

Tribal Ct

ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD INDIAN RESERVATION) SS IN TRIBAL COURT
ROSEBUD, SOUTH DAKOTA)

ROSEBUD HOUSING AUTHORITY, *
Plaintiff, * CIV 87-198
vs. * MEMORANDUM DECISION
JOHN EDWARD MURRAY, *
Defendant. *

Plaintiff, Rosebud Housing Authority, is a Tribal Agency established by Tribal Ordinance to administor low income housing on the Rosebud Reservation.

Defendant, John Edward Murray, is an enrolled member of the Rosebud Sioux Tribe and resided in a housing unit managed by the Plaintiff from November 1, 1978 until July 1, 1987 at which time he vacated the unit.

In June, 1987 the Plaintiff filed its complaint to recover unpaid rent owed by the Defendant to Plaintiff. The complaint was later amended to reflect the specific amount of \$3,312.00 for alleged rent arrearages. Defendant answered and counterclaimed against Plaintiff alleging damages from Rosebud Housing Authority for failure to live up to the terms of the Mutual Housing and Occupancy (MHO) Agreement and for damages caused by Rosebud Housing Authority's failure to inspect the home prior to the date of occupancy. In his second claim for relief Defendant claimed damages for Rosebud Housing Authority's failure to comply with the

Rosebud Sioux Tribe Landlord-tenant Code.

In particular defendant alleged that Rosebud housing Authority failed to initially inspect to be sure the dwelling was habitable before defendant moved in.

Defendant further alleged Rosebud Housing Authority failed to comply with applicable building codes and failed to make certain that the contractor built the dwelling according to applicable builders codes.

Finally Defendant alleged Rosebud Housing Authority failed to make necessary repairs to the dwelling as agreed upon by the parties. Defendant prayed for judgment against the Plaintiff in the amount of \$10,000.00 on each claim for relief for a total of \$20,000.00.

Plaintiff moves the Court to dismiss the counterclaim based on the doctrine of sovereign immunity.

Discussion

The Rosebud Housing Authority is an agency of the Rosebud Sioux Tribe established by tribal ordinance See Rosebud Sioux Tribal Ordinance No. 76-02; DuBray vs. Rosebud Housing Authority, 12 Ind.L.R . 6015 (Rosebud Sioux Tribal Court., 1985).

Rosebud Sioux Tribal Ordinance No. 76-02, Article 5, Section 2 States:

"The council hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activity under this Ordinance and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have; but the tribe shall not be liable for the debts or obligations of the Authority except insofar as expressly authorized by this ordinance."

In DuBray this Court found that this ordinance is not a blanket waiver of immunity but merely grants Rosebud Housing Authority the authority to contractually waive immunity. Nothing in the record of this case suggests that the Plaintiff contractually waived its immunity from suit. There is no language in the Mutual Homeowner Agreement that waives Plaintiff's immunity from suit.

The Rosebud Sioux Landlord Tenant provides for tenants remedies where a landlord fails to make repairs as required by the code or written agreement, See RSL-TCode 8-3-3.3. The tenants remedies are to terminate the occupancy agreement or put the rental amount into escrow while awaiting a negotiated or judicial resolution to the problem. This remedy does not waive the Plaintiffs immunity from suit.

Because the Defendant's counterclaim against the Plaintiff is barred by the doctrine of sovereign immunity the Defendant's counterclaim should be and is dismissed.

This constitutes the Findings of Fact and Conclusions of Law in this case.

Dated this 7 day of June, 1990.

BY THE COURT:

Sherman J. Marshall
Sherman J. Marshall
Chief Tribal Judge

Attest:

Denita Marshall
Clerk of Courts

STATE OF SOUTH DAKOTA
ROBERTS CIRCULAR TRIBAL COURT
ROBERTS CIRCULAR

I HEREBY CERTIFY THAT I HAVE CAREFULLY EXAMINED
THE ABOVE AND THE SAME CORRECTLY REFLECTS THE
ORDER OF THE COURT AND THAT I HAVE
AND THAT THE SAME IS A TRUE AND CORRECT COPY OF THE FILED
THEREON, DATED THIS 5 DAY OF June, 1990

Denita Marshall
Clerk
ROBERTS CIRCULAR TRIBAL COURT