

IN THE CIRCUIT COURT OF
POPE COUNTY, ARKANSAS

DIVISION U

BEN CROSS, IN HIS OFFICIAL
CAPACITY AS COUNTY JUDGE AND
ON BEHALF OF POPE COUNTY,
ARKANSAS; AND
LEGENDS RESORT AND CASINO, LLC

PLAINTIFFS

v. Case No. 58CV-20-429

ARKANSAS RACINIG COMMISSION,
ALEX LIEBLING, MARK LAMBERTH,
BUTCH RICE, DENNY EAST, MICHAEL
POST, BO HUNTER and STEVE LANDERS,
Commissioners, in their official capacities;
AND GULFSIDE CASINO PARTNERSHIP

DEFENDANTS

FILED
POPE COUNTY CLERK
2020 OCT 13 AM 9:38
BY: R RACHIEL L. GRIFFIN
POPE COUNTY CIRCUIT CLERK

**VERIFIED PETITION FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Comes now Legends Resort and Casino, LLC ("Legends"), and Ben Cross, in his official capacity as County Judge and on behalf of Pope County, Arkansas ("Pope County"), by and through undersigned counsel, pursuant to the Administrative Procedures Act ("APA"), specifically Ark. Code Ann. § 25-15-207, Ark. Code Ann. § 16-111-101, et seq., and Arkansas Rule of Civil Procedure 57, the common law of the State of Arkansas, and for their Verified Petition, state and allege as follows:

INTRODUCTION

1. On July 31, 2020, the Arkansas Racing Commission ("ARC") issued a casino license to Gulfside Casino Partnership ("Gulfside") despite Gulfside lacking

support from the County Judge or the Quorum Court as required by Amendment 100 of the Arkansas Constitution and despite it making misrepresentations regarding its proposed casino project. *See Exhibit A.*

2. On July 30, 2020, Gulfside counsel explained in no uncertain terms to the ARC that if Gulfside does not do what it says it will do, the ARC can take the license away. Neither Gulfside's application for a license nor the ARC's Casino Gaming Rules contemplate the construction and operation of a temporary annex casino. Moreover, the casino gaming license expressly sets forth the real property boundaries where casino gaming is authorized, and the proposed temporary annex casino is not within those boundaries. Gulfside is now in the process of unlawfully constructing and operating a temporary annex casino in Pope County, Arkansas that wholly conflicts with its application, its representations to the ARC, its casino gaming license, and the Casino Gaming Rules.

3. Legends is an Arkansas limited liability company that is wholly owned by Cherokee Nation Businesses, LLC ("CNB") and has an office in Pope County, AR. Legends is the limited liability company through which CNB has applied for the casino license in Pope County, and it is the only applicant that meets the minimum qualifications set forth in Amendment 100 of the Arkansas Constitution. Legends' application for a casino license was denied and an appeal hearing held on such denial on July 30, 2020. The ARC has not issued its formal order and findings of fact or conclusions of law as required by the APA. The administrative procedures process is ongoing, and assuming the ARC denies Legends' appeal, litigation will ensue

pursuant to the APA. Legends' claims in this matter are restricted to the unlawful authorization and construction/operation of a temporary annex casino, as the claims regarding Gulfside's qualifications to hold a casino license have not been adjudicated by the ARC.

4. Pope County, AR is a County and political subdivision within the State of Arkansas. Ben Cross is the County Judge of Pope County, Arkansas, where the temporary annex casino is to be located. Neither Ben Cross nor the Quorum Court of Pope County has issued a letter or resolution of support necessary for Gulfside to be considered by the ARC or operate a casino, much less a temporary annex casino, in Pope County, AR.

5. Gulfside is a partnership formed pursuant to the laws of the State of Mississippi and currently holds a license to operate a casino in Pope County, AR. Its redacted application is attached hereto as **Exhibit B**.

6. The ARC 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.

7. Defendant Alex Lieblong is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Faulkner County, Arkansas.

8. Defendant Mark Lamberth is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Independence County, Arkansas.

9. Defendant Butch Rice is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of White County, Arkansas.

10. Defendant Denny East is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Crittenden County, Arkansas.

11. Defendant Michael Post is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Franklin County, Arkansas.

12. Defendant Bo Hunter is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Sebastian County, Arkansas.

13. Defendant Steve Landers is a duly appointed Commissioner of the Arkansas Racing Commission and is a resident of Pulaski County, Arkansas.

14. This Court has subject matter jurisdiction pursuant to the Ark. Code Ann. § 16-13-201, Ark. Code Ann. § 16-111-101, et seq, and the APA.

15. Jurisdiction and venue are proper in the Pope County Circuit Court. Both Plaintiffs are located within Pope County, AR. Further, the temporary annex casino proposed by Gulfside is to be built in Pope County, AR.

16. Plaintiffs incorporate their Motion for a Temporary Restraining Order and Preliminary Injunction filed same day herewith as if set forth word for word herein pursuant to Ark. R. Civ. P. 10(c).

FACTUAL BACKGROUND

I. Amendment 100

17. Amendment 100 of the Arkansas Constitution, enacted by voters in the 2018 general election, mandates that the Arkansas Racing Commission shall issue four casino licenses, including one in Pope County, Arkansas.

18. Amendment 100 states that “[t]he Arkansas Racing Commission shall

adopt rules necessary to carry out the purposes of this Amendment and perform its duties under this Amendment.” Ark. Const. Amend. 100, § 4(c).

19. The ARC’s rules are subject to the APA. Ark. Const. Amend. 100, § 4(d).

20. Amendment 100 requires the Arkansas Racing Commission (“ARC”) to adopt rules governing “[t]he manner in which the Arkansas Racing Commission considers applications for issuance of casino licenses.” Ark. Const. Amend. 100, § 4(e)(2).

21. Pursuant to the authority and requirement to promulgate rules set forth by Amendment 100, the ARC promulgated the Casino Gaming Rules. . . .

22. Nothing in the Casino Gaming Rules addresses or contemplates the construction and operation of a temporary annex casino.

II. Incumbent Support Required

23. Amendment 100 states that the ARC “shall require all casino applicants for a casino license in Pope County and Jefferson County to submit either a letter of support from the county judge or a resolution from the quorum court in the county where the proposed casino is to be located. . . .” Ark. Const. Amend. 100, § 4(n).

24. “Casino applicant” is defined 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) (emphasis added).

25. Legends is the only casino applicant that has submitted a letter of support from the County Judge or a resolution of support from the Quorum Court in office at the time of submission of the casino application, which is the time that the

entity by definition becomes a casino applicant as contemplated by Ark. Const. Amend. 100, § 2(b).

26. The ARC began accepting applications in May 2019 pursuant to Casino Gaming Rule 2.13.4(b). At that time, Gulfside tendered a letter from a former County Judge of Pope County. *See Exhibit C*. It did not offer any support from incumbent officials in office at the time it submitted its application or any time thereafter.

27. Further, the County Judge of Pope County – Ben Cross – expressly withdrew any support that Gulfside previously enjoyed from the office of the Pope County Judge prior to Gulfside submitting its application. *See Exhibit D*.

28. County Judge Ben Cross and the Pope County Quorum Court, both in office from January 2019 to present – which includes the entirety of the casino application process which began in May 2019 – have only supported Legends.

29. The ARC rejected Gulfside’s application based on Gulfside not having support from the incumbent at the time the application was submitted. Litigation ensued, and Gulfside ultimately prevailed on March 24, 2020 at the circuit court level (Case No. 60CV-19-5832) with the Circuit Court finding the Casino Gaming Rule and related statute requiring incumbent local official support unconstitutional. The State Defendants, specifically this Commission, chose not to appeal that ruling.

30. Although Case No. 60CV-19-5832 pertained to the wording of ARC’s rule requiring incumbent support (which is required by the plain language of Amendment 100), Legends’ owner CNB was denied intervention in that case (the denial of intervention is now before the Arkansas Supreme Court). Thus, the Circuit Court’s

judgment does not apply to or bind this Court in this action as Legends and Pope County were not parties to that judgment. Further, Legends' claims, as clarified above and throughout, do not pertain to the issue of whether Gulfside meets Amendment 100's requirements on local support.

31. In addition to Gulfside failing to satisfy the plain language of Amendment 100's requirement for local support, County Judge Ben Cross rescinded his office's support (by former County Judge Jim Ed Gibson) for Gulfside prior to Gulfside submitting its May 2019 application and becoming a "casino applicant" as defined above.

