

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

EVANS ENERGY PARTNERS, LLC,  
a Delaware limited liability company,

Plaintiff/Petitioner,

v.

Case No.:

SEMINOLE TRIBE OF FLORIDA, INC.  
a federal corporation,

Defendant/Respondent.

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**COMPLAINT FOR DECLARATORY JUDGMENT AND PETITION TO COMPEL  
ARBITRATION PURSUANT TO SECTION 4 OF THE FEDERAL ARBITRATION ACT**

NOW COMES Plaintiff/Petitioner, EVANS ENERGY PARTNERS, LLC (“Petitioner” or “EEP”), by and through undersigned counsel, and hereby brings this Complaint for Declaratory Judgment (the “Complaint”) against Defendant/Respondent, the SEMINOLE TRIBE OF FLORIDA, INC. (“Respondent” or “STOFI”), and Petition pursuant to Section 4 of the Federal Arbitration Act, 9 U.S.C § 4 (the “Petition”) to compel STOFI to arbitration in accordance with the arbitration provision in the Management and Operations Agreement (the “Agreement”), and alleges as follows:

**NATURE OF THE CASE**

1. This is an action for declaratory judgment pursuant to the Federal Declaratory Judgment Act, 28 U.S.C §§ 2201–2202, and Rule 57 of the Federal Rules of Civil Procedure.

2. This is also a Petition to compel arbitration pursuant to Section 4 of the Federal Arbitration Act, 9 U.S.C § 4.

### **PARTIES**

3. EEP is a Delaware limited liability company that is authorized to do business in Florida. EEP formerly owned and operated a wholesale fuel distribution business under the trade name “Askar Energy”<sup>1</sup> (hereinafter “AE”) at 3170 Horseshoe Dr. S., Naples, Florida 34104.

4. EEP is not a member of the Seminole Tribe.

5. EEP presently conducts business from its location at 848 1<sup>st</sup> Ave. N., Naples, Florida 34102.

6. STOFI is a federal corporation, as defined by Section 17 of the Indian Reorganization Act of June 18, 1934, as amended. As explained below, STOFI at all times material to this action operated the business formerly known as AE under the trade name “Seminole Petroleum” at 3170 Horseshoe Dr. S., Naples, Florida 34104.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367, 9 U.S.C. § 4, U.S. Const. art. I, § 8, cl. 3, and federal common law.

8. This action involves the issue whether a tribal court has exceeded the lawful limits of its jurisdiction and therefore jurisdiction in this Court is proper under 28 U.S.C. § 1331.

9. Moreover, an actual controversy exists between EEP and STOFI within the meaning of 28 U.S.C. § 2202, which is of sufficient immediacy and reality to warrant declaratory relief.

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<sup>1</sup> EEP initially operated the business under the trade name “Evans Oil Co.” In June 2014, this was changed to “Askar Energy” during the time that EEP managed the business pursuant to a Management and Operations Agreement, attached hereto as **Exhibit A**.

10. Additionally, this Petition seeks to compel STOFI to arbitration pursuant to Section 4 of the Federal Arbitration Act which provides:

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.

9 U.S.C. § 4

11. STOFI resides in the U.S. District Court for the Middle District of Florida as it has maintained continuous and systematic contact with the Middle District by maintaining offices in the Middle District of Florida located at 3170 Horseshoe Dr. S., Naples, Florida 34104 and operating the AE business in the Middle District of Florida from its office located at 3170 Horseshoe Dr. S., Naples, Florida 34104.

12. The U.S. District Court for the Middle District of Florida has personal jurisdiction over STOFI because STOFI has offices in the Middle District of Florida located at 3170 Horseshoe Dr. S., Naples, Florida 34104, STOFI does extensive business in the Middle District of Florida by operating the AE business in the Middle District of Florida from its office located at 3170 Horseshoe Dr. S., Naples, Florida 34104, and the acts complained of and giving rise to the claims alleged herein occurred in the Middle District of Florida.

13. Venue is proper in the Middle District of Florida pursuant to under 28 U.S.C. § 1391(b) as a substantial part of the events giving rise to this Complaint and Petition are alleged to have occurred in the Middle District of Florida and STOFI resides in the Middle District of Florida as it has offices located at 3170 Horseshoe Dr. S., Naples, Florida 34104 and presently conducts

continuous and systemic business, AE now known as Seminole Petroleum, in Collier County, Florida.

### **GENERAL ALLEGATIONS**

14. In or about 2013, EEP was engaged in the wholesale and commercial distribution of petroleum products which included fuels, lubricants and related specialty products in Florida, under the trade name AE.

