

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

<p>ALABAMA-QUASSARTE TRIBAL TOWN,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>(1) FIRST NATIONAL BANK AND TRUST COMPANY OF OKMULGEE, (2) WILSON L. YARGEE, and (3) ROVENA YARGEE,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. CIV-22-268-RAW</p>
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ORDER

This action involves a dispute over tribal governance. Plaintiff Alabama-Quassarte Tribal Town (hereinafter the “AQTT”) brought this action against the First National Bank and Trust Company of Okmulgee (hereinafter the “Bank”), Wilson Yargee, Rovena Yargee, and Tahlina Nofire on September 26, 2022, seeking declaratory and injunctive relief. The AQTT filed the Amended Complaint on November 21, 2022 against the Bank,¹ Wilson Yargee, and Rovena Yargee, seeking declaratory and injunctive relief.²

Now before the court is the motion to dismiss the Amended Complaint filed by Wilson Yargee and Rovena Yargee (hereinafter jointly referred to as the “Yargees”) [Docket No. 31],

¹ The court notes that summons has not been issued as to the Bank.

² After a motion to dismiss was filed by Tahlina Nofire, the court invited the AQTT to file an amended complaint providing additional legal or factual averments. The court directed that the AQTT may drop, but not add parties or claims and that a redline version be attached. While the AQTT failed to attach a redline version to its Amended Complaint, it attached one to its response to the motion to dismiss. *Docket No. 34-1*. To the extent claims were added in the Amended Complaint, the court hereby gives leave. Fed. R. Civ. P. 15(a)(2).

the AQT's response thereto [Docket No. 34], and the Yargees' reply [Docket No. 35], as well as the Yargees' notice of supplemental authority [Docket No. 36] and the AQT's response thereto [Docket No. 37]. The Yargees move for dismissal of the Amended Complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). They also move for the dismissal of the claims for injunctive relief for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

Standard of Review

A motion pursuant to Rule 12(b)(1) takes one of two forms – a facial attack or a factual attack. *Stuart v. Colorado Interstate Gas Co.*, 271 F.3d 1221, 1225 (10th Cir. 2001) (citing *Holt v. United States*, 46 F.3d 1000, 1002-03 (10th Cir. 1995)). A facial attack questions the sufficiency of a complaint, and in reviewing it, the court accepts the allegations in the complaint as true. *Id.* A factual attack goes beyond the allegations in a complaint and challenges the facts upon which subject matter jurisdiction depends. *Id.* In reviewing a factual attack, the court does not accept the allegations in the complaint as true and has wide discretion to consider evidence to resolve the disputed jurisdictional facts without converting the motion into a Rule 56 motion. *Id.*

For purposes of a motion to dismiss pursuant to Rule 12(b)(6), the court accepts as true all of the well-pleaded factual allegations in a complaint and construes those facts in the light most favorable to the plaintiff. *See Anderson v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 521 F.3d 1278, 1284 (10th Cir. 2008). Of course, the court does not accept as true conclusory statements or legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

To survive a Rule 12(b)(6) motion to dismiss, a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). A plaintiff must nudge its “claims across the

line from conceivable to plausible.” *Twombly*, 550 U.S. at 570. The plausibility standard requires “more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. “Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal quotations omitted). In other words, the well-pleaded facts must “permit the court to infer more than the mere possibility of misconduct.” *Id.* at 679.

[T]he *Twombly* / *Iqbal* standard is a middle ground between heightened fact pleading, which is expressly rejected, and allowing complaints that are no more than labels and conclusions or a formulaic recitation of the elements of a cause of action, which the Court stated will not do. In other words, Rule 8(a)(2) still lives. Under Rule 8, specific facts are not necessary; the statement need only give the defendant fair notice of what the claim is and the grounds upon which it rests.

Khalik v. United Air Lines, 671 F.3d 1188, 1191 (10th Cir. 2012).

The Amended Complaint³

In its Amended Complaint, the AQTТ alleges that Wilson and Rovena Yargee were elected as Chief and Second Chief, respectively, of the AQTТ in May of 2021 and sworn in on May 27, 2021. The AQTТ alleges that before the Yargees took office, its financial affairs were in order, but that almost immediately after they took office, the financial situation of the AQTТ went into a downward spiral. The AQTТ alleges that by August 26, 2021, the Yargees transferred, spent, and had no accounting for the majority of \$718,000. The AQTТ also alleges that the Yargees were not taking drawdowns from the AQTТ’s grant accounts during the time of their administration.

