
NORTH CAROLINA COURT OF APPEALS

REID GOLDSBY MILLER,)
Plaintiff-Appellant,)

vs.)

From Graham County
No. 20-CVS-130

EASTERN BAND OF CHEROKEE)
INDIANS and/or other affiliated)
governmental entities and/or other)
affiliated private entities; WESTRIDGE)
RANCH, LLC; WALTER WILLIAM)
ELLSWORTH, III; RICHARD G. SNEED;)
ALAN B. ENSLEY; THE TRIBAL)
COUNCIL OF THE EASTERN BAND OF)
CHEROKEE INDIANS; THE BUSINESS)
COMMITTEE OF THE EASTERN BAND)
OF CHEROKEE INDIANS; JOHN DOES)
1-15 (fictitious names as identity is)
unknown); JANE DOES 1-15 (fictitious)
names as identity is unknown),)
Defendants-Appellees.)

PLAINTIFF-APPELLANT'S REPLY BRIEF

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TRIBAL DEFENDANTS' OPERATIVE "FACTS" ARE INAPPLICABLE.

The operative "facts" are what I allege in my Complaint. They are neither unwarranted deductions nor conclusions of law.

Any operative "facts Tribal Defendants ("Defendant-Appellees") have restated inconsistent with the facts alleged in the Complaint are rebutted herein. Glaring inaccuracies of Defendant-Appellees' operative "facts" are corrected in part as follows:

The Bird Road Easement ("Easement") dispute was instigated by the Bird family, the possessory interest holders of the land that the easement overlays. (R at 6) Our title insurance company defended the easement in federal court. Were sued: Bird family possessory interest holders; United States of America; Department of the Interior, Bureau of Indian Affairs; Eastern Band of the Cherokee Indians.

The Deed of Easement from the Consent Judgment was issued by the United States of America as Trustee of the Bird land, and was approved by Tribal Defendants and signed by:

Jeff W. Muskrat, Agency Superintendent, United States of America as Trustee, acting by
and through the Secretary of the Interior

Five officials of Defendant EBCI acting by and through its Tribal Business Committee,

who were:

John A. Crowe, Chief

Alvin Smith, Vice-Chief

Jerome Parker, Executive Advisor

Dan McCoy, Chairman of Tribal Council

Jeff W. Muskrat, Ex-Officio Secretary

(R at 55-58)

This Deed of Easement contained no expiration date and zero language for revocation. In 2013-present, Defendant Tribal Councilman, Adam Wachacha, (“Wachacha”), had a duty and obligation to stand behind what his predecessor, Dan McCoy, and Defendant EBCI had approved. Wachacha has been on Tribal Council at all relevant times, and actively involved at all relevant times in improperly revoking Easement and interfering with the ownership and enjoyment of Subject Property to the extent it resulted in defective transfer to Westridge Defendants. (R at 21)

XYZ Bottling approached Plaintiff-Appellant around 2010, looking for a source of spring water.

We were in continued communication with XYZ Bottling through 2015, when XYZ Bottling stated that they could not continue dealing with us because of our easement issues with Defendant EBCI. (R at 24)

Defendant-Appellees refer to “the spring located on Subject Property”. It is not just “the spring”. It is a commercial, state-approved spring. It was very expensive to develop. It was developed with the oversight of state departments/engineers to the stringent standards required to be approved as a public water source. (R at 7-8)

Plaintiff-Appellant’s work on Easement was immediately brought to a halt as a direct result of the Stop-Work Order (“SW-Order”), *not* due to “setbacks”. (R at 15)

There were trees cut on Bird/U.S. trust land. However, they were either cut by John Bird himself, or at the direction and behest of John Bird himself. ¹ (R at 10-11)

Complaint alleges that Wachacha was involved at all relevant times, including in issuance of trespass bills which are still active (2021). (R at 11) It is alleged that, under supervision of Wachacha, BIA sent surveyors over, who surveyed Easement into the center of Little Snowbird Creek. (R at 21 ¶ 154) Their stated reason was not being able to locate the original tack on NC State 1115, or Little Snowbird Road. However, any survey crew knows that if one tack is missing, back up to a known point, bringing the known point forward to reestablish the missing tack. BIA surveyors refused to do this. Easement was/is a monument that has existed as an access road/train track bed for over 100 years. (R at 13-14)

Defendant EBCI's SW-Order was designed to be impossible to comply with. The SW-Order required starting of the equipment, but Defendant EBCI stated we would be arrested if we started the equipment for anything other than to move it from the Easement. (R at 20-21) ² This statement alone proves their true intent. Plaintiff-Appellant alleged that Wachacha was directly involved and directing all of this at all relevant times. (R at 21)

Defendant-Appellees state that Plaintiff-Appellant received a SW-Order for the Bird Road "project". This is mischaracterization. We were conducting lawful

¹ Of note: The resulting money from a trespass bill is paid to the possessory interest holders, John Bird/family.

