

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BURREL JONES

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CIVIL ACTION 9:20-cv-00063

VS.

ALABAMA-COUSHATTA TRIBE OF
TEXAS AND NASKILA GAMING

**PLAINTIFF BURREL JONES’ RESPONSE
IN OPPOSITION TO THE TRIBE’S MOTION TO
DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

1. Plaintiff, Burrel Jones, (hereinafter “Plaintiff”) comes in opposition to the Alabama-Coushatta Tribe of Texas’s (hereinafter “the Tribe”) Motion to Dismiss Plaintiff’s First Amended Complaint and would respectfully request that this Court deny the Tribe’s motion.

SUMMARY OF THE ARGUMENT

2. Plaintiff respectfully requests that the Court deny the Tribe’s Motion to Dismiss because (1) the Court has original jurisdiction over Plaintiff’s declaratory-judgment action, and (2) the Court should exercise supplemental jurisdiction over Plaintiff’s premises liability claim.

ARGUMENTS AND AUTHORITIES

A. The Court Has Jurisdiction Over Plaintiff’s Declaratory-Judgment Action

Sovereign Immunity Does Not Bar Plaintiff’s Claims for Declaratory Relief

3. As the Fifth Circuit has reiterated in multiple cases, Indian tribes are not immune from suits for declaratory relief. *See Comstock Oil & Gas Inc. v. Alabama & Coushatta Indian Tribes of Texas*, 261 F.3d 567, 572 (5th Cir. 2001); *TTEA v. Ysleta del Sur Pueblo*, 181 F. 3d 676, 680

(5th Cir. 1999). As the Tribe admits in its Motion to Dismiss, the *TTEA* Court acknowledged that “actions seeking declaratory and injunctive relief” could proceed” against the Indian tribe in that case. Thus, the Tribe in the present case acknowledges what well-established case law already elucidates: the Tribe is not able to hide behind the shield of sovereign immunity to protect itself from declaratory-relief suits in federal court.

4. As such, in the present case, the Court has jurisdiction over Plaintiff’s declaratory relief claims and they should proceed. Whether the Court should ultimately grant the declaratory relief that Plaintiff seeks and/or exercise supplemental jurisdiction over Plaintiff’s premises-liability claim are legal questions that the Court will have to decide based on the unique legal and factual circumstances of this case. However, there is no legal basis to suggest that Plaintiff cannot even *seek* declaratory relief in federal court against the Tribe.

Plaintiff’s Petition-Clause Declaratory-Judgment Action Raises a Federal Question

5. Since sovereign immunity does not bar Plaintiff’s declaratory judgment action, Plaintiff need only show that there is a basis for the Court to exercise original jurisdiction over Plaintiff’s declaratory judgment action. The federal question statute, 28 U.S.C. § 1331, provides federal district courts with “original jurisdiction of all civil actions arising under the Constitutions, laws, or treaties of the United States.” 28 U.S.C. § 1331; *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 328 (5th Cir. 2008). Furthermore, federal district courts have jurisdiction over cases that involve federal questions arising under the Constitution of the United States. *See ex parte Young* 209 US 123, 145 (1908).

6. The declaratory-judgment action that Plaintiff brings before this Court is rooted in the Constitution and laws of the United States. The First Amendment of the U.S. Constitution declares that “Congress shall make no law...abridging...the right of the people...to petition the

government for a redress of grievances.” U.S. Const. amend. I. In addition, the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (hereinafter “Restoration Act”) is a congressionally passed law that, according to Section 103 of the Act, restored “all rights and privileges of the tribe...under any...authority of the United States,” (including common-law sovereign immunity). Finally, as Plaintiff laid out in his First Amended Complaint, the Tribe had no tribal court in which Plaintiff could litigate his premises liability claim. *See* Dkt. No. 12, p. 6-8.

7. The Restoration Act’s restoration of common-law immunity by way of the restoration of “all rights and privileges” to the Tribe, as well as the Tribe’s failure to have a tribal court in which Plaintiff could seek redress for his injury claims violates Plaintiff’s constitutional right to petition. Consequently, Plaintiff’s petitioning to this Court for a declaratory judgment regarding the extent to which congressionally passed statutes and failures of the Tribe both violate his rights create precisely the kind of federal question that allows the Court to exercise original jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

8. Because the Tribe is not protected from declaratory judgment actions by the doctrine of sovereign immunity and Plaintiff’s declaratory-judgment action raises a federal question, the Court has subject-matter jurisdiction over Plaintiff’s Complaint for declaratory relief. The Tribe’s Motion to Dismiss must therefore be denied.

B. The Court Should Exercise Supplemental Jurisdiction Over Plaintiff’s Premises Liability Claim.

9. When federal district courts have original jurisdiction over a civil action, they “shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). In the case at bar, Plaintiff’s premises-

liability injury claim is directly related to his declaratory-judgment-action claim, which serves as the basis for the Court's original jurisdiction over the case. Consequently, the Court should exercise supplemental jurisdiction over Plaintiff's premises-liability claims.

