

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

1. CHEYENNE AND ARAPAHO TRIBES,

Plaintiff,

v.

CASE NO. CIV-15-262-W

1. LESLIE WANDRIE-HARJO, an individual;

2. CITIZENS BANK OF ADA;

3. JANICE BOSWELL, an individual,

Defendants.

COMPLAINT

COME NOW the Cheyenne and Arapaho Tribes ("Tribes") and, for their causes of action against Defendants, allege and state as follows:

INTRODUCTION

1. This is an action to recover certain funds (the "Embezzled Funds" or "Funds") owned by the Tribes and currently held in an account located at Defendant Citizens Bank of Ada ("Citizens Bank" or "Bank" or "Stakeholder").

2. At all times relevant hereto, Defendant Leslie Wandrie Harjo ("Harjo") was the duly elected lieutenant governor of the Tribes, and Defendant Janice Boswell ("Boswell") was the duly elected governor. On information and belief, neither Harjo nor Boswell has an individual interest in or claim to the Embezzled Funds.¹

¹ Boswell is named merely as a nominal party in interest. The events discussed herein arose during her tenure as the Tribes' governor, and she undertook actions to obtain the return of the funds during her administration.

PARTIES

3. Plaintiff Tribes are a federally recognized Indian tribal government located in Concho, Canadian County, Oklahoma.²

4. Defendant Harjo may be served at her last known address, 2601 S. Lawn Place, El Reno, OK 73036.

5. Defendant Citizens Bank of Ada has a primary business address of 123 West 12th St., Ada, OK 74820, but may, for purposes of this litigation only, be served by service on its counsel, John N. Goodman, 301 N. Harvey, Suite 210, Oklahoma City, OK 73102-3421.

6. Defendant Boswell may be served at her last known address, 815 N. Illinois, Weatherford, OK 73096.

JURISDICTION & VENUE

7. This Court has jurisdiction over this matter pursuant to 18 U.S. Code § 1163 because this suit concerns property belonging to a federally recognized Indian tribe. *See also*, 28 U.S. Code § 1362.

8. This is an action in the nature of interpleader pursuant to Fed.R.Civ.P. 22.

9. Venue is proper in this Court because Plaintiff and Defendants Harjo and Boswell are located within the Western District.

FACTUAL ALLEGATIONS

The Tribal Trust Accounts

10. The Cheyenne and Arapaho Tribes are a federally-recognized Indian tribe eligible to receive services from the United States Bureau of Indian Affairs, 80 Fed. Reg. 1942 (Jan. 14, 2015). The Tribes are organized under a Constitution ratified by the Tribes' members and

² Although considered a single governmental entity for purposes of federal recognition, the Tribes are themselves culturally distinct entities and are referred to in the plural.

approved by the Secretary of Interior pursuant to Section 3 of the Oklahoma Indian Welfare Act (49 Stat. 1967).

11. The United States is the trustee of property it holds on behalf of the Tribes. Congress has statutorily designated the Secretary of the Department of the Interior as being primarily responsible for the management of Indian affairs generally. As such, the Secretary of the Interior is the primary trustee of tribal trust funds. The Secretary of the Interior in turn has delegated his or her authority to several agencies within the Department of the Interior, including the Bureau of Indian Affairs ("BIA"), the Office of Trust Funds Management ("OTFM") and the Office of Special Trustee for American Indians ("OST"). The Special Trustee is appointed by the Secretary of the Interior and charged with certain duties and responsibilities pursuant to the American Indian Trust Fund Management Reform Act of 1994, 108 Stat. 4239, 25 U.S.C. § 4001 et seq., legislation by which Congress expressly recognized the critical importance of proper management of trust funds to Native Americans.

12. The lands comprising the Cheyenne and Arapaho Territory are held in trust by the United States for the benefit of the Tribes and their members, and are managed by the Department of the Interior ("Interior") for the benefit of the Tribes.

13. A substantial portion of the funds held by the United States in trust for the Tribes and their members consist of income derived from the Tribes' oil and gas mineral holdings ("mineral assets") located on tribal lands held in trust by the United States for the benefit of the Tribes.

14. The BIA is responsible for carrying out the federal government's trust responsibilities to the Tribes with respect to the Tribes' trust assets, including management of the Tribes' mineral assets. Pursuant to the Federal Oil and Gas Royalty Management Act of 1982, 96

Stat. 2447, which amended the Mineral Lands Leasing Act of 1920, 41 Stat. 437, codified at 30 U.S.C. § 181 et seq., the BIA is obligated to collect royalty funds derived from the production of the Tribes' mineral assets and to deposit those funds into the Tribes' trust accounts.

15. The United States is also obligated to collect revenues derived from the Tribes' grazing and agricultural activities occurring on the lands held in trust by the United States for the Tribes.

16. The BIA deposits funds collected from the production of the mineral assets into the Tribes' trust account number PL 7370700. The BIA deposits the revenues collected from the Tribes' grazing and agricultural assets into the Tribes' trust account number PL 7210708 (together, the "Trust Accounts").

