

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GRINDSTONE INDIAN RANCHERIA, and )  
ONE HUNDRED PLUS MEN, WOMEN AND )  
CHILDREN LIVING ON GRINDSTONE )  
INDIAN RESERVATION, )

Plaintiffs, )

v. )

TERRENCE OLLIFF, INDIVIDUALLY )  
AND AS A BENEFICIARY/TRUSTEE OF )  
THE OLLIFF FAMILY TRUST, DIANE )  
L. OLLIFF, INDIVIDUALLY AND AS A )  
BENEFICIARY/TRUSTEE OF THE )  
OLLIFF FAMILY TRUST, AND DOES 1- )  
10, )

Defendants. )

AND RELATED COUNTERCLAIM. )

No. 2:17-cv-2292-JAM-EFB

ORDER GRANTING MOTION TO  
DISMISS COUNTERCLAIM

This case concerns adjacent properties, a boundary dispute,  
and quarreling neighbors. Grindstone Indian Rancheria and its  
tribal membership sued Terrence and Diane L. Olliff, individually  
and as trustees of the Olliff Family Trust, over their deteriorated  
relationship and property line disagreement. ECF Nos. 1, 10-2.  
Also dissatisfied with the state of things, the Olliffs filed a  
counterclaim against Grindstone Indian Rancheria. ECF No. 15.

1 Grindstone moves to dismiss the counterclaim. ECF No. 16. For the  
2 reasons set forth below, Grindstone's motion to dismiss is  
3 granted.<sup>1</sup>

4  
5 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

6 The following facts are taken as true for the purposes of this  
7 motion:

8 Counter-Defendant Grindstone Indian Rancheria ("Grindstone")  
9 is a federally-recognized Indian Tribe. 81 Fed. Reg. 5019-02, 2016  
10 WL 337698; First Amended Complaint ("FAC") ¶ 4; Answer ¶ 1;  
11 Counterclaim ("CC") ¶ 2. Counter Claimants Terrence Olliff and  
12 Dianne L. Olliff (the "Olliffs"), as Trustees of the Olliff Family  
13 Trust, own approximately 15 acres of agricultural land and a family  
14 residence ("Olliff Parcel"), located at 3580 County Road 305 in  
15 Orland, California. CC ¶ 3. They acquired this parcel of land in  
16 1977. CC ¶ 4. The Bureau of Indian Affairs owns an 80-acre parcel  
17 ("Indian Reservation Parcel") located southeast of the Olliff  
18 Parcel. CC ¶ 5. Grindstone acquired title to a 20.03-acre  
19 property to the east of the Olliff Parcel and just north of the  
20 Indian Reservation Parcel (the "Rancheria Parcel") in 1993, on which  
21 Grindstone developed housing for its members. CC ¶¶ 6, 13  
22 (diagram). Grindstone obtained title to the Rancheria Parcel with  
23 knowledge of a recorded public survey by George Pride ("Pride  
24 Survey") that clearly shows the corner markers of the Olliff  
25 Parcel. CC ¶ 7. In 2011, the Bureau of Land Management surveyed  
26 the Indian Reservation Parcel and Rancheria Parcel and noted a

27  
28 <sup>1</sup> This motion was determined to be suitable for decision without  
oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled  
for June 19, 2018.

1 small overlap between the northwest corner of the Indian  
2 Reservation Parcel and the southeast corner of the Olliff Parcel.  
3 CC ¶ 8. The Olliffs did not object to the survey results or the  
4 determination that this corner is part of the Indian Reservation  
5 Parcel. CC ¶ 9. However, the BLM Survey shows that, apart from  
6 this small corner, the eastern property line of the Olliff Parcel  
7 is consistent with the Pride Survey. CC ¶ 8. Thus, the western  
8 side of the Rancheria Parcel ends at the Olliff Parcel's eastern  
9 property line as determined by the Pride Survey. CC ¶ 8. The  
10 western boundary of the Rancheria Parcel does not extend into the  
11 Olliff Parcel as does the western boundary of the Indian  
12 Reservation Parcel; if it did, the Olliffs would lose approximately  
13 43,500 square feet of their property to Grindstone. CC ¶¶ 8, 10.  
14 Grindstone maintains that the Rancheria Parcel does extend so far  
15 and that this land belongs to them. CC ¶ 10. The Olliffs state  
16 the BLM survey does not show this disputed area belongs to the  
17 Rancheria Parcel. CC ¶ 11.

