ORIGINAL

No. 118,504

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

WAREHOUSE MARKET INC.,

Plaintiff/Appellee,

v.

STATE OF OKLAHOMA, *ex rel.* OKLAHOMA TAX COMMISSION,

Defendant/Appellant,

and

MUSCOGEE (CREEK) NATION, *ex rel.* OFFICE OF THE TAX COMMISSION, and PINNACLE MANAGEMENT & CONSULTING, LLC,

Defendants.

REPLY BRIEF OF APPELLANT

On Appeal from the District Court in
and for Okmulgee County
Case No. cv-18-96
Judge Kenneth Adair

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INTRODUCTION

Oklahoma's interpleader statute bars any "of the several claimants" in an interpleader action from "object[ing] to the joinder [for interpleader]" on the grounds "that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants."[1] Plaintiff asserts that this clause renders null interpleader's essential requirements of multiple adverse claimants to single, identifiable stake; creates an implicit exception to administrative requirements in tax challenges while flipping the burden which would normally be applied; and authorizes the court to avoid its judicial obligation to divvy up the stake at the conclusion of the interpleader action while at the same time grants power to decide matters outside its interpleader jurisdiction. Contrary to Plaintiff's overreading, this clause is not the radical overhaul of administrative and interpleader law that Plaintiff purports it to be, but is a commonplace recognition of a now-familiar "bill in the nature of interpleader."

ARGUMENT

The Oklahoma interpleader statute's recognition of a bill in the nature of interpleader governs defenses to joinder of claimants. It does not authorize Plaintiff to challenge the State's taxing authority here because the mere fact that "the plaintiff [may] aver[] that he is not liable in whole or in part to any or all of the claimants" (1) does not relieve Plaintiff of its burden to show the essential elements of interpleader, (2) does not implicitly create an exception to administrative exhaustion that flips the burden of proof, and (3) does not allow the court to rule on matters beyond its circumspect interpleader jurisdiction. For these reasons, the lower court's decision should be reversed and this case dismissed.

[1] 12 O.S.2011 § 2022(A).

I. Like federal law, Oklahoma law recognizes an action in the nature of interpleader, which governs defenses to joinder of claimants under interpleader.

"There are two varieties of interpleader: 'true interpleader' and 'actions in the nature of interpleader.'"[2] If the action is a true interpleader, the stakeholder asserts no interest in or claim to the stake and seeks relief by way of discharge from the case. On the other hand, "[a] bill in the nature of ... interpleader is one in which the complainant seeks some relief ... concerning the fund ... *in addition to* the interpleader of conflicting claimants."[3] That is, the stakeholder becomes another litigant along with the several claimants claiming all or part of the stake. "Aside from the distinction as to the interest of the plaintiff, actions in the nature of interpleader are identical to traditional interpleader suits and, ordinarily, are governed by the same general principles."[4]

"[T]he origins of interpleader have been traced back to [the] fourteenth century."[5] Our court system adopted the interpleader remedy from English and medieval courts and put it to use as far back as colonial times. Roughly speaking, until around the turn of the 19th century, American courts recognized only one sort of interpleader: what is now called a bill of true or strict interpleader. In his 1883 treatise *Equity Jurisprudence*, John Norton Pomeroy sums up to doctrine as follows:

> The equitable remedy of interpleader ... depends upon and requires the existence of the four following elements, which may be regarded as its essential conditions:
>
> 1. The same thing, debt, or duty must be claimed by both or all the parties against whom the relief is demanded.
>
> 2. All their adverse titles or claims must be dependent, or be derived from the same source.
>
> 3. The person asking the relief—the plaintiff—must not have nor claim any interest in the subject-matter.

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[2] 48 C.J.S. Interpleader § 3.

[3] *Chicago, R.I. & P. Ry. Co. v. Moore*, 123 S.W. 233, 237 (Ark. 1909) (emphasis added).

[4] 48 C.J.S. Interpleader § 3.

