UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

Plains Commerce Bank, Plaintiff, vs. Long Family Land and Cattle Company, Inc., and Ronnie and Lila Long, Defendants.	)	CIV 05-3002 **DEFENDANTS' BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants, Long Family Land and Cattle Company, Inc. and Ronnie and Lila Long (collectively referred to as the Longs), through their counsel of record, respectfully submit their Brief in support of their motion for summary judgment as required by Local Rule 7.2, as follows:

1. Summary Judgment Standard: Under Rule 56(c) of the Federal Rules of Civil Procedure, a movant is entitled to summary judgment if the movant can "show that there is no genuine issue as to any material fact and that [the movant] is entitled to judgment as a matter of law." In determining whether summary judgment should issue, the facts and inferences from those facts are viewed in the light most favorable to the nonmoving party, and the burden is placed on the moving party to establish both the absence of a genuine issue of material fact and that such party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 US 574, 106 SCt 1348, 1356-57, 89 LEd2d 538 (1986). Once the moving party has met this burden, the nonmoving party may not rest on the allegations in the pleadings, but by affidavit or other evidence must set forth specific facts showing that a genuine issue of material fact exists. Anderson v. Liberty Lobby, Inc., 477 US 242, 256, 106 SCt 2505, 2514, 91 LEd2d 202 (1986).

In determining whether a genuine issue of material fact exists, the Court views the evidence presented based upon which party has the burden of proof under the substantive law. Anderson v. Liberty Lobby, Inc., 477 US 242, 106 SCt 2505, 2513, 91 LEd2d 202 (1986). The Supreme Court has instructed that "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to 'secure the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477 US 317, 327, 106 SCt 2548, 2555, 91 LEd2d 265 (1986). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts," and "[w]here the record as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 106 SCt at 1356.

The trilogy of Celotex, Anderson, and Matsushita provides the Court with a methodology in analyzing motions for summary judgment. See generally 1 Steven A. Childress & Martha S. Davis, Federal Standards of Review § 5.04 (2d ed. 1991) (discussing the standards for granting summary judgment that have emerged from Celotex, Anderson, and Matsushita).

2. Procedural Background: The procedural background is set out in paragraph 1 of the Defendants' Motion for Summary Judgment, and is incorporated in this Brief by this reference.

3. Statement of Material Facts: The Defendant's Statement of Material Facts is annexed to the Defendants' Motion for Summary Judgment, and is incorporated in this Brief by this reference.

4. Statements of Law and Discussion: The material facts were presented to the CRST trial court and decided by the jury. The CRST Court of Appeals affirmed on all issues. Res judicata and issue preclusion prevent the parties from relitigating once a court has decided

an issue of fact. Oldham v. Pritchett, 599 F.2d 274 (8th Cir. 1979). Relitigation of any tribal court resolution of the facts should be precluded by the proper deference owed the tribal court system. Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 107 S. Ct. 971, 978 (1987).

The Longs submit that the CRST trial court and the CRST Court of Appeals correctly ruled on the bank's claim that the Cheyenne River Sioux Tribal Court does have jurisdiction over the Longs' discrimination claim.

Ronnie and Lila Long are tribal members. The land was owned by Kenneth Long, a nonmember, and his wife, Maxine Long, who was a tribal member. The land is located in the CRST Reservation.

Long Family Land and Cattle Company was incorporated for the purpose of obtaining BIA guarantees of bank loans to the Longs. The Longs' corporation was incorporated in the state of South Dakota because the Longs are citizens of South Dakota, and there was no CRST tribal office at that time set up to incorporate a privately owned Indian-controlled corporation which was not owned by the Cheyenne River Sioux Tribe.

At all times the Longs' corporation was 51% owned and controlled by tribal members, Maxine Long, Ronnie Long, and Lila Long. When Maxine Long died she gave her shares to Ronnie and Lila Long, thus maintaining the 51% Indian owned requirement. After Kenneth Long died, with his 49% ownership bequeathed to Ronnie Long, the Longs' corporation was 100% Indian owned when the discrimination by the bank occurred.

The bank is a nonmember, however, the bank entered into consensual relationships with Ronnie and Lila Long, who are tribal members, and with the Longs' corporation, which was at all times 51% Indian owned, and which was 100% Indian owned by Ronnie and Lila Long after Kenneth Long's death. The consensual relationships entered into by

the bank and the Longs through numerous commercial dealings, included contracts, loan agreements, promissory notes, lease with option to purchase, personal guarantees, mortgages, and other arrangements.

The CRP contract on the land which was owned by Kenneth Long, and after his death by Ronnie Long, was assigned to the bank under the terms of the Lease With Option to Purchase. (Attachment 3) The bank received the CRP payments of about $44,000 per year for two years. The bank owned the 2,230 acres from 1996 to 1999 when the bank sold the land to nonmembers.

Loans made by the Bank of Hoven to the Longs' corporation were guaranteed by the BIA. The BIA guarantees required a first lien on the cattle, machinery, crops, and feed of the Longs' corporation, and a second lien (mortgage) on the land owned by Kenneth and Maxine Long. (Attachment 19) Kenneth and Maxine Long, and Ronnie and Lila Long were required to sign personal guarantees of the loans of Bank of Hoven to the Longs' corporation. Kenneth and Maxine Long mortgaged their land to the Bank of Hoven to provide real estate collateral for the loans made by the Bank of Hoven to the Longs' corporation as required by the BIA guarantee. The BIA guarantees are noted in the real estate mortgage on the land.

The bank benefited from the BIA guarantees. The bank loans could not have been guaranteed by the BIA unless the Longs' corporation was at all times at least 51% Indian owned and controlled as required by 25 C.F.R. § 103.7. The bank filed a claim on the BIA guarantees, and the BIA paid the bank a substantial sum of money under the BIA guarantees of the Longs' loans with the bank. (Attachment 22)

Kenneth and Maxine Long and Ronnie and Lila Long were required to sign personal guarantees of the loans of the bank to the Longs' corporation. Kenneth Long assigned

his life insurance to the bank as collateral for the bank's loans to the Longs' corporation. When Kenneth Long died, his life insurance proceeds of $100,000 were paid to the bank.

The bank was present on the Longs' land located on the CRST Reservation, and inspected the livestock, machinery, crops, and hay located on the land. The bank held a mortgage on the land and a lien on the livestock, machinery, crops, and hay located on the land. The bank had discussions with the Longs and with CRST officers on the CRST Reservation in the CRST Tribal offices in negotiating the Loan Agreement and Lease With Option to Purchase. (Attachment 3)

The facts of this case establish the jurisdiction of the CRST Court over the bank and the Longs' claim of discrimination against the bank.

In Montana v. United States, 450 U.S. 544 (1981), the Supreme Court held that tribal courts generally do not have jurisdiction over non-Indians involving matters that arise on fee land within the reservation. The Supreme Court further held, however, "to be sure, Indian tribes retain sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing or other means, the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements…." (underline added).

The Longs submit that the instant case is an exact fit for this test of tribal court jurisdiction set out in Montana. The bank entered into promissory notes with tribal members, Ronnie and Lila Long. Tribal members, Maxine Long, Ronnie Long, and Lila Long, personally guaranteed the bank's loans to the Longs' corporation. Tribal member, Maxine Long, and her nonmember husband, Kenneth Long, mortgaged their 2,230 acres of land to the bank to secure

the bank's loans to the Longs' corporation. Tribal members, Maxine Long, Ronnie Long, and Lila Long, owned at all times 51% of the Longs' corporation so that it met the BIA requirement for the BIA guarantees of the bank's loans to the Longs' corporation. (Attachment 17) The cattle owned by the Longs' corporation, which were security for the bank's loans to the Longs' corporation, were pastured and cared for on the 2,230 acres owned by Kenneth and Maxine Long, and were pastured on the Indian Range Unit of Ronnie Long.

Pursuant to consensual agreements, the bank took title to the Longs' 2,230 acres and owned the land from 1996 to 1999 when the bank sold it to nonmembers. During this period of time, the bank, as landlord of this land on the Reservation, leased the land to the Longs, and the Longs' livestock were pastured and cared for there. (Attachment 3)

It is clear in this case that the bank engaged in business activities with tribal members, Maxine Long, Ronnie Long, and Lila Long, and their Indian-owned and controlled corporation, both on and off the Reservation. Under the test set out in Montana, it appears clear that the CRST tribal court has jurisdiction over the bank on the Longs' claim of discrimination in this case, where the nonmember bank entered into consensual relationships with CRST members through commercial dealing, loan agreements, contracts, leases, mortgages, promissory notes, personal guarantees, or other arrangements.

WHEREFORE, based on the foregoing, the Longs submit that there are no genuine issues of material fact and that the Longs are entitled to summary judgment as a matter of law on the bank's claim that the CRST Court lacked jurisdiction over the bank on the Longs' claim of discrimination.

Respectfully submitted this 1st day of December, 2005.

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

BY:*/s/James P. Hurley*

JAMES P. HURLEY
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(605) 343-1503 (fax)

INDEX OF ATTACHMENTS TO DEFENDANTS' BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1.	Jury Verdicts.
2.	Letter from Bank of Hoven to Ronnie Long dated 4/26/96. Trial Exhibit 4.
3.	Loan Agreement and Lease With Option to Purchase dated 12/5/96. Trial Exhibits 6 and 7.
4.	Letter from Bank of Hoven to Dennis Huber, ND/SD Indian Business Development Center dated 1/16/97. Trial Exhibit 10.
5.	Letter from Bureau of Indian Affairs Area Director, United States Department of Interior to Bank of Hoven dated 2/14/97. Trial Exhibit 11.
6.	Letter from Ronnie Long to Bank of Hoven dated 12/1/98. Trial Exhibit 17.
7.	Letter from Bank of Hoven to Ronnie Long dated 12/2/98. Trial Exhibit 18.
8.	Deed from Bank of Hoven to Ralph and Norma Pesicka dated 3/17/99. Trial Exhibit 19.
9.	Letter from Bank of Hoven's counsel to CRST Tribal Court enclosing a Notice to Quit requesting the CRST Tribal Court serve the Notice to Quit on the Longs dated 6/4/99. Trial Exhibit 20.
10.	Notice to Quit to Long Family Land and Cattle Co., Inc. and Ronnie Long from Bank of Hoven dated 5/19/99 and Certificate of Service signed by CRST Tribal Court Chief Judge dated 6/15/99.
11.	Contract for Deed entered into by Bank of Hoven, Seller, to Edward and Mary Jo Maciewjewski, Buyers, dated 6/25/99, and Deed from Plains Commerce Bank to Edward and Mary Jo Maciewjewski dated 1/11/02. Trial Exhibit 21.
12.	Letter from CRST Tribal Enrollment Office dated 12/9/02 stating that the Maciewjewskis and the Pesickas are not tribal members. Trial Exhibit 26.
13.	Order entered 1/3/03 by CRST Special Trial Court Judge B. J. Jones.
14.	Judgment entered 2/18/03 by CRST Special Trial Court Judge B. J. Jones
15.	Supplemental Judgment entered 2/18/03 by CRST Special Trial Court Judge B. J. Jones.
16.	Memorandum Opinion and Order entered 11/22/04 by CRST Court of Appeals Chief Justice Frank Pommersheim and Associate Justices Everett Dupris and Patrick Lee.
17.	CFR § 103.7 requires a corporation to be 51% Indian owned to be eligible for BIA guaranteed loans.
18.	Chapter IV Sec. 1-4-1 of the CRST Law and Order Code - Jurisdiction.
19.	BIA Guaranty of Bank of Hoven loans to Longs requires first lien on all receivables, livestock, feed, grain, crops, machinery, equipment, and a second lien on all real estate and vehicles.
20.	Certificate of Incorporation for Long Family Land and Cattle Company, Inc. dated 3/24/87. Trial Exhibit 1.
21.	Last Will and Testament of Kenneth L. Long dated 6/29/95. Trial Exhibit 2. Agreement Relinquishing Interest. Trial Exhibit 3.
22.	Bank of Hoven received funds from the BIA under the BIA guarantees. Trial Exhibit 16.

SPECIAL INTERROGATORY ONE TO JURY

Did the Defendant Bank breach the December 5, 1996 loan agreement (Plaintiff's Exhibit 6) between the Long Family Land and Cattle Co. Inc and the Bank of Hoven?

YES 7 (Number of jurors voting yes)
NO 0 (Number of jurors voting no)

Foreperson

Attachment 1

SPECIAL INTERROGATORY TWO TO JURY

If you found in Interrogatory one that the Defendant Bank breached the loan agreement to the Plaintiffs, did that breach prevent the Plaintiffs Long Family Land and Cattle and Ronnie and Lila Long from performing under the lease with an option to purchase (Exhibit 7)?

YES 7
NO 0

Foreperson

SPECIAL INTERROGATORY THREE TO JURY

Did the Defendant Bank [redacted] use self-help remedies in an attempt to remove the Plaintiffs from the land that was subject to the lease with an option to purchase (Exhibit 7)?

YES 0
NO 7

Foreperson

SPECIAL INTERROGATORY FOUR TO JURY

Did the Defendant Bank intentionally discriminate against the Plaintiffs Ronnie and Lila Long based solely upon their status as Indians or tribal members in the lease with option to purchase. (Exhibit 7)?

YES 7

NO 0

Foreperson

SPECIAL INTERROGATORY FIVE TO JURY

Did the Defendant Bank act in bad faith when it attempted to gain the increased guarantee from the Bureau of Indian Affairs as referenced in the loan agreement dated December 5, 1996? (Exhibit 6)

YES 7

NO 0

Foreperson

SPECIAL INTERROGATORY SIX TO JURY

If you answered no to Numbers 1,3,4, and 5 you should stop here and not award damages.

If you answered yes to Number 1, 3,4, or 5 what amount of damages should be awarded to the Plaintiffs?

$ 750,000.00

AGREE 7

DISAGREE 0

Should interest be added to the Judgment?

YES 7

NO 0

Foreperson

BANK OF HOVEN

April 26, 1996

Ronnie Long
Box 272
Timber Lake, S.D. 57656

Dear Ronnie,

This is an update to my letter written on April 17, 1996. I had previously talked to you about the bank foreclosing on the land base and the house in Timber Lake. The house would be sold with the sale proceeds applied to your BIA guaranteed debt, and the land base would be deeded to the bank and sold back to you on a contract.

There appears to be some difficulties in dealing with this situation in that manner. After talking to our legal counsel, David Von Wald, the only way the bank could sell this property back to you would be for you to secure financing through another financial institution or go through a government agency guaranteed loan such as FHA, BIA or SBA through our bank. This is because of possible jurisdictional problems if the bank ever had to foreclose on this land when it is contracted or leased to an Indian owned entity on the reservation.

Please call me at the bank if you have any questions on the above matter. We will try to proceed as soon as possible to secure financing through one of the above federal agencies or you can try to secure financing through another financial institution, as these appear to be the only ways we could sell the land base back to you. Thank You!

Sincerely,

Charles Simon

Charles Simon, VP
Bank of Hoven
P.O.Box 7
Hoven, S.D. 57450

Attachment 2

Loan agreement between Long Family Land and Cattle Co. Inc. and the Bank of Hoven.

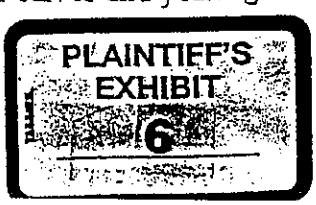
The Bank of Hoven has received a deed to property described in exhibit A attached here to, through the estate of Kenneth Long. The Bank of Hoven will credit Long Family Land and Cattle Co. Inc. from the sale proceeds as follows:

Credit for land	$468,000.00
Credit for house	$ 10,000.00
	$478.000.00

Less State Enhancement payoff	$ 82,447.88
Less past due taxes	$ 23,314.38
Less attorneys fees	$ 9,540.10
Less title search	$ 473.00
Less title ins	$1,118.25
Less payment in full of note #98179 RE Note	$206,566.16
Less payment in full of note #2002 BIA Subordination	$ 50,301.51
Less payment in full of note 2470 Emergency feed note	$ 5,312.69
Less payment in full of note #1866 (Ronnie & Lila Long)	$ 3,928.56
Less payment in full of note #98262 BIA Guaranteed Note 84%	~~$ 60,669.21~~
Less partial payment on note # 98809 BIA Guaranteed Note 80%	$ 34,328.26
	$478,000.00

The Bank of Hoven will request, from the BIA, to increase the guarantee to 90% and to reschedule note #98181(prin, int. and late charges), over 20 years with an annual payment from crop and yearling sales. Primary security will be cows, bulls and machinery. The Bank of Hoven will also request a 90% BIA guarantee on a $70,000.00 annual operating loan. This note will be secured by a 2nd lien on calves, yearlings, and a first lien on crops, and will be paid down to $1.00 annually.

