

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAC VIEUX DESERT BAND OF LAKE
SUPERIOR CHIPPEWA INDIANS, a
federally recognized Indian Tribe,

Plaintiff,

File No. 2:97-CV-67

v.

HON. ROBERT HOLMES BELL

THE MICHIGAN GAMING CONTROL BOARD,
THOMAS DENOMME, MICHAEL STACEY,
PAULA BLANCHARD, RICHIE DAVIS,
and KAREN BATCHELOR FARMER; and
THE CITY OF DETROIT, MICHIGAN,
DENNIS W. ARCHER, MARY ANN MAHAFFEY,
GILL HILL, CLYDE CLEVELAND, SHEILA
COCKREL, BRENDA M. SCOTT, NICHOLAS
HOOD, III, ALBERTA TINSLEY-WILLIAMS,
MEL RAVITZ and KAY EVERETT,

Defendants,

and

ATWATER ENTERTAINMENT ASSOC.,
L.L.C.; DETROIT ENTERTAINMENT, L.L.C.,
GREEKTOWN CASINO, L.L.C.; and
MGM GRAND DETROIT, L.L.C.,

Intervening Defendants.

OPINION

This matter is before the Court on a limited remand order issued by the United States Court of Appeals for the Sixth Circuit on February 13, 2004. *Lac Vieux Desert Band of Lake*

Superior Chippewa Indians v. The City of Detroit, Nos. 02-1893/1996 (6th Cir. Feb. 13, 2004). The purpose of the limited remand is for consideration of a proposed partial settlement agreement between Plaintiff Lac Vieux Desert Band of Lake Superior Chippewa Indians ("Lac Vieux"), and Intervenor/Defendants Greektown Casino, L.L.C. ("Greektown"), Atwater Entertainment Associates, L.L.C. ("Atwater"), and Detroit Entertainment, L.L.C. ("Detroit Entertainment"). (Docket # 299). Intervenor/Defendant M.G.M. Grand Detroit, L.L.C. ("MGM") is not a party to the settlement. The Sixth Circuit has directed this Court to "review the status of the proposed settlement and the settlement's effect upon the non-settling party, approve the settlement agreement if appropriate, and determine the proper course of action for any remaining issues." The Sixth Circuit emphasized that the non-settling party should not be prejudiced by the actions of the settling parties.

In response to the remand, this Court directed the parties to file under seal a pleading indicating that party's position on the settlement issue. Upon review of those submissions, and for the reasons that follow, the proposed settlement will be approved.

I.

Under the Settlement Agreement Greektown and Detroit Entertainment have agreed to pay Lac Vieux a substantial sum of money in exchange for Lac Vieux's dismissal of all pending litigation against them and its execution of the Stipulated Consent Judgment. The Stipulated Consent Judgment provides in part that Detroit Entertainment and Greektown may

continue to operate their respective casinos without being subjected to a new casino development competitive selection process.

The parties to the Settlement Agreement, Lac Vieux, Greektown, Atwater, and Detroit Entertainment, strenuously request the Court to approve the settlement because it represents a fair and reasonable resolution of all claims between the settling parties reached after years of contentious litigation and extensive negotiations. (Docket #'s 307, 308, & 312).

Although Defendant City of Detroit is not a formal party to the Settlement Agreement, the City strongly supports the partial settlement because it will enable two permanent casino complexes to finally be built. (Docket # 302). According to the City these two permanent casino complexes will be a major component in the City's economic development and downtown revitalization. Defendant Members of the City Council of the City of Detroit have also advised that they have no objection to the Court's approval of the partial settlement. (Docket # 301). Although the City Council Members had previously requested that the federal courts not consider the motion for partial settlement pending compliance with mandatory provisions of Detroit municipal law, the City Council adopted the necessary resolutions on February 27, 2004. Accordingly, the City Council Members have now withdrawn their opposition to consideration of the proposed partial settlement.

MGM is not a party to the Settlement Agreement. MGM objects to those provisions of the Stipulated Consent Judgment that would exempt the settling casinos from any new

selection process. (Docket # 310).¹ According to MGM it would be prejudiced by this provision because it faces the threat of having to participate again in a competition for a single franchise.

II.

