

Slovak Baron Empey Murphy & Pinkney LLP  
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Attorneys for Defendant Michael J. Prieto

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

THE TAMARISK RD. TRUST UDT  
08/19/2020, PROPERT T VIEW INC. AS  
TRUSTEE,

Plaintiff,

v.

MICHAEL J. PRIETO, an individual; and  
DOES 1 – 10,

Defendants.

**CASE NO.: 5:23-cv-01886 SPG SP**

Judge: Sherilyn Peace Garnett

**DEFENDANT’S SECOND AMENDED NOTICE OF  
MOTION AND MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION [RULE  
12(B)(1)]**

**Date: January 10, 2024  
Time: 1:30 p.m.  
Dept.: 5C**

PLEASE TAKE NOTICE that on January 10, 2024, at 1:30 p.m. in Courtroom 5C of the above-entitled Court located at 350 West 1<sup>st</sup> Street, Los Angeles, California 90012, Defendant Michael J. Prieto will move this Court for an Order dismissing Plaintiff’s Complaint.

Defendant’s second amended motion to dismiss is made in accordance with Federal Rule of Civil Procedure 12(b)(1) on the grounds that the Court lacks subject matter jurisdiction of this action. Defendant’s amended motion to dismiss shall be based on this Notice, the attached Memorandum of Points and Authorities, Plaintiff’s Complaint, the complete files and records of this action, and such other and further oral and written evidence as may be presented at the hearing of this Motion.

PLEASE TAKE FURTHER NOTICE that this motion is made following the conference of

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counsel pursuant to L.R. 7-3 which took place by telephone on Tuesday, December 5, 2023. The parties conferred by telephone because their respective offices are more than 50 miles apart.

PLEASE TAKE FURTHER NOTICE that by default, all hearings, except hearings on Motions in Limine, Final Pretrial Conferences, and Trials, shall proceed in-person unless a request for Zoom is filed by the parties and granted by the court. The link below may be used only if ordered by the court. Any request for a remote Zoom appearance must be made by the Friday before the hearing and must indicate that counsel has met and conferred with opposing counsel consistent with Local Rule 7-3.

The Zoom link information is set forth below and may also be found on the court’s website (<https://www.cacd.uscourts.gov/honorable-sherilyn-peace-garnett>)

**Link:** <https://cacd-uscourts.zoomgov.com/j/1608687864?pwd=V290TzJQQTZBzVXJFTXBiUndkM05kQT09#success>

**Telephone:** (669) 254-5252

**Webinar ID:** 160 868 7864

**Passcode:** 833882

Dated: December 6, 2023

**SLOVAK BARON EMPEY MURPHY & PINKNEY LLP**



By: \_\_\_\_\_  
Shaun M. Murphy  
Attorney for Defendant Michael J. Prieto

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**I. INTRODUCTION**

Plaintiff’s complaint alleges state law claims for ejectment, trespass, and past due rents. The subject property is land allotted to an individual member of the Agua Caliente and Plaintiff claims that this court has subject matter jurisdiction because the California State Court decided it did not. The absence of state court jurisdiction does not create jurisdiction with this court. Plaintiff’s claims do arise from federal law. Federal courts do not have subject matter jurisdiction to hear state law claims regarding possession of allotted Indian land. The complaint must therefore be dismissed.

**II. FACTUAL BACKGROUND**

On April 10, 1972, Dora Joyce Prieto acquired 20 acres of real property in Palm Springs, and which is part of the Agua Caliente Indian Reservation (the “*Real Property*”).<sup>1</sup> (Plaintiff’s Complaint, ¶ 5, Exh. 1.) By a residential lease dated February 9, 1982, Dora Prieto leased the Real Property to her son Michael Prieto (“*Leasehold Interest*”). (Plaintiff’s Complaint, ¶ 6, Exh. 2.) Dora Prieto passed away on October 6, 2000, and the Real Property passed to Michael Prieto through applicable probate proceedings.

Michael Prieto used the Leasehold Interest to secure a loan in September 2001. (Plaintiff’s Complaint, ¶ 8, Exhs. 3, 4.) Michael Prieto defaulted on the loan and the trustee under the deed of trust initiated foreclosure proceedings on the Leasehold Interest in 2020. (Plaintiff’s Complaint, ¶¶ 11-12.) Plaintiff purchased the Leasehold Interest at public auction in August 2020. (Plaintiff’s Complaint, ¶ 13.) Plaintiff brings this action to enforce its purported right in the Leasehold Interest and to take possession of the Real Property.

**III. LEGAL STANDARD**

Federal Rule of Civil Procedure 12(b)(1) provides for dismissal of an action for “lack of subject matter jurisdiction.” See FED.R.CIV.P.12(b)(1). Federal courts cannot consider claims that lack subject matter jurisdiction. *Wang ex rel. United States v. FMC Corp.*, 975 F.2d 1412, 1415 (9th Cir. 1992). “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994). Attacks on jurisdiction under Rule 12(b)(1) may be “either facial or factual.” *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). In a facial attack, as in

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<sup>1</sup> Dora Joyce Prieto was Defendant Michael Prieto’s mother. Plaintiff’s Complaint, ¶ 5.

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1 this case, the party challenging jurisdiction asserts that the “allegations contained in a complaint are  
 2 insufficient on their face to invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035,  
 3 1039 (9th Cir. 2004). Courts presume that “a cause lies outside [of a federal court's] limited jurisdiction,  
 4 and the burden of establishing the contrary rests upon the party asserting jurisdiction[,]” which in this  
 5 case is the Plaintiff. *Kokkonen, supra*, 511 U.S. at p. 377; see also *United States v. Orr Water Ditch*  
 6 *Co.*, 600 F.3d 1152, 1157 (9th Cir. 2010).

7 Accordingly, when a federal court finds that it lacks subject matter jurisdiction, it must dismiss  
 8 the complaint in its entirety. Fed. R. Civ. P. 12(h)(3); see *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514,  
 9 126 S.Ct. 1235 (2006).

10 **IV. LEGAL ARGUMENT**

11 **A. Federal courts do not have jurisdiction to hear state law claims regarding possession of  
 12 allotted Indian land.**

13 In support of jurisdiction, Plaintiff alleges in its complaint only that this “Court has subject  
 14 matter jurisdiction in this case because this matter involves the Subject Property, which is Native  
 15 American land, and the Superior Court of California, County of Riverside previously ruled that it does  
 16 not have subject matter jurisdiction over Defendant and/or the Subject Property.” Plaintiff’s Complaint,  
 17 ¶ 3. Plaintiff does not identify any federal constitutional provision, statutory enactment, or treaty from  
 18 which its claims arise to support jurisdiction of its claims.

19 Federal courts have original jurisdiction over “all civil actions arising under the Constitution,  
 20 laws, or treaties of the United States.” *28 U.S.C. § 1331*. “For a case to ‘arise under’ federal law, a  
 21 plaintiff’s well-pleaded complaint must establish either (1) that federal law creates the cause of action  
 22 or (2) that the plaintiff’s asserted right to relief depends on the resolution of a substantial question of  
 23 federal law.” *Peabody Coal v. Navajo Nation*, 373 F.3d 945, 949 (9th Cir. 2004) (citing *Franchise Tax*  
 24 *Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27-28, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983)).

25 Plaintiff does not cite to a provision of the Constitution, a federal statute, or a treaty of the  
 26 United States as the basis for jurisdiction in this case. Plaintiff’s jurisdictional argument hinges on a  
 27 single allegation: this matter involves an allotment lease of real property on an Indian reservation.

28 The Ninth Circuit’s decision in *K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3rd 1024 (9th  
 Cir. 2011) is on point and controlling. *K2* involved a dispute over an oil and gas lease on land held in

1 trust by the United for Indian allottees. The plaintiff claimed that the defendant committed various  
2 tortious acts in acquiring a lease and alleged that it was the rightful owner of the lease. Referring to 28  
3 U.S.C. § 1360(b) (Public Law 280), the plaintiff’s jurisdictional argument was based on the single  
4 allegation that because the land was held in trust by the United States for Indian allottees, the federal  
5 courts had exclusive jurisdiction over actions concerning ownership of any interest in that land. The  
6 Court affirmed the district court’s dismissal for lack of subject matter jurisdiction.

7 The Court noted that 28 U.S.C. § 1360(b) does not grant federal jurisdiction. *K2 Am. Corp.*,  
8 *supra*, at p. 1027. Section 1360(b) limits state court jurisdiction; it does not confer jurisdiction on  
9 federal courts. *Id.* at p. 1028. Even if a state court lacks jurisdiction to grant the relief a plaintiff requests,  
10 the absence of state court jurisdiction “does not establish federal court jurisdiction over its claim.” *Ibid.*,  
11 fn. 5. The Court considered and rejected the Plaintiff’s contention that jurisdiction was appropriate  
12 under federal preemption rules and because Indian leases are subject to federal regulation. *Id.* at pp.  
13 1029, 1031. The Court said that preemption does not apply to claims involving trust lands and disputes  
14 involving leases on allotted land do not arise under federal law especially where there are no problems  
15 with the underlying lease. *Ibid.*

16 *Safari Park, Inc. v. Southridge Prop. Owners Ass’n of Palm Springs*, 2018 U.S. Dist. LEXIS  
17 223715\*; 2018 WL 6843667 (U.S.D.C. Central Dist. 2018) presented a similar issue involving a dispute  
18 over possession of land allotted to an Indian tribal member. The plaintiff alleged that an easement over  
19 allotted land had expired and that the defendants were trespassing. Thus, as in this case, the dispute  
20 concerned the right to possession and use of allotted land. As did the plaintiff in *K2*, Safari Park relied  
21 on *Boisclair v. Superior Court* to support its argument that 28 U.S.C. Section 1360(b) completely  
22 preempts state law; thus, the state law trespass claim was properly adjudicated in federal court. See  
23 *Boisclair v. Superior Court*, 51 Cal.3d 1140, 276 Cal. Rptr. 62, 801 P.2d 305 (1990).

24 As did the court in *K2*, *supra*, the district court in *Safari Park* concluded that federal subject  
25 matter jurisdiction was absent. Although the dispute might require an interpretation of applicable  
26 federal regulations, that did not create subject matter jurisdiction. *Safari Park*, *supra*, 2018 U.S. Dist.  
27 LEXIS 223715, \*10-11. “A court may have to examine federal regulations but that does not necessarily  
28 create federal jurisdiction over this state law trespass claim.” *Id.* at p. \*10. “[W]here there is a

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‘specialized type of contract that is subject to extensive federal regulation,’ there is no federal question jurisdiction where the ‘claim does not allege any problem with the underlying lease and their amendments.’” *Id.* at \*11, citing *Peabody Cold Co. v. Navajo Nation*, 373 F.3d 945, 951 (9th Cir. 2004).

The Plaintiff in this case is pursuing state law claims for ejectment, trespass, and nonpayment of rent. The claims arise from the Plaintiff’s purchase of a lease on allotted land through a state law non-judicial foreclosure proceeding. Neither the foreclosure proceeding, nor the ejectment, trespass, or nonpayment of rent claims arise from treaty, federal statute, or constitutional law. Because they do not arise from federal law, this court lacks subject matter jurisdiction over the claims.

Further, the Plaintiff does not allege that there was any defect or problem with the underlying lease. That the Bureau of Indian Affairs approved the lease does not confer subject matter jurisdiction on this court. Plaintiff’s complaint must therefore be dismissed.

**V. CONCLUSION**

Plaintiff’s complaint alleges state law claims for ejectment, trespass, and past due rents. The subject property is land allotted to an individual member of the Agua Caliente Band of Cahuilla Indians and Plaintiff claims that this court has subject matter jurisdiction because the California State Court decided it did not. The absence of state court jurisdiction does not create jurisdiction with this court. Plaintiff’s claims do arise from federal law. Federal courts do not have subject matter jurisdiction to hear state law claims regarding possession of allotted Indian land. The complaint must therefore be dismissed.

Dated: December 6, 2023

**SLOVAK BARON EMPEY MURPHY & PINKNEY LLP**

By: \_\_\_\_\_

Shaun M. Murphy

Attorney for Defendant Michael J. Prieto

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**CERTIFICATE OF SERVICE**

I am employed in the County of Riverside, State of California. I am over the age of 18 years and not a party to the within action; my business address is that of SLOVAK BARON EMPEY MURPHY & PINKNEY LLP, 74785 Highway 111, Suite 105, Indian Wells, California 92210.

I hereby certify that I electronically filed the foregoing with the Clerk of the United States District Court for the Central District of California by using the CM/ECF system and served the foregoing document described as **SECOND AMENDED NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO FRCP 12(B)(1)** on all interested parties in this action by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

Daniel E. Katz, Esq.  
[dkatz@rhlaw.com](mailto:dkatz@rhlaw.com)  
Kiki Manti Engel, Esq.  
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*Attorneys for Plaintiff,*  
*THE TAMARISK RD. TRUST UDT 08/19/2020*  
*PROPER T VIEW INC. AS TRUSTEE*

**(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at INDIAN WELLS, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**(BY ELECTRONIC MAIL)** I am personally and readily familiar with the business practice of the firm for the preparation and processing of documents by electronic transmission using the CM/ECF system. I prepared said document(s) in PDF and then caused such document(s) to be served by electronic mail at yeakel@sbemp.com to the above addressee.

**(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct. Executed on December 6, 2023, at Indian Wells, California.

By: *Dianne Yeakel*  
Dianne Yeakel