

**IN THE MUSCOGEE (CREEK) NATION DISTRICT COURT
OKMULGEE DISTRICT**

DISTRICT COURT
OK
2007 OCT 11 A.M. 10:25

**THLOPTHLOCCO TRIBAL
TOWN, a federally-recognized
Indian tribe**

Plaintiff,

v.

Case No. CV-2007-39

**NATHAN ANDERSON, BRYAN McGERTT,
TIMMY CHEEK, CANDICE (a/k/a KENDIS)
ROGERS, INDA McGERTT, FRANK
HARJOCHEE, VIRGIL SANDERS, MARY
McGERTT, GRACE BUNNER, THELMA
JEAN NOON, WESLEY MONTEMEYER,
PAULA BARNES-HERROD, MALINDA
NOON, AND THOSE ACTING IN JOINT
CONCERT AND PARTICIPATION WITH
THEM**

Defendants.

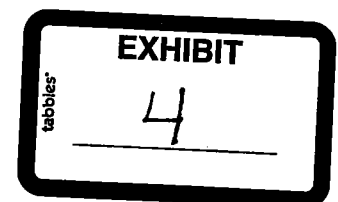
v.

**GEORGE SCOTT, RON BARNETT,
VERNON YARHOLAR, BRENT BROWN,
RYAN MORROW, JANNA DICKY
TRACEY HILL, CELESTE JOHNSON,
BARBARA CANARD-WELLBORN,**

Cross-claim Defendants.

SPECIALLY APPEARING DEFENDANTS' CROSS-CLAIM

Specially appearing Defendants, Thlopthlocco Tribal Town as constituted under the leadership of Nathan Anderson, Timmy Cheek, Bryan McGertt, Kendis Rogers, Malinda Noon, Inda McGertt, Virgil Sanders, Marian Berryhill, Mike Harjochee, and Frank Harjochee



(“Defendants”)¹, for their cross claim against GEORGE SCOTT, RON BARNETT, VERNON YARHOLAR, RYAN MORROW, JANNA DICKY, TRACEY HILL, CELESTE JOHNSON, BRENT BROWN, BARBARA CANARD-WELLBORN and Those Acting in Joint Concert and Participation With Them, individually allege as follows:

PARTIES

1. Defendants are all citizens and officials of the Thlopthlocco Tribal Town and citizens the Muscogee (Creek) Nation.
2. Cross-claim Defendant George Scott, upon information and belief, is a citizen of the Muscogee (Creek) Nation. Scott served as acting Town King and Warrior for Thlopthlocco Tribal Town on and before January 26, 2007.
3. Cross-claim Defendant Ron Barnett, upon information and belief, is a citizen of the Thlopthlocco Tribal Town and the Muscogee (Creek) Nation. Barnett served as Tribal Administrator for Thlopthlocco Tribal Town on and before January 26, 2007.
4. Cross-claim Defendant Ryan Morrow, upon information and belief, is a citizen of the Thlopthlocco Tribal Town and the Muscogee (Creek) Nation. Morrow served as an Advisor for Thlopthlocco Tribal Town on and before January 26, 2007.
5. Cross-claim Defendant Vernon Yarholar, upon information and belief, is a citizen of the Thlopthlocco Tribal Town and the Muscogee (Creek) Nation. Yarholar served as an Advisor for Thlopthlocco Tribal Town on and before January 26, 2007.
6. Cross-claim Defendant Celeste Johnson, upon information and belief, is a citizen of the Thlopthlocco Tribal Town and the Muscogee (Creek) Nation. Johnson served as

¹ Defendants as officials of the Thlopthlocco Tribal Town previously objected to the jurisdiction of this Court to hear internal matters of the Thlopthlocco Tribal Town. By filing this cross-claim, Defendants do not waive any defense to sovereign immunity.

the Grievance Committee Secretary for Thlopthlocco Tribal Town on and before January 26, 2007.

