Long's
First
Brief
Jan. 15, 2004

IN THE CHEYENNE RIVER SIOUX TRIBAL
COURT OF APPEALS
APPEAL NO. 03-002-A

THE BANK OF HOVEN
NKA PLAINS COMMERCE BANK, (1) Prejudgment interest

Appellant-Respondent,

vs.

(2) Long purchase all of their land back from the bank.

LONG FAMILY LAND AND CATTLE COMPANY, INC.-
RONNIE AND LILA LONG,

Respondents-Appellants.

APPEAL FROM THE CHEYENNE RIVER SIOUX
TRIBAL COURT, EAGLE BUTTE,
SOUTH DAKOTA

The Honorable B. J. Jones, Special Judge

Notice of Appeal Dated March 27, 2003

BRIEF OF RESPONDENTS-APPELLANTS, LONG FAMILY LAND AND CATTLE COMPANY, INC.-RONNIE AND LILA LONG

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PRELIMINARY STATEMENT

Appellant-Respondent, Bank of Hoven, nka Plains Commerce Bank, will be referred to as the Bank or the Defendant. Respondents-Appellants, Long Family Land and Cattle Company, Inc.-Ronnie and Lila Long, will be referred to as the Longs or the Plaintiffs. References to the jury trial before the trial court will be designated as "TR" followed by the page number of the trial transcript. References to the jury trial exhibits will be referred to as "Exh." followed by the exhibit number. The Bank, which was the Defendant in the trial court, appealed the Judgment and Supplemental Judgment entered by the Cheyenne River Sioux Tribal Court, the Honorable B. J. Jones, Special Judge, on the 25th day of February, 2003. The Longs, who were the Plaintiffs in the trial court, also appealed the Judgment and Supplemental Judgment entered by the Cheyenne River Sioux Tribal Court, the Honorable B. J. Jones, Special Judge, on the 25th day of February, 2003. Therefore, the Bank is captioned in this appeal as the Appellant on its appeal issues, and is also captioned as the Respondent responding to the Longs' appeal issues. Similarly, the Longs are captioned as Respondents responding to the Bank's appeal issues, and are captioned as Appellants on their appeal issues.

JURISDICTIONAL STATEMENT

The Cheyenne River Sioux Tribal Court of Appeals has jurisdiction to hear and decide the issues presented by the parties in this appeal as provided in Rule 37 of the Cheyenne River Rules of Civil Procedure of the Law and Order Code of the Cheyenne River Sioux Tribe. Both the Bank and the Longs timely filed their Notices of Appeal.

STATEMENT OF THE ISSUES

1. Where the jury decided that prejudgment interest should be added to the damages of $750,000 awarded to the Longs by the jury, did the trial court err in reducing the prejudgment interest from 10% to 2.7%?

2. Where the jury decided that the Bank breached the Loan Agreement, and that the Bank's breach of the Loan Agreement prevented the Longs from performing under the Lease With Option to Purchase, did the trial court err in not permitting the Longs to purchase all of their land back from the Bank?

STATEMENT OF THE CASE AND FACTS

1. This case involves 2,225 acres of deeded land located within the CRST Indian Reservation. This land has been in the Long family for over forty years.

2. Ronnie and Lila Long are enrolled members of the CRST, and they reside on the CRST Indian Reservation.

3. Long Family Land and Cattle Company, Inc. is a wholly owned Indian corporation, which is owned 100 percent by Ronnie and Lila Long.

4. Ronnie Long is the son of Kenneth Long. Kenneth Long, Ronnie Long and Lila Long have lived on the CRST reservation all of their lives farming and ranching. Until his death on July 17, 1995, Kenneth Long owned the 2,225 acres of land, he owned 49 percent of Long Family Land and Cattle Company, Inc. Ronnie and Lila Long owned 51 percent of Long Family Land and Cattle Company, Inc., and at all times it was an Indian controlled corporation.

5. Kenneth Long mortgaged the 2,225 acres of land to Bank of Hoven to provide collateral for loans by the Bank to Long Family Land and Cattle Company, Inc. The Bureau of Indian Affairs guaranteed several of the Bank loans.

6. Ronnie Long inherited the 2,225 acres of land and his father's 49 percent in Long Family Land and Cattle Company, Inc. through the will of his father, Kenneth Long.

7. In the spring of 1996 after Kenneth's death, ~~employees~~ officers of the Bank came to the Longs' land on the reservation, inspected the 2,225 acres and the Longs' cattle, hay, and machinery on the land. The Bank proposed a new loan agreement to the Longs. Discussions also took place with Bank officers, the Longs, and CRST officers at the CRST offices on the

reservation. The Bank proposed that the Longs' 2,225 acres of land and Kenneth's house would be deeded to the Bank, and the Bank would credit $478,000 against debt owed to the Bank, and the Bank would sell the 2,225 acres back to the Longs on a contract for deed ~~with twenty (20) years to pay off the land~~. The Bank then changed the proposal on the advice of their lawyer, and they told the Longs they could not sell the land back to them on a contract for deed because they ~~were Indians~~. (Exh. 4) In the revised agreement the Bank changed the terms from ~~a twenty (20) year~~ contract for deed to a two (2) year lease, where the Longs only had two (2) years to pay for their land.

The agreement prepared by the Bank involved several points: (a) the 2,225 acres of land and Kenneth's house would be deeded to the Bank, and the Bank would credit $478,000 against debt owed to the Bank; (b) the Longs would lease their land from the Bank for a period of two years, and at the end of the two years they would buy back their land from the Bank; (c) the Bank would request that BIA increase the guarantee to 90 %, and reschedule note #98181 over 20 years; (d) the Bank would make Longs a new operating loan of $70,000 to care for their cattle and crops; (e) the Bank would make Longs a loan of $53,000 to pay off note #98809 of $17,000, with the balance of $37,500 to be used to purchase 110 calves to be fed and pastured with the Longs' calves to increase their income so they could buy back their land from the Bank; and (f) the Bank would enter into a lease purchase agreement which would provide that the Longs could buy back their 2,225 acres of land from the Bank at the end of two years. If the Longs could not buy back their land, they would be out of business.

8. During the discussions concerning the agreement and the drafting and signing of the written agreement the Bank was represented by its lawyer, however, the Longs were not represented by a lawyer.

9. The 2,225 acres of land were transferred to the Bank. The agreement was prepared by the Bank in two documents entitled (a) Loan Agreement between Long Family Land and Cattle Co. Inc. and the Bank of Hoven, and (b) Lease With Option To Purchase. Both documents are dated the same, December 5, 1996. The two documents are part of the same agreement.

10. Ronnie and Lila Long and Long Family Land and Cattle Company, Inc. claimed at trial that the agreement was breached by the Bank in several material respects: The Bank received a deed to all of Longs' land, CRP payments, and house proceeds, however, (a) note #98809 was not rescheduled by the Bank; (b) the new operating loan of $70,000 was never made by the Bank; and (c) the new loan for $35,500 to purchase 110 calves was never made by the Bank. The purpose of these new loans was to put the Longs in a stronger financial position so they could purchase back their 2,225 acres of land from Bank in two years. The Bank breached these promises of new loans needed to pay for necessary operating expenses and to purchase 110 calves. As a direct result, the Longs were unable to feed or care for their livestock during the severe winter of 1996-1997. The Bank knew that the Longs did not have operating money to move their hay 20 miles to their cattle on their Indian range unit that needed the hay. The Bank knew that the cattle did not have feed, and that cattle without feed cannot survive for very long in winter weather. Because the Bank failed to make the $70,000 operating loan as promised, and did not make an emergency loan to care for the cattle, the Longs lost 230 cows, 277 yearlings, and 8 horses. The livestock that died in the winter of 1996-1997 had a value of $340,000, plus lost calf crops. (Exh. 23)

11. The 2,225 acres and house worth $478,000 was transferred to the Bank, the Bank received CRP payments of approximately $88,000, and received proceeds from the sale of the house of approximately $25,000, but the Bank did not make the loans that the Longs

needed. The promised operating loan of $70,000 would have enabled the Longs to move their hay to their cattle and take care of their cattle during the winter. Failure to make the loan caused the Longs to suffer losses of $1,236,792. (Exh. 23) The Bank got $566,000 from the Longs through the deed to the land, the Longs' CRP payments, and house proceeds, but the Longs did not get from the Bank what the Bank promised and what the Longs needed.

12. The failure of the Bank to make the loan of $70,000 to pay operating expenses, and the loan of $53,500 to purchase an additional 110 calves, made it impossible for the Longs to buy back their land. The purpose of buying the 110 calves was to increase Longs' income over the next two years so they could afford to buy back their land. The Longs were unable to purchase the 110 calves, and they lost the income from these calves. In addition, they were unable to care for and feed the cattle they had, and as a direct result they suffered substantial losses of cattle. With these losses it was impossible for the Longs to buy back their land. The failure of the Bank to perform made it impossible for the Longs to perform and buy back their land from the Bank.

13. At the end of the two-year period the Longs requested a 60 day period to complete an agreement with investors who would provide the money for the Longs to buy back their land from the Bank. (Exh. 17) The Bank refused the Longs' request, although the agreement provides a period of 60 days to pay the purchase price. (Exh. 18)

14. The Longs kept possession of the 2,225 acres after the end of the two-year period on December 5, 1998. They had their cattle and machinery on the land. They were in the process of putting up hay on the land.

15. On May 19, 1999, Bank signed a Notice To Quit as part of the Bank's effort to evict the Longs from their land. (Exh. 20) The Notice To Quit shows the descriptions of all of the Longs' 2,225 acres of land. On June 4, 1999, the Bank sent its Notice To Quit to the

CRST Tribal Court. The Bank requested that the Court serve the Notice To Quit on the Longs to begin the Bank's eviction process. Without obtaining a Court Order to evict the Longs or authorizing sale of the land, the Bank sold the Longs' land. The Longs never gave up possession of any of the 2,225 acres of land. On March 17, 1999, the Bank sold 320 acres to Ralph Pesicka. (Exh. 19) On June 25, 1999, the Bank sold the 1,905 acres to Edward and Mary Jo Maciejewski on a contract for deed, the Maciejewskis took possession of Parcel One, and the Bank issued a warranty deed to Maciejewskis on Parcel One during this litigation. (Exh. 21) The contract for deed provides that the Bank is in the process of evicting the Longs from the land, that the buyers shall have possession of Parcel Two when the eviction is accomplished, and if eviction of the Longs is not accomplished by June 1st of any year, then the buyers will have possession on June 1st of the following year.

