

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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CITIZENS AGAINST CASINO GAMBLING, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
JOEL A. GIAMBRA, <i>et al.</i> ,	)	Civil Action No. 06 CV 0001
	)	
Intervenor-Plaintiffs,	)	
vs.	)	
	)	Hon. William M. Skretny, U.S.C.J.
NORTON, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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**AFFIDAVIT OF JOSEPH M. FINNERTY IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

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STATE OF NEW YORK     )  
                                          ) ss.:  
COUNTY OF ERIE         )

Joseph M. Finnerty, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before this Court. I submit this Affidavit pursuant to Local Rules of Civil Procedure (U.S.D.C., W.D.N.Y.) Rule 7.1(e) to place before the Court Plaintiffs’ and Intervenor-Plaintiffs’ motion for summary judgment and judgment on the law.

2. The motion is a legal motion based on the uncontroverted material facts and relevant statutes, including specifically but without limitation the Seneca Nation Settlement Act of 1990, 25 U.S.C. §1774 (“SNSA”) and the Indian Gaming Regulatory Act, 25 U.S.C. §2701 (“IGRA”).

3. The supporting papers consist of:
- the Notice of Motion, dated July 25, 2006;
  - this Affidavit, sworn to July 25, 2006, with annexed Exhibits A through F;
  - Plaintiffs' Statement of Undisputed Facts, dated July 25, 2006, pursuant to Local Rules of Civil Procedure Rule 56; and
  - Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment, dated July 25, 2006.

4. It is Plaintiffs' position that the Court's decision of the legal issues in this case, which involves judicial statutory construction and analysis and challenges to determinations by the Defendants under both the SNSA and IGRA, may now proceed on the basis of the applicable legal principles and in the absence of legitimate disputes of material fact.

5. Essentially, Plaintiffs assert that the record is now adequate<sup>1</sup> to permit a judicial determination as matter of law that:

- (a) certain lands acquired in October 2005 by the Seneca Nation of Indians ("SNI") in "restricted fee status" pursuant to a procedure they invoked under the SNSA are not 'sovereign,' *i.e.*, they are not Indian Country, Indian Lands, lands in trust, reservation land or otherwise "set aside" and legitimately subject to the governmental authority or the exercise of government control of the SNI;
- (b) the lands are not eligible for the conduct of casino gambling under the provisions of IGRA, which proscribes gambling on lands acquired by Native Americans after 1988 with certain very limited exceptions, none of which apply to the lands at issue in this case; and
- (c) the Secretary and NIGC violated the National Environmental

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<sup>1</sup> Of course and in the event of defendants' answering papers, plaintiffs reserve the right to supplement the record on reply as warranted.

Policy Act (“NEPA”) and National Historic Preservation Act (“NHPA”).

6. I annex to this affidavit for the Court’s convenience and use in its decision of this motion six exhibits:

- Exhibit A--indices of the two Administrative Records filed by the Defendants in this action with cross references to the document and part number designation in the Federal Court Clerk’s CM/ECF System;
- Exhibit B--a summary compendium of all Native American land claim Settlement Acts passed by the United States Congress. These Acts are referred to in legal argument contained in the accompanying supporting Memorandum of Law;
- Exhibit C--a true and correct copy of Senate Report 101-511, *Providing for the Renegotiation of Certain Leases of the Seneca Nation, and for Other Purposes*, October 8, 1990. This document is part of the legislative history of the Seneca Nation Settlement Act (“SNSA”), a statute central to the issues in this case;
- Exhibit D--a true and correct copy of House Report 101-832, *Providing for the Renegotiation of Certain Leases of the Seneca Nation, and for Other Purposes*, October 10, 1990. This document is also part of the legislative history of the SNSA;
- Exhibit E--a true and correct copy of the Hearing Before the Committee on Interior and Insular Affairs, House of Representatives: *To Provide for the Recognition of Certain Leases of the Seneca Nation*, H.R. 5367, September 13, 1990, also related to the SNSA; and
- Exhibit F--a true and correct copy of the testimony presented in the Hearing Before the Committee on Indian Affairs, United States Senate: *Off Reservation Gaming-Oversight Hearing for the Process for*

*Considering Gaming Application*, February 1, 2006.  
This document is relevant to Defendants' policies and procedures as pertaining to off-reservation gambling.

7. I also incorporate by reference and on information and belief the accompanying Statement of Undisputed Facts in support of this motion. The good faith basis of my information and belief in the accuracy of this Statement is its preparation by my legal staff, whose work I have experienced to be reliable.

8. The moving parties request a conference of the Court and counsel to address scheduling and other details concerning this motion and related pending motion practice.

9. On the basis of these accompanying supporting materials and the application of relevant legal principles to the undisputed material facts in the record before the Court and within its judicial notice, Plaintiffs request judgment in their favor as a matter of law.

s/ Joseph M. Finnerty

Joseph M. Finnerty

Sworn to before me this 25th  
day of July 2006.

s/ Rebecca H. Baritot

Notary Public

State of New York

Qualified in Erie County

My Commission Expires: June 10, 2007