

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE STILLAGUAMISH TRIBE OF
INDIANS, a federally-recognized Indian tribe,

Plaintiff,

v.

PILCHUCK GROUP II, L.L.C., a Washington
Limited Liability Company

Defendant.

No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff Stillaguamish Tribe of Indians (the "Tribe") brings this action and alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiff. Plaintiff Stillaguamish Tribe of Indians (the "Tribe") is a federally-recognized sovereign Indian tribe with offices at 3310 Smokey Point in Arlington, Washington 98223. The Tribe operates pursuant to the Constitution of the Stillaguamish Tribe of Indians of Washington State and exercises and enjoys all the inherent powers of a sovereign government, including, but not limited to, Tribal sovereign immunity. The Tribe expressly reserves its inherent sovereign immunity.

1 1.2 Defendant: Defendant Pilchuck Group II L.L.C. (“Pilchuck II”) is a
2 Washington limited liability company with, on information and belief, headquarters in
3 Arlington, Washington.

4 II. JURISDICTION AND VENUE

5 2.1 Plaintiff realleges paragraphs 1.1 through 1.2 of this Complaint as though fully
6 set forth herein.

7 2.2 Jurisdiction.

8 a. This court has jurisdiction over the subject matter pursuant to 9 U.S.C.
9 § 4; 28 U.S.C. §§ 1331, 1362, 1367, 2201 and 2202 as the causes of action arise under the
10 Constitution, laws and treaties of the United States, including the federal common law, or are
11 state law claims cognizable under this Court’s supplemental jurisdiction.

12 b. This Court has personal jurisdiction over the defendant because the
13 defendant resides and/or conducts business in the State of Washington.

14 2.3 Venue. Venue is proper in the United States District Court, District of Western
15 Washington (“District”) pursuant to 28 U.S.C. § 1391 because the defendant is subject to
16 personal jurisdiction here.

17 III. FACTUAL ALLEGATIONS

18 3.1 Plaintiff realleges paragraphs 1.1 through 2.3 of this Complaint as though fully
19 set forth herein.

20 3.2 The Tribe is a signatory to the 1855 Treaty of Point Elliot, 12 Stat. 927, and in
21 1976 gained federal recognition through the Bureau of Indian Affairs’ acknowledgement
22 process. The Tribe possesses all inherent sovereign authority over its members and its
23 territory, including, but not limited to, sovereign immunity from suit.

24 3.3 The Tribe is governed by a Constitution the Tribe adopted on June 18, 1986.
25 Pursuant to the Constitution, the Tribe is governed by a six-person Board of Directors (the
26 “Board”). The Constitution vests the Board with “[a]ll powers and legal authority, express,

1 implied, or inherent, which are vested or acknowledged by existing Federal Law in the
2 Stillaguamish Tribe as a sovereign political entity.” Constitution, Art. VII, § 1. This power
3 includes the authority to enter into contracts on behalf of the Tribe, and the power to waive
4 the Tribe’s sovereign immunity from suit. *Id.*

5 3.4 On July 15, 2006, a document entitled “Working Agreement By and between
6 Stillaguamish Tribe of Indians and Pilchuck Group II and Dave Nelson and Nathan
7 Chapman” (the “Agreement”) was signed by David L. Nelson, on behalf of Pilchuck II, and
8 Edward L. Goodridge, Sr. (“Goodridge Sr.”), ostensibly signing on behalf of the Tribe. At the
9 time he signed the Agreement., Goodridge Sr. was not a member of the Tribe’s Board.

10 3.5 The Agreement contemplated the Tribe’s acquisition of certain lands and its
11 application to the United States to place the land into trust on behalf of the Tribe. The
12 Agreement provided that disputes between the parties that could not be resolved amicably
13 were to be resolved through binding arbitration. The Agreement also contained a provision
14 that purported to waive the Tribe’s inherent sovereign immunity for the limited purpose of
15 permitting suits and/or arbitration to enforce the terms of the Agreement.

16 3.6 The Tribe’s official records demonstrate that the Tribe’s Board of Directors
17 passed no resolution delegating authority to Goodridge Sr. to sign the Agreement on the
18 Tribe’s behalf. Further, there is no evidence the Board passed a resolution approving the
19 Tribe’s entry into the Agreement. There is also no evidence the Board passed a resolution
20 approving or agreeing to arbitrate disputes arising from the Agreement or authorizing the
21 Agreement’s purported limited waiver of the Tribe’s inherent sovereign immunity. Without a
22 Board resolution approving the Agreement or authorizing anyone to sign it on the Tribe’s
23 behalf, the Tribe did not agree to be bound by the Agreement or any of the provisions therein,
24 and the Tribe could not have waived its inherent sovereign immunity for claims arising out of
25 the Agreement.
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1 3.7 On January 26, 2010, Pilchuck II sent the Tribe a demand for arbitration. The
2 demand asserted the Tribe failed to perform under the Agreement by not taking certain steps
3 necessary to apply to place certain lands into trust status with the United States, and asserted
4 claims for breach of contract and promissory estoppel.

