

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

Ford Motor Credit Company and Ford)	Civil No. 4:10-cv-42
Motor Company,)	RESPONSE TO DEFENDANT'S
)	OPPOSITION TO PLAINTIFFS
Plaintiffs.)	MOTION FOR SUMMARY JUDGMENT
)	AND DEFENDANT'S MOTION TO
vs.)	DISMISS FOR LACK OF SUBJECT
Raymond Poitra,)	MATTER JURISDICTION
)	
Defendant.)	

Defendant's Statement of Facts that the transaction took place on the Turtle Mountain Indian Reservation is not stipulated or agreed to by Plaintiffs. Plaintiffs furnish motor vehicles to Eide Ford automobile dealership in Bismarck, North Dakota. Defendant approached Eide Ford regarding the purchase of the Lincoln Navigator which they sold to Defendant. Although procedures can be taken to assist enrolled members of Tribes living on sovereign nations to exercise delivery options for purposes of avoiding North Dakota Sales Tax within the confines of the law, Plaintiffs did not take part in that delivery. Instead, Defendant sued the Plaintiffs in the Turtle Mountain Tribal Court, Belcourt, North Dakota. Plaintiffs do not submit to the jurisdiction of the Turtle Mountain Tribal Court. Plaintiffs ask that their attorney fees and costs be paid in its entirety in this matter.

At one time the Plaintiffs sought to have its Lincoln Navigator returned because the Defendant failed to pay the monthly installments. In addition to the difficulty in finding the vehicle post-judgment, the Lincoln Navigator has been rendered worthless due to Defendant's lack of care and maintenance while the property was in his possession or the possession of his agents or family member(s). It is unknown while the Defendant was

incarcerated whether basic care and treatment of the vehicle was rendered by Defendant's family members to preserve its value or if the vehicle was already wrecked when Defendant went to jail. At any rate, the vehicle deteriorated and became worthless¹. After being released from jail, the Defendant then sued the Plaintiffs for storage charges during the time he was incarcerated up to present. Requests to immediately release the vehicle during Tribal Court proceedings were denied.

The Plaintiffs agree that by adhering to the law of the State of North Dakota it was required to proceed with a repossession action in Tribal Court. It had no other choice. Because of the state mandate, Plaintiffs did not thereafter continually submit itself to the jurisdiction of Tribal Court for frivolous cases such as this. The exceptions of Montana do not apply as Plaintiffs did not enter into a contractual agreement with the Defendant and Plaintiffs were not present upon the reservation conducting activities when they were sued in Tribal Court.

This Court has jurisdiction pursuant to 28 U.S.C. §1331, as the issue of Tribal Court jurisdiction over a person who is not a member of the Tribe is a federal question arising under the Constitution, laws and treaties of the United States. The Plaintiffs have jurisdiction within this Court pursuant to 28 U.S.C. §§2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure. Pursuant to 28 U.S.C. §1331 this Court is empowered to determine whether Tribal Court has exceeded the lawful limits of jurisdiction. The exhaustion doctrine does not apply.

It also must be mentioned that Defendant has not complied with the Order for Joint

¹ The Plaintiffs have not been able to examine the vehicle but have been told it is worthless.

Scheduling/Discovery Plan signed by this Court and agreed to by the parties or the Rule 26(A)(1) Disclosures that were due on November 15, 2010. Plaintiff's disclosed their Rule 26(A)(1) and no Rule 26(A)(1) disclosures have been made by the Defendant rendering this matter ripe for dismissal on its own pursuant to Local Rule 37.1(D).

CONCLUSION

1. Plaintiffs are not required to exhaust Tribal Court remedies pursuant to 28 U.S.C. §1331.
2. There is a federal question of law and jurisdiction as set forth in their Complaint.
3. Plaintiffs are not residents of the Turtle Mountain Indian Reservation nor residents of the State of North Dakota. Any required diversity of citizenship is established due to the fact that Defendant is an enrolled member of the Turtle Mountain Band of Chippewa Indians, living on said reservation and a citizen of the State of North Dakota.
4. Plaintiffs are not parties to any contract with Defendant or the Tribe. The contract was not entered into with Ford but with Eide Ford, a distributor and seller of Ford vehicles located in Bismarck North Dakota. The exceptions of Montana do not apply to render Tribal Court jurisdiction over Plaintiffs.
5. Plaintiffs stand by their written arguments contained in their Memorandum in Support of Motion for Summary Judgment.

Dated this 1st day of February, 2011.

