

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KPMG LLP, a Delaware Limited Liability
Partnership,

Plaintiff,

v.

KURT KANAM, individually and as
Tribal Attorney for the Native Village
of Karluk, and ORBIE MULLINS,
individually and as Village of Karluk
Tribal Court Judge for the Karluk Tribal
Court for the Native Village of Karluk,

Defendants.

Case No.: 3:15-cv-00129-SLG

ORDER GRANTING PLAINTIFF
KPMG LLP'S MOTION FOR
PRELIMINARY INJUNCTION

[Dkt. #3 and Dkt. #21]

THIS COURT, having reviewed Plaintiff KPMG LLP's ("KPMG") Complaint, Motion for Temporary Restraining Order and Preliminary Injunction and supporting documents, together with the arguments of counsel, and with Defendants having filed no opposition, finds that KPMG has demonstrated that entry of a preliminary injunction is warranted.

A party seeking a preliminary injunction must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) a preliminary injunction is in the public interest.¹

The record before the Court demonstrates that Plaintiff has provided notice of the motion to the Defendants. Further, a hearing was held on the motion on the 14th day of August, 2015 at which Plaintiff's counsel appeared, but at which Defendants failed to appear, although the record demonstrates that Plaintiff provided Defendants with notice of the hearing.

¹ *Sierra Forest Legacy v. Mark Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008));

The record further reflects that Defendants have purported to subject KPMG to the jurisdiction of the Karluk Tribal Court by filing an action against KPMG in Karluk Tribal Court and issuing an Order to Show Cause as to why the relief sought against KPMG should not be entered.² This purported exercise of tribal court jurisdiction violates federal common law in numerous respects. First, KPMG asserts that it is not a member of the Village of Karluk.³ Defendants have presented no contrary evidence. Thus, tribal court jurisdiction is presumptively invalid. Second, KPMG asserts that it has not consented to the Karluk Tribal Court's jurisdiction.⁴ Again, Defendants have presented no contrary evidence. Third, the Alaska Native Claims Settlement Act revoked the Karluk Indian reservation, and there is no dependent Indian community over which the Native Village of Karluk could exercise territorial sovereignty over non-members.⁵ Based on the Court's review of KPMG's filings, the Court finds that KPMG has demonstrated a likelihood of success on the merits of its claims that Defendants' purported assertion of tribal court jurisdiction on behalf of the Native Village of Karluk over non-member KPMG violates federal law.

KPMG has also demonstrated that it is likely to face an immediate risk of irreparable harm in the absence of injunctive relief. Defendant Orbie Mullins, a Judge of the Karluk Tribal Court, has issued an Order to Show Cause in the action pending against KPMG in Karluk Tribal Court.

² See Dockets 6-2 and 6-3 (Summons, Complaint, Order to Show Cause, Proposed Declaratory Judgment, and Proposed Stipulated Order).

³ See Docket 5 (Decl. of Elizabeth M. Stuart, dated July 30, 2015) at ¶ 3.

⁴ *Id.*

⁵ Docket 4 (Mem.) at 9-10; *see also Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 531-32 (1998).

That Order directs KPMG to show cause why the tribal court should not grant the relief sought by Karluk—the entry of a \$10 million judgment against KPMG in favor of the “People of the United States”—“within 10 days and by 7-30-15.”⁶ Absent immediate injunctive relief, KPMG has demonstrated that it is likely to face an immediate risk of an adverse judgment being entered against it in Karluk Tribal Court. As a public accounting firm, KPMG has also demonstrated that it is likely to face irreparable harm from even an invalid judgment being entered against it.⁷

KPMG has also demonstrated that it is likely to face irreparable harm if it makes even a limited special appearance in Karluk Tribal Court to dispute the jurisdiction of that forum. KPMG notes that Judge Mullins of the Karluk Tribal Court has previously held that a party lacks the ability to make a special appearance in Karluk Tribal Court, and it appears that any appearance in Karluk Tribal Court may be treated by that court as tantamount to a consent to jurisdiction in violation of KPMG’s due process rights, which in and of itself would constitute irreparable harm.⁸

On the record before the Court, the balance of equities also favors KPMG. KPMG has demonstrated that an adverse judgment entered against KPMG by the Karluk Tribal Court could well impose a significant burden to KPMG’s existing and potential relationships (business or otherwise) with the State of Alaska, state and local governmental agencies, Alaska Native

⁶ Docket 6-2 at 12 (Order to Show Cause).

