

**IN THE DISTRICT COURT OF THE NAVAJO NATION
JUDICIAL DISTRICT OF KAYENTA, ARIZONA**

IN THE MATTER OF:

Kayenta Township Commission, on its own
Behalf and on behalf of the Kayenta
Township,

Plaintiff,

v.

Royal N. Churchill d.b.a. Chief Propane, Inc.,
Royal Chief Towing LLC, and Chief Propane
& Accessories, jointly and severally,
Defendants.

Case No. KY- CV-026-2020 (CV)

JUDGMENT

THIS MATTER having come before the Court and upon review of the case, the Court hereby finds the following:

FINDINGS OF FACT

1. This matter came before the Court on February 10, 2023, for a Forcible Entry and Detainer Hearing. The Parties appeared with legal counsels. The Plaintiff had one witness, Geraldine Laughter.
2. The Plaintiff filed a Petition for Forcible Entry and Detainer on September 14, 2020.
3. The Defendants filed an Answer on February 2, 2023.
4. The Plaintiffs filed a motion to strike the Answer. The Court denied the motion, pursuant to *Dine' bi beenahaz'aanii* concept of finality. Under this concept, once parties have had an opportunity to have their say, the matter is final. *Kindle*, 9 Nav. R. 29. With the concept of finality, the Court allowed both parties to have their say as this matter has been pending for some time.
5. The Plaintiff is the governing body of the Kayenta Township, a home rule municipality and political subdivisions of the Navajo Nation.
6. The Defendants are Royal N. Churchill d.b.a. Chief Propane, Inc., Royal Chief Towing LLC, and Chief Propane & Accessories.
7. The location of the Defendant's business Premises is located in the Kayenta Township, US Highway 160, Milepost 394 in Kayenta, Arizona.
8. On January 23, 1996, Chief Propane entered Lease No. TC-96-159 with the Navajo Nation for the Premises.
9. The Defendant Churchill owns and operates Chief Propane Inc., an Arizona corporation

that was formed in 1986. And was dissolved on May 10, 1996, for failure to submit annual reports. Though the corporation was dissolved, Defendant Churchill continued operating the business as the sole proprietorship, operating for 15 years under the Lease at the Premises. When Chief Propane, Inc. was dissolved, title to the property including to the leasehold property interest of Chief Propane, Inc., transferred to its owner, Royal Churchill. Defendant Royal Churchill is a holder over tenant, subject to the lease terms for continuing to holdover. Defendant Churchill remained on the property as the sole proprietor after Chief Propane, Inc. was dissolved.

10. The Defendant Royal Chief Towing was formed in August 2016 by Royal Churchill as an Arizona limited liability company with the same business address as Chief Propane. Churchill is the sole member and manager of Chief Towing.

11. The Defendant Chief Propane & Accessories was formed by Churchill in September 2016 as an Arizona limited liability company with the same business address as Chief Propane.

12. The Kayenta Township received the business site leasing authority in 2009.

13. On June 22, 2010, the Department of Interior, Bureau of Indian Affairs terminated the Lease for material default of Lease terms. Defendant Churchill was instructed to vacate the property by the Regional Director.

14. On July 31, 2012, the Kayenta Township through written letter attempted to get the Defendant into an emergency operating agreement and into a business site lease. Defendant Churchill failed to follow through.

15. In March 2016, the Kayenta Township through a written notice to the Defendants to vacate the premises and he ignored the notice.

16. Defendant Royal Churchill forms Royal Chief Towing in August 2016 and then forms Chief Propane & Accessories in September 2016, despite notices to vacate and there being no lease.

17. In November 2016, pursuant to its trespass ordinance, the Kayenta Township issued an official trespass order and assessment. A written notice to the Defendants instructed them to vacate the premises or face fines and sanctions.

18. The Plaintiff then filed a complaint with the Kayenta District Court to enforce the trespass order and a settlement order was entered by this Court. But the Defendants failed to follow through with the settlement.

19. On June 12, 2019, this Court determined that Defendants have no legal right to occupy the

Premises under KY-CV-066-2017. The Court confirmed the Defendants are trespassing on the Premises. The Defendants were on notice that they are in trespass and were required to vacate the Premises since the entry of the Judgment, which states “peaceably deliver up the Premises with the original [L]ease terms within 180 days of the date of this Order.” The Defendants were to vacate on or before December 12, 2019. And to “immediately contact the Navajo Nation Environmental Agency to arrange for an Environmental Site Assessment, at the Defendant’s sole costs, and to thereafter remove themselves and any and all of their property from the premises in compliance with all Navajo Nation and federal environmental laws and order of any agencies.” Also, to “restore the Premises to its condition prior to entry onto the Premises included any contamination discovered.”

