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CHEROKEE NATION
SUPREME COURT
KENDALL BIRD, COURT CLERK

IN THE SUPREME COURT OF THE CHEROKEE NATION

IN THE SUPREME COURT OF THE CHEROKEE NATION
CASE NO. SC 2007-17

ON APPEAL FROM CHEROKEE NATION DISTRICT COURT
CASE NO. CV 2005-52

The Loyal Shawnee Cultural Center, Inc., Plaintiff/Appellant
Versus
Peace Pipe, Inc., Defendant/Appellee

FOR THE PLAINTIFF/APPELLANT:

The Loyal Shawnee Cultural Center, Inc.

Sherrin Watkins, CNB# 216
Attorney at Law
113 South Lewis
Stillwater, Oklahoma 74074

FOR THE DEFENDANT/APPELLEE:

Peace Pipe, Inc.

Ralph F. Keen, II, CNB# 121
Attorney at Law
205 West Division
Stilwell, Oklahoma 74960

BEFORE:

Darell R. Matlock, Jr., Chief Justice
Darrell R. Dowty, Justice
James G. Wilcoxon, Justice
Kyle B. Haskins, Justice
Troy Wayne Poteete, Justice

DISTRICT COURT'S GRANTING DEFENDANT/APPELLEE'S
MOTION FOR SUMMARY JUDGMENT
IS AFFIRMED

OPINION BY:

Chief Justice Darell R. Matlock, Jr.

OPINION

NOW on this 3rd day of April, 2008, the Plaintiff/Appellant's petition for
appellant review of the District Court's Judgment entered by the Honorable Bart Fite, on

the 8th day of May, 2007, in District Court Case No. CV-2005-52 granting the Defendant/Appellee's Motion for Summary Judgment comes on for review.

Jurisdiction

This Court has jurisdiction in these proceedings pursuant to Article VIII of The Constitution of The Cherokee Nation of 1999 and Title 20 Section 51 of the Cherokee Nation Code Annotated.

Standard of Review

The Appellate standard of review of a trial court's grant of summary judgment is *de novo*.

Case Procedural History

1. The Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc., filed its amended petition for breach of contract on the 30th day of September, 2005, against the Defendant/Appellee, Peace Pipe, Inc., alleging among other things that the Defendant/Appellee failed to pay to the Plaintiff/Appellant monies due it under a contract wherein the parties were co-lessees concerning a smoke shop.
2. The Defendant/Appellee, Peace Pipe, Inc., filed its answer to the Plaintiff/Appellant's amended petition on October 19, 2005, denying all allegations of the Plaintiff/Appellant's amended petition except admitting that Defendant/Appellee, Peace Pipe, Inc., was in the business of operating smoke shops under a license granted by the Cherokee Nation, and, setting forth the affirmative defenses of Failure of Consideration, Statute of Frauds, Statute of Limitations, Waiver Estoppel and Laches.

3. The Defendant/Appellee, Peace Pipe, Inc. filed its Motion for Summary Judgment and combined Brief in Support on March 15, 2007.
4. The Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc., filed its Response to Defendant's Motion for Summary Judgment and Plaintiff's Brief in Support on April 4, 2007.
5. The trial court entered its order granting the Defendant/Appellee's Motion for Summary Judgment on May 8, 2007, from which this appeal is commenced.
6. The Plaintiff/Appellant timely filed its appeal with this Court on May 16, 2007 setting forth that the trial Court erred in granting the Defendant/Appellee's Motion for Summary Judgment.

Review of the Evidentiary Record

This Court determines there is no dispute of the following material facts of the case.

1. The Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. is a corporation formed pursuant to the laws of the Cherokee Nation in 1994.
2. The Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. has at all times herein been in good standing as defined by the laws of the Cherokee Nation.
3. Don Greenfeather was an original incorporator of the Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc., and, president of said corporation in 1994 and at all times herein.
4. Don Greenfeather signed all documents for the Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. concerning the business relationship with the

Defendant/Appellee, Peace Pipe, Inc.

