

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

(1) THE QUEENS, LLC; and	)	
(2) CHEROKEE QUEEN, LLC,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 19-cv-350-JED-FHM
	)	
(1) THE SENECA-CAYUGA NATION	)	
formerly known as the SENECA-CAYUGA	)	
TRIBE OF OKLAHOMA,	)	
	)	
Defendant.	)	

**COMPLAINT**

The plaintiffs, The Queens, LLC and Cherokee Queen, LLC (collectively “The Queens” or “Plaintiffs”), for their claims against the defendant, the Seneca-Cayuga Nation, formerly known as the Seneca-Cayuga Tribe of Oklahoma (the “SCN” or “Defendant”) allege and state as follows:

**PARTIES**

1. The Queens, LLC is an Oklahoma limited liability company with its principal place of business in Grove, Oklahoma.
2. Cherokee Queen, LLC is an Oklahoma limited liability company with its principal place of business in Grove, Oklahoma.
3. The Seneca-Cayuga Nation is a federally-recognized Indian nation with its tribal headquarters in or near Grove, Oklahoma. The SCN acts by and through officials who serve on its business committee (“the Business Committee”).

**JURISDICTION AND VENUE**

4. The Queens’ claims arise under a Memorandum of Agreement between The Queens and the SCN (the “MOA”) (attached hereto as Exhibit 1) which contains a limited waiver by the SCN of its tribal sovereign immunity by and through to § 13.01 which states:

**Tribe's Limited Waiver of Sovereign Immunity and Consent to Suit.** The Tribe hereby agrees to, and hereby does, make a limited waiver of its sovereign immunity for the limited purpose of allowing the terms of this Agreement or any agreements referenced herein to be enforced by all Parties or other Party approved third parties to the Agreement or agreements referenced herein by judicial enforcement in any court of competent jurisdiction in equity or law, pursuant to the following order of priority: (i) in applicable federal courts in the State of Oklahoma with all rights of appeal therein, and (ii) in the event that a federal court in the State of Oklahoma determines that it does not have jurisdiction, first, in the courts of the State of Oklahoma, with all rights of appeal therein; and (iii) only if the Oklahoma courts determine that they do not have jurisdiction, any other court of competent jurisdiction; provided, however that liability of the Tribe under any judgment shall always be “**Limited Recourse**,” as defined herein[.]

5. Having determined that no good faith basis existed to invoke either federal question or diversity of citizenship jurisdiction in this court,<sup>1</sup> The Queens proceeded to file its case in the District Court of Delaware County, State of Oklahoma, Case No. CJ-2015-53. The SCN admitted liability on the merits in the state court litigation, which resulted in a summary judgment awarded to The Queens against the SCN on February 14, 2018 (corrected *Nunc Pro Tunc* on August 29, 2018).

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<sup>1</sup> See *Mescalero Apache Tribe v. Martinez*, 519 F.2d 479, 482-83 (10th Cir. 1975) (holding that a “simple breach of contract case” does not present a federal question simply because an Indian tribe is a party); *Gaines v. Ski Apache*, 8 F.3d 726, 729 (10th Cir. 1993) (“available authority holds that Indian tribes are not citizens of any state for purposes of diversity jurisdiction”). See also *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 27 (1st Cir. 2000) (holding that “the presence of an Indian tribe destroys complete diversity” because “[a]n Indian tribe ... is not considered to be a citizen of any state”); *Romanella v. Hayward*, 114 F.3d 15, 16 (2d Cir. 1997) (per curiam) (“an Indian tribe is not a citizen of any state for purposes of diversity jurisdiction”); *Wells Fargo Bank, Nat. Ass’n v. Lake of the Torches Economic Dev. Corp.*, 658 F.3d 684, 692-93 (7th Cir. 2011) (“[M]ost courts agree that Indian tribes are not citizens of any state for purposes of the diversity statute and therefore may not sue or be sued in federal court under § 1332.”); *Rock Sioux Indian Tribe v. Dorgan*, 505 F.2d 1135, 1140 (8th Cir. 1974) (“an Indian tribe is not a citizen of any state for purposes of diversity jurisdiction”); *Am Vantage Cos., Inc. v. Table Mountain Rancheria*, 292 F.3d 1091, 1098 (9th Cir. 2002) (“[a]n unincorporated Indian tribe is not a citizen of any state within the meaning of § 1332(a)(1)”; *Miccosukee Tribe of Indians of Florida v. Kraus-Anderson Constr. Co.*, 607 F.3d 1268, 1276 (11th Cir. 2010) (“[T]he majority view—followed by every court of appeals that has addressed the issue—is that unincorporated Indian tribes cannot sue or be sued in diversity under 28 U.S.C. § 1332(a)(1) because they are not citizens of any state.”); see also 13D Charles Alan Wright et al., *Federal Practice and Procedure* § 3579 (3d ed. 2011) (“the better view—adopted by every court of appeals to address the question—is that a tribe is not a citizen of any state.”).

