

IN THE CROW COURT OF APPEALS

IN AND FOR THE CROW INDIAN RESERVATION

CROW AGENCY, MONTANA

CIV. APP. DOCKET NO. 95-095

**DENNIS WARREN,
Plaintiff/Appellee,**

vs.

**BILL GARDNER,
Defendant/Appellant.**

Decision Entered August 21, 1997

[Cite as 1997 CROW 1]

Before Birdinground, J., Stewart, J., and Watt, J.

OPINION

[¶1](#) Defendant Bill Gardner has appealed a Judgment of the Crow Tribal Court (Arneson, J.), awarding to plaintiff Dennis Warren the sum of \$1,483.67, plus post-judgment interest at 10% per annum, for an appraisal of Crow Allotment #202-544.

Statement of Facts

[¶2](#) The Tribal Court found that the allegations in the complaint were true (Judgment, ¶ 2). The record supports this finding, except with respect to the date that Jacox inspected the property and Gardner signed the guarantee (July 19, 1994, instead of August 5 as alleged in the Complaint). The following statement of facts also adopts Mr. Gardner's undisputed allegations and testimony, and other undisputed facts contained in the record.

[¶3](#) Bill Gardner is a member of the Crow Tribe residing in Lodge Grass. He owned an

interest in Allotment #544, a 720-acre parcel of Indian trust land known as the Thomas Gardner Grazing Tract located near St. Xavier on the Crow Reservation in Big Horn County, Montana. Dennis Warren is a state-certified professional real estate appraiser with offices in Billings. During the summer of 1994, Gardner requested Dennis Warren to appraise the fair market value of Allotment #544 for a sale in trust to another Tribal member, Shirley Miller.

¶4 On July 19, 1994, Warren's contract assistant, Bob Jacox, went to take pictures of the property. He also met with Bill Gardner, and Gardner signed an undated "Guarantee of Payment" promising to pay Warren an appraisal fee "between \$1400 and \$1800." At that time, Gardner also changed the language of the guarantee to make payment due "upon completion of the land sale" rather than completion of the appraisal, and Jacox initialed the change.

¶5 Warren completed his appraisal and delivered it to Gardner on or about August 10, 1994, along with a bill for \$1,483.67. The charges included \$990.00 for 22 hours of certified appraiser time at \$45 per hour, and \$383.50 for contract labor.

¶6 The appraisal consisted of 35 pages plus a summary, supporting appendices, photographs, and disclaimers, and was signed by Warren and "associate appraiser" Janet Urlacher. Among other factors, the appraisal considered the property's location (p.5), weed conditions (p.6), carrying capacity (p.7), and the current lease income (p. 10). With regard to the dirt-road access to the property, the appraisal stated:

It appears that a granted easement(s) *does not* exist for access to the tract; such access, however, is not uncommon on the Crow Reservation. . . . Overall, the questionable access to the tract does not have a significant negative effect on value, as it is typical of reservation properties in this area.

¶7 Appraisal at page 5 (emphasis in original). Elsewhere, the appraisal states: "Although legal access is assumed through prescription, access may also be a potential problem to any buyer not owning adjoining lands." Appraisal at page 10.

¶8 The appraisal's consideration of the "income approach" assumed a net lease operating income of almost 50% higher than the current lease rate (\$2,141 per year vs. \$1,440). The appraisal considered six "comparable sales" ranging from \$86 per acre to \$107 per acre for 160 - 1,040 acre grazing tracts sold between 1989 and late-1993. It also considered a large recent sale of Campbell Farming grazing lands at \$60 per acre.

¶9 In the appraisal certification, Warren and Urlacher affirmed that the appraisal report conformed with the Uniform Standards of Professional Appraisal Practice. The certification disclosed that Bob Jacox performed a preliminary field inspection, but that he did not provide significant assistance regarding any value conclusions. The certification also stated that "We have made a personal inspection of the property that is the subject of this report." The appraisal placed the "market value" of the property as of July 19, 1994, at \$63,000, or \$87.45 per acre.

¶10 Gardner was not satisfied with Warren's appraised value, and the sale was apparently completed later at a different price. When Warren did not receive payment, he contacted Gardner, who at one time agreed to pay Warren \$50 per month. Warren and his lawyer sent letters to Gardner demanding payment, but Gardner has paid nothing to Warren for the appraisal.

Course of Proceedings

¶11 Warren filed his Complaint for collection of the appraisal fee in the Crow Tribal Court on March 28, 1995. The case was tried to Judge Arneson on June 12, 1995, with Warren represented by counsel and Gardner appearing *pro se*. At trial, Gardner offered as evidence the BIA appraisal dated September 20, 1994 (Defendant's Exhibit A), and Warren objected on grounds of relevancy and lack of foundation. The Tribal Court entered Judgment against Gardner that same day for the amount sought in the complaint.

