

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

**1. RIVER TRAILS, LLC, an Ohio )  
limited liability company, )  
 )  
Plaintiff, )**

vs. )

**Case No. 13-CV-93-JHP-PJC**

**1. DELAWARE ENTERPRISE )  
AUTHORITY, a division of the )  
Delaware Tribe of Indians of )  
Oklahoma; and )**

**JURY TRIAL DEMANDED**

**2. THE DELAWARE TRIBE OF )  
INDIANS OF OKLAHOMA, )  
 )  
Defendants. )**

**COMPLAINT**

Plaintiff River Trails, LLC alleges and states as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff is an Ohio limited liability company with its principal place of business in Cincinnati, Ohio.

2. The Defendant Delaware Enterprise Authority (DEA) is a division of the Delaware Tribe of Indians of Oklahoma. The DEA is the entity delegated the power to represent and to transact business on behalf of and for the benefit of the Delaware Tribe in economic development. The DEA is located in and has its principal place of business in Bartlesville, Oklahoma.

3. The Defendant Delaware Tribe of Indians of Oklahoma is a federally restored and recognized Indian Tribe (the Tribe). The Tribe maintains its tribal headquarters in Bartlesville, Oklahoma.

4. The Agreements which are the subject of this litigation were negotiated, approved and executed in the Northern District of Oklahoma in Bartlesville and Tulsa, Oklahoma.

5. The DEA resolutions and Tribal authority decisions regarding the Agreements which are the subject of this litigation were all passed and approved in Bartlesville, Oklahoma.

6. All necessary governmental approval was obtained for the Agreements.

7. The Agreements which are the subject of this action were signed by Defendants in Bartlesville, Oklahoma.

8. Under Article 13 of the Development Agreement, which is the subject of this lawsuit, DEA and the Tribe have waived sovereign immunity and agreed to jurisdiction in the federal or state courts with jurisdiction and have waived the exhaustion of tribal remedies. (Ex. 1, Development Agreement; Ex. 2, Addendum to Development Agreement)

9. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.00. The jurisdiction of this Court is based upon diversity of citizenship in accordance with 28 U.S.C. § 1332.

10. Venue is proper in this judicial district by virtue of 28 U.S.C. § 1391, as a substantial part of the events or omissions giving rise to the claim occurred within the Northern District of Oklahoma.

### **BACKGROUND FACTS**

11. On May 3, 2010, Plaintiff, DEA and the Tribe entered into a Development Agreement wherein the Tribe and DEA granted River Trails the exclusive authority to develop a casino project for DEA and the Tribe in Ohio. (Ex. 1)

12. Under the Development Agreement, River Trails agreed to pay DEA and the Tribe \$25,000.00 a month for DEA and the Tribe's expenses incurred in negotiating the

Development Agreement, machine leases, additional documents and other pre-development expenses associated with the project. The amount was to be reimbursed to River Trails from proceeds of permanent financing and net income of the casino operations. No repayment of the amount was required if the Tribe was unsuccessful in its pursuit of taking land into trust for gaming or in securing permanent financing consistent with conditions available at the time in the marketplace or obtaining necessary regulatory approvals or if a court enjoined the development project. Repayment is required if DEA or the Tribe defaults (Ex. 1, Article 6.2 and Article 10)

13. Under 5.5 of the Agreement, River Trails paid an additional \$25,000.00 a month for its right to exclusivity in Ohio. This additional \$25,000.00 a month was to continue for 12 months from the date of the execution of the Agreement or the termination of the Agreement, whichever occurred first. No reimbursement was required from the Tribe or the DEA for this exclusivity payment unless the exclusivity provision was violated or the Agreement was breached.

