

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,

vs.

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

Defendants.

**PLAINTIFFS' RESPONSE IN
RESISTANCE TO DEFENDANT
BANK OF HOVEN'S MOTION
FOR SUMMARY JUDGMENT**

R-120-99

Come now Plaintiffs, Long Family Land and Cattle Company, Inc., Ronnie and Lila Long, and respond in resistance to the Motion for Summary Judgment filed by Defendant, Bank of Hoven, as follows:

1. Plaintiffs Longs agree with paragraph 1 of Defendant Bank of Hoven's Motion for Summary Judgment, that Defendant's Motion is brought pursuant to Rule 56 of the Cheyenne River Sioux Tribe Rules of Civil Procedure.
2. Plaintiffs Longs admit paragraph 2 of Defendant Bank of Hoven's Motion for Summary Judgment, that this Court has jurisdiction over the parties and the subject matter of this action.
3. Plaintiffs Longs deny paragraph 3 of Defendant Bank of Hoven's Motion for Summary Judgment. Genuine issues of material fact exist in this case which preclude granting summary judgment. The pleadings, depositions, and affidavits show there are genuine issues as to material facts, and the moving party is not entitled to judgment as a matter of law. Under Rule 56(c) of the Cheyenne River Sioux Tribe Rules of Civil Procedure, movant, Bank of Hoven, has

the burden of showing "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Movant, Bank of Hoven, has not met its burden of proof. The responsive Affidavit of Ronnie Long shows that genuine issues of material fact exist for trial, and therefore, movant's Motion for Summary Judgment must be denied.

Respectfully submitted this 24 day of September, 2002.

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

BY: James P. Hurley
JAMES P. HURLEY
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served copies of the Plaintiffs' Response in Resistance to Defendant Bank of Hoven's Motion for Summary Judgment upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressees, to wit:

Mr. David A. Von Wald
Attorney at Law
P.O. Box 468
Hoven, SD 57450

Honorable B. J. Jones
CRST Judge
UND School of Law
Law Building
Box 9003
Grand Forks, ND 58202

which addresses are the last addresses of the addressees known to the subscriber.

Dated this 24 day of September, 2002.

James P. Hurley
JAMES P. HURLEY

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,

vs.

AFFIDAVIT OF RONNIE LONG

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

R-120-99

Defendants.

State of South Dakota:

ss

County of Pennington :

Ronnie Long, being first duly sworn, deposes and states, as follows:

1. Ronnie Long's parents, Kenneth and Maxine Long, were married in 1941 and had four children, Ronnie Long, Robert Long, Terry Long, and Myrna Long. They were life-long residents of the Cheyenne River Sioux Tribe Reservation. Kenneth and Maxine Long farmed and ranched near Timber Lake, South Dakota.

2. Kenneth and Maxine Long owned approximately 2,225 acres of deeded land located within the Cheyenne River Sioux Tribe Indian Reservation. Kenneth Long owned the land since 1958. Before Maxine Long died in 1992, she deeded her interest in the land to her husband, Kenneth Long.

3. Kenneth and Maxine Long's children, Robert Long, Terry Long, and Myrna Long, grew up, left home, and pursued interests away from the family ranch. Ronnie Long continued to work with his parents operating the family farm and ranch.

4. In 1966 Ronnie and Lila Long were married. They have raised their three children on the family ranch.

5. In 1987 Long Family Land and Cattle Company, Inc. was formed with Kenneth and Maxine Long and Ronnie and Lila Long 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 Cheyenne River Sioux Tribe, and they have always owned over 50% of the Company. The Company has always been an Indian controlled corporation because Cheyenne River Sioux Tribe 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 in the Company, and they then owned over 50% of the Company, and it continued to be an Indian controlled corporation entitled to BIA guaranteed bank loans.

6. After Maxine Long died, Kenneth Long owned the 2,225 acres of real estate, and Long Family Land and Cattle Company, Inc. owned the cattle, crops, feed, and machinery.

7. Bank of Hoven loaned money to the Company. Several of the Bank of Hoven loans to the Company are guaranteed by the BIA. The Bank of Hoven took liens on the cattle, horses, machinery, feed, and grain of the Company, and took a mortgage on Kenneth Long's land as collateral for the obligations of the Company to the bank. Kenneth Long did not borrow any money from the bank. All of the loans from the bank were loans to Long Family Land and Cattle Company, Inc. Such loans to the Company were secured by the livestock, machinery, and crops of the Company, the land of Kenneth Long, the guarantee of Kenneth Long, and the BIA guarantees.

8. 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, 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; he owned the CRP contract on the land; and in addition to his own stock, Ronnie Long owned the 49% of the Company stock that was owned by his father, Kenneth Long.

