

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

State Farm Insurance Companies,  Plaintiff,  v.  Turtle Mountain Fleet Farm LLC; Rich's Construction, by its owner, Rich Parisien; Lloyd Greenwood and Brenda Greenwood,  Defendants.	Civil No. 1:12-cv-094  <b>PLAINTIFF'S BRIEF IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT</b>
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**INTRODUCTION**

Previously, Plaintiff State Farm Insurance Companies, (hereinafter "State Farm"), filed a Motion for Summary Judgment seeking an Order declaring that the Turtle Mountain Tribal Court lacked jurisdiction over the breach of contract and tort claims in the underlying matter. At the same time, Defendants, Lloyd and Brenda Greenwood (hereinafter "Greenwoods"), filed a Cross Motion for Summary Judgment, asserting that the Turtle Mountain Tribal Court has jurisdiction over this case. Plaintiff State Farm now responds to the Greenwoods' Motion.

**STATEMENT OF FACTS**

In the interest of brevity, State Farm incorporates all facts set out in its Brief in Support of Motion for Summary Judgment. (Plaintiff's Brief in Support of Motion for Summary Judgment, e-filed as ECF No. 27, at pp. 1-4).

**ARGUMENT**

**I. STANDARD OF REVIEW**

Summary judgment is appropriate where the pleadings, discovery, disclosures and affidavits show there is no genuine dispute as to any material fact and that the movant is entitled to judgment

as a matter of law. Fed.R.Civ.P. 56. A party presenting a material fact to support its argument must support the assertion by citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials. Fed.R.Civ.P. 56(c)(1)(A). More specifically, a memorandum in support of a motion for summary judgment must contain, separate from the argument portion of the memorandum, a recitation of the material facts that the moving party claims are uncontested, with each significant material fact supported by reference to specific pages, paragraphs, or parts of the pleadings, depositions, answers to interrogatories, exhibits, and affidavits that have been served and filed with the court and that conform to the requirements of Fed. R. Civ. P. 56(e). U.S.Dist.Ct.Rules D.N.D., Civ. L.R. 7.1. A party's failure to comply with these requirements may result in the denial of the motion. *Id.*

In their memorandum in support of their motion for summary judgment, the Greenwoods make numerous factual allegations (twenty-four by this author's count) that are not support by reference to exhibits or supported by evidence in the record. (Greenwood Brief, e-filed as ECF No. 25, generally). Most are simply unsupported or unsupportable arguments.

As set out in State Farm's Motion for Summary Judgment, Tribal Court jurisdiction over non-members is very limited. Under the governing case law, "efforts by a tribe to regulate nonmembers ... are presumptively invalid, [and] the party asserting tribal authority bears the burden of showing that its assertion of jurisdiction falls within one of the Montana exceptions. *Attorney's Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927, 936 (8th Cir. 2010), citing *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 329, 128 S. Ct. 2709, 2720, 171 L. Ed. 2d 457 (2008). Without such proof, "the

presumption [of no jurisdiction] ripens into a holding. *Atkinson Trading Co., v. Shirley*, 532 U.S. 645, 659, 121 S. Ct. 1825, 1833-34, 149 L. Ed. 2d 889 (2001).

Here, Plaintiffs have failed to cite to any material fact and, as such, cannot meet their burden of proof. Accordingly, dismissal is appropriate.

## **II. TRIBAL COURT JURISDICTION OVER NONMEMBERS IS LIMITED**

Here, State Farm takes the position that the Greenwoods have submitted no appropriate facts to support their argument. Even if the unsupported facts were accepted, though, this Court should still deny the Greenwoods' Motion for Summary Judgment. The Greenwoods' primary argument is that State Farm's contractual dealings with them subject State Farm to tribal jurisdiction. (Greenwood Brief, at p. 4). Under the governing case law, though, the Greenwoods must go further than merely identifying a contractual relationship. Rather, they must show that the activities giving rise to their claims actually occurred within the external boundaries of the reservation. *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 16, 334. The case law also makes clear that harm suffered by a tribal member on the reservation will not establish jurisdiction if the activity causing the harm occurred off the reservation. *Attorney's Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927, 931 (8th Cir. 2010). As set out in State Farm's Motion for Summary Judgment, all of the relevant conduct in this case occurred outside the external boundaries of the reservation.

