No. 02380
September Term 2008

In the Court of Special Appeals of Maryland

ELIZABETH ANNE REEVES

Appellant Pro Se

DELAWARE NATION, formerly DELAWARE OF WESTERN OKLAHOMA

v.

LASALLE BANK

Appellee

ON APPEAL FROM THE CIRCUIT COURT OF ST MARY'S COUNTY

Hon. Judge Vincent Femia, Presiding

REPLY BRIEF

Elizabeth Anne Reeves
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REPLY BRIEF

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TABLE OF CITATIONS
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CONSTITUTION, STATUTORY AND REGULATORY PROVISIONS

(1) (3) Art. III, Section 2 [1] and Art. VI, Section 2 of the U.S. Constitution; 28 USC 1331

(2) Maryland Rule 2-211 (a)

(3) Maryland Code, Courts and Judicial Proceedings, Section 5-901 (3)

(4) TREATY WITH THE DELAWARES, Sept. 17, 1778. | 7 Stat., 13. Indian Affairs: Laws and Treaties. Vol. II (Treaties). Compiled and edited by Charles J. Kappler. Washington: Government Printing Office, 1904. Also the Treaty of 1803, 1854,and 1860.

(5) The Delaware are a federally recognized tribe as listed in the Federal Register 103, Dec. 5, Vol. 68, page 68180, the Delaware Nation, formerly the Delaware of Western Oklahoma, are listed on page 68181.

(6) Delaware Executive Committee Resolution No. 02-36, May 21, 2002

STATEMENT OF CASE

The La Salle Bank, Appellee, by and through its attorney, James Gorney, Esq. has asked this court: Is The Delaware Tribe Of Western Oklahoma A Necessary Party To The Underlying Declaratory Judgment Action?

Appellant, Pro se, Elizabeth Reeves replies and argues that the Appellee conclusions of law and fact are incorrect and summarizes her arguments in the following three statements:

1. The Delaware Nation, formerly known as the Delaware of Western Oklahoma, had a presumptive property interest in this action and is a necessary party to the action as required by Maryland Rule 2-211(a). Appellant was both entitled to federal jurisdiction as a sovereign state with treaty status with the US Government under the US Constitution at 28 USC 1331 and sovereign immunity from suit under mandatory US Supreme Court decision *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.* 523 US 751 (1998)

2. The conveyance of land was a valid transfer as a contract between the defendants, Elizabeth Reeves (offer) and Delaware Nation (acceptance by act of tribal legislature) as evidenced by the separate memoranda in the lower court record and the gift language was added by request of the Attorney General's Office after a three week delay in filing for the sole purpose of avoidance of the state transfer tax. There is a genuine dispute of material fact.

3. The Appellee was not entitled to foreclose on land in equity it had not specifically attached in the mortgage legal description, e.g. the contiguous 1.6 acres of land that is the subject of this declaratory judgment according to the Statute of Frauds and Parole Evidence Rule. Intent has been disputed on the record and is therefore a factual dispute for the jury as well as tribal status and existence of a lease/contract. The grant of summary judgment was improper.

QUESTIONS PRESENTED ON REBUTTAL

1. Did the State of Maryland have original and subject matter jurisdiction to hear and decide a case on substantive issues involving a sovereign state with treaty status?

2. Was the conveyance, as a contract including elements of mutual assent, consideration, a valid transfer?

3. Was Appellee entitled to land not included in the mortgage legal description it had recorded, e.g. the approximately 1.6 acres that is the subject of this declaratory judgment under the Parole Evidence Rule and Statute of Frauds?

STATEMENT OF FACTS

1. JURISDICTION

Elizabeth A. Reeves, Appellant, *pro se*, moved to dismiss this action on the grounds of Plaintiffs lacking jurisdiction (see Motion to Dismiss on 7/23/04 at R.27). The Delaware Nation formerly known as the Delaware Tribe of Western Oklahoma are required by Maryland Rule 2-211(a) to be necessary party which states in part that a person subject to service of process:

> Shall be joined as a party if in that person's absence (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action...

