection of defense counsel.) Messrs. Beckwith and Devereaux

Tribe failed to inform CGI of the Tribe's involvement with Harrah's – to develop a casino in West Warwick." (Pl.'s Reply Mem. 2.)

The Tribe responds that "the Promissory Note is devoid of any affirmative obligation on the part of the Tribe to use any efforts to secure a casino in the State of Rhode Island or elsewhere [noting that] the Tribe and its previous partners, went through extraordinary, public efforts and expended millions of dollars to develop a Narragansett Casino in West Warwick, R.I." (Def.'s Post-Trial Mem. 24.) The Court recognizes CGI's perspective that the publicity of certain events pertaining to a contract party's obligations do not alter or extinguish said party's obligations under the agreement. However, under the circumstances, particular and unique to this controversy, the Court concludes that even if there was a material breach of Paragraph 2.3 (which this Court finds unsupported by the evidentiary record), nominal damages, as requested by CGI, are not in order.

Conclusion

The Court, after considering all of the evidence and respective arguments and assessing the credibility of the witnesses, hereby enters

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have been exemplary professionals, prompt, earnest and respectful to the Court and, as importantly, to each other and to the witnesses. The Court has no doubt that, indeed, Mr. Beckwith transmitted the document as certified, on June 19, 2014. However, the Court was not aware of its existence until October 30, 2014, when the document was resubmitted. The Court apologizes to the parties for the unintended delay.

judgment on the causes of action in favor of the Tribe. The Court, specifically addressing the request for damages as articulated in CGI's closing memorandum, declines to award to CGI: (1) "accelerated payments and interest in accordance with Paragraphs 1.1, 1.3, 1.4 and 1.6 of the Note"; (2) nominal damages pursuant to Paragraph 2.3 of the Note; and (3) reimbursement to CGI for its costs, expenses and attorneys' fees pursuant to Paragraph 2.4 of the Note. Counsel for the Tribe will prepare an order in conformance with the within findings.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**CGI-NIT, LLC v. Narragansett Indian Tribe**
CASE NO:	**WC-2006-0571**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**January 20, 2015**
JUSTICE/MAGISTRATE:	**Thunberg, J.**
ATTORNEYS:	
For Plaintiff:	**Matthew P. Horvitz, Esq.** **Paul F. Beckwith, Esq.**
For Defendant:	**William P. Devereaux, Esq.** **James W. Ryan, Esq.** **Matthew C. Reeber, Esq.**

ATTACHMENT A

STATE OF RHODE ISLAND
WASHINGTON, SC

SUPERIOR COURT

CGI-NIT, LLC,

Plaintiff,

v.

NARRAGANSETT INDIAN TRIBE,

Defendant.

C.A. No.: 06-0571

STIPULATED FACTS AND EXHIBITS

In anticipation of trial, the parties to this action hereby stipulate and agree to the following facts and exhibits:

Narragansett Indian Tribe

1. The Narragansett Indian Tribe is a federally acknowledged and recognized Indian Tribe.

2. The Tribe is governed by a Constitution. It has an elected government consisting of a Chief Sachem and a nine member Tribal Council. The Tribe has an 1,800 acre reservation, approximately 50 employees and 2,400 members.

3. During 1992 or 1993, the Tribe entered into a Management and Development Agreement with British American Bingo for the purpose of attempting to develop a gaming facility on the Tribe's Lands near Charlestown, Rhode Island.

4. In 1993, British American Bingo was acquired by and became a wholly owned subsidiary of Capital Gaming International, Inc. ("CGI).

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5. On June 17, 1995, Capital Development Gaming Corporation ("CDGC"), a Rhode Island corporation, and wholly owned subsidiary of CGI, entered into an "Amended and Restated Management and Development Agreement" with the Tribe (Attached hereto as **Exhibit 1**) for, among other things, the potential development, financing, construction, operation and management of a tribal gaming facility on the Tribe's trust lands in Charlestown.