16. At trial, the jury determined that the Bank breached the Loan Agreement (Jury Interrogatory One), that the Bank intentionally discriminated against the Longs based solely on their status as Indians or tribal members in the Lease With Option to Purchase (Jury Interrogatory Four), and that the Bank acted in bad faith when it attempted to gain the increased guarantee from the BIA as required by the Loan Agreement (Jury Interrogatory Five). (Appendix Tab 1) The jury awarded the Longs damages of $750,000, and determined that prejudgment interest should be added to the judgment. (Jury Interrogatory Six) (Appendix Tab 1)

ARGUMENT AND AUTHORITIES

Issue One: Prejudgment Interest:

The Longs moved the trial court to include in the judgment prejudgment interest in addition to the jury verdict damages of $750,000 in favor of The Longs, upon the following grounds:

1. The Court instructed the jury in Instruction 10a that if the jury returns a verdict for the Longs, then the jury must decide whether the Longs are entitled to prejudgment interest.

2. In Jury Interrogatory Six, the jury awarded damages in favor of the Longs and against the Bank in the sum of $750,000, and advised the Court that prejudgment interest should be added to the judgment. (Appendix Tab 1)

3. The CRST Law and Order Code does not set a prejudgment interest rate, however, South Dakota statutes do set a prejudgment interest rate. SDCL 21-1-13.1 provides that "when prejudgment interest is awarded, it shall be at the Category B rate specified in § 54-3-16 (10%). The court shall compute and award the interest provided in this section and shall include such interest in the judgment in the same manner as it taxes costs." SDCL 21-1-13.1 provides that the Longs are entitled to recover interest on damages "from the day that the loss or damage occurred."

4. The trial evidence established the date when the Longs' loss or damage occurred. The Bank breached the Loan Agreement as soon as it was signed December 5, 1996, by failing to advance the $70,000 for operating expenses to the Longs, as promised, and by failing to loan $37,500 to the Longs to purchase 110 additional cattle, as promised. The purpose of the loans was to increase the Longs' income to enable them to buy their land back from the Bank under the Lease With Option to Purchase. (Exh. 7) The Longs would not have had the huge cattle losses they experienced if the $70,000 operating loan had been made by the Bank at the time the Loan Agreement was signed December 5, because the Longs would have been able to move their hay 20 miles to the winter pastures to feed their livestock when bad winter weather hit. Ronnie Long testified that if the Bank had made the operating loan as agreed on December 5, 1996, the cattle losses in January of 1997 would have been prevented because the cattle would have had feed. He also testified that the loan to

buy 110 additional heifers would have increased the Longs' income with more calves to sell each year. The Longs claimed that the Bank breached the Loan Agreement. These were questions of fact for the jury to resolve, and the jury resolved these questions against the Bank.

The Loan Agreement (Exh. 6) and the Lease With Option to Purchase (Exh. 7) were both signed by the Bank and the Longs on December 5, 1996. The testimony of Ronnie Long was clear and uncontroverted at trial. He testified that the Bank breached the Loan Agreement right after it was signed on December 5, 1996, because the Bank did not make the loan as promised. The Bank breached the implied contractual covenant of good faith and fair dealing by (i) failing to timely make a correct application to the BIA to increase the percent of BIA guarantee, (ii) failing to make the $70,000 operating loan, as promised, to enable the Longs to feed and care for their cattle, (iii) failing to timely make an emergency loan of up to $40,000 to preserve the Bank's collateral and get feed to the Longs' cattle as authorized by the BIA and 25 CFR 103.22 (Exh. 12), and (iv) failing to make the cattle purchase loan, as promised. Ronnie Long testified, based on his years of experience caring for cattle, that if the Bank had loaned him the $70,000 operating money or an emergency protection loan of $40,000 in December of 1996, he would have been able to move his hay from the fields where it was baled to the winter pastures where the cattle were located some 20 miles away, and the cattle would have survived the winter weather. The winter pastures have deep ravines and wooded shelter to protect the cattle in harsh winter storms, but the cattle need hay to eat to survive. Although the Bank agreed on December 5, to loan $70,000 to the Longs for operating money to feed and care for the cattle, after the Loan Agreement was signed the Bank refused to loan the money as agreed. The Longs claimed that the Bank breached the agreement, which caused the death of their cattle, and rendered the Longs unable to perform

under the Lease With Option to Purchase to buy their land back from the Bank. The jury agreed and decided that the Bank breached the Loan Agreement. (Appendix Tab 1)

Ronnie Long testified that his cattle died in winter storms in January of 1997. (TR 156) He testified that 230 cows and 260 yearlings died. The death losses were verified by the FEMA inspectors (Exh. 14).

Thus, the evidence is clear that the Bank breached the contracts in early December of 1996, and the Longs' damages, caused by the Bank's breach of the Loan Agreement and the implied covenant of good faith, happened in January of 1997. The losses continued each year thereafter because the cows that died would have continued to produce calf crops each year after 1996.

5. Based on the trial evidence, it is clear that prejudgment interest on $750,000 should begin to accrue on February 1, 1997, because that is when the Longs suffered the loss and damage caused by the Bank's breach of contract and the implied contractual covenant of good faith.

6. The Longs claimed damages in the total amount of $1,236,792 (Exh. 23). The jury awarded damages of $750,000, plus prejudgment interest. Prejudgment interest accrues at the Category B rate of 10% as specified in SDCL 54-3-16. The prejudgment interest accrued on the jury award of $750,000 is $453,698.

7. The South Dakota Supreme Court has held that after SDCL 21-1-13.1 was enacted in 1990, prejudgment interest on damages awarded by a jury to a plaintiff is mandatory. "Prejudgment interest is now mandatory, not discretionary." Alvine v. Mercedes-Benz of North America, 620 N.W.2d 608, 614 (S.D. 2001). Prejudgment interest is allowed from "the day that the loss or damaged occurred." Fritzel v. Roy Johnson Const., 594 N.W.2d 336, 339 (S.D. 1999) (quoting SDCL 21-1-13.1).

In this case there was no issue as to when the loss occurred, therefore, the jury did not have to determine the date when the loss occurred. SDCL 21-1-13.1 provides: "If there is a question of fact as to when the loss or damage occurred, prejudgment interest shall commence on the date specified in the verdict or decision. . . ." However, where there is no question of fact raised as to when the loss or damage occurred, the date of loss does not have to be determined by the jury in its verdict.

In this case there was no issue of when the Longs' damage or loss occurred. The testimony of Ronnie Long was clear and uncontroverted. The Longs' cattle died in January of 1997. (TR 156) The Bank did not produce any testimony or exhibits that contradicted Ronnie Long's testimony as to the date of the Longs' loss of cattle.

The verdict form concerning whether interest should be added to the judgment did not require the jury to determine the date of the Longs' loss, because there was no question of fact as to when the loss or damage occurred. Jury Interrogatory Six to the jury, concerning whether interest should be added to the judgment, was shown to the Bank's counsel before it went to the jury. The Bank did not object to Jury Interrogatory Six, and did not request that the trial court require the jury to determine the date of the loss. Thus, the Bank waived any objection to Jury Interrogatory Six. (Appendix Tab 1) The S.D. Sup Ct in Alvine v Marcedes Benz held that the objection was waived where no objection was made at the trial level.

SDCL 21-1-13.1 requires the court, and not the jury, to compute the interest. The statute provides: "The court shall compute and award the interest provided in this section and shall include such interest in the judgment in the same manner as it taxes costs." The South Dakota Supreme Court has approved the trial court determining the date of loss, and computing the interest under SDCL 21-1-13.1. Fritzel v. Roy Johnson Const., 594 N.W.2d 336 (S.D. 1999).

8. In this case, ~~As discussed above~~, there was no issue at trial of when the Longs' cattle died (January 15-16, 1996); or when the Bank intentionally discriminated against the Longs solely on the basis of their status as Indians or tribal members (April 26, 1996); or when the Bank acted in bad faith (December 1996, through January 1997). The only issue was whether the Bank was liable for the loss. The jury determined these questions in favor of the Longs and against the Bank. Thus, the Bank is liable for $750,000 of the Longs' losses which happened from April 1996, through early February 1997. Under the statute, it really makes no difference on which cause of action the jury determined the Bank liable for such loss. The jury determined that the Bank breached the Loan Agreement (Jury Interrogatory One), that the Bank intentionally discriminated against the Longs based solely on their status as Indians or tribal members in the Lease With Option to Purchase (Jury Interrogatory Four), and that the Bank acted in bad faith when it switched the cash flows that it sent to the BIA when it attempted to gain the increased guarantee from the BIA (Jury Interrogatory Five). (Appendix Tab 1) It is impossible to determine which one cause of action, or perhaps all of these causes of action, caused the losses for the Longs that the jury relied on to reach its decision that the Bank is liable to the Longs for $750,000. However, under the statute, it makes no difference. Once the jury has decided on the amount of the damages, and there is no question of fact as to when the loss or damage occurred, the court shall calculate the interest "from the day that the loss or damage occurred, at the Category B rate specified in § 54-3-16" (10%). SDCL 21-1-13.1 (underline added).

9. The Bank argued to the trial court in paragraph 3 of the Bank's Opposition, that even though the Longs claimed losses from the Bank's bad faith, discrimination, and breach of contract which all occurred before February 1, 1997, and the Longs' cattle died in January of 1997, "interest should not start on the date of their loss." The Bank argued, as to

the bank argues that

the 260 yearlings that died in January of 1997, that the Longs did not plan to sell the yearlings until October of 1997, thus the loss of the yearlings should not be recognized until then, and prejudgment interest should not begin until then. As to the 230 cows that died in January of 1997, the Bank argued without legal authority that the Longs did not intend to sell the cows, thus, there should be no prejudgment interest added to the judgment at all because the cows died. Thus, there is no interest at all on $142,600 of the $750,000 jury verdict. This argument is ridiculous. The Bank's argument violates the facts and the statute. Prejudgment interest should begin to run when the loss and damage occurred when the cattle died on January 15-16, 1997. Based on the Bank's argument, the Bank proposed that prejudgment interest should only be $123,131.81. The trial court erred when it adopted the Bank's arguments, and awarded prejudgment interest of only $123,131.81, or 2.7% interest prejudgment on $750,000 from the date of loss to the date of the judgment.

It is obvious that these arguments and the trial court's decision ignore the command of SDCL 21-1-13.1, which provides: "Any person who is entitled to recover damages . . . is entitled to recover interest thereon from the day that the loss or damage occurred. . . ." It is clear that interest begins on "the day that the loss and damage occurred," not, as the Bank argued and which the court adopted, on the day that the Longs planned to sell the cattle. The trial court ignored the statutory command that interest shall be at 10% from the date of loss.