9. After Kenneth Long died July 17, 1995, the Bank of Hoven was reluctant to make loans to the Company to continue the family farming and ranching operation until the estate of Kenneth Long was settled to the bank's satisfaction. It was difficult to continue to operate this million dollar operation without adequate operating loans.

10. 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 misrepresented to the Longs that the Company was insolvent. The Bank represented that 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, 1997-1998. 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.

11. 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

misrepresented 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.

12. Charles Simon states in paragraph 7 of his Affidavit in support of the Bank of Hoven's Motion for Summary Judgment that the Kenneth Long Estate was insolvent on the date that Kenneth Long died on July 17, 1995. Ronnie and Lila Long take issue with this misrepresentation by the bank.

The bank represented to Ronnie and Lila Long in 1996 that the estate was insolvent, and that the bank had the deed to Kenneth Long's land, and therefore, we had no choice but to enter into a loan agreement and lease with option to purchase agreement with the bank.

13. In paragraph 8 of his affidavit, Charles Simon states that Attorney Aberle mailed a copy of the Proposal For Abandonment of Real Estate to Ronnie Long on August 7, 1996. Ronnie Long takes issue with this statement because he never received a copy in August of 1996. Paulette Long, an enrolled member of the CRST, Kenneth Long's second wife of two weeks 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 misrepresentations of the Bank of Hoven, that the estate was insolvent on the date of death, as the amount of debt owed to the bank exceeded the value of the assets subject to the liens and mortgages of the bank.

14. Ronnie and Lila Long on behalf of the Company, signed the agreement presented by the bank, in reliance upon the misrepresentations 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, 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.

15. 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 \$100,300 from the Kenneth Long estate, four CRP payments for 1997 and 1998 of \$88,396, and the house sale proceeds of \$30,000. 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) although the Longs had paid more than five percent down payment in the form of \$17,000 net value from the sale of the house and \$88,396 in CRP payments as rent, such house proceeds and CRP payments as rent were supposed to be credited off the purchase price of the land, but when the Longs sent written notice that they intended to buy the land back, 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.

16. The Longs claim in their Amended Complaint that such acts of the bank constitute fraud and deceit.

17. As a direct result of the acts of the bank, the Longs were unable to feed or care for their livestock during the severe winter of 1996-1997, and the Longs suffered damages. 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.

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

19. The bank represented to Ronnie and Lila Long on December 5, 1996, that the Longs' 2,225 acres of land had already been deeded to the bank by Kenneth Long's second wife, Paulette Long. They were married just two weeks before Kenneth Long died. Ronnie and Lila Long were not represented by a lawyer, but the bank was represented by a lawyer. Ronnie and Lila Long trusted the bank and relied upon the representations of the bank. Ronnie Long inherited 49% of the Company and all the land from his father, Kenneth Long, in his will. Ronnie Long had not consented to the transfer of ownership of the land to the bank.

Ronnie and Lila Long felt, however, that where the bank already had been deeded the land, they had no choice but to go along with the loan agreement and lease and purchase option proposed and drafted by the bank.

Several years later Ronnie and Lila Long discovered that the representations of the bank were not truthful. The real estate records show that the land was not deeded to the bank until after the agreement was signed on December 5, 1996. The Personal Representative's Deed was signed by Paulette Long on December 10, 1996, and her signature was notarized by Andrew Aberle on December 23, 1996, and the deed was not filed for record in Dewey County until December 27, 1996.

20. Also, the bank misrepresented to Ronnie and Lila Long that the estate was insolvent, the bank could foreclose and force a sale, and therefore, the land had to be transferred to the bank. Ronnie and Lila Long have recently discovered that this representation was also false.

The bank hired and paid Attorney Andrew Aberle to process in state court the probate of the Kenneth Long Estate. An appraiser was not employed to ascertain the fair market value of the assets as required by South Dakota law, and the assets were not inventoried. The 2,225 acres of land were undervalued at \$405,830, although the bank had a 1991 appraisal on the land of \$468,000, and the value had increased from 1991 when the land was appraised to 1995 when Kenneth Long died. Kenneth Long's house was undervalued at \$24,500, although there was a higher appraisal value, and Kenneth Long had paid \$50,000 for the house in Timber Lake. The CRP payments for 1995, 1996, 1997, and 1998 of \$44,198 each year, totaling \$176,792, were not included in the assets, although the CRP mortgage of \$148,912 was used in the liabilities. The life insurance proceeds on Kenneth Long's life of \$100,339.73 were not included

in the assets. Also left out of the assets were the livestock worth \$444,750, feed worth \$20,250, and machinery and vehicles worth \$148,925. In addition, the inventory did not include the BIA guarantees worth \$14,628 (\$60,000 @ 80%) and \$38,340 (\$428,930 @ 84%). By selectively leaving off valuable assets, the inventory filed with the state court showed that debts exceeded assets, and the estate was insolvent by \$477,791 negative net worth. This was the misrepresentation that the bank used to get the deed to the Long land.