² One certain area of Easement is referred to as the "slide area". To repair it necessitated, in part, the removal of the Bird logjam/dam, which had elevated the water level thereby destabilizing the roadbed. It is of note EBCI Environmental Department had no issue with the Birds damming up Little Snowbird Creek with a logjam, thereby raising the water level and harming all the property owners upstream. It is also of note that the Birds actually did get a massive amount of mud into Little Snowbird Creek building the logjam as they were driving their heavy equipment through the creek. EBCI Environmental Department had no problem with it though. (R at 17-18) Our easement maintenance was getting zero mud in the creek. The slide area issue caused by Defendant EBCI was then used in part by Westridge Defendants to obtain additional terms to their Purchase Agreement when they failed to perform. (R at 26-27)

maintenance on our lawful Easement. The SW-Order had a box to check for photographic evidence. (R at 63). Defendant-Appellees did not check this box and did not provide any photographic evidence. The photographic evidence is not in their favor. It is in our favor.

ARGUMENT

I. TRIBAL-DEFENDANTS DO NOT HAVE SOVEREIGN IMMUNITY OVER SUBJECT PROPERTY
N.C.G.S. 12(b)(1) AND/OR 12(b)(2)

Trial court's dismissal of Tribal Defendants because of their claimed sovereign immunity should be reversed.

Subject Property is held under color of title ³ by Defendant EBCI in fee. Title is defective.

A. UNDERLYING STATUS OF LAND

Defendant-Appellees have failed to raise a single argument, case law, statute, or any other legal basis barring a Declaratory Action purely *in rem* relying, in part, on the legal basis of the common law, immovable-property exception to a sovereign immunity defense. Subject Property's legal status exists under the jurisdiction of NC, as it is *not* reservation land, allotted land, aboriginal title land, ⁴ land held in trust by the federal government (trust land), nor is it land that was purchased pursuant to 25 U.S.C. Section 465, which would qualify it legally as Indian country.

³ Pursuant to N.C.G.S. § 1-38.

⁴ Any aboriginal claims that might have existed were extinguished by Congress in the Treaty of New Echota and were recently reconfirmed as extinguished by SCOTUS in *McGirt* (citation in body), so there exist zero aboriginal claims relating to the Nonintercourse Act/six statutes passed by Congress in 1790/1793/1796/1799/1802/1834.

B. DEFENDANT-APPELLEES' SOVEREIGN IMMUNITY CASES
DO NOT APPLY

Defendant-Appellees erroneously apply *Cayuga Indian Nation of New York v. Seneca Cty., New York*, 978 F.3d 829 (2nd Cir. 2020) to this matter.

Cayuga concerns land owned by the Cayugas that was formerly part of a 64,000-acre reservation. Cayugas claimed aboriginal title under Nonintercourse Act, relating to aboriginal title claims unless they have been extinguished by Congress. In this case, any of Defendant EBCI's aboriginal title claims in NC were clearly and unambiguously extinguished by Congress in the Treaty of New Echota. Further, the Treaty of New Echota was just reaffirmed in the recent court case of *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), and also in *Herrera v. Wyoming*, ___ U.S. ___, 139 S. Ct. 1686 (2019). *Cayuga* concerned reservation land and also an aboriginal title claim. Defendant-Appellees do not have a reservation claim or aboriginal title claim. *Cayuga*:

... do not seek to establish Seneca County's *rights* in real estate such as are the animating concern of the immovable-property exception. *Cayuga* at ____.

Cayuga is of no benefit to Tribal Defendants.

Wisconsin Dep't. of Nat. Resources v. Timber & Wood Prod. Located in Sawyer Cty., 2018 WI App 6, 379 Wis. 2d 690 (2018) involved land within the boundaries of the tribe's reservation. Subject Property is not within the boundaries of the tribe's reservation and never was. *Wisconsin* has nothing to do with *rights* in land.

Navarro v. Eagle Mountain Casino, 183 App'x 659 (9th Cir. 2006) concerns the FSIA. This case is no longer relevant. FSIA was *abandoned* by Plaintiff-Appellant at the trial court level, and Plaintiff-Appellant *requested leave* from the trial court to amend.

(R at 228) Defendant-Appellees acknowledged their awareness that the FSIA as a legal basis had been abandoned. (R at 253)

Plaintiff-Appellant relies on her argument of *McGirt* in her Brief. It is legally sound. *McGirt* confirmed that treaties with Indian nations are still the law of the land, and by extension, that includes the Treaty of New Echota.

Defendant-Appellees misconstrue *Sasser v. Beck*, 40 N.C. App. 668, 253 S.E.2d 577 (1979). The legal bases within the Court's opinion in *Sasser* rely on the Treaty of New Echota. The Treaty of New Echota concerned two issues: It forever extinguished any aboriginal claims of the Cherokee to all lands east of the Mississippi, and it placed remaining Cherokees east of the Mississippi under the jurisdiction of the state they reside.

Only Congress has the power to enter/withdraw from treaties, and the treaties Congress enters, the states have agreed to abide by. Congress has not withdrawn from the Treaty of New Echota. Therefore, *Sasser* is correct. Defendant-Appellees' theories of why *Sasser* does not apply are in error.

Page 16, Defendant-Appellees' Brief:

It is a well-established principle that 'there is no distinction between suits against the government directly, and suits against its property. *The Siren*, 74 U.S. 152,154 (1868)

Defendant-Appellees' are in error. Tribes are not the U.S. government. They are domestic, dependent nations, and as such, Congress has provided one pathway for tribes to purchase and exert sovereign immunity over land. In *Buzzard v. Oklahoma*, 992 F.2d 1073 (10th Cir. 1993), the U.S. Court of Appeals, 10th Circuit found:

If ... UKB could remove land from state jurisdiction and force the federal government to exert jurisdiction over that land

without either sovereign having any voice in the matter, ⁵ nothing in *McGowan* or the cases concerning trust land indicates that the Supreme Court intended for Indian tribes to have such unilateral power to create Indian country. *Id.* at 1077

Defendant-Appellees are attempting to advance the fiction that Indian tribes are the federal government. They are not.

