

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 08/14/2014

TIME: 02:00:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown

REPORTER/ERM: S. Adams CSR# 12554

BAILIFF/COURT ATTENDANT: J. Green, T. Elder

CASE NO: **34-2014-00164169-CU-MC-GDS** CASE INIT.DATE: 05/30/2014

CASE TITLE: **Ione Band of Miwok Indians vs. Franklin**

CASE CATEGORY: Civil - Unlimited

EVENT ID/DOCUMENT ID: ,11577282

EVENT TYPE: Motion to Quash Service of Summons - Civil Law and Motion

MOVING PARTY: Matthew Franklin

CAUSAL DOCUMENT/DATE FILED: Motion to Quash Service of Summons, 07/18/2014

APPEARANCES

Jack Duran, Jr, counsel, present for Defendant(s).

Tim Evans, counsel present for plaintiff

Nature of Proceeding: Motion to Quash Service of Summons

TENTATIVE RULING

Specially appearing Defendant Matthew Franklin's motion to quash is granted.

Defendant's request for judicial notice of the complaint in this action is granted.

In this action, Plaintiff Ione Band of Miwok Indians brought suit against Defendant and defendant Johnny Jamerson for money had and received and account stated based on allegations that they used credit cards as Plaintiff's employees which were not intended for personal use. Plaintiff alleges that in violation of the agreed use of the credit card Defendant incurred \$205,749.22 in unauthorized personal charges which Plaintiff was forced to pay.

Defendant moves to quash pursuant to CCP § 418.10 on the basis that this Court lacks jurisdiction over him on the basis that as a former Tribal Chairman of Plaintiff, he is entitled to sovereign immunity from suit as the action involves conduct which occurred while he was the Tribal Chairman.

Plaintiff's Constitution provides that "[w]hen acting within the scope of their authority, the members of the Tribal Council; tribal employees; tribal agents; tribal departments and agencies; and tribal members acting in an official capacity are immune from unconsented suit. Such immunity shall extend beyond the term of office or employment for actions taken during said term or employment." (Art. XIV-Sovereign Immunity)

The applicable law in this regard is conclusive and undisputed. Jurisdiction to resolve internal tribal disputes and interpret tribal constitutions and laws lies with Indian tribes. (See *United States v. Wheeler* (1978) 435 U.S. 313, 323-36 (noting that Indian tribes are "unique aggregations possessing attributes of sovereignty over both their members and their territory" (citing *United States v. Mazurie* (1975) 419 U.S. 544, 557); *Turner v. United States*(1919) 248 U.S. 354, 354-355; and *Cherokee Nation v. Georgia*(1831) 30 U.S. 1, 16-17; *Runs After v. United States*, 766 F.2d 347, 352 (8th Cir. 1985) (holding that the district

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court lacked jurisdiction to resolve "disputes involving questions of interpretation of the tribal constitution and tribal law" (citations omitted)); *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996) (holding that the district court lacked jurisdiction to hear what, in effect, was an appeal by individuals from an adverse tribal membership determination by a tribe). Generally, Indian tribes enjoy sovereign immunity from suit in state or federal court. (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 58.) A tribe's sovereign immunity extends to tribal officials when they act in their official capacity and within the scope of their authority. (*Trudgeon v. Fantasy Springs Casino*, (1999) 71 Cal.App.4th 632, 643; *Imperial Granite Company v. Pala Band of Mission Indians* (9th Cir. 1991) 940 F.2d 1269, 1271.) However, "when such officials act beyond their authority, they lose their entitlement to the immunity of the sovereign." (*Id.*) Defendant recognizes that the complaint should allege such facts that the official acted outside his or her authority but argues that no such allegations in the instant complaint exist. (*Id.*)

Defendant first argues that the complaint does not sufficiently allege that he acted outside the scope of his authority as a tribal official in incurring the subject credit card charges. The Court need not resolve that issue as it agrees with Defendant that the matter presents a non-justiciable intra-tribal dispute.

