

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
6th Division

GULFSIDE CASINO PARTNERSHIP

APPELLANT

vs.

Case No. 60CV-21-1653

**ARKANSAS RACING COMMISSION, and
LEGENDS CASINO AND RESORT, LLC**

APPELLEES

CHOCTAW NATION OF OKLAHOMA

INTERVENOR

**PETITION TO JOIN IN PENDING APPEAL AND FOR REVERSAL OF
ADJUDICATION UNDER THE ADMINISTRATIVE PROCEDURE ACT**

Intervenor, Choctaw Nation of Oklahoma, a federally recognized Indian tribe (“Choctaw Nation”), by and through its attorneys, submits this *Petition to Join in Pending Appeal and for Reversal of Adjudication under the Administrative Procedure Act* and states as follows:

INTRODUCTION

1. This petition seeks to join in the appeal filed by Appellant, Gulfside Casino Partnership, of an agency adjudication under the Arkansas Administrative Procedures Act (“APA”), which provides that “[i]n cases of adjudication, any person . . . who considers himself or herself injured in his or her person, business, or property by final agency action shall be entitled to judicial review of the action under this subchapter.” Ark. Code Ann. § 25- 15-212(a).

2. Intervenor seeks to intervene pursuant to Ark. Code Ann. § 25- 15-212(b)(3), which provides that “[i]n its discretion, the court may permit other interested persons to intervene.”

3. Intervenor seeks relief from this Court in the form of a declaration that the decision by the Arkansas Racing Commission on July 28, 2020, that Legends Casino and Resort, LLC met the qualifications of a casino applicant violated Arkansas Constitutional Amendment 100 and, therefore, must be reversed under Ark. Code Ann. § 25- 15-212(h)(1).

4. This Court has subject matter jurisdiction pursuant to Arkansas Code Annotated §§ 25-15-201 *et seq.*

5. Intervenor Choctaw Nation of Oklahoma is a federally recognized Indian tribe. Intervenor owns and operates Choctaw Casino & Resort located in Pocola, Oklahoma.

6. Appellant Gulfside Casino Partnership is a Mississippi general partnership.

7. Appellee Legends Resort and Casino, LLC, is an Arkansas limited liability company.

8. Appellee the Arkansas Racing Commission is an agency of the state government of Arkansas charged by Amendment 100 with the oversight and regulation of casino gaming within the State of Arkansas and authorized to issue casino gaming licenses to qualified applicants.

FACTS

9. On November 6, 2018, a majority of Arkansas voters approved Issue 4, codified as Amendment 100 to the Arkansas Constitution (“Amendment 100”), that authorized casinos and casino gaming in the State of Arkansas. Amendment 100 allows for the issuance of four casino licenses for the purposes of conducting casino gaming in Arkansas, one of which is for a casino to be located in Pope County, Arkansas. Ark. Const. Amend. 100, §§ 4(j) and (k).

10. Amendment 100 defines “casino applicant” as “any individual, corporation, partnership, association, trust, or other entity applying for a license to conduct casino gaming at a casino.” Ark. Const. Amend. 100, § 2(b). Amendment 100 states that the Racing Commission

shall award a casino license to a *casino applicant* for the casino to be located in Pope County. Ark. Const. Amend. 100, § 4(k). Emphasis added. Amendment 100 requires that all casino applicants for a casino license in Pope County demonstrate experience conducting casino gaming. Ark. Const. Amend. 100, §4(m).

11. On January 15, 2020, Legends Resort and Casino, LLC (“Legends”) submitted an application to the Racing Commission for the Pope County casino license and asked that its application be accepted as part of the May 2019 application period, after the submission deadline, “for good cause shown,” pursuant to Rule 2.13.4(b) of the Arkansas Casino Gaming Rules. The entity known as “Legends” is an Arkansas limited liability company formed on September 11, 2019. The sole member of Legends Resort & Casino, LLC, is CNB, which, in turn, is the sole member of Cherokee Nation Entertainment, LLC (“CNE”).

12. The application submitted by Legends on January 15, 2020, provided for only one entity, Legends, as the applicant. CNB was not an applicant on the January 15, 2020, application submitted by Legends.

13. Legends has never, now or at any other time, presented evidence that it has ever held a casino license in any state or ever engaged in “casino gaming” as defined by Amendment 100. Further, CNB has never, now or at any other time, presented evidence that it has ever held a casino license in any state or ever engaged in “casino gaming” as defined by Amendment 100. CNE allegedly operates ten casinos in Oklahoma, but CNE contains no ownership interest in nor operates as a member of Legends or CNB.

14. On April 15, 2020, the Racing Commission held a public meeting and voted to accept the application of Legends as part of the May 2019 application period for “good cause shown,” pursuant to Casino Gaming Rule 2.13.4(b). On May 7, 2020, the Racing Commission

met and voided the vote it took on April 15, 2020. After voiding the April 15, 2020, vote, the Racing Commission again voted to accept Legends' January 2020 application as part of the May 2019 application period "for good cause shown." As of May 7, 2020, Legends, and only Legends, had an accepted application for casino gaming in Pope County to the Racing Commission under the "good cause shown" exception pursuant to Casino Gaming Rule 2.13.4(b).

15. On June 20, 2020, Gulfside submitted a letter to the Racing Commission, wherein it alleged that Legends was not a qualified applicant under Amendment 100 because Legends does not have experience conducting casino gaming, as required by Amendment 100. (Amendment 100 states, "The Arkansas Racing Commission shall require all casino applicants for a casino license in Pope County and Jefferson County *to demonstrate experience conducting casino gaming.*" Amendment 100, § 4(m) (Emphasis added)).

16. On July 28, 2020, the Racing Commission issued a notice of meeting to be held on July 30, 2020, to consider Gulfside's request for determination regarding Legends's qualified applicant status under Amendment 100 and Legends's appeal of the denial of its application. On July 30, 2020, the Racing Commission took up Gulfside's challenge to the Racing Commission's finding that Legends was a qualified applicant, and the Racing Commission held a hearing on Gulfside's motion that Legends was not a qualified applicant because it did not demonstrate experience conducting casino gaming. At the conclusion of the hearing, the Racing Commission found that Legends met Amendment 100's casino-gaming-experience requirement, based upon CNB's history of gaming experience through CNE.

17. On February 2, 2021, the Racing Commission approved two sets of Findings of Fact, Conclusions of Law, and Orders. The first reflects the Racing Commission decision that Legends met Amendment 100's casino-gaming-experience requirement, based upon CNB's

history of gaming experience through CNE. On March 9, 2021, Gulfside timely filed its appeal of the Racing Commission's decision that Legends met Amendment 100's casino-gaming-experience requirement.

**COUNT I : THE ARKANSAS RACING COMMISSION VIOLATED ARKANSAS
AMENDMENT 100**

18. Intervenor realleges Paragraphs 1 through 17 above as if set forth word for word herein.

19. On July 28, 2020, the Racing Commission held an adjudication at which it made a determination that Legends was a qualified casino applicant under Arkansas Constitutional Amendment 100.

20. The Racing Commission's determination violated Arkansas Constitutional Amendment 100 and, therefore, must be reversed pursuant to Ark. Code Ann. § 25- 15-212(h)(1).

RELIEF SOUGHT

WHEREFORE, Intervenor prays that the Court enter an order reversing the Racing Commission's determination that Legends is a qualified applicant under Arkansas Constitutional Amendment 100; hold that Legends is not a qualified casino applicant under Arkansas Constitutional Amendment 100; and, therefore, hold that Legends is not qualified to hold a casino license under Arkansas Constitutional Amendment 100.

Respectfully submitted,

Choctaw Nation of Oklahoma

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the forgoing have been served via the court's electronic filing system on all counsel of record on this the 30th day of November, 2021:


Attorneys for Choctaw Nation of Oklahoma