

COPY



**INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
COURT OF APPEAL**

MARIA GALVAN,

Plaintiff and Respondent,

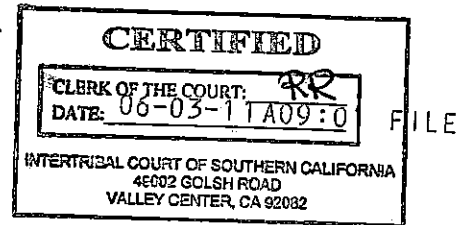
v.

**RINCON BAND OF LUISENO
INDIANS; HARRAH'S RINCON
CASINO & RESORT; HCAL, LLC,**

Defendants and Appellant.

Case No. Rincon 00522008

OPINION



RINCON BAND OF LUISENO INDIANS; HARRAH'S RINCON CASINO & RESORT; HCAL, LLC ("RINCON") petitions for relief after the trial court allowed Plaintiff to amend her complaint, to include a cause of action for negligent hiring, but did not require Plaintiff to draft, file, and serve on Defendants any such amended complaint. Defendants were consequently denied the opportunity to procedurally challenge the amended pleadings and denied the ability to conduct a proper defense to the newly alleged cause of action. We therefore conclude the trial court abused its discretion and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

This case concerns an injury sustained by Plaintiff when she tripped over a microwave oven, which had been placed on the floor and against the wall of the interior hallway at the Harrah's Rincon Casino and Resort (the "Hotel"). The microwave was not placed there by any hotel employee. Plaintiff alleges that she was not looking where she was walking, as she passed by a maid's cart parked across from the microwave, and then tripped over the microwave oven.

During plaintiff's case in chief, Plaintiff's attorney began arguing a cause of action not previously plead — "negligent training" of the guestroom attendant who had purportedly parked the maid's cart across from the microwave. Plaintiff claimed that even if the guestroom attendant did everything she was supposed to do, in the exact manner she was trained and was not negligent, the Hotel would still be liable for Plaintiff's fall based on a theory of "negligent training." At the close of Plaintiffs case in chief, Plaintiff moved to amend her complaint to include a claim for "negligent training."

The Trial Court granted Plaintiffs motion to amend, but did not require Plaintiff to file an amended pleading. Defendants claim the Trial Court's action prevented them from properly responding to an amended complaint and prevented them from properly preparing a defense to this new cause of action. Defendants petitioned this Court to appeal the Trial Court's ruling.

After the petition for review was granted, both plaintiff and defendant timely submitted their briefs in support of their respective positions. Regrettably, due to

personnel changes at the Intertribal Court of Southern California, this case was inadvertently archived. It is only until recently the Court's error has been discovered so that the Appellate Judges could meet and review this appeal. After thorough review of the records now before the Court the Appellate Judges find as follows:

DISCUSSION

The trial court has discretion to allow amendments to the pleadings in the furtherance of justice. This discretion should be exercised liberally in favor of amendments, and the Intertribal Court of Southern California has a policy which favors resolution of all disputed matters in the same lawsuit.

Plaintiff introduced a novel theory at trial, ostensibly, after hearing testimony from the guestroom attendant at trial. Plaintiff argues that negligent training may be the basis upon which relief should be granted instead of garden variety negligence.

Plaintiff maintains her amendment does not formally include a separate cause of action for negligent hiring. Plaintiff claims the amendment only seeks to conform her pleading to more accurately represent the facts presented at trial. This legal wrangling appears to smack of an "end-around" the full amendment procedure but cannot stand. Once the Trial Court granted the motion to amend, the nuance of whether or not the amendment specifically stated a new separate cause of action for negligent hiring is of little consequence, the fact remains; the theory is now on the table.

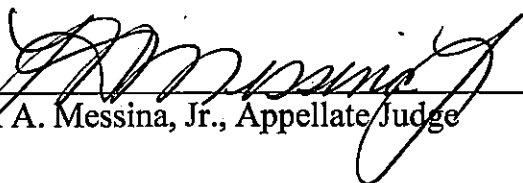
When the Trial Court allows the complaint to be amended, procedural due process must follow. A copy of the amended complaint shall be filed, and a copy of

amended complaint must be served upon the defendants affected thereby. Once served, the defendant shall answer the complaint as amended, within 30 days after service thereof, or such other time as the court may direct, and judgment by default may be entered upon failure to answer, as in other cases.

Additionally, once filed, an amended pleading making substantive changes supersedes the original. Here, a substantive change was made since the new cause of action, "negligent training", is based on a different legal theory. The new pleading constitutes an abandonment of the issues raised by the original pleading, and therefore a new round of pleadings is required: The amended pleading is subject to the same pleadings challenges (demurrer, motion to strike) as the original. And, the opposing party has the same opportunity to respond to the amended pleading as to the original.

DISPOSITION

This cause is remanded for further proceedings consistent with the views expressed herein.



John A. Messina, Jr., Appellate Judge

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WE CONCUR:

Anthony J. Brandenburg

Anthony Brandenburg, Appellate Judge

John Madigan

John Madigan, Appellate Judge