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**FORT PECK COURT OF APPEALS  
ASSINIBOINE AND SIOUX TRIBES  
FORT PECK INDIAN RESERVATION  
POPLAR, MONTANA**

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IN THE MATTER OF:

Linda Neilsen,  
Appellant

vs

**Appeal No. 459**

MARGARET BROCKSMITH, individually and as  
personal representative of the Estate of CHARLES H.  
BROCKSMITH, BROCKSMITH LAND AND  
LIVESTOCK, CO., KAY I. BROCKSMITH DORE and  
MARGARET LEE BROCKSMITH HEINS,  
Appellees

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**OPINION AND ORDER**

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This matter comes before the Court on an appeal filed by Appellant, Linda Nielsen, of a Tribal Court Order of Dismissal of her Complaint with prejudice. The Court Order appealed is dated August 2, 2006, the Honorable Lonnie Headdress presiding. For the reasons stated herein, we affirm the dismissal order.

**APPEARANCES**

**Laura Christoffersen, Esq .**, KNIERIM, FEWER & CHRISTOFFERSEN, P.C., P.O. Box 650, Culbertson, Montana 59218-0650, as Attorney for Appellant.

**Terrance L. Toavs, Esq .**, 429 – 2 nd Avenue South, Wolf Point, Montana 59201, as Attorney for Appellees.

**BRIEF FACTUAL OVERVIEW AND PROCEDURAL HISTORY**

The facts as to the issues before the Court are generally undisputed. In February of 2000, the Appellant, "Nielsen", contracted with Appellees, "Brocksmiths" to purchase certain real estate, equipment and personal property. By the terms of the sale agreements, Nielsen was to assume risk of loss and take immediate possession pending full performance of the contract. Brocksmiths were required to furnish merchantable title to the fee land, lease assignments and trust land and lease conveyances.

Various title issues appeared in regard to merchantable title transfer. The closing was delayed to January of 2001, subject to a reservation of rights. Due to the delay in closing caused by the title issues, Nielsen claimed losses and injuries in her court filings.

The record shows that Brocksmiths held certain sale assets in a corporation with its registered agent and corporate headquarters in Glasgow, Valley County, Montana. Other sale assets were held individually. Charles H. Brocksmith was a Fort Peck Tribal member and the sale also involved conveyance of Indian Trust lands and leases. At the time of sale, Charles H. Brocksmith owned 100 percent of the voting stock of Brocksmith Land and Livestock Co, a Montana corporation. Charles H. Brocksmith died while the matter was pending, and his successors-in-interest appear as parties to the action before the Court.

The matter first appeared in litigation in a Fort Peck Tribal Court filing in 2000; Brocksmith – vs- Nielsen, Cause No. 00-10-200, brought by Brocksmiths for damages for failure to timely close the purchases described therein. Nielsen objected to subject matter and personal jurisdiction, but the tribal court denied the objections and asserted jurisdiction. That case was concluded in Tribal Court with the filing of a Motion for Leave to Amend by Nielsen, opposed by Brocksmith on the grounds of expiration of statute of limitations, and denied by the Court. Nielsen did not appeal.

On or about June of 2001, while the Tribal Court matter was pending, Nielsen filed a complaint in Montana District Court in the Seventeenth Judicial District, Valley County, Montana on substantially the same issues. This filing is the basis for Nielsen's legal argument herein for tolling of the three-year statute of limitations. Title IV CCOJ, §601; §27-2-407, M.C. A.

On or about August of 2001, Brocksmiths filed a Motion to Dismiss the District Court proceeding on the grounds that the Montana Court either lacked jurisdiction or must abstain from exercising jurisdiction. The District Court granted the Motion to Dismiss. That decision was appealed and was eventually affirmed by the Montana Supreme Court. *Nielsen v. Brocksmith Land & Livestock, Inc.*, 2004 MT 101, 88 P.3d 1269.

Nielsen filed the present Complaint in Tribal Court in February of 2006, asserting basically the same issues as she had in state court. The Tribal Court ordered that the Complaint be dismissed, and this appeal followed.

## ISSUE PRESENTED

Whether the Appellant's Complaint before the Court is barred by the statute of limitations, or equitable tolling of the statute of limitations.

