

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' REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT
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I. INTRODUCTION

The Long Family Land and Cattle Co. Inc. ("Long Company"), and Ronnie Long and Lila Long (the "Longs") attempt to obscure the straight-forward question at issue by raising undisputed and immaterial arguments that have no bearing on whether the Tribal Court has jurisdiction to adjudicate Long Family Land and Cattle Company, Inc. v. Plains Commerce Bank, Case No. 12C087 (the "Bond Action").

There is no dispute that Plains Commerce Bank's (the "Bank") jurisdictional challenge presented to the United States Supreme Court was based on the Longs' discrimination claim. But whether the Bank challenged jurisdiction over the breach-of-contract and bad-faith claims is entirely irrelevant to whether the Tribal Court has jurisdiction to enforce an appeal bond securing a judgment that the Supreme Court has declared "null and void."

In Plains Commerce Bank v. Long Family Land & Cattle Co., Inc., 554 U.S. 316 (2008), the United States Supreme Court definitively held that the Tribal Court lacked jurisdiction to enter the judgment, based on a general verdict, from which the Bank appealed and for which the Bank posted an appeal bond. It follows that the Tribal Court lacked jurisdiction to require the

appeal bond. And, so too, the Tribal Court lacks jurisdiction over a new action to enforce that invalid appeal bond.

Pursuant to the well-established exceptions to the doctrine of exhaustion of remedies and consistent with the Supreme Court's holding in Plains Commerce Bank v. Long Family Land & Cattle Co., Inc., 554 U.S. 316 (2008), this Court has jurisdiction to, and should, enter summary judgment declaring that the Tribal Court lacks jurisdiction to adjudicate Long Family Land and Cattle Company, Inc. v. Plains Commerce Bank, Case No. 12C087 (the "Bond Action").

II. ARGUMENT

A. **The Longs and Long Company Failed to Raise a Genuine Issue of Material Fact that Would Preclude Entry of Summary Judgment and Plaintiffs are entitled to a declaration that the Cheyenne River Sioux Tribal Court lacks jurisdiction over the Bond Action.**

The Longs and Long Company have failed to raise a genuine issue of material fact that would preclude the entry of summary judgment. Therefore, the only question remaining for this Court is whether Plaintiffs are entitled to a declaration that the Cheyenne River Sioux Tribal Court lacks jurisdiction over the Longs' and Long Company's Bond Action.

It is incumbent upon the Longs and Long Company to assert a material fact dispute in order to avoid the issuance of an order for summary judgment. 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) (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.'").

The Longs and Long Company have failed to do so. The vast majority of the Longs' and Long Company's brief is devoted to explaining to the Court that the Bank did not appeal the

Tribal Court's exercise of jurisdiction over the breach-of-contract and bad-faith claims. This point is neither disputed nor relevant to the determination of this motion for summary judgment.

The Longs' and Long Company's attempt to reframe the issue from whether the Tribal Court has jurisdiction over the Bond Action to whether this Court has jurisdiction over the breach-of-contract and bad-faith claims entirely misses the point. It simply is irrelevant whether any such jurisdictional challenge was presented. The United State Supreme Court rendered the Tribal Court judgment based on the general verdict "null and void," because the Tribal Court lacked jurisdiction over the discrimination claim. Merely because the judgment was based on multiple causes of action carries no weight in the face of the Supreme Court's ruling. It is axiomatic then, that, having lacked jurisdiction to enter judgment, the Tribal Court lacked jurisdiction to require the appeal bond. The Tribal Court cannot possibly have jurisdiction over an action to enforce a bond that it lacked jurisdiction to require.

The Longs and Long Company raise no genuine issues of material fact bearing on the question of the Tribal Court's jurisdictional authority over the Bond Action. Accordingly, the only issue left for the Court to decide is whether Plaintiffs are entitled to judgment as a matter of law. That answer is unquestionably, "yes" and nothing in the Longs' and Long Company's opposition argues otherwise. Plaintiffs are entitled to judgment declaring that the Tribal Court lacks jurisdiction over the Bond Action.

B. The Court has Jurisdiction to Enter Summary Judgment Pursuant to the Well-Established Exceptions to the Doctrine of Exhaustion of Remedies.

Plaintiffs need not exhaust tribal-court remedies with respect to the Bond Action before this Court can declare that the Tribal Court lacks jurisdiction over the Bond Action. This action falls squarely within the well-established exceptions to the doctrine of exhaustion of remedies.

The Longs and Long Company fail to acknowledge these exceptions, let alone attempt to

distinguish their undisputed applicability to this action. It is plain that this Court has immediate jurisdiction to declare that the Tribal Court lacks jurisdiction to adjudicate the Bond Action.

