

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

WILLIAM DAVID CARDEN )  
 )  
 Plaintiff-Appellant, )  
 )  
 v. )  
 )  
 OWLE CONSTRUCTION, LLC )  
 )  
 Defendant-Appellee. )

From Durham County  
 File No. 06 CVS 6720

FILED  
 2011 MAR -9 A 7: 56  
 CLERK OF COURT OF APPEALS  
 NORTH CAROLINA

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No. \_\_\_\_\_

FOURTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

WILLIAM DAVID CARDEN )  
 )  
 Plaintiff-Appellant, )  
 )  
 v. )  
 )  
 OWLE CONSTRUCTION, LLC )  
 )  
 Defendant-Appellee. )

From Durham County  
File No. 06 CVS 6720

IDENTIFICATION OF THE COURT

BEFORE the Honorable Shannon R. Joseph, Special Superior Court Judge, at the December 15, 2010 Session of Durham County Superior Court upon the Plaintiff's Motion to Lift Stay filed on October 21, 2010. The Plaintiff-Appellant filed a Notice of Appeal on January 5, 2011 to the Superior Court's order filed December 16, 2010 denying the Plaintiff's Motion.

Record on Appeal filed 3-9-11  
Docketed 3-14-11

SC-106770

STATE OF NORTH CAROLINA

DURHAM County In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff
WILLIAM DAVID CARDEN
Address
City, State, Zip

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS
G.S. 1A-1, Rules 3, 4
Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

VERSUS
Name Of Defendant(s)
Harrah's NC Casino Company, LLC, Harrah's Operating Company, Inc. and Owle Construction, LLC

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
Owle Construction, LLC
c/o Amy J. Owle Cook, Registered Agent
120 Hoot Owl Road
Whittier, NC 28789

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!
You are notified to appear and answer the complaint of the plaintiff as follows:
1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served.
2. File the original of the written answer with the Clerk of Superior Court of the county named above.
If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)
Michael W. Patrick
P.O. Box 16848
Chapel Hill, NC 27516
(919) 960-5848

Date Issued
DEC 08 2006
Time
8:38 AM
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement
Time
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
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*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason.

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

S

CCV108720

STATE OF NORTH CAROLINA

DURHAM County

DEC 8 AM 8:07

In The General Court Of Justice  
 District  Superior Court Division

Name Of Plaintiff  
WILLIAM DAVID CARDEN  
Address  
BY  
City, State, Zip

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

VERSUS  
Name Of Defendant(s)  
Harrah's NC Casino Company, LLC, Harrah's Operating Company, Inc. and Owle Construction, LLC

Date Original Summons Issued  
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1  
Harrah's NC Casino Company, LLC  
c/o Corporation Service Company, Registered Agent  
327 Hillsborough Street  
Raleigh, NC 27601

Name And Address Of Defendant 2  
Harrah's Operating Company, Inc.  
c/o Corporation Service Company, Registered Agent  
327 Hillsborough Street  
Raleigh, NC 27601

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)  
Michael W. Patriok  
P.O. Box 16848  
Chapel Hill, NC 27516  
(919) 960-5848

Date Issued  
DEC 8 2006  
Time  
8:37 AM  
Signature  
Lenora S. Johnson  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court

ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement  
Time  
 AM  PM  
Signature  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (If corporation, give title of person copies left with)*

Other manner of service (specify)

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**DEFENDANT 2**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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*Name And Address Of Person With Whom Copies Left (If corporation, give title of person copies left with)*

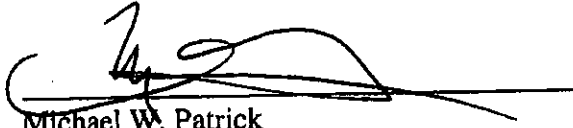
Other manner of service (specify)

Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>






  
Michael W. Patrick

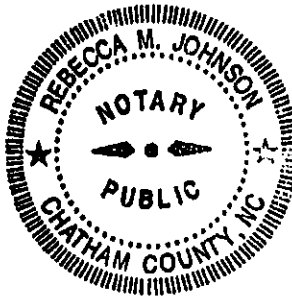
STATE OF NORTH CAROLINA

COUNTY OF ORANGE

Sworn to and subscribed by Michael W. Patrick, this the 18<sup>th</sup> day of December, 2006.

  
Notary Public (signature)

Rebecca M. Johnson  
Notary Public (printed name)



My Commission Expires:

July 27, 2007

STATE OF NORTH CAROLINA

DURHAM County

In The General Court Of Justice  
 District  Superior Court Division

Name Of Plaintiff  
WILLIAM DAVID CARDEN  
Address  
City, State, Zip

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

VERSUS  
Name Of Defendant(s)  
Harrah's NC Casino Company, LLC, Harrah's Operating Company, Inc. and Owle Construction, LLC

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1  
Owle Construction, LLC  
c/o Amy J. Owle Cook, Registered Agent  
120 Hoot Owl Road  
Whittier, NC 28789

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)  
Michael W. Patrick  
P.O. Box 16848  
Chapel Hill, NC 27516  
(919) 960-5848

Date Issued  
DEC 08 2006  
Time  
8:38  AM  PM

Signature  
Lenora S. Johnson

Deputy CSC  Assistant CSC  Clerk Of Superior Court

ENDORSEMENT  
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement  
Time  
 AM  PM

Signature

Deputy CSC  Assistant CSC  Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

**RETURN OF SERVICE**

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**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
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*Name And Address Of Person With Whom Copies Left (If corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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Other manner of service (specify)

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<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:



Owle Construction, LLC  
 c/o Amy J. Owle Cook,  
 Registered Agent  
 120 Hoot Owl Road  
 Whittier, NC 28789

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X *Jodie Cook*  Agent  Addressee

B. Received by (Printed Name) | C. Date of Delivery  
 JODIE COOK | 12-14-06

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No


3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number **7003 0500 0001 0885 8115**  
 (Transfer from service label)

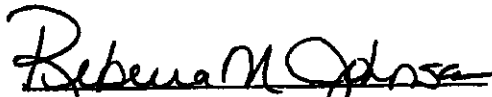


  
Michael W. Patrick

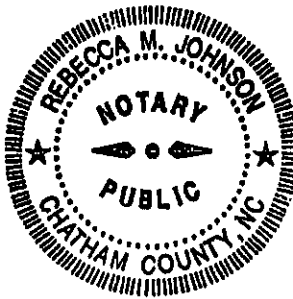
STATE OF NORTH CAROLINA

COUNTY OF ORANGE

Sworn to and subscribed by Michael W. Patrick, this the 18<sup>th</sup> day of December, 2006.

  
Notary Public (signature)

Rebecca M. Johnson  
Notary Public (printed name)



My Commission Expires:

July 27, 2007

STATE OF NORTH CAROLINA  
DEC - 8 AM 8:37

DURHAM County

In The General Court Of Justice  
 District  Superior Court Division

Name Of Plaintiff  
WILLIAM DAVID CARDEN  
Address  
City, State, Zip

**CIVIL SUMMONS**  
 ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

**VERSUS**  
Name Of Defendant(s)  
Harrah's NC Casino Company, LLC, Harrah's Operating Company, Inc. and Owle Construction, LLC

Date Original Summons Issued  
Date(s) Subsequent Summons(es) Issued

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1  
Harrah's NC Casino Company, LLC  
c/o Corporation Service Company, Registered Agent  
327 Hillsborough Street  
Raleigh, NC 27601

Name And Address Of Defendant 2  
Harrah's Operating Company, Inc.  
c/o Corporation Service Company, Registered Agent  
327 Hillsborough Street  
Raleigh, NC 27601

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If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)  
Michael W. Patriok  
P.O. Box 16848  
Chapel Hill, NC 27516  
(919) 960-5848

Date Issued  
DEC 08 2008  
Time  
8:37 AM  
Signature  
Lenora S. Johnson  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court

ENDORSEMENT  
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Date Of Endorsement  
Time  
Signature  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court

**NOTE TO PARTIES:** Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (If corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
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Other manner of service (specify)

Defendant WAS NOT served for the following reason.

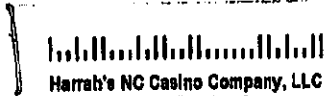
<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:



Harrab's NC Casino Company, LLC  
 c/o Corporation Service Company,  
 Registered Agent  
 327 Hillsborough Street  
 Raleigh, NC 27601

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
 X *[Signature]*

B. Received by (Printed Name) C. Date of Delivery  
*Hughes* *12/8/04*

D. Is delivery address different from item 1?  Yes  
 No  
 If YES, enter delivery address below:

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
 (Transfer from service label)

7003 0500 0001 0885 8122

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. 06 CVS 6720

FILED DEC 19 PM 3:06

WILLIAM DAVID CARDEN,

)  
DURHAM COUNTY C.S.C.

Plaintiff

BY SD

AFFIDAVIT OF SERVICE  
BY CERTIFIED MAIL

v.

HARRAH'S NC CASINO COMPANY,  
LLC, HARRAH'S OPERATING  
COMPANY, INC. and OWLE  
CONSTRUCTION, LLC

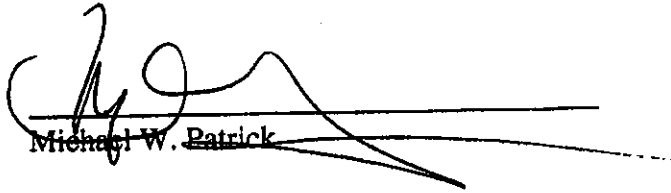
Defendants.

Michael W. Patrick, being duly sworn, deposes and says:

1. I am an attorney licensed to practice in the State of North Carolina and I am counsel for the Plaintiff in the above-entitled action.
2. Summons for the Defendant Harrah's Operating Company, Inc. was issued on December 8, 2006 and a copy of the Summons and Complaint in this action was deposited with the United States Postal Service, postage prepaid, for mailing by certified mail, return receipt requested on December 12, 2006, addressed as follows: Harrah's Operating Company, Inc., c/o Corporation Service Company, Registered Agent, 327 Hillsborough Street, Raleigh, NC 27601. A true and accurate copy of the Summons for Harrah's Operating Company, Inc. is attached as Exhibit A to this Affidavit.
3. The Summons and Complaint were received on the 13<sup>th</sup> day of December, 2006 by Defendant Harrah's Operating Company, Inc., as evidenced by the attached original registry receipt.

Further, the affiant sayeth not.

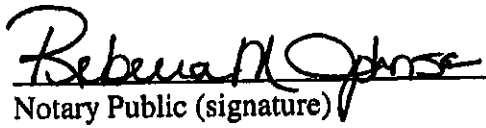
This the 18<sup>th</sup> day of December, 2006.

  
Michael W. Patrick

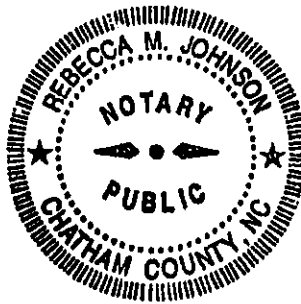
STATE OF NORTH CAROLINA

COUNTY OF ORANGE

Sworn to and subscribed by Michael W. Patrick, this the 18<sup>th</sup> day of December, 2006.

  
Notary Public (signature)

Rebecca M. Johnson  
Notary Public (printed name)



My Commission Expires:

July 27, 2007

STATE OF NORTH CAROLINA

DURHAM County

In The General Court Of Justice  
 District  Superior Court Division

DEC - 8 AM 8:38

Name Of Plaintiff  
WILLIAM DAVID CARDEN  
Address  
City, State, Zip

**CIVIL SUMMONS**  
 ALIAS AND PLURIES SUMMONS  
G.S. 1A-1, Rules 3, 4

**VERSUS**  
Name Of Defendant(s)  
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Date(s) Subsequent Summons(ess) Issued

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o/o Corporation Service Company, Registered Agent  
327 Hillsborough Street  
Raleigh, NC 27601

Name And Address Of Defendant 2  
Harrah's Operating Company, Inc.  
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If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)  
Michael W. Patrick  
P.O. Box 16848  
Chapel Hill, NC 27516  
(919) 960-5848

Date Issued: DEC 08 2011  
Time: 8:38 AM  
Signature: [Handwritten Signature]  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court

ENDORSEMENT  
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement  
Time  
Signature  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court

**NOTE TO PARTIES:** Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (If corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------


- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (If corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason.

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <input type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p>C. <i>H. Hughes</i> <i>12/15/04</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No  If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p>  <p>Harrah's Operating Company, Inc.  c/o Corporation Service Company,  Registered Agent  327 Hillsborough Street  Raleigh, NC 27601</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

2. Article Number **7003 0500 0001 0885 8139**  
(transfer from service)

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. \_\_\_\_\_

WILLIAM DAVID CARDEN,	)
	)
Plaintiff	)
	)
v.	)
	)
HARRAH'S NC CASINO COMPANY,	)
LLC, HARRAH'S OPERATING	)
COMPANY, INC. and OWLE	)
CONSTRUCTION, LLC	)
	)
Defendants.	)

COMPLAINT

The Plaintiff, complaining of the defendants, alleges:

1. The Plaintiff WILLIAM DAVID CARDEN is a citizen and resident of Durham County, State of North Carolina.
  
2. Upon information and belief Defendant HARRAH'S OPERATING COMPANY, INC. and HARRAH'S NC CASINO COMPANY, LLC (hereinafter collectively referred to as HARRAH'S) at all times material to this action operated a casino in Cherokee, North Carolina. Defendant HARRAH'S NC CASINO COMPANY, LLC is a limited liability corporation organized under the laws of North Carolina with a place of business in Swain County, North Carolina. Defendant HARRAH'S OPERATING COMPANY, INC. is a corporation organized under the laws of Delaware with a place of business in Swain County, North Carolina. Defendant HARRAH'S OPERATING COMPANY, INC. is a member of HARRAH'S NC CASINO COMPANY, LLC.
  
3. Defendant OWLE CONSTRUCTION, LLC ( hereinafter referred to as OWLE) is a corporation organized and existing pursuant to the laws of North Carolina and maintains a place of business within Swain County.

4. At a time prior to December 12, 2003, the defendant OWLE was employed by defendants HARRAH'S to perform construction in and about U.S. Highway 19 within the municipal limits of Cherokee, and specifically at the intersection of U.S. 19 and Casino Drive.

5. Specifically, the contract between Defendants HARRAH'S and OWLE called for the removal of existing sidewalk along Casino Drive and U.S. 19, and the construction of a new sidewalk along Casino Drive and U.S. 19. Some of the construction work was to be performed in the right-of-way of U.S. 19, a highway that is owned by the State of North Carolina under the jurisdiction of the N.C. Department of Transportation.

6. In accordance with the contract OWLE and its agents and employees undertook the construction on the referenced site and at a time prior to December 12, 2003, that caused the pedestrian traffic to be impeded and rerouted at that location.

7. Prior to December 12, 2003, Plaintiff DAVID CARDEN was offered accommodations at the Fairfield Inn in Cherokee by Defendants HARRAH'S as an inducement for his patronage at the casino operated across the street by Defendants HARRAH'S.

8. On December 12, 2003, Plaintiff arrived at the Fairfield Inn as previously arranged and proceeded to become a customer at Defendants HARRAH'S casino.

9. At approximately 11 pm on December 12, 2003, Plaintiff Carden attempted to collect his winnings at the casino and was informed by Defendants HARRAH'S agents that he would have to produce two forms of identification to collect his winnings. After being so informed, Plaintiff, who had only one form of identification on his person, left the casino with the intention of obtaining a second form of identification from his room at the Fairfield Inn.

10. On December 12, 2003, it was well known to Defendants HARRAH'S that many



of its customers, including the Plaintiff, stayed at the Fairfield Inn and that such customers typically reached the casino by crossing U.S. 19 at a pedestrian crosswalk between the casino and the Fairfield Inn.

11. On December 12, 2003, it was well known to Defendants HARRAH'S and Defendant OWLE that the pedestrian crossing between the Fairfield Inn and the casino was not well lit at night and that the placement of construction materials, including plastic, cones and barrels interfered with visibility for pedestrians and motorists.

12. On December 12, 2003, while the plaintiff was at the edge of the sidewalk at U.S. 19 at a marked pedestrian crossing zone, he was struck by a motorist on U.S. 19; the rerouting of pedestrian traffic, the poor lighting conditions and the construction for the sidewalk were a proximate cause of the accident and of Plaintiff's injuries as is hereinafter described.

#### FIRST CLAIM FOR RELIEF

(Against Defendants HARRAH'S)

13. Defendants HARRAH'S, by and through their agents and employees acting within the scope of their employment, were negligent in the following respects relating to the construction activities:

- A. They failed to construct a traffic control system within the confines of the construction project being done by Owle Construction, LLC as was necessary to insure the safety of persons travelling through the area.
- B. The traffic control system created by Defendants HARRAH'S at the aforesaid location failed to adequately communicate to traffic traveling on Hwy. 19 of the existence and presence of pedestrians at the location where a vehicle struck the plaintiff.
- C. Defendants HARRAH'S failed to maintain adequate lighting in the area of the referenced construction project sufficient to give ample visual notice of the

presence of pedestrians.

- D. Defendants HARRAH'S failed to monitor and analyze the efficiency and safety of the traffic and control system in place at the construction project on the date of plaintiff's injury.
- E. Defendants HARRAH'S failed to implement the safest and most efficient traffic control system at the construction project at the accident site.
- F. Defendants HARRAH'S knew or should have known that U.S. 19 in December of 2003 was one of the most heavily traveled residential thoroughfares within the municipality and that the traffic control devices employed by Owle Construction, LLC were inadequate to warn motorists on that thoroughfare of impending dangers created by the construction and the presence of pedestrians.
- G. Defendants HARRAH'S knew or should have known that the safety measures used by Owle Construction, LLC at this referenced time and place were inadequate to warn motorists of the danger created at the construction site and HARRAH'S failed to monitor the activities of its contractor Owle Construction, LLC in that regard.
- H. The construction was being carried out without proper permits and supervision.

14. The defendants HARRAH'S were negligent in maintaining its premises at the time and place complained of in that:

- (a) They failed to exercise ordinary care to keep that portion of its premises designed for use by its guests in a reasonably safe condition.
- (b) They failed to give warning to its guests of hidden dangers or unsafe conditions of which it had knowledge.
- (c) They failed after aware of the unsafe condition of said crossing to make any corrections to remedy said dangerous situation.
- (d) After having been advised of the dangerous condition of said pedestrian crossing they failed to post any notice or warning that said crossing was dangerous or

created a hazard.

- (e) They maintained said pedestrian crossing in a dangerous condition with known hazards without providing proper lighting so that its guests using said crossing could see the condition of the crossing thereby creating a hidden and increased hazard for guests.
- (f) They created a hidden danger or unsafe condition in the pedestrian crossing and failed to give warning of said danger.
- (g) They failed to make necessary improvements or alterations to correct the dangerous condition of said pedestrian crossing when it knew or in the exercise of reasonable care should have known that it constituted a hazard to its guests using said crossing.

15. The negligence of the defendants HARRAH'S as herein alleged was a direct and proximate cause of the injuries and damages sustained by the plaintiff.

16. The collision on December 12, 2003 was a direct and proximate result of the negligent acts and omissions of the defendants as are set forth above.

17. As a direct and proximate result of aforesaid acts of negligence of the defendants, the plaintiff sustained severe, painful, and permanent injuries to his body, including injuries to his pelvis, legs, shoulders and back; he suffered and is continuing to suffer pain of body and mind; he has received hospital care and is continuing to receive medical care, attention, and treatment; he has incurred expenses and will continue to incur expenses for hospital and medical care, attention, and treatment; he was disabled from performing his usual activities and has lost income; and as a direct and proximate result of the aforesaid injuries, the plaintiff is informed,

believes, and therefore alleges that he has been severely and permanently injured and damaged in an amount greater than Ten Thousand (\$10,000.00) Dollars.

**SECOND CLAIM FOR RELIEF**

**(Against Defendant OWLE CONSTRUCTION, LLC)**

18. The defendant OWLE through its agents, servants, and employees acting within the scope of their employment, was careless and negligent in that:
- A. Defendant OWLE failed to construct a traffic control system at the accident scene of U.S. 19 as was necessary to insure the safety of persons walking or traveling through the area.
  - B. The traffic control system created by Defendant OWLE at the aforesaid location failed to adequately communicate to traffic traveling on U.S. 19 of the existence of an immediate presence of pedestrians at the location where vehicle struck the plaintiff at the right hand of the paved surface of the roadway.
  - C. Defendant OWLE failed to maintain adequate lighting in the area of the referenced construction project sufficient to give ample visual notice of the pedestrians.
  - D. Defendant OWLE failed to monitor and analyze the efficiency and safety of the traffic control system in place at the construction project on the date of plaintiff's injury.
  - E. Defendant OWLE failed to implement the safest and most efficient traffic control system at the construction project on U.S. 19.
  - F. Defendant OWLE knew or should have known that U.S. 19 during December 2003 was a heavily traveled pedestrian thoroughfare and that the traffic control devices employed by OWLE were inadequate to warn motorists on that thoroughfare of impending dangers created by the construction.
  - G. Defendant OWLE knew or should have known that during the December 2003, that there was no inadequate illumination available to motorists, beyond the use of their own headlights, to warn them of the presence of pedestrians at the crossing.

- H. Defendant OWLE knew or should have known that the safety measures used at this referenced time and place were inadequate to warn motorists and pedestrians of the danger created at the construction site.
  - I. There were at all times available to Defendant OWLE traffic control equipment which would have provided adequate notice to motorists and pedestrians of the impending danger created at the construction project but that it failed to install such traffic control equipment.
  - J. Such warning devices as had been utilized by Defendant OWLE at the referenced construction site did not meet the terms of the requirements of the Manual on Uniform Traffic Control Devices for Streets and Highways applicable to the project.
  - K. Defendant OWLE implemented and/or tolerated a traffic control system at the time and at the place complained of which enhanced the probability of driver and pedestrian misinterpretation and confusion.
  - L. Defendant OWLE failed to maintain adequate supervision of the construction site in question and failed to determine that conditions which existed there posed an extreme hazard to pedestrians and motorists travelling on U.S. 19.
  - M. Defendant OWLE failed to issue to its employees adequate safety directives regarding the maintenance of the construction site at the end of the workday and failed to direct those employees to place barrels and other materials in a location where it did not pose a hazard to pedestrians and motorists on U.S. 19.
  - N. The construction was being carried out without proper permits and supervision.
19. The collision on December 12, 2003 was a direct and proximate result of the negligent acts and omissions of the defendant as are set forth above.