6. The SCN appealed and on February 25, 2019, the Oklahoma Court of Civil Appeals, Division IV, reversed holding that the sovereign immunity waiver required The Queens to first file in federal court and for the federal court to decline jurisdiction before the state court could adjudicate the matter. The Queens has filed a Petition for a Writ of Certiorari asking that the Oklahoma Supreme Court reverse that decision, and as of the date of this Complaint, that Petition is pending.

7. In order to pursue its contractual remedies, and by order of the Oklahoma Court of Civil Appeals, this Complaint is filed for a determination first of federal question jurisdiction (28 U.S.C. § 1331) or diversity of citizen jurisdiction (28 U.S.C. § 1332).

8. This Complaint is filed notwithstanding the pending appeal before the Oklahoma Supreme Court to preserve Plaintiffs' rights as against any applicable statute of limitations and may proceed concurrently with the state court litigation. *See Predator Int'l, Inc. v. Gamo Outdoor USA, Inc.*, 793 F.3d 1177, 1188 (10th Cir. 2015).

9. If jurisdiction exists, venue would be proper in this court because the SCN is located within the exterior boundaries of this district and because the events and omissions giving rise to The Queens' claims, and the real and personal property involved, are located within the exterior boundaries of this district. *See* 28 U.S.C. § 1391.

10. The SCN did not post a supersedeas bond and The Queens has executed upon foreclosure and replevin and currently is in possession of the properties described herein pending the ongoing state court appeals process. The Queens has since spent significant time and effort in restoring the properties and making them productive. The Queens reserves the right to move for a preliminary injunction to preserve this status quo if and when it may become necessary.

### **GENERAL ALLEGATIONS**

11. The SCN entered into a Memorandum of Agreement with The Queens, along with ancillary agreements, including a Promissory Note and Security Agreement, effective March 8, 2012

(collectively the “MOA”). The MOA is attached as Exhibit 1, the Promissory Note is attached as Exhibit 2, and the Security Agreement is attached as Exhibit 3.

12. On or about January 12, 2012, the SCN Business Committee unanimously passed Resolution 39-011212 approving the MOA (the “Resolution”), which included approval of the sovereign immunity waiver verbatim. A copy of the Resolution is attached as Exhibit 4.

13. Pursuant to the MOA, The Queens conveyed to the SCN certain real property (the “Real Property”). The Real Property is more particularly described in Exhibit A to the MOA. The Real Property was divided into two tracts, the deeds of which appear in Exhibit B to the MOA and are referred to in the MOA as the “Exhibit B-1 Property” and the “Exhibit B-2 Property.”

14. The Queens also conveyed to the SCN certain personal property (the “Personal Property”) pursuant to the MOA, and certain ongoing businesses (the “Lake Businesses”). The Personal Property included two paddlewheel riverboats, docks, boat slips, and related equipment. The Personal Property is more particularly described in Exhibit D to the MOA. The Lake Businesses are more particularly described in §3.01 of the MOA. The UCC Financing Statements perfecting Plaintiffs’ security interest in the Personal Property is attached as Exhibit 5.

15. The Personal Property also included assignment of a Federal Energy Regulatory Commission (FERC) approval of Project #1494-236 and Grand River Dam Authority (GRDA) extension of time, issued May 14, 2008, to extend construction pursuant to the FERC permit until January 13, 2017 (the “FERC/GRDA Permits”). These documents authorized an expansion to the number of docks and boat slips affixed to the Exhibit B-2 Property. Under § 7.01(d), the SCN’s failure to complete construction of the permitted expansion constituted a breach of the MOA.

