

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

DISTRICT COURT  
**FILED**

AUG 27 2021

DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

LESSIE BENNINGFIELD RANDLE, )  
Tulsa Race Massacre Survivor, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CITY OF TULSA, a municipal corporation, et al. )  
 )  
Defendants. )

Case No. CV-2020-01179  
Judge Caroline Wall

**DEFENDANT TULSA DEVELOPMENT AUTHORITY'S REPLY TO  
PLAINTIFFS' OPPOSITION IN RESPONSE TO DEFENDANT TULSA  
DEVELOPMENT AUTHORITY'S MOTION TO DISMISS.**

COMES NOW Defendant Tulsa Development Authority ("TDA") to reply to "PLAINTIFFS' OPPOSITION IN RESPONSE TO DEFENDANT TULSA DEVELOPMENT AUTHORITY'S MOTION TO DISMISS. In support of its reply, TDA would show the Court the following:

**PLAINTIFFS' HAVE FAILED TO SHOW ANY EXCEPTION TO THE  
GOVERNMENTAL TORT CLAIMS ACT.**

The Plaintiffs allege two torts: (1) Public Nuisance and; (2) Unjust Enrichment. (Am. Pet. pg. 64-67). The Governmental Tort Claims Act ("GTCA") is "the exclusive remedy for an injured plaintiff to recover against a governmental entity in tort." *Tuffy's, Inc. v. City of Okla. City*, 2009 OK 4, ¶7, 212 P.3d 1158, 1163. Sections 156 and 157 of the GTCA provide that notice must first be given to the governmental entity (in this case TDA) and time be given for the TDA to respond to the claim. Then suit must be commenced within 180 days after denial of the claim or it is barred as untimely. Title 51 O.S. § 157(8) specifically provides: "No action for any cause arising under this act, Section 151 et seq. of this title, shall be maintained unless valid notice has been given and

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the action is commenced within one hundred eighty (180) days after denial of the claim as set forth in this section." Plaintiffs appear to concede they did not comply with the notice requirements under GTCA as any assertions to the contrary are absent. Furthermore, 51 O.S. § 155 (6) specifically enumerate the exceptions that would cause a state or political subdivision to not be liable, specifically: "Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection" *Id.* These exceptions to liability are the exact factual scenario pleaded by the Plaintiffs specifically, "at the height of the rioting 25,000 whites, armed to the teeth were ranging the city in utter and ruthless defiance of every concept of law and righteousness" (Plaintiffs' First Amended Petition, ¶ 63) and that during the course of the riot various City and County officials including officers of the Defendant City's Police Department and members of the County Sheriff's office unlawfully and without just cause, participated with the angry White mob, killing African American Greenwood residents" (Plaintiffs' First Amended Petition, ¶ 68) and committed arson on almost fifteen hundred Greenwood residents' homes and businesses (Plaintiffs' First Amended Petition, ¶ 69).

Plaintiffs' attempt to assert that their claims are not torts due to their requested relief being equitable in nature (Plaintiffs' Opposition In Response To Defendant Tulsa Development Authority's Motion To Dismiss ("Plaintiffs' Response") Pg 5.) The Plaintiffs argue they are not asking for money damages, and that is why they are excepted from the requirements of the GTCA, but then they seek money anyway as part of some elaborate, multi-faceted, equitable remedy. Their prayer for relief (Am. Pet. pg. 67-73) asks this Court for "money" and "monies" (PRAYER - ¶ 2, ¶ 7, ¶ 8, ¶ 10a, ¶ 10b, ¶ 10c, ¶ 10d, ¶ 10e, ¶ 10f); for "the costs of" (PRAYER - ¶ 4); for "compensation for" (PRAYER - ¶ 6); for "fees" or "revenue" (PRAYER - ¶ 9); for "payment" (PRAYER - ¶ 6, ¶ 12a); for the "value of" (PRAYER - ¶ 10g, ¶ 10h, ¶ 10i, ¶ 10j, ¶ 10k, ¶ 10l, ¶

10n); for “the creation of a Compensation fund” (PRAYER - ¶ 11); for the “Development of programs” (PRAYER - ¶ 12c, ¶ 12d); for this Court to order the “purchase of” (PRAYER - ¶ 12b); for the “creation of” (PRAYER - ¶ 12e, ¶ 12h); for the “Construction of” (PRAYER - ¶ 12f); for the “immunity from taxes, fees and assessments” (PRAYER - ¶ 12g); for “punitive damages” (PRAYER - ¶ 13); for “attorney fees and costs” (PRAYER - ¶ 14); and for “pre and post-judgment interest.” (PRAYER - ¶ 15). Plaintiffs’ “equitable remedies” are nothing but “money damage claims” masquerading as equitable relief. Their claimed equitable remedies would require the enactment and funding of laws and are seeking financial compensation for the Plaintiffs.

#### **THE DOCTRINE OF LACHES PROHIBITS RECOVERY FOR ANY EQUITABLE CLAIMS.**

Laches The right to equitable relief in nuisance cases may be lost by laches or by acquiescence. *Osage Nation v. Bd. of Comm'rs of Osage Cty*, 2017 OK 34, 394 P.3d 1224 (the equitable defense of laches bars a claim where delay in bringing or prosecuting the claim is unreasonable, and the defendant has been materially prejudiced by the delay). TDA is materially prejudiced by Plaintiffs’ delay in filing this lawsuit 100 years after the events alleged occurred. *Parks v. Classen Co.*, 1932 OK 157, 9 P.2d 432 (when it appears on the face of the Petition that laches is apparent, the court should dismiss the case). Plaintiffs are asking this Court to ignore the doctrine of laches. The loss of evidence after 100 years cannot be overstated. Most, if not all, of the evidence to defend this case no longer exists.

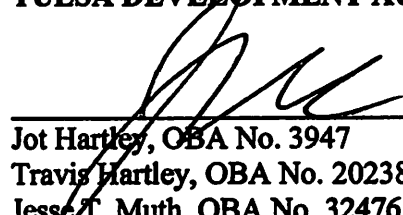
Further, Plaintiffs have failed to plead facts which would establish any causation to conclusively demonstrate that any actions or omissions of the TDA occurring since its creation in 1959 and the present are the proximate cause of any alleged racial disparities. Plaintiffs cite the 2019 Tulsa Equality Indicators Annual Report as “examples of how the nuisance caused and

perpetuated by the Defendants has imperiled the lives of Black Tulsans" and points to facts regarding jobs, financial security, education, housing, justice, and health. However, as with the rest of Plaintiffs' First Amended Petition, what the Plaintiffs fail to do is plead any facts which would establish that any actions of the TDA created any such problems as opposed to other independent circumstances, events, intervening and supervening causes wholly outside the TDA's control. The remaining propositions in TDA's Motion to Dismiss remain uncontested by Plaintiffs.

WHEREFORE, Defendant Tulsa Development Authority respectfully requests this Court enter an Order dismissing the Plaintiffs' claims filed in the present lawsuit with prejudice against refiling of the same.

Respectfully submitted,

**TULSA DEVELOPMENT AUTHORITY**



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## CERTIFICATE OF SERVICE

I, Jesse T. Muth, hereby certify that on the 27th day of August, 2021, I mailed, or submitted via email, a true and correct copy of the above and foregoing document with property postage thereon applied, to:

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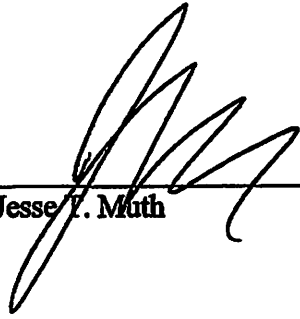
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