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

IN THE MATTER OF
DANIEL R. SCHAUER,
     Plaintiff/Appellant

Appeal No. 114

vs.

ROXANNE GOURNEAU,
     Defendant/Appellee.

   THIS MATTER came before the Court on a petition for review of a Court order issued in favor of Defendant/Appellee on June 8, 1990; the Honorable A.T. Stafne presiding. The order dismissed Plaintiff/Appellant's action for a money judgment on an oral contract between the parties.

APPEARANCES:

FOR PLAINTIFF/APPELLANT: Melissa G. Schauer
Lay Law Advocate
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Wolf Point, MT 59201

FOR DEFENDANT/APPELLEE: Ronald A. Hodge
Attorney at Law
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Bismarck, ND 58502

Submitted on written briefs without oral argument.

DECIDED: January 9, 1991

Opinion by Debra Johnson and Gary James Melbourne, Justices. Chief Justice Gerard M. Schuster filed a dissent.

HELD: The decision of the Tribal Court is affirmed. Plaintiff/Appellant's case is dismissed.

The trial court did not make findings of fact and conclusions of law in it's order; however, a review of the file transcript shows:

Appellant had an existing contract with GMAC for the purchase of a 1989 Oldsmobile. Appellee had possession of the vehicle for a period of time by agreement of the parties, Plaintiff/Appellant and Defendant/Appellee.

DISCUSSION:

The Court takes judicial notice of the **STATUTE OF FRAUDS AND UNIFORM COMMERCIAL CODE,** particularly **Section 2-201** thereof in regard to a contract for sale of personal property in excess of $500.00. Any such agreement must be in writing, or evidenced by a written memorandum. This Court affirms the trial court's conclusion of law, in that the transaction in issue involves more than $500.00, and there was no written contract or memorandum between the parties. Appellant had an existing contract with GMAC for the purchase of a 1989 Oldsmobile. Appellant lacks the ability and authority to assign this contract without the permission of Assignor, GMAC. Assignor did not provide this permission, therefore any agreement or assignment would be invalid and contrary to law. Plaintiff/ Appellant further failed to meet his burden of proof by a preponderance of the evidence.

Having so concurred with the conclusion of law of the trial court, the remaining issues on appeal are moot and **the order of the trial court is affirmed.** Additionally, for the record, Defendant/Appellee's cross-complaint is dismissed, and each party assumes it's own fees and costs.

DATED this 9th day of January, 1991.

FORT PECK COURT OF APPEALS

BY _____
   Debra Johnson
   Associate Justice

BY _____
   Gary James Melbourne
   Associate Justice

DISSENT:

I respectfully dissent. The record has conflicting testimony; however, it appears that the transaction intended here was not a sale, but rather a month to month lease/use agreement for consideration under $500.00 per month. **TRANSCRIPT**, pages 10, 11, 21 et al. Appellee had possession of and did use the car. **TRANSCRIPT**, pages 16, 17 et al. Whether the parties intended a sale or assignment of the GMAC contract to Appellant is not clear. The record indicates that Appellee did use the car for some time for which just and adequate use/rental fee was not paid to Appellant.

It is my opinion that the **STATUTE OF FRAUDS** does not apply in this case. While the statue

includes "transactions" in goods, it more narrowly applies to "a contract for the sale of goods for the price of $500.00 or more....**UCC 2-201, REF.** Speidel, **COMMERCIAL TRANSACTIONS** (West Publishing Co., 1969) "Transactions within the scope of UCC 2-201" page 525. Leaseholds or use rental agreements are not within the statute in this case. **37 cjs, STATUTE OF FRAUDS**, Section 142.

I believe that the parties here had a month to month rental agreement, and that the transaction was not one within the scope of the UCC Statute of Frauds. For that reason I would not agree with the rule of law applied by the trial court.

Respectfully submitted January 9, 1991.

BY THE COURT OF APPEALS:

_____
Gerard M. Schuster, Chief Justice

____   _____   _____