UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. FRANK VANDERWALKER, KIRA VANDERWALKER and ANY PARTY IN POSSESSION, Defendants.	CIV 10-3008 **DEFENDANT KIRA VANDERWALKER'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Comes now, the Defendant, Kira Vanderwalker, by and through her attorney of record, Steven D. Sandven, and submits this Memorandum of Law In Opposition to Plaintiff's Motion for Summary Judgment. Defendant opposes the Plaintiff's Motion and offers her Opposition to refute the claims made by the United States.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On or about April 27, 1998, Defendant Frank Vanderwalker and his former wife, Wanita Vanderwalker, entered into a residential lease agreement with the Rosebud Sioux Tribe for a parcel of trust land legally described as follows:

> SE1/4SE1/4SE1/4SE1/4 of Section 3, Township 41 North, Range 29 West, 6th PM, containing 2.50 acres, M/L, and (subject to prior valid existing right of way). **Exhibit 1**.

In accordance with 25 U.S.C. 415, the Secretary of the Interior approved the residential lease on August 11, 1998. Id.

On or about October 27, 2000, Defendant Frank Vanderwalker and Wanita Vanderwalker executed a Note with Wells Fargo Home Mortgage, Inc. for the principal amount of $60,405.00 plus 8.375% interest. **Exhibit 2**. On that same day, the parties executed a Section 184 mortgage with the described trust land as security therefore in the amount of $60,405.00. **Exhibit 3**. Section 15 thereof provides for jurisdiction as follows:

> This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Interest or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable. Id. at §15

The mortgage was approved by the Secretary of the Interior on November 7, 2000. **Exhibit 4**.

On or about March 20, 2001, the Bureau of Indian Affairs approved and recorded a Modification of the Lease Agreement changing ownership to the described tract from the Rosebud Sioux Tribe to the Rosebud Sioux Tribal Land Enterprise. **Exhibit 5**.

On or about April 15, 2002, Wells Fargo Home Mortgage notified the Rosebud Sioux Tribe that Defendant Frank Vanderwalker was in default on the loan and that the Tribe had the right of first refusal to acquire his interest in the property. **Exhibit 6**. On or about June 27, 2003, Wells Fargo Home Mortgage transferred their interest in the mortgage to the Secretary of Housing and Urban Development. **Exhibit 7**.

On or about April 19, 2004, the United States Department of Housing and Urban Development filed a Complaint against Defendant Frank Vanderwalker, Wanita Vanderwalker and the Rosebud Sioux Tribe seeking to foreclose "a loan made under the provisions of Section 184 of the Housing and Community Development Act (12 U.S.C. § 1715z-13a) and secured by a leasehold mortgage on real property held in trust for and leased to the Defendants Frank J. Vanderwalker and Wanita M. Vanderwalker, by the Rosebud Sioux Tribe." **Exhibit 8**. ¶ 1.

On or about July 21, 2004, the Rosebud Sioux Tribe filed its Answer to the Complaint explicitly stating that "it will exercise its right of first refusal to acquire the Borrower's interest in the property that is the subject of this litigation by remitting payment of the balance of the loan or assuming the mortgage." **Exhibit 9**.

On or about November 8, 2004, the United States filed an Application for Entry of Default because "Defendants Frank J. Vanderwalker and Wanita M. Vanderwalker have failed to plead, otherwise defend or appear in the instant act as provided for by the Federal Rules of Civil Procedure." **Exhibit 10**. On or about December 1, 2004, the Clerk entered its default against Defendant Frank Vanderwalker and Wanita Vanderwalker. **Exhibit 11**.

On or about August 30, 2005, the United States filed its Motion for Summary Judgment against the Rosebud Sioux Tribe for failing to remit payment for the loan or make arrangements therefore and a default judgment against Defendant Frank Vanderwalker and Wanita Vanderwalker. **Exhibit 12**. On or about November 10, 2005, the Court issued a Judgment of Foreclosure and Decree of Sale. **Exhibit 13**. On or about April 20, 2006, the Court issued an order confirming the sale of the property in question. **Exhibit 14**.