17. The Trust Accounts are maintained by the United States Department of Treasury for the benefit of the Tribes.

18. The BIA Concho Agency in El Reno, Oklahoma (the "Concho Agency"), which is under the supervision of the BIA Southern Plains Regional Office, is the office within Interior that is responsible for managing the collection and disbursement of funds in the Tribes' Trust Accounts.

The Embezzlement

19. On or about November 10, 2011, Harjo contacted the Concho Agency seeking to transfer funds from the Trust Accounts to a bank account.

20. On or about November 18, 2011, in response to Harjo's request and direction, the Concho Agency transferred \$00.84 and \$760,047.97 from the Trust Accounts to an account at Citizens Bank numbered xx8645 (the "Transfer") and an additional \$300.00 was deposited into the account. The Stakeholder now holds \$760,348.81 ("Funds held by Stakeholder").

21. The Tribes neither authorized nor had knowledge of the request.

22. Harjo had no legal right to the Funds held by Stakeholder, which were held by the United States for the exclusive benefit of the Tribes and their members.

23. As a result of the Transfer, the Tribes' funds were placed beyond the control of both the Tribes and the United States.

24. On or about November 23, 2011, the BIA Southern Plains Regional Director vacated the actions of the BIA Concho Agency and demanded that the funds transferred from the Trust Accounts as a result of the Transfer be returned with all possible haste.

25. To date, Harjo has repeatedly refused to return the embezzled funds to the Tribes or the BIA.

26. As a result of the Transfer, the Tribes were unable to provide their members with a year-end per capita distribution in December 2011.

COUNT I
(Embezzlement – As to Defendant Harjo)

27. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs.

28. At the time of her embezzlement, Harjo was an elected official of the Tribes. As such, she owed a fiduciary duty to the Tribes and their members to properly manage tribal assets.

29. By means of stealth and misrepresentation, Harjo secured the transfer of tribal funds to the Citizens Bank account and personally attempted to use the funds.

30. Harjo's embezzlement of the Tribes' trust funds violated common-law fiduciary principles as well as federal law.

31. As a result of Harjo's actions, the Tribes and their members have suffered and continue to suffer considerable damage and harm.

32. Harjo's actions have violated her fiduciary duties to the Tribes and continue to violate the Tribes' rights as beneficiary of the Trust Funds.

WHEREFORE, Tribes pray for judgment against Harjo as more particularly described below.

COUNT II
(Fraud – As to Defendant Harjo)

33. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs.

34. Harjo obtained property belonging to the Tribes by fraud:

- a. On or about November 10, 2011, Harjo made one or more material misrepresentations to the personnel at the Concho Agency. On information and belief, Harjo misrepresented her authority to act and led the Agency to believe the funds were being deposited in a bank account belonging to the Tribes.
- b. Harjo knew her representations to the Concho Agency were false.
- c. Plaintiff intended the Concho Agency to rely on her misrepresentations.
- d. The Concho Agency relied on Harjo's misrepresentations to the detriment of the Tribes.

WHEREFORE, Tribes pray for judgment against Harjo as more particularly described below.

COUNT III
(Conversion – As to Defendant Harjo)

35. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs.

36. Based on the above and foregoing allegations, Harjo obtained the Embezzled Funds with the intent to convert same to her personal use.

37. Based on the above and foregoing allegations, Harjo expended a portion of the Embezzled Funds for her own personal benefit.

WHEREFORE, Tribes pray for judgment against Harjo as more particularly described below.

COUNT IV
(Interpleader – As to Defendant Citizens Bank)

38. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs.

39. Citizens Bank is in possession of the Embezzled Funds as a Stakeholder.

40. Citizens Bank has no individual right or claim to the Embezzled Funds.

41. Interpleader is appropriate in this action pursuant to Fed.R.Civ.P. 22.

WHEREFORE, Tribes pray for judgment against Bank as more particularly described below.

PRAYER FOR RELIEF

WHEREFORE, the Cheyenne and Arapaho Tribes respectfully request the Court enter judgment in their favor and against the Defendants as follows:

1. Monetary damages against Defendant Harjo in an amount no less than \$760,225.00 plus with pre- and post-judgment interest;

2. Monetary damages against Defendant Harjo for all costs of collection incurred by the Tribes since 2011 in an amount not less than \$25,000.00;

3. An Order directed to Defendant Citizens Bank as follows:

- a. Directing Bank to deposit the Funds held by Stakeholder into the Court;
 - b. Providing that Bank's attorney fees and any poundage or other costs shall be paid from the Funds prior to deposit; and
 - c. Ordering that, upon payment into the Court as provided herein, Bank shall be relieved of liability as to all parties and released and dismissed with prejudice from this action and that Tribes, Harjo and Boswell are prohibited from filing further suit against Bank concerning the Funds;
4. Injunctive relief against Defendant Harjo requiring her to provide a full and complete accounting, reconciliation and certification of the Embezzled Funds;
 5. All additional and further relief, both at law and in equity, to which the Tribes are entitled.

March 13, 2015

Respectfully submitted,

HOBBS, STRAUS, DEAN & WALKER

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