On page 17, Defendant-Appellees misconstrue *Lewis v. Clarke*, ___ U.S. ___, 137 S. Ct. 1285 (2017). The matter before this court is about *rights* in real property. *Lewis* had nothing to do with real property, so is not relevant.

On Page 18, Defendant-Appellees mention Subject Property as government property, and it has been shown that this is simply not the case. Tribal-Defendants also raise the case of *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014). To understand this case correctly, one must first determine the *legal status* of the real property at issue.

In *Bay Mills*, Congress established a fund for the Bay Mills Indian tribe to purchase real property. Congress provided for this fund that any real property purchased by Bay Mills Tribe with these funds would immediately enjoy legal status of Indian country as if it had been purchased pursuant to 25 U.S.C. § 465. This provision *only* relates to Bay Mills Indian Tribe and said fund. There is no need to go any further discussing *Bay Mills*. It is not relevant.

Defendant-Appellees cited *Herrera v. Wyoming*, ___ U.S. ___, 139 S.Ct. 1686. This case is not in favor of Defendant-Appellees. This case reaffirms, by extension, the validity of the Treaty of New Echota. Justice Sotomayor delivered the in *Herrera*. Word count does not permit, but I want to fully incorporate as if fully stated herein the first

⁵ By “either sovereign”, the court is speaking of Oklahoma or the U.S. government.

paragraph of Justice Sotomayer delivering the Opinion of the Court in *Herrera* at 1690-1691. The Supreme Court, by extension, reconfirmed the Treaty of New Echota.

INTENTIONALLY LEFT BLANK

Every case Defendant-Appellees cited regarding sovereign immunity would fall under one of the following categories:

Indian country as legally defined in 25 U.S.C. § 465	Defendant-Appellees cited 2 cases in this category.
Aboriginal title that would fall under the Nonintercourse Act	Defendant-Appellees cited 3 cases in this category.
Land that is a reservation set aside by Congress	Defendant-Appellees cited 6 cases in this category.
Land that is owned by the United States government	Defendant-Appellees cited 1 case in this category.
Land held by the federal government in trust for Indian beneficiaries	Defendant-Appellees cited 2 cases in this category.
Cases that do not concern land at all	Defendant-Appellees cited 17 cases in this category
Plaintiff has cited/argued 10 cases. Tribal-Defendants have listed these 10 cases in their statutes and authorities as well. However, they are simply not in favor of Tribal-Defendants.	10 cases
Cases supporting Tribal-Defendants in their argument that they are entitled to assert sovereign immunity over real property that they purchased in fee on the open market in the manner of a private individual	Defendant-Appellees cited zero (0) cases in this category.

Indian tribes are *domestic, dependent nations* under the tutelage and superintendence of the United States government.

C. DEFENDANT-APPELLEES ARE ATTEMPTING TO CUT SHORT
STATUTE OF LIMITATIONS WITH WESTRIDGE

I was working diligently to file suit against Westridge Defendants. After extensive review after the defective transfer in 2016, I have concluded that the transfer to Defendant Westridge was defective and Defendant Westridge was only holding title under color of title. ⁶

Defendant EBCI continues to interfere and attempt to deprive me of my rights and privileges as afforded under law and the Constitution.

Defendant-Appellees legally had implied, actual, or constructive notice that equitable claims and other claims existed surrounding Subject Property. It would not be reasonable to consider that EBCI did not have implied, actual, or constructive notice of claims against Subject Property, as they were one of the parties who directly caused said claims.

II. DEFENDANTS-APPELLEES' 12(b)(6) ARGUMENTS ARE
WITHOUT MERIT

Tribal-Defendants' dismissal under Rule 12(b)(6) should be reversed.

⁶ In addition to the other allegations in the Complaint against Westridge Defendants, I respectfully request that the Court take judicial notice here that, in support of the argument for defective title held under color of title by Westridge Defendants is that at the purported transfer on 22 December 2016, the deferred tax liability against Subject Property was never transferred to Defendant Westridge. It continued to be carried by me through tax year 2019, and was still being carried by me at the time of his defective transfer to Tribal-Defendants. It was carried by me as if there had been no transfer. This tax amounted to over \$40,000.00, and to this day is still held by Graham County. This was a three-year, deferred tax liability.

The Court must liberally construe the allegations of the Complaint when ruling on a Rule 12(b)(6) motion to dismiss. *Dixon v. Stuart*, 85 N.C.App. 338, 354 S.E.2d 757 (1987). Mere vagueness or lack of detail is not ground for a motion to dismiss. *Redevelopment Comm'n. of Washington v. Grimes*, 277 N.C. 634, 178 S.E.2d 345 (1971). The function of a motion to dismiss is to test the law of a claim, not the facts. *White v. White*, 296 N.C. 661, 252 S.E.2d 698(1979). The rules governing discovery and motion for summary judgment provide adequate procedure to obtain details not set out in Complaint. *Lupo v. Powell*, 44 N.C.App. 35, 259 S.E.2d 777 (1979).