6. On March 18, 1998, the Tribe and CDGC executed an addendum to the above referenced agreement, entitled the "Amended and Restated Management and Development Agreement" for, among other things, the potential development, financing, construction, operation and management of a tribal gaming facility either on the trust Tribe's lands under existing federal law or, elsewhere within the State of Rhode Island, pursuant to then existing state law. (Attached hereto as **Exhibit 2**).

7. The Tribe and CGI's efforts to establish and build a gaming facility were ultimately not successful.

8. On or about September 3, 1999 the Tribe sent a letter to CGI in which the Tribe asserted that it was terminating its Management and Development Agreement with CDGC/CGI.

9. A dispute subsequently arose between CDGC and the Tribe regarding whether the Tribe was obligated to repay CDGC for funds expended by CDGC or CGI on behalf of the Tribe in connection with a proposed casino project.

10. At the time of the negotiations leading to the promissory note, the Tribe was partnering with Boyd Gaming of Nevada in an effort to obtain statewide ballot approval for a resort casino to be located in West Warwick, Rhode Island.

11. After negotiations, the Tribe and CDGC/CGI executed mutual releases and a Promissory Note (the "Note"), which is the subject matter of this action. That Note is attached hereto as **Exhibit 3**. The releases are attached hereto as **Exhibit 4 and 5**.

The Note

12. Chief Sachem, Matthew Thomas (the "Chief Sachem") executed the Promissory Note on April 2, 2001 after obtaining authorization from the Tribal Council through Council Resolution No. 2001-0329, passed on March 29, 2001. That Council resolution is attached hereto as **Exhibit 6.**

13. The Chief Sachem executed a Release from the Tribe to CDGC on April 2, 2001 (**Exhibit 4**) and on that same day, Charles B. Brewer, President of CDGC, executed a Release from CDGC to the Tribe (**Exhibit 5**).

14. The Chief Sachem was involved in the negotiations with Michael W. Barozzi, then President of CGI, and William S. Papazian, then Executive Vice President and General Counsel for CGI which resulted in the Tribe's execution of the Note and the Release.

15. The Note was drafted by Attorney James B. Keenan, counsel for CGI and William Papazian; reviewed and edited by attorney Jack Killoy, counsel for the Tribe; and reviewed by Chief Sachem, MatthewThomas.

16. The Note, **Exhibit 3**, is in the amount of Ten Million Dollars ($10,000,000). Certain terms of the Note are as follows:

- **1.1 Payment of Principal.** "All unpaid principal of this Note shall be due and payable… after the opening of any gaming, casino or similar facility, project or enterprise, whether on Tribal land, Settlement Act land, trust land or commercial land, and/or any such substituted facility, project, or enterprise, and any expansion thereof, wholly or partially within the State of Rhode Island ("Casino Project") as to which the Tribe, the Tribal Gaming Commission, any Tribal administrative agency, any wholly or partially owned or controlled subsidiary, corporation or other entity or agent or representative, and members, affiliates, successors and assigns of any of the foregoing, present or future (altogether, the "Tribal

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Entities"), is owner, controller, sponsor or is otherwise involved, directly or indirectly...."

- **1.4 Payment Terms.** "...the obligation to pay such debt shall be limited as source to revenues, dividends or other payments payable or due to the Tribe or any Tribal Entity and arising from or in connection with any Casino Project...."
- **2.10 Limited Waiver of Sovereign Immunity**; Consent to Jurisdiction. "...this consent is not, and shall not be deemed to be, a consent by Obligor (Tribe) to the levy of any judgment, lien or attachment upon any property or income of Obligor (Tribe) other than on said revenues, dividends or other amounts payable to the Tribe or any Tribal Entity and arising from or in connection with any Casino Project...."

