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

ECONO LUMBER YARDS, INC.
Plaintiff/Appellant,

vs.

Appeal No. 179

FORT PECK HOUSING AUTHORITY,
et al.,
Defendant/Appellee.

THIS APPEAL is from an order of the Fort Peck Tribal Court granting Fort Peck Tribal Housing Authority's Motion for Summary Judgment, entered on November 30, 1992; Honorable A.T. Stafne presiding.

APPEARING FOR APPELLANT ECONO LUMBER YARDS, INC.: David L. Irving, Esquire,
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APPEARING FOR APPELLEE FORT PECK HOUSING AUTHORITY: John Fredericks III, Esquire,
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CIVIL

**HELD: THE ORDER GRANTING SUMMARY JUDGMENT ENTERED ON NOVEMBER 30, 1992,
WAS PROPERLY ENTERED BY THE COURT, AND THE ORDER IS AFFIRMED.**

Appellant here (Econo Lumber Yards, Inc.) seeks the enforcement of a mechanic's lien against real property and improvements of a Fort Peck Housing Authority (Housing Authority) project based on an implied contract entered into when the Housing Authority allegedly accepted certain supplies from Econo and a money judgment for materials furnished in the sum of \$270,223.00, plus interest, service charges, attorney's fees and costs. We gather the following summary of facts and issues from the Court files and briefs of the parties:

FACTS

The substantive facts here are basically undisputed. In August of 1984 the Housing Authority

entered into a contract with K.T. Construction Inc. under which K.T. Construction was to act as the general contractor for the construction of Project MT9-25. The project was for the construction of 50 low rent homes on the Fort Peck Indian Reservation with federal funds. The land upon which the homes were built is held in trust by the United States for the benefit of the Assiniboiné and Sioux Tribes. The Tribes leased the land to the Housing Authority to enable the Housing Authority to construct the housing project. The leases were approved by the Bureau of Land Affairs, as required by law.

In addition to the general construction contract, the Housing Authority and K.T. Construction executed an agreement to control payments made under the general construction contract, including payments by K.T. Construction to subcontractors and materialmen. Econo, Plaintiff herein, was a materialman/subcontractor for K.T. Construction on the Project. Econo had no express Contract with the Housing Authority.

Econo's substantive complaint alleged that it provided certain materials, supplies and services to K. T. Construction for use on Project MT9-25, for which Econo was never paid. Econo alleged that these materials and services were provided to K.T. Construction with the knowledge and consent of the Housing Authority, and that the Housing Authority is liable for the unpaid accounts.

PROCEDURAL FACTS

The complex procedural history may be summarized by stating that during the over four (4) years of pending litigation, some three (3) motions to dismiss and motions for summary judgment were filed and argued. A long delay in the process was occasioned by procedural delays in the discovery process. The major arguments on the motions included the issues on appeal here, namely indispensable party (ies), enforcement of mechanic' lien and privity of contract. Since we find for the Appellee on these issues, we do not herein discuss an additional issue raised on appeal, as to whether the complaint as filed was barred by the Tribal Statute of Limitations, under IV CCOJ §601.

HELD: The United States and the Fort Peck Tribes are indispensable parties to this action; the Housing Authority has not waived its sovereign immunity; a mechanic's lien action is not enforceable within the Tribal Court's jurisdiction; and a personal money judgment is not enforceable as long as the United States and Tribes are indispensable parties, and have not been joined.

ISSUES PRESENTED

1. Whether Econo is legally barred from asserting and enforcing a mechanic's lien against the property and improvements constituting Project MT9-25, and against the FPHA's rents, fees and revenues, due to failure to join indispensable party/parties.
2. Whether Econo is barred from seeking a personal judgment against the Housing Authority.
3. Whether Econo's action for a personal judgment is barred due to lack of privity of contract.

4. Whether Econo's cause of action is jurisdictionally barred by the Tribal Statute of Limitations.

DISCUSSION

The Court will address the issue of indispensable parties first, they being the United States and the Fort Peck Tribes. Appellant argues here that the issue of indispensable parties is moot since Econo stipulated that the mechanic's lien, if any, was not enforceable against tribal trust lands. Appellant's brief, page 11-12. However, we do not find this argument convincing. The mechanic's lien statute in issue applies to **interests in real property**. MCA § 71-3-514 (1985). Econo's amended complaint seeks judgment against the Housing Authority:

1. For "a lien upon the property, including the improvements"; and
2. Ordering "the property and the improvements to be sold" and to the extent necessary, the proceeds paid to Econo to satisfy its claim.

