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IN THE TULALIP TRIBAL COURT
TULALIP INDIAN RESERVATION
TULALIP, WASHINGTON

JEREMY JACKSON and MICHELLE
JACKSON, husband and wife,

No. TUL-CV-PI-2014-0083

Plaintiffs,

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

vs.

THE TULALIP TRIBES of Washington
State, and ABC GLASS, INC.

Next Hearing Date: NA

Defendants

THIS MATTER came before the Court on Defendant Tulalip Tribes' motion for summary judgment in the above-captioned matter. The Court has considered the pleadings filed in support of and in opposition to the motion, the remainder of the file, heard oral argument on December 17, 2014, and hereby grants summary judgment in favor of Defendant.

I. PROCEDURAL & FACTUAL BACKGROUND

On March 14, 2014, Plaintiffs Jeremy Jackson and Michelle Jackson (collectively "Plaintiffs") filed this action seeking damages for personal injuries they alleged were obtained from a floral bouquet purchased at the Tulalip Resort Casino on July 21, 2013. Tulalip Resort Casino is a gaming and entertainment enterprise wholly-owned by the Tulalip Tribes, a federally-recognized Indian tribe. The Plaintiffs also named ABC Glass, Inc., a

1 corporation with its primary place of business located in Norcross, Georgia. Plaintiffs allege
2 that the floral arrangement sold by the florist shop in the Tulalip Resort Casino was sold with
3 no warnings or instructions for transporting or carrying the arrangement. The complaint
4 alleges that when one of the Plaintiffs removed the floral arrangement from the 5-gallon
5 bucket the florist placed the arrangement in for transport, Plaintiff's finger punched through
6 the glass of the vase, causing significant personal injuries.

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8 The Plaintiffs allege three causes of action against the Defendants including strict product
9 liability pursuant to Washington State's Product Liability Act (WLPA), common law
10 negligence, and violation of the Washington State Consumer Protection Act (WCPA).

11 Defendant Tulalip Resort Casino answered, challenging the application of Washington State
12 statutory law to a civil tort action governed by the law of the Tulalip Tribes.

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14 On September 17, 2014, Defendant ABC Glass, Inc. filed a motion for partial summary
15 judgment against Plaintiffs alleging that the WCPA did not apply and dismissing Plaintiffs'
16 claim of common law negligence because the WPLA preempts common law negligence
17 claims in the context of product liability cases.

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19 On November 4, 2014, Defendant Tulalip Tribes moved for summary judgment dismissing
20 Plaintiffs' claims for strict liability under the WLPA and under the WCPA asserting that
21 these statutes are not applicable within the jurisdiction of the Tulalip Indian Reservation and
22 to the Tulalip Tribes and wholly-owned instrumentalities of the Tulalip Tribes. Defendant
23 Tribes' summary judgment motion further requested dismissal of the common law negligence
24 claim for lack of *prima facie* evidence that the claim is available to the asserted facts. The
25 motion was noted for argument on December 3, 2014. On November 14, 2014, Defendant
26 ABC Glass, Inc. filed a joinder in Defendant Tulalip Tribes' motion for summary judgment,
27 joining the Tulalip Tribes' motion that strict liability claims under the WLPA are not
28 available under Tulalip law and that there was a lack of *prima facie* evidence against ABC
29 Glass, Inc. of any common law negligence.

1 On November 24, 2014, Plaintiffs filed Motion for Dismissal of Claims Against Defendant
2 ABC Glass, Inc. and provided a proposed order of dismissal which the Court signed on
3 November 26, 2014.

4
5 On December 2, 2014 at 11:37 a.m., Defendant Tulalip Tribes filed its Reply in Support of Its
6 Motion to Dismiss, alleging that Plaintiffs did not timely respond to the Tribes' Motion for
7 Summary Judgment. At 12:59 p.m. on that same day, Plaintiffs filed their Response to
8 Defendant Tulalip Tribes' Motion for Summary Judgment. On December 3rd, at 9:00 a.m.,
9 Defendant filed a Supplemental Reply in Support of its Motion to Dismiss requesting that the
10 filed response be struck as untimely. Defendant also objected to the affidavit filed by Matt
11 Quick, an attorney at the firm representing Plaintiff, as being improper, as being unqualified
12 to render the opinions contained in the affidavit regarding the floral arrangement being "top
13 heavy and awkward to carry".

14
15 At argument set for December 3, 2014, Plaintiffs' counsel admitted that her response was
16 untimely, asserting that she had referenced an older version of the Tulalip Civil Rules of
17 Tribal Court which caused her to miss her filing deadline. Defendant's counsel withdrew his
18 request to strike Plaintiffs' Response, and the Court granted a continuance of argument to
19 December 17, 2014 and leave for Defendant to file an additional supplemental reply
20 addressing the issues brought forward by the Plaintiffs in the Response. On December 12,
21 2014, Defendant filed its Second Supplemental Reply in Support of its Motion to Dismiss and
22 argument on the motion was held on December 17, 2014.