16. Pursuant to § 3.01 of the MOA, The SCN agreed to operate the Lake Businesses and to use revenues to pay the purchase price to The Queens. The Lake Businesses included popular riverboat cruises on the Grand Lake O’ the Cherokees (“Grand Lake”), which Plaintiffs successfully

and profitably operated for more than a decade prior to the MOA, and which had been profitably and successfully operated for decades before. The Lake Business also included boat docks and slips which were approximately 80% occupied at the time of the MOA, and a successful ship store. The Lake Businesses were a “turnkey” operation at the time they were conveyed to the SCN.

17. The purchase price is set forth in Section 4 of the MOA. The price included a schedule of minimum bi-annual payments to commence at closing, and an accelerated payment schedule to commence on the first day of the thirteenth month after the Exhibit B-1 Property was placed into trust by the United States for the SCN. The accelerated payment schedule required monthly payments being the greater of: (a) \$100,000.00, or (b) seven percent of the gross profit of the Lake Businesses and any other businesses, enterprises, operations, or facilities of the SCN anywhere within the Real Property or adjacent waters. The Promissory Note also included a late fee of 2.5% of the amount of any missed installment payment.

18. The Exhibit B-1 Property was conveyed to the United States in trust for the SCN on October 20, 2014. The accelerated payment schedule therefore commenced November 1, 2015. The trust deed is attached as Exhibit 6.

19. The total purchase price was to be determined by a sliding scale based on the timing in which The SCN paid in full. If paid by the end of the third year after closing, the total purchase price would be \$5,666,666.67. If paid at the end of nine years after closing, the total purchase price would be \$8,000,000.00, this being the maximum possible price. The Promissory Note was for \$8,000,000.00 to secure the maximum possible purchase price.

20. The Promissory Note provides that, on default by the SCN, The Queens had the right to immediately call the balance in full.

21. The SCN made timely payments for the first two and a half (2 1/2) years totaling \$1,091,557.66, the last payment being for amounts due September of 2014.

22. The SCN failed to make a \$200,000 payment due March of 2015, and another \$200,000 payment due September of 2015. Each of these missed payments is subject to a late fee of \$5,000, for a total of \$10,000 in late fees.

23. The accelerated payment schedule commenced November of 2015, and as of the date of the filing of this Complaint, Defendants have failed to make forty-four (44) consecutive minimum payments of \$100,000, representing the minimum monthly installments due for November 2015, through June 2019. Each missed payment is subject to a late fee of \$2,500, for a total of \$110,000 in late fees.

24. Beginning in March of 2015, the SCN is in default by and through their failure to make agreed upon payments.

25. The SCN's abrupt termination of payments and business operations coincides with the Exhibit B-1 Property being placed into trust by the United States for the SCN, thereby diminishing The Queens' recourse under the MOA. Specifically, it precludes foreclosure on the Exhibit B-1 Property. The SCN's termination of business operations and its refusal to make installment payments constitutes bad faith by the SCN. Their intent appears to be to enjoy the Exhibit B-1 Property without paying the required purchase price. The Exhibit B-1 Property constitutes most of the real estate conveyed and specifically includes a valuable structure that contained a restaurant and significant square footage for commercial use. The Exhibit B-2 Property is much smaller and is mainly for ingress, egress, and parking for the Exhibit B-1 Property, and for operation of the Lake Businesses. The SCN's actions appear to have been designed to obtain valuable land for free at The Queens' expense. In addition to all of The Queens' legal recourse, equity demands that The Queens be granted any and all possible relief.

26. Due to their various breaches of the MOA and default of the Promissory Note, the SCN owes to The Queens the unpaid balance of the Promissory Note, being \$8,000,000, plus

\$120,000 in late fees, less \$1,091,557.66 in payments received. Thus, the total amount due by the SCN to The Queens is \$7,028,442.34.

27. The SCN further failed to construct the dock and slip expansion permitted by the FERC/GRDA Permits within the time required and failed to secure an extension. The SCN thereby caused the FERC/GRDA Permits to expire. This failure constitutes a breach of the MOA, and The Queens are entitled to monetary damage for such loss.

28. Section 3.01 of the MOA required the SCN to protect The Queens' security interest by maintaining and keeping the Lake Businesses, the Personal Property, and the Exhibit B-2 Property in the same or better condition as such properties were on the closing date, and the SCN were further prohibited from engaging in any activity that negatively impacted or affected the Lake Businesses until the full purchase price was paid.

29. The SCN failed and refused to maintain and keep the Lake Businesses, the Personal Property, and the Exhibit B-2 Property in the same or better condition as such properties were on the closing date of the MOA. The SCN failed to comply and allowed the two paddlewheel riverboats, the docks and slips, and other equipment to fall into significant disrepair. The Queens is entitled to damages for these losses caused by the SCN's breach of the MOA.

30. Section 13.04(c) of the MOA entitles The Queens' to performance and/or injunctive relief if the SCN fails to perform their obligations under the MOA.

31. Pursuant to § 13.01 of the MOA, the SCN waived sovereign immunity and consented to be sued to enforce the MOA subject to "limited recourse." The SCN's Business Committee approved the MOA's waiver of sovereign immunity expressly in the Resolution.

32. Through the sovereign immunity waiver, The SCN consent to suit in federal courts in Oklahoma or, if the federal courts lack jurisdiction, in Oklahoma state courts. This case does not present a federal question and the SCN is not a citizen of any state for purposes of diversity

jurisdiction (and the SCN is otherwise physically headquartered in Oklahoma, the same state the state of incorporation and principal place of business for The Queens). This federal action is brought solely due to the decision of the Oklahoma Court of Civil Appeals for a determination from this Court of its jurisdiction over The Queens' breach of contract and related claims against the SCN.

**FIRST CAUSE OF ACTION**

(Breach of Promissory Note and Related Contracts/Money Damages)

33. The Queens incorporate by reference all preceding paragraphs.

34. The SCN failed and refused to operate the Lake Businesses as required by the MOA and to produce revenues and to otherwise fulfill their obligation under the MOA to make payments towards the purchase price. The SCN's failure to operate the Lake Businesses and to make required installment payments as set forth above constitute breaches by the SCN of the MOA.

35. Due to The SCN's breaches, the Queens are entitled to call the entire balance of the Promissory Note, and to further recover \$120,000 in accrued late fees. Accounting for payments received, the balance due to The Queens by the SCN is \$7,028,442.34.

36. The Queens is further entitled to recover from the SCN reasonable attorney's fees pursuant to Okla. Stat. tit. 12, § 936.

WHEREFORE, The Queens pray for a money judgment in the amount of \$7,028,442.34, and in addition thereto, reasonable attorney fees and costs, pre- and post-judgment interest, and any and all other relief the Court may deem to be just and proper.

**SECOND CAUSE OF ACTION**

(Breach of Contract/Money Damages)

37. The Queens incorporate by reference all preceding paragraphs.

38. Under the MOA, The Queens assigned to the SCN the FERC/GRDA Permits and the SCN agreed to build the permitted expansion of the docks and slips or obtain an extension or to otherwise prevent them from expiring.



39. The SCN failed to construct the expansion or to obtain an extension and the FERC/GRDA Permits have now expired. This constitutes a breach by the SCN of the MOA.

40. The Queens invested considerable time and money into obtaining the FERC/GRDA Permits and they otherwise held monetary value which has now been lost due to the SCN's breach.

WHEREFORE, The Queens pray for a money judgment in the amount of their investment into the FERC/GRDA Permits and the monetary value lost due to the SCN's breach of the MOA by failing to construct the expansion or obtain an extension, along with costs, attorney fees, pre- and post-judgment interest, and any and all other relief the Court may deem to be just and proper.

**THIRD CAUSE OF ACTION**  
(Breach of Contract/Money Damages)

41. Plaintiffs incorporate by reference all preceding paragraphs.

42. Under the MOA, the SCN was obligated to keep the Personal Property, and the Exhibit B-2 Property in the same or better condition as such properties were on the closing date.

43. The SCN failed and refused to maintain the Personal Property, and the Exhibit B-2 Property in the same or better condition as such properties were on the closing date of the MOA.

44. The Queens are entitled to money damages for the costs associated with the diminishment of the condition of the properties.

WHEREFORE, The Queens pray for a money judgment in an amount to rectify the SCN's failure to keep the properties in good condition, along with costs, attorney fees, pre- and post-judgment interest, and any and all other relief the Court may deem to be just and proper.