On or about January 2, 2008, the Bureau of Indian Affairs approved a modification of the Lease Agreement removing Wanita Vanderwalker's name from the residential lease and adding Kira Vanderwalker in her stead. **Exhibit 15**.

On or about May 6, 2010, the United States filed the Complaint in the instant action alleging that Defendants were wrongfully possessed of the property in question.

STANDARD OF REVIEW

The United States has moved this Court pursuant to Rule 56 of the Federal Rules of Procedure for an Order granting Summary Judgment, claiming there exists no material issues of

fact in this suit and that they are entitled to judgment as a matter of law. Rule 56(c) of the Federal Rules of Civil Procedure makes it clear that summary judgment is not appropriate unless the pleadings, stipulations, affidavits, and admissions in the case "show that there exists no genuine issue as to any material fact."

The purpose of summary judgment is not to try an issue of fact but to determine whether one exists between the parties. As this Court knows, a motion for summary judgment should be denied, as in this case, where (1) there are genuine issues as to several material facts, and (2) the Plaintiff is not entitled to judgment as a matter of law. *See e.g.*, Holloway v. Lockhart, 813 F.2d 874, 878 (8th Cir. 1987).

As the Eighth Circuit explained nearly two decades ago in Vette Co. v. Aetna Casualty and Surety Co., 612 F.2d 1076, 1077 (8th Cir. 1980), summary judgment is "an extreme and treacherous remedy" appropriate only in those cases where the movant has unquestionably established its right to judgment with such clarity as to leave no room for controversy, and the other party is not entitled to a favourable judgment under any discernible circumstances. Equal Opportunity Commission v. Liberty Loan Corp., 584 F.2d 853, 857 (8th Cir. 1978); Green v. Associated Milk Producers, 692 F.2d 1153, 1154 (8th Cir. 1982).

In determining a motion for summary judgment, the Court:

> [I]s required to view the facts in the light most favourable to the party opposing the motion and to give that party the benefit of all reasonable inferences to be drawn from the underlying facts disclosed in the pleadings and affidavits filed in this case. Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-159, 90 S.Ct. 1598…(1970); Equal Employment Opportunity Comm. V. Liberty Loan Corp. supra.

Vette v. Aetna Casualty, supra, 612 F.2d at 1077. *See also* Holloway v. Lockhart, 813 F.2d 874, 878 (8th Cir. 1987).

The United States therefore carries the heavy burden of justifying its Motion for Summary Judgment in this case. The Defendant respectfully submits the United States has not met its burden and the Motion should be denied.

Where a moving party has met its burden, the non-moving party in response "must do more than show there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1355 (1986). There would be no genuine issue for trial "[w]here the record as a whole could not lead a rational trier of fact to find for the non-moving party." Id., 475 U.S. at 588, 106 S. Ct. at 1356.

In the instant case, probative evidence in the record reflects substantially more than a "metaphysical" doubt exists about disputed and omitted material facts relevant to the legal issues herein. When combined with facts omitted by the United States, a rational trier of fact could find for the Defendant.

SUMMARY ARGUMENT

Despite urging its Lenders to adhere to Tribal law, the United States is raising every argument, albeit implausible, to get this Court to decide an issue that involves only Indian land. By doing so, the United States has muddied the issues involved in this matter to such an extent nothing short of rescission of the foreclosure sale is warranted. First, Defendant Kira Vanderwalker was not a party to the foreclosure action. Hence, the only charges pertinent to her deal with ejectment and contempt of court. Ms. Vanderwalker has not disobeyed any order of the Court to which she was a party, and therefore, a contempt charge is not warranted. The United States has framed the second charge as "ejectment" to evade raising a simple trespass claim that would undoubtedly fall within the jurisdiction of the Rosebud Sioux Tribe. Further, the United States has failed to give the proper party – the Rosebud Sioux Tribal Land Enterprise

(hereinafter "TLE") – notice of its right to purchase the Vanderwalker's interest in this matter as required by the mortgage. Finally, and most importantly, the United States has completely ignored its own regulations that require exhaustion of tribal remedies when a dispute arises. With the foregoing in mind, not only must the United States' Motion for Summary Judgment be denied, this case must be dismissed in its entirety.

