

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

LEWIS TEIN P.L., GUY LEWIS and
MICHAEL TEIN,

Plaintiffs,

v.

CASE NO.: **16-21856 (CA 40)**
COMPLEX BUSINESS LITIGATION SECTION

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA,

Defendant.

**DEFENDANT THE MICCOSUKEE TRIBE OF INDIANS OF FLORIDA'S
RESPONSE TO PLAINTIFF'S BENCH BRIEF**

Defendant, the Miccosukee Tribe of Indians of Florida (the "Tribe"), files its Response to the Bench Brief filed by Plaintiff:

1. Setting aside the legally irrelevant and immaterial background information provided by Plaintiffs in its Bench Brief, the sole issue for the Court are the factors set out in F.S.A. 768.79 and which are set out on page 11 of the Bench Brief.

2. In spite of well settled law and an incorrect legal analysis by the Plaintiffs on the issue of sovereign immunity, the Plaintiffs pursued full speed litigation which forced the Defendant to incur costs and fees to prepare for trial and comply with discovery orders set by the Court and for which the Plaintiffs refused to delay or stay, pending outcome on the issue of sovereign immunity.

3. The Defendant made every attempt to limit, reduce, or otherwise prevent unnecessary litigation and costs as shown by the undisputed timeline of actions below:

a. November 11, 2016: Defendant moved to dismiss the litigation based on well settled legal precedent of Tribal Sovereign Immunity which barred the action.

b. December 7, 2016: The Court denied the Tribe's Motion to Dismiss and held that the Tribe waived tribal sovereign immunity. Docket Entry 14. The Court supported its finding by adopting Plaintiffs' incorrect analysis of *Miccosukee Tribe v. Bermudez*, 92 So.3d 232 (3d DCA 2012) and *Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1246 (8th Cir. 1995).

c. December 13, 2016: The Tribe appealed the Court's Order to the Third District Court of Appeal and moved to stay discovery pending the appeal on. Plaintiffs opposed any stay of discovery. Docket Entry 18.

d. December 29, 2016: The Tribe filed its Motion for Immediate Review of Circuit Court's Order Denying Motion to Stay, with the Third DCA.

e. January 3, 2017: Plaintiffs filed their 22 page opposition to the Tribe's Motion for Immediate Review of Circuit Court's Order Denying Motion to Stay. .

f. May 10, 2017: The Third DCA held oral argument regarding the Tribe's appeal..

g. May 17, 2017: The Tribe made an offer of judgment under Fla. Stat. Ann. § 768.79 to each Plaintiff in the amount of \$2,500.00 respectively. The Tribe's offer was made in good faith in order to efficiently resolve this action without further expending the resources of the parties or the Court while the parties awaited an order of the Third District Court of Appeal. .

h. July 10, 2017: The Tribe filed its Motion to Modify Scheduling Order seeking 60 day extension of trial date. Docket Entry 148.

i. July 28, 2017: Plaintiffs filed their opposition to the Tribe's Motion to Modify the Scheduling Order. Docket Entry 163.

j. August 1, 2017: The Court denied the Tribe's motion for a 60 day extension of the trial date and cautioned the Tribe's counsel against bringing any further motions to delay the trial and discovery schedule).

k. August 9, 2017: The Third District Court of Appeal reversed the Court's Order, instructing this Court to "grant the Tribe's motion to dismiss on sovereign immunity grounds and dismiss the case as to the Tribe." Appellate Order at 27.

l. August 25, 2017: Plaintiffs filed a motion to certify the Third District Court of Appeal's Order, abandoning the arguments that they made to this Court and instead shifting to ask that the Third District Court of Appeal certify whether off-reservation torts should be treated differently for purposes of tribal sovereign immunity than on-reservation torts.

m. September 18, 2017: The Court entered an agreed order to stay this matter pending resolution of Plaintiff's Motion for Certification. Docket Entry 167.

m. September 26, 2017: the Third District Court of Appeal denied Plaintiffs' motion.

n. November 15, 2017: This Court reversed its prior Order and granted the Tribe's Motion to Dismiss and dismissed this case with prejudice.

* On September 18, 2017 the parties entered an Agreed Order to Stay only after the Third DCA ruled in favor of the Defendant's initial Motion to Dismiss on the well settled legal issue of Tribal Sovereign Immunity.

4. From the beginning of the legal action until now Defendant and its legal counsel advised, maintained, and argued that sovereign immunity barred any legal action. Instead of heeding that well settled legal precedent, Plaintiffs maintained the action refusing to agree to any delay or attempt to reduce legal costs in spite of the lack of merit in its claims. F.S.A. 768.79(7)(b)(1)

5. In spite of countless requests to stay or slow down the discovery and litigation process, Plaintiffs filed voluminous requests for production and maintained a breakneck discovery speed mandating Defendant comply.

6. Even after requesting a stay following the appeal, Plaintiffs, and then Judge John Thornton, cautioned the Defendant not to bring any further motions to stay the proceedings and to be prepared for trial on all merits of the case. The actions of the Plaintiffs by ignoring requests to halt and delay litigation and discovery ended up costing additional fees and costs related to discovery and trial preparation.

7. Plaintiffs misplaced legal analysis of well settled law involving Federally recognized Indian Tribes resulted in increased litigation costs, increased attorney fees.

8. Plaintiffs continued to pursue the issue by seeking certiorari from the United States Supreme Court, which was also denied.

9. It is clear that the efforts of the Defendant were designed to stop the unnecessary expenses associated with litigating a case that had little legal merit and which centered on well settled legal precedent barring any recovery for the Plaintiffs. The Bench Brief fails to indicate any basis for reducing or otherwise minimizing the fees sought by the Defendant for work and costs incurred as a result of the Plaintiffs' failure to agree to halt litigation while the Court resolved the issue of sovereign immunity. Had the Plaintiffs simply agreed to a short period of

time to let the issue of sovereign immunity be confirmed, both parties would have been spared millions of dollars in fees and costs.

F.S.A. 768.79 is set out to do exactly what the Plaintiffs refused to do in this case.

For the reasons set out above and the other issues and evidence provided to the Court, Defendant requests that the fees and costs set out in the affidavits and undisputed expert testimony be awarded to the Defendant.

Respectfully submitted this 19th day of November 2020.

/s/ ROBERT O. SAUNOOKE

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was sent to
Curt Miner, Esq. Attorney for Plaintiffs at curt@colson.com 255 Alhambra Circle, Penthouse,
Coral Gables, FL 33134 this 19th day of November 2020

/s/ ROBERT O. SAUNOOKE

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