

Docket No. 15-15470

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ROGER FRENCH  
Plaintiff and Appellant,

vs.

KARLA STARR, et al.  
Defendants and Appellees.

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Appeal From The United States District Court  
For The District of Arizona  
Case No. 2:13-cv-02153-JJT  
Honorable John J. Tuchi, United States District Judge

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**Appellees' Motion to Take Judicial Notice  
In Support of Answering Brief;  
Memorandum of Points and Authorities in Support**

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Appellees Karla Starr, Robert N. Clinton, Christine Williams, Lawrence C. King, Dennis Patch and Herman “TJ” Laffoon respectfully request that this Court take judicial notice pursuant to Federal Rules of Evidence Rule 201(b)(2) of the facts set forth below on the grounds that they are each capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Exhibit A: Opinion, *Colorado River Indian Tribes v. Blythe Boat Club* (CRIT Court of Appeals Case No. 11-0002)

### **Memorandum of Points and Authorities**

Rule 201(d) of the Federal Rules of Evidence mandates that federal courts take judicial notice of qualifying facts upon a properly supported request by a party. Rule 201(b)(2) authorizes judicial notice of any fact that is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”

Exhibit A is the CRIT Court of Appeals final opinion in *Colorado River Indian Tribes v. Blythe Boat Club* (Case No. 11-0002). The Ninth Circuit regularly takes judicial notice, under subsection 201(b)(2), of proceedings in other court systems. *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002) (“[W]e ‘may take notice of proceedings in

other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.’ ”) (quoting *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992)); *Mack v. Kuckenmeister*, 619 F.3d 1010, 1014 n.1 (9th Cir. 2010).

Exhibit A is relevant to this proceeding because the CRIT Court of Appeals, in its review of the eviction action at the center of this case, “adopt[ed] and reaffirm[ed]” the opinion contained in Exhibit A. Supplemental Excerpts of Record Vol. 1, p. 322. Because this opinion was incorporated by reference in support of the CRIT Court of Appeals decision that it had jurisdiction over this action, it is also relevant to this Court’s review of that decision.

DATED: August 19, 2015

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By: s/ Winter King

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**CERTIFICATE OF SERVICE**

I certify that on August 19, 2015, I filed the foregoing Motion to Take Judicial Notice using the Court's CM/ECF system. All participants in this case are registered to receive service with that system and will receive a copy of this Motion to Take Judicial Notice upon its filing.

/s/ Sean P. Mulligan  
Sean P. Mulligan

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TRIBAL COURT OF THE  
COLORADO RIVER INDIAN TRIBES

**In the Court of Appeals  
of the  
Colorado River Indian Tribes**

**COLORADO RIVER INDIAN TRIBES,**

Plaintiff/Appellee

**v.**

**BLYTHE BOAT CLUB,**

Defendant/Appellant

APPEAL NO. 11-0002

RE: TC CASE NO. CV-CO-2010-0083

**NOTE:** As provided for in the Law and Order Code “[a]ll decisions” of this Court “including those made prior to enactment of this provision, are memorandum decisions that shall not be regarded as opinions of binding precedent in any other cases. See CRIT Law and Order Code, Article II, Chapter B, section 211(d) (as amended on December 14, 1999, by Ordinance 99-3).

Per Curiam (Before Chief Justice KARLA STARR, and Associate Justices ROBERT N CLINTON and ROBERT MOELLER )

This matter involves an eviction proceeding brought by Plaintiff/ Appellant, Colorado Indian Tribes (Tribe), against Blythe Boat Club (BBC), a California corporation and the Tribe's lessee. According to both its Petition for Appeal and its position at oral argument of this matter, BBC appeals the Ruling and Order dated May 5, 2011 granting summary judgment (later corrected by the Order of June 17, 2011) and Writ of Restitution of the Tribal Court entered May 17, 2011 returning possession of the leased premises to the Tribe. BBC did not file any appeal of the subsequent Order and Judgment of the Tribal Court entered on July 8, 2011 awarding damages for nonpayment of rent, trespass damages, damages to property, attorneys' fees and litigation costs and expenses. Since BBC, by its own admission, filed no petition to appeal from this monetary Order and Judgment, that award is not properly before this Court since BBC declined to exhaust all available tribal judicial remedies to contest the monetary award in this matter. Thus, the only issue presented by BBC to this Court involves the legality of its eviction from the

premises it previously occupied.<sup>1</sup> For reasons more fully set forth below, this Court finds no error in the Writ of Restitution entered by the Tribal Court and for that reason affirms, with amendment, the grant of summary judgment in the Ruling and Order and the Writ of Restitution entered below.

## Background

### A. Factual Background

On January 17, 1969, the Solicitor of the Department of the Interior rendered a Solicitor's Opinion to the Secretary of the Interior entitled *Western Boundary of the Colorado River Indian Reservation*. 2 *Opinions of the Solicitor of the Department of Interior Relating to Indian Affairs* 2096 (Jan. 17, 1969). The opinion was rendered in response to the request of the Tribe "that the western boundary of the reservation be *finally* determined." (Emphasis supplied). After an exhaustive survey of the various executive orders creating the Colorado River Indian Reservation, the desire of the federal government to extend the original boundaries of the Reservation into California to protect the western boundary of the Tribe's reservation from the meandering of the Colorado River, which in prior executive orders had formed the western boundary, some erroneous historic surveys that failed to properly locate the top or highest point of Riverside Mountain that formed part of the boundary description in the relevant executive orders, and the inconsistent history of treatment of portions of the affected land by the State of California, the Solicitor's Opinion concluded:

As noted above, in 1876 the United States owned all the lands abutting the river on the west from the above-mentioned section 25, T. 2 S., R. 23 E., south through section 12, T. 5 S., R. 23 E. Also, the record indicates the present course of the river in this reach is now along or east of its position as surveyed in 1874 and 1879, except in two insignificant respects. The record also discloses that the lands presently lying between the meander lines of 1874 and 1879 and the right bank of the river were formed by accretion. Since the bulk of the lands abutting these meander lines on the west are presently owned by the United States and those lands in non-federal ownership located to the west of the meander lines are not entitled to accretions as against the United States in any event, these meander lines

<sup>1</sup> BBC failed to request a stay of the eviction order of June 22, 2011 from either the Tribal Court or from this Court. Accordingly, on May 25, 2011, the Colorado River Indian Tribal Police executed the Writ of Restitution, ousted BBC of the leased premises, and returned possession to the Tribe. Thus, at the time of submission of this appeal, BBC was not in possession of the leased premises. Since, as more fully set forth below, its lease already had expired, this Court has serious doubt as to whether this appeal involves a continuing live controversy or whether it became moot upon the execution of the Writ of Restitution. Since neither party suggested mootness to this Court and, in general, parties in tribal court should be entitled to have their disputes aired and fully considered by the tribal judiciary, this Court has chosen to fully address BBC's claims, while noting serious doubt as to the whether this Court or the Tribal Court could, in the present procedural posture of this eviction case, afford BBC the relief it requests, presumably by returning BBC to possession of its formerly leased premises.



may be adopted as the boundary of the reservation as a matter of Administrative convenience. Only lands of the United States under the jurisdiction of the Department of the Interior are involved. Considering the nature of surveys in isolated areas and the limits of accuracy which could be achieved with equipment available nearly 100 years ago, it is concluded that these lines are adequate evidence of the proper location of the reservation boundary as they are reasonable as a practical matter, having regard to the circumstances. *Arkansas v. Tennessee*, supra. In summary, it is concluded that in those areas where the United States has not conveyed its title to the lands abutting the reservation, it may survey and resurvey what it owns and establish and reestablish boundaries. *United States v. State Investment Co.*, supra. The United States may make or correct its surveys and such are not assailable in the courts, except in a direct proceeding. *Cragin v. Powell*, 128 U.S. 691 (1888). Therefore, in the above-mentioned areas, it is concluded the determination of the reservation boundary as herein made is not subject to collateral attack. *As to those areas where the lands abutting the reservation boundary are in non-federal ownership, it may be expected that litigation will be necessary to extinguish claims of others which are adverse to those of the Colorado River Indian Tribes.*

(Emphasis supplied).

Based on the facts of this case and the record in *Colorado River Indian Tribes v. Water Wheel Recreation Area, Inc.*, No. 08-0003 (CRIT Ct. App., decided Mar. 13, 2009), an earlier case heard and decided by this Court (the record of which this Court takes judicial notice), it appears that after the Solicitor's Opinion, the United States commenced a course of litigation during the 1970s to do precisely what the last sentence of the Solicitor's Opinion recommended, i.e. quieting title in the United States for the benefit of the Tribe to a few disputed land parcels then adversely claimed and, perhaps, occupied by non-Indians without authority from the United States that were located within the Colorado River Indian Reservation under the boundaries established in the Solicitor's opinion. In *Water Wheel*, the federal litigation initiated by the United States in *United States v. Denham*, Civ. No. 73-495-ALS (C.D. Cal. 1973) ultimately led to a settlement and consent decree under which the non-Indian claimants acknowledged that the United States owned the disputed land in trust for the Tribe and which resulted in the lease of the disputed property by the adverse claimants, the expiration of which ultimately produced the dispute in *Water Wheel*. See also, *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9<sup>th</sup> Cir. 2011) (affirming tribal court jurisdiction over the eviction proceeding involved in *Water Wheel*).

In this case, BBC claims title based on a 1947 quit claim deed under which it claims to have acquired title to the disputed premises, located along the lower Colorado River, for the stated sum of \$10. While the fact that the deed was a quit claim, rather than warranty, deed and a nominal purchase price may suggest that its predecessors in interest, Gus and

Nannie Sterling, were fully aware of the dispute as to the ownership of the property, the later history further demonstrates how this dispute arose. In a separate quiet title proceeding initiated by the United States in *United States v. Lonesome Valley Land Co.*, Civ. No. 72-1623-HP (C.D. Cal. 1974), the District Court found that a larger described parcel of land, which both parties conceded before this Court included the property subject to the lease and dispute in this case, "had been reserved at all times as part of the Colorado River Indian Reservation by the Executive Order of May 15, 1876." The *Lonesome Valley Land* judgment therefore clearly held that title to the disputed parcel was in the United States in trust for the Tribe and *not* the adverse non-Indian claimants. Both parties concede that not only was the leased land here in dispute fully included within the lands adjudicated in the *Lonesome Valley Land* judgment but also that the BBC's predecessors in interest, the Sterlings, were also parties to that proceeding. Since the record before this Court reflects that the quit claim deed on which BBC relies was recorded with the County of Riverside in 1948, it is not clear on this record why BBC was not made a party to the *Lonesome Valley Land Co.* case but both parties agree they were not. Despite the fact that BBC is in privity with a party to the *Lonesome Valley Land Co.* litigation and their land title was at issue in the litigation, the Tribe here concedes that BBC itself is not directly bound by the *Lonesome Valley Land* judgment as a matter of *res judicata*, although it uses the judgment to indicate, as a factual matter, that BBC lacked any colorable claim to occupy the disputed premises other than through the leases at issue here.

While not clear from the record in this case, perhaps the reason that BBC was not directly named as a party in the *Lonesome Valley Land* litigation was that on August 9, 1972 BBC entered into the first of a series of three successive leases for the property in question.<sup>2</sup> In the 1972 Lease (actually described in the document as a year to year permit), BBC expressly:

[A]cknowledge[d] that the title and right to possession of said lands is and has at all times during applicant's past occupancy and/or use thereof been vested in the United States of America, hereinafter referred to as United States, now held in trust for the Tribes. Applicant abandons and relinquishes any and all right, title, and interest to any mining claims located thereon.

Application and Permit for Use of Land in Lower Colorado River Area between United States Department of the Interior and Blythe Boat Club, Permit No. WB-131(R), dated August 9, 1974 (1972 Lease), ¶ 2. Thus, while not clearly demonstrated by the Record, the United States may have refrained from including BBC as party to the *Lonesome*

<sup>2</sup> For reasons that are not clear on the record, the 1972 Lease is file stamped with a Colorado River Indian Tribe Agency date of July 17, 1972 and that date was employed by the Tribe in some of its filings. Since the execution date on the 1972 Lease, August 9, 1972, is almost a month after the file stamped date, this Court presumes the file stamped date was incorrect and has employed the date of execution as recited in the 1972 Lease. As will become clear, this discrepancy is not the only technical discrepancy that appears in the record of this case.

*Valley Land Co.* litigation because it already had settled whatever title dispute existed between the United States and BBC through the 1972 lease in which BBC expressly disclaimed any "title and right to possession" of the lands it had been occupying in exchange for securing a lease that permitted it to continue such occupancy as a lessee.

The Tribe and BBC continued this leasing arrangement for over thirty years through two subsequent leases, dated April 8, 1983 (1983 Lease) and January 1, 1990 (1990 Lease). The most recent Lease, dated January 1, 1990, expressly provided that "[e]xcept as may otherwise be provided by applicable Federal law, the law of the Colorado River Indian Tribes shall govern the construction, performance, and enforcement of this lease." 1990 Lease, ¶ 38. It also provided that "[a]t the termination of this lease, Lessee will peaceably and without legal process deliver up the possession of the lease premises in good condition, usual wear and Acts of God excepted." *Id.* at ¶ 24. Additionally, paragraph 22 of the 1990 Lease also expressly indicated that "[h]olding over by the Lessee after the termination of this Lease shall not constitute a renewal or extension thereof or give the Lessee any rights hereunder or in or to the leased premises."

The 1990 Lease expired by its terms on December 31, 2004. Prior to its expiration BBC did not deliver any written notice to the Tribe indicating any intent to renew. BBC had sent a letter to the Bureau of Indian Affairs (BIA) in April 2004 proposing a renewal for ten years with a one time increase in rent of \$5,000. When December 31, 2004 passed without BBC peaceably returning possession of the leased premises to the Tribe, the Tribe made further inquiries regarding BBC's intent until June 2005. After the Tribe caused the BIA to conduct an appraisal of the property, it notified BBC that the BIA appraiser had recommended an annual rental value of \$128,000. BBC would not agree to such an increase in rent and instead proposed an initial \$5,000 increase over the rent it had paid for the last year of its lease, plus a \$1,000 yearly increase thereafter, for a ten-year rental period, which would have constituted only a small fraction of the appraised annual rental value. The Tribe thereafter rejected the BBC proposal and the parties never came to an agreement on a renewed lease. Nevertheless, BBC remained in possession of the property purporting to pay nominal rent of \$30,216 for the year 2005 and \$15,608 for the first half of 2006. Thereafter, it ceased paying any rent at all but remained in possession despite the expiration of the 1990 Lease on December 31, 2004.

On February 6, 2006, the Tribe sent BBC a letter terminating any periodic holdover tenancy that might have been created and demanding that BBC vacate the property and remove all personal property by June 30, 2006. Two days before the date on which it was required to vacate, BBC sent a letter to the Tribe claiming, despite express provisions to the contrary in paragraph 22 of the 1990 Lease, that by accepting its rent payment for 2005 and the first half of 2006 the Tribe had extended the lease for five or ten years and BBC indicated that it would pay no further rent unless the Tribe accepted this alleged extension. BBC did not return possession of the lease premises to the Tribe by June 30, 2006 as demanded. It continued to occupy the lands without any lease and without paying any rent or other fees to the United States or the Tribe.

On December 14, 2009, the Tribe again sent BBC a letter demanding that it quit possession of the premises by January 1, 2010. This letter, however, offered BBC another opportunity to resolve the dispute. Since BBC neither availed itself of the opportunity to negotiate a new lease in good faith nor vacated the premises, on May 25, 2010, having apparently concluded that further patience and negotiation would not lead to a satisfactory lease, the Tribe sent another letter to BBC that withdrew its offer of compromise, rejected an outstanding BBC counteroffer, and demanded, for the third time, that BBC quit possession of the property on or before June 24, 2010. On August 12, 2010, with BBC still in possession of the property, the Tribe attempted to deliver a final Notice to Quit the property by August 26, 2010. Finding no agents or employees to whom it could deliver the Notice to Quit, the Tribe posted the Notice to Quit in conspicuous places on the property. That Notice to Quit was apparently received since it produced a letter from BBC dated August 25, 2010 indicating that it had no intention of vacating the property.

### **B. Procedural Background**

Since the Tribe's repeated efforts to get BBC either to renegotiate a lease on acceptable terms to peaceably vacate the property without legal process as required by the 1990 Lease failed, on September 3, 2010, the Tribe filed a Verified Complaint for Eviction and Damages in the Tribal Court of the Colorado River Indian Tribes (Verified Complaint) seeking to evict BBC and its agents and employees from the formerly leased property. On September 9, 2010 the Tribe filed an Amended Verified Complaint for Eviction and Damages (Amended Verified Complaint). Its Amended Verified Complaint for Eviction and Damages was signed by Eric Shepherd as Tribal Attorney and separately verified by him under oath. It attached and authenticated virtually all of the documents relevant to the disposition of this matter.

On September 20, 2010, BBC, appearing *pro se* through Toni Hawley (an officer of the corporation), filed an Answer of Blythe Boat Club to Amended Verified Complaint for Eviction and Damages (Answer). In its Answer, BBC denied it ever occupied lands described in the 1990 Lease<sup>3</sup> admitted that it continued to occupy other lands despite the Tribe's demands, and purported to deny ownership of the property in question by the United States in trust for the Tribe. This Answer also set forth an affirmative defense that "[t]his Court is without jurisdiction over defendant *pro se* BBC because the non-Indian corporation BBC has never consented to the Tribal Court's jurisdiction, as required by federal law. *Montana v. United States*, 450 U.S. 544 (1981)." Answer of Blythe Boat

<sup>3</sup> This denial appears to have been the product of a clerical error in the description of the leased property contained in the 1990 Lease but not reflected in either of the two earlier leases, which had correctly described the property leased by BBC from the United States and the Tribe. For reasons set forth below, this Court finds the clerical error in the description of the leased property immaterial to the relations of the parties, as reflected by the record in this case, and therefore directs that the 1990 Lease be retroactively reformed to conform to the correct legal description of the leased property as contained in the prior two leases.



**Club to Amended Verified Complaint for Eviction and Damages, Third Affirmative Defense.**

On October 22, 2010, the Tribe filed a Motion for Summary Judgment or Summary Adjudication of Claims (Motion for Summary Judgment) together with a Declaration of Eric Shepard in Support of Plaintiff Colorado River Indian Tribes' Motion for Summary Judgment or Summary Adjudication of Claims (Shepard Declaration) and a Declaration of Herman Laffoon, Jr. in Support of Plaintiff Colorado River Indian Tribes' Motion for Summary Judgment or Summary Adjudication of Claims (Laffoon Declaration). Eric Shepard is the Tribal Attorney and Herman Laffoon, Jr. is the Commercial Manager of the Tribe's Realty Services. The Shepard Declaration, filed under oath by the Tribal Attorney, set forth the basic facts and attached as well as authenticated some of the basic documents relevant to the eviction dispute including some of the letters exchanged between the parties. The Laffoon Declaration also recited under oath most of the basic facts set forth above and attached and authenticated various documents including the 1972 Lease, the 1983 Lease and the 1990 Lease. The Laffoon Declaration noted that the property BBC leased "is located in the County of Riverside, State of California, San Bernadino Base and Meridian, Township 5 South, Range 24 East, Section 6, Portions of Lots 4 & 5, which was described in the initial 1972 Lease as 10.75 acres was described in later documents, including the 1990 Lease as 7.07 acres, more or less.<sup>4</sup> Among other items, the Laffoon Declaration attached exhibits reflecting rental payments by BBC after expiration of the 1990 Lease and noted that BBC had not submitted any rental payments since its last payment on December 12, 2005.

On November 9, 2010, BBC filed a *nonverified* Opposition of Blythe Boat Club to Plaintiff's Motion for Summary Judgment or for Summary Adjudication of Claims (Opposition). In its opposition, BBC noted the incorrect legal description of the leased property in the 1990 Lease and claimed it described property in Arizona, not California, which it did not occupy. Opposition, ¶¶ 4-9. From that observation BBC argued, despite correct legal descriptions having been employed in the Verified Complaint, Amended Verified Complaint, Shepard Declaration and Laffoon Declaration, that a material issue of fact existed that precluded summary judgment because it denied that it occupied the land erroneously described in the 1990 Lease. In one sentence of the Opposition it also indicated that "BBC affirmatively pleaded that as a matter of fact it has never occupied any land which was held by the United States in trust status for the benefit of CRIT," Opposition, ¶ 10, thereby denying, albeit not under oath, that its lessor of thirty years actually owned the property that it had leased in three successive leases. Rejecting a request by the Tribe that the Tribal Court take judicial notice of the federal court decision in *United States v. Lonesome Valley Land Co.*, No. 72-1623-HP (C.D. Cal. 1974), BBC

<sup>4</sup> Since, with the exceptions of the clerical mistake noted below, the legal description of the property that BBC leased had not changed whether the discrepancy in the acreage descriptions resulted from changes in the Colorado River which abuts the property or erroneous initial calculation of the acreage cannot be ascertained from the record in this matter but is irrelevant to the disposition of this eviction matter. The position of the Tribe is that it seeks to evict BBC only from the 7.07 acres that was intended to be described in the 1990 Lease.

noted that it "was neither served with process in, nor made a party to, the *Lonesome Valley* litigation and asserts that as a matter of fact any decision rendered therein did not concern any land ever occupied by BBC." Opposition, ¶ 13. The Tribe did not later contradict BBC's claim that it was not served in or made a party to the *Lonesome Valley Land Co.* litigation, although both parties conceded at oral argument in this appeal that (1) the *Lonesome Valley* litigation involved a larger parcel which fully included the property BBC had leased and (2) that its predecessors in interest, the Sterlings, had been made parties to the litigation. While denying United States ownership of the leased property, BBC in its Opposition did not question or in any fashion contest the jurisdiction of the Tribal Court to hear the case, is it had done in the Third Affirmative Defense in its Answer. BBC therefore never requested the Court to rule on its jurisdiction and failed to properly raise that question as part of the record for summary judgment. No affidavits or other declarations under oath were appended to the Opposition, which, while signed, was not verified. As noted above, BBC also did not authenticate or submit its 1947 quit claim deed as part of its Opposition, but, rather, later submitted it to the Tribal Court during argument on the Motion for Summary Judgment.

The Motion for Summary Judgment was first argued on December 3, 2010 before Judge Neil Flores. Having taken the case under advisement, Judge Flores determined that "[t]he Court may have a conflict in the matter" and, accordingly, by Minute Entry and Order dated December 6, 2010 recused himself and reassigned the matter to Deputy Judge Lawrence C. King. Judge King ordered the parties to file supplemental research and briefs on "the boundaries of the Colorado River Indian Tribe's Reservation and the boundaries of the plot(s) of land at issue" and set oral argument on the Motion for Summary Judgment for January 19, 2010. Minute Entry and Order, December 7, 2010. Both parties filed supplemental briefs. Following the scheduled oral argument on the Motion for Summary Judgment, the Tribal Court awarded summary judgment to the Tribe in a lengthy Ruling and Order dated May 5, 2011.<sup>5</sup> Thereafter, pursuant to the award of summary judgment the Tribal Court issued the disputed Writ of Restitution on May 17, 2011. On the same day, the Court also set a hearing for June 17, 2011 on the questions of damages and attorneys' fees. A critical clerical error in the findings of the May 5, 2011 Ruling and Order was corrected by revision of a sentence therein through an Order dated June 17, 2011. Following the scheduled hearing on damages and attorneys' fees, the Tribal Court entered its Order and Judgment dated July 7, 2011 awarding the Tribe damages and attorneys' fees, as provided for in the 1990 Lease.

BBC did not seek a stay of the May 17, 2011 Writ of Restitution from either the Tribal Court or this Court. Accordingly, on May 25, 2011, the Colorado River Indian Tribal Police executed the Writ of Restitution, ousted BBC from the formerly leased property, and returned possession of the property to the Tribe.

<sup>5</sup> For reasons that are not clear from the record, this May 5, 2011 Ruling and Order was not filed or served by the Clerk of Court on the parties until June 22, 2011, an unfortunate and inexcusable delay of over a month and a half.

On June 6, 2011, before the hearing and entry of the final Order and Judgment on damages and attorneys' fees, BBC filed its timely Petition for Appeal solely from the Writ of Restitution, which was granted by this Court, following briefing on whether BBC or any corporation could appear *pro se* before the Tribal Courts. BBC filed no Petition to Appeal from the Order and Judgment dated July 7, 2011 awarding the Tribe damages and attorneys' fees and, at oral argument in this matter, both parties agreed that BBC had not appealed the damages and attorneys' fees award. Consequently, the Order and Judgment dated July 7, 2011 awarding damages and attorneys' fees is final and BBC, by its own admission, waived any right to appeal that judgment. Thus, the only matter before this Court on appeal is the propriety of the issuance of the Writ of Restitution, dated May 17, 2011, pursuant to the Ruling and Order awarding the Tribe Summary Judgment dated May 5, 2011.

### Discussion

In its Petition for Appeal, BBC essentially raises two distinct claims for reversing the Tribal Court's entry of the Writ of Restitution: (1) lack of jurisdiction of the Tribal Court and (2) the Tribal Court erroneously entered its order in contradiction to the record. In its subsequent briefing to this Court, BBC raised a number of other points, such as the manner in which the manner in which Colorado River Indian Tribal Police executed the Writ of Restitution, which were not part of the Tribal Court record nor properly presented through the Petition for Appeal. Accordingly, such other matters are not properly before this Court and will not be discussed. Rather, this Court will address each of BBC's two claims set forth in its Petition for Appeal in the order presented.

#### A. Jurisdiction of the Tribal Court

BBC's legal theory as to why it claims the Tribal Court lacked jurisdiction in this matter is far from clear. In its Third Affirmative Defense set forth in its Answer, BBC alleged "[t]his Court is without jurisdiction over defendant *pro se* BBC because the non-Indian corporation BBC has never consented to the Tribal Court's jurisdiction, as required by federal law. *Montana v. United States*, 450 U.S. 544 (1981)." However, BBC never raised this *Montana*-based defense or any other claim of lack of Tribal Court jurisdiction in its filings in opposition to the Motion for Summary Judgment and therefore never requested that the Tribal Court rule on this claim. Accordingly, the Tribal Court did not specifically address the Third Affirmative Defense in its Ruling and Order dated May 5, 2011. Likewise, BBC failed to mention *Montana v. United States*, 450 U.S. 544 (1981), later cases interpreting that decision, or the basic legal theory of these cases as the basis for its claim that the Tribal Court lacked of subject matter jurisdiction over this case in its Petition for Appeal or the two briefs it filed with this Court. For these reasons, this Court specifically finds that BBC failed to properly request any ruling from either the Tribal Court or from this Court on its Third Affirmative defense based on *Montana* and thereby failed to exhaust available remedies with respect to these claims and therefore waived its Third Affirmative Defense by its total failure to advance and raise it in a timely manner.



Accordingly, this Court need not discuss at any length the Third Affirmative Defense based on *Montana v. United States*, 450 U.S. 544 (1981).<sup>6</sup>

Before the Tribal Court and this Court, to the extent that BBC contested the jurisdiction of the Tribal Court at all, the claim is based on the assertion that the land it leased and occupied was not owned by the United States in trust of the Tribe and was not located within the Reservation. Central to that argument is the 1947 quit claim deed to the property, which BBC presented to the Tribal Court during argument on the Motion to Dismiss. Thus, the essence of the jurisdictional defense actually asserted involved the anomalous, logically incoherent claim that the land BBC had long leased *from the Tribe* actually was not located within the Colorado River Indian Tribes Reservation and was not owned by the United States in trust for the Tribe.

In short, BBC seeks to relitigate and unsettle, in the context of this eviction proceeding, the boundaries of the Colorado River Indian Reservation that cases like the *Denham* and *Lonesome Valley Land* cases had sought during the 1970s to finally settle, pursuant to the 1969 Solicitor's Opinion. In *Arizona v. California*, 460 U.S. 605, 626 (1983), the United States Supreme Court noted that "[f]inality principles would become meaningless if an adversarially determined issue were final only if the equities were against revising it." The Court therefore held that finality principles reflected in the doctrines of *res judicata*

<sup>6</sup> Since the Third Affirmative Defense involves the subject matter jurisdiction of the tribal courts, this Court would be remiss if it did not note that had BBC had not waived its claims and had it asserted its Third Affirmative Defense in a timely fashion, it nevertheless would not have been successful. BBC's Third Affirmative Defense is inconsistent by this Court's decision of this Court in *Colorado River Indian Tribes v. Water Wheel Recreation Area, Inc.*, No. 08-0003 (CRIT Ct. App., decided Mar. 13, 2009) the reasoning and analysis of which this Court simply reaffirms here. That decision makes clear that (1) *Montana v. United States*, 450 U.S. 544 (1981), may not even apply to cases involving eviction of non-Indian lessees from tribal land for overstaying or noncompliance with their lease since the appropriate analysis for cases involving eviction from Indian lands is found in the power to exclude recognized in *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982) and (2) even if *Montana* applies to tribal evictions of non-Indians from leased lands, the lease itself constitutes the precise situation envisioned by the first *Montana* exception – the consensual relationship exception. While *Water Wheel Recreation Area* is not binding on this Court in this case, *see* CRIT Law and Order Code, Article II, Chapter B, section 211(d) (as amended on December 14, 1999, by Ordinance 99-3), we can and do invoke it here as persuasive and informative authority. LRAP (14(b)). Since the legal analysis applicable to this case is exhaustively canvassed in this Court's decision in *Water Wheel Recreation Area*, this Court will not further reiterate the same points here, but simply adopt for this case the analysis supplied in that case. This Court further notes that the United States Court of Appeals for the Ninth Circuit in *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9<sup>th</sup> Cir. 2011), later approved of both the exercise of the Tribal Court jurisdiction in that case and essentially adopted this Court's analysis of the jurisdictional question. Thus, had BBC properly presented its Third Affirmative defense to the Tribal Court, rather than waiving it, it would not have prevailed in foreclosing the exercise of Tribal Court jurisdiction. While this Court cannot know BBC's motives, perhaps its recognition of the utter futility of pressing its Third Affirmative Defense after the Ninth Circuit decision in *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9<sup>th</sup> Cir. 2011), prompted BBC to waive that claim. This Court also notes that any such *Montana* based claims also would have been foreclosed by the express language of the 1990 Lease, which provided that "[e]xcept as may otherwise be provided by applicable Federal law, the law of the Colorado River Indian Tribes shall govern the construction, performance, and enforcement of this lease." 1990 Lease, ¶ 38.



were critical and must be upheld in areas of land and water rights, irrespective of detrimental reliance. The parties in this case are agreed that the issue preclusion doctrines of *res judicata* are technically inapplicable to this case since BBC was not served or otherwise made a party to the *Lonesome Valley Land* litigation, although the Complaint in that litigation described a larger parcel that included the disputed leased property here and also named BBC's predecessors in interest as defendants. Thus, BBC's claim is not technically foreclosed by doctrines of issue preclusion that are part of *res judicata*, although it would be hard to imagine a case that came any closer to such a bar without being formally precluded than this one.

While not technically foreclosed by *res judicata*, BBC's efforts to relitigate and unsettle the boundaries of the Colorado River Indian Reservation litigated during the 1970s run afoul of three other preclusive doctrines, all doctrines of estoppel. First, BBC's claim that the leased property is not located within the Colorado River Indian Reservation and beneficially owned by the Tribes is simply foreclosed by the doctrine of promissory estoppel or estoppel by contract. *See generally*, John H. Matheson and Daniel A. Farber, *Beyond Promissory Estoppel: Contract Law and the 'Invisible Handshake'*, 52 U. of Chi. L. Rev. 903 (1985); *Sanders Construction Co. v. San Joaquin First Federal Savings & Loan Ass'n*, 136 Cal. App. 3D 387, 395 (1982) (applying estoppel by contract to prevent party from asserting invalidity of lease); *First Federal Trust Company v. Stockfleth*, 98 Cal. App. 21, 26-26 (1929) (noting that the doctrine of estoppel by contract prevents parties from contradicting in later litigation the factual recitals in their contracts because such contradictions would "necessarily change the contract in essential matters."). This, Court notes that even if BBC were factually correct, California law, which is the law it erroneously claims should apply, expressly adopts estoppel by contract as part of the California Evidence Code by proving that "[t]he facts recited in a written instrument are conclusively presumed to be true as between the parties thereto . . . ." Cal. Evid. Code § 622. Here, in the 1972 Lease, BBC expressly agreed that it:

[A]cknowledge[d] that the title and right to possession of said lands is and has at all times during applicant's past occupancy and/or use thereof been vested in the United States of America, hereinafter referred to as United States, now held in trust for the Tribes. Applicant abandons and relinquishes any and all right, title, and interest to any mining claims located thereon.

1972 Lease ¶ 2.

Likewise, in the 1983 Lease, BBC expressly relinquished "all past, present, or future claims of equitable right, title, or interest in the Property." This Court can only surmise that the only reason BBC was not served and made a party to the *Lonesome Valley* litigation was that it had already settled and compromised its claims prior to that litigation through paragraph 2 of the 1972 Lease. Having done so, BBC cannot forty years later seek to relitigate and undo that settlement by denying that title to the land it leased was vested in the United States in trust for the Tribes and that the lands was then and is now

part of the Colorado River Indian Tribes Reservation. BBC is simply estopped by the express language of the 1972 Lease from making that claim.

In *Colorado River Indian Tribes v. Water Wheel Recreation Area, Inc.*, No. 08-0003 (CRIT Ct. App., decided Mar. 13, 2009), this Court recognized that the conduct of the lessee in that case in paying lease rentals, securing required permissions, and otherwise operating for decades under a lease with the Tribe, foreclosed the lessee from later claiming that the land was not part of the Tribe's reservation or owned by the United States in trust for the Tribe. *See generally, Morgan v. Railroad Company*, 96 U.S. 716 (1877) (canvassing the basis for estoppel by conduct). Likewise, in this case, BBC's conduct in signing three successive leases and operating pursuant to, and in accordance, with the terms of those years (except in the closing years and after termination of the 1990 Lease) also forecloses BBC from denying both that the United States owns the leased property in trust for the Tribe and that the leased property is located within the exterior boundaries of the Colorado River Indian Reservation. The facts that (1) the leased property was owned by the United States in trust for the Tribe and (2) that the leased was located within the Colorado River Indian Reservation constituted fundamental premises of not only the three successive permits and leases but also the course of conduct between the parties for three decades. At this late date and inconsistent with its prior conduct and course of dealings, BBC cannot contest those facts.

Finally, a more specific and concrete application of the doctrine of estoppel by conduct is codified as part of the laws of the Colorado River Indian Tribes governing evictions. Specifically, section 1-311(i) of Ordinance 04-06 entitled Evictions provides:

On the trial of an action brought under this Chapter, the issue shall be the right of actual possession and the *merits of title shall not be inquired into*.

(Emphasis supplied) While not controlling on this case, both California and Arizona statutes contain similar provisions. Cal. Evid. Code § 624 ("A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation."); Ariz. Rev. Stat. Ann. § 33-324 ("When a person enters into possession of real property under a lease, he may not, while in possession, deny the title of his landlord in an action brought upon the lease by the landlord or a person claiming under him.") These provisions codify a long-standing common law rule preventing tenants in eviction actions from contesting the title of their landlords. *See, e.g., Wendt v. Smith*, Case No. EDCV 02-1361-VAP(SGL), 2003 WL 21750676, at \*5 (C.D. Cal. Jan. 30, 2003) (unpublished opinion) ("a tenant in possession is estopped from contesting the landlord's title in an ejectment action"); *United States v. Jorgensen*, 116 F.3d 1487, 1997 WL 355849, at \*1 (9<sup>th</sup> Cir. 1997) (unpublished memorandum opinion) (affirming order of ejectment and rejecting mobile home residents' argument that Indian tribe was not beneficial owner of land because "tenant in possession[] is estopped from contesting the landlord's title in an ejectment action"); *Greenhut v. Woodeb*, 129 Cal. App. 3d 64,68 (1982) (reciting general rule that "tenant in possession is estopped from denying the landlord's title as it existed at the outset of the relationship"); *Richardson v. Van Dolah*, 429 F.2d 912, 917 (9<sup>th</sup> Cir.

1970) (tenant in peaceful possession is estopped from questioning title of his landlord); *Quon v. Sanguinetti*, 60 Ariz 301, 303 (1943) ("it may be stated as the universal law that a tenant who enters upon premises under a lease may not question his landlord's title as long as he has not been evicted therefrom"); *Gibbs v. Basham*, 53 Ariz. 357, 364 (1939) ("a defendant in any action affecting real property, who has gone into possession thereof by virtue of a lease . . . , is estopped from denying the title of the plaintiff from whom he received possession so long as he retains that possession."); *Goode v. Gamines*, 145 U.S. 141, 152 (1892) ("The estoppel which prevents a tenant, who has acquired possession as such, from claiming title adversely to his landlord, does not depend on the validity of his landlord's title . . . ."); *Williams v. Morris*, 96 U.S. 444, 445 (1877)("[W]henver the possession is acquired under any species of tenancy, whether the action be assumpsit, debt, covenant, or ejectment, the tenant is estopped from denying the title of the landlord."). These statutory provisions adopted by the Tribe and the States of California and Arizona merely codify in legislation specific to landlord-tenant law this long-standing common law rule which seems to be the result of the combined effects of estoppel by contract and estoppel by conduct.

Under the clear and unambiguous statutory language of section 1-311(i) of Ordinance 04-06, the defenses of lack of jurisdiction or lack of ownership offered by BBC based on the alleged lack of beneficial title by the Tribe and location within the Colorado River Indian Tribes Reservation are simply foreclosed as a matter of law. As a result, since the only claim actually advanced by BBC contesting the jurisdiction of the Tribal Court is foreclosed as a matter of law, the Tribal Court properly found that it had subject matter jurisdiction over BBC and the leased property in this eviction proceeding.