[5] Ilsen & Sardell, *Interpleader in the Federal Courts*, 35 ST. JOHN'S L. REV. 1 (1960).

> 4. He must have incurred no independent liability to either of the claimants; that is, he must stand perfectly indifferent between them, in the position merely of a stakeholder.[6]

Thus, under the law at the time, claimants could defeat a joinder for true or strict interpleader on grounds set forth in the third and fourth essential elements: that the plaintiff was not completely disinterested in the subject of the action or perfectly indifferent to the claims of the claimants.

But these strict requirements began to loosen in the years to follow. Applying equitable principles, courts realized that interpleader could remedy the vexations caused by multiple adverse claims against a single stake even when the plaintiff was not completely disinterested in the stake. Accordingly, courts started to allow such cases to proceed.[7] Of course, this scenario did not present a true interpleader case. To differentiate, these cases were deemed an action "in the nature of interpleader."[8] While relaxing some outdated requirements, the first element remains essential: that "[t]he same thing … must be claimed by both or all the parties against whom the relief is demanded."[9]

In 1936, Congress amended the federal interpleader statute to expressly acknowledge that "bills in the nature of interpleader are included."[10] Accordingly, under Rule 22 of the Federal Rules of Civil Procedure:

> Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. **Joinder for interpleader is proper even though … the plaintiff denies liability in whole or in part to any or all of the claimants.**

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[6] John Norton Pomeroy, *A Treatise on Equity Jurisprudence as Administered in the United States of America*, § 1322 (1883).

[7] *See, e.g., Moore*, 123 S.W. at 237.

[8] *Interpleader - Bill in Nature of Interpleader*, 23 HARV. L. REV. 405, 406 (1910) ("Where the plaintiff bases his right in equity on grounds other than those of strict interpleader, and where he is seeking further equitable relief than that of negative injunction, his bill is in the nature of interpleader.").

[9] *See supra.* n. 6.

[10] Zechariah Chafee, Jr., *The Federal Interpleader Act of 1936: I*, 45 YALE L.J. 963, 969 (1936).

The action in the nature of interpleader is ingrained in the second sentence of this rule. Today, acknowledgement of an action in the nature of interpleader is a common feature of state interpleader statutes across the country.[11] When Oklahoma codified its interpleader law in 1984, it allowed for actions in the nature of interpleader just like the federal rule.[12] Under Oklahoma law:

> Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. **It is not ground for objection to the joinder ... that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants.**[13]

This text confirms the historical understanding. The first sentence, mirroring federal law, sets forth the requirements for interpleader. And the second sentence, also mirroring federal law, codifies the recognition of an action in the nature of interpleader. The full statutory text makes clear that interpleader relief is a mechanism for joinder of claimants; a now-common action in the nature of interpleader is merely a vestigial provision facilitating a range of joinder for interpleader broader than the scope that existed decades and even centuries ago.

In the proceedings below, by omitting reference to joinder, Plaintiff argued that the language acknowledging an action in the nature of interpleader is a unique feature of Oklahoma law that allows this "unusual" case to proceed.[14] Ordinarily, "[b]ecause § 2022 [i.e., Oklahoma's

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[11] *See, e.g.*, Wash. R. Civ. P. 22 ("It is not ground for objection to the joinder that the claims of the several claimants ... that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants."); Haw. R. Civ. P. 22 ("It is not ground for objection to the joinder that the claims of the several claimants ... that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants."); R.I. Dist. Ct. R. 22 ("It is not ground for objection to the joinder that the claims of the several claimants ... that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants."); Alaska R. Civ. P. 22 ("It is not ground for objection to the joinder that the claims of the several claimants ... that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants.").

[12] Oklahoma Laws 1984, SB 417, c. 164, § 22, eff. November 1, 1984.

[13] 12 O.S.2011 § 2022(A) (emphasis added).