14. In addition to the repayment terms for the project financing, DEA and the Tribe agreed that River Trails and DEA would enter into a Machine Lease Agreement under which River Trails would acquire and lease to DEA gaming devices to be installed in the casino facility. The Machine Lease was to contain terms reasonably agreed upon by the parties, but at a minimum was to provide that the Machine Lease would be for no less than 12 years and that River Trails would be entitled to a lease fee equal to 20% of the net win from the gaming devices. The “net win” from the gaming devices was defined as an amount equal to gross receipts less costs of prizes awarded. (Ex. 1, Article 4.10) Additional provisions for the Machine Lease Agreement were specified in the Development Agreement.

15. The fact that the parties agreed to enter into Machine Lease Agreements was critical to and was a material provision in and consideration for the Development Agreement. On numerous occasions during the negotiation of the Development Agreement Plaintiff advised Defendants that without a Machine Lease Agreement there would be no Development Agreement.

16. The parties began pursuing development in Ohio. As the Ohio negotiations progressed, the Tribe and DEA requested that, rather than develop the project in Ohio, River Trails consider developing a casino project in Kansas. The Tribe and DEA believed they would be able to develop a casino in Kansas more quickly than in Ohio for various reasons. Pursuant to the Tribe and DEA's request, River Trails entered into the Development Agreement Addendum dated June 1, 2011 which amended the Development Agreement to provide that DEA, the Tribe and River Trails had the flexibility of developing a casino in the greater Kansas City area. (Ex. 2)

17. Under the Addendum, River Trails agreed that it would not have the exclusive right to develop gaming operations for Defendants in Kansas, although River Trails retained its exclusive right to develop gaming operations for Defendants in Ohio.

18. Under the Addendum the parties agreed that if they opted to pursue development in Kansas, neither DEA nor the Tribe would be required to reimburse River Trails for the Ohio exclusivity payments; however, the parties agreed that River Trails would still be entitled to be reimbursed for the monthly advance payments of \$25,000.00 made to the Tribe and DEA, except for those expenses directly related to Ohio. (Ex. 2)

19. The Addendum provided that, except for the modifications in the Addendum, the Development Agreement remained in full force and effect. (Ex. 2)

20. Nothing in the Addendum Agreement affected the language in the original Development Agreement regarding the Machine Leases associated with any developed casino. Further, nothing in the Addendum Agreement relieved DEA or the Tribe from developing or pursuing a development of a casino in Kansas with River Trails.

21. After the Addendum, River Trails continued to pay \$25,000.00 a month development fee, which was then associated in large part with the Kansas development.

22. Pursuant to the Tribe and DEA's direction, after the Addendum, Plaintiff focused on developing the Kansas project, rather than the Ohio project. In fact, the Tribe and DEA closed its Ohio tribal office to focus the attention on moving the project to Kansas.

23. The Development Agreement Article 9.2(c) covenant of the Tribe and DEA reads as follows:

(c) *Non-Impairment.* Neither the Tribe, DEA nor any Authority Party<sup>1</sup> will enact any law, ordinance, rule or regulation impairing the obligations of any Authority Party under this Agreement or under any contracts entered into by a Authority Party or the Developer<sup>2</sup> in furtherance of the design, development, construction, equipping or financing of the Casino Facility, including but not limited to this Agreement, the Design-Build Agreement, or Other Project Agreements.

24. On November 20, 2012, DEA in a meeting action decided that it would not enter into a Machine Lease Agreement with River Trails for a casino in Kansas.

25. By an email from DEA's legal counsel dated November 25, 2012. DEA informed River Trails that DEA would not be entering into a Machine Lease Agreement with River Trails for a casino in Kansas.

26. Despite repeated requests by email and phone calls, neither DEA, the Tribe nor Defendants' legal counsel has ever supplied plaintiff with the minutes or resolution confirming

---

<sup>1</sup> Authority Party" is defined in the Development Agreement as any individual or individuals authorized by Tribal Law to sign agreements on behalf of the Tribe and DEA.

<sup>2</sup> Developer is defined in the Development Agreement as River Trails, LLC.

or denying DEA's legal counsel's representation that Defendants would not enter into a Machine Lease Agreement with Plaintiff for a casino in Kansas.