Voluntary settlement of legal disputes is favored by the courts and is generally perceived to be in the public interest. *United States v. County of Muskegon*, 33 F. Supp.2d 614, 620 (W.D. Mich. 1998) (citing *Citizens for a Better Environment v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983)). *See also In re Air Crash Disaster*, 86 F.3d 498, 551 (6th Cir. 1996) (noting that public policy in Michigan favors the negotiated settlement of civil disputes). Because judicial approval of a settlement agreement places the power and prestige of the court behind the compromise struck by the parties, judicial approval may not be

¹MGM objects to the following provisions of the Proposed Consent Judgment:

It is further ORDERED that Detroit Entertainment and Greektown are hereby authorized to continue operating their casinos pursuant to their current respective Development Agreements unaffected by the remaining parties to this litigation continuing to pursue their respective claims and appeals and unaffected by the resolution of those claims or appeals.

It is further ORDERED that Detroit Entertainment and Greektown may continue to operate their respective casinos pursuant to their current respective Development Agreements without satisfying any additional material requirements relating to or arising as a consequence of the Pending Litigation or participating in a new casino development competitive selection process or its equivalent.

Proposed Stipulated Consent Judgment at 5.

obtained for an agreement which is illegal, a product of collusion, or contrary to the public interest. *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983). Accordingly, before approving a proposed settlement, the Court must be satisfied that the agreement is "fair, adequate, and reasonable, as well as consistent with the public interest." *United States v. County of Muskegon*, 298 F.3d 569, 580-81 (6th Cir. 2002) (quoting *United States v. Jones & Laughlin Steel Corp.*, 804 F.2d 348, 351 (6th Cir. 1986)).

In order to advance the policy of encouraging the voluntary settlement of lawsuits, federal courts uniformly deny non-settling defendants standing to complain about a settlement unless they can demonstrate that they will suffer plain legal prejudice as a result of the settlement. *See, e.g., In re Integra Realty Resources, Inc.*, 262 F.3d 1089, 1102 (10th Cir. 2001); *In re Vitamins Antitrust Class Actions*, 215 F.3d 26, 31 (D.C. Cir. 2000); *Eichenholtz v. Brennan*, 52 F.3d 478, 482 (3rd Cir. 1995); *Zupnick v. Fogel*, 989 F.2d 93, 98 (2nd Cir. 1993); *Agretti v. ANR Freight System, Inc.*, 982 F.2d 242, 246 (7th Cir. 1992); *Alumax Mill Prods., Inc. v. Congress Fin. Corp. of Am.*, 912 F.2d 996, 1002 (8th Cir. 1990); *Waller v. Financial Corp.*, 828 F.2d 579, 582-83 (9th Cir. 1987); *Bass v. Phoenix Seadrill/78, Ltd.*, 749 F.2d 1154, 1165 (5th Cir. 1985); *Geyer v. USX Corp.*, 896 F. Supp. 1440, 1446 (E.D. Mich. 1994) ("a nonsettling defendant may object to a settlement when it can demonstrate that it will suffer some formal legal prejudice as a result of the settlement"). Plain legal prejudice means interference with a party's contract rights, interference with a party's ability to seek contribution or indemnification, or stripping the party of a legal claim

or cause of action. *Agretti*, 982 F.2d at 247. "Mere allegations of injury in fact or tactical disadvantage as a result of a settlement simply do not rise to the level of plain legal prejudice." *Id.* (citing *Quad Graphics, Inc. v. Fass*, 724 F.2d 1230, 1233-34 (7th Cir. 1983)).

MGM contends that the legal prejudice requirement does not apply in this case because its opposition is to the Stipulated Consent Judgment which requires court enforcement rather than to the parties' settlement between themselves. MGM's distinction is unconvincing. The Settlement Agreement calls for entry of the Stipulated Consent Judgment and defines the closing date in terms of the court's "accepting in full the settlement herein proposed and specifying that Detroit Entertainment and Greektown will not be subject to a change in the Existing Condition as a result of the Pending Litigation." Clearly, the protective provisions of the Stipulated Consent Judgment are part and parcel of the parties' Settlement Agreement. As noted above, the Court is familiar with the general proposition that whenever it enters a consent judgment that imposes continuing duties on the court or affects third parties it must consider the fairness of the decree on those affected by it and must be satisfied that the decree is reasonable. *Williams*, 720 F.2d at 921. *See also Donovan v. Robbins*, 752 F.2d 1170, 1176-77 (7th Cir. 1985). This general duty, however, does not negate the non-settling party's obligation to show plain legal prejudice in order to object to the terms of the settlement.

MGM cannot show that it will suffer plain legal prejudice as a result of the Settlement Agreement or the Stipulated Consent Judgment. MGM is concerned that the Stipulated

Consent Judgment would prevent the courts from ordering a rebidding of all three casinos and that any new selection process that might be ordered would be limited to the franchise held by MGM. MGM contends that the Stipulated Consent Judgment would effectively "eliminate MGM's rights to a new selection process for franchises held by Detroit Entertainment and Greektown." (MGM Br. at 12). MGM's argument fails because no rebidding of the three casinos has been ordered and MGM accordingly never obtained a right to a new selection process for three casinos that could be eliminated. MGM also contends that the Stipulated Consent Judgment would deny MGM any ability to defend against Lac Vieux's new demand for a new selection process for the single franchise held by MGM, an entity that was also ineligible for the unconstitutional preference. Contrary to MGM's arguments, neither the Settlement Agreement nor the Stipulated Consent Judgment would affect MGM's ability to defend against Lac Vieux's request for relief. MGM can still argue that it is entitled to dismissal of Lac Vieux's appeal on the basis that the partial settlement moots that appeal; MGM can still argue that this Court's resolution of Lac Vieux's motion for further relief should be affirmed; MGM can still argue that if the Sixth Circuit reverses this Court's determination that Lac Vieux is not entitled to further relief, the case should be remanded for consideration of MGM's motion for summary judgment; and MGM can still argue that it stands on a different footing from the other casinos such that the relief that might have been appropriate as to Greektown and Detroit Entertainment would not be appropriate

as to MGM. The Settlement Agreement and Stipulated Consent Judgment would not legally impede MGM from pursuing any of its claims.

Upon review, this Court is satisfied that the Settlement Agreement does not interfere with MGM's contract rights, its right to seek contribution, or its right to seek indemnification, nor does it strip MGM of any legal claim or cause of action. The best MGM can show is that it may suffer a tactical disadvantage as a result of the settlement, but, as noted above, such injury does not rise to the level of plain legal prejudice. *Agretti*, 982 F.2d at 247. In fact, MGM is hard pressed to show any prejudice at all. As this Court noted in its opinion of July 9, 2002, "Plaintiff's proposed relief [rebidding of the three casino development agreements] is particularly inequitable with respect to MGM. MGM was not eligible for, did not seek, and did not receive any preferential treatment in the casino selection process. MGM was as much a victim of the preference provision as was Plaintiff." (July 9, 2002, Op. at 22-23). Lac Vieux's agreement not to pursue rebidding of the two casino development agreements held by the parties that did obtain preferences strengthens MGM's position with respect to Lac Vieux's claim for relief because a rebidding of only one casino development agreement would make the rebidding process even more inequitable to MGM. Moreover, the equities in favor of Lac Vieux will be diminished by Lac Vieux's voluntary relinquishment of its request for a reselection of all three casinos and by its receipt of substantial relief under the Stipulated Consent Judgment.

III.

The settlement between Lac Vieux, Greektown, Atwater and Detroit Entertainment was reached after extensive negotiation by well-represented parties. The Court commends the settling parties for their valiant efforts. All of the settling parties have given up substantial interests to achieve this partial settlement of this lengthy and very contentious litigation. The Court concludes that the Settlement and Proposed Consent Judgment represents a fair and reasonable settlement, that it is in the public interest and that it does not prejudice MGM. The Court will enter an order approving the Settlement and will sign the Stipulated Consent Judgment.

An order consistent with this opinion will be entered.

Date: April 9, 2004

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
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MGM GRAND DETROIT, L.L.C.,

Intervening Defendants.

ORDER

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that the Settlement Agreement and Stipulated Consent Judgment between Plaintiff Lac Vieux Desert Band of Lake Superior Chippewa Indians, and Intervenor/Defendants Greektown Casino, L.L.C. ("Greektown"), Atwater Entertainment Associates, L.L.C. ("Atwater"), and Detroit Entertainment, L.L.C. ("Detroit Entertainment") is **APPROVED**.

IT IS FURTHER ORDERED that a copy of this opinion and order and the Stipulated Consent Judgment be certified to the Court of Appeals for inclusion in Case Nos. 02-1893/1996.

Date: April 9, 2004

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE