

EXHIBIT I

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE
APPELLATE DIVISION

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAR 22 2024

T. Chavira

GEORGE FISCHER,
Plaintiff and Respondent,

Case No: APRI2300056
(Trial Court: UDPS2201460)

v.

PER CURIAM OPINION

JOSEPH MOSCATO,
Defendant and Appellant.

Appeal from a judgment of the Superior Court of Riverside County, Arthur Hester, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed.

Riverside Legal Aid, Ernest Reguly, Raychele B. Sterling, Michael M. Gayler, Immanuel Aldeguer; Liddle & Liddle, Raymond Zakari for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

THE COURT

In this unlawful detainer action, we are called upon to decide whether the trial court had subject matter jurisdiction. The dispute over subject matter jurisdiction concerns 28 U.S.C. § 1360(b), which provides that states do not have jurisdiction to hear disputes regarding the "ownership or right to possession" of any real property "belonging to any Indian or any Indian tribe...that is held in trust by the United

States....” We hold that the trial court erred in denying defendant’s motion to dismiss, finding that the state court lacked subject matter jurisdiction pursuant to 28 U.S.C. § 1360.

FACTS AND PROCEDURAL HISTORY

The relevant facts here are undisputed. In August 2022, plaintiff George Fischer and defendant Joseph Moscato entered into a one-year residential lease agreement for the real property located at 353 North Hermosa Drive, Unit 7B2, Palm Springs, California, 92662. On December 23, 2022, defendant was served with a 3-day notice to pay rent or quit. On December 30, 2022, plaintiff filed an unlawful detainer complaint to recover possession, alleging defendant failed to comply with the 3-day notice. Defendant filed an answer generally denying the allegations of the complaint and asserting the premises was on Indian land therefore the state courts have no jurisdiction. Trial was set for April 20, 2023. On April 19, 2023, defendant filed a motion to dismiss asserting lack of subject matter jurisdiction. After entertaining the motion to dismiss, the trial court moved forward with the trial and thereafter took the matter under submission. Subsequently, on April 24, 2023, the trial court denied the motion to dismiss finding that because neither party were Indians, 28 USC section 1360 did not preclude the state court from exercising jurisdiction. On May 4, 2023, the trial court granted judgment for possession to plaintiff and awarded monetary damages against defendant totaling \$8,009.55. The defendant is no longer in possession since June 27, 2023. Defendant timely filed an appeal from the judgment.

The sole issue on appeal is whether the trial court had subject matter jurisdiction to adjudicate the right to possession over Indian land under Title 28, section 1360 of the United States Code, when neither party were Indians.

DISCUSSION

I

Standard of Review

Generally, the issue of whether a court has subject matter jurisdiction over an action against an Indian tribe is a question of law subject to de novo review. (*Warburton/Buttner v. Superior Court* (2002) 103 Cal. App. 4th 1170, 1180.)

II

28 U.S.C. Section 1360

In 1953, Congress enacted Public Law 280, 67 Stat. 588 (1953) codified as 18 U.S.C. § 1162 and 28 U.S.C. § 1360. 28 U.S.C. § 1360(a) grants the state courts “jurisdiction over civil causes of action ... to which Indians are parties....” However, 28 U.S.C. section 1360(b) limits the scope of such state power and jurisdiction. It states that, “Nothing in this section shall authorize the alienation...of any real or personal property...belonging to any Indian or any Indian tribes...or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.”

III

The Trial Court Lacked Subject Matter Jurisdiction

The trial court denied the motion to dismiss, interpreting the statute to require that defendant be Indian in order to preclude subject matter jurisdiction. Specifically, after citing subsection (a) of 28 USC 1360, the trial court stated:

The Code states that the action involves ‘between Indians or to which Indians are parties.’ While the parties both testified there was no dispute the property in question on Hermosa Drive was part of Indian country, there was no evidence submitted that the Defendant was in fact an Indian. 28 USC 1360(b) is an exception to part (a) only in regards to the state court’s limitations for ownership or right to possession issues, not the status of a defendant.

We disagree that application of subsection (b) requires that the action be between Indians or to which Indians are parties.

In *Boisclair v. Superior Court* (1990) 51 Cal.3d 1140 (*Boisclair*), the trial court was asked to adjudicate the existence of an easement claimed by a non-Indian company over a road that traversed property which was held in trust by the federal government for the benefit of an Indian tribe. The trial court denied defendant’s motion to dismiss for lack of subject matter jurisdiction. The Supreme Court reversed. It noted that statutes passed for the benefit of Indians are to be liberally construed in favor of the Indians. (51 Cal.3d at p. 1153.) Moreover, it interpreted section 1360(b) as precluding states “from asserting jurisdiction over disputes concerning Indian land, including ... disputes in which one party claims the disputed property is non-Indian.” In order to apply section 1360(b), “the threshold question must be whether one possible outcome

of the litigation is the determination that the disputed property is in fact Indian trust land. If that outcome is possible, then a state court is barred from assuming jurisdiction of the case." (51 Cal.3d at p. 1152.) The court found the language of section 1360(b) supported the position that state court jurisdiction "is barred whenever one litigant claims the disputed property is Indian trust land." (51 Cal.3d at p. 1153.)

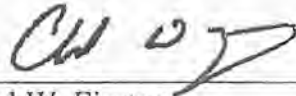
Similarly, in *Inland Casino Corp. v. Superior Court* (1992) 8 Cal.App.4th 770 (*Inland Casino*), a non-Indian entity (FSE) entered into a contract with a non-Indian casino operator (Inland) for the installation of kitchen equipment for a casino located on Indian land on the Barona Band reservation in San Diego County. After FSE installed the equipment, Inland refused to pay. FSE then filed an action against Inland asserting numerous claims, including one seeking to foreclose on a mechanic's lien. Relying on *Boisclair*, the court held that the trial court had no subject matter jurisdiction over the mechanic's lien claim. It found that in asserting the mechanic's lien claim, FSE was seeking to foreclose on "the Indian realty," which plainly creates a dispute over the ownership of Indian property. (*Inland Casino*, at pp. 777-778.) Significantly, neither party was an Indian, yet the appeals court held that the state court had no subject matter jurisdiction.

Moreover, in *Zachary v. Wilk* (1985) 173 Cal.App.3d 754 (*Zachary*), involving whether a city rent control ordinance applied to Indian land when the landlord and tenant were non-Indians, the court held that regardless of whether the affected tenants were non-Indians, the municipal rent control ordinance was found to impermissibly infringe on the Indian tribe's sovereignty to control its own land.

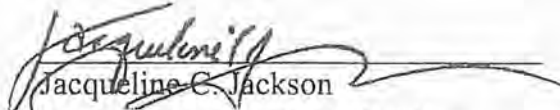
The basis for denying subject matter jurisdiction in this case is indistinguishable from *Inland Casino* and *Zachary*. Here, it is undisputed that the North Hermosa Drive property is Indian land. The issue the court was required to adjudicate was the right to possession of Indian property.¹ That is enough to conclude the trial court had no subject matter jurisdiction to do so.

DISPOSITION

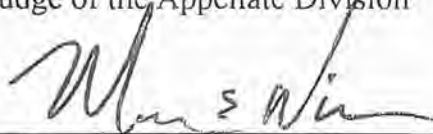
The judgment is reversed. Defendant Joseph Moscato to recover his costs on appeal.²



Chad W. Firetag
Presiding Judge of the Appellate Division



Jacqueline C. Jackson
Judge of the Appellate Division



Marie E. Wood
Judge of the Appellate Division

¹ Where tribal land is to be leased, federal law requires the Secretary of Interior approve any lease of Indian land. (25 U.S.C.A. § 415(a).)

² During the course of our review, we became aware that the plaintiff George Fischer is deceased. We take judicial notice of the certificate of death pursuant to Evidence Code sections 452 and 459. (*People v. Terry* (1974) 38 Cal.App.3d 432, 439.) We refer the trial court to Code of Civil Procedure section 377.31.