

IN THE MISSOURI GAMING COMMISSION

In Re:)
) DC-19-077
Gaming and Leisure Properties, Inc.)

PRELIMINARY ORDER FOR DISCIPLINARY ACTION

Comes now the Missouri Gaming Commission acting in its official capacity pursuant to 11 CSR 45-13.050, and states as follows:

1. The Missouri Gaming Commission (the "Commission") or ("MGC") is a state commission created under Chapter 313, RSMo 2016,¹ with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.
2. The Commission issued Gaming and Leisure Properties, Inc., ("GLPI") a Key Business Entity License.
3. As the holder of a Key Business Entity license, GLPI is subject to the provisions of §§ 313.800 to 313.850, RSMo, and the regulations promulgated thereunder by the Commission.
4. The Commission issued Eldorado Resorts, Inc. ("Eldorado") a Class A Riverboat Gaming License to develop and operate Class B gaming licenses in the State of Missouri.
5. As the holder of a Class A license, Eldorado is subject to the provisions of §§ 313.800 to 313.850, RSMo, and the regulations promulgated thereunder by the Commission.

STATEMENT OF FACTS²

6. On May 15, 2018, Eldorado and GLPI filed a Petition for Change of Control.
7. Upon the review of the Petition, MGC expressed concern that the transaction would result in the ownership by GLPI, as landlord, of all the casino properties in the St. Louis market. As the parties stipulated in paragraph 6 of the Agreement to Restructure Transaction (ART) the Petition filed on May 15, 2018, and the resulting ownership of GLPI and all four casinos in the St. Louis, Missouri metropolitan area would not have been approved by the Commission.
8. In order to resolve the issues and concerns raised by the MGC with respect to the real estate transfer proposed in the Petition, GLPI and Eldorado executed the Agreement to Restructure Transaction (ART) on September 20, 2018.

¹ All statutory references are to RSMo 2016, unless otherwise specified

² GIR 20190730003

9. Attached to the ART were a Promissory Note and Deed of Trust, and the ART prohibited any amendment or revision of those documents without the prior approval of the Commission.

10. The Promissory Note contained no maturity date and instead contained the following language found in Article I of the Note:

Borrower agrees to satisfy the principal sum of this Note and pay interest on the unpaid principal sum of this Note and all other amounts set forth in the Loan Agreement from time to time outstanding at the rates and at the times specified in Article 2 of the Loan Agreement.

11. The maturity date of the Note was the maturity date set forth in Article 2 of the Loan Agreement and any amendment or revision of the definition or provisions relating to the maturity date in the Loan Agreement would also therefore constitute an amendment or revision to the Note.

12. The Note, in Article 3, contained the following language:

This Note is secured by the Security Instrument pursuant to the terms of the Security Instrument. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provision of the Loan Agreement shall govern.

13. The Deed of Trust contained a provision on page 25 in Article XX which provided for the MGC to hold a Deed of Release in escrow to be filed at the end of one year if the Deed of Trust had not been released by the parties.

14. On September 24, 2018, GLPI sent its draft of the Loan Agreement to the MGC. That draft of the Loan Agreement, in Article 2 stated that the maturity date of the Loan was two years after its execution.

15. Pursuant to 11 CSR 45-10.040(12) and 11 CSR 45-13.065, both the Petition for Change of Control and the ART required approval by the full Commission and was placed on the Commission agenda for its regularly scheduled September 26, 2018 meeting.

16. At that meeting the Commission approved Resolution No. 18-049 which, among other things, approved both the Agreement to Restructure Transaction and the Amended Petition for Change of Control.

17. The Resolution further ordered Eldorado and GLPI to comply with the terms of the ART and with all the terms Note, Deed of Trust and Loan Agreement (collectively the "Loan Documents") that relate to the ART, including, but not limited to, the parties' obligation not to amend or revise any of the Loan Documents without the expressed written consent of the Commission.

18. There were provisions in the Loan Agreement which related to the parties' agreement concerning replacement property and other matters, however there were provisions such as Article 2 of the Loan Agreement, which established the maturity date of the Note and was incorporated by reference into the Note. Therefore, Article 2 of the Loan Agreement did, in fact, relate to the Agreement to Restructure Transaction.
19. The Commission ordered the parties to deliver copies of all documents executed in connection with the transaction within three days of their execution or recording.
20. The Commission made a specific finding that the directives set forth in the Resolution would be a valid order and ruling of the Commission pursuant to § 313.812.14(2) RSMo. In doing so and by operation of that statute, any failure to comply with the requirements stated in the Resolution would subject GLPI and Eldorado to discipline.
21. The parties failed to deliver the documents within three days of their execution or recording and only delivered them to the MGC on October 23, 2018, following prompting by the Commission.
22. Upon review of the documents, it was discovered that the maturity date in the Loan Agreement, and therefore the maturity date of the Note, had been revised and amended in violation of both the Resolution and the ART to add to the original two year term an option for three consecutive one year extensions.
23. In addition, the language approved by the Commission for Article XX of the Deed of Trust was amended and revised in the actual Deed of Trust recorded and did not include the provisions relating to the Deed of Release being held in escrow by the Commission.
24. At the Commission meeting on September 26, 2018, Tom Reeg, CFO of Eldorado, made representations to the Commission that the Note would be paid off after two years whether or not the replacement property transaction had been consummated, and that Eldorado had the cash to pay off the Note.
25. Brandon Moore, General Counsel of GLPI, was present at the meeting when the statements were made.
26. At 7:30 p.m. on September 26, 2018, the evening of the Commission meeting, Brandon Moore proposed modifying the term of the Loan Agreement relating to the maturity date to add the three one year extensions to Eldorado, and further stated the following, "If we could get comfortable that MO does not care we were thinking that we should add a provision that would provide an option for Borrower to extend the loan for successive one year periods..." He went on the email to state that those extensions would "provide GL with originally expected economics."
27. In response to a Request for Production of Documents provided to investigators for MSHP, GLPI indicated that when they first proposed the change to the maturity date on the Loan Agreement and Note at 7:36 p.m. on September 26, 2018, GLPI thought that the extension should be previewed by the MGC. In that same response they then indicated that between