20. As a direct and proximate result of aforesaid acts of negligence of the defendant OWLE, the plaintiff sustained severe, painful, and permanent injuries to his body, including injuries to his pelvis, legs, shoulders and back; he suffered and is continuing to suffer pain of body and mind; he has received hospital care and is continuing to receive medical care, attention, and treatment; he has incurred expenses and will continue to incur expenses for

hospital and medical care, attention, and treatment; he was disabled from performing his usual activities and has lost income; and as a direct and proximate result of the aforesaid injuries, the plaintiff is informed, believes, and therefore alleges that he has been severely and permanently injured and damaged in an amount greater than Ten Thousand (\$10,000.00) Dollars

NOW THEREFORE, the plaintiff prays the Court as follows:

1. That the plaintiff recover judgment of the defendants, jointly and severally, for damage to his property in an amount in excess of \$10,000.00.
2. That all issues raised herein be tried by a jury.
3. That the plaintiff recover his costs, to include reasonable attorney fees and such other relief as the Court may deem appropriate.

This the 6<sup>th</sup> day of December, 2006.

LAW OFFICE OF MICHAEL W. PATRICK

BY: 

Michael W. Patrick  
N.C.S.B. No. 7956  
312 West Franklin Street  
P.O. Box 16848  
Chapel Hill, N.C. 27516  
Attorney for Plaintiff

NORTH CAROLINA

DURHAM COUNTY

WILLIAM DAVID CARDEN,  
Plaintiff,

v.

HARRAH'S NC CASINO COMPANY, LLC, )  
HARRAH'S OPERATING COMPANY, INC., )  
and OWLE CONSTRUCTION, LLC, )  
Defendants. )

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
File No. 06 Cvs 06720

filed 2/13/2007

ANSWER OF  
OWLE CONSTRUCTION, LLC

NOW COMES the defendant Owle Construction, LLC, by and through undersigned counsel, answering the complaint of the plaintiff as follows:

**FIRST DEFENSE AND MOTION TO CHANGE VENUE**

The complaint is brought in an improper venue in that the accident that is the subject of the complaint occurred in Swain County, North Carolina, or in the alternative, is brought in an inconvenient forum as all defendants and the vast majority of potential witnesses are citizens and residents of Swain County. Accordingly, this answering defendant moves pursuant to Rule 12(b)(3) of the Rules of Civil Procedure that the complaint be dismissed, or, in the alternative, pursuant to N.C.G.S. §1-83, that venue be transferred to the Superior Court of Swain County for the convenience of witnesses and to promote the ends of justice.

**SECOND DEFENSE**

The complaint fails to state a claim for which relief can be granted as to this answering defendant. Accordingly, the complaint should be dismissed as to this answering defendant

pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, and this answering defendant so moves.

**THIRD DEFENSE**

1. The allegations contained in paragraph 1 of the complaint are admitted upon information and belief.

2. This answering defendant has insufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of the complaint; therefore, the same are denied.

3. In response to the allegations contained in paragraph 3 of the complaint, it is admitted that Owle Construction, LLC is a limited liability company organized under the laws of the State of North Carolina. The balance of the allegations contained in the paragraph are denied. Except as specifically admitted herein, the allegations contained in the paragraph are denied.

4. The allegations contained in paragraph 4 of the complaint are denied.

5. The allegations contained in paragraph 5 of the complaint are denied.

6. The allegations contained in paragraph 6 of the complaint are denied.

7. This answering defendant is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the complaint; therefore, the same are denied.

8. This answering defendant is without sufficient information to form a belief as to the truth or falsity of the



allegations contained in paragraph 8 of the complaint; therefore, the same are denied.

9. This answering defendant is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 9 of the complaint; therefore, the same are denied.

10. The defendant is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the complaint; therefore, the same are denied.

11. The allegations contained in paragraph 11 of the complaint are denied.

12. The allegations contained in paragraph 12 of the complaint are denied.

13. The defendant is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 13 of the complaint; therefore, the same are denied.

14. The defendant is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 14 of the complaint; therefore, the same are denied.

15. The allegations contained in paragraph 15 of the complaint are denied.

16. The allegations contained in paragraph 16 of the complaint are denied.

17. The allegations contained in paragraph 17 of the complaint are denied.

18. The allegations contained in paragraph 18 of the complaint are denied.

19. The allegations contained in paragraph 19 of the complaint are denied.

20. The allegations contained in paragraph 20 of the complaint are denied.

**FOURTH DEFENSE**

This answering defendant pleads the lack of proximate cause in complete bar of all claims asserted against it in this action.

**FIFTH DEFENSE**

If this answering defendant is in any way liable to the plaintiff, which liability is denied, then the plaintiff failed to exercise due care and circumspection for his own safety in that he:

a. stepped into the path of an oncoming vehicle without exercising reasonable care and prudence.

b. stepped into the path of an oncoming vehicle without determining whether he could proceed with reasonable assurance and safety to himself and others.

c. entered the roadway under circumstances where there existed the danger of collision with an approaching vehicle without waiting until the approaching vehicle had passed.

d. failed to maintain a proper lookout.

e. failed to exercise due care in other ways as will be shown at trial.

This contributory negligence on the part of the plaintiff proximately caused the plaintiff's injuries or damages, if any, and such negligence is pleaded in bar of any recovery from this answering defendant.

**SIXTH DEFENSE**

If the plaintiff was injured or damaged as alleged, which is expressly denied, then such injuries or damages were proximately caused by acts of negligence of others, including the operator of the motor vehicle that allegedly struck the plaintiff. This answering defendant pleads the doctrine of insulating and superceding negligence in complete bar to any and all claims asserted against it in this action.

**SEVENTH DEFENSE**

This answering defendant alleges, upon information and belief, that if it is found negligent in any respect, which negligence is specifically denied, then such negligence was passive and secondary to the active and primary negligence of others, and that the active and primary negligence of others was the direct and proximate cause of the plaintiff's alleged damages, if any. This answering defendant pleads the doctrine of insulating negligence in complete bar of all claims asserted against it in this action.

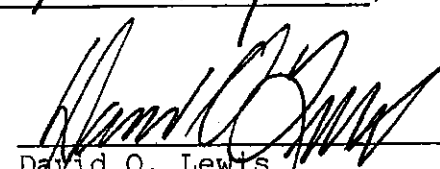
**EIGHTH DEFENSE**

In the alternative, if the plaintiff is entitled to recover anything of the defendant, which is expressly denied, then and in that event under N.C.G.S. §1B and North Carolina common law, this answering defendant is entitled to have such damages offset by any monies received by the plaintiff from, or on behalf of, any person or party involved in the events alleged in the complaint or having potential or actual liability to the plaintiff arising out of the events alleged in the complaint.

WHEREFORE, having fully answered the complaint of the plaintiff, the defendant Owle Construction, LLC prays the Court:

1. That the complaint be dismissed.
2. That the plaintiff have and recover nothing as a result of the filing of the complaint.
3. That the costs of this action, including a reasonable attorney's fee, be taxed against the plaintiff.
4. For a jury trial on all issues so triable.
5. For such other and further relief as to the Court shall seem just and proper.

This the 13<sup>th</sup> day of FEBRUARY, 2007.

  
\_\_\_\_\_  
David O. Lewis  
Attorney for Defendant  
Owle Construction, LLC  
BRYANT, PATTERSON, COVINGTON,  
IDOL & LEWIS, P.A.  
P.O. Box 341  
Durham, NC 27702  
(919) 688-6341


CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has this day duly served a copy of the foregoing Answer on the following by depositing a copy of same in the United States Mail, first-class, postage prepaid, addressed as follows:

Mr. Michael W. Patrick  
LAW OFFICE OF MICHAEL W. PATRICK  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516

Mr. John D. Loftin  
LOFTIN & LOFTIN, P.A.  
117 North Churton Street  
Post Office Box 733  
Hillsborough, North Carolina 27278

This 13<sup>th</sup> day of FEBRUARY, 2007.

  
\_\_\_\_\_  
David O. Lewis  
Attorney for Defendant  
Owle Construction, LLC

NORTH CAROLINA  
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06 CVS 6720

WILLIAM DAVID GARDEN, )  
Plaintiff, )

**MOTION TO DISMISS,  
MOTION TO DROP PARTY,  
MOTION TO ADD PARTY, ANSWER,  
COUNTERCLAIM**

HARRAH'S NC CASINO )  
COMPANY, LLC, HARRAH'S )  
OPERATING COMPANY, INC. )  
and OWLE CONSTRUCTION, LLC )  
Defendants. )

MOTION TO DISMISS  
Rule 12(b)(6)

Defendants Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc. move the Court pursuant to Rule 12(b)(6) of the Rules of Civil Procedure for an Order dismissing the Complaint against them, and in support of the Motion, shows that Owle Construction, LLC was the contractor whose conduct and work is the subject of the allegations of this Complaint and that Owle Construction, LLC is solely liable for any and all damages related to the subject matter of this Complaint.

MOTION TO DROP PARTY  
Rules 12(b)(7) and 21

Defendants Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc. move this Honorable Court pursuant to Rules 12(b)(7) and 21 of the Rules of Civil Procedure for an Order striking their name as parties Defendant on the grounds that there is a misjoinder of parties Defendant, and shows to the Court that Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc. are not necessary or proper parties in this action because Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc. only manage Harrah's Cherokee Casino, which is owned and operated by the Tribal Casino Gaming Enterprise.

MOTION TO ADD PARTY  
Rule 20

NOW COME Defendants Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc., pursuant to Rule 20 and moves this Honorable Court for an Order adding the Tribal Casino Gaming Enterprise as a proper party Defendant in this

action, and in support of the Motion, shows unto the Court that the Tribal Casino Gaming Enterprise owns and operates Harrah's Cherokee, Casino and hired Owle Construction, LLC, the entity that was involved in the incident which is the subject matter of this action.

ANSWER

Defendants Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc., by and through counsel, responding to the allegations of the Complaint, answer as follows:

1. The allegations of paragraph 1 of the Complaint are admitted on information and belief.
2. The allegations of paragraph 2 of the Complaint are denied.
3. The allegations of paragraph 3 of the Complaint are admitted on information and belief.
4. The allegations of paragraph 4 of the Complaint are denied.
5. The allegations of paragraph 5 of the Complaint are denied.
6. The allegations of paragraph 6 of the Complaint are admitted on information and belief.
7. The allegations of paragraph 7 of the Complaint are denied.
8. The allegations of paragraph 8 of the Complaint are denied.
9. The allegations of paragraph 9 of the Complaint are denied.
10. The allegations of paragraph 10 of the Complaint are denied.
11. The allegations of paragraph 11 of the Complaint are denied.
12. The allegations of paragraph 12 of the Complaint are denied.
- 13.(a-h)The allegations of paragraph 13(a-g) of the Complaint are denied. The Defendants are without sufficient knowledge to either admit or deny the allegations of paragraph 13(h) and therefore deny them.
- 14.(a-g)The allegations of paragraph 14 (a-g) of the Complaint are denied.
15. The allegations of paragraph 15 of the Complaint are denied.
16. The allegations of paragraph 16 of the Complaint are denied. By way of further answer, on information and belief, the collision on December 12, 2003 was solely a

direct and proximate result of the negligent acts of the party who operated the motor vehicle that collided with the Plaintiff.

17. The allegations of paragraph 17 of the Complaint are denied.

18.(a-n)Defendants Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc. are at this time without sufficient information to either admit or deny the allegations of paragraph 18 (a-n) and therefore deny them.

