

# **Exhibit 8**

COLVILLE TRIBAL  
FILED  
2018 MAY 18 AMIN THE TRIBAL COURT OF THE CONFEDERATED TRIBES OF THE  
COLVILLE RESERVATION

Colville Confederated Tribes	)	No. CV-OC-2018-41009
<i>Plaintiff</i>	)	
	)	
v.	)	Order Denying Defendants' Motion
	)	to Dismiss for Lack of Personal and
South Bay Excavating, Inc.,	)	Subject Matter Jurisdiction
Liquid Networks, Inc., James Clements,	)	
& Jason Clements	)	
<i>Defendants</i>	)	

The defendant corporations and their registered agents move to dismiss this case for lack of personal and subject matter jurisdiction.

**Facts of the Case**

South Bay Excavating, Inc. ("South Bay") is a corporation incorporated in the State of Washington. The President and registered agent of South Bay is James Clements. James's brother Jason Clements is the Vice-President of South Bay.

On November 9, 2016, South Bay and the Confederated Tribes of the Colville Reservation ("the Colville Tribes") executed a contract for the excavation and installation of 35 miles of fiber optic cable within the exterior boundaries of the Colville Indian Reservation ("the Colville Reservation"). The project was to be completed no later than October 31, 2017.

After beginning work on the project, it is alleged that South Bay left the worksite on or about June 2, 2017.

The Colville Tribes claim that it paid South Bay 20% of the total contract price of \$2,457,194 pursuant to Section 3 of the Contract.

On July 11, 2016, South Bay attempted to assign its rights under the Contract to Liquid Networks, Inc. ("Liquid Networks"), a corporation incorporated on July 6, 2016 by Jason Clements. Under the purported assignment, Liquid Networks agreed to assume all performances and duties under the contract in exchange for holding South Bay harmless from any liability or loss from the "nonperformance of [contractual] duties and obligations by [Liquid Networks]."

Section 13(a) of the Contract provides that South Bay “shall be solely responsible for all construction under [the] [c]ontract.”

Section 20 of the contract executed between the Colville Tribes and South Bay states the parties “agree that sole and exclusive jurisdiction over disputes arising from this Contract shall be in the Tribal Courts of the Colville Confederated Tribes.”

### Analysis

#### **I. This Court has personal jurisdiction over these defendants because they have made sufficient contacts with this forum and have availed themselves of the jurisdiction of this Court.**

“[P]ersonal jurisdiction is the power a Court has over [a] person in order to enter a judgment against him. *Seymour v. CCT*, 6 CCAR 5, 6 (2001) (citing *Pennoyer v. Neff*, 95 U.S. 714 (1877)). Personal jurisdiction requires that a “defendant [have] sufficient contact with the sovereign ‘such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 880 (2011) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). “As a general rule, the sovereign’s exercise of power requires some act by which the defendant ‘purposefully avails itself of the privilege of conducting activities within the forum..., thus invoking the benefits and protections of its laws.’” *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

In this case, the defendants should have anticipated that they would be hailed into Court in this forum. South Bay executed a contract with the Colville Tribes for the excavation and installation of 35 miles of fiber optic cable wholly within the exterior boundaries of the Colville Reservation. The Colville Tribes claim that it paid South Bay 20% of the total contract price of \$2,457,194 to complete the project. After leaving the worksite, the Tribes allege that South Bay attempted to assign its rights under the contract to Liquid Networks, a corporation incorporated just five days earlier by a South Bay executive. The purported assignment was made despite language in the contract indicating that South Bay would be “solely responsible for all construction.” According to the Tribes, neither South Bay nor Liquid Networks completed the project. The Tribes then brought this suit to recover its losses.



Not only did these defendants have extensive contacts with this forum, but they also purposefully availed themselves of the jurisdiction of this Court. Section 20 of the Contract executed between the Colville Tribes and South Bay states in clear and unequivocal language that “sole and exclusive jurisdiction over disputes arising from this Contract shall be in the Tribal Courts of the Colville Confederated Tribes.” Thus, it is this Court’s determination that, in doing business with the Colville Tribes on the Colville Reservation, the defendants made sufficient contacts with this forum and purposefully availed themselves of this Court’s jurisdiction.

**II. This Court has subject-matter jurisdiction over this breach of contract action because: (1) the Colville Tribes are a party to this action; (2) the Contract concerns construction that was to take place wholly within the exterior boundaries of the Colville Reservation; and (3) the parties consented to the jurisdiction of this Court by the terms of the Contract.**

“Subject matter jurisdiction is considered the power of the Court to hear the type of case that is before it.” *Seymour v. CCT*, 6 CCAR 5, 6 (2001) (citing *Ex Parte Crow Dog*, 109 U.S. 556 (1883)). This Court maintains jurisdiction over “all suits...in which the events giving rise to the action occurred within...Tribal jurisdiction.” CTC § 2-2-1. Tribal court jurisdiction “include[s] all territory within the Reservation boundaries...and all persons therein.” CTC § 1-1-70. This case concerns the nonperformance of a contract executed between the Colville Tribes and South Bay to install and excavate 35 miles of fiber optic cable wholly within the exterior boundaries of the Colville Reservation. Thus, this breach of contract action concerns conduct that occurred within the jurisdiction of this Court.

