

FILED

FEB 22 2013

**CHOCTAW SUPREME COURT
COURT CLERK**

**IN THE CHOCTAW SUPREME COURT OF THE
MISSISSIPPI BAND OF CHOCTAW INDIANS**

**MJ'S COFFEE AND MORE,
MARY J. BURNS, OWNER**

APPELLANT

v.

CAUSE NO. SC2012-03 3-02 JC

MISSISSIPPI BAND OF CHOCTAW INDIANS

APPELLEES

NOTICE OF APPEAL

TO: Ms. Jane Charles
Clerk of the Choctaw Supreme Court
Choctaw Supreme Court
125 River Ridge Circle
Choctaw, Mississippi 39350

**MJ'S COFFEE AND MORE,
MARY J. BURNS, OWNER**

APPELLANT

MISSISSIPPI BAND OF CHOCTAW INDIANS

APPELLEES

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Email: cer@wisecarter.com

YOU ARE HEREBY GIVEN NOTICE, pursuant to the *Choctaw Rules of Appellate Procedure*, that Appellant Petitioner, Mary J. Burns, (hereinafter referred to as "***Appellant Burns***"), by and through counsel, being aggrieved at the decision rendered by the Choctaw Civil Tribal Court in Cause No. 2012-1151-cv, hereby appeals to the Choctaw Supreme Court this cause of action filed against her by Appellee and Defendant, Mississippi Band of Choctaw Indians (hereinafter referred to as "***Appellee MBCI***") in Choctaw Civil Tribal Court, Cause No. 2012-1151-cv. Appellant Burns cause of action that is being appealed relates to the adverse rulings by the Choctaw Civil Tribal Court in favor of Appellee MBCI and against Appellant Burns including the granting of the *Motion to Dismiss* as to the Counterclaim by Appellee MBCI and the dismissal of Appellant Burns' Counterclaim by the Choctaw Civil Tribal Court in Cause No. 2012-1151-cv.

APPELLANT BURNS hereby appeals to the Choctaw Supreme Court the ***Order of Dismissal*** of January 24, 2013 in which the Choctaw Tribal Civil Court of the Mississippi Band of Choctaw Indians ruled against her and denied her claim for relief against the Appellee MBCI as set forth in her Counter-claim; and dismissed with prejudice her claims as set forth in her Counterclaim.

APPELLANT BURNS would show unto the Court that the ***Order of Dismissal*** entered on ***January 24, 2013*** is on file and of record in the Choctaw Civil Tribal Court in Cause No.

2012-1135-cv and that a copy of the *Order of Dismissal* entered on *January 24, 2013* from which an appeal is sought is attached as *Exhibit "A"* and incorporated herein by reference.

APPELLANT BURNS would further show that a copy of *Final Judgment and Dismissal with Prejudice* of January 24, 2013, is on file and of record in Choctaw Civil Tribal Court Cause No. 2012-1135-cv and a copy of the *Final Judgment and Dismissal with Prejudice* is attached as *Exhibit "B"* and is incorporated herein by reference.

RESPECTFULLY SUBMITTED, this the 22nd day of February, 2013.

**MJ'S COFFEE AND MORE,
MARY J. BURNS, OWNER,
APPELLANT**

BY:



**JOHN M. MOONEY, JR.
ATTORNEY FOR APPELLANT**

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ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I, John M. Mooney, Jr., do hereby certify that I have this day mailed a true and correct copy of the *Notice of Appeal* by email and by U. S. Mail, postage prepaid, to the following:

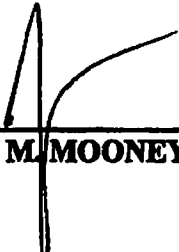
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Honorable Judge Jeff Webb
Tribal Court Judge
P.O. Box 6012
Philadelphia, MS 39350
Email: webblaw@bellsouth.net

DATED, this the 22nd day of February, 2013.



JOHN M. MOONEY, JR.

**CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS**

MISSISSIPPI BAND OF CHOCTAW INDIANS

PETITIONER

VS.