If the BIA guarantee requests are approved, then the Bank of Hoven will make a loan to Long Family Land and Cattle Co. Inc. for $ 53,500.00 to pay off the balance of note # 98809 for approximately $17,000.00, with $37,500.00 to be used to purchase 110 calves to be feed and pastured with their own calves. The sale proceeds from wheat, millet, and 10hd of assorted yearlings will be applied to note #98809 first with any balance to be applied to the $53,500.00 note. The Bank of Hoven will have a 1st security interest on all calves and yearlings



and will apply those sales to the $53,500.00 note first.

The Bank of Hoven will enter into a lease/purchase option on the approximately 2230 acres of land only described in exhibit A, under a separate agreement attached hereto.

Dated this 5th day of Dec, 1996

Long Land and Cattle Co. Inc.
by Lonnie Long Pres
by Lila Long Sec Treasure

Bank of Hoven
by James Nelson AVP

LEASE WITH OPTION TO PURCHASE

* *

This Indenture, made and entered into and executed in duplicate this 5th day of December, 1996, by and between Bank of Hoven, a South Dakota Banking Corporation, P.O. Box 7, Hoven, South Dakota 57450, P.O., lessor, and Long Family Land and Cattle Company, Inc., of P.O. Box 272, Timber Lake, South Dakota 57656, lessee, WITNESSETH:

That the Lessor in consideration of the rents and covenants hereinafter mentioned, does hereby demise, lease and let unto the said lessee, and the said lessee does hereby hire and take from the said lessor, the following described real estate situated in Dewey County, South Dakota:

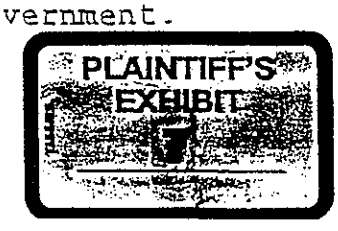
The East Half (E½) of Section One (1), Township Fifteen (15) North, Range Twenty Four (24), East of the Black Hills Meridian;

The Northwest Quarter (NW¼) of Section Twenty Five (25), all of Section Twenty Eight (28), the East Half (E½) of Section Thirty Two (32), the Northeast Quarter (NE¼), the West Half of the Northeast Quarter of the Northwest Quarter (W½NE¼NW¼), the Southeast Quarter of the Northeast Quarter of the Northwest Quarter (SE¼NE¼NW¼), the West Half of the Northwest Quarter (W½NW¼) and the Southeast Quarter of the Northwest Quarter (SE¼NW¼) and the South Half (S½) of Section Thirty Three (33); and the Southwest Quarter (SW¼) of Section Thirty Four (34), all in Township Seventeen (17) North, Range Twenty Five (25), East of the Black Hills Meridian, subject to easements, reservations and conveyances, if any, existing and of record,

to have and to hold, the above leased premises unto the said lessee for the full term of two (2) years from and after December 5, 1996.

LEASE PAYMENTS:

The said lessee agrees to and with the said lessor to pay as rent for the above described real estate, the sum of Forty Four Thousand One Hundred Ninety Eight Dollars ($44,198.00), per year, payable in approximately October or November of 1997 and 1998. Said payment is a CRP payment which will be payable from the United States Government to lessee, and lessee agrees to assign said payment to lessor so that lessor may receive said payment directly from the United States Government.



Prepared by:
David A. Von Wald
Attorney-at-Law
Box 468
Hoven, So. Dak. 57450
Tel. (605) 948-2550

NO ASSIGNMENT OR SUBLETTING:

It is understood that the lessee shall not have the right to sublet the above described real estate, or any part thereof, nor assign this lease without the prior written consent of the lessor.

REAL ESTATE TAXES:

The lessee shall pay the 1996 real estate taxes which become due and a lien on January 1, 1997, and the 1997 real estate taxes which become due and a lien on January 1, 1998, before the same shall become delinquent.

POSSESSION:

The lessee is currently in possession of the above described real estate and its possession shall terminate on December 5, 1998.

OPTION TO PURCHASE:

The lessee shall have an option to purchase the above described real estate during the term of this lease under the following terms and conditions:

A. The option purchase price for the above described real estate shall be the sum of Four Hundred Sixty Eight Thousand Dollars ($468,000.00).

B. In the event lessee wishes to exercise its option to purchase, it must give notice to lessor in writing and pay five percent (5%) of the purchase price and furnish the remaining balance of purchase price within sixty (60) days of the date of any such notice.

C. Lessee shall pay all selling expenses, including attorney fees, transfer fees, title insurance and any other miscellaneous expenses, including real estate taxes.

D. Lessor agrees to provide a Quit Claim Deed only, quitclaiming its interest in the above described real estate to the lessee, upon receipt of the entire purchase price.

E. Lessor agrees that there is currently a mortgage under the State Enhancement Program which it shall forthwith pay off,

and additionally it shall satisfy any mortgages wherein the Bank of Hoven is presently the mortgagee.

F. Lessor now owns residential real estate in Timber Lake, formerly owned by Kenneth Long, and has credited lessee's notes for $10,000.00. In the event said residential property is sold for more than $10,000.00, lessee agrees to reduce the selling price of the above described farm real estate any net amount, after expenses exceeding $10,000.00. In the event said residential real estate is sold for less than $10,000.00, the selling price of the above described farm real estate shall be increased by the net amount, after expenses of less than $10,000.00. Lessor does not warrant that it will sell said residential real estate nor is it under any obligation to attempt to sell the same. In the event it is not sold at the time lessee exercises its option to purchase, the option price of the farm real estate shall not be affected. If lessor later sells said residential real estate, or if lessee does not exercise its option to purchase, any proceeds from the sale of said residential property will be the Bank of Hoven's.

G. In the event lessee exercises its option to purchase, all rent payments received prior to the purchase of said real estate will be credited against the purchase price of said real estate, minus an amount equal to interest at the rate of eight and one-half percent (8.5%) per annum on the unpaid balance of purchase price from and after December 5, 1996.

INSURANCE:

Lessor will purchase a policy of insurance insuring the buildings located on the above described real estate against loss by fire and extended coverage along with liability insurance, and it shall be the responsibility of the lessee to reimburse the lessor for the cost of all such insurance.

WASTE:

Lessee agrees that it shall not commit any waste on the above described real estate and shall farm or graze said real estate in a good and husbandlike manner and shall maintain the buildings and fences in a good state of repair, reasonable wear and tear by the elements alone excepted, at its expense.

DEFAULT:

That should the lessee fail to pay any of the rent aforesaid

when due, or fail to fulfill any of the covenants herein contained, and in that event, it shall be lawful for the said lessor to re-enter and take possession of the above rented premises and to hold and enjoy the same without such re-entering working a forfeiture of the rents to be paid, and the covenants to be performed by the said lessee for the full term of this lease and to pursue any other remedy accorded to lessor by law. In the event lessee defaults under the terms and conditions of this agreement, the option to purchase above mentioned shall terminate upon lessor giving lessee a notice to cure, which notice is not cured within thirty (30) days of any such notice.

QUIET ENJOYMENT:

The lessor does covenant with the lessee that the lessee upon paying the rent and performing the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said premises for the full term of this lease.

In Witness Whereof, all parties have hereunto set their hands the day and year first above written.

LESSOR:

BANK OF HOVEN, a South Dakota Banking Corporation

By: James Nielsen
Its: Asst V.P.

(CORPORATE SEAL)

LESSEE:

LONG FAMILY LAND AND CATTLE COMPANY, INC.

By: Lonnie Long Pres.
Its:

(CORPORATE SEAL)

State of South Dakota)
) ss
County of Potter)

On this 5th day of December, 1996, before me, the

undersigned officer, personally appeared James Nielsen who acknowledged himself to be the Assistant V.P. of Bank of Hoven, a South Dakota Banking Corporation, lessor, and that he, as such Assistant V.P., being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Assist. V.P.

In Witness Whereof, I hereunto set my hand and official seal.

David A. Van Walt
Notary Public

My Commission Expires:
July 22, 2001

(SEAL)

State of South Dakota)
) ss
County of Potter)

On this 5-th day of December, 1996, before me, the undersigned officer, personally appeared Ronnie Long, who acknowledged himself to be the President of Long Family Land and Cattle Company, Inc., a Corporation, lessee, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

In Witness Whereof, I hereunto set my hand and official seal.

David A. Van Walt
Notary Public

My Commission Expires:
July 22, 2001

(SEAL)
Bank\Lease

BANK OF HOVEN

January 16, 1997

Dennis Huber
ND/SD Indian Business Development Center
Bismarck, N.D. 58504

Dear Dennis,

The Bank of Hoven has received a deed to property previously owned by Kenneth Long, Timber Lake, S.D. worth $468,000.00 on farm and range real estate and $10,000.00 on a house in Timber Lake. This value of $478,000.00 has been used to pay off prior real estate debt, taxes, attorney fees, title fees and bank debt owed by Long Family Land and Cattle Co., Inc., Timber Lake, S.D.

Longs are also in the process of receiving a rescheduling of the remaining present BIA guaranteed debt of $343,874.42 over a 20 year term. They will also be receiving a BIA guaranteed operating loan for $70,000.00 for annual operating expenses. Upon receiving the BIA guarantee shortly, they will also receive a direct bank loan for $53,500.00 to be used to refinance bank debt and purchase feeder cattle.

These credits and loans would not have been possible without your expertise and assistance. We appreciate your efforts in helping the bank secure this loan package and reduction of bank debt for the Longs. Please call me at the bank if you have any questions on the above information. Thank You!

Sincerely,

Charles Simon

Charles Simon VP
Bank of Hoven
P.O.Box 7
Hoven, S.D. 57450

Attachment 4

PLAINTIFF'S EXHIBIT 10

FDIC

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Aberdeen Area Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401

REPLY REFER TO:
Community Services/Economic Development
MC-305

FEB 14 1997

James Nielsen
Assistant Vice President
Bank of Hoven
P.O. Box 7
Hoven, South Dakota 57625

Dear Mr. Nielsen:

This letter is to recap your conversation with Loan Specialist, Stacey Johnston on February 3, 1997 and respond to your December 12, 1997 submittal on the Long Family Land Cattle Co. Inc..

Your December 12, 1996 request involved a restructure of the term guaranty, a new $85,000 line of credit, a LIFO on $41,000 to purchase livestock, and an increase of the guaranty percentage. Loan Specialist, Stacey Johnston informed you that this kind of request would have to be viewed as a modification, which requires a more complete application. Modification criteria is clearly outlined in your Loan Guaranty Agreement and 25 CFR 103.21. This reference material is the basis for our programs and should be adhered to when requesting, modifying, servicing and collecting guaranteed loans.

We understand the emergency situation caused by the severe winter conditions. Therefore, we concur with a loan for emergency expenses. These expenses should be documented and readily available to the Agency Superintendent. This decision is made with the intention of preserving collateral. Refer to 25 CFR 103.22 for further direction and documentation.

We will not act on your December 12, 1996 requests until we receive a complete application. Under separate cover, we are again sending a copy of 25 CFR 103.

Area Director

Attachment 5

PLAINTIFF'S EXHIBIT 11

12/01/98

Steve Hageman, CEO
Bank of Hoven
P. O. Box 7
Hoven SD 57450

Dear Steve:

This letter is a request for a 60 day extension on the land that Ronnie long has deeded to Bank of Hoven. I have 4 possibilities of refinancing and paying the debt off against the land that the bank holds the deed on. This will allow me the necessary time to try and secure financing for this endeavor. I have a bank interested and will be looking at the land in the next day or two. I also have been working on investors and have a individual out of Nebraska that is interested and this will allow me time to work out the necessary details to make this a reality.

Ronnie Long

Attachment 6

BANK OF HOV

FAX (605) 948-2198

TELECOPIER COVER LETTER

TO John Lemke or Harley Henderson DATE 12-2-98

FROM: Charles Simon, BOH # OF PAGES 1

RECEIVED
DEC 4 1998
C.R.S.T. TRIBAL COURT

RE: _____

COMMENTS/ACTION This letter will notify you and Ronnie Long that there will be no extension of time from the December 5, 1998 deadline for option to purchase. Possession of this property by lessee, Long Family Land and Cattle Company, Inc., will terminate on December 5,1998.

Charles W. Simon, VP

REPLY REQUESTED: YES ( ) WHEN: _____
NO ( )

BOX 7 • Hoven, South Dakota 57450 • Phone (605) 948-2214

FDIC

PLAINTIFF'S EXHIBIT 18

Attachment 7

37-189

3-22-99

QUIT CLAIM DEED—Statutory Form

Bank of Hoven, A Corporation, PO Box 7

grantor of Potter

County, State of South Dakota for and in consideration of

Forty Nine Thousand Six Hundred Dollars and no/100---------- Dollars,

convey and quit claim to Ralph H Pesicka Jr. and Norma J. Pesicka the

grantees, of Timber Lake SD P. O. all interest in the following described real

estate in the County of Dewey in the State of South Dakota:

East Half of Section One, Township Fifteen, Range Twenty Four
(E½ 1-15-24) Dewey County, South Dakota.

Transfer Fee
$50.00 pd.

Attachment 8

PLAINTIFF'S EXHIBIT 19

Dated this 17th day of March 1999

Bank of Hoven, A Corporation

Brent Heinert, VP

66494

STATE OF SOUTH DAKOTA }
County of Dewey } ss.

OFFICE of REGISTER of DEEDS

Filed for record the 22nd day of March 1999, at 9 o'clock and 30 Minutes A. M., and recorded in Book 37 of Deeds on page 189

Joe Addicketble
Register of Deeds.

By _____ Deputy.

Fee $10.00

Prepared by Nancy Rausch
Bank of Hoven
Box 7, Hoven, SD 57450
Phone 605-948-2216

STATE OF SOUTH DAKOTA. }
County of Potter } ss.

On this the 17th day of March 1999 before me Nancy K. Rausch, A Notary Public the undersigned officer, personally appeared Brent Heinert

known to me or satisfactorily proven to be the person whose name subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Nancy K Rausch

A Notary Public

Title of Office

My commission expires NANCY K. RAUSCH Notary Public, POTTER COUNTY, S. DAK. My Commission Expires APRIL 10, 2001

DAVID A. VON WALD
ATTORNEY-AT-LAW
P.O. BOX 468
HOVEN, SOUTH DAKOTA 57450

Telephone: (605) 948-2550
Fax: (605) 948-2236
E-Mail: dvonwald@sullybuttes.net

June 4, 1999

Cheyenne River Sioux Tribal Court
Attention: Dale Charging Cloud
P.O. Box 120
Eagle Butte, South Dakota 57625

Re: Bank of Hoven v. Long Family Land & Cattle Co., Inc.

Dear Mr. Charging Cloud:

Enclosed please find a Notice to Quit which I would like served on Long Family Land & Cattle Co, Inc., Ronnie Long, President. Send your Return of Service with your billing to my office after service has been completed. I would appreciate it if you would serve it immediately. Thank you.

Sincerely,

David A. Von Wald

DAVW/jh
Encl.

NOTICE TO QUIT

TO: Long Family Land & Cattle Co., Inc. and
Ronnie Long

Notice is hereby given and demand made by Bank of Hoven to Long Family Land & Cattle Co., Inc. and Ronnie Long that you must immediately quit possession of the real estate described below and to remove all cattle or other livestock owned by you. Notice is further given that Bank of Hoven intends to seek the damages set out by SDCL 21-3-8 in the event you do not immediately terminate your possession of the real estate.