15. In 2013, STOFI representatives decided to make a foray into the petroleum distribution business and they approached EEP with the idea that a partnership between the two companies would allow EEP's business to prosper.

16. While EEP had the knowledge and wherewithal to properly operate such a business, STOFI represented that its involvement in a joint venture would provide significant capital and tax advantages that would not be otherwise available to EEP's operation.

17. The parties originally agreed that EEP's wholesale fuel distribution operation had a value of \$20,000,000.00 and that STOFI would purchase a fifty percent (50%) interest in the business for \$10,000,000.00 and EEP would continue to manage the day-to-day operations.

18. EEP had every intention of participating in the joint venture as an equal partner with STOFI, however, as STOFI's purchase transaction was concluding, STOFI represented that in order for the joint venture to enjoy the tax advantages and other benefits that it promised, STOFI would need to own one hundred percent (100%) of the AE operation.

19. STOFI's representatives stated that its ownership of one hundred percent of the AE business would have the following benefits:

- a. Sovereign immunity status that would shield the company from liabilities;
- b. Minority status that would allow the business to sell fuel to large entities that purchased fuel from minority owned enterprises;

- c. STOFI would not be required to pay certain fuel taxes that would provide it with an economic advantage over other wholesale fuel distributors;
- d. STOFI would be able to invest working capital into the company in order to provide new tools, additional employees and other resources that would allow the business to grow.

20. In order to effectuate STOFI's complete ownership interest in the joint venture, STOFI agreed to purchase EEP's assets used in the operation of AE at the discounted price of \$10,000,000.00.

21. As the parties intended to operate this business as equal partners, the parties entered into a Management and Operations Agreement ("Agreement") which provided that EEP would operate AE and manage the day-to-day activities in exchange for fifty percent (50%) of the profits generated by the business and EEP would be entitled to payment equal to fifty percent (50%) of the Fair Market Value of the AE business in the event that the Management and Operations Agreement was terminated (the "Termination Fee"). A copy of the Agreement is attached hereto as **Exhibit A**.

22. The purpose of this Termination Fee clause was to protect EEP's fifty percent (50%) interest in AE's operations even though the business would be owned solely by STOFI.

23. Additionally, to further protect EEP, STOFI waived sovereign immunity so that EEP would be able to collect the Termination Fee, i.e. ensuring that EEP would receive full value for its original interest in the wholesale fuel distribution business.

24. Nevertheless, as the parties appeared at a meeting to close STOFI's purchase transaction, STOFI backtracked and insisted that it would only pay \$8,625,000.00 for the assets. However, STOFI was willing to give EEP a loan in the amount of \$1,400,000.00, which it intended to collect through either repayment from profits or from a future sale of the companies. This

structure would allow STOFI's representatives to proclaim to tribal leaders and members that they negotiated a great deal while still allowing EEP and its principal to receive the full amount of the sale proceeds previously agreed to by the parties.

25. STOFI obtained a loan from Fifth Third Bank in the amount of \$5,625,000 and funded the remainder of the purchase transaction in cash. In order to obtain this loan, STOFI posted all of the assets of the fuel distribution business as security for the loan. Given that STOFI securitized all of the business' assets, STOFI agreed that EEP would not be responsible for any of the business' debts and EEP's interest in fifty percent (50%) of the fair market value of the business upon termination of the Management Agreement was not to be compromised or otherwise reduced by this debt since the debt belonged solely to STOFI.

26. Throughout the period in which EEP operated AE pursuant to the Agreement, AE was operated from AE's office located at 3170 Horseshoe Dr. S., Naples, Florida 34104

27. Throughout the period in which EEP operated AE pursuant to the Agreement, STOFI failed to properly capitalize AE's operations and the supposed tax advantages STOFI repeatedly promised never came to fruition.

28. Moreover, STOFI failed to pay approximately \$2,200,000.00 in fuel sales taxes to the Florida Department of Revenue because it (a) incorrectly believed that it was not required to pay the taxes and (b) never had the funds to make the payments.

29. STOFI's failure to properly capitalize AE's operations prevented the business from expanding and improving margins through increased economies of scale.

30. On April 4, 2016, STOFI's general counsel, Allan Lerner, baselessly terminated the Agreement and did so without realizing that the termination triggered STOFI's obligation to pay to EEP the Termination Fee as required by Section 2.4 of the Agreement.

31. Section 2.5 of the Agreement provides that STOFI was to pay Thirty Percent (30%) of the Termination Fee in cash to EEP, when EEP at all material times resided in Collier County, Florida.

32. Section 2.5 of the Agreement further provides that STOFI was to pay the balance of the Termination Fee in twenty-four (24) equal monthly installments to EEP, when EEP at all material times resided in Collier County, Florida.