ARGUMENT

I. THE UNITED STATES HAS FAILED TO EXHAUST TRIBAL REMEDIES.

A. The Rosebud Sioux Tribal Court Has the Authority to Exercise Jurisdiction Over this Dispute.

The United States has sued Kira Vanderwalker seeking to eject her from the trust land in question. In a covert attempt to circumvent Tribal Court jurisdiction, the United States is trying to tie this complaint into the foreclosure action to maintain this Court's assertion of jurisdiction. This attempt must fail as it is clear that the Rosebud Sioux Tribal Court would have jurisdiction over a tribal member and trust land within its original boundaries.

By way of background, the Rosebud Sioux Tribal Court has jurisdiction over all matters involving or affecting the Rosebud Sioux Tribe. Specific provisions in the Tribe's Constitution provide that the jurisdiction extends to "the territory within the original confines of the Rosebud Reservation boundaries as established by the Act of March 2, 1889, and to such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law." Constitution, Article I. Excerpt attached hereto as **Exhibit 16**. Additionally, Title Four, Chapter Two of the Rosebud Sioux Tribe's Rules of Civil Procedure provides the following:

> The Rosebud Sioux Tribal Court will exercise civil and criminal jurisdiction over all persons within its territorial jurisdiction to the extent allowed by federal statutory law and Federal Court decisions. It is recognized that decisions such as Oliphant (55 Lawyers Ed

> 2nd 209) limit the jurisdiction of this Court over certain non-Indians. However; the Rosebud Sioux Tribal Court will continue to exercise all of tile civil and criminal jurisdiction over all persons allowed to it by federal statute and federal judicial Court decisions. Title Four, Chapter 2, Section 4-2-6. **Exhibit** 17.

Finally, Title Eight, Chapter Two of the Tribe's Remedies Code provides that the "The Rosebud Sioux Tribal Court shall have jurisdiction in any case of forcible entry and detainer or of detainer only, of real property within the Rosebud Sioux Tribe original tribal reservation boundaries." Chapter Two, Section 8-3-3. **Exhibit 18**.

Based upon the foregoing, there can be no doubt that the Rosebud Sioux Tribal Court is the appropriate forum to resolve disputes such as the instant action.

B. Congress and Federal Courts Have Endorsed Exhaustion of Tribal Remedies.

Congress has endorsed tribes' assertion of jurisdiction to the widest extent allowed by law. Specifically, in the Indian Tribal Justice Support Act, codified at 25 U.S.C. § 2601 *et seq.*, Congress found and declared the following:

(1) there is a government-to-government relationship between the United States and each Indian tribe;

(2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;

(3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;

(4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;

(5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments;

(6) *Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights*;

(7) *traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this chapter*;

(8) tribal justice systems are inadequately funded, and the lack of adequate funding impairs their operation; and

(9) tribal government involvement in and commitment to improving tribal justice systems is essential to the accomplishment of the goals of this chapter.

Emphasis added. In this case it is eminently clear that the Rosebud Sioux Tribal Court is the "appropriate[forum] for the adjudication of disputes affecting . . . property rights. Id. subsection (6).

The Supreme Court has also spoken regarding the proper role of tribal courts. In National Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845 (1985), the Supreme Court addressed whether non-Indians (a school district and its insurer) could invoke general federal question jurisdiction to prevent a tribal member from invoking the jurisdiction of the Tribal Court. In the face of the non-Indian plaintiffs' attempt to invoke the federal court's jurisdiction, the Supreme Court advised:

> We believe that examination should be conducted in the first instance in the Tribal Court itself. Our cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge. Moreover the orderly administration of justice in the federal court will be served by allowing a full record to be developed in the Tribal Court before either the merits or any question concerning appropriate relief is addressed. The risks of the kind of "procedural nightmare" that has allegedly developed in this case will be minimized if the federal court stays its hand until after the Tribal Court has had a full opportunity to determine its own jurisdiction and to rectify any errors it may have made. Exhaustion of tribal court remedies, moreover, will encourage tribal courts to explain to the parties the precise basis for accepting jurisdiction, and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review.

National Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845, 856-57 (1985) (footnotes omitted).

Finally, there is also Eighth Circuit precedent that speaks directly to the case at hand. *See* Bruce H. Lien Co. v. Three Affiliated Tribes, 93 F.3d 1412 (8th Cir. 1996).[1] In Bruce Lien, the validity of a contract was challenged because it was not clear that the tribal leader who entered into the contract had the authority to do so. The Bruce Lien court correctly noted that the "challenge to the document itself…calls into question all provisions contained therein (including provisions relating to arbitration, sovereign immunity, and federal district court jurisdiction)." Id. at 1417. It went on to state that "underlying issues regarding the contract's validity must be resolved before any other matter can be productively addressed." Id. at 1419.

In fact, most circuits considering this issue have concluded that Nat'l Farmers Union "established an inflexible bar to considering the merits of a petition by the federal court, and therefore requiring that a petition be dismissed when it appears that there has been a failure to exhaust [tribal remedies]," Smith v. Moffet, 947 F.2d 442, 445 (10th Cir.1991), and that the "requirement of exhaustion of tribal remedies is not discretionary, it is mandatory. If deference is called for, the district court may not relieve the parties from exhausting tribal remedies." Crawford v. Genuine Auto Parts, Co., 947 F.2d 1405, 1407 (9th Cir.1991), *cert. denied,* 502 U.S. 1096 (1992). Cf. Texaco, Inc. v. Zah, 5 F.3d 1374, 1379 (10th Cir. 1993) (characterizing exhaustion as "almost always" required when the activity at issue arises on the reservation). Finally, disputes arising on the reservation, as this one did, that raise questions of tribal law and

[1] *See also* City of Timber Lake v. Cheyenne River Sioux Tribe, 10 F.3d 554 (8th Cir. 1993) (recognizing tribal court authority under tribal constitution to exercise jurisdiction over non-Indian operators of liquor establishments on fee-patented land in cities within reservation, and therefore tribal remedies must be exhausted prior to the exercise of jurisdiction by a federal district court); United States ex rel. Kishell v. Turtle Mountain Hous. Auth., 816 F.2d 1273, 1276 (8th Cir. 1987) ("A federal court should stay its hand until tribal remedies are exhausted and the tribal court has had a full opportunity to determine its own jurisdiction."); and Northwest S.D. Prod. Credit Ass'n v. Smith, 784 F.2d 323 (8th Cir. 1986) (holding that tribal court is the appropriate forum to decide its jurisdictional reach in the first instance).

jurisdiction, as this one does, must first be addressed in the tribal court. *See* Weeks Constr., Inc. v. Oglala Sioux Hous. Auth., 797 F.2d 668 (8th Cir. 1986).

C. United States v. American Horse is Distinguishable.

The United States attempts to convince this Court that the decision issued in United States v. American Horse, 352 F.Supp.2d 984 (D.N.D. 2005), is controlling. In American Horse, the Court found it compelling that the dispute between the United States and the Tribal member was over a privately held debt secured by a mortgage and that the Standing Rock Sioux Tribe had no direct connection to the debt. The instant action is easily distinguishable from American Horse. First, American Horse dealt with a foreclosure action between contractual parties. Kira Vanderwalker does not have a contractual relationship with the United States. Additionally, American Horse only dealt with foreclosure. Here, we have a case where the United States is asking a federal court to eject a Tribal member from Tribal trust land. Finally, American Horse did not deal with a situation where the original lessor was not granted an opportunity to exercise its right of first refusal. Here, the United States failed to conduct the necessary due diligence to ascertain that the ownership of the land had been transferred by the Rosebud Sioux Tribe to TLE. Certainly, the Tribal Court should be granted an opportunity to determine the foregoing issues.

