

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

Darrel & Janine Gustafson, d/b/a)	
1 Stop Market,)	
)	
Plaintiffs,)	MEMORANDUM IN SUPPORT OF
)	MOTIONS TO DISSOLVE
vs.)	TEMPORARY RESTRAINING
)	ORDER, AND TO DISMISS
Linus Poitra and Raymond Poitra,)	
)	Case No. 4:12-cv-129
Defendants.)	

In Plaintiffs' Memorandum in Support of Motion for Temporary Restraining Order, Plaintiffs allege Defendants have filed numerous law suits in the Turtle Mountain Tribal Court (Tribal Court) harassing Plaintiffs; while Plaintiffs merely want to mange their business. Plaintiffs do not come into this action with clean hands. Plaintiffs, through Mr. Reed Soderstrom, Debra Hoffarth, both in the Pringle and Herigstad law firm have file as many law suits as Defendants in Tribal Court, State District Court, the North Dakota Supreme Court and this Court. The numerous law suits filed by Plaintiffs harassed Defendants.

1. Plaintiffs purported to buy a loan which Defendant Raymond Poitra had with the Small Business Administration (SBA) at a Rolette County Sheriff's sale. The loan agreement between Defendant Raymond Poitra and the SBA is numbered 61175130 and is attached.
2. Plaintiffs conspired with the Rolette County Sheriff, through Mr. Reed Soderstrom, Debra Hoffarth, both in the Pringle and Herigstad law firm, to have

the Sheriff conduct a foreclosure sale of the land described in the State District Judge's order confirming the sale in paragraph # 3 below. A certified copy is attached.

3. The loan was filed in the State District Court for Rolette County, whereby the State District Judge issued an order confirming the sale. A certified copy is attached.
4. The loan with SBA was discharged in bankruptcy on December 31, 2004, and the SBA issued Defendant Raymond Poitra a IRS Form 1099-C Corrected on January 21, 2005, instructing Defendant Raymond Poitra to claim the amount discharged on his federal income tax return. The is form is attached.
5. After the bankruptcy discharge, there was no loan default for Defendants To purchase.
6. In the federal bankruptcy law, there is an automatic stay or an automatic injunction that halts actions by creditors to collect debts from a debtor who has a debt discharged through bankruptcy. 11 U.S.C. § 362. It is a Clear violation of federal law to attempt to collect on a debt discharged in bankruptcy. The bankruptcy court maintains jurisdiction to enforce this injunction and it bankruptcy order. *Cox v. Zale Delaware, Inc.*, 239 F.3d 910 (7th Cir. 2001).
7. Defendants and their attorneys violated federal bankruptcy law with the Sheriff's sale of Defendant Raymond Poitra's land described in the attached State District judge's order.
8. Because the subject land is situated with the exterior boundaries of the Turtle

Mountain Indian Reservation (Reservation), Defendants filed a quiet title action in Tribal Court pursuant to *Darrel Gustafson and One Stop Market, v. Estate of Leon Poitra and Linus Poitra*, 2011 ND 150, 800 N.W.2d 842 (Aug. 10, 2011).

9. Defendants also have a right to request this Court to enforce the federal bankruptcy discharge under *Cox*.
10. In regards to the multimillion dollar law suit Mr. Soderstrom is complaining of in this action, he and Plaintiffs are again without clean hands.
11. Plaintiffs, through their attorney Mr. Soderstrom, purchased a Workmen's Compensation Bureau judgment against Defendant Raymond Poitra, on the same subject land that was at issue in the SBA bankruptcy discharge. This land is described in the Sheriff sale documents referenced in paragraph # 3 *supra*.
12. Mr. Soderstrom is an administrative law judge for the Workmen's Compensation Bureau, and had inside knowledge of the judgement.
13. The Workmen's Compensation Bureau judgment expired on February 10, 2006 and the State District Court discharged the Workmen's Compensation Bureau judgment against Defendant Raymond Poitra on September 25, 2007.
14. Plaintiffs, through their attorney Mr. Soderstrom file an action in Tribal Court in an attempt to enforce the expired Workmen's Compensation Bureau judgment in Tribal Court
15. Mr. Kip Kaler, Esq. filed a motion in State District Court to have the Workmen's Compensation Bureau judgment against Defendant Raymond Poitra canceled and discharged. See attached Kaler letter.

