

**IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF OKLAHOMA**

ROBERT GARLAND,)
)
 Plaintiff,)
)
-vs-)
)
CHOCTAW CASINO,)
)
 Defendant.)

Case No. 09-CIV-051-RAW

MOTION TO DISMISS

COMES NOW the Defendant, Choctaw Nation by and on behalf of the named Defendant, “Choctaw Casino” and moves to dismiss Plaintiff’s petition herein for the following reasons:

I.

**THIS COURT HAS NO JURISDICTION OVER THE
CHOCTAW NATION.**

1. The Choctaw Nation is the sole owner of the “Choctaw Casino”. It has not waived its sovereign immunity for purposes of suit in this Court. This Court has no subject matter or personal jurisdiction over the claims herein or the Choctaw Nation. This case should be dismissed as a matter of law.

Federally recognized Indian tribes are immune from suit, absent an express waiver of sovereign immunity by the tribe or some action by Congress permitting the suit. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). Kiowa Tribe of Okla. v. Manufacturing Technologies,

Inc., 523 U.S. 751 (1998). Neither of those things has happened here. Indian tribes are protected by sovereign immunity whether their conduct occurs on the reservation; Bank of Okla. v. Muscogee (Creek) Nation, 972 F. 2d 1166 (10th Cir. 1992) or off the reservation, Sac & Fox Nation v. Hanson, 47 F. 3d 1061 (10th Cir. 1995). See also Federico v. Capital Gaming Intern. Inc., 888 F. Supp. 354, (R.I. 1995) recognizing tribal immunity for off reservation advertising of tribal gaming; Elliott v. Capital Intern. Bank, 870 F. Supp. 733 (E. D. Tex. 1994) holding that immunity applies to off reservation banking activities; and North Sea Prods. v. Clipper SeaFoods, 595 P. 2nd 938 (Wash. 1979) holding that immunity applies to garnishment action in off reservation business.

Sovereign immunity has been applied to all kinds of tribal organizations and agencies, including but not limited to housing authorities, tribal farms, recreational facilities, timber companies, construction contractors and gaming enterprises. See White Mountain Apache Indian Tribe v. Shelley, 480 P.2nd 654 (1971); Graves v. White Mountain Apache Tribe, etc., 570 P.2d 803 (1977); cert. den. 436 U.S. 931 (1978); and S. Unique v. Gila River Pima-Maricopa Indian Community, 674 P.2d 1376 (1983).

The tribe has not consented to suit in this Court for an action in tort.

II.

**FAILURE TO STATE A CLAIM UPON
WHICH RELIEF CAN BE GRANTED**

This party has failed to meet the most basic pleading requirements for a claim of discrimination based on race. *Lewis v. Circuit City*, 500 F.3d, 1140 (10th Cir.) 2007. He has failed to state a claim for non-employment race based discrimination. *Christian v. Wal-Mart Stores, Inc.*, 252 F.3d, 862 (6th Cir.) 2001. The allegations of Garland's complaint taken as true, for purpose of this motion only, fail to state a cause of action for race based discrimination by the Choctaw Nation. *Rule 12(b)(6)*. Claimant has failed to plead facts sufficient to make a *prima facie* case for intentional discrimination in the non-employment context. Particularly, Garland has failed to plead facts, and cannot plead facts, alleging that he was denied services based on race. *Norton v. McDonald Hamburger Corp.*, E.D. CA.. (2006)

CONCLUSION

For the above stated reasons, these Defendants pray this Court dismiss Plaintiff's action.

Respectfully submitted,

/s/ James G. Wilcoxen
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Attorney for Defendants

CERTIFICATE OF SERVICE

I do hereby certify that on this 4th day of May, 2009, I electronically transmitted to the Clerk of the Court, the above motion to dismiss, using the ECF system for filing and transmittal of a Notice of Electronic Filing. This motion to dismiss was

_____ hand delivered

_____ sent via facsimile No.

_____ via Certified Mail, Receipt # _____

 X mailed with proper postage prepaid thereon:

on the following, who are not registered participants of the ECF System:

Robert Garland
936 N.W. 9th
Paris, TX 75460

/s/ James G. Wilcoxen