10. The trial court adopted the Bank's argument set out in paragraph 3 of its Opposition, that interest should not accrue on the loss of the yearlings until they normally would have been sold in October of 1997, and that no interest should be added to the judgment on the loss of the cows because the Longs never intended to sell the cows. However, the loss of cattle was only one of the causes of the Longs' damages. The Longs sustained their loss and damage: (a) when their cattle died on or about January 15-16, 1997; (b) when the Bank breached the Loan Agreement in early December 1996; (c) when the Bank

intentionally discriminated against the Longs as Indians in April of 1996; and (d) when the Bank acted in bad faith toward the Longs from December of 1996, to February 1, 1997. All of these bad acts by the Bank caused loss and damage to the Longs, and the losses occurred prior to February 1, 1997. Under SDCL 21-1-13.1, interest at 10% should begin from the date of the loss.

The jury decided, based on all of the trial evidence, that the Bank (a) breached the Loan Agreement with the Longs; (b) intentionally discriminated against the Longs as Indians; and (c) acted in bad faith toward the Longs. With these bad acts of the Bank determined by the jury, the trial court should not have given the Bank such a break on prejudgment interest. The Bank would never loan the Longs money at 2.7% interest.

Taken together, the jury award of $750,000, and the date that the Longs suffered damage and loss from the Bank's intentional discrimination in April of 1996; the Bank's bad faith from December 1996, to February 1, 1997; the Bank's breach of the Loan Agreement in December 1996, and the Longs' cattle loss January 15-16, 1997, these facts mean that under SDCL 21-1-13.1 interest should begin to accrue on the jury award of $750,000 at 10% from and after February 1, 1997. The Longs request that the error of the trial court in calculating prejudgment interest be corrected by this Court as a matter of law.

The Longs proposed to the trial court the following method of calculating interest. The Longs again propose the following calculation of interest on the jury verdict of $750,000, without compounding interest, from and after the date of the Longs' loss, February 1, 1997, to the date the judgment was entered February 18, 2003:

$ 750,000	date of loss 2/1/97
10%	interest rate Category B, § 54-3-16
75,000	interest accrued 2/1/97 to 2/1/98 (year one)
75,000	interest accrued 2/1/98 to 2/1/99 (year two)
75,000	interest accrued 2/1/99 to 2/1/00 (year three)

75,000	interest accrued 2/1/00 to 2/1/01 (year four)
75,000	interest accrued 2/1/01 to 2/1/02 (year five)
75,000	interest accrued 2/1/02 to 2/1/03 (year six)
$1,200,000	as of 2/1/03
3,698	After 2/1/03, interest accrues at $205.48 per day
$1,203,698	($75,000 ÷ 365 = $205.48) Judgment entered 2/18/03
	18 days x $205.48

$450,000.

The judgment should have included prejudgment interest of $453,698, plus the verdict amount of $750,000, for a total judgment of $1,203.698.

The Bank claims that the statutory interest rate of 10% is too high, however, it is important to note the similar interest rates that the Bank charged the Longs, as shown on the promissory notes. The promissory notes with the Longs are listed in the Loan Agreement (Exh. 6), and are part of the Loan Agreement. The jury determined the Bank breached the Loan Agreement (Jury Interrogatory Six). The rates of interest shown on the promissory notes are all part of the contract that was breached by the Bank, and are therefore contract rates of interest agreed upon by the Bank. Note #98181, which compounds interest on interest, has a rate of interest of 9.5%; Note #98179 has a rate of interest of 10%; Note #98809 has a rate of interest of 9.5%; and Note #98262 has a rate of interest of 11.25%. Some of these notes have provisions for variable rates of interest. All of these promissory notes are listed in the Loan Agreement (Exh. 6) and are the contract rates of interest. The average rate of interest on these notes is 10.06%. When the 8.5% interest rate set out in the Lease With Option to Purchase is factored in, the average interest rate is 9.75%. The Bank was charging these interest rates to the Longs, therefore, the Bank should not be heard to complain that 10% interest as set by statute is too high.

This Court could consider all of the various interest rates involved in the Loan Agreement and the Lease With Option to Purchase, or the Court could simply use the interest rate set out in SDCL 21-1-13.1, which is the Category B rate specified in SDCL 54-3-16

(10%). If the Bank had obtained a judgment against the Longs, the prejudgment interest rate would have been 10%.

The foregoing facts and authorities support the conclusion that this Court should correct the error of the trial court and in the interest of justice, include in the judgment interest of $75,000 per year, which is 10% per annum on the jury award of $750,000, from and after the date of loss of February 1, 1997. The judgment should include the jury award of $750,000, and in addition, the judgment should include the interest accrued of $450,000 to February 1, 2003, plus per diem interest accrual of $205.48 per day after February 1, 2003, to the date the judgment was entered on February 18, 2003, of $3,698, for total prejudgment interest of $453,698.

11. The jury decided that the Bank breached the Loan Agreement (Jury Interrogatory One), that the Bank intentionally discriminated against the Longs based solely upon their status as Indians or tribal members in the Lease With Option to Purchase (Jury Interrogatory Four), and that the Bank acted in bad faith in connection with the Loan Agreement (Jury Interrogatory Five). The jury decided that as the result of the Bank's breach of contract, intentional discrimination, and bad faith, the Longs sustained damages of $750,000, and that interest should be added by the Court to such damages of $750,000.

The jury intended that interest at the statutory rate would be computed by the trial court. The interest rate proposed by the Bank, and adopted by the trial court, of 2.7%, violates the decision of the jury that interest at the statutory rate shall be added to the judgment. An interest rate of 2.7% is not the statutory rate of interest, and it is unfair to the Longs.

The Bank proposed, and the trial court adopted, interest of $123,131.81 for prejudgment interest over a period of six years or 2.7%. Prejudgment interest of $123,131.81

over six years, February 1, 1997, to February 1, 2003, is only $20,521.96 per year, or 2.7% interest. The Bank does not make loans to the Longs or any other customer for 2.7% interest, but the Bank proposed, and the trial court agreed, that 2.7% interest was good enough for the Longs. This low interest rate violates and partially nullifies the jury's decision. Prejudgment interest should be calculated at 10% per annum, as proposed by the Longs and as required by the statute.

Issue Two: Respondents-Appellants Longs Should be Permitted to Exercise Their Option to Purchase on All Their Land:

1. The jury determined in Jury Interrogatory One that the Bank breached the December 5, 1996 Loan Agreement (Exh. 6) entered into between the Long Family Land and Cattle Company, Inc. and the Bank.

2. The trial court ruled that the Lease With Option to Purchase (Exh. 7) and the Loan Agreement (Exh. 6) "were part and parcel of the same agreement." (See Order dated 1-3-03, p. 10.) (Appendix Tab 17) The trial court ruled that the Loan Agreement and the Lease With Option to Purchase are related documents under the integrated document doctrine. See Battery Steamship Corp. v. Refineria Panama S.A., 513 F.2d 735 n.3 (2d Cir. 1975). "The Court must examine both documents to determine if the performance of promises made within one agreement should be assessed by the promises referred to in the other." (See Order dated 9-30-02, p.7.) The trial court held that both agreements, the Loan Agreement and the Lease With Option to Purchase, were part and parcel of the same agreement.

3. The jury determined in Jury Interrogatory Two that the breach of the Loan Agreement by the Bank prevented the Longs, from performing under the Lease With Option to Purchase.

4. The trial court held that a condition precedent is any fact except mere lapse of time which must occur before a duty of immediate performance by the promissor can arise.

See Video Update v. Videoland, 182 F.3d 659 (8th Cir. 1999). As the trial court stated, "a party is not bound to perform a contract in the time frame contracted for if the other party breaches prior to the required performance or commits an anticipatory breach of that contract." (See Order dated 9-30-02, p. 8.) That is exactly what happened in this case, as determined by the jury. (Jury Interrogatory Two.)

5. The Longs demonstrated at trial, and the jury determined, that The Longs' performance under the Lease With Option to Purchase was conditioned upon the Defendant Bank's performance of the Loan Agreement. Therefore, the Defendant Bank's breach relieved the Longs of the obligation to perform under the time frames of the Lease With Option to Purchase Agreement. Where the Bank immediately breached the Loan Agreement after it was signed on December 5, 1996, by failing to make the $70,000 operating loan or an emergency collateral preservation loan, and as a result of such breach, the Longs' cattle loss or damage happened shortly thereafter January 15-16, 1997, the two year time frame set out in the Lease With Option to Purchase December 5, 1996, to December 5, 1998, never began to run. Defendant Bank's breach relieved The Longs of the obligation to perform under the time frame of the Lease With Option to Purchase. Defendant Bank's breach stopped the time running as of the date of the breach in December of 1996.

6. The trial court ruled in the Order dated 1-3-03 p. 10, as follows:

> In light of the jury's verdict that the Bank did breach the Loan Agreement, and this Court's previous finding that the Lease With Option to Purchase and Loan Agreement were part and parcel of the same agreement, the Court must rule against the Bank on the counterclaim for eviction. A party that has failed to comply with a lease with an option to purchase cannot seek to enforce the agreement through an eviction action. The jury advised the Court that the Bank's breach prevented the Longs from performing under the lease with an option to purchase. The Court therefore concludes that the Plaintiffs did not violate the lease with an option to purchase and their option to purchase remains intact. (Underline added.) (Appendix Tab 17)

7. Where the trial court concluded that the Longs' option to purchase their land "remains intact," the Longs seek an order of this Court permitting the Longs to exercise their option at this time and purchase all of their 2,225 acres of land back from the Bank, not just 960 acres. This is what the parties intended and agreed to under the Loan Agreement and the Lease With Option to Purchase, and the Bank should be held to its contracts.

8. Under the terms of the Lease With Option to Purchase the option purchase price for the 2,225 acres is $468,000. (Exh. 7, para. A, p. 2.) Such purchase price is reduced under the terms of the agreement, by the net selling price of the house in Timber Lake over $10,000. (Exh. 7, para. F, p. 3.) The house was sold, and the amount to be deducted from the option purchase price is $16,478.64. (Exh. 15.) With the house deduction the option purchase price is reduced to $451,521.36 ($468,000 – $16,478.64 = $451,521.36). In addition, the Lease With Option to Purchase, by its terms, provides that all rent payments (Longs' CRP payments) received by the Bank prior to the purchase of the real estate will be credited by the Bank against the purchase price of the real estate. (Exh. 7, para. G, p. 3.) The Longs paid "rent" by assigning their CRP payments to the Bank. (See "Lease Payments," p. 1.) The Bank received payments of $44,198 for 1997 and $44,198 for 1998; thus, the amount of $88,396 shall be credited off the purchase price, leaving a balance of $363,125.36 ($451,521.36 – $88,396 = $363,125.36). The Bank agreed to such deductions from the purchase price. in the lease with option to purchase. Ex. 7

The Lease With Option to Purchase also provides that interest at 8.5% per annum shall accrue on the unpaid balance during the time frame December 5, 1996, to December 5, 1998. However, this time frame does not apply because the jury determined that the breach of the Loan Agreement by the Bank prevented the Longs from performing under the Lease With Option to Purchase. (Jury Interrogatory Two.) Therefore, interest did not begin to accrue

during the time frame in the Lease With Option to Purchase, because the Bank breached the agreements immediately after the agreements were signed on December 5, 1996. It would be manifestly unfair for the Bank to accrue interest on the purchase price during the time frame December 5, 1996, to December 5, 1998, where the Bank breached the Loan Agreement in December of 1996. From that date forward the Longs were denied the $70,000 operating loan and the loan of $35,700 to buy additional cattle as promised by the Bank, which were the very tools the Longs needed to care for their livestock and increase their livestock income to enable them to buy their land back from the Bank under the Lease With Option to Purchase.