The East Half (E½) of Section One, Township Fifteen North, Range Twenty-four (1-15-24), East of the Black Hills Meridian;

The Northwest Quarter (NW¼) of Section Twenty-five (25), all of Section Twenty-eight (28), the East Half (E½) of Section Thirty-two (32), the Northeast Quarter (NE¼), the West Half of the Northeast Quarter of the Northwest Quarter (W½NE¼NW¼), the Southeast Quarter of the Northeast Quarter of the Northwest Quarter (SE¼NE¼NW¼), the West Half of the Northwest Quarter (W½NW¼) and the Southeast Quarter of the Northwest Quarter (SE¼NW¼) and the South Half (S½) of Section Thirty-three (33); and the Southwest Quarter (SW¼) of Section Thirty-four (34), all in Township Seventeen (17) North, Range Twenty-five (25), East of the Black Hills Meridian, subject to easements, reservations and conveyances, if any, existing and of record, all in Dewey County, SD.

Dated this 19th day of May, 1999.

BANK OF HOVEN

By: Steve Hageman,
Its President

Attachment 10

CHEYENNE RIVER SIOUX TRIBE

CERTIFICATE OF SERVICE

I the undersigned CRST Tribal Officer received and served the NOTICE TO QUIT for Long Family Land & Cattle Co. on this 16 day of June 1999 at 1:25 am/(pm) at Timber Lake, SD

Joe Mesteth C.R.S.

OFFICER, CHEYENNE RIVER SIOUX TRIBE

CASE INFORMATION

Letter of request from David A. Von Wald, Attorney At Law., P.O. Box 468, Hoven, SD 57450.

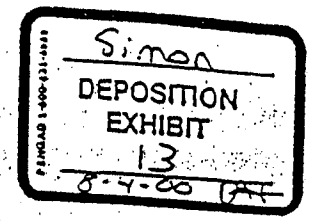
RESIDENCE - Timber Lake Area

Reviewed and approved for service

Bersan Bluespruce, Chief Judge

6/15/99
Date approved

Will be billed for $20.00 upon proof of service. Please return the Certificate of Service to the Court Administrator.



CONTRACT FOR DEED

* * * * * * * * * * * * * *

This Agreement, made and entered into and executed in duplicate this 25th day of June, 1999, by and between **Bank of Hoven, a South Dakota Banking Corporation**, of P.O. Box 7, Hoven, South Dakota 57450, Seller, and **Edward Maciejewski** and **Mary Jo Maciejewski**, husband and wife, as tenants in common and not as joint tenants, of HCR 64, Box 6, Timber Lake, South Dakota 57656, Buyers, WITNESSETH:

That for the consideration hereinafter named, the Seller has sold and does hereby agree to convey to the Buyers, by good and sufficient Warranty Deed, free and clear of all taxes, liens, and encumbrances, except as hereinafter provided, the real estate situated in Dewey County, South Dakota, described as follows:

Parcel One:

> The Northwest Quarter (NW¼) of Section Twenty Five (25), all of Section Twenty Eight (28), and the the Southwest Quarter (SW¼) of Section Thirty Four (34), all in Township Seventeen (17), Range Twenty Five, East of the Black Hills Meridian;

Parcel Two:

> The East Half (E½) of Section Thirty Two (32), the East Half (E½), the Southwest Quarter (SW¼), the South Half of the Northwest Quarter (S½NW¼), the Northwest Quarter of the Northwest Quarter (NW¼NW¼), the South Half of the Northeast Quarter of the Northwest Quarter (S½NE¼NW¼), and the Northwest Quarter of the Northeast Quarter of the Northwest Quarter (NW¼NE¼NW¼) of Section Thirty Three (33), all in Township Seventeen (17), Range Twenty Five (25), East of the Black Hills Meridian;
>
> all subject to easements, reservations, and conveyances if any, existing and of record,

upon the terms hereinafter stated, and the Buyers do hereby agree to purchase said real estate from the Seller, at the price, in the manner, and upon the terms hereinafter set forth.

PURCHASE PRICE:

The purchase price for the real estate described in Parcel One above is Two Hundred One Thousand Six Hundred Dollars ($201,600.00), and shall be paid as follows, to-wit: The sum of Forty Thousand Three Hundred Twenty Dollars ($40,320.00) shall be paid as a down payment, upon the execution of this contract and the remaining balance of purchase price in the amount of One Hundred Sixty One Thousand Two Hundred Eighty Dollars ($161,280.00) shall be paid in ten (10) equal amortized annual installment payments, with the first such installment payment due and payable on March 1, 2000, in the amount of Twenty Three Thousand Two Hundred Twenty Nine and 59/100 Dollars ($23,229.59), and thereafter the sum of Twenty Two Thousand Two Hundred Twenty Nine and 59/100 Dollars ($23,229.59) is due and payable on the first day of March in each succeeding year until the final payment of Twenty Three Thousand Two Hundred Twenty Nine and 54/100 ($23,229.54) shall be due and payable on March 1, 2009. The deferred balance of purchase price in the amount of One Hundred Sixty One Thousand Two Hundred Eighty Dollars ($161,280.00) shall draw interest at the rate of 7.75% per annum, upon the balance thereof remaining unpaid from and after June 25, 1999, interest being included in the above mentioned installment payment, all according to the schedule thereof hereto annexed as Schedule "A", and by this reference thereto made a part hereof.

The purchase price for the real estate described in Parcel Two above is the sum of One Hundred Ninety Nine Thousand Five Hundred Dollars ($199,500.00) and shall be payable as follows: The sum of Thirty Nine Thousand Nine Hundred Dollars ($39,900.00) as a down payment shall be paid upon Buyers obtaining possession of Parcel Two, and the remaining balance of purchase price in the amount of One Hundred Fifty Nine Thousand Six Hundred Dollars ($159,600.00) shall be paid in ten (10) equal annual amortized installment payments with the first such payment due on March 1, after the year Buyers obtain possession for the crop year, and thereafter an equal annual amortized payment shall be due on the 1st day of March in each succeeding year, until the full purchase price has been paid. The deferred balance of purchase price in the amount of One Hundred Fifty Nine Thousand Six Hundred Dollars ($159,600.00) shall draw interest at the rate of 7.75% per annum, upon the balance thereof remaining unpaid from and after the date of possession of said real estate.

ITEMIZED PURCHASE PRICE:

It is agreed between the parties hereto that the depreciable assets located on Parcel One are sold for $18,050.00 and on Parcel Two for $22,684.00.

PREPAYMENT:

The Buyers shall have the option or privilege of making payments in advance on either purchase price or interest, at any time, and in any amount.

POSSESSION DATE:

The Buyers shall be entitled to possession of Parcel One upon the payment of the down payment, and shall be entitled to possession of Parcel Two when the current lessee quits possession of the real estate, either voluntarily or involuntarily. It is specifically understood that Long Family Land & Cattle Company, Inc., is currently grazing cattle on Parcel Two, and Rhonda Long is living in a house located on Parcel Two and that the Bank of Hoven is in the process of evicting the lessee and Rhonda Long from said real estate. Due to the uncertainties of litigation, it is impossible to accurately predict when the lessee shall be evicted from the real estate, but that upon either eviction or voluntary surrender of the real estate, by the past lessee, Buyers shall be entitled at that time to possession of said real estate or if eviction is not accomplished prior to June 1st of any year, then Buyers shall be entitled to possession by June 1st of the year following eviction.

MINERAL RIGHTS:

All right, title and interest which the Seller now has and holds in and to all oil, gas, and other minerals in and under said real estate, of every nature, are sold to the Buyers as part of the property sold under this Contract for Deed, for the consideration hereinbefore named, and shall pass to the Buyers by virtue of the Warranty Deed hereinafter referred to.

TAXES:

The Seller will pay the first half of the 1999 real estate taxes and the taxes for all prior years for Parcel One, and the Buyers shall pay the second half of the 1999 real estate taxes for Parcel One, which become due and a lien on January 1, 2000,

and the taxes for all subsequent years before the same shall become delinquent.

FARM PAYMENTS:

The Seller shall be entitled to keep one-half of the agricultural subsidy payments or any other governmental farm payment for the year 1999 for Parcel One, and the Buyers shall be entitled to receive the remaining one-half.

PARCEL TWO:

In the year that Buyers obtain possession of Parcel Two, for the crop year, (which is defined as prior to June 1st of any year) the Buyers shall receive all government payments attributable to that year and pay the real estate taxes attributable to that year and the taxes for all subsequent years. Interest on the unpaid balance shall then commence on the date of possession of Parcel Two.

MACHINERY:

Currently Long Family Cattle Company, Inc., or Ronald Long, has machinery located on some of the above described real estate, and Seller, or its agent, or agents, shall be entitled to enter upon the real estate for the purposes of removing any machinery owned by Long Family Cattle Company, Inc., or Ronald Long.

TITLE INSURANCE AND WARRANTY DEED:

The Seller shall pay the costs of a policy of title insurance, and that when the full purchase price, together with all interest and taxes have been paid in full, the Seller shall make, execute and deliver to the Buyers, a good and sufficient Warranty Deed conveying said real estate to Buyers. Seller shall also pay the transfer fee.

TIME OF ESSENCE:

The time of payment of said annual payments of purchase price, together with principal and interest, along with all taxes, shall be considered as of the essence of this contract and that a failure to pay such purchase price, interest or taxes before they become delinquent, shall constitute a default in the terms and conditions of this contract, and thereupon the Seller may, at its option, declare the full amount unpaid under this

contract to be due and payable forthwith, and may, at its option, proceed to foreclose this contract, or to pursue any other remedy accorded to it by law.

BINDING EFFECT:

All of the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, personal representatives, successors and assigns of the respective parties hereto.

IN TESTIMONY WHEREOF, all of the parties have hereunto set their hands and seals this day and year first mentioned above.

SELLER:

BANK OF HOVEN, a South Dakota Banking Corporation,

By: _____
Its President

BUYERS:

Edward Maciejewski

Edward Maciejewski

Mary Jo Maciejewski

Mary Jo Maciejewski

State of South Dakota)
) ss
County of Potter)

On this 25th day of June, 1999, before me, the undersigned officer, personally appeared Stephen A. Hageman, who acknowledged himself to be the President of the Bank of Hoven, a South Dakota Banking Corporation, and that he, as such president, being authorized so to do, executed the foregoing instrument for the purposes therein contined, by signing the name of the corporation by himself as President.

In Witness Whereof, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:
11/1/2004
(SEAL)

BRENT HEINERT
NOTARY PUBLIC
SOUTH DAKOTA

State of South Dakota)
) ss
County of Potter)

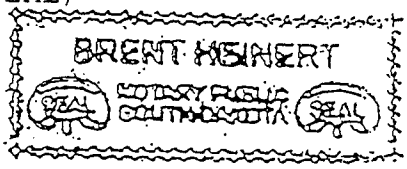
On this 25th day of June, 1999, before me, the undersigned officer, personally appeared Edward Maciejewski and Mary Jo Maciejewski, Buyers, known to me to be the persons whose names are subscribed to the within and foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:
11/1/2004

(SEAL)



Prepared By: David A. Von Wald, Attorney
Address: P.O. Box 468
Hoven, South Dakota 57450
Telephone: (605) 948-2550
Fax: (605) 948-2236

Payment #	Date	Interest	Principal	Balance
10	06/25/99	7.750%	$161280.00	$161280.00
1	03/01/00	8561.10	14668.49	146611.51
YEAR	2000	8561.10	14668.49	146611.51
2	03/01/01	11362.39	11867.20	134744.31
YEAR	2001	11362.39	11867.20	134744.31
3	03/01/02	10442.68	12786.91	121957.40
YEAR	2002	10442.68	12786.91	121957.40
4	03/01/03	9451.70	13777.89	108179.51
YEAR	2003	9451.70	13777.89	108179.51
5	03/01/04	8406.88	14822.71	93356.80
YEAR	2004	8406.88	14822.71	93356.80
6	03/01/05	7235.15	15994.44	77362.36
YEAR	2005	7235.15	15994.44	77362.36
7	03/01/06	5995.58	17234.01	60128.35
YEAR	2006	5995.58	17234.01	60128.35
8	03/01/07	4659.95	18569.64	41558.71
YEAR	2007	4659.95	18569.64	41558.71
9	03/01/08	3229.62	19999.97	21558.74
YEAR	2008	3229.62	19999.97	21558.74
10	03/01/09	1670.80	21558.74	0.00
YEAR	2009	1670.80	21558.74	0.00

Payment Amount $ 23229.59
Final Payment Amount $ 23229.54

SCHEDULE "A"

DEED RECORD No. 40

Book

page 318

WARRANTY DEED

67699

PRINTED BY BROWN & SAENGER, SIOUX FALLS, SD

Plains Commerce Bank, a South Dakota Banking Corporation, formerly known as Bank of Hoven, grantor of P.O. Box 7, Hoven, Potter County, State of South Dakota 57450, for and in consideration of for a good and valuable consideration, and One Dollar ($1.00), ~~Dollars~~, GRANTS, CONVEYS AND WARRANTS TO Edward Maciejewski and Mary Jo Maciejewski, husband and wife, as joint tenants with the right of survivorship and not as tenants in common, grantees, of HCR 64, Box 6, Timber Lake, South Dakota 57656, P. O., the following described real estate in the County if Dewey, in the State of South Dakota:

The Northwest Quarter (NW¼) of Section Twenty Five (25), all of Section Twenty Eight (28), and the Southwest Quarter (SW¼) of Section Thirty Four (34), all in Township Seventeen (17), Range Twenty Five (25), East of the Black Hills Meridian, subject to easements, reservations and conveyances, if any, existing and of record.

Transfer Fee: $202.00

Dated this 11th day of January, 2002.

(Corporate Seal)

Plains Commerce Bank, a South Dakota Banking Corporation
By: s/ Stephen A. Hageman
Its President

STATE OF South Dakota)
)ss
County of Potter)

On this the 11th day of January, 2002, before me, David A. Von Wald, the undersigned officer, personally appeared Stephen A. Hageman, who acknowledged himself to be the President of the Plains Commerce Bank, a South Dakota Banking Corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

(SEAL)

s/ David A. Von Wald
David A. Von Wald, Notary Public

My Commission Expires: July 22, 2007

Prepared by:
David A. Von Wald
Attorney-at-Law
Box 468
Hoven, So. Dak 57450
Tel. (605) 948-2550

STATE OF SOUTH DAKOTA, County of Dewey, ss.

Filed for record this 16th day of January A. D., 2002, at 10:50 o'clock A. M., and recorded in Book 40 of Deeds on page 318

Register of Deeds Seal

Jean Holdahl Tibke
Register of Deeds.

Fee, $10.00

By _____ Deputy.

TRIBAL ENROLLMENT
PO BOX 325
EAGLE BUTTE, SOUTH DAKOTA 57625
605-964-6612/6613
FAX: 605-964-6614

December 9, 2002

TO WHOM IT MAY CONCERN:

This is in regards to Edward and Mary Jo (Kraft) Macijewski and Ralph and Norma (Long) Pesicka. They are not enroll with the Cheyenne River Sioux Tribe.

Should you have any question please feel free to call.

Thanking you for your time and consideration of this letter.

Sincerely,

CHEYENNE RIVER SIOUX TRIBE

Charlene Anderson
Enrollment Research Specialist

Attachment 12

PLAINTIFF'S EXHIBIT 26

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,

R-120-99

Plaintiffs,

vs.

ORDER

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

Defendants.