5 3.8 On February 26, 2010, the Tribe notified Pilchuck II that it had no evidence
6 that the Tribe's Board had authorized anyone to sign the Working Agreement or to bind the
7 Tribe to any of the provisions therein. The Tribe notified Pilchuck II that it did not believe
8 the Agreement, its dispute resolution provision, or its limited waiver of the Tribe's inherent
9 sovereign immunity were valid or enforceable against the Tribe. The Tribe therefore declined
10 to participate in an arbitration.

11 3.9 Notwithstanding the Tribe's position, Pilchuck II submitted the dispute for
12 arbitration with JAMS in Seattle, Washington on April 14, 2010. On May 4, 2010, the Tribe
13 reiterated its position that it retained its immunity from suit and neither the Agreement nor
14 any of its provisions were enforceable against the Tribe. The Tribe again declined to
15 participate in an arbitration.

16 3.10 On May 6, 2010, JAMS officially commenced an arbitration. On May 21,
17 2010, the Tribe also notified JAMS that it did not believe that Pilchuck II's asserted dispute
18 with the Tribe was arbitrable and that because the Tribe had not waived its inherent sovereign
19 immunity as to any such dispute, JAMS was without jurisdiction over the Tribe. The Tribe
20 also reiterated its position that the Agreement is not valid or enforceable against the Tribe.

21 **IV. FIRST CAUSE OF ACTION – INJUNCTIVE RELIEF PURSUANT TO THE**
22 **STATE AND FEDERAL ARBITRATION ACTS AND FEDERAL COMMON LAW**

23 4.1 The Tribe realleges paragraphs 1.1 through 3.10 of this Complaint as though
24 fully set forth herein.

25 4.2 The Tribe's inherent sovereign immunity is a matter of federal common law.
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4.3 The Federal Arbitration Act ("FAA"), 9 U.S.C. § 4, allows district courts to review claims that a particular dispute is not subject to arbitration, and enjoin a claim from being arbitrated where an arbitration clause does not apply or an arbitration tribunal lacks jurisdiction.

4.4 Washington's Uniform Arbitration Act ("Washington Act"), RCW 7.04A.070, allows a party to contest a threatened or pending arbitration on the grounds that there is no valid agreement to arbitrate.

4.5 The arbitration tribunal lacks jurisdiction over Pilchuck II's claims because the Tribe never waived its inherent sovereign immunity as to those claims; and the Agreement (and its arbitration provision) are unenforceable against the Tribe.

4.6 The Tribe is entitled to preliminary and permanent injunctive relief under the federal common law, the FAA and the Washington Act enjoining arbitration of the claims raised by Pilchuck Group II against the Tribe.

V. SECOND CAUSE OF ACTION – DECLARATORY RELIEF

5.1 The Tribe realleges paragraphs 1.1 through 4.5 of this Complaint as though fully set forth herein.

5.2 The Tribe's inherent sovereign immunity is a matter of federal common law.

5.3 A controversy has arisen between the Tribe on the one hand, Pilchuck II on the other, in regards to the validity of the Agreement, whether the Tribe waived its inherent sovereign immunity as to any claims asserted by Pilchuck II, and whether the Tribe must submit to arbitration on Pilchuck II's claimed dispute under the Agreement.

5.4 Pursuant to 28 U.S.C. §§ 2201 and 2202, and RCW 7.24.010, the Tribe is entitled to a declaration that:

a. The Tribe's Board of Directors never authorized any person to sign the Agreement on the Tribe's behalf;

1 b. The Tribe's Board of Directors never authorized any person to agree to
2 a waiver of the Tribe's inherent sovereign immunity in the Agreement on its behalf;

3 c. The Agreement and all the provisions therein are invalid and
4 unenforceable against the Tribe; and

5 d. The Tribe has not waived its inherent sovereign immunity for any
6 dispute with Pilchuck II or any issue related to the Agreement.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for the following relief:

9 1. For a declaration that:

10 a. The Tribe's Board of Directors never authorized any person to sign the
11 Agreement on the Tribe's behalf;

12 b. The Tribe's Board of Directors never authorized any person to agree to
13 a waiver of the Tribe's inherent sovereign immunity in the Agreement on its behalf;

14 c. The Agreement and all the provisions therein are invalid and
15 unenforceable against the Tribe; and

16 d. The Tribe has not waived its inherent sovereign immunity for any
17 dispute with Pilchuck II or any issue related to the Agreement.

18 2. For preliminary and permanent injunctions enjoining arbitration of any claims
19 raised by Pilchuck II against the Tribe.

20 3. For such other relief as the Court deems just, equitable and proper.

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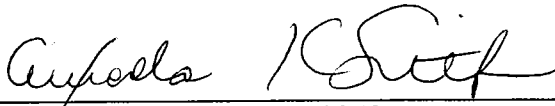
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3 DATED this 16th day of June, 2010

4 LANE POWELL PC

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6 By: 
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