7. Cross-claim Defendant Janna Dickey, upon information and belief, is a citizen of the Thlopthlocco Tribal Town and the Muscogee (Creek) Nation. Dickey served no role for Thlopthlocco Tribal Town before January 26, 2007.
8. Cross-claim Defendant Tracey Hill, upon information and belief, is a citizen of the Thlopthlocco Tribal Town and the Muscogee (Creek) Nation. Hill served no role for Thlopthlocco Tribal Town before January 26, 2007.
9. Cross-claim Defendant Brent Brown, upon information and belief, is a citizen of the Thlopthlocco Tribal Town and the Muscogee (Creek) Nation. Brown served no role for Thlopthlocco Tribal Town before January 26, 2007.
10. Cross-claim Defendant Barbara Canard-Wellborn, upon information and belief, is a citizen of the Thlopthlocco Tribal Town and the Muscogee (Creek) Nation. Canard-Wellborn served as an Advisor for Thlopthlocco Tribal Town on and before January 26, 2007.

JURISDICTION

11. Jurisdiction is proper in this Court based on the ruling of the Muscogee (Creek) Nation Supreme Court on June 29, 2007.
12. This Court has personal jurisdiction over all Cross-claim Defendants by virtue of their Muscogee (Creek) citizenship. Cross-claim Defendants cannot claim sovereign immunity because their actions are ultra vires and beyond the scope of their authority.
13. Defendants seek injunctive and declaratory relief against Cross-claim Defendants for violation of the Thlopthlocco Constitution and individual Defendants' civil rights.

ALLEGATIONS COMMON TO ALL COUNTS

14. The Thlopthlocco Tribal Town held a general election on January 27, 2007. Offices to be filled in the election included Mekko, 1st Warrior, 2nd Warrior, Secretary, and Treasurer.
15. The Thlopthlocco Tribal Town Constitution provides that all members 18 years of age and older shall be eligible to vote at Thlopthlocco elections. In order to be a member of Thlopthlocco Tribal Town, an individual must be a lineal descendant of a person listed on the 1890 authenticated census roll or the 1895 pay roll. The only other method for becoming a member of Thlopthlocco Tribal Town is by adoption through a vote of the Thlopthlocco Tribal Town members at a regular meeting.
16. On or about January 26, 2007, upon information and belief, Cross-claim Defendants held a secret meeting. At the meeting, these individuals passed resolution 07-07 purporting to adopt several individuals as members of Thlopthlocco Tribal Town. The individuals allegedly adopted were: Alfred Berryhill, Chubby Berryhill, Edward Berryhill, George Berryhill, Kenneth Berryhill, and Ripley (Sonny) Berryhill.
17. The Thlopthlocco Constitution expressly provides the requirement for membership in the Thlopthlocco Tribal Town. The Thlopthlocco Constitution, art IV states:

SECTION 1. The membership of this organization shall consist of the following:

(a). All Indians who were on either the 1890 authenticated census roll or the 1895 pay roll of the said town were and shall be members.

(b). All persons born of parents both of whom were members when the persons were born were and shall be members.

(c). All Indians born of women who were members of this town when such persons were born were and shall be members of this town.

(d). All Indians born of non-Creek women whose fathers were members of this town when such persons were born were and shall be members of this town.

SECTION 2. Any Indian may be adopted as a member of this town by the Town King with the consent of the members of this town by a majority vote at a regular meeting, with the consent of the authorities of the Creek Town from which the person came, if any, and with the consent of the Secretary of the Interior.

18. The Thlopthlocco Tribal Town membership did not vote to adopt these individuals at a regular meeting. In addition, the Secretary of Interior did not consent to the adoption of these individuals.

19. Cross claim Defendants, upon information and belief, violated the Thlopthlocco Constitution by allowing Alfred Berryhill, Chubby Berryhill, Edward Berryhill, George Berryhill, Kenneth Berryhill, and Ripley (Sonny) Berryhill to vote at the general election held on January 27. Acting Town King/Warrior George Scott was informed that these individuals had not been properly adopted as members of Thlopthlocco Tribal Town and should not be able to vote.