¶12 Appellant Gardner filed a notice of appeal on June 23, 1995, and following this Court's scheduling order of December 13, 1995, the parties timely filed their briefs and supporting materials. After being continued for reasons relating to Mr. Gardner's health, oral argument was heard on June 20, 1996.

Issues on Appeal

¶13 Gardner argued at trial and on appeal that Warren did not really do the appraisal himself, but instead improperly relied on Bob Jacox, who is not a certified appraiser, to view the property and estimate its value. He argues that Warren's appraisal was too low, and pointed to the \$25,615 difference between it and the BIA appraisal. Gardner therefore argues that he owes nothing to Warren because Warren breached his contract, and that the Tribal Court's Judgment should be vacated.

¶14 Warren testified that he himself personally inspected the property, and that he performed the valuation work for the appraisal. He argues that Gardner can hardly protest the use of Jacox for some of the field work, because Gardner signed the guarantee after he already knew that Jacox had inspected the property, and using Jacox for some of the field work reduced the cost of the appraisal.

¶15 Warren also argues that the BIA appraisal is irrelevant to the issue of whether Gardner received the services for which he bargained, and it should not have been admitted as evidence based on lack of foundation and relevancy. At trial and on appeal, Warren contended that the main reason for the difference between the two appraisals is that the BIA did not consider the lack of legal access to the property, as Warren was bound to do by his professional appraiser's standards and ethics. Warren requests us to affirm the Tribal Court's judgment, and to award his costs on appeal.

Subject Matter Jurisdiction

¶16 The Tribal Court specifically held that it had jurisdiction of this matter involving a dispute over payment for an appraisal of Crow trust land. This is consistent with the Tribal Code, which asserts jurisdiction over "all civil causes of action arising within the exterior boundaries of the Crow Indian Reservation," Crow Tribal Code § 3-2-205, with such jurisdiction "limited only by federal law." Crow Tribal Code § 3-2-204(1).

¶17 We note that under federal law, any contract "touching" trust allotments which has not been approved by the Secretary of the Interior is "absolutely null and void." 25 U.S.C. § 348. Federal courts have jurisdiction pursuant to 28 U.S.C. § 1353 and 25 U.S.C. § 345 of disputes involving interests in Indian allotments, to the exclusion of state courts. See, e.g., State of Alaska Dept. of Public Works v. Agli, 472 F. Supp. 70 (D. Alaska 1979). Accordingly, the Montana Supreme Court has recognized the strong

federal and Tribal interests at stake in disputes concerning Indian trust allotments, and has declined to assert jurisdiction that would involve even appraising the value of such lands. In re Marriage of Wellman, 258 Mont. 131, 852 P.2d 559 (1993) (marital estate involving Blackfeet trust lands). In at least one case, Federal court jurisdiction has also been held to exclude Tribal court jurisdiction in circumstances that would involve directly adjudicating an interest in the allotment. Fredericks v. Mandel, 650 F.2d 144 (8th Cir. 1981) (no Tribal court jurisdiction to grant an easement across an allotment). In a case a little closer to home, however, the Ninth Circuit has held that the U.S. District Court must abstain pending exhaustion of Crow Tribal Court remedies even if it otherwise would have jurisdiction over a dispute involving interests in trust lands. United States v. Plainbull, 957 F.2d 724 (9th Cir. 1992) (trespass on Tribal range units).

¶18 In this case, resolving the dispute over payment for the appraisal does not directly or indirectly affect any title or interest in trust lands. We therefore hold that the contract for the appraisal does not sufficiently touch upon interests in trust lands so as to be void as a matter of federal law, or to invoke exclusive federal court jurisdiction.

¶19 The fact that a Crow trust allotment was the subject of the appraisal contract, that performance of the contract necessarily involved physically inspecting the land on the Reservation, and that one of the parties was a Tribal member residing on the Reservation, do mean that the contract dispute arose on the Reservation. See R.J. Williams Co. v. Fort Belknap Housing Authority, 719 F.2d 979, 985 (9th Cir. 1983). “When a contract concerns a specific physical thing, such as land or a chattel, the location of the thing is regarded as highly significant.” Id.

¶20 Thus, for jurisdictional purposes, this case is an action for collection of a debt from a Crow Tribal member arising from a contract performed on the Reservation, over which the Tribal Court has exclusive jurisdiction under the Crow Tribal Code, and as a matter of federal law. Williams v. Lee, 358 U.S. 217 (1959).