16. The State District Court for Rolette County cancelled the discharged the Workmen's Compensation Bureau judgment against Defendant Raymond Poitra. See attached Notice to Cancel Transcript of Judgment.
17. The Tribal Court ruled against Defendants and Defendants appealed to the Turtle Mountain Tribal Court of Appeals, in Case No. TMAC-06-019. The Tribal Court of Appeals affirmed the Tribal Court in the first appellate court order.
18. Defendants then submitted the State District Court Cancellation Order and the Tribal Court of Appeals, Chief Justice B.J. Jones, then reversed its first itself and reversed the Tribal Court decision in favor of Plaintiffs. See attached Tribal Appellate Court Order.
19. Defendants filed a law suit against Plaintiffs, Mr. Soderstrom, and Pringle and Herigstad law firm.
20. Defendants sent Mr. Soderstrom a request for admissions where Mr. Soderstrom admitted that the he attempted to enforce the expired Workmen's Compensation Bureau judgment against Defendant Raymond Poitra in Tribal Court. See attached Soderstrom responses to request for admissions.
21. Mr. Soderstrom responded stating he was not aware of the cancellation Workmen's Compensation Bureau judgment against Plaintiff until September 25, 2007, when he received a copy of the State District Court Cancellation. See Soderstrom, et al Answers to Plaintiff's First Request for Admission, dated July 31, 2008.
22. Mr. Soderstrom is an administrative law judge for the Workmen's Compensation

Bureau, and would have known that the judgment was discharged.

23. Mr. Soderstrom represented himself *pro se* in the law which Defendants brought against Plaintiffs, Mr. Soderstrom, and Pringle and Herigstad law firm. Debra Hoffarth represented Plaintiffs and the Pringle and Herigstad law firm.

24. When Plaintiffs failed at this attempt to enforce the cancelled Workmen's Compensation Bureau judgment against Defendant Raymond Poitra, Plaintiffs and their attorney dived back into State District Court for Rolette County. The State District Court granted Plaintiffs a default judgment. Defendants appealed to the North Dakota Supreme Court.

25. During Defendants' appeal to the North Dakota Supreme Court, the Tribal Court scheduled an omnibus hearing, on July 15, 2010, in the law suit Defendants brought against Plaintiffs, Soderstrom and the Pringle and Herigstad law firm.

26. Mr. Soderstrom appeared *pro se*, Plaintiffs did not appear, and Ms. Debra Hoffarth, attorney for Plaintiffs and the Pringle and Herigstad law firm did not appear.

27. The Tribal Court issued a default judgment against Plaintiffs and the Pringle and Herigstad law firm, for non appearance. See attached Tribal Court Order dated August 5, 2011.

28. The very next week, August 11, 2011, the North Dakota Supreme Court reversed the default judgment in *Darrel Gustafson and One Stop Market, v. Estate of Leon Poitra and Linus Poitra*, 2011 ND 150, 800 N.W.2d 842 (Aug. 10, 2011); holding

The state district court did not have subject matter jurisdiction in this case.

Gustafson asserted a claim against the Poitras over a lease of Indian-owned fee land located within the boundaries of the reservation. Under the infringement test, state jurisdiction over a claim asserted by a non-Indian against an Indian arising within the boundaries of that Indian's reservation is prohibited. *Roe*, 2002 ND 136, ¶ 8, 649 N.W.2d 566. We cannot conclude, as Gustafson argued, the tribal court did not have jurisdiction under Montana, because Gustafson entered into a consensual relationship with the Poitras through the lease. 450 U.S. at 565. There is an available forum for this matter in the tribal courts. See *Kelly*, 2009 ND 20, ¶ 11, 759 N.W.2d 721. The Turtle Mountain Tribal Code allows for the tribal court to exercise jurisdiction over the "Ownership, leasehold, use, or possession of any property, or interest therein, located within the Court's territorial jurisdiction," Turtle Mountain Tribal Code § 2.0102(1)(c), which includes "all land on the Turtle Mountain Indian Reservation." Turtle Mountain Band of Chippewa Indians Const. and Bylaws art. II, § 1. Further, North Dakota has disclaimed jurisdiction over reservation lands, and the Turtle Mountain Band of Chippewa Indians has not consented to state court civil jurisdiction. *See* Turtle Mountain Band of Chippewa Indians Const. and Bylaws art. XIV, § 3(a); see also Turtle Mountain Tribal Code § 2.0102.

