

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

THINK FINANCE, INC., et al.,

Defendants.

Civil Action No. 18-cv-831

(Original E.D. Pa. No. 14-cv-7139-JCJ)

**NON-PARTY DEFENDANT MOBILOANS' MOTION TO QUASH SUBPOENA TO
MOBILOANS TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Non-Party MobiLoans, LLC (“MobiLoans”), hereby moves to quash Defendant Think Finance’s (“Think Finance”) June 13, 2018 Subpoena to MobiLoans to Testify at a Deposition in a Civil Action (the “Subpoena”) in the matter of *Commonwealth Pennsylvania v. Think Finance, Inc., et al.*, No. 14-cv-7139 (E.D. Pa. filed Dec. 17, 2014). Because MobiLoans is a wholly-owned tribal entity that has never waived its sovereign immunity or consented to be involved in this action, the Court lacks jurisdiction to enforce the Subpoena over MobiLoans and any of its employees, officers, and agents.

I. BACKGROUND

MobiLoans is a wholly-owned entity of the Tunica-Biloxi Tribe of Louisiana (the “Tunica-Biloxi Tribe”), a federally recognized Indian Tribe. *See* Declaration of Marshall Pierite (“Pierite Decl.”) at ¶ 5 (attached hereto as Exhibit A); Charter of MobiLoans (“MobiLoans’ Charter”), Exhibit A-1; MobiLoans’ Second Amended and Restated Operating Agreement (“Operating Agreement”), Exhibit A-2. More specifically, MobiLoans is organized and chartered under the laws and the inherent sovereign authority of the Tunica-Biloxi Tribe as a

limited liability company. Ex. A at ¶ 6.; Ex. A-1, art. 1; Ex. A-2 at § 2.1 & 6.1. MobiLoans' stated purpose is to engage in lending and related activities that will generate additional revenue for the Tribe. Ex. A at ¶ 7; *see* Ex. A-1, art. 1, 3; Ex. A-2 at § 2.1. Additionally, the Tunica-Biloxi Tribe vested MobiLoans "with all of the privileges and immunities of the Tribe, including, without limitation, the immunity from suit by any person or entity in any forum." Ex. A at ¶ 6; *see* Ex. A-1, art. X; Ex. A-2 at §§ 6.1 & 6.3. The Tunica-Biloxi Tribe, including MobiLoans, has never waived its sovereign immunity or consented to be involved in this action. Ex. A at ¶ 10.

On June 13, 2018, the Think Finance served the MobiLoans Subpoena on MobiLoans through the Tunica-Biloxi Tribal Police. The Subpoena demands that MobiLoans designate an employee or other person to testify at a deposition in the matter of *Commonwealth of Pennsylvania v. Think Finance, Inc., et al.*, No. 14-cv-7139-JCJ, on July 2, 2018, in Mansura, Louisiana. to testify on behalf of MobiLoans pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. *See* Subpoena, Exhibit B. Counsel for both parties met and conferred by phone multiple times before issuance of the subpoena but did not reach a resolution.

II. STANDARD OF REVIEW

As a threshold matter, a court must possess jurisdiction to enforce a subpoena. *Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 141 (2d Cir. 2014); *see also* *Shea v. Office of Thrift Supervision*, 934 F.2d 41 (3d Cir. 1991) (finding that the court lacked jurisdiction to review agency's refusal to quash or modify a subpoena); *Matter of Marc Rich & Co., A.G.*, 707 F.2d 663, 669 (2d Cir. 1983) ("A federal court's jurisdiction is not determined by its power to issue a subpoena; its power to issue a subpoena is determined by its jurisdiction."). And "[s]overeign immunity is a jurisdictional bar which deprives federal courts of subject matter jurisdiction."

Magyar v. Kennedy, No 12-5906, 2013 WL 6119243, at *2 (Nov. 20, 2013) (citation and internal quotation omitted). Upon timely motion, “Rule 45 authorizes a district court to quash a subpoena if it subjects a person to an undue burden . . . or requires disclosure of confidential information.” *Ciarlone v. City of Reading*, 263 F.R.D. 198, 201 (E.D. Pa. 2009) (citing Fed. R. Civ. P. 45). Accordingly, MobiLoans’ sovereign immunity prevents the Court from enforcing the Subpoena against MobiLoans and, thereby, warrants an order to quash the Subpoena.