This Court also maintains jurisdiction over causes of action which involve the Colville Tribes “or any other matter which effects the interests and rights of the Tribe[s].” CTC § 1-4-131(a)(10). The Colville Tribes claim that it paid South Bay 20% of the total contract price of \$2,457,194 to complete the project. After South Bay left the worksite, the Colville Tribes brought this breach of contract action against the defendants to recover its losses. Not only are the Colville Tribes a party to this matter, but the Colville Tribes are seeking to recover a substantial financial loss.

By agreeing that “sole and exclusive jurisdiction” over disputes arising from the Contract lies with this Court, the defendants have consented to this Court’s jurisdiction. Tribal Court jurisdiction extends to “all...suits in which a party is deemed to have consented to the jurisdiction [of] this Court.” CTC § 2-2-1. A person consents to the jurisdiction of this Court when he or she “transacts, conducts, or performs any business or activity within the Reservation by being present on the Reservation or by mail, phone, broadcast, cable either in person or by an agent or representative.” CTC § 1-4-131(a)(2). Section 20 of the Contract states in clear and unequivocal language that the parties “agree that sole and exclusive jurisdiction over disputes from this Contract shall be in the Tribal Courts of the Colville Confederated Tribes.” Liquid Networks (through its registered agent) attempted to assume South Bay’s rights under the Contract via assignment. Thus, by the terms of the Contract, the defendants consented to the jurisdiction of this Court.

## **II. The defendants’ status as non-Indians does not exempt them from the jurisdiction of this Court.**

“Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations.” *Montana v. United States*, 450 U.S. 544, 565-566 (1981). However, “absent express authorization by federal statute or treaty, tribal jurisdiction over the conduct of nonmembers exists only in [two] circumstances.” *Id.* First, “a tribe may regulate...the activities of nonmembers who enter consensual relationships with the tribe...through commercial dealings, contracts, leases, or other arrangements.” *Id.* Second, “a tribe may...exercise civil authority over the conduct of non-Indians...when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Id.*

This case involves two non-Indian corporations, represented by their registered agents, who entered into a consensual relationship to do business with the Colville Tribes. South Bay (through its registered agent) executed a contract with the Colville Tribes for the excavation and installation of 35 miles of fiber optic cable wholly within the exterior boundaries of the Colville Reservation. After leaving the worksite, South Bay attempted to assign its rights under the contract to Liquid Networks, a corporation incorporated just five days earlier by a South Bay executive. Thus, it is this Court’s



determination that the South Bay (through its registered agent), entered into a consensual relationship with the Colville Tribes via a construction contract. Further, Liquid Networks (through its registered agent) attempted to assume South Bay's relationship with the Colville Tribes via assignment.

The Colville Tribes claim that it paid South Bay 20% of the total contract price of \$2,457,194 to complete the project, and that the project was never completed. Assuming these facts are true, failure to complete the work required under the Contract had a direct effect on the economic security of the Colville Tribes.

Where a Tribe possesses authority to regulate the activities of non-Indians on reservation lands, civil jurisdiction over the activities presumptively lies in tribal court unless affirmatively limited by a specific treaty provision or federal statute. *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) (citing *Iowa Mut. Ins. Co.*, 480 U.S. at 18). No treaty provision or federal statute expressly limits this Court's jurisdiction over this breach of contract action. Because construction under the Contract was to take place on wholly within the exterior boundaries of the Colville Reservation, South Bay was required to abide by all applicable tribal laws which regulate the manner in which construction was to be performed. Thus, this Court's jurisdiction extends to the conduct which caused the alleged nonperformance of the Contract.

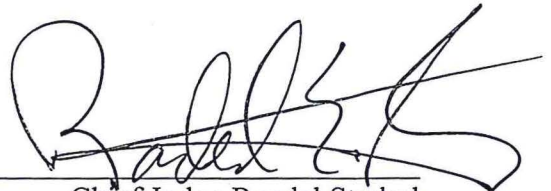
**III. Because this Court has "sole and exclusive jurisdiction over disputes arising from this Contract," the issue of whether the defendant corporations' registered agents are personally liable for breaching the contract will be adjudicated in this Court.**

Counsel for the defendants suggests that this case should be bifurcated so that the Tribes' claims against James and Jason Clements (the registered agents of the defendant corporations) can proceed in the courts of the State of Washington. Though these claims *could* be heard in State court, a plain reading of the language of the contract suggests otherwise. Section 20 of the contract executed between the Colville Tribes and South Bay states in clear and unequivocal language that "sole and exclusive jurisdiction over disputes arising from this Contract shall be in the Tribal Courts of the Colville Confederated Tribes." The issue of whether James and Jason Clements are personally

liable for allegedly breaching the contract is necessarily a dispute "arising from" the contract. Thus, this Court will not dismiss the claims against James and Jason Clements until the Tribes have presented their case at trial.

THEREFORE, IT IS ORDERED that the defendants' motion to dismiss the case for lack of personal and subject-matter jurisdiction is DENIED.

Done this 17<sup>th</sup> day of May, 2018.

  
Chief Judge Randal Steckel

I hereby certify that I served a copy  
of the following document on:  
Colville Confederated Tribes-IM  
Jaymanon - POB554 Grand Coulee 49133  
James Clements-RM Jason Clements-RM  
Date: 5/18/18 Clerk: RM