[14] ROA, Tab 19, Plaintiff's Reply, at 4.

interpleader statute] mirrors [Rule 22], [Oklahoma courts] look to interpretations of the Federal Rule for guidance."[15] But, according to Plaintiff, courts cannot do so here because the state interpleader statute allows a stakeholder to "aver[] that he is not liable in whole or in part to any or all of the claimants" and federal law "does not include [this] language."[16] And they restate this claim here, staking their case on it.[17] But such a strong assertion is puzzling as it is so demonstrably false. In this regard, Oklahoma and federal interpleader law are precisely the same:

Oklahoma Interpleader Law	**Federal Interpleader Law**
12 O.S. § 2022(A)	Fed. R. Civ. P. 22(a)(1)(B)
It is not ground for objection to the joinder [for interpleader] … that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants.	Joinder for interpleader is proper even though … the plaintiff denies liability in whole or in part to any or all of the claimants.

This clause provides no meaningful difference between Oklahoma law and federal law that allows this case to proceed, on its face it deals with nothing other than joinder of claimants, the clause is commonplace and has been so for decades, and nowhere has the clause tacitly blown up all the requirements of an interpleader action and the orderly process that the legislature created to resolve state agency disputes through administrative processes.

II. An action in the nature of interpleader does not (1) render null the essential elements of interpleader, (2) implicitly remove tax challengers' statutory obligation to pursue administrative remedies, or (3) extend the bounds of the court's interpleader jurisdiction.

By its plain text, read in full, the clause at issue arises only when there is an objection to joinder of claimants. Because there was only claimant in the proceedings below, joinder of claimants was not even a possibility. This case, as Plaintiff sees it now, is about one claim against one party. By omitting any statutory text that refers to joinder, Plaintiff asks for a stark reversal of

[15] *Stanford v. Fid. & Guar. Life Ins. Co.*, 1996 OK CIV APP 156, 936 P.2d 352, 355.

[16] ROA, Tab 19, Plaintiff's Reply, at 3.

[17] Pltf. Br. at 17-18.

decades of interpleader law. But nothing about the clause saves this case from dismissal.

First, the clause does not relieve Plaintiff of its burden to show the essential elements of interpleader—including multiple claimants—at phase one. An interpleader case proceeds "in two phases."[18] In the first phase, the court decides whether the matter should be handled as an interpleader.[19] There must be (1) multiple claimants, (2) a single stake, and (3) the risk of multiple liability. All three conditions must be present. If so, the case then proceeds to phase two, in which "the court determines the respective rights of the claimants to the fund or property at stake via normal litigation processes."[20] If not, the case is dismissed.

Whether the case is pled as a true interpleader or in the nature of interpleader—that is, whether plaintiff alleges complete disinterest or avers otherwise—does not affect stage one. In either case, "the sole ground for equitable relief is the danger of injury because of the risk of multiple suits when the liability is single."[21] Thus, courts must begin with the elements of interpleader no matter which type of interpleader it is. Indeed, the clause at issue kicks in at a specific point for a specific purpose: to prohibit the objection to joinder of claimants for interpleader. Needless to say, joinder of claimants requires two or more.[22]

The difference between the two types of interpleader comes when transitioning to stage two. In true interpleader, the plaintiff is discharged from the action and the claimants are left to litigate the case between themselves. In an action in the nature of interpleader, the plaintiff becomes another litigant and stays in the case along with the *multiple* adverse claimants to litigate

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[18] *Stanford*, 1996 OK CIV APP 156, n.1, 936 P.2d at 355, n. 1.

[19] *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530 (1967).

[20] *United States v. High Tech. Prod., Inc.*, 497 F.3d 637, 641 (6th Cir. 2007).

[21] *Texas v. Florida*, 306 U.S. 398, 406 (1939).

[22] "JOINDER, n. The uniting of parties or claims in a single lawsuit." Black's Law Dictionary (11th ed. 2019).

its share of the single stake. This means that, of course, Plaintiff may aver that it is not liable to any or all of the claimants. But that does not relieve Plaintiff of its burden to show that there are multiple claimants to the stake.