The Defendant Bank has moved this Court for judgment notwithstanding the verdict, or in the alternative a new trial, on several causes of action asserted in the Plaintiffs' complaint and tried to a seven-member jury[1] on December 6 and 11, 2002. This Court dismissed several counts of the complaint, including one for fraud, one for failure of consideration, one pleading an unconscionable contract, and one praying for rescission of contract, after submission of the Plaintiffs' case, but permitted four counts- breach of contract, bad faith, discrimination, and violation of self-help remedies- to be submitted to the jury.[2] The Defendant's counterclaim for unlawful entry and detainer was heard by the Court at the same time as the legal issues were tried to the jury. The jury returned its verdict in the form of six interrogatories finding for the Plaintiffs on the causes of action alleging breach of contract, bad faith, and discrimination and finding for

[1] Although the Court impaneled six jurors and one alternate in this case, the Parties during the trial stipulated that all seven jurors could deliberate the case.
[2] The Court also dismissed, prior to trial, the count of the complaint alleging fraud in the inducement of a personal representative's deed from the estate of Kenneth L. Long to the Bank prior to trial on the ground that this count was an attempt to collaterally attack state court probate proceedings and should have been brought in the state court.

Attachment 13

the Defendants on the count alleging violation of self-help remedies. The jury also issued an advisory verdict on the issue of whether the Defendant Bank's breach of contract prevented the Plaintiffs from performing on a lease with an option to purchase, finding that it did. That verdict informs the Court with regard to the counterclaim of the Bank to evict the Plaintiffs from certain real property it had acquired title to in the probate proceedings of Kenneth L. Long. The jury also returned a verdict for damages in the amount of $750,000 and directed the Court to award interest on that amount. The Defendant Bank timely filed its motion for JNOV and for a new trial on all counts the jury returned against it. This order will also address the Defendant Bank's counterclaim seeking to evict the Plaintiffs from certain fee lands within the Cheyenne River reservation.

The Defendant Bank's first argument is that the finding that it breached a loan agreement (Plaintiff's Exhibit 6) is legally insufficient because the loan agreement is not a legally-enforceable contract because the Defendants failed to give consideration. Although this defense was not pled by the Defendant Bank prior to trial, it did make an oral motion to conform its pleadings to the evidence submitted and that motion was granted by the Court. The Defendant Bank also moved for a directed verdict on the issue and the motion is therefore appropriate. The issue of want of consideration was therefore appropriately submitted to the jury and is therefore now resolvable by the Court.

In general, a Court should not overturn the verdict of a jury if sufficient evidence was submitted to the jury so that reasonable minds could disagree about the evidence. See Dunes Hospitality v. Country Kitchen, 623 NW2d 484 (SD 2001). As the South Dakota Supreme Court has stated with regard to judgments nov:

> Thus, the grounds asserted in support of the directed verdict motion are brought before the trial court for a second review. We review the testimony and evidence in a light most favorable to the verdict or the nonmoving party, "then without weighing the evidence [we] must decide if there is evidence which would have supported or did support a verdict.

Matter of Estate of Holan, 621 NW2d 588, 591 (SD 2000).

BREACH OF CONTRACT ACTION

The Bank makes a strong argument that the loan agreement that the jury found it breached is non-enforceable because of a lack of consideration by the Plaintiffs. If a contract is lacking in consideration, a party not giving consideration cannot recover for a breach of that contract. At first blush, it is difficult to see what consideration the Plaintiffs gave in exchange for the promises made by the Bank in the loan agreement, Trial Exhibit 6. The Bank had received a personal representative's deed to the land owned by Kenneth Long that secured the loans to Long Family Land and Cattle Company. The Plaintiffs owed the Bank the amounts reflected in the loan agreement and the agreement appears to be a method for the Bank to re-amortize the payments on the outstanding owed the Bank by the Defendants. Admittedly, the Bank was attempting to gain an increased guarantee from the BIA and needed the Longs cooperation in seeking this, but that "consideration" is not anything the Longs were giving up.

However, the Longs still occupied the land and were receiving the CRP payments on the land. It is impossible to gauge whether valid consideration was given by the Plaintiffs for the loan agreement without also viewing the lease with the option to purchase, which the Court has already ruled, in denying the Defendant's motion for summary judgment on its counterclaim for eviction, was a related document under the integrated document doctrine. See Battery Steamship Corp. v. Refineria Panama S.A.,

513 F.2d 735, 738 n.3 (2d Cir. 1975). It is possible that the jury found consideration in the fact that the Longs were agreeing to continue the operation of their cattle ranch in order to pay the entire amount of principal plus interest instead of having the Bank call the loans and collect the guarantee from the BIA in an amount substantially less than what was owed by the Plaintiffs. In addition, the Longs agreed to assign the CRP payments to the Bank as part of the plan to permit them to get on their feet again and attempt to regain title to the land that was in the Long family name for many years. The Court cannot conclude that there is no evidence that supports the jury's verdict and therefore denies the motion for judgment notwithstanding the verdict on the claim that consideration was wanting.

The Bank also contends that even if consideration existed, no evidence was submitted to the jury to support the Plaintiffs' claim that the Bank breached the loan agreement. The Bank contends that by the time it was required to perform under the loan agreement- late winter of 1997- the Plaintiffs had suffered substantial livestock losses due to the catastrophic winter of 96-97 and could not have possibly met the loan payments under the loan agreement. The Bank also contends that the only thing it promised to do in the loan agreement was to seek an increase in the BIA guarantee, which it did and the BIA delayed action on the request, and the advance of operating monies of $70,000 was contingent upon the increased guarantee by the BIA which never came.

The Plaintiffs' theory at trial was that the guarantee of $70,000 in annual operating loans was breached and that the advances were not contingent upon the increase by the BIA in the guarantee. The Plaintiffs advanced the theory that had the Bank advanced the $70,000 in operating costs to it they would not have had the

catastrophic cattle losses they experienced because they would have gotten feed to their livestock.[3] It was undisputed that the Bank did not advance the $70,000 referred to in the loan agreement and the Court believes the issue of whether that advance was contingent upon the increase in the BIA guarantee is not clear from the face of the loan agreement and was therefore a jury issue. The jury apparently felt that the Bank breached the promise to advance the operating costs and this Court cannot substitute its opinion for that of the jury when evidence does exist to support the verdict. The loan agreement is ambiguous on its face on the issue of whether the annual advance of the $70,000 in operating monies was contingent upon the BIA improving the increase in the guarantee and that ambiguity must be construed against the drafter of the document- in this case, the Bank.

The Bank also seems to be contending in its motion that it should have been excused from performing the loan agreement after the winter of 96-97 because the catastrophic livestock losses suffered by the Longs precluded them from paying the notes that were consolidated into the loan agreement. This is a legal issue that the Bank did not ask for a jury instruction on and was not therefore properly preserved at trial. Even had it been proposed as a defense, however, the success of this defense would depend upon the jury accepting the premise that the Bank had complied with the loan agreement up to the point when the Longs lost their livestock. The Plaintiffs' theory of the case appeared to be that the operating loan, had it been made prior to the cattle losses, would have prevented those losses and this was a question of fact for the jury to resolve.

---

[3] There was conflicting testimony whether the Longs had ever asked the Bank for operating monies to move hay to the livestock or to move the livestock, but this was a jury issue that was apparently resolved against the Bank.

BAD FAITH CAUSE OF ACTION

The jury also returned a verdict finding that the Bank acted in bad faith when it attempted to gain the increase in the guarantee from the BIA. The Bank contends that there is no evidence to support this conclusion and the verdict should therefore be set aside. Although there is evidence from the record that the BIA was somewhat derelict in delaying a decision on the guarantee until after the Longs had suffered substantial cattle losses,[4] the undisputed evidence presented to the jury was that the Bank failed to respond to a request from the BIA to correct the submission for the increased guarantee in accordance with federal regulations attached to the letter notifying the Bank and the Longs of the insufficient application. The Bank decided not to respond to the request because it apparently had concluded that with the Longs' cattle losses the Longs were no longer able to make the payments on the loan agreement. Admittedly, the Bank did proceed to loan more monies to the Longs and to re-amortize additional loans. However, the jury must have decided that this was not a substitute for the $70,000 in operating monies the Longs needed in order to survive the winter of 96-97.

The Bank argues that the bad faith claim is subsumed into the cause of action alleging breach of contract and a separate cause of action should not have been tried to the jury on this issue. The Court believes that the bad faith claim relates to the failure of the Bank to follow through with the promise to seek an increase in the BIA guarantee, while the breach of contract action relates to the failure of the Bank to make the operating

[4] The BIA took almost two months before it denied the Bank's request for an increase in the BIA guarantee because it was not appropriately submitted. The record is not clear regarding who submitted the documentation for the increase- the Bank or the Cheyenne River Sioux Tribe's Finance Office- but it is clear in that the Bank did not respond to the increase for a correct application.

loans as promised in the loan agreement. These are discrete claims and both impacted the ultimate inability of the Longs to purchase back the land of Kenneth Long under the lease with an option to purchase.

DISCRIMINATION

The third verdict returned against the Defendant Bank related to the claim of the Longs for discrimination in the lending practices of the Bank. During the trial a document was admitted into evidence, without objection, wherein the Vice-President of the Bank advised the Longs that the Bank would not sell them the land they obtained from the personal representative of the estate of Kenneth Long by contract for deed because of the "jurisdictional problems if the Bank ever had to foreclose on this land when it is contracted or leased to an Indian owned entity on the reservation." (Pl's Exhibit 4). This letter was dispatched after the Parties had apparently reached an understanding that the Bank would resale the Longs the land on a contract for deed. The Bank then proceeded to sell a parcel of the land to the Maciejewskis, non-Indians, on a contract for deed. The Court determined that his was prima facie evidence that the Bank denied the Longs the privilege of contracting for a deed because of their status as tribal members and thus submitted the count to the jury for determination over the objection of the Bank, which timely made a motion for a direct verdict on that issue and objected to the jury instruction and interrogatory on the issue.

The Bank reiterates its argument that this Court has no jurisdiction over a claim of discrimination arising under federal law against a non-Indian entity. Federal law prohibits any entity that receives the benefit of federal financial assistance from discriminating against any person in the delivery of services. See 42 U.S.C. 2000d. This statute has been

held to prevent a bank from "redlining" a certain area because of the racial composition of the residents of that area. See Laufman v. Oakley Bldg and Loan, 408 F.Supp 489 (SD Ohio 1976). The Longs are Indian residents of the Cheyenne River Sioux Indian reservation who claimed that the Bank denied them a privilege of contracting for a deed that was granted non-Indians.[5] There was uncontroverted evidence during the trial that the Bank was receiving the benefit of Department of Interior guarantees and CRP payments under federal programs and thus the Bank appears to be covered by federal law.

The Bank contends, however, that even if a prima facie case of discrimination was demonstrated, this Court lacks the jurisdiction to enforce federal civil rights laws under Nevada v. Hicks, 150 L.Ed. 2d 398, 121 S.Ct 2304(2001). In Hicks the Supreme Court held that a tribal court lacks the authority to hear claims against state officials or those acting under the color of state law who allegedly violate the rights preserved persons under federal law under the provisions of 42 USC 1983. The Defendants argue that the same logic applies to claims brought against private parties for violations of other federal laws protecting the rights of individuals to be free of discrimination.

The Court disagrees with the Bank's argument that this Court lacks the jurisdiction to enforce federal anti-discrimination laws against non-Indian entities over which the Court clearly has jurisdiction under the principles laid out in Nevada v. Hicks. It is undisputed in this case, and was conceded by the Bank, that the Bank had a consensual commercial relationship with the Longs, enrolled members of the Cheyenne

[5] In denying the Bank's motion for a directed verdict on this issue, the Court stated that it did not feel that the mere denial of the contract for deed to the Longs was conclusive evidence of discrimination and thus instructed the jury that it must find that the Bank's decision to deny the contract for deed was based "solely" upon their status as tribal members, thus permitting the jury to return a verdict for the Bank if it determined that the Bank had other non-discriminatory reasons to deny the contract for deed.

River Sioux Tribe, and their family cattle corporation, an Indian-owned entity. Even under the very proscribed view of tribal court jurisdiction over non-Indians contained in Hicks, this Court has jurisdiction over a non-Indian Bank that enters into a consensual relationship with the Band or its member or whose actions "threaten or ha(ve) some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe." Montana v. United States, 450 U.S. 544, at 566 (1981); see also Gesinger v. Gesinger, 531 N.W.2d 17 (SD 1995). In Hicks the Supreme Court found that the tribal court jurisdiction over the game warden there was wanting because he had no consensual relationship with the Tribe or its members and his actions did not meet the second prong of the Montana test.

The Court notes that the Cheyenne River Sioux Tribal Code directs this Court to apply federal law in the absence of applicable tribal law. The only anti-discrimination laws explicitly contained in the Cheyenne River Sioux Tribal Code and Constitution are those prohibiting the Tribe from discriminating or denying equal protection of the laws to persons. The Tribe does not appear to have specific code provisions prohibiting private discrimination and the Court is therefore instructed to look to relevant federal law. The Court does not believe that Hicks precludes a tribal court from exercising jurisdiction over a claim of discrimination, ultimately founded upon federal law, against a party over which the Court can exercise jurisdiction under Hicks and Montana. 42 U.S.C. 1983 is not a basis for substantive law, but merely a procedural vehicle for a federal court to exercise jurisdiction over claims of violations of federal law that find their source in other federal laws. If this Court were precluded under Hicks from enforcing all federal civil rights laws, it would be stripped of the authority to enforce the Indian Civil Rights Act,

notwithstanding the United States Supreme Court's pronouncement in Santa Clara Pueblo v. Martinez, , 436 U.S. 49, 58 (1978) that it has ultimate authority to enforce that law. Merely because the genesis of a right arises under federal law does not preclude this Court from enforcing that right.

REDUCTION OF DAMAGES

The Bank argues that the verdict returned by the jury was excessive and had no basis in the law. The Court disagrees. The verdict returned was approximately $500,000 less than what was claimed by the Longs as their damages. Based upon the special interrogatory answers and the exhibits submitted, including Plaintiff's Exhibit 23, the Court cannot conclude that there was no basis for the amount of damages awarded by the jury and therefore denies the motion to reduce the amount of damages awarded.

COUNTERCLAIM FOR EVICTION

In light of the jury's verdict that the Bank did breach the loan agreement, and this Court's previous finding that the lease with an option to purchase and loan agreement were part and parcel of the same agreement, the Court must rule against the Bank on the counterclaim for eviction. A party that has failed to comply with a lease with an option to purchase cannot seek to enforce that agreement through an eviction action. The jury advised the Court that the Bank's breach prevented the Longs from performing under the lease with an option to purchase. The Court therefore concludes that the Plaintiffs did not violate the lease with an option to purchase and their option to purchase remains intact.

However, the jury concluded that the Bank did not violate the tribal law prohibiting self-help remedies when it conveyed parcels of the land covered by the lease with an option to purchase to the other Defendants. The Court has no authority therefore

to set aside the land conveyances to the other Defendants. The Court acknowledges that this leaves an ultimate resolution of this matter in a state of flux. The parties are urged to seek a resolution of the issues left pending by the jury verdict regarding ownership of the land involved herein.

Now, therefore based upon the foregoing analysis, it is hereby

ORDERED, ADJUDGED, AND DECREED that the motion of the Defendant Bank for judgments notwithstanding the verdict, or in the alternative a new trial, on the counts of breach of contract, bad faith, and discrimination are hereby DENIED, and it is further

ORDERED, ADJUDGED, AND DECREED that the motion of the Defendant Bank for a reduction in the amount of damages of $750,000 is DENIED and it is further

ORDERED, ADJUDGED, AND DECREED that the Defendant Bank's counterclaim for eviction of the Plaintiffs from the lands they presently occupy is DENIED at this time, and it is further

ORDERED, ADJUDGED, AND DECREED that counsel for the Plaintiffs shall submit a judgment conforming to the verdict of the jury in this case.

So ordered this 3rd day of January 2003.

CHEYENNE RIVER SIOUX CIVIL COURT SEAL SOUTH DAKOTA

BY ORDER OF THE COURT:

B. J. Jones

BJ Jones
Special Judge

ATTEST: Dale Charging Cloud
Clerk of Courts

Dale Charging Cloud Clerk of the Cheyenne River Sioux Tribal Court, do hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears on file and of record in my said office.

Date this 07th day of Jan 2003

Dale Charging Cloud
Clerk, Cheyenne River Sioux Tribal Court

By DCC

CHEYENNE RIVER SIOUX TRIBAL COURT — IN CIVIL COURT
CHEYENNE RIVER SIOUX TRIBE
CHEYENNE RIVER INDIAN RESERVATION

****

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

Plaintiffs,

vs. — JUDGMENT

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

R-120-99

Defendants.

