

## Sovereign Immunity Barred Quiet Title Suit Against Indian Tribe

The First Appellate District held that tribal sovereign immunity bars a quiet title action to establish a public easement for coastal access on property owned by an Indian tribe. *Self v. Cher-Ae Heights Indian Community*, 60 Cal. App. 5th 209 (2021). The Cher-Ae Heights Indian Community of the Trinidad Rancheria is a federally recognized Indian tribe in Humboldt County, California. The Tribe purchased coastal property in fee simple



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The Tribe

moved to dismiss the quiet title action for lack of subject matter jurisdiction on the basis of sovereign immunity. An Indian tribe is immune to suit in the absence of waiver or congressional abrogation of a tribe's immunity, neither of which applied in this case. Plaintiffs instead asked the court to recognize a common law exception to sovereign immunity on the theory that, under common law, sovereigns such as states and foreign governments were not immune to property disputes under a so-called "immovable property exception." The court acknowledged that states and foreign sovereigns are not immune to suits regarding real property located outside of their territorial boundaries. It was not persuaded, however, that a common law exception extends to tribes, or that the court should depart from the standard practice of deferring to Congress to determine limits on tribal sovereign immunity. For one, the immunity possessed by tribes is not coextensive with that of states. The Supreme Court has held that when one state purchases property in another, it becomes subject to that state's laws

pertaining to the property, with the transaction viewed as a private undertaking, not a sovereign one. But the same principle does not apply to a tribe -- unlike with states, the Supreme Court has not limited tribal immunity to traditional sovereign activities as distinct from private commercial ventures. Among other rationales for its holding, the court observed that tribal land acquisition is a key feature of modern federal Indian policy, and distinguishable from state or federal land acquisition. The court also noted that the facts of this case were simply a "poor vehicle for extending the immovable property rule to tribes." Plaintiffs claimed neither an ownership interest in the property nor injury, but instead sought to quiet title to an easement based merely on a concern the Tribe might interfere with their access at some point in the future. This concern was speculative in light of assurances the Tribe had given the state that it would preserve coastal access.

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