Plaintiff's complaint, page 6-7.

The property referred to is the lands upon which the 50 low rent homes comprising Project MT9-25 are constructed. The lands are held in trust by the United States for the Tribes. Appellant's brief, page 10 et al.

We hold that the United States is a "necessary party" to any action in which the relief sought might interfere with its obligation to protect Indian lands from alienation. The enforcement of a mechanic's lien against trust land and its improvements would clearly involve alienation of tribal trust lands. Carlson v. Tulalip Tribes of Washington. 510 F.2d 1337, 1339 (9th Cir. 1975). Citing extensively from United States v. Rickert, 188 U.S. 432, 438 (1903). Thus, the United States must be made a party defendant to this suit. See also Spriggs v. McKay, 228 F.2d 3\31 (District of Columbia Cir. 1955).

In an action to foreclose a mechanic's lien, the general rule is that **all** persons with an interest in the property affected by the lien must be made parties to the suit. Monterey S.P. Partnership v. W.L. Bangham. Inc., 777 P.2d 623 (Cal. 1989). This obviously includes the United States and the Tribes who own the legal and beneficial interests in the real property affected by the asserted lien.

Here, the lands affected by the mechanic's lien action were leased by the Tribes to the Housing Authority so that the homes could be constructed. The Tribes' interest both as the lessor and as the beneficial owner of the lands in question would clearly be affected by the attempted foreclosure of a mechanic's lien. As such, the Tribes and the United States are indispensable parties to the mechanic's lien action.

In addition, the assertion of a mechanic's lien is also legally barred by Tribal law. Tribal Ordinance 3A, Article VII §7, clearly prohibits the enforcement of a mechanic's lien against the Housing Authority's interest in Project MT9-25. While the Housing Authority can waive its rights under Article VIII §7, it has not done so in this case at bar.

Moreover, Tribal law prohibits the enforcement of a lien for rentals, fees and revenues. **REF.** Tribal Ordinance 3A, Article VII §7., specifically:

" all property including funds acquired or held by the Authority (FPHA) pursuant to this Ordinance shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for enforcement of any pledge or lien given by the Authority on its rents, fees or revenues....."

We Concur with the position of the Fort Peck Tribes (Amicus Curiae) brief that Econo is not an 'obligee' as that term is used in Section 7, **Supra**. It is clear here that Econo holds no evidence of obligation from the Housing Authority. The "sue and be sued" language of Article V, §2 of the Tribal Ordinance creating the Housing Authority provides:

"The Council hereby gives its irrevocable consent to allowing the Authority (FPHA) to sue and be sued in its corporate name, upon any contract, claims or obligation arising under its activities under this Ordinance and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for the debts or obligations of the Authority".

This section is limited by the provisions of Article VII, §7, *Supra.*, and any waiver of sovereign immunity must be expressly made and construed in favor of the Tribes. Nanekagon Housing Development Company v. Bois Forte Reservation Housing Authority, 517 F.2d 508 (8th Cir. 1975); cited extensively in R.C. Hedreen Company v. Crow Tribal Housing Authority, 521 F.Supp. 599 at page 604 et al.

The related issue and argument deals with the issue of "privity of contract" and whether Econo can maintain suit for a money judgment. Appellant's brief, page 15 et al. Complaint and amended complaint, paragraph 7. This argument can be rejected summarily Econo and the Housing Authority had no contract. With the failure of the mechanic's lien, the claim for a money judgment likewise fails. The Fort Peck Tribes have not adopted a mechanic's lien law. Without such a law the use of a mechanic's lien statute to enforce a money judgment is circuitous and unfounded. Simply put, Econo is not an "obligee" as that term is used in Article II § 7, *Supra*.

We note for the record the threshold argument again raised by Appellee and via Amicus Curiae brief

of the Fort Peck Tribes concerning the statute of limitations issue. IV CCOJ §601. Since we affirm the order granting summary judgment on the issues contained therein, we will not further rule on this issue.

CONCLUSION AND ORDER

The order granting summary judgment entered on November 30, 1992 was properly entered by the Court, and the order is **AFFIRMED**.

DATED this _____ day of June, 1993.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, CHIEF JUSTICE

DEBRA A. JOHNSON, ASSOCIATE JUSTICE
