

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

WAMPANOAG TRIBE OF GAY HEAD,	:	CIVIL ACTION NO. 74-5826-G
AND WAMPANOAG TRIBAL COUNCIL	:	
OF GAY HEAD, INC.,	:	
	:	
PLAINTIFFS,	:	
	:	
v.	:	
	:	FIRST AMENDED COMPLAINT
TOWN OF GAY HEAD, LUTHER,	:	
MADISON, LEONARD VANDERHOOP,	:	
and WALTER MANNING, individually:	:	
and in their official capacities:	:	
as Selectmen of the Town of Gay :	:	
Head, Massachusetts,	:	
	:	
DEFENDANTS.	:	

INTRODUCTION.

1. This is a civil action to establish the right of possession of the Wampanoag Tribe of Gay Head to certain aboriginal and reservation land.

JURISDICTION.

2. The jurisdiction of the court is invoked pursuant to 28 U.S.C. §§ 1331 and 1337. The amount in controversy exceeds \$10,000, exclusive of interest and costs.

3. Plaintiffs' claim for relief arises under the federal restriction against extinguishment of Indian title or right of occupancy except by the action of the United States, and under Article I, § 8 and Article VI of the Constitution of the United States and 25 U.S.C. § 177, which in whole or in part incorporate that federal restriction.

PARTIES.

4. Plaintiff Wampanoag Tribe of Gay Head (hereinafter the "Tribe") is a tribe of Indians which has resided in the Commonwealth of Massachusetts since time immemorial. The Tribe consists of the Wampanoag Indians of Gay Head.

5. Plaintiff Wampanoag Tribal Council of Gay Head, Inc. (hereinafter the "Council"), is the governing body of the Tribe. The Council is duly incorporated under the laws of Massachusetts for the purpose of transacting business within the said Commonwealth. The address of the principal place of business of the said Council is: State Road, Gay Head, Massachusetts 20535.

6. The defendant Town of Gay Head is a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts.

7. Defendants LUTHER MADISON, LEONARD VANDERHOOP, and WALTER MANNING, are the duly elected selectmen of the Town of Gay Head, and are charged with the administration, care and custody of the lands which are the subject of this dispute.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

8. Article I, § 8 of the United States Constitution provides, in pertinent part, that "The Congress shall have Power to ... regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes."

9. Article VI of the United States Constitution provides, in pertinent part, that:

This Constitution, and the laws of the United States which shall be made in Pursuance thereof ... shall be the Supreme Law of the Land.

10. 25 U.S.C. § 177 provides in pertinent part:

No purchase, grant, lease, or other conveyance of land, or of any title or claim thereto, from any Indian Nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

FACTS OF THE CASE.

11. Since time immemorial, and until the acts complained of herein, the Tribe owned, exclusively used, and occupied the following portions of the present Town of Gay Head, Massachusetts (hereinafter referred to as the "Common Lands"), as part of its aboriginal territory:

a) Those lands known as the Clay Cliffs, bounded on the North, West and South by Vineyard Sound and the Atlantic Ocean, and on the East by lots 32, 33, 35, 34, 37, 48, 39, 44, 40, 41, 42, 45, 47, 50, 51, 729, 730, 731, 732, 733, 734, 188, 189, and the unnumbered lot lying between lots 33 and 35, as shown on a map entitled "Map of Gay Head, showing the Partition of the Common Lands, as made by Joseph T. Pease and Richard L. Pease, Commissioners, Appointed by the Judge of Probate under Section 6, Chapter 213 of the Acts of 1870," on file in the Dukes County Registry of Probate, Edgartown, Massachusetts;

b) Those lands known as the Cranberry Lands and designated as such on a map entitled "Map of Gay Head, Eastern Section, showing the Partition of the Common Lands, as made by Joseph T. Pease and Richard L. Pease, Commissioners, Appointed by the Judge of Probate, under Section 6, Chapter 213 of the Acts of 1870," on file in the Dukes County Registry of Probate, Edgartown, Massachusetts; and

c) That stream known as the Herring Creek, in the Town of Gay Head, Massachusetts, running from Menamsha Pond to

Squibnocket Pond, and a strip of land one rod wide on each side of the said Creek.

12. The European Nations, including Great Britain, which asserted claims to territory in the New World also claimed, as an incident of their discovery, the inherent and exclusive sovereign power of extinguishing the Indian right of occupancy. This power passed to the government of the United States upon separation from Great Britain in 1783.

13. In 1789 the Constitution of the United States was ratified, reserving to the federal government the power to regulate commerce with the Indian Tribes.

14. In 1790, the United States adopted the first Indian Nonintercourse Act, incorporating in whole or in part the restrictions set forth in paragraphs 12 and 13 and confirming the right of Indian Tribes, including the plaintiff Tribe, to possession of all lands then owned or occupied by them, until alienated with the consent of the Government of the United States.

15. As of 1870, the Tribe owned, exclusive used, and occupied the Common Lands.

16. By Chapter 213 of the Acts of 1870 the Commonwealth of Massachusetts purported to terminate the legal existence of the Tribe, and without compensating the Tribe, purported to convey all of the Tribe's remaining property, including the Common Lands, to the Town of Gay Head.

17. Defendants Madison, Vanderhoop and Manning, acting personally and through their agents and employees and asserting a claim of right acquired pursuant to the said act of the Commonwealth of Massachusetts, are presently in possession of, and exer-

cise dominion and control over, the Common Lands, and keep plaintiff out of possession of the same.

18. The Government of the United States has never approved or consented to the said enactment of the Commonwealth of Massachusetts by which the Common Lands were purportedly conveyed, nor to any other transaction by which the defendants claim right or title to any of the Common Lands.

19. The Tribe therefore retains its original title and right of possession and occupancy to the Common Lands. Neither defendants Madison, Vanderhoop and Manning, nor any other party, has ever obtained title or right or any interest in the said lands.

20. The plaintiff Council has a present right to possess and occupy the Common Lands as the governing body of the Tribe.

21. The Common Lands are not and never have been the property of the defendant Town of Gay Head, and the defendant Town of Gay Head has never been in possession of the said lands.

FIRST CLAIM FOR RELIEF.

22. Defendants Madison, Vanderhoop and Manning are in possession of the Common Lands in violation of the federal restriction against extinguishment of Indian title except by action of the United States, 25 U.S.C. § 177, and Article I, § 8 and Article VI of the United States Constitution. Said violation interferes with plaintiffs' title and right to possession of the said lands.

SECOND CLAIM FOR RELIEF.

23. If the defendant Town of Gay Head is also in possess-

ion of the Common Lands its possession violates the federal restriction against extinguishment of Indian title except by action of the United States, 25 U.S.C. § 177, and Article I, § 8 and Article VI of the United States Constitution. Said violation interferes with plaintiffs' title and right to possession of the said lands.

W H E R E F O R E , plaintiff respectfully pray that this Court:

1. Adjudge and decree that plaintiffs have the right of possession to the Common Lands and restore the plaintiffs to possession of the said lands.

2. Grant such other and further relief as the court deems just and proper.

Dated: June 2, 1975  
Calais, Maine

/s/ Thomas N. Tureen

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