
*
IN THE MATTER OF: *
*
BLUECHIP FINANCIAL *
d/b/a SPOTLOAN *
(“BlueChip”) *
*
(“Respondent”) *
*

SETTLEMENT AGREEMENT

WHEREAS, the Connecticut Banking Commissioner (“Commissioner”) is charged with the administration of Part III of Chapter 668, Sections 36a-555 to 36a-573, inclusive, of the Connecticut General Statutes, “Small Loan Lending and Related Activities,” and the regulations promulgated thereunder, Section 36a-570-1 to 36a-570-17, inclusive, of the Regulations of Connecticut State Agencies (“Regulations”);

WHEREAS, BlueChip is an economic development entity wholly owned by the Turtle Mountain Band of Chippewa Indians, a federally recognized American Indian tribe (“Tribe”), with a place of business at 914 Chief Little Shell Street, NE, Belcourt, North Dakota;

WHEREAS, as a result of an investigation conducted by the Consumer Credit Division of the Connecticut Department of Banking (the “Department”), on June 22, 2018, the Commissioner issued a Temporary Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Issue Order to Cease and Desist, Notice of Intent to Impose Civil Penalty and Notice of Right to Hearing against BlueChip (collectively, the “Notice”);

WHEREAS, the Notice alleged that BlueChip: (1) engaged in the business of making loans of money or credit without obtaining the required license prior to July 1, 2016, in violation of Section

36a-555(1) of the Connecticut General Statutes in effect prior to July 1, 2016, (2) made, offered or assisted Connecticut borrowers to obtain a small loan in Connecticut without the required license prior to July 1, 2016, in violation of Section 36a-555(2) of the Connecticut General Statutes in effect prior to July 1, 2016, (3) charged, contracted for and received interest at a rate greater than 12% on at least one small loan to a Connecticut resident in an amount less than \$15,000 without the required license prior to July 1, 2016, in violation of Section 36a-573(a) of the Connecticut General Statutes in effect prior to July 1, 2016, (4) made at least one small loan to a Connecticut borrower without obtaining the required license on or after July 1, 2016, in violation of Section 36a-556(a)(1) of the Connecticut General Statutes, (5) offered or solicited small loans in Connecticut without the required license on or after July 1, 2016, in violation of Section 36a-556(a)(2) of the Connecticut General Statutes; (6) advertised a small loan in this state without the required license on or after July 1, 2016, in violation of Section 36a-556(a)(6) of the Connecticut General Statutes in effect on or after July 1, 2016, and (7) made a statement to the Commissioner which was false or misleading in a material respect, in violation of Section 36a-53a of the Connecticut General Statutes;

WHEREAS, the Commissioner asserts that the allegations made in the Notice constitute sufficient grounds for the Commissioner to issue an order to cease and desist pursuant to Section 36a-573(c) of the Connecticut General Statutes in effect prior to July 1, 2016, Section 36a-570(b) of the Connecticut General Statutes effective July 1, 2016, and Section 36a-52(a) of the 2018 Supplement to the General Statutes, issue an order to make restitution pursuant to Section 36a-573(c) of the Connecticut General Statutes in effect prior to July 1, 2016, Section 36a-570(b) of the Connecticut General Statutes effective July 1, 2016, and Section 36a-50(c) of the 2018 Supplement to the General Statutes, and to impose a civil penalty not to exceed One Hundred Thousand Dollars (\$100,000) per violation pursuant to Section 36a-573(c) of the Connecticut General Statutes in effect prior to July 1, 2016, Section 36a-570(b) of the Connecticut General Statutes effective July 1, 2016, and Section 36a-50(a) of the 2018 Supplement to the General Statutes;

WHEREAS, on June 25, 2018, the Notice was mailed to BlueChip;

WHEREAS, on July 16, 2018, the Department received from BlueChip a document entitled Special Appearance, Objection to Jurisdiction and Reservation of Rights, and Conditional Request for Hearing (“Special Appearance”);

WHEREAS, in the Special Appearance, BlueChip objected to the Department’s “attempt to exercise jurisdiction over, make orders with respect to, or assess penalties against BlueChip,” alleging that BlueChip “is immune from Connecticut state law and Connecticut state regulatory authority because it is an arm of [the Tribe], a sovereign federally recognized tribal government” The Special Appearance further stated that, “By entering this special appearance, BlueChip does not waive its immunity or any other defenses or procedural options, consent to the jurisdiction or authority of the Department, or agree to participate in administrative proceedings under Connecticut state law, which is preempted by, among other things, the Indian Commerce Clause of the United States Constitution.” BlueChip further reserved “the right to seek an adjudication of whether the Department has jurisdiction in a federal forum,” disagreed “with the propriety of the Department’s proposed orders and civil penalty,” and requested “a hearing in the event that there is a final and binding legal determination that the Department has jurisdiction and authority over this matter”;