32. Thus, the County Judge of Pope County effectively withdrew any support for Gulfside and Gulfside submitted its application without any actual support from Pope County or the County Judge of Pope County.

33. In contrast, Legends has obtained multiple letters of support from incumbent County Judge Ben Cross and a resolution of support from the Quorum Court of Pope County. *See Exhibits E - I.* Legends is the only applicant with continuous support from incumbent county officials and the only applicant that has executed an economic development agreement with Pope County. *See Exhibit J.*

34. The economic development agreement requires that Pope County exclusively support Legends, which it has done and defeats any assertion by Gulfside that it has obtained the necessary support required by Amendment 100.

35. Legends' application was accepted by the ARC pursuant to Casino Gaming Rule 2.13.4(b). Because Legends is the only applicant that enjoys continuous

support from the Pope County Judge and the Quorum Court – and the only applicant that has been supported by Pope County since the application process began in May 2019 – it is the only qualified applicant under Amendment 100.

III. June 18, 2020 Presentations

36. On June 18, 2020, the ARC held a meeting to receive presentations from both applicants and determine scores for each application. Pursuant to the Casino Gaming Rules, the ARC designated all of the Commissioners as the Review Panel to review and score the applications.

37. Gulfside misrepresented at the presentations the cost and size of its project. Gulfside's increase in project size and cost directly contradicted representations it has made to the ARC by its application and otherwise. **See Exhibit K.**

38. Gulfside, without leave of the ARC or authority under the Casino Gaming Rules, changed its application to a one phase project instead of a three-phase project.

39. Gulfside also made promises of eventually expanding its proposed hotel to 900 rooms.

40. Nothing in the Casino Gaming Rules authorized this last-minute amendment, nor do the Casino Gaming Rules authorize the ARC to consider the information Gulfside provided at the June 18, 2020 presentations.

41. But regardless of which project Gulfside may intend to ultimately execute, neither project, nor the ARC Casino Gaming Rules, contemplate a temporary

annex casino that was never presented to the ARC through application or otherwise prior to the issuance of a casino license.

42. Following the presentations of both applicants, the ARC Review Panel began the process of scoring the applications based on the four merit criteria outlined by Casino Gaming Rule 2.13.9: (1) experience in gaming; (2) financial stability; (3) Pope County project specifications; and (4) timeline for opening.

43. On the same date, the ARC and Review Panel issued the scores (*see Exhibit L*) and pursuant to Casino Gaming Rule 2.13.9(d) issued letters to the applicants notifying them of their scores.

44. Gulfside initially had a higher score, 637, to CNB's 572.

45. Thereafter, various events transpired, including the disqualification of Commissioner Butch Rice for his bias against Legends (which alone would have caused Legends to have the higher score total), the disqualification of Chairman Alex Lieblong (which resulted in Gulfside remaining the recipient of the highest score), and the July 30, 2020 appeal hearing.

46. Ultimately, the license was issued to Gulfside (*see Exhibit A*) and Legends' appeal is still awaiting findings of fact and a final order from the ARC as required by the APA before initiating future litigation on that administrative appeal.

IV. Gulfside's Plans to Build a Temporary Annex Casino

47. On August 11, 2020, Gulfside presented to the Russellville City Council that it intends to build a temporary casino annex on property currently located outside of Russellville, AR and within unincorporated land within Pope County, AR.

A transcript of this presentation is attached hereto as **Exhibit M**.

48. In Mr. Green's presentation, he represents that Gulfside intends to build the temporary annex casino and that his attorneys assure him Gulfside has a "ninety-nine percent chance" of keeping the license.

49. Thereafter, on September 28, 2020, Gulfside submitted detailed plans to the Russellville Planning Commission regarding constructing a temporary annex casino in unincorporated territory of Pope County, AR. *See Exhibits N – Q*, which includes a staff report by the City of Russellville.

50. The temporary casino annex, as proposed, is approximately 33,000 square feet and includes predominately slot machines. *See Exhibit P*.

51. The proposed temporary casino annex was not included in Gulfside's application.

52. The proposed temporary casino annex is not consistent with either Gulfside's application or its amended project presented at the June 18, 2020 presentations.

53. The Casino Gaming Rules do not contemplate a temporary casino annex being constructed and operated.

54. Further, Gulfside's proposed temporary annex casino is not within the real property boundaries set forth in Gulfside's casino license for authorized gaming.