Under no circumstance may an interpleader case proceed with only one claimant. The statute clearly uses the plural form for "[p]ersons having claims" and "any or all of the claimants." Indeed, the statute would make no sense textually, logically, or historically if it did not. And the statute even expressly refers to "the several claimants" in the same sentence that Plaintiff claims relieves them of that requirement.[23] As repeatedly recognized, "[i]f there is only one claimant [to the stake], then by definition there are not overlapping and adverse claims to it."[24] By the same token, if there is only one claimant, then by definition there will be no joinder of claimants because joinder requires more than one. Thus, there is no need for the court to invoke the prohibition against defending against joinder on the ground that Plaintiff denies liability to any or all claimants because no claimant is raising that defense.

Furthermore, "[a] statute must be read to make every part operative and to avoid making parts of it superfluous or useless."[25] Accepting Plaintiff's interpretation would render not just a part of interpleader law superfluous, but all of it. The entire point of interpleader law is to address the specific situation wherein the stakeholder faces multiple liability from the competing claims of two or more claimants when there is but one possible obligation.[26] "Accordingly, interpleader actions are proper only when a stakeholder faces two or more adverse claims to the same

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[23] 21 O.S.2011 § 2022(A).

[24] *Airborne Freight Corp. v. United States*, 195 F.3d 238, 242 (5th Cir. 1999).

[25] *Raymond v. Taylor*, 2017 OK 80, ¶ 16, 412 P.3d 1141, 1146.

[26] *Stanford*, 1996 OK CIV APP 156, 936 P.2d at 355 ("The express purpose of interpleader is to avoid multiple litigation.").

property."[27] That is why, despite centuries of interpleader precedent to draw upon, Plaintiff has not identified a single instance in which interpleader was allowed to proceed with only one claimant. For this reason alone the case should be dismissed.[28]

Second, the clause does not implicitly create an exception to administrative remedies in the Uniform Tax Procedures Act that flips the burden of persuasion. Plaintiff's argument on this issue is internally inconsistent, counter to statutory text, and yields absurd results. Plaintiff states that "[t]his action is not a tax challenge" because its "claim [which is a challenge to the State's power to tax] is based on the interpleader statute."[29] By cherry-picking the text of one-half of one clause in one sentence of interpleader law, Plaintiff asserts that the text "clear[ly] and unmistakabl[y]" bestows upon the stakeholder a substantive cause of action for declaratory judgment that allows an end-run around otherwise exclusive administrative proceedings.[30] But that is incorrect. Reading the full text, the clause at issue is a limitation on claimants seeking to oppose joinder for interpleader. It removes the ancient defense of strict interpleader that allowed one of the claimants to defeat joinder for interpleader on the grounds that the stakeholder has denied liability. It does nothing more than that.

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[27] *Vincent Metro, LLC v. Yah Realty, LLC*, 1 A.3d 1026, 1030 (Conn. 2010).

[28] Additionally, the possibility of dual obligations provides an independent ground for dismissal. Interpleader "requirement[s] [are] not met when … the 'stakeholder' may be liable to both claimants." 7 Wright, Miller & Kane, *Federal Practice and Procedure* § 1705 (2001). The U.S. Supreme Court has clearly held that a party may be liable to remit taxes to both a state and a tribe on the same transaction. In *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989), the U.S. Supreme Court was not blessing the double collection of a single tax, but the single collection of separate taxes—no different than the situation here. "Interpleader is designed to prevent multiple recoveries only where there are not multiple obligations; it is not intended to telescope multiple obligations into one." *Bradley v. Kochenash*, 44 F.3d 166, 169 (2d Cir. 1995). And the Tribe here made clear that state and tribal taxes are separate obligations. If Plaintiff is called upon to pay twice, it is not twice on the same tax, but only once on each tax.

[29] Pltf. Br. at 21.

[30] Pltf. Br. at 18.

