

# EXHIBIT D

**State of North Dakota Court**

***Lacey Laducer v. Dish Network Service L.L.C.*, Civil Case No. 40-09-C-99**

**September 13, 2011 OPINION**

Dismissed Lacey Laducer's claims against DISH  
and DISH's third party claims against Brian Laducer

**COPY**

STATE OF NORTH DAKOTA  
COUNTY OF ROLETTE

IN DISTRICT COURT  
NORTHEAST JUDICIAL DISTRICT

Lacey Laducer, )

Plaintiff, )

-vs- )

Dish Network Service, L.L.C. )

Defendant and Third-Party )  
Plaintiff, )

-vs- )

Brian Laducer, )

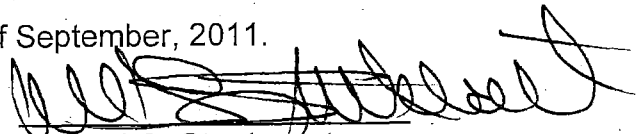
Third-Party Defendant. )

Civil Case No. 40-09-C-99

**ORDER FOR DISMISSAL OF  
COMPLAINT AND THIRD-PARTY  
COMPLAINT**

Pursuant to Gustafson v. Poitra, 2011 ND 150 and as explained in the attached Memorandum, the Complaint and Third-Party Complaint in the above entitled action are hereby dismissed without prejudice and without costs.

IT IS SO ORDERED on this 13th day of September, 2011.



Michael G. Sturdevant  
District Judge

Copies: Christopher Nyhus  
Thomas Dickson  
Ariston Johnson

I hereby certify that I mailed  
this document to the above  
entitled parties on the 13<sup>th</sup>  
day of September, 2011  
Kap

DISTRICT/JUVENILE COURT  
Northeast Judicial District

# State of North Dakota

District Court



Northeast Judicial District

Donovan J. Foughty, P.J.  
Lee A. Christofferson, D.J.  
Laurie A. Fontaine, D.J.  
M. Richard Geiger, D.J.  
John T. McClintock, Jr., D.J.  
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## MEMORANDUM

TO: Judge Sturdevant  
FROM: Samantha Miller  
DATE: September 13, 2011  
RE: Laducer v. Dish – jurisdiction

Plaintiff and the Third-Party Defendant are both enrolled members residing on the Turtle Mountain Reservation. Dish Network is a foreign corporation that had a written agreement for providing satellite television services to a residence on the reservation. At issue is whether this Court has jurisdiction – subject matter or personal – in this matter.

“Subject-matter jurisdiction is the court’s power to hear and determine the general subject involved in the action.” Gustafson v. Poitra, 2011 ND 150, ¶ 9 (quoting Investors Title Ins. Co. v. Herzig, 2010 ND 138, ¶ 57, 785 N.W.2d 863). “Subject matter jurisdiction is derived from the constitution and laws and cannot be conferred by agreement, consent, or waiver.” Id. (citing Herzig at ¶ 57). If there is an available forum in the tribal courts, “considerations of tribal sovereignty and the federal interest in promoting Indian self-governance and autonomy arise.” Id. at ¶ 10 (quoting Kelly v. Kelly, 2009 ND 20, ¶ 11, 759 N.W.2d 721). A state court does not have jurisdiction over a civil action if state court jurisdiction “undermines tribal authority.” Id. (citing Luger v. Luger, 2009 ND 84, ¶ 8, 765 N.W.2d 523). Indian tribes are considered distinct, independent political communities with the power of regulating their internal and social relations. Id. at ¶ 9 (quoting Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505, 509 (1991)).

The U.S. Supreme Court has said that state court assumption of jurisdiction in cases against Indian defendants arising in Indian country is impermissible. Winer v. Penny Enterprises, Inc., 2004 ND 21, ¶ 11, 674 N.W.2d 9 (citing Three Affiliated Tribes v. Wold Eng’n, P.C., 476 U.S. 877, 880 (1986)). The North Dakota Supreme Court has pointed out:

There are two categories of claims over which the United States Supreme court has held tribal courts have exclusive civil jurisdiction under the infringement test. Included in the first category are those claims in which a non-Indian asserts a claim against an Indian for conduct occurring on that Indian’s reservation. In the second category, are those claims in

which all the parties are members of the same Indian tribe and the claim involves conduct occurring on that tribe's reservation.

Winer at ¶ 11 (citing Roe v. Doe, 2002 ND 136, ¶ 8, 649 N.W.2d 566) (internal citations omitted). Thus, under the infringement test of Williams v. Lee, 358 U.S. 217, 223 (1959), and as noted previously, "state courts have no jurisdiction over claims if it 'would undermine the authority of the tribal courts of Reservation affairs and hence would infringe on the right of the Indians to govern themselves.'" Winer at ¶ 11 (citing Williams at 223). It should also be noted that N.D.C.C. Chapter 27-19 permits state courts to take jurisdiction over all civil causes of action which arise on an Indian reservation upon the acceptance of jurisdiction by the Indian citizens. Id. (citing Airvator, Inc. v. Turtle Mountain Mfg. Co., 329 N.W.2d 596, 600 (N.D. 1983)). Unless a majority of the enrolled residents of the Reservation vote to accept jurisdiction, a district court would have no jurisdiction over civil causes of action involving Indians arising within the exterior boundaries of a Reservation. Id. N.D.C.C. § 27-19-05 allows for individual Indians to accept state court jurisdiction, but this acceptance must be made in writing, along with other requirements that have not been met in the instant case.

