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7/07 MPT 1

① Because Indian Tribes Retain Inherent Sovereign Powers to Exercise Some Forms of Civil Jurisdiction over Non-Indians on Non-Indian Fee Land,
There is no genuine issue of material fact that the Tribe has Jurisdiction

② Because Indian Tribes Retain Inherent Sovereign Powers to Exercise Some

Forms of Civil Jurisdiction over Non-Indians on Non-Indian Fee

Lands, there is no genuine issue of material fact that the TRIBE

Has Jurisdiction over Plaintiff Acme's ~~activities on~~ ~~land~~

As stated in AO Architects v. Red Fox et al. (hereinafter "AO"),

Analysis of Indian tribal court civil jurisdiction begins with

Montana v. United States (hereinafter "Montana"). In Montana,

the ~~the~~ U.S. Supreme Court ("SC") held that absent express ~~authority~~

authorization by federal statute or treaty, the inherent sovereign powers of

an Indian tribe do not, as a general proposition, extend to the activities

of nonmembers of the tribe.

This being the case, the SC did acknowledge that there were two instances where the Indian Tribes do "retain inherent Sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. These two instances are :

① The Tribe could exercise such sovereignty where a "tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements" ; and

② The tribe could exercise such sovereignty where 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 and welfare of the tribe": (Montana).

Here, the land in question is non-Indian fee land owned by Patrick Murray. Both prongs of Montana's exceptions apply to this case. ~~Acme has entered into~~

Acme has entered into a consensual relationship with the tribe through commercial dealings. ~~Acme has~~ As part of Acme's contract to extract methane gas, it is providing royalties to the tribe. The tribe has leased the minerals under Murray's land to Acme, and as such, Acme is developing the coal bed methane. Clearly Acme, as a nonmember of the tribe, has entered ~~into a~~ ^{into a} consensual relationship.

with the tribe. Hence, the first exception to Montana applies.

Secondly, the tribe retains ~~an~~ inherent power to exercise civil authority over the ~~the~~ conduct of Acme because the second exception

to Montana has been ~~not~~ met. Acme's actions in extracting

the methane gas does have an ~~appreciable~~ effect on "the

economic security" and "the health and welfare of the tribe." (Montana)

As stated in the affidavit by ~~Dr.~~ Jesse Bellingham, PhD, a geologist from the University of Franklin, it is his professional opinion

"that coal bed methane development activity by Acme Resources Inc. is

causing the defendant's ("Tribe") wells to run dry. Additionally,

it is his opinion that the ^{all the} Reservations wells will run dry

over the next five years if Acme's coal bed ~~the~~ methane development

continues. Furthermore, Robert Black Hawk, has indicated

that he cannot economically use his land to grow crops and feed

cattle without water, and there is no other source of water

available to him. Clearly with the wells running dry,

~~because both~~ the economic security (no beef to sell)

and the health and welfare of the tribe (no water to drink)

are ~~at~~ at stake. Furthermore, the consequences of Acme's actions in drilling ~~at the site~~ would certainly be felt on the Tribe's land.

Because both exceptions to Montana have been satisfied,

the tribe most certainly has jurisdiction over plaintiff Acme in

tribal court, hence summary judgment must be granted in favor

of the Tribe.



② Under the Tribal Exhaustion Doctrine requiring that a Party exhaust its Remedies in Tribal Court Before seeking Relief in Federal Court, the United States District Court For the District of Franklin must stay or Dismiss Acme's Complaint on the Ground that the BLACK EAGLE TRIBE Must Be Permitted to Consider its Jurisdiction Over THE MATTER.

~~Under~~ The Tribe should be given the first opportunity to address its jurisdiction and explain its basis for jurisdiction to both Acme and the Tribe. Under National Farmers Union Ind. Cas. v. Crow TR the United States Supreme Court applied a tribal exhaustion doctrine requiring that a party exhaust its remedies in tribal court before seeking relief in federal court. This doctrine is based on a

"policy of supporting tribal self-government and self-determination."

(National Farmers). The Supreme Court decided that

a federal court should ordinarily stay its hand "Until after the

tribal court has had a full opportunity to determine its own

jurisdiction." (National Farmers. See also, "AO") As stated

in "AO", the Supreme Court has emphasized that the exhaustion

doctrine is based on "comity." ~~the~~ ("AO"). The "comity doctrine reflects

a practice of deference to another court and is not a jurisdictional

prerequisite. Thus, where it is clear that a tribal court lacks jurisdiction,

the exhaustion doctrine gives way for it would serve no purpose other than

delay. (see State v. A-1 Contractors (V.S. 1997))

Here the Tribe is clearly ~~alleging~~ alleging that there has been

no exhaustion of tribal remedies. In fact, Acme ~~the~~ has alleged

that the Black Eagle Tribal Court lacks jurisdiction over ~~the~~ ^{Aene} ~~the~~ ^{Aene} in the tribal court action (because Aene is not a member of the ~~tribe~~ ^{tribe}) and is praying the Court enter a judgment enjoining the Tribe from prosecuting the tribal court action. The Federal Court must stay or dismiss Aene's complaint so that the Tribal Court may be permitted to consider its jurisdiction over the matter.

~~Because of the decision in Montana, which~~

In Strate, the Court held that a tribal court had no jurisdiction to hear a personal injury lawsuit between non-tribal members arising from a car accident that occurred on a state highway running through a reservation. Unlike Strate, where the Court ~~decided~~ ^{found} that that case was not closely related to any consensual relationship between non-member and the tribe or a tribe member, and as such it was

distinctly non-tribal in nature" (Strate, citing CF. Franklin Motor Credit

Co. v. Turnmiller, 15th Cir. 2005), here there is a consensual

relationship between Acme and the Tribe. Here there is a "direct

nexus" between Acme and the Tribe because they entered into an

~~agreement~~ ~~with~~ The Tribal Council voted on an agreement with

Acme whereby the Tribe is getting a 20% royalty on all

methane production. Unlike Strate, there is a consensual relationship

between a non-member ("Acme") and the tribe.

Since the Tribe should be permitted to consider its jurisdiction

over this matter, the United States District Court for the

District of Franklin must stay or dismiss Acme's Federal action on

the ground that the ~~Federal Court~~ Black Eagle Tribal Court

must be permitted to consider its jurisdiction over the matter. Acme

must exhaust its tribal court remedies before seeking relief in Federal Court. Although Acme is not a member of the Tribe (Montana), the Tribe still retains inherent sovereign power to exercise some form of civil jurisdiction over non-Indian (Acme) on ~~state land~~ non-Indian fee land. Hence, ~~the~~ Acme ~~must~~ ~~also~~ under the Tribal Exhaustion Doctrine must exhaust its tribal court remedies before seeking relief in Federal Court. Acme's Complaint must be dismissed, or in the alternative, the Federal Court should stay its hand. ~~and allow Acme to~~