



LOS COYOTES BAND OF CAHUILLA AND CUPENO INDIANS TRIBAL COURT
INTERTRIBAL COURT OF SOUTHERN CALIFORNIA

LOS COYOTES BAND OF CAHUILLA) Case No.: 2011100301A
AND CUPENO INDIANS,)
Plaintiff,)
vs.) **DECISION**
ERTC, LLC, a Nevada limited)
liability company, Brain)
Bonfiglio, Sean Roach, Jerry)
VanDeWeghe, and Does 1-50)
Defendant)

This matter came before the court on December 19, 2011 as an Eviction Proceeding. The Honorable A.J. Brandenburg, Chief Judge presiding. Plaintiff herein Los Coyotes Band of Cahuilla and Cupeno Indians, a federally recognized Native American Indian Tribe (the Tribe) whose Reservation is located in San Diego County California seeks to evict Defendant Eagle Rock Training Center; LLC (ERTC) from Tribal Land pursuant to a disputed lease agreement.

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1 **HISTORY OF CASE AND BACKGROUND**

2 Prior to this case being argued in the Tribal court it was
3 presented in the United States District Court Southern District of
4 California as Case No.11cv2148-WQH-NLS before the Honorable Court
5 William Q. Hayes, United States District Court Judge. In that
6 proceeding Plaintiff Eagle Rock Training Center (ERTC) sought a
7 Temporary Restraining Order and Order to Show Cause re Preliminary
8 Injunction pursuant to FED.R. Civ. P.65 ("Application for Temporary
9 Restraining Order") (ECF NO.11, in an effort to prevent the tribe
10 from evicting them from the Reservation.
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14 Following argument the court concluded:

15 *"ERTC has failed to demonstrate a*
16 *likelihood of success on the merits of a*
17 *claim that Los Coyotes is bound by the*
18 *lease's waiver of sovereign immunity by*
19 *operation of an equitable doctrine."*
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22 The court went on to say:

23 *"ERTC has failed to show a likelihood*
24 *of success on the merits."*
25
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27 The case has now come before the tribal court as an Eviction
28 Proceeding.

JURISDICTION

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2 While a tribal courts jurisdiction in matters such as the one
3 presently before the court may be argued as limited as a matter of
4 comedy, federal courts:

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6 *"generally decline challenges to tribal*
7 *courts jurisdiction until the tribal*
8 *courts has had a full opportunity to*
9 *rule on its own jurisdiction."*
10

11 Elliot v. White Mountain, D.C. No: CV-05-04240-MHM.

12 Accordingly appellate review of a tribal court decision can
13 generally occur only after a tribal court decision on the merits.

14 One must also keep in mind that while Los Coyotes is a California
15 tribe subject to the particulars of Public Law 280 California
16 tribes were never divested of their civil jurisdiction under PL
17
18 280.

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1 Further there is also:

2 *"a long line of state and federal*
3 *cases concluding tribal court have*
4 *jurisdiction over conduct and business*
5 *activities engaged in by non-Indians*
6 *who enter(ed) consensual relationships*
7 *with tribes or its members, though*
8 *commercial dealings contract leases or*
9 *other arrangements."* Plains Commerce
10 Bank 554 U.S. at 329.
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14 The above coupled with the Tribe's own Law and Order Codes,
15 and Eviction and Exclusive Ordinance clearly present this as a case
16 whose original jurisdiction is in fact the Los Coyotes tribal
17 court. As such the court finds the Los Coyotes Tribal Court has
18 original jurisdiction in this case.
19
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21 **DISCUSSION**

22 While the parties at trial argued a series of issues the court
23 finds once the jurisdictional question, as discussed above, has
24 been satisfied the court must then turn to what it finds the
25 threshold issue to be resolved in this matter and that is: was
26 there in fact a valid lease?
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1 In a review of the document entitled "lease" following a
2 reading of the lease the courts attention is drawn to the final
3 page #19. Here we find following the signature of the Elected
4 Tribal Spokesperson Ms. Francine Kupsch a recital, which reads:
5

6 *"Tribal Stamp and Assembly/Council*
7 *Ratification to be Asserted Below."*
8

9 There is affixed to this document neither a Tribal stamp nor
10 Assembly/Council Ratification. The question then becomes why are
11 these items not present on this document and does their absence
12 invalidate or void the lease?
13

14 Defendant argued they had asked if there was tribal stamp and
15 were told none existed or in fact had ever existed. Respondents
16 then failed to prove or somehow demonstrate to the contrary by
17 producing a stamp or its likeness. The court then must conclude
18 that none in fact exist.
19

20 Plaintiff then argued while the spokesperson Ms. Francine
21 Kupsch had signed the lease on behalf of the tribe it was not a
22 valid lease because it was not approved by the General Council,
23 which consist of all enrolled tribal members who were eligible to
24 vote over the age of majority (18 years of age). Defendants further
25 argued that the approval of the General Council was not a
26 prerequisite to the validity, of the lease. Plaintiff argued to the
27 contrary.
28