The major distinction regarding jurisdiction of the state courts over an Indian is between *in rem* and *in personam* actions. See Op. N.D. Atty. Gen., 2006-L-25 (2006); Cass Co. Joint Water Resource District v. 1.43 Acres of Land, 2002 ND 83, ¶¶ 10-11, 643 N.W.2d 685. The Supreme Court noted the distinctions between *in rem* and *in personam* jurisdiction as stated in Shaffer v. Heitner, 433 U.S. 186, 199 (1977):

If a court's jurisdiction is based on its authority over the defendant's person, the action and judgment are denominated "in personam" and can impose a personal obligation on the defendant in favor of the plaintiff. If jurisdiction is based on the court's power over property within its territory, the action is called "in rem" or "quasi in rem." The effect of a judgment in such a case is limited to the property that supports jurisdiction and does not impose a personal liability on the property owner, since he is not before the court.

Cass Co. Joint Water Resource District at ¶ 10 (quoting Shaffer at 199) (emphasis in original). *In rem* jurisdiction therefore "can be exercised without acquiring *in personam* jurisdiction over a party, but ... due process requires that there be minimum contacts between the party and the forum state." Id. See generally 20 Am.Jur.2d Courts § 72 (2009) (noting that "[a] decision *in personam* imposes a responsibility or liability on a person directly and binds such individual personally with regard to every property he or she possesses, even that over which the court has no jurisdiction *in rem* and which its decision cannot directly affect. On the other hand, a decision *in rem* does not impose responsibility or liability on a person directly but operates directly against the property in question, which is called the 'res,' irrespective of whether the owner is subject to the jurisdiction of the court *in personam*. While mere involvement of real property in an action does not render such action *in rem*, an action will be considered *in rem* where its purpose is to require the court to act directly on property or the title to property"); 1 Am.Jur.2d Actions § 28 (2009) (stating that "[a]n action *in personam* has for its object a judgment against the person, as distinguished from a judgment against property to determine its status ... although it may involve [the person's] right to or ownership of specific property or seek to compel him or her to control or dispose of it in accordance with the mandate of the court"); 1 Am.Jur.2d Actions § 29 (2009) (describing a proceeding *in rem* as "essentially a proceeding to determine rights in a specific thing or in specific property, against all the world, equally binding on everyone. It is a proceeding that takes no cognizance of an owner or person with a beneficial interest, but is against the thing or property

itself directly, and has for its object the disposition of the property, without reference to the title of individual claimants”).

In Williams v. Lee, a non-Indian creditor who operated a general store on reservation land brought an action against an Indian in state court. Id. at 217-18; Gustafson at ¶ 10. The United States Supreme Court stated that “[t]here can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves.” Williams at 223. Though the general store operator was non-Indian, “[h]e was on the Reservation and the transaction with an Indian took place there.” Id. The North Dakota Supreme Court, citing Williams, noted that “[u]nder the infringement test, trial courts have exclusive civil jurisdiction over claims in which a non-Indian asserts a claim against an Indian for conduct occurring on that Indian’s reservation.” Roe v. Doe, 2002 ND 136, ¶ 8, 649 N.W.2d 566 (citing Williams at 223).

The North Dakota Supreme Court has noted:

In Montana v. United States, 450 U.S. 544 (1981), the Supreme Court established the general rule that “the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.” 450 U.S. at 565. Two exceptions to this general rule were also established. First, “[a] *tribe may regulate*, through taxation, licensing, or other means, *the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements.*” Id. Second, the Court stated: “A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” Id. at 566.

Luger at ¶ 9 (emphasis added). The Court further noted that the Montana Supreme Court has clarified that “for the purposes of a tribal civil jurisdiction analysis, the term ‘non-member’ encompasses anyone who is not a member of the tribe at issue, including Indians who are members of a different tribe, as well as Indians who are not members of any tribe.” Id. at ¶ 10 (quoting Zempel v. Liberty, 2006 MT 220, ¶ 27, 143 P.3d 123). Further, the Court has stated “a reservation Indian’s domicile on the reservation is not an in-state contact which grants jurisdiction to state courts.” Id. at ¶ 14 (quoting Byzewski v. Byzewski, 429 N.W.2d 394, 397 (N.D. 1988)). The United States Supreme Court also “assume[s] that ‘where tribes possess authority to regulate the activities of nonmembers, civil jurisdiction over disputes arising out of such activities presumably lies in the tribal courts ... .’” Gustafson at ¶ 11 (quoting Nevada v. Hicks, 533 U.S. 353, 358 n.2 (2001)).

Because the contract in dispute was executed on the Turtle Mountain Indian Reservation and that this contract deal with providing services to a residence on the reservation, it would appear that the tribe “may regulate ... the activities of nonmembers who enter consensual relationship with the tribe or its members, through ... contracts ....” Luger at ¶ 9 (quoting Montana at 565). This Court may consider whether it has subject matter jurisdiction *sua sponte*, and as such, it appears likely that this Court does not have jurisdiction. See Gustafson at ¶ 7 (citing Albrecht v. Metro Area Ambulance, 1998 ND 132, ¶ 9, 580 N.W.2d 583).