19. The allegations of paragraph 19 of the Complaint are denied.

20. The allegations of paragraph 20 of the Complaint are denied.

CROSSCLAIM AGAINST DEFENDANT OWLE CONSTRUCTION, LLC

Having answered the Complaint the Defendants Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc. hereby bring this crossclaim against Owle Construction, LLC, co-defendant herein, and state:

1. The Plaintiff, William David Carden is a citizen and resident of Durham County, North Carolina.

2. Defendant Harrah's NC Casino Company, LLC is a limited liability corporation organized under the laws of North Carolina with a place of business in Swain County, North Carolina. Defendant Harrah's Operating Company, Inc. is a corporation organized under the laws of Delaware with a place of business in Swain County, North Carolina. Defendant Harrah's Operating Company, Inc. is a member of Harrah's NC Casino Company, LLC.

3. Defendant Owle Construction, LLC is a corporation organized and existing pursuant to the laws of North Carolina and maintains a place of business within Swain County.

4. Defendant Owle Construction, LLC was hired by the Tribal Casino Gaming Enterprise to remove the existing sidewalk along Casino Drive in U.S. 19 and to construct a new sidewalk in its place.

5. If Defendant Owle Construction, LLC was negligent in any way and if such negligence was a direct and proximate cause of the injuries alleged in this Complaint, which allegations are specifically denied, on information and belief, Owle Construction, LLC, not Defendants Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc., are liable for any damages.

WHEREFORE, Defendants, Harrah's N.C. Casino Company, LLC and Harrah's Operating Company, Inc. pray this Honorable Court:



1. Plaintiff's Complaint be dismissed and that Plaintiff have and recover nothing of the Defendants Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc.
2. That Defendants Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc. be dropped as parties to this action.
3. That the Tribal Casino Gaming Enterprise be added in their place as a necessary and proper party to this action.
4. That the costs be taxed against the Plaintiff and/or Defendant Owle Construction, LLC.
5. For such other and further relief as the court deems just, proper and equitable.

This the 5 day of February, 2007.

LOFTIN & LOFTIN, P.A.

By: 

John D. Loftin (Bar No. 16723)  
Post Office Box 738  
117 North Churton Street  
Hillsborough, N.C. 27278  
919/732-9748; fax 919/732-4241

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this document in the above entitled action upon all parties to this cause by:

\_\_\_\_\_ Hand delivering a copy hereof to the attorney for each said party;

\_\_\_\_\_ Hand delivering a copy hereof to the said party;

  X   Depositing a copy hereof, postage pre-paid in the United States mail, properly addressed to the following attorney(s) or party(s);

\_\_\_\_\_ Via facsimile transmission to the following attorney(s) or party(s):

\_\_\_\_\_ Depositing a copy hereof, in UPS Next Day Air.

**Michael W. Patrick  
Attorney at Law  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516**

This the   5   day of   February  , 2007

LOFTIN & LOFTIN, P.A.

By: \_\_\_\_\_

*John D. Loftin*  
John D. Loftin (Bar No. 16723)  
Post Office Box 733  
117 North Churton Street  
Hillsborough, North Carolina 27278  
919/732-9748; fax: 919/732-4241

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

WILLIAM DAVID CARDEN,

Plaintiff

v.

HARRAH'S NC CASINO COMPANY,  
LLC, HARRAH'S OPERATING  
COMPANY, INC. and OWLE  
CONSTRUCTION, LLC

Defendants.

DURHAM COUNTY  
**FILED**  
MAR 15 2007  
AT 3:19 P.M.  
BY JRC  
CLERK OF SUPERIOR COURT

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. 06 CVS 6720

ORDER DENYING MOTION  
TO CHANGE VENUE

This matter, having come before the Court for hearing on the DEFENDANT OWLE CONSTRUCTION, LLC's Motion to Change Venue for the Convenience of the Parties and Witnesses, the Court having considered the matters of record and the arguments of counsel, and the Court having concluded that in its discretion the Motion should be denied:

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Change Venue, be and the same is hereby denied.

This the 15 day of March, 2007

*Ronald W. Stephens*  
Superior Court Judge Presiding

Copies given to attorney in open court  
3-15-07 JRC

STATE OF NORTH CAROLINA ) IN THE GENERAL COURT OF JUSTICE  
 COUNTY OF DURHAM ) SUPERIOR COURT DIVISION  
 CASE NO. 06 CVS 6720

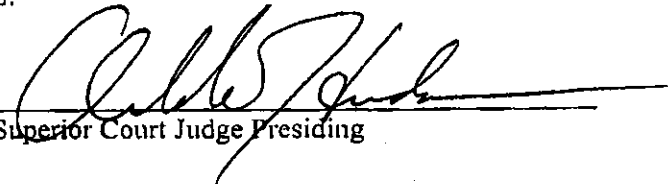
WILLIAM DAVID CARDEN, )  
 )  
 Plaintiff BY )  
 )  
 v. )  
 )  
 HARRAH'S NC CASINO COMPANY, )  
 LLC, HARRAH'S OPERATING )  
 COMPANY, INC. and OWLE )  
 CONSTRUCTION, LLC )  
 )  
 Defendants. )

ORDER  
 CONTINUING TRIAL  
 DATE

THIS MATTER having come before the undersigned Superior Court Judge upon Joint Motion of the Parties to Continue Trial Date from the February 11, 2008 session of the Durham County Superior Court;

It is ordered, adjudged and decreed that the trial of this matter be continued to the August 25, 2008 session of Durham County Superior Court.

This the 8<sup>th</sup> day of February, 2008.

  
 Superior Court Judge Presiding



6. Indian Tribes were sovereign before contact with Europeans and a number of sovereign powers continue to this day. The fact that Indian tribes proved to be weaker than Europe and the United States politically and militarily, does not mean that Indian tribes have lost their right to self government. The continued right of tribes to govern themselves is an inherent right, not delegated by the United States. *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832)
7. The United States Supreme Court has consistently guarded the authority of Indian governments over their reservations. *Williams v. Lee*, 358 U.S. 217, 223, 79 S.Ct. 269, 272 (1959). Indian tribes remain a separate people with power to regulate all internal and social matters. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 54, 98 S.Ct. 1670, 1675 (1978). This includes claims and transactions involving the reservation, as well as matters involving non-Indians. *Williams v. Lee*, supra, 358 U.S. at 223, 79 S.Ct. at 272. In *Montana v. U.S.*, 450 U.S. 544, 101 S.Ct. 1245 (1981), the Supreme Court held that a Tribe retains civil authority over all activities and conduct which threaten or may have an effect on "the political integrity, the economic security, or health and welfare of the tribe." (*Id.*, 450 U.S. at 565-566, 101 S.Ct. at 1258).
8. The pertinent provision of the Cherokee Code concerning civil jurisdiction is set forth in Article 1, § 1-2(a), which reads as follows: "The Cherokee court of Indian offenses or any successor Cherokee court, shall have jurisdiction over all persons and civil suits which arise on the Cherokee Indian Reservation and involve the personal, property or legal rights of an individual Indian or an Indian owned business, corporation or other legal entity." Harrah's Cherokee Casino is an Indian owned business as defined by the Cherokee Code.
9. The Eastern Band of Cherokee Indians, through the Tribal Casino Gaming Enterprise has exclusive and sole ownership and ultimate authority over Harrah's Cherokee Casino. Accordingly, a complete determination of the claims in this Complaint cannot be made without the presence of the Tribal Casino Gaming Enterprise. The Tribal Casino Gaming Enterprise should be joined as a necessary party in this action.
10. The North Carolina General Court of Justice lacks subject matter and personal jurisdiction in this case.
11. This case should have been brought in the Cherokee Court and should name the Tribal Casino Gaming Enterprise as the party Defendant.

MOTION TO DISMISS

Rule 12(b)(7)

Defendants, Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc., move this Honorable Court, pursuant to Rule 12(b)(7) of the Rules of Civil Procedure, for an Order dismissing this action without prejudice, and in support of the Motion, shows unto the Court that Harrah's Cherokee Casino is owned and operated by the Tribal Casino Gaming Enterprise and, therefore, the Tribal Casino Gaming Enterprise is a necessary party to this action. However, because of the doctrine of sovereign immunity, the Tribal Casino Gaming Enterprise cannot be sued in the General Court of Justice. The Tribal Casino Gaming Enterprise waives sovereign

immunity to the extent of its insurance coverage when cases are brought in the Cherokee Court. Accordingly, this case should be dismissed, without prejudice, and brought in the Cherokee Court.

**MOTION TO REMOVE TO THE CHEROKEE COURT**

Rule 12(b)(3)

NOW COMES Defendants, Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc., through counsel, and move this Honorable Court for an order to remove this case to the Cherokee Court, and in support of the Motion show unto the Court that the events which are the subject of this action occurred on the Cherokee Indian Reservation, that several material witnesses live in and around Cherokee and the Cherokee Court is a more convenient forum than is Durham County, North Carolina, and that the Cherokee Court will grant full faith and credit to an order entered in the General Court of Justice removing this case to the Cherokee Court. Several injury cases previously brought in the General Court of Justice in the last three years have been removed to the Cherokee Court.

**MOTION TO DISMISS**

Rule 12(b)(6)

Defendants, Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc., move this Court for an order dismissing this action because the Complaint fails to state a claim upon which relief can be granted in that: the Tribal Casino Gaming Enterprise is the owner and operator of Harrah's Cherokee Casino and has sovereign immunity against actions brought in the North Carolina General Court of Justice; there is no such entity as Harrah's North Carolina Casino Company, LLC and Harrah's North Carolina Casino Corporation was dissolved prior to the subject incident.

WHEREFORE, Defendants, Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc., pray this Honorable Court:

1. Plaintiff's Complaint be dismissed and that Plaintiffs have and recover nothing of the Defendants, Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc.
2. That this action be dismissed against Defendants, Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc., for lack of subject matter jurisdiction and personal jurisdiction.
3. That Defendants, Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc., be dropped as the parties to this action and that Tribal Casino Gaming Enterprise be added as a necessary party.
4. That this matter be dismissed pursuant to Rule 12(b)(7) without prejudice.
5. That this matter be removed to the Cherokee Court.
6. That the costs of this action be taxed to the Plaintiff.
7. For such other and further relief as the Court deems just and proper.

This the 12 day of March, 2008.

LOFTIN & LOFTIN, P.A.

By: 

John D. Loftin (Bar No. 16723)  
Post Office Box 733  
117 North Churton Street  
Hillsborough, N.C. 27278  
919/732-9748; fax 919/732-4241



**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this document in the above entitled action upon all parties to this cause by:

\_\_\_\_\_ Hand delivering a copy hereof to the attorney for each said party;

\_\_\_\_\_ Hand delivering a copy hereof to the said party;

Depositing a copy hereof, postage pre-paid in the United States mail, properly addressed to the following attorney(s) or party(s);

\_\_\_\_\_ Via facsimile transmission to the following attorney(s) or party(s):

\_\_\_\_\_ Depositing a copy hereof, in UPS Next Day Air.

**Michael W. Patrick  
Attorney at Law  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516**

**Mr. David O. Lewis  
Bryant, Patterson, Covington, Idol and Lewis, P.A.  
Post Office Box 341  
Durham, North Carolina 27702**

This the 12 day of March, 2008.

LOFTIN & LOFTIN, P.A.

By: 

John D. Loftin (Bar No. 16723)  
Post Office Box 733  
117 North Churton Street  
Hillsborough, North Carolina 27278  
919/732-9748; fax: 919/732-4241

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

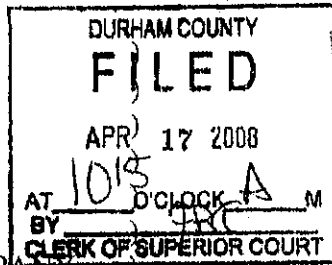
CASE NO. 06 CVS 6720

WILLIAM DAVID CARDEN,

Plaintiff

v.

