

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

SS

IN TRIBAL COURT

 * * * * *
 RAYMOND WRIGHT, *
 *
 Plaintiff, * CIV 89-483
 *
 vs. * MEMORANDUM DECISION
 *
 PUETZ CONSTRUCTION, INC., *
 *
 Defendant. *
 *

The Plaintiff is an enrolled member of the Rosebud Sioux Tribe and resides within the exterior boundaries of the Rosebud Sioux Reservation.

Plaintiff brings this cause of action claiming damages for alleged personal injuries as a proximate cause of the negligence of the Defendant.

The complaint alleges in paragraph (4):

That on or about October 12, 1989, in Mission, South Dakota on the Rosebud Sioux Indian Reservation, the Defendant through its agent employee and servant, Justin Snow Fly, negligently, and with great force and violence drove a pickup truck belonging to the Defendant, into Plaintiff pinning him against another pickup truck which was parked.

The Defendant is a corporation licensed to do business in the State of South Dakota with its principal place of business in Mitchell, South Dakota.

Defendant moves this Court to dismiss the action for the reason that Plaintiff's Complaint lacks personal and subject matter jurisdiction over the Defendant. Defendant contends this Court lacks jurisdiction because the Defendant

is non-Indian and that the alleged incident occurred on non-Indian owned fee land within the exterior boundaries of the Rosebud Indian Reservation.

In order for this Court to assume Judicial jurisdiction of this case it must determine that it has territorial, subject matter and personal jurisdiction.

I. TERRITORIAL JURISDICTION

Article I of the Constitution and Bylaws of the Rosebud Sioux Tribe states:

That the jurisdiction of the Rosebud Sioux Tribe of Indians shall extend to the territory within the original confines of the Rosebud Reservation boundaries as established by the Act of March 2, 1889, and to such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

The Act of March 2, 1889 encompasses the present counties of Gregory, a portion of Lyman, Tripp Mellette and Todd. Subsequent Congressional Acts of 1904, 1907 and 1910 opened unallotted lands of the Reservation for homesteading. These Acts have been held to demonstrate a Congressional intent to diminish the boundaries of the Reservation and to remove certain lands in four of the counties from the jurisdiction of the tribe. Rosebud Sioux Tribe v. Kneip, 97 S. Ct. 1361 (1977). "[O]nly Todd County remains unaffected by these post 1889 enactments." Id. at 1363. Thus it is clear that Todd County is within the exterior boundaries of the Rosebud Indian Reservation and within the jurisdiction of the Rosebud Sioux Tribe.

II. SUBJECT MATTER JURISDICTION

In October 1988 the Rosebud Sioux Tribal Council enacted legislation to regulate business conducted within the Rosebud Indian Reservation by Indians and non-Indians. See § 16-1-101.

The purpose of the legislation is to regulate persons engaged in trade and business on the Reservation "to safeguard and promote the peace, safety, morals, and general welfare of the Tribe." ... §16-1-103. The definition of "person" includes corporation. § 16-1-104 (11).

Business licenses apply "to all persons engaged in business within the exterior boundaries of the Reservation. No person shall engage in business upon the Reservation without a valid business license issued by the Tribe, ..." §16-1-201.

Section 16-1-202 sets forth the application and issuance process for a business license.

This section provides among other things that all applications shall include:

- (1) A description of the type of business;
- (2) The name and address of the owners of the business;
- (3) The trade name, if any, to be used by the company;
- (4) The locations on the Reservation at which the business will be conducted;
- (5) A sworn statement that the applicant will comply with all Tribal law applicable to the applicant's business;
- (6) A statement that the applicant consents to Tribal Court jurisdiction and service of process in matters arising from the conduct

of business;

- (7) The, name, address and signature of the agent who will accept service of process on behalf of the company

* * *

Once the license issues certain conditions attach.

Section 16-1-206 provides the following conditions:

Each licensee shall comply with all applicable tribal laws, including but not limited to: tax laws, Indian employment and contracting preference laws, health and sanitation laws and consumer protection laws. The Tribe may, but need not, notify each licensee by regular mail of any additional tribal laws with which the licensee must comply as such laws are enacted by the Council.

Each licensee consents to the jurisdiction of Tribal Court as to any cause of action arising in connection with the transaction of any business within the Reservation, or any tortious acts committed in connection with the transaction of any business within the Reservation. Each licensee consents to the service of process of the Tribal Court with respect to all actions over which the Tribal Court has subject matter jurisdiction, in accordance with the Rules of Procedure of the Tribal Court.

Each licensee shall respond in a timely manner to requests by the Tribal Revenue Department for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with the terms of this Chapter.