33. To date, STOFI has improperly breached the Agreement and refused to pay the required Termination Fee to EEP.

34. Specifically, regarding payment of the Termination Fee, Section 2.4 of the Agreement provides:

In the event of the termination of this Agreement, Evans Energy shall be entitled to a termination payment equal to Fifty Percent (50%) of the Fair Market Value of the Business as calculated on an Income Approach Basis (the "Termination Fee"). Each party shall nominate an appraiser both of whom shall determine the Fair Market value of the Business on an Income Approach Basis. In the event that the two appraisers are unable to agree on the value of the Business, both appraisers shall agree on and appoint a third appraiser to value the Business on an Income Approach Basis. The average value of the Business as determined by the three appraisers shall be conclusively binding on all of the parties concerned.

35. The Termination Fee was payable to EEP, regardless of whether the Agreement was terminated for cause, as contemplated by Section 2.5 of the Agreement, which provides:

The Company shall pay the Termination Fee to Evans Energy as follows:

2.5.1 Thirty Percent (30%) of the Termination Fee shall be paid in cash within sixty (60) days after the Termination of the Agreement.

2.5.2 The balance of the Termination Fee shall be paid in Twenty Four (24) equal monthly installments of principal and interest beginning ninety (90) days after the termination of this Agreement.

The indebtedness shall be evidenced by a Promissory Note. The Promissory Note shall bear interest at the annual rate of six percent (6%) per year. The Promissory Note shall include a waiver of sovereign immunity by the Company.

36. Regarding enforcement of Section 2.4 of the Agreement, Section 7.13 of the Agreement provides:

Enforcement. Any dispute, controversy, claim, question or difference arising out of this Agreement shall be finally settled by a binding proceeding administered by the Tribal Council of the Seminole Tribe of Florida or as specifically delegated under the provisions of the Amended Constitution and By Laws of the Seminole Tribe of Florida. Notwithstanding what is set forth above, the Company through its parent company the Seminole Tribe of Florida, Inc., agrees to a limited waiver of its Sovereign Immunity in order to allow Evans Energy to initiate a binding arbitration proceeding administered under the rules of the American Arbitration Association for sole and exclusive purpose of terminating the Management Agreement and compelling the payment of the Termination Fee as set forth in Section 2 above and said waiver shall include a waiver of immunity for collection of any sum awarded through the binding arbitration proceeding. The parties specifically agree that in no event shall the Seminole Tribe of Florida, Inc. or any of its other affiliated entities be named a party in any arbitration or court proceeding. Evans Energy's rights under this Section 7.13 shall be restricted to compelling Seminole Energy to participate in an arbitration proceeding for the express purpose set forth herein.

37. On June 27, 2016, STOFI filed a Petition for Declaratory Relief and Damages against EEP in the Seminole Tribal Court of the Seminole Tribe of Florida. A true and accurate copy of the Petition for Declaratory Relief and Damages is attached hereto as **Exhibit B**.

38. Therein, in addition to seeking damages, STOFI sought a declaration that EEP was not entitled to payment of the Termination Fee and that STOFI was not obligated to pay the Termination Fee to EEP.



39. On May 2, 2019, the Seminole Trial Court of the Seminole Tribe of Florida, by way of default, entered a Final Judgment against EEP (“Tribal Judgment”). A true and accurate copy of the Tribal Judgment is attached hereto as **Exhibit C**.

40. Therein, the Tribal Court entered damages against EEP in the amount of \$2,533,522.46 and declared that EEP was not entitled to payment of the Termination Fee under the Management Agreement.

41. The Seminole Trial Court of the Seminole Tribe of Florida did not have jurisdiction over EEP or the controversy surrounding the Management Agreement.

42. This Complaint seeks a declaration that EEP and the controversy surrounding the Management Agreement were not subject to tribal court jurisdiction and that the Tribal Judgment is void for lack of jurisdiction.

43. On January 18, 2019, EEP delivered a demand for arbitration (“Demand for Arbitration”), pursuant to Section 7.13 of the Agreement, to the American Arbitration Association, naming EEP as claimant and STOFI as respondent. A true and accurate copy of the Demand for Arbitration and accompanying Complaint, without exhibits, is attached hereto as **Exhibit D**.

44. In the Demand for Arbitration, EEP brought a single count against STOFI for breach of contract for STOFI’s failure to pay the Termination Fee when due.

45. On September 29, 2020, the Arbitration Panel filed an Opinion and Order (“Opinion and Order”) finding that EEP “cannot show that there is clear and unmistakable evidence that the parties intended to empower the Panel with the authority to decide the gateway question of who decides the arbitrability of their dispute.” (Opinion and Order, p. 1). A true and accurate copy of the Opinion and Order is attached hereto as **Exhibit E**.

46. As such, the Arbitration Panel held that “until that preliminary issue is resolved by a court of competent jurisdiction, the Panel lacks the jurisdiction to decide subject matter jurisdiction in order to proceed. [...] Furthermore, the Panel’s decision only relates to its own jurisdiction and does not foreclose Evans Energy from seeking a determination of the arbitrability of its dispute in a different forum<sup>2</sup>.” (Opinion and Order, pp. 1 & 2).

47. Accordingly, this Petition seeks to compel arbitration of STOFI’s failure to pay the Termination Fee.

48. All conditions precedent to this action have been performed, satisfied, excused or waived.

**COUNT I**  
**(Declaratory Judgment)**

49. EEP repeats and realleges each of the allegations in paragraphs 1 through 48 as if fully set forth herein.

50. EEP is not a member of the Seminole Tribe and the actions alleged to have formed the basis of the Tribal Judgment did not occur on reservation land.

51. As a result of the facts described in the foregoing paragraphs, an actual, substantial controversy of sufficient immediacy exists between the Parties, with adverse legal interests, as to whether the Tribal Court had jurisdiction to adjudicate STOFI’s Petition for Declaratory Relief and Damages against EEP and whether the Tribal Judgment is void for lack of jurisdiction.

WHEREFORE, EEP respectfully requests this Honorable Court enter a declaration that EEP was not subject to tribal court jurisdiction, that the Tribal Court did not have jurisdiction to adjudicate STOFI’s Petition for Declaratory Relief and Damages against EEP, that the Tribal

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<sup>2</sup> Indeed, at the September 9, 2020 hearing before the Arbitration Panel, Counsel for STOFI recognized this Court’s jurisdiction to determine the instant issues under the Federal Arbitration Act.

Judgment is void for lack of jurisdiction, and any other and further relief to which EEP may be entitled.

**COUNT II**  
**(Order Compelling Arbitration Pursuant to 9 U.S.C. § 4)**

52. EEP repeats and realleges each of the allegations in paragraphs 1 through 48 as if fully set forth herein.

53. On May 31, 2013, EEP and STOFI entered into the Agreement.

54. The Agreement is a valid and enforceable contract.

55. The Agreement evidences a transaction involving commerce.

56. On April 4, 2016, STOFI terminated the Agreement.

57. Pursuant to Section 2.4 of the Agreement, STOFI was required to pay a Termination Fee to EEP equal to fifty percent (50%) of the Fair Market Value of the Business.

58. To date, STOFI has failed to make any payment of the Termination Fee to EEP.

59. STOFI's failure to pay the Termination Fee to EEP is a material breach of the Agreement.

60. STOFI's failure to pay the Termination Fee to EEP is a direct and proximate cause of EEP's damages.

61. EEP has been damaged in an amount greater than \$8,000,000.00.

62. STOFI's failure to pay the Termination Fee to EEP is within the scope of the arbitration provision of the Agreement and is to be conducted pursuant to the Federal Arbitration Act and the Rules of the American Arbitration Association.

63. STOFI disputes that it is required to arbitrate its failure to pay the Termination Fee under the Agreement.

64. STOFI has failed or otherwise refused to arbitrate its failure to pay the Termination Fee under the Agreement.

65. Pursuant to Section 4 of the Federal Arbitration Act, 9 U.S.C. § 4, this Court has authority to compel STOFI to arbitrate the foregoing issue.

WHEREFORE EEP demands that the Court enter an Order, pursuant to Section 4 of the Federal Arbitration Act, compelling arbitration of STOFI's failure to pay the Termination Fee to EEP pursuant to the Agreement in accordance with the Rules of the American Arbitration Association and before a panel of three (3) arbitrators. EEP requests that the arbitration be conducted in Naples, Florida as that is where each party conducts business and is the location of the issues in this matter. Furthermore, EEP requests that the Court grant any other relief in its favor that it deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, Evans Energy Partners, LLC hereby demands a jury trial on all issues so triable.

Dated: December 15, 2020

Respectfully Submitted,

/s/ Donald G. Peterson, Esq.

Donald G. Peterson, Esq.

Florida Bar No. 711616

YARNELL & PETERSON, P.A.

Attorneys for Plaintiff

3431 Pine Ridge Road, Suite 101

Naples, Florida 34109

Ph. 239/566-2013; Fax 239/566-9561

[service@napleslaw.us](mailto:service@napleslaw.us)

[donpeterson@napleslaw.us](mailto:donpeterson@napleslaw.us)

[stacycollins@napleslaw.us](mailto:stacycollins@napleslaw.us)

*Attorney for Petitioner*