HARRAH'S NC CASINO COMPANY,  
LLC, HARRAH'S OPERATING  
COMPANY, INC. and OWLE  
CONSTRUCTION, LLC  
Defendants.



CONSENT ORDER.

THIS CAUSE COMING ON TO BE HEARD and being heard before the undersigned Superior Court Judge pursuant to Defendant Harrahs' Motion to Remove to Dismiss or to remove to Cherokee Court and the Court being of the opinion that the motion is meritorious, makes the following:

FINDINGS OF FACT

1. This is an action alleging personal injuries on the Qualla Indian Boundary, the reservation of the Eastern Band of Cherokee Indians.
2. The Tribe and the State of North Carolina have entered into a Tribal-State compact which authorized the Tribe to operate gaming on the reservation. The Tribe formed an entity named the Tribal Casino Gaming Enterprise to conduct gaming within the Qualla Indian Boundary.
3. The TCGE entered into an agreement with Harrah's NC Casino Company, LLC, under which Defendant manages the Tribe's gaming facility.
4. Plaintiff is a citizen and resident of Durham County, North Carolina and has brought this action in the Superior Court Division of the General Court of Justice in Durham County.
5. The action involves an accident on December 12, 2003, in which the Plaintiff is a non-Indian and was struck as a pedestrian while crossing U.S. 19 between Harrahs Casino and the Fairfield Inn in Cherokee, N.C. Plaintiff alleges that his injuries were the result of the Defendants' negligence in doing sidewalk construction partially in the U.S. 19 right of way. The accident site is within the Cherokee Indian Reservation.
6. The pertinent provision of the Cherokee Code concerning civil jurisdiction is set forth in Article 1, § 1-2(a), which reads as follows: "The Cherokee court of Indian offenses or any successor Cherokee court, shall have jurisdiction over all persons and civil suits which arise on

the Cherokee Indian Reservation and involve the person, property or legal rights of an individual Indian or an Indian owned business, corporation or other legal entity." Harrah's Cherokee Casino is an Indian owned business as defined by the Cherokee Code.

7. The Eastern Band of Cherokee Indians, through the Tribal Casino Gaming Enterprise has exclusive and sole ownership and ultimate authority over Harrah's Cherokee Casino. Accordingly, a complete determination of the claims in this Complaint would be assisted by having the presence of the Tribal Casino Gaming Enterprise. The Tribal Casino Gaming Enterprise should be joined as a necessary party in this action if the matter is removed.

8. The defendants contend that this case should have been brought in Cherokee Tribal Court where the Plaintiff could have named the Tribal Casino Gaming Enterprise as a party Defendant. The defendants further contend that if there is concurrent jurisdiction with the General Court of Justice, as a matter of comity Plaintiff should be required to exhaust his remedies in Cherokee Tribal Court.

9. Plaintiff contends that this case is properly brought in the General Court of Justice in Durham County and that this court has concurrent jurisdiction over the claims in this case.

11. The parties have represented to the Court that in the event this matter is removed to the Tribal Court that no objections to the depositions, pleadings, discovery materials will be raised that could not have been made in this court and that any claims concerning the statute of limitations will be adjudicated as if the case had been filed in Tribal Court on the day that this case was filed in Durham County.

Based on the foregoing limited Findings of Fact the Court makes the following:

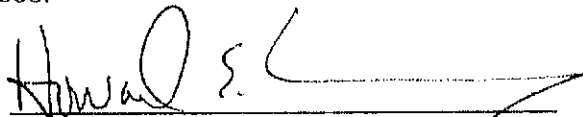
#### CONCLUSIONS OF LAW

1. The issues in this matter present difficult issues of subject matter jurisdiction that have not been resolved by controlling decisions of the United States Supreme Court and the North Carolina Supreme Court.
2. This court makes no decision at present over whether it has subject matter jurisdiction in this matter.
3. As a matter of comity, the Plaintiff should exhaust his remedies before the Cherokee Court before this court decides the difficult issue of subject matter jurisdiction. The Tribal Casino Gaming Enterprise should be added as party Defendant.
4. Further proceedings in this matter will be stayed in this Court pending the outcome of proceedings in the Tribal Court.
5. This matter is properly brought before the Cherokee Court.

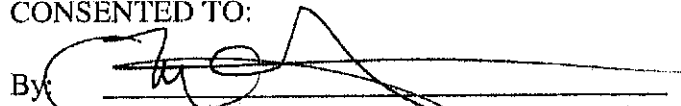
NOW, THEREFORE IT IS ORDERED:

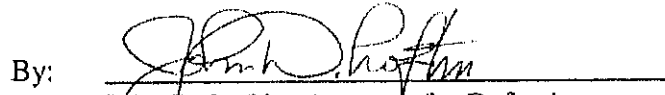
1. That the Tribal Casino Gaming Enterprise is hereby added as party Defendant.
2. That this matter is removed to the Cherokee Court.
3. That after the Clerk transfers this file to the Cherokee Court, Plaintiff shall file an Amended Complaint naming the Tribal Casino Gaming Enterprise as party defendant.
4. That the Clerk of Durham County shall forward this file to the Cherokee Clerk of Court, P.O. Box 1629, 575 Acquoni Road, Cherokee, NC 28719.


This the 19<sup>th</sup> day of April, 2008.

  
\_\_\_\_\_  
Superior Court Judge Presiding

CONSENTED TO:

By:   
\_\_\_\_\_  
Michael W. Patrick, Attorney for Plaintiff

By:   
\_\_\_\_\_  
John D. Loftin, Attorney for Defendant  
Harrah's NC Casino Company, LLC

By:   
\_\_\_\_\_  
David O. Lewis, Attorney for Defendant  
Owle Construction, LLC

FILED

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

2008 OCT 21 PM 4: 37

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

CASE NO. 06 CVS 6720

WILLIAM DAVID CARDEN,

Plaintiff

v.

OWLE CONSTRUCTION, LLC

Defendants.

MOTION TO LIFT STAY

NOW COMES Plaintiff pursuant to N.C. Gen. Stat. §1-75.12 and hereby moves the Court to lift the stay entered April 17, 2008 in this case.

In support of this motion the Plaintiff respectfully shows unto the Court the following:

1. This matter was initially filed in 2006 in Durham County Superior Court against Harrah's NC Casino Company, Harrah's Operating Company, Inc., and Owle Construction, LLC. The case proceeded through discovery. After being placed upon a trial calendar in 2008, Defendant Harrahs as real party interest for the Tribal Casino Gaming Enterprise of the Eastern Band of Cherokee Indians filed a motion to dismiss or in the alternative to transfer the case to the Tribal Court of the Eastern Band of Cherokee Indians on the grounds that subject matter jurisdiction was available in the Tribal Court and on the grounds that the Tribal Casino Gaming Enterprise, the real party in interest, was immune from suit in Superior Court and was subject to jurisdiction only in the Tribal Court.

2. Thereafter, the Superior Court entered an order on April 27, 2008 staying the current proceedings and directing the parties to proceed in the Tribal Court to exhaust remedies available there.

3. Since that time, the case was accepted by the Tribal Court. It was scheduled for trial in November 2009 and the trial resulted in a mistrial being granted in the Tribal Court on November 17, 2009. A copy of the Order of Mistrial is attached as Exhibit A hereto.

4. Thereafter, the Tribal Court entered a mediation order, see Exhibit B attached hereto. The parties proceeded with a mediation in this case in April 2010. As a result of the mediation settlement conference, settlement was reached with Harrahs and the Tribal Casinos Gaming Enterprise of the Eastern Band of Cherokee Indians. A dismissal with prejudice as to claims against the Tribal Casino Gaming Enterprise and Harrah's NC Casino Company, LLC was entered in the Tribal Court. See Voluntary Dismissal attached as Exhibit C hereto.

5. Owle Construction, LLC, a North Carolina corporation, is the remaining defendant.

6. With the settlement, the Plaintiff has exhausted his remedies against the parties to this litigation that required that the case be litigated in the Tribal Court. Subject matter jurisdiction no longer exists in the Tribal Court for the remaining claims against Owle Construction, LLC, North Carolina corporation, by Plaintiff, a non-tribe member. See *Strate v. A-1 Contractors*, 520 U.S. 438 (1997).

7. As a result of these events, grounds for the stay of this proceeding no longer exist. Accordingly, the Court should enter an order lifting the stay and directing the suit to proceed in Durham County Superior Court.

WHEREFORE, Plaintiff respectfully requests the Court to enter an order lifting the stay that was granted on April 17, 2008.

This the 21<sup>st</sup> day of October, 2010.

LAW OFFICE OF MICHAEL W. PATRICK

BY:

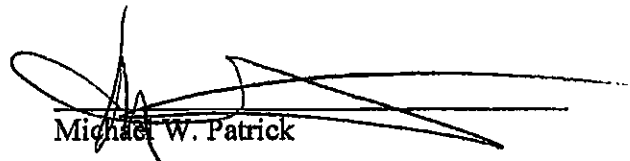


Michael W. Patrick  
State Bar #7956  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516  
(919) 960-5848 (919) 869-1348 - fax

CERTIFICATE OF SERVICE

I, Michael W. Patrick, do hereby certify that a true and correct copy of the foregoing Motion to Lift Stay was served upon Defendants by placing the same in the United States Mail, this the 21<sup>st</sup> day of October, 2010, addressed as follows:

Mr. David O. Lewis  
Bryant, Patterson, Covington & Idol, P.A.  
P.O. Box 341  
Durham, NC 27702



Michael W. Patrick

LAW OFFICES OF MICHAEL W. PATRICK  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516  
(919) 960-5848  
(919) 967-4953 - fax  
Attorney for Plaintiff

EASTERN BAND OF CHEROKEE INDIANS  
THE CHEROKEE COURT  
QUALLA BOUNDARY, CHEROKEE, NORTH CAROLINA

EBCI  
CHEROKEE TRIBAL COURT

DEC 15 PM 1:38

WILLIAM DAVID CARDEN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 HARRAH'S NORTH CAROLINA CASINO CO., )  
 L.L.C., OWLE CONSTRUCTION, LLC and )  
 TRIBAL CASINO GAMING ENTERPRISE. )  
 )  
 Defendants. )

FILED

Case No. CV-08-273

ORDER GRANTING MISTRIAL

THIS MATTER came on before the undersigned judge for trial on November 2, 2009 and thereafter a jury was selected and impaneled on November 3, 2009 and jury trial was commenced after jury selection on November 3, 2009. On November 18, 2009, the Court declared a mistrial and discharged the jury. In support of that oral order, the Court enters the following findings of fact and conclusions of law:

1. Jury selection in this case began on November 2, 2009. During the selection of a jury on November 2, 2009, an unusual number of jurors were excused so that an insufficient number of prospective jurors were available to complete the selection of the jury at the end of the first day. Jury selection continued on November 3, 2009 with additional jurors having been summoned. Jury selection of six regular jurors and one alternate juror was completed on the morning of November 3, 2009 and thereafter the jury was impaneled and the other prospective jurors dismissed. Thereafter opening statements of counsel along with testimony from two witnesses took place on November 3, 2009.

