

D060610

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

FOURTH APPELLATE DISTRICT, DIVISION ONE

PATRICIA DONATO

Defendant and Appellant

v.

SERGEY PEREYMA

Plaintiff and Respondent

**APPEAL FROM JUDGMENT AFTER COURT TRIAL
OF THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO**

Honorable Joel R. Wohlfeil, Presiding
Superior Court Case No. 37-2009-00070768-CU-OR-EC

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

	<u>Page(s)</u>
INTRODUCTION	1
A. CASE SUMMARY	1
B. STATEMENT OF CONTENTIONS	5
STATEMENT OF APPEALABILITY	7
DE NOVO STANDARD OF REVIEW	7
STATEMENT OF FACTS	9
LEGAL DISCUSSION	14
A. The Trial Court Lacks Subject Matter Jurisdiction Over Indian Trust Land	14
B. Appellant Need Not be a Tribe Member to Assert Lack of Subject Matter Jurisdiction	19
CONCLUSION	22
CERTIFICATE OF COMPLIANCE	(Attached)
PROOF OF SERVICE	(Enclosed at Rear)

TABLE OF AUTHORITIES

<u>Cases Cited</u>	<u>Page(s)</u>
<i>Ash v. Hertz Corp.</i> (1997) 53 Cal.App.4th 1107	8
<i>Boisclair v. Superior Court</i> (1990) 51 Cal.3d 1140	8, 14, 15, 16, 20
<i>Consolidated Theatres, Inc. v. Theatrical Stage Employees Union, Local 16</i> (1968) 69 Cal.2d 713	7
<i>Diamond Benefits Life Insurance Co. v. Troll</i> (1998) 66 Cal.App.4th 1	8
<i>Ghirardo v. Antonioli</i> (1994) 8 Cal.4th 791, 799	8
<i>Hydrothermal Energy Corp. v. Fort Bidwell Indian Community Council</i> (1985) 170 Cal.App.3d 489	17
<i>Inland Casino Corporation v. Superior Court</i> (1992) 8 Cal.App.4th 770	19, 20, 21
<i>Long v. Chemehuevi Indian Reservation</i> (1981) 115 Cal.App.3d 853	17
<i>Marlow v. Campbell</i> (1992) 7 Cal.App.4th 921	6, 14
//	

Table of Authorities
(Continued)

<i>McClanahan v. Arizona State Tax Commission</i> (1973) 411 U.S. 164	15
<i>People v. National Auto & Cas. Ins. Co.</i> (2000) 82 Cal.App.4th 120	8
<i>Robbins v. Foothill Nissan</i> (1994) 22 Cal.App.4th 1769	7

Statutes Cited

28 United States Code Section 1360	14, 16
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INTRODUCTION

This Appeal is taken from a Judgment After Trial by the Superior Court entered in favor of Plaintiff and Respondent, Sergey Pereyma, and against Defendant and Appellant, Patricia Donato.

Appellant appeals from the judgment on the ground that the trial court lacked subject matter jurisdiction and, therefore, the judgment is void.

A. CASE SUMMARY

Rancho Ballena Road is, and at all relevant times was, Indian trust land, owned by the United States of America in trust for the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation (hereinafter the “Tribe”). Rancho Ballena Road is part of a parcel which was conveyed to the Tribe in 1998 (AA p. 027-030) and, in 2002, accepted by the United States Department of the Interior, Bureau of Indian Affairs, in trust for the benefit of the Tribe. (AA p. 031-035)¹.

¹ Cites to “AA” refers to Appellant’s Appendix of Exhibits.

Rancho Ballena Road is located in the unincorporated area of Ramona, California, and provides access from Highway 78 East to eleven (11) separate parcels of land, including those parcels owned by Appellant, Respondent, and the other defendants to the underlying action.

In 2008, Respondent, Sergey Pereyma (“Pereyma”), took it upon himself to improve 1330 linear feet Rancho Ballena Road at a cost of \$148,484.34. (AA p. 053, lns. 1-3). Pereyma had no authority or consent from the Tribe, Congress, or the United States Secretary of the Interior to perform any work to the road.