CASE NO. 2012-1151-CV

**MJ'S COFFEE AND MORE,
MARY J. BURNS, OWNER**

DEFENDANTS

ORDER OF DISMISSAL

THIS MATTER came before this Court on the Motion to Dismiss the Counterclaim of Burns filed by the Petitioner/Counter-Defendant, the Mississippi Band of Choctaw Indians ("MBCI" or the "Tribe") doing business as the Choctaw Shopping Center Enterprise ("Shopping Center"). The Motion was filed with this Court on September 20, 2012. Through this Motion, MBCI seeks dismissal of the Counterclaim of Mary J. Burns, owner of MJ's Coffee and More (Defendants/Counter Plaintiffs), against MBCI. Having considered the Motion to Dismiss the Counterclaim of Burns filed by the MBCI, Defendants/Counter Plaintiffs response, argument by all parties, and the applicable law, the Court finds as follows:

- A. Ms. Burns filed a Counterclaim against MBCI in this action alleging "fraud, deceit, and negligent misrepresentation;" emotional distress; and intentional interference with business relations. Ms. Burns seeks actual and compensatory damages in the amount of Five Hundred Thousand Dollars (\$500,000.00), costs and attorneys' fees, and other relief. Ms. Burns asserts through her Counterclaim that her eviction from the Shopping Center premises was wrongful, as opposed to pursuant to the Business Lease, disputes her default on the loan she had with Choctaw Entrepreneurial Loan Program ("CELP"), and claims that MBCI damaged or wrongfully retained some of her property from the leased premises.

- B. All of the issues in Ms. Burns' Counterclaim were fully adjudicated by the Court in *MBCI v. Burns*

EXHIBIT

A

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Coffee and More, Mary J Burns, Owner v. MBCI d/b/a Choctaw Shopping Center Enterprise, John Hendrix, General Manager, Choctaw Tribal Court, Mississippi Band of Choctaw Indians No. 2012-235 (hereinafter "Injunction Action") and a Final Judgment was entered in that matter on August 21, 2012. Because all of the claims Ms. Burns raises in this action were fully adjudicated and decided in the Injunction Action, Ms. Burns' Counterclaim in this action is barred by the doctrine of res judicata.

- C. Because the Court finds that Ms. Burns' Counterclaim in this action is barred by the doctrine of *res judicata*, the Court need not address MBCI's argument for dismissal based on the sovereign immunity of the MBCI or MBCI's argument that this Court lacks jurisdiction because Ms. Burns failed to comply with the mandatory pre-suit notice of claim requirement set forth in Choctaw Tribal Code section 1-5-10 and section 25-1-6 and failed to post the mandatory bond required by section 1-5-5.
- D. For all of these reasons, Ms. Burns' Counterclaim is without merit, and MBCI's Motion to Dismiss the Counterclaim in this action is well taken and should be granted.

A. **IT IS THEREFORE ORDERED** that MBCI's Motion to Dismiss the Counterclaim of Ms. Burns is hereby granted and the Counterclaim of Ms. Burns in this action is hereby dismissed, with prejudice. The Court notes that Ms. Burns' Counterclaim does not assert claims associated with or related to action(s) or inaction(s) of the Choctaw Tax Commission, and as such, in this action, the Court has not adjudicated any rights or claims Ms. Burns may have related to any action(s) or inaction(s) of the Choctaw Tax Commission.

SO ORDERED, THIS THE ^{24th} ~~11th~~ DAY OF ^{JAN.} ~~DECEMBER~~, 2017.


JEFF WEBB, TRIBAL COURT JUDGE

SUBMITTED BY:

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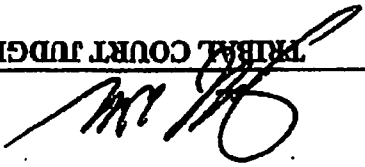
CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS

MISSISSIPPI BAND OF CHOCTAW INDIANS
PETTINER
VS.
MJS CORRE AND MORE,
MARY J. BURNS, OWNER
DEFENDANTS
CASE NO. 2012-1151-CV

FINAL JUDGMENT AND ORDER OF DISMISSAL

In accordance with this Court's Order of Dismissal dated December 11, 2012, FINAL JUDGMENT is hereby entered in favor of the Mississippi Band of Choctaw Indians against Mary J. Burns, and all claims asserted by Mary J. Burns against the Mississippi Band of Choctaw Indians d/b/a Choctaw Shopping Center in this action are hereby dismissed, with prejudice, with Mary J. Burns to take nothing, and final judgment is hereby entered in favor of MBI and against Mary J. Burns.

SO ORDERED THIS THE 29th DAY OF Jan., 2013.



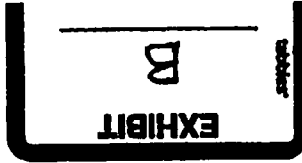
TRIBAL COURT JUDGE

PREPARED AND SUBMITTED BY:

COUNSEL FOR DEFENDANTS

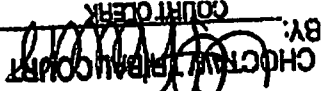
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CHOCTAW TRIBAL COURT
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