Plaintiff-Appellant has not alleged any facts in her Complaint that renders her legal theory impossible. The NC Supreme Court has held that a 12(b)(6) motion to dismiss should *not be granted* unless it appears to a certainty that Plaintiff is entitled to *no relief* under any state of facts which could be proved in support of the claim(s). *Isenhour v. Hutto*, 350 N.C. 601, 604-05, 517 S.E.2d 121, 124 (1999).

Based upon these foregoing principles of a Rule 12(b)(6) motion, Plaintiff-Appellant has adequately pled her claims, and due to word count limits, does not have the words to restate the facts supporting each claim herein, so Plaintiff restates the allegations alleged in the Complaint as if fully restated herein, and should this Court find that the allegations are lacking in detail/clarity, then Plaintiff-Appellant respectfully requests leave to amend.

Plaintiff-Appellant respectfully requests that Tribal-Defendants' Motion(s) to Dismiss be denied

A. ACTION *IN REM*

Action *in rem* is not a claim against Defendant-Appellees. Action *in rem* concerns

subject matter jurisdiction over Subject Property, and was properly brought under N.C.G.S. 1-75.8, *et seq.* All elements of due process have been met. Defendant-Appellees reside in NC, buy and sell real property in NC, and have been involved in the matter before this Court at all relevant times, and have been served proper notice of suit.

B. INJUNCTION

Injunction is a form of relief, and is sought purely against Subject Property. Where controversy surrounds title to real property, an injunction barring activity that affects the real property or resources located thereon is proper, pursuant to N.C.G.S. 1-487, *et seq.*

C. UNFAIR AND DECEPTIVE TRADE PRACTICES

The SW-Order is not comparable to a loan. SW-Order required continued decision-making from Tribal-Defendants to keep in place. It was stated by Tribal AG the intent was to revoke. It was again acted upon by Deputy Bird in 2016 when threatening arrest. That threat renewed itself on daily basis. SW-Order remained in effect, minimum, through year 2017. Timber trespass bill are still active.

Defendant-Appellees attempt to dispense with the UDTP claim by comparing it to *Hajmm Co. v. House of Raeford Farms, Inc.*, 328 N.C. 578, 592-93, 403 S.E.2d 483, 492-93(1991) that involve securities governed by the SEC. This is irrelevant. There is no other superior governing structure around the issues before this Court.

D. DURESS

Defendant-Appellees erroneously in their construction of wording imply that Westridge Defendants' non-refundable, due diligence payments they offered in return for an earlier extension were actually consideration for the additional contract terms he obtained in 2016 when his Purchase Agreement terminated due to their nonperformance. This is not true. I was unwilling to continue in 2016 when his Purchase Agreement terminated. The only "consideration" he offered was not suing me for what Defendant-Appellees had done from 2013-2016 that was completely out of my control, *after* I entered the Purchase Agreement with Westridge Defendants.

E. NORTH CAROLINA DECLARATORY JUDGMENT ACT

A declaratory action is proper for the matter before this Court. Pursuant to the 2006 Supreme Court of North Carolina *W.D. Goldston, Jr., v. State of North Carolina*, 361 N.C. 26, 33, 637 S.E.2d 876, 881 (2006):

Although a declaratory judgment action must involve an 'actual controversy between the parties', plaintiffs are not 'required to allege or prove that a traditional cause of action' exists against defendants to establish an actual controversy. *Id.* at 881 (citations omitted)

Further in *Goldston v. State*:

A declaratory judgment should issue: (1) when it will serve a useful purpose in clarifying and settling the legal relations at issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding. West's N.C.G.S.A. § 1-257, *Id.*

The matter before this Court is proper as the declaratory relief that is being sought in this matter is to have defective deeds declared void *ab initio*, which will

settle the continuing controversy around EBCI holding title under color of title, and Westridge Defendants obtaining title under color of title. This action is not seeking *execution or performance* from Tribal-Defendants.

Further, from *Goldston v. State*:

We next consider the form of relief sought by plaintiffs, who filed a declaratory judgment action under the North Carolina Uniform Declaratory Judgment Act (NCUDJA). N.C.G.S. Section 1-253 to -267. (2005). The North Carolina Constitution provides that “every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law.” N.C. Const. Art. I, § 18. Consistent with this mandate, the NCUDJA provides “[a]ny person... whose rights, status or other legal relations are affected by a statute...may have determined any question of construction or validity arising under the ...statute...and obtain a declaration of rights, status, or other legal relations thereunder.” N.C.G.S. § 1-254. *Id.* at 881.

Tribal-Defendants erroneously state that “a declaratory judgment is a remedy that a court can provide, but is not a cause of action.” The intentional acts of Tribal-Defendants to interfere in ownership/enjoyment of Subject Property and in arbitrarily revoking Easement have created a situation of a continuous and ongoing color-of-title controversy surrounding Subject Property. Further, Tribal-Defendants grossly, tortiously interfered with Westridge Defendants’ Purchase Agreement to the extent that when Westridge Defendants failed to perform, I may as well have just given them Subject Property if I was not going to give them additional Purchase Agreement terms that they demanded. Further, Westridge Defendants have created an ongoing, continuous controversy that continues up to the current time, including but not limited to the implied duty of good faith and fair dealing as recently as 2019. Pursuant to N.C.G.S. § 1-38, the statute of limitations for bringing color of title issues/claims is seven years.

