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United States District Court  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

|                                  |   |                       |
|----------------------------------|---|-----------------------|
| GUIDIVILLE BAND OF POMO INDIANS, | ) |                       |
|                                  | ) |                       |
| Plaintiff,                       | ) | No. C 04-3955-SC      |
|                                  | ) | No. C 05-1605-SC      |
| v.                               | ) |                       |
|                                  | ) |                       |
| NGV GAMING LTD., a Florida       | ) | ORDER GRANTING        |
| partnership,                     | ) | PLAINTIFF GUIDIVILLE  |
|                                  | ) | BAND OF POMO INDIANS' |
|                                  | ) | MOTION FOR            |
| Defendant.                       | ) | DECLARATORY RELIEF    |
| _____                            | ) |                       |
|                                  | ) | AND                   |
| NGV GAMING, LTD., a Florida      | ) |                       |
| partnership,                     | ) | ORDER DENYING         |
|                                  | ) | PLAINTIFF NGV GAMING, |
| Plaintiff,                       | ) | LTD.'S MOTION FOR     |
|                                  | ) | SUMMARY JUDGMENT      |
| v.                               | ) |                       |
|                                  | ) | AND                   |
|                                  | ) |                       |
| UPSTREAM POINT MOLATE, LLC, a    | ) | ORDER DISMISSING CASE |
| California limited liability     | ) | NO. C 04-3955-SC, NGV |
| company and HARRAH'S OPERATING   | ) | GAMING, LTD. v.       |
| COMPANY, INC., a Delaware        | ) | UPSTREAM POINT        |
| corporation,                     | ) | MOLATE, LLC and       |
|                                  | ) | HARRAH'S OPERATING    |
|                                  | ) | <u>COMPANY</u>        |
| Defendants.                      | ) |                       |
| _____                            | ) |                       |

**I. INTRODUCTION**

Plaintiff NGV Gaming, Ltd. ("NGV") filed this action, Case No. 04-3955, against rival casino development groups Upstream Point Molate, LLC and Harrah's Operating Company, Inc. ("Defendants") alleging that Defendants tortiously interfered with

1 NGV's contract with the Guidiville Band of Pomo Indians ("the  
2 Tribe").

3 The Tribe filed Case No. 05-01605 seeking declaratory and  
4 injunctive relief against NGV on the grounds that the underlying  
5 contracts are invalid. The two cases were consolidated.

6 The Tribe now moves for declaratory relief. Specifically,  
7 the Tribe asks the Court to issue an order declaring the  
8 Agreements to be invalid. NGV now moves for summary judgment.<sup>1</sup>

9 For the reasons set forth below, the Court hereby GRANTS the  
10 Tribe's motion for declaratory relief and DENIES NGV's motion for  
11 summary judgment and DISMISSES Case No. 04-3955.

12  
13 **II. LEGAL STANDARD**

14 The burden of proving the requirements for declaratory relief  
15 - i.e., the existence of a dispute on a matter within federal  
16 court subject matter jurisdiction - rests on the party seeking  
17 declaratory relief. State of Texas v. West Publishing Co., 882  
18 F.2d 171, 175 (5th Cir. 1989).

19 The burden of proof as to the substantive right involved  
20 rests on whichever party holds the coercive claim - the true  
21 plaintiff. See Sanchez-Martinez v. I.N.S., 714 F.2d 72 (9th Cir.  
22 1983).

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25 \_\_\_\_\_  
26 <sup>1</sup> The Court has reviewed the surreply filed by NGV. The Court  
27 finds that NGV has submitted evidence concerning issues of fact.  
Because the Court bases its decision on an issue of law, it finds  
it unnecessary to address the contentions contained in the  
surreply.

1 **III. BACKGROUND**

2 On July 3, 2002, the Guidiville Band of Pomo Indians entered  
3 into a series of contracts (the "Transaction Agreements" or the  
4 "Agreements") with F.E.G.V. Corporation to develop and construct a  
5 proposed gaming facility on restored trust land in Northern  
6 California. Plaintiff NGV's Memorandum in Support of Opposition  
7 to Motion for Summary Judgment at 3 ("Pl. NGV's Mem."). NGV is  
8 the assignee of these contracts. Id. The Transaction Agreements  
9 consist of the Development Agreement and Personal Property Lease  
10 ("Lease") and a Cash Management Agreement ("CMA"). Id. NGV was  
11 obligated under the Transaction Agreements to assist the Tribe in  
12 identifying and purchasing land in order to establish the trust  
13 land base on which the gaming facility would eventually be built.  
14 Id.