³ Attached to the Amended Complaint are: (1) the AQTТ’s Constitution and By-Laws; (2) the AQTТ’s Corporate Charter; (3) the AQTТ’s Governing Committee Standing Policy and Rules of Procedure; (4) the minutes of the AQTТ emergency called meeting of the Governing Committee on November 3, 2021; (5) Resolutions dated April 5, 2018, December 18, 2018, and August 19, 2019; and (6) the December 22, 2021 notice to AQTТ tribal members of the December 30, 2021 regular membership meeting. *Docket No. 23-1 through 23-6.*

On August 26, 2021, at the regularly scheduled bimonthly membership meeting, the members discussed the financial and accounting problems with Wilson Yargee. Rather than working to correct the financial crisis, he then took a two-week vacation. Upon his return, the Governing Committee (the AQTT's legislative branch) convened special meetings on September 15 and 23, 2021 to continue addressing the dire financial situation. The AQTT alleges that Wilson Yargee then hired an accounting firm without following proper BIA procedure or even informing the Governing Committee. By October 21, 2021, all employees of AQTT companies were laid off and received termination notices as a result of the AQTT's negative cash flow and balances.

The AQTT alleges that the Governing Committee asked the Yargees to attend the October 28, 2021 regularly scheduled bimonthly meeting and account for the financial crisis. The Yargees arrived an hour and fifteen minutes late to the meeting and then deflected questions about the financial health of the AQTT. When a motion was made and seconded for their removal, the Yargees left the meeting instead of responding. A vote was held, and an overwhelming majority voted to remove the Yargees for cause, specifically for willful neglect of duty, incompetence, mismanagement, abuse of authority, unethical behavior and other actions.

The AQTT alleges that the removal was conducted according to the AQTT Constitution and its Standing Policy and Rules of Procedure. Further, it alleges that on November 3, 2021, a special meeting was called by the Governing Committee to memorialize through official AQTT resolution the removal of the Yargees. On November 3, 2021, the AQTT Solicitor⁴ confirmed that the removal was conducted properly according to the AQTT's constitution and by-laws.

⁴ The AQTT Constitution provides that "in the case of a dispute between the Governing Committee and the Chief, the matter shall be settled by the Solicitor." *Amended Complaint, Docket No. 23, at 6*, quoting Article V of the AQTT Constitution, *Docket No. 23-1, at 3*. The

Even after their removal was confirmed by the Solicitor, the AQTT alleges that the Yargees have continued to claim they are in power and have “mounted an insurrection.” On or about December 6, 2021, the Yargees or individuals acting on their behalf broke into AQTT government offices, removed sensitive AQTT documents including AQTT stationary, and replaced locks. The Yargees have purported to pass resolutions, remove and replace elected members, and expel individuals from tribal membership altogether in a series of letters sent on December 3, 2021.

On December 22, 2021, the AQTT sent a letter to all tribal members notifying them of a membership meeting on December 30, 2021. At that meeting, a vote to *re-enforce* the removal of the Yargees was taken and passed unanimously.

The AQTT alleges that because of the discord created by the Yargees, the Bank refuses to acknowledge the newly appointed interim Chief Sam Marshall and/or his designee as the sole legal representative of the AQTT’s accounts. The Bank maintains several accounts on behalf of the AQTT, but will not disburse funds to the tribe, resulting in suspension of several tribal programs including elderly and child assistance programs. The AQTT alleges that recognizing that a court order would be key to obtaining tribal funds from the Bank, Wilson Yargee then purported to establish an AQTT Town Court, naming his friend Tahlina Nofire as its judge, on December 18, 2021, well after the Yargees were removed from office.

The AQTT asserts that this court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1362, as well as the Indian Civil Rights Act (hereinafter “ICRA”), Oklahoma Indian Welfare Act (hereinafter “OIWA”), Public Law 93-638, the Indian Self-Determination and Education

Defendants initially disputed the existence of an AQTT Solicitor during this time, but upon the evidence of his appointment attached to the AQTT’s response, Wilson Yargee acknowledges his signature on the resolution appointing Elton Smith as Solicitor. *See Docket No. 34-4, at 2-3.*

Assistance Act of 1975, and Section 8(a) of the Small Business Act. Pursuant to 28 U.S.C. § 2201, the AQTT requests that this court enter declaratory judgment that:

