

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

[Filed: January 31, 2020]

STATE OF RHODE ISLAND EX REL. :  
TOWN OF CHARLESTOWN :

v. :

Case Nos. W3/2019-0265A  
W3/2019-0266A

MUSQUANT NOMPASHIM NETAS, :  
A/K/A IRVING J. JOHNSON :

**DECISION**

**THUNBERG, J.** Before this Court for decision is the Defendant’s motion to dismiss for lack of personal jurisdiction. In the motion, Musquant Nompashim Netas, a/k/a Irving J. Johnson (Defendant) urges this Court to dismiss the criminal complaints against him in W3/2019-0265A and W3/2019-0266A. The State of Rhode Island (State) has objected to Defendant’s motion. Jurisdiction is pursuant to G.L. 1956 § 8-2-15.

**I**

**Facts and Travel**

The instant motion arises from two criminal complaints filed by the Charlestown Police Department against Defendant. On April 15, 2019, Defendant was charged with one count of willful trespass. No. W3/2019-0265A (Notice of Appeal or Transfer to Superior Court). On April 27, 2019, Defendant was charged in a four-count criminal complaint with simple assault and/or battery; obstructing an officer in execution of duty; disturbance of public assembly; and disorderly

conduct. No. W3/2019-0266A (Notice of Appeal or Transfer to Superior Court). Both cases were transferred to this Court on June 13, 2019.

Defendant filed the within motion in each case on July 23, 2019. The State filed its opposition on September 3, 2019.

## II

### Standard of Review

The instant motion presents an issue of statutory interpretation, which is a question of law. *See State v. Sivo*, 925 A.2d 901, 917 (R.I. 2007). When interpreting a statute, courts must first determine whether the statute is ambiguous. *Bucci v. Lehman Brothers Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013). “[W]hen the language of a statute is clear and unambiguous, [the court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996) (alteration omitted); *see also Dart Industries, Inc. v. Clark*, 696 A.2d 306, 310 (R.I. 1997) (citation omitted). The United States Court of Appeals for the First Circuit has established that the Rhode Island Indian Claims Settlement Act, the statute at issue in this case, is unambiguous. *See Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16, 22 (1st Cir. 2006).

## III

### Analysis

Defendant asks this Court to dismiss the criminal complaints filed against him by the Charlestown Police Department. Def.’s Mem. Supp. Mot. to Dismiss at 1. Defendant argues that such relief is warranted because the State lacks jurisdiction over conduct alleged to have occurred on foreign, *i.e.*, Indian territory. *Id.* Defendant identifies as a member of two distinct Indian tribes—the Narragansett Indian Tribe (NIT), a federally-recognized Indian tribe, and the Ninigret

Nehantick Nahaganset Tribal Trust (NNN), an Indian tribe that is not federally recognized. *Id.* Defendant's argument, in support of the State's lack of jurisdiction over him, centers on his contention that the alleged criminal activity occurred on land owned by the NIT and NNN. *Id.* According to Defendant, the NNN has an overlapping and nonconflicting claim over the same lands identified as the tribal lands belonging to the NIT. *Id.* at 2. Defendant contests the State's jurisdiction as the NNN has never agreed to the State's governance of NNN land. Furthermore, the agreements, statutes, and laws interpreted by the United States Court of Appeals for the First Circuit giving the State criminal and civil jurisdiction over the NIT lands have no impact on the NNN's sovereignty over the lands it claims to own. *Id.*

Conversely, the State argues that it, indeed, possesses criminal jurisdiction over Defendant for alleged criminal activity that occurred on Indian land. Pl.'s Mem. Opp. Mot. to Dismiss at 1. Plaintiff argues that State law applies to Defendant's activities because the NNN is not a federally-recognized Indian tribe; therefore, no federal law preempts State law. Moreover, according to the State, the Rhode Island Indian Claims Settlement Act (the Settlement Act), 25 U.S.C.A. §§ 1701 *et seq.*, establishes that the State's criminal and civil laws apply to Indian land located within the State. Lastly, the State contends that the NNN's right to assert an aboriginal claim to land within the State was extinguished by § 1712(a)(3) of the Settlement Act, coupled with the NNN's failure to file a claim within the statute of limitation period provided in § 1712(b). Pl.'s Mem. Opp. Mot. to Dismiss at 2, 4-5.

The parties' dispute can be distilled to the issue of whether the State has criminal jurisdiction over Defendant. The Joint Memorandum of Understanding (JMOU) between the State and the NIT, and the Settlement Act that followed such settlement, provide the guiding principles necessary to resolve this dispute.

