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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

PLAINTIFF KPMG LLP'S
REPLY IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT

[Dkt. 35]

REPLY ISO MOTION FOR SUMMARY JUDGMENT

KPMG LLP v. Kanam, et al., 3:15-cv-00129-SLG

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Instead of opposing Plaintiff KPMG LLP's (KPMG's) Motion for Summary Judgment, Defendants Kurt Kanam and Orbie Mullins (collectively, the "Defendants") have filed a "Notice of Mootness" that only highlights their continuing defiance of this Court's orders and the need for permanent injunctive relief.

The Court has enjoined Defendants from exercising or purporting to exercise the jurisdiction of the Karluk Tribal Court for the Native Village of Karluk (Karluk Tribal Court) over KPMG.¹ The Court also enjoined Defendants from recording any order of the Karluk Tribal Court with respect to KPMG in connection with any matters related to the July 3, 2015 complaint that Defendants filed against KPMG in Karluk Tribal Court (the Tribal Court Complaint). In direct violation of this injunction, Defendants purportedly "removed" this action to the Karluk Tribal Court, secured an invalid "Order of Dismissal" from the Karluk Tribal Court, and then proceeded to record that order with the Washington State Superior Court for Thurston County.² As a result of their unlawful actions, Defendants now argue that there is no need to oppose KPMG's Motion for Summary Judgment because this case no longer exists. Defendants' conduct violates the Court's preliminary injunction order and their legal position is without merit.³

¹ Dkt. No. 21 (Temporary Restraining Order), Dkt. No. 29 (Preliminary Injunction).

² Dkt. No. 43-1.

³ As noted in KPMG's Memorandum of Law in Support of Motion for Summary Judgment, the Court retains jurisdiction to decide this motion notwithstanding Defendants' appeal from the Court's interlocutory Order Granting Plaintiff KPMG LLP's Motion for Preliminary Injunction. Dkt. No. 36 at 10, n. 22.

First, this Court has already held that Defendants are not authorized or permitted to “remove” this (or any other) case from a federal district court to a tribal court and that Defendants’ Motion to Dismiss does not present a basis for dismissal of this action under the Federal Rules of Civil Procedure.⁴ In short, contrary to Defendants’ assertions, this case has not been removed or dismissed and is still pending before this Court.

Second, as set forth in KPMG’s moving papers and as the Court has already found on two occasions, the Karluk Tribal Court clearly lacks jurisdiction over KPMG.⁵ The Karluk Tribe lacks a reservation and therefore lacks territorial jurisdiction as a matter of law.⁶ KPMG is not a member of the Karluk Tribe and has not consented to the Karluk Tribal Court’s jurisdiction or taken any actions that could be viewed as having created a consensual relationship with the Karluk Tribe.⁷ Defendants have failed to raise any legal argument or to identify any disputed issue of material fact in opposition to KPMG’s Motion for Summary Judgment.

Third, KPMG is entitled to the injunctive and declaratory relief that it seeks. The evidence is undisputed that KPMG faces irreparable harm should Defendants’ unlawful actions continue. As a public accounting firm, KPMG’s reputation is essential to its business, and the entry of an order by the Karluk Tribal Court purporting to find KPMG liable for securities fraud, even if invalid, would result in irreparable harm to that

⁴ Dkt. No. 42 (Order re Notice of Removal and Motion to Dismiss).

⁵ Dkt. Nos. 21, 29.

⁶ Dkt. No. 36 at 11, citing Dkt. Nos. 21 at 2, 29 at 2.

⁷ Dkt. No. 36 at 11-12, citing Dkt. Nos. 21 at 2, 29 at 2.

reputation.⁸ As set forth in KPMG's moving papers, the balance of hardships and public policy concerns also weigh strongly in favor of granting the requested injunction.⁹ Further, given the Parties' clear dispute as to the scope of the Karluk Tribal Court's jurisdiction, entry of a declaratory judgment in conjunction with a permanent injunction, would serve to further clarify the Parties' rights in connection with this dispute.

Accordingly, KPMG respectfully requests that the Court grant KPMG's Motion for Summary Judgment.

DATED: October 16, 2015

By: /s/ James E. Torgerson
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-and-

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2015, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Alaska by using the CM/ECF system. I further certify that Defendants were served same date via U.S. First Class Mail as follows:

⁸ Dkt. No. 5 (Stuart Decl., ¶ 4).

⁹ Dkt. No. 36 at 14-15.

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Honorable Orbie Mullins
Village of Karluk Tribal Judge
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/s/ James E. Torgerson
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