5. Don Greenfeather was chairman of the Loyal Shawnee Tribe in 1994 and until 1999.
6. The Loyal Shawnee Tribe was not federally recognized in 1994.
7. The Loyal Shawnee Tribe gained federal recognition in the year 2000.
8. The Defendant/Appellee, Peace Pipe, Inc. is a corporation organized under the laws of the State of Delaware.
9. Joseph C. Lane is and was the president of Peace Pipe, Inc. at all times herein.
10. Defendant/Appellee, Peace Pipe, Inc. and the Loyal Shawnee Tribe entered into an agreement dated October 27, 1993 concerning the operation of smoke shops and in particular a smoke shop to be located on the restricted allotment property of Annie Dick, deceased, full blood Cherokee. The agreement was signed on behalf of the Loyal Shawnee Tribe of Indians by Don Greenfeather, and, on behalf of Peace Pipe, Inc. by Joe C. Lane. The agreement is not ambiguous on its face or by its terms.
11. Defendant/Appellee, Peace Pipe, Inc. and The Loyal Shawnee Cultural Center, a Cherokee Tribally chartered corporation signed a U.S. Department of the Interior, Bureau of Indian Affairs, Business Lease as "Lessees" dated October 1, 1994 concerning the restricted allotment of Annie Dick, deceased, a full blood Cherokee for the purpose of operating a smoke shop, tobacco resale. The lease was signed, on behalf of The Loyal Shawnee Cultural Center, a Cherokee Tribally chartered corporation by Don Greenfeather, and,

on behalf of Peace Pipe, Inc. a Delaware corporation by Joe C. Lane. The lease agreement is neither ambiguous on its face or by its terms.

12. The initial lease agreement dated October 1, 1994 has at various times been renewed.
13. Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. wrote a demand letter to the Defendant/Appellee Peace Pipe, Inc. dated May 17, 2005 which in effect directed the Defendant/Appellee to pay any monies due under the agreement dated October 27, 1993 to The Loyal Shawnee Cultural Center, Inc. This letter of demand was the only written demand for payment presented to the Defendant/Appellee, Peace Pipe, Inc. by the Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc.
14. The Defendant/Appellee, Peace Pipe, Inc. paid monies due, under the agreement dated October 27, 1993 between and signed by Defendant/Appellee, Peace Pipe, Inc. and the Loyal Shawnee Tribe, to the Loyal Shawnee Tribe from the inception of the contractual obligation on October 17, 1993 to May 17, 2005.
15. The Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. knew the Defendant/Appellee, Peace Pipe, Inc. was making payments under the agreement dated October 27, 1993 to the Loyal Shawnee Tribe.
16. The Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. has never received any money payments from the Defendant/Appellee Peace Pipe, Inc.
17. The Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. has received benefit from the Loyal Shawnee Tribe by reason of the payments of monies

made to the Loyal Shawnee Tribe by the Defendant/Appellee, Peace Pipe, Inc. under the agreement dated October 27, 1993.

Discussion

This Court by *de novo* review determined whether or not there are disputed material factual questions, and, whether the Defendant/Appellee was entitled to judgment as a matter of law under the undisputed facts before the trial court at the time of granting of the summary judgment. This method of review is standard in most state and federal jurisdictions and is adopted by this Court. *Celotex Corp. v Catrett*, 477 U.S. 317; 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986); *In Re Macfarlane* 2000 Ok 87, 14 P3d 551

The Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. was acting as the [alter ego] of the Loyal Shawnee Tribe when it secured the initial lease of the restricted allotment of Annie Dick, deceased, full blood Cherokee, from the Secretary of the Interior for the purposes of a smoke shop for tobacco resale on October 1, 1994. The undisputed evidence before the trial court supports this conclusion. Don Greenfeather who was an original incorporator of the Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. and served as its president, and, who was also serving as the chairman of the Loyal Shawnee Tribe, testified in his deposition taken on the 26th day of January, 2007, that the Loyal Shawnee Tribe did not have the ability to sign the initial U.S. Department of the Interior, Bureau of Indian Affairs, Business Lease dated October 1, 1994 because it was not federally recognized. It was stipulated by the Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc., that the terms of the initial U.S. Department of the Interior, Bureau of Indian Affairs, Business Lease dated October 1, 1994 did not require any performance from the Plaintiff/Appellant, The Loyal

Shawnee Cultural Center, Inc. The agreement entered into by the Defendant/ Appellee, Peace Pipe, Inc. and the Loyal Shawnee Tribe dated October 27, 1993 required the Defendant/Appellee, Peace Pipe, Inc. to pay 30% of the net profits from the Annie Dick smoke shop to the Loyal Shawnee Tribe, and, required the Loyal Shawnee Tribe to aid and assist Peace Pipe, Inc. in locating other smoke shop locations. Don Greenfeather further testified that the Plaintiff/Appellant periodically received benefit from the proceeds paid to the Loyal Shawnee Tribe by the Defendant/Appellee, Peace Pipe, Inc. The Defendant/Appellee, Peace Pipe, Inc. has performed under this agreement for approximately 11 years with the knowledge of the Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc.

