

ROSEBUD SIOUX SUPREME COURT)
ROSEBUD SIOUX RESERVATION) SS
ROSEBUD, SOUTH DAKOTA)

SICANGU WICOTI AWANYAKAPE, Plaintiff/Appellant

VS.
PHYLLIS STONE, Defendant, Appellee

TO: THE ABOVE-NAMED PARTIES

Please take notice that on the 25 day of August, 2005, the Honorable Associate Justice FRANK POMMERSHIEM presiding, The Court entered a MEMORANDUM OPINION AND ORDER a certified copy of said Judgment of ORDER is enclosed and by this reference is incorporated herein and is herewith served upon you.

Dated this 30th day of August, 2005.

Rowley m. n. d.
Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of August, 2005, a true and correct copy of the foregoing **MEMORANDUM OPINION AND ORDER** was deposited in the United States Mail, first-class, postage prepaid and addressed as follows:

Bernie Wilson
Dakota Plains Legal Services
PO Box 727
Mission, SD 57555

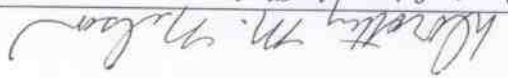
Doris Farmer

Sicangu Wicoti Awanyakape Corp.
PO Box 69

Rosebud, SD 57570

Phyllis Stone

PO Box 53
Rosebud, SD 57570



Court of Appeals Clerk
Dorothy M. Nelson

Per Curiam (Before Chief Justice Leroy Greaves and Associate Justices Patrick Lee and Frank Pommersheim)
I. Introduction

The Plaintiff Sicangu Wicoti Awanyakape Corporation filed an eviction action against the defendant Phyllis Stone in the trial court in September 2003. The basis for the eviction was that the defendant was in violation of her lease with Plaintiff in that she was allowing unauthorized people to remain in unit 333-05.

In November 2003, a hearing was held at which the defendant did not appear. Pursuant to the evidence presented at the hearing, a default judgment of eviction was entered against the "Defendant and all members of her household." A subsequent writ of execution order was entered requiring removal of Defendant and all other occupants by April 1, 2004.

On March 30, 2004, a motion was filed by Calvin Iron Shell through his legal representative in which he claimed to be an occupant of unit 333-05 that was leased by Ms. Stone and that there was no judgment against him personally for which he could be evicted. A hearing on the motion was heard on April 6, 2004 and the trial judge ruled in favor of Mr. Iron Shell and issued an order preventing his eviction without further action "naming him as a defendant and as occupier of SWA Unit No. 333-05.". This timely appeal followed. The

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FILED
BY *[Signature]*
SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE
2005 AUG 30 PM 1 34
ROSEBUD SIOUX TRIBE TRIBAL COURT

Docket #: CA2004-03
MEMORANDUM OPINION
AND ORDER

Plaintiff/Appellant subsequently filed a motion for summary disposition alleging that Appellee had not complied with the briefing schedule and had in fact submitted no appeal brief in this matter.

II. Issues

This case raises two issues namely:

- A. Whether the motion for summary disposition should be granted; and
- B. If so, whether the trial court ruled erroneously as a matter of law in its decision that a landlord must file individual actions against all known and unknown occupants of a unit in addition to the named tenant in the lease.

Each issue will be discussed in turn.

III. Discussion

A. Summary Disposition Motion

Appellant's motion for summary disposition is straightforward. It claims that the Appellee has not complied with the Court ordered briefing schedule and requests the Court to dispose of the case by summary means. The Appellant filed its notice of appeal and designation of record on or about July 27, 2004. The Court issued a briefing order and Appellant filed its brief in a timely manner on August 30, 2004.

The Appellee received several court approved extensions for the submission of his brief. Pursuant to those extensions, Appellee's brief was due on February 2, 2005. To this date, Appellee has filed no brief with the Court. For the failure to submit said brief, the motion for summary disposition is hereby granted.

B. Eviction Proceeding

Eviction proceedings are governed by the Rosebud Sioux Landlord Tenant Code. The Code is preemptive and expressly preempts both state law and conflicting tribal law. § 8-3-1.3. Both the complaint and writ of execution (for eviction) in this case were directed to "defendant Stone and all other occupants of Unit 333-05." Appellant's brief at 8-9.

There is no requirement in the Tribal Landlord/Tenant Code that a landlord name any (or all) known or unknown occupants of unit in an eviction proceeding. The only Code requirement is that such an action be brought against the tenant(s) named in the lease. This is the basic black letter principle of landlord tenant law. *Thompson on Real Property*, Vol. 3A, § 1357, Termination of Leases (1981).

This rule appears uniform across all (state) jurisdictions. See e.g. *Telegraph Ave. Corp. v. Raentsoh*, 269 P. 1109 (Col. 1928); *Lakota Community Homes v. Randall*, 2004 SD 16 (2004).

While no tribal court cases have been cited by the parties (presumably because none are available), the established rule reflects both fairness and common sense. It is only the named tenants that have a legal relationship with the landlord and would create a problematic situation if the rule were otherwise. It would force the landlord to bring 'John/Jane Doe' actions against any number of known or unknown parties. This defies common sense.

While there may be a rare and unusual case where a party not identified on the lease may have a legitimate interest in the eviction proceeding, there is no evidence of such in this case.

The order of trial court in the matter provides no legal justification for its order except its citation to § 8-3-4.6, which states:

Notice to quit. Following any notice which terminates or cancels an agreement a *tenant* may be given a notice to quit possession of the premises. Except by mutual consent of the parties, no landlord may compel a tenant to vacate any premises in a forceful fashion

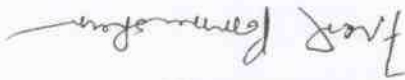
or way which causes a breach of the peace without giving a notice to quit and obtaining a court order of eviction. For purposes of this section, a notice to quit shall be the same as the notice provided in 8-3-4.4.

But as all parties agree, Mr. Iron Shell is not a named *tenant* on the lease.

IV. Conclusion

For all the above-stated reasons, the motion for summary disposition is hereby granted and the trial court's order of April 27, 2004 is hereby reversed. Ordered this 25th day of August, 2005.

FOR THE COURT:



Frank Pommersheim, Associate Justice