

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION, by and through its lawful governing
body, the CAYUGA NATION COUNCIL,

Plaintiff

v.

DUSTIN PARKER, NORA WEBER, JOSE VERDUGO, JR.,
ANDREW HERNANDEZ, PAUL MEYER, BLUE BEAR
WHOLESALE, LLC, IROQUOIS ENERGY GROUP, INC.,
JUSTICE FOR NATIVE FIRST PEOPLE, LLC, AND C.B.
BROOKS, LLC, AND JOHN DOES 1-10,

Defendants.

Case No. 5:22-cv-128
(BKS/ATB)

DUSTIN PARKER, NORA WEBER, and ANDREW
HERNANDEZ,

Third Party Plaintiffs

v.

CLINT HALFTOWN

Third Party Defendant.

**THIRD PARTY COMPLAINT OF DUSTIN PARKER, NORA WEBER,
AND ANDREW HERNANDEZ**

Dustin Parker, Nora Weber, and Andrew Hernandez (collectively, “Third Party Plaintiffs”), by and through their undersigned counsel and pursuant to the Federal Rules of Civil Procedure, hereby respectfully state their Third Party Complaint against Third Party Defendant Clint Halftown (“Halftown”).

PARTIES AND JURISDICTION

1. Dustin Parker (“Parker”) is a member of the Cayuga Nation and an adult resident of Seneca County, New York and has been sued in this case by Plaintiff Cayuga Nation.
2. Parker is the owner operator of Pipekeepers.
3. Nora Weber (“Weber”) is an adult resident of Seneca County, New York and has been sued in this case by Plaintiff Cayuga Nation.

4. Weber is Parker's wife and the office manager and bookkeeper for Pipekeepers.

5. Andrew Hernandez ("Hernandez") is an adult resident of Ontario County, New York and has also been sued by Plaintiff in this case.

6. Hernandez is an employee of Pipekeepers.

7. Plaintiff, the Cayuga Nation, is a federally recognized sovereign Indian Nation.

8. Clint Halftown is a member of the Cayuga Nation. Upon information and belief, Halftown is an adult resident of Seneca County, New York.

9. The Court has jurisdiction over these parties under 28 USC § 1367(a) and because Halftown regularly conducts business in the state of New York.

FACTUAL BACKGROUND

10. In addition to conducting tribal affairs, Cayuga Nation is engaged in several business enterprises, including owning and operating convenience stores called Lakeside Trading on the Nation's land.

11. The stores sell tobacco related products, such as unstamped cigarettes and marijuana.

12. One Lakeside Trading store is located at 299 Cayuga Street, Village of Union Springs, New York while the other location is now operated at the former location of the Pipekeepers original store at 126 East Bayard Street in the Town of Seneca, New York (East Bayard Property).

13. Halftown operates a wholesale cigarette distribution company that Lakeside Trading and other stores use to purchase tobacco and other products for resale.

14. Halftown, along with others, owns and operates Great Swamp Enterprises, Inc. ("GSE"), a corporation founded under the laws of the State of New York and operating in several

states, including Texas. See Office of the Texas Comptroller Tax Account Status attached as Exhibit B.

15. In 2012, GSE was registered as a for-profit, foreign corporation in the state of Florida. Halftown is listed as one of the business directors/officers of GSE. See 2019 Foreign Profit Corporation Annual Report attached as Exhibit C.

16. As recently as 2019, GSE's principal place of business was listed as 122 N. Genesee Street, Suite A100, in Geneva, New York. See Ex. C.

17. Upon information and belief, the address listed as GSE's principal place of business is affiliated with Cayuga Nation of Indians, a private business entity with no affiliation to Plaintiff Cayuga Nation.

18. Yet Halftown runs GSE as his own personal business and profits under the guise of being affiliated with Cayuga Nation.

19. Halftown does not report these GSE sales to the State of New York and does not attach tax stamps to these distributed products as required by New York state law.

20. The bulk of these products are not for Cayuga Nation members and these items are not produced by Cayuga Nation members.

21. In 2021, Defendant Paul Meyer ("Meyer"), through his company, Justice for Native First People, LLC, entered into a four-year lease with the Seneca-Cayuga Nation of Oklahoma regarding the East Bayard Property. See Lease dated August 5, 2021 attached as Exhibit A.

22. The Seneca-Cayuga Nation of Oklahoma signed the lease pursuant to a tribal resolution authorizing the transaction.

23. The lease provides for a four-year term, commencing May 20, 2021 and ending May 31, 2025, during which period Justice for Native First People, LLC was free to sublet all or a part of the premises.

24. Section XI of the lease governs the "Use of Property by Tenant" and requires, among other things, that the leased premises be "used exclusively for commercial business purposes." It further provides that "[s]aid commercial purpose may include, but are not limited to, general retail, office space or any other legal commercial business."

25. In or about June 2021, Parker asked Meyer whether he could sublet the East Bayard Property from Justice for Native First People, LLC to operate a smoke shop and gas station.