10. The Tribe in its Motion to Dismiss presses this Court to find that Plaintiff's premises-liability claim is barred by the tribe's alleged sovereign immunity against that claim and that the Court should therefore not exercise supplemental jurisdiction over Plaintiff's tort claim. However, serious questions regarding equity arise when, as in this case, a tribe has no tribal court in which a plaintiff can litigate his tort claims. As such, courts that have been faced with facts similar to those in the case at bar have held that a defendant tribe's use of the sovereign immunity defense does not apply where justice requires that immunity not be upheld.

11. In *Wilkes v. PCI Gaming Auth.*, 287 So. 3d 330 (Ala. 2017), the Supreme Court of Alabama held that the doctrine of tribal sovereign immunity did not apply to shield an Indian tribe from tort claims brought by non-tribal plaintiffs. The plaintiffs in *Wilkes* originally brought suit for negligence against the casino in state court seeking damages after sustaining injuries in a head-on automobile collision with an employee of the casino. *Id.* The casino argued that the state court did not have jurisdiction over the claim because the casino was supposedly protected by its tribe's sovereign immunity. *Id.*

12. The Supreme Court of Alabama held that the tribe was subject to suit for the negligence claims and was not entitled to tribal sovereign immunity because upholding the tribe's sovereign immunity would be contrary to the interests of justice in a situation such as the one in the *Wilkes* case where "[plaintiffs] [would] have no way to obtain relief if the doctrine of tribal sovereign immunity [was] applied to bar their lawsuit." *Id.* at 334.

13. The risk of being deprived a mechanism for obtaining relief that the plaintiffs in *Wilkes* faced is the same risk that Plaintiff now faces in the case at bar. The Tribe has no tribal court in which Plaintiff could bring suit for his premises liability claim against the Tribe and/or the Casino. Therefore, unless this Court exercised supplemental jurisdiction over Plaintiff's premises liability claims, Plaintiff would have no way to seek relief for said claim.¹ As such, in the interests of equity and justice, this Court should follow the precedent set by the *Wilkes* court and not apply sovereign immunity to the Tribe against Plaintiff's tort claim.

14. The Tribe notes in its Motion to Dismiss that *Wilkes* is not binding precedent on this Court and argues that this Court should not follow its precedent. Leaving aside the fact that the Tribe one the one hand decries the use of non-binding tribal tort claims cases outside of the Fifth Circuit while on the other hand arguing that this Court should follow several *other* non-binding tribal tort claims cases outside of the Fifth Circuit, the Tribe glosses over the key comparison between *Wilkes* and the present case. The *Wilkes* Court declined to apply the sovereign immunity doctrine to the tribe, which would have barred the alleged tort victims from being able to seek relief, because "a contrary holding would be contrary to the interests of justice." *Id.* The *Wilkes* Court notes the doctrine of sovereign immunity is a common-law doctrine that "developed almost by accident." *Id.* at 333. *Wilkes* further acknowledges that, as Justice Clarence Thomas explained, "the doctrine of tribal sovereign immunity as articulated by the Supreme Court in [*Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998)] lacks "substantive justification" and the majority's reasons for continuing to uphold the doctrine —deference to Congress, stare decisis, etc.—are insufficient in

¹ It should be noted that, contrary to the Tribe's assertions, Plaintiff is not asking this Court to find that the Constitution "mandates that he have a remedy against the tribe" for his injures; Plaintiff merely seeks a declaration that the Constitution mandates that he be able to *seek* a remedy through the litigation process.

light of that lack of a justification, and the "unfairness and conflict it has engendered" *Id.* at 335 (citing *Mich. V. Bay Mills Indian Cmty.*, 572 U.S.782, (2014) (Thomas, J., dissenting)).

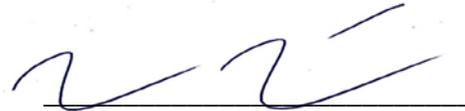
15. In the interests of justice, this Court should follow the *Wilkes* court's lead and decline to extend sovereign immunity "beyond the circumstances to which [the U.S. Supreme Court] itself has applied it," hold that Plaintiff's tort claim is not barred by sovereign immunity, and deny the Tribe's Motion to Dismiss.

CONCLUSION

16. For the foregoing reasons, Plaintiff respectfully requests that this Court deny in its entirety the Tribe's Motion to Dismiss Plaintiff's First Amended Complaint.

Respectfully submitted,

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**ATTORNEY FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record herein in accordance with the Federal Rules of Civil Procedure on August 14, 2020.

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A handwritten signature in black ink, appearing to read 'Rashon Murrill', is written over a horizontal line.

Rashon Murrill