

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

KYLE GROCERY, INC. a South
Dakota corporation,

Plaintiff,

vs.

RENA SHORT HORN, CHARLES
ABOUREZK, Former Chief Judge and
Presiding Judge of The Oglala Sioux
Tribal Court in *Rena Short Horn v.
Kyle Grocery, Inc.*, Civ-19-0128,
DAVID DILLON, Current Chief Tribal
Court Judge, THE OGLALA SIOUX
TRIBAL COURT, and THE OGLALA
SIOUX TRIBE,

Defendants.

Civ. No. 21-5092

VERIFIED COMPLAINT

Plaintiff Kyle Grocery, Inc., through counsel, Gary D. Jensen of
Beardsley, Jensen & Lee, Prof. LLC, and for its Verified Complaint against
Defendants, states and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action to enjoin the prosecution of a civil action based
upon premises liability in the Oglala Sioux Tribal Court against Kyle Grocery,
Inc. This action also seeks a declaratory judgment that the Oglala Sioux Tribal
Court may not exercise jurisdiction over the subject matter of the civil action.

PARTIES

2. Kyle Grocery, Inc., is a South Dakota corporation with a principal
place of business located on non-Indian, fee land at 20261 BIA 2, Kyle, South

Dakota 57752. See Affidavit of Elizabeth May, attached hereto and incorporated by reference as Exhibit A.

3. Defendant Rena Short Horn, upon information and belief, is an enrolled member of the Oglala Sioux Tribe and a resident of Kyle, South Dakota.

4. Charles Abourezk was the Chief Judge of the Oglala Sioux Tribal Court and presiding judge in *Rena Short Horn v. Kyle Grocery, Inc.*, Civ-19-0128. Currently, the Chief Judge is David Dillon.

5. Upon information and belief, the Oglala Sioux Tribal Court is the tribunal organized to perform judicial functions for the Oglala Sioux Tribe on the Pine Ridge Indian Reservation and is the venue in which *Rena Short Horn v. Kyle Grocery, Inc.*, Civ-19-0128, was filed on or about April 30, 2019.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 – Federal Question.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

8. Kyle Grocery, Inc. is located on non-Indian, fee land.

9. Kyle Grocery, Inc. is a registered domestic corporation under the laws of the State of South Dakota.

10. As such, for purposes of jurisdiction, Kyle Grocery, Inc. is deemed a citizen of the state of South Dakota and is a distinct entity from its

owners. *F.T.C. v. Payday Financial, LLC*, 935 F.Supp.2d 926, 936 (D.S.D. 2013) (citing 28 U.S.C. § 1332(c)(1)).

11. On or about February 5, 2019, Defendant visited Kyle Grocery, Inc.'s business. During this visit, Defendant tripped and fell over a box, allegedly causing injuries.

12. On April 30, 2019, Defendant initiated an action in the Oglala Sioux Tribal Court, Civ-19-0128, seeking damages from Plaintiff. Attached as Exhibit B is a copy of the Tribal Court Complaint.

13. Kyle Grocery, Inc. filed its response on or about May 28, 2019, and affirmatively set forth its defense that the Oglala Sioux Tribal Court has no jurisdiction over the mater.

14. On or about July 22, 2019, Kyle Grocery, Inc. filed its Motion and Brief in Support of Motion to Dismiss for Lack of Jurisdiction.

15. On October 1, 2019, Kyle Grocery, Inc. filed a Renewed Motion to Dismiss for Lack of Jurisdiction and brief in support.

16. On December 3, 2019, the Oglala Sioux Tribal Court heard arguments on the motion. Then, on December 16, 2019, Charles Abourezk, the Former Chief Judge of the Oglala Sioux Tribal Court and presiding judge over this matter, issued an opinion denying Kyle Grocery, Inc.'s motion to dismiss. Attached as Exhibit C is a copy of the Tribal Court's decision.

17. Kyle Grocery, Inc. filed its Notice of Appeal to the Supreme Court of the Oglala Sioux Nation on December 23, 2019. Kyle Grocery also requested

a copy of the transcript from the December 3, 2019, hearing and submitted payment for the same.

18. Kyle Grocery, Inc. confirmed in writing on March 19, 2020, that pursuant to Rule 31 of the Rules of Appellate procedure for the Oglala Sioux Supreme Court, the parties were waiting for the composition of the record on appeal and docketing of the appeal before the parties could proceed with the serving and filing of the appeal briefs.

19. On July 7, 2021, the Supreme Court of the Oglala Sioux Nation issued its briefing schedule despite no transcript ever being created or provided to the parties. In addition, there was no record provided to the parties and a request was made for Plaintiff's counsel to supplement the official record by emailing all of the pleadings and exhibits to the Supreme Court of the Oglala Sioux Nation for review.

20. On August 31, 2021, the Supreme Court of the Oglala Sioux Nation heard oral arguments via Zoom with only two of the three Supreme Court of the Oglala Sioux Nation justices hearing the case as the Chief Justice position is vacant.

21. On or about November 19, 2021, Jack Duran, Jr., Associate Justice of the Supreme Court of the Oglala Sioux Nation, issued an opinion affirming the decision of the lower court. Attached as Exhibit D is a copy of the Court's decision.

22. Recognizing that Tribal Courts do not generally have jurisdiction over cases involving the conduct of non-Indians, absent a federal rule or

treating authorizing tribal jurisdiction, the Supreme Court of the Oglala Sioux Nation applied the *Montana* exceptions.

