

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Bird Industries, Inc,	)	
A South Dakota Corporation, and	)	Case No. 1:21-cv-70
Laura Bird, Individually,	)	
Plaintiffs,	)	
vs	)	
	)	AMENDED COMPLAINT
The Tribal Business Council of the Three	)	WITH JURY DEMAND
Affiliated Tribes of the Fort Berthold	)	
Indian Reservation	)	
Defendant,	)	

[1] This is a civil RICO action brought pursuant to 18 U.S.C. § 1964(c), the statute's civil damages provision.<sup>1</sup>

**I. JURISDICTION & VENUE**

[2] This Court has jurisdiction pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 2314, 18 U.S.C. § 1962 (c), and a specific grant of federal jurisdiction in 18 U.S.C. § 1964. The proper venue is the United States District Court for the District of North Dakota because that is where the defendant is located.

**II. PARTIES**

[3] Bird Industries Inc. (hereafter "Bird") is a duly organized, South Dakota Corporation, in good standing, with offices located at 504 West 8<sup>th</sup> St South, Brookings, SD 57006-3533. At all times relevant to this action, Bird was authorized to do business in South Dakota and in North Dakota and had offices located at 400 East Broadway Ave, Suite 306, Bismarck, N.D. 58501.

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<sup>1</sup> References to the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1961-1968, will omit title 18 and refer to the section only.

[4] Laura Bird is the owner and President of Bird Industries Inc. She is a citizen of South Dakota.

[5] Defendant, Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, (hereafter “TBC”) is located in North Dakota. Pursuant to Article III, Section I of the Tribe’s Constitution the TBC is the governing body of the Three Affiliated Tribes Indian Nation (hereafter “TAT Tribe”) as authorized by the United States Secretary of Interior pursuant to the Indian Reorganization Act of June 18, 1934. At all times relevant to this action, the TBC consists of an elected representative from each of the 6 geographical Segments and a chairman elected at large.

### **III. FACTS**

[6] Pursuant to Article VI Powers, Section 5 of the TBC Constitution and By-laws Tribal Business Council has the power, to manage all economic affairs and enterprises of the Three Affiliated Tribes of the Fort Berthold Reservation. TBC is responsible for all actions taken on behalf of the Three Affiliated Tribes including those taken in the name of any of its officers, arms, segments, employees, department managers, commissions, corporate entities or other sub-entities that it creates or any that those sub entities may create.

[7] On April 22, 2015, TBC entered into a Joint Venture (hereafter “JV”) agreement with Bird in which Bird agreed to provide funds, equipment, management, and manufacturing knowledge to produce aggregates and ready-mix products for sale.

[8] The JV Agreement provided that Bird would receive 40% of the net income generated by sales from the aggregate businesses. Bird was to contribute 50% of the first quarters cost of goods and services. Bird was to receive 49% of the net income generated

by the ready-mix operation and contribute 50% of the costs of goods and services for that operation over the week following execution of the JV.

[9] Commencing approximately June 1, 2015, Bird began to excavate aggregate to sell and began development of a ready-mix plant that would process aggregate and sell it as concrete. In the months following, TBC defaulted on its agreement to contribute 50% toward cost of goods and services. To continue operations in which it was heavily invested, Bird found it necessary to advance \$3,007,888.98 for cost of goods and services, one half of which was the obligation of the TBC.

[10] In June of 2016, TBC advised Bird that it was being removed from all day-to-day activities of the aggregate and ready-mix operations. TBC demanded that Bird Industries sell its interest in the JV. To assess the value of its interest in the JV, Bird Industries requested financial and sales information. The request was denied. Finding itself expelled and denied access to information, Bird Industries commenced negotiations for a buyout of its interests. In the course of negotiations, the TBC provided Bird Industries with misleading information concerning past income and expenses of the project. Critical records relating to assets, production, sales, financial disbursements, accounts receivable, and work in progress were knowingly and purposely omitted, undisclosed, and/or distorted in order to give Bird a belief the operation had little or no monetary value and little, if any, chance for success. TBC represented to Bird that the aggregate and ready-mix operations had made little, if any, profit, was losing money, and had little to no chance for survival.