D. The United States' Regulations Require Adherence to Tribal Law.

The United States has drafted regulations to implement the Section 184 program, and interestingly, it now chooses to circumvent the very requirements every other lender must adhere to. For example, 24 C.F.R. § 1005.107 explicitly provides that a guaranteed loan under Section 184 may be secured by a leasehold of trust or restricted property if "the tribe having jurisdiction over such property [notifies] the Department that it has adopted and will enforce procedures for

eviction of defaulted mortgagors where the guaranteed loan has been foreclosed." This regulation begs the question – why would the Tribe need to adopt eviction procedures if Lenders, including the United States, can simply bring an action in District Court? Obviously, the Rosebud Sioux Tribe has met the United States' stringent requirements for eviction proceedings because, upon information and belief, the Department has not ceased issuing guarantees as required by 24 C.F.R. § 1005.107 (i) that provides the following:

> If the Department determines that the tribe has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans for tribal members except pursuant to existing commitments. Adequate enforcement is demonstrated where prior evictions have been completed within 60 days after the date of the notice by HUD that foreclosure was completed.

In addition to the foregoing regulations, 24 C.F.R. § 1005.112 requires that "[t]he lender and the borrower will each certify that they acknowledge and agree to comply with all applicable tribal laws." 24 C.F.R. § 1005.113 mandates that "[f]ailure of the lender to comply with applicable tribal law is considered to be a practice detrimental to the interest of the borrower and may be subject to enforcement action(s) under section 184(g) of the statute." No where do the regulations state that once the United States assumes the loan, that the issue must be moved to district court.

It truly is an affront to Tribal sovereignty when the United States recognizes its unique relationship with tribes on paper, but when it comes time to implementation; their very own rules do not apply. If the United States wants its day in court like any other Lender, it can have it -- in the Tribal Court.

II. THE UNITED STATES FAILED TO JOIN AN INDISPENSABLE PARTY.

The Rosebud Sioux Tribe is a federally recognized Indian Tribe organized under the Indian Reorganization Act, 25 U.S.C. §476, which possesses and exercises all inherent sovereign

powers of a Tribal government. The Tribe operates under a federally approved Constitution and Bylaws and is governed by a Tribal Council. *See* Exhibit 16. Pursuant to its Constitution and Bylaws, the Tribe has the authority to: (1) charter subordinate organizations for economic purposes and to regulate the activities of all cooperative associations of members of the Tribe; Art. IV, §n and (2) delegate to subordinate boards or tribal officials…or to cooperative associations…reserving the right to review any action taken by virtue of such delegated power. Art. IV §u. Pursuant to these Constitutional authorities, the Tribe incorporated TLE as a subordinate organization under the Tribal Council. Bylaws § 1. In fact, TLE manages the land at the center of this dispute.

Approximately three (3) months after the United States and Frank and Wanita Vanderwalker entered into the mortgage agreement, the land in question changed ownership from the Rosebud Sioux Tribe to TLE. *See* Exhibit 5. This modification was not only approved by the United States – in the form of the Bureau of Indian Affairs – it was officially recorded by them on March 20, 2001. Further, the Residential Lease Agreement between the Rosebud Sioux Tribe and Defendant Frank Vanderwalker and his wife Wanita was revised in accordance with the Lease Modification to reflect the change in land ownership from the Rosebud Sioux Tribe to TLE. The United States either ignored this change in ownership or failed to complete the necessary due diligence required to ascertain title. Regardless of the reason for their oversight, the United States never notified TLE that foreclosure of the land in question was being undertaken nor was TLE given the right of first refusal as mandated by the lease agreement that provides the following:

> Lessor shall have the right of first refusal to acquire the Lessee's interest in the premises (subject to all liens and encumbrances) ……Such right of first refusal may be exercised at any time within thirty (30) days after notice in writing from the lender of the Lessee's default, which notice shall be given before the lender invokes any other remedies

> provided by the mortgage or by law, and shall be exercised by notice in writing from the Lessor to the Lessee and the lender."

TLE, under a valid conveyance, is the lessor of the premises, and as such should have been given notice of the opportunity to exercise their right of first refusal. The United States never notified TLE, and therefore, their failure to join a necessary and indispensable party to the foreclosure litigation means TLE's rights as Lessor of the premises are unaffected by the foreclosure proceeding.