III.

EBCI WAS MALA FIDE PURCHASER

It has been thoroughly alleged in the Complaint that Defendant-Appellees were involved at all relevant times, specifically that Wachacha was involved at all relevant times both openly and behind the scenes. It is alleged in the Complaint that Tribal AG Tarnawsky stated their intent to revoke Plaintiff-Appellant's lawful Easement. ⁷ (R at 22, ¶164) It is stated in Complaint Deputy Bird, acting in his official capacity at behest of Defendant-Appellees, threatened to arrest anyone who set foot on our lawful Easement. It is alleged in Complaint that when Westridge Defendants failed to perform under the Purchase Agreement, they wielded these actions of Defendant-Appellees as a means to obtain additional Purchase Agreement terms that were extremely beneficial to themselves, while offering zero consideration to Plaintiff-Appellant and causing Plaintiff-Appellant to lose title to Subject Property. Defendant-Appellees had implied, constructive, or actual notice of claims surrounding Subject Property when Tribal Council, under Chairman Wachacha, voted to purchase Subject Property. As such, Tribal-Defendants are a *mala fide* purchaser. Their defective title is subject to any judgment this Court might enter under Declaratory Judgment Act, and this would include a Consent Judgment were Plaintiff-Appellant and Westridge Defendants to reach a consensual resolution.

In other words, as a *mala fide* purchaser, Defendant EBCi's deed/title is subject to a judgment from this Court in the same manner as a *bona fide* purchaser would be subject to a judgment if they purchased property in fee that was subject to a lawfully recorded notice of *lis pendens*. I am attaching as Appendix public documents from

⁷ It went well beyond just intent. They took action: SW-Order, threats of arrest, etc.

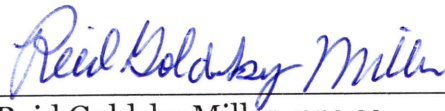
Defendant EBCI's website wherein Chairman Wachacha led Defendant Tribal Council in approving the defective, *mala fide* purchase of Subject Property. Included in these documents is Tribal Council attaching Plaintiff's \$5,000,000.00 appraisal of Subject Property that did not include the appraisal of the commercial spring. Defendant-Appellees, on the one hand, belittle Plaintiff-Appellant by putting in quotes *extreme fire sale price* [R at 10 ¶51(f)], while on the other hand in their Tribal meetings, are attaching Plaintiff-Appellant's appraisal that proves Plaintiff's allegation.

Defendant-Appellees stated in their Brief that Plaintiff was trying to be the first State case post-Skagit deciding the extent of Tribal sovereign immunity. This is an untrue and unfair characterization. Plaintiff-Appellant and family have suffered losses that are in the hundreds of thousands of dollars from the actions of Tribal Defendants, Westridge Defendants, and individuals in the Graham County tax office, so it left no other option than to proceed *pro se*. Plaintiff-Appellant would much have preferred to retain counsel for this matter, but it was cost prohibitive, and counsel consulted in this matter stated that. As a matter of equity, the deed to Defendant Westridge is defective, and the subsequent deed to Defendant EBCI is defective, and as such, Defendant EBCI only holds title under color of title, and both deeds should be declared void *ab initio*, and it be determined the refund amounts owed each party.

CONCLUSION

For these reasons, this Court should reverse the trial court's order granting Tribal Defendants' Motions to Dismiss.

Respectfully submitted this 1st day of September, 2021.

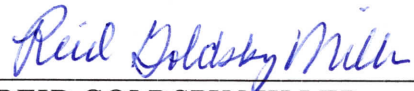


Reid Goldsby Miller, *pro se*
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, Plaintiff-Appellant certifies that the foregoing Plaintiff-Appellant's Reply Brief does not exceed 4,000 words in length, pursuant to Order of this Court dated 26 August 2021 (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and appendices) as reported by the word-processing software.

This the 1st day of September, 2021.



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CERTIFICATE OF SERVICE

The undersigned certifies that she has this day served the foregoing Plaintiff-Appellant's Reply Brief in the above-captioned action upon all other parties to this cause by depositing a copy hereof in a postage-paid envelope in a post office under the custody of the United States Postal Service, properly addressed to the parties:

Dale A. Curriden
Nevin Wisnoski
The Van Winkle Law Firm
P.O. Box 7376
Asheville, NC 28802

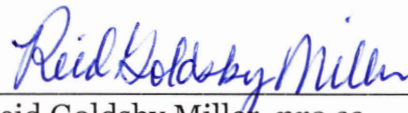
dcurriden@vwlawfirm.com

and by e-mail

Jay Gallinger, Attorney General
Eastern Band of Cherokee Indians
P.O. Box 455
Cherokee, NC 28719

Kelly Langteau-Ball
Ridenour & Goss, P.A.
P.O. Box 965
Sylva NC 28779

This the 1st day of September, 2021.