In November 2009, Sergey Pereyma (“Pereyma”) sued Appellant and the other parcel owners for specific performance of a County of San Diego Covenant of Improvements Requirements (“CIR”) from the late 1970s and early 1980s. (AA p. 051, lns. 27-28; AA p. 054, lns. 4-6 & 18-19). The CIR was in effect years prior to Rancho Ballena Road becoming Indian trust land. Pereyma sued for specific performance of the CIR and also sued under Civil Code Section 845 for contribution for his costs of improvements to the road. (AA p. 001-008)

In his complaint, Pereyma contends that in 2008, the County of San Diego required him to improve said 1330 linear feet of Rancho Ballena Road as a condition to issue a building permit to Pereyma to legalize and remodel the existing residence on the Pereyma parcel. (AA p. 002, lns. 16-18). Pereyma alleges that the County refused to grant the permits because the subject eleven (11) parcels, including the Pereyma parcel, were subject to the CIR, recorded on November 17, 1980, affecting Appellant's parcel. (AA p. 005, lns. 11-21).

Appellant does not dispute that before Rancho Ballena Road became Indian trust land, the CIR required the parcel owners using Rancho Ballena Road to improve the road before any building permits would be issued. At the time of the CIR, Rancho Ballena Road was not owned by the Tribe. (AA p. 005, lns. 15-21; AA p. 009-016). It is undisputed that when Pereyma applied for his building permits to legalize and improve his residence, Rancho Ballena Road was held in trust by the United States for the benefit of the Tribe. It is undisputed that Pereyma made improvements to Rancho Ballena Road at a time when it was Indian trust land.

During the trial below, there was no evidence presented or admitted showing that Pereyma obtained permission from the Tribe or

the United States to improve the road. The trial court found that none of the defendants, including Appellant, were notified of the work of improvement or agreed to the road improvements made by Pereyma. (AA p. 053, lns. 9-15).

No evidence was presented at trial establishing ownership of Rancho Ballena Road or whether the improvements were authorized by the Tribe. The only evidence at trial was oral testimony from co-defendant, John Mallon, that Rancho Ballena Road was currently owned by the Mesa Grande Indian Tribe.² No title instruments or recorded documents were presented at trial to show ownership of record or vesting of title as to Rancho Ballena Road.

After a bench trial was concluded, on May 2, 2011, Appellant filed objections to the Statement of Intended Decision (AA p. 037-044) which, for the first time, raised the issue that the trial court lacks subject matter jurisdiction over the dispute concerning Indian land. (AA p. 045-049). However, no proof was submitted in support of the assertion that Rancho Ballena Road was, indeed, Indian trust land.

² Such testimony was not accurate because the road was actually owned by the United States (AA p. 031-035).

On June 9, 2011, the court issued its Statement of Decision (AA p. 050-057). The court found, at paragraph 30, that the Mesa Grande Tribe owns land adjacent to the Laird property and that the Tribe uses Rancho Ballena Road to access that parcel. (AA p. 055). There was no finding that the Tribe owned Rancho Ballena Road. At paragraph 31, the court found that the Tribe is not an indispensable party to the action. (AA p. 055). The finding was based upon the Tribe owning land which is accessed by using Rancho Ballena Road, not because the Tribe is the owner of Rancho Ballena Road.

On July 13, 2011, the court entered judgment against Appellant and the other defendants, ordering that Appellant pay to Pereyma the sum of \$16,069.73 as a proportionate contribution for the work performed on Rancho Ballena Road, in conformity with the court's Statement of Decision. (AA p. 058-059).

On August 17, 2011, Appellant filed a Substitution of Attorney representing self for purposes of this Appeal. (AA p. 067).

B. STATEMENT OF CONTENTIONS

The trial court made no finding as to the ownership of Rancho Ballena Road. (See, AA p.050-057). It cannot be disputed that

Rancho Ballena Road was Indian trust land at the time Pereyma took it upon himself to made his unauthorized improvements. (AA p. 027-030). Rancho Ballena Road was owned by the United States in trust for the Tribe. (AA p. 031-035).

