

IN THE DISTRICT COURT OF KAY COUNTY  
STATE OF OKLAHOMA

Filed in the DISTRICT COURT  
Key County, Oklahoma

JUN 22 2004

GLEND A EMERSON, Court Clerk  
BY \_\_\_\_\_ Deputy

Oklahoma Department of Securities )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Southern Cross Ltd., and )  
Charles Scherer, )  
 )  
Defendants. )

Case No. CV-2004-13

**PETITION FOR PERMANENT INJUNCTION**  
**AND OTHER EQUITABLE RELIEF**

COMES NOW the Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught (Department), and for its claims against the above-named Defendants (collectively, "Defendants"), alleges and states as follows:

**INTRODUCTION**

1. This case involves violations of the Oklahoma Securities Act (Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 & Supp. 2003). Specifically, the Department alleges that Defendants failed to register as agents, failed to register securities for offer and/or sale in and/or from the state of Oklahoma, and perpetrated fraud in connection with the offer, sale, or purchase of securities. Unless enjoined, Defendants will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object.

**THIS CASE ASSIGNED TO  
JUDGE ROB GALBRAITH**

## **JURISDICTION**

2. The Administrator of the Department brings this action pursuant to Section 406.1 of the Act and is the proper party to bring this action against the Defendants.

3. Pursuant to Sections 2 and 413 of the Act, Defendants, in connection with their activities and the offer, sale, and/or purchase of securities in and/or from this state, are subject to the provisions of the Act. By virtue of their transaction of business and commission of other acts in this state, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside of this state.

## **DEFENDANTS**

4. Charles Scherer (Scherer) is an individual who, at all times material hereto, was doing the acts complained of in his own name and doing business as Southern Cross, Ltd. (SCL) and Southern Cross, LLC. Scherer is the president and sole owner of SCL and is the sole signatory on the bank account maintained by Southern Cross, LLC at Eastman National Bank in Newkirk, Oklahoma (the "Newkirk Account").

5. At all times material hereto, SCL maintained addresses in Ponca City, Oklahoma, and Wrightwood, California. SCL purportedly owned, operated, and distributed proprietary electronic video gaming equipment, including software, to participating locations on Native American lands.

6. Neither Scherer nor SCL has been registered in any capacity under the Act.

## NATURE OF THE CASE

7. During 2002, a Wisconsin resident, R. Peavey (Peavey), became aware of an investment opportunity offered by Scherer. On December 12, 2002, Peavey traveled to Ponca City, Oklahoma, to meet with Scherer regarding the investment opportunity. Scherer later faxed Peavey a document entitled "Equipment Revenue Share Agreement" for Peavey to review.

8. In or about January 2003, Scherer presented a document entitled "Class II Equipment Revenue Share Agreement" (the "Class II Agreement") to the Chairman of the Kaw Nation of Oklahoma (Kaw Nation). The proposed parties to the Class II Agreement were the Kaw Nation and SCL.

9. The Class II Agreement provided that SCL would supply 80 gaming machines to the Kaw Nation gaming facility (Kaw Nation Casino) in Newkirk, Oklahoma. The term of the Class II Agreement was for five (5) years, beginning when the machines were fully operational to the public. The Class II Agreement provided that SCL would provide a temporary structure to house the gaming machines and pay a pro-rata share of the costs of maintenance, accounting services, liability insurance, and electricity. Further, the Class II Agreement required the parties to obtain any required regulatory approval and "to abide by the laws, regulations, rules, and requirements of governmental and tribal authorities." In return, SCL would receive thirty per cent (30%) of the pay out revenue generated by the gaming machines, with the Kaw Nation to receive the remaining seventy per cent (70%). The Class II Agreement stated that SCL was "capable, ready and committed to proceed immediately."

10. The Chairman of the Kaw Nation signed the Class II Agreement on January 21, 2003.

11. On March 19, 2003, Peavey traveled to Ponca City, Oklahoma, with Robert Traynor (Traynor), a Wisconsin resident, to meet with Scherer.

12. Scherer provided Peavey and Traynor with a copy of the Class II Agreement. Scherer took Peavey and Traynor to the Kaw Nation Casino and showed them a mobile home where he represented the gaming machines would be placed. Scherer told Peavey and Traynor that he was seeking investors to finance the purchase of the gaming machines.