#### **B. Record Support for the Grant of Summary Judgment**

Rule 56 of the Tribal Rules of Civil Procedure (TRCP) governs the entry of summary judgment in the Tribal Courts of the Colorado River Indian Tribes. This rule is identical in all material respects to Rule 56 of the Federal Rules of Civil Procedure, thereby justifying looking to federal precedent to inform its meaning. Under *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986), the Supreme Court of the United States described the procedure for evaluating a summary judgment motion as follows:

When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts . . . . When the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'"

*See also, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.").

In the present case, the Tribe clearly carried its burden under Rule 56(c) by filing a voluminous Motion for Summary judgment with attached Declarations under oath that contained the relevant lease and permit documents, records of payments, and indication of nonpayment of rent and the fact of continued occupancy of BBC of the leased property, after the middle of 2005, without payment of any rent in violation of the 1990 Lease provisions. The record provided the Tribal Court in support of the Tribe's Motion for Summary Judgment further demonstrated that the 1990 Lease had expired of its own express terms and that it contained express provisions precluding the creation of any holdover tenancy. Pursuant to the Court's request for supplemental briefing on the location and ownership of the leased property, the Tribe also supplied the Court with the 1969 Solicitor's Opinion and the judgment and record in the *Lonesome Valley* litigation as well as other documents.

Since the Tribe, through its filings, had certainly discharged its burden under Rule 56(c)(2) to "show that there is no genuine issue as to any material fact and that [it] is entitled to judgment as a matter of law," it was incumbent on BBC through its filings to demonstrate, according to *Matushita Elec. Industrial Co.*, not merely that there was some metaphysical doubt, but that there was a genuine disputed and material issue of fact for trial. BBC totally failed to discharge that obligation.

Despite the fact that Rule 56(e)(2) expressly provides that "[w]hen a motion for summary judgment is properly made and supported, an opposing party may not merely rely on allegations and denials in its own pleadings; rather, its response must – by affidavits or otherwise provided in this rule – set forth specific facts showing a genuine issue for trial," BBC responded to the Motion for Summary Judgment without supplying any documents under oath by affidavit or otherwise and relied primarily on the denials contained in its Answer. At the hearing on the Motion for Summary Judgment it did supply the Court with and unauthenticated xerox copy of its purported 1947 Quit Claim deed which it had not previously disclosed in its opposition to the Motion for Summary Judgment. Given that state of the record, Rule 56(e)(2) is clear that "[i]f the opposing party does not so respond, summary judgment should, if appropriate, be entered against the party." Thus, given the state of the record and the lack of any submissions by BBC showing a genuine issue for trial, this Court finds no procedural irregularity with the grant of summary judgment by the Tribal Court.

In this appeal, however, BBC objects to the grant of summary judgment pointing to several issues, it claims were material facts that were in dispute. First, and foremost, BBC disputes the ownership of the leased property and its location within the Colorado River Indian Tribes Reservation. BBC claims due to its 1947 quit claim deed that it, and not the Tribe, is the owner of the leased property. Since this Court held in the preceding section that both these two interrelated claims are positions that BBC is legally precluded from asserting by doctrines of estoppel by contract, estoppel by conduct, and express provisions of section 1-



311(i) of Ordinance 04-06, this alleged dispute cannot and does not, as a matter of law, constitute a disputed issue of material fact foreclosing a grant of summary judgment to the Tribe.

In its submissions on these questions, BBC has made much of the provisions of Public Law 88-302, April 30, 1964. In particular, section 5 of that Act provides:

The Act of June 11, 1960 (74 Stat. 199), as amended by the Act of September 5, 1962 (76 Stat. 428), is amended to read as follows:

"The Secretary of the Interior is authorized to approve leases of lands on the Colorado River Indian Reservation, Arizona and California, for such uses and terms as are authorized by the Act of May 11, 1938 (52 Stat. 347; 25 U. S. C. 396a et seq.), and the Act of August 9, 1955 (69 Stat. 539), as amended (25 U. S. C. 415 et seq.) including the same uses and terms as are permitted thereby on the Agua Caliente (Palm Springs), Dania, Navajo, and Southern Ute Reservations: Provided, however, That the authorization herein granted to the Secretary of the Interior shall not extend to any lands lying west of the present course of the Colorado River and south of section 25 of township 2 south, range 23 east, San Bernardino base and meridian in California, and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation: *Provided further, That any of the described lands in California shall be subject to the provisions of this Act when and if determined to be within the reservation.*

(Emphasis supplied). Based on this provision, BBC argues that the western boundaries of the Colorado River Indian Tribes Reservation have not been finally determined. What BBC apparently fails to appreciate is that the 1969 Solicitor's Opinion and the subsequent litigation that thereafter ensued to implement that Opinion were precisely part of the process contemplated by Public Law 88-302 to finally determine those western boundaries. Since BBC relinquished any and all claim of interest in the disputed land through the 1972 Lease and, through that process, apparently settled the dispute as to its parcel, the inclusion of its land within the Colorado River Indian Reservation was finally settled within the meaning of section 5 of Public Law 88-302 through the 1969 Solicitor's Opinion.

Since section 5 prevented the Secretary of the Interior from approving any leases until the western boundary of the Colorado River Indian Reservation was finally determined, clearly the Secretary of the Interior also agreed that the 1969 Solicitor's Opinion had finally determined the western boundary since the Department of the Interior approved each of the three successive leases that BBC held for the leased property located within the Colorado River Indian Reservation. The Department of the Interior is the agency charged with implementing Public Law 88-302 and is specifically mentioned in section 5. Its determination that the lands fell within the Reservation and, consequently, were held

in trust by the United States for the benefit of the Colorado River Indian Tribes is entitled to great deference from the courts. *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Additionally, given the success of the United States in implementing the 1969 Solicitor's Opinion through the *Denham* and *Lonesome Valley Land* decisions during the 1970s, clearly the United States District Court for the Central District of California accepted the results of the 1969 Solicitor's Opinion. Thus, even were BBC not precluded from asserting that it owned the leased property and that the property was not within the boundary of the Tribe's reservation, BBC is simply wrong in its claim that there are disputed questions of fact as to ownership and location of the the western boundary of the Colorado River Indian Reservation. The 1969 Solicitor's Opinion authoritatively determined the western boundaries of the Reservation and the ownership of the disputed land and the later *Denham* and *Lonesome Valley Land* decisions, as well as the 1972 Lease in this case, merely implemented that decision.