CAUSES OF ACTION

I. Gulfside's Casino License Does Not Authorize the Construction and Operation of a Temporary Casino Annex (Claim by all Plaintiffs)

55. Plaintiffs incorporate paragraphs 1 through 54.

56. Casino Gaming Rule 2.13.5(d) states that “Casino applicants shall provide a complete application with responses for each required item.”

57. Pursuant to the Casino Gaming Rules, the ARC may issue a casino license based on a merit review of the application. Casino Gaming Rule 2.13.9.

58. “A casino license shall only be valid at the location for which it was originally issued by the Commission.” Casino Gaming Rule 2.13.17(a).

59. Gulfside’s casino license does not contemplate or authorize the construction of a temporary annex casino.

60. Gulfside’s application does not reference or contemplate the construction of a temporary annex casino.

61. The location of the temporary annex casino is not designated an area for casino gaming in Gulfside’s application.

62. The location of the temporary annex casino is not authorized for casino gaming in the casino license issued to Gulfside.

63. The Casino Gaming Rules do not authorize an applicant to submit, or the ARC to accept, an amendment to an application after licensure.

64. For these reasons, the proposed temporary annex casino, and any authorization thereof, is in violation of Casino Gaming Rules and Amendment 100.

65. Plaintiffs request that this Court (1) enter a declaratory judgment, pursuant to Ark. Code Ann. 16-111-101, et seq. and Ark. Code Ann. § 25-15-207, that the proposed temporary annex casino is not authorized by Amendment 100 or the Casino Gaming Rules and is in fact prohibited by the Casino Gaming Rules, (2) find

that the ARC approving the building of a temporary annex casino would be ultra vires and in violation of Amendment 100 and the Casino Gaming Rules, and (3) find that allowing Gulfside to construct and operate a temporary annex casino would cause irreparable harm to the Plaintiffs and issue an injunction.

II. Gulfside Fails To Meet The Minimum Qualifications As Prescribed By Amendment 100 (Claim by Plaintiff Pope County)

66. Plaintiff Pope County incorporates paragraphs 1 – 65.

67. Gulfside is not a qualified applicant pursuant to Amendment 100.

68. Specifically, Amendment 100 states that the ARC “shall require all casino applicants for a casino license in Pope County and Jefferson County to submit either a letter of support from **the** county judge or a resolution from **the** quorum court in the county where the proposed casino is to be located. . . .” Ark. Const. Amend. 100, § 4(n) (emphasis added).

69. “Casino applicant” is defined 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) (emphasis added).

70. Thus, an entity is not an “applicant” until it submits an application.

71. Gulfside was not a “casino applicant” as defined by Amendment 100 until it filed its application in May 2019.

72. Amendment 100 specifically requires that the applicant submit a letter or resolution of support from **the** County Judge or **the** Quorum Court.

73. At the time Gulfside became a “casino applicant,” Jim Ed Gibson, the only person to issue a letter of support for Gulfside, was no longer **the** County Judge.

74. By Gulfside's interpretation, that letter suffices in perpetuity, which is in conflict with Amendment 100's plain language.

75. Conversely, County Judge Ben Cross was the County Judge at the time Gulfside became a "casino applicant" by submitting an application to the ARC.

76. County Judge Ben Cross has been the County Judge for the entire application process (May 1, 2019 – June 18, 2020) and from January 2019 through the present date.

77. County Judge Ben Cross, and the Pope County Quorum Court, have supported only one applicant: CNB/Legends.

78. Further, assuming arguendo that a letter of a former county judge has any legal significance, prior to Gulfside submitting its application in May 2019, Pope County Judge Ben Cross made it abundantly clear that the Office of County Judge no longer supported Gulfside and rescinded any prior support. **See Exhibit D.**

79. County Judge Ben Cross, subsequent to Gulfside's application submission in May 2019 and prior to June 18, 2020, continued expressly demonstrating to the ARC that neither he nor his office supported Gulfside.

80. When Gulfside submitted its application, it had zero support from the county officials and the prior support that had been offered, although insufficient, was withdrawn. That absence of support remains today.

81. Moreover, the economic development agreement entered into by Legends and Pope County requires Pope County to support only CNB/Legends.

