

IN THE DISTRICT COURT OF THE CHOCTAW NATION

WILLIAM LUTHER HORTON)

Plaintiff,)

v.)

CHOCTAW NATION d/b/a)
THE CHOCTAW CASINO)

Defendant.)

Case No. CJ-21-6

FILED
CHOCTAW NATION OF OKLAHOMA
DISTRICT COURT CLERK

APR 20 2022
SUSAN LOZANO
COURT CLERK
BY [Signature] DEPUTY

JOURNAL ENTRY

On this 20th day of April 2022 there came before this Court Defendant's Motion for Summary Judgment ("Motion"), filed on February 25, 2022. The Court has reviewed the Motion, along with Plaintiff's Response and Defendant's Reply thereto. Additionally, on April 7, 2022, the Court conducted a hearing on this matter, considering the argument of counsel. For the reasons set forth herein, the Court **GRANTS** Defendant's Motion for Summary Judgment.

The following facts are undisputed: Plaintiff alleges he sustained a fall on the Choctaw Casino premises on August 19, 2019 and reported the same on August 20, 2019.¹ Plaintiff was provided a copy of the Rules and Procedures for Tort Claims, in compliance with the Model Tribal Gaming Compact ("Gaming Compact").² Plaintiff submitted his tort claim notice to the Choctaw Casino Gaming Commission on July 17, 2020.³ The Choctaw Nation received the Plaintiff's notice of tort claim on July 23, 2020.⁴ The Choctaw Nation did not issue any written denial of Plaintiff's notice of tort claim until Tribal First (Choctaw Nation insurance service) issued a letter to Plaintiff

¹ Defendant's Motion ("Def. MSJ,") Para. No. 1; Plaintiff's Response ("Pltf Resp.") Para. 1.

² Def. MSJ Para. 2; Pltf Resp., Para 2.

³ Def. MSJ. Para. 3, Pltf Resp. 3.

⁴ Def. MSJ, Para 5, Pltf. Resp., Para. 5.

dated December 2, 2020.⁵ This December 2, 2020 letter states it denies the claim and then specifically states “a judicial proceeding must be filed no later than 180 days after the date of this letter.”⁶ Plaintiff filed his Complaint in this matter on May 6, 2021.⁷

Pursuant to Part 6 of the Gaming Compact, Paragraph 4, a tort claim notice must be filed within one year of the date of the event which allegedly caused the claimed loss. The “enterprise”⁸ shall promptly make a determination regarding the tort claim, and any unresolved portion of the claim “shall be deemed denied if the enterprise fails to notify the claimant in writing of its approval within ninety (90) days of the filing date, **unless the parties by written agreement extend the date by which a denial shall be deemed issued if no other action is taken. Each extension shall be for no more than ninety (90) days...no written agreement for extension shall be valid unless signed by the claimant and an authorized representative of the enterprise.**”⁹(emphasis added.) The Gaming Compact requires that a judicial proceeding be filed no later than the 180th day after denial.¹⁰ Neither the claimant nor the enterprise can agree to extend the time to commence a judicial proceeding.¹¹

Plaintiff did timely submit and file his notice of tort claim with the Choctaw Nation as of July 23, 2020. However, the record does not indicate that there was any written denial of Plaintiff’s

⁵ Def. MSJ, Para. 9, Pltf. Resp. Para. 9.

⁶ Def. MSJ, Ex. 6.

⁷ Def. MSJ, Para. 10; Pltf Resp. Para. 10.

⁸ Defined in the Gaming Compact at Paragraph 13 as “the tribe or tribal agency or section of tribal management with direct responsibility for the conduct of covered games, the tribal business enterprise that conducts covered games, or a person, corporation or other entity that has entered into a management contract with the tribe to conduct covered games in accordance with the IGRA.”

⁹ Gaming Compact, Part 6, Para. 8.

¹⁰ Gaming Compact, Part 6, Para. 9 (c).

¹¹ *Id.*

tort claim within 90 days of this date, therefore as of October 21, 2020, his claim was deemed denied pursuant to the Gaming Compact, Part 6, Para 8. Accordingly, Plaintiff had 180 days, or until April 19, 2021, to file his complaint with this Court. It is undisputed Plaintiff did not file his complaint until May 6, 2021.

