

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’S OBJECTION TO REPORT AND RECOMMENDATION
GRANTING IN PART DEFENDANTS’ MOTION TO DISMISS**

1. Plaintiff Burrel Jones (hereinafter “Plaintiff”) files this objection to the Report and Recommendation by this Court’s magistrate judge to transfer venue. Pursuant to Federal Rule of Civil Procedure 72(b), when a party’s claim is referred to a magistrate judge to hear and decide, the party may serve and file objections to the magistrate’s order within 14 days of being served a copy. FED. R. CIV. P. 72(b). By timely filing an objection, the filing party preserves its ability to assign as error a defect in the magistrate judge’s order. *Id.*

**Plaintiff Objects to the Recommendation to Grant
Defendants’ Motion to Dismiss Plaintiff’s Premises Liability Claim**

2. Contrary to the Report and Recommendation, this Court can and should exercise supplemental jurisdiction over Plaintiff’s premises liability claim. The Court should follow the example of *Wilkes v. PCI Gaming Auth.*, 287 So. 3d 330 (Ala. 2017), a case very similar factually to the case at bar. In *Wilkes*, the Supreme Court of Alabama declined to apply the court-made doctrine of tribal sovereign immunity 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.* The Supreme Court of Alabama held that the tribe was subject to suit for the negligence claims because it 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.

3. 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 present case. Despite the Tribe's claims to the contrary, the Tribe has no currently operating tribal court in which Plaintiff could bring suit for his premises liability claim against the Tribe and/or the Casino. Therefore, Plaintiff would have no way to obtain relief for his premises liability claim if this Court were to uphold the Tribe's claim of sovereign immunity.

4. 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 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)). As such, in the interests of equity and justice, this Court can and should follow the precedent set by the *Wilkes* court and not uphold the Tribe's claim of sovereign immunity over Plaintiff's tort claim. With sovereign immunity set aside, there is no reason for the Court to decline to exercise supplemental jurisdiction

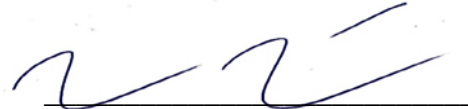
over Plaintiff's premises liability claim. Plaintiff therefore objects to the Report and Recommendation granting Defendants' Motion to Dismiss Plaintiff's premises liability claim.

PRAYER

For these reasons, Plaintiff respectfully requests that this Court's district judge to set aside the Report and Recommendation to dismiss Plaintiff's premises liability claim, decline to uphold sovereign immunity for the Tribe, and exercise supplemental jurisdiction over Plaintiff's premises liability claim.

Respectfully submitted,

KOLODNY LAW FIRM, PLLC



Rashon Murrill
State Bar of Texas: 24110622
1011 Augusta Dr., Suite 111
Houston, Texas 77057
Telephone: (713) 532-4474
Facsimile: (713) 785-0597
Email: rmurrill@fko-law.com

**ATTORNEY FOR PLAINTIFF
BURREL JONES**

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 November 3, 2020.

Via Electronic Service

Danny S. Ashby
Texas Bar No. 01370960
Justin Roel Chapa
Texas Bar No. 24074019
MORGAN, LEWIS & BOCKIUS LLP
1717 Main Street, Suite 3200
Dallas, Texas 75201

(214) 466-4000 Telephone
(214) 466-4001 Facsimile
danny.ashby@morganlewis.com
justin.chapa@morganlewis.com

Frederick R. Petti
Texas Bar No. 24071915
PETTI & BRIONES, PLLC
8160 East Butherus Drive, Suite 1
Scottsdale, Arizona 85260
fpetti@pettibriones.com

**ATTORNEY FOR DEFENDANT
ALABAMA-COUSHATTA TRIBE
OF TEXAS AND NASKILA GAMING**

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

Rashon Murrill