Appellant contends that because Rancho Ballena Road is Indian trust land, the Superior Court lacked subject jurisdiction to consider and adjudicate the matter.

In the trial below, the sole issue was whether Pereyma could compel defendants to contribute money for his unilateral improvement of Rancho Ballena Road. (AA p. 001-025). Pereyma did not allege the state of ownership of Rancho Ballena Road in his complaint or offer any evidence of ownership of the road at trial. During trial, no documents were presented by any party establishing the ownership of Rancho Ballena Road. The trial court did find, however, that the Tribe owned a parcel which also is accessed by use of Rancho Ballena Road. (AA p. 055, Ins. 3-11). No finding was made by the court as to whether Rancho Ballena Road is Indian trust land.

Appellant contends that the Superior Court lacks subject matter jurisdiction in disputes over real property transferred to, owned by

and/or held in trust by the United States for an aboriginal Native American Tribe, which is a sovereign nation. *Marlow v. Campbell* (1992) 7 Cal.App.4th 921, 928. Appellant contends that the trial court did not have the power to adjudicate the action and that the lower court proceedings, including the judgment, are void.

STATEMENT OF APPEALABILITY

On September 23, 2011, Appellant filed a timely Notice of Appeal (AA p. 070-072) from the July 13, 2011, Judgment After Trial By Superior Court (AA p. 058-059). The Judgment is appealable as a judgment under Code of Civil Procedure Section 904.1(1). Notice of Entry of Judgment was served by mail by Pereyma's legal counsel on July 26, 2011 (AA p. 061-066).

DE NOVO STANDARD OF REVIEW

This Appeal challenges the trial court's subject matter jurisdiction raising a question of law, reviewed de novo on appeal. *Robbins v. Foothill Nissan* (1994) 22 Cal.App.4th 1769, 1774.

Issues affecting the trial court's subject matter jurisdiction are never waived and thus, can be asserted for the first on appeal.

Consolidated Theatres, Inc. v. Theatrical Stage Employees Union, Local 16 (1968) 69 Cal.2d 713, 721. Failure to object to the court's subject matter jurisdiction at time of trial is a defect which may nonetheless be raised for the first time on appeal. *People v. National Auto & Cas. Ins. Co.* (2000) 82 Cal.App.4th 120, 125. The policy against courts acting in excess of their power is so strong that lack of subject matter jurisdiction can be raised for the first time on appeal. *Ash v. Hertz Corp.* (1997) 53 Cal.App.4th 1107, 1112.

This Appeal presents pure questions of law, not involving the resolution of disputed facts, and is subject to the appellate court's independent ("de novo") review: *i.e.*, the appellate court gives no deference to the trial court's ruling or the reasons for its ruling, but instead decides the matter anew. *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799; *Diamond Benefits Life Insurance Co. v. Troll* (1998) 66 Cal.App.4th 1, 5.

This standard of review applies to the ownership of Rancho Ballena Road, which is Indian trust land - a fact which cannot be disputed. The legal issue of whether subject matter jurisdiction exists in a case involving Indian trust land is subject to de novo review.

Boisclair v. Superior Court (1990) 51 Cal.3d 1140.

The two Grant Deeds (AA p. 027-030; AA p. 031-035) which are the subject of Appellant's Motion to Take Judicial Notice conclusively establish that Rancho Ballena Road was first conveyed to the Tribe in 1998 and in 2002, the United States accepted the road into Trust for the benefit of the Tribe.

Because the dispute below involved or affected Indian trust property, the trial court lacked subject matter jurisdiction and therefore, the judgment is void.

STATEMENT OF FACTS

Rancho Ballena Road is identified by the County of San Diego Assessor's Map 286-060 as Parcel no. 37 (AA p. 026).³ The Assessor Parcel Number (APN) for Rancho Ballena Road is 286-060-37 (Map Page 286-060, Parcel 37).

The Tribe became the owner of record of Rancho Ballena Road by way of Grant Deed, dated February 13, 1998, as recorded in the Official Records of San Diego County on June 19, 1998, as document

³ Parcel Map 286-060 was offered by Pereyma at trial and admitted as Exhibit 2. Parcel 37 is depicted by the number 37 inside a circle.

no. 1998-0373926 (Grant Deed No. 1)(AA p. 027-030)⁴. Rancho Ballena Road is described as Parcel 7 in Grant Deed No. 1 as part of larger conveyance of seven (7) parcels of land to the Tribe, including APN 286-060-37. (AA p. 029-030).

Then, in 2002, the Tribe conveyed those same seven (7) parcels, including APN 286-060-37, to the United States of America in Trust for the Tribe, by way of Grant Deed, dated November 8, 2001, as recorded in the Official Records of San Diego County on January 11, 2002, as document no. 2002-0024439. (Grant Deed No. 2)(AA p. 031-035). Included in the recorded conveyance described by Grant Deed No. 2 is a recognition and acceptance of the Tribe's conveyance of land by the Secretary of the Interior, United States Department of the Interior, Bureau of Indian Affairs, dated December 17, 2001. (AA p. 035).

In his complaint, Pereyma contends that the County of San Diego required him to improve said 1330 linear feet of Rancho Ballena Road as a condition to issue a building permit to Pereyma to legalize and remodel the existing residence on the Pereyma parcel.

⁴ Grant Deed No.1 was the subject of Appellant's Motion to Take Judicial Notice previously filed and served.

While this may be true, the County may not assert jurisdiction over Indian land. (AA p. 002, lns. 16-23; AA p. 003, lns. 3-10).

Pereyma alleges that the County refused to grant him the permits because the Pereyma parcel was subject to the CIR, recorded on November 17, 1980, requiring that Rancho Ballena Road be improved before any building permits be issued by the County. (AA p. 005, lns. 11-21). When the road became Indian land, the County of San Diego, a state agency, had no power to compel any person to make improvements to Rancho Ballena Road without waiver or consent by the Tribe or Congress. No such evidence was presented during the trial below.

The lower court's Statement of Decision is devoid of any finding as to the ownership of Rancho Ballena Road (See, AA, p. 050-057). It is undisputed that Pereyma, Appellant, and the other defendants use Rancho Ballena Road to access their respective parcels (AA p. 054, lns. 22-24; AA p. 054, lns. 27-28; AA p. 055, lns. 12-14), but there was no evidence admitted or findings made by the trial court as to whom owned the actual road itself. (See, AA p. 050-057). The trial court merely found that the Tribe owned a parcel of land in the area and that the Tribe uses Rancho Ballena Road to

access that parcel. (AA p. 055, Ins. 3-6). The trial court found that the Tribe's absence in the case will not be prejudicial to the Tribe and, therefore, the Tribe is not an indispensable party⁵. (AA p. 055, Ins. 7-11). It is clear that these findings were not based upon the Tribe owning the road, but based upon the Tribe owning a separate parcel which used the road for access.

The trial court found that before issuing a permit to improve the Pereyma residence, the County of San Diego required Pereyma to perform work on a section (consisting of 1330 linear feet) of Rancho Ballena Road. (AA p. 052, Ins. 1-5). However, no evidence was presented at trial or was there any finding by the trial court that Pereyma was authorized by the owner of Rancho Ballena Road to perform such work. (See, AA p. 050-057). The court found that Pereyma did not provide defendants, including Appellant, with any notice of the work being performed or of the nature of the work required by the County. (AA p. 053, Ins. 9-12). Nor did Pereyma procure any agreement from the defendants to repair or maintain Rancho Ballena Road. (AA p. 053, Ins. 13-15).

⁵ Grant Deed No. 1 and Grant Deed No. 2 both describe seven (7) parcels conveyed to the Tribe; however, only one parcel is Rancho Ballena Road, APN 286-060-27.

Although Rancho Ballena Road had been Indian land for more than ten (10) years, in 2008 the County and Pereyma took it upon themselves to make improvements to Rancho Ballena Road with no authorization from either the Tribe, Congress or the United States Department of the Interior. The record and the Statement of Decision are devoid of any such evidence. (See, AA p. 050-057). No title instruments or recorded documents were presented at trial to show who owned Rancho Ballena Road.

Regardless of whom owned the road, Peyerma had no authorization or permission from any person, except the County, to perform work on land he did not own. Pereyma completed the work to Rancho Ballena Road on December 17, 2008, and recorded a Release of Covenant of Improvement Requirements in the Official Records of San Diego County on January 27, 2009, as document no. 2009-0037657. (AA p. 036).

It is undisputed that Pereyma made improvements to Rancho Ballena Road in 2008, at a time when it was Indian trust land and he did so without any authorization from the Tribe, Congress or the Department of the Interior.

LEGAL DISCUSSION

In the trial below, the sole issue was whether plaintiff, Sergey Pereyma, could compel defendants under a previous County of San Diego CIR to contribute money for the improvement of Rancho Ballena Road. Surprisingly, the threshold fact of ownership of the road was not an issue at trial. It is undisputed that Pereyma did not own the road. Pereyma improved land that he did not own and did so absent any consent of the owner. Now, it cannot be disputed that the road was Indian land since 1998 and Indian trust land since January 2002. (AA p. 027-030; AA p. 031-035). The County of San Diego had no power to require Pereyma to make improvements to Indian trust land.

A. The Trial Court Lacks Subject Matter Jurisdiction Over Indian Trust Land.

The trial court lacks subject matter jurisdiction in disputes over real property transferred to, owned by and held in trust for an aboriginal Native American Tribe, which is a sovereign nation.

Marlow v. Campbell (1992) 7 Cal.App.4th 921, 928.

In the case of *Boisclair v. Superior Court* (1990) 51 Cal.3d 1140, the California Supreme Court concluded that 28 United States

Code Section 1360 (Section 1360) limits state jurisdiction over disputes which may involve or affect Indian trust land. In this case, it is undisputed that the dispute below involves Indian trust land despite the fact that no party had the foresight to raise this issue at trial.

In *Boisclair*, the issue presented was whether a state court may assume jurisdiction over a dispute where the road in question may be part of Indian trust land. Prior to the land being conveyed to the Pala Band of Mission Indians, Imperial Granite Company (“Imperial”) enjoyed the use of a private easement over the subject road. In 1973, the land on which was road is situated was conveyed to the Pala Band of Indians and held in trust by the United States for benefit of the Pala Band. The Pala Band members claimed that the road became part of the Indian trust land. Imperial denied the claim and contended that Imperial has a continuing right to use the road to transport quarried granite from its mining operations on non-Indian land. *Id.* at 1144-1145.

The Supreme Court explained in *Boisclair* that “the policy of leaving Indians free from state jurisdiction and control is deeply rooted in this nation’s history,” citing *McClanahan v. Arizona State*

Tax Commission (1973) 411 U.S. 164, 168. The *Boisclair* court stated that the basis of exclusive federal authority over Indian affairs is rooted in: (1) the Indian Commerce Clause of the U.S. Constitution (art. I, sec. 8, cl. 3) which gives Congress the exclusive power to control Indian commerce; (2) the treaty clause (art. II, sec. 2, cl. 2); and (3) the supremacy clause (art. VI, cl. 2) which, taken together with extensive congressional legislation, has broadly preempted state law. *Id.* at 1148.

The *Boisclair* court concluded that 28 U.S.C. Section 1360 precludes states from jurisdiction over disputes concerning Indian trust land, including disputes in which one party claims, as in *Boisclair*, the disputed property *may* be Indian trust land. *Id.* at 1152 & 1156. In applying its test, the Supreme Court explained that the jurisdictional bar exists when the dispute is about the “ownership or right of possession” of Indian trust land, as well as a dispute about interests in such land. *Id.* at 1156.

