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JAN - 7 2005


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**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION**

Plains Commerce Bank,

Plaintiff,

v.

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

Defendants.

Court File No.: 05-3002

**COMPLAINT FOR
DECLARATORY
AND RELATED RELIEF**

Plaintiff Plains Commerce Bank ("Bank"), for its complaint against Defendants Long Family Land and Cattle Company, Inc. ("Company") and Ronnie and Lila Long ("Longs"), states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. This is an action for declaratory judgment under 28 U.S.C. § 2201 and for related relief.
2. Plains Commerce Bank, formerly known as Bank of Hoven, is a South Dakota banking corporation with its principal place of business located in Potter County, South Dakota.
3. Defendant Long Family Land and Cattle Company, Inc. is a South Dakota corporation with its principal place of business in Dewey County, South Dakota, located on the Cheyenne River Sioux Indian Reservation.
4. Defendants Ronnie and Lila Long are members of the Cheyenne River Sioux Tribe and residents of the Cheyenne River Sioux Indian Reservation.

5. This Court has federal question jurisdiction over the subject of this action pursuant to 28 U.S.C. § 1331.

6. This Court has supplemental jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1367(a).

7. Venue in this district is proper under 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

8. The facts underlying this declaratory judgment action involve a lease with option to purchase and related transactions between the Bank, the Longs and their Company with respect to approximately 2,240 acres of farm real property owned by the Bank within the boundaries of the Cheyenne River Sioux Reservation.

9. In 1996 the Bank and the Company entered into a two-year lease with option to purchase the property for a purchase price of \$468,000. The parties also entered into a loan agreement. The loan agreement provided that upon fulfillment of certain conditions, including the condition that the federal Bureau of Indian Affairs ("BIA") increase its guaranty of prior loans between the parties, the Bank would make two additional loans to the Company, one a BIA Guaranteed operating loan in the amount of \$70,000 and another loan of \$37,000 to be used to purchase cattle.

10. The parties signed both the lease with option to purchase and the loan agreement on December 5, 1996. On December 12, 1996 the Bank applied to the BIA for the increased guaranty and related BIA approvals upon which the loan agreement was conditioned. On February 14, 1997 the BIA responded informing the Bank that additional information was required.

11. The winter of 1996-1997 was one of the worst on record in South Dakota. The Longs lost 230 cows, 277 yearlings, and 8 horses. Although the BIA did not increase the guaranty as contemplated by the loan agreement, the Bank made several loans to the Longs.

12. The lease expired December 5, 1998. The Company did not exercise the option to purchase. Upon expiration of the lease, the Longs did not vacate all of the property.

13. On March 17, 1999, the Bank sold 320 acres of the property to Ralph Pesicka for cash and on June 29, 1999, the Bank sold the remaining portion of the property to Edward and Mary Jo Maciejewski on a contract for deed. The Bank commenced a State Court eviction proceeding by first serving a notice to quit on the Company and the Longs.

14. The Longs commenced an action in Cheyenne River Sioux Tribal Court seeking a restraining order preventing the Bank from selling the real estate. The Bank responded asserting, inter alia, that the Tribal Court lacked jurisdiction. The Longs subsequently amended their Complaint to include several causes of action, including a claim of "discrimination" against the Bank and seeking damages and other relief. The Bank answered, again asserting that the Tribal Court lacked jurisdiction, and counterclaimed seeking eviction of the Longs and damages. The Bank's motion to dismiss the action based on lack of jurisdiction was denied.

15. The Tribal Court held a two-day jury trial on December 6 and December 11, 2002. The jury panel was comprised solely of tribal members. The jury rendered a general 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 Native Americans, and acted in bad faith in its dealings with the Longs. The jury awarded the Longs \$750,000 and pre-judgment interest.

16. The Bank moved for judgment NOV and a new trial asserting, inter alia, that the Tribal Court lacked jurisdiction and that the discrimination claim, premised upon federal law, was beyond the power of the Tribal Court to adjudicate, citing Nevada v. Hicks, 533 U.S. 353 (2002). The Tribal Court acknowledged that the discrimination claim was based upon federal law because:

“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.”