[11] Bird was first offered \$5,000.00 for its shares in the JV. Then, it was offered \$25,000.00, then \$75,000.00, then \$250,000.00. Finally, on or about May 23, 2017, \$320,000.00 was offered. Because of the misrepresentations, omitted information,

undisclosed financial affairs, and the assertions the business was doomed to failure, Bird accepted the \$320,000.00 and was paid that amount by a check signed by the Chairman of the TBC.

#### **IV. DISCOVERY OF INJURY**

[12] After Bird was expelled from the project, a company from Texas, Focus Energy, was hired to do marketing and perform some management functions of the aggregate and ready-mix operation. On October 11, 2018, Laura Bird learned in a phone call from Brandon Bentley, an employee of Focus Energy, that during his employment engagement with the TBC, the TBC had established numerous bank accounts in North Dakota, Texas and other States to enable it to steal from Bird millions of dollars in income from the sale of aggregate and ready-mix, make disbursements to persons not entitled, and avoid sharing in profits with Bird as required by the JV Agreement.

[13]. Laura Bird also learned in that conversation that Frank Grady and Jolene Lockwood had conspired to get Laura Bird and Bird Industries removed from the project in order to gain control over the money. Brandon Bentley represented to Laura Bird that there were bank statements from bank accounts at Cornerstone Bank that had not been disclosed to her or Bird that would confirm his accusations. Bentley represented those records should be obtainable by Kirt Bailey, another Focus Energy employee, who also worked for the TBC, because he was authorized to sign on the undisclosed accounts. From December 26, 2018 to January 4, 2019, Kirt Bailey and Brandon Bentley exchanged e-mails with Jarin Blumhagen, a Customer Service Representative for Cornerstone Bank, requesting the banking records from the joint venture accounts at Cornerstone Bank that had not been disclosed to Bird. Records show that those accounts were being copied at Cornerstone at

8:09 A.M. on January 04, 2019 and were then sent to Kirt Bailey. Kirt Bailey then forwarded them by U.S. Postal Mail to Laura Bird sometime in the following two weeks. Examination of those records in the weeks following revealed to Bird and its staff the magnitude of the theft that had taken place.

[14] After Bird Industries was evicted from management of the project, TBC took possession of equipment Bird had brought to the JV. These items of equipment including a conveyor, dozer, excavator were each worth in excess of \$5,000. Bird had an equity interest in this equipment. TBC stole this equipment and transported it from North Dakota to Texas during the year 2016 without Bird's knowledge or consent. Bird first learned of this theft and transportation of the equipment to Texas in the phone call from Brandon Bentley on October 11, 2018. This theft was in violation of 18 U.S.C. § 2314 which states in pertinent part:

“Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more knowing the same to have been stolen, converted or taken by fraud...Shall be fined under this title or imprisoned not more than ten years or both.”

[15] Without Bird Industries' knowledge or consent TBC stole Bird Industries share of net profits from millions of dollars received in payment for aggregate and concrete from the joint venture. It was product used for Tribal projects such as the Johnny Bird Community Center, The Law Enforcement Center, Four Bears Casino and Lodge, road construction, and projects in other Reservation villages. These millions of dollars were never reported to Bird in financial statements or by any other medium, written or oral. Bird did not learn of the thefts until a phone call from Brandon Bentley on October 11, 2018. At that time, Bentley informed Laura Bird that TBC had caused millions of dollars of income

from the aggregate and concrete project to be deposited in accounts at various bank accounts of which Bird had no knowledge located in Minnesota and Texas.