The Settlement Act was enacted in 1978 to resolve disputes between the NIT, landowners in the Town of Charlestown, and the State of Rhode Island, stemming from the NIT's claim to land located in Charlestown that was purportedly taken wrongfully from their ancestors. *Greene v. State of Rhode Island*, 398 F.3d 45, 45 (1st Cir. 2005). Congress enacted the Settlement Act following the parties' execution of the JMOU, an agreement that "created a carefully calibrated relationship" between the NIT and the State with respect to lands within the State subject to Indian claims. *Narragansett Indian Tribe*, 449 F.3d at 19. The purpose of the JMOU and the Settlement Act were to dispel clouds on land title in the State caused by Indian claims. *Greene*, 398 F.3d at 45; *see also* 25 U.S.C.A. §§ 1701(c), 1701(d).

Through the JMOU, the NIT eventually gained control over 1800 acres of land in the Town of Charlestown. *Narragansett Indian Tribe*, 449 F.3d at 19. In exchange, however, the NIT was required to voluntarily dismiss its pending lawsuits against the State, relinquish its aboriginal claims to land located in the State, and agree that "with the exception of state hunting and fishing regulations, 'all laws of the State of Rhode Island shall be in full force and effect on the settlement lands.'" *Id.* The Settlement Act and the Narragansett Indian Land Management Corporation Act, G.L. 1956 §§ 37-18-1 *et seq.*, echoed the jurisdiction provisions of the JMOU. *See* 25 U.S.C.A. § 1708(a); *see also* § 37-18-13(b).

The Settlement Act also addressed the effect that its enactment would have on other aboriginal claims to land located within the State. Specifically, "[T]he Settlement Act provides for the ratification of various transfers of land and natural resources, extinguishment of aboriginal title, and the elimination of any further Indian claims arising subsequent to the transfer to land and natural resources in Rhode Island." *Greene*, 398 F.3d at 52. Section 1712 of the Settlement Act addresses the extinguishment of claims to aboriginal title and provides that:

“(a) [A]ll claims against the United States, any State or subdivision thereof, or any other person or entity, by any such Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or rights involving such land or natural resources . . . shall be regarded as extinguished as of the date of the transfer.

“(b) This section shall not apply to any claim, right, or title of any Indian, Indian nation, or tribe of Indians that is asserted in an action commenced in a court of competent jurisdiction within one hundred and eighty days of September 30, 1978: *Provided*, That the plaintiff in any such action shall cause notice of the action to be served upon the Secretary and the Governor of the State of Rhode Island.”  
U.S.C.A. § 1712.

Here, Defendant’s argument against the State’s jurisdiction over him fails in light of the Settlement Act. This conclusion is inevitable for two reasons: (1) the NNN’s aboriginal claim to land located in the Town of Charlestown was extinguished by § 1712 of the Settlement Act; and (2) Defendant’s alleged criminal activity occurred on NIT land—land over which the State’s civil and criminal laws apply.

## A

### **Extinguishment**

The Settlement Act extinguished any aboriginal title to land involved in the transfers that prompted its enactment. *Greene*, 398 F.3d at 47. The United States Court of Appeals for the First Circuit addressed the issue of extinguishment under the Settlement Act in *Greene*. In *Greene*, the Seaconke Wampanoag Tribe sought a declaration to recover a portion of land located in Rhode Island which the Tribe claimed was wrongfully taken by European colonists. 398 F.3d at 45. The State argued that the Tribe’s claims were barred by the Settlement Act. *Id.* The Court discussed the fact that “[s]pecific congressional action . . . is necessary to ‘recognize’ aboriginal title.” *Id.* at 50 (quoting *Zuni Indian Tribe of New Mexico v. United States*, 16 Cl. Ct. 670, 672 (1989)). To that point, the Court concluded that:

“[t]here is nothing to indicate any intention by Congress to grant to the Wampanoags any permanent rights in the lands of Rhode Island. The Wampanoags are not a federally recognized tribe and the House Report at the time of the Settlement Act clearly stated that Congress did not believe there were any possible Indian claims in Rhode Island other than those of the Narragansetts.” *Id.*

The Court further acknowledged that the Wampanoags lacked a treaty or agreement with the federal government that recognized the Wampanoags’ claim to the land. *Id.*

The Court then turned its attention to the extinguishment provision of the Settlement Act and explained that:

“In provisions pertinent to this dispute, the Settlement Act provides for the ratification of various transfers of land and natural resources, extinguishment of aboriginal title, and the elimination of any further Indian claims arising subsequent to the transfer to land and natural resources in Rhode Island. Specifically, the Settlement Act ratified ‘any transfer of land or natural resources located anywhere within the State of Rhode Island outside the town of Charlestown from, by, or on behalf of any Indian, Indian nation, or tribe of Indians’ as congressionally approved as of the date of the transfer. 25 U.S.C. § 1712(a)(1). The Act also provided for ratification of any transfers of land or resources located within the town of Charlestown. *Id.* § 1705(a)(1). The Settlement Act defines a ‘transfer’ as including, but not limited to, ‘any sale, grant, lease, allotment, partition, or conveyance, . . . or any event or events that resulted in a change of possession or control of land or natural resources.’ *Id.* § 1702(j) (emphasis added).