23 24 II. DISCUSSION

25 26 A. Summary Judgment Standard and Applicable Law

27
28 Motions for summary judgment in Tulalip Tribal Court are governed by the Tulalip Civil
29 Rules of Tribal Court which states that "[a] party against whom a claim...is asserted may, at
30 any time, move with or without supporting affidavits for a summary judgment in his favor as

1 to all or any part of the claim...” TTC 2.10.100(5)(b). The Civil Rules also state that “[t]he
2 judgment sought shall be rendered if the pleadings, depositions, and admissions on file,
3 together with the affidavits, if any, show that there is no genuine issue as to any material fact
4 and that the moving party is entitled to judgment as a matter of law.” TTC 2.10.100(5)(c).

5
6 The Tribal Court is also required to apply the laws and ordinances of the Tulalip Tribes,
7 including the custom laws of the Tribes. TTC 2.05.030(2). Where there is no applicable
8 Tulalip Tribal Law, ordinance or custom to an issue before the Court, the court “may utilize,
9 in the following order, the procedural laws of other Federally-recognized Indian tribes,
10 Federal statutes, Federal common law, State common law, and State statutes as guides to
11 decisions of the Courts.” *Id.*

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13 For tort claims such as those before the Court in this matter, Tulalip Tribal Law applies
14 pursuant to TTC 2.35. In this Chapter:

15
16 ... an action for monetary damages may be brought in Tribal Court under this
17 chapter against the Tribes by any person for any injury to that person caused (1)
18 by an act or omission by the Tribes or (2) by an act or omission by any agent,
19 employee or officer acting on behalf of the Tribes and within the scope of
20 authority of that agent, employee or officer...”

21 TTC 2.35.030. This is limited to damages below the limits of insurance maintained by the
22 Tribes to compensate for injuries. *Id.* Claims must not be of a type excluded by TTC 2.35.050,
23 may not be based on strict or absolute liability, may not request punitive or exemplary
24 damages, may not request prejudgment interest, and may not include attorney fees. TTC
25 2.35.070.

26 Law to be applied shall be Tribal law, applicable Federal law and Washington substantive tort
27 law. TTC 2.35.090. “Injury” is defined as “injury to a person, death, or damage to or loss of
28 property of whatever kind, which, if caused by the negligent or wrongful act or omission of a
29 private person would be a tort under Tribal law, applicable Federal law, and, to the extent
30

1 consistent with Tribal law, substantive tort laws of the State of Washington..." TTC
2 2.35.020(3).

3
4 The Defendant Tulalip Tribes' motion for summary judgment dismissing Plaintiffs' claims for
5 strict liability under the Washington Products Liability Act and under the Washington State
6 Consumer Protection Act, asserting that these statutes are not applicable within the jurisdiction
7 of the Tulalip Indian Reservation and to the Tulalip Tribes and wholly-owned instrumentalities
8 of the Tulalip Tribes. Defendant Tribes' motion further requested dismissal of the common
9 law negligence claim for lack of *prima facie* evidence that the claim is available to the asserted
10 facts.

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12 B. Washington State Statutory Law Is Inapplicable

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14 The Court will first address the two claims of the Plaintiff based on the Washington Product
15 Liability Act and the Consumer Protection Act. It is long established that federally-recognized
16 tribes are separate sovereign governments with "distinct political [societies], separated from
17 others, cable of managing [their] own affairs and governing..." *United States v. Lara*, 541 U.S.
18 193, 204-205 (2004), *quoting, Cherokee Nation v. Georgia*, 30 U.S. 1 (1831). It is clear that
19 absent federal legislation making a state statute applicable to a tribe, any application of that
20 statute must be agreed to by the tribal government. In this case, the WPLA and WCPA have
21 neither been applied to tribal governments by federal law, nor has the Tulalip Tribes adopted
22 those statutes as being binding law on the Tulalip Tribal Court.

23
24 Plaintiff argues that Tulalip Tribes should be held to the higher standard of duty of care as a
25 manufacturer under the WPLA. A defendant who is held to this higher standard under the
26 WPLA will be held responsible for injury if the "product was not reasonably safe as designed
27 or constructed or not reasonably safe because adequate warnings or instructions were not
28 provided." Plaintiffs' Response at 7. However, Plaintiff makes no arguments as to why this
29 higher standard created by Washington State statutory law would be applicable to a suit filed
30 under the jurisdiction of a different sovereign government. When questioned by the Court in

1 argument whether this higher standard was based solely on the WPLA or also on Washington
2 common law which the Court may consider under Tulalip tribal law, counsel for Plaintiffs
3 asserted it was based in Washington State common law. However, the Plaintiff makes no
4 citations leading the Court to find that these claims are based on anything other than the WPLA
5 and Washington court decisions interpreting that statute. Plaintiffs, in their response, have no
6 discussion of the Tribes' challenge to the applicability of the Washington Consumer Protection
7 Act at all. For these reasons, the Court finds that there is no material issue of fact present, and
8 solely as a matter of law, Plaintiffs' claims based on the Washington Products Liability Act and
9 the Washington Consumer Protection Act are not available in this jurisdiction.