**EXHIBIT A**



2. On November 4, 2009, prior to the first full day of evidence in the case, one of the members of the regular jury panel was absent at the beginning of the day and a message was received from that juror that she was at the Emergency Room seeking medical treatment. The Court confirmed that the juror was in fact checked in at the Emergency Room but no further information was available to the Court or counsel about the juror's condition or whether she would be able to return to trial. At this point in the trial on November 4, 2009 with the consent of all parties, the alternate juror was placed onto the jury as a regular juror. Approximately two hours later the juror who had been at the Emergency Room seeking medical treatment reported back to the courtroom and indicated that she was well and able to proceed. After conference with counsel, all parties agreed that this juror would be placed back on the jury as an alternate juror and that in the event of her service being required as a regular juror, she would be required to listen to the recorded testimony that she had missed.

3. The Court adjourned for the week at approximately 4:30 p.m. on November 6, 2009. The Court reconvened at 8:30 a.m. on November 9, 2009. After certain issues concerning the presentation of videotaped depositions were resolved, presentation of video deposition evidence of Dr. Daniel Reuland began. After approximately one and a half hours of court proceedings, the Court allowed members of the jury to take their morning break. At this time five of the six regular jurors and the alternate left the jury box and went to their jury room. One member of the regular jury remained in her seat with her eyes closed and was non-responsive to questions from the bailiff. Upon this happening, the Court had Tribal EMS called and members of the Tribal EMS promptly responded to the scene. It was subsequently determined that this member of the jury had taken an overdose of prescription pain medication and EMS advised that

while there was no imminent danger to the juror that because of her condition she could not function as a juror for the remainder of Monday, November 9, 2009. After consultations with all counsel, counsel for all parties agreed that the Court should recess for the remainder of the day to permit the juror in question to recover and attend further sessions of the Court.

4. Court thereupon recessed for the remainder of November 9, 2009 and re-convened at 9:30 a.m. on November 11, 2009. At this point all members of the jury and the alternate were present and the presentation of evidence continued in the case.

5. Presentation of the evidence for both sides continued until approximately mid-day on Thursday, November 12, 2009 when all parties rested. A charge conference was conducted during the afternoon of November 12, 2009 and the court ruled upon various issues relating to jury instructions to be given to the jury. No court was held on Friday, November 13, 2009.

6. Court then reconvened as previously scheduled on Monday, November 16, 2009 at 9:30 a.m. with closing arguments and instruction of the jury. After discharge of the alternate juror, the jury began deliberations in early afternoon on Monday, November 16, 2009.

7. During their deliberations on November 16, the jury asked for the photographic exhibits and were provided these exhibits. The jury deliberated until just before 5:00 p.m. on Monday, November 16, 2009 and then asked to be excused for the evening to resume their deliberations the following morning. Court was then recessed for the evening.

8. On November 17, 2009 the jury resumed its deliberations again but around mid-morning informed the Court that it believed it was deadlocked. At this point, the Court again read the jury instructions to the jury concerning the requirement for a unanimous verdict. The jury continued its deliberations until just before lunch when the jury asked to see exhibits related to

Plaintiff's medical bills. These exhibits were provided to the jury after their return from lunch.

9. After returning from lunch the jurors deliberated for a couple more hours and returned to the courtroom and again informed the Court that they believed they would be unable to reach a unanimous decision. It was obvious from the demeanor of the jurors that they had been taking the case seriously and had been working hard during deliberations.

10. After the consultation with counsel for the parties and agreement of all parties, the Court gave the jury the instruction under the North Carolina Pattern Jury Civil Instructions 150.50 on failure to reach a verdict. The jury then retired for further deliberations but came back into the courtroom at 4:15 p.m. and informed the Court that it still was unable to reach a verdict and that the jurors were exhausted and that they would like to go home a little early at 4:15 p.m. The Court discharged the jury to return on November 18, 2009 at 9:30 a.m.

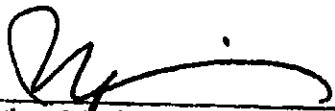
12. On November 18, 2009 at 9:30 a.m., Court reconvened. All members of the jury except Juror Bird were present. The Court was informed and confirmed that early in the morning hours of November 18, 2009 Juror Bird's father had died and that Juror Bird was at the hospital in Murphy in connection with his father's death. The Court informed the counsel for the parties that in light of this and because of the Cherokee customs relating to death that the Court would not reconvene the jury for deliberations before Monday, November 23, 2009. The Court also informed counsel that the Court had received a handwritten note from another juror indicating that, because of what she considered improper pressures being put on her by other members of the jury, she did not feel that she could continue as a juror in the case.

13. After being informed of these matters, the parties through their counsel informed the Court that all parties believed that a mistrial was appropriate under the circumstances.

14. The Court having considered all of the above factors, and having also taken into consideration that this trial is the longest civil trial in Tribal Court history, finds that continuing jury deliberations would probably have been fruitless, that continuing jury deliberations would probably not resulted in a unanimous jury verdict and continuing jury determination until a unanimous verdict would carry the substantial risk that such a verdict would not be fair to one or more parties in this case.

THEREFORE, IT WAS ORDERED, ADJUDGED AND DECREED that:

1. A mistrial, be and the same, is hereby declared in this action.
2. This action be re-calendared for trial at a future time after completion of a mediation that is being ordered by the Court in a separate order.
3. Counsel for the parties is directed to confer and to advise the Court of when a re-trial in this case should take place after the scheduling of the mediation.

  
\_\_\_\_\_  
J. Matthew Martin, Judge Presiding

December 15, 2009.

EASTERN BAND OF CHEROKEE INDIANS  
THE CHEROKEE COURT  
QUALLA BOUNDARY, CHEROKEE, NORTH CAROLINA

EBCI  
CHEROKEE TRIBAL COURT  
2009 DEC 15 PM 1:38

WILLIAM DAVID CARDEN,

Plaintiff,

v.

HARRAH'S NORTH CAROLINA CASINO CO.,  
L.L.C., OWLE CONSTRUCTION, LLC and  
TRIBAL CASINO GAMING ENTERPRISE.

Defendants.

FILED

Case No. CV-08-273

**ORDER REQUIRING MEDIATION**

THIS MATTER having been tried before the Court during the special session beginning November 2, 2009 and a mistrial having been declared in this matter on November 18, 2009; and the Court having reviewed the records and proceedings in the case makes the following findings of fact and conclusions of law:

1. Prior to the transfer of this case to Tribal Court from the Durham County Superior Court, a court-ordered mediation under the North Carolina Superior Court Mediation Rules was required by the Durham Superior Court. Mediation was in fact held on January 29, 2008. The mediation was attended by counsel for the Plaintiff, Plaintiff, representatives of Owle Construction, LLC and its insurance company, and Owle's counsel. John Loftin, counsel for the Harrah's defendants also attended. Harrah's N.C. Casino Co., LLC and Harrah's Operating Company, contrary to the North Carolina Superior Court Mediation Rules, failed to have a representative present. The defendants Harrah's had no company or insurance representative available by telephone to participate in the proceedings, nor did the defendants Harrah's prior to mediation seek to have the presence of a representative excused from attendance at the

**EXHIBIT B**

mediation. This prompted Plaintiff to file a Motion for Sanctions from Defendants Harrahs for violation of the mediation rules.

2. After the case was transferred to Tribal Court, the Plaintiff's Motion for Sanctions was heard by Judge Saunooke. Judge Saunooke entered an Order imposing sanctions on the defendants Harrah's for their violation of the mediation rules and failure to attend and participate in any settlement discussions in this case.

3. Specifically in his order, Judge Saunooke found:

Defendants Harrahs' and their insurance representatives failed to attend the mediation without excuse and did not participate in good faith in violation of the applicable mediation rules, and it further appearing that Defendants Harrahs' conduct unnecessarily caused expense and wasted effort by the Plaintiff in this matter.

4. During the trial of this action, on November 17, 2009 when the jury first indicated its inability to reach a verdict, the Court suggested to parties that they consult and consider the possibility of settlement in this case.

5. Thereafter the Court was advised that Plaintiff, through counsel, and Owle Construction, LLC through its counsel had discussed their settlement positions. The Court was further advised that no representative from Harrah's NC Casino Co., LLC was available by telephone to discuss settlement matters and that in the absence of Defendant Harrah's participation there could be no meaningful discussion of settlement by the parties in this case.

6. In light of the history of the failed mediation while the case was pending in Superior Court and the inability to have any settlement discussions during the trial, it appears that it would be appropriate prior to the re-trial of the case that an attempt be made to have settlement negotiations conducted in this case.

7. Defendant Harrah's N.C. Casino Co., LLC is a limited liability company organized in North Carolina; the limited liability company's members are Harrah's Operating Co., Inc. and Harrah's Management Company. According to documents filed in this case, defendant Harrah's N.C. Casino Co., LLC has only a single employee, its general manager, on site in Cherokee, North Carolina. The Management Agreement between the Tribal Casino Gaming Enterprise places primary responsibility for the conduct of the casino's business affairs on Defendant Harrah's NC Casino Co., LLC.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The parties' counsel shall confer and, as soon as practicable, the parties shall hold a mediated settlement conference.
2. For purposes of the mediated settlement conference, the parties shall be governed by the North Carolina Mediated Settlement Conference Rules applicable in North Carolina Superior Court.
3. The mediated settlement conference shall be conducted at a location to be selected by the parties but it is anticipated that the parties will agree that the location will be at a place in the central portion of North Carolina such as the Triangle or Triad areas or Charlotte area so as to facilitate the easier attendance by the Plaintiff and the Defendants who are located in different parts of the state.
4. All parties shall have in attendance persons with full authority to negotiate possible resolution of the case. In the case of Owle Construction, LLC this includes insurance representatives and one or more owners of the corporate defendant.
5. While it is not necessary for both the Tribal Casino Gaming Enterprise and Harrah's NC Casino Co., LLC to have separate representatives present, it is ordered that these parties have a representative present with full authority to negotiate concerning settlement of the case.
6. It is specifically ordered that Harrah's NC Casino Co., LLC have in physical presence at the settlement conference one of its own employees or officers, or one of the employees or officers of its members, Harrah's Management Company or Harrah's Operating Co, Inc. In addition, a representative of the insurance company

providing insurance coverage for the Harrah's NC Casino Co., LLC and the Tribal Casino Gaming Enterprise shall also be in physical attendance.

This the 15<sup>th</sup> day of December, 2009.



---

J. Matthew Martin, Judge Presiding



EASTERN BAND OF CHEROKEE INDIANS · CHEROKEE TRIBAL COURT  
THE CHEROKEE COURT  
QUALLA BOUNDARY, CHEROKEE, NORTH CAROLINA  
CV 08 273

EBCI  
CHEROKEE, NC

MAY 19 AM 9:35

FILED

WILLIAM DAVID CARDEN,  
Plaintiff,

v.

HARRAH'S NC CASINO CO.,  
LLC, HARRAH'S OPERATING  
COMPANY, INC., OWLE  
CONSTRUCTION, LLC,  
TRIBAL CASINO GAMING  
ENTERPRISE,  
Defendants.

NOTICE OF  
VOLUNTARY DISMISSAL  
WITH PREJUDICE

Please take notice that Plaintiff, William David Carden, through counsel, hereby voluntarily dismisses his claim against Defendants, Harrah's NC Casino Company, LLC and Tribal Casino Gaming Enterprise, pursuant to Rule 41(a) of the Rules of Civil Procedure, with prejudice.

This the 7<sup>th</sup> day of May, 2010.