Reid Goldsby Miller, *pro se*
P.O. Box 5451
Asheville, NC 28813
(251) 923-8889
reidgmiller@yahoo.com

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Eastern Band of Cherokee Indians

*PO Box 455
Cherokee, NC 28719*



Meeting Agenda - Final

Thursday, June 13, 2019

8:30 AM

Council Chambers

Tribal Council

I. Call to Order - Chairman

8:30 AM

II. Prayer

III. Roll Call

IV. Orders of the Day

- 1.) 2019-2729 Amendment to Cherokee Code-Chapter 117B-Results Based Accountability (Item No. 1)
Attachments: New ord. amd to cc Chapter 117B-results based accountability
- 2.) 2019-2730 Amendment to Cherokee Code-Chapter 117-42-Tribal Action Plan for Substance Use Disorder Prevention Treatment and Recovery (Item No. 2)
Attachments: New ord. amd. to cc chapter 117-42-Tribal action plan for substance use disord
- 3.) 2019-2731 Chapter 20 of Cherokee Code-Off Road Vehicle Use (Item No. 3)
Attachments: Chapter 20 of Cherokee Code-Off Road Vehicle Use
- 4.) 2019-2732 Addition to Cherokee Code-Sec.14-25.20-Loitering for unlawful drug related activity (Item No. 4)
Attachments: Addition to Cherokee Code-Sec.14-25.20-Loitering for unlawful drug related acti
- 5.) 2019-2733 Amendment to Cherokee Code-Sec.14-15.1-Public intoxication (Item No. 5)
Attachments: Amendment to Cherokee Code-Sec.14-51.1-public intoxication
- 6.) 2019-2734 Addition to Cherokee Code-Chapter 8-Bondsmen, Bail Bonds, and Forfeiture (Item No. 6)
Attachments: Addition to Cherokee Code-Chapter 58-Bondsmen,Bail Bonds, and forfeiture

V. Reports and Announcements

- 7.) 2018 -2550 Tabled Res. No. 438 (2018) - Frances Long request that HCD move her trailer (Item No. 5)
Attachments: Res. 438 (2018)
Backup Res. 438 (2018)

9:00 a.m.

- 8.) 2018 -2568 Tabled Res.No.479((2019) - Tribal Council authorizes the TABCC to enter into a contract with Amanda Sneed Bridgeman Lane for the purchase of upper Cherokee Community Parcels 162-A, consisting of 0.525 acres, 162-C consisting of 0.071 acres and 162-E consisting of 1.50 acres, total acreage is 2.096 more or less, for the purchase price of \$1,500,000.00 and the pay off lien to Macon Bank, Inc. or any successor in the amount of \$254,791.00 plus per diem interest to the date of closing

Attachments: T.Res.No.479(2019)

T.Res.No.479(2019) backup #1

T.Res.No.479(2019) backup #2

T.Res.No.479(2019) backup #3

9:10 a.m.

Legislative History

2/5/19 Budget Council tabled

Res. No. 479 (2019) was tabled

- 9.) 2019-2612 Res.No.489(2019) Constitution be voted on at General Election

Attachments: Res.No.489(2019)

Res.No.489(2019) backup

9:20 a.m.

- 10.) 2019-2643 Tabled Ord.No.516(2019) Section 55B-8 -- Mergers and Conversions added to Cherokee Code Chapter 55B (EBCI LLC)

Attachments: T.Ord.No.516(2019)

9:30 a.m.

- 11.) 2019-2646 Tabled Ord.No.519(2019) - Cherokee Code Chapter 28 - Inheritance Laws of North Carolina

Attachments: T.Ord.No.519(2019)

9:40 a.m.

- 12.) 2019-2650 Tabled Ord.No.523(2019) - Cherokee Code Chapter 95 be amended, Tribal Employment Rights Committee

Attachments: T.Ord.No.523(2019)

9:50 a.m.

- 13.) 2677 Tabled Ord. No. 552(2019) - Ordinance to amend Cherokee Code Chapters 16C and 55B to clarify the management and regulation of special purposes LLC

Attachments: Tabled Ord.552(2019)

Tabled Ord.552(2019) Pt.2

10:00 a.m.

- 14.) 2019-2679 Tabled Ord. No. 553(2019) - Ordinance amendment to change the term of future HIP Agreements from 12 years to 15 years due to the rising cost of building homes
Attachments: Tabled Ord.553(2019)
10:10 a.m.
- 15.) 2019-2690 Tabled Ord.No.563(2019) - Amending Cherokee Code Section 16-2.01 Tribal Gaming Commission
Attachments: Ord.No.563(2019)
10:20 a.m.
- 16.) 2019-2691 Tabled Ord.No.564(2019) -Sec. 117-52-Executive Orders
Attachments: Ord.No.564(2019)
10:30 a.m.
- 17.) 2019-2692 Tabled Ord.No.565(2019) - Amendment to Cherokee Code Sect 18B-804 to delete TABCC tax, markup or surcharge on alcoholic beverages
Attachments: Ord.No.565(2019)
10:40 a.m.
- 18.) 2019-2693 Tabled Ord.No.566(2019) - Addition to the Cherokee Code August 22nd recognized as a Tribal Holiday-Cherokee Elders Day
Attachments: Ord.No.566(2019)
10:50 a.m.
- 19.) 2019-2657 Appointments to the Tribal Gaming Commission due to terms expiring (two appointments) (Item No.19)
Attachments: New Res Item #19
11:00 a.m.
- 20.) 2019-2735 Resolution asking Council to re-appoint Pepper Taylor to TABCC, Pepper Taylor's term expired this resolution reappoints him to serve a successive four-year term on the TABCC, his term will expire on the anniversary of his reappointment in 2023 (Item No. 20) - 11:10 a.m.
Attachments: Resolution asking Council to re-appoint Pepper Taylor to TABCC, Pepper Taylo
11:10 a.m.
- 21.) 2019-2736 Resolution asking Council to fill vacancy on TERO Commission left by resignation of Kevin Jackson, term will expire in September 2019 (Item No. 21) - 11:20 a.m.
Attachments: Resolution asking Council to fill vacancy on TERO commission left by resignatic
11:20 a.m.