13. On or about March 19, 2003, Peavey and Traynor, doing business as Roger Peavey & Associates, and Scherer, as president of SCL, entered into an "Equipment Revenue Participation Agreement" (the "Revenue Participation Agreement") in Ponca City, Oklahoma. Peavey and Traynor agreed to invest \$125,000 for a twenty percent (20%) participation in the net revenues received by SCL from the Class II Agreement. The term of the Revenue Participation Agreement was for five (5) years from the date the electronic gaming equipment went online and was available to the public.

14. On or about March 24, 2003, Traynor wire transferred the amount of \$50,000 to the Newkirk Account. The sum of \$25,000 was to be invested in the Kaw Nation Casino project and the remaining sum of \$25,000 was to be held in escrow for a similar project involving the Apache Tribe. Scherer agreed that the money in the escrow account would not be accessed until Traynor gave further notice to Scherer.

15. On March 25, 2003, Peavey's wife wired the sum of \$100,000 to the Newkirk Account.

16. Although the Revenue Participation Agreement specified that investor funds would be used for "site improvements, start up costs, legal, management, consultant, etc.," Scherer assured Peavey and Traynor that their funds would be used solely for the purpose of purchasing gaming machines. Scherer represented to Peavey and Traynor that the gaming machines would be "up and going" within two weeks after Scherer received their investment funds and that Peavey and Traynor would receive revenue payments approximately two weeks thereafter.

17. In or about April of 2003, Peavey met with Scherer in Hinton, Oklahoma, regarding another revenue sharing investment. Peavey entered into an agreement with Scherer that was substantially the same as the Revenue Participation Agreement signed in March, 2003. Peavey wrote a check for \$80,000 for the second investment.

18. Soon thereafter, Scherer advised Peavey that the gaming machines had been installed at the Kaw Nation Casino but were not "up to code." Scherer said updated computer chips needed to be installed in the machines and the upgrade would cause a delay in revenue payments.

19. The gaming machines that were installed by Defendants at the Kaw Nation gaming facility were Class III gaming machines rather than Class II gaming machines. The placement of Class III machines at the Kaw Nation Casino violated federal, state and tribal regulations. Furthermore, the machines were not adequately identified as required under federal law. Most of the machines contained identification marks that had been altered, also in violation of federal law.

20. On May 20, 2003, based upon the apparent violations of Kaw Nation gaming regulations and violations of federal law, Defendants were advised by the Kaw Nation's tribal attorney that the Class II Agreement was void. Defendants were ordered to remove the machines from the casino within five days or the machines would be removed and stored at Defendants' expense.

21. The funds invested by Peavey and Traynor were not used to purchase Class II gaming machines as represented by Scherer. In addition, Scherer failed to escrow the \$25,000 that he told Traynor he would escrow for the Apache Tribe project. Further, a portion of the invested funds was used to pay Scherer's personal expenses.

22. On or about August 13, 2003, Peavey, Traynor, and Scherer met in Rapid City, South Dakota, to discuss the revenue sharing investments. During this meeting, Peavey and Traynor requested the return of their money. Scherer informed Peavey and Traynor that he was involved in legal proceedings with the Kaw Tribe and offered to put them into other investments. Peavey and Traynor declined. At the same meeting, Scherer told Traynor that he would not return the \$25,000 that Scherer had initially agreed to escrow.

23. Gayle Peavey, Peavey's spouse, and Traynor have made repeated attempts to contact Scherer. Scherer has refused to communicate with Gail Peavey and Traynor and no refunds or revenue sharing payments from the investments have been distributed by the Defendants.

24. The SCL revenue sharing investments were not registered as securities under the Act and no claim of an exemption from the registration provisions of the Act was filed with the Administrator pursuant to Section 401 of the Act.

## **FIRST CAUSE OF ACTION**

### **(Violation of Section 201 of the Act: Failure to Register as an Agent)**

25. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 25 above.

26. Defendant Scherer, by virtue of his efforts and activities on behalf of SCL in effecting or attempting to effect purchases or sales of securities, is an agent, as defined in Section 2 of the Act. Defendant Scherer effected purchases and/or sales of securities without registration under the Act as an issuer agent as required by Section 201 of the Act. By reason of the foregoing, Defendant Scherer has violated, and unless enjoined, will continue to violate Section 201 of the Act.

27. Defendant SCL is an issuer as defined by Section 2 of the Act. Defendant SCL, by virtue of the employment of Defendant Scherer, violated Section 201 of the Act. By reason of the foregoing, Defendant SCL has violated, and unless enjoined, will continue to violate Section 201 of the Act.

