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Judge scolds tribe over legal tactics

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By Denny Walsh

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--A Sacramento federal judge leveled a broadside Monday at an El Dorado County Indian tribe's legal tactics as he dismissed a lawsuit over a loan to help the tribe get a casino off the ground.

A suit was filed against the Shingle Springs band of Miwok Indians in December in El Dorado Superior Court, but the tribe invoked a 1996 loan agreement that it said obligates the lender, Wayne Queen, and his family to "bring their action in federal court."

"The Superior Court accepted the tribe's argument," Queen's attorney, Matthew Jacobs, said in court papers. "So, off to federal court plaintiffs went."

The tribe then promptly moved to dismiss, asserting it cannot be sued in federal court over an alleged debt because it is neither a foreign state nor a citizen.

"The tribe is correct," U.S. District Judge Morrison C. England Jr. ruled Monday.

In a footnote in his written order, however, England added:

"Given the clear lack of federal jurisdiction in this matter and the inevitability of its dismissal ... plaintiffs question why they were forced to file a lawsuit in this court.

"The court shares that concern, and questions what appears to be blatant gamesmanship on the part of the tribe. In granting this motion, the court in no way condones that behavior."

Jacobs did not contest the jurisdiction issue, but wrote in his response to the dismissal motion:

"We just wish the tribe had played it straight the first time around so that neither plaintiffs, nor this court, nor the state court would have had to incur the expense, distraction and delay of this silly motion practice.

"The tribe's tactics in this litigation gives lawyering a bad name."

Anthony Cohen, the tribe's attorney, scoffs at that contention. He denies he had an obligation to disclose in state court the lack of federal jurisdiction.

"The tribe is in no position to offer legal advice to plaintiffs, let alone to anticipate the contents of the federal complaint," he said in response to Jacobs.

Queen, a 78-year-old Choctaw Indian, lent the Miwok tribe \$500,000 in 1996, and got a promissory note calling for him to receive 3.5 percent of the revenue from the planned Crystal Mountain Casino for five years. He now accuses the tribe of reneging by claiming the operation of the casino under a new name will effectively cut Queen out of the deal.

With the exception of a brief, ill-fated effort in a 20,000-square-foot, tent-like structure next to Highway 50 at Greenstone Road, the casino venture went nowhere. It bogged down in legal wrangling with the county, government regulators and neighbors of the rancheria. But the plan persists, now calling for an upscale hotel-casino resort on the site.

As a result of the abrupt closure and resulting delay in payments on Queen's note, the tribe agreed to pay him 12 percent interest until it opened a permanent gaming operation, his suit alleges.

"There is now due, owing and unpaid from (the Shingle Springs Miwok) at least \$870,000," it says.

The tribe denies an obligation to share gaming revenues because the current plan does not call for the casino to bear the Crystal Mountain name.

"So, off we will go, back to El Dorado County, where plaintiffs wanted to be in the first place," Jacobs said wearily.

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