82. If the economic development agreement is not enforced, the County will

lose more than \$40,000,000.00 in direct economic incentives.

83. For these reasons, Gulfside does not meet the minimum requirements set forth by Amendment 100.

84. Plaintiff Pope County requests that this Court (1) enter a declaratory judgment, pursuant to Ark. Code Ann. § 16-111-101, et seq., that Gulfside is not a qualified applicant pursuant to Amendment 100, (2) enter a declaratory judgment, pursuant to Ark. Code Ann. § 16-111-101, et seq., that County Judge Ben Cross is the only County Judge in Pope County with authority per Amendment 100 to issue a letter of support for any applications submitted in the May 2019 application period, (3) enter a declaratory judgment, pursuant to Ark. Code Ann. § 16-111-101, et seq., that the economic development agreement requires the County to exclusively support Legends, (4) enter a declaratory judgment, pursuant to Ark. Code Ann. § 16-111-101, et seq., that the economic development agreement renders null and void any prior support issued to Gulfside, (5) find that the ARC approving the building of a temporary annex casino for an unqualified entity would be ultra vires and in violation of Amendment 100 and the Casino Gaming Rules, (6) find that the continued approval and regulation of casino gaming by the ARC of an unqualified entity is ultra vires and in violation of Amendment 100, and (7) find that Gulfside's construction and operation of the proposed temporary casino annex would cause irreparable harm to Plaintiff Pope County and issue an injunction.

REQUEST FOR RELIEF

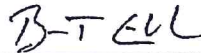
85. Plaintiffs request that this Court find:
- a. that Gulfside does not meet the minimum requirements for local support pursuant to Amendment 100 (request by Plaintiff Pope County);
 - b. that, even if a letter of support from a former County Judge not in office at the time of submission of application satisfies Amendment 100, County Judge Ben Cross effectively rescinded the support of the prior County Judge prior to May 2019 making Gulfside ineligible for a casino gaming license pursuant to Amendment 100 (request by Plaintiff Pope County);
 - c. that, even if a letter of support from a former County Judge not in office at the time of application satisfies Amendment 100, Pope County's support is bound by contract to only one applicant: Legends (request by Plaintiff Pope County);
 - d. that the construction and operation of a temporary annex casino and continued authorization of casino gaming by an entity, Gulfside, not meeting the minimum requirements of Amendment 100 is contrary to Amendment 100, ultra vires, and arbitrary and capricious (request by Pope County);
 - e. that the construction and operation of a temporary annex casino, and any authorization by the ARC thereof, is unlawful and contrary to

Amendment 100 and Casino Gaming Rules; and

- f. that an injunction is necessary to prevent further harm to Plaintiffs.

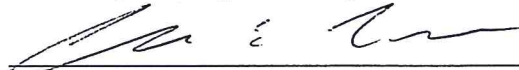
RESPECTFULLY SUBMITTED,

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SCOTT RICHARDSON
DUSTIN McDANIEL
Attorneys for Legends



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Fax (479) 967-3309

(verifications to follow)

VERIFICATION

I, Ben Cross, state under oath that the statements made in the above Petition are true to the best of my knowledge and beliefs.



County Judge Ben Cross

ACKNOWLEDGMENT

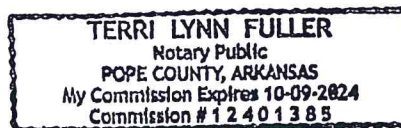
STATE OF ARKANSAS)
) ss
COUNTY OF POPE)

SUBSCRIBED AND SWORN to before me, a Notary Public, on this 13th day of October, 2020.



Notary Public

My Commission Expires: 10/9/2024



VERIFICATION

I, Charles "Chuck" Garrett, as CEO of Cherokee Nation Businesses, LLC (the sole owner of Legends), state under oath that the statements made in the above Petition are true to the best of my knowledge and beliefs.

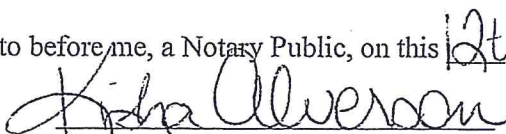


Charles Garrett

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss
COUNTY OF PULASKI)

SUBSCRIBED AND SWORN to before me, a Notary Public, on this 12th day of October, 2020.



Notary Public

My Commission Expires:

11.17.2026