18 In 2013, Grindstone constructed a dirt embankment with a  
19 sloped edge on the west side of the Rancheria Parcel, sloping down  
20 into the Olliff Parcel and toward the Olliff residence. CC ¶ 15.  
21 The embankment causes storm water to run onto the Olliff Parcel, an  
22 effect the Olliffs contend was intentional. CC ¶¶ 15, 16. In the  
23 last three years, Grindstone "has directed, acquiesced to, and/or  
24 failed to supervise and control some of its members and agents such  
25 that they have come onto the Olliff Parcel with vehicles and  
26 equipment, removed fences from the Olliff Parcel, and placed or  
27 created conditions to deposit dirt and boulders on the Olliff  
28 Parcel, without the permission or consent of [the Olliffs]." CC

1 ¶ 17. Also, Grindstone members and agents have engaged in hostile  
2 behavior toward the Olliffs, which deters and disrupts their use  
3 and quiet enjoyment of their property. CC ¶ 18.

4 Grindstone and its membership filed their Complaint against  
5 the Olliffs on October 31, 2017, ECF No. 1, and their First  
6 Amendment Complaint on March 8, 2018, ECF No. 10-2, 11. Grindstone  
7 contends that Terrence Olliff has embarked "on a pattern of  
8 domestic terrorism towards [Grindstone] and its membership" related  
9 to the disputed land boundaries described above. FAC ¶¶ 7-9.

10 Grindstone seeks damages for willful trespass, negligent trespass,  
11 conversion, intentional infliction of emotional distress, and  
12 negligent infliction of emotional distress. FAC at 4-11. It also  
13 seeks an injunction compelling the Olliffs to remove the  
14 encroachments, cease trespassing on and obstructing any property  
15 rights, and cease other intimidating behavior. FAC at 10-11.  
16 Finally, it seeks a declaratory judgment that the property markers  
17 as identified by the BLM survey are the correct markers for  
18 identifying the boundaries of the Rancheria Parcel. FAC ¶¶ 38-40.

19 The Olliffs filed an Answer and Counterclaim on March 16,  
20 2018, which asserted claims against Grindstone for trespass, quiet  
21 title-adverse possession, quiet title-establishment of prescriptive  
22 easements, and declaratory relief. ECF No. 12. By stipulation,  
23 they filed an Amended Answer and Counterclaim, dropping three of  
24 the claims and asserting only the claim for trespass. ECF No. 15.  
25 Grindstone now moves to dismiss this counterclaim.

26 ///

27 ///

28 ///

1 II. OPINION

2 Grindstone Indian Rancheria, "as an Indian tribe, possesses  
3 'the common-law immunity from suit traditionally enjoyed by  
4 sovereign powers.'" Imperial Granite Co. v. Pala Band of Mission  
5 Indians, 940 F.2d 1269, 1271 (9th Cir. 1991) (quoting Santa Clara  
6 Pueblo v. Martinez, 436 U.S. 49, 58 (1978)). Tribes are shielded  
7 from suits for money damages, declaratory relief, and injunctive  
8 relief. Quinault Indian Nation v. Pearson for Estate of Comenout,  
9 868 F.3d 1093, 1096 (9th Cir. 2017).

10 A tribe's immunity may only be limited by express waiver or an  
11 act of Congress. See Santa Clara Pueblo, 436 U.S. at 56; Quinault  
12 Indian Nation, 868 F.3d at 1097. It "is not defeated by an  
13 allegation that [the tribe] acted beyond its powers." Imperial  
14 Granite, 940 F.2d at 1271. Further, "a tribe does not waive its  
15 sovereign immunity from actions that could not otherwise be brought  
16 against it merely because those actions were pleaded in a  
17 counterclaim to an action filed by the tribe." Oklahoma Tax Comm'n  
18 v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505,  
19 509 (1991). This rule applies to compulsory counterclaims. Id.

20 Grindstone argues that this Court is without jurisdiction to  
21 entertain the Olliffs' counterclaim due to Grindstone's tribal  
22 sovereign immunity. MTD at 8-9. The Olliffs fail to rebut  
23 Grindstone's argument. They argue that Grindstone "has not cited  
24 to any authority which supports the proposition that where an  
25 Indian Tribe is alleged to have interfered with or otherwise  
26 violated the property rights of one who owns property outside of  
27 tribal lands, the landowner is barred from suing the Indian Tribe  
28 on the basis of sovereign immunity." Opp'n at 9. But the Olliffs

1 fail to cite any authority holding that the contrary proposition is  
2 valid, namely, that a tribe is not immune from suit where the tribe  
3 allegedly violates an outsider's property rights. In light of  
4 clear precedent holding that tribal sovereign immunity bars suits  
5 for damages—the relief sought here—the burden falls on the Olliffs  
6 to demonstrate that their claim is an exception to the rule. They  
7 have not done so.

8 The Olliffs seek to derive their preferred rule from Imperial  
9 Granite Co. v. Pala Band of Mission Indians, but that decision  
10 supports dismissal of the Olliffs' counterclaim. 940 F.2d 1269  
11 (9th Cir. 1991). In that case, Imperial Granite Co. sued a tribe,  
12 certain officers, and the tribe's members for their decision to  
13 deny the company access to a road that crossed a portion of the  
14 tribe's reservation. Id. at 1270-71. The Ninth Circuit affirmed  
15 the district court's determination that the tribe was immune from  
16 suit. Id. at 1271. This holding supports dismissal of the  
17 Olliffs' claim against Grindstone here. The Circuit then  
18 considered whether the company could maintain its suit against the  
19 tribal officials. Id. It held that because the officials acted  
20 within the scope of their authority when they voted against  
21 Imperial Granite Co.'s use of the road on tribal property, they  
22 were also immune from suit. Id. at 1271-72.

23 The Olliffs ask the Court to construe the allegations against  
24 Grindstone as allegations against Grindstone's officials. Opp'n at  
25 8-9. The Court is constrained, however, to evaluate the  
26 counterclaim as alleged. The Olliffs only assert the counterclaim  
27 against Grindstone Indian Rancheria, a federally recognized tribe,  
28 and not against any individual officials. Their unalleged theory

1 of the case cannot save their claim from dismissal.

2 Precedent dictates that Grindstone Indian Rancheria enjoys  
3 immunity from suit and the Olliffs have not offered any legal basis  
4 for this Court to find otherwise. The Olliffs' counterclaim is  
5 dismissed for lack of jurisdiction.<sup>2</sup>

6 District courts should grant leave to amend the allegations of  
7 a complaint unless it determines such amendment would be futile.  
8 See Cook, Perkiss & Liehe, Inc. v. N. California Collection Serv.  
9 Inc., 911 F.2d 242, 247 (9th Cir. 1990). The Olliffs have  
10 requested leave to amend their counterclaim and the Court finds  
11 that such amendment would not be futile. The Court therefore  
12 grants the Olliffs leave to amend their counterclaim.

13  
14 III. ORDER

15 For the reasons set forth above, the Court GRANTS Counter-  
16 Defendant's Motion to Dismiss, with leave to amend. The Olliffs'  
17 amended counterclaim shall be filed within twenty days of the date  
18 of this Order. Grindstone's responsive pleading shall be filed  
19 twenty days thereafter.

20 IT IS SO ORDERED.

21 Dated: July 16, 2018

22  
23   
24 JOHN A. MENDEZ,  
25 UNITED STATES DISTRICT JUDGE

26 \_\_\_\_\_  
27 <sup>2</sup> Because the Court finds dismissal warranted due to sovereign  
28 immunity, the Court does not address Grindstone's arguments that  
the Olliffs failed to exhaust their administrative remedies and  
failed to join the United States as a necessary party. Grindstone  
raised this latter point for the first time in their Reply brief.  
Reply, ECF No. 19, at 5.