- 22.) 2019-2737 Resolution asking Council to fill the vacant seat on the Police Commission left vacant by the passing of former Commission Member David Ensley (Item No. 22) - 11:30 a.m.

Attachments: Resolution asking Council to fill the vacant seat on the Police Commission left v.
11:30 a.m.

- 23.) 2019-2739 Resolution asking that Council approve the Chief's nomination and re-appoint Marcia Hollifield to the Cherokee Indian Hospital Authority to serve as a Community Representative for a term of four years beginning May 28th, 2019 (Item No. 23) - 11:40 a.m.

Attachments: Resolution asking that Council approve the Chief's nomination and re-appoint M
11:40 a.m.

- 24.) 2019-2741 Resolution asking Tribal Council to adopt population indicators that it will monitor annually for the next five years and that strategic tribal government entities and programs shall prioritize for an intentional and collective focus to achieve the long-range results of community welfare (Item No. 24) - 11:50 a.m.

Attachments: Resolution asking Tribal Council to adopt population indicators that it will monito
11:50 a.m.

Lunch

- 25.) 2019-2748 Resolution asking Council to require that it shall be unlawful for any transportation provider to provide services especially the transportation of passengers on the Qualla Boundary that do not meet the requirements of the EBCI (Item No. 25) - 1:10 p.m.

Attachments: Resolution asking Council to require that it shall be unlawful for any transportati
1:10 p.m.

- 26.) 2019-2750 Resolution asking Council to approve "The Weight loss and Exercise for Communities with Arthritis in North Carolina, " (WE-CAN) to conduct a research project (Item No. 26) - 1:20 p.m.

Attachments: Resolution asking Council to approve The weight loss and exercise for commun
1:20 p.m.

- 27.) 2019-2753 Resolution asking Council to approve "Multisite Implementation Study of Tribal Home Visiting (MUSE) Study" (Item No. 27) - 1:30 p.m.

Attachments: Resolution asking Council to approve Multisite Implementation Study of Tribal H
1:30 p.m.

- 28.) 2019-2756 Last Will and Testament of Willard Monroe Lambert (d) (Item No. 28) - 1:30 p.m.

Attachments: Last Will and Testament of Willard Monroe Lambert (d)
back up Last Will and Testament Willard Monroe Lambert (d)
1:40 p.m.

- 29.) 2019-2758 Last Will and Testament of Howard Baker (d) (Item No. 29) - 1:40 p.m.
Attachments: Last Will and Testament of Howard Baker (d)
Back up Last Will and Testament of Howard Baker (d)
1:50 p.m.
- 30.) 2019-2759 Recognition of heirs of Lena Yvonne Hornbuckle (d) (Item No. 30) - 1:50 p.m.
Attachments: Recognition of heirs of Lena Yvonne Hornbuckle (d)
Back up Recognition of heirs of Lena Yvonne Hornbuckle (d)
2:00 p.m.
- 31.) 2019-2761 Recognition of heirs of John Quincey Owle (d) (Item No. 31) - 2:00 p.m.
Attachments: Recognition of heirs of John Quincey Owle (d)
back up Recognition of heirs of John Quincey Owle (d)
2:10 p.m.
- 32.) 2019-2762 Recognition of heirs of Martha Ann Lossiah Ross (d) (Item No. 32) - 2:10 p.m.
Attachments: Recognition of heirs of Martha Ann Lossiah Ross (d)
back up recognition of heirs of Martha Ann Lossiah Ross (d)
2:20 p.m.
- 33.) 2019-2763 Last Will and Testament of Darrell Dwight Ross (d) (Item No. 33) - 2:20 p.m.
Attachments: Last Will and Testament of Darrell Dwight Ross (d)
Back up Last will and testament of Darrell Dwight Ross (d)
2:30 p.m.
- 34.) 2019-2764 Katherine Irene James and Louise Patricia James Fleming First Generation Descendants shall be allowed to transfer their interests in the above stated possessory holdings containing 126.382 acres more or less to the EBCI for the purchase price of \$474,000.00 (Item No. 34) - 2:30 p.m.
Attachments: Katherine Irene James and Louise Patricia James Fleming first generation desc
back up Katherine Irene James and Louise Patricia James Fleming First genera
2:40 p.m.
- 35.) 2019-2765 Tribal Council authorizes the Principal Chief, on behalf of the Tribe, to enter into an open contract with the payment of \$20,000 for the option to purchase 918 acres more or less in Graham County for the purchase price not to exceed \$3,700,000.00 (Item No. 35) - 2:40 p.m.
Attachments: Tribal Council authorizes the Principal Chief, on behalf of the Tribe, to enter into
2:50 p.m.