On February 14, 1989 Defendant submitted an application for a business license. The application was received on February 15, 1989 and the Business license was issued on February 17, 1989 duly executed by the Revenue Director and Tribal President.

Defendant contends that it obtained a Tribal business

license but was never informed that obtaining the license required the Defendant to consent to Tribal Court jurisdiction. Defendant contends further that the business license application did not contain any statement that by making such application Defendant consented to Tribal Court Jurisdiction.

The Court finds no merit to this contention. Subsections (5) and (6) of § 16-1-202 are required to be included in the application as a prerequisite to obtaining the business license. While the tribe may have implicitly waived the requirement that the statements required by subsections (5) and (6) be included in the application Defendant cannot contend that he is not subject to tribal Court jurisdiction.

The license was issued to the Defendant on February 17, 1989. At that point Defendant was a licensee subject to the conditions of the license. In addition Defendant had opportunity to obtain information about the business license law of the tribe. In a letter to the Defendant, dated February 10, 1989 a brief explanation was given for the need for a business license and how to obtain information about the various laws and a copy of the code.

In short the Tribal Council passed a law requiring a business license to do business on the Rosebud Reservation. By obtaining a license the licensee consents to Tribal Court jurisdiction as a condition of the license. One such condition is that "[e]ach licensee consents to the

jurisdiction of Tribal Court as to any cause of action arising in connection with the transaction of any business within the Reservation, or any tortious acts committed in connection with the transaction of any business within the Reservation." ... " § 16-1-206. The allegation in the Complaint is that the Defendant committed a tortious act while transacting business on the Rosebud Reservation.

In addition to the business license provisions the Tribal Code authorizes this Court to award money damages generally and for personal injuries. § 8-6-1 and § 8-8-1.

III. PERSONAL JURISDICTION

Rosebud Sioux Tribe Law and Order Code

§ 4-2-6 provides jurisdiction over persons as follows:

The Rosebud Sioux Tribal Court will exercise civil and criminal jurisdiction over all persons within its territorial jurisdiction to the extent allowed by Federal statutory law and Federal Court decisions. It is recognized that decisions such as Oliphant (55 Lawyers Ed. 2d 209) limit the jurisdiction of this Court over certain non-Indian. However, the Rosebud Sioux Tribal Court will continue to exercise all of the civil and criminal jurisdiction over all persons allowed to it by federal statute and federal judicial Court decisions.

This particular section was analyzed by the Court of Appeals for the Rosebud Sioux Tribe in the case of Rosebud Housing Authority v. Greaves & Reifle, (unreported).

In that case the Court of Appeals states:

Section 4-2-6 is a (sic) interesting statute. In that statute the initial two (2) sentences relate to jurisdiction over non-Indians. The intent is clear, the first two sentences are a response to Oliphant v. Suquanish Indian Tribe,

455 U.S. 191, ___ S.Ct. ___ 1011 (1978).
 The Oliphant case refers to the United States Supreme Court decision stating that Tribal Court's do not have jurisdiction over non-Indians in criminal matters. By referring to Oliphant in these two sentences, the intent is that the first two sentences refer to jurisdiction of non-Indians and that the Rosebud Sioux Tribe intends to exercise all jurisdictional authority over non-Indians allowed by federal law. Federal law acknowledge that jurisdiction does exist over non-Indians for transactions arising within the exterior boundaries of the Reservation where there are vital interests of the Tribal government. Even though criminal jurisdiction of Tribal Courts is substantially limited by federal law, "civil jurisdiction is not similarly restricted." Iowa Mutual supree, at ___ U.S. ___ 1075. Ct. at 976. See National Farmer's Union Insurance Company v. Crow Tribe of Indians, ___ U.S. ___, 105 S. Ct. 2447 (1985); Weeks Construction, Supra. Any claim that the established law is that Tribal Courts do not have jurisdiction over non-Indians is not recognized by this Court.
Id at 9, 10.

On January 11, 1989 the Rosebud Sioux Tribal Court adopted Ordinance 88-14 entitled "Civil Amendments of 1989." The amendments include the following:

4-2-7. Personal Service Off of Reservation - Acts Submitting Non- resident Persons to Jurisdiction of Court.

- A. To the greatest extent consistent with due process of law, any person, whether or not a citizen, resident, or present on the Reservation, who in person or through an agent does any of the acts as enumerated in this Section, thereby submits said person or his personal representative to the jurisdiction of the Tribal Court as to any cause of action arising from doing any of the following acts within the Rosebud Indian Reservation:
 1. The Transaction of any business;
 2. The commission of a tortious act;

3. The ownership, use or possession of any property, real or personal;
4. Contracting to insure any person, property or risk;
5. The act of sexual intercourse within this Reservation;
6. Living in a marital relationship, notwithstanding the subsequent departure from this Reservation, as to any action for divorce or separate maintenance so long as the petitioning party has continued to reside within the Reservation.

B. Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this Section.

C. Nothing in this Section limits or affects jurisdiction over persons now or hereafter provided by law or the right to serve any process in any other manner now or hereafter provided by law.

Pursuant to § 4-26, 4-2-7, and 16-1-206 it is clear that this Court has personal jurisdiction over the Defendant. Defendant entered into a contract with the Rosebud Housing Authority to build 45 dwelling units on the Rosebud Reservation at a cost of \$2,525,000.00. Rosebud Housing Authority is a tribal agency in the business of providing low cost housing on the Rosebud Reservation. Defendant applied for and received a business license which entitled Defendant to transact business on the reservation. While Defendant was engaged in construction on the Rosebud Reservation Defendant allegedly injured a tribal member through negligence on the part of the Defendant.

Having determined that this Court has the requisite

territorial, personal and subject matter jurisdiction over this case it must proceed to determine whether the tribe has the authority to make laws governing the conduct of non-Indians on the Reservation.

The leading case involving the extent of tribal authority over the conduct of non-Indians on the Reservation is Montana v. United States, 450 U.S. 544 (1981), 8 ILR 1005. In Montana the U.S. Supreme Court acknowledged that tribes have authority to exercise some forms of Civil jurisdiction over non-Indians on the Reservation.

To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A Tribe may regulate, through taxation, licensing, or other means, the activities of non-members, who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (citations omitted).

Defendant contends this Court lacks jurisdiction since the issues raised in the complaint do not deal with regulation of the Defendant, taxation or licensing with the tribe or its members. In other words Defendant contends this Court lacks jurisdiction because there is no consensual relationship between the Plaintiff and Defendant because there is no contract between them.

According to Montana the tribe " may regulate through ... licensing ... the activities of non-Indians who enter consensual relationship's with the tribe or its members, through commercial dealings, contracts, leases or other arrangements." 450 U.S. at _____, 8 ILR at 1011.

The Defendant has entered into a consensual relationship with the tribe. The Defendant made application for and did obtain a business license to transact business on the Rosebud Reservation. The Defendant entered into a contract with the Rosebud Housing Authority, a Tribal agency whose purpose is to provide low cost housing on the Reservation. The contract called for Defendant to construct 45 dwelling units on the Rosebud Reservation for a contract price of \$2,525,000.00. In addition to obtaining a business license the Defendant signed a Tribal Employment and Contracting Rights office Compliance Plan wherein Defendant agreed that 80% of all employees in the semi-skilled, unskilled, laborer, or office/clerical positions will be filled by local Indians or Indian employees.

The tribe has enacted the business license code to regulate the activities of Indians and non-Indians who transact business on the Rosebud Reservation. The Tribe finds regulation is" necessary to safeguard and promote the peace, safety, morals, and general welfare of the Tribe."...§ 16-1-103.

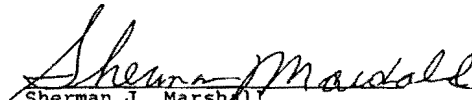
Defendant misreads Montana to require there be a contractual relationship between the Plaintiff and

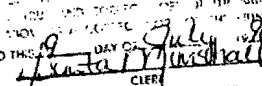
Defendant.

As it applies to the case the requirements of Montana are satisfied. The Defendant is a non-Indian who entered into a consensual relationship with a tribal agency through a contract. The tribe has enacted legislation to regulate such business license and the creation of Tribal Employment and Contracting Rights Office. One of the conditions of the business license is that the license consents to the jurisdiction of the Tribal Court. The Defendant obtained a license and is therefore subject to this Courts jurisdiction.

For those reasons set forth above, the Defendant's Motion to Dismiss the Complaint is denied. This Memorandum Decision constitutes the Findings of Fact and Conclusions of Law of the Court.

Dated this 6th day of July, 1990.


Sherman J. Marshall
Chief Tribal Judge

STATE OF SOUTH DAKOTA
ROSEBUD SIOUX TRIBAL COURT
ROSEBUD, SIOUX
I HEREBY CERTIFY THAT I HAVE CAREFULLY EXAMINED
THE WRITING OF THE COURT AND COMPARED THE SAME WITH THE
ORIGINAL FILED IN THE OFFICE OF THE CLERK OF THE COURT
AND THAT THE SAME IS A TRUE AND CORRECT COPY OF THE SAME
AND THAT THE COURT HAS RECEIVED THE ORIGINAL THEREON, DATED THIS 9 DAY OF July, 1990.
CLERK

ROSEBUD SIOUX TRIBAL COURT