23. The Supreme Court of the Oglala Sioux Nation ultimately found that both *Montana* exceptions applied and that the Oglala Sioux Tribal Court has subject matter jurisdiction over the parties.

24. Former Chief Judge Charles Abourezk and the Oglala Sioux Tribal Court acted outside the scope of their authority delegated by the Tribe or by Federal law.

25. Defendant Rena Short Horn's counsel has pushed for depositions at the Tribal Court level and immediate and irreparable injury, loss, or damage will result if Plaintiff is forced to proceed in Tribal Court.

COUNT I – INJUNCTIVE RELIEF

26. Kyle Grocery, Inc. incorporates the allegations of paragraphs 1 through 23 as if fully set forth herein.

27. It is plain that no federal grant provides tribal governance over Kyle Grocery, Inc.'s alleged negligence, which occurred on non-Indian, fee land governed by *Montana's* main rule.

28. The Oglala Sioux Tribal Court lacks any authority to hear or decide the civil case filed against Kyle Grocery, Inc., a non-Indian corporation, occurring on non-Indian, fee land and further proceedings in the Oglala Sioux Tribal Court would be contrary to law.

29. Kyle Grocery, Inc. has exhausted all applicable tribal remedies.

30. Kyle Grocery, Inc. has no other adequate or speedy remedy at law and this action for injunctive relief is Kyle Grocery, Inc.'s only means for securing relief.

31. Plaintiff will suffer immediate and irreparable injury, loss, or damage if forced to proceed in Tribal Court while this action regarding Tribal jurisdiction is pending as discovery has been demanded by Defendant Rena Short Horn's counsel with a future trial date yet to be set.

COUNT II – DECLARATORY RELIEF

32. Kyle Grocery, Inc. incorporates the allegations of paragraphs 1 through 28 as if fully set forth herein.

33. Kyle Grocery, Inc. brings this declaratory judgment action pursuant to 28 U.S.C. § 2201, seeking a determination that the Oglala Sioux Tribal Court may not exert jurisdiction over Plaintiff in the action filed in Tribal Court, Civ-19-0128.

34. There exists an actual controversy between Kyle Grocery, Inc. and Defendants within the jurisdiction of this Court involving the authority of the Tribal Courts, which controversy may be determined by a judgment of this Court.

WHEREFORE, Kyle Grocery, Inc. prays for the following relief:

1. For a preliminary injunction pursuant to Fed. R. Civ. P. 65 enjoining Defendants, their agents, employees, successors and assigns from further proceedings against Kyle Grocery, Inc. herein in the action filed in Tribal Court, Civ-19-0128.

2. For a permanent injunction pursuant to Fed. R. Civ. P. 65 enjoining Defendants, their agents, employees, successors and assigns from further proceedings against Kyle Grocery, Inc. herein in the action filed in Tribal Court, Civ-19-0128.

3. For a declaratory judgment, pursuant to 28 U.S.C. § 2201, that the Oglala Sioux Tribal Court may not exert jurisdiction over Kyle Grocery, Inc. in the action filed in Tribal Court, Civ-19-0128.

4. For such other and further relief as may be warranted.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Kyle Grocery, Inc. respectfully requests a jury trial on all issues and claims so triable.

Dated the 17 day of December, 2021.

BEARDSLEY, JENSEN & LEE, Prof. L.L.C.

By: 

Gary D. Jensen
4200 Beach Drive, Suite 3
P.O. Box 9579
Rapid City, SD 57709
Telephone: (605) 721-2800
Facsimile: (605) 721-2801
Email: gjensen@blackhillslaw.com
Attorneys for Plaintiff

VERIFICATION

State of South Dakota)

County of Oglala) ss.

Elizabeth May, being first duly sworn, deposes and states that he has read the foregoing document and knows the contents thereof, and that the same is true of his own belief, except as to matters herein stated on information and belief, and as to those matters he believes them to be true.

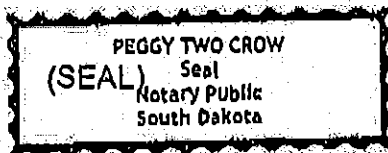
KYLE GROCERY, INC.

By Elizabeth May
Its Sec. / Treas.

Date: 12/15/21

Subscribed and sworn to before me this 15 day of December, 2021.

Peggy Two Crow
Notary Public, South Dakota
My Commission Expires: 02/04/2027



JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS**KYLE GROCERY, INC. a South Dakota Corporation (b)**

County of Residence of First Listed Plaintiff Oglala Lakota, S.D.
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Gary D. Jensen; Matthew J. McIntosh
Beardsley, Jensen & Lee
4200 Beach Drive, Suite 3
Rapid City, SD 57702
(605) 721-2800

DEFENDANTS

RENA SHORT HORN, CHARLES ABOUREZK, Former Chief Judge and Presiding Judge of The Oglala Sioux Tribal Court in *Rena Short Horn v. Kyle Grocery, Inc.*, Civ-19-0128, DAVID DILLON, Current Chief Tribal Court Judge, THE OGLALA SIOUX TRIBAL COURT, and THE OGLALA SIOUX TRIBE

County of Residence of First Listed Defendant Oglala Lakota, S.D.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Jay C. Shultz
402 St. Joseph St., Suite 14
Rapid City, SD 57701
Attorney for Rena Short Horn

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1331 - Federal Question

Brief description of cause: Kyle Grocery seeks declaratory judgment that the Oglala Sioux Tribal Court does not have jurisdiction of the underlying slip/fall case; it also seeks injunctive relief.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE