

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

Plains Commerce Bank, Jerome Hageman, and
Randy Robinson,

Plaintiffs,

v.

Long Family Land and Cattle Co. Inc., Ronnie
Long, and Lila Long,

Defendants.

Court File No. 12-3021

**PLAINTIFFS' MEMORANDUM OF
LAW IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT**

I. INTRODUCTION

The United States Supreme Court already ruled that the Cheyenne River Sioux Tribal Court lacked jurisdiction over Ronnie and Lila Long's (the "Longs") and the Long Family Land and Cattle Company, Inc.'s (the "Long Company") discrimination claim against Plains Commerce Bank (the "Bank"). This lack of jurisdiction, the Supreme Court determined, rendered "null and void" the judgment entered on a general verdict that included findings with respect to discrimination. Where the Tribal Court lacked jurisdiction to hear the discrimination claim and enter judgment against the Bank, so too does the Tribal Court lack jurisdiction over the Longs' and the Long Company's untimely efforts to enforce the now-void appellate bond.

The Longs' and Long Company's renewed efforts to breathe life into a judgment that the Supreme Court invalidated are without merit. Bringing suit against the Bank again in Tribal Court to collect on the original appeal bond is patently violative of jurisdictional prohibitions and is brought in bad faith in an effort to leverage and harass the Bank. In addition, continued litigation in Tribal Court serves no purpose but to delay resolution of this action. It is well-

settled that, under these circumstances, Plaintiffs are not required to exhaust their tribal court remedies and may seek relief immediately from this Court.

Because there is no genuine issue of material fact, consistent with the Supreme Court's decision in Plains Commerce Bank v. Long Family Land & Cattle Co., Inc., 554 U.S. 316 (2008), Plaintiffs are entitled to summary judgment and a declaration that the Cheyenne River Sioux Tribal Court lacks jurisdiction to adjudicate Long Family Land and Cattle Company, Inc. v. Plains Commerce Bank, Case No. 12C087 (the "Bond Action").

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

In accordance with Local Rule 56.1(A), Plaintiffs have submitted a separate Statement of Undisputed Material Facts, filed concurrently herewith ("SUMF"). A brief summary of the factual history between the parties and the events that give rise to this action will nevertheless provide context for this motion.

Ronnie and Lila Long (the "Longs"), together with the Long Company, filed an action in 1999 against the Bank in the Cheyenne River Sioux Tribal Court (the "Tribal Court") in claiming bad faith, breach of contract, and discrimination. (SUMF ¶ 8.) The Bank objected to tribal court jurisdiction, but the Tribal Court held that it had jurisdiction over the Bank's objection. (SUMF ¶ 9.) Following a jury trial in Tribal Court, the jury returned a general verdict against the Bank in the amount of \$875,922.46 (\$750,000 plus prejudgment interest) predicated on the Bank's liability for breach of contract, bad faith, and discrimination. (SUMF ¶ 10.) The Tribal Court entered judgment upon the general verdict. (SUMF ¶ 11.)

The Bank then perfected an appeal of the discrimination claim to the Cheyenne River Sioux Tribal Court of Appeals (the "Tribal Court of Appeals"). (SUMF ¶ 12.) In order to facilitate that appeal, the Bank filed an Appeal Bond in 2003 pursuant to Rule 37(e) of the Law

and Order Code of the Cheyenne River Sioux Tribe that promised to pay the judgment “once all remedies have been exhausted.” (SUMF ¶ 13.) The Bank is a principal on the Appeal Bond, and Plaintiffs Jerome Hageman and Randy Robinson are joint and several sureties on the Appeal Bond. (SUMF ¶ 14.) The Tribal Court of Appeals affirmed the Tribal Court’s jurisdiction over the discrimination claim in 2004. (SUMF ¶ 15.)

The Bank then commenced a declaratory-judgment action in federal court in 2005 to challenge the Tribal Court’s assertion of jurisdiction. The District Court held in 2006 that the Tribal Court had jurisdiction over the discrimination claim. (SUMF ¶ 16.) The Bank then appealed to the 8th Circuit Court of Appeals. The Circuit Court affirmed the District Court in 2007. (SUMF ¶ 17.)