20. All Cross-claim Defendants acted together and in joint concert in an attempt to illegally adopt the six individuals into the Town. Cross-claim Defendants actions are especially egregious because their attempt to illegally adopt members into Thlopthlocco Tribal Town was for the purpose of influencing the outcome of the January 27, 2007, general election.

21. On or about January 16, 2007, Cross-claim Defendants began seeking a legal opinion from counsel for Plaintiff, Mike McBride, on the constitutionality of preventing Thlopthlocco Tribal members from voting in the January 27 general election. Upon information and belief, Cross-claim Defendants George Scott, and Julie Scott Sharp contacted Mr. McBride asking for the legal opinion. Further, upon information and belief, Cross-claim Defendants and others acting in joint concert with them, sought a resolution from the Thlopthlocco Business Committee to ban all Defendants in the cases *Thlopthlocco Tribal Town v. Noon Tomah, et. al.*, 8 Okla. Trib. 451 (Musc. (Cr.) D. Ct. 2004) and *Thlopthlocco Tribal Town v. Louis McGertt, et. al.*, Case No. CV-2005-28 from being nominated for any elective office. See attached Exhibit 1.

22. Mr. McBride informed Thlopthlocco officials that preventing Thlopthlocco members from voting would violate due process. See attached Exhibit 1. In fact, Mr. McBride stated

It is doubtful that less than one (1) week before the election, Thlopthlocco can provide adequate due process to the defendants in the two law suits as provided in the Petition with sufficient notice of the intent to prevent or (sic) from voting or being nominated for office. Excluding the defendants would set a horrible precedent.

Cross-claim Defendants refused to adhere to Mr. McBride's advice and prevented at least three Thlopthlocco members from exercising their right to vote and run for office. Despite Mr. McBride's earlier advice that such actions would violate the Thlopthlocco Constitution and set a horrible precedent, he now defends the actions of these individuals.

23. At the January 27 election, upon information and belief, Cross-claim Defendant Ron Barnett denied several Thlopthlocco Tribal Town members their constitutional right

to vote. Cross-claim Defendant Barnett informed Thlopthlocco Tribal Town member Grace Bunner that she would not be able to vote at the January 27 election or any other Thlopthlocco Tribal Town election. Nathan Anderson told Cross-claim Defendant Barnett that Ms. Bunner had a constitutional right to vote. Cross-claim Defendant Barnett did not permit Ms. Bunner.

24. Upon information and belief, Cross-claim Defendant Barnett also denied

Thlopthlocco Tribal Town member Bryan McGertt the right to run for office and vote at the January 27 general election. Cross-claim Defendant Barnett told Mr. McGertt that he would not be allowed to run for office. Nathan Anderson asked Cross-claim Defendant Barnett if Mr. McGertt could vote. Cross-claim Defendant Barnett stated that Mr. McGertt could not vote. After Cross-claim Defendant Barnett told Mr. McGertt that he could not vote, Thomas Yarholar told security officers, off duty Ofuskee County Sheriffs Deputies, to remove Mr. McGertt from the voting area.

25. At the January 27 general election, upon information and belief, Thlopthlocco Tribal Town member Robert Anderson was not permitted into the voting area.

26. On July 9, 2007, Cross-claim Defendant Vernon Yarholar sent a letter to Mekko Anderson. The letter cited three resolutions, 07-22, 07-26, 07-27, passed by those individuals purporting to act as the Thlopthlocco Business Committee. The resolutions unconstitutionally strip Mekko Anderson of his authority as Town King in violation of the Constitution.

27. The Cross-Claim Defendants place three of the Cross-Claim Defendants in the position of Town King in violation of the Constitution.

28. The Cross-Claim Defendants have placed the government-to-government relationship with the United States in jeopardy as only the Mekko can conduct the business for 638 funding.

