



JUL 18 2022

RICK WARREN
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STATE OF OKLAHOMA *ex rel.* OKLAHOMA)
TOURISM AND RECREATION DEPARTMENT,)

Plaintiff,)

v.)

SWADLEY'S FOGGY BOTTOM)
KITCHEN, LLC, an Oklahoma limited)
Liability company,)

Defendant.)

Case No. CJ-2022-2001

JURY TRIAL DEMANDED

AMENDED PETITION

Plaintiff State of Oklahoma *ex rel.* Oklahoma Tourism and Recreation Department, for its claims for relief against Defendant Swadley's Foggy Bottom Kitchen, LLC, states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Oklahoma Tourism and Recreation Department ("Tourism Department") is an agency of the State of Oklahoma, with its principal office Oklahoma County, Oklahoma.
2. Defendant Swadley's Foggy Bottom Kitchen, LLC ("Swadley's") is an Oklahoma limited liability company with its principal office in Oklahoma County, Oklahoma.
3. Jurisdiction and venue are proper in Oklahoma County, State of Oklahoma.

BACKGROUND AND APPLICABLE FACTS

4. The Tourism Department promotes tourism and visitation to Oklahoma's state parks. The State of Oklahoma ("State" or "Oklahoma"), through the Tourism Department, sought to improve the visitor experience at many of its parks. Part of these improvements involved investments in State-owned facilities around the state. As part of this investment in an

improved visitor experience, the Tourism Department decided to remodel five restaurants located in Oklahoma State Parks. The Tourism Department sought an experienced third-party to facilitate the remodel and the day-to-day operation of these restaurants.

5. At the relevant time in 2020, Swadley's operated numerous restaurants in various cities and towns across Oklahoma including: Ardmore, Bethany, El Reno, Enid, Midwest City, Mustang, and two Oklahoma City locations.
6. Swadley's also had experience remodeling and repurposing existing restaurants.
7. Relying upon Swadley's representations that it was qualified not only to operate restaurants, but to serve as a general contractor for commercial remodeling and construction projects for restaurants, the Tourism Department selected Swadley's as the independent contractor to manage the Tourism Department's State Park restaurant improvement projects.
8. In further reliance on Swadley's representations, on or about March 4, 2020, the Tourism Department entered into a Master Concession Lease ("Lease" or "Original Contract") with Swadley's regarding the restaurant remodels and operations in five of Oklahoma's State parks.
9. Following the entry of the Original Contract, the Tourism Department and Swadley's (the "Parties") executed two amendments and an additional addendum (collectively, the Original Contract, Addendum E and the two amendments are referenced as the "Contract").¹
10. The Contract included a number of obligations, including, but not limited to these:

¹ On or about March 24, 2020, the Tourism Department and Swadley's executed an Addendum E to the Master Concession Lease. On or about February 23, 2021 the Tourism Department and Swadley's executed a First Amendment to the Master Concession Lease ("First Amendment"). On or about August 27, 2021, the Tourism Department and Swadley's executed a Second Amendment to the Master Concession Lease ("Second Amendment").

- a. Swadley's would make one-time improvements, purchases, modifications and additions to the six restaurants.²
- b. In exchange Swadley's would receive one-time reimbursements and then operate the six restaurants in their existing conditions thereafter.
- c. The furniture, fixtures, and equipment purchased pursuant to the Contract were to remain the State's property.
- d. Swadley's would obtain any and all inspections and permits required by the laws of the State, County, or municipality applicable to the remodel or operation of the restaurants.
- e. Swadley's would keep true and accurate books and records of all its business transactions in accordance with generally accepted accounting principles ("GAAP").
- f. Swadley's was required to make its books and records for inspection and copying by the Tourism Department and the Oklahoma State Auditor and Inspector at all reasonable times for the duration of the Contract and for seven (7) years following its expiration.
- g. Swadley's was required, at its own expense, to have its financial statements audited annually by a Certified Public Accountant licensed to practice in Oklahoma. The financial statements and audit report were to be delivered to the Tourism Department no later than 150 days after the end of the Swadley's fiscal year.
- h. Swadley's was required to timely file state and federal income tax returns and submit copies to Tourism not later than thirty (30) days after their filing date.