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11 C. No *Prima Facie* Evidence Exists for Common Law Negligence
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13 A much closer issue is whether a *prima facie* case has been made for the claim against the
14 Defendant Tulalip Tribes based on the common law of negligence. This issue turns on the
15 difference between a supplier like ABC Glass, Inc., and a vendor like Tulalip Resort Casino
16 who passes through a product from the supplier to the injured party. As the Plaintiffs' brief in
17 response notes, "[a] duty to warn arises when the supplier 'knows or has reason to know that
18 the chattel is or is likely to be dangerous for the use for which it is supplied.'" Plaintiffs'
19 Response to Defendant Tulalip Tribes' Motion for Summary Judgment at 11, *citing, Zamora v.*
20 *Mobil Corp.*, 104 Wash.2d 199, 204 (1985). Plaintiff also states that "a vendor of a chattel
21 manufactured by a third person who neither knows nor has reason to know that it is, or is likely
22 to be, dangerous, is not subject to liability." Plaintiffs' Response at 12, *citing, Ringstad v. I.*
23 *Magnin & Co.*, 39 Wash.2d 923, 925 (1952).
24

25 Plaintiff argues that Tulalip Resort Casino breached its duty by failing to inspect the vase "in
26 light of the nature of the product, the reputability of the supplier, and the scope of the risk."
27 Plaintiff's Response at 9, *citing, Martin v. Schoonover*, 13 Wash. App. 48, 54-55 (1975)
28 (emphasis Plaintiffs'). Plaintiff argues that "[i]t is common knowledge that products
29 manufactured in China are too often of poor quality, due to poor standards of workmanship and
30 quality control and mass production." Plaintiffs' Response at 10. The Court does not give

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1 much credence to an automatic duty being placed on a vendor for a good that originated in
2 China.

3
4 Plaintiff also argues that because ABC Glass' website contained a recommendation that as
5 chips or cracks may occur as a result of transportation, that care should be taken and gloves
6 used when handling their products. *Id.* at 12. Plaintiff notes that the Defendant admitted in
7 discovery that it was aware that some vases break during shipping from ABC. These two
8 factors combined, according to Plaintiff, provide the "reasonable inference [that] Tulalip knew
9 or should have known of the fragility of these vases and the need for extra care in handling." *Id.*
10 at 12 (emphasis theirs).

11
12 The flaw of the argument made by Plaintiff is the nature of the alleged defect leading to the
13 injury. Plaintiff do not argue that Defendant didn't inspect the vase and in fact, noted that the
14 process the florist used to prepare the arrangement included unpacking and cleaning the vase,
15 which likely would also result in noticing if the vase was cracked during transport. This is not
16 the factual situation alleged. As Plaintiff's Complaint noted, the injury occurred when the
17 Plaintiff picked up the vase and "the middle finger of his left hand punctured through the side
18 of the vase..." Complaint at § 5.10. Plaintiff Jeremy Jackson, who by profession is a jeweler,
19 used a "digital multimeter gauge calibrator..." to measure the glass at the point of the puncture.
20 Plaintiff's Response at 3. As the Complaint and Response highlight, all the evidence in this
21 case points to a manufacturing defect on the part of ABC Glass, Inc. And, as the cases cited by
22 Plaintiff highlight, absent the applicability of the Washington Product Liability Act and a
23 finding by a Washington State court that a vendor should be held to the higher standard of a
24 manufacturer, the standard to be applied here is as is outlined by *Zamora* and *Ringstad*, namely
25 that "a vendor of a chattel manufactured by a third person who neither knows nor has reason to
26 know that it is, or is likely to be, dangerous, is not subject to liability." *Ringstad, supra*. Here,
27 there is no evidence that Tulalip Resort Casino would know that the vase in question was so
28 thin that simply carrying it would result in the glass being punctured.¹ Because of this, the
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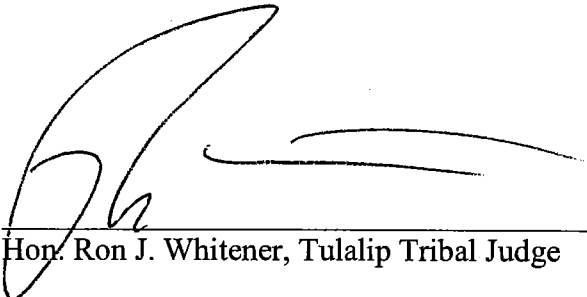
¹ Plaintiff's Response makes much of the way the floral arrangement was created and the height of the arrangement.
~~However~~, nothing in the facts alleged infers that the injury was a result of the ungainliness or weight of the

1 Court finds no *prima facie* showing of facts supporting the common law negligence claim and
2 thus there is no issue of material fact supporting denial of the motion for summary judgment.

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4 III. ORDER

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6 Therefore, it is hereby ORDERED that Defendant Tulalip Tribes' motion for summary
7 judgment is granted and this case is CLOSED.

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11 Dated this 13th day of January, 2015.

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14 _____
15 Hon. Ron J. Whitener, Tulalip Tribal Judge

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30 arrangement, instead supports the inference that there was a defect in the manufacture of the vase not readily
observable to people handling it.

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