The Court agrees with Defendant that the motion must be granted because it involves a non-justiciable internal tribal matter which would require the Court to interpret tribal law, custom and practice to determine whether the credit card charges at issue were proper. Internal tribal disputes are generally held to be non-justiciable. (*Longie v. Spirit Lake Tribe* (8th Cir. 2005) 400 F.3d 586, 589.) "A dispute over the meaning of tribal law does not 'arise under the Constitution, laws, or treaties of the United States...this is the essential point of opinions holding that a federal court has no jurisdiction over an intra-tribal dispute.'" (*Kaw Nation v. Lujan* (10th Cir. 2004) 378 F.3d 1139, 1143.) A recent non-binding case from the Alaska Supreme Court confirmed in a matter involving a lawsuit relating to a tribal election dispute that a "state has no interest in determining the outcome of this internal tribal dispute, the tribal election and membership dispute in this case remains within the tribe's retained inherent sovereign powers. We therefore conclude that the state court lacks subject matter jurisdiction in this case because the state lacks an interest, and the exercise of jurisdiction would require the state court to apply tribal law to determine the outcome of a tribal dispute and issues of tribal membership." (*Healy Lake Village v. Mt. McKinley Bank* (2014) 322 P.3d 866, 875.)

Here, while the complaint asserts a cause of action for common counts, the matter is a purely intra-tribal dispute between Plaintiff and its former tribal council chair regarding credit card charges he made while he was the tribal council chair. Patently, he performed some type of high-level or governing role within the tribe. See, e.g. *Baugus v. Brunson* (E.D.Cal. 1995) 890 F. Supp. 908, 911-912. While the matter ostensibly presents issues of state law as it relates to common counts, in order to determine whether Defendant made any improper charges, this Court would be called upon to determine Plaintiff's tribal law, custom and practice. Indeed, Plaintiff essentially confirms this in its opposition as it submitted a declaration from the current tribal chair who classifies the charges at issue as "unauthorized diversion[s] of Tribal assets," "misuse of Tribe's money" and even states that she is familiar with the laws, rules and actions of the Tribe and **know of no provisions in the Tribe's laws or records that authorize such expenditures...**" (Miller Decl. ¶¶ 2-5, 8.) This confirms that to resolve the instant lawsuit, the Court would be required to determine what Plaintiff's laws, policies and customs allow or do not allow with respect to credit cards issued to tribal officials and confirms that this is a purely intra-tribal dispute in which this State has no interest. Plaintiff's constitution expressly provides a forum in which to resolve this tribal dispute. (Def. Decl. Exh. 1 (Plaintiff's Constitution, Art. VIII.) The Tribe should be making the determinations based on tribal law and policies as to whether Defendant engaged in improper conduct, not the Court.

Plaintiff's argument that the dispute is justiciable is not persuasive. Plaintiff does not really dispute that this is an intra-tribal dispute. Rather, it argues that the cases cited by Defendant involve purely internal political matters regarding tribal elections, or property rights on reservations and not matters brought by

a tribe against a former tribe member involving simple common count causes of action. Plaintiff cites no legal authority for its argument that a dispute between a tribe and a tribal council official regarding whether the official properly incurred credit charges in connection with a credit card issued by a tribe is a justiciable dispute. Further, as discussed above, Plaintiff itself has confirmed that the instant dispute is purely intra-tribal and will necessarily involve the application of tribal law, custom and practice. As the United States Supreme Court has stated, "[e]ven in matters involving commercial and domestic relations, we have recognized that '[subjecting] a dispute arising on the reservation among reservation Indians to a forum other than the one they have established for themselves,' [citations omitted] may 'undermine the authority of the tribal [court]...and hence...infringe on the right of the Indians to govern themselves.'" (*Santa Clara Pueblo, supra*, 436 U.S. at 59-60.) As a result, the motion to quash is granted. This Court lacks jurisdiction over this purely intra-tribal dispute which would undoubtedly call for the Court to apply tribal law to resolve the dispute between Plaintiff and Defendant. This is a matter in which the State has no interest and for which a tribal forum exists .

The motion is granted.

Defendant shall prepare a formal order pursuant to CRC Rule 3.1312.

COURT RULING

The matter was argued and submitted.

The Court affirmed the tentative ruling.