

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

Ford Motor Credit Company and Ford)	
Motor Company,)	
)	PLAINTIFFS MEMORANDUM IN
Plaintiffs,)	SUPPORT OF MOTION FOR
)	SUMMARY JUDGMENT
vs.)	
Raymond Poitra,)	Civil No. 4:10-cv-042
Defendant.)	

COME NOW the Plaintiffs, Ford Motor Credit Company and Ford Motor Company, and move for Summary Judgment against the Defendant pursuant to Rule 56 of the Federal Rules of Civil Procedure due to the fact that there is no genuine issue as to any material fact regarding the facts and law, as set forth below. Thus, Plaintiffs are entitled to Judgment as a matter of law.

I. STATEMENT OF THE FACTS.

On or about December 20, 2000, Defendant Raymond Poitra purchased a 1999 Navigator from Eide Ford Lincoln Mercury, Inc. located in Bismarck, North Dakota, which is outside the exterior boundaries of the Turtle Mountain Reservation. Plaintiff Ford Motor Credit financed this purchase, as evidenced by the Simple Interest Vehicle Retail Installment Contract. (see Ex. A, Doc. 1-1). This agreement states that said agreement will be governed by the laws of the State of North Dakota. Defendant Raymond Poitra signed said agreement.

Under the terms of the Installment Contract, Defendant agreed to pay to Ford Motor Credit 60 equal monthly installments of \$627.24 beginning on January 19, 2001. The Defendant failed and refused to pay the monthly installments due and owing under the

Installment Contract from September 2, 2003, to the present.

Plaintiffs had no other choice, pursuant to state law, to commence suit in Tribal Court to regain possession of the vehicle. See, Fredericks v. Eide-Kirschman, 462 N.W. 2d 164, (N.D. 1990)¹. An Order for Default Judgment was signed by Tribal Judge MaDonna Marcellais on July 7, 2004. The vehicle was never recovered. Approximately, three years later, Raymond Poitra commenced a lawsuit against Plaintiffs in the Turtle Mountain Tribal Court on June 15, 2007. Raymond Poitra's Complaint alleges various assertions including harm to his credit report and compensation for storage charges. On July 7, 2004, Plaintiffs filed a Special Answer in the Turtle Mountain contesting jurisdictional issues and generally denying the allegations. At a Status Conference/Hearing on August 25, 2009, Judge Andrew Laverdure ruled from the bench that the Turtle Mountain Tribal Court had jurisdiction over the Plaintiffs. Thereafter, Plaintiffs filed a Request for Appeal to the Turtle Mountain Appellate Court. Appellate briefs were submitted by all parties and on February 19, 2010, the Turtle Mountain Tribal Appellate Court affirmed the lower court's finding of jurisdiction. The Turtle Mountain Tribal Court has not dismissed the matter. The issue of jurisdiction has been exhausted by Tribal Court remedies and Plaintiffs will sustain immediate and substantial harm and injury if they are required to defend the lawsuit brought by Raymond Poitra in the Turtle Mountain Tribal Court.

The issue to be decided is whether or not Plaintiffs are entitled to a declaration by the U.S. District Court that the Tribal Court lacks jurisdiction over the dispute between non-

¹Plaintiffs could not sue in state court as a matter of state law to repossess the vehicle.

tribal members and over interpretation of obligations under a contract which specifies adjudication of disputes in courts of the United States.

II. SUMMARY JUDGMENT STANDARD.

Summary Judgment is appropriate only if the pleadings, the discovery and disclosure materials on file, and any affidavits 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. Fed.R.Civ.P. 56(c). Summary Judgment is to be granted only in those situations where there is no genuine issue as to any material facts. Celotex Corp. v. Cartrett, 477 U.S. 317, 322, 106 S.Ct. 2548 (1986). Summary judgment is a “disfavored procedural shortcut.” Celotex, 477 U.S. at 327. All evidence is to be viewed in favor of the nonmoving party and all inferences are to be made in favor of the non-moving party. Vacca v. Viacom Broadcasting of Missouri, Inc., 875 F.2d 1337, 1339 (8th Cir. 1989). The fact-finder at trial makes credibility determinations, weighs the evidence, and draws the inferences from the facts, not the judge at the summary judgment stage. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505 (1986). However, “at the summary judgment stage, the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Id. at 249. The inquiry is whether a trial is necessary. Id. at 250. “The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” Id. at 255. Negligence actions are generally not appropriate for summary judgment actions. DeLair v. County of LaMoure, 326 N.W.2d 55, 58 (N.D. 1982).