20. The Defendants continue to refuse to surrender possession of the Premises to the Township.

21. The Plaintiffs have not received any compensation from the Defendants for the period from the date of the Judgment to the present for their use of the Premises and the Defendants continue to profit from the Premises.

22. At the hearing, Geraldine Laughter testified on behalf of the Plaintiff. Ms. Laughter is the Economic Development Specialist for the Kayenta Township. Geraldine Laughter testified to the exhibit regarding Lease TC-96-159 and the United States Department of Interior BIA Notice of Cancellation letter to Mr. Churchill dated June 22, 2010. The Court admitted the exhibits into the record. This cancellation noticed stated as follows:

“The lease is cancelled the date of the receipt of this letter and has no further force and effect. Chief Propane, Inc., is advised that the business has not further interest and use of the premises, Any unauthorized use will be considered illegal and you will be liable for damages accordingly. The cancellation of this lease does not release you of any financial obligations you may have with the Navajo Nation. Please make arrangements to satisfy these obligations.”

23. Geraldine Laughter testified to exhibit 9, a map of the boundaries of Kayenta Township. The Premises is located within the boundaries of Kayenta Township.

24. Geraldine Laughter testified to Kayenta Township Manager Gabriel Yazzie’s letter to Royal Churchill regarding Terminated Business Site Lease dated March 22, 2016, labeled as exhibit 3. This letter is sent out to a business owner when they are not in compliance. Part of this letter stated as follows:

“Accordingly, since you no longer have a valid business site lease. Please call me soon, so that we may discuss timeline for the removal process.”

25. Geraldine Laughter testified to Kayenta Township Commission Notice of Trespass and Order to Comply and Civil Trespass Assessment with attachments exhibits E and I. The exhibits were admitted. The Trespass Order states as follows under No. 10, Page 3:

“The Responsible Parties do not have a valid Lease, Easement, Right of way, Operating Agreement, or Permit for use of the Premises and they are therefore trespassing on Township Lands in violation of the Ordinance. See Ordinance 12-103 (L), 12-109, Ex. D.”

“Under No. 14 of the Trespass Order on Page 3 states: “Pursuant to Section 12-114(B) of the Ordinance, the Commission hereby specifies the following actions to be taken by the Responsible Parties to remedy their trespass. The Responsible Parties are ordered to: (1) immediately contact the Navajo Nation Environmental Protection Agency to arrange for an Environmental Site Assessment “ESA”), at the Responsible Parties’ sole cost, and to thereafter remove themselves and any and all of their property from the Premises in compliance with all Navajo Nation and federal environmental laws and orders of any agencies thereto; (2) restore the Premises to its condition prior to the entry onto the Premises by the Responsible Parties, including the complete remediation of any contamination discovered pursuant to the ESA; (3) pay the costs and attorneys’ fees incurred by the Commission and Township in connection with the Notice and Assessment; and (4) pay any civil assessment below.”

26. Geraldine Laughter testified to Exhibit 5, which is the Business Site Lease Application, which included financial statements, updated business plan, Commercial/general liability insurance, environmental assessments, and procurement clearances.

27. Geraldine Laughter testified to Exhibit 11, the Kayenta Township Business Site Leasing Administrative plan. Ms. Laughter testified the Township has been waiting for Defendant to complete the Business site Lease package since 2012. After receiving the notification of cancellation of Defendant’s BIA lease, Ms. Laughter notified the Defendant of what is needed to complete a business site lease package.

28. Geraldine Laughter testified to Exhibits F, G, and H to the Trespass Order. Exhibit F is a letter to expedite an Emergency Operating Agreement. Exhibit G is another letter to Chief Propane, which was a second notice requesting Defendant to expedite an Emergency Operating Agreement. Exhibit H is another letter to Chief Propane, which was another notice requesting Defendant to expedite an Emergency Operating Agreement. Ms. Laughter stated she hand delivered the letters.

29. Geraldine Laughter testified to Exhibit 6 and 7, Arizona Corporations Commission Entity

Search. Ms. Laughter testified she downloaded it from the Arizona Corporations Commissions website on February 2, 2023. This exhibit provided the dates of when the Defendant corporations were formed and became inactive.