****

The above-captioned matter came before this Court for trial on December 6, and 11, 2002. Plaintiffs' causes of action for breach of contract, bad faith, discrimination, and violation of self help remedies were submitted to the jury, and Defendant's counterclaim for unlawful entry and detainer was heard by the Court at the same time as the trial evidence was presented to the jury. The jury returned its verdict in the form of interrogatories: (1) for the Plaintiffs on breach of contract, bad faith, and discrimination; (2) for the Defendants on violation of self help remedies; (3) for the Plaintiffs advising the Court that Defendant Bank's breach of contract prevented the Plaintiffs from performing the lease with an option to purchase; (4) for the Plaintiffs a verdict in the amount of $750,000 against the Defendant, Bank of Hoven, nka Plains Commerce Bank; and (5) directing the Court to award prejudgment interest to the Plaintiffs on the verdict amount of $750,000. Defendant Bank moved this Court post trial for judgment notwithstanding the verdict, or in the alternative for a new trial, and this Court denied the Defendant Bank's motions by an Order dated January 3, 2003, which was recorded January 7,

2003. Now, therefore, based on the decisions of the jury and upon good cause having been shown, it is

ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of the Plaintiffs, Long Family Land and Cattle Company, Inc. and Ronnie and Lila Long, and against Defendant, Bank of Hoven, nka Plains Commerce Bank, in the sum of $750,000; and it is further

ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of the Plaintiffs, Long Family Land and Cattle Company, Inc. and Ronnie and Lila Long, against Defendant, Bank of Hoven, nka Plains Commerce Bank, for prejudgment interest in the sum of ~~$263,210,~~ and it is further

$123,131.81 BJ Jones

ORDERED, ADJUDGED, AND DECREED that judgment

Plaintiffs, Long Family Land and Cattle Company, Inc. and Ronnie

Defendant, Bank of Hoven, nka Plains Commerce Bank, for costs a

of $2,850.65.

So ordered this 18th day of ~~January~~, 2003.

Plaintiff's calculation is rejected; Defendant's is accepted.

fob

BY ORDER OF THE C

B.J. JONES
Special Judge

ATTEST: Dale Charging Cloud
Dale Charging Cloud, Clerk

Dale Charging Cloud Clerk of the Cheyenne River Sioux Tribal Court, do hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears on file and of record in my said office.

Date this 25th day of Feb 2003

Dale Charging Cloud
Clerk, Cheyenne River Sioux Tribal Court

By DCC

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,

R-120-99

Plaintiffs,

vs.

SUPPLEMENTAL JUDGMENT

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

Defendants.

This Court entered its judgment in this matter awarding the amount of principal awarded by the jury plus interest, as directed by the jury, and costs and disbursements. This supplemental judgment will address the Plaintiff's request to exercise its option to purchase all of the land conveyed by administrator's deed from the estate of Kenneth Long to the Bank of Hoven, including the land purchased by the Pesickas and Maciejewskis from the Bank. The Bank opposes the motion with regard to the land that was conveyed to the other parties, and also with regard to the land the Plaintiffs presently occupy.

The Court first notes that the tribal jury returned a verdict for the Bank and against the Plaintiffs on the Plaintiffs' claim that the Bank violated tribal law against self-help remedies when it sold certain parcels of the land the Plaintiffs had an option to purchase. The Court construes this to mean that the jury found that the sale of the land to the other parties was not done in violation of tribal law and therefore the other Defendants were good faith purchasers of the land

The Plaintiffs contend that the jury's verdict coupled with this Court's denial of the Defendant Bank's counterclaim for eviction, due to the jury's finding that the Bank's breach of the loan agreement prevented them from exercising their option to purchase, preserves them the option to purchase the land including the land that was sold to the other Defendants after the Bank determined that the Plaintiffs' option to purchase had expired. Were it not for the intervening purchases, the Court may well be inclined to agree with the Plaintiffs. However, the Court does not feel it has the authority to set aside the contracts for deed the Bank entered into with the other Defendants if those Defendants entered into those contracts in good faith and without knowledge of the existing legal dispute between the Bank and the Plaintiffs. Additionally, the only legal issue presented by the counterclaim was whether the Court should evict the Plaintiffs

from the 960 acres they presently occupy. The jury ruled against the Plaintiffs on their theory that the conveyances to the other Defendants violated the law.

In light of this, the Court finds that the Plaintiffs continue to possess an option to purchase the 960 acres they presently occupy at the amount per acre contemplated in the original option, but that they do not have a right to purchase the lands sold the other Defendants. The Court rejects the Bank's argument that enforcing the original option to purchase would be inequitable because land values have gone up because the Plaintiffs were denied the right to exercise the option because of the Defendant Bank's breach. The Court also finds that under the original agreement the proceeds from the sale of the house as well as the CRP payments were to be applied to the purchase price for the entire parcel. However, those amounts were pled in the request for the monetary judgment and a further reduction here would result in the Plaintiff achieving a double recovery.

WHEREFORE, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Plaintiffs are entitled to exercise the option to purchase the 960 acres they presently occupy in the amount of $201,600 and said amount shall be reduced from the judgment entered on their behalf against the Defendant Bank. The Plaintiffs shall file a partial satisfaction of judgment in that amount and the Bank shall, within 30 days of that filing, convey a quit claim deed to the Plaintiffs for the 960 acres they presently occupy, and it is further

ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' request to exercise the option on the remaining balance of land referenced in the option to purchase is DENIED.

So adjudged this 18th day of February 2003.

B.J. Jones
Special Judge

ATTEST: Dale Charging Cloud
Clerk of Courts

Dale Charging Cloud Clerk of the Cheyenne River Sioux Tribal Court, do hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears on file and of record in my said office.

Date this 25th day of Feb 20 03

Dale Charging Cloud
Clerk, Cheyenne River Sioux Tribal Court

By _____

IN THE CHEYENNE RIVER
SIOUX TRIBAL COURT OF APPEALS

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THE BANK OF HOVEN, NOW KNOWN AS PLAINS COMMERCE BANK, Defendant/Appellant/Respondent vs. LONG FAMILY LAND AND CATTLE COMPANY, INC. – RONNIE AND LILA LONG, Plaintiffs/Respondents/Appellants.	#03-002-A R-120-99 MEMORANDUM OPINION AND ORDER

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Per Curiam (Chief Justice Frank Pommersheim and Associate Justices Everett Dupris and Patrick Lee).

I. Introduction and Background

The facts in this case involve a series of complex commercial interactions between Ronnie and Lila Long, the Long Family Land and Cattle Company, Inc., Plaintiffs/ Respondents/Appellants (Longs), and Plains Commerce Bank (formerly Bank of Hoven), Defendant/Appellant/Respondent (Bank), dating back to 1989. Kenneth Long was a non-Tribal member whose first wife, Maxine Long, was a member of the Cheyenne River Sioux Tribe. Kenneth and Maxine owned approximately 2,230 acres of Dewey County real estate in fee simple as well as a house in Timber Lake. All of this real estate is located within the exterior boundaries of the Cheyenne River Sioux Reservation. All of this real estate was mortgaged to the Bank for loans to the Long Family Land and Cattle Company, Inc.

Upon the death of Maxine, Kenneth became the sole owner of the real estate in Dewey County. At the time of Kenneth's death on July 17, 1995, Mr. Long and the Long Family Land and Cattle Company owed the Bank approximately $750,000. Mr. Long's estate acting through Paulette Long, Kenneth's second wife and personal representative of the estate, conveyed the Dewey County real estate, as well as the house in Timber Lake, to the Bank in lieu of foreclosure.

As a result of this conveyance on December 5, 1996, the Long Family Land and Cattle Company was given credit for $478,000 on its outstanding debt to the bank.

Ronnie Long is a member of the Cheyenne River Sioux Tribe and is the son of Kenneth Long. Upon his father's death, Ronnie inherited Kenneth's interest in the 2,250 acres of land in Dewey County on the Cheyenne River Sioux Reservation as well as his father's 49% interest in the Long Family Land and Cattle Company, Inc. The other 51% of the Company is owned by Ronnie and his wife Lila, who is also a member of the Cheyenne River Sioux Tribe. The Company has always been an Indian controlled company.

After Kenneth Long's death, employees of the Bank came to the Longs' land on the Cheyenne River Sioux Reservation to inspect it as well as the cattle, hay and machinery on the land. In addition, Bank officers met several times with the Longs, officials of the Cheyenne River Sioux Tribe, and Bureau of Indian Affairs employees. These meetings all took place on the Cheyenne River Sioux Reservation. All of these activities were directed to establishing a basis from which the Bank would provide new loans to Ronnie Long and the Long Family Land and Cattle Company, Inc. for their ranching operation on this land.

The Bank initially proposed that it would sell the land back to the Longs (which was conveyed to the Bank by the Long Estate) via a 20 year contract for deed. Upon the advice of counsel, in a letter to Ronnie Long dated April 20, 1996, the Bank withdrew this offer because of "possible jurisdictional problems." (Exhibit 4) The revised proposal of the Bank offered the Longs only a two year lease and option within which to purchase and pay for the land in full.

The Lease with Option to Purchase included a purchase price of $478,000 for the land. The other features of the lease provided that annual Crop Reserve Program (CRP) payments to the Longs were assigned to the Bank and the right of the Longs to exercise their option to purchase for $478,000 at the conclusion of the lease period. Another document captioned "Loan Agreement" was signed by both the Bank and the Longs. It recited a series of debits and credits of the Longs to the Bank, and also stated that the Bank would request that the BIA increase the

loan guarantee to 90% of note #98181, that the Bank would make an operating loan to the Longs in the amount of $70,000. The Bank also agreed to make another loan of $53,000 to pay off note #98809 of $17,000 with the balance of $37,000 to be used to purchase 110 cattle. Both the Lease with Option to Purchase and the Loan Agreement were signed by the Bank and the Longs on December 5, 1996.

Shortly thereafter, mother nature intervened with a vengeance during the horrific winter of 1996-97. As a result of the failure to provide the $70,000 loan and the implacable force of the brutal winter, the Longs lost 230 cows, 277 yearlings, and 8 horses. The Bank did provide some additional loans that were quite modest. The Longs never recovered from these financial and weather-related blows and were unable to meet their outstanding debt to the Bank and were not able to exercise their option to purchase.

The Longs did not remove from the property in question at the expiration of the lease. The Bank began (state) eviction proceedings by sending a notice to quit to the Cheyenne River Sioux Tribal Court for service on the Longs. Service was apparently never effectuated. There was never any hearing or ruling by the state court. Without any order of eviction and with the Longs remaining in possession of the land, the Bank nevertheless sold the land. On March 17, 1999, the Bank sold 320 acres to Ralph Pesicka for cash and on June 29, 1999, the Bank sold the remaining 1,905 acres to Edward and May Jo Mackjewski on a contract for deed. None of these purchasers are members of the Cheyenne River Sioux Tribe.

The Longs then commenced an action in the Cheyenne River Sioux Tribal Court seeking a restraining order preventing the Bank from selling the real estate. The Bank's motion to dismiss for lack of subject matter jurisdiction was denied as was the Longs motion for a restraining order against the Bank. The Longs subsequently amended their complaint to include several causes of action against the Bank that sought damages and other relief. The Bank counterclaimed seeking eviction of the Longs and damages. The Longs requested a jury trial on their claims. The Bank did not seek a jury trial on its counterclaim.

A two day jury trial was held on December 6 and 11, 2002. At the close of the Plaintiffs' case, Special Judge B.J. Jones dismissed Plaintiffs' claims that sought to void the contract, alleged fraud, failure of consideration, and unconscionability. The jury returned a verdict in favor of the Longs on their claims that the Bank breached the loan agreement, discriminated against the Longs based on their status as Indians, and acted in bad faith with regard to its dealings with the Longs. The jury awarded the Longs $750,000 along with pre-judgment interest. Special Judge B.J. Jones determined that interest to be $123,131. The jury also found that the Bank did *not* use self-help remedies in an attempt to remove Plaintiffs from the land. A supplemental judgment was later entered permitting the Plaintiffs to exercise the option to purchase the 960 acres of the land they continued to occupy.

Both sides filed timely notices of appeal with this Court. Oral argument was heard on October 6, 2004.

II. Issues

This appeal involves seven (7) issues raised by the Defendant/Appellant/Respondent and two (2) issues of the Plaintiffs/Respondents/Appellants. They are:

A. Defendant/Appellant/Respondent

1. Whether the Cheyenne River Sioux Tribal Court lacked subject matter jurisdiction for a claim of discrimination against an off reservation bank.

2. Whether the trial court erred in failing to grant Defendant's motion for a directed verdict and judgment N.O.V. on the Plaintiffs' breach of contract claim.

3. Whether the trial court erred in failing to grant Defendant's motion for a directed verdict and judgment N.O.V. on Plaintiffs' separate cause of action based on bad faith.

4. Whether the trial court erred in failing to grant Defendant's motion for a judgment N.O.V. in that the damages awarded by the jury were excessive and controlled by passion.

5. Whether the trial court erred in not granting Defendant's cause of action for eviction against the Plaintiffs.

6. Whether the trial court erred in granting Plaintiffs' motion to exercise its option to purchase some of the real estate sold to Edward and Mary Jo Mackjewski under a contract for deed.

7. Whether the trial court erred in allowing pre-judgment interest on certain damages absent specific instructions to the jury.

B. Plaintiffs/Appellees/Respondents Longs and Long Ranch and Cattle Company, Inc.

1. Whether the trial court erred in its calculation of prejudgment interest.

2. Whether the trial court erred in permitting the Plaintiffs to exercise their option to purchase with regard to only part, rather than all, of the land described in the option to purchase.

Each issue will be discussed in turn.

III. Discussion

A. Defendant/Appellant/Respondent Bank

1. Jurisdiction

The Bank's jurisdictional claim is quite limited in scope and is best understood as involving two separate (but overlapping) legal contentions. As to scope, the Bank argues that the Cheyenne River Sioux Tribal court does not have jurisdiction over the Longs' discrimination claim. Bank's brief at 6-9. This presumably forecloses any federal appeal under the *National Farmers Union* exhaustion doctrine of any other issue involved in this case save the jurisdiction claim relative to the discrimination cause of action. *See e.g., National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985). The Bank's two legal arguments, while not drawn as sharply as they might be, assert that the trial court did not have jurisdiction over the discrimination claim because it is a *federal* claim barred under *Nevada v. Hicks*, 533 U.S. 353

(2002), and because no discrimination cause of action exists as a matter of Cheyenne River Sioux Tribal law. Each of these will be discussed in turn concluding with the pertinent jurisdictional analysis under *Montana v. United States*, 450 U.S. 544 (1981).

a) *Nevada v. Hicks* and Federal Causes of Action

The Bank alleges that Cheyenne River Sioux Tribal Court did not have subject matter jurisdiction over Plaintiffs' discrimination claim against the Bank. It is critical to note that the Bank does *not* challenge (on appeal) the general jurisdiction of the Cheyenne River Sioux Tribal Court over the lawsuit brought by the Longs against the Bank, but only against a single cause of action. Appellant's argument centers its claim on its reading of *Nevada v. Hicks*, 533 U.S. 353 (2002). More precisely, the Bank relies on *Hicks* for the limited proposition that tribal courts do not have jurisdiction over federal causes of action. Appellant's interpretation of *Nevada v. Hicks* in this regard is not incorrect, but it is inapposite. The Court in *Hicks* did hold that tribal courts do not have jurisdiction over a *federal* cause of action alleged under 42 U.S.C. § 1983.[1] The Bank argues by extension that tribal courts would have no jurisdiction over a discrimination claim grounded in 42 U.S.C. § 1981 (c). This is likely true, but misses the point. The Plaintiffs discrimination claim is based on a cause of action grounded in tribal, not federal, law.