The Bank petitioned the Supreme Court of the United States for certiorari. The Court granted the petition, and after briefing on the merits, issued a decision in 2008 reversing the Circuit Court and District Court. (SUMF ¶ 18; see also Plains, 554 U.S. 316 (2008).) The Supreme Court explained that “[i]f the tribal court is found to lack such jurisdiction [over nonmembers], any judgment as to the nonmember is necessarily null and void.” The Court noted that the Longs did not contest this “settled principle.” (SUMF ¶ 19.) The Supreme Court then held that the Tribal Court lacked jurisdiction over the discrimination claim against the Bank, which necessarily rendered the Tribal Court judgment against the Bank null and void. (SUMF ¶ 20.)

Nevertheless, nearly four years later, on May 30, 2012, the Longs and the Long Company filed a new lawsuit in Tribal Court against the Plaintiffs. (SUMF ¶ 21.) The Longs and the Long Company seek damages in the amount of \$875,922.46, together with pre-judgment and post-

judgment interest pursuant to the appeal bond posted by the Bank to facilitate its 2003 appeal from the Tribal Court judgment to the Tribal Court of Appeals. (SUMF ¶ 22.)

The appeal bond was posted pursuant to “Rule 37(e) of the Law and Order Code of the Cheyenne River Sioux Tribe requiring that a bond be filed in an amount set by the Trial Court.” (SUMF ¶ 23.) The Longs’ and Long Company’s Bond Action complaint alleges that “Plains Commerce Bank did not appeal from that portion of the judgment awarding damages for breach of contract and bad faith and appeal from that portion of the judgment is time barred.” (SUMF ¶ 25.) The Bond Action complaint further alleges that “The judgment awarding Plaintiffs damages for breach of contract and bad faith has not been reversed.” (SUMF ¶ 26.)

Shortly after service of the Bond Action, the Bank commenced this 2012 declaratory-judgment action in this Court. After some initial procedural modifications, the parties and the Court devised a procedure to resolve this dispute through a summary-judgment motion. The undisputed material facts primarily are set out in the United States Supreme Court’s opinion. What remains is a legal question for this Court to resolve.

III. STANDARD OF REVIEW

Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ.P. 56(c); Donaho v. FMC Corp., 74 F.3d 894, 898 (8th Cir. 1996). In considering the motion for summary judgment, this Court must view the facts in the light most favorable to the non-moving party and give that party the benefit of all reasonable inferences that can be drawn from the facts. Donaho, 74 F.3d at 897-98. “Where the unresolved issues are primarily legal rather than factual, summary judgment is particularly appropriate.” Mansker v. TMG Life Ins. Co., 54 F.3d 1322, 1326 (8th Cir. 1995).

“A material fact dispute is genuine if the evidence is sufficient to allow a reasonable jury to return a verdict for the non-moving party.” Landon v. Nw. Airlines, Inc., 72 F.3d 620, 634 (8th Cir. 1995). “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The nonmoving party “must do more than show that there is some metaphysical doubt as to the material facts,” and “[w]here the record as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” Blue Legs v. U.S. Bureau of Indian Affairs, CIV 06-5001-RHB, 2007 WL 1815994 (D.S.D. June 21, 2007), quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

IV. ARGUMENT

Under the circumstances of this case, the Court has immediate jurisdiction under 28 U.S.C. § 1331 and Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845, 857 (1985) to determine whether the Tribal Court may assert jurisdiction over the Bond Action. Pursuant to Plains, 544 U.S. 316 (2008), that answer is undisputedly “no.” The Court should enter summary judgment and declare that the Cheyenne River Sioux Tribal Court lacks jurisdiction over the Longs’ and Long Company’s Bond Action in light of the United States Supreme Court’s opinion that the Tribal Court lacked jurisdiction over the Longs’ discrimination claim, invalidating the judgment for which the appeal bond was posted.

- A. This Court has jurisdiction to determine the Tribal Court’s jurisdiction over the Bond Action because the Longs’ and Long Company’s Bond Action is “motivated by a desire to harass or is conducted in bad faith,” expressly violates the jurisdictional prohibitions established by the United States Supreme Court, and exhaustion would serve no purpose but delay.**

The Court has jurisdiction to determine whether the Cheyenne River Sioux Tribal Court has jurisdiction over the Bank, Jerome Hageman, and Randy Robinson in the Bond Action.

