

Case No. 10-35455

Court Name: United States Court of Appeals for the Ninth Circuit

Case Title: K2 America Corporation (Plaintiff – Appellant) v. Roland Oil & Gas, LLC (Defendant – Appellee)

Nature of Proceeding: Appeal

Name of Court Below: U.S. District Court, District of Montana, Great Falls, Division

Document Title: Appellee's Answer Brief

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

K2 AMERICA CORPORATION,) NO. 10-35455
)
Plaintiff – Appellant,) DC. No.
) U.S. District Court for Montana,
v.) Great Falls
)
ROLAND OIL & GAS, LLC,)
)
Defendant – Appellee.)

APPELLEE’S ANSWER BRIEF

CORPORATE DISCLOSURE STATEMENT

COMES NOW, Roland Oil & Gas, LLC and pursuant to FED R. APP. P.

26.1, hereby states Roland Oil and Gas, LLC is a Montana Limited Liability Company and not partially or wholly owned by either a parent corporation or publicly traded corporation.

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I. STATEMENT OF THE ISSUE

Whether 28 U.S.C.A. §1360(b) grants the federal district court original jurisdiction over civil actions in Montana arising on Indian Country and involving an Indian.

II. SUMMARY OF ARGUMENT

The district court properly dismissed Plaintiff's Complaint for lack of Subject Matter Jurisdiction. 28 U.S.C.A. §1360(b) does not grant the federal district court in Montana original jurisdiction over civil actions arising on Indian Country and involving an Indian. Rather, the Blackfeet Indian Tribe's inherent sovereignty grants the tribal court concurrent jurisdiction and Plaintiff's must exhaust tribal remedies.

V. ARGUMENT

28 U.S.C.A. §1360(b) does not grant the federal district court in Montana original jurisdiction over civil actions arising on Indian Country and Involving an Indian.

A. Federal Jurisdiction Does Not Preempt Tribal Jurisdiction.

The United States Supreme Court addressed the extent of a Tribe's inherent sovereignty to exercise civil jurisdiction over non-Indians on their reservations in *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981).

There, the Court held that Indian tribes “retain inherent sovereign authority to

exercise some forms of civil jurisdiction over non-Indians on their reservations.”

Id. at 565, 101S.Ct. at 1258. The jurisdiction over non-Indians arises: 1) when nonmembers “enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements“ or 2) when a nonmember's “conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Id.* at 565-66, 101S.Ct. at 1258 (citations omitted).

The United State Supreme Court established that a federal claimant must exhaust tribal remedies before relief could be entertained in federal district court in *National Farmers Union Insurance Cos. v. Crow Tribe*, 471 U.S. 845, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985).

In *National*, a Crow Indian minor was struck by a motorcycle in the parking lot of a school located within the Crow Indian Reservation but on property owned by the State of Montana. *National*, 471 U.S. at 847, 105 S.Ct. at 2449. Minor brought a damages action in the Crow Tribal Court against the school and obtained a default judgment. *Id.* The School District and its insurer brought an action in federal district court for injunctive relief, invoking 28 U.S.C. §1331, federal question jurisdiction. *National*, 471 U.S. at 847-8, 105 S.Ct. at 2449-50. The Court ruled the School District had to exhaust tribal remedies before a federal

court could hear their petition. *National*, 471 U.S. at 855-56, 105 S.Ct. at 253-54.

The Court further reasoned, “[o]ur cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination.... *Id.*, 471 U.S. at 856, 105 S.Ct. at 2454. 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 in federal court.” *Id.* “The risks of ‘procedural nightmare’ will be minimized... and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review.” *Id.*

Deference to the Tribal court is required even where a colorable question exists as to whether the disputed issue actually arises on reservation lands. In *LandMark*, the court held that a contractual dispute between a non-Indian developer of Indian lands and the Indian tribe required the developer to exhaust tribal remedies first. *LandMark Golf Limited Partnership v. Las Vegas Paiute Tribe*, 49 F.Supp.2d 1169 (D. Nevada 1999). *Landmark* contended that the exhaustion rule did not apply because the claims at issue, the alleged misrepresentations made by tribal members at the Las Vegas airport, did not occur on the Tribe's land. *Id.*, 49 F.Supp.2d at 1175. The court disagreed. Even where

there is colorable question as to whether disputed issue actually involves a reservation affair or arises on reservation, federal court must defer to tribal court to make that determination. *Id.*; *See Stock West Corp. v. Taylor*, 964F.2d 912, 918-20 (9th Cir. 1992); *Allstate Indem. Co. v. Stump*, 191 F.3d 1071, 1073 (9th Cir. 1999).