30. Geraldine Laughter testified to Exhibit 8; Letter from Defendants dated December 10, 2019.

31. Geraldine Laughter testified to Exhibit 10, Kayenta Township business site lease Management Plan. Ms. Laughter testified it is her job that there is rental compliance and leases are followed. This duty is implemented in conjunction with the accounting department. If there are late charges, they are handled according to section 2.2 of the Kayenta Township business site lease Management Plan. If rent is 10 days late then its 10 percent of the rental due for the month. If rent is 60 days late then it is another late fee of 10 percent of the past due rent. If the rent is 90 days late then it is another late fee of 10 percent of the past due rent. For this court case, Ms. Laughter testified she has made calculations for the loss of rental from the Defendants beginning June 2019 to the date of the hearing.

32. Geraldine Laughter testified to Exhibit 11, Kayenta Township Business Site Lease Administrative Plan. Ms. Laughter testified about the exhibits and their policy regarding rental rates. That a rental rate shall be either a flat lease rate per year or a flat lease rate per year plus a percentage of gross receipts.

33. Geraldine Laughter testified to Exhibit 13, labeled as Chief Propane Rentals Calculated through June 2019 to February 2023 presented in a table format. This table would be for the corporate Defendants who were formed in 2016. Ms. Laughter testified the document shows calculations of income receipts. Ms. Laughter testified to the table and that column 4 is the flat rate and 2% of gross income. The flat rate, \$430.15, is based on the land and here, the land is undeveloped, and it is 1.5 acre in size. The flat rate and the 2% of the gross receipts are added together. Ms. Laughter stated the calculations in exhibit 13 are based on Kayenta Township business site lease Management Plan section 2.2 rental compliance regarding late charges. Ms. Laughter calculated each corporate entity owing \$133,860.95.

34. Geraldine Laughter testified to Exhibit 10, Kayenta Township business site lease Management Plan Section 8.0 is Enforcement, Relief And Remedies, subsection 8.9 is Holding Over. Ms. Laughter testified the Kayenta Township received the business site leasing authority in 2009. The date of the cancellation of the business site lease in 2010, the Kayenta Township already

had its business site leasing authority. It was the responsibility of the Kayenta Township to deal with Defendants hold over on the lease. Under 8.9, "Lessees holding over after termination of the lease for any defaults or non-compliant as provided herein: shall be charged the holdover rental specified in the lease; and May be subject to a trespass action and eviction through a forcible detainer action as determined by the Department."

35. Geraldine Laughter testified to Exhibit 1, Lease, page 3, section 6 Rental. This section states as follows:

The Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America to the Controller of the Navajo Nation, for the use and benefit of the Lessor, the greater of the following amounts as annual rental hereunder.

- (a) A percentage of gross receipts of business as specified below, whether such businesses are operated by Lessees, subleases, Assignee, or operated under management agreement.
 - Year 1- 5: 2% of gross sales
 - Year 6-10: 2.5% of gross sales
 - Year 11-25: 3% of gross sales
- (b) The sum of \$5,000 as a Guaranteed Minimum annual rental (GMAR) hereunder.

It is acknowledged and agreed that Lessee's rental obligation hereunder is an obligation to pay either the percentage rental amounts more specifically defined in section 6 (a) above or the guaranteed minimum annual rent (GMAR) as more specifically set forth in section 6 (b) above, whichever is greater.

Geraldine Laughter testified that the Defendant would be in the 11 to 25 years stage. The percentage of gross sales for the Defendants is 3% as the Defendant has been on the property for 12 years without a Lease since 2009.

36. Geraldine Laughter testified to Exhibit 1, Lease, page 19, section 31 Holding Over. Section 31 of the Lease states that the "Lessee agrees to pay as hold over rental a daily rental computed at the rate of double the daily rental charged during the year immediately preceding termination of the Lease, from the day following the termination date of the Lease until Lessee vacated the premises." Ms. Laughter testified this provision of Hold Overs aligns with exhibit 10, Kayenta Township business site lease Management Plan. Ms. Laughter testified she would look to this section in determining rental for the property. In 2009, the gross receipts were over a million dollars, and this was based on the Kayenta township accounting records as reported by the Defendants. Ms. Laughter testified that her calculations are 3% multiplied by gross receipts which, in this case is, 3% of one million dollars equaling \$30,000 a year. The holdover provision doubles

that amount under section 31 on Page 19 of the Lease, which then comes to \$60,000 per year. Defendant Churchill has held over since 2009 for 12 years. The amount totals \$720,000.