## STANDARD OF REVIEW

The Court reviews orders of the Tribal Court regarding matters of law de Novo. Title II CCOJ §202.

## DISCUSSION

The applicable statute of limitations here is set forth in Title VIII CCOJ §601;

Limitation of actions. The court shall have no jurisdiction over any action brought more than three (3) years after the cause of action arose, except that no statute of limitation shall bar an action commenced by the Tribes.

Appellant here argues that her complaint is not time-barred because the issues were timely brought in another forum. The Appellant's argument is that the doctrine of "equitable tolling" should apply, and therefore the present cause should proceed to conclusion in Tribal Court

As counsel for each party discusses in well-prepared briefs, the question of equitable tolling of the statute of limitations was involved in an earlier opinion of this Court, *Todd –vs- General Motors Corporation*, (FPCOA, Appeal 215, 1995). Counsel for Appellant stated the basic concept as follows:

"The doctrine of equitable tolling applies in a case where the parties have previously been litigating the very same issues in another forum. Equitable tolling is the concept whereby the running of the statute of limitations is tolled because the parties have adequate notice of the claims and have opportunity to respond in a timely manner. The Montana courts have described this concept:

In **Erickson v. Croft** (1988), 233 Mont. 146, 760 P. 2d 706, this Court looked favorably upon the doctrine of equitable tolling. Under that doctrine, the statute of limitations may be tolled when a party reasonably and in good faith pursues one of several possible legal remedies and the claimant meets three criteria: " (1) timely notice to the defendant within the applicable statute of limitations in filing the first claim; (2) lack of prejudice to defendant in gathering evidence to defend against the second claim; and (3) good faith and reasonable conduct by the plaintiff in filing the second claim." **Chance v. Harrison**, 272 Mont. 52, 55, 899

The federal courts in Montana have also recognized the concept of equitable tolling when jurisdiction is first litigated in state, federal or tribal court and jurisdiction may lie in another jurisdiction. *State of Montana v. Gilham*, 133 F. 3d 1133, 1139 (1998)."

Response in Opposition to Motion to Dismiss, filed June 6, 2006, (Court file 06-2-050, FPTC).

However, as counsel for Appellee Brocksmith argues, the present case can be distinguished from the ruling in Todd. In Todd, the action was initiated in Federal Court, and was subsequently removed to Tribal Court in compliance with a court order just a few months after the statute of limitations had run. Before attempting removal, the Plaintiffs in Todd received a tribal court order assuming jurisdiction.

Here, by contrast, while Brocksmiths' complaint was pending in tribal court, Nielsen filed on the same issues in State District Court. The District and State Supreme Courts properly concluded that the Tribal Court was the more appropriate venue. Then, after several years and more than three years after the statute of limitations had expired, Appellant Nielsen filed the present case in Tribal Court. **Court record, by judicial notice.**

The purpose of the statute of limitation is to "promote justice by preventing surprises, through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared." Todd, supra, citing *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348, (1994).

We find and rule here that the facts of Todd are substantially different from those presented in the case before this Court today. The Montana courts have long recognized that once the Tribal Court asserts jurisdiction in a particular transaction, the State Court loses any concurrent jurisdiction over the transaction. ( See, *State ex rel. Iron Bear v. District Court*, 162 Mont. 335, at 346, 1973, followed by *In re Marriage of Limpy*, 195 Mont. 314, 1981, *Stewart v. District Court*, 187 Mont. 209, 1980, and *Agri West v. Koyama Farms*, 281 Mont. 167, among others). Therefore, the FPTC is the court of competent jurisdiction over the matter.

Here, the Tribal Court exercised jurisdiction over the matter in 2000 and made a final Order on the matter in 2004. Nielsen is precluded from raising the same issues by the present Complaint.

## **CONCLUSION**

The ruling of the Fort Peck Tribal Court dismissing Appellant's complaint with prejudice should be affirmed.

**IT IS NOW, THEREFORE, THE ORDER OF THIS COURT THAT:**

The order of the Fort Peck Tribal Court dismissing Plaintiff's complaint with prejudice be, and the same is hereby affirmed.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**BY THE FORT PECK COURT OF APPEALS:**

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Brenda Desmond, Chief Justice

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Gerard Schuster, Associate Justice

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Joseph Raffiani, Associate Justice

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