15 In January of 2004, Defendants began negotiating to purchase  
16 354 acres of land from an outside entity for the purpose of  
17 building a gaming facility. Id. at 4. According to NGV,  
18 Defendants were aware of the existing contracts between NGV and  
19 the Tribe, yet intended to put these lands into trust for the  
20 Tribe and build a gaming facility for the Tribe to operate. Id.  
21 at 4-5.

22 On August 2, 2004, the Tribe sent a letter to NGV in which it  
23 attempted to "rescind" the Transaction Agreements with NGV. Id.  
24 at 6. NGV maintains that the reasons given for the rescission  
25 were "entirely pretextual" and that the Tribe was induced to  
26 terminate its agreements with NGV as a result of Defendants'  
27 interference. Id. at 6.

1 After termination of the contract, NGV filed its case, No.  
2 04-3955, against Defendants, alleging tortious interference with a  
3 valid contract. Defendants filed a motion to dismiss NGV's  
4 complaint on the grounds that NGV failed to state a claim upon  
5 which relief can be granted. The Court denied this motion and  
6 granted the Tribe's motion to participate as an amicus curiae.

7 The Tribe filed Case No. 05-1605, seeking declaratory and  
8 injunctive relief. Defendants filed a motion for summary judgment  
9 in Case No. 04-3955.

10  
11 **IV. DISCUSSION**

12 Under the standard cited above, the Court finds that the  
13 Tribe, as the declaratory relief plaintiff, has established the  
14 existence of a dispute on a matter within federal court subject  
15 matter jurisdiction.

16 The Court further finds, under the above-stated standard,  
17 that NGV is the true plaintiff because it is trying to establish  
18 that the contracts are valid, therefore it possesses the  
19 "coercive" claim. Therefore, the Court's order will address NGV's  
20 contentions.

21 NGV contends that the Agreements are valid because 25 U.S.C.  
22 § 81 does not apply to the Agreements and the Agreements do not  
23 implicate or otherwise encumber Indian trust lands. Pl. NGV's  
24 Mem. at 9-10.

25 Under California law, the elements of a cause of action for  
26 intentional interference with contract are 1) a valid contract  
27 between plaintiff and a third party; 2) defendants' knowledge of

1 the contract; 3) defendants' intentional acts designed to induce a  
2 breach or disruption of the contractual relationship; 4) actual  
3 breach or disruption of the contractual relationship; and 5)  
4 resulting damage. See Tuchsher Development Enterprises Inc. v.  
5 San Diego Unified Port District, 106 Cal.App.4th 1219 (2003).

6  
7 A. Validity of the Transaction Agreements Under 25 U.S.C.  
8 § 81

9 NGV contends that because no lands were acquired and  
10 transferred into trust, it is not necessary to obtain regulatory  
11 approval of the Agreements by the Secretary of the Interior, or  
12 his designee, pursuant to 25 U.S.C. § 81(b) (2000). Pl. NGV's Mem.  
13 at 9-10.

14 That section of the statute provides:

15 No agreement or contract with an Indian tribe that  
16 encumbers Indian lands for a period of 7 or more years  
17 shall be valid unless that agreement or contract bears  
18 the approval of the Secretary of the Interior or a  
19 designee of the Secretary.

20 25 U.S.C. § 81(b). Regulations governing this section declare  
21 that a "contract or agreement that requires Secretarial approval  
22 under this part is not valid until the Secretary approves it."  
23 25 C.F.R. § 84.007.

24 Apart from the fact that the land had not been acquired and  
25 converted into Indian trust land, the Agreement appears to fall  
26 squarely under the scope of Section 81. No one disputes that the  
27 to-be-acquired lands were to be converted into Indian trust lands.  
28 No one disputes that the term was in excess of seven years.

NGV does not concede, however, that the unacquired lands

1 would have been "encumbered" under Section 81. Pl. NGV's Mem. at  
2 10. The Court, however, finds that the Agreements do encumber  
3 Indian trust lands within the meaning of the statute and the  
4 appropriate regulations. Under 25 C.F.R. § 84.002, "encumber"  
5 means to "attach a claim, lien, right of entry or liability to  
6 real property." The Agreements declare that the Tribe, so long as  
7 base rent for the gaming facility is payable<sup>2</sup>, will not "[s]ell,  
8 dispose of, lease, assign, sublet, transfer, mortgage or encumber  
9 (whether voluntarily or by operation of law) all or any part of  
10 its right or interest in or to the Trust Lands" without the prior  
11 written consent of NGV. Declaration of Amy Wilkins ("Wilkins's  
12 Dec.), Ex. B at 26. Also, the Agreements grant NGV, its agents,  
13 employees, and independent contractors a right of entry, providing  
14 them with "complete and unrestricted access to the Indian trust  
15 lands for purposes of developing, installing and constructing the  
16 Structure."<sup>3</sup> Id. at 9.

