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

IN THE MATTER OF
BOYD BROTHERS, TERRY L. BOYD, and
DARYL V. BOYD,
APPELLANTS,

vs.

Appeal No. 133

TRADERS STATE BANK OF POPLAR,
MONTANA
APPELLEE.

THIS APPEAL is from a Order of the Fort Peck Tribal Court granting Defendant\Appellee's motion for summary judgment, the Honorable Don Sollars, Special Judge, presiding.

APPEARING FOR APPELLANTS: Jerrold Nye, Attorney at Law, 3317 Third Avenue North, Billings, Montana 59101.

APPEARING FOR APPELLEE: Steven R. Milch, Attorney at Law, Crowley, Haughey, Hanson, Toole & Dietrich Law Offices, P.O. Box 2529, Billings, Montana 59103; Bruce A. Fredrickson, Attorney at Law, Crowley, Haughey, Hanson, Toole & Dietrich Law Offices, argued orally.

ARGUED: January 17, 1992

DECIDED: February 6, 1992

Unanimous Opinion by Court:

HELD: THE ORDER OF THE COURT GRANTING SUMMARY JUDGMENT IS AFFIRMED.

FACTS

A brief summary of the relevant facts before the Court is as follows:

Boyd Brothers is a partnership engaged in the business of farming and ranching. Terry L. Boyd and Daryl V. Boyd, two of the partners, are enrolled members of the Fort Peck Tribes and this action arose on the Fort Peck Indian Reservation.

Over a course of years, the Boyd Brothers established a borrower/lender relationship with both FmHA and Traders State Bank of Poplar (Appellee-Bank). Since FmHA had priority liens on most of the partnership collateral, it was usually necessary for the partnership to obtain subordination agreements from the FmHA to obtain loans from the Bank.

There were a series of loans from the Bank to the partnership. This dispute arose over the financing requirements for the partnership for their 1987 farming/ranching year. Basically, the partnership had received a subordination agreement from FmHA in the amount of \$65,000.00. The Bank, however, had decided to commit to only \$50,000.00, based on some conditions of payment of an earlier subordination and other concerns. The earlier subordination was paid off in 1986 and the Bank did advance \$50,000.00 for the 1987 crop year, and later in 1987 an additional \$5,000.00 was loaned on the same subordination agreement. The lawsuit arose after the Bank did not loan additional funds to the partnership for the 1987 crop year, and the Boyd Brothers alleged a loss in their operations and "domino effect" damages.

After discovery, the Bank moved for summary judgment; the motion was briefed and argued. The Court granted the motion for summary judgment on May 7, and this appeal followed.

The appeal was limited to the following **issue**:

"DID THE TRIBAL COURT IMPROPERLY DECIDE THE MATERIAL FACTS OF THIS CASE AND IMPROPERLY REMOVE THE ISSUES OF FACT FROM THE JURY CONTRARY TO RULE 56 OF THE FEDERAL RULES OF CIVIL PROCEDURE OR OTHER APPLICABLE RULES?"

DISCUSSION:

1. JURISDICTION AND APPLICABLE LAW:

This Court's jurisdiction is stated as follows:

" The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review de novo all determinations of the Tribal Court on matter of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence." **I CCOJ 202**

Since the Tribal Code does not have a specific provision for summary judgment, this Court will apply applicable Federal and State provisions in regard thereto, all in accordance with **IV CCOJ 501**.

2. STANDARD OF REVIEW:

Since there were no specific findings of fact or conclusions of law in the Tribal Court's order, this

Court considers the matter de novo and sits in the Tribal Court's position on review. We therefore apply the rule that summary judgment "shall be rendered forthwith if the pleadings, depositions answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law". Rule 56(c) Fed.R.Civ.P.

3. SUMMARY JUDGMENT:

This Court has before it the pleadings, transcripts, briefs and arguments of the parties. The points of fact and law are extensively discussed. In reviewing the files, one paramount conclusion is evident: **there is no obligation created on the part of a lender to loan money to a borrower absent a clear contractual commitment to loan** (our emphasis). **Mann Farms, Inc. vs. Traders State Bank of Poplar, Montana** 801 P.2d 73 at 77. Here, there was a commitment on the part of the Bank to loan the partnership \$50,000.00 for the 1987 crop year, and nothing else. **REF. promissory note** December 30, 1986, case file. The fact that the Bank loaned an additional \$5,000.00 still does not **obligate** further loans, absent a clear contractual commitment. **REF. promissory note** of July 10, 1987, case file. We find none therein. Further, the doctrine of **merger** applies here, and the Court looks at the notes themselves and not any prior or contemporaneous alleged oral agreements or understandings. **Baker vs. Bailey** 782 P.2d 1286. The application of this doctrine brings stability and order to commercial transactions, and both lenders and borrowers are benefited.

As to the sub-issue of the covenant of good faith and fair dealing, we concur with the proposition that "every contract ... contains an implied covenant of good faith and fair dealings. A breach of the covenant is a breach of the contract". **Story vs. City of Bozeman**, 791 P2d 767 at 775.

There is nothing in the record indicating that the "special circumstances" as to tort claims in these cases exists here. The transaction was at all times ordinary, arms-length and commercial. We find no inconsistency with this Court's ruling in **Kirn vs. Indian Credit Corp.** (Fort Peck Appeals Court No. 076 (1989), in that the Court considered the matter under the then applicable standard as to bad faith law.

In conclusion, we find no genuine issue of the material fact, and that judgment was properly entered in favor of the Bank as a matter of law.

THEREFORE, we affirm the order of summary judgment.

DATED this _____ day of February, 1992.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, CHIEF JUSTICE

DEBRA A. JOHNSON, ASSOCIATE JUSTICE

GARY JAMES MELBOURNE, ASSOCIATE JUSTICE