The Longs and Long Company argue that the Bank has failed to exhaust its Tribal Court remedies as it relates to the breach-of-contract and bad-faith claims. But whether the Bank appealed the Tribal Court's jurisdiction to adjudicate the breach-of-contract and bad-faith claims has no bearing on this Court's jurisdiction over this action. The Bank does not challenge the Tribal Court's jurisdiction over those substantive claims. Rather, the Bank challenges the Tribal Court's jurisdiction over the Bond Action, which is an enforcement action related to an appeal bond that the Tribal Court had no jurisdiction to require, securing a judgment the Tribal Court had no jurisdiction to enter.

As discussed more thoroughly in the Bank's initial brief, 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 Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845, 857 (1985) and reasserted in Strate v. A-1 Contractors, 520 U.S. 438, 459 (1997) and Nevada v. Hicks, 533 U.S. 353, 370 (2001). The Bond Action, initiated in bad faith defiance of the United States Supreme Court's jurisdictional ruling, is motivated by a desire to harass Plaintiffs. Continued litigation in Tribal Court to determine the Tribal Court's jurisdiction over an appeal bond that it lacked jurisdiction to require "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.

C. The Longs and Long Company Fail to Address the Supreme Court's Determination That the Judgment Entered Against the Bank is Null and Void.

The Longs and Long Company ignore, throughout their opposition, the undeniable fact that the United States Supreme Court deemed "null and void" the judgment from which the Bank

initially appealed and for which the appeal bond the Longs and Long Company now seek to enforce was posted. Because the Tribal Court lacked jurisdiction to enter the judgment and require the appeal bond, it lacks jurisdiction to adjudicate the Bond Action.

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.

In their briefing to the Supreme Court, the Longs and Long Company made an analogous argument to the one they make here. They argued that the Bank lacked standing. The premise of their argument was that the general verdict was supported by breach-of-contract and bad-faith claims, and that a ruling that there was no jurisdiction over the discrimination claim would not remedy an injury in fact. The Supreme Court rejected this standing challenge, concluding that the general verdict was tainted by the presence of the discrimination claim over which the Tribal Court lacked jurisdiction. In finding that the Tribal Court lacked jurisdiction over the discrimination claim, 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.

The same conclusion holds in the present action. The Tribal Court judgment is not valid as to the breach-of-contract and bad-faith claims merely because the Bank did not assert a separate jurisdictional challenge as to those causes of action. Indeed, the Supreme Court rejected the Longs' and Long Company's argument that "the jury's damages award was in fact premised entirely on their breach-of-contract rather than on their discrimination claims." Id. at 324. The Supreme Court flatly stated "[w]e are not persuaded" and found that, the Bank's injury in being

subjected to tribal court jurisdiction could be remedied by invalidating the judgment. Id. at 325. Although it declined to comment on the peripheral implications of the ruling, the Supreme Court rendered the entire judgment null and void for want of jurisdiction. Id.

The Tribal Court lacked jurisdiction to enter judgment based on the general verdict. The Tribal Court also lacked jurisdiction to require an appeal bond to secure that invalid judgment. The Longs and Long Company assert no arguments that dispute or distinguish those facts. It necessarily follows that the Tribal Court lacks jurisdiction to hear an action based on the appeal bond it lacked jurisdiction to enter. Plaintiffs are entitled to judgment as a matter of law.

D. The Doctrine of Res Judicata is Inapplicable Here, Though the Supreme Court's Opinion is Determinative of the Issues Presently Before the Court.

The doctrine of res judicata is inapplicable to Plaintiffs' claim in this action where there is no renewed challenge to an already decided issue. Again, Plaintiffs do not challenge the Tribal Court's exercise of jurisdiction over the breach-of-contract and bad-faith claims with this action. Instead, Plaintiffs challenge the Tribal Court's jurisdiction over the appeal bond securing a judgment invalidated for lack of jurisdiction. The appeal bond did not exist during the pendency of the initial Tribal Court action and it could not have been the subject of the previous litigation.

The Longs and Long Company misapply the doctrine of res judicata. In doing so, they also ignore the fact that the Supreme Court's opinion in Plains is determinative of the issues in this case – namely, that the Tribal Court cannot have jurisdiction over the appeal bond that it lacked jurisdiction to require. Plains resolves the question as it relates to the Tribal Court's authority over the judgment and appeal bond. It has none. Accordingly, Plaintiffs are entitled to summary judgment.

III. 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.

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LINDQUIST & VENNUM PLLP

By: /s/ DANIEL R. FRITZ – electronically filed

Daniel R. Fritz (#2390)
100 S. Dakota Avenue
Sioux Falls, SC 57104
(605) 978-5200
(605) 978-5225 (facsimile)
dfritz@lindquist.com

-and-

Paul A. Banker (*admitted pro hac vice*)
pbanker@lindquist.com
LINDQUIST & VENNUM P.L.L.P.
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 371-3211
(612) 371-3207 (facsimile)

ATTORNEYS FOR PLAINTIFFS