

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY
STATE OF OKLAHOMA

FILED
IN THE DISTRICT COURT
JUL 17 2023
POTTAWATOMIE COUNTY, OK
VALERIE N. UELTZEN, COURT CLERK
BY _____ DEPUTY

PEORIA TRIBE OF INDIANS OF)
OKLAHOMA,)
)
Plaintiff,)
)
)
vs.)
)
)
DAVID J. QUALLS and)
TONY D. HOLDEN,)
)
)
Defendants.)

Case No. CJ-2019-395

ORDER

Now on this 17th day of July, 2023, the above styled case comes on for ruling on the several motions filed by the plaintiff and the defendants. The Court heard oral argument from each party on April 10, 2023, and June 6, 2023. The Court also received extensive briefing on the motions from each party. Having analyzed and reviewed both the written materials submitted by the parties and the oral arguments presented to the Court, the Court now issues the following findings and orders:

FINDINGS

1. The Plaintiff, Peoria Tribe of Indians of Oklahoma (“plaintiff”) filed an amended petition against the Defendants, David J. Qualls and Tony D. Holden (“defendants”) alleging nine counts: conspiracy and aiding and abetting, fraud, embezzlement, unjust enrichment, money had and received, breach of fiduciary duty, constructive trust, chose in action, and enforcement of tribal judgment.
2. On September 10, 2020, the Plaintiff filed a Motion for Summary Judgment as to Actual Damages with a Supporting Brief.
3. On October 13, 2020, the Defendants filed a joint Brief in Opposition that sought summary judgment pursuant to Rule 13(e) on the subject of Plaintiff’s motion as to actual damages. On October 29, 2020, Plaintiff filed a Reply Brief.

4. On December 21, 2022, Plaintiff dismissed without prejudice its first count for conspiracy and aiding and abetting.

5. On December 22, 2022, Defendants filed their Motion for Summary Judgment on all remaining counts, except Count IX, which was already at issue by the filing of the Plaintiff's Motion for Summary Judgment on September 10, 2020, and Defendants' Opposition Brief filed on October 13, 2020, seeking partial summary judgment pursuant to Rule 13(e).

6. On December 23, 2022, Plaintiff filed both its Motion for Partial Summary Judgment as to Contractual Interpretation of the Indian Gaming Regulatory Act with supporting brief and its Motion for Partial Summary Judgment as to Defendants' Statute of Limitations Defenses with supporting brief.

7. On January 23, 2023, Plaintiff filed responses to each Defendants' motion for summary judgment.

8. On January 23, 2023, Defendants filed separate objections to each of Plaintiff's motions for partial summary judgment to which the plaintiff replied on February 13, 2023.

9. On February 13, 2023, the Defendants each filed reply briefs in support of their respective motions for summary judgment.

10. On April 10, 2023, pursuant to a special setting by this Court, oral argument was held on the pending motions, except for the Plaintiff's Motion for Summary Judgment as to Actual Damages.

11. On June 6, 2023, oral argument was held on the Plaintiff's Motion for Summary Judgment as to Actual Damages pursuant to Rule 4(h) of the Rules for the District Courts.

ORDERS

1. Based on the uncontroverted material facts, the Defendants are entitled to judgment on their respective motions for summary judgment and summary judgment is granted on each Defendants' motion, except as to the issue of the statute of limitations. As a result of this Order the Plaintiff's Motion for Partial Summary Judgment as to the statute of limitations defense is moot and therefore DENIED.

2. Plaintiff is not entitled to judgment as a matter of law on its September 10, 2020 Motion for Summary Judgment as to Actual Damages and said motion is DENIED.

3. Pursuant to Rule 13(e), Defendants are entitled to judgment as a matter of law on Plaintiff's September 10, 2020 Motion for Summary Judgment and on Plaintiff's Count IX for Enforcement of Tribal Judgment, and Summary Judgment is GRANTED to Defendants on each Count. This Court specifically finds that the fines assessed against the Defendants by the Peoria Tribal Gaming Commission were not authorized by the Peoria Tribal Gaming Ordinance since neither that Ordinance or the Peoria Tribal Gaming Commission's Bylaws identified any amount of potential fine or method of calculation as required by the applicable federal, state, or tribal constitutions. Based on that failure to specify the amount of potential fines or a method of calculation, the Peoria Tribal Gaming Commission lacked jurisdiction to issue any fine against either Defendant and the unauthorized fines which Plaintiff seeks to collect in this action therefore violate due process.

4. Plaintiff's Motion for Partial Summary Judgment as to Contractual Interpretation of the Indian Gaming Regulatory Act is rendered moot by this grant of summary judgment and therefore is DENIED.

It is therefore ADJUDGED, ORDERED AND DECREED that judgment is GRANTED in favor of the Defendants David J. Qualls and Tony D. Holden and against Plaintiff Peoria Tribe of Indians. The Plaintiff's action is dismissed.

DATED this 17TH day of July , 2023.



JOHN CANAVAN
DISTRICT JUDGE

CERTIFICATE OF TRUE COPY
State of Oklahoma ss. In the Dist. Court
Potawatomie County
I, Valerie Ueltzen, Court Clerk, within and for the
County and County of Potawatomie hereby certify that the
above foregoing is a true, correct and complete
copy of _____ as fully as the same appears on
record and on file in my office.
WITNESS my hand and Clerk and official seal this
_____ day of _____, 2023
VALERIE UELTZEN, Court Clerk
By _____ Deputy

Certificate of Mailing

I hereby certify that on the 17th day of July, 2023, a true and correct copy of the above Order was sent to:

Attorneys for Plaintiff the Peoria Tribe
of Indians of Oklahoma:

D. Michael McBride, III
Crowe & Dunlevy, P.C.
500 Kennedy Building
321 S. Bouston Avenue
Tulsa, OK. 74103-3313

And


Evan G.E. Vincent
Crowe & Dunlevy, P.C.
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK. 73102

Attorneys for Defendant Tony Holden:

Joe Vorndran
Breanne Gordon
Stuart & Clover, PLLC
P.O. Box 1925
Shawnee, OK. 74802-1925

Attorney for Defendant David Qualls:

Graydon D. Luthey, Jr.
GableGotwals
110 N. Elgin, Ste. 200
Tulsa, OK. 74120



Shonie Edmonson, Bailiff