The documents presented as exhibits and the testimony of Don Greenfeather concerning the performance of the parties including the non party, Loyal Shawnee Tribe, for an 11 year period could only lead a reasonable person to one conclusion. That being the Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. was the alter ego for the Loyal Shawnee Tribe for the purposes of securing the lease of the Annie Dick restricted allotment, and, the Defendant/Appellee, Peace Pipe, Inc. had no contractual obligation to the Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc.

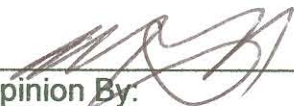
Conclusion

The trial court's order granting judgment entered on May 8, 2007 is not clear as to the legal conclusion for granting summary judgment in favor of the Defendant/Appellee, Peace Pipe, Inc. The trial court indicated that the statute of limitation had run with respect to Plaintiff/Appellant's claims. This legal conclusion is only partially correct. The terms of the agreement dated October 27, 1993 between the

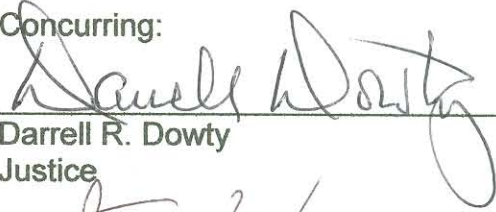
Defendant/Appellee, Peace Pipe, Inc. and the Loyal Shawnee Tribe are such that the statute of limitations found at 12 C.N.C.A. §11 would only bar claims for breach of contract occurring five years before the Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. filed its original petition for breach of contract. However, this Court finds that the Defendant/Appellee, Peace Pipe, Inc. had no contractual obligation to pay monies to the Plaintiff/Appellant, The Loyal Shawnee Cultural Center, Inc. under any agreements presented to the trial court.

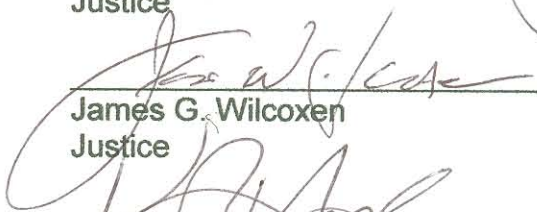
IT IS THEREFORE ORDERED BY THE COURT that the judgment of the trial court for summary judgment in favor of the Defendant/Appellee, Peace Pipe, Inc. is hereby **affirmed**.

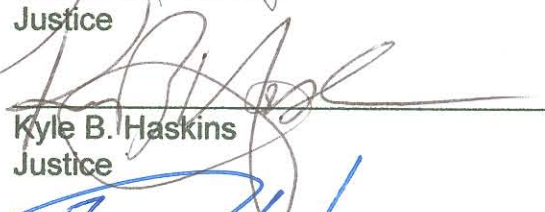
Executed this 3rd day of April, 2008.

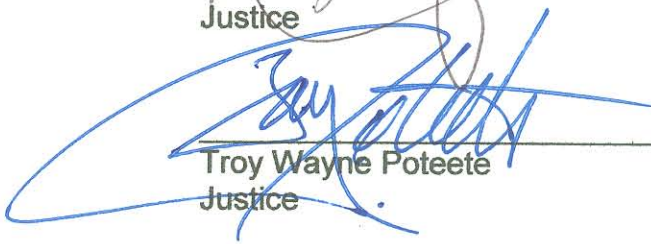

Opinion By:
Darell R. Matlock, Jr.
Chief Justice

Concurring:


Darrell R. Dowty
Justice


James G. Wilcoxon
Justice


Kyle B. Haskins
Justice

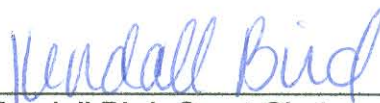

Troy Wayne Poteete
Justice

CERTIFICATION OF MAILING

I certify that a true and correct copy of the foregoing document, OPINION, was mailed and/or transmitted via facsimile on this 4th day of April, 2008 to the following:

Ralph Keen, fax # (918) 696-3576

Sherrin Watkins, fax # (405) 707-9959



Kendall Bird, Court Clerk
Cherokee Nation Supreme Court