Plaintiffs' amended complaint did not invoke 42 U.S.C. § 1981 or any federal statute as the source of the discrimination claim and the Bank did not seek to question the source of law for this claim through a motion to dismiss for failure to state a claim on which relief might be granted. In addition, there were no jury instructions provided to the jury on an alleged *federal* cause of action for discrimination. In fact, the Court in the *Hicks* case itself noted that *tribal* law is often a "complex 'mix of tribal codes and federal, state, and traditional law' " 533 U.S. at 384-85.

[1] The Court's rationale for this holding that there was no congressional delegation of such authority to tribal courts remains unconvincing in light of Justice Stevens' observation that there is no congressional delegation to state courts yet it is unquestioned that state courts have 42 U.S.C. § 1983 jurisdiction. See *Nevada v. Hicks*, 533 U.S. at 402-03 (2002). (Stevens, J. dissenting).

In addition, the Court in *Hicks* concluded:

> that tribal authority to regulate *state officers* in executing process related to the violation, off reservation, of state [criminal] laws is not essential to tribal self-government or internal relations.[2]

The case at bar is not a criminal case, does not involve state officers, and did not take place off the Reservation. It is therefore totally inapplicable as to causes of action arising on the Reservation involving private individuals. The *Hicks* opinion limited its holding "to the question of tribal court jurisdiction over state officers" leaving "open the question of tribal court jurisdiction and non-member defendants in general." 533 U.S. 358 n. 2.

b) Discrimination Causes of Action Under Tribal Law

Notwithstanding its citation to *Nevada v. Hicks*, the Bank's claim is not really that the Tribal Court does not have subject matter jurisdiction over the discrimination claim, but rather there is no such cause of action under tribal law. In essence, the Bank is claiming that the Longs' discrimination claim should have been dismissed not for lack of jurisdiction, but for a failure to state a claim upon which relief might be granted. This is especially evident in that the Bank's motion to dismiss was not directed to all of the Plaintiffs' claims, but was limited to the discrimination cause of action premised on the (erroneous) theory that it was being pursued as a federal cause of action under 42 U.S.C. § 1981. This more precise claim is also insufficient as a matter of law.

Private claims of discrimination based on status are recognized under federal and state statutes. See, e.g. 42 U.S.C. 2000 (d), *et seq.* (2003), SDCL § 20-13-21 (2003). They are also recognized under the traditional (or common) law of the Cheyenne River Sioux Tribe.[3] While

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[2] Nevada v. Hicks, 533 U.S. at 364 (2002) (emphasis added).

[3] Discrimination is prohibited under tribal customary law in much the same way that other injurious or tortious conduct is prohibited under the common law. While it is true that discrimination is frequently the subject of legislation, it is also actionable under the common law. The Supreme Court has long recognized that "an action brought for compensation by a victim of ... discrimination is, in effect, a tort action." *Meyer v. Holley*, 537 U.S. 280, 285, 123 S.Ct. 824, 828 (2003) (citing *Curtis v. Loether*, 415 U.S. 189, 94 S.Ct. 1005 (1974)). In *Curtis*, the Court held that a claim for damages under the Civil Rights Act of 1968 "sounds basically in tort" and "is analogous to a number of tort actions recognized at common law." 415

there is no express tribal ordinance creating a civil cause of action based on discrimination, there are nevertheless at least two other sources of tribal law that do recognize such a cause of action. They are tribal common law and the Cheyenne River Sioux Law and Order Code § 1-4-3 which confers jurisdiction on the trial court over claims arising out of "tortious conduct."

Since it is well understood that a claim based on discrimination essentially sounds in tort, jurisdiction over "tortious conduct" necessarily includes jurisdiction over Plaintiffs' discrimination claim.[4] In addition, there is basis for a discrimination claim that arises directly from Lakota tradition as embedded in Cheyenne River Sioux tradition and custom. Such a potential claim arises from the existence of Lakota customs and norms such as the "traditional Lakota sense of justice, fair play and decency to others," *Miner v. Banley*, Chy. R. Sx. Tr. Ct. App., No. 94-003 A, Mem. Op. and Order at 6 (Feb. 3, 1995); and "the Lakota custom of fairness and respect for individual dignity." *Thompson v. Cheyenne River Sioux Tribal Board of Police Commissioners*, 23 ILR 6045, 6048 Chey. R. Sx. Tr. Ct. App. (1996). Such notions of fair play are core ingredients in federal and state definitions of discrimination. Therefore a tribally based cause of action grounded in an assertion of discrimination may proceed as a "tort" claim as defined in the Cheyenne River Sioux Tribal Code, as derived from Tribal tradition and custom, or even from the federal ingredients defined at 42 U.S.C. § 2000-2001.[5]

The core of the Longs' discrimination claim was based on the Bank's letter to the Longs dated April 26, 1996, (Exhibit 4, TR 106-07, 330) in which the Bank withdrew its offer to sell the

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U.S. 189, 195-196, 94 S.Ct. 1005, 1008-1009. The Court noted that, "[a]n action to redress racial discrimination may ... be likened to an action for defamation or intentional infliction of mental distress," and further that "under the logic of the common law development of a law of insult and indignity, racial discrimination might be treated as a dignitary tort." 415 U.S. at 195-196, n. 10, 94 S.Ct. at 1008-1009, n. 10. These are precisely the kinds of actions over which the tribal courts have jurisdiction. Under tribal law, the courts "have jurisdiction over claims and disputes arising on the reservation." CRST By-Laws, Art. V, § 1(c), including claims arising out of "tortious conduct." Cheyenne River Sioux Tribal Code § 1-4-3. Cheyenne River Sioux Tribe's Amicus Brief at 14, footnote 3.

[4] One kind of classical tort is the harm that results from the differential and invidious treatment of one individual by another individual or entity.

[5] Note this last theory is *not* the pursuit of a *federal* cause of action in tribal court like the 42 U.S.C. § 1983 claim in *Nevada v. Hicks*, but that of a "borrowing" of federal law to stand in or amplify tribal law where it is necessary. *See, e.g.*, Cheyenne River Sioux Tribal Law and Order Code, Title VII Rule 1 (d).

land back to Longs on a 20 year contract for deed because it involved an "Indian owned entity" and related (but unidentified) "jurisdictional problems." The Bank's subsequent offer as contained in the lease with option to purchase required *full* payment within 60 days of the expiration of the two year lease. (Exhibit 7) It is also significant to recall that the land involved is fee land not trust land. While trust land does involve certain federal restrictions on alienability, fee land does not. The Longs contended that this adverse and differential treatment of them was based on their status as "Indians" and constituted discrimination, a question that was ultimately resolved in their favor by the jury verdict.

It is a testament to the vitality and dignity of American jurisprudence that it would most certainly shock the conscience if a claim of discrimination – especially one based on the disparity of treatment on account or race or status – would not be cognizable in state or federal court. In this vein, the Cheyenne River Sioux Tribal Court is no different from its federal and state brethren in its unwillingness to ignore claims of discrimination. In the area of discrimination, there is a direct and laudable convergence of federal, state, and tribal concern.

c) Jurisdiction under *Montana v. United States*

Since there is a discrimination cause of action under Tribal law involving fee land, the most relevant case for jurisdictional purposes therefore is not *Nevada v. Hicks* but *Montana v. United States*, 450 U.S. 544 (1981). In *Montana*, the Court held that tribal courts generally do *not* have jurisdiction over non-Indians involving matters that arise on fee land within the reservation. This presumption against tribal court jurisdiction is nevertheless subject to *Montana's* well-known proviso which states: "to be sure, Indian tribes retain sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing or other means, the activities of members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements... A tribe may also retain inherent power to exercise civil authority over non-Indians on fee lands within its reservation when that conduct threatens

charities or has some effect on the political integrity, economic security, or the health or welfare of the tribe." 450 U.S. 565-66 (citations omitted).

It is clear that the case at bar satisfies both prongs. This case is the prototype for a consensual agreement as it involves a signed contract between a tribal member and a non-Indian bank. The contract deals solely with fee land located wholly within the exterior boundaries of the reservation. Fee land that was originally owned by the Longs, but owned by the Bank during the controverted events in this lawsuit. All bank loans in this matter were provided solely for the ranching operation by the Longs taking place on the Bank's land within the reservation. Numerous meetings of the Bank with the Longs, with Cheyenne River Sioux Tribal Officials, and Bureau of Indian Affairs personnel took place on the reservation, both when the land was owned by the Longs and subsequently when it was owned by the Bank.

It is somewhat misleading for the Bank to identify itself as an *off* reservation Bank, because it *owned* the land *on* the Reservation that is the subject of this lawsuit. As a result, the Bank is more accurately described as owning property and engaged in business activities *both* on and off the Reservation.

In addition, the case clearly involves the "economic security" of the Tribe in that the Cheyenne River Sioux Tribe (along with the Bureau of Indian Affairs) was a direct participant actively consulted by both the Longs *and* the Bank seeking economic data and support relevant to the cattle operation on the Longs' land. If the economic security of the Tribe was not involved, the Tribe would not have played such a large role in these events in seeking to support and advance the opportunity for Tribal members to succeed in their ranching operation on the Reservation.

2. Breach of Contract Cause of Action

Appellant Bank asserts that the Longs' breach of contract claim was improperly submitted to the jury or if properly submitted to the jury, improperly decided by it because *no* contract existed as a matter of law or fact. In particular, the Bank contends that the key document

captioned "Loan Agreement" which was prepared by the Bank and signed by both the Bank and the Longs on December 5, 1996 and recites, among other things, the Bank's commitment to provide two loans to the Long Land and Cattle Company, Inc. was not a contract at all. It was merely some kind of balance sheet that mainly recited a list of debts and credits relative to the real estate conveyed by the Long Estate to the Bank. In essence, according to the Bank, there was no consideration and hence no contract.

In the Bank's motion for judgment N.O.V. on this issue, Judge B.J. Jones decided against the Bank finding there was sufficient consideration when the "Loan Agreement" is considered as part of the Lease with Option to Purchase under the integrated document doctrine. These documents were contemporaneous, applied to the same subject matter, and were interrelated as to terms. *See Battey Steamship Comp. v. Refineria Panama S.A.*, 513 F.2d 735, 738 n. 3 (2d Cir. 1975). Judge Jones had already adopted the integrated document doctrine in denying the Defendant's motion for summary judgment on its counterclaim for eviction and it appropriately became the law of the case. This Court now adopts the substance of this rule as appropriate law within this jurisdiction. In this view, it is reasonable to construe the Loan Agreement along with the Lease with Option to Purchase and find sufficient consideration provided by the Longs in their commitment to assign their CRP payments to the Bank and their commitment to continue the operation of their ranch in an attempt to pay off their debts to the Bank without the Bank having to resort to legal action and the less than complete loan guarantees provided by the BIA.

The analysis set out by Judge Jones in his well-reasoned opinion of June 7, 2003 is persuasive. As noted above, there certainly was enough evidence submitted to the jury for it to have found adequate consideration. In reviewing a jury's determination on a motion for a judgment N.O.V., the South Dakota Supreme Court has established a reasonable standard of review, which this Court adopts. This standard directs the reviewing court to review the testimony and evidence in a light most favorable to the verdict or nonmoving party and then to

decide without weighing the evidence if there is evidence which did support the verdict. *Matter of Estate of Holan*, 621 N.W.2d 588, 591 (SD 2000).

In sum, the application of the integrated documents doctrine is an appropriate legal standard within this jurisdiction. In addition, its legal elements of contemporaneity, similar subject matter, and interrelatedness of terms were also satisfied as a matter of law and there was a sufficient factual basis for the jury to find there was adequate consideration for a contract, and the Bank's failure to perform breached this contract.

3. Bad Faith Cause of Action

In a similar vein to the breach of contract claim, the Bank makes two contentions. First, that such a cause of action does not exist as a matter of law because it is subsumed in the breach of contract claim and second, even if such an independent cause of action does exist, there was insufficient evidence submitted to the jury to sustain a verdict upholding such a bad faith claim.

The question of law concerning a bad faith cause of action involves an issue of first impression within this jurisdiction. The trial court ruled that such a cause of action does exist within this jurisdiction and that it is one that is independent of any breach of contract claim. More precisely, it might be stated that the trial court ruled that the bad faith claim *derives from* but is *severable* and hence independent of the breach of contract claim. As Judge Jones stated in his order of June 7, 2003 on the post-trial motions, the heart of the breach of contract claim was the failure to *provide* the $70,000 loan, while the heart of the bad faith claim was the Bank's failure to follow through with its promise to seek an increase in the level of the BIA guarantee for several outstanding loans.

This statement of the governing law is reasonable and appropriate. While it appears that no other tribal court has addressed this issue, it is true that the rule articulated by the trial court is within the ambit of both South Dakota Law, *see e.g. Garrett v. Bank West, Inc.*, 459 N.W.2d 833 (SD 1990) and the general rule as articulated in the *Restatement 2nd of Contracts* § 204 (1990) that every contract includes an implied covenant of good faith and fair dealing which prohibits

either contracting party from preventing or injuring the other party's right to receive the agreed upon benefits of the contract.

The Bank's challenge to the sufficiency of the evidence in this issue is likewise rejected. Given the standard of review articulated in Part IIIA2 at p. 11, clearly there was sufficient evidence in the record concerning the Bank's failure to respond to the BIA's request for a more detailed application relative to potential increased loan guarantees from which the jury might conclude that the Bank acted in bad faith.

4. Excessive Damages Controlled by Passion or Prejudice

The jury awarded damages to the plaintiffs in the amount of $750,000. The Bank claims this was "excessive and controlled by passion and prejudice." (Bank's brief at 16.) This conclusion remains just that, a conclusion unsupported by reason or law. Plaintiffs sought damages in the amount of $1,236,792 (Exhibit 23) and thus the award of $750,000 represents an award of only 60% of the amount requested. The trial judge also sustained a number of objections made by the Bank to the Plaintiffs' claimed damages and Exhibit 23 was changed accordingly. The Bank did not object, stating, "I have no objections with these changes," TR 308 and therefore the Bank waived any subsequent right to appeal. The absence of 'prejudice' is also further evidenced by the jury's rejection of the Longs' claim of improper self-help eviction by the Bank.

The Plaintiffs provided extensive evidentiary data and testimony relative to their damages. The Bank had the same opportunity. Given the appropriate standard of review in challenging a jury finding of fact as noted above, this Court cannot conclude that the jury award in this context lacked a sufficient factual predicate, even disregarding the Bank's waiver of this issue.

Ordinarily, this would conclude the Court's analysis of this otherwise legitimate issue, but for the Bank's decision to characterize the entire trial as "tainted":

> Once a claim for discrimination was allowed to be tried to the jury, where no one but tribal members could serve, the Bank could no longer obtain a fair trial. Allegations of racial discrimination by a nonmember Bank located off the reservation *completely enflamed the jury*. They became incapable of rendering a fair and impartial verdict. The *race card tainted* the entire trial process. (emphasis added) (Bank's brief at 23).

This rhetoric is itself inflammatory. At oral argument, counsel for the Bank admitted that he did not challenge any juror for cause, did not challenge the jury panel as a whole because it did not contain any non-tribal members, and perhaps most importantly, he did *not* request that the trial court use its discretionary power under Sec. 1-6-1(2) of the Tribal Code to "adopt procedures whereby non-enrolled Indians and non-Indians may be summoned for jury duty in cases in which one or more non-Indian parties are involved."

The Bank, apparently excusing its own ('benign') neglect of the issue at the trial, then twists it (somehow) to contend that the very existence of a discrimination cause of action was playing the 'race card.' The Bank's apparent 'solution' to this 'problem' is that claims of discrimination against non-resident Banks should not exist as a matter of tribal law. This asserts a rather extravagant privilege for the Bank that is presumably not available to others, especially tribal members and the Tribe itself. Whether intended or not, this *is* the Bank playing its own 'race card', which at a minimum is quite baffling and potentially quite disturbing in the context of seeking to maintain a fair and reasonable legal context for the necessary commercial transactions involving individual Tribal ranchers and business people and the banking establishment. Both Tribal members and the Bank need each other and it is quite disheartening to have the Bank interject the potentially destabilizing 'race card' into these proceedings.