Because the Longs' and the Long Company's new Tribal Court action falls squarely within the well-established exceptions to the doctrine of exhaustion of Tribal Court remedies, this Court has immediate jurisdiction over this action.

This Court has jurisdiction pursuant to 28 U.S.C. § 1331 to determine whether the Tribal Court has jurisdiction over the Longs' and the Long Company's complaint. Section 1331 gives federal district courts jurisdiction over "civil actions arising under the Constitution, laws, or treaties of the United States." *Id.*; see also Nat'l Farmers Union, 471 U.S. at 857; Strate v. A-1 Contractors, 520 U.S. 438, 459 (1997).

Generally, under Section 1331, a defendant must exhaust available tribal remedies before instituting suit in federal court. Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 19 (1987); Strate, 520 U.S. at 449-450. However, exhaustion of tribal court remedies is not required where an assertion of tribal jurisdiction "is motivated by a desire to harass or is conducted in bad faith," where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction. Nat'l Farmers Union, 471 U.S. at 857. Exhaustion is also excused when it is plain the tribal court lacks adjudicatory authority, in which case the "otherwise applicable exhaustion requirement ... must give way, for it would serve no purpose other than delay." Strate, 520 U.S. at 459; Nevada v. Hicks, 533 U.S. 353, 370 (2001) ("since it is clear ... that tribal courts lack jurisdiction ... adherence to the tribal exhaustion requirement in such cases 'would serve no purpose other than delay,' and is therefore unnecessary"); see also N. State Power Co. v. Prairie Island Mdewankanton Sioux Indian Cmty., 991 F.2d 458, 463 (8th Cir. 1993) (exhaustion of tribal court remedies unnecessary where tribal ordinances are preempted); Blue Legs v. U.S.

Bureau of Indian Affairs, 867 F.2d 1094, 1097-1098 (8th Cir. 1989) (exhaustion of tribal court remedies unnecessary where federal courts have exclusive jurisdiction).

Four years after the Supreme Court determined that the Tribal Court lacked jurisdiction over Longs' discrimination claim, the Longs and the Long Company now attempt a new tactic. But there is no merit to their effort to enforce the Tribal Court appeal bond securing the judgment rendered, at least in part, on the Longs' discrimination claim. The Supreme Court found that judgment was "null and void" because the Tribal Court lacked jurisdiction over the discrimination claim. It is axiomatic that the Tribal Court also then lacked jurisdiction to enter the judgment upon which the appeal bond was posted. Having lacked jurisdiction to enter judgment and require an appeal bond, the Tribal Court cannot now have jurisdiction over the Bond Action.

Commencement of the Bond Action in Tribal Court patently violates the jurisdictional prohibition set forth in Plains. The Tribal Court lacked jurisdiction to enter the judgment from which the Bank appealed. Requiring the Bank to proceed in Tribal Court over its objection to jurisdiction when jurisdiction over the appeal bond securing a null and void judgment is plainly lacking serves no purpose but to delay resolution – possibly for years. Thus, under Strate, Hicks, and Plains, this Court has jurisdiction over this action.

Moreover, the Longs' and Long Company's untimely and continued pursuit of this matter in Tribal Court constitutes bad faith litigation and is motivated by a desire to harass Plaintiffs. The Longs and the Long Company lost the question of whether there was a valid judgment at the Supreme Court. The passage of time does not alter that conclusion. This effort to rehabilitate a void judgment serves no purpose but to harass the Bank. Under Nat'l Farmers Union, this Court has jurisdiction over this matter.

It is beyond dispute that this action falls squarely within the exceptions to the doctrine of exhaustion of Tribal Court remedies set forth in Nat'l Farmers Union and reasserted in Strate and Hicks. The Bond Action has been initiated in bad faith defiance of the United States Supreme Court's jurisdictional ruling and is motivated by a desire to harass Plaintiffs. Continued litigation in Tribal Court "would serve no purpose other than delay" the inevitable finding that the Tribal Court lacks jurisdiction over the Bond Action. Consequently, pursuant to Plains, Nat'l Farmers Union, Strate and Hicks, the Court has immediate jurisdiction over this action.

B. Plaintiffs are entitled to a declaration that the Cheyenne River Sioux Tribe lacks jurisdiction over the Longs and Long Company's Tribal Court action.

