

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

GULFSIDE CASINO PARTNERSHIP

APPELLANT/PLAINTIFF

VS.

CASE NO. 60CV-21-1653

ARKANSAS RACING COMMISSION,
LEGENDS RESORT AND CASINO, LLC,
and CHEROKEE NATION BUSINESSES, LLC

APPELLEES/DEFENDANTS

CHOCTAW NATION OF OKLAHOMA

INTERVENOR

ORDER

On the 3rd and 4th days of January, 2023 came on for hearing all pending motions in the subject case. From the pleadings filed herein and arguments of counsel, the court doth find and order as follows:

1. Defendant Legends Resort and Casino, LLC's *Motion to Dismiss Administrative Appeal and Incorporated Brief* filed on April 9, 2021, to the extent not rendered moot by the subsequent filing of the *Amended Complaint* as well as an amended motion, is denied.
2. Plaintiff's *Motion to Strike Reply to Motion in Support of Motion to Dismiss Administrative Appeal, and Incorporated Brief*, filed on July 16, 2021, to the extent not rendered moot by the subsequent filing of the *Amended Complaint* as well as an amended motion, is denied.
3. Plaintiff's *Motion for Scheduling Order* filed on July 16, 2021, is denied.
4. Plaintiff's *Motion for Summary Judgment* filed on November 8, 2021, is rendered moot by the subsequent filing of the *Amended Complaint*.
5. Defendant Legends Resort and Casino, LLC's *Amended Motion to Dismiss Administrative Appeal and Incorporated Brief* filed on November 12, 2021, to the extent not

rendered moot by the subsequent filing of the *Amended Complaint* as well as an amended motion, is denied.

6. Defendant Legends Resort and Casino, LLC's *Motion to Dismiss First Amended Complaint and Incorporated Brief* filed on January 12, 2022, is denied.

7. Defendant Legends Resort and Casino, LLC's *Motion for Summary Judgment*, filed on January 12, 2022, is denied.

8. Defendant ARC's *Unopposed Motion for Extension of Time to Respond*, filed on January 13, 2022, is moot.

9. Defendant ARC's *Motion to Dismiss Gulfside's First Amended Complaint and Response to Legends/CNB's Motion for Summary Judgment*, filed on February 4, 2022, is denied.

10. Intervenor Choctaw Nation of Oklahoma's *Amended Motion to Intervene and Brief in Support*, filed on February 24, 2022, has been granted by prior order of the court.

11. Plaintiff Gulfside's *Motion for Summary Judgment*, filed on March 1, 2022, is granted, as follows:

(a) Legends Resort and Casino, LLC had no prior "experience conducting casino gaming" as required by Amendment 100, Section 4, and, accordingly, such entity was not a "qualified casino applicant" as defined and required by Amendment 100. The Arkansas Racing Commission's administrative determination that such entity was a qualified casino applicant as defined by Amendment 100 was therefore *ultra vires* and such decision is reversed.

(b) At the time the Arkansas Racing Commission jointly issued the Pope County casino license to Legends Resort and Casino, LLC and Cherokee Nation Businesses (CNB), CNB had no casino license application pending. Like the other four applicants who submitted applications during the first license application period, its application was "rejected" by the Arkansas Racing Commission after

the first license application period. CNB's second application was terminated when the Arkansas Racing Commission realized it had violated its own rules in the second license application period and terminated that application period. CNB never submitted another application. Accordingly, the Arkansas Racing Commission acted *ultra vires* in issuing a joint license to Legends Resort and Casino, LLC and to CNB. CNB was not a "qualified casino applicant" as required by Amendment 100.

(c) The Arkansas Racing Commission's decision to jointly award the Pope County casino license to Legends and CNB was facially violative of Amendment 100 which specifically requires a single casino license applicant, accordingly such decision and the action to award the license were *ultra vires*.

(d) The Arkansas Racing Commission's decision awarding the Pope County casino license jointly to CNB and to Legends is reversed.

(e) The Pope County casino license issued jointly to Legends and CNB on November 12, 2021, is declared a nullity and is void and of no effect.

12. As the Intervenor, Choctaw Nation of Oklahoma, orally, without objection, joined in the plaintiff's *Motion for Summary Judgment*, the declarations and findings in the preceding paragraph are also granted to the Intervenor Choctaw Nation of Oklahoma.

13. All motions or causes of action not specifically addressed and ruled on above are denied.

14. It is the intent of the court that this *Order*, together with the *Findings of Fact and Conclusions of Law*, entered on even date herewith, constitute a final and appealable order.



TIMOTHY DAVIS FOX
CIRCUIT JUDGE



DATE

MANNER OF DISPOSITION-6TH DIVISION

- ☐ **MDCO** CONSOLIDATED INTO:
- ☐ **MDDM** DISMISSED
- ☒ **MDJD** JUDGMENT/DECREE/ORDER
- ☐ **MDAR** REMOVED TO ARBITRATION
- ☐ **PMDRB** REMOVED TO BANKRUPTCY COURT
- ☐ **MDRF** REMOVED TO OTHER FEDERAL COURT
- ☐ **MDTR** TRANSFERRED TO OTHER CIRC COURT