[16] Between the period of October 8, 2016 and January 18, 2017, TBC made at least 34 similar transfers from the joint venture account in Minnesota, where it was stolen, to undisclosed accounts in North Dakota. At least 16 of those transfers/checks were in excess of \$5,000, totaling approximately \$1,600,000.00. All of the 16 checks were signed by Mark Fox, the TBC Chairman, and Mervin Packineau, a Councilman on the TBC. Each such theft, concealment, and transfer of a check by TBC in excess of \$5000 constituted an additional violation of § 2314. Fewer than 10 deposits, totaling less than \$300,000, were deposited into the Lakeview Aggregate joint venture's account at Wells Fargo where Bird was entitled to receive regular statements and enjoy a share of any net profits.

#### **V. OTHER THEFTS AND VICTIMS:**

[17] TBC has committed similar acts of theft of money owed to contractors who it hired to do construction work on Reservation projects such as the Johnny Bird Community Center, the Law Enforcement Center, New Town park projects, and projects in other Reservation villages. Upon completion of the projects, the contractors were not paid for their work. Instead, TBC stole the contractors' money and transferred it to undisclosed bank accounts in Minnesota and Texas. This was to avoid detection by Bird and avoid paying Bird's share of the net proceeds to Bird. TBC transferred the money from these out of state bank accounts to members of the TBC and others not entitled. These are additional violations of § 2314. Contractors against whom thefts were also committed include the following;

[18] **United Rentals (North America), Inc.** – TBC stole at least \$13,000 of Bird's money in 2017. This company was incorporated in DC and Connecticut. The amount stolen was money that should have been used for payment of rent for equipment used in construction at the Johnny Bird Building site.

[19] **Worldwide Rentals Services** – TBC stole \$65,000 of Bird's money in 2017. This company was incorporated in Colorado. The amount stolen was money that should have been used for payment of rent of equipment used for construction at the Johnny Bird Building site.

[20] **Buechner's, Inc.** – TBC stole \$2740 of Bird's money in 2017. This company was incorporated in Wyoming. The amount stolen was money that was transferred from North Dakota to Texas and should have been used to pay for heavy haul services to move equipment to and from various TBC building sites.

[21] **King's Concrete, LLC.** – TBC stole \$376,000 of Bird's money in 2017. This company was Organized in Colorado. The amount stolen was money that should have been used for payment for labor performed for concrete finishing at the Johnny Bird building project.

[22] **CIG, LLC.** – TBC stole \$281,361.72 of Bird's money in 2017. This company was organized in Utah. The amount owing was for CIG's commission on sales of aggregate and concrete.

[23] **Cormican's, Inc.** – TBC stole \$371,041.48 of Bird's money in 2017. This company was Incorporated in Minnesota. The amount owing is pursuant to a payment agreement signed by TBC councilman Frank Grady on September 12, 2017. Payment was for work performed at a Retirement Center project in New Town, N.D.

[24] **Earthworx Specialties LLC** - TBC stole \$242,201.00 of Bird's money in 2017. This company was organized in North Dakota. The amount owing was for "Project Development" work Earthwork paid to Bear Chief Oil/4 Bears a company owned by Jolene Lockwood a TBC employee.

[25] **Western Earthmoving Contractors, LLC** -TBC stole 270,662.10 of Bird's money in 2017. This company was organized in North Dakota. This amount owing was for road rebuilding work done on B.I.A. Road # 2.

[26] **Pinky's Aggregates, Inc.** - TBC stole \$65,907.60 of Bird's money in 2016. This company was organized in North Dakota. This amount owing was for backfill sand provided for the Johnny Bird construction project.

[27] **Brock White Construction LLC** – TBC stole \$13,071.87 of Bird's money in 2017. This company was Incorporated in Minnesota. This amount owing was for concrete provided for the Johnny Bird construction project.

[28] **Focus Energy, Inc.** – TBC stole \$1,608,291.00 of Bird's money in 2016 and 2017. This company was originally incorporated in Nevada in 2013 but converted to Texas in 2018. \$1,608,291.00 of the amount owing was for payroll related to aggregate pit operation, concrete plant operation and construction work at the Johnny Bird Center. The balance of \$260,320.45 was for earthwork and installation of site utilities at the Johnny Bird Building project.