THE LAW OFFICE OF MICHAEL PATRICK

By: 

Michael W. Patrick  
312 West Franklin Street  
Chapel Hill, North Carolina 27516

EXHIBIT C

FILED

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

2010 OCT 21 PM 4: 37

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. 06 CVS 6720

WILLIAM DAVID CARDEN, DURHAM COUNTY C.S.C.

Plaintiff BY 

v.

VOLUNTARY DISMISSAL  
WITH PREJUDICE

HARRAH'S NC CASINO COMPANY,  
LLC, HARRAH'S OPERATING  
COMPANY, INC. and OWLE  
CONSTRUCTION, LLC

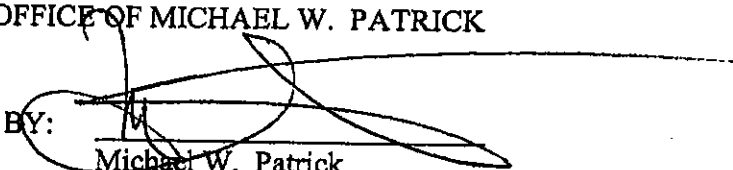
Defendants.

NOW COMES Plaintiff William David Carden, pursuant to Rule 41(a) of the North Carolina Rules of Civil Procedure, and hereby takes a voluntary dismissal with prejudice of all claims against Defendants Harrah's NC Casino Company, LLC and Harrah's Operating Company, Inc. in this action. All other claims against the other defendants are reserved.

This the 21<sup>st</sup> day of October, 2010.

LAW OFFICE OF MICHAEL W. PATRICK

BY:

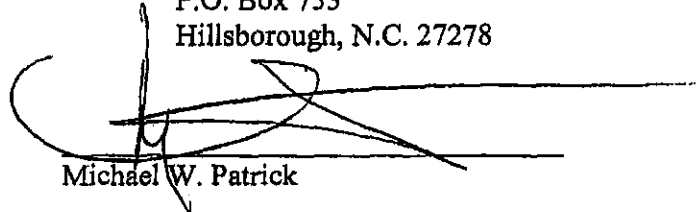
  
Michael W. Patrick  
State Bar #7956  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516  
(919) 960-5848 (919) 967-4953 - fax

CERTIFICATE OF SERVICE

I, Michael W. Patrick, do hereby certify that a true and correct copy of the foregoing Notice of Voluntary Dismissal with Prejudice was served upon Defendants by placing the same in the United States Mail, this the 21<sup>st</sup> day of October, 2010, addressed as follows:

Mr. David O. Lewis  
Bryant, Patterson, Covington & Idol, P.A.  
P.O. Box 341  
Durham, NC 27702

John D. Loftin  
Loftin & Loftin, PA  
P.O. Box 733  
Hillsborough, N.C. 27278



Michael W. Patrick

LAW OFFICES OF MICHAEL W. PATRICK  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516  
(919) 960-5848  
(919) 967-4953 - fax  
Attorney for Plaintiff

NORTH CAROLINA

DURHAM COUNTY

WILLIAM DAVID CARDEN,  
Plaintiff,

v.

OWLE CONSTRUCTION, LLC,  
Defendant.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
File No. 06 Cvs 06720

*CM*

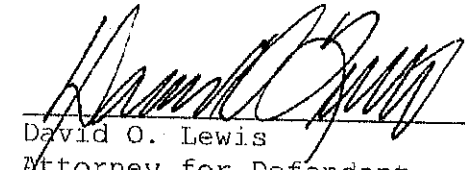
NOTICE OF FILING

NOW COMES the defendant Owle Construction, LLC, by and through undersigned counsel, and gives notice of the filing of the following documents in the above-captioned case file:

1. Memorandum Order filed in the Cherokee Tribal Court, file number CV 08-273, dated and filed September 2, 2010. A copy of the Memorandum Order is attached hereto as Exhibit A.

2. Voluntary Dismissal Without Prejudice filed in the Cherokee Tribal Court, dated October 20, 2010 and filed October 27, 2010. A copy of the Voluntary Dismissal is attached hereto as Exhibit B.

This the 16<sup>th</sup> day of DECEMBER, 2010.



David O. Lewis  
Attorney for Defendant  
Owle Construction, LLC  
BRYANT, PATTERSON, COVINGTON,  
LEWIS & LINDSLEY, P.A.  
P.O. Box 341  
Durham, North Carolina 27702  
(919) 688-6341

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has this day duly served a copy of the foregoing Notice of Filing on the following by depositing a copy of same in the United States Mail, first-class, postage prepaid, addressed as follows:

Mr. Michael W. Patrick  
LAW OFFICE OF MICHAEL W. PATRICK  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516

This 16<sup>th</sup> day of DECEMBER, 2010.


  
\_\_\_\_\_  
David O. Lewis  
Attorney for Defendant  
Owle Construction, LLC

EXHIBIT A

IN THE CHEROKEE COURT  
EASTERN BAND OF CHEROKEE INDIANS  
QUALLA BOUNDARY, CHEROKEE, NORTH CAROLINA

EBCI  
CHEROKEE TRIBAL COURT  
CHEROKEE, NC

2010 SEP -2 PM 3: 54

WILLIAM DAVID CARDEN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 OWLE CONSTRUCTION, LLC, )  
 )  
 Defendant. )

FILED

CV 08-273

MEMORANDUM ORDER

This case is before the Court on Motion of the Plaintiff for an Order staying this case or dismissing it, effectively transferring the case to the Superior Court of Durham County. The Plaintiff also moves alternately for an Order dispensing with a jury trial and substituting a bench trial instead. The case came on for hearing before the undersigned on August 12, 2010. The Plaintiff was represented by Michael Patrick, Esquire and Suzanne Begnoche, Esquire. The Defendant was represented by David Lewis, Esquire. The Court has reviewed the file, the materials submitted by counsel and has heard the argument of counsel. The matter is now ready for a ruling.

**FINDINGS OF FACT**

1. This personal injury case was originally filed in Durham County Superior Court.
2. As a matter of comity and with the consent of the parties, the Honorable Howard E. Manning, a Superior Court Judge, entered a stay of proceedings in Durham County Superior Court and requested that this Court accept transfer of the case for trial in this forum.

3. In November, 2009, the undersigned presided over a multi-week trial of this case which resulted in a mistrial.
4. Following the declaration of the mistrial, the Defendants Harrah's NC Casino Co., LLC and Tribal Casino Gaming Enterprise reached a mediated settlement resolution with the Plaintiff and they and their cross-claims were dismissed from the case. The only remaining Defendant is Owle Construction, LLC, which is an Indian owned, North Carolina corporation.

#### DISCUSSION

Boiled down, the Plaintiff makes two separate arguments as to why this Court should no longer adjudicate this case. They both relate to the dismissal of the Tribal entities from the case.

First, the Plaintiff argues that, by virtue of the absence of the Tribal entities, this matter has become converted into a garden variety case governed by *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) and therefore the case should be dismissed. The testimony in the case discloses that the Plaintiff was injured within the right of way of the State of North Carolina. Pursuant to *Strate*, the Court would likely have had no jurisdiction to entertain the case had it been in the procedural posture it is in now at the time of Judge Manning's transfer Order. But that is not what happened. At the time of the transfer Order, Tribal entities were party Defendants, and all parties agreed that the Court properly possessed subject matter jurisdiction over the action and personal jurisdiction over them. Indeed, there was a jury trial of the matter.

"Once the jurisdiction of a court or administrative agency attaches, the general rule is that it will not be ousted by subsequent events. This is true even when the events are of such a nature that they would have prevented jurisdiction from attaching in the first instance." *In Re Peoples*, 296 N.C. 109, 146, 250 S.E.2d 890, 911 (1978). "If the converse of this were true, it would be

within the power of [a party] to preserve or destroy jurisdiction of the court at his own whim.”

*Silver Surprise, Inc. V. Sunshine Mining Co.*, 74 Wash.2d 519, 523, 455 P.2d 334, 336-37 (1968).

The Court can only conclude that the dismissal of the Tribal entities had no effect on the continued exercise of its jurisdiction over the remaining parties and subject matter of the action. The Motion to dismiss should be denied.

The Plaintiff's second thrust is that the Court should enter a stay on the basis of comity so that the Durham County Superior Court can reactivate the case in that forum. As support for this Motion, the Plaintiff argues once again that the loss of the Tribal entities as party Defendants changes the complexion of the case such that the Superior Court is the proper forum. Additionally, the Plaintiff argues that the trial of the case was so complex that it “taxed the resources of the Court,” and that, in general, Durham County is a more convenient forum in that a number of medical experts can be expected to testify upon re-trial. This argument is unavailing, as well.

No one has more respect for the Durham County Court system than the undersigned. The undersigned has either personally appeared before or worked with all of the sitting Superior Court Judges in Durham County, and additionally appeared before retired Judges Anthony M. Brannon and Milton Read. Retired Judge A. Leon Stanback is the former law partner of the undersigned. These Judges have created a legacy of superb jurisprudence in Durham. Any one of them could manage this case with ease, of that the Court has no question.

Although the case has been pared down, the core components are the same: are there issues of fault which caused the Plaintiff's injuries, and, if so, what are his damages? During trial, counsel for the Plaintiff conceded that his theory of liability, at least with one of the Tribal



entities was "more attenuated." So the Court is left with a cleaner case which will proceed more swiftly. It did not tax the resources of the Court before and it will not now.

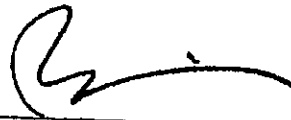
It is true that the case is set far from the Plaintiff's home in Durham County. However, the Plaintiff and his partner have, according to testimony, purchased a home in Buncombe County, roughly fifty miles from the Cherokee Courthouse. It is routine for counsel and Court personnel to commute from the Asheville area to Court. Counsel indicate that they would call more medical witnesses for the Plaintiff if the case were situated in Durham, as that is closer to the relevant medical facilities in which they work. This may be so, but counsel have also indicated that numerous trial depositions have also been taken and counsel are masters of the Courtroom technology in the Tribal Courthouse. Finally, Plaintiff's counsel consented to the transfer of this case to this Court. For the Court to stay its hand or otherwise send the case back to Durham doesn't appear to be an act of comity by this Court, but rather a potential burden to the Superior Court by way of increasing its caseload.

Finally, the Plaintiff moves to dispense with the jury and proceed with a bench trial. The Defendant strenuously objects. It is true that no statute or ordinance gives the Defendant a right to a jury trial in this civil case. However, the Court is also called upon to construe Cherokee culture and tradition and it has been the tradition in this territory to afford jury trials in Tribal Court since at least 1823. Construing that tradition, this Motion should be denied.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this civil action.
2. The Motion to Dismiss should be denied.
3. The Motion for a Stay should be denied.
4. The Motion to forego a jury trial should be denied.

ACCORDINGLY IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion to Dismiss is DENIED. IT IS FURTHER ORDERED that the Plaintiff's Motion for a Stay is DENIED. IT IS FURTHER ORDERED that the Plaintiff's Motion to forego a jury trial is DENIED. The counsel are directed to confer and send an email to the Clerk with some suggested trial dates. The Court will give this matter a preemptory setting during the first quarter of 2011.



---

J. MATTHEW MARTIN  
CHEROKEE COURT JUDGE

September 2, 2010.