The trial evidence supports this conclusion. Dennis Huber of the North and South Dakota Native American Business Development Center, United Tribes Technical College, Bismarck, North Dakota, testified that he and his assistant, Bret Maxon, were present at a meeting at the Bank conference room in late October of 1996. He testified that BIA officer, Stacey Johnston, attended by speakerphone. Also in attendance were Bank president, Dennis Jensen; and Bank officers, Jim Nielsen and Charles Simon; and the Bank's attorney, David Von Wald. Ronnie and Lila Long also attended the meeting. The Longs were not represented by an attorney. Dennis Huber testified that he and Bret Maxon presented to the group the cash flow they had prepared which reflected the Loan Agreement and Lease With Option to Purchase, which were finalized and signed on December 5, 1996. (Exh. 8a) He identified the cash flow that he prepared as Exhibit 8a. He testified that all parties present at the meeting approved his cash flow (Exh. 8a) and agreed that the Longs' operation under the Loan Agreement and the Lease With Option to Purchase would work. (Appendix Tab 5)

The trial evidence shows that after the agreements were signed on December 5, 1996; the Bank came up with an entirely different cash flow, which it sent to the BIA by letter dated December 12, 1996. (Exh. 8.) Dennis Huber and Ronnie Long testified they had never seen

the Bank's cash flow before. The Bank had switched and substituted a bad cash flow to the BIA which showed that it would not work. The BIA rejected the Bank's letter and cash flow and requested that the Bank resubmit the application. The Bank never responded to the BIA and never did resubmit an application to the BIA. The jury determined this was bad faith by the Bank.

Dennis Huber's cash flow requires the Bank to provide $40,000 of the $70,000 operating loan to the Longs in November of 1996. (Exh. 8a.) Dennis Huber and Ronnie Long both testified that this operating money was absolutely necessary for the Longs to prepare their operation for winter, including moving the hay to the winter pasture where the cattle were located.

The Bank breached the Loan Agreement as soon as it was signed December 5, 1996, by failing to advance the $70,000 in operating costs to the Longs, as promised, to feed and care for their cattle, and in failing to loan $37,500 to the Longs to purchase 110 additional cattle, as promised, to increase their income to enable them to buy their land back under the Lease With Option to Purchase. The Longs would not have had the catastrophic cattle losses they experienced if the $70,000 operating loan had been made by the Bank after the agreements were signed in December of 1996, because the Longs would have been able to move their hay 20 miles to feed their livestock. Ronnie Long, testified that if the Bank had made the operating loan as agreed, prior to the cattle losses, the cattle losses would have been prevented. He also testified that the loan to buy 110 additional cattle would have increased the Longs' income. Had the Bank advanced the $70,000 operating money to the Longs as agreed, and had the Bank advanced the $37,500 direct loan cattle purchase money to the Longs as agreed, the Longs would have been able to feed and care for their cattle and increase their income as shown on Dennis Huber's cash flow (Exh. 8a), and would have been able to

purchase their land back at the end of the two year time frame set out in the Lease With Option to Purchase. These were questions of fact for the jury to resolve, and the jury resolved these questions against the Bank.

The Loan Agreement (Exh. 6) and the Lease With Option to Purchase (Exh. 7) were both signed December 5, 1996. The testimony of Ronnie Long was clear at trial. He testified that the Bank breached the Loan Agreement right after it was signed. The Bank breached the Loan Agreement and the implied covenant of good faith and fair dealing: (a) by failing to timely make a complete application to the BIA to increase the percent of BIA guarantee; (b) by failing to timely make the $70,000 operating loan, as promised, to enable the Longs to feed and care for their cattle; (c) by failing to timely make an emergency loan of up to $40,000 to preserve collateral and get feed to the Longs' cattle as authorized by the BIA and 25 CFR 103.22; (d) by switching the cash flows and sending a bad cash flow to the BIA; and (e) by failing to make the cattle purchase loan, as promised. Ronnie Long testified based on his years of experience caring for cattle, that if the Bank had loaned him the $70,000 operating money or an emergency protection loan of $40,000 in December of 1996, he could then have moved his hay from the fields where it was baled to the winter pastures where the cattle were located some 20 miles away, and the cattle would have survived the winter weather. The jury agreed.

The trial evidence established the date when the Longs' cattle loss or damage occurred. Ronnie Long testified that his cattle died in winter storms in January of 1997. He testified that 230 cows and 260 yearlings died. The death losses were verified by the FEMA inspectors (Exh. 14). Thus, the evidence is clear that the Longs' cattle damages, caused by the Bank's breach of contract and covenant of good faith, happened in January of 1997.

The jury decided that the Bank's breach of the Loan Agreement prevented the Longs from performing under the Lease With Option to Purchase. (Jury Interrogatory Two.) Where the Bank breached the Loan Agreement as soon as the agreement was signed on December 5, 1996, and the Longs' losses and damages caused by the Bank's breach followed in January of 1997, interest of 8.5% should not begin to accrue during the time frame of December 5, 1996, to December 5, 1998, on the option purchase price as provided in the Lease With Option to Purchase. As the trial court stated, "a party is not bound to perform a contract in the time frame contracted for if the other party breaches prior to the required performance or commits an anticipatory breach of that contract." (See Order dated 9-30-02, p. 8.) Where the Bank breached the agreements in December of 1996, the time frame in the Lease With Option to Purchase of December 5, 1996, to December 5, 1998, does not apply. The Bank's breach prevented the time frame from running. Such time frame never started running. Thus, the provision of the Lease With Option to Purchase that requires 8.5% interest to accrue on the option purchase price during the time frame of December 5, 1996, through December 5, 1998, does not apply.

9. The jury awarded the Longs damages against the Bank of $750,000 plus prejudgment interest. The purchase price of the land under the option to purchase is $363,125.36, and such option purchase price should be allowed to be paid immediately in full at this time by deducting such amount from the judgment entered in favor of the Longs and against the Bank. The Longs will file a partial satisfaction of the judgment in the amount of the purchase price when the Longs receive a deed to the land.

10. When the option price is paid in full by deducting $363,125.36 from the judgment, the Bank should deliver to the Longs a warranty deed to the Longs' 2,225 acres, with a policy of title insurance showing good and merchantable title in Ronnie and Lila Long.

11. When the Bank received the deed to the 2,225 acres of land, a policy of title insurance was issued to the Bank, and the Longs paid $1,118.25 in land credit for such policy of title insurance (Exh. 6). The Bank subsequently sold parcel one of 960 acres to the Maciejewskis under a contract for deed (Exh. 13), and sold 320 acres to the Psickas (Exh. 19). When the Maciejewskis entered into the ~~contract~~ for deed with the Bank, the Maciejewskis also received a policy of title insurance. (Exh. 21 p 4) Similarly, when the Psickas purchased the 320 acres, they also received a policy of title insurance. The trial court concluded, "that the Plaintiffs did not violate the lease with an option to purchase and their option to purchase remains intact." (See Order dated 1-3-03 p. 10.) Thus, the sale of the Longs' land by the Bank to the Maciejewskis and the Psickas was subject to the Longs' option to purchase, which the trial court has determined is still intact. When the Longs purchase their land from the Bank at this time, the Bank, the Maciejewskis, and the Psickas will not be damaged because they have full title insurance coverage in place to reimburse them for the amount they have paid the Bank for the land. Or, the Bank could simply pay the Maciejewskis and the Psickas back the money they paid the Bank for the land. The Bank will not be damaged because the Bank will have received the full price from the Longs that the Bank agreed to in the Lease With Option to Purchase.

Where the Longs have elected to exercise their option to purchase and buy back their 2,225 acres of land from the Bank, the Maciejewskis and the Psickas will be repaid by title insurance, or by the Bank, whatever amount they paid to the Bank for the 320 acres and the 960 acres. The Bank will receive the full price from the Longs that the Bank agreed to.

The CRST Law and Order Code also sets forth a remedy for the Maciejewskis and the Psickas. In this case, the Bank received title to the Longs' 2,225 acres of land as a deed in lieu of foreclosure. In return, the Longs received a Loan Agreement and a Lease With Option

to Purchase. The jury decided that the Bank breached the Loan Agreement, which made it impossible for the Longs to perform their option to purchase. The trial court held that the Longs' option to purchase remains intact. The Longs have elected to exercise their option to purchase and buy their land back from the Bank. Therefore, the sale of 1,905 acres by the Bank to the Maciejewskis and the sale of 320 acres by the Bank to the Psickas was defective, because the Longs' option to purchase was still intact, and the litigation was pending.

CRST Law and Order Code Section 10-1-5 entitled Sale of Property provides that (1) a proposed sale of foreclosed property must be noticed for 20 days in four public places on the Reservation, and (2) if the notice provisions are not complied with the sale may be declared void and of no effect. Section 10-2-6(6) provides that where tenant Longs held over and retained possession for more than sixty days after the expiration of the lease term, December 5, 1998, without any demand of possession or notice to quit by the landlord, or its successor in interest, the tenant Longs shall be deemed to have the permission of the landlord or his successor to hold over a full year under the same terms and conditions (Lease With Option to Purchase) as the original tenancy, and such tenants shall not be guilty of an unlawful detainer for such period by reason of holding over.

The Bank did not serve the Longs with a demand for possession or notice to quit within sixty days after December 5, 1998, or on or before February 5, 1999. (Exh. 20) The Bank's Notice To Quit was not until June 9, 1999. Therefore, the Longs had lawful possession of the 2,225 acres for another year, through December 5, 1999.