5. Eviction

The trial court dismissed the Bank's counterclaim for forcible entry and detainer against the Longs. The counterclaim was not tried to the jury as neither party requested it. The trial court rendered its decision after the jury verdict. It reasoned that based on its own previous decision that the loan agreement and the lease with option to purchase formed an integrated

document and the jury's verdict that the Bank breached the contract, it could not render a favorable decision to the Bank on its counterclaim for eviction. The court's reasoning was that the jury finding that the Bank breached the contract (including the lease) effectively precluded any finding that Longs had breached the lease or otherwise improperly held over and were subject to eviction.

In addition, the Bank made no attempt to comply with the Tribal Law and Order Code provisions for recovering the possession of real property set out §§ 10-2-1 – 10-2-8. § 10-2-6(6) specifically provides that when a tenant has held over for more than sixty days without any notice to quit by the landlord, the tenant shall have the right to remain in possession for a full year after the lease termination date. The lease between the Bank and the Longs ran from December 5, 1996 to December 6, 1998. The Longs held over but no notice to quit was served within the sixty days (i.e. February 5, 1999) and thus the Longs had the right to hold over to December 6, 1999. Indeed, the notice to quit was not served on the Longs until June 16, 1999. (Exhibit 20). The notice to quit described the Longs as still in possession of the entire 2,230 acres. Despite the fact that the Longs were legally in possession of this land as a matter of express tribal law during this period, the Bank *sold* the land to two different purchasers in violation of the Longs' right to hold over and exercise their option to purchase under the original lease. (Exhibit 20). At no time did the Bank ever get an order from the tribal court removing the Longs from the land (TR 370).

6. Option to Purchase

The trial court granted partial relief to the Longs on this issue when it ruled that the Longs would be permitted to exercise their option to purchase the 960 acres they were currently occupying but not the 960 acres that were sold to the Maciejewskis and the 320 acres sold to the Pesickas. The Bank asserts that the trial court in essence ordered (partial) specific performance be granted against the Bank, but that such a remedy was never sought by the Longs and that such a remedy is equitable in nature and not available in a breach of contract action which is 'action at

law' that does not authorize equitable relief. These statements constitute legal observations of a quite general kind and are not part of the positive law of the Cheyenne River Sioux Tribe.

In the instant case, the trial court attempted to strike a balance between law and equity and to secure fairness to both sides. The specific performance element involving the option to purchase involved land originally owned by the lessee and lost because of the inability to pay a significant debt to the Bank. The fact that the Longs were seeking to (re)purchase land that had been in their family for generations takes the case outside the realm of the formal law/equity distinction. In addition, Judge Jones was careful not to interfere with the property rights of the Maciejewskis and the Pesickas as good faith purchasers. The balance struck by the trial court is fair, reasonable, and violated no rule of Cheyenne River Sioux Tribal law.

7. Pre-Judgment Interest

The Bank objects to the award of pre-judgment interest.[6] Its essential argument – drawn primarily from South Dakota and California Law – is that prejudgment interest should only be awarded if the defendant knows or should have known based on reasonably accessible information what the amount owed was. This general observation however does not require a different result. It is routine in the West – including South Dakota – to calculate pre-judgment interest on lost cattle based on their market value at the time of the loss. Deciding the date of loss – if contested – is a factual question to be resolved by the jury. Thus the method of awarding pre-judgment interest in this case conforms to the general practice throughout Western parts of the United States.

The Bank's claim is further undermined by the fact that it did not object to special jury interrogatory 6 or jury instruction 10a on the issue of the potential award of interest and it did not propose any special jury interrogatories of its own. Such failure ordinarily precludes raising the issue on appeal. See e.g. *Alvine v. Mercedes-Benz of North America*, 620 N.W.2d 608 (SD 2001).

[6] Pre-judgment interest is neither directly authorized nor prohibited by the Tribal Code. This might be an area where direct legislative guidance by the Cheyenne River Sioux Tribal Council would be beneficial, especially as to the rate of interest and the means of calculation of such interest.

In addition, the trial court adopted and accepted (to the penny) the Bank's proposed interest of $123,131.81 as opposed to the Plaintiffs' proposal of $453,698.

B. Plaintiffs/Respondents/Appellants Issues on Appeal

The Plaintiff Longs raise two issues on appeal and they are the mirror images of the Bank's issues numbers six and seven, namely that trial court erred in *not* awarding Plaintiffs complete specific performance to (re)purchase *all* the land involved in the original lease and option to purchase and the trial court erred in its calculation of pre-judgment interest to be awarded. Each issue will be discussed in turn.

1. Option to Purchase

The Longs contend that the trial court erred in its failure to permit the Longs to exercise its option to purchase all of their 2,225 acres rather than just 960 acres on which they effectively heldover. The Bank had already sold 320 acres to Pesickas and 960 acres to Maciejewskis and Judge Jones decided the option to purchase would *not* apply to these parcels.

In Judge Jones' supplemental judgment of February 18, 2003, he expressly stated:

> The court first notes that the tribal jury returned a verdict for the Bank and against the Plaintiffs on the Plaintiffs' claim that the Bank violated tribal law against self-help remedies when it sold certain parcels of the land the Plaintiffs had an option to purchase. The Court construes this to mean that the jury found that the sale of the land to the other parties was not done in violation of tribal law and the other defendants [i.e. the Pesickas and Maciejewskis] were good faith purchasers.

Counsel for the Longs does not state what the appropriate standard of review is and more directly, why this legal determination of Judge Jones is wrong as a matter of tribal law.[7] Under these circumstances, Judge Jones' decision violated no rule of tribal law and balanced the equities in a most reasonable and fair manner.

2. Pre-Judgment Interest

[7] The discussion of Cheyenne River Sioux Tribe Law and Order Code Sec. 10-1-5 is inappropriate as it deals with the proposed sale of foreclosed property which is not involved in this lawsuit.

The Longs contend that while the trial court was correct in submitting the question of whether to award pre-judgment interest to the jury (which answered in the affirmative), the trial judge erred in his calculations of the amount of pre-judgment interest to be awarded. The core of the Longs claim on this issue is that the trial judge should have adopted the South Dakota statute, SDCL 21-1-13.1, which sets a rate of 10% for pre-judgment interest. Working from this assertion, plaintiffs' counsel does what he regards as the necessary mathematical calculations and arrives at the figure of $453,698 (Respondents-Appellants brief at 9).

There are several shortcomings in this line of argument. Counsel for the Longs does not identify what the appropriate standard of review is and whether the trial judge's mistake was one of law and/or fact. There can be no mistake of law because there is no express rate of interest specified in the tribal code and therefore any (reasonable) rate of pre-judgment interest would be an appropriate legal standard.[8] Judge Jones required that counsel for both parties submit proposals to him. Then Judge Jones accepted the Bank's proposal of pre-judgment interest in the amount of $123,131.81 based on a rate of 8.5 %, the rate of interest identified in the lease with option to purchase to be charged the Longs if they exercised their option to purchase.

In addition to different rates of interest, the proposals of both parties used slightly different mathematical models of calculation based on the varying assessments as to the time of loss, value at the time of loss, and whether interest would be simple or compound. While these differences in approach lead to quite different final calculations, there is no demonstration by the Longs that these figures are clearly erroneous or arbitrary and capricious and therefore the amount of pre-judgment interest awarded by Judge Jones is affirmed.

Unfortunately, a final concern must be addressed. In his concluding summation to this Court, counsel for the Bank stated that a lot of banks and lenders were watching this case. While it seemed jarring and inappropriate at the time, it is even more so upon reflection. It is difficult to

[8] As noted above in footnote 6, *supra* at p. 16, the issue of pre-judgment interest including the specific rate of interest and method of calculation would greatly benefit form specific statutory guidance provided by the Cheyenne River Sioux Tribal Council.

see the statement as merely some form of artless advocacy, but rather more as some kind of threat impugning the integrity of the Cheyenne River Sioux Tribe's judicial system, which this Court finds most offensive and unprofessional. Such statements must not be made again. Though it hardly needs repeating, the Court restates its commitment to fair play, the rule of law, and cultural respect for *all* parties who appear in the courts of the Cheyenne River Sioux Tribe.

IV. Conclusion

For all the reasons above stated, the decision of the trial court is affirmed on all issues.

Ho Hec'etu Ye Lo

IT IS SO ORDERED.

FOR THE COURT:

Frank Pommersheim

Frank Pommersheim
Chief Justice

Dated November 22, 2004.

Rhea A. Hall Clerk of the Cheyenne River Sioux Tribal Court, do hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears on file and of record in my said office.

Date this 24th day of Nov 20 04

Rhea A. Hall
Clerk, Cheyenne River Sioux Tribal Court

By _____

CERTIFICATE OF SERVICE

I, RHEA A. HALL, Clerk of the Cheyenne River Sioux Tribe Appellate Court, do hereby certify that I served a true and correct copy of the foregoing MEMORANDUN OPINION AND ORDER CASE# 03-002-A & R-120-99 has been served upon the persons next designated by First Class Mail, Postage Prepaid, addressed as follows:

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November 24, 2004

RHEA A. HALL, CLERK
CHEYENNE RIVER SIOUX TRIBE

he advantage of the applicant in the peration of an economic enterprise.

(d) No loans will be guaranteed or insured for the financing of a relending rogram.

103.4 Management and technical assistance.

(a) Prior to and concurrent with the ssuance of a guaranty certificate for a oan to finance an economic enterprise, he Commissioner will assure under itle V of the Indian Financing Act hat competent management and technical assistance are available for preparation of the application and/or administration of funds granted consistent with the nature of the enterprise proposed to be or that is in fact funded. Assistance may be provided by available Bureau of Indian Affairs staff, other government agencies including states, a tribe, or other sources which the Commissioner considers competent to provide the needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable Federal Procurement Regulations, and the Buy Indian Act of April 30, 1908, chapter 431, section 25 (36 Stat. 861).

(b) When submitting to the Commissioner a request for guaranty or insurance of a loan to finance an economic enterprise, a lender will include, as part of the request, or separately, its evaluation of the applicant's need for management and technical assistance, specific areas of need, and whether the lender will provide such assistance to the applicant. A lender making loans under the provisions of a general insurance agreement may determine each applicant's need for management and technical assistance when financing of an economic enterprise is involved. If a lender determines that an applicant will need management and technical assistance, it will notify the Commissioner in writing indicating the specific areas of need, and whether it will provide such assistance.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989]

§ 103.5 Preservation of historical and archeological data.

Lenders making guaranteed or insured loans to finance activities involving excavations, road construction, and land development or involving the disturbance of land on known or reported historical or archeological sites will take appropriate action to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), as amended by the Act of May 24, 1974 (Pub. L. 93–291, 88 Stat. 174), relating to the preservation of historical and archeological data. Lenders receiving applications for loans which include funds for purposes which may involve compliance with the provisions of the Act of June 27, 1960, as amended, may request assistance and guidance from the Commissioner in assuring compliance with the requirements of the Act.

§ 103.6 Environmental and flood disaster protection.

Applications for loans to purchase or construct buildings or other improvements which require compliance with any provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234, 87 Stat. 975), and provisions of the National Environmental Policy Act of 1969 (Pub. L. 91–190; 42 U.S.C. 4321) and Executive Order 11514 will not be approved until the lender has received assurance of compliance with any applicable provisions of these Acts. Lenders receiving applications which include funds for purposes which may involve compliance with the provisions of one or both of these Acts may request assistance and guidance from the Commissioner in assuring compliance.

§ 103.7 Eligible organizations.

Tribes and Indian organizations having a form of organization satisfactory to the Commissioner recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs, and indicating reasonable assurance of repayment, are eligible for guaranteed or insured loans. If Indian ownership of an economic enterprise falls below 51 percent, the borrower shall be in default and the guaranty shall cease and the interest subsidy

Attachment 17

§ 103.12 Insured loans.

(a) Eligible lenders, as prescribed in § 103.9, and tribes making loans from their own funds to other tribes or Indian organizations, may make insured loans, except those excluded in § 103.10 pursuant to the provisions of an insurance agreement entered into between the Commissioner and the lender. Insurance agreements may be entered into by the Commissioner and eligible lenders which will authorize the lenders to make insured loans to eligible applicants without the Commissioner's approval of each individual loan. Separate insurance agreements will be issued by the Commissioner for those loans which require the issuance of individual insurance agreements.

(b) Lenders will make loans only when there is a reasonable prospect of repayment. The insurance on any loan made under the provisions of an insurance agreement will not be effective until receipt of the insurance premium by the Commissioner.

§ 103.13 Amount of guaranty.

(a) The percentage of a loan that is guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90 percent of the unpaid principal and interest. The liability under the guaranty shall increase or decrease pro rata with an increase or decrease in the unpaid portion of the principal amount of the obligation. No loan to an individual Indian, partnership, or other non-tribal organization may be guaranteed for an unpaid principal amount in excess of $500,000 or such maximum amount provided in any amendments to the Indian Financing Act of 1974.

(b) Applications of minors as determined by applicable state and federal law, may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing document(s). Not more than one guaranteed loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989; 57 FR 46473, Oct. 8, 1992]

§ 103.14 Amount of insurance.

(a) The insurance provisions will apply to loans made by a particular lender under the terms of an insurance agreement entered into between the Commissioner and the lender. The insurance procedure will be used primarily for loans to finance small economic enterprises and secondarily for housing. A lender may be reimbursed for a loss on a particular loan in an amount not to exceed 90 percent of the loss on principal and unpaid accrued interest on the loan. However, the total reimbursement to a lender for losses may not exceed 15 percent of the aggregate of insured loans made by it.

(b) Loans for any amount made by tribes from their own funds to other tribes or Indian organizations will not be insured without the prior approval of the Commissioner. No loan to finance an economic enterprise with a principal amount in excess of $50,000 shall be insured without the prior approval of the Commissioner. No loan to an individual Indian may be insured which would cause the total unpaid principal amount to exceed $100,000. Any loan to an individual Indian having a principal amount in excess of $50,000 will require prior approval of the Commissioner. No loan to an individual with a principal amount of less than $2,500 or for a term of less than one year may be insured. No loan to a tribe or Indian organization for a principal amount of less than $10,000 for a term of less than one year may be insured. An exception may be made to these limitations on amounts and time, if approved by the Commissioner.

(c) Applications of minors may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing documents. Not more than one insured loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

§ 103.15 Applications for loan guaranties or insurance.

(a) Applicants for loans will deal directly with lenders for both guaranteed and insured loans. The form of loan applications will be determined by the

(8) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

(9) Any other interference with the process, proceeding, or dignity of the Court or a Judge of the Court while in the performance of his official duties.

Sec. 1-3-2 Civil Contempt.

(1) A civil contempt is prosecuted to preserve, protect, enforce or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of a judicial decree or order.

(2) Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the Court or to the complaining party or imprisonment of the party in contempt to secure compliance, or both.

Sec. 1-3-3 Criminal Contempt.

(1) Conduct which is directed at, or is detrimental to, the dignity and authority of the Court is a criminal contempt.

(2) Criminal contempt is an offense which may be punishable, at the discretion of the Court based on the nature of the conduct in question, with a fine of up to $500.00 and/or up to six (6) months in jail.

Sec. 1-3-4 Contempt Procedure.

(1) A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and such may be adjudged and punished summarily.

(2) All other comtempts shall be determined at a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

CHAPTER IV. JURISDICTION

Sec. 1-4-1 Jurisdiction - Tribal Policy.

It is hereby declared as a matter of Tribal policy, that the public interest and the interests of the Cheyenne River Sioux Tribe demand that the Tribe provide itself, its members, and other persons living within the territorial jurisdiction of the Tribe as set forth in Section 4 of the Act of March 2, 1889, (48 Stat. 888) with an effective means of redress in both civil and criminal cases against

members and non-Tribal members who through either their residence, presence, business dealings, other actions or failures to act, or other significant minimum contacts with this Reservation and/or its residents commit criminal offenses against the Tribe or incur civil obligations to persons or entities entitled to the Tribes protection. This action is deemed necessary as a result of the confusion and conflicts caused by the increased contact and interaction between the Tribe, its members, and other residents of the Reservation and other persons and entities over which the Tribe has not previously elected to exercise jurisdiction. The jurisdictional provisions of this Code, to insure maximum protection for the Tribe, its members and other residents of the Reservation, should be applied equally to all persons, members and non-members alike.