A true inventory and valuation of the estate on the date of Kenneth Long's death shows assets worth \$1,788,285 and debts of \$956,376, for a positive net worth of \$831,909. The estate was not insolvent, and the deed to the Longs' land did not have to be transferred to the bank in lieu of foreclosure to satisfy debt.

21. 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 worth \$468,000, life insurance proceeds of \$100,300 from the Kenneth Long estate, the CRP payments for 1995, 1996, 1997, and 1998 of \$176,792, the house sale proceeds of \$30,000, pickup proceeds of \$6,300, and cash payments of \$378,340 and \$14,628 from the BIA under the BIA guarantees. 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. The bank failed to honor its promise of new loans to pay for necessary operating expenses to keep the ranch operating and its promise to loan money to purchase 110 replacement heifers to produce calves to increase ranch income. Without the operating loan and the additional heifers, the very purpose of the agreement was breached by the bank.

22. 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.

23. The Longs claim in their Amended Complaint that 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.

24. The Longs and the Company claim in their Amended Complaint that 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 \$100,300, the bank received CRP payments in 1997 and 1998 from the land of approximately \$88,396, the bank received net proceeds from the sale of the house of approximately \$25,478, and the bank received cash from the BIA under the BIA guarantees of \$360,301 and \$48,000, 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.

25. 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 Longs' 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.

26. 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 \$1,788,000 in cash and value in the 2,225 acres of land, the CRP payments, life insurance proceeds, BIA guarantee payments, and the house sale proceeds, but the Longs and the

Company did not get what they bargained for. The Longs and the Company claim in their Amended Complaint that such failure of consideration voids the agreement, and they should get the deed and the land back from the bank.

27. The Longs and the Company claim in their Amended Complaint 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.

28. 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.

29. 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.

30. 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 Longs claim that the agreement and the deed of the 2,225 acres of land to the Bank of Hoven are void.

31. 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.

32. 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.

33. 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. Psicka, on March 17, 1999.

34. 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.

35. The bank and its buyers, Psicka 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, Psicka, 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, all without first obtaining approval of this Court.

36. The Bank of Hoven and its buyers, Psicka 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 Edward and Mary Maciejewski and Ralph and Norma Psicka are liable to the Longs and the Company for the such damage in an amount established by the evidence at trial.

37. 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 Psickas and Maciejewskis, who are not enrolled members of the CRST.

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

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

40. 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.

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

42. The sale of the Longs' land to Psickas 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 Psickas and Maciejewskis should be set aside, and the Longs should get possession and title to their land back.

43. The Longs and the Company claim in their Amended Complaint that the bank failed to perform all requirements of the contract in good faith.

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

45. 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.

46. 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.

47. The Longs and the Company claim that 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.

48. The Longs and the Company claim in their Amended Complaint that contracts with the bank signed December 5, 1996, were unconscionable complicated contracts that they did not understand, and such contracts should be set aside as void.

49. Bank of Hoven employees came to the Longs' 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.

50. 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 misrepresentations 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.

51. 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.

The Longs and the Company claim in their Amended Complaint for the following relief, including, but not limited to:

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 Defendant, Bank of Hoven, and its buyers, Defendants, Psicka 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 because of the bank's actions.

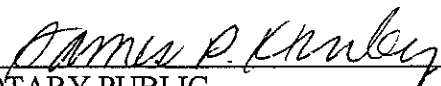
This Affidavit is submitted in resistance to the bank's Motion for Summary Judgment. It is clear from the pleadings, depositions, and affidavits that genuine issues of material fact exist which preclude summary judgment, and the bank is not entitled to summary judgment as a matter of law. Plaintiffs, Ronnie and Lila Long and the Company, request that the bank's Motion for Summary Judgment be denied.

Dated this 24th day of September, 2002.



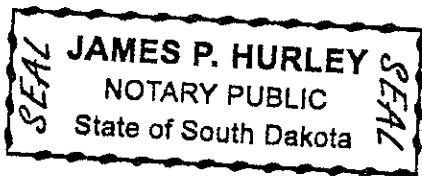
RONNIE LONG

Subscribed and sworn to before me this 24th day of September, 2002.



NOTARY PUBLIC

(SEAL)



My Commission Expires: _____

My Commission Expires
October 6, 2006

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served copies of the Affidavit of Ronnie Long upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressees, to wit:

Mr. David A. Von Wald
Attorney at Law
P.O. Box 468
Hoven, SD 57450

Honorable B. J. Jones
CRST Judge
UND School of Law
Law Building
Box 9003
Grand Forks, ND 58202

which addresses are the last addresses of the addressees known to the subscriber.

Dated this 24 day of September, 2002.



JAMES P. HURLEY