During this period of time, however, the Bank sold 320 acres to Psickas and sold 1,905 acres to Maciejewskis, and the Psickas took possession of and pastured the 320 acres in from March of 1999 on, and the Maciejewskis took possession of and farmed, pastured, and hayed the 960 acres from and after June 1999. Thus, the Bank and its successors violated the

↑ M + P had knowledge of the litigation.

and option to purchase
lease rights of the Longs in 1999, and the Bank sold the Longs' 2,225 acres of land to third parties in violation of the Longs' right to buy their land back.

CONCLUSION

The Longs request that this Court order prejudgment interest at the rate of 10% on the damages awarded by the jury of $750,000, not 2.7% as ordered by the trial court. The Longs request that this Court order that the Longs can buy all of their land back from the Bank, not just 960 acres as ordered by the trial court.

Oral Argument is requested because this is a complicated case, and argument may answer questions and clarify matters for this Court.

Dated this 15th day of January, 2004.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: James P. Hurley
JAMES P. HURLEY
Attorneys for Appellants-Respondents
818 St. Joe St.; P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343-1040 (phone)
(605) 343-1503 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of January, 2004, he served this original Brief of Respondents-Appellants, Long Family Land and Cattle Company, Inc.-Ronnie and Lila Long, 4 copies upon Rhea Hall, Clerk of Small Claims/ Appellate Division, Cheyenne River Sioux Tribe, and one copy upon David A, Von Wald and Kenneth E. Jasper , by depositing the same in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressees, to wit:

Ms. Rhea Hall, Clerk Claims/Appellate Clerk P.O. Box 120 Eagle Butte, SD 57625	Mr. David A. Von Wald Attorney at Law P.O. Box 468 Hoven, SD 57450	Mr. Kenneth E. Jasper Attorney at Law P.O. Box 2093 Rapid City, SD 57709-2093

which addresses are the last addresses of the addressees known to the subscriber.

James P. Hurley
JAMES P. HURLEY

APPENDIX
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15. Letter from Charlene Anderson, Enrollment Research Specialist, CRST, regarding Maciejewski and Pesicka not being enrolled with the CRST (Exh. 26) — 12/9/02

16. Notice of Entry of Order, Supplemental Judgment, Judgment — 1.25.03

17. Order — ~~1/3/03~~ 1.7.03

SPECIAL INTERROGATORY ONE TO JURY

Did the Defendant Bank breach the December 5, 1996 loan agreement (Plaintiff's Exhibit 6) between the Long Family Land and Cattle Co. Inc and the Bank of Hoven?

YES 7 (Number of jurors voting yes)
NO 0 (Number of jurors voting no)

Foreperson

SPECIAL INTERROGATORY TWO TO JURY

If you found in Interrogatory one that the Defendant Bank breached the loan agreement to the Plaintiffs, did that breach prevent the Plaintiffs Long Family Land and Cattle and Ronnie and Lila Long from performing under the lease with an option to purchase (Exhibit 7)?

YES 7
NO 0

Foreperson

SPECIAL INTERROGATORY THREE TO JURY

Did the Defendant Bank [redacted] use self-help remedies in an attempt to remove the Plaintiffs from the land that was subject to the lease with an option to purchase (Exhibit 7)?

YES 0
NO 7

Foreperson

SPECIAL INTERROGATORY FOUR TO JURY

Did the Defendant Bank intentionally discriminate against the Plaintiffs Ronnie and Lila Long based solely upon their status as Indians or tribal members in the lease with option to purchase. (Exhibit 7)?

YES 7

NO 0

Foreperson

SPECIAL INTERROGATORY FIVE TO JURY

Did the Defendant Bank act in bad faith when it attempted to gain the increased guarantee from the Bureau of Indian Affairs as referenced in the loan agreement dated December 5, 1996? (Exhibit 6)

YES 7

NO 0

Foreperson

SPECIAL INTERROGATORY SIX TO JURY
If you answered no to Numbers 1,3,4, and 5 you should stop here and not award damages.

If you answered yes to Number 1, 3,4, or 5 what amount of damages should be awarded to the Plaintiffs?

$750,000.00

AGREE 7

DISAGREE 0

Should interest be added to the Judgment?

YES 7
NO 0

Foreperson

EXHIBIT (5)

BANK OF HOVEN

April 26, 1996

Ronnie Long
Box 272
Timber Lake, S.D. 57656

Dear Ronnie,

This is an update to my letter written on April 17, 1996. I had previously talked to you about the bank foreclosing on the land base and the house in Timber Lake. The house would be sold with the sale proceeds applied to your BIA guaranteed debt, and the land base would be deeded to the bank and sold back to you on a contract.

There appears to be some difficulties in dealing with this situation in that manner. After talking to our legal counsel, David Von Wald, the only way the bank could sell this property back to you would be for you to secure financing through another financial institution or go through a government agency guaranteed loan such as FHA, BIA or SBA through our bank. This is because of possible jurisdictional problems if the bank ever had to foreclose on this land when it is contracted or leased to an Indian owned entity on the reservation.

Please call me at the bank if you have any questions on the above matter. We will try to proceed as soon as possible to secure financing through one of the above federal agencies or you can try to secure financing through another financial institution, as these appear to be the only ways we could sell the land base back to you. Thank You!

Sincerely,

Charles Simon

Charles Simon, VP
Bank of Hoven
P.O.Box 7
Hoven, S.D. 57450

PLAINTIFF'S EXHIBIT 5

EXH 011 (6)

Loan agreement between Long Family Land and Cattle Co. Inc. and the Bank of Hoven.

The Bank of Hoven has received a deed to property described in exhibit A attached here to, through the estate of Kenneth Long. The Bank of Hoven will credit Long Family Land and Cattle Co. Inc. from the sale proceeds as follows:

Credit for land	$468,000.00
Credit for house	$ 10,000.00
	$478.000.00

Less State Enhancement payoff	$ 82,447.88
Less past due taxes	$ 23,314.38
Less attorneys fees	$ 9,540.10
Less title search	$ 473.00
Less title ins	$1,118.25
Less payment in full of note #98179 RE Note	$206,566.16
Less payment in full of note #2002 BIA Subordination	$ 50,301.51
Less payment in full of note 2470 Emergency feed note	$ 5,312.69
Less payment in full of note #1866 (Ronnie & Lila Long)	$ 3,928.56
Less payment in full of note #98262 BIA Guaranteed Note 84%	~~$ 60~~,669.21
Less partial payment on note # 98809 BIA Guaranteed Note 80%	$ 34,328.26
	$478,000.00

The Bank of Hoven will request, from the BIA, to increase the guarantee to 90% and to reschedule note #98181(prin, int. and late charges), over 20 years with an annual payment from crop and yearling sales. Primary security will be cows, bulls and machinery. The Bank of Hoven will also request a 90% BIA guarantee on a $70,000.00 annual operating loan. This note will be secured by a 2nd lien on calves, yearlings, and a first lien on crops, and will be paid down to $1.00 annually.

If the BIA guarantee requests are approved, then the Bank of Hoven will make a loan to Long Family Land and Cattle Co. Inc. for $ 53,500.00 to pay off the balance of note # 98809 for approximately $17,000.00, with $37,500.00 to be used to purchase 110 calves to be feed and pastured with their own calves. The sale proceeds from wheat, millet, and 10hd of assorted yearlings will be applied to note #98809 first with any balance to be applied to the $53,500.00 note. The Bank of Hoven will have a 1st security interest on all calves and yearlings

PLAINTIFF'S EXHIBIT 6

and will apply those sales to the $53,500.00 note first.

The Bank of Hoven will enter into a lease/purchase option on the approximately 2230 acres of land only described in exhibit A, under a separate agreement attached hereto.

Dated this 5th day of Dec, 1996

Long ~~Land~~ and Cattle Co. Inc.
by Bonnie Long Pres
by Lila Long Sec Treasure

Bank of Hoven
by James Nelson AVP

Exhibit

LEASE WITH OPTION TO PURCHASE

* *

This Indenture, made and entered into and executed in duplicate this 5th day of December, 1996, by and between Bank of Hoven, a South Dakota Banking Corporation, P.O. Box 7, Hoven, South Dakota 57450, P.O., lessor, and Long Family Land and Cattle Company, Inc., of P.O. Box 272, Timber Lake, South Dakota 57656, lessee, WITNESSETH:

That the Lessor in consideration of the rents and covenants hereinafter mentioned, does hereby demise, lease and let unto the said lessee, and the said lessee does hereby hire and take from the said lessor, the following described real estate situated in Dewey County, South Dakota:

> The East Half (E½) of Section One (1), Township Fifteen (15) North, Range Twenty Four (24), East of the Black Hills Meridian;
>
> The Northwest Quarter (NW¼) of Section Twenty Five (25), all of Section Twenty Eight (28), the East Half (E½) of Section Thirty Two (32), the Northeast Quarter (NE¼), the West Half of the Northeast Quarter of the Northwest Quarter (W½NE¼NW¼), the Southeast Quarter of the Northeast Quarter of the Northwest Quarter (SE¼NE¼NW¼), the West Half of the Northwest Quarter (W½NW¼) and the Southeast Quarter of the Northwest Quarter (SE¼NW¼) and the South Half (S½) of Section Thirty Three (33); and the Southwest Quarter (SW¼) of Section Thirty Four (34), all in Township Seventeen (17) North, Range Twenty Five (25), East of the Black Hills Meridian, subject to easements, reservations and conveyances, if any, existing and of record,

to have and to hold, the above leased premises unto the said lessee for the full term of two (2) years from and after December 5, 1996.

LEASE PAYMENTS:

The said lessee agrees to and with the said lessor to pay as rent for the above described real estate, the sum of Forty Four Thousand One Hundred Ninety Eight Dollars ($44,198.00), per year, payable in approximately October or November of 1997 and 1998. Said payment is a CRP payment which will be payable from the United States Government to lessee, and lessee agrees to assign said payment to lessor so that lessor may receive said payment directly from the United States Government.

PLAINTIFF'S EXHIBIT 7

Prepared by:
David A. Von Wald
Attorney-at-Law
Box 468
Hoven, So. Dak. 57450
Tel. (605) 948-2550

NO ASSIGNMENT OR SUBLETTING:

It is understood that the lessee shall not have the right to sublet the above described real estate, or any part thereof, nor assign this lease without the prior written consent of the lessor.

REAL ESTATE TAXES:

The lessee shall pay the 1996 real estate taxes which become due and a lien on January 1, 1997, and the 1997 real estate taxes which become due and a lien on January 1, 1998, before the same shall become delinquent.

POSSESSION:

The lessee is currently in possession of the above described real estate and its possession shall terminate on December 5, 1998.

OPTION TO PURCHASE:

The lessee shall have an option to purchase the above described real estate during the term of this lease under the following terms and conditions:

A. The option purchase price for the above described real estate shall be the sum of Four Hundred Sixty Eight Thousand Dollars ($468,000.00).