Sec. 1-4-2 Territorial Jurisdiction.

(1) The Jurisdiction of the Courts of the Cheyenne River Sioux Tribe shall extend to the territory within the exterior boundaries as set forth in Section 4 of the Act of March 2, 1889 (48 Stat. 888) and to such other lands without such boundaries as may hereafter be added to the Reservation or held in Trust for the Tribe under any law of the United States or otherwise.

Sec. 1-4-3 Personal Jurisdiction.

(1) As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association, or corporation.

(2) Subject to any contrary provisions, exceptions or limitations contained in either federal law, the Tribal Constitution, or as expressly stated elsewhere in this Code, the Courts of the Cheyenne River Sioux Tribe shall have civil and criminal jurisdiction over the following persons:

A. Any person residing, located or present within the Reservation for:

1. Any civil cause of action; or
2. Any charge of criminal offense prohibited by this Code or other ordinance of the Tribe when the offense is alleged to have occurred within the Reservation.

B. Any person who transacts, conducts, or performs any business or activity within the Reservation, either in person or by an agent or representative, for any civil cause of action or charge of criminal offense for any act expressly

prohibited by this Code or other ordinance of the Tribe arising from such business or activity.

C. Any person who owns, uses or possesses any property within the Reservation, for any civil cause of action or charge of criminal offense prohibited by this Code or other ordinance of the Tribe arising from such ownership, use or possession.

D. Any person who commits a tortous act or engages in tortous conduct within the Reservation, either in person or by an agent or representative, for any civil cause of action arising from such act or conduct.

E. Any person who commits a criminal offense prohibited by this Code or other ordinance of the Tribe, by his own conduct or the conduct of another for which he is legally accountable, if:

1. The conduct occurs either wholly or partly within the Reservation; or
2. The conduct which occurs outside the Reservation constitutes an attempt, solicitation, or conspiracy to commit an offense within the Reservation, and an act in furtherance of the attempt or conspiracy occurs within the Reservation; or
3. The conduct which occurs within the Reservation constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense prohibited by this Code or ordinances of the Tribe and such other jurisdiction.

(3) None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable.

Sec. 1-4-4 Jurisdiction Over Property.

Subject to any contrary provisions, exceptions, or limitations contained in either federal laws and regulations, the Tribal Constitution, or as expressly stated elsewhere in this Code, the Courts of the Cheyenne River Sioux Tribe shall have jurisdiction over any real or personal property located on the Reservation to determine the ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property may be liable.

Sec. 1-4-5 General Subject Matter Jurisdiction - Limitations.

Subject to any contrary provisions, exceptions, or limitations contained in federal law, or the Tribal Constitution, the Courts of the Cheyenne River Sioux Tribe shall have jurisdiction over all civil causes of action, and over all offenses prohibited by this Code except the Courts of the Cheyenne River Sioux Tribe shall not assume jurisdiction over any civil or criminal matter which does not involve either the Tribe, its officers, agents, employees, property or enterprises, or a member of the Tribe, or a member of a federally recognized tribe, if some other forum exists for the handling of the matter and if the matter is not one in which the rights of the Tribe or its members may be directly or indirectly affected.

Sec. 1-4-6 Concurrent Jurisdiction.

The jurisdiction involved by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Code does not recognize, grant, or cede jurisdiction to any political or governmental entity in which jurisdiction does not otherwise exist in law.

Sec. 1-4-7 Exclusive Original Jurisdiction.

(1) The Courts of the Cheyenne River Sioux Tribe shall have exclusive original jurisdiction in all matters in which the Cheyenne River Sioux Tribe or its officers or employees are parties in their official capacities.

(2) Nothing contained in the preceding paragraph or elsewhere in this Code shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises unless specifically denominated as such.

CHAPTER V. COUNSELORS AND PROFESSIONAL ATTORNEYS

Sec. 1-5-1 Lay Counsel.

(1) Any person appearing as a party in any judicial proceeding before a Court of the Cheyenne River Sioux Tribe shall have the right to be represented by a lay counselor (not a professional attorney) and to have such person assist in the preparation and presentation of his case.

(2) The Cheyenne River Sioux Tribe shall have no obligation to provide or pay for such lay counselors and such

Attachment to Form 5-4755
Request for loan Guaranty - Long Family Land & Cattle Co.
Modification #1
(f). Other Conditions

1. The loans will be structured as follows:

Operating Line of Credit	$50,000	84% guaranty	3 yrs
Total Note #1	50,000		
Cattle Purchases	85,000	84% guaranty	20 yrs
Existing Guaranty	293,930	84% guaranty	20 yrs
Total Note #2	428,930		
Real Estate	211,750	-0- guaranty	20 yrs
Total Note #3	211,750		

2. The loan subsidy will be limited to 2.5%, fixed, and will be provided for the first three years. At the end of the third year, the need for the subsidy will be reviewed on an annual basis for the following two years.

3. Security for this guaranty will consist of a first lien on all receivables, livestock, feed, grain, crops, machinery, equipment now owned or hereafter acquired and a second lien on all real estate and vehicles.

4. No additional real estate loans will be advanced and the note will not contain a balloon clause.

5. A UCC/EFS will be executed in favor of the Bank of Hoven to perfect the security interest in the BIA guaranteed notes.

6. Proceeds from the sale of livestock or other products will first be applied to the BIA line of credit and term loan payment, followed by the scheduled payment on the unguaranteed notes. Any excess proceeds will be made available to offset operating funds for subsequent year. Such funds will directly reduce borrowers line of credit borrowing limit.

FEB 2 0 1992
Date

(SGD) DONALD E. WHITENER
Assistant Area Director
Indian Programs

Accepted by Bank of Hoven, Hoven, South Dakota

3-10-92
Date

Signature

Asst. Cashier
Title

STATE OF SOUTH DAKOTA

OFFICE OF THE SECRETARY OF STATE

Certificate Of Incorporation
Business Corporation

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that duplicate originals of the Articles of Incorporation of

LONG FAMILY LAND AND CATTLE COMPANY, INC.

duly signed and verified, pursuant to the provisions of the South Dakota Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Incorporation

of LONG FAMILY LAND AND CATTLE COMPANY, INC.

and attach hereto a duplicate original of the Articles of Incorporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this 24th day of March A.D. 19 87

Joyce Hazeltine
Secretary of State

Deputy

Filed this 24th day of March 19 87

SECRETARY OF STATE

MAR 24 1987

ARTICLES OF INCORPORATION

OF

LONG FAMILY LAND AND CATTLE COMPANY, INC.

Executed by the undersigned for the purpose of forming a SD Corporation under the provisions of the SD Business Corporation Act. SDCL 47-2

ARTICLE I.

The name of the corporation is Long Family Land and Cattle Company, Inc.

ARTICLE II.

The period of existence of said corporation is perpetual.

ARTICLE III.

The purposes for which this corporation is formed shall be:

(a) To engage in a general livestock, ranching and farming business, to feed, to range, graze, manage, herd, control, brand, care for, purchase, market and sell livestock of every kind and cultivate land;

(b) To purchase and operate retail establishments, to buy, improve, develop, lease, exchange, sell, dispose of, mortgage and otherwise deal-in real and personal property.

(c) To purchase, lease, build, construct, erect, occupy and manage buildings and machinery and personal property necessary to the objects of the business;

(d) To borrow money and issue evidences of indebtedness in furtherance of any or all of the objects of the business;

to secure the same by mortgage, pledge or other lien.

(e) To enter into any kind of activity, to have all of the powers of the South Dakota Business Corporation Act, and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of the purposes of the Corporation.

ARTICLE IV.

The corporation shall have the authority to issue ONE HUNDRED THOUSAND (100,000) shares of capital stock of said corporation with par value of One Dollar (1.00) per share, for a total authorized capital stock of ONE HUNDRED THOUSAND DOLLARS. ($100,000.)

ARTICLE V.

The corporation will not commence business until consideration of the value of at least ONE THOUSAND (1,000.00) has been received from the issuance of shares.

ARTICLE VI.

The Address of its registered office is Post Office Box 272, Timber Lake, South Dakota 57656, and the name of its registered agent at such address is Ronnie Long.

ARTICLE VII.

The number of directors constituting the Board of Directors are four and the name and address of the directors is as follows:

Ronnie Long	Box 272, Timber Lake, South Dakota 57656
Lila Long	Box 272, Timber Lake, South Dakota 57656
Kenneth Long	Box 186, Timber Lake, South Dakota 57656
Maxine Long	Box 186, Timber Lake, South Dakota 57656

ARTICLE VIII.

The name and address of the incorporator is as follows:

Ronnie Long, Post Office Box 272, Timber Lake, South Dakota 57656.

ARTICLE IX.

It is the wish of the shareholders and incorporator that the Long Family Land And Cattle Company, Inc. shall be controlled by native Americans who at least at all times own 51% of the outstanding stock in the corporation.

ARTICLE X.

These Articles of Incorportion may be amended in the manner authorized by law at the time of amendment.

EXECUTED IN DUPLICATE ON THIS 23rd DAY OF March 1987.

Ronnie Long

STATE OF SOUTH DAKOTA

COUNTY OF DEWEY

On this 23rd day of March, 1987, before me, the undersigned officer personally appeared Ronnie Long. Known to me to be the person who is described herein, and who executed the within instrument for the purpose therein contained.

IN WITNESS, WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC - SOUTH DAKOTA

My Commission Expires Oct. 15, 1990

-SEAL-

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF DEWEY)

Ronnie Long being first duly sworn on oath deposes and states: That he is the person described in and who signed the foregoing Articles of Incorporation as an incorporator herein; that he has read such articles and knows the contents thereof; that the incorporator intends in good faith to form a corporation for the purposes of the promotion of a lawful business as set forth in said articles and not for the purpose of enabling any corporation or corporations to avoid provisions of 1967 SDCL 37-1 relating to unlawful trust and combinations and laws amendatory therein.

Ronnie Long

Subscribed and sworn to before me this 23rd day of March, 1987.

Andrew Aberle, Notary Public
South Dakota

My Commission Expires: 10/15/90

(SEAL)

Receipt No. C56002

File No. DB-34327

Filed at Request of
Ronnie Long
Box 272
Timber Lake, SD. 57656

ARTICLES OF INCORPORATION OF

LONG FAMILY LAND AND CATTLE COMPANY, INC.

100,000 shares, $1 par value
$100,000.00

State of South Dakota

ss.

Office of Secretary of State

Filed in the office of the Secretary of State on the 24th day of March 19 87.

Joyce Hazeltine
Secretary of State

By _____
Deputy

Fee Received $60

SOS CRP 491 1/81

Last Will and Testament

I, Kenneth L. Long, of Timber Lake, Dewey County, South Dakota, being of sound mind and disposing memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all other Wills and Codicils by me heretofore made.

I.

I hereby direct that all expenses of my last illness and funeral be paid out of my estate.

II.

I hereby devise unto Paulette Rowley my house and lots and all improvements thereon together with all personal property contents in said improvements and my car.

III.

I hereby devise unto my children, Myrna Fiddler, Ronnie Long, Robert Long and Terry Long all the rest and residue of my estate equally in undivided interests.

IV.

I hereby nominate and appoint Paulette Rowley executrix (personal representative) of my estate and I further request that she not be compelled to furnish bond or security.

IN WITNESS WHEREOF, I hereunto set my hand this 29th day of June, 1995.

Kenneth L. Long

THIS INSTRUMENT was, on the date last above written, signed, published and declared by the said Kenneth L. Long to be his Last Will and Testament in our presence, who at his request have subscribed our names thereto as witnesses in his presence and in the presence of each other.

Linda Dahlgren residing at Timber Lake SD 57656

Nicki Hoeker residing at Timber Lake, SD 57656

Attachment 21

PLAINTIFF'S EXHIBIT 21

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF DEWEY)

We, Kenneth L. Long, Linda Dahlgren and Dirk Holzer, the testator and the witnesses respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his Last Will and Testament and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witnesses and that to the best of their knowledge the testator was at the time 18 or more years of age, of sound mind and under no constraint or undue influence.

Kenneth L. Long
Kenneth L. Long

Linda Dahlgren

Dirk Holzer
Witnesses

Subscribed, sworn to and acknowledged before me by Kenneth L. Long, the testator, and subscribed and sworn to before me by Linda Dahlgren and Dirk Holzer, witnesses, this 29th day of June, 1995.

Andrew Aberle
Andrew Aberle, Notary Public,
South Dakota

My Commission Expires: 10/15/98
(SEAL)

Wills-04-1
FILED
Dewey County
Timber Lake, South Dakota
JUL 28 1995
11:15 o'clock A M.
Eileen La Compte, Clerk

Form 5-4759
(April 1975)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

ASSIGNMENT OF INTEREST

Bank of Hoven — 46-0108210	Long Family Land & Cattle Co. Inc.
Lender — I. D. No.	Borrower
PO Box 7	Box 272
Address	Address
Hoven, SD 57450	Timber Lake, SD 57656
Zip Code	Zip Code
G922D1A0103 — 5-15-92	
Guaranty Certificate Number and Date	Insurance Agreement Number and Date

1. In consideration of $ 378,340.23 received from the United States Government, representing 84 % of the net loss claimed by the Lender as provided in the Guaranty Certificate or Loan Insurance Agreement executed by the Commisioner of Indian Affairs, in the amount of $ 428,930.00, the undersigned hereby grants, conveys, tranfers, and sets over unto the United States Government all its right, title and interest, now and in the future to come, in the following promissory note and collateral securing documents.

2. Promissory note executed by Long Family Land & Cattle Co. Inc., dated 4-1-97, in the amount of $ 420,515.40, bearing interest at the rate of 9.50 % per annum, having a balance this date of $ 420,515.40 unpaid principal and $ 29,889.64 unpaid accrued interest & Late Charges.

3. The following documents are hereby assigned to the United States Government:

   a) Promissory note dated 4-1-97, in the amount of $ 420,515.40.
   b) S/A dated 4-1-97 & 9-28-88
   c) S/A dated 1-8-97
   d) Personal Guarantees dated 4-1-97
   e) UCC/EFS dated 10-18-88
   f) Promissory Notes dated 4-1-97

PLAINTIFF'S EXHIBIT 16

Bank of Hoven
Lender

By James E Nelson
Title AVP

12-30-97
Date

Attachment 22

Form 5-4759
(April 1975)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

ASSIGNMENT OF INTEREST

Bank of Hoven	46-010821
Lender	I. D. No.
PO Box 7	
Address	
Hoven, SD 57450	
Zip Code	

Long Family Land & Cattle Co. Inc.	
Borrower	
Box 272	
Address	
Timber Lake, SD 57656	
Zip Code	

G924C1A0113	2-22-93
Guaranty Certificate Number and Date	

Insurance Agreement Number and Date

1. In consideration of $ 14,628.32 received from the United States Government, representing 80 % of the net loss claimed by the Lender as provided in the Guaranty Certificate or Loan Insurance Agreement executed by the Commisioner of Indian Affairs, in the amount of $ 60,000.00, the undersigned hereby grants, conveys, tranfers, and sets over unto the United States Government all its right, title and interest, now and in the future to come, in the following promissory note and collateral securing documents.

2. Promissory note executed by Long Family Land & Cattle Co. Inc., dated 4-1-97, in the amount of $ 17,604.73, bearing interest at the rate of 9.50 % per annum, having a balance this date of $ 17,604.73 unpaid principal and $ 680.68 unpaid accrued interest. & Late Charges

3. The following documents are hereby assigned to the United States Government:

   a) Promissory note dated 4-1-97, in the amount of $ 17,604.73.

   b) S/A dated 4-1-97 & 9-28-88

   c) S/A dated 1-8-97

   d) Personal Guarantees dated 4-1-97

   e) UCC/EFS dated 10-18-88

   f)

Bank of Hoven
Lender

By James E Nelson
Title AVP

12-30-97
Date

GPO 847 - 352