III. LAW AND ARGUMENT.

A. PLAINS BANK v. LONG.

The United States Supreme Court in the decision of Plains Commerce Bank v. Long Family Land and Cattle Company, Inc., 128 S.Ct.2709, 1761 L.Ed 2d.457, 76 USLW 4558 (2008) (hereinafter Plains Bank v. Long) made clear that with certain exceptions (none of which apply to the facts of this case) tribal courts do not have jurisdiction over non-Indian companies. This is true even if those companies do business with American Indians, even if those companies do business on Indian Reservations, and even if those companies are named as parties in a lawsuit in tribal court.

Plains Bank v. Long, arose out of a dispute over loans that Plains Bank made to the Long Family Land and Cattle Company, Inc, and the owners of the Long Company, Ronnie and Lila Long. Ronnie and Lila Long were both enrolled members of the Cheyenne River Sioux Indian Tribe and were owners of the Long Family and Cattle Company, Inc. They operated a ranching and farming operation located on the Cheyenne River Sioux Indian reservation in South Dakota. The Long's had loans with Plains Bank which was secured by their farm/ranch land. The Long's experienced financial difficulties and refinanced their farm and ranch operation with Plains Bank in exchange for a deed from the Longs to the Plains Bank and a lease-back by the Longs and an option by Longs to repurchase. The Longs suffered further financial setbacks and were unable to exercise their option to repurchase the land. Plains Bank in turn sought to evict the Longs from the farm/ranch. The Longs commenced a claim, in Tribal Court, against Plains Bank alleging that Plains Bank had breached its contract with the Longs and had discriminated against

them because they were Indians. Plains Bank moved to dismiss alleging that the Tribal Court lacked jurisdiction over Plains Bank because Plains Bank was a non-Indian company. The Tribal Court denied the motion. The case went to trial and a verdict was rendered in favor of the Longs and against Plains Bank for \$750,000. Plains Bank appealed to the intertribal Court of Appeals contesting jurisdiction and the decision was affirmed. Plains Bank then brought an action in Federal Court to set aside the Tribal Court judgment. The Federal District Court affirmed the Judgment. Plains Bank appealed to the Eight Circuit Court of Appeals which also affirmed the judgment. Plains Bank then appealed the case to the U.S. Supreme Court. The U.S. Supreme Court reversed, holding that the Tribal Court did not have jurisdiction over a non-Indian corporation. This was the holding even though Plains Bank entered into contracts with Indians involving Indian owned land on an Indian Reservation. Even the fact that the non-Indian Bank had ongoing business relations with, not only the Longs, but also others on the Indian reservation, did not confer jurisdiction on this Court.

Like the Tribal Court in Plains Bank v. Long, the Turtle Mountain Tribal Court does not have jurisdiction over Ford under these circumstances. The fact that the vehicle is presently on the reservation in a decayed state does not confer jurisdiction on this Court. The fact that the vehicle was purchased by an Indian does not confer jurisdiction on this court.

The U.S. supreme Court in Plains Bank v. Long, began its analysis by pointing out that “whether a tribal court has adjudicative authority over nonmembers is a federal question.” Plains Bank v. Long, at 2716. The U.S. Supreme Court also said: “ If the tribal

court is found to lack such jurisdiction any judgment as to the nonmember is necessarily null and void.” Plains Bank v. Long, at 2717. As applied to this case, the U.S. Supreme Court is saying that it has decided that it has jurisdiction to determine who tribal courts have jurisdiction over and if the lower Court enters judgment against Ford, that judgment will be null and void.

The U.S. Supreme Court went on to say “...Tribes do not, as a general matter, possess authority over non-Indians who come within their borders: the inherent sovereign powers of an Indian Tribe do not extend to the activities of nonmembers of the tribe.” Plains Bank v. Long, at 2718-19, *see also*, Montana v. U.S. *infra*.

The U.S. Supreme Court’s reasoning for the limitation on tribal court jurisdictions is explained in Plains Bank v. Long, at p.2724 wherein it states:

Tribal sovereignty, it should be remembered, is sovereignty outside the basic structure of the constitution.” The Bill of Rights does not apply to Indian tribes. Indian courts differ from traditional American courts in a number of significant respects and non-members have no part in tribal government – they have no say in the laws and regulations that govern tribal territory. Consequently, those laws and regulations may be fairly imposed on non-members only if the non-member has consented, either expressly or by his actions. Even then the regulations must stem from the Tribe’s inherent sovereign authority to set conditions of entry, preserve tribal self government or control internal relations. *See also* Montana v. U.S. *infra*.