27. On November 29, 2012, River Trails' counsel sent a Notice of Default and demand for cure to DEA and the Tribe demanding compliance with the Addendum and the Development Agreement and in the alternative demanding the return of monies paid to Defendants within 30 days.

28. Under Article 10.2 of the Development Agreement a default is defined as a violation of any of the covenants of Section 9.2 of the Agreement and where the Tribe or DEA is not proceeding with reasonable diligence to cure the violation, but in any event after 60 days have passed following a written request by River Trails to cure the violation during which the violation has not been cured. (Ex. 1)

29. Article 10 further states that DEA will have 30 days following receipt of written notice of an intention to terminate the Agreement within which to effect a cure. (Ex. 1)

30. Over 60 days have passed since River Trails delivered written notice. Neither DEA nor the Tribe has made any effort to cure the stated intention of the Tribe and DEA not to enter into a Machine Lease nor have Defendants responded to Plaintiff's repeated requests for documentation of Defendants' actions regarding the Machine Lease. The Tribe and DEA's actions violate the Addendum and the Development Agreement.

31. On January 29, 2013 River Trails, through counsel, delivered to Defendants written notice to meet and confer as required by Article 13.1(d). (Ex. 1) Seven days have passed without resolution.

32. DEA and the Tribe's closing of its tribal offices in Ohio, after DEA and the Tribe requested and signed the Addendum to move the project to Kansas, rendered the Ohio development unfeasible.

33. In addition to breaching the Machine Lease provision of the Agreements, Defendants have also failed to cooperate in timely pursuing the casino project in Kansas.

34. Defendants requested the Addendum to allow for a casino site in Kansas, closed their tribal office and presence in Ohio to allegedly focus on moving the project to Kansas, but have since refused to consider appropriate sites in Kansas presented by Plaintiff thus delaying the project and/or "slow playing" the project.

35. DEA and the Tribe have acknowledged that River Trails had fully complied with the Development Agreement and Addendum, until River Trails suspended its performance due to DEA's and the Tribe's breach of the Agreement and Addendum.

36. To date, River Trails has invested \$2,686,971.91 to develop projects under the Agreements including direct payments to DEA and the Tribe.

37. The Tribe and DEA have indicated that approximately \$600,000.00 of the monies paid to the Tribe and DEA by River Trails is currently being held in the Tribe's bank account.

38. \$2,686,971.91 is refundable to River Trails for the Ohio development and the Kansas development.

39. Because of DEA's and the Tribe's breach of the Addendum and the Development Agreement, River Trails is due reimbursement of a total of \$2,686,971.91 under the terms of the Development Agreement and Addendum.

40. Defendant's actions were willful, deliberate and in bad faith for which punitive damages may be assessed.

**CLAIMS FOR RELIEF**

**Count I – Breach of Contract**

41. Plaintiff incorporates the allegations of the above paragraphs.

42. DEA and the Tribe breached the Development Agreement and the Addendum by passing a resolution in November 2012 to not enter into a Machine Lease Agreement with River Trails for a casino in Kansas.

43. Plaintiff is therefore due repayment under an open account, statement of account and account stated and repayment for its labor and services provided.

44. Plaintiff has had to hire legal counsel to pursue and protect its interests and has incurred expenses and will incur expenses of attorney fees and costs.

45. As a direct and proximate result of Defendants' breach of the Development Agreement and Addendum, Plaintiff has been damaged in the principal amount of \$2,686,971.91, along with pre-judgment and post-judgment interest, which continues to accrue, and reasonable attorney fees.

**Count II – Demand for Accounting**

46. Plaintiff incorporates the allegations of the above paragraphs.

47. The monies paid by River Trails pursuant to the Development Agreement and Addendum in the amount of \$2,686,971.91 were to be used for the parties' development of a casino in Ohio and subsequently in Kansas.