- a. The AQTT's removal of Wilson Yargee as Chief and Rovena Yargee as Second Chief comported with due process requirements of the United States Constitution and § 1302 of the ICRA;
- b. Wilson Yargee's purported establishment of an AQTT Court is not legally authorized by the OIWA, and orders issued by it are therefore void *ab initio* as a matter of United States law;
- c. Wilson Yargee's purported establishment of an AQTT Court violates the sovereignty and self-governance rights of the AQTT under the OIWA as a result of its inconsistency with the AQTT Constitution;
- d. Orders entered by the Yargee Court purporting to bind the AQTT violate the sovereign immunity granted to the AQTT under the OIWA;
- e. Orders issued by the Yargee Court are not entitled to full faith and credit under the United States Constitution;
- f. Wilson Yargee and Rovena Yargee do not have authority to represent AQTT with respect to Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975;
- g. The Yargees do not have authority to represent AQTT with respect to Section 8(a) of the Small Business Act;
- h. The Yargees actions have violated the Corporate Charter issued by the United States Department of the Interior pursuant to the OIWA, and thereby violated the OIWA;
- i. Orders issued by the unlawful court Yargee established, the so-called Yargee Tribal Town Court, that purport to bind the AQTT violate the federally-recognized sovereign immunity of the AQTT;
- j. The Yargees have no valid claim to the funds held by the Bank on behalf of AQTT, and that the Bank should therefore turn over control of the AQTT bank account(s) to Sam Marshall and/or his designees.

The AQTT also requests preliminary and permanent injunctions:

- (1) Ordering any state court not to domesticate or otherwise honor any orders from the illegitimate Yargee Tribal Town Court before this court can determine whether it was constitutionally and/or lawfully created;
- (2) Ordering the Bank not to honor any orders entered by the Yargee Tribal Town Court;
- (3) Ordering the Bank to provide immediate and exclusive access and control of the AQTT accounts to Chief Sam Marshall and/or his designees, and preventing the Bank from distributing funds to the Yargees; and
- (4) Preventing the Yargees from representing themselves as the authorized leadership of the AQTT.

Additional Evidence

The Yargees argue that their Rule 12(b)(1) motion should be granted under either a facial or factual analysis. They attach to their motion to dismiss an affidavit by Wilson Yargee, *Docket No. 31-3*, an affidavit by Molly Moore who was hired as “Tribal Administrator” by the Yargees in August of 2021, *Docket No. 31-1*, and an Order of Dismissal issued on April 20, 2022 by the Muscogee (Creek) Nation District Court dismissing for lack of subject matter jurisdiction an action between the parties now before the court (as well as other individuals) over the same tribal governance issue included in this action, *Docket No. 31-2*. The Yargees attach to their reply an appeal of a decision by the U.S. Postal Service, *Docket No. 35-2*, and an order issued by the “Alabama-Quassarte Tribal Town District Court,” *Docket No. 35-1*, the legitimacy of such court being at issue in this case.

The AQTT also attaches evidence to its response, including the minutes of the AQTT regular meeting of the Governing Committee on September 30, 2021, *Docket No. 34-3*, and the resolution of the AQTT Governing Committee appointing Elton Smith as “Solicitor” signed by *inter alia* Wilson Yargee. *Docket No. 34-4*.

Motion to Dismiss⁵

In contrast to the Amended Complaint, the Yargees argue that when they took office, they hired a Tribal Administrator, Molly Moore, who quickly discovered considerable accounting discrepancies, including overdraft charges, negative account balances, and program

⁵ The court notes that in their motion to dismiss, the Yargees argue that the persons claiming to represent the AQTT are Sam Marshall, Lena Wind, Annie Merritt, Bernadette Whitetree, Wendy Wind, and Brina Williams. The Yargees refer to these individuals as well as other tribal members who oppose the Yargees as “the Wind-Marshall group.” In their reply, the Yargees drop the “Wind-Marshall group” reference and refer to the internal tribal leadership dispute as being between the “Yargee and Marshall factions.”

account balances that did not match the financial reports provided to them. They argue that Ms. Moore further found that federal funds had not been drawn down and the required reports for such funds had not been filed for one to three years. The Yargees argue that they, Ms. Moore, and the Governing Committee met with a prominent accounting firm, RedW, after which Wilson Yargee hired the firm to assist with putting the AQTT's accounts in order.

The Yargees contend that their removal was illegitimate and unenforceable. They argue that the attempt to remove them from office was unsuccessful because they were not provided with due process of law. Specifically, the Yargees state:

The removal of elected officers at regular membership meetings without prior notice is contrary to the Interior Board of Indian Appeals' previous determination that the removal provision of the Town Constitution must be interpreted in a manner consistent with the due process guarantees of §1302 of the Indian Civil Rights Act. *See Rebecca Torres v. Acting Muskogee Area Director, Bureau of Indian Affairs*, 34 IBIA 173 (1999).

Docket No. 31 at 11. Nevertheless, the Yargees concede that they could not obtain relief from this court on the basis that they were denied due process of law, as ICRA does not provide a basis for relief here.

The Yargees argue that this action must be dismissed because this court does not have subject matter jurisdiction, as this case involves an internal tribal leadership dispute that does not raise a federal question under any of the provisions listed in the Amended Complaint. The Yargees argue that the AQTT's reliance on ICRA does not create a federal question. The Yargees further argue that the AQTT's references to the Full Faith and Credit Clause of the United States Constitution, the OIWA, the Indian Self-Determination Act, and Section 8(a) of the Small Business Act do not create federal question jurisdiction. Finally, the Yargees maintain that the AQTT's request for injunctive relief must be denied pursuant to Fed. R. Civ. P. 12(b)(6).