17. The Note has been assigned to plaintiff CGI-NIT, LLC by CGI.

18. CGI-NIT, LLC was formed essentially to hold the Promissory Note and to manage the instant litigation.

19. The only asset of CGI-NIT is the promissory note.

20. William S. Papazian was designated by CGI-NIT as its Rule 30(b)(6) representative witness.

21. During Papazian's employment with CGI he served as executive vice president and general counsel.

22. William S. Papazian owns approximately two and one-half percent of the equity of CGI-NIT.

The VLT Statute

23. On or about July 15, 2005 the Rhode Island Senate and the House passed Senate Bill No. 970 Sub B and House Bill No, 6285 which authorized the Rhode Island Lottery to install/operate additional Video Lottery Terminal machines ("VLT") at Twin River (formerly known as "Lincoln Park").

24. R.I. Gen. Law § 42-61.2-7(5) codified that legislation and provided that the Tribe would receive 5% of "new" VLT machine proceeds, per year:

"five (5%) of net terminal income that is solely attributable to the introduction of newly authorized machines at Lincoln Park... up to a maximum of ten million dollars ($10,000,000) per year, which shall be paid to the Narragansett Indian Tribe for the account of a Tribal Development Fund to be used for the purpose of encouraging and promoting: home ownership and improvement, elderly housing, adult vocational training; health and social services; childcare; natural resource protection; and economic development consistent with state law. Provided, however, such distribution shall terminate upon the opening of any gaming facility in which the Narragansett Indians are entitled to any payments or other incentives; and provided further any monies distributed hereunder shall not be used for, or spent or previously contracted debts."

25. At the time the above referenced House and Senate Bills were introduced, Representative Steven M. Costantino amended the proposed legislation, which amendment added the language, "... and provided further any monies distributed hereunder shall not be used for or spent for previously contracted debts." The proposed House and Senate bills with the language added by Representative Costantino passed and was signed into law by the Governor.

26. In 2006, the Rhode Island General Assembly amended the VLT Act as follows:

"(5) To the Narragansett Indian Tribe, seventeen hundredths of one percent (0.17%) of net terminal income of authorized machines at Lincoln Park up to a maximum of ten million dollars ($10,000,000) per year, which shall be paid to the Narragansett Indian Tribe for the account of a Tribal Development Fund to be used for the purpose of encouraging and promoting: home ownership and improvement, elderly housing, adult vocational training; health and social services; childcare; nature resource protection; and economic development consistent with state law." Provided, however, such distribution shall terminate upon the opening of any gaming facility in which the Narragansett Indians are entitled to any payments or other incentives; and provided further, any monies distributed hereunder shall not be used for or spend on previously contacted debts. (An accurate copy of that statute is attached as **Exhibit 7**).

27. The Tribe does not own, operate, or control the Twin Rivers Casino (formerly known as "Lincoln Park").

28. The Tribe has not opened or obtained any control in or over a new or existing casino or gambling entity in Rhode Island or elsewhere.

29. The Tribe has no participation in or membership on any board or management group related to the Rhode Island Lottery or at the casino commonly known as "Twin River" or any other gambling entity.

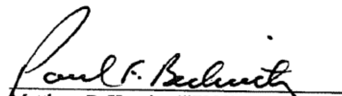
30. During the period of time from 2006 until January 15, 2014, the Tribe has received total funds in excess of $5.7 million from the Rhode Island Lottery, pursuant to RIGL 6.2-7 for the purposes stated within R.I.G.L. 42-61-2-7(5). (See **Exhibit 8**).

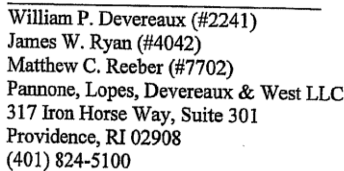
The State Constitution

31. Article VI, Section 15 of the Rhode Island Constitution states that: "All lotteries shall be prohibited in the State except lotteries operated by the State and except those previously permitted by the General Assembly prior to the adoption of this section, and all shall be subject to the prescription and regulation of the General Assembly.

Respectfully submitted,

CGI-NIT, LLC
By its attorneys,





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Dated: February 4, 2014