

IN THE DISTRICT COURT OF THE CHEROKEE NATION

CHEROKEE NATION EDUCATION
CORPORATION, d/b/a CHEROKEE
NATION FOUNDATION,

Plaintiff,

vs.

KIMBERLIE GILLILAND,
Defendant.

Case No. CV-2016-397

Judge T. Luke Barteaux

FILED
FEB 26 2018
CHEROKEE NATION
DISTRICT COURT

**PLAINTIFF'S RESPONSE TO ANDREW SIKORA'S
MOTION TO QUASH OR MODIFY SUBPOENA**

Comes now the plaintiff, who responds to Andrew Sikora's Motion to Quash or Modify Subpoena and would show the Court as follows:

I. This Court Has Adjudicatory Jurisdiction Over Sikora And Cherokee Media.

As a general principle, a Tribe's regulatory jurisdiction over non-Indians sets the aperture of its adjudicatory jurisdiction.¹ In *Montana v. United States*, the Supreme Court established:

A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.²

Discovery in this case has confirmed that Sikora/Cherokee Media engaged in multiple consensual relationships with Foundation, which is a tribally-chartered 501(c)(3) non-profit, wholly owned by the Cherokee Tribe and operated by employees, officers and directors who are

¹ *Strate v. A-1 Contractors*, 520 U.S. 438, 453-54 (1997)(finding the tribe's adjudicative jurisdiction over non-members did not exceed its legislative jurisdiction)("We 'can readily agree,' in accord with *Montana* . . . that tribes retain considerable control over nonmember conduct on tribal land.")

² *Montana v. United States*, 450 U.S. 544, 565-566 (1981)

all tribal citizens.³ Sikora/Cherokee Media shared office space at Foundation offices in 2011. Sikora entered into a written contract with Foundation to produce the Cherokee Lullaby CD in 2010 (attached hereto as Exhibit "A"). Sikora/Cherokee Media received over \$6,000.00 in payments from Foundation, allegedly for services performed, but which Foundation asserts were merely a pretext for embezzlement. Sikora also enjoined multiple trips and family vacations which his wife, Kimberly Gilliland, all paid with Foundation funds. Without doubt, Sikora and Cherokee Media entered into multiple consensual relationships with the Foundation. As such, he has availed himself, not only to the regulatory jurisdiction of the tribe, but also the adjudicatory jurisdiction of our courts. This adjudicatory jurisdiction is more than sufficient to support the power of subpoena over Mr. Sikora as an individual and over Cherokee Media, Ltd.

II. This Court Has Personal Jurisdiction Over Sikora And Cherokee Media Sufficient To Support The Power Of Subpoena.

Personal jurisdiction may be general or specific. General jurisdiction exists over the defendant for claims that arise in the forum if the defendant resides in the forum or conducts continuous and systematic business activities there.⁴ Specific jurisdiction exists for the claim alleged in the suit if the defendant "*purposefully avails itself of the privilege of conducting activities within the forum state.*"⁵

At all times relevant to this litigation, Andrew Sikora resided at, and operated his and Gilliland's home-based business, Cherokee Media, Ltd., from their home located at 28177 S. Boat House Lane, Park Hill, OK 74451, situated within the Cherokee Nation. For a time in 2011, Cherokee Media shared office space with Foundation, rent free. Sikora/Cherokee Media

³ The Foundation's advisory board includes the Principal Chief and appointed members of the tribal council.

⁴ Helioperos Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-415 (1984).

⁵ World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)).

received thousands of dollars in Foundation monies (allegedly for services performed) and enjoyed multiple family vacations at Foundation expense. Clearly, Sikora/Cherokee Media has availed himself/itself of the privilege of conducting business activities with a Cherokee entity within the Cherokee Nation, and by so doing clothed the Court with general and specific personal jurisdiction sufficient to support the Court's subpoena powers over him and Cherokee Media. Moreover, Sikora testified at deposition that Cherokee Media is also co-owned by the defendant, Kimberly Gilliland, who is a tribal citizen:

20	okay. so you and your wife were the only owners of
21	this company; correct?
22	A. Uh-huh.
23	Q. so would it be fair to say that --
24	MR. PROSZEK: Yes or no?
25	A. Yes, yes, yes.

Further, Gilliland's 2010 résumé listed herself as the "President" of Cherokee Media from "2002 - Current" (attached hereto as Exhibit "B"). Thus, Sikora's assertion that Cherokee Media is not subject to this Court's subpoena power is erroneous.

III. The Subpoena Was Properly Served On Sikora's Legal Counsel.

Sikora's proposition II is without merit; the subpoena was properly served on Sikora's legal counsel as he directed, and he is estopped from denying otherwise. Plaintiff engaged the services of RLG Process Service, a process server duly licensed by the Cherokee courts. Andrew Sikora was evasive to personal service on four different occasions and ultimately instructed the process server over a cell phone: ". . . [T]o serve his attorney."⁶ Defendant's

⁶ Exhibit "C" at page 5.