² The First Amendment added two additional restaurants; however, the Second Amendment removed one of the restaurants as there were budgetary concerns about the costs of having to remodel the seventh site.

- i. Swadley's was required to obtain background checks from the Oklahoma State Bureau of Investigation for all owners and potential employees of the relevant restaurants.
 - j. Prior to the execution of the Original Contract, three restaurants³ were operating at a loss. Under the Contract, the Tourism Department agreed to cover Swadley's operational losses up to a set dollar limit.
11. The Tourism Department entered the Contract with Swadley's based on Swadley's representations as to the expected costs to be incurred for furniture, fixtures, equipment, remodeling and branding.
 12. Upon information and belief, Swadley's negotiated the terms of the original costs based upon its pre-Original Contract inspections of the sites and its experience as a general contractor.
 13. The Tourism Department entered the Contract believing it to be a mutually beneficial arrangement that would benefit the State of Oklahoma, its citizens, and Swadley's.
 14. While the State did receive some benefit from the Contract, unfortunately, the Contract eventually became solely beneficial to Swadley's and to Plaintiff's detriment.
 15. Defendant Swadley's breached the Contract, in a multitude of ways, including without limitations:
 - a. Swadley's overcharged the Tourism Department for a number of items. For example, Defendant Swadley's invoiced the Tourism Department for the reimbursement of two new smokers but delivered used smokers of a different model than were invoiced.

³ Lake Murray, Roman Nose and Sequoyah

- b. Swadley's made unauthorized price markups on equipment and furniture that were invoiced to the Tourism Department.
- c. Swadley's submitted invoices for reimbursement of equipment that it never delivered to any of the restaurants.
- d. Swadley's improperly (and contrary to GAAP) accounted for several expenses and made numerous other improper accounting entries. A number of "reimbursed costs" were listed on the Profit/Loss statement. This improper accounting entry misleadingly reduced the net revenue and prevented the State from receiving a royalty payment on the restaurants.
- e. Swadley's paid employees bonuses and then sought reimbursement for these expenses as a "loss" under the Contract.
- f. Swadley's failed to install a commercial fire alarm and commercial fire suppression system in one of the restaurants it remodeled. Instead of installing the required systems, it simply installed non-operational residential smoke detectors in the facility.
- g. Swadley's failed to perform required background checks on its employees. Thereafter, an illegally hired employee who had a criminal record committed an assault on a separate employee.
- h. Despite explicit requests for backup documentation for certain invoices from the Tourism Department, Swadley's refused to provide the documentation.
- i. Defendant Swadley's stopped providing the monthly Profit/Loss statements in December 2021.

- j. Defendants Swadley's failed to provide copies of any tax returns or audits despite operations over two fiscal years.
 - k. Swadley's failed to timely provide the Tourism Department a "projected business plan for Fiscal Year 2022" which was due on September 15, 2021.
16. Further, prior to entering into the Original Contract, Defendant Swadley's provided the Tourism Department operational revenue, cost and expense projections to justify the mutually beneficial nature of the agreement.
17. Despite Swadley's purported expertise as a restaurant operator, these projections were completely unrealistic, as the actual expenses charged against revenue greatly exceeded projections. Upon information and belief, these projections were intended to mislead the Tourism Department.
18. Swadley's, by failing to abide by and abusing the terms of the Contract, has received unknown thousands in unjustified payments and reimbursements from the Tourism Department.
19. As a result of Swadley's multiple breaches of the Contract and in order to protect taxpayers and the State of Oklahoma, the Tourism Department terminated the Contract on April 25, 2022.
20. Upon information and belief, Swadley's conduct has damaged the State of Oklahoma in an amount to be established at trial, in excess of \$75,000, for which the State is entitled to be paid.

COUNT I: BREACH OF CONTRACT

The above numbered paragraphs are restated and incorporated by reference in Count I.

21. Swadley's breached the terms of the Contract with the Tourism Department.

22. Other breaches of the Contract may be discovered by Plaintiff Tourism Department upon receipt of documents that have not been provided to Plaintiff and that are in the sole control of Defendant Swadley's.
23. Plaintiff has been damaged by Swadley's multiple breaches in an amount to be established at trial.

