

Lawsuits Against Eastern Pequots Can Go Forward

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By Karen Florin - Day Staff Writer, Casinos/Gambling

Donald Trump and the venture capital firm that introduced him to the Eastern Pequots will have their day in court.

Superior Court Judge Susan Peck ruled Monday that Trump and Amalgamated Industries Inc. of Windsor can go forward with breach of contract lawsuits against the tribe and some of its individual members. Peck is presiding over so-called complex litigation involving two factions of the tribe, the unified tribe, individual members and financial backers who hoped to profit from an Eastern Pequot casino.

Peck denied the Eastern Pequots' motions to dismiss most aspects of the cases, asserting in some instances that the tribe waived its sovereign immunity and in others that it had no sovereignty to waive. The judge rejected the tribe's assertion that the cases are not "ripe" for the courtroom because the tribe's federal recognition is under appeal.

The disputes surfaced after the U.S. Bureau of Indian Affairs recognized two factions of Eastern Pequots as a single tribe. The unified tribe voted in 2003 to retain the financial backers of the larger faction, dropping Trump and Amalgamated, who had contracted with the smaller faction.

Parties from several sides found something to like in Peck's detailed decisions. Amalgamated representatives called them "a clean sweep" in their favor and intimated that they'll relish the court battle that could follow.

R. Bartley Halloran, an attorney for Amalgamated, said the Eastern Pequots "have a long history of trying to hide behind claims of sovereign immunity to renege on agreements."

"But this time they have failed and this now becomes a simple contract case, concerning a contract that is airtight," Halloran said.

Amalgamated contends it provided the Paucatuck Eastern Pequot faction with day-to-day guidance and millions of dollars in exchange for "percentages of future economic development related proceeds." The firm ultimately introduced the tribe to Trump, who says he spent \$14 million to help the "PEPs" with their petition for federal recognition and day-to-day expenses.

Trump was prepared to develop a Paucatuck Eastern Pequot casino in exchange for 40 percent of net profits in the first seven years of operation.

"It was a good day for the Trump organization," attorney Robert Reardon of New London said of Peck's decisions. "The lawsuit will proceed."

The judge is allowing Trump to sue both factions of the tribe, but not individual members of the Paucatuck Eastern Pequot Tribal Council.

"It's a little tricky, but the bottom line is quite simple," Reardon said. "Everybody is still in, with the exception of the individual PEP tribal council members."

The judge found a provision in the Trump contract that held the individual council members were not

to be sued for actions taken in their official capacities. He will, however, be able to pursue civil charges against Eugene Young, a PEP tribal councilor alleged to have sought money from Trump in exchange for his vote to retain Trump as financial backer.

Trump also is suing the tribe's current backers, Eastern Capital Development, and individual partners David A. Rosow and William I. Koch. Motions concerning that aspect of the case are still pending.

Robert Tobin, attorney for the Eastern Pequots, said the judge "found some important facts from the Indian defendants' point of view." He said the decisions indicate that the unified tribe, sometimes called the Historic Eastern Pequots, are not a successor in interest to the Paucatuck Eastern Pequots or the larger faction of Eastern Pequots.

"Our point has always been that the historic tribe is not bound by Trump's contract and is not bound by Amalgamated's contract," Tobin said.

Though the tribe says it has long since resolved the differences that kept the factions apart in the past, the contract disputes are highlighting their divided history. Peck wrote in the Amalgamated decision that the unified tribe has not been finally recognized by the state or federal government and is not entitled to the protection of sovereign immunity. She said the Eastern Pequot faction is not entitled to immunity because "they are not a distinct tribe" recognized by the state. She notes it was the PEPs who were mentioned specifically in state documents concerning the tribe.

Peck also ruled that individual members of the group previously known as the Eastern Pequots were not entitled to sovereignty.

"As members of a tribal group that is not a bona fide tribe, tribal sovereign immunity cannot protect them," she wrote.