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

IN CIVIL COURT

IN GENERAL SESSION

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

Plaintiffs,

vs.

EDWARD AND MARY MACIEJEWSKI,
RALPH AND NORMA J. PSICKA,
And THE BANK OF HOVEN, nka PLAINS COMMERCE BANK,

Defendants.

R-120-99

ORDER

The Plaintiffs brought this instant action seeking to enjoin the Defendants from interfering with their asserted right to continue occupying certain fee lands located on the Cheyenne River Sioux Indian reservation and seeking monetary relief against the Defendant Bank for an alleged breach of a written agreement to loan the Plaintiffs monies for operating a ranch on that land. This Court, per the Honorable Chief Judge Leisah Bluespruce, denied the Plaintiffs' request for a preliminary injunction pending the resolution of this matter, due to the Plaintiffs' failure to post sufficient security, but did uphold this Court's exercise of jurisdiction over the causes of action asserted by the Plaintiffs.[1]

[1] . Judge Bluespruce issued a memorandum opinion after she was removed as Chief Judge of the Tribal Court on January 24, 2000, nunc pro tunc July 30, 1999, explaining her reasoning for denying the preliminary injunction. In that decision, which the Court does not consider to be dispositive of the legal issues raised in this case, Judge Bluespruce found that the Plaintiffs did demonstrate a likelihood of success on the merits of their complaint and indicated she would grant a preliminary injunction preventing the Defendants from taking any action to remove the Plaintiffs from the certain fee lands within Dewey County, South Dakota if the Plaintiffs posted security. Because no security

The Defendant Bank filed a counterclaim in equity seeking an order evicting the Plaintiffs from the fee lands in dispute. The other Defendants have purchased some of those lands and were thus joined as party Defendants. The Bank has filed a motion for summary judgment on its counterclaim and hearing was held before the Court, Special Judge B.J. Jones presiding, on the 27th day of September 2002 with the Plaintiffs appearing through counsel, James Hurley Esq., and the Defendant Bank appearing through counsel, David Von Wald, Esq. The other Defendants did not appear. The Court took the motion under advisement and based upon that hearing and the Court's review of the affidavits submitted in support of and opposition to the motion, and the Court's review of the file, now issues the following decision.

In ruling on the motion for summary judgment, this Court must construe the facts in a light most favorable to the Plaintiffs. Summary judgment should not be granted unless the Plaintiffs can prove no set of facts that would entitle them to the defenses they assert to the counterclaim. See Jensen v. Taco John's Int'l, 110 F.3d 525,527 (8th Cir. 1997).

The Defendant Bank contends that the personal representative of the estate of Kenneth L. Long, a non-Indian, executed a deed of conveyance[2] on December 10, 1996 to the Bank abandoning any interest Plaintiffs may have had in the land in dispute. Ergo,

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was posted, Judge Bluespruce ultimately denied the preliminary injunction on August 23, 1999. At hearing, counsel for the Bank questioned how Judge Bluespruce could enter a subsequent memorandum decision after she was removed as the Judge in this case. In light of her ultimate denial of the preliminary injunction request, and because the Court does not find her decision to be controlling on the ultimate legal issues in this case, the Court need not decide that issue.

[2] That personal representative, Paulette Long- Kenneth's then wife, had actually executed another deed prior to the date of Judge Moses' order but then executed yet another deed after the Circuit Court order.

the Defendants allege that the Plaintiffs are trespassers on the land and should be evicted. That deed of conveyance was authorized by the Honorable Scott Moses, a South Dakota Circuit Court Judge, in an order dated December 2, 1996 as part of probate proceedings pending before the Dewey County Circuit Court. Kenneth Long had four children, three of whom are enrolled members of the Cheyenne River Sioux Tribe, all of whom formed a corporation called Long Family Land and Cattle Company in order to operate the 2230 acres of Dewey County land and home and appurtenances thereon. The Corporation is a majority Indian-owned corporation. The four children were nominated by Kenneth Long as the devisees of the interests Kenneth possessed in the land in Dewey County in Kenneth's will.

The facts pertinent to the probate proceeding are somewhat confusing. The claim of the Bank to the 2230 acres and land, including a home, in the probate proceedings of Kenneth arose from a guarantee Kenneth executed to secure a loan to the Long Family Land and Cattle Company. The property pledged in the guarantee is described as "all assets" and the Plaintiffs appear to agree in the affidavit of Ronnie Long that this included the land of Kenneth Long. Plaintiff Ronnie Long contends that he was not aware of the personal representative's intent to abandon the land in exchange for a write-off of the guarantee[3] and also asserts that the deed executed by the representative was induced by the false assertions of the Bank that the estate of Kenneth Long was insolvent. The estate's attorney, Andrew Aberle, however appeared to agree with the Bank that the

[3] This assertion is rendered somewhat dubious by the fact that Ronnie Long later would agree to a lease with an option to buy the very land that he asserts he was not aware was conveyed to the Bank in the probate proceedings.

estate of Kenneth was insolvent because he represented to the Court that the voluntary abandonment would be in the estate's interest. [4]

The Plaintiffs ask that this Court, as part of consideration of the present motion, re-examine the events that led to the execution of the deed by the representative of Kenneth Long's estate to the Bank. They urge this Court to find some material factual disputes in the manner in which that deed was induced, claiming that the estate of Kenneth Long was not insolvent and the Bank misled the representative of the estate to believe it was. If that is true, they urge, there would be genuine factual disputes regarding whether the Plaintiffs have a continuing right to occupy the lands in dispute.

This Court, however, believes that this effort by the Plaintiffs is an attempt to collaterally attack the order of Judge Moses authorizing the representative of the estate to execute the deed. If the Plaintiffs' assertions are true, they may move the Circuit Court to set aside Judge Moses' order and the deed on the ground that the order was obtained by fraud or some misrepresentation to the Circuit Court. That remedy is not foreclosed even if the estate of Kenneth Long is no longer an open matter, something that is not clear. The Plaintiffs' other insinuation- that the Circuit Court lacked the jurisdiction to adjudicate a claim of a Indian-owned corporation to fee land owned by a non-Indian and located within the exterior boundaries of an Indian reservation- is intriguing, but again should be brought to the attention of the Circuit Court initially. [5]Although this Court is not bound

[4] The Plaintiffs appeared to assert at oral argument that counsel Aberle was actually representing the Bank. The Court's review of the state court pleadings reveals otherwise, although the Bank acknowledges paying the fees for Aberle to draw up the voluntary abandonment agreement and deed.

[5] In light of recent United States Supreme Court decisions expanding the jurisdiction of state courts in Indian country and constricting parallel tribal court authority, this may not be the type of argument Indian litigants may wish to raise in a state court forum. See

by the principles of full faith and credit to honor state court judgments, this Court does recognize that South Dakota courts have honored judgments from this Court under the doctrine of comity. See SDCL §1-1-25; Gesinger v. Gesinger, 531 N.W.2d 17 (SD 1995). The Court also notes that the Cheyenne River Tribal Court of Appeals has directed this Court to attempt to maintain positive relations with the state courts by attempting to honor their decisions. See Eberhard v. Eberhard, No. 96-005-A, slip op. at 6 (Cheyenne River Sioux Tribal Ct. App. Feb. 18, 1997)(honoring a state court child custody decision under the PKPA, 28 U.S.C §1738B). By permitting the Plaintiffs to use this forum to collaterally challenge the state court probate order, a resulting consequence may be conflicting court orders regarding the ownership of the land in question. The Plaintiffs' remedy with regard to its complaints regarding how the Bank obtained the deed to the land lies with the state court. Therefore, to the extent that the Plaintiffs are alleging material factual disputes based upon their assertions that the deed conveying the lands in dispute here to the Bank was obtained by false assertions, the Court determines that no factual disputes exist for this Court to resolve at trial.[6]

The Plaintiffs make other arguments, however, in opposition to the motion for summary judgment that must be considered. About the time the Bank gained the title to Kenneth Long's fee land and appurtenances thereon through the state court proceedings,

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Nevada v. Hicks, 150 L.Ed. 2d 398, 121 S.Ct 2304,2315 (2001). The US Supreme Court decision in Strate v. A-1 Contractors, 520 U.S. 438, 448 (1997) would seem to dictate that the state court has jurisdiction over the probate proceeding because it involved a non-Indian decedent and fee land. The Tribal Court may very well have concurrent jurisdiction over the claims of the Indian-owned corporation to this land but that does not necessarily bar state court jurisdiction.

[6] This ruling does not necessarily preclude the Plaintiffs from claiming at trial, should this matter reach trial, that the Defendant Bank did not act in good faith in obtaining a re-conveyance of the land and then leasing it to the Plaintiffs as a defense to the eviction action.

the Bank approached Plaintiff Ronnie and Lila Long to discuss the rights, if any, of the Corporation to the continued occupancy of the land. On December 5, 1996 the Corporation and Bank entered into both a lease with option to purchase and a loan agreement. The loan agreement expressly references the lease with an option to purchase and appears to be a document that attempts to both account for any outstanding debt of the Corporation, independent of Kenneth Long, to the Bank arising from the loans to the Corporation secured by the land and appurtenances and to authorize the Corporation certain operating expenses to permit it the opportunity to regain title to the land. The Court notes that no party has moved the Court for summary judgment on the Plaintiffs' complaint asserting a breach of this loan agreement and will assume, therefore, that factual disputes exist regarding whether this agreement was breached by the Defendant Bank.