Plaintiff contends that the December 2, 2020 letter he received from Tribal First extended his time to file his suit because the letter: (a) states it was a denial, and (b) informs Plaintiff that a judicial proceeding must be filed within 180 days of the date of the letter (or April 19, 2021). Plaintiff did file his lawsuit on April 19, 2021. *See* Pltf Response, pp. 3-7. Defendant argues that Tribal First letter could not have extended the deadline for Plaintiff to file suit as it was not a written extension signed by both parties, pursuant to the Gaming Compact, Part 6, Para. 8.

Thus, the question before this Court is whether or not the December 2, 2020 letter from Tribal First extended the Plaintiff's time to file his lawsuit. The parties point this Court to several State of Oklahoma cases construing the Oklahoma Governmental Tort Claims Act, 51 Okla. Stat. § 151 *et. seq.* ("GTCA").¹² Plaintiff relies primarily upon *Carswell v. Oklahoma State Univ.*, 1999 OK 102, 995 P.2d 1118. In *Carswell*, a chemistry student brought suit against the university under the GTCA for harm she suffered as the result of a chemical exposure. More than 90 days after she notified the university of her claim, she received a letter from the State denying her claim "effective as of the date of this letter." The State argued that plaintiff did not timely file suit within 180 days of the date her claim was "deemed" denied, even though she did file suit within 180 days of the letter. The Oklahoma Supreme Court found that the plaintiff's claims were not time barred because the letter specifically provided that the denial was "effective" as of the date of the letter.

¹² Although these cases are not binding or controlling, their analysis is informative.

Carswell does not save Plaintiff's claims in the instant matter. The December 2, 2020 Tribal First letter does not state that the denial of Plaintiff's claims is "effective" as of the date of the letter. Instead, the letter merely states that the claim was denied.¹³ The instant fact pattern is similar to *Trent By and Through Trent v. Bd of County Com'rs*, 1988 OK 15, 755 P.2d 615. In that case, plaintiffs filed their tort claim and no response was received from the county within 90 days of the plaintiff's tort claim, and the claim was deemed denied. However, after the expiration of the 90 days and the "deemed" denial, the plaintiffs received a letter from the county stating that the claim was "denied." Because plaintiff did not file suit within 90 days of the deemed denial date, but instead filed based off of the date of the denial letter, the Oklahoma Supreme Court held the suit was not timely. *See also Carswell*, 995 P.2d at Para. 11 (nothing that one material difference between the facts in *Carswell* and the facts in *Trent* were that the letter in *Carswell* specifically stated the "effective date" of denial was the date of the letter).

More importantly, any agreement for an extension of the filing deadline must be in writing and "signed by the claimant and an authorized representative of the enterprise" pursuant to the terms of the Gaming Compact.¹⁴ Similar language does not appear in the GTCA or the cited cases. The December 2, 2020 letter from Tribal First is not signed by the Plaintiff. Accordingly, the Court finds Plaintiff's claims are time barred and GRANTS Defendant's Motion for Summary Judgment.¹⁵

IT IS SO ORDERED.

¹³ Def. MSJ, Ex. 6.

¹⁴ Gaming Compact, Part 6, Para. 8.

¹⁵ The Court would note that for most individuals filing a claim pursuant to the Gaming Compact, the language included in the Tribal First letter stating that a judicial proceeding must be filed no later than "180 days after the date of this letter" could be considered misleading and confusing. However, for the reasons set forth herein, and based upon the language of the Gaming Compact, the Court grants summary judgment to Defendant.



Amy J. Pierce
DISTRICT COURT JUDGE FOR
THE CHOCTAW NATION OF
OKLAHOMA.

CERTIFICATE OF DELIVERY

I hereby certify that on the 20th day of April, 2022, I sent by electronic mailed or faxed thereon the foregoing document to:

Jason Reynolds

jason@griffinreynoldslaw.com

Attorney for Plaintiff

Bart Jay Robey

bjrobey@chubbucklaw.com

Meagon Eagon

mreagon@chubbucklaw.com

Attorneys for Defendant



Choctaw Nation Judiciary Clerk,

Shelbi Phelps