

IN THE COURT OF THE QUAPAW NATION
(THE O-GAH-PAH)

QUAPAW NATION
TRIBAL COURT

APR 16 2021

FILED

THE QUAPAW NATION *ex rel.*, THE)
DOWNSTREAM DEVELOPMENT)
AUTHORITY, and SARACEN)
DEVELOPMENT, LLC)

Plaintiffs,)

v.)

Case No. CIV 21- 01

JOHN BERREY, JACK BRILL,)
TAMARA SMILEY-REEVES,)
JANET CUMMINGS, GEORGE)
MCWATTERS, MARILYN ROGERS,)
SHERI SMILEY, TENA SMITH,)
and the KNOWN AND UNKNOWN)
HEIRS OF MERLIN JONES, JR.)

Defendants.)

COMPLAINT

COMES NOW The Quapaw Nation, ex rel. the Downstream Development Authority (the “DDA”) by and through undersigned counsel, and for its Complaint states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff DDA is a wholly-owned, unincorporated instrumentality of the Quapaw Nation (the “Nation”).
2. Plaintiff Saracen Development, LLC (“Saracen”) is an Arkansas Limited Liability Company wholly owned by the DDA.
3. Defendant John Berrey (“Berrey”) is a member of the Nation residing in Tulsa County, Oklahoma and is subject to the jurisdiction of this Court.
4. Defendant Jack Brill (“Brill”) is a former employee of the Nation residing in Neosho, Missouri and is subject to the jurisdiction of this Court.

5. Defendant Tamara Smiley-Reeves (“Smiley-Reeves”) is a member of the Nation residing in Ottawa County, Oklahoma and is subject to the jurisdiction of this Court.
6. Defendant Janet Cummings (“Cummings”) was an employee of the Nation residing in Joplin, Missouri and is subject to the jurisdiction of this Court.
7. Defendant George McWatters (“McWatters”) is a member of the Nation residing in Ottawa County, Oklahoma and is subject to the jurisdiction of this Court.
8. Defendant Marilyn Rogers (“Rogers”) is a member of the Nation residing in Craig County, Oklahoma and is subject to the jurisdiction of this Court.
9. Defendant Merlin Jones, Jr. (“Jones”) was an employee of the Nation residing in Joplin, Missouri and his estate is subject to the jurisdiction of this Court.
10. Defendant Sheri Smiley (“Smiley”) is a member of the Nation residing in Kansas and is subject to the jurisdiction of this Court.
11. Defendant Tena Smith (“Smith”) was an employee of the Nation residing in Joplin, Missouri and is subject to the jurisdiction of this Court.
12. The claims in this case all involve the misappropriation of or unjust enrichment via assets of the Nation by members of the Nation or by non-members employed by the Nation on Nation land. As such, this Court has jurisdiction over the claims and the parties.
13. The acts that are the subject of this suit took place primarily, if not wholly, within the Nation’s territory. As such, this Court is the proper venue for this action.

FACTS COMMON TO ALL COUNTS

14. The defendants Berrey, McWatters, Rogers and Smiley-Reeves are former members of the Quapaw Tribal Business Committee (the “BC”). Many also sat on the boards for the DDA and for Saracen. The actions of the defendants complained of herein occurred

while said defendants were members of the BC, DDA and/or Saracen.

15. Defendant Brill acted as legal counsel to the Nation.
16. Defendant Jones served as Chief Financial Officer for the Nation. Mr. Jones passed away on or about April 8, 2021.
17. Defendant Cummings was employed as general manager of the Downstream Casino Resort.
18. Defendant Smith was employed by the Nation as secretary to Berrey.
19. Defendants Berrey, Smiley-Reeves, Brill and Jones caused the Downstream Casino Resort to pay salaries and bonuses to Berrey, Brill, Jones, Smith, Cummings and Smiley-Reeves in an amount more than \$1,000,000 in excess of those authorized by the BC.
20. Defendants Berrey, Smiley-Reeves, Brill and Jones caused the Saracen Casino Resort to pay salaries to Berrey, Brill, Jones, Smith, Cummings and Smiley-Reeves in an amount more than \$1,000,000 when no such salaries were authorized by the BC.
21. Defendants Berrey, Smiley-Reeves, Brill and Jones caused the Saracen Casino Resort to pay "Success Fees" and bonuses in excess of \$4,000,000 to Berrey, Brill, Jones, Smith, Cummings, John Thompson and Smiley-Reeves when no such "Success Fees" or bonuses were authorized by the BC.
22. Defendants Berrey, Smiley-Reeves, Brill and Jones caused the Downstream Casino Resort and the Saracen Casino Resort and Q Store to issue unauthorized checks for unauthorized severance pay and unauthorized Paid Time Off reimbursement to Berrey, Brill, Jones, Smith, Cummings and Smiley-Reeves in an amount in excess of \$1,300,000.
23. Defendant Jones absconded with a laptop computer and other electronic equipment belonging to the Downstream Casino Resort and/or the DDA. Defendant Berrey has

absconded with artwork belonging to the DDA or the Nation.