The Supreme Court determined that the Cheyenne River Sioux Tribal Court lacked jurisdiction to enter the general verdict giving rise to the judgment from which the Bank appealed and for which the Bank posted an appellate bond. The Tribal Court lacked jurisdiction over the discrimination claim and lacked jurisdiction to require the issuance of the bond. As a matter of law, the Tribal Court does not now have jurisdiction over the Longs' and the Long Company's new action in which they attempt to enforce an appeal bond posted to appeal from a court that lacked jurisdiction in the first instance. The material facts are undisputed. Plaintiffs are entitled to summary judgment and a declaration that the Cheyenne River Sioux Tribal Court lacks jurisdiction to adjudicate Long Family Land and Cattle Company, Inc. v. Plains Commerce Bank, Case No. 12C087.

In the original Tribal Court litigation, the Longs and Long Company asserted three claims against the Bank – breach of contract, bad faith, and discrimination. The jury rendered a general verdict against the Bank and awarded damages. But it did not delineate what damages were attributable to each theory of liability. The Bank then appealed only the discrimination claim to the Tribal Court of Appeals and the Tribal Court's jurisdiction over the discrimination claim was

the only jurisdictional challenge presented to the federal courts and the Supreme Court.

Nevertheless, the Supreme Court invalidated the entire judgment, finding it null and void because the general verdict was, at least in part, based upon the discrimination claim. Plains, 554 U.S. at 324-325.¹

“[W]hether a tribal court has adjudicative authority over nonmembers is a federal question.” Plains, 554 U.S. at 324, citing Iowa Mut. Ins. Co., 480 U.S. 9, 15 (1987); Nat’l Farmers Union, 471 U.S. 845, 852–853 (1985). “If the tribal court is found to lack such jurisdiction, any judgment as to the nonmember is necessarily null and void.” Id.; see also Printed Media Servs., Inc. v. Solna Web, Inc., 11 F.3d 838, 843 (8th Cir. 1993) (judgment against party over whom court lacked jurisdiction is void); United States v. 51 Pieces of Real Prop., 17 F.3d 1306, 1309 (10th Cir. 1994) (“a judgment is void if the court that enters it lacks jurisdiction over either the subject matter of the action or the parties to the action”).

Nearly four years after the Supreme Court’s opinion, the Longs and the Long Company attempt to enforce and collect upon an appeal bond, necessarily filed in the Tribal Court when the Bank appealed the judgment based on the discrimination claim to the Tribal Court of Appeal. In fact, the appeal bond was filed pursuant to Rule 37 (e) of the Law and Order Code of the Cheyenne River Sioux Tribe “requiring that a bond be filed in an amount set by the Trial Court.” (Banker Aff., Ex. A, Appeal Bond, p.1.)

But the Tribal Court lacked jurisdiction over the Longs’ discrimination claim. Plains, 554 U.S. at 330. It also lacked jurisdiction to enter the judgment from which the Bank appealed. Id. at 324, 326-327. And it lacked jurisdiction to require that the Bank post a bond to appeal the

¹ That the Supreme Court conclusively overturned the judgment is apparent from Justice Ginsberg’s dissent, in which she focuses on the reversal of the judgment and explicitly states, “I dissent from the Court’s decision, however, to the extent that it overturns the Tribal Court’s principal judgment....” Plains, 554 U.S. at 342.

judgment it did not have jurisdiction to enter. Id. That judgment has been rendered “null and void.” Id. It is axiomatic that enforcement of the now-void appeal bond that secured the judgment that the Tribal Court required to be posted also is beyond the jurisdictional authority of the Tribal Court.

Simply put, as a matter of law, the Tribal Court lacks authority over the Longs’ and the Long Company’s attempt to execute on the appeal bond that secures a judgment invalidated by the United States Supreme Court. Plaintiffs are entitled to summary judgment and a declaration that the Tribal Court lacks jurisdiction over the Bond Appeal pursuant to Plains, 554 U.S. 316 (2008).

V. CONCLUSION

In conclusion, the Court should grant summary judgment in favor of Plains Commerce Bank, Jerome Hageman, and Randy Robinson and declare that the Cheyenne River Sioux Tribal Court lacks jurisdiction over Long Family Land and Cattle Co., Inc. v. Plains Commerce Bank, Case No. 12C087. Pursuant to Local Rule 7.1(c), Plaintiffs request oral argument on their motion for summary judgment.

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