

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	
MONEY CENTERS OF AMERICA, INC.,)	Bk. No. 14-10603 (CSS)
et al.,)	
Debtors.)	
)	
MARIA APRILE SAWCZUK, as Trustee)	Civil Action No. 17-319-RGA
of the Liquidating Trust of Money Centers)	
of America, Inc. and Check Holdings, LLC,)	On Appeal from the Bankruptcy Court
)	for the District of Delaware
Appellant,)	
)	
v.)	
)	
THUNDERBIRD ENTERTAINMENT)	
CENTER, INC. and QUAPAW CASINO)	
AUTHORITY OF THE QUAPAW TRIBE)	
OF OKLAHOMA)	
)	
Appellees.)	

**ANSWERING BRIEF OF APPELLEE THUNDERBIRD
ENTERTAINMENT CENTER, INC.**

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Date: July 28, 2017

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INTRODUCTION

Thunderbird Entertainment Center, Inc., a wholly owned entity of the Absentee Shawnee Tribe of Oklahoma, a federally recognized Indian Tribe and sovereign nation (“Thunderbird”), by and through the undersigned attorneys, hereby submits this answering brief on appeal in support of affirming the order of the Bankruptcy Court for the District of Delaware dated February 28, 2017 which dismissed the Liquidating Trustee’s complaint to avoid and recover certain transfers from Thunderbird because of Thunderbird’s sovereign immunity.

FACTUAL BACKGROUND AND NATURE AND STATE OF PROCEEDINGS

On March 21, 2016, a complaint (the “Complaint”) was filed against Thunderbird seeking to avoid and recover \$230,633.80 in allegedly preferential transfers or fraudulent conveyances paid by Debtors to Thunderbird in the 90 days prior to Debtors’ bankruptcy filing, Adv. 16-50410-CSS (the “Adversary Proceeding”) (Adv. D.I. 1)¹. Thunderbird filed a Motion to Dismiss the Adversary Proceeding on May 5, 2016 because it had not waived its immunity from suit and the Bankruptcy Court lacked subject matter jurisdiction over the Adversary Proceeding (Adv. D.I. 5). Following briefing on the Motion to Dismiss, the Bankruptcy Court agreed with Thunderbird and issued an Opinion and Order granting Thunderbird’s Motion to Dismiss (Adv. D.I. 10 and 11). The Bankruptcy Court’s decision in the Opinion addressed the Adversary Proceeding against Thunderbird, as well as another adversary proceeding involving the sovereign immunity of the Quapaw Casino Authority of the Quapaw Tribe of Oklahoma, the “Quapaw Adversary”, Adv. No. 14-50437 (CSS). The Liquidating Trustee appealed the dismissal of the Adversary Proceeding and the Bankruptcy Court’s partial dismissal order in the Quapaw Adversary, and both appeals have been consolidated before this Court.

¹ References to the docket numbers in the Adversary Proceeding will be denoted as “Adv. D.I. _____”.

The Complaint accurately sets forth the facts concerning the relationship between Debtors and Thunderbird. Debtors provided debit card and credit card processing for patrons of Thunderbird's casino. Patrons would present their credit or debit cards to Thunderbird, who would then run those cards through equipment provided by Debtors. If the transaction was approved, Thunderbird would advance the funds to the patrons and Debtors would obtain an amount equal to the advanced amount from the patrons' credit or debit card issuers and forward those funds to Thunderbird, less a fee. (Adv. D.I. 1 ¶ 10).

In pleadings before the Bankruptcy Court, the Trustee admitted that the Absentee Shawnee Tribe of Oklahoma is entitled to tribal sovereign immunity, *Chapter 11 Trustee's Memorandum of Law in Opposition to Motion to Dismiss*, p. 4 (Adv. D.I. 6). The Liquidating Trustee conceded in footnote two of the *Appellant's Opening Brief* that the Trustee is not contesting in this appeal the Bankruptcy Court's determination that it can look beyond the face of the pleadings to establish entitlement to sovereign immunity. (D.I. 15, p. 5, n.2) As a result, it is undisputed that Thunderbird is wholly owned by the Absentee Shawnee Tribe of Oklahoma and is a tribal corporation and tribal entity with sufficient relationship with the Absentee Shawnee Tribe to enjoy the tribe's sovereign immunity.

The sole legal issue before this Court, as it relates to Thunderbird, is determining that the Bankruptcy Court correctly held that Congress did not abrogate tribal sovereign immunity in the Bankruptcy Code.

ARGUMENT

The Bankruptcy Court issued a combined opinion granting Thunderbird's motion to dismiss, in whole and granting the Quapaw Casino Authority of the Quapaw Tribe of Oklahoma's ("Quapaw") motion to dismiss, in part. The Bankruptcy Court correctly held that the

Trustee's Complaint against Thunderbird is barred by tribal sovereign immunity. Thunderbird, with consent of Appellee, Quapaw, hereby joins in the *Response Brief of Appellee Quapaw Casino Authority of the Quapaw Tribe of Oklahoma* (the "Response Brief"), filed contemporaneously herewith, and incorporates the legal arguments and authorities contained in sections I-III of the Response Brief, as if set forth in full herein.

CONCLUSION

The Bankruptcy Court correctly held that §§106(a) and 101(27) of the Bankruptcy Code do not abrogate tribal sovereign immunity, and Thunderbird was properly dismissed from the Trustee's Adversary Proceeding.

Dated: July 28, 2017

Respectfully submitted,

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