1 Regarding the question of the requirement of a vote of the
2 General Council to validate the lease, ERTC failed to present any
3 evidence the lease was ever presented or distributed to the General
4 Council for approval nor could they present any signed resolution
5 approving the lease by the General Council. Instead they argued
6 there had been other instances where contracts and or agreements
7 with outside vendors had been acted upon without General Council
8 approval or a tribal resolution and this same logic and rationale
9 should be applied in this present case therein not requiring
10 General Council approval of the lease.
11

12 ERTC also argued that it was reasonable for them to assume
13 that Ms. Francine Kupsch being both the Tribal Administrator and
14 Spokesperson had the implied authority to sign on behalf of the
15 tribe.
16

17 Petitioners however insisted that custom and tradition alone
18 demanded the approval of the lease by the General Council as well
19 as the fact that their Law and Order Ordinance and their Eviction
20 and Exclusion Ordinance do in fact require General Council
21 approval.
22

23 Examining the contents of the lease one must consider it
24 contains in section 16.16 an irrevocable waiver of the tribes
25 sovereign immunity. It is an expansive waiver which:
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1 "encompasses all suits in law or equity,
2 for damages, injunctive or declaratory
3 relief." and a wavier of "the right to
4 have any dispute, controversy, or any
5 proceeding heard in a tribal forum."
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8 This court took note of the fact that this waiver speak of
9 definition of "Tribe" as being "The Los Coyotes Band of Cahuilla
10 and Cupeno Indians". The very existence of any tribal nation is
11 founded within the concept of Sovereign Immunity. Los Coyotes is no
12 different. Sovereign Immunity is, as well, an inherent and integral
13 part of the makeup of a tribes ability to resolve disputes and
14 conflicts affecting the tribe and those in works with. As domestic
15 dependent nations:
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18 *"tribal ordinances and customs'*
19 *will be given full force and*
20 *effect in determination of*
21 *civil causes of action" 28 USC*
22 *§1360(c).*
23

24 The tribes Eviction and Exclusion Ordinance as passed and
25 approved by a Resolution vote upon and approved by the General
26 Council on June 14, 2009 clearly states in Section #1.
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1 *"According to the Tribes customs*
2 *and traditions the General Council*
3 *possesses the inherent right and*
4 *authority to establish laws to*
5 *govern the conduct of individuals*
6 *within the boundaries of the*
7 *reservation land."*

8
9 This section goes on to state:

10 *"In addition to the Law and Order*
11 *Code, the General Council possesses*
12 *the inherent right and authority to*
13 *establish laws to govern the*
14 *conduct of individuals within the*
15 *boundaries of the reservation*
16 *land."*

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19 In section #2 of The Law and Order Code, Definitions, it
20 states:
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22 *"General Council means the governing*
23 *body of the tribe which consist of*
24 *all members of the tribe eligible to*
25 *vote."*
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1 Ms. Francine Kupsch, during her examination at trial, was
2 somewhat ambiguous when questioned about the fact as to weather she
3 knew a General Council vote required to approve the lease in
4 question or if she knew in fact that a General Council vote had
5 been taken. Yet neither she nor the defendants could produce a
6 tribal resolution or any evidence in support of a General Council
7 vote on the matter. Instead the defendants insisted such a vote was
8 not required and that Ms. Francine Kupsch did in fact have the
9 authority to bind the Tribe to the agreement.
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11 However it should be noted that in the courts in camera review
12 of the audiotapes of the Tribal Council meetings leading up to Ms.
13 Francine Kupsch signing the lease nothing could be found that would
14 show the General Council approved the lease or waived its right to
15 do so.
16

17 Section 2F of the tribes Exclusion and Eviction Code defines
18 spokesperson as:
19

20 *"the person elected by the General*
21 *Council who is authorized to carry*
22 *out the decisions made by the*
23 *General Council."*
24

25 When these ordinances and codes are taken in the context of
26 what authority is given to the elected spokesperson with regard to
27 conducting business on behalf of the tribe it is extremely
28

1 difficult to accept the idea that a lease encompassing 25,000 acres
2 of tribal land does not require a vote and/or resolution of
3 approval of the General Council.