26. Meyer knew Parker to be an enrolled member of the Cayuga Nation.

27. Parker and Meyer agreed to a four-year sublease term to run concurrently with the lease between Justice for Native First People, LLC and the Seneca-Cayuga Nation of Oklahoma.

28. The purpose of the lease was to provide Parker a small retail convenience store.

29. Shortly after obtaining the sub-lease, Parker opened up Pipekeepers at the East Bayard Property.

30. Within a few months of opening Pipekeepers, Halftown began harassing Parker by sending personnel to Pipekeepers with demands to close Pipekeepers.

31. In the meantime, Meyer obtained a letter from an attorney stating that the business that Parker was running at the East Bayard Property was appropriate and legal.

32. Meyers shared that letter with Parker, which is attached to Meyer's third-party complaint against Halftown in this proceeding.

33. After Parker rejected Halftown's demands to close his business, the Cayuga Nation ostensibly purchased the East Bayard Property at the end of December 2021.

34. Halftown's demands to close Pipekeepers began long before the Cayuga Nation ostensibly purchased the East Bayard Property.

35. On January 1, 2022, Halftown forcibly evicted Pipekeepers from the East Bayard Property without any pre-warning or notification (written or otherwise).

36. In any event, there was absolutely no judicial process that was used or observed to evict Pipekeepers from the East Bayard Property.

37. Indeed, there was no warrant or other instrument/document issued by the Cayuga Nation Tribal Court requested or used to effectuate this forced eviction.

38. Likewise, there was no warrant or other legal instrument/document issued by any City, Town, County or State Court of New York to effectuate this forced eviction.

39. And there was no warrant or other legal instrument/document issued by any Federal Court to effectuate this forced eviction.

40. To execute the illegal eviction, Halftown hired dozens of armed, private security guards to enter the East Bayard Property and confiscate the entire inventory and property located at Pipekeepers, including cash, computers and various other personal property belonging to Pipekeepers, Parker, Weber and Hernandez.

41. When Parker and Weber arrived at the East Bayard Property, the guards verbally and physically assaulted and harassed them, resulting in a physical altercation.

42. The seizure resulted in Halftown taking approximately \$200,000 worth of inventory and gas, with a retail value of approximately \$400,000.

43. The seizure also resulted in Halftown taking password protected computers that were the property of Pipekeepers, Parker, Weber and Hernandez.

44. Shortly after seizing the personal property, Halftown, using the Cayuga Nation as a cover, opened a new Lakeside Trading convenience store at the East Bayard Property and began selling the Pipekeepers' inventory.

45. Parker, Weber and Hernandez have been unable to retrieve their property from the store, and Halftown has not provided compensation for the unlawful confiscation of the property, inventory, cash, computers and business.

46. Upon information and belief, Halftown profits from the sales at Lakeside Trading by selling cigarettes through his company, GSE.

47. Upon information and belief, Halftown used the Cayuga Nation as a front for taking personal retribution and revenge on Pipekeepers.

48. Upon information and belief, Halftown, or others at his direction, hacked into the Pipekeepers' computers, taking and using the information and data on those computers, including financial information for the store and personal information for Parker and Weber.

49. Upon information and belief, Halftown obtained access to email and other communications between and among the Parker, Weber, Hernandez and others.

50. Upon information and belief, Halftown continues to have and use the information and data from the Pipekeepers' computers.

51. Parker, Weber, and Hernandez did not receive notice from Halftown as to the illegal eviction by force.

52. Parker, Weber, and Hernandez were given no opportunity to cure any alleged default under the lease or sub-lease agreements.

53. There was no court or other legal proceeding that took place concerning the forceful eviction of Parker, Weber, and Hernandez and the confiscation of their personal property and possessions.

54. Parker, Weber, and Hernandez were not provided notice nor an opportunity to be heard to protect their leasehold and personal property interests.

55. Halftown still possesses the computer and other data that belonged to Parker and Weber.

56. On information and belief, Halftown used the password protected data on the computers to bring an action against Parker, Weber, and Hernandez in this Court.

COUNT I
(Tortious Interference with Contract)

57. Parker, Weber, and Hernandez incorporate by reference the allegations contained in the preceding paragraphs as if specifically set forth herein.

58. At all relevant times, Parker had a valid enforceable lease for the East Bayard Property with Meyer.

59. Parker, Weber, and Hernandez had a legal right to be on and to use the East Bayard Property.

60. Halftown knew a valid contract existed between Parker and Meyer.

61. Despite the existence of an enforceable contract between Parker and Defendant Meyer, Halftown knowingly and intentionally interfered with the rights of Parker, Weber, and Hernandez by attempting to forcibly evict them and causing Cayuga Nation to ultimately do so without justification.

62. Due to an alleged breach of the lease, Halftown evicted Parker, Weber, and Hernandez from the East Bayard Property and seized their personal property and computer data without notice.

63. As a result, Parker, Weber, and Hernandez have suffered damages to be determined at trial, but in an amount no less than \$400,000.

COUNT II
(Trespass)

64. Parker, Weber, and Hernandez incorporate by reference the allegations contained in the preceding paragraphs as if specifically set forth herein.