37. The previous amount calculated for the recently formed Defendant corporations is \$133,860.95. Any payments of this amount would be subtracted from the \$720,000.

38. Ms. Laughter stated the Defendants have not obtained a new business site lease from the Kayenta Township since 2009, that the Defendants do not have a lease, and the Defendants do not have any other permission from the Kayenta Township to occupy the property.

39. The Defendants cross examined the Plaintiff's witness.

40. The Defendants did not call any witnesses.

41. The Defendants argued there was no notice to vacate the Premises in 5 days and that no tenant was asked to leave. The Defendants also argue there is no rent owed because there is no lease. The Defendants attempted to renegotiate a lease, and nothing came to fruition between the Parties. Further, there is no evidence of costs and damages. The Plaintiff testified the rent is based on fair market value, however, that was never provided to the Defendants in writing.

CONCLUSIONS OF LAW

1. This Court has subject matter and personal jurisdiction over this matter, pursuant to 7 N.N.C. § 253.

2. The Forcible Entry and Detainer statute provides that a person is guilty of forcible entry and detainer or forcible detainer when, "A person guilty of forcible entry and detainer, or of forcible detainer, as the case may be, if he or she: Makes an entry into any lands, tenements or other real property, except in cases where entry is given by law, and such an entry is by force. 16 N.N.C. § 1801(A) (1).

3. Or "Willfully holds over any lands, tenements or other real property after termination of his or her right to possession, after demand made in writing for the possession thereof by the person entitled to such possession." 16 N.N.C. § 1801(A)(2).

4. A "forcible entry" under the FED statute is defined as "an entry without the consent of the person having the actual possession." *Id.* § 1801(B).

5. Further, there is a forcible detainer if

- a. "A tenant at will or by sufferance, after termination of his or her tenancy or after written demand of possession by his or her landlord, or a tenant from month to month or a lesser period whose rent is due and unpaid, fails or refuses for five days

after demand in writing to surrender and give possession to his or her landlord.” 16 N.N.C. § 1801(C)(1).

- b. “The tenant of a person who has made a forcible entry refuses for five days after written demand to give possession to the person upon whose possession the forcible entry was made.” 16 N.N.C. § 1801(C)(2).
- c. “A person who has made a forcible entry upon the possession of one who acquired such possession by forcible entry refuses for five days after written demand to give possession to the person upon whose possession the first forcible entry was made.” 16 N.N.C. § 1801(C)(3).
- d. “A person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord for five days after written demand, after the term expires. If the term expires while a writ of forcible entry applied for by the tenant is pending, the landlord may at his or her own cost and for his or her own benefit, prosecute it in the name of the tenant.” 16 N.N.C. § 1801(C)(4).

6. On the trial of an action of forcible entry or forcible detainer, the only issue shall be the right of actual possession and the merits of title shall not be inquired into. An action for forcible entry or forcible detainer may not be brought in connection with any other action, nor may it be made the subject of any setoff or counterclaim. 16 N.N.C. § 1805 (A).

7. The FED process is intended to be a simplified and summary legal process for a party with the right of actual possession to eject trespassers and squatters. *Burnside v. Thriftway Marketing Corp.* 7 Nav. R. 152, 154 (Nav. Sup. Ct. 1995) (“A forcible entry and detainer action is a summary statutory action to adjudicate possession rights, and it should not be burdened by matters that are not related to the issue of possession.”) (*citing* 16 N.N.C. § 1805(A)).

8. Pursuant to 16 N.N.C. §1807 states as follows as to appeals, notice, and bond:

A. Either party may appeal from the decision to the Supreme Court of the Navajo Nation by giving notice as in other actions and filing with the court within five days after rendition of the judgment a bond in an amount equal to double the yearly value or rental of the premises in dispute, with sureties to be approved by the Navajo Nation Court judge, payable to the adverse party and conditioned that he or she will prosecute the appeal to effect and pay all costs and damages which may be adjudged against him or her.

B. The yearly value or rental of the premises in dispute shall be determined by the Navajo Nation Court judge for the purpose of fixing the amount of the bond.

9. The Forcible Entry and Detainer statute states that:

If defendant is found guilty, the court shall give judgment for plaintiff for restitution of the premises and for costs and, at plaintiffs

option, for all rent found to be due and unpaid at the date of judgment, and shall grant a writ of restitution putting plaintiff in possession of the premises, and a warrant of removal shall issue accordingly which shall command the Navajo Police Department to immediately remove the defendant, to use such force as is necessary to effect removal if the defendant resists, and which shall further command such Department to levy damages and costs as fixed by the court. 16 N.N.C. § 1806(A).