Analysis

Indian tribes are a “separate people, with the power of regulating their internal and social relations.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (citation omitted). “Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.” *Id.* at 58 (citation omitted). Moreover, “a waiver of sovereign immunity ‘cannot be implied but must be unequivocally expressed.’” *Id.* (citation omitted). In *Santa Clara*, the Supreme Court held that:

[U]nless and until Congress makes clear its intention to permit the additional intrusion on tribal sovereignty that adjudication of such actions in a federal forum would represent, we are constrained to find that § 1302 does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers.

Id. at 72.

Before this court are two “groups” or “factions,” as so referenced by the Yargees, each claiming the legitimate seat of the Chief of the AQTT. According to the AQTT, the removal of the Yargees was conducted according to the AQTT Constitution and its Standing Policy and Rules of Procedure, was reaffirmed by the Solicitor who decides disputes between a Chief and a Governing Board, and then was reaffirmed again by a unanimous tribal vote after notice was given. Yet the Yargees persist in their stance that they were not legitimately removed because they were not given due process and that they thus remain in power. The parties are at a standoff.

Citing *Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682, 685 (10th Cir. 1980), the AQTT argues that the limitations and restrictions in *Santa Clara* should not be applied because it has “no remedy within the tribal machinery.” *Dry Creek*, however, involved a non-Indian plaintiff, and its limited exception to the *Santa Clara* holding is not applicable here. Moreover, as evidenced by the attachments to the Amended Complaint, the AQTT has the tribal

machinery to choose and determine its own legitimate governing officers. To the extent the AQTT members believe the tribal machinery requires any improvements or amendments to ensure due process is given to its members and their elected officials, such is up to the AQTT and its members.

“[T]he Supreme Court has uniformly recognized that one of the fundamental aspects of tribal existence is the right to self-government.” *Alturas Indian Rancheria v. Bernhardt*, No. 19-16885, 2023 WL 385176, at *1 (9th Cir. Jan 25, 2023) (citing *Wheeler v. United States Dep’t of Interior, Bureau of Indian Affs.*, 811 F.2d 549, 551 (10th Cir. 1987)). “The federal government and federal courts have also encouraged tribal self-governance, and ‘[federal courts] have stated that when a dispute is an intratribal matter, the Federal Government should not interfere.’” *Id.* A claim is “nonjusticiable where litigants seek ‘a form of relief that the federal courts cannot provide, namely, the resolution of the internal tribal leadership dispute.’” *Id.* (citing *In re Sac & Fox Tribe of Miss. In Iowa/Meskwaki Casino Litig.*, 340 F.3d 749, 763 (8th Cir. 2003)).

In *Wheeler*, the Tenth Circuit dealt with an intratribal election dispute. The Tenth Circuit held that while the federal government “may be required by statute or tribal law to act in intratribal matters, it should act so as to avoid any unnecessary interference with a tribe’s right to self-government.” *Wheeler*, 811 F.2d at 553. “Plaintiffs have not cited, and we have not found, any federal statute or any provision of Cherokee law that requires the Department to intervene in a Cherokee election dispute.” *Id.* The same is true here. The AQTT has not cited, and this court has not found, any federal statute or any provision of AQTT law that requires this court to intervene in an AQTT governance dispute.

In fact, whether an AQTT governing official “was properly removed from office and whether he had general authority to act on behalf of the Tribe in a governmental capacity are

pure questions of tribal law, beyond the purview of the federal agencies and the federal courts.” *Attorney’s Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927, 943 (8th Cir. 2010).

Likewise, the issues related to the legitimacy or illegitimacy of the AQTT Court created by the Yargees after they were allegedly removed from office is an intratribal governance dispute and outside this court’s jurisdiction. In fact, every issue before the court turns on these intratribal governance disputes over which only the AQTT has jurisdiction. To decide any of claims before the court, the court would first have to exceed its jurisdiction into the AQTT’s intratribal governance dispute. As such, the court need not reach the remainder of the Yargees’ arguments. This action is dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

Summary

The motion to dismiss [Docket No. 31] filed by the Yargees is hereby GRANTED. The court notes further that more than a year has passed since this action was filed, and a summons has never been issued for the Bank. Again, the court does not have jurisdiction over any of the claims asserted herein, but as the AQTT has not attempted to serve the Bank, any remaining claims against the Bank are also dismissed for failure to prosecute.

IT IS SO ORDERED this 29th day of September, 2023.



**THE HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA**