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

DATE: January 31, 2024
TIME: 1:30 p.m.
DEPT.: 5C

I. INTRODUCTION

This court either has subject matter jurisdiction or it does not. Plaintiff’s arguments about the Defendant remaining in possession of the property, the previous removal and remand of the state court action, and the ultimate dismissal of the state court action are immaterial as none of them provide a basis for conferring subject matter jurisdiction on this court over the state law claims raised in the complaint.

In its opposition to the Second Amended Motion to Dismiss (“*Motion to Dismiss*”), Plaintiff makes four arguments all of which are without merit. Plaintiff first argues that jurisdiction is proper under 28 U.S.C.S. § 349, and 28 U.S.C.A. §§ 1331, 1346(f). Those statutes do not confer subject matter

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1 jurisdiction in this case. Section 349 is not a statute granting general subject matter jurisdiction. It
2 pertains to allotments of Indian lands and subjects Indians to *personal jurisdiction* of Federal courts.
3 Section 1331 does not apply because Plaintiff’s claims do not arise from Federal law. They are State
4 law claims which do not support Federal jurisdiction. And section 1346(f) does not apply because the
5 statutory language specifically confers jurisdiction where the United States is a party, but expressly
6 provides that it “does not apply to trust or restricted Indian lands...”

7 Plaintiff next tries to distinguish Defendant’s reliance on *Safari Park, Inc. v. Southridge Prop.*
8 *Owner Ass’n of Palm Springs*. Plaintiff, however, points out distinctions without a difference. The court
9 dismissed the plaintiff’s complaint not because the parties were not tribal members or because the
10 claims arose from expiration of a right-of-way. The court in *Safari Park* dismissed the complaint
11 because the plaintiff, as the plaintiff here, alleged state law trespass and possession claims, which are
12 not subject to federal jurisdiction.

13 Third, Plaintiff argues that Defendant previously sought removal from State court alleging
14 Federal jurisdiction over the disputed claims. The argument lacks merit for several reasons. Parties
15 cannot agree to confer subject matter jurisdiction on the district court. Similarly, a defendant cannot—
16 by waiver, argument, or otherwise—confer subject matter jurisdiction on the district court where it does
17 not otherwise exist. Finally, the district court remanded the case to the State court because the removal
18 was untimely and did not make any rulings on whether it had subject matter jurisdiction.

19 Plaintiff last argues that the Agua Caliente Tribe does not have a tribal court to adjudicate its
20 claims so it will be left without a forum to adjudicate its claims. This court’s jurisdiction over Plaintiff’s
21 claims is not dependent on the existence or non-existence of a tribal court. Whether a tribal court exists
22 is irrelevant in determining if Plaintiff’s claims arise under Federal law. The court should grant
23 Defendant’s Motion to Dismiss and dismiss this case.

24 **II. REPLY ARGUMENT**

25 **A. Plaintiff’s citation to federal statutes does not support jurisdiction in this case.**

26 **1. Title 25 U.S.C. § 349 is not a statute that confers jurisdiction on Federal**
27 **courts.**

28 Section 349 concerns patents in fee to allottees where the trust period of an allotment expires,

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1 and the lands have been conveyed to the Indian by a patent in fee. Section 349 provides that at such
2 time as the patent in fee is issued, the allottee is subject to the benefits and obligations of the law of the
3 state in which they reside. Until such time as the patent in fee has issued, the allottee is subject to the
4 exclusive [personal] jurisdiction of the United States.

5 Whether Section 349 confers subject matter jurisdiction over state law claims involving allotted
6 property was decided in *Guardianship of Prieto v. Palm Springs*, 328 F.Supp. 716, 718 (C.D. Cal.
7 1971.) In that case, the plaintiff filed suit in district court against the City of Palm Springs alleging a
8 state law claim for interference with a reasonable expectancy in the use of allotted land. The plaintiff
9 invoked Section 349 as a basis for jurisdiction in federal court. The court rejected the argument and
10 dismissed the complaint. It said: Section 349 “is part of the scheme of allotments of Indian lands and
11 title affecting these allotments. It is not a general grant of jurisdiction for all acts by or against an Indian
12 allottee.” *Ibid*.

13 Additionally, Section 349 is part of Chapter 9 of Title 25, which concerns allotment of Indian
14 lands. Section 345 in Chapter 9 is a jurisdictional statute regarding allotments. It allows a person of
15 Indian blood or descent who is entitled to land under any allotment Act to commence an action in
16 district court and confers jurisdiction on the district court to adjudicate that person’s claim to any
17 allotment of land. It does not provide jurisdiction over state law claims against a person of Indian blood
18 or descent.

19 **2. Title 28 U.S.C.A. § 1331 does not support jurisdiction in this case.**

20 The district court in *Guardianship of Prieto, supra*, addressed the application of Section 1331
21 as well. It said, “[n]or can plaintiff bootstrap himself on the Federal question jurisdiction permitted in
22 28 U.S.C. § 1331. The gravamen of plaintiff’s claim is the interference with a reasonable expectancy.
23 Plaintiff’s claim is created by State not Federal law.” *Ibid*. There are no facts alleged in the complaint
24 to show that Plaintiff’s claim arises “under the Constitution, law, or treaties of the United States.”

25 Plaintiff’s claims in this case are based on state foreclosure and trespass laws, which similarly
26 do not arise under federal law. Section 1331 therefore does not confer jurisdiction in this case.

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3. Title 28 U.S.C.A. § 1346(f) does not confer jurisdiction in this case and expressly provides that this court does not have jurisdiction.

Plaintiff cites to 28 U.S.C.S. § 1346(f) arguing that this court has jurisdiction over quiet title actions in which the United States claims an interest. First, Section 1346 applies only where the United States is a defendant. The United States is not a defendant here nor does it claim an interest in the subject property. And Section 2409a provides that in real property quiet title actions the United States may be named as a party defendant. But it specifically provides that section 2409a “does not apply to trust or restricted Indian lands...”

The United States is not a party, it does not claim an interest in the subject property, and the state law claims in this case involve trust or restricted Indian lands. Thus, Section 1346(f) does not confer jurisdiction on this court to adjudicate Plaintiff’s claims.

B. *Safari Park, Inc. v. Southridge Prop. Owners Ass’n of Palm Springs* is not distinguishable in any meaningful way from this case.

Plaintiff points out that this case involves a tribal member whereas *Safari Park* involved a dispute between non-tribal members. Plaintiff also points out that in *Safari Park* the claims arose after the expiration of a right-of-way created under federal regulations. These are distinctions without a difference as neither fact is material to the court’s jurisdictional analysis. The court in *Safari Park* did not decide the case based on whether either party was a tribal member. In discussing the application of the Ninth Circuit’s decision in *K2 Amer. Corp. v. Roland Oil & Gas LLC*, 653 F.3d 1024 (9th Cir. 2011) the court noted in *K2* that neither party was a tribal member. Tribal membership, however, was not material to either *Safari Park* or *K2*. Addressing the nature of the plaintiffs claim in the complaint before it, the court noted that Safari Park’s state trespass claim “hinge[d] on its contention that Defendants’ right-of-way to cross the tribal lands expired in 2010 pursuant to federal regulations.” *Safari Park, Inc. v. Southridge Prop. Owners Ass’n of Palm Springs* 2018 U.S. Dist. LEXIS 223715, *10 (C.D. Cal. 2018). Continuing, the court said, “A court may have to examine federal regulations but that does not necessarily create federal jurisdiction over this state law trespass claim.” *Ibid*. The court made no reference to the parties’ tribal affiliation, or lack thereof. The decision in *Safari Park* was therefore not based on tribal membership or the expiration of a right-of-way created under federal regulations.

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Plaintiff’s claims in this case present nothing more than post-foreclosure and trespass claims under California law, which are not subject to federal jurisdiction.

C. Defendant’s arguments while seeking removal from state court are irrelevant to whether this court has jurisdiction over the claims alleged in Plaintiff’s complaint.

Plaintiff’s argument about the removal pleadings is immaterial. First, “it is well settled that ‘no action of the parties can confer subject-matter jurisdiction upon a federal court’ and ‘the consent of the parties is irrelevant.’” *Sheet Metal Workers Pension Trust of N. Cal. v. Prime Mech. Serv., Inc.*, 2023 U.S. Dist. LEXIS 232441, *3 (N.D. Cal. 2023), quoting *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S. Ct. 2099, 72 L. Ed. 2d 492 (1982); see also *Hill v. Blind Indus. & Servs.*, 179 F.3d 754, 757 (“Lack of subject matter jurisdiction may be raised at any time because the parties cannot, by their consent, confer jurisdiction in excess of that provide by Article III of the United States Constitution.”). Defendant’s previous attempt to remove the state court action to federal court and the arguments made to support removal are irrelevant. Defendant’s attempt to remove the state court case cannot create federal question jurisdiction where it does not exist.

Second, Plaintiff has not cited any authority for the proposition that a parties’ efforts to remove a case to federal court [unsuccessfully] preclude that party from subsequently moving to dismiss a complaint filed in federal court on the same claims. That’s because none exists.

D. The absence of a tribal court does not confer jurisdiction on this court.

The absence of a tribal court to adjudicate Plaintiff’s claims does not confer jurisdiction on this court. See *All Mission Indian Hous. Auth. v. Magante*, 526 F. Supp. 2d 1112, 1117 (S. D. Cal. 2007). In *All Mission Indian Hous. Auth.*, the plaintiff was a federally-sanctioned and federally-funded Indian housing authority that filed an unlawful detainer complaint under state law to recover possession of land and for damages. When the court denied there was subject matter jurisdiction, the plaintiff argued that it would be left without a forum because the tribe had not established a tribal court. The court said, “the lack of a presently-available alternative forum does not provide the constitutional and statutory basis required to provide jurisdiction in federal court.” *Ibid.*; see also *Owens Valley Indian Housing Authority v. Turner*, 185 F.3d 1029, 1034 (9th Cir. 1999) (“In matters of Indian law, federal jurisdiction does not necessarily follow from the absence of state jurisdiction.”).

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III. CONCLUSION

Plaintiff’s complaint alleges claims arising under California law 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.

Dated: January 17, 2024

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 **DEFENDANT’S REPLY TO PLAINTIFF’S OPPOSITION TO THE SECOND AMENDED NOTICE OF MOTION AND MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION** 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.
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Kiki Manti Engel, Esq.
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3685 Main Street, Ste. 300
Riverside, CA 92502-1300

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 January 17, 2024, at Indian Wells, California.

By: *Dianne Yeakel*
Dianne Yeakel

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