10. At the hearing, the Plaintiff admitted into evidence a map of the Kayenta Township showing that the Premises is located within the boundaries of the Kayenta Township. The Plaintiff also admitted into evidence the Kayenta Township Business Site Lease Management Plan and the Kayenta Township Business Site Lease Administrative Plan, which indicates the delegated authority from the Navajo Nation for Business site leases to the Kayenta Township. The Kayenta Township Business Site Lease Management Plan and Administrative Plan provides leasing staff with policy, direction, and guidance in the management of business site leases within the boundaries of Kayenta Township. These plans specify the required consent from Kayenta Township for entry. With that authority, the Defendants had numerous notices of written demands to surrender and give possession to the Kayenta Township. A notice from the Bureau of Indian Affairs regional director, notice from Kayenta Township manager Gabriel Yazzie via letter to Royal Churchill regarding Terminated Business Site Lease dated March 22, 2016, notice by the Kayenta Township through the Trespass Order in November 2016, and finally through this Court's Order entered on June 12, 2019. Through each notification the Defendants were on notice that they have no legal right to occupy the Premises.

11. The Defendants are occupying the Premises without an agreement, lease, or any other permission or consent from the Plaintiff or from the Navajo Nation to occupy the Premises, therefore, the Plaintiff has the right of actual possession to the property, the Defendants are guilty of forcible entry and detainer.

12. The Navajo Nation Supreme Court in *Arviso* states "the collective Navajo people, who have chosen to utilize their common land for economic benefit, should be respected under *k'e*. Alonzo did not operate under *k'e* when occupying and using Navajo land without invitation or compensation. *Navajo Nation v. Arviso*, 8 Nav. R. 697, 704 (Nav. Sup. Ct. 2005). Here, the Defendants continue to operate without invitation or compensation to the Navajo people.

Based on the foregoing, **IT IS THEREFORE ORDERED** that Plaintiff is granted judgment in its favor on the Verified Complaint for Forcible Entry and Detainer.

IT IS FURTHER ORDERED that Defendants shall vacate the Premises five days from the date of this Order.

IT IS FURTHER ORDERED that the Plaintiff is granted judgment against Defendant Churchill in the amount of \$720,000. As for each of the recently formed Defendant corporations, they are responsible for \$133,860.95, which would then be subtracted from the \$720,000.

IT IS FURTHER ORDERED that should the Defendants fail to vacate the Premises, this Court will issue Writ of Restitution, in accordance with 16 N.N.C. § 1806 (A). The Plaintiffs are to submit a proposed Writ of Restitution.

IT IS FURTHER ORDERED that should the Defendants fail to vacate the Premises; this Court will issue Warrant of Removal commanding the Navajo Nation Division of Public Safety to remove the Defendants from the Premises in accordance with 16 N.N.C. § 1806 (A). The Plaintiffs are to submit a proposed Warrant of Removal.

IT IS FURTHER ORDERED that either party may appeal this Judgment to the Navajo Nation Supreme Court. Pursuant to 16 N.N.C. § 1807, and the Navajo Nation Supreme Court's decisions in *Navajo Townsite Comm. Dev. Corp. v. Sorrell*, 8 Nav. R. 214, 220 (Nav. Sup. Ct. 2002) and *Fort Defiance Housing Corp. v. Lowe*, 8 Nav. R. 463, 475 (Nav. Sup. Ct. 2004), if either Party wishes to appeal, the appeal bond is set at \$30,000.00. The appealing party must file the appeal bond with the Court within five business days after receiving this Judgment and Order, or, within that time, file a motion for waiver with the Court setting out why he cannot comply with the conditions set forth herein. Any waiver of the bond shall be in the sound discretion of the Court.

- a. You only need to post this bond if you choose to appeal this decision.
- b. You must file the required bond **OR** file a request for waiver of the bond with the Kayenta District Court within five working days of the date you receive this order. The first day begins the day after you receive this order. Weekend days and holidays are not counted as working days.
- c. If you do not file the required bond or a request for a waiver of the bond within the required five working days, you will lose your right to appeal this decision.

SO ORDERED May 14, 2024.



JUDGE, District Court of the Navajo Nation

CERTIFICATE OF SERVICE

I have on this day; May 14, 2024,
route a copy of the foregoing Judgment
to Plaintiffs Legal Counsel and
Defendants Legal Counsel via US
Postal Mail/Email.

M A. Dennison, Court Clerk 