**FOURTH CAUSE OF ACTION**  
(Foreclosure on Real Property)

45. The Queens incorporate by reference all preceding paragraphs.

46. Through the MOA, Promissory Note, Security Agreement, and the deed to the Exhibit B-2 Property, the SCN granted The Queens a security interest and reversionary right to the Exhibit B-2 Property in the event the SCN defaulted on its payment obligations.

47. The SCN has breached the MOA by failing to operate the Lake Businesses and by failing and refusing to make the required purchase price payments under the MOA and Promissory Note and are in default.

48. The Queens are therefore entitled to possession of the Exhibit B-2 Property under the terms of the MOA, Promissory Note, Security Agreement, and Deeds.

49. The Exhibit B-2 Property is located in Delaware County, State of Oklahoma. A legal description of the real property is attached hereto as Exhibit 7.

50. The land records of Delaware County, Oklahoma, reflect no other or superior liens to the Exhibit B-2 Property and, therefore, there are no other persons or entities that have any legal or equitable interest in the Exhibit B-2 Property that would be necessary parties to this action for foreclosure.

51. The Queens' security interest is first, prior, and superior to any liens, interests, or claims that may be later asserted.

WHEREFORE, The Queens request relief in its favor and against the SCN specifically as follows:

- (1) for a money judgment as set forth above;
- (2) for a judgment ordering The Queens' security interest and reversionary right foreclosed and the Exhibit B-2 Property (along with the docks, slips, buildings, and all other fixtures attached thereto) sold, with the proceeds of such sale being applied, first, to the costs of this action, second, to the payment and satisfaction of The Queens' money judgment, and third, the surplus, if any, paid into the Court and distributed to the SCN;

(3) that, pursuant to such judgment, all subordinate claims to any right, title, interest, estate, or equity of redemption in or to the Exhibit B-2 Property that may be later asserted, if any, be forever barred, foreclosed, and enjoined;

(4) and for such other relief as this Court may deem to be just and proper.

**FIFTH CAUSE OF ACTION**  
(Replevin of Personal Property)

52. The Queens incorporate by reference all preceding paragraphs.

53. Under the MOA, The Queens conveyed to the SCN the Personal Property described in Exhibit D to the MOA, including two paddlewheel riverboats, docks, boat slips, and related equipment, along with the right and obligation to operate the Lake Businesses.

54. The conveyance of the Personal Property and the Lake Businesses was subject to a security interest held by the The Queens as described in § 2.03 of the MOA and in the Security Agreement. The Queens' security interest was perfected by the filing of UCC Financing Statements. The Queens' security interest was retained until the purchase price was paid in full. The Personal Property is described in Exhibit 8.

55. The SCN has failed and refused to pay the purchase price and are in default under the payment terms set forth in the MOA and the Promissory Note.

56. The SCN is in wrongful possession of the Personal Property which properly belongs to The Queens.

57. During its ownership the SCN allowed the Personal Property to fall into complete and utter disrepair and have therefore breached the MOA. In particular, nearly every aspect of the paddlewheel riverboats fell nearly to ruin under the SCN's ownership requiring complete and costly overhaul of nearly every aspect of the ships.

58. Plaintiffs are entitled to immediate possession of the Personal Property and the Lake Businesses under the terms of the MOA (except for the FERC/GRDA Permits which have expired and cannot be recovered and for which a money judgment is requested as set forth above).

59. The Personal Property has not been taken in execution on any order or judgment against The Queens, or for the payment of any tax, fine, or amercement assessed against The Queens, or by virtue of any order of delivery issued under Okla. Stat. tit. 12, § 1571 *et. seq.* or other final process issued against The Queens.

WHEREFORE, The Queens request a judgment in replevin against the SCN for immediate and permanent possession of the Personal Property and all rights to the Lake Businesses, for recovery of possession of the Personal Property, or for the value of all or any part of the Personal Property if it has been destroyed, or if return cannot otherwise be had, for money damages for damage to all or any part of the Personal Property which occurred during The Queens' possession, for attorney fees as authorized by Okla. Stat. tit. 12, §§ 936 and 1580, costs of this action, pre- and post-judgment interest, and for any other relief authorized by law or to which the Court deems just and proper.

Respectfully submitted,

s/ Daniel E. Gomez

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