

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

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

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 (8<sup>th</sup> 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 1<sup>st</sup> day of December, 2005.

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

BY: /s/James P. Hurley

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