

**STANDING ROCK SIOUX TRIBAL COURT
STANDING ROCK SIOUX INDIAN RESERVATION**

Stella Guggolz,

plaintiff

vs.

Farmer's Union Oil Company,

defendant

File #COMP 06-681

**MEMORANDUM
OPINION**

The defendant has brought a Motion to Dismiss for Lack of Subject Matter Jurisdiction. It is based upon the premise that the defendant, although doing business within the exterior boundaries of the Reservation, is not subject to suit in this matter, as a non-Indian entity, doing business on fee land.

The suit is for personal injuries alleged to have occurred on the defendant's property, as a result of a trip and fall, as a result of the defendant's failure to maintain its premises in a reasonably safe condition. It is alleged that the plaintiff was on the property to make a retail purchase from the defendant.

The matter has been briefed and oral arguments were held on February 1, 2007.

The plaintiff alleges and the defendant agrees that the defendant is a South Dakota corporation, doing business on the reservation. As a matter of law, by virtue of being a South Dakota Corporation, the defendant is a non-Indian entity. Airvator, Inc. v. Turtle Mountain Manufacturing Co., 329 NW2d 596 (ND 1983).

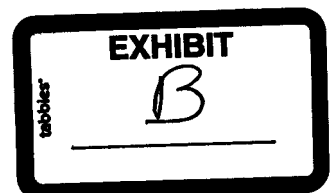
The parties agree that the cause of action arises on fee land.

It appears, as well, that the defendant is engaged in the retail business of a gas station and convenience store, selling gas and sundries to Indian as well as non-Indian persons. The Complaint alleges that the plaintiff was on the defendant's property to make a retail purchase.

The United States Supreme Court, in the case of Montana v. United States, 450 US 544 (1981) ruled that the tribal courts do not generally have jurisdiction over cases involving the conduct of non-Indians, absent enabling federal statute or treaty. However, it provided two narrow exceptions, the first of which is pertinent in this case:

A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.

Montana, supra, at 565-566.



The 9th Circuit, in the case of Ford Motor Co. v. Todecheene, 394 F2d 1170 (9th Cir. 2005), at 1180, held that tort law is a form of regulation.

The Supreme Court's position in Montana was further defined in the case of Strate v. A-1 Contractors, 520 US 438 (1997). In that case the Court dealt with the question of whether the defendants had subjected themselves to Tribal Court jurisdiction by entering into a contractual relationship for landscaping work with the Three Affiliated Tribes at Fort Berthold. The parties do not identify, nor is the Court aware of any case dealing with the issue of subjection to Tribal jurisdiction "through commercial dealing."

In its analysis of whether the contract between the Tribes and the defendants constituted a "consensual relationship" sufficient to extend jurisdiction over the defendants for the vehicular accident which was the basis of the claim, the Supreme Court said:

The first exception to the Montana rule covers "activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangement." 450 U.S., at 565, 101 S.Ct., at 1258. The tortious conduct alleged in Frederick's complaint does not fit that description. The dispute, as the Court of Appeals said, is "distinctly non-tribal in nature." 76 F.3d, at 940. It "arose between two non-Indians involved in [a] run-of-the-mill [highway] accident." Ibid. Although A-1 was engaged in subcontract work on the Fort Berthold Reservation, and therefore had a "consensual relationship" with the Tribes, "Gisela Fredericks was no a party to the subcontract, and the [T]ribes were strangers to the accident." Ibid.

Strate, *supra*, at 457.

A-1's only relationship with the Tribes was its landscaping contract. There were not alleged, or at least not considered by the courts, any "commercial dealings."

It seems to this Court that, if there is a consensual relationship here between the parties, there is not a substantial question as to whether there is a nexus between that consensual relationship and the cause of action. If there were commercial dealings as contemplated by Montana, then the plaintiff is not a stranger to those dealings, as was Gisela Fredericks to A-1's contract with the Tribes. She alleges that she was there to make a purchase, to "purchase supplies," and we must presume that she will so testify. Indeed, it must be presumed that she was there for a purpose related to Farmers' Union's presence there. If the store were not there; if it were an empty lot, she certainly would not have stopped there or walked there.

Therefore, it seems to the Court that the issue here is whether the defendant's activities for which the plaintiff was there, constitute "commercial dealings," as contemplated by Montana. The Supreme Court has not elaborated on the meaning of the term it used,

either in its opinion in that case, nor in any subsequent case, to the knowledge of this Court.

Black's Law Dictionary, 8th Ed., defines "commerce" as:

The exchange of goods and services, esp. on a large scale involving transportation between cities, states, and nations.

It does not define "commercial."

The defendant's reading of "commercial dealings," as the Court understands its oral argument, is that the term presumes larger scale and more formalized commerce. However, that is not the exclusive meaning in Black's.

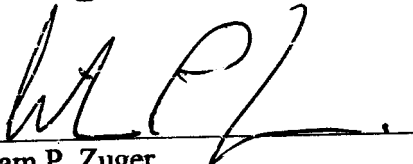
The accepted English definition of "commercial," as contained in Webster's New World Dictionary, Second Concise Ed., pub. Simon and Schuster, 1979, is broader and appears more consistent with the plaintiff's position:

1. of or connected with commerce or trade. 2. of or having to do with stores, office buildings, etc. 3. of a lower grade, or for use in large quantities in industry 4. a) made or done primarily for profit b) designed to have wide popular appeal 5. offering training in business skills, etc.

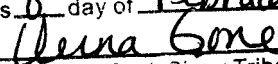
The Court believes that the underlying rationale of Montana is that by taking some substantive advantage or benefit from dealings with Indians, a non-Indian should take with it legal responsibilities arising from the common sense contemplated scope of those activities. Thus, operating a retail establishment for profit should reasonably be construed as "commercial," and liability for torts arising from those activities to be within the scope of those "dealings."

In this case, the defendant was on the Reservation to deal with Indians and non-Indians alike who came to deal with it. The parking lot was clearly part and parcel, there to facilitate those dealings. Thus, it is the Court's determination that the Tribal Court has subject matter jurisdiction in this matter and the defendant's motion is denied.

Dated this 8 day of February, 2007,


William P. Zuger
Associate Judge

 Clerk of Court of the
Standing Rock 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.

Dated this 8th day of February 2007

Clerk, Standing Rock Sioux Tribal Court