However, the Court denied the Bank’s motion.

17. The Tribal Court later entered a supplemental judgment in the amount of \$875,982.46, including interest and costs, and ordered that the Longs could exercise the option to purchase the 960 acres of the property they continued to occupy for \$201,600.

18. Both parties appealed to the Cheyenne River Sioux Tribal Court of Appeals. The Bank appealed seven issues, including: (1) whether the Tribal Court lacked jurisdiction for a claim of discrimination against an off reservation bank; (2) whether the trial court erred in failing to grant the Bank’s motion for a directed verdict and judgment N.O.V. on the Longs’ breach of contract claims; (3) whether the trial court erred by failing to grant Bank’s motion for a directed verdict and judgment N.O.V. on a

separate cause of action for bad faith; (4) whether the trial court erred in failing to grant the Bank'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 the Bank's cause of action for eviction against the Longs; (6) whether the trial court erred in granting the Longs' motion to exercise its option to purchase some of the real estate sold to Edward and Mary Jo Maciejewski under a contract for deed; and (7) whether the trial court erred in allowing pre-judgment interest on certain damages absent specific interrogatories to the jury.

19. On November 22, 2004, the Cheyenne River Sioux Tribal Court of Appeals issued a decision affirming the trial court with respect to all of the issues appealed by the Bank.

20. On December 16, 2004, the Longs, through their attorney, advised the Bank, that they "plan to transfer the judgment to Potter County".

21. The Bank has now instituted this action seeking a declaration that the Tribal Court's judgment is unenforceable because the Tribal Court lacked jurisdiction, that the Tribal Court proceedings denied the Bank due process and that the Longs are in wrongful possession of the land.

COUNT I
DECLARATORY JUDGMENT
JURISDICTION OF THE TRIBAL COURT

22. The Bank adopts and realleges paragraphs 1-21 hereof as if fully stated herein.

23. An actual controversy exists between Plaintiff and Defendants regarding the jurisdiction of the Cheyenne River Sioux Tribal Court to enter the judgment between the parties referred to herein.

24. The controversy warrants relief declaring the rights and liabilities of the parties pursuant to 28 U.S.C. § 2201, and declaring and finding that the Cheyenne River Sioux Tribal Court did not have proper jurisdiction to enter the judgment between the parties referred to herein.

25. Plaintiff seeks a judgment declaring that the judgment between the parties referred to herein is null and void.

COUNT II
DECLARATORY JUDGMENT
COMITY

26. The Bank adopts and realleges paragraphs 1-25 hereof as if fully stated herein.

27. An actual controversy exists between Plaintiff and Defendants regarding whether the Tribal Court proceedings referred to herein afforded the Bank fundamental due process of law and, therefore, whether the judgment of the Tribal Court should be recognized and granted comity.

28. Plaintiff seeks a judgment declaring that the judgment between the parties referred to herein is null and void.

COUNT III
DECLARATORY JUDGMENT
WRONGFUL POSSESSION

29. The Bank adopts and realleges paragraphs 1-28 hereof as if fully stated herein.

30. An actual controversy exists between Plaintiff and Defendants regarding Defendants' right to continue possession of the 960 acres of property referred to herein.

31. Plaintiff seeks a judgment declaring that the Defendants have no right to continue in possession of said property, ordering that they quit possession thereof immediately and determining and awarding Plaintiff damages arising from Defendants' wrongful possession of said property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Plains Commerce Bank respectfully requests declaratory judgment in its favor and against Defendants as follows:

1. Declaring that the Cheyenne River Sioux Tribal Court did not have jurisdiction to enter the judgment referred to herein and that said judgment is null and void;
2. Declaring that the judgment referred to herein is not entitled to recognition and comity;
3. Declaring that Defendants are in wrongful possession of the property referred to herein and ordering that they quit possession thereof immediately;
4. Determining and awarding Plaintiff its damages arising from the wrongful possession by Defendants of the property referred to herein; and
5. Granting Plaintiff the reasonable costs and disbursements incurred in this action and such further relief as the Court finds Plaintiff entitled as a matter of law or equity.

Dated: January 6, 2005.

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