COUNT II: FRAUD

The above numbered paragraphs are restated and incorporated by reference in Count II.

24. In the alternative, the above conduct outlined regarding the invoicing of the furnishings, fixtures and equipment purchased by Defendant Swadley's were done intentionally to defraud Plaintiff Tourism Department.
25. Upon information and belief, Defendant Swadley's submitted other invoices that intentionally misstated the cost of furniture, fixtures and equipment and/or that identified furniture, fixtures, and equipment models that were not provided.
26. Defendant Swadley's expected Plaintiff to rely upon these invoices as accurate statements of the costs of furniture, fixtures and equipment and the Tourism Department paid the invoices to its detriment.
27. Defendant Swadley's additionally overcharged the State/Tourism Department on other invoices for remodeling and operating one or more of the restaurants.
28. Defendant Swadley's intended for Plaintiff to rely upon these invoices as truthful representations of the costs.
29. The Tourism Department relied upon these representations and paid the invoices to its detriment.

30. Defendant Swadley's misrepresentations were done with reckless disregard for the truth and/or intentionally and damaged the State/Tourism Department in amounts to be established at trial.

COUNT III: NEGLIGENT MISREPRESENTATION

The above numbered paragraphs are restated and incorporated by reference in Count III.

31. In the alternative, the representations outlined above regarding invoicing and costs and expenses for operating the restaurants were done in a negligent manner or with reckless disregard for the truth.

32. The State relied upon these statements and has been harmed by Defendant Swadley's.

33. To the extent, the statements were done with reckless disregard for the truth or intentionally, Defendant Swadley's damaged the State/Tourism Department in amounts to be established at trial.

COUNT IV: UNJUST ENRICHMENT

The above numbered paragraphs are restated and incorporated by reference in Count IV.

34. In the alternative, should the above conduct not be deemed a breach of contract or fraud, Defendant Swadley's was unjustly enriched to the detriment of the State as it received unjust compensation for furniture, fixtures and equipment and services provided and for operating expenses.

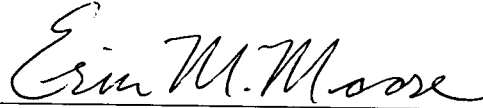
COUNT V: ACCOUNTING

The above numbered paragraphs are restated and incorporated by reference.

35. Under the terms of the Contract, Defendant Swadley's has the duty and obligation to make its financial books, records, and documents available to Plaintiff at all reasonable times.
36. Under the terms of the Contract, Defendant Swadley's has the duty and obligation to have its financial statements audited annually and delivered with the audit report to Plaintiff.
37. Plaintiff has repeatedly requested that Defendant Swadley's make its financial statements, books, records, reports, and such documents available for examination by Plaintiff.
38. Plaintiff's requests are reasonable and necessary not only because Plaintiff is contractually entitled to such information and documents but also to ascertain the accuracy of Defendant Swadley's record keeping and reconcile all monies paid by or owed to Plaintiff.
39. Defendant Swadley's has violated its promises and obligations and is in material breach of the Contract and has failed and refused to provide an accounting to Plaintiff.
40. As a result of Defendant's knowing, reckless, and willful refusal to comply with its obligations and to provide an accounting, Plaintiff has been damaged.
41. Plaintiff is entitled to a full and complete accounting from Defendant Swadley's.

WHEREFORE, Plaintiff State of Oklahoma *ex rel.* Oklahoma Tourism and Recreation Department prays for judgment against Defendant Swadley's Foggy Bottom Kitchen, LLC for an accounting and for all damages incurred and recoverable by law, including punitive damages, to be proven at trial which are in excess of \$75,000.00, including attorney fees, costs, and interest and all other relief deemed just and equitable.

Respectfully submitted,

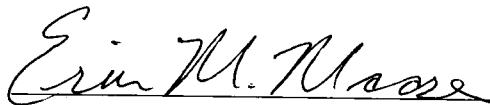


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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 18th day of July, 2022, a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, to the following:

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C. Eric Shepard
A. Wayne Billings
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