24. Defendants obtained services and goods from the Downstream Casino Resort without paying for them. The goods and services include but are not limited to cash from the casino cashier in excess of \$10,000; free meals and alcohol in excess of \$100,000; free spa treatments in excess of \$75,000; the purchase of personal goods and services on Downstream Casino Resort credit cards in excess of \$50,000; tickets to Kansas City Chiefs football games, Kansas City Royals baseball games, Arkansas Razorbacks sporting events and various concerts valued in excess of \$100,000; and personal use of private air transportation valued in excess of \$100,000.

COUNT I FRAUD

25. Plaintiff restates and realleges all preceding paragraphs.
26. Defendants represented to payroll personnel and the financial institutions holding Plaintiff's money that Defendants were entitled to certain payments as authorized salary, fees or bonuses when Defendants knew they were not so entitled. Defendants intended for the Plaintiff's payroll personnel and financial institutions to rely on those representations. Plaintiff's payroll personnel and financial institutions reasonably relied on Defendants' misrepresentations causing funds to be transferred to Defendants. Plaintiff has been damaged in the amount of all of the unauthorized funds that were transferred to Defendants.
27. Defendants represented to various service providers of the Downstream Casino Resort and the Saracen Casino Resort that they were authorized to receive goods or services for free. Defendants knew they were not authorized to receive those goods or services for free when they made the representations to the providers. Defendants intended for the

providers of goods and services within the Downstream Casino Resort and the Saracen Casino Resort to rely on Defendants' misrepresentations and those providers reasonably relied on Defendants' misrepresentations. Plaintiff has been damaged in the amount of the value of the goods and services so obtained by Defendants.

COUNT II CONSTRUCTIVE FRAUD

28. Plaintiff restates and realleges all preceding paragraphs.
29. Defendants represented to payroll personnel and the financial institutions holding Plaintiff's money that Defendants were entitled to certain payments as authorized salary, fees or bonuses when Defendants knew they were not so entitled. Defendants intended for the Plaintiff's payroll personnel and financial institutions to rely on those representations. Plaintiff's payroll personnel and financial institutions reasonably relied on Defendants' misrepresentations causing funds to be transferred to Defendants. Plaintiff has been damaged in the amount of all of the unauthorized funds that were transferred to Defendants.
30. Defendants continued to receive monthly payments to which they were not entitled under prior fraudulently induced procedures. Defendants were obligated to inform Plaintiff's payroll personnel and financial institutions that they were not authorized to receive said payments. Defendants remained silent when they were obligated to so speak and are therefore guilty of constructive fraud.
31. Defendants represented to various service providers of the Downstream Casino Resort and the Saracen Casino Resort that they were authorized to receive goods or services for free. Defendants continued to receive goods and services for free under the prior fraudulently induced procedures. Defendants knew they were not authorized to receive

those goods or services for free and were obligated to so inform the providers. Defendants remained silent when they were obligated to so speak and are therefore guilty of constructive fraud.

32. Plaintiff has been damaged in the amount of the value of the goods and services so obtained by Defendants.

COUNT III CONVERSION

33. Plaintiff restates and realleges all preceding paragraphs.
34. Defendants have taken possession of items of personal property belonging to the Plaintiff and have wrongfully exercised dominion over said property in denial of Plaintiff's ownership rights therein.
35. Plaintiff has suffered the loss of said personal property and has been damaged in an amount equal to the value of said property.

COUNT IV UNJUST ENRICHMENT


36. Plaintiff restates and realleges all preceding paragraphs.
37. Defendants have obtained goods, services and money at Plaintiff's expense. Defendants are not entitled to said goods, services and money and it would be unjust for Defendants to retain the benefit of said goods, services and money without commensurate compensation to the Plaintiff.

WHEREFORE, Plaintiff demands judgment against John Berrey, Tamara Smiley-Reeves, Jack Brill, Sheri Smiley, the known and unknown heirs of Merlin Jones, Jr., Tena Smith, Marilyn Rogers, Janet Cummings and George McWaters for the following relief:

- a. Money damages in excess of \$7,000,000;
- b. Punitive damages as a result of Defendants' malicious, wanton, willful,

intentional, and reckless disregard for the rights of Plaintiff, in an amount sufficient to punish Defendants and to deter such conduct in the future; and

c. Such other relief in law and equity, including, costs and fees incurred by Plaintiff to the extent recoverable by law, pre-judgment interest, post judgment interest, and any other relief to which Plaintiff shows himself to be entitled.



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