

No. 17-35755

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

COEUR D'ALENE TRIBE, A FEDERALLY RECOGNIZED INDIAN TRIBE

Plaintiff-Appellant,

v.

STEVE W. HAWKS; DEANNE A. HAWKS

Defendant-Appellees.

On Appeal from the United States District Court
for the District of Idaho
No. 2:16-cv-00366-BLW
Hon. B. Lynn Winmill

APPELLANT'S OPENING BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26-1 of the Federal Rules of Appellate Procedure, Appellant Coeur d'Alene Tribe, a federally recognized Indian Tribe, indicates there is no parent corporation and no publicly held corporation that owns 10% or more of its stock.

Date: November 20, 2017

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/s/ Peter J. Smith IV

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INTRODUCTION

Native American law is inextricably intertwined with federal law. Recognition and enforcement of a tribal judgment by the United States must be founded on federal law. *Wilson v. Marchington*, 127 F.3d 805 (1997). In this matter, the Coeur d'Alene Tribe seeks recognition and enforcement by the United States District Court of the Tribe's judgment from the Coeur d'Alene Tribal Court. The Honorable Chief Judge B. Lynn Winmill dismissed the Coeur d'Alene Tribe's Complaint on the basis that it posed no federal question. Judge Winmill's holding was in err. Federal question jurisdiction exists under Ninth Circuit precedent.

JURISDICTIONAL STATEMENT

The basis for jurisdiction for the District Court is 28 U.S.C. § 1331 and *Marchington*, 127 F.3d 805. The basis for jurisdiction for the Court of Appeals is 28 U.S.C. § 1291. This matter is an appeal from the Judgment entered August 25, 2017. ER 001 & 002. Notice of Appeal was timely filed September 20, 2017 pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A). ER 001. This appeal is from a final judgment that disposes of all parties' claims.

STATUTORY AUTHORITIES

28 U.S.C.A. § 1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C.A. § 1291: The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

ISSUE PRESENTED

Whether the district court erred in dismissing Plaintiff's petition on the grounds there is no basis for federal jurisdiction.

STATEMENT OF THE CASE

The Coeur d'Alene Tribe is a federally recognized Indian Tribe, with a reservation spanning Kootenai and Benewah Counties in the state of Idaho (the "Coeur d'Alene Reservation"). ER 008. Within the boundaries of the Coeur d'Alene Reservation are portions of Lake Coeur d'Alene and the St. Joe River. ER 009. The Coeur d'Alene Reservation is unique; within the boundaries of the Reservation, the beds and banks of Lake Coeur d'Alene and the St. Joe River are not owned by the State of Idaho. *Idaho v. United States*, 533 U.S. 262 (2001).

Those submerged lands are held in trust by the United States for the benefit of the Coeur d'Alene Tribe. ER 009; *Idaho*, 533 U.S. 262.

The Defendants Steve and Deanne Hawks ("Hawks") own waterfront property within the boundaries of the Coeur d'Alene Reservation, but they are not members of the Coeur d'Alene Tribe. ER 004-005. Extending from the Hawks' property are a dock and pilings that trespass upon the Coeur d'Alene Tribe's submerged lands. ER 004. The dock and pilings violate the Coeur d'Alene Tribal Code. ER 020.

On May 13, 2016, the Coeur d'Alene Tribe filed a Complaint for Damages and Eviction against the Hawks in the Tribal Court of the Coeur d'Alene Tribe of the Coeur d'Alene Indian Reservation ("Tribal Court"). ER 017. The Tribe served the Hawks on May 24, 2016. ER 017. The Hawks defaulted. ER 010 & 017.

The Tribal Court held an evidentiary hearing on the complaint on June 21, 2016 at 11:00 a.m. ER 017. The Hawks were given notice. ER 019. The Tribe's counsel presented evidence and testimony. ER 017-018. The Hawks did not appear. ER 010 & 020.

The Tribal Court entered its Findings of Fact and Conclusions of Law on July 15, 2016. ER 009 & 020. The Tribal Court entered an Order of Eviction and a Judgment against the Hawks. ER 013-015. The Hawks did not appeal. ER 009.

On August 12, 2016, the Coeur d'Alene Tribe filed this lawsuit seeking recognition and enforcement of the Tribal Court's Judgment. For the first time, the Hawks appeared.

SUMMARY OF THE ARGUMENT

The District Court erred by dismissing this case and finding there is no federal question. This case presents a federal question. The District Court has jurisdiction to decide this case on its merits. A finding of federal jurisdiction is supported by the policy favoring uniform treatment of tribal court judgments.

Ninth Circuit precedent, *Marchington*, 127 F.3d 805, establishes that recognition and enforcement of a tribal court judgment under the principle of comity poses a federal question. The Tribe's petition in this matter requested exactly that: recognition and enforcement of the Coeur d'Alene Tribal Court's judgment.

ARGUMENT

I. RECOGNITION OF A TRIBAL COURT JUDGMENT UNDER THE PRINCIPLE OF COMITY IS A FEDERAL QUESTION.

The District Court erred in concluding there is no basis for federal jurisdiction over the Coeur d'Alene Tribe's Complaint. ER 007. In *Marchington*, 127 F.3d 805, this Court rejected that recognition of tribal judgments requires

application of state law. 127 F.3d at 813. Recognition and enforcement of tribal court judgments by the United States is necessarily founded on federal law. *Id.*

In this case, the District Court looked past Ninth Circuit precedent, and dismissed the Coeur d'Alene Tribe's Complaint in reliance upon an Eleventh Circuit opinion, *Miccosukee Tribe of Indians of Florida v. Kraus-Anderson Construction Company*, 607 F.3d 1268 (2010). *Miccosukee* has no authoritative effect in this Circuit and contradicts Ninth Circuit authority. *See, Marchington*, 127 F.3d 805; *see also, Bird v. Glacier Electric Cooperative, Inc.*, 255 F.3d 1136 (2001).

A. Standard Of Review

This Court reviews *de novo* whether the district court improperly dismissed for lack of subject matter jurisdiction. *Maronyan v. Toyota Motor Sales, U.S.A., Inc.*, 658 F.3d 1038, 1039 (9th Cir. 2011).

B. *Marchington* Is Binding Precedent Conferring Jurisdiction Upon The District Court.

The District Court erred when it looked beyond this Circuit and found there is no basis for federal jurisdiction. In *Marchington*, this Court concluded “as a general principle, federal courts should recognize and enforce tribal judgments.” *Id.* at 810. No further inquiry must be made to conclude there is federal jurisdiction over this matter. *Marchington* is good law, and was reaffirmed in *Bird*.

The present case is analogous to *Marchington*. Like the present case, *Marchington* involved a petition for recognition of a tribal court judgment. 127 F.3d at 807. The tribal court judgment at issue in *Marchington* was ultimately not recognized, but the decision not to recognize that judgment was reached on the merits. *See generally*, 127 F.3d 805. The Coeur d’Alene Tribe was not afforded the opportunity for its petition for recognition to be considered on the merits. Rather, the District Court summarily dismissed the case on the basis that there is no federal question. This conclusion is erroneous and ignores this Circuit’s binding precedent.

In its Memorandum Decision and Order, the District Court stated a “dispute over whether the Tribal Court had jurisdiction over a non-member of the Tribe would be a federal question that would satisfy the jurisdiction demands of § 1331.” ER 005. The District Court then concluded the Coeur d’Alene Tribal Court’s jurisdiction was not at issue. The District Court’s conclusion ignores *Marchington*’s recognition that tribal court subject matter jurisdiction is a threshold matter to federal recognition of tribal judgments. *See, Marchington*, 127 F.3d at 811 (“[T]he existence of both personal and subject matter jurisdiction is a necessary predicate for federal court recognition and enforcement of a tribal judgment.”).

Rather than follow *Marchington*, the District Court drew an artificial jurisdictional line in the sand. On one side of the line are the Hawks, who may file

an action in federal court challenging the Tribal Court's jurisdiction to enter judgment. On the other side of the line is the Coeur d'Alene Tribe, which is barred from bringing a parallel suit seeking recognition of its valid Tribal Court judgment. This logic is inequitable and denies equal access to the Federal Courts. It also ignores that tribal court subject matter jurisdiction is at issue as a threshold matter in any request for federal recognition of a tribal judgment. *Marchington*, 127 F.3d at 811.

Again, the Coeur d'Alene Tribe did not need to seek declaratory relief that the Tribal Court had jurisdiction; the Tribal Court's jurisdiction is necessarily at issue in any matter seeking recognition of a tribal court judgment under principles of comity. In light of the *Marchington* precedent, the District Court could, and should, have stopped its inquiry there. The District Court erroneously held that there is no federal question.

C. Policy Favoring Consistent Treatment Of Indian Tribes Favors Federal Jurisdiction Over Matters Seeking Recognition And Enforcement Of Tribal Court Judgments.

Important policy considerations also support jurisdiction of the federal courts. Federal courts "apply federal common law when a federal rule of decision is 'necessary to protect uniquely federal interests.'" *Marchington*, 127 F.3d at 813 (quoting *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964)). Indian law is uniquely federal. *Marchington*, 127 F.3d at 813. "[T]he quintessentially federal

character of Native American law, coupled with the imperative of consistency in federal recognition of tribal court judgments, *by necessity require* that the ultimate decision governing the recognition and enforcement of a tribal judgment by the United States *be founded on* federal law.” *Id.* (emphasis added).

The *Marchington* Court did not mince words. Recognition and enforcement of tribal judgments is founded on federal law. This conclusion is driven by the important policy of consistent treatment of Indian Tribes. Consistent treatment would undoubtedly be impossible if left to piecemeal litigation among the fifty states.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed, and the case remanded for consideration of Plaintiff’s claims on the merits.

Date: November 20, 2017

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STATEMENT OF RELATED CASES

There are no related cases pending in the Ninth Circuit.

There are related cases pending in other tribunals:

1. *Coeur d'Alene Tribe v. Steve W. Hawks et al.*, Case No. CV-DE-2016-0116, Tribal Court of the Coeur d'Alene Tribe of the Coeur d'Alene Reservation. That case involves an encroaching water line extending from real property onto the submerged lands of the St. Joe River.
2. *Coeur d'Alene Tribe v. Kenneth and Donna Johnson*, CV-2016-0025, District Court of the First Judicial District for the State of Idaho, in and for the County of Benewah. This case is awaiting entry of judgment on remand from the Supreme Court of the State of Idaho.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 2348 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word, Version 14.7.3, Times New Roman 14-point font.

Date: November 20, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: November 20, 2017

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