- 36.) 2019-2767 Resolution requesting that the usage rights to Parcel No. 10 in Painttown Community shall be transferred to the TCGE for continued development of the casino and hotel operations (Item No. 36) - 2:50 p.m.

Attachments: Resolution requesting that the usage rights to Parcel No. 10 in Painttown comm

3:00 p.m.

Emergency Resolutions

Banishment Items if Necessary

- 37.) 2019-2769 Banishment - Joshua Robert Hodcock (Item No. 37) - 3:00 p.m.

Attachments: Joshua Robert Hodcock banishment

V. Recessed

**CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA**

Date: _____

RESOLUTION NO. _____ (2019)

WHEREAS, The Tribe would like to purchase property in Graham County described as follows: BEING part of Snowbird Plat as recorded in Book 2 Page 102, Tract 79 north of the center of Little Snowbird Creek, Tract 80, Tract 81, Tract 82 and Tract 83 containing 918 acres more or less as found in Deed Book 355 Page 625 Graham County NC Register od Deeds.

WHEREAS, The Seller upon ratification of this Resolution would grant the EBCI an option to purchase this Property for an immediate payment of \$20,000.00 which would be applied to the purchase price and which will not exceed \$3,700,000.00. The purchase must be completed by August 1, 2019.

WHEREAS, This property was appraised for \$5 million dollars in 2008.

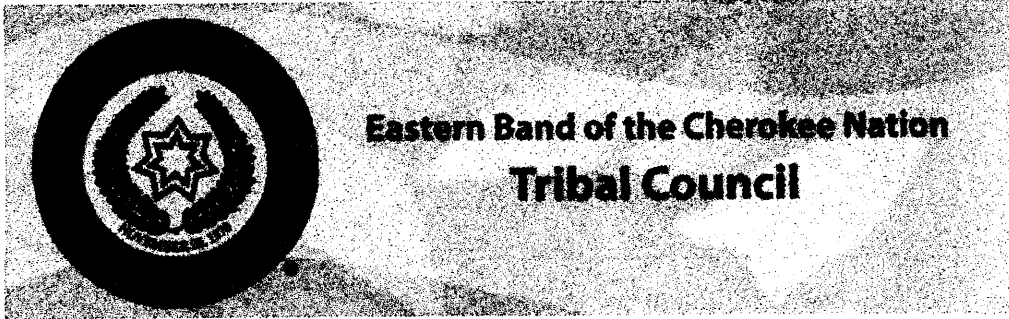
NOW THEREFORE BE IT RESOLVED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that the Tribal Council hereby authorizes the Principal Chief, on behalf of the Tribe, to enter into an Option Contract with the payment of \$20,000.00, for the option to purchase 918 acres more or less in Graham County, North Carolina as described above for a purchase price not to exceed \$3,700,000.00.

BE IT FURTHER RESOLVED that the Eastern Band of Cherokee Indians approves entering into contracts and the cost for due diligence and closing costs which include surveying, title insurance, Phase I and if necessary a Phase II environmental assessment, a licensed inspector, attorney fees and recording fees.

BE IT FURTHER RESOLVED that the \$3,700,000.00 purchase price and due diligence and closing costs come from the fund balance of the Endowment Fund No. 2.

BE IT FINALLY RESOLVED that all resolutions that are inconsistent with this resolution are rescinded, and that this resolution shall become effective when ratified by the Principal Chief.

Submitted by Principal Chief, Vice Chief and Chair of Tribal Council



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Person Name	Title	Start Date	End Date	E-mail	Web Site	Appointed By
Adam Wachacha	Chair Termed-out: 10/4/2021	10/3/2011	10/4/2021*	adamwach@nc-chokeee.com		
Albert Rose	Council Member	10/7/2013	10/1/2017*	alberose@nc-chokeee.com		
Albert Rose	Council Member Termed-out: 10/4/2021	10/23/2017	10/4/2021*	alberose@nc-chokeee.com		
Bo Crowe	Council Member Termed-out: 10/4/2021	10/7/2013	10/4/2021*	robcrow@nc-chokeee.com		
Boyd Owle	Council Member Termed-out: 10/4/2021	10/2/2017	10/4/2021	boydowle@nc-chokeee.com		
Bucky Brown	Council Member Termed-out: 10/4/2021	10/2/2017	10/4/2021			
Chelsea Saunooke	Council Member Termed-out: 10/4/2021	10/7/2019	10/4/2021	chelsaun@nc-chokeee.com		
David Wolfe	Vice Chairman Termed-out: 10/4/2021	10/3/2011	10/4/2021*	daviwolf@nc-chokeee.com		
Dike Sneed	Council Member Termed-out: 10/4/2021	10/7/2019	10/4/2021	dsneed@nc-chokeee.com		
Perry Shell	Council Member Termed-out: 10/4/2021	10/3/2011	10/4/2021*	perrshell@nc-chokeee.com		
Richard French	Council Member Termed-out: 10/4/2021	10/6/2015	10/4/2021	richfren@nc-chokeee.com		
Tom Wahnetta	Council Member Termed-out: 10/4/2021	10/2/2017	10/4/2021			
Tommye Saunooke	Council Member Termed-out: 10/4/2021	10/3/2011	10/4/2021*	tommsaun@nc-chokeee.com		

Page 9 on uploaded Appendix is not legible. It downloaded and printed off of EBCI's website illegibly. It is included in the Appendix to show that there is another document.