

OCT 27 2011

IN THE DISTRICT COURT OF CUSTER COUNTY
STATE OF OKLAHOMA

STACI HUNTER
COURT CLERK

FIRST BANK AND TRUST COMPANY,)

Plaintiff,)

v.)

THE CHEYENNE AND ARAPAHO TRIBES;)
JANICE PRAIRIE CHIEF-BOSWELL, in her)
representative capacity, if any, as the alleged)
Governor of the CHEYENNE AND ARAPAHO)
TRIBES; LESLIE WANDRIE-HARJO, in her)
representative capacity, if any, as the alleged)
Governor of the CHEYENNE AND ARAPAHO)
TRIBES,)

Defendants.)

Case No. CW-2011-53

PETITION FOR DECLARATORY RELIEF AND DETERMINATION
OF PARTY AUTHORIZED TO ACT ON BEHALF OF TRIBAL ACCOUNTS

Plaintiff, First Bank and Trust Company ("Plaintiff" or "First Bank"), pursuant to 12 Okla. Stat. § 1651, hereby submits its Petition for Declaratory Relief and Determination of Party Authorized to Act on Behalf of Tribal Accounts ("Petition"), and in support thereof alleges and states as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, First Bank, is an Oklahoma banking corporation with its principal place of business located at 510 Frisco, Clinton, Oklahoma 73601.

2. Defendant, the Cheyenne and Arapaho Tribes ("Tribe"), is a federally recognized Indian tribe with jurisdictional lands located in Oklahoma, including Custer County, Oklahoma. The Tribe's tribal headquarters are located in Concho, Oklahoma.

3. Defendant, Janice Prairie Chief-Boswell, a person who alleges she is Governor of the Tribe ("Boswell"), upon information and belief, is a resident of Custer County, Oklahoma.

4. Defendant, Leslie Wandrie-Harjo, a person who alleges she is Governor of the Tribe ("Harjo"), upon information and belief, is a resident of Custer County, Oklahoma.

5. This Court has jurisdiction over the Tribe, as well as Boswell and Harjo, in their respective capacities as the alleged Governor of the Tribe, with respect to the depository accounts that are the subject matter of this litigation. The depository accounts that are the subject of this action are maintained at First Bank's banking offices located in Clinton, Custer County, Oklahoma. Further, the agreements governing the subject depository accounts were executed in First Bank's banking offices located in Custer County, Oklahoma. Accordingly, jurisdiction and venue are proper in this Court.

BACKGROUND

First Bank hereby adopts and incorporates by reference all of the statements and allegations contained in paragraphs 1 through 5 of its Petition as if fully set forth herein, and in addition, states:

6. The Tribe maintains certain depository accounts at First Bank's banking offices in Clinton, Oklahoma (the "Tribal Accounts"). The Tribal Accounts were established at a time when Boswell was the undisputed Governor of the Tribe, and the agreements related to the Tribal Accounts were executed by Boswell acting in her official capacity as Governor of the Tribe. The agreements relating to the Tribal Accounts have not been amended and remain in full force and effect as originally written.

7. The person holding the title and position of Governor of the Tribe is designated as the authorized signatory for the Tribal Accounts.

8. The records of First Bank relating to the Tribal accounts reflect that Boswell is the Governor of the Tribe and is the authorized tribal signatory for the Tribal Accounts.

9. A dispute has arisen as to whom is the actual Governor of the Tribe. Boswell alleges that she continues to serve as the duly elected and authorized Governor of the Tribe. Harjo, however, alleges that she has recently become the duly elected and authorized Governor of the Tribe.

10. In connection with the dispute, both Boswell and Harjo have made conflicting demands on First Bank in regards to who is entitled to act as the authorized signatory for the Tribal Accounts.

11. The Third Legislature of the Cheyenne and Arapaho Tribes ("Third Legislature"), as a body politic, apparently acting through its Speaker, Michael Kodaseet ("Kodaseet"), asserts Harjo is the Governor of the Tribe and has demanded recognition of the same from First Bank.

12. Both Harjo and Kodaseet, apparently acting on behalf of the Tribe, have threatened First Bank with legal liability if it does not remove Boswell as the signatory authority on the Tribal Accounts and replace her with Harjo.

13. On February 18, 2011, Harjo and the Tribe filed suit against Boswell and First Bank, among others, in the United States District Court for the Western District of Oklahoma, Case No. CIV-11-171-F, alleging, in part, that Harjo was the Governor of the Tribe and, as such, was entitled to be the signatory authority to the exclusion of Boswell over the Tribal Accounts. On August 15, 2011, Judge Friot entered an Order dismissing the above-referenced case on the grounds that the Court lacked jurisdiction over the matter and declined to exercise supplemental jurisdiction over any state law claims.

14. First Bank has been informed and believes that various actions have been brought by Boswell and/or Harjo before the Department of Interior, Bureau of Indian Affairs ("BIA"), seeking recognition of either Boswell or Harjo as Governor of the Tribe or recognition of one of

two purported Supreme Courts of the Tribe as the legitimate Supreme Court of the Tribe. To date, First Bank has been informed and believes that appeals are pending on such matter and no final decision has been reached by the BIA.

15. First Bank has been informed and believes that two separate Supreme Courts are purporting to act on behalf of the Tribe and the two Supreme Courts have taken conflicting positions as to whether Boswell or Harjo is the Governor of the Tribe.

CLAIM ONE – DECLARATORY RELIEF

First Bank hereby adopts and incorporates by reference all of the statements and allegations contained in paragraphs 1 through 15 of its Petition as if fully set forth herein, and in addition, states:

16. This Court has subject matter jurisdiction to declare the contractual rights and duties of the parties in regards to the Tribal Accounts pursuant to 12 Okla. Stat. § 1651, *et seq.* The Tribe, Boswell, and Harjo each have and/or have claimed an interest in the Tribal Accounts, and are made parties to this suit pursuant to 12 Okla. Stat. § 1653.A.

17. First Bank seeks a declaration as to whether Boswell should remain as the authorized tribal signatory for the Tribal Accounts, or the authorized signatory for the Tribal Accounts should be changed to Harjo.

18. First Bank also seeks a declaration that it should be absolved of any and all liability as to disputes concerning the signatory authority for the Tribal Accounts.

PRAYER FOR RELIEF

WHEREFORE, First Bank prays that the Court declare whether Boswell should remain as the authorized tribal signatory for the Tribal Accounts, or the authorized signatory for the Tribal Accounts should be changed to Harjo, and declare that First Bank is absolved of any and all liability as to disputes concerning the signatory authority for the Tribal Accounts.

Respectfully submitted,



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