WHEREAS, notwithstanding its view that the Special Appearance asserts valid defenses to the Notice, BlueChip wishes to resolve this matter on the terms stated herein given unique circumstances. Specifically, in response to a January 2014 inquiry from the Department, a prior Chairman of BlueChip communicated to the Department in writing that it “no longer makes loans to residents of Connecticut.” BlueChip represents that, years later, without being aware of the 2014 statement by its former Chairman, BlueChip resumed making small loans (in relatively small numbers) to residents of Connecticut. BlueChip also represents that after being made aware of the representation made by its prior Chairman, BlueChip as of August 7, 2018 ceased collecting on existing small loans to Connecticut borrowers and ceased offering and making new small loans to Connecticut residents, for the purpose of honoring its prior representation;

WHEREAS, Section 4-177(c) of the Connecticut General Statutes and Section 36a-1-55(a) of the Regulations of the Connecticut State Agencies provide that a contested case may be resolved by stipulation or agreed settlement, unless precluded by law; and

WHEREAS, the Commissioner and BlueChip desire to settle the matters described herein and voluntarily enter into this Settlement Agreement without any admission by either party, acknowledging that this Settlement Agreement is in lieu of any court action or further administrative proceedings adjudicating any issue of fact or law alleged in the Notice or the Special Appearance.

NOW, THEREFORE, in consideration of the foregoing recitals, BlueChip and the Department hereby mutually agree as follows:

1. This Settlement Agreement resolves all matters alleged by the Commissioner in the Notice and shall be binding upon BlueChip, its assigns, and any successor entity owned, controlled or operated by the Turtle Mountain Band of Chippewa Indians (subsequent references to “BlueChip” in this Settlement Agreement include these assigns and successors). BlueChip expressly agrees that this Settlement Agreement shall bind any future lending entity established by the Tribe, including without limitation BlueChip’s assigns, successors-in-interest, acquirers of BlueChip assets, subsidiaries and/or affiliates, and any Tribal entities created to engage in substantially the same business.

2. Terms used in this Settlement Agreement that are defined in Section 36a-555 of the Connecticut General Statutes, including “Connecticut borrower” and “small loan,” shall have the same meanings provided therein. Notwithstanding the use of these terms in the Settlement Agreement, BlueChip does not concede that any loan was negotiated, agreed to, entered into, or executed in Connecticut.

3. Without waiving any of the positions taken in the Special Appearance, BlueChip agrees to cease and desist from directly or indirectly engaging in activity prohibited by Section 36a-556 of the Connecticut General Statutes without Connecticut licensure, including:

- a. Making a small loan to a Connecticut borrower;

- b. Offering, soliciting, brokering, directly or indirectly arranging, placing, or finding a small loan for a prospective Connecticut borrower;
- c. Engaging in any other activity intended to assist a prospective Connecticut borrower in obtaining a small loan, including, but not limited to, generating leads;
- d. Receiving payments of principal and interest in connection with a small loan made to a Connecticut borrower;
- e. Purchasing, acquiring, or receiving assignment of a small loan made to a Connecticut borrower; and
- f. Advertising or causing to be advertised in this state a small loan; provided, however, that BlueChip may continue to advertise loans on its website if such loans are not made available to Connecticut borrowers who may access the website.

4. No later than the date of execution of this Settlement Agreement by BlueChip, BlueChip agrees to cease and desist from directly or indirectly collecting on small loans made to Connecticut borrowers. BlueChip represents that it has repurchased all small loans previously made to Connecticut borrowers and later sold, transferred, or assigned to third parties, and that it has written off any and all outstanding balances, including interest and late fees, on any such small loans.