Under Fed. R. Civ. P. 19, a court undertakes a three-step analysis to determine if a party is indispensable. First, the court determines if a party is needed for the litigation. United States ex rel. Steele v. Turn Key Gaming, Inc., 135 F.3d 1249, 1251 (8th Cir. 1998); Pembina Treaty Comm. v. Lujan, 980 F.2d 543, 544 (8th Cir. 1992). If the party is necessary to the litigation, the court determines whether joinder is feasible. Steele, 135 F.3d at 1251. If joinder is not feasible, the court considers whether the litigation can proceed "in equity and good conscience" based on the factors in Fed. R. Civ. P. 19(b). Pembina, 980 F.2d at 545. If the court determines the litigation cannot proceed, the party is "indispensable" and the case must be dismissed. Id.; *see also* Spirit Lake Tribe v. North Dakota, 262 F.3d at 746. Here, this case must be dismissed because the United States has failed to join TLE as an indispensable party.

A party is necessary if one of the three criteria in Rule 19(a) is met: (1) complete relief cannot be afforded in the party's absence; (2) the party has an interest in the action and its ability to protect that action would be impeded in its absence; or (3) the party's absence would risk inconsistent obligations being imposed on the present parties, generally the defendants. "Whether a person is 'indispensable,' that is, whether a particular lawsuit must be dismissed in the absence of that person, can only be determined in the context of particular litigation."

Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 118, 88 S. Ct. 733, 19 L. Ed. 2d 936 (1968). Rule 19(b) identifies four factors the court should consider in making this determination: (1) to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief or other measures the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Fed. R. Civ. P. 19(b). These factors overlap with each other and with the Rule 19(a) analysis.

When a third party seeks to establish rights which directly compete with an Indian tribe's claim to its reservation land base, federal courts have uniformly determined that the Tribe is a necessary and indispensable party that cannot be joined. *See, e.g.*, Pit River Home and Agric. Coop. Assoc. v. United States, 30 F.3d 1088 (9th Cir. 1994); Quileute Indian Tribe v. Babbitt, 18 F.3d 1456 (9th Cir. 1994); Shermoen v. United States, 982 F.2d 1312 (9th Cir. 1992), *cert. denied*, 509 U.S. 903 (1993); Confederated Tribes of the Chehalis Indian Reservation v. Lujan, 928 F.2d 1496 (9th Cir. 1991).[2] Accordingly, TLE, as the arm and instrumentality of the Tribe responsible for land management, is undoubtedly a necessary and indispensable party because the United States seeks foreclosure on land within the Tribe's Reservation.

[2]Cases in agreement that a Tribe is indispensable involve claims related to contracts, leases, or agreements to which the absent Tribe was a party. In re United States ex rel. Hall, 825 F. Supp. 1422 (D. Minn. 1993), aff'd, 27 F.3d 572 (8th Cir. 1994), *cert. denied*, 513 U.S. 1155 (1995); Clinton v. Babbitt, 180 F.3d 1081, 1088 (9th Cir. 1999) (lease agreement); Soberay Mach. & Equip. Co. v. MRF Ltd., Inc., 181 F.3d 759, 764 (6th Cir. 1999) (contract). Other cases where a Tribe was held to be indispensable involve intra-tribal disputes. Quileute Indian Tribe v. Babbitt, 18 F.3d 1456, 1457-59 (9th Cir. 1994) (governance of reservation land); Shermoen v. United States, 982 F.2d 1312, 1314-17 (9th Cir. 1992) (intra-tribal conflict regarding profits from land).

CONCLUSION

For the foregoing reasons, the United States' Motion for Summary Judgment as to Kira Vanderwalker should be denied.

Respectfully submitted this 29th day of July, 2010

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By:

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I, Steven D. Sandven, hereby certify that on this date a true and correct copy of the DEFENDANT KIRA VANDERWALKER'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT were served upon counsel for Plaintiff by electronic mail through the Court's CM/ECF system at the following email address(es):

Jan Holmgren jan.holmgren@usdoj.gov

Dated this 29th day of July, 2010.

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