“The Act then extinguished any Indian claims of aboriginal title to all such property as of the date of the transfer. *Id.* §§ 1705(a)(2), 1712(a)(2).” *Greene*, 398 F.3d at 52.

Section 1712(a)(3) of the Settlement Act provides for the extinguishment of aboriginal claims to land within the State. Specifically, § 1712(a)(3) states:

“by virtue of the approval of such transfers of land or natural resources effected by this subsection or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by

any such Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or rights involving such land or natural resources . . . shall be regarded as extinguished as of the date of the transfer.”

The exception to § 1712(a)(3) is provided in § 1712(b) and states that:

“This section shall not apply to any claim, right, or title of any Indian, Indian nation, or tribe of Indians that is asserted in an action commenced in a court of competent jurisdiction within one hundred and eighty days of September 30, 1978: *Provided*, That the plaintiff in any such action shall cause notice of the action to be served upon the Secretary and the Governor of the State of Rhode Island.”  
U.S.C.A. § 1712(b).

Ultimately, the Wampanoag’s aboriginal claims to land located in Rhode Island were precluded by the extinguishment provision of the Settlement Act. In other words, the Wampanoag’s claims were barred because they failed to bring them within the 180 day statute of limitation period established in § 1712(b).

Here, the NNN’s aboriginal claim to land located in the Town of Charlestown fails for the same reasons that the Wampanoag’s claims failed. The NNN’s claim to land is not substantiated by any congressional action. *See Greene*, 398 F.3d at 50. Moreover, the NNN failed to bring its claims within the statute of limitations period provided in § 1712(b). Thus, the NNN’s claim is barred. *Id.* at 53.

## **B**

### **Jurisdiction**

Because the NNN’s aboriginal claim was extinguished by the Settlement Act, Defendant’s argument that the State lacks jurisdiction over him as a foreign citizen on foreign territory fails. Thus, this Court must turn to the language of the Settlement Act to determine whether it addresses the State’s jurisdiction over Defendant.

It is well established that:

“Criminal jurisdiction is the power of a government to administer justice under the law, to prohibit certain behavior and punish violators of its laws. This power generally extends to the limits of a state’s territory unless specifically limited by the Federal Constitution and the Congress through the Supremacy Clause.” *State of Rhode Island v. Brown*, No. W3/1993-0389A, 1996 WL 936982, at \*3 (Sept. 23, 1996) (Goldberg, J.).

The Settlement Act “includes a grant of both civil and criminal jurisdiction over the Settlement Lands to the State of Rhode Island.” *Id.* at \*2. Thus, the Settlement Act “effectively extinguished the [NIT’s] right to resist the application of state authority as to matters occurring on the settlement lands. And that arrangement drew no distinction between tribal members and the Tribe itself, on the one hand, and the general public, on the other hand.” *Narragansett Indian Tribe*, 449 F.3d at 22. By entering into the JMOU, the NIT “abandoned any right to an autonomous enclave, submitting itself to state law as a quid pro quo for obtaining the land that it cherished.” *Id.* Moreover, § 37-18-13, which addresses the lands contemplated by the Settlement Act, provides that NIT land would be “subject to the civil and criminal laws of the state of Rhode Island and the town of Charlestown, Rhode Island, except as otherwise provided . . . .”

Here, the parties do not dispute the fact that Defendant’s alleged criminal conduct occurred on NIT land. Thus, pursuant to the Settlement Act and § 37-18-13, the State, indeed, has criminal jurisdiction over Defendant’s alleged criminal conduct that took place on NIT land.

#### **IV**

#### **Conclusion**

For the foregoing reasons, this Court denies Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction. Counsel shall submit the appropriate order to be entered by this Court.





**RHODE ISLAND SUPERIOR COURT**

*Decision Cover Sheet*

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**TITLE OF CASE:** State of Rhode Island ex rel. Town of Charlestown v. Musquant Nompashim Netas, a/k/a Irving J. Johnson

**CASE NO:** W3/2019-0265A; W3/2019-0266A

**COURT:** Washington County Superior Court

**DATE DECISION FILED:** January 31, 2020

**JUSTICE/MAGISTRATE:** Thunberg, J.

**ATTORNEYS:**

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