FIRST CAUSE OF ACTION

29. Defendants repeat and reallege the allegations contained in paragraphs one through 28 as though set forth fully herein.

30. Cross-claim Defendants violated the Thlopthlocco Tribal Town Constitution by purporting to adopt members without following the method described in the Constitution.

31. Cross-claim Defendants actions are in violation of the oath of office each took, swearing to uphold the Thlopthlocco Tribal Town Constitution.

32. Cross-claim Defendants' intentional and willful violation of the Thlopthlocco Tribal Town Constitution entitles Defendants to declaratory and injunctive relief.

SECOND CAUSE OF ACTION

33. Defendants repeat and reallege the allegations contained in paragraphs one through 32 as though set forth fully herein.

34. Cross-claim Defendants violated the civil rights of Thlopthlocco Tribal Town members, including but not limited to, Grace Bunner, Bryan McGertt, and Robert Anderson.

35. Cross-claim Defendants' acts violate, without limitation, the Thlopthlocco Tribal Town Constitution, and the oath of office that Cross-claim Defendants took.

36. Cross-claim Defendants' intentional and willful violation of the Thlopthlocco Tribal Town Constitution entitles Defendants to declaratory and injunctive relief.

THIRD CAUSE OF ACTION

37. Defendants repeat and reallege the allegations contained in paragraphs one through 36 as though set forth fully herein.
38. Cross-claim Defendants are in contempt of court for violating the Order issued by the Supreme Court on June 29.
39. Cross-claim Defendants acts violate, without limitation, the Thlopthlocco Constitution by stripping the duties of Mekko in violation of Articles VI and VII.

FOURTH CAUSE OF ACTION

40. Defendants repeat and reallege the allegations contained in paragraphs one through 39 as though set forth fully herein.
41. Cross-claim Defendants are in contempt of court for violating the Order issued by the Supreme Court on June 29.
42. Cross-claim Defendants acts violate, without limitation, the Thlopthlocco Constitution by placing three Cross-Claim Defendants in the position of Mekko in violation of Article V, Section 1.

FIFTH CAUSE OF ACTION

43. Defendants repeat and reallege the allegations contained in paragraphs one through 42 as though set forth fully herein.

44. Cross-claim Defendants are in contempt of court for violating the Order issued by the Supreme Court on June 29.
45. Cross-claim Defendants violated the civil rights of Mekko Nathan Anderson by attempting to strip him of his authority and position as Town King without due process of law.
46. Cross-claim Defendants' acts violate, without limitation, the Thlopthlocco Tribal Town Constitution, and the oath of office that Cross-claim Defendants took.
47. Cross-claim Defendants' intentional and willful violation of the Thlopthlocco Tribal Town Constitution entitles Defendants to declaratory and injunctive relief.

PRAYER FOR RELIEF

Wherefore, Defendants respectfully requests that it be granted an order against the Cross-claim Defendants as follows:

A. Declaratory and Injunctive relief mandating that:

(1) Cross-claim Defendants actions in attempting to adopt members in violation of the Thlopthlocco Tribal Town Constitution are void;

(2) Cross-claim Defendants actions in denying Thlopthlocco Tribal Town members the right to run for office and vote at the January 27 general election violated the fundamental and civil rights of Thlopthlocco Tribal Town citizens.


(3) Cross-claim Defendants be enjoined from interfering with Thlopthlocco Tribal Town government which is constituted as follows:

Mekko	Nathan Anderson
1 st Warrior	Tim Cheek
2 nd Warrior	Bryan McGertt
Treasurer	Malinda Noon

Secretary	Kendis Rogers
Advisor 1	Inda McGertt
Advisor 2	Virgil Sanders
Advisor 3	Marian Berryhill
Advisor 4	Mike Harjochee
Advisor 5	Frank Harjochee

B. Such other relief as this Court deems just and appropriate.

Respectfully Submitted,
Velie & Velie, Attorneys at Law. PLLC

By 

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