The bottom line is, pursuant to Plains Commerce Bank v. Long, this Court has no jurisdiction over Ford Motors and therefore must dismiss the Complaint as to Ford Motors.

B. MONTANA EXCEPTION.

Plains Bank v. Long, references Montana v. U.S., 101 S.Ct. 145 U.S. 54,67 L.Ed.2d 493(1981). Montana v. U.S., was a dispute that arose over the claimed right of the Crow

Tribe of Indians of Montana to control hunting and fishing on and along the Big Horn River which was contained within the Crow Reservation within Montana.

The State of Montana and the Crow Tribe each sought control. The key issue ultimately was not control of hunting and fishing, but rather the extent of tribal authority over non-Indian activities on the reservation. The U.S. Supreme Court held that the State of Montana had control as to non-Indians on the reservation. The U.S. Supreme Court on its decision recognized two circumstances, and only two circumstances, wherein a tribal court will have jurisdiction over non-Indians. Those two exceptions are, first, a tribe may regulate, through taxation, licensing, and other means, the activities of nonmembers who enter consensual relationships with the tribe or its members through commercial dealings contracts, leases, or other arrangements. The tribe can impose taxes or issue licenses for those who do business on the reservation and tribal courts can adjudicate disputes that arise out of those circumstance. The case before this Court does not fit within this exception. The Montana v. U.S. exception is that a tribe may exercise civil authority over the conduct of non-Indians on fee lands within the reservation when the conduct threatens or has some direct affect on the political integrity, the economic security, or the health or welfare of the tribe. Montana v. U.S., at 565-566. Under the second exception, tribal court can regulate non-Indian persons or companies in dealing with the tribe itself, or affecting the entire tribe, not between non-Indians and individual tribal members. The second exception does not apply to this case.

Plains Bank v. Long, clarifies the Montana v. U.S., exception holding that tribal regulation of non-members' conduct inside the reservation that implicates the tribe's

sovereign interests (only) and expressly limits the first Montana v. U.S., exception to activities of nonmembers allowing these to be regulated to the extent necessary to protect tribal self government and to control internal relations. Plains Banks v. Long, at 2721. In regard to the matter at hand, the fact that Ford financed Plaintiff's car does not confer upon tribal court its jurisdiction over Ford. Adjudicating a dispute between Ford and a tribal member does not limit the tribe's rights to self government nor affect internal relations. In order for this court to have jurisdiction, it would require, in essence, that Ford have entered into contract with the tribe itself, not merely a tribal member.

The second Montana v. U.S. exception as explained in Plains Bank v. Long requires that the conduct of the non-Indian must threaten or have some direct affect on the political integrity, economic security, or the health or welfare of the tribe. Plains Bank v. Long at 2720. The second exception of Montana v. U.S. once again only applies to the tribe and not to the individual members. In other words, the conduct of the non-Indian must have some direct impact on the entire tribe, not merely a tribal member. The dispute involved in this case does not impact the tribe, only the parties to this case. In order for this Court to have jurisdiction it would require that the outcome of this case would have to directly affect the entire tribe, not just Poitra. As applied to the case before this Court, nether of the Montana v. U.S. exceptions apply and therefore, this Court does not have jurisdiction over Ford.

CONCLUSION

Under the decision of Plains Bank v. Long the Tribal Court does not have jurisdiction over Ford and the tribal litigation against Plaintiff in the Turtle Mountain Tribal Court must

be dismissed.

Dated this 6th day of January, 2011.

PRINGLE & HERIGSTAD, P.C.

BY: /s/
Reed A. Soderstrom #04759
Attorneys for Plaintiffs
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381
rsoderstrom@srt.com

CERTIFICATE OF SERVICE

I certify that on the 6th day of January, 2011, the following documents:

Plaintiffs Motion for Summary Judgment and Plaintiffs Memorandum in Support of Motion for Summary Judgment was filed electronically with the Clerk of Court through ECF and the ECF will send a Notice of Filing (NEF) to the following:

Dated this 6th day of January, 2011.

Donald G. Bruce
Attorney at Law
PO Box 674
Belcourt, ND 58316

/s/
Reed A. Soderstrom #04579