⁷ See Docket 5 (Stuart Decl.) at ¶ 4.

⁸ See *Koniag, Inc. and O’Connell v. Kanam, et al.*, 3:12-cv-00077 (D. Alaska), Docket 31 at 3. The Court acknowledges that Plaintiff has filed a document with this Court that purports to be from the Karluk Tribal Court that states it is an “Order Granting Special and Limited Appearance Pro Hac Vice for James E. Torgerson” if Mr. Torgerson provides that court with “an affidavit stating that said attorney or attorneys affirms to uphold The Constitution of the United States and the Constitution of the Native Village of Karluk.” However, the document is silent as to whether KPMG would be deemed to have made a general appearance before the Karluk Tribal Court should Mr. Torgerson or any other attorney attempt to appear on Plaintiff’s behalf in the Karluk Tribal Court. (See Docket 27-1 at 11-12).

Corporations and other public and private clients.⁹ Further, in the absence of temporary injunctive relief KPMG has demonstrated that it could not effectively appeal a judgment entered by the Tribal Court to a federal or state court, even with its allegation that such a judgment would be the result of an unlawful exercise of jurisdiction.¹⁰ Defendants, on the other hand, can choose to assert their claims against KPMG in another forum of competent jurisdiction and therefore would still have an opportunity to have their claims heard.¹¹ KPMG has also persuasively demonstrated that there is a public interest in protecting nonconsenting non-tribal members from purported assertions of tribal jurisdiction.¹²

In light of the foregoing, the Court finds that KPMG is likely to succeed on the merits, KPMG is likely to suffer irreparable harm in the absence of preliminary relief, the balance of equities tips in KPMG's favor, and entry of a preliminary injunction is in the public interest.

Accordingly, the Court hereby GRANTS KPMG's motion for a preliminary injunction and ORDERS as follows:

1. With respect to KPMG, Defendants Kurt Kanam and Orbie Mullins and their agents, servants, employees, and other persons who are in active concert or participation with Kurt Kanam or Orbie Mullins or their agents, servants, and employees, are ENJOINED from:

⁹ See *Herb Reed Enters., LLC v. Florida Entertainment Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013) ("Evidence of loss of control over business reputation and damage to goodwill could constitute irreparable harm.") (citing *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240 F.3d 832, 841 (9th Cir. 2001)).

¹⁰ Docket 4 (Mem.) at 16.

¹¹ Docket 4 (Mem.) at 17.

¹² See *Montana v. United States*, 450 U.S. 544, 564-65 (1981) ("[E]xercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.").

- retaining, exercising, or threatening to retain or exercise, jurisdiction of or by, or
- attempting or threatening to record or enforce any order or judgment of, the Karluk Tribal Court for the Native Village of Karluk against or with respect to KPMG, as to any matters related to the Tribal Court Complaint, Order to Show Cause, Proposed Declaratory Judgment, Summons, and related documents received by KPMG.¹³

2. The Temporary Restraining Order issued on August 6, 2015¹⁴ is VACATED and the Court finds that the cash bond posted by KPMG in connection with the Temporary Restraining Order¹⁵ in the amount of \$1,000 (One Thousand Dollars) be transferred to pay costs associated with this PRELIMINARY INJUNCTION ORDER should it later be determined to have been wrongly issued.

3. This PRELIMINARY INJUNCTION ORDER shall be in effect during the pendency of this case or until vacated or modified by further order of this Court.

DATED this 14th day of August, 2015 at 2:30 p.m. in Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE

¹³ See Dockets 6-2 and 6-3 (Summons, Complaint, Order to Show Cause, Proposed Declaratory Judgment, and Proposed Stipulated Order).

¹⁴ Dkt. No. 21.

¹⁵ Dkt No. 22.