

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**STAR TICKETS,  
Plaintiff,**

v.

**Case No. 14-138263-CB  
Hon. James M. Alexander**

**CHUMASH CASINO RESORT,  
Defendant.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant’s motion for summary disposition. Plaintiff is entertainment ticketing company that entered into a written contract with Defendant to serve as the exclusive ticketing agent for performances at Defendant’s casino.

Defendant claims that it is a wholly owned enterprise of the Santa Ynez Band of Chumash Indians, and as a result, is cloaked in the tribe’s sovereign immunity from suit. Because it has not consented to this suit, Defendant argues that Plaintiff’s Complaint must be dismissed.

To that end, Defendant now move for summary disposition under MCR 2.116(C)(4) and (C)(7). A (C)(4) motion tests whether the Court has subject matter jurisdiction over Plaintiff’s claims, and a motion under (C)(7) determines whether a claim is barred, among other grounds, by governmental immunity.

The United States Supreme Court has often repeated well-settled law that:

Indian tribes are “domestic dependent nations” that exercise inherent sovereign authority over their members and territories. Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional

abrogation. *Oklahoma Tax Comm'n v Citizen Band Potawatomi Indian Tribe*, 498 US 505, 509; 111 S Ct 905; 112 L Ed 2d 1112 (1991); citing *Cherokee Nation v Georgia*, 5 Pet 1, 17cc (1831); and *Santa Clara Pueblo v Martinez*, 436 US 49, 58; 98 S Ct 1670; 56 L Ed 2d 106 (1978).

Plaintiff does not dispute that that “Indian tribes generally enjoy sovereign immunity from suits,” but argues that “Defendant waived sovereign immunity” under a provision of the parties’ Agreement. That provision, paragraph 13(D), provides (in full):

**Applicable Law:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan. Each party agrees that this Agreement, and each of its terms and provisions, may be enforced against any party hereto in any court of competent jurisdiction within the County of Kent, State of Michigan, and each party hereto fully consents to and submits to the personal jurisdiction of the State of Michigan for that purpose.

Defendant appears to argue that the above provision is simply a choice-of-law provision that cannot reflect an unequivocal intent to waive immunity. Plaintiff argues that this provision “is far more than a mere choice of law provision – it is Defendant’s specific consent to be subject to the jurisdiction of the court in an action filed to enforce the terms of the [Agreement].”

Both parties rely on *Bates Assocs, LLC v 132 Assocs, LLC*, 290 Mich App 52, 64; 799 NW2d 177 (2010) in support of their arguments. In *Bates*, the plaintiff assigned the right to use a parking garage to the Sault Ste. Marie Tribe of Chippewa Indians to service Greektown Casino in Detroit. In exchange, the Tribe was responsible for making repairs on the structure. The plaintiff also retained the right to repurchase the structure for \$1 at any time within seven years of the assignment. Ultimately, the plaintiff exercised its right to repurchase the building, which led to a lawsuit and settlement agreement.

The Tribe challenged its CFO’s authority to enter into the settlement agreement and claimed that the waiver of immunity contained therein was invalid. The Agreement provided (by incorporation), in relevant part:

**Waiver of Immunity** The Seller and the Tribe (in connection with aforementioned [sic] guaranty the Tribe) hereby expressly waive their sovereign immunity from suit should an action be commenced with respect to this Agreement or any document executed in connection with this Agreement of Sale. *Bates*, 290 Mich App at 55, quoting the Agreement.

The *Bates* Court held that the Tribe had “unequivocally” waived its sovereignty by agreeing to the above language in the contract. The *Bates* Court compared the provision to that found to constitute a waiver by United States Supreme Court in *C & L Enterprises, Inc v Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 US 411; 121 S Ct 1589; 149 L Ed 2d 623 (2001).

In *C & L*, the US Supreme Court considered the effect of an arbitration provision contained in an agreement entered into by a tribe for the construction of a roof on a building. By including the arbitration provision, the Supreme Court concluded that “by the clear import of the arbitration clause, the Tribe is amenable to a state-court suit to enforce an arbitral award in favor of [the] contractor.” *C & L*, 532 US at 414.

Despite not including the phrase “sovereign immunity” in the arbitration provision, the Court concluded that there was an implied waiver of immunity. This was so because “the Tribe clearly consented to arbitration and to the enforcement of arbitral awards in Oklahoma state court; the Tribe thereby waived its sovereign immunity from [the contractor’s] suit.”

The present case is unlike *Bates* in an important way. The *Bates* provision was titled “Waiver of Immunity,” and it provided an explicit waiver. Unlike *Bates*, the title of the provision in our case, “Applicable Law” indicates a simple choice of law provision. Reading further, however, the provision does include the language that “each party hereto fully consents to and submits to the personal jurisdiction of the State of Michigan” for purposes of enforcing the Agreement.

Like the Supreme Court’s reasoning regarding the arbitration provision in *C & L*, the implication is that the Tribe must have waived its immunity in order to submit to jurisdiction in Michigan courts. If an agreement to arbitrate constitutes sufficient implied waiver, so must the present provision.

Next, Defendant argues that the person signing the Agreement, a “Marketing Assistant,” was not authorized to execute a waiver of immunity. On this issue, *Bates* is again instructive. In that case, the Tribe argued that its CFO did not have authority to waive immunity – which required a board resolution under the Tribe’s code.

The *Bates* Court reasoned that the Tribe had partially performed under the contract, which indicated that the CFO did have appropriate authority to contract. Likewise, in this case, Defendant does not dispute operating under the 2009 Agreement until November 2013 and receiving millions of dollars under its terms.<sup>1</sup>

Although not dispositive in itself, the Court is also persuaded by a line of cases cited by Plaintiff for the proposition that courts generally uphold contracts executed by public officials without authority so long as the subject matter is within the municipality’s power and not illegal. See *Webb v Wakefield Twp*, 239 Mich 521, 527-229; 215 NW 43 (1927); and *East Jordan Lumber Co v East Jordan*, 100 Mich 201, 205; 58 NW 1012 (1894).

For all of the foregoing reasons, Defendant’s motion for summary disposition is DENIED.

**IT IS SO ORDERED.**

June 6, 2014  
Date

/s/ James M. Alexander  
Hon. James M. Alexander, Circuit Court Judge

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<sup>1</sup> Plaintiff’s Complaint alleges that the parties operated under the terms of the User Agreement from 2006 onward, but the Agreement itself was not executed until April 2009.