In *Allstate Indem. Co. v. Stump*, the Ninth Circuit affirmed that the exhaustion of tribal remedies requirement applies even where a colorable question exists as to whether the disputed issue actually arises on reservation lands. *Id.* at 1073. Unless “it is plain” that the tribe lacks jurisdiction, the exhaustion of tribal remedies applies through tribal appellate review. *Id.*

Moreover, the Ninth Circuit reiterated that the requirement to exhaust tribal court remedies before suing in federal court cannot be waived. *Id.* at 1071, 1073. District court has no discretion to relieve a litigant from the duty to exhaust tribal remedies. *Allstate*, 191 F.3d at 1073; *see also, Burlington Northern R.R. Co. v. Crow Tribal Council*, 940 F.2d 1239, 1245 (9th Cir. 1999).

Courts recognize limited exceptions to the exhaustion rule where: 1) assertion of tribal jurisdiction is motivated by desire to harass or is conducted in bad faith, or 2) where action violates express jurisdictional prohibitions, or 3) where exhaustion would be futile because of lack of adequate opportunity to

challenge court's jurisdiction. LandMark, 49 F.Supp.2d 1169.

Here, the Blackfeet Tribe has jurisdiction over the parties and subject matter involved in this action based on Montana v. United States. Roland and K2 both have entered consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. And, K2's Complaint threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Blackfeet Tribe.

Second, K2 filed it's Complaint outside of tribal court and failed to pursue any tribal remedy, much less exhaust its tribal remedies. According to National, it is clear that K2 must exhaust tribal remedies..

Further, none of the recognized exceptions to the exhaustion rule apply. There is no evidence Roland's assertion of tribal jurisdiction is made in bad faith or motivated by a desire to harass K2. The United States Congress has not removed jurisdiction from the Blackfeet Tribe with respect to the subject matter. And, K2 has adequate opportunity to challenge jurisdiction in the Blackfeet Tribal Court.

Because no exception to the exhaustion doctrine applies this Court should uphold the district court's dismissal.

B. §28 U.S.C.A. §1360(b) Does Not Grant Original Jurisdiction.

The district court correctly construed the plain language of 28 U.S.C.A. §1360(b) as a limitation on an express grant of jurisdiction to state courts. K2 misapplies the Complete Preemption analysis utilized in 28 U.S.C.A. §1441 removal cases to whether district courts possess original jurisdiction over claims arising upon Indian Country and involving an Indian.

28 U.S.C.A. §1360(b) precludes states courts from exercising jurisdiction in specific cases, including ownership of Indian lands. However, the issue raised in K2's Complaint is not whether jurisdiction is proper in Montana state court, but whether a federal court with limited jurisdiction has a specific legislative grant of authority to exercise jurisdiction. *Boisclair v. Superior Ct.*, 801 P.2d 305 (Cal. 1990), denied California state jurisdiction to address title to lands within an Indian reservation because the questioned road passed across Indian trust lands. However, the analysis of *Boisclair* is limited to the extent of jurisdiction granted to states in 28 U.S.C.A. §1360(a). *Boisclair* does not address tribal jurisdiction and the general rule that Indian tribes possess jurisdiction over civil actions arising on Indian lands and involving an Indian.

VI. CONCLUSION

For the reasons stated above, Roland respectfully requests that this Court
Dated this 6th day of October, 2010.

“s”/Brad Aklestad

Brad Aklestad

Attorney for Appellee Roland Oil & Gas, LLC

9th Circuit Case Number(s)

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Re: K2 America Corporation v. Roland Oil & Gas, LLC
Case No. 10-35445

Dear Gentlemen,

Pursuant to my notice earlier today regarding an extension of time to file Appellee's Answer Brief, I've requested 48 additional hours in which to file Appellee's Answer Brief. The Court automatically grants a 14-day extension when an extension is requested, therefore the new deadline for filing the Appellee's Answer Brief is October 6, 2010. It is still my intention to file the Appellee's Answer Brief within the 48-hour extension I initially asked for.

The Appellant's Optional Reply Brief will be due 14 days from the filing date of the Appellee's Answer Brief.

A copy of this letter will be attached to the Appellee's Answer Brief when it is filed.

Thank you for your cooperation.

Very Truly,


Brad Aklestad
BLA/dd