4 Ms. Francine Kupsch or ERTC implying differently flies in the
5 force of not only custom and tradition but existing Codes and
6 Ordinances which do require General Council approval.
7

8 The court also takes notice of the fact that the Eviction and
9 Exclusion Ordinance require a full vote of the General Council for
10 removal. It then stands to reason that the initial approval of the
11 underlying lease would require that same General Council vote.
12

13 14 **CONCLUSION and FINDINGS**

15 The court in this matter finds based upon, the exhibits, oral
16 testimony and other evidence presented there was never a valid
17 lease. Any agreement signed by Ms. Francine Kupsch was void *ab*
18 *initio*. Clearly she did not have the authority either expressed or
19 implied to bind the tribe without an approving vote of the General
20 Council. Additionally and in support of the courts findings Ms.
21 Francine Kupsch did not have the authority to enter into any
22 agreement purporting to waive the Tribes Sovereign Immunity without
23 a vote and supporting resolution of the General Council. Allowing a
24 single person to do so is unheard of in Indian Country and is
25 contrary to the sacred principle.
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1 As to any and all other issues raised at Trial once the
2 underlying lease is declared invalid, as here, they become moot.
3 There is no doubt in the courts mind that ERTC during the entire
4 time of their relationship with the Tribe they had the upper hand.
5 The bargaining positions of the parties completely favored ERTC.
6 Los Coyotes economically is a poor tribe. Coupled with their remote
7 location, high rate of unemployment and lack of economic standing
8 in the Tribal world they are clearly in need. As presented at
9 Tribal meetings and by way of testimony at trial ERTC's promises to
10 the tribe were almost too good to be true, at times grandiose. There
11 is no doubt in the courts mind that during negotiations ERTC had
12 the upper hand. Promises of Hollywood productions, exposure on the
13 Discovery Channel, million dollar greenhouses, military exercises,
14 a new tribal hall, a children's park, automobiles and more were
15 made. It is understandable why lacking the same bargaining
16 position, legal and business acumen Ms. Francine Kupsch did what
17 she did. However her good intentions do not compensate for her
18 actions. As had been stated she did not have the authority to bring
19 the tribe to a lease.
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24 **DAMAGES**

25 As to damages awarded for either side in both law and equity:
26 There will be no award of damages. Admittedly the tribe over the
27 last year has received a nominal amount of compensation from ERTC
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1 for exercises ERTC has held on the reservation. Evidence showed
2 ERTC as well has been paid by their clients.

3 ERTC has 45 days in which to remove all of its equipment and
4 property from the reservation. This shall be done in an orderly
5 fashion without interference from any Los Coyotes Tribal members.
6 ERTC shall make arrangements with the police chief of Los Coyotes
7 for said removal of property. The police chief or his designee
8 shall be present at all times during the removal of ERTC's property
9 and shall keep the peace. The times and dates of the property
10 removal shall be set in advance with Tribal police. Upon entering
11 and leaving the reservation all ERTC's employees so engaged shall
12 check in and out with Tribal police.
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15 Judgment in this matter is for the Plaintiffs the Los Coyotes
16 Band of Cahuilla and Cupeno Indians.
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19 **THE ABOVE IS HEREBY AN ORDER OF THE COURT**

20 Chief Judge of the *Los Coyotes Band of Cahuilla Indians* Tribal Court

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Anthony J. Brandenburg

25 DATED: February 1, 2012

LOS COYOTES TRIBAL COURT
Intertribal Court of Southern California

LOS COYOTES: Los Coyotes Band of Cahuilla and Cupeno Indians v. ERTC, LLC

PROOF OF SERVICE

RINCON INDIAN RESERVATION, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of eighteen years and not a party to the within action, my business address is 49002 Golsh Road, Rincon Reservation, CA 92082.

On February 2, 2012, I served the following document(s) described as:

- **Decision**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes

Respondents

McKenna Long and Aldridge LLP

Christian Humphreys

Jae. K. Park

4435 Eastgate Mall, Suite 400

San Diego, CA 92121

Petitioner

Mark Radoff, Esq.

609 S. Escondido, CA 92025

Escondido, CA 92025

BY MAIL: I am readily familiar with the Court'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 San Diego, California in the ordinary course of business pursuant to Intertribal Court of Southern California Rules of Court and Code of Civil Procedure Section 2, 1.2.07, Service Methods 2, 3, 4. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date of postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FACSIMILE: I served said document(s) to be transmitted by facsimile pursuant to Intertribal Court of Southern California Rules of Court and Code of Civil Procedure. The telephone number of the sending facsimile machine was (760) 751-3078. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.

BY PERSONAL SERVICE: I hand-delivered said document(s) to the addressee(s) pursuant to Intertribal Court of Southern Rules of Court and Code of Civil Procedure Section 2, 1.2.06, name of person as follows:

BY OVERNIGHT DELIVERY: I caused said document(s) to be deposited in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Intertribal Court of Southern California Rules of Court and Code of Civil Procedure Section 2, 1.2.07, Service Methods, 2, 5.

BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed.

Executed on February 2, 2012, at Rincon Indian Reservation, California. I declare under penalty of perjury under Tribal Law of the Rincon Band of Luiseno Indian Reservation that the foregoing is true and correct.



Rachel Roberts, Clerk of Court
Intertribal Court of Southern California