7:36 p.m. on September 26, 2018 and 7:36 a.m. on September 27, 2018, when the revisions to the documents were made, they concluded that the revisions were not subject to approval by the Commission based on GLPI's review of the ART and Resolution and therefor proceeded to draft the changes to the Loan Agreement which amended and revised the maturity date of the Note and did not give any notice or request prior approval from MGC.

LAW

28. Section 313.805, RSMo, states, in pertinent part, as follows:

The commission shall have full jurisdiction over and shall supervise all gambling operations governed by sections 313.800 to 313.850. The commission shall have the following powers and shall promulgate rules and regulations to implement sections 313.800 to 313.850:

* * *

- (5) To investigate alleged violations of sections 313.800 to 313.850 or the commission rules, orders, or final decisions

- (6) To assess any appropriate administrative penalty against a licensee, including but not limited to, suspension, revocation or penalties of an amount determined by the commission up to three times the highest daily amount of gross receipts derived from wagering on the gambling games, whether unauthorized or authorized, conducted during the previous twelve months as well as confiscation and forfeiture of all gambling game equipment used in the conduct of unauthorized gambling games.

* * *

- (19) To take any other action as may be reasonable or appropriate to enforce sections 313.800 to 313.850 and the commission rules.

29. Section 313.812.14, RSMo, states, in pertinent part, as follows:

A holder of any license shall be subject to imposition of penalties, suspension or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit the Missouri gaming industry or the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action. The commission shall take appropriate action against any licensee who violates the law or the rules and regulations of the commission. Without limiting other provisions of this subsection, the following acts or omissions may be grounds for such discipline.

(1) Failing to comply with or make provision for compliance with sections 313.800 to 313.850, the rules and regulations of the commission or any federal, state or local law or regulations;

(2) Failing to comply with any rule, order or ruling of the commission or its agents pertaining to gaming;

* * *

(9) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties regulated by sections 313.800 to 313.850.

30. Title 11 CSR 45-10.030(1) states as follows:

(1) Licensees shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than minor traffic violations), minimum internal control standard requirements or commission rule committed by licensees, their employees or others, including, without limitation, the performance of licensed activities different from those permitted under their license.

31. Title 11 CSR 45-10.040(12) states as follows:

(12) Upon any voluntary material change in ownership or control, the license held by the gaming licensee that is the subject of the material change in ownership or control or that is a direct or indirect subsidiary of the holding company that is the subject of the material change in ownership or control, shall automatically become null and void and of no legal effect, unless the commission has approved such material change in ownership or control by vote of the commissioners prior to its consummation. The commission may grant a petition to approve a material change in ownership or control if the petitioner proves by clear and convincing evidence that—

(A) The transfer is in the best interest of the state of Missouri;

(B) The transfer is not injurious to the public health, safety, morals, good order, or general welfare of the people of the state of Missouri, and that it would not discredit or tend to discredit the gaming industry or the state of Missouri;

(C) It would have no material negative competitive impact;

(D) It would have no potential to affect the licensee's suitability to hold a gaming license; and

(E) It would not potentially result in any significant negative changes in the financial condition of the licensee.

32. Title 11 CSR 45-13.065 states, in pertinent part, as follows:

(1) The parties may initiate settlement negotiations at any stage of the proceedings, including prior to the initiation of the proceedings before the Administrative Hearing Commission in the case of a bingo or fantasy sports contest hearing, or prior to the entry of a final order of the commission.

* * *

(3) All settlement agreements shall be in writing, signed by the parties, and accurately reflect all the terms of the settlement, including the facts agreed to by the parties constituting the grounds for the action proposed in the settlement agreement.

(4) Once signed by the parties, the settlement agreement shall be presented to the commission for its approval or disapproval. If the commission approves the settlement offer it will become a final commission order. If the commission disapproves the settlement offer the parties shall be notified and the settlement agreement and any documents solely relating to the offer shall not constitute part of the record.

VIOLATIONS

33. The actions or omissions of employees or agents of the Company as described above constitute the failure to comply with or make provision to comply with Resolution 18-049, thereby violating 314.812.14 (1) and (2), RSMo, and 11 CSR 45-10.030(1).

34. The Company is therefore subject to discipline for such violations pursuant to §§ 313.805(6) and 314.812.14 (1) and (2), RSMo.

PENALTY PROPOSED

35. Under § 313.805(6), RSMo, the Commission has the power to assess any appropriate administrative penalty against the Company, as the holder of a Key Business license.

36. THEREFORE, it is proposed that the Commission fine Gaming and Leisure Properties, Inc., the amount of \$150,000 for the violations set forth herein.

Mike Leara
Chairman
Missouri Gaming Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing to be mailed, postage prepaid, this 26th day of September, 2019, to:

Brandon J. Moore
Senior Vice President, General Counsel & Secretary
Gaming and Leisure Properties, Inc.
845 Berkshire Blvd., Suite 200
Wyomissing, PA 19610

Mike Leara
Chairman
Missouri Gaming Commission