EXHIBIT B

EASTERN BAND OF CHEROKEE INDIANS  
THE CHEROKEE COURT  
QUALLA BOUNDARY, CHEROKEE, NORTH CAROLINA

EBCI  
CHEROKEE TRIBAL COURT  
CHEROKEE, NC

2010 OCT 27 AM 11:45

WILLIAM DAVID CARDEN, )  
)  
Plaintiff, )  
)  
v. )  
)  
OWLE CONSTRUCTION, LLC )  
)  
Defendants. )

FILED

Case No. CV-08-273

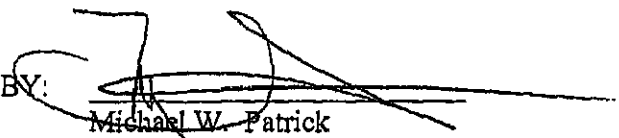
VOLUNTARY DISMISSAL WITHOUT PREJUDICE

NOW COMES Plaintiff William David Carden, pursuant to Rule 41(a) of the Rules of Civil Procedure, and hereby takes a voluntary dismissal without prejudice of all claims against Defendant Owle Construction, LLC in this action.

This the 20<sup>th</sup> day of October, 2010.

LAW OFFICE OF MICHAEL W. PATRICK

BY:

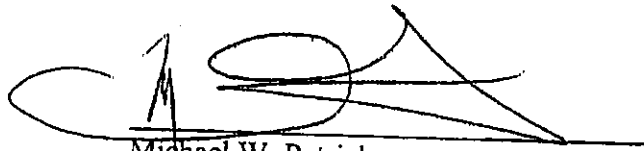


Michael W. Patrick  
State Bar #7956  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516  
(919) 960-5848 (919) 967-4953 - fax

CERTIFICATE OF SERVICE

I, Michael W. Patrick, do hereby certify that a true and correct copy of the foregoing Notice of Voluntary Dismissal without Prejudice was served upon Defendants by placing the same in the United States Mail, this the 21<sup>st</sup> day of October, 2010, addressed as follows:

Mr. David O. Lewis  
Bryant, Patterson, Covington & Idol, P.A.  
P.O. Box 341  
Durham, NC 27702

  
Michael W. Patrick

LAW OFFICES OF MICHAEL W. PATRICK  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516  
(919) 960-5848  
(919) 967-4953 - fax  
Attorney for Plaintiff

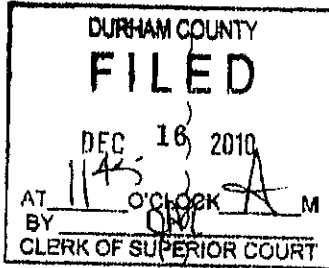
NORTH CAROLINA  
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
File No. 06 Cvs 06720

WILLIAM DAVID CARDEN,  
Plaintiff,

v.

OWLE CONSTRUCTION, LLC,  
Defendant.



**ORDER**

THIS CAUSE, coming on to be heard and being heard at the December 15, 2010 civil session of Superior Court in and for Durham County, North Carolina on the plaintiff's motion to lift stay;

After reviewing the court file and Cherokee Tribal Court pleadings submitted by counsel, and hearing the arguments of counsel, the Court makes the following FINDINGS OF FACT:

1. Plaintiff filed the above-captioned action in Durham County Superior Court on or about December 6, 2006. In the action, plaintiff named Harrah's NC Casino Company, LLC, Harrah's Operating Company, Inc. and Owle Construction, LLC as parties defendant.

2. On or about April 17, 2008, the Honorable Howard E. Manning, Jr., Superior Court Judge, entered a Consent Order ordering that the Tribal Casino Gaming Enterprise be added as a party defendant, and that the matter "is removed to the Cherokee Court."

3. After Judge Manning's order, the Cherokee Court opened its file CV-08-273 for this matter. The case was tried in Cherokee Court from November 3, 2009 to November 18, 2009. The

Honorable J. Matthew Martin, Cherokee Court Judge Presiding, declared a mistrial on the basis of jury deadlock on November 18, 2009, and entered an order in the Cherokee Court on December 15, 2009 granting the mistrial.

4. On December 15, 2009, Judge Martin entered an order in the Cherokee Court requiring that the case be mediated.

5. As a result of the mediated settlement conference held pursuant to Judge Martin's order, the plaintiff reached a settlement with defendants Harrah's NC Casino Company, LLC, Harrah's Operating Company, Inc., and Tribal Casino Gaming Enterprise. The plaintiff filed a Voluntary Dismissal with Prejudice in the Cherokee Court as to those defendants on or about May 19, 2010, leaving Owle Construction, LLC as the sole defendant in the case.

6. On or about July 15, 2010, the plaintiff filed a "Motion to Stay or in the Alternative to Dismiss" in the Cherokee Court. Judge Martin heard the motion in Cherokee Court on August 12, 2010.

7. By order dated and filed September 2, 2010, Judge Martin found that the dismissal of the Tribal entities had no effect upon the Cherokee Court's subject matter jurisdiction and continued jurisdiction over the remaining parties, and denied the plaintiff's motions. Judge Martin ordered counsel to confer and send an email to the Cherokee Clerk of Court with suggested trial dates for a retrial of the case in the Cherokee Court.

8. On or about October 27, 2010, plaintiff filed in the Cherokee Court a Voluntary Dismissal without Prejudice of all claims against the remaining defendant Owle Construction, LLC.

BASED ON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:


1. Because the plaintiff's action was removed to the Cherokee Court and has been completely dismissed in the Cherokee Court, no case regarding the plaintiff's claims in this matter is now open in Durham County Superior Court.

2. Because the plaintiff voluntarily dismissed his claims against defendant Owle Construction, LLC in the Cherokee Court without prejudice, the plaintiff may refile an action regarding his claims against Owle Construction, LLC if such a refiling is proper under applicable law. The questions of subject matter jurisdiction and the proper jurisdiction, venue or forum for such refiling are not before the Court at this time.

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff's Motion to Lift Stay be, and it hereby is, DENIED.

IN MAKING THIS RULING, THE COURT does not reach any issue of subject matter jurisdiction, and makes no findings or rulings concerning the proper jurisdiction, venue or forum for any refiling of any action regarding the plaintiff's claims against defendant Owle Construction.

This the 16 day of December, 2010.

  
Shannon R. Joseph  
Superior Court Judge  
Judge Presiding CVS 6720



STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

1/11/11 10:23:14 AM  
CASE NO. 06 CVS 6720

WILLIAM DAVID CARDEN,

Plaintiff

v.

OWLE CONSTRUCTION, LLC


Defendants.

NOTICE OF APPEAL

NOW COMES Plaintiff William David Carden pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure, and hereby gives Notice of Appeal to the North Carolina Court of Appeals from the Order filed December 16, 2010.

This the 4<sup>th</sup> day of January, 2011.

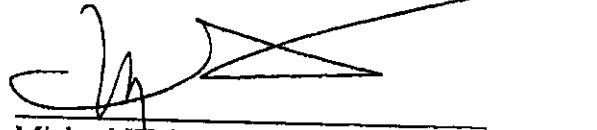
LAW OFFICE OF MICHAEL W. PATRICK

BY:   
Michael W. Patrick  
State Bar #7956  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516  
(919) 960-5848 (919) 967-4953 - fax  
*Attorney for William David Carden*

**CERTIFICATE OF SERVICE**

I, Michael W. Patrick, do hereby certify that a true and correct copy of the foregoing Notice of Appeal was served upon the following by placing the same in the United States Mail, this the 4<sup>th</sup> day of January, 2011, addressed as follows:

Mr. David O. Lewis  
Bryant, Lewis & Lindsley, P.A.  
P.O. Box 341  
Durham, NC 27702



Michael W. Patrick  
N.C. Bar #7956

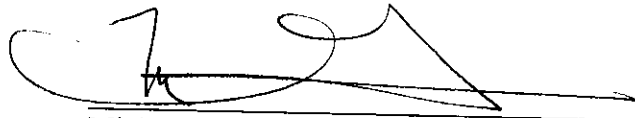
LAW OFFICE OF MICHAEL W. PATRICK  
312 West Franklin Street  
P.O. Box 16848  
Chapel Hill, N.C. 27516  
(919) 960-5848  
(919) 967-4953 - fax  
*Attorney for William David Carden*

CERTIFICATE OF SERVICE OF FOREGOING PROPOSED RECORD ON APPEAL

The undersigned hereby certifies that the foregoing Proposed Record on Appeal in accordance with the Appellate Rules of Procedure, has been served upon counsel by first class mail, postage prepaid.

Mr. David O. Lewis  
Bryant, Lewis & Lindsley, P.A.  
P.O. Box 341  
Durham NC 27702

This the 31<sup>st</sup> day of January, 2011.

A handwritten signature in black ink, appearing to read 'Michael W. Patrick', written over a horizontal line.

Michael W. Patrick  
Attorney for Plaintiff-Appellant

LAW OFFICE OF MICHAEL W. PATRICK  
312 West Franklin Street  
P.O. Box 16848  
Chapel Hill, North Carolina 27516  
Telephone: (919) 960-5848  
Telecopier: (919) 869-1348

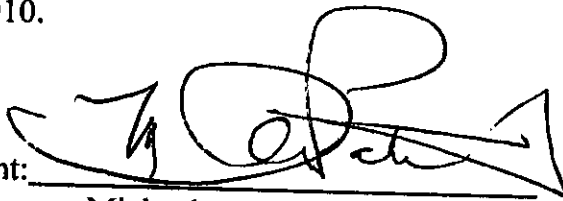
**STIPULATION SETTLING RECORD ON APPEAL**

Counsel for Appellant and Appellees stipulate as follows:

1. The Plaintiff-Appellant served his Notice of Appeal on January 4, 2011.
2. The proposed Record On Appeal was timely served by Plaintiff-Appellant on January 31, 2011.
3. The Defendant-Appellee informally requested slight changes in the format of the Record on Appeals which have been made by the Plaintiff-Appellant.
4. Accordingly, pursuant to Rule 11(c) of the North Carolina Rules of Appellate Procedure, this record has been settled by agreement of the parties.

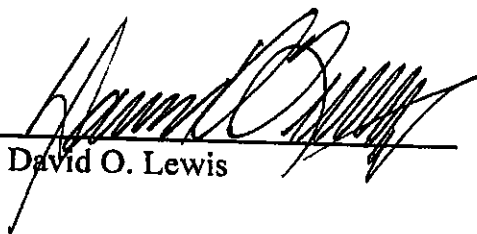
This 2<sup>nd</sup> day of March, 2010.

For the Plaintiff-Appellant:



Michael W. Patrick

For the Defendant-Appellees:



David O. Lewis

ISSUES ON APPEAL

Pursuant to Rule 10(b) of the North Carolina Rules of Appellate Procedure, the Plaintiff-Appellant William David Carden identifies the following issues on appeal:

1. The correctness of the Superior Court's ruling that there was no case pending in the Superior Court with the dismissal of the claims against Owle Construction, LLC in the Cherokee Court.
2. The denial of the Plaintiff's Motion to Lift Stay in the Superior Court.

IDENTIFICATION OF COUNSEL

Counsel of record are:

Michael W. Patrick  
Law Office of Michael W. Patrick  
312 West Franklin Street  
Post Office Box 16848  
Chapel Hill, North Carolina 27516  
mpatrick@ncproductslaw.com  
*Attorney for Plaintiff-Appellant William David Carden*

Mr. David O. Lewis  
Bryant, Lewis & Lindsley, P.A.  
103 W. Main Street  
Kress Building, Mezzanine Floor  
P.O. Box 341  
Durham NC 27702  
david.lewis@bll-nclaw.com  
*Attorney for Defendant-Appellee Owle Construction, LLC*