FILED
October 14, 2022
By the Clerk of the Court

RAC No. AP-0001-21

IN THE COURT OF APPEALS
FOR THE RINCON BAND OF LUISEÑO INDIANS

FAYE HEBBLETHWAITE,
Plaintiff-Appellee,

v.
FOR THE RINCON BAND OF LUISEÑO INDIANS
Defendant-Appellant.

On Appeal from the Intertribal Court of Southern Californis
Civil Action No. CVR-2019-003-TO
Honorable Gregory Thompson

AWARD

This appeal is from an order of the Intertribal Court of Southern California (ICSC). We have jurisdiction over appeals from that court under the provisions of the Rincon Tribal Ordinances. (See RTO §3.803(c) and §3.804(b) wherein jurisdiction is granted over appeals from the ICSC and the amount in controversy is over $75000. The ICSC denied appellant's motion for summary judgment. Appellant appeals that denial. We REVERSE the order of the ICSC, grant appellant's motion for summary judgment, and DISMISS the case.

This case arises out of an incident at The Rincon Casino during which appellee alleged that she was injured by a promotional spinning wheel in use at one of the gaming tables. The allegations in the complaint included a claim that the Casino was liable for a dangerous condition on its property because it "owned, operated, and controlled" a gaming wheel that dislodged and injured the plaintiff and that "the Casino had a duty to inspect, maintain, and/or repair the gaming wheel…..". (ER-78). The Rincon Band responded with a motion for summary judgment based, in part, on their claim that the tribe is entitled to sovereign immunity and that the applicable Rincon ordinances do not waive sovereign immunity in a products liability case. A motion for summary judgment is immediately appealable 28 U.S.C. §1291 and a series of cases applying the

collateral order doctrine. See *Burlington Northern & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085 (9th Cir.2007).

The ICSC order makes clear that the trial judge considered the products liability claim, but did not grant the motion for summary judgment on sovereign immunity grounds. See ER-6:19-22. The trial court apparently did not consider or failed to apply the products liability exclusion from the Patron Tort Ordinance RTC §6110 et. seq. (PTO). The PTO clearly excludes "Claims against the Tribe or Gaming Operation based on any theory of Products Liability". The allegations in appellee's original complaint in this matter are clearly based in theories of Products Liability and therefore fit squarely into the explicit exclusion of the PTO.

This panel on appeal is in the unusual position of deciding a case based on the appellant's briefing alone. Despite several inquiries and an order to show cause why no response brief was filed by appellee, appellee has failed to file briefs or any responses to the order to show cause and the inquiries about the appeal. Appellant has filed timely briefs and responses. We note that it is the duty of counsel in any matter before any court to, at a minimum, respond timely to orders of the court. Appellant here points out that no such responses have been forthcoming despite the efforts of this panel and of the court officials of the Rincon Court of Appeals. Therefore, upon the motion of the appellant, we decide this appeal on the basis of the Appellant's brief alone. The Appellant has adequately briefed the case and fully informed this Court with respect to the facts and legal issues in the appeal such that this panel can make its independent determination.

We hold, therefore, that under the explicit terms of the PTO and its limited waiver of sovereign immunity and, considering the allegations in the complaint in this matter, that appellant is entitled to sovereign immunity in this products liability matter. The motion for summary judgment should have been granted in the trial court. We REVERSE the order of the trial court, grant the motion for summary judgment, and DISMISS the case.

Dated: October 14, 2022

/s/ Raul A. Ramirez
Hon. Raul A. Ramirez, Chief Justice

/s/ Angela Riley
Hon. Angela Riley

/s/ Deanell Reece Tacha
Hon. Deanell Reece Tacha