In their brief, the Greenwoods identify six activities that they believe create the existence of tribal jurisdiction. (Greenwood Brief, at pp. 4-5). The first allegation is that State Farm sold "a homeowner's policy to a reservation home." It is true that the contract involves a reservation home; however, as set in State Farm's Motion for Summary Judgment, that alone does not create jurisdiction because the contract was actually solicited and signed off the reservation. (Greenwood

Brief, at pp. 4-5). The second set of allegations is that State Farm dealt directly with the contractor. That argument fails for two reasons. First, the contact between State Fare and Turtle Mountain Fleet Farm was between two unenrolled members. (Attached as Exhibit 1 is the North Dakota LLC business record with the North Dakota Secretary of State). Moreover, there is no evidence that communication, much less any that might have harmed the Greenwoods, took place on the reservation. The remaining allegations by the Greenwoods are, essentially, that State Farm failed to provide information to them. That unsupported claim is unsupported and, more importantly, inactivity that would not fall under the first *Montana* exception. *Montana v. U. S.*, 450 U.S. 544, 565, 101 S. Ct. 1245, 1258, 67 L. Ed. 2d 493 (1981).

The Greenwoods have failed to show that the activities, or inactivities, that form the basis for their allegations took place on the reservation. Therefore, they have failed to prove that tribal jurisdiction exists.

### **III. TRIBAL COURT REMEDIES HAVE BEEN EXHAUSTED**

Exhaustion of tribal remedies means that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 17, 107 S. Ct. 971, 977, 94 L. Ed. 2d 10 (1987). The exhaustion requirement gives tribal courts the opportunity “to explain to the parties the precise basis for accepting jurisdiction” and to “provide other courts with the benefit of their expertise in such matters in the event of further judicial review. *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc.*, 491 F.3d 878, 889 (8th Cir. 2007) *rev'd sub nom. Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 128 S. Ct. 2709, 171 L. Ed. 2d 457 (2008). A trial on the merits, however, is not required to satisfy the tribal exhaustion doctrine. *Tunica-Biloxi Indians of Louisiana v. Pecot*, 351 F. Supp. 2d 519, 524 (W.D. La. 2004); citing *Enlow v. Moore*, 134 F.3d 993 (10th Cir.1998).

Instead, Tribal exhaustion, only requires that Tribal Appellate Courts have an opportunity to review whether or not tribal jurisdiction exists.

In the case at hand, the Turtle Mountain Tribal Court of Appeals was, in fact, given an opportunity to review this matter after the lower Court dismissed State Farm for lack of tribal jurisdiction. (Tribal Court of Appeals Memorandum Decision, e-filed as ECF No. 25-1, at p. 2). In its opinion, the Tribal Appellate Court ruled that tribal jurisdiction over State Farm existed since State Farm "voluntarily entered into a contractual relationship with the Greenwoods." (Tribal Court of Appeals Memorandum Decision, at p. 3). Since the Turtle Mountain Court of Appeals is the highest appellate court in Turtle Mountain, tribal remedies have been exhausted. A full jurisdictional review and determination by the tribal court has been completed and tribal exhaustion is satisfied.

### **CONCLUSION**

The Greenwoods have failed to present any evidentiary support for their argument. In addition, that have failed to establish that the activities that form the basis for their claims occurred on the Turtle Mountain Reservation. Consequently, the Greenwoods have failed to overcome the presumption that the Tribal Court does not have jurisdiction over State Farm. Furthermore, all tribal remedies have been exhausted and ruling is appropriate.

Based on the foregoing, it is respectfully requested that the Court grant State Farm's Motion for Summary Judgment and deny Defendants' Cross-Motion.

Dated this 13th day of January, 2014.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of January, 2014, the Plaintiff's Brief in Response to Defendants' Motion for Summary Judgment, was filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

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