B. In the event lessee wishes to exercise its option to purchase, it must give notice to lessor in writing and pay five percent (5%) of the purchase price and furnish the remaining balance of purchase price within sixty (60) days of the date of any such notice.

C. Lessee shall pay all selling expenses, including attorney fees, transfer fees, title insurance and any other miscellaneous expenses, including real estate taxes.

D. Lessor agrees to provide a Quit Claim Deed only, quitclaiming its interest in the above described real estate to the lessee, upon receipt of the entire purchase price.

E. Lessor agrees that there is currently a mortgage under the State Enhancement Program which it shall forthwith pay off,

and additionally it shall satisfy any mortgages wherein the Bank of Hoven is presently the mortgagee.

F. Lessor now owns residential real estate in Timber Lake, formerly owned by Kenneth Long, and has credited lessee's notes for $10,000.00. In the event said residential property is sold for more than $10,000.00, lessee agrees to reduce the selling price of the above described farm real estate any net amount, after expenses exceeding $10,000.00. In the event said residential real estate is sold for less than $10,000.00, the selling price of the above described farm real estate shall be increased by the net amount, after expenses of less than $10,000.00. Lessor does not warrant that it will sell said residential real estate nor is it under any obligation to attempt to sell the same. In the event it is not sold at the time lessee exercises its option to purchase, the option price of the farm real estate shall not be affected. If lessor later sells said residential real estate, or if lessee does not exercise its option to purchase, any proceeds from the sale of said residential property will be the Bank of Hoven's.

G. In the event lessee exercises its option to purchase, all rent payments received prior to the purchase of said real estate will be credited against the purchase price of said real estate, minus an amount equal to interest at the rate of eight and one-half percent (8.5%) per annum on the unpaid balance of purchase price from and after December 5, 1996.

INSURANCE:

Lessor will purchase a policy of insurance insuring the buildings located on the above described real estate against loss by fire and extended coverage along with liability insurance, and it shall be the responsibility of the lessee to reimburse the lessor for the cost of all such insurance.

WASTE:

Lessee agrees that it shall not commit any waste on the above described real estate and shall farm or graze said real estate in a good and husbandlike manner and shall maintain the buildings and fences in a good state of repair, reasonable wear and tear by the elements alone excepted, at its expense.

DEFAULT:

That should the lessee fail to pay any of the rent aforesaid

when due, or fail to fulfill any of the covenants herein contained, and in that event, it shall be lawful for the said lessor to re-enter and take possession of the above rented premises and to hold and enjoy the same without such re-entering working a forfeiture of the rents to be paid, and the covenants to be performed by the said lessee for the full term of this lease and to pursue any other remedy accorded to lessor by law. In the event lessee defaults under the terms and conditions of this agreement, the option to purchase above mentioned shall terminate upon lessor giving lessee a notice to cure, which notice is not cured within thirty (30) days of any such notice.

QUIET ENJOYMENT:

The lessor does covenant with the lessee that the lessee upon paying the rent and performing the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said premises for the full term of this lease.

In Witness Whereof, all parties have hereunto set their hands the day and year first above written.

LESSOR:

BANK OF HOVEN, a South Dakota Banking Corporation

By: James Nielsen
Its: Asst V.P.

(CORPORATE SEAL)

LESSEE:

LONG FAMILY LAND AND CATTLE COMPANY, INC.

By: Lonnie Long Pres.
Its:

(CORPORATE SEAL)

State of South Dakota)
) ss
County of Potter)

On this 5th day of December, 1996, before me, the

undersigned officer, personally appeared James Nielsen who acknowledged himself to be the Assistant V.P. of Bank of Hoven, a South Dakota Banking Corporation, lessor, and that he, as such Assistant V.P., being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Assist. V.P..

In Witness Whereof, I hereunto set my hand and official seal.

David A. Van Walt
Notary Public

My Commission Expires:
July 22, 2001

(SEAL)

State of South Dakota)
) ss
County of Potter)

On this 5th day of December, 1996, before me, the undersigned officer, personally appeared Ronnie Long, who acknowledged himself to be the President of Long Family Land and Cattle Company, Inc., a Corporation, lessee, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

In Witness Whereof, I hereunto set my hand and official seal.

David A. Van Walt
Notary Public

My Commission Expires:
July 22, 2001

(SEAL)
Bank\Lease

BANK OF HOVEN

December 12, 1996

Russell McClure, Supt.
Cheyenne River Sioux Tribe
Box 590
Eagle Butte, SD 57625

Re: Long Family Land and Cattle Co. Inc.

Dear Mr. McClure;

The Bank of Hoven is requesting to restructure its current BIA guarantee loan #98181 in the approximate amount of $415,000.00 over 20 years @9.25% variable, payable in annual payments. We would also request an $85,000.00 line of credit for operating expenses. The Bank would also make a direct loan on a LIFO basis of approximately $41,000.00 to purchase 110 calves for $37,500.00 and to refinance BIA guarantee note # 98809, after applying the proceeds from 10 hd of yearlings, wheat and millet sales.

This restructing we feel is in the best interest of the borrower to allow them some time to work through this low cattle market and will lessen the chance for the U.S. Gov't of the Bank calling the guarantee. The Long's have deeded some real estate to the Bank for credit on their loans, and are leasing this real estate from the Bank, and with this reduction in debt and a restructing of the existing debt we feel that the operation can cash flow even during this low cattle price cycle and begin to rebuild the financial structure of the ranching operation. We have enclosed the financial statements and cash flows to support this position.

We would request that the guarantee % be increased to 90% on note #98181 and that the line of credit be a 90% guarantee. We hope that you can look favorably on this request to allow the Long's to continue on in their life long ranching operation.

Thank you.

Sincerely yours,

James Nielsen, AVP

PLAINTIFF'S EXHIBIT 8

00529

FINANCIAL STATEMENT

Name Ronnie I - Long Family Address P O : 272, Timber Lake, SD 57656

To Bureau of Indian Affairs

For the purpose of obtaining loans and discounting paper with you, and otherwise procuring credit from time to time, I furnish the following true and accurate statement of my financial condition.

I agree to, and will notify you immediately in writing of any materially unfavorable change in my financial condition, and in the absence of such notice or of a new and full written statement, this may be considered as a continuing statement and substantially correct; and it is hereby expressly agreed that upon application for further credit, this statement shall have the same force and effect as if delivered as an original statement of my financial condition at the time such further credit is requested.

Financial condition as of December 9, , is 96

ASSETS

				(Omit Cents)
CATTLE				
305	Cows 1-4	@ $ 700	$	213,000
	Cows over 4	@		
	Cows Dairy	@		
	Heifers 1's	@		
	Heifers 2's	@		
250	Steers 1's Yearlings	@ 350		87,500
	Steers 2's	@		
110	Calves	@ 305		33,550
	Bulls	@		
	TOTAL CATTLE		$	334,550
HOGS				
	Sows	@ $	$	
	Shoats	@		
	Pigs	@		
	Boars	@		
	TOTAL HOGS		$	
SHEEP				
	Ewes 1-4	@ $	$	
	Ewes over 4	@		
	Lambs	@		
	Bucks	@		
	TOTAL SHEEP		$	
OTHER				
12	Horses	@ $ 1,500	$	18,000
		@		
	TOTAL OTHER		$	
	TOTAL LIVESTOCK		$	352,550
FEED & GRAIN ON HAND				
	Bu. Corn	@ $	$	
	Bu. Oats	@		
	Bu. Milo	@		
	Bu.	@		
	B-T Alfalfa	@		
1400	B-T Mixed Hay	@ 40		56,000
	T Silage	@		
	B-T	@		
	TOTAL FEED & GRAIN		$	56,000
OTHER CURRENT ASSETS				
Cash in Bank			$	500
Accounts & Notes Receivable				
Government Bonds				
Cash Value Life Insurance				
Other Investments				
Other Current Assets				
TOTAL CURRENT ASSETS			$	409,050
Machinery & Equipment (over)			$	116,700
Automobiles				
Trucks				
REAL ESTATE				
15	Acres in Dewey County 25		$	3,750
	Acres in County			
Household				20,000
House in country				90,000

LIABILITIES

	Date Incurred	Date Due	(Omit Cents)
ENCUMBRANCE ON LIVESTOCK			$
To BOH			415,000
Security			
To BOH			53,500
Security			
UNSECURED LOANS			
To Bank			$
To			
PURCHASE CONTRACTS (payments due within 12 months)			
To			$
For			
To			
For			
To			
For			
ACCOUNTS PAYABLE			
To			$
For			
To			
For			
To			
For			
OTHER CURRENT LIABILITIES (e.g. RE taxes, cash rent, due relatives)			
To			$
To			
On Real Estate			$
On Income			
To			$
To			$
To			
REAL ESTATE MORTGAGE DUE WITHIN 12 MONTHS			
To			$
To			
TOTAL CURRENT LIABILITIES			$ 468,500
PURCHASE CONTRACTS LESS AMOUNT DUE WITHIN 12 MONTHS			
To			$
Less amount due within 12 Mo.			
To			$
Less amount due within 12 Mo.			
Net amount owing on contracts			$
REAL ESTATE MORTGAGE:			
To HUD			$ 15,600
Less amount due within 12 Mo.			
To			$
Less amount due within 12 Mo.			
To			$
Less amount due within 12 Mo.			
Net amount owing on Real Estate			$
TOTAL LIABILITIES			$ 484,100
		248	155,400

Cheyenne River Sioux Tribe
CREDIT OFFICE
P.O. Box 590
EAGLE BUTTE, SOUTH DAKOTA 57625
Telephone: 605-964-4000
FAX: 605-964-1180
WATS: 800-831-5975

December 10, 1996

Jim Nielsen, Asst Vice Pres
Bank of Hoven
P O Box 7
Hoven, SD 57450

Jim,

This is the narrative on the notes to cash flow on Ronnie Long.

YEAR 1)

Existing wheat and millet are projected to bring $12,125 and 97 wheat production to yield $17,500. The interest subsidy is projected at $22,000, the CRP at $44,168. We project selling half of his 97 calf production in Oct 97 (300 at 90% for 270 calves total) with 135 at $350 for $47,250. Current yearlings of 10 head to be sold right away and 320 to be sold in Sep. The 320 in Sept comes from the advance on the 250 head he now owns plus the 110 head to be bought in the 98809 note payoff. He is projecting selling 40 culls at $300 and taking the proceeds from this sale plus another $300 to buy back 40 to keep his cattle numbers. The calves he retains will probably be the heifers and sell the steers so that he could run bulls with these and sell bred heifers instead of the 8 weight yearlings the following year.