5. No later than 30 calendar days after the date of execution of this Settlement Agreement by BlueChip, BlueChip shall request, electronically or in writing, that each credit reporting agency to which BlueChip previously furnished negative information regarding a Connecticut borrower delete the tradelines or other data containing such negative information. BlueChip represents and warrants that, to the extent any small loan BlueChip made to a Connecticut borrower was sold, assigned or otherwise transferred to a third party, BlueChip has reacquired such loan and received assurances that such third parties either did not furnish any negative information with respect to such loans or requested deletion of all previously reported negative information with respect to such loans. The Commissioner acknowledges that BlueChip does not control the actions of the credit reporting agencies and, thus, the credit reporting agencies may not comply with or honor requests to make the tradeline updates stated in this paragraph. In

the event that the Department becomes aware of any negative information that was not deleted pursuant to this paragraph, BlueChip agrees to make a second request for deletion of that information within 14 days of its receipt of a written request from the Department containing sufficient information to identify the credit reporting agency and affected Connecticut borrower. Any such written request shall be sent via electronic mail to: Legal@bluechipfinancial.com and spearson@manatt.com.

6. No later than 40 calendar days after it executes this Settlement Agreement, BlueChip shall certify in writing to the Commissioner under penalty of perjury under the laws of the United States of America its compliance with the terms of this Settlement Agreement.

7. BlueChip agrees not to assert the defense of sovereign immunity in any action to enforce this Settlement Agreement. The Department agrees to be contractually bound by the provisions of this Settlement Agreement and does not claim that any party lacks the ability to enforce this Settlement Agreement against the Department due to sovereign immunity. The parties agree that the sole forum in which this Settlement Agreement may be enforced by either party is the United States District Court for the District of Connecticut, which has diversity jurisdiction. If, and only if, the United States District Court for the District of Connecticut dismisses an action to enforce this Settlement Agreement for lack of diversity jurisdiction, the parties agree to the jurisdiction of the courts of the State of Connecticut solely for the purpose of enforcing this Settlement Agreement in accordance with Connecticut law. This provision concerns claims for injunctive relief, specific performance, and declaratory relief, and does not extend to claims for restitution or monetary damages. The parties agree that pursuant to this Settlement Agreement no civil penalties or other amounts will be paid by BlueChip. Nothing herein shall be construed to constitute a waiver of the sovereign immunity of either BlueChip or the State of Connecticut with respect to any third party.

8. This Settlement Agreement shall become binding when (1) executed by BlueChip, the Tribe and the Commissioner, and (2) BlueChip has fully performed its initial tradeline deletion and certification obligations under sections 5 and 6 this Settlement Agreement. BlueChip warrants that it is authorized to

enter into this Settlement Agreement and that the person signing on its behalf is duly authorized to do so, and that no other approvals or signatures are necessary to bind BlueChip to the terms provided herein.

9. Subject to full performance of each of their respective obligations under this Settlement Agreement, the Department and BlueChip hereby release and discharge each other from all potential liability and waive all remedies (including the right to seek judicial review) for the matters that were alleged in or that relate to the Notice and the Special Appearance, to the extent such matters occurred before the date of this Settlement Agreement; provided, however, that this release does not preclude or affect any right of either party to enforce the terms of this Settlement Agreement.

10. The parties agree not to issue press releases or furnish third parties with this Settlement Agreement, except as follows: (1) by making available the Settlement Agreement on the Department's website; (2) a reference that BlueChip and the Department settled this matter in the Department's weekly "News Bulletin" during the week the Settlement Agreement becomes binding; and (3) where otherwise required by law.

11. If BlueChip's legal authority to engage in activity currently prohibited by Section 36a-556 of the Connecticut General Statutes without Connecticut licensure is established by a new or amended federal or Connecticut law, BlueChip may terminate this Settlement Agreement after 60 calendar days' notice to the Department.

12. The Tribe warrants that BlueChip is a duly formed and authorized economic development entity of the Tribe with the authority to enter into this Settlement Agreement and thereby bind itself. Furthermore, the Tribe hereby agrees not to take any specific action to circumvent this Settlement Agreement, such as by forming a new entity to replace BlueChip and offer loans within the State of Connecticut, and the Tribe hereby provides a limited waiver of the immunity of the Tribe from suit, in favor of the State of Connecticut Department of Banking specifically, for the sole purpose of enforcing the terms of this paragraph.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement on the dates indicated.

STATE OF CONNECTICUT
DEPARTMENT OF BANKING

/s/

Jorge L. Perez
Banking Commissioner

7/23/2019
Date

BLUECHIP FINANCIAL D/B/A SPOTLOAN

/s/

Jamie Azure, Chairman

7/17/2019
Date

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS
(as to paragraph 12 only)

/s/

Jamie Azure, Tribal Chairman

7/17/2019
Date