Discussion

¶21 Under federal law, all sales of Indian trust land require an appraisal “indicating the fair market value.” 25 C.F.R. § 152.24. Any negotiated sale of a trust allotment must be “for not less than appraised fair market value.” 25 C.F.R. § 152.25(a). Accordingly, as Mr. Warren has recognized, a professional appraiser of Indian trust lands is subject to the standards and requirements of federal law. See, e.g., 12 U.S.C. § 3331, *et. seq.*, and 12 C.F.R. Part 323 (appraisal standards applicable to transactions of federally-regulated financial institutions); 43 C.F.R. Part 2200 (federal land exchanges). Undoubtedly, the appraiser also owes a corresponding fiduciary duty to the allotment owner under Tribal common law to conform to federal appraisal standards, although no damages claims for a breach of that duty are involved in this case.

¶22 Because of the importance of accurate appraisals for Crow trust lands, and according to general principles of contract law, the question raised by Mr. Gardner -- whether the appraisal was competently performed and indicated a reasonable “fair market value” -- is relevant to the issue of whether he is obligated to pay for the appraisal. This is the service that Gardner bargained for, and the appraisal must conform to applicable federal and professional appraisal standards in order for Warren to be entitled to payment.

¶23 The Tribal Court apparently found no merit to Gardner’s argument that Jacox was improperly involved in the appraisal. We agree. Although the record does not

disclose exactly what services Jacox rendered for his \$383.50 contractor's bill (or provide an itemized description of Warren's time), the total charges were well within the range stated in the guarantee that Gardner signed. Gardner's signature on the payment guarantee that Jacox presented to him indicates that Gardner did not object to Jacox assisting with this field work until after he became dissatisfied with the results of the appraisal. And although Warren could have extended the courtesy of inviting Gardner to accompany him on his inspection, Mr. Gardner is not able to dispute that Warren actually inspected the property as Warren testified under oath and certified in the appraisal.

[¶24](#) As to Mr. Gardner's other defense, we believe that the discrepancy between Warren's appraised value (\$63,000) and the BIA appraisal dated September 20, 1994 (\$88,615) is relevant. Under the Crow Rules of Civil Procedure, "the rules of evidence applicable to civil actions in the Crow Tribal Court shall be the Federal Rules of Evidence, as amended." Crow R. Civ. P. 11(a). The more than 40% difference between the two appraisals certainly meets the criteria for relevance under Fed. R. Evid. 401. Arguably, the BIA appraisal is otherwise admissible under the hearsay exceptions in Fed. R. Evid. 803(8) and (24), the authentication requirement of Rule 901(b)(7), and the best evidence requirements of Rules 1003 and/or 1005.

[¶25](#) Despite whatever strong presumptions of competence and authenticity are afforded to Bureau of Indian Affairs documents by our courts, any probative value of this BIA appraisal is limited by its lack of explanation of the basis for its higher appraised value. It is not supported by any substantial written analysis, although it does briefly describe the soil type and carrying capacity in essentially the same terms as Warren. The BIA appraisal does not discuss its assumptions or the methods employed, list any comparable sales, or consider the lack of granted access. Without any official's testimony, by declaration or otherwise, laying additional foundation for the BIA appraisal or describing its methodology and the factors considered, the Tribal Court did not abuse its discretion by not placing great weight on the BIA appraisal. We do not need to decide whether or not it was properly admitted into evidence, because Warren did not appeal this issue, and even if the Tribal Court erred in this regard, it was harmless error.

[¶26](#) The only explanation for the difference between the appraisals was offered by Mr. Warren--the question of legal access. In this regard, we note some confusion between the statements in Warren's appraisal that the lack of granted access "does not have a significant negative effect on value," and his statements in the court proceedings that the BIA's failure to consider lack of recorded legal access probably accounted for most of the difference in appraised values (See, e.g., Appellee's Brief at 5-7). It is not clear the extent to which Warren discounts the value of "reservation properties" which lack granted access, or whether the comparable sales examples already reflect the same problems with lack of granted access and no adjustment is necessary. It is also not clear what legal analysis supports Mr. Warren's assumptions that there is prescriptive access, but that any owner who does not have adjoining lands could still have problems.

[¶27](#) Although these access questions are troubling, this is not the proper case for an exhaustive inquiry into the legal and jurisdictional questions involved in access to trust allotments. Mr. Gardner has not himself argued that Warren treated the access question improperly. Mr. Warren's appraisal on its face appears to conform to applicable federal and professional appraisal standards, and he was bound by those standards to some way take into account the lack of granted access. Except for his objection to Bob Jacox' participation in the appraisal, Mr. Gardner has not criticized any specific assumption or method used in Warren's appraisal, or offered any expert testimony or other competent evidence showing that Warren's appraisal did not conform to applicable standards.

Conclusion

¶28 Based on the record before us, the Tribal Court's findings of fact were not clearly erroneous, and the Court did not err in holding that Dennis Warren was entitled to payment from Bill Gardner of the amount claimed in the complaint.

The judgment of the Tribal Court is **AFFIRMED**. Each party shall bear his own costs of this appeal.

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