YEAR 2)

Wheat sales are the same as year one with 200 Acres at 25 Bu/A and $3.50 per bushel. The interest subsidy is projected at $11,294 and the CRP at $44,168. This is the last year for the CRP payment. The cow count is projected at 340 head this year, by keeping 20 head of the yearlings from the previous year (250 owned + the 110 bought less 320 sold), with half sold in the fall at 144 head (320 at 90% = 288). The proposal is to advance $280 per head on the 97 calves and buy 100 head this year for 235 head to sell in Sep at $550. He intends to sell 20 culls in Nov of 97. His cow count is now back to 300 head. The 144 to 150 head of heifers that are saved from this calf crop are to be added to the herd to make the cow count in 2000 at 450 head. Selling 20 culls reduces

the cows to 320 head.

YEAR 3)

Grain sales are left the same at $17,500. Interest subsidy at $10,932. No CRP payment this year. The intent this year is to add 130 head of bred stock to the 320 for a total of 450 cows to calve this year with all of these calves sold in the fall for $172,125. There would be an extensive culling in the fall of 99, with the bred stock on the place in Oct will be at 580 head (320 head of cows plus the 144 heifers from the 1997 calf crop plus the 130 head of bred heifers purchased this year). There is a sale of 130 head of bred stock projected to be culled that should leave a good young pregnancy tested herd of at least 450 head for 2000 and later years where cull sales should be about equal to the calf sales in revenue. With no more CRP, there will be those Acres that can be hayed plus the 320 Acres of Alfalfa for a total of about 1630 of hayland. Maciejewski's will hay this for 50% of the crop, which would leave Ronnie's share at 1,630 tons of hay. He will need about 600 tons for his own use, so he could sell the 1030 tons. We projected this at $35/T.. The payment on the land acquisition would be $478,000 over a 20 year period at 8.5% would have a payment of $50,510.

This plan shows a positive cash flow of right at 8% all three years with a total positive cash margin of $88,581. Another consideration is that the cattle numbers have increased to 450 head from the now 300 head.

Hope this explains what we tried to do. If you have any questions please call.

Sincerely,

John Lemke, CRST Credit Officer

Name: Ron Long

Monthly Cash Flow (Agri-Business)

Year 1

Date: 11/96 to 10/97

Month	11	12	1	2	3	4	5	6	7	8	9	10	Total
Cash, beginning:		($28,227)	($31,777)	($35,327)	($42,877)	($46,427)	($50,777)	($69,827)	($77,377)	($80,927)	($84,477)	$54,373	$0
Grain	$12,125	96 wheat and millet							200 @ 25 @ $3.50		$17,500		$29,625
Int subsidy and CRP	$22,000											$44,168	$66,168
Calf sales 50% 135@$350												$47,250	$47,250
Yearling sales 281 + 110 = 391	$4,800	10 @ $480							388	320@$520	$166,400		$171,200
37,500 + $3,000; 40Culls@$300	$52,500												$52,500
40,586 Cash available:	$91,425	($28,227)	($31,777)	($35,327)	($42,877)	($46,427)	($50,777)	($69,827)	($77,377)	($80,927)	$99,423	$145,791	$366,743
Operating Expenses:													
Car & Truck													$0
Chemicals								$4,000					$4,000
Conservation													$0
Custom Hire (machine work)													$0
Depreciation													$0
Employee Benefits													$0
Feed	$19,800												$19,800
Fertilizers				$4,000									$4,000
Freight & Trucking													$0
Gasoline, Fuel & Oil	$700	$700	$700	$700	$700	$1,100	$1,700	$700	$700	$700	$1,700	$2,700	$12,800
Insurance (other than health)	$4,000												$4,000
Interest - other												$9,809	$9,809
Labor hired	$600	$600	$600	$600	$600	$1,000	$1,000	$600	$600	$600	$600	$600	$8,000
Pension & Profit-sharing													$0
Rent or lease (Eqmt. etc.)													$0
Rent or lease (Animals, Land)	$16,702						$7,000						$23,702
Repairs & Maintenance	$400	$400	$400	$400	$400	$400	$400	$400	$400	$400	$400	$400	$4,800
Seeds and plants							$3,600						$3,600
Storage and warehousing													$0
Supplies	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$2,400
Taxes	$3,500						$3,500						$7,000
Utilities	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$4,200
Veterinary, breeding, & medicine	$6,600												$6,600
Miscellaneous (specify)													$0
Total Cash Expenses:	$52,852	$2,250	$2,250	$6,250	$2,250	$3,050	$17,750	$6,250	$2,250	$2,250	$3,250	$14,059	$114,711
	1) Advance on calves and purchase $40,500 2) OLC												
OTHER DISBURSEMENTS:	3) BIA term note $415,000 20yrs 9.25% $46,246 4) Lease/purchase option w/bank $44,168												
Capital expenditures	$12,000	20 cows@$600							20	12 cows @ $800		$12,000	$24,000
Livestock purchases	$53,500	Livstk purchase and note 98809 payoff $40,500				$13,000							$53,500
Owner's withdrawal	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$15,600
Loan repayment											$40,500	$90,414	$130,914
Total Other Disbursements:	$66,800	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$41,800	$103,714	$224,014
Total Cash Disbursements:	$119,652	$3,550	$3,550	$7,550	$3,550	$4,350	$19,050	$7,550	$3,550	$3,550	$45,050	$117,773	$338,725
TOTAL CASH, ENDING:	($28,227)	($31,777)	($35,327)	($42,877)	($46,427)	($50,777)	($69,827)	($77,377)	($80,927)	($84,477)	$54,373	$28,018	$28,018

Name: Ron Long

Monthly Cash Flow (Agri-Business)

Year 2

Date: 11/97 to 10/98

Month	11	12	1	2	3	4	5	6	7	8	9	10	Total
Cash, beginning:	$28,018	$42,965	$4,415	$865	($6,685)	($10,235)	($14,585)	($33,635)	($41,185)	($44,735)	($48,285)	$56,115	$28,018
Grain									200 @ 25 @ $3.50		$17,500		$17,500
Int subsidy and CRP	$11,294											$44,168	$55,462
Calf sales 50% 144@$375												$54,000	$54,000
Yearlings 235 @ $550											$129,250		$129,250
135@$280; 20 culls@$400	$45,800												$45,800
37.5% Cash available:	$85,112	$42,965	$4,415	$865	($6,685)	($10,235)	($14,585)	($33,635)	($41,185)	($44,735)	$98,465	$154,283	$330,030
Operating Expenses:													
Car & Truck													$0
Chemicals								$4,000					$4,000
Conservation													$0
Custom Hire (machine work)													$0
Depreciation													$0
Employee Benefits													$0
Feed	$10,395												$10,395
Fertilizers				$4,000									$4,000
Freight & Trucking													$0
Gasoline, Fuel & Oil	$700	$700	$700	$700	$700	$1,100	$1,700	$700	$700	$700	$1,700	$2,700	$12,800
Insurance (other than health)	$4,000												$4,000
Interest - other												$929	$929
Labor hired	$600	$600	$600	$600	$600	$1,000	$1,000	$600	$600	$600	$600	$600	$8,000
Pension & Profit-sharing													$0
Rent or lease (Equi. etc.)													$0
Rent or lease (Animals, Land)	$16,702						$7,000						$23,702
Repairs & Maintenance	$400	$400	$400	$400	$400	$400	$400	$400	$400	$400	$400	$400	$4,800
Seeds and plants							$3,600						$3,600
Storage and warehousing													$0
Supplies	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$2,400
Taxes	$3,500						$3,500						$7,000
Utilities	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$4,200
Veterinary, breeding, & medicine	$4,000												$4,000
Miscellaneous (specify)													$0
Total Cash Expenses:	$40,847	$2,250	$2,250	$6,250	$2,250	$3,050	$17,750	$6,250	$2,250	$2,250	$3,250	$5,179	$93,826

1) Advance on calves 135 @ $280 $37,800 2) OLC

OTHER DISBURSEMENTS: 3) BIA term note $415,000 20yrs 9.25% $46,246 4) Lease/purchase option w/bank $44,168

Capital expenditures													$0
Livestock purchases		$35,000	100yrlg@$350								$37,800		$72,800
Owner's withdrawal	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$15,600
Loan repayment												$90,414	$90,414
Total Other Disbursements:	$1,300	$36,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$39,100	$91,714	$178,814
Total Cash Disbursements:	$42,147	$38,550	$3,550	$7,550	$3,550	$4,350	$19,050	$7,550	$3,550	$3,550	$42,350	$96,893	$272,640
TOTAL CASH, ENDING:	$42,965	$4,415	$865	($6,685)	($10,235)	($14,585)	($33,635)	($41,185)	($44,735)	($48,285)	$56,115	$57,390	$57,390

loan by 35,000

+ 35,000

92,390

Monthly Cash Flow (Agri-Business)

Year 3

Name: Ron Long

Date: 11/98 to 10/99

Month	9 10 11	12	1	2	3	4	5	6	7	8	9	10	Total
Cash, beginning:	$57,390	($46,030)	($49,580)	($53,130)	($60,680)	($64,230)	($68,580)	($89,630)	($97,180)	($100,730)	($104,280)	($55,280)	$57,390
Grain									200 @ 25 @ $3.50		$17,500		$17,500
Interest subsidy	$10,932												$10,932
Calf sales 450@90%@$425												$172,125	$172,125
Bred hfr 130@$650												$84,500	$84,500
Hay sales 1630A@2T@50%less600Ton@$35										1030@$35	$36,050		$36,050
Cash available:	$68,322	($46,030)	($49,580)	($53,130)	($60,680)	($64,230)	($68,580)	($89,630)	($97,180)	($100,730)	($50,730)	$201,345	$378,497
Operating Expenses:													$0
Car & Truck								$4,000					$4,000
Chemicals													$0
Conservation													$0
Custom Hire (machine work)													$0
Depreciation													$0
Employee Benefits													$2,000
Feed	$2,000												$4,000
Fertilizers				$4,000									$0
Freight & Trucking													$12,800
Gasoline, Fuel & Oil	$700	$700	$700	$700	$700	$1,100	$1,700	$700	$700	$700	$1,700	$2,700	$4,000
Insurance (other than health)	$4,000												$8,050
Interest - other												$8,050	$8,000
Labor hired	$600	$600	$600	$600	$600	$1,000	$1,000	$600	$600	$600	$600	$600	$0
Pension & Profit-sharing													$0
Rent or lease (Equip. etc.)													$25,702
Rent or lease (Animals, Land)	$16,702						$9,000						$4,800
Repairs & Maintenance	$400	$400	$400	$400	$400	$400	$400	$400	$400	$400	$400	$400	$3,600
Seeds and plants							$3,600						$0
Storage and warehousing													$2,400
Supplies	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$7,000
Taxes	$3,500						$3,500						$4,200
Utilities	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$6,600
Veterinary, breeding, & medicine	$6,600												$0
Miscellaneous (specify)													$97,152
Total Cash Expenses:	$35,052	$2,250	$2,250	$6,250	$2,250	$3,050	$19,750	$6,250	$2,250	$2,250	$3,250	$12,300	

1) OLC 2) BIA term note $413000 20yrs 9.25% $46,246
3) Land note $478,000 20yrs 8.5% $50,510

OTHER DISBURSEMENTS:													
Capital expenditures													$0
Livestock purchases	$78,000	130 bred hfrs @ $600											$78,000
Owner's withdrawal	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$15,600
Loan repayment												$96,756	$96,756
Total Other Disbursements:	$79,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$98,056	$190,356
Total Cash Disbursements:	$114,352	$3,550	$3,550	$7,550	$3,550	$4,350	$21,050	$7,550	$3,550	$3,550	$4,550	$110,356	$287,508
TOTAL CASH, ENDING:	($46,030)	($49,580)	($53,130)	($60,680)	($64,230)	($68,580)	($89,630)	($97,180)	($100,730)	($104,280)	($55,280)	$90,989	$90,989

Name: Long Family Inc. R Long mgrs.