The *Boisclair* court emphasized that “the predominance of the federal government in Indian affairs is nowhere more pronounced than in the field of Indian property law. Most Indian lands are owned by the United States and held in trust for the benefit of Indians.” *Id.*

at 1148. Thus, the Supreme Court held that the state court had no subject matter jurisdiction in a case involving a claimed easement over Indian trust lands. *Id.* at 1152. The *Boisclair* decision echoed the established rule that California courts cannot exercise personal or subject matter jurisdiction over Indian land. See, *Long v.*

Chemehuevi Indian Reservation (1981) 115 Cal.App.3d 853, 857.

Moreover, states have no power to regulate the use or governance of Indian land in the absence of an effective waiver or consent by Congress or the Tribe. *Hydrothermal Energy Corp. v. Fort Bidwell Indian Community Council* (1985) 170 Cal.App.3d 489, 494-495; *Long v. Chemehuevi Indian Reservation* (1981) 115 Cal.App.3d 853, 857-858. Here, San Diego County erroneously exercised power it did not possess when requiring Pereyma to perform work on Rancho Ballena Road. During the permit process, Pereyma was represented by legal counsel who failed to object to the County's illegal exercise of power. There is no evidence or findings in the lower court which show that the County or Pereyma or his counsel obtained a waiver or consent by Congress or the Tribe to perform work on the Tribe's Indian trust land. The County and Pereyma took it upon themselves to perform the unauthorized work.

Pereyma is not without a remedy - the County of San Diego erred in requiring Pereyma to perform work on Indian trust land.

Under the facts of this Appeal, it is undisputed that: (1) Rancho Ballena Road is Indian trust land; (2) Rancho Ballena Road was part of Indian trust land at the time the County required Pereyma to perform work on the road as a condition of issuing a Pereyma a building permit; (3) the road was Indian trust land at the time Pereyma performed the work; and (4) Pereyma was not authorized by the Tribe or Congress to perform the work.

In this case, both the County of San Diego (a non-party to the action) and Pereyma acted in excess of their authority. The Superior Court has no subject matter jurisdiction involving disputes involving or affecting Indian trust land. It cannot be said that Pereyma's work of improvement did not affect Rancho Ballena Road.

Clearly, the instant action is a dispute concerning Indian trust property and the Superior Court has no subject matter jurisdiction over Rancho Ballena Road. The trial court must abstain from exercising jurisdiction in any proceeding which may involve or affect an interest in Indian property.

Therefore, the judgment below is void.

**B. Appellant Need Not be a Tribe Member to Assert
Lack of Subject Matter Jurisdiction.**

It is anticipated that Respondent will challenge Appellant's standing to assert lack of subject matter jurisdiction because Appellant is not a member of the Tribe or because the Tribe was not named as a party to the action. However, because the lower court action involved and affected a road which is part of Indian trust land, Appellant has the requisite standing to mount this challenge.

The case of *Inland Casino Corporation v. Superior Court* (1992) 8 Cal.App.4th 770, is a San Diego County Superior Court case decided by the instant Court of Appeal, which involved a dispute between non-Indians. Real Party in Interest, FSE, Inc. ("FSE"), manufactured and installed kitchen equipment at a bingo hall for the hall's operator, Inland Casino Corporation ("Inland"). The bingo hall was situated on land owned by the Barona Band of Indians. The Barona Band was not a party to the transaction or to the lawsuit, and the Tribe did not know about or consent to the equipment being affixed to its land. *Inland Casino Corporation v. Superior Court*, supra, 8 Cal.App.4th at 773-774.