17 NGV hangs its case on the fact that the lands had not yet  
18 been acquired, therefore rendering Secretarial approval  
19 unnecessary to a finding that a valid contract existed. Pl. NGV's  
20 Mem. at 12. The Court does not find this contention convincing.  
21 Rather, the Court finds that Secretarial approval is a bar to the

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23 <sup>2</sup> That is, after the unacquired lands have been acquired,  
24 transferred into trust status, and the gaming facility has been  
built.

25 <sup>3</sup> The Master Definitions List attached to the Agreements  
26 defines "Structure" as the "buildings and improvements constructed  
27 and installed on the Trust Lands on which the Tribe operates the  
Facility." Wilkins's Dec., Ex. D. at 3. "Facility" is defined as  
the "Structure, equipped and ready for the Tribe to conduct Gaming  
for the public." Id. at 6.

1 formation of a valid contract or agreement. See A.K. Management  
2 Company v. The San Manuel Bank of Mission Indians, 789 F.2d. 785,  
3 789 (9th Cir. 1986). Therefore, the Agreements are invalid as a  
4 matter of law.

5 Ninth Circuit case law is clear on this issue. The Court of  
6 Appeals wrote:

7 [I]t is doubtful that general contract principals apply to an  
8 agreement subject to 25 U.S.C. § 81 (1982). Section 81  
9 explicitly provides that a contract is "null and void"  
10 without written approval from the BIA [Bureau of Indian  
11 Affairs]. Therefore it is logical to conclude that an  
12 agreement without BIA approval must be null and void in its  
entirety. No part of it may be enforced or relied upon  
unless and until BIA approval is given. BIA approval is an  
absolute prerequisite to the enforceability of the contract.  
To give piecemeal effect to a contract...would hobble the  
statute.

13 Id. Though this decision concerned Section 81 before it was  
14 amended in 2000 and dealt with a dispute over lands then held in  
15 trust for an Indian tribe, the Court's interpretation of  
16 congressional intent is clear: contracts that encumber Indian  
17 trust lands in excess of seven years are invalid unless and until  
18 BIA approval is given.<sup>4</sup> To enforce the Agreements piecemeal, as  
19 NGV urges the Court to do, would hobble the statute and go against  
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21 <sup>4</sup> Before 2000, § 81 declared that contracts "relating" to  
22 Indian trust land were "null and void" without BIA approval. 25  
23 U.S.C. § 81 (1982). One reason Congress amended the statute is  
24 that parties disputed - and heavily litigated - the meaning of  
25 "relating to Indian lands" for many years. The Senate report on  
26 the 2000 amended version of Section 81 stated that Section 81 "will  
only apply to those transactions where the contract between the  
tribe and a third party could allow that party to exercise  
exclusive or nearly exclusive proprietary control over Indian  
lands." See Catskill Development, L.L.C., v. Park Place  
Entertainment Corporation, 144 F.Supp.2d 215, 223 (S.D.N.Y. 2001).

the protective intentions of Congress.

1           The federal government's longstanding policy of regulating  
2 Indian land transactions supports this reading of the  
3 applicability of the statute.<sup>5</sup> The United States Supreme Court  
4 has stated that federal statutes relating to Indian tribes must be  
5 "construed liberally in favor of the Indians." Montana v.  
6 Blackfeet Tribe of Indians, 471 U.S. 759, 766 (1985).  
7 Furthermore, Section 81 notifies all parties that any contract  
8 encumbering trust lands for seven years or more is invalid without  
9 BIA approval. The Agreement, by its own terms, recognizes the  
10 need to satisfy this requirement. Wilkins's Dec., Ex. B at 16.

11           Accordingly, the Court finds that the Agreements are invalid  
12 as a matter of law. Because the Agreements are invalid, NGV's  
13 claim for tortious interference with a valid contract cannot  
14 stand.

15  
16 **V. CONCLUSIONS FOR CASE NO. C-04-3955 AND CASE NO. C-05-1605**

17           For the foregoing reasons, the Tribe's motion for declaratory  
18 relief in Case No. C-05-1605 is GRANTED. Because the granting of  
19 the Tribe's motion decides the central issue on which NGV's motion  
20 and case are based, NGV's motion for summary judgment is DENIED,  
21 and its case, C-04-3955, is hereby DISMISSED.

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26 <sup>5</sup> A contract forming the base for a claim of tortious  
27 interference should not be "opposed to public policy, so that the  
28 law will not aid in upholding it." W. Page Keeton et al., Prosser  
and Keaton on Torts Section 129 at 995 (5th ed. 1984).



IT IS SO ORDERED.

Dated: October 19, 2005



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UNITED STATES DISTRICT JUDGE

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