The Court of Appeals has stated that Rule 2-21 tracks F.R.C.P. 19:

> See *Garay v. Overholtzer* 332 Md. 339, 355, 631 A.2d 429 (1993). Courts interpreting Rule 19 have held, "[g]enerally, in breach of contract actions, all parties to the contract are necessary ones." *Rogas v. Loewan Group Int'l*, 178 F.R.D.356, 361 (D.P.R.1998)

As evidenced by the attached deed the Delaware are the current owners of the property (E. 123-124). Obviously, their interest is impaired if not joined as necessary parties. Mr. Gorney makes much ado about a name change of the Western Delaware to Delaware Nation, both mentioned in the Federal Register. At the time of the lawsuit, 2003, the Federal Register (E.100, 101) clearly states that the Delaware Nation was formerly known as the Western Delaware. In the words of the Bard, "a rose by any other name would smell as sweet," or as Gertrude Stein said, "a rose is a rose is a rose." A federally recognized tribe is still immune as the Bard would say or a federally recognized tribe is still a federally recognized tribe as Ms Stein would say, a fact Mr. Gorney does not dispute. He argues instead a name change means the old tribal name no longer has immunity, a bald faced accusation that is unsupported by the facts in the Federal Register (E. 100 and 101) or any proffered legal authority on the record.

If Appellant changes her name to Elizabeth Reeves Santone through marriage, she is still Elizabeth Anne Reeves though her name changes and all her contracts are still enforceable in the old name. If Appellant changes her name by next April, will Mr. Gorney object to Elizabeth Reeves Santone giving oral argument to the Court of Special Appeals because she is not Elizabeth Anne Reeves and no longer a legal entity?

Under Federal law, the Delaware were entitled to and denied their defense of tribal immunity, *Kiowa Tribe of Oklahoma, v. Manufacturing Technologies, Inc, infra* and the right to be in U.S. District Court, 28 USC 1331. And Elizabeth Reeves had standing to object.[1] The Default Judgment (R. 12, 13) was objected to by the Appellant (Motion to Vacate Orders at R.27) and the Default Judgment has no legal effect because Judge Femia had no jurisdiction to rule from the inception of the lawsuit.

Ironically, Judge Femia admits on the Record he has no jurisdiction in another State or in matters involving Indian tribes.

E. 80 at Line 3 THE COURT states: I have no subpoena power to Washington, D.C.
E. 80 at Line 10 THE COURT states: I have no power to issue subpoenas to people in Washington, D.C. There's no power in this court to subpoena people in the District of Columbia.
E.80 Line 24 THE COURT: You needed somebody in here to authenticate that and if I don't have subpoena power in D.C., I
E. 81 Line 1, 2, 3 guarantee you I don't have subpoena power in Oklahoma. To officially subpoena these people is- you might as well open the window and yell at them. It's of no effect.

So if Judge Femia cannot subpoena the Delaware Nation or expert witnesses on Indian tribes, on what authority does he have to rule against them in a Default Judgment? Is this Due Process to the extent permitted by

[1] The Court of Special Appeals in *Elizabeth Anne Reeves v. Howard Bierman, et al* acknowledges that " despite having quitclaimed her interest in the property to the Delaware Tribe, the appellant has standing to oppose the foreclosure because the quitclaim deed includes a "leaseback" to her."

the Fourteenth Amendment required under *Krashes v. White*, 275 Md. 549 A.2d 798 (1975). The lower court cannot have it both ways, rule against an out of state party then deny them testimony in the form of witnesses and documents. See *Goldberg v. Kelly*, 397 U.S. 254 (1970). [2]

2. CONTRACT NOT GIFT

The lower court further pontificates:

> E.81 Line 15-25 THE COURT: ... I can not accept as evidence unauthenticated papers. The acceptance of a gift is the one that jumps out at me. Now, the quick claim, no problem, its on file here in this courthouse, so I have the power to judicially note that. That acceptance is not a formal public document in Maryland [*jurisdiction again*] It is a piece of paper that you've present and without authentication, Mr. Gorney is absolutely right when he objects to its admission. So it is not accepted. So you can see why I can't accept your memorandum. You can put anything you want in your memorandum, I can't accept it as evidence.
> E.81 Line 14 MS. REEVES: But I'm pro se, Your Honor.

The Maryland Appellate court has held that the Defendant "being charged" is allowed to have the terms of the contract admitted into evidence.