Second, BBC makes much of the fact that it was not formally served or made a party to the *Lonesome Valley Land* litigation (facts not disputed by the Tribe) and claims that its lack of participation in that litigation constitutes a disputed issue of material fact requiring a trial. The contention must be rejected for two reasons. The Tribe does not dispute that BBC was not a party to the *Lonesome Valley Land* litigation and before this Court expressly disclaimed any reliance on doctrines of claim preclusion or *res judicata* derived from the final judgment in that case. Reliance on that case only helped illuminate the factual background of this dispute. More importantly, BBC's observation is irrelevant and therefore their claimed disputed fact (which is undisputed by the Tribe) is not material since BBC expressly relinquished any claim of interest or ownership in the leased property and conceded that it was beneficially owned by the Tribe and located within the Reservation when it signed the 1972 Lease. 1972 Lease, ¶ 2.

Finally, BBC sought to emphasize an admitted clerical error in the legal description of the leased property to completely obfuscate and muddy the issues before the Tribal Court and before this Court. The 1972 Lease, the 1983 Lease, and the Complaint and Amended Verified Complaint filed in this action all correctly described the leased property. That description, as found in the Complaint, is:

"lands as shown on the Bureau of Land Management survey of Township 5 South, Ranges 23 East and 24 East, San Bernardino Meridian, California, accepted May 21, 1962" including Township 5 South, Range 24 East, Section 6, Lots 4 and 5.

Amended Verified Complaint, ¶ 17. Perhaps because the majority of the land comprising the Colorado River Indian Reservation is located in Arizona, the leased property was described in the 1990 Lease as being within "Township 5 North, Range 24 East, SRM&M." The discrepancy of legal description exists in the underscored language and involves the substitution of North for South and the use of the SRM&M (Salt River Base and Meridian, located in Arizona) for the San Bernardino Meridian, located in California. Since the majority of lands of the Colorado River Indian

Reservations are located in Arizona, it is easy to see how a busy tribal land office, that presumably has far more leases in Arizona than California, might inadvertently (but inexcusably and erroneously) substitute the Salt River Base and Meridian, located in Arizona, for the San Bernardino Meridian, located in California. To its credit, the Tribe called attention to the error in the 1990 Lease legal description of the leased property in its Complaint. Amended Verified Complaint ¶ 20.

Having been alerted by the Tribe to the error contained in the 1990 Lease in legal description of the leased property, BBC seeks to use this clerical error to claim that the Tribe had not shown that BBC had leased the property from which it was being evicted and to further suggest that since the land described in the lease was located in Arizona, rather than California, the Tribe was somehow evicting the wrong party from the wrong land. Based on the record before the Tribal Court, that Court could and did properly find that this discrepancy in the legal description merely constituted a clerical error and did not create a material issue of fact requiring a trial.

BBC leased the property in question through federally approved leases with the Tribe in the 1972 Lease and the 1983 Lease. In both of those leases the property was correctly described. The 1990 Lease was intended as a renewal of the 1983 Lease and BBC, pursuant to the 1990 Lease, continued to occupy the leased property previously occupied pursuant to the 1983 Lease and the 1972 Lease. BBC never occupied or claimed any right to the lands located in Arizona actually described in the mistaken description in the 1990 Lease. Rather, until the Tribe raised the misdescription in its pleadings, all parties understood and operated under the assumption that the property leased in the 1990 Lease constituted precisely the same property described in the 1983 Lease, and the 1972 Lease before it. Furthermore, BBC was never misled in any fashion in this litigation since it had notice of both the misdescription of the leased property in the 1990 Lease and of the correct legal description of the leased property from the Tribe's initial pleading in this matter. Had BBC relied in any fashion on the erroneous description in the 1990 Lease, it should have at some point over the fifteen year term of that lease attempted to occupy or claim a right in the land actually described in that lease. BBC admitted at oral argument that it had not done so and had merely continued to occupy the property correctly described in the 1983 Lease. Thus, the Tribal Court correctly determined that the misdescription of the leased property in the 1990 Lease was a clerical error not affecting the rights of the parties which did not create a genuine issue of material fact requiring a trial.

It long has been the law in California and elsewhere that where such clerical errors occur the Court has authority to correct such errors and ignore them unless reasonable detrimental reliance on them materially and adversely affects the rights of the parties. *E.g. Goatman v. Fuller*, 191 Cal. 245, 216 P. 35 (1923). Indeed, in this case, the Tribal Court was forced to correct a clerical error in its Ruling and Order of May 15, 2011, which forms the basis for this appeal, by entering a corrective Order dated June 17, 2011. While lawyers and judges try their best to avoid such clerical errors, mistakes do occur

and where no justified reliance interest of any party is adversely affected, the Court has the power to correct mere clerical errors.

Since the erroneous legal description of the leased property obviously constituted a clerical error and BBC never detrimentally relied on that error in any fashion, that error must be ignored in this litigation. More importantly, having concluded that the error constituted a mere clerical error, the Tribal Court should have taken the additional step of retroactively ordering the correction of the lease to reflect the accurate legal description of the leased property set forth above. Since it did not do so, this Court hereby orders that the legal description of the leased property set forth in the 1990 Lease be retroactively corrected to conform to the accurate legal description set forth in the 1983 Lease.

Thus, BBC failed to carry its burden under Rule 56(c)(2) and (e)(2) of demonstrating that there was a genuine issue of material fact requiring a trial. Consequently, this Court finds no error in the Ruling and Order of the Tribal Court dated May 5, 2011 (as amended by the Order of June 17, 2011) granting summary judgment to the Tribe in this matter or in its issuance pursuant thereto of the Writ of Restitution on May 17, 2005. This Court, however, does order the Ruling and Order of the Tribal Court dated May 5, 2011 is hereby amended to additionally direct that the legal description of the leased property contained in the 1990 Lease be retroactively reformed to the legal description contained in the 1983 Lease. As amended, this Court therefore AFFIRMS both the Ruling and Order dated May 5, 2011 (as amended by the Order of June 17, 2011 and by this ruling) and the Writ of Restitution dated May 17, 2011.

IT IS SO ORDERED

Entered this 9th day of March, 2012  
on behalf of the entire panel,

By: Robert N. Clinton  
Robert N. Clinton  
Associate Justice