III. ARGUMENT

A. Sovereign Immunity From Suit Protects the Tunica-Biloxi Tribe.

As a federally recognized Indian tribe, the Tunica-Biloxi Tribe possesses sovereign immunity from suit. *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2030 (2014). The Supreme Court has “time and again treated the doctrine of tribal [sovereign] immunity as settled law and dismissed any suit against a tribe absent congressional authorization or a waiver” of immunity by the tribe. *Id.* (internal quotation and punctuation omitted); *Bynon v. Mansfield*, No. 15-00206, 2015 WL 2447159, at * 1 (E.D. Pa. May 21, 2015). Indeed, these acts “cannot be implied but must be unequivocally expressed.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). Moreover, tribal sovereign immunity encompasses immunity from “suits arising from a tribe’s commercial activities, even when they take place off Indian lands.” *Bay Mills*, 134 S. Ct. at 2031; *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998); *Oklahoma Tax Comm’n v. Citizen Band Potawatomi*, 498 U.S. 505 (1991).

Here, Congress has not abrogated tribal immunity for suits arising from tribal lending activity. *See Howard v. Plain Green, LLC*, No. 2:17CV302, 2017 WL 3669096 (E.D. Va. Aug. 24, 2017); *see also See Meyers v. Oneida Tribe of Indians of Wisc.*, No. 15-CV-445, 2015 WL

13186223 (E.D. Wis. Sept. 4, 2015). Nor has the Tribe waived its immunity from suit. Ex. A at ¶ 10. Thus, tribal sovereign immunity demands that the Subpoena be set aside.

B. MobiLoans' Sovereign Immunity Bars the Subpoena.

Tribal sovereign immunity applies not only to tribes themselves, but also to tribal arms, enterprises, and entities. *See, e.g., United States ex rel Cain v. Salish Kootenai Coll.*, 862 F.3d 939 (9th Cir. 2017); *White v. Univ. of Cal.*, 765 F.3d 1010, 1025 (9th Cir. 2014); *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1185 (10th Cir. 2010); *Freemanville Water Sys., Inc. v. Poarch Band of Creek Indians*, 563 F.3d 1205, 1207 n.1 (11th Cir. 2009); *Hagen v. Sisseton-Wahpeton Cmty. Coll.*, 205 F.3d 1040, 1043 (8th Cir. 2000). Thus, as a tribal lending entity, MobiLoans easily and indisputably qualifies as an arm of the Tunica-Biloxi Tribe, which shares in the Tribe's sovereign immunity from suit. *See* Ex. A at ¶ 5-6; Charter of MobiLoans, Ex. A-1; Operating Agreement, Ex. A-2; *Everette v. Mitchum, et al.*, 146 F. Supp. 3d 720, 723-24 (D. Md. 2015) (recognizing MobiLoans as an arm of the tribe entitled to sovereign immunity); *see Howard*, 2017 WL 3669096 at *6 (recognizing that a tribal lending entity enjoyed sovereign immunity). Moreover, because there is no indication that Congress abrogated the MobiLoans' immunity in this third-party suit or that the Tunica-Biloxi Tribe expressly waived its immunity, MobiLoans is fully entitled to exercise its immunity from the Subpoena. *See* Ex. A at ¶ 10; *see Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978) (a waiver of tribal immunity may not arise by implication).

Immunity from suit also extends to all aspects of judicial process, including third-party subpoenas. *See Alltel Commc'ns., LLC v. DeJordy*, 675 F.3d 1100, 1005-06 (8th Cir. 2012) (holding that a federal court's third-party subpoena issued on a non-party tribe and non-party tribal official was a "suit" that was subject to Indian tribal immunity); *United States v. James*, 980 F.2d

1314 (9th Cir. 1992) (tribal sovereign immunity bars issuance of subpoena duces tecum requested by criminal defense attorney seeking records regarding victim's alleged alcohol and drug problems). Consequently, as a matter of law, MobiLoans' status as an arm of the Tunica-Biloxi Tribe protects it from third-party discovery. The Court, therefore, lacks jurisdiction to issue or enforce the Subpoena.

IV. CONCLUSION

Because Plaintiff Commonwealth of Pennsylvania has subpoenaed MobiLoans, an arm of the Tunica-Biloxi Tribe, MobiLoans shares in the Tribe's sovereign immunity from suit, including subpoenas. Accordingly, MobiLoans respectfully requests that this Court grant its Motion to Quash the Subpoena to MobiLoans to Testify at Deposition in a Civil Action.

Dated: June 21, 2018

Respectfully submitted,

/s/ Raymond T. Fischer
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2018, I electronically filed the foregoing NON-PARTY DEFENDANT MOBILOANS' MOTION TO QUASH SUBPOENA TO MOBILOANS TO TESTIFY AT DEPOSITIONS IN A CIVIL ACTION with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered CM/ECF users. In addition, a true and correct copy was also sent by United States mail, first-class postage prepaid, to the following:

John J. Grogan
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/s/ Raymond T. Fischer
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