

IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION

TRIBAL CREDIT PROGRAM OF)	Cause No. AP 01-22-CV
THE CONFEDERATED SALISH)	
AND KOOTENAI TRIBES OF THE)	
FLATHEAD RESERVATION,)	
Plaintiff-Appellee,)	
)	
vs.)	OPINION
)	
MELISSA ANN BELL, a/k/a)	
MELISSA a. MICHEL and)	
LEONARD L. MICHEL,)	
Defendants-Appellants.)	
)	

Argued April 5, 2010

Decided July 23, 2010

Ranald L. McDonald and John T. Harrison, Tribal Legal Department,
Confederated Salish and Kootenai Tribes, P.O. Box 278, Pablo, MT 59855-0278, for
Plaintiff and Appellee.

Kevin S. Jones, Christian, Samson, & Jones, PLLC, 310 West Spruce Street,
Missoula, MT 59802, for defendants and appellants.

Appeal from the Tribal Court of the Confederated Salish and Kootenai Tribes,
Daniel D. Belcourt, Associate Justice, Eldena Bear Don't Walk, Associate Justice, and
Gregory T. Dupuis, Associate Justice, Presiding.

INTRODUCTION

Defendants Melissa Ann Bell, a/k/a Melissa A. Michel and Leonard L. Michel
appeal the order of the Tribal Court granting summary judgment in favor of the Plaintiff.

The issues before the Court of Appeals are:

1. Whether the Trial Court erred by determining that no genuine issues of material fact existed, even though Respondent offered new evidence at the hearing on summary judgment and even though the parties' assertion of the amount owing to Michels differed by more than \$275,000.

2. Whether the Trial Court erred by awarding \$36,443.94 to Respondent rather than awarding at least \$27,417.48 to Michels, which Respondent admitted owing to Michels.

We uphold the Tribal Court's July 9, 2009 decision granting Summary Judgment.

DISCUSSION

This matter has been to the Tribal Court of Appeals twice before (Cause No. AP-01-022-CV, Opinions of Jan. 9, 2003 and May 9, 2007). As previously stated by this Court,

"[T]he basic documents, notes and mortgages signed by the Michels are not in the record. A summary of the amounts claimed was received in evidence without objection; and, although there is testimony as to what properties were encumbered, there is nothing in the record (as opposed to the complaint) to tie the specific loans to mortgages on any particular property. There is also confusion in the record as to the properties involved."

(See, Tribal Credit Program of the Confederated Salish and Kootenai Tribes of the Flathead Reservation v. Melissa Ann Bell, a/k/a Melissa A. Michel, and Leonard Michel, CSKT Court of Appeals, Cause No. AP-01-022-CV (May 9, 2007)).

This protracted case has been well documented. There is a lengthy discussion of the lower court's facts, findings, and order in previous Appellate Court decisions. They need not be repeated herein. The Appellate Court's decision of May 9, 2007 disallowed any amount claimed for insurance premiums. Although the maintenance of insurance was not plaintiff's obligation, the court did not consider it equitable to permit plaintiff to be reimbursed for insurance premiums when they made no move to recover the benefit. The amount due upon the mortgages admitted, with interest at 5% to and including February 22, 1987 but with no allowance for claimed insurance premiums paid. Michels were given credit in the sum of \$79,203.19. All mortgages executed by the Michels and made in lieu of the mortgages in evidence were to be expunged. No attorney fees were awarded, however the Michels were awarded their costs, including costs on appeal. The issue on retrial was limited to a factual finding as to the total amount due on the mortgages admitted as Exhibits 2 and 3 as of the date of Leonard [Lee] Bell's death, together with interest.

On July 9, 2009, the Chief Judge of the Tribal Court issued an order granting the Tribe's Motion For Summary Judgment On Limited Remand. (See, Tribal Credit Program of the Confederated Salish and Kootenai Tribes of the Flathead Reservation v. Melissa Ann Bell, a/k/a Melissa A. Michel and Leonard L. Michel, CSKT Tribal Court, Cause No. 01-22-CV (July 9, 2009)). The Tribal Court recognized the Appellate Court Judgment and concluded that there were no genuine issues of material fact as to the amount of the indebtedness and interest thereon. The Court concluded that the Plaintiff

recover from the Defendants the Final Judgment of \$36,443.94. It was ordered that the Plaintiff recover the Final Judgment amount. It was further ordered that any and all mortgages executed by the Michels and made in lieu of the mortgages be expunged. It was further ordered that the Defendants recover their costs, including costs of appeal, from the Plaintiff.

STANDARD OF REVIEW

This Court's review of a grant of summary judgment is *de novo* both as to the legal questions and to the Tribal Court's determination of the existence of disputed material facts. (See, Robert Lulow v. Delores "Lori" Marie Shourds Peterson, CSKT Court of Appeals, Cause No. AP-94-089-CV (1996); citing Spain –Marrow Ranch, Inc. v. West, 264 Mont. 441,444, 872 P.2d 330, 331-32 (1994)).

DECISION

The Tribal Court correctly concluded that there were no genuine issues of material fact regarding the limited factual determination on remand.

1. The amount due upon the mortgages admitted by both parties as of the date of Leonard Bell's death is \$128,224.54.
2. The interest on the above calculated at five percent (5%) per annum simple interest to and including February 22, 1987 is \$14,778.65.
3. The amount of credit based on payments by the Defendants is \$79,203.19.
4. Additional credits for payments made is \$27,356.06, and should be applied to the mortgages.

The Michels argue that they should be credited \$63,000 because the Plaintiff at some point agreed to these credits. However, this issue was addressed previously and Plaintiff's alleged agreement does not open the door to change the previous court decision on this issue. The Appellate Court previously determined the final amount of credit to be given to the Michels was \$79,203.19. The question of credits was not before the Trial Court.

The Defendants have stated that since the prior Appellate Court Order does not specify whether Michels are to receive interest on the credit for \$79,203.19, that it can be assumed that Michels are entitled to interest on this money. However, the prior court order does not state that interest based on payments when it determined an equitable solution in this matter. The Appellate Court Order does state specifically that interest should be applied to the mortgage amount. If the Appellate Court wanted to order interest on the credit amount, it would have so stated.

The Tribal Court made the proper determination in that there was no genuine issue of material fact that would preclude summary judgment. Inasmuch as those decisions did not specify interest to be credited to the Michels on payments made, the Appellants had made assumptions on the scope of the Tribal Court's remand order. The Appellants did not present material or substantial evidence, but rather, only entered assumptions made based on previous court decisions.

ORDER

IT IS HEREBY ORDERED AND ADJUDGED that the orders from the Summary Judgment will be upheld and affirmed. We concur that there are no genuine issues of material fact and this case will not be remanded to the Trial Court for limited retrial.

IT IS FURTHER ORDERED that the Trial Court made the correct judgment by awarding \$36,443.94 to the Plaintiff.

IT IS SO ORDERED THIS 23RD DAY OF JULY, 2010.



Daniel D. Belcourt
Associate Justice

We concur:



Edena Bear Don't Walk
Associate Justice



Gregory T. Dupuis
Associate Justice

CERTIFICATE OF MAILING

I, D. Renee Pierre, Appellate Court Administrator, do hereby certify that I mailed true and correct copies of the **OPINION** to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, this 31st day of August, 2010.

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D. Renee Pierre
Appellate Court Administrator