

EXHIBIT 2

IN THE DISTRICT COURT OF THE MUSCOGEE (CREEK) NATION

DISTRICT COURT
FILED

2022 APR 20 P 3: 04

MUSCOGEE (CREEK) NATION
CYNTHIA FREEMAN
COURT CLERK

ALABAMA-QUASSARTE TRIBAL TOWN)
DULY ELECTED TRIBAL OFFICIALS AND)
GOVERNING COMMITTEE MEMBERS,)
A federally recognized Indian Tribe; LENA WIND)
MARY TIGER; GHASTIN HARJO;)
BERNADETTE WHITETREE; ANNIE)
MERRITT; WENDY WIND; BRINA WILLIAMS,)

Plaintiffs,)

v.)

Case No. CV 2021-117 SL

WILSON L. YARGEE, Purported Alabama-)
Quassarte Tribal Town Chief; ROVENA YARGEE,)
Purported Second Chief; and those acting in)
Joint Concert and Participating with him,)

Defendants.)

ORDER OF DISMISSAL

Now on this 20th day of April, 2022, comes on for consideration the Motion to Dismiss filed by defendants herein on January 5, 2022. In support of their Motion to Dismiss, defendants allege this court lacks subject matter jurisdiction in this case.

Plaintiffs filed this action on December 16, 2021, contending they are the legitimate, duly elected officers of the Alabama-Quassarte Tribal Town (hereafter "AQTT"), a federally recognized tribal town. Plaintiffs further allege that defendants, acting in joint concert and participation with others, unlawfully removed plaintiffs from office in violation of the AQTT Constitution and Rules of Procedure. Defendants responded by alleging that they are the legitimate AQTT officials and as such, do not submit to the jurisdiction of the Muscogee (Creek) Nation District Court. Defendants deny this court has subject matter jurisdiction over this matter.

In determining whether the court has subject matter jurisdiction, the court is guided by

the opinion in *Thlopthlocco Tribal Town v. Nathan Anderson, et al*, SC-2021-03. In that case, the Muscogee (Creek) Nation Supreme Court considered the issue of subject matter jurisdiction over a federally recognized tribal town. The court held that a finding of jurisdiction would not be proper absent a waiver of sovereign immunity by the tribal town.¹ The Court . . . recognizing that (Thlopthlocco) is a federally recognized band of the Muscogee (Creek) Nation, and as such, under both federal and tribal law, is entitled to sovereign immunity in the courts of the Nation and in certain circumstances, jurisdiction may be proper.² The court concluded that when a federally recognized tribal town waives its sovereign immunity, only then may the courts of the Muscogee (Creek) Nation exercise jurisdiction over the tribal town.

The first element that we must address in any sovereign immunity analysis is whether the party asserting the jurisdictional defense is in fact a sovereign capable of asserting such a defense.³ In the present case before this court, both parties allege and assert they are the legitimate officers or governing committee members of AQTT in accordance with the law and constitution of AQTT. However, only the plaintiffs have waived sovereign immunity on behalf of AQTT and submitted to the jurisdiction of this court. On the other hand, defendants, while also asserting their claim as the legitimate officers or governing committee members of AQTT, do not waive sovereign immunity on behalf of AQTT nor do they submit to the jurisdiction of this court.

Determining which party is the legitimate governing committee of the AQTT, and thus legally authorized to waive AQTT's sovereign immunity would require a hearing on the merits and an application of the law and constitution of the AQTT. At a minimum, the court could rule on the pleadings to determine whether plaintiffs or defendants are the proper sovereign "capable

¹ *Id.* at 25.

² *Id.* at 27.

³ *Id.* at 19.

of asserting” the defense of sovereign immunity. It would be more difficult to make such a determination simply by reviewing the pleadings without an evidentiary hearing. A hearing on the merits would be preferred before making conclusory findings of fact and law in this matter. Without the benefit of a hearing on the merits or at a minimum, a review of the pleadings, the court would have difficulty making a legal and factual determination regarding which of the two parties are the legitimate body of governing committee members, capable of asserting the defense of sovereign immunity on behalf of AQTT.

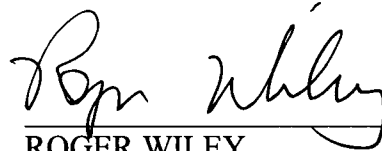
However, making a legal and factual determination as to which party may properly assert the defense of sovereign immunity would require an assertion of subject matter jurisdiction over both parties. One of the parties is the legitimate governing body of AQTT, and one of is not. By ruling on the merits of this case and asserting jurisdiction over both parties, the court would potentially be exercising jurisdiction over a governing body of AQTT without first procuring a waiver of sovereign immunity from the federally recognized tribal town. Doing so would violate the holding in *Thlopthlocco*. In this case, the court is confronted by this paradox.

Without asserting jurisdiction over both parties, the court cannot determine which party is in fact, a sovereign, capable of asserting the defense of sovereign immunity on behalf of AQTT. However, making such a determination could potentially result in an assertion of jurisdiction over a federally recognized tribal town absent a waiver of sovereign immunity. Therefore, unless both plaintiffs and defendants waive sovereign immunity as the purported governing body of AQTT, the court has no assurance that a party asserting a jurisdictional defense is in fact a sovereign, capable of asserting such a defense. For this reason, the court has no basis for exercising subject matter jurisdiction over both parties herein.

Defendants’ Motion to Dismiss for lack of subject matter jurisdiction is hereby

granted.

DATED this 20th day of April, 2022.



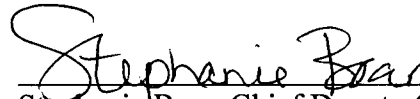
ROGER WILEY
CHIEF DISTRICT JUDGE

CERTIFICATE OF DELIVERY

I, Stephanie Bear, Deputy Court Clerk, Muscogee (Creek) Nation District Court, do hereby certify that on this 20th day of April, 2022, I sent via email a true and correct copy of the foregoing Order of Dismissal to the following:

Chadwick Smith
chad@chadsmith.com

Pansy Moore-Shrier
pansy@mstulsalaw.com



Stephanie Bear, Chief Deputy Court Clerk