> "Admission of a contract and its terms in court through the testimony of the party to be charged satisfies the statute of frauds". *Litzenberg v. Litzenberg* 57 Md App 303, 469 A2d 1279 (1984) (cert.denied).

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[2] *Goldberg v. Kelly*, 397 U.S. 254 (1970), is a case in which the United States Supreme Court ruled that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires an evidentiary hearing before a recipient of certain property rights can be denied. The individual who stands to lose those rights is not entitled to a trial, but is entitled to an oral hearing before an impartial decision-maker, the right to confront and cross-examine witnesses, and the right to a written opinion setting out the evidence relied upon and the legal basis for the decision.

Swimming against the tide, the Appellant argues that (besides the fact she can authenticate her own documents as a *pro se* Defendant) she further argues that a grant of summary judgment is improper when there is a genuine issue of material fact to be adjudicated. At pages E. 82 and 83

E. 82 Line 14 MS REEVES: But, Your Honor there's never been a trial...
E. 82 Line 16 THE COURT: There doesn't have to be once I grant motion for summary judgment.
E. 82 Line 19 MS REEVES: ...I say that it was improper because it was-
E. 82 Line 21 THE COURT: And it may well have been and the time to appeal that was thirty days...Not now.
E. 83 Line 4 MS REEVES: ...Mr. Gorney appealed it actually.
E. 83 Line 8,9,10 MS REEVES:...originally the motion [to] dismiss was granted and the Court sent it back for further proceedings. You granted the motion for summary judgment.
E. 83 Line 11 THE COURT: Well-
E. 83 Line 12, 13, 14 MS REEVES: I filed a motion for reconsideration. Its thirty days from today that I get to bring that before the Court of Special Appeals.
E. 83 Line 15 THE COURT: Okay.
E. 83 Line 16 MS REEVES: But there are genuine issues of material fact, therefore it should have gone to trial. And at a trial is when you get to present evidence and you authenticate your documents.

There has always been evidence of a contract between the Appellant and the Delaware Nation in the court record. A contract is a promise that the law will enforce. Generally, it is a bargain or exchange formed by an offer and an acceptance of that offer. The Quitclaim Deed was the offer, E. 123, the acceptance was the Act of Tribal Legislature Resolution 02-36 (Acts of Legislature are self-authenticating) E.99, E.97, 98 and consideration was taxes were paid by the Appellant (upfront on the face of the Liber 1794

Folio 594 and on a yearly basis of approximately $100 a year) and the Delaware Nation forebear invoking their sovereign immunity against her granting her a 99-lease. E.97 The Appellant was the Defendant and the burden was on the Plaintiff/Appellee to prove by clear and convincing evidence his claims not the reverse. And on the face of the documents authenticated by the Appellant/Defendant *pro se* the Delaware Nation are entitled to sovereign immunity and the transfer is valid. No proffer of actual evidence has been proffered by the Appellee proving the contrary only innuendo. The grant of summary judgment by the lower court for the Plaintiff/Appellee was improper because there existed genuine disputes of material fact.

3. STATUTE OF FRAUDS/PAROLE EVIDENCE

> Under Maryland's statute of frauds, no action may be brought unless the contract or agreement upon which the action is brought, or some memorandum or note of it, is in writing and signed by the party charged: MD Code § 5-901(3).
>
> Because reformation of a contract is considered a drastic remedy, clear and convincing evidence of the grounds is required. *Moyer v. Title Guarantee Co.,* 227 Md.499, 177 A.2d 714 (1962).
>
> The non-breaching party must establish the terms of the mistaken agreement and the agreement that was actually contemplated at the time at the time it was executed. *Moyer, supra.*
>
> *Maryland Port Administration v. Brawner Contracting Co.* 303 Md 44 492 281 (1985) defined "mutual mistake" as a "patent, honest, and obvious clerical mistake.

The Appellee has proffered only evidence of the prior re-financed mortgage by a different bank as evidence of their intent in 2000.