The Bank asserts that the loan agreement and lease with option to purchase are not related and the lease with option to purchase, and alleged default, should be considered without reference to the other loan agreement. The Plaintiffs counter that the loan agreement and its promises therein were to be the basis for the Plaintiffs to obtain the funds to exercise their rights under the lease with option to purchase and must therefore be construed as two parts of the same transaction. The Plaintiffs also assert that the CRP payments received by the Bank were to be recognized by the Bank as the 5% down payment to exercise the option to buy. This latter argument appears to be erroneous to the Court because the lease expressly references those payments as lease payments and not as the down payment on the option to purchase.

In general, when construing a written document the Court is confined to examining the language within the four corners of the document and should not look beyond those four corners to divine the intent of the parties. See Video Update v. Videoland, 182 F.3d 659 (8th Cir. 1999). There is an exception to the parol evidence rule, however, when the document being interpreted is not an integrated document. See Battery Steamship Corp. v. Refineria Panama S.A., 513 F.2d 735, 738 n.3 (2d Cir. 1975). If a party to a contract can demonstrate another writing executed at the same time or in close proximity, and that the document being interpreted does not have a merger clause, which the lease does not appear to have, a Court may look to the other document to construe the intent of the Parties. In that case, the Court must examine both documents to determine if the performance of promises made within one agreement should be assessed by the promises referred to in the other.

The Defendant Bank asserts that it is undisputed that the Plaintiffs did not exercise the option given them in the lease by paying the 5% of the purchase price within the two years the lease was in duration. The Plaintiffs counter, however: first, with the argument that the CRP payments constituted the 5%, something the Court rejects as spurious; and second, that the Plaintiffs were foiled in their effort to exercise the option because of the Defendant Bank's breach of the loan agreement that guaranteed them certain operating expenses that, if received, would have enabled them to exercise the option. The Court does not find this argument so wanting so as to deny the Plaintiffs the right to argue it to a trier of fact, either a jury or the Court. The Plaintiffs' argument is that the Defendant Bank's performance on the loan agreement was a condition precedent to its performance on the lease with the option to purchase. A condition precedent is "any

fact except mere lapse of time which must exist or occur before a duty of immediate performance by the promisor can arise." See Video Update, at 663. Again, summary judgment is not a proper method of disposing of a case if the Plaintiffs could prevail under any legally-cognizable theory they assert. In the instant case, the Court believes factual disputes certainly exist as to whether the Defendant Bank breached the loan agreement and whether the performance of the Plaintiffs under the lease agreement was conditioned upon performance by the Bank under the loan agreement. The Court believes the Plaintiffs have demonstrated a sufficient legal basis to deny the motion for summary judgment.

The Defendant Bank points out, quite naturally, that the lease under which the Plaintiffs assert possessory rights to the land in dispute has expired and therefore whatever the Court's disposition of the Plaintiffs' claims against the Bank may ultimately be, the bottom line is that the Plaintiffs never paid the purchase price for the land. However, a party is not bound to perform a contract in the timeframe contracted for if the other party breaches prior to the required performance or commits an anticipatory breach of that contract. Therefore, if the Plaintiffs can demonstrate at trial that their performance under the lease agreement was conditioned upon the Defendant Bank's performance of the loan agreement, they may have an argument that the Defendant's breach relieved them of the obligation to perform under the time frames of the lease agreement.[7] This is a question for the trier of fact, however.

[7] Of course this would not mean that the Plaintiffs may never have to perform under the lease with the option to purchase, but only that their performance may be delayed if sufficient cause is demonstrated.

The Court will therefore deny the Defendant's motion for summary judgment. The Court notes that the Plaintiffs made a timely demand for a jury trial under Rule 14 of the Tribal Code on their complaint. The Court needs to resolve the issue, therefore, whether both the complaint and counterclaim should be resolved by the jury or only the complaint. Rule 14 states that "all factual issues property triable by a jury shall be decided by the jury at trial." Actions sounding in equity are generally not triable to a jury, but instead are triable to the Court. Rule 14 is certainly flexible enough, however, to permit the Court to designate the jury as the trier of all facts in this case. The Court notes that the Counterclaim filed by the Defendant Bank does not demand a trial by jury, nor has the Plaintiff made a demand that the issues in the counterclaim be tried by the jury. The Court will therefore be the trier of fact on the counterclaim and the jury the trier of fact on the Plaintiffs' complaint. The trial shall be consolidated, however.

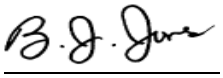
For the foregoing reasons it is hereby

ORDERED, ADJUDGED, AND DECREED that the Defendant Bank's motion for summary judgment on its counterclaim for unlawful entry and detainer is DENIED and it is further

ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' complaint and Defendant Bank's counterclaim shall come on for trial before the Tribal Court on the 6th day of December 2002 at 8:00 a.m., with the Plaintiffs' complaints to be tried to a jury and the Defendant Bank's counterclaim to be tried to the Court . The Tribal Clerk of Courts is hereby directed to call a sufficient number of jurors on that date and at that time.

So ordered this 30th day of September 2002.

BY ORDER OF THE COURT:



B.J. Jones
Special Judge

ATTEST: _____
Clerk of Courts