65. Parker, Weber, and Hernandez had a legal right to be on and to use the East Bayard Property.

66. Halftown improperly and unlawfully entered the leased premises by force and took possession.

67. Halftown has refused to allow Parker, Weber, and Hernandez back on the East Bayard Property, and continue to deny them their rights under the sub-lease.

68. As a proximate result of Halftown's actions in taking possession and keeping Parker, Weber, and Hernandez from being allowed to use the property in the manner described in the valid and legally enforceable sub-lease, Parker, Weber, and Hernandez have been injured in the form of lost customers, business opportunities, and business revenue in an amount to be determined at trial.

69. Halftown's actions were conscious, intentional, wanton, malicious and criminal, entitling Parker, Weber, and Hernandez to an award of punitive damages.

COUNT III
(Conversion)

70. Parker, Weber, and Hernandez incorporate by reference the allegations contained in the preceding paragraphs as if specifically set forth herein.

71. Halftown willfully interfered with the personal property of Parker, Weber, and Hernandez, including but not limited to, inventory, cash, computers, and other personal effects at the East Bayard Property.

72. Halftown's willful interference was without lawful justification.

73. In doing so, Halftown deprived and continues to deprive Parker, Weber, and Hernandez of the possession and use of their personal property.

74. Parker, Weber, and Hernandez have been damaged by the taking and subsequent use, possession and sale of their personal property.

75. Parker, Weber, and Hernandez have also been damaged as a result of Cayuga Nation and Halftown's unauthorized access to, and subsequent use and deletion of data from Pipekeepers' computers and computing related equipment.

76. Halftown's actions complained of, herein, were conscious, intentional, wanton, malicious and criminal, entitling Parker, Weber, and Hernandez to an award of punitive damages.

COUNT IV
(Trespass to Chattels)

77. Parker, Weber, and Hernandez incorporate by reference the allegations contained in the preceding paragraphs as if specifically set forth herein.

78. Halftown, without justification and without consent, interfered with the use of the personal property, including inventory, cash, computers, and other personal effects at the East Bayard Property, that belonged to Parker, Weber, and Hernandez.

79. Parker, Weber, and Hernandez were damaged as a result of Halftown's actions as they were deprived of the use and enjoyment of their personal property for a substantial period of time while it was in Halftown's possession, where it remains.

80. Parker, Weber, and Hernandez were also damaged as a proximate result of Halftown's trespass by virtue of Halftown hacking into and illegally downloading and/or copying the contents of their private information and data, and because a substantial but as-of-yet undetermined number of electronic files were copied, captured or otherwise taken from the computer and computer equipment, without the knowledge or consent of Parker, Weber, and Hernandez, and thereby, Parker, Weber, and Hernandez have been deprived of the same.

81. Parker, Weber, and Hernandez have also been damaged as a proximate result of Halftown's unauthorized access to, and subsequent deletion of data from the Parker, Weber, and Hernandez computers and iCloud accounts.

82. Halftown's actions were conscious, intentional, wanton, malicious and criminal, entitling Parker, Weber, and Hernandez to an award of punitive damages.

COUNT V
(Violation of the Computer Fraud and Abuse Act – 18 U.S.C. § 1030)

83. Parker, Weber, and Hernandez incorporate by reference the allegations contained in the preceding paragraphs as if specifically set forth herein.

84. The computers taken by Halftown are "protected computers" pursuant to Section 1030(e)(2) of the Computer Fraud and Abuse Act ("CFAA").

85. As detailed above, Halftown knowingly and intentionally accessed the computers without authorization or exceeded authorized access to the computers, or caused others to access the computers without authorization or exceeded authorized access to the computers, and thereby obtained information from the computers, in violation of 18 U.S.C. §1030(a)(2), which has a value

exceeding five thousand dollars (\$5,000.00) in a one-year period, in violation of 18 U.S.C. § 1030(a)(4).

86. Halftown's actions to unlawfully access the computers and Third Party Plaintiffs' email and other communications gave him access to personal and potentially attorney-client privileged communications.

87. The information that Halftown obtained included financial information related to the Pipekeepers store and private emails and other communications by Third Party Plaintiff.

COUNT VI
(Attorneys' Fees and Costs)

88. Parker, Weber, and Hernandez incorporate by reference the allegations contained in the preceding paragraphs as if specifically set forth herein.


89. Under Section 19.09 of the sub-lease and lease agreements, Parker, Weber, and Hernandez upon prevailing, are entitled to recover reasonable attorney's fees plus costs.

WHEREFORE, Third Party Plaintiffs respectfully request that the Court:

- A. Issue an order granting the judgment sought by Third Party Plaintiffs in their Complaint in the entirety;
- B. Issue an award of money damages against the Third Party Defendant and in favor of Third Party Plaintiffs in an amount to be determined at trial, but not less than \$200,000;
- C. Award Third Party Plaintiffs reasonable attorneys' fees and costs;
- D. Grant Third Party Plaintiffs such further relief as is just and proper.

Dated: Albany, New York
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