> "Being Known and Designated as Residue(consisting of 3.00 Acres more of less) as shown on a plat entitled White Plains Farm, Fourth Election District, St Mary's County, Maryland which Plat is recorded among the Land Records of St Mary's County in Plat Book [MRB] Liber 32 Folio 18." [Found in ORDER at E. 16]

But under Maryland common law this is not sufficient to establish intent at the time this mortgage was executed. In *Linz v. Schuck*, 106 Md. 220, 67 A. 286 (1907):

> The parties were deemed to have rescinded the contract and entered into a separate, new agreement, as opposed to a mere modification of the original agreement, the second agreement must satisfy the prerequisites of contract law (i.e., statute of frauds). *Dowling v. Bruffey,* 266 Md. 77, 291 A.2d 471 (1972).

The intent of the parties must be evident on the face of the Deed of Trust, Exhibit A of this contract not a prior re-finance by a different bank to satisfy the Statute of Frauds. The demonstrated intent from the Appellee was the original deed description from 1988 of the 1.4 acres s recorded. The demonstrated written intent of the Appellant as to the current description of the house property is not what the Appellee wants but "Lot 6 White Plains Farm Subdivision, recorded in the Land Records of St Mary's County, MD in EWA 34 Folio 84" as evidenced by the Quit Claim Deed of April 2002. E.97. This plat was recorded within 18 months of the original deed in 1988.

ARGUMENT

28 USC 1331 states all civil actions "arising under the U.S. Constitution, U.S. laws, or U.S. treaties" have original jurisdiction in U.S. District Court.

Article VI, Section 2 states that the Constitution, laws and treaties made by the federal government are the supreme law of the law and any other laws or mandates are inferior to them. The exact language is:

> *"This Constitution, and the Laws of the United States which shall be made Pursuant thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding."*

> Article III, Section 2 [1] *The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made or which shall be made, under their authority;...*

McCullough v. Maryland, 4 Wheat 316, 4 L. Ed. 579 (1819) settled the matter whether a State could enact laws (or interpret them) to contravene the Constitution, laws, or treaties of the U.S. Government. In essence a Maryland law was a tax on all bank notes issued in Maryland, including federal banks. The Supreme Court held the U.S. Constitution and the laws, treaties they make are supreme. The Maryland law was found unconditional and void on those grounds.

The federal question, ownership rights under a US treaty and immunity of the Delaware Nation, exist on the face of the quitclaim deed filed in the chain of title and the Appellant's Answer and Motion to Dismiss. R. 7, R. 27, E. 97.

> *Smith v. Kansas City & Trust Co*, 255 U.S. 180 (1921) provides that a case arises under federal law if the cause was created by state law, but the success of the plaintiff's claim depends on interpretation or application of federal law.

The lower state court cannot escape interpreting the land rights of the Delaware Nation as well as their tribal immunity in this suit and therefore trigger federal question jurisdiction. The Circuit Court of St Mary's County had no original jurisdiction to decide substantive issues and if it did it was bound by *Kiowa Tribe, supra*, to dismiss the case when a party pleaded lack of jurisdiction in the Answer and Motion to Dismiss R.7 and R.27.

CONCLUSION

In *Kiowa Tribe, supra.* the High Court states:

> In this commercial suit against an Indian tribe, the Oklahoma Court of Appeals rejected the tribe's claim of sovereign immunity. Our case law to date often recites the rule of tribal immunity from suit...we adhere to these decisions and reverse the judgment...So tribal immunity is a matter of federal law and is not subject to diminution by the States. *Three Affiliated Tribes, supra, at 891; Washington v. Confederated Tribes of Colville Reservation, 447 U.S. 134, 154 (1980)*...Congress has not abrogated this immunity, nor has petitioner waived it, so the immunity governs this case. The contrary decision of the Oklahoma Court of Appeals is reversed."

Respectfully, the Maryland Court of Special Appeals is bound by mandatory US Supreme Court precedent to do the same in *Reeves v. LaSalle Bank.* "*Sed quis custodiet ipsos custodes.*"

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 16th day of May, 2009, a copy of the foregoing was mailed, U.S. regular mail, postage prepaid, to the following:

La Salle Bank, NA
c/o James Gorney, Esq.
PO Box 386
LaPlata, MD 20646

Elizabeth A. Reeves

The size font used in this brief is 14 in Times New Roman font.

Footnotes are in size 12 in Times New Roman font in this brief.