The problem with Plaintiff's claim is not that it is "unusual," but that it is directly counter to interpleader law. Interpleader does not create an independent cause of action. Rather, "[t]he right to interplead only creates a procedure for determining the rights of various claimants in a single forum."[31] But otherwise it "effects no important change in the substantive rights of parties to an interpleader suit."[32] This Court has held that the procedures for obtaining judicial review of tax liability under the Uniform Tax Procedure Act "shall control and shall be exclusive."[33] Thus, Plaintiff is wrong that the interpleader statute creates an alternative avenue to bring a tax challenge outside administrative procedures. In essence, Plaintiff asks this Court to accept what the U.S. Supreme Court has rejected: that interpleader is "an all-purpose bill of peace."[34]

What is more, Plaintiff's interpretation, if accepted, would implicitly render a big chunk of administrative procedures outside the tax context obsolete as well. Under Plaintiff's view, challenges to all state and local taxes, fees, assessments, liens, and the like, which the legislature has put under administrative processes to capitalize on subject-matter expertise could be avoided when a litigant feels it is to their advantage merely by filing an interpleader. That understanding can only be reached by assuming the implausible: that the legislature hid the "elephant" of nullifying Oklahoma's administrative procedure law in the "mousehole" of Oklahoma's recognition of a bill in the nature of interpleader. It is unreasonable to assume the legislature "alter[ed] … fundamental details of a regulatory scheme [like tax procedure] in vague terms or ancillary provisions."[35]

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[31] *In re TMIC Indus. Cleaning Co.*, 19 B.R. 397, 400 (Bankr. W.D. Mo. 1982).

[32] *Mass. Mut. Life Ins. Co. v. Morris*, 61 F.2d 104, 105 (9th Cir. 1932).

[33] 68 O.S.2011 § 201.

[34] *Tashire*, 386 U.S. at 535-37.

[35] *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

And Plaintiff does not stop there. It not only advances a view that interpleader creates a substitute for administrative exhaustion, but that seeking interpleader relief automatically reverses the burden of persuasion as well. Ordinarily, parties challenging administrative collections generally bear the burden.[36] But under Plaintiff's view, merely by filing an interpleader, the burden flips. In fact, they say that due to filing an interpleader here the State now "has the burden in this case."[37] We must ask then: Why would anyone ever bring any cause of action other than an interpleader if there are no requirements to do so and it has all these advantages?[38]

The answer is that Plaintiff's interpretation is wrong. Oklahoma interpleader law does not contain an implicit exception to well-established administrative procedural requirements in tax challenges. Plaintiff brings up various distinctions between this situation and this Court's prior precedent on tax challenges.[39] But none of these distinctions establish that Plaintiff's claim is immune from administrative procedures. That is because it is not. The Uniform Tax Procedure Act is clear on this:

> The purpose of this article, [that is] the "Uniform Tax Procedure Code," is to provide ... uniform procedures and remedies with respect to ***all state taxes***. Unless otherwise expressly provided in ***any state tax law***, ... the provisions of this article ***shall control and shall be exclusive***.[40]

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[36] *Tucker v. Cochran Firm-Criminal Def. Birmingham L.L.C.*, 2014 OK 112, ¶ 21, 341 P.3d 673, 682 ("A burden to present facts, claims and legal arguments falls on the party who asserts an entitlement to the judicial relief sought."); *see also Three Levels Corp. v. Conservation Comm'n of Town of Redding*, 89 A.3d 3, 11 (Conn. App. 2014) ("In challenging an administrative agency action, the plaintiff has the burden of proof."); *Buckner v. Univ. Park Police Pension Fund*, 983 N.E.2d 125, 129 (Ill. App. 2013) ("The plaintiff bears the burden of proof in an administrative review action.").

[37] Pltf. Br. at 22.

[38] And, following Plaintiff's logic, the burden-flipping extends well beyond administrative procedures: any party seeking a declaratory judgment that they are "not liable" to another party in which the challenging party would bear the burden could merely file an interpleader and reverse the burden.

[39] Pltf. Br. at 21-22.

[40] 68 O.S.2011 § 201.