## **SECOND CAUSE OF ACTION**

### **(Violation of Section 301 of the Act: Offering and/or Selling Unregistered Securities)**

28. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

29. The Defendants offered and/or sold securities in and/or from this state. Such securities were not registered under the Act. By reason of the foregoing, the Defendants have violated, and unless enjoined, will continue to violate Section 301 of the Act.

## **THIRD CAUSE OF ACTION**

### **(Violation of Section 101(2) of the Act: Untrue Statements of Material Facts and Omissions of Material Facts in Connection With Offer, Sale or Purchase of Securities)**

30. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

31. Defendants, in connection with the offer, sale, or purchase of securities, directly and indirectly, made untrue statements of material facts including, but not limited to, the following:

- a. that Peavey and Traynor would receive a return on their investments;
- b. that the gaming machines would be operational two weeks after Scherer received investor funds;
- c. that one-half of Traynor's investment funds would be held in escrow;

- d. that Peavey and Traynor's funds would be used to purchase Class II gaming machines;
- e. that Defendants were "capable, ready and committed to proceed immediately."

32. Defendants, in connection with the offer, sale, or purchase of securities, directly and indirectly, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following matters:

- a. that Scherer was not qualified to transact business in this state as an agent of an issuer;
- b. that the revenue sharing investments issued by SCL were securities that were not registered under the Act;
- c. that Scherer would use investor funds to pay for expenses other than those connected with the purchase of legal Class II gaming machines; and
- d. the risk that Peavey and Traynor could lose all of their invested funds.

33. By reason of the foregoing, Defendants, directly and indirectly, violated, and unless enjoined, will continue to violate Section 101(2) of the Act.

## FOURTH CAUSE OF ACTION

**(Violation of Section 101(3) of the Act:  
Engaging in any act, practice, or course of business which operates or would  
operate as a fraud or deceit upon any person)**

34. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

35. Defendants, in connection with the offer, sale, or purchase of securities, and through the use of the untrue statements of material facts and the omissions of material facts described in paragraphs 31 and 32 above, engaged in an act, practice, or course of business that operated as a fraud or deceit upon Peavey and Traynor.

36. By reason of the foregoing, Defendants, directly and indirectly, violated, and unless enjoined, will continue to violate Section 101(3) of the Act.

## PRAYER FOR RELIEF

Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from investors. Unless enjoined, the Defendants will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object.

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 406.1 of the Act, the Department prays for the Court to grant the following relief:

I.

A permanent injunction forever enjoining and restraining Defendants from offering and/or selling securities in and/or from the state of Oklahoma;

II.

An order requiring Defendants to make restitution to Traynor and the estate of Peavey;

III.

An order requiring Defendants, their officers, directors, agents, servants, employees, assigns, attorneys, and all persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, to disgorge all ill-gotten gains;

IV.

An order imposing a civil penalty against Defendants in the amount of Fifty Thousand Dollars (\$50,000); and

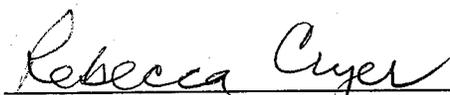
V.

Such other equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
Irving L. Faught, Administrator

By:



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Amanda Cornmesser, #20044  
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STATE OF OKLAHOMA )  
 )  
COUNTY OF OKLAHOMA ) SS.

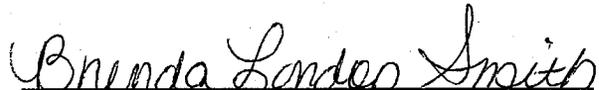
Irving Faught, of lawful age, being first duly sworn deposes and says: that he is the Administrator of the Oklahoma Department of Securities, that he has read the foregoing Petition for Permanent Injunction and Other Equitable Relief and knows the contents thereof, and that the matters and things stated therein have been provided to him by staff members of the Department under his authority and direction, and are true and correct to the best of his knowledge, information and belief.

(SEAL)



IRVING L. FAUGHT, ADMINISTRATOR OF THE  
OKLAHOMA DEPARTMENT OF SECURITIES  
120 North Robinson, Suite 860  
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(405) 280-7700

Subscribed and sworn to before me this 21st day of June, 2004.



Notary Public

My Commission Expires: August 26, 2005  
My Commission No.: 01013792  
(NOTARIAL SEAL)