29. Plaintiffs, and the Pringle and Herigstad law firm appealed the default judgment issued by the Tribal Court to the Tribal Court of Appeals, where it is currently pending.
30. On appeal Mr. Soderstrom argued he represented Plaintiffs and the Pringle and Herigstad law firm.
31. However, on appeal, Mr. Soderstrom file a Notice of Substitution of Counsel and the Tribal Court, issued an Order, dated July 26, 2012, approving the substitution of counsel. Attached.
32. Mr. Soderstrom's filing of the Notice of Substitution of Counsel and the Tribal Court, issued an Order, dated July 26, 2012, is solid evidence Ms. Debra Hoffarth, and not Mr. Soderstrom, was the attorney of record at the July 15, 2010, Tribal

Court hearing; from which Defendants obtained the default judgment.

33. Now Plaintiffs and their attorney are now jumping into this forum, in an effort to again thwart the jurisdiction of the Tribal Court.

EXHAUSTION OF TRIBAL REMEDIES

This Court in *Security State Bank v. Parisien Wilkie*, citations omitted (1999), the Honorable Pat Comny, presiding, ruled Tribal Court has personal and subject matter jurisdiction in transactions between non-Indians and Indians which take place on the Reservation. In *Security State Bank*, this Court ruled the parties must first exhaust Tribal Court remedies before this Court will entertain jurisdiction. In *Ford Motor Credit Company, et al vs. Raymond Poitra*, Case No. 4:10-cv-042, this Court found *Ford Motor Credit* had exhausted tribal court remedies, but stated:

Pursuant to 28 U.S.C. § 1331, this Court is empowered to determine whether a tribal court has exceeded the lawful limits of its jurisdiction. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 853 (1985). "The question of whether an Indian tribe retains the power to compel a non-Indian property owner to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law and is a 'federal question' under § 1331." *Id.* at 852. The United States Supreme Court also explained "that examination should be conducted in the first instance in the Tribal Court itself." *Id.* at 856. In *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987), the United States Supreme Court held, "At a minimum, exhaustion of tribal remedies means that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts." *LaPlante*, 480 U.S. at 17.

Again this case represents the fact that every time Mr. Soderstrom anticipates an adverse decision in Tribal Court, Mr. Soderstrom jumps into another forum.

The legal principle of *stare decisis* dictates this Court must follow its precedent to avoid the appearance of flip flopping on similar issues; thereby maintaining its credibility. Plaintiffs

are correct, in their memorandum in Support of Motion for Temporary Restraining Order, where Plaintiffs assert:

The doctrine of exhaustion of tribal court jurisdiction and remedies is sometimes raised by tribal Defendants to block actions in federal court and it is anticipated that Defendants may seek dismissal of this action on such a basis. "Supreme Court precedent and this Court's pronouncements based thereon required exhaustion of tribal court remedies in matters related to reservation affairs." *Bruce H. Lien Co. v. Three Affiliated Tribes*, 93 F.3d 412, 1420 (8th Cir. 1996) (citing *Reservation Tel. Co-op v. Affiliated Tribes*, 76 F.3d 181, 184 (8th Cir. 1996)).

CONCLUSION

Plaintiffs are correct in this assertion. Federal district courts must follow U.S. Supreme Court decisions and the decisions of the U.S. circuit court of appeals in which a district court is located. In closing, *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Montana*, 471 U.S. 845, (1985), requires this Court to dissolve the TRO and to dismiss this case.

DATED October 17, 2012.

FOR DEFENDANTS:

/S/

Don G. Bruce, Esq., MBA
SD Bar # 2407, TMT # ATT-12-15
P.O. Box 674
Belcourt, North Dakota 58316
Ph. 701-477-8755
FAX 701-477-8772
Email michif0@yahoo.com