Plaintiff asks this Court to violate that clear text. Aside from the situation in *Smith*,[41] which is not relevant here, Oklahoma law "envisions that an aggrieved taxpayer initially seek relief from the [Tax] Commission, and the Commission be given an opportunity to rule on the contested matter, before the taxpayer may resort to judicial remedies"[42] and in most instances administrative exhaustion is required.

This case is no exception. It is beyond credible to argue that this is not a tax challenge. The State identified two possible grounds to challenge state taxation—tax protest or refund claim—but there are more.[43] And the State was candid that it "cannot know what sort of tax challenge this is."[44] Even under notice pleading we should not be left to guess. In any event, Plaintiff now provides a "full understanding of the issue" that what is at stake is "closure" or "revocation of the vendor's sales tax permit."[45] This, of course, is the standard penalty for refusing to remit taxes, which is faced by every business in Oklahoma. And the process, including a challenge thereto, is governed by statute. When "[a] taxpayer intends to do any … act tending to prejudice or render wholly or partially ineffectual … [the] collect[ion] [of] any state tax," the Tax Commission is obligated to "immediately assess the tax …, notify the taxpayer, and demand immediate payment."[46]

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[41] *Okla. Tax Comm'n v. Smith*, 1980 OK 74, ¶ 14, 610 P.2d 794, 802 (Plaintiff was allowed to forego jurisdictional requirements only because "no tax was due," thus Plaintiff could not pay the tax under protest and, in that case, the statute did not provide an adequate remedy).

[42] *Stallings v. Okla. Tax Comm'n*, 1994 OK 99, ¶ 10, 880 P.2d 912, 916.

[43] *See, e.g.*, 62 O.S.2011 § 206.

[44] State's Br. at 16.

[45] Pltf. Br. at 2-3.

[46] 68 O.S.2011 § 224(4).

An appeal of the Commission's attempt to "collect the [tax]" may be sought by process "***as provided in this article***"—that article being the Uniform Tax Procedures Act.[47] So, even if we entertain Plaintiff's false interpretation, the *general* allowance to deny liability in interpleader law cannot trump the *specific* process the legislature set forth to govern this situation.[48] "[T]he Legislature has made certain remedies to be *required* for a party seeking relief from unauthorized, excessive, or incorrect taxation, and [Oklahoma law] … require[s] compliance with such statutes."[49] To do it right, regardless of the nature of the tax challenge, Plaintiff must start with administrative remedies.

Third, the clause does not allow the court to decide matters beyond its circumspect interpleader jurisdiction. Plaintiff asserts an interpretation of interpleader law that requires that a stake—the subject of the action—be deposited with the court, but the court can issue an order without addressing that deposit. In other words, the deposit is pointless. Specifically, Plaintiff says that the stakeholder can claim no interest in the stake and proceed with only one claimant on the grounds that the claimant is not entitled to the stake. So, under Plaintiff's view, the law allows a result in which the deposit will sit there in perpetuity, which, if the lower court is affirmed, is exactly what will happen. What sense does that make?

The law, in fact, is not so bizarre. To the contrary, it is the district court's job to "determine[] the respective rights of the claimants to the fund or property at stake,"[50] but the district court's jurisdiction does not extend any further than that.[51] The law is clear that "any order

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[47] *Id.* at § 224(4)(b) (emphasis added).

[48] *See, e.g., Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976) (citations omitted) ("[A] specific statute will not be controlled or nullified by a general one.").

[49] *Tulsa Indus. Auth. v. City of Tulsa*, 2011 OK 57, ¶ 24, 270 P.3d 113, 125 (emphasis in original).

[50] *High Tech. Prod.*, 497 F.3d at 641.

[51] *See, e.g., Orseck, P.A. v. Servicios Legales De Mesoamerica S. De R.L.*, 699 F. Supp. 2d 1344, 1351 (S.D.

that does issue, must not be overbroad" but must be tailored to "serve its proper purpose."[52] Indeed, interpleader "cannot be seized upon as an opportunity for achieving results that exceed the resolution of disputes concerning entitlement to the fund" and "interpleader ... must be limited to actions involving the interpleaded stake."[53] In sum, at stage two the relief cannot be mere declaratory judgment; rather, it must resolve the claims to the stake, but do no more. Thus, the lower court's ruling on matters outside its circumspect interpleader jurisdiction and refusal to decide what to do with the stake constituted reversible error.

Moreover, Oklahoma's statute unambiguously states that "[w]here the party seeking relief by way of interpleader claims no interest in the subject of the action and the subject of the action has been deposited with the court ... the court should discharge him from the action."[54] Consistent with interpleader's scope, when a plaintiff "disclaims any interest in the funds deposited in court, he has no further legal standing in the interpleader suit."[55] Under long-standing principles, a party "plead[s] himself out of court" when his pleading effectively disclaims any interest in the stake.[56] Here, Plaintiff exclaims in bold-italics that it "***never claimed entitlement to the interpleaded funds.***"[57] Plaintiff further states that that is "true today," points out that the State "admit[ted] that Plaintiff has no interest in the subject of the action," and asserts that if the State

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Fla. 2010) (citation omitted).

[52] *Vega v. T–Mobile USA, Inc.*, 564 F.3d 1256, 1264 (11th Cir. 2009).

[53] 48 C.J.S. Interpleader § 17; *see also In re Millennium Multiple Employer Welfare Ben. Plan*, 772 F.3d 634, 643 (10th Cir. 2014) (holding that interpleader may not be used by the stakeholder as a weapon to defeat recovery from funds other than the one before the court).

[54] 12 O.S.2011 § 2022(C).

[55] *Savage v. First Nat. Bank & Tr. Co. of Tulsa*, 413 F. Supp. 447, 452 (N.D. Okla. 1976).

[56] *Dupeck v. Union Ins. Co.*, 216 F.Supp. 487, 492 (E.D.Mo.1962).

[57] Pltf. Br. at 21.

wants to back out of that position, it is "judicially estopped" from doing so.[58] But the State has no intention to change its answer as paragraph 11 of Plaintiff's initial pleading provides an independent ground to dismiss the case. By its forceful and unambiguous disclaimer, Plaintiff has effectively "pleaded [it]self out of court" and "has no further legal standing in the interpleader suit."[59]

* * *

Because Plaintiff's claim fails to meet the threshold requirements of proper interpleader, this Court need not reach Plaintiff's next erroneous proposition: conducting the particularized inquiry set forth in *White Mountain Apache v. Bracker*[60] balancing the respective interests of the State, the Tribe (a necessary non-party), and the United States (a non-party) regarding the taxation of non-tribal customers at Plaintiff's non-tribal grocery store in the first instance on appeal without anything in the record from the State, the Tribe, or the United States addressing those interests to inform such a fact-intensive inquiry.

CONCLUSION

For efficiency's sake, the State will not chase every red herring, strawman, and non-sequitur in Plaintiff's brief. This is a simple matter of procedure. For all the ink spilled in the proceedings below, the case can be resolved under an inescapable syllogism: (1) interpleader is proper only when there are two or more claimants, (2) here, there is only one claimant, and (3) therefore interpleader is improper. For this reason, the lower court's decision should be reversed and remanded with instructions to dismiss the case.

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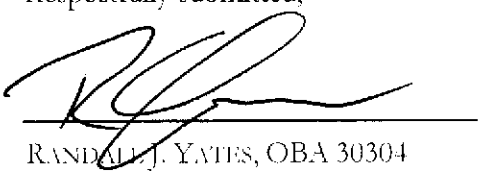
[58] *Id.*

[59] *See supra.* n. 54-55.

[60] 448 U.S. 136, 145 (1980).

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on this 9th day of June 2020, a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT was mailed, postage prepaid to the following:

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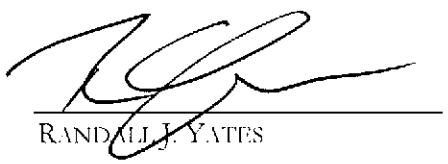

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