Monthly Cash Flow (Agri-Business)
projected income for 11/01/96 to 10/31/97

Year 1

Date: 11/01/96

Month	November	December	January	February	March	April	May	June	July	August	September	October	Total
1996 calves adv	$62,500	$5,875	$4,225	$7,575	$1,925	$3,275	$4,225	($9,525)	($175)	($1,825)	($3,475)	$198,575	$62,500
Cash receipts from L. O. C.	$10,000		$5,000		$3,000	$3,000	$2,000	$15,000					$68,000
Cash from 96 grain and 1997	$12,125	Sale of 96 grain wht and millet				200@whtX25buX$3.50					$17,500		$29,625
Cash from BIA Int sub & CRP	$22,000	BIA Int sub				CRP pmt						$44,000	$66,000
Cash from sale of yrlgs & adv 97 calves	$4,800	360hdyrlygsX$520.00		&10hd95yrlgs		300hdcowX90%X$330.00					$187,200	$89,100	$281,100
Cash from cattle purchase	$96,050												$96,050
Cash available:	$237,475	$5,875	$9,225	$7,575	$4,925	$6,275	$6,225	$5,475	($175)	($1,825)	$201,225	$331,675	$603,275
Operating Expenses:													$0
Car & Truck								$4,000					$4,000
Chemicals													$0
Conservation													$0
Custom Hire (machine work)													$0
Depreciation													$0
Employee Benefits													$19,800
Feed	$19,800	660hdX$.25 per hd for 120days							400@cornX$25.00 per @				$4,000
Fertilizers		500@Corn&WhtX$8.00 $4,000											$0
Freight & Trucking													$12,800
Gasoline, Fuel & Oil	$700	$700	$700	$700	$700	$1,100	$1,700	$700	$700	$700	$1,700	$2,700	$0
Insurance (other than health)												$15,100	$102,100
Interest - other	$87,000												$0
Labor hired													$0
Pension & Profit-sharing													$0
Rent or lease (Equip. etc.)							$6,000						$23,000
Rent or lease (Animals, Land)	$17,000						$400	$400	$400	$400	$400	$400	$4,800
Repairs & Maintenance	$400	$400	$400	$400	$400	$400	$3,600	$400	$400	$400	$400	$400	$3,600
Seeds and plants													$0
Storage and warehousing													$2,400
Supplies	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$7,000
Taxes	$3,500						$3,500						$4,200
Utilities	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$6,600
Veterinary, breeding, & medicine	$6,600												$0
Miscellaneous (specify)													
Total Cash Expenses:	$135,550	$1,650	$1,650	$5,650	$1,650	$2,050	$15,750	$5,650	$1,650	$1,650	$2,650	$18,750	$194,300
OTHER DISBURSEMENTS:													$0
Capital expenditures													$96,050
Livestock purchases	$96,050	55hdstrX$325.00&55hdbfrsX$285.00				plus adv 250hdcalves 96						$80,547	$80,547
BIA loan pmt &RB loan pmt												$68,000	$68,000
Loan repayment													
Total Other Disbursements:	$96,050	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$148,547	$244,597
Total Cash Disbursements:	$231,600	$1,650	$1,650	$5,650	$1,650	$2,050	$15,750	$5,650	$1,650	$1,650	$2,650	$167,297	$438,897
TOTAL CASH, ENDING:	$5,875	$4,225	$7,575	$1,925	$3,275	$4,225	($9,525)	($175)	($1,825)	($3,475)	$198,575	$164,378	$164,378

8a

8a

Name: Long Family Inc. & Long Pns

Monthly Cash Flow (Agri-Business)
projected cash flow 11/01/97 to 10/31/98

Year 1

Date: 11/01/97

Month	November	December	January	February	March	April	May	June	July	August	September	October	Total
Cash, beginning:	$164,378	$82,328	$80,428	$74,528	$72,628	$70,728	$68,428	$62,428	$48,128	$46,228	$44,328	$246,128	$164,378
Cash receipts from L. O. C.													$0
Cash from sale of whi											$17,500		$17,500
Cash from sale of 97yrlgs&ad	98calves	200@whtX25buX$3.50									$187,200	$89,100	$276,300
Cash from DIAInt & crpPMT	$10,000	360yrlgsX$520.00		300cowsX90%X$330.00								$44,000	$54,000
Cash from sales, OTHER													$0
Cash available:	$174,378	$82,328	$80,428	$74,528	$72,628	$70,728	$68,428	$62,428	$48,128	$46,228	$249,028	$379,228	$512,178
													$0
Operating Expenses:													$4,000
Car & Truck								$4,000					$0
Chemicals													$0
Conservation													$0
Custom Hire (machine work)													$19,800
Depreciation													$4,000
Employee Benefits													$0
Feed	$19,800	660HDx$25 PER HD FOR 120 DAYS											$12,300
Fertilizer			$4,000	500@x$8.00									$7,500
Freight & Trucking													$0
Gasoline, Fuel & Oil	$750	$750	$750	$750	$750	$1,150	$1,350	$750	$750	$750	$1,750	$2,250	$0
Insurance (other than health)	$7,500												$0
Interest - other													$0
Labor hired													$23,000
Pension & Profit-sharing								$6,000					$6,000
Rent or lease (Farm, etc.)								$500	$500	$500	$500	$500	$2,400
Rent or lease (Animals, Land)	$17,000							$2,400					$0
Repairs & Maintenance	$500	$500	$500	$500	$500	$500	$500						$3,000
Seeds and plants													$7,000
Storage and warehousing								$250	$250	$250	$250	$250	$4,800
	$250	$250	$250	$250	$250	$250	$250	$3,500					$6,600
Taxes	$3,500							$400	$400	$400	$400	$400	$0
Utilities	$400	$400	$400	$400	$400	$400	$400						$100,600
Veterinary, breeding, & medicine	$6,600												
Miscellaneous (specify)													
Total Cash Expenses:	$56,300	$1,900	$5,900	$1,900	$1,900	$2,300	$6,000	$14,300	$1,900	$1,910	$2,900	$3,400	
													$0
OTHER DISBURSEMENTS:													$35,750
Capital expenditures													$0
Livestock purchases	$35,750											$80,547	$80,547
Owner's withdrawal												$80,547	$116,297
Loan BIA Oly & RB loan pmts													
Total Other Disbursements:	$35,750	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$83,947	$216,897
Total Cash Disbursements:	$92,050	$1,900	$5,900	$1,900	$1,900	$2,300	$6,000	$14,300	$1,900	$1,900	$2,900	$83,947	$295,281
TOTAL CASH, ENDING:	$82,328	$80,428	$74,528	$72,628	$70,728	$68,428	$62,428	$48,128	$46,228	$44,328	$246,128	$295,281	$295,281

8a

BANK OF HOVEN

January 16, 1997

Dennis Huber
ND/SD Indian Business Development Center
Bismarck, N.D. 58504

Dear Dennis,

The Bank of Hoven has received a deed to property previously owned by Kenneth Long, Timber Lake, S.D. worth $468,000.00 on farm and range real estate and $10,000.00 on a house in Timber Lake. This value of $478,000.00 has been used to pay off prior real estate debt, taxes, attorney fees, title fees and bank debt owed by Long Family Land and Cattle Co., Inc., Timber Lake, S.D.

Longs are also in the process of receiving a rescheduling of the remaining present BIA guaranteed debt of $343,874.42 over a 20 year term. They will also be receiving a BIA guaranteed operating loan for $70,000.00 for annual operating expenses. Upon receiving the BIA guarantee shortly, they will also receive a direct bank loan for $53,500.00 to be used to refinance bank debt and purchase feeder cattle.

These credits and loans would not have been possible without your expertise and assistance. We appreciate your efforts in helping the bank secure this loan package and reduction of bank debt for the Longs. Please call me at the bank if you have any questions on the above information. Thank You!

Sincerely,

Charles Simon

Charles Simon VP
Bank of Hoven
P.O.Box 7
Hoven, S.D. 57450

PLAINTIFF'S EXHIBIT 10

FDIC

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Aberdeen Area Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401

REPLY REFER TO:
Community Services/Economic Development
MC-305

FEB 14 1997

James Nielsen
Assistant Vice President
Bank of Hoven
P.O. Box 7
Hoven, South Dakota 57625

Dear Mr. Nielsen:

This letter is to recap your conversation with Loan Specialist, Stacey Johnston on February 3, 1997 and respond to your December 12, 1997 submittal on the Long Family Land Cattle Co. Inc..

Your December 12, 1997 request involved a restructure of the term guaranty, a new $85,000 line of credit, a LIFO on $41,000 to purchase livestock, and an increase of the guaranty percentage. Loan Specialist, Stacey Johnston informed you that this kind of request would have to be viewed as a modification, which requires a more complete application. Modification criteria is clearly outlined in your Loan Guaranty Agreement and 25 CFR 103.21. This reference material is the basis for our programs and should be adhered to when requesting, modifying, servicing and collecting guaranteed loans.

We understand the emergency situation caused by the severe winter conditions. Therefore, we concur with a loan for emergency expenses. These expenses should be documented and readily available to the Agency Superintendent. This decision is made with the intention of preserving collateral. Refer to 25 CFR 103.22 for further direction and documentation.

We will not act on your December 12, 1997 requests until we receive a