**VI. COUNT ONE**  
**18 U.S.C. 1962 (c) FEDERAL CIVIL RICO CLAIM**  
**(Defendant Tribal Business Council)**

[29] Bird Industries incorporates by reference all of the factual allegations set forth above.



[30] The TBC has been engaged in a continuing a pattern of racketeering activity, namely stealing money and property from Bird Industries and other contractor victims in violation of 18 U.S.C. § 2314. These violations have occurred over a three-year period, from 2016-2019 and are ongoing.

[31] These acts are related to each other by being committed by TBC. They involved similar § 2314 violations, and as to the other victims, were committed for the same purpose, i.e. to take Bird Industries money, move it out of state, and hide it from detection.

[32] This pattern of §2314 violations is both open, in the sense that the violations will continue because TBC is continuing to conduct the joint venture and deprive Bird Industries of its share of the ongoing business. The violations also constitute a “closed” pattern because they have been committed for an extended period of time, at least three years, damaged several victims in additional to Bird Industries, resulting in numerous injuries and amount to several “schemes” in that the damage to each victim is a separate undertaking and therefore a separate scheme.

[33] TBC is the RICO “person” pursuant to 18 U.S.C. § 1961(3). It is capable of holding an interest in property.

[34] The TAT tribe is the RICO enterprise pursuant to 18 U.S.C. § 1961(4). It is a legal entity existing under federal law and has an effect on interstate commerce by virtue of its business dealings with contractors and vendors located in numerous states. TBC is responsible for all business and financial affairs of the TAT tribe including approving all contracts for the tribe. It thus participates in the affairs of the TAT tribe.

[35] The unlawful activities of the TBC damaged Bird Industries by at least \$45,755,888.98 or such other amount as will be proven at trial.

[36] The TBC's actions were in violation of 18 U.S.C. § 1962 (c) which prohibits a person from committing a pattern of racketeering activity through an enterprise.

[37] Accordingly, Bird Industries demands judgment be entered against said Defendant TBC pursuant to 18 U.S.C. § 1964(c), for damages to Bird, trebled, plus attorney's fees, costs and pre-judgment interest, and any other relief deemed proper. Bird Industries requests a jury trial.

**VII. COUNT 2**  
**(Fraud and Interference in Business Advantage & Emotional Damage)**  
**Plaintiff, Laura Bird-Defendant Tribal Business Council**

[38] For her separate, personal, and individual cause of action plaintiff, Laura Bird, states the following:

[39] Incorporates by reference all of the preceding paragraphs of this Complaint as if fully set forth as a part of this Claim.

[40] Alleges the TBC through its agents, arms, and representatives engaged in theft that inflicted economic loss and damage to her reputation and caused her to become financially destitute and experience emotional suffering. She became unable to pay creditors of her corporation or her personal obligations. Just one of these victims was the U.S. Government with whom she had a loan. As a result of her default on the government loan, she lost her Section 8(a) Small Business Administration preferential minority business status certificate (Woman-Native American). She no longer has preferential bidding status on Government contracts. This suspension has caused a loss in the hundreds of thousands of dollars as will be shown at the time of trial.

[41] Defendant's actions as detailed above were the proximate cause of Laura Bird's injury, and it should be held liable for all of the damages they have caused.

### **VIII. PRAYER FOR RELIEF**

- [42] WHEREFORE, Plaintiffs respectfully request that the Court:
- A. Award compensatory, consequential, exemplary, and punitive damages to the Plaintiff, Bird, in an amount to be determined at trial;
  - B. Award compensatory, consequential, exemplary, and punitive damages to the Plaintiff, Laura Bird, in an amount to be determined at trial;
  - C. Attorney fees and costs to the Plaintiffs; and
  - D. Such other and further relief as the Court deems just and proper.

### **VIII. JURY TRIAL DEMAND**

- [43] Plaintiffs demand trial by jury on issues so triable.

- [44] Respectfully submitted this 30<sup>th</sup> day of June 2021.

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