48. River Trails demands an accounting of the funds paid directly to the Tribe and DEA and expended to date by the Tribe and DEA that confirms that the monies paid by River Trails have only been used for the Kansas project and the Ohio project between these parties or are being held in a separate account for such use.



49. Plaintiff demands a statement of account.

50. Plaintiff has had to hire legal counsel to pursue this accounting and has incurred expenses and will incur expenses of attorney fees and costs.

51. Plaintiff demands payment of reasonable attorney fees.

### **Count III – Conversion**

52. Plaintiff incorporates the allegations of the above paragraphs.

53. DEA and the Tribe have refused to cure the default and have refused to return the funds paid by River Trails. DEA and the Tribe have also refused to proceed with the development of the Kansas casino project and refused to enter into Machine Leases associated with the Kansas casino project.

54. DEA and the Tribe closed its tribal offices in Ohio when DEA and the Tribe requested and signed the Addendum to move the project to Kansas. DEA and the Tribe's actions rendered the Ohio development unfeasible.

55. The funds advanced for both the Ohio and Kansas projects have therefore been kept by Defendants for other purposes.

56. Defendants have converted the funds in the total amount of \$2,686,971.91 for their own benefit.

57. As a direct and proximate result of the conversion, Plaintiff has been damaged in the principal amount of \$2,686,971.91, along with pre-judgment and post-judgment interest, which continues to accrue, and reasonable attorney fees.

### **Count IV – Bad Faith**

58. Plaintiff incorporates the allegations of the above paragraphs.

59. Defendants' actions have been willful, deliberate and in bad faith.

60. Defendants knew during the negotiations and execution of the Development Agreement and Addendum that the Agreements were only entered into because of the Machine Lease provision and that but for the Machine Lease provision, Plaintiff would have never entered into the Agreements.

rendered the Ohio development unfeasible.

61. In addition to breaching the Machine Lease provision of the Agreements, Defendants have also failed to cooperate in timely pursuing the casino project in Kansas.

62. DEA and the Tribe closed its tribal offices in Ohio when DEA and the Tribe requested and signed the Addendum to move the project to Kansas. DEA and the Tribe's actions

63. Defendants requested the Addendum to allow for a casino site in Kansas, closed their tribal office and presence in Ohio to allegedly focus on moving the project to Kansas, but have since refused to consider appropriate sites in Kansas presented by Plaintiff thus delaying the project and/or "slow playing" the project.

64. These actions by Defendants are willful, deliberate and in bad faith for which Plaintiff demands punitive damages in an amount in addition to and equal to the amount of actual damages of \$2,686,971.91.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, River Trails, LLC, an Ohio limited liability company, requests that the Court enter judgment against Defendants, Delaware Enterprise Authority, a division of the Delaware Tribe of Indians of Oklahoma and The Delaware Tribe of Indians of Oklahoma, as follows:

A. Actual damages against DEA and the Tribe in an amount to be proven at trial, but in any event, at least \$2,686,971.91, exclusive of costs, interest and attorney fees;

- B. Pre-judgment interest;
- C. Post-judgment interest;
- D. Punitive damages of at least \$2,686,971.91;
- E. An award of all costs incurred by Plaintiff in bringing and prosecuting this action;
- F. Reasonable attorney fees;
- G. An accounting for all monies paid by Plaintiff to Defendants; and
- H. All other relief to which Plaintiff is entitled at law or in equity.
- I. Plaintiff requests a jury trial.

Respectfully submitted,

FRANDEN | WOODARD | FARRIS  
QUILLIN + GOODNIGHT

/s/ Paula J. Quillin

Joseph R. Farris, OBA #2835  
Paula J. Quillin, OBA # 7368  
Williams Center Tower II, 9<sup>th</sup> Floor  
2 West 2<sup>nd</sup> Street, Suite 900  
Tulsa, Oklahoma 74103  
Tel: 918/583-7129  
Fax: 918/584-3814

ATTORNEYS FOR PLAINTIFF