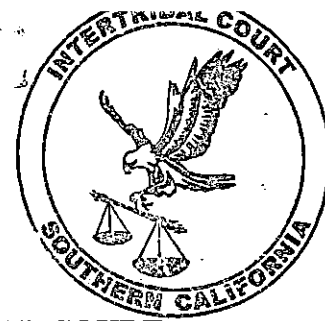
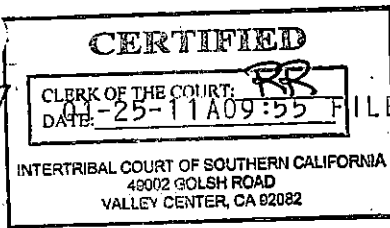


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RINCON BAND OF LUISENO INDIANS TRIBAL COURT

Intertribal Court of Southern California

JOYCE DOUGLAS

Plaintiff,

vs.

HARRAH'S RINCON CASINO & RESORT,
HCAL, LLC,

Respondents

Case No. RINCON-02432009

FINDINGS AND ORDER
AFTER HEARING

This matter came regularly before the Inter Tribal Court of Southern California in and for the Rincon Band of Luiseno Indians on January 12, 2011, the Honorable John L. Madigan, Judge presiding. Jurisdiction had been properly established pursuant to the Patron Tort Claim Ordinance of the Rincon Band of Luiseno Indians as well as the Rules of Court and Code of Civil Procedure of the Inter Tribal Court of Southern California. A patron tort claim was filed by Plaintiff Joyce Douglas.

1. FACTUAL BACKGROUND

On December 24, 2008, the complainant Joyce Douglas filed a claim seeking damages in the amount of \$432,2417.60. The

1 complaint for negligence and damages was then filed on November
2 5, 2009 with damages alleged "according to proof at trial"
3 against the Rincon Band of Luiseno Indians and its tribal casino
4 gaming enterprise Harrah's Rincon Casino and resort for injuries
5 suffered on September 21, 2008 during plaintiff's visit to
6 Harrah's casino. The complainant "slipped and fell" as the
7 result of alleged negligence causing a "dangerous condition", as
8 well as premise liability on part of the Defendant. The trial
9 was bifurcated between liability and damages. Representing the
10 Plaintiff Joyce Douglas was Lawrence S. Eisenberg, Attorney at
11 Law. Representing the Defendants Rincon et al. was Ronald R.
12 Giusso, Attorney at Law.

13 II. STANDARD OF REVIEW

14 In this matter the Plaintiff had the burden of proof
15 based on the standard of "clear and convincing" evidence per the
16 ICSC Rules of Court and the Rincon Tort Claims Ordinance. The
17 Plaintiff had to prove to the Court with credible and admissible
18 evidence that the condition of the roped off walk way, in front
19 of the buffet table, constituted a foreseeable dangerous
20 condition, in which negligent actions by the defendants caused
21 injuries and damage to Plaintiff Douglas.

22 III. DISCUSSION

23 On September 21, 2008 between the hours of 2:15 p.m. and
24 2:45 p.m. (approximately), Mrs. Joyce Douglas and her friend
25 Christy Warner were at the Grand Opening of the Sports Pit Bar

1 and Grill, within Harrah's Casino. Mrs. Douglas walked over to
2 the buffet table and spoke with a waiter standing at/near the
3 buffet table. Testimony was given by Christy Warner and
4 Plaintiff Joyce Douglas that Mrs. Douglas talked momentarily to
5 the waiter about the "salsa" that had been served and whether it
6 was available to be purchased by customers of the casino. There
7 was disputing testimony as to where the waiter was standing.
8 Testimony and an e-mail was offered by Agatha Maher, an former
9 employee of Harrah's Casino, disputing where the Plaintiff Joyce
10 Douglas had walked to talk to the waiter. The first dispute in
11 the testimony was whether Joyce Douglas walked around the buffet
12 table to talk to the waiter or whether the two held their
13 discussion in front of the table. Testimony was given by Mrs.
14 Douglas and Ms. Warner that when the Plaintiff walked by the
15 right front corner of the table, she stumbled and fell to the
16 ground. Witness Christy Warner testified she saw a black speaker
17 wire looped out from under the table. Plaintiff Joyce Douglas
18 testified that she did not see the speaker wire, but felt
19 something catch between her left foot (toes) and her sandal,
20 causing her to trip and fall. As the Plaintiff fell, the
21 speaker, located to the side of the table and it's standard,
22 fell behind her to the floor.

23 There was testimony by employee Fabian Alfaro, that he set
24 up the public address system to be used by promotional employees
25 at the Grand Opening. Witness Alfaro, who has approximately

1 twenty years in the profession, testified that he placed the
2 speaker standard, and speaker, out of the way of the visiting
3 attendees. He testified he taped the speaker wire to the
4 baseboard/wall and to the floor carpet behind the buffet tables,
5 again, out of the way of attendees. He testified as to where he
6 placed the amplifier, which was against the back wall. He also
7 testified to the length of the speaker cord used to connect the
8 amplifier to the speaker and that he wrapped any excess cord
9 around the speaker standard. He testified that he saw no speaker
10 wire in the area of the buffet table when he was summoned after
11 the fall of Mrs. Douglas. He also testified that no one asked
12 him to re-tape any speaker wire after the fall of Mrs. Douglas.
13 There was no testimony or evidence given to this court as to how
14 the speaker wire ended up several feet over to the area where
15 Plaintiff Douglas fell.

16
17 IV. CONCLUSION

18 The trial to determine liability was heard on January 12
19 and 13, 2011. The court heard from four witnesses and was
20 allowed to conduct examination and review of all the evidence
21 and testimony submitted in this matter.

22 The Court must begin with the measure of the burden of
23 proof in this matter. Plaintiff Joyce Douglas, bringing this
24 action, has the burden of proving every element of her claim
25 pursuant to the Patron Tort Claims Ordinance. The Court did not

1 find evidence of such a convincing force, in contrast to the
2 opposing evidence, a high probability of truth to the facts for
3 which was offered by the plaintiff, to the court as proof.
4 "Clear and Convincing Proof" means proof by the evidence that
5 is: Clear, Explicit and Unequivocal. So clear, as to leave no
6 substantial doubt. The testimony of witnesses and the evidence
7 presented, left substantial doubt with the Court. The pertinent
8 authority of the Patron Claims Ordinance requires an
9 unreasonable risk to human health or safety must be "known" to
10 exist or in the exercise of reasonable care "should have been
11 known" to exist. No evidence was presented that demonstrated
12 knowledge or foreseeable knowledge of the risk of harm. It was
13 not established that a dangerous condition should have been
14 known to exist, or that it existed for such a period of time and
15 that it was such a nature, that in the exercise of reasonable
16 care, such a condition and its dangerous character should have
17 been discovered. Evidence was presented that there were numerous
18 attendees to this event area and that there were several
19 employees in attendance. The establishment was not given notice
20 of any dangerous condition. The condition alleged seemed to be
21 of such character that someone should have seen it, reported it,
22 or that it existed for such a period of time that it would have
23 been reported or seen. There were no other trips or falls in
24 that area prior to the Plaintiff falling.

25

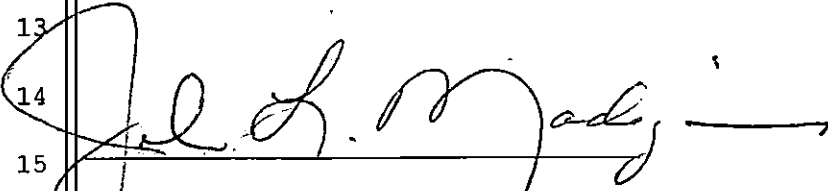
1 Plaintiff's Counsel argued the "special tort doctrine" of
2 "Res Ipsa Loquitur". Unfortunately, the facts of this case do
3 not reach the legal mark of the doctrine. The Res Ipsa doctrine
4 lies where: 1. The accident or incident does not happen unless
5 someone is negligent, 2. That it was caused by an agency or
6 instrument in the exclusive control of the defendant and was not
7 mishandled or it's condition changed after the defendant-
8 relinquished control, 3. That the accident or incident was not
9 due to any voluntary action or contribution on the part of the
10 plaintiff which was the responsible cause of plaintiff injury.
11 There must be all three requirements to meet the Res Ipsa
12 doctrine. There was no evidence or witness testimony that
13 satisfied the third requirement. There was disputed testimony
14 that the plaintiff was behind the table talking with the waiter,
15 which then put her closer to one of the legs of the tripod of
16 the speaker and /or closer to the speaker wire. Counsel argued
17 that the falling of the speaker was that kind of action, which
18 ordinarily does not happen unless someone is negligent, in which
19 the speaker wire was attached causing the speaker to fall. The
20 problem with this argument is that the speaker did not harm the
21 plaintiff; her fall and contact with the floor injured the
22 plaintiff. Therefore, this argument fails.

23 Accordingly, it is therefore ordered that the Defendants
24 are not to be found liable for any damages as alleged by the
25 Plaintiff in this matter. It is further ordered that all claims

1 related to this matter against the Rincon Band of Luiseno
2 Indians and its tribal casino gaming enterprise Harrah's Rincon
3 Casino and Resort be dismissed with prejudice.

4
5
6 **IT IS SO ORDERED:**

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9
10
11 **Dated this 25 Day of January, 2011**

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14  →
15
16 **John L. Madigan, Judge of the**
17 **Intertribal Court of Southern California**