

CHEYENNE RIVER SIOUX TRIBAL COURT
CHEYENNE RIVER SIOUX TRIBE
CHEYENNE RIVER INDIAN RESERVATION

IN CIVIL COURT

LONG FAMILY LAND AND CATTLE
COMPANY, INC.-RONNIE AND LILA LONG,

Plaintiffs,

AMENDED COMPLAINT

vs.

EDWARD AND MARY MACIEJEWSKI
and RALPH H. AND NORMA J. PSICKA,
and THE BANK OF HOVEN,

R-120-99

Defendants.

COME NOW Long Family Land and Cattle Company, Inc. (hereinafter referred to as the Company) and Ronnie and Lila Long, through their attorney, James P. Hurley, and for their Amended Complaint state and allege as follows:

I

JURISDICTION

This Court has jurisdiction over the parties and the subject matter involved in this case.

II

FACTUAL ALLEGATIONS

1. Kenneth Long owned approximately 2,225 acres of deeded agricultural land located within the Cheyenne River Sioux Tribe (hereinafter CRST) Indian Reservation. Kenneth Long owned the land since 1958.
2. Kenneth Long is the father of Ronnie Long, Robert Long, Terry Long, and Myrna Fiddler.
3. The Company was formed with Kenneth and Maxine Long (Ronnie Long's mother and father) and Ronnie and Lila Long (husband and wife) as stockholders. The Company was formed to qualify for Bureau of Indian Affairs guaranteed loans from area banks. Maxine Long, Ronnie Long, and Lila Long are enrolled members of the CRST, and they have always



owned over 50% of the Company. Thus, the Company has always been an Indian controlled corporation because CRST enrolled members have always owned over 50% of the Company. Maxine Long died in 1992. After her death Ronnie and Lila Long inherited some of her shares, and they then owned over 50% of the Company, and it continued to be an Indian controlled corporation entitled to BIA guaranteed bank loans.

4. Kenneth Long mortgaged his 2,225 acres of land to the Bank of Hoven as collateral for the obligations of the Company to the Bank of Hoven.

5. Bank of Hoven loaned money to the Company. Several of the Bank of Hoven loans to the Company are guaranteed by the Bureau of Indian Affairs (hereinafter BIA). The Bank of Hoven took liens on the cattle, horses, machinery, feed, and grain of the Company, as well as a mortgage on Kenneth Long's land.

6. Kenneth Long died July 17, 1995. In his will, Kenneth Long bequeathed his 2,225 acres of land and his stock in the Company to his four children. In December of 1995, three of the children transferred their interest in Kenneth Long's land and shares in the Company to Ronnie Long. Thus, as of December of 1995, under Kenneth Long's will Ronnie Long owned the 2,225 acres of land, subject to the mortgage and debt owed to the Bank of Hoven, and the 49% of the Company stock that was owned by his father, Kenneth Long. Paulette Long, an enrolled member of the CRST, Kenneth Long's second wife and personal representative of the estate of Kenneth Long, signed a Personal Representative's Deed transferring the 2,225 acres of land to the Bank of Hoven without the written authorization of Ronnie Long to do so.

7. In the spring of 1996, employees of the Bank of Hoven came to the Long land on the CRST reservation, and inspected the 2,225 acres and the cattle and machinery on the land. The Bank of Hoven proposed an agreement to Ronnie and Lila Long. The Bank of Hoven discussed the terms of the bank's proposed agreement. Discussions about the proposed agreement also took place with Bank of Hoven officers at the Planning Office of the CRST on the CRST reservation. The Bank of Hoven represented to the Longs that the Company was insolvent because the debt owed to the bank exceeded the value of all assets that were subject to the liens and mortgages of the bank. A proposed agreement was discussed between Bank of Hoven, Ronnie and Lila Long, and the Company. The proposed agreement involved several points: (a) the 2,225 acres of land would be deeded to the Bank of Hoven, and the bank would

credit against and satisfy debt owed by the Company and Ronnie and Lila Long to the bank in the sum of \$478,000; (b) the Longs would lease with option to purchase back their 2,225 acres of land from the bank for a period of two years, and at the end of the two years they would buy back their land from the bank for \$478,000, minus certain credits for the house proceeds and the CRP payments. There was a Conservation Reserve Program (CRP) contract in Kenneth Long's name bequeathed under his will to Ronnie Long on 1,281 acres of the 2,225 acres. CRP held a first mortgage on such 1,281 acres. Under this CRP contract, the United States Government paid \$34.50 per acre for a total CRP payment of approximately \$44,198 per year. Under the agreement, the Company received \$44,198 per year CRP payment that the company assigned to Bank of Hoven, which was counted as "rent" for the two year agreement period. At the end of two years, the two CRP payments received by the Bank of Hoven as "rent" of \$88,396, minus interest at 8.5% for two years, was to be credited to reduce the option purchase price. The agreement also provided the proceeds from the sale of Kenneth Long's house would be applied to reduce the option purchase price for the house. The house sold for \$30,000, and the net balance was to be deducted from the lease purchase option of the 2,225 acres of land; (c) Bank of Hoven agreed to request that BIA increase the BIA guarantee from 84% to 90 %, and reschedule note #98181 over 20 years with an annual payment; (d) Bank of Hoven would request a BIA guarantee on a new operating loan of \$70,000; (e) Bank of Hoven would make a new loan of \$53,000 to pay off note #98809 of \$17,000, with the balance of \$37,500 to be used to purchase 110 replacement heifers to be fed and pastured with the Longs' cattle; and (f) Bank of Hoven would enter into a lease purchase agreement which would provide that the Longs could buy back their 2,225 acres of land.

8. A written agreement was prepared by the bank in two documents entitled (1) Loan agreement between Long Family Land and Cattle Co. Inc. and the Bank of Hoven, and (2) Lease With Option To Purchase (together referred to as the agreement). Both documents are dated the same, December 5, 1996. The two documents are part of the same agreement. The Bank of Hoven prepared both agreements. On December 5, 1996, Bank of Hoven represented that the 2,225 acres of land had been deeded to the Bank of Hoven prior to December 5, 1996, by the personal representative of the estate of Kenneth Long.

9. At all times during the negotiations and signing of the agreement, the bank was represented by its lawyer, however, Ronnie and Lila Long and the Company did not have the benefit of a lawyer representing them. The Longs trusted the bank to treat them fairly in this complicated financial transaction which they did not understand.

III

COUNT ONE

FRAUD AND DECEIT

1. Plaintiffs reallege the foregoing paragraphs.

2. Paulette Long, an enrolled member of the CRST, Kenneth Long's second wife and personal representative of the estate of Kenneth Long, signed a Personal Representative's Deed transferring the 2,225 acres of land to the Bank of Hoven based on representations of the Bank of Hoven, that the estate was insolvent because the amount of debt owed to the bank exceeded the value of the assets subject to the liens and mortgages of the bank.

3. Ronnie and Lila Long on behalf of the Company, signed the agreement presented by the bank, in reliance upon the representations by the bank. On December 5, 1996, the bank represented to Ronnie and Lila Long that the bank had previously received the deed to the 2,225 acres signed by Paulette Long, that the estate and the Company were insolvent, and that Ronnie and Lila Long had no choice but to sign the agreement. The bank also represented and promised that the bank would perform the actions and make the loans set out in the agreement. Absent such representations, Ronnie and Lila Long on behalf of the Company would not have signed the agreement. Such representations were not true, and the bank failed to perform on its promises. Such representations and negligent misrepresentations were relied upon by Ronnie and Lila Long and the Company to their detriment.

4. Based on the representations, negligent misrepresentations, and promises of the bank, the bank received a deed to the 2,225 acres of land and insurance proceeds of \$100,000 from the Kenneth Long estate, the CRP payments, and the house sale proceeds. However, (a) note #98809 was not rescheduled by the bank; (b) the new operation loan of \$70,000 was not made by the bank; (c) the new loan for \$53,500 to purchase 110 replacement heifers was not made by the bank; (d) the bank failed to properly and timely apply for the increase in the BIA guarantees from 84% to 90%; (e) the bank failed to properly and timely apply for the annual

interest subsidy from BIA for several years; (f) the bank failed to recognize the Longs' exercise of their option to purchase their land back; and (g) the bank failed to give credit for the CRP payments and house sale proceeds, which were received by the bank, on the option to purchase and purchase price of the land. The purpose of these new loans was to put the Longs in a stronger financial position so they could purchase back their 2,225 acres of land from the bank in two years. These promises of new loans to pay for necessary operating expenses and to purchase 110 replacement heifers were not kept by the bank. As a direct result, the Longs were unable to feed or care for their livestock during the severe winter of 1996-1997. Bank of Hoven knew that the Longs had a supply of hay, and that the Longs did not have operating money to move their hay 20 miles to their cattle that needed the hay on their Indian range unit. The bank knew that the cattle did not have feed. The bank knew that cattle without feed cannot survive very long in severe winter weather. The Longs lost 230 cows, 260 yearlings, and 3 horses. The livestock that died in the winter of 1996-1997 had a value of approximately \$400,000, plus the loss of income from calves in the future.

5. The bank is liable to Ronnie and Lila Long and the Company for damages they suffered as a proximate result of the fraud and deceit of the bank, together with exemplary damages. The title and possession of the 2,225 acres of land should be returned to the Longs.

IV

COUNT TWO

BREACH OF CONTRACT

1. Plaintiffs reallege the foregoing paragraphs.
2. Ronnie and Lila Long and the Company claim that the agreement was breached in several important and material respects, including but not limited to: The bank received a deed to the 2,225 acres of land, and insurance proceeds of \$100,000 from the Kenneth Long estate, the CRP payments, and the house sale proceeds, however, the bank failed to perform as promised: (a) note #98809 was not rescheduled by the bank; (b) the new operating loan of \$70,000 was not made by the bank; (c) the new loan for \$53,500 to purchase 110 replacement heifers was not made by the bank; (d) the bank failed to properly and timely apply for the increase in the BIA guarantees from 84% to 90%; (e) the bank failed to properly and timely apply for the annual interest subsidy from BIA for several years; (f) the bank failed to recognize the Longs' exercise

of their option to purchase their land back; and (g) the bank failed to give credit for the CRP payments and house sale proceeds, which were received by the bank, on the option to purchase and the purchase price of the land. The purpose of these promised new loans was to put the Longs and the Company in a stronger financial position so they could purchase back their 2,225 acres of land from Bank of Hoven in two years. These promises of new loans to pay for necessary operating expenses and to purchase 110 replacement heifers were breached by the bank.

3. As a direct result of the breach of agreement by the bank, the Longs were unable to feed or care for their livestock during the severe winter of 1996-1997. The bank knew that the Longs had an adequate supply of hay, and the bank knew that the Longs did not have the operating money to move their hay 20 miles to their cattle that needed the hay on their Indian range unit. The bank knew that the cattle did not have feed. The bank knew that cattle without feed cannot survive very long in severe winter weather. The bank knew that if the bank did not make the new operating loan as promised the cattle would have no feed and would die. The bank breached the agreement and did not make the new operating loan as agreed. As a direct result of the bank's breach of the agreement, the Longs and the Company lost 230 cows, 260 yearlings, and 3 horses. The livestock that died in the winter of 1996-1997 had a value of approximately \$400,000, and additional cattle died thereafter. This breach of the agreement caused the Longs and the Company to be financially unable to buy back their land from the bank.

4. The bank is liable to the Longs and the Company for such loss and damages which directly resulted from the bank's breach of the agreement.

V

COUNT THREE

FAILURE OF CONSIDERATION

1. Plaintiffs reallege the foregoing paragraphs.
2. The Longs and the Company believe there has been a failure of consideration which voids the agreement and they should get the deed back to their land. The 2,225 acres worth \$478,000 was transferred to Bank of Hoven, the bank received insurance proceeds of \$100,000, the bank received CRP payments from the land of approximately \$88,396, and the bank received net proceeds from the sale of the house of approximately \$25,478, but the bank did

not make the loans that the bank promised and that the Longs and the Company needed. The promised operating loan of \$70,000 would have enabled the Longs to move their hay to their cattle and take care of their cattle during the winter.

3. Failure of the bank to make the loan of \$70,000 to pay operating expenses, and the loan of \$53,500 to purchase an additional 110 replacement heifers, made it impossible for the Longs to buy back their 2,225 acres of land. The purpose of buying the 110 replacement heifers was to increase Long's income over the next two years so they could afford to buy back their land. The Longs were unable to purchase the 110 replacement heifers, and they lost the income from the calves each year in the future from these replacement heifers. In addition, they were unable to care for and feed the cattle they had, and as a direct result they suffered a \$400,000 loss of livestock. The livestock that died included production cows that would have had calves in the spring, thus, they also lost the income from the calf crop each year thereafter.

4. The bank's failure to make the loans as promised caused the Longs and the Company to suffer a \$400,000 loss of livestock, plus loss of income from calves in the future, plus the Longs were unable to buy back their land from the bank. The bank received approximately \$691,874 in cash and value in the deed to the 2,225 acres of land, the CRP payments, life insurance proceeds, and the house sale proceeds, but the Longs and the Company did not get what they bargained for. The Longs and the Company claim that such failure of consideration voids the agreement, and they should get the deed and the land back from the bank.

VI

COUNT FOUR

CONTRACT AND DEED ARE VOID

1. Plaintiffs reallege the foregoing paragraphs.
2. The Longs and the Company believe that the failure of the bank to make the loan of \$70,000 to pay operating expenses, and the loan of \$53,500 to purchase an additional 110 replacement heifers, made it impossible for the Longs and the Company to perform under the agreement and buy back their 2,225 acres of land. The purpose of buying the 110 replacement heifers was to increase Long's income over the next two years so they could afford to buy back their land. The Longs were unable to purchase the 110 replacement heifers, and they lost the future calf income from these heifers. In addition, they were unable to care for and feed the

cattle they had, and as a direct result they suffered a \$400,000 loss of livestock, plus the loss of income from calves in the future. With these losses it was impossible for the Longs to buy back their land.

3. The failure of the bank to perform made it impossible for the Longs to perform and buy back their 2,225 acres of land from the bank. The Longs claim that the failure of the bank to perform voids the agreement, and they should get the deed back from the bank.

4. At the end of the two year period the Longs requested a 60 day period to complete an agreement with investors who would provide the money for the Longs to buy back their land from the bank. The bank knew that the Longs and the Company wished to buy back their land from the bank. The bank failed to credit against the option payment the house sale proceeds and the CRP payments that the bank had received. The bank wrongfully refused the Longs' request, although the agreement provides a period of 60 days to pay the purchase price.

5. The failure of the Bank of Hoven to perform as agreed made it impossible for the Company and Ronnie and Lila Long to perform under the agreement and buy their land back. Therefore, the agreement and the deed of the 2,225 acres of land to the Bank of Hoven are void.

VII

COUNT FIVE

SELF HELP

1. Plaintiffs reallege the foregoing paragraphs.

2. The Longs kept possession of the 2,225 acres after the end of the two year period on December 5, 1998, because the bank had not performed as promised under the agreement. At that time, the Longs and the Company had their cattle and machinery on the land and they were in the process of putting up hay on the land.

3. On May 19, 1999, Bank of Hoven signed a Notice To Quit as part of the bank's effort to evict the Longs from the 2,225 acres of land. On June 4, 1999, the bank sent a Notice To Quit to the Cheyenne River Sioux Tribal Court. The bank requested that the CRST Court serve the Notice To Quit on the Longs to begin the bank's eviction process. The Longs and the Company did not quit but remained on the land because the bank had not performed as promised under the agreement.

4. Without first obtaining a Tribal Court order to do so, the bank sold 320 acres of the 2,225 acres of land for cash to Ralph H. and Norma J. Pesicka, on March 17, 1999.

5. On June 25, 1999, without first obtaining a Tribal Court order to do so, the bank sold 1,905 acres of the 2,225 acres of land to Edward and Mary Jo Maciejewski on a contract for deed. The contract for deed provides (a) buyers have immediate possession of Parcel 1, (b) that the bank is in the process of evicting the Longs from Parcel 2, (c) that the buyers shall have possession of Parcel 2 when the eviction is accomplished, and (d) if eviction of the Longs is not accomplished by June 1st of any year, then the buyers will have possession on June 1st of the following year.

6. The bank and its buyers, Pesicka and Maciejewski, have interfered with and prevented the Longs and the Company from using the farm ground, from pasturing the grass crop, and from harvesting the hay crop on the land. The Longs need the farm ground for crops, need the grass crop for summer livestock grazing, and need the hay crop for winter livestock feed. The Bank of Hoven and its buyer, Pesicka, used 360 acres of pasture land, and the bank and its buyer, Maciejewski, drove the Company's cattle off, stopped the Longs' hay harvest, removed the Company's machinery, took the hay harvest, fenced off a portion of the land, and planted crop on 160 acres.

7. The Bank of Hoven and its buyers, Pesicka and Maciejewski, engaged in self help in violation of the CRST Tribal Code and law which caused damage to the Longs and the Company. The bank and Ed Maciejewski are liable to the Longs and the Company for the such damage in an amount established by the evidence at trial.

VIII

COUNT SIX

DISCRIMINATION

1. Plaintiffs reallege the foregoing paragraphs.

2. In selling the Longs' land, the Bank of Hoven unfairly discriminated against the Company and the Longs, who are enrolled members of the CRST, in favor of Pesickas and Maciejewskis, who are not enrolled members of the CRST.

3. Bank of Hoven required Longs and the Company to pay \$468,000 in cash for 2,225 acres, or \$210 per acre.

4. Bank of Hoven sold Pesickas 320 acres of the 2,225 acres for \$49,600, or \$155 per acre. The sale by the bank to Pesickas was \$55 per acre less than the bank charged the Longs to buy back their own land.

5. Bank of Hoven sold Maciejewskis 1,905 acres of the 2,225 acres for \$401,100, to be paid over ten years with 7.75% interest. Bank of Hoven charged Longs 8.5% interest, or .75% higher interest. The bank allowed Maciejewskis ten years to pay for the land, but the bank would not permit Longs even 60 days to pay for their land.

6. Such unfair discrimination by the bank prevented the Longs and the Company from buying back their land from the bank.

7. The sale of the Longs' land to Pesickas and Maciejewskis on terms more favorable than the bank required of the Longs, constitutes unequal treatment and unfair discrimination against the Longs, and prevented the Longs from buying back their land. The land sales by the bank to the Pesickas and Maciejewskis should be set aside, and the Longs should get possession and title to their land back.

IX

COUNT SEVEN

BAD FAITH

1. Plaintiffs recallege the foregoing paragraphs.

2. The law requires both parties to a contract to perform all requirements of a contract in good faith.

3. Bank of Hoven failed to timely perform in good faith the requirements and actions that the bank represented and agreed to do.

4. The bank failed to timely make a good faith effort to make the loans or perform the other requirements of the agreement between the parties.

5. The bank failed to make protective advances to enable the Longs and the Company to move the hay to the cattle before the cattle perished in the winter of 1996-1997.

6. Such actions and failure to act by the bank constitutes bad faith which caused the Longs and the Company to suffer substantial losses for which the bank is liable.

X

COUNT EIGHT

UNCONSCIONABLE CONTRACT

1. Plaintiffs reallege the foregoing paragraphs.

2. Bank of Hoven employees came to the Long's land on the CRST reservation in the spring of 1996 and inspected the land, and the Longs' cattle, hay, and machinery. The bank designed and proposed an agreement to the Longs. Discussions also took place with bank officers and the Longs and CRST planning officers at the CRST planning office on the CRST reservation. A written agreement was prepared by a lawyer representing the bank.

3. At all times during the negotiations and signing of the agreement, the bank was represented by its lawyer, however, Ronnie and Lila Long and the Company did not have the benefit of a lawyer representing them. The Longs trusted the bank to treat them fairly in this complicated financial transaction, designed and proposed by the bank, which the Longs did not understand. The Longs believed the representations of the bank, that the bank already had received the deed to the 2,225 acres of land, and that the Company was financially insolvent. The Longs felt that they had no choice but to go along with the bank's proposed agreement.

4. The agreement is an unconscionable contract which should be voided and should not be enforced against the Longs in these circumstances. The Longs did not receive the benefits of the agreement. The agreement and the deed to the bank should be voided and the Longs should get their land back.

XI

COUNT NINE

PERMANENT INJUNCTION

1. Plaintiffs reallege the foregoing paragraphs.

2. Plaintiffs are requesting a permanent injunction against Defendant, Bank of Hoven prohibiting the Bank of Hoven from attempting to evict or otherwise interfere with the Plaintiffs' possession of the 2,225 acres of land, so that the Plaintiffs' could continue to possess the land and graze their cattle and put up their hay on the land for winter livestock feed, and from

prohibiting the bank from selling, renting, or leasing or attempting to sell, rent, or lease the 2,225 acres or any part thereof.

3. Plaintiffs are seeking a permanent injunction against Defendant, Bank of Hoven, as irreparable damage to the Plaintiffs is eminent without the granting of the injunction as set forth above.

4. The harm to Plaintiffs if the injunction is not granted, far outweighs the resultant damage to the Defendants, if any, if the injunction is granted. If Plaintiffs are not allowed to operate their land, Plaintiffs can no longer afford the operating expenses incurred to date associated with their ranching business, and Plaintiffs will no longer be able to maintain their family ranching operation.

WHEREFORE, the Plaintiffs pray as follows:

1. That the Court find in favor of the Plaintiffs and against the Defendant, Bank of Hoven, and the Court enter a judgment providing that the Defendant, Bank of Hoven is liable to Plaintiffs for damages suffered by Plaintiffs as a result of the fraud and deceit of the bank, together with exemplary damages in an amount to be determined at trial; and that title and possession of the 2,225 acres of land be returned to the Plaintiffs;
2. That the Court find in favor of the Plaintiffs and against Defendant, Bank of Hoven, and that the Court enter judgment providing that the Defendant Bank of Hoven is liable to the Plaintiffs for loss and damages directly resulting from the bank's breach of agreement in an amount determined at trial; and that title and possession of the 2,225 acres of land be returned to the Plaintiffs;
3. That the Court enter judgment in favor of the Plaintiffs and against the Defendant, Bank of Hoven, and provide that due to the failure of consideration, the agreement executed by the parties is null and void, and that the deed and possession of the land be returned to the Plaintiffs; and that the Bank of Hoven shall pay Plaintiffs for the loss of livestock, the loss of income from future calves, the loss of the use of the land, and all other damages in an amount established at trial;
4. That the Court grant judgment in favor of the Plaintiffs and against Defendant, Bank of Hoven, and provide that due to the failure of Defendant Bank of Hoven to perform

the agreement, such agreement and deed to the land are void; and Plaintiffs shall have possession of the 2,225 acres of land;

5. That the Court find that the Defendants Bank of Hoven and its buyers, Pesicka and Maciejewski, engaged in self help in violation of the CRST Tribal Code and law, and are liable to the Plaintiffs for all loss and damage suffered by the Plaintiffs in an amount established by the evidence at trial;
6. That the Court grant judgment providing that Defendant Bank of Hoven is liable to the Plaintiffs for acts of bad faith and for the damages and losses suffered by the Plaintiffs in the amount determined at trial;
7. For a determination that the agreement is an unconscionable contract, and that the agreement and deed to the bank are void, and provide that the deed and possession of the land be returned to the Plaintiffs;
8. For an Order granting a permanent injunction in favor of the Plaintiffs and against the Defendant, Bank of Hoven, enjoining the Defendants from interfering into Plaintiffs' title, possession and use of their 2,225 acres of land;
9. For Plaintiffs' attorney's fees, costs and expenses incurred herein; and
10. For such other and further relief as is just and equitable under these circumstances.

Dated this 3 day of January, 2000.

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS, L.L.P.

BY: James P. Hurley

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PLAINTIFFS DEMAND TRIAL BY JURY