After Inland refused to pay the contract invoice for the kitchen equipment, FSE filed suit for breach of contract and for a mechanic's lien to foreclose upon the equipment delivered to Inland. Inland demurred to all causes of action, including the equipment foreclosure cause of action, arguing that the Superior Court did not have subject matter jurisdiction over disputes involving Indian lands. *Inland Casino Corporation v. Superior Court*, supra, 8 Cal.App.4th at 774-775. Inland relied upon *Boisclair v. Superior Court*, supra, 51 Cal.3d 1140, for the proposition that state courts lack subject matter jurisdiction to hear a dispute that *may* involve Indian property rights. *Inland Casino Corporation v. Superior Court*, supra, 8 Cal.App.4th at 776-777. FSE argued that Inland, a non-Indian, had no standing to assert for its own benefit rights and immunities reserved for the United States or the Tribe. *Id.* at 775-776.

The trial court overruled Inland's demurrer as to the foreclosure cause of action having concluded that Inland, a non-Indian, was the owner of the equipment sought to be foreclosed upon and that the equipment was not owned by the Barona Band or held in trust for the Barona Band. The trial court did not find the United

States or the Tribe to be indispensable parties. *Inland Casino Corporation v. Superior Court*, supra, 8 Cal.App.4th at 774.

Upon review, the Court of Appeal concluded that the trial court in *Inland* erred in overruling the demurrer as to the foreclosure cause of action because, under *Boisclair*, the court did not have jurisdiction to hear the cause of action. Because the equipment may be affixed to the property owned by the Barona Band, the issue was whether the equipment could be Indian trust property, even though the equipment was acquired by Inland and affixed to the land without the approval of the Tribe or the Secretary of the Interior. *Inland Casino Corporation v. Superior Court*, supra, 8 Cal.App.4th at 778.

The Court of Appeal determined that the trial court erred in overruling the demurrer to the foreclosure cause of action. Because there existed a clear dispute as to whether the equipment is Indian trust property, the state court is without jurisdiction to adjudicate the dispute. *Inland Casino Corporation v. Superior Court*, supra, 8 Cal.App.4th at 778. It did not matter that none of the parties to the action were Indians or the United States. It was sufficient that the dispute could have possibly involved Indian trust property.


Here, Appellant is a non-Indian who has standing to assert lack of subject matter jurisdiction because the dispute below clearly involved or affected Indian trust property. As such, the judgment below is void.

CONCLUSION

By virtue of the foregoing facts and legal authority presented herein above, Appellant, Patricia Donato, respectfully requests that the Court of Appeal void the trial court's Judgment of July 13, 2011, instruct the court below to vacate said judgment.

Dated: February 1, 2012

Respectfully submitted,


Patricia Donato,
Appellant, in pro per

CERTIFICATION OF COMPLIANCE
California Rules of Court, Rules 8.204(b)(4) & (c)(1)

I, the undersigned, do hereby certify, pursuant to California Rules of Court, Rule 8.204(b)(4) & (c)(1), that the Opening Brief to which this certification is attached is proportionately spaced, has a typeface of 13 points or more and contains 4180 words, exclusive of cover, tables, signature lines, and indices, and inclusive of all text, titles, footnotes, and headings.

February 1, 2012



Patricia Donato

PROOF OF SERVICE BY MAIL

PEREYMA VS. DONATO

Appeal Case No.: D060610

Superior Court Case No.: 37-2009-00070768-CU-OR-EC

I reside in Ramona, County of San Diego, State of California. I am over the age of 18 years old. I am not a party to the action. I am not a registered process server. My address is 26702 Rancho Ballena Lane, Ramona, CA 92065.

On February 1, 2012, I deposited in the U.S. Mail at the U.S. Post Office in Ramona, California, an envelope containing a true and correct copy of the below described documents with First Class Postage affixed thereon:

APPELLANT'S OPENING BRIEF
APPELLANT'S APPENDIX (Volume 1 of 1)

Upon the following persons:

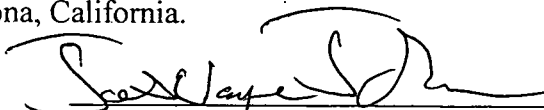
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Attorney for Respondent, Sergey Pereyma
(1 copy - Opening Brief; 1 copy - Appendix)

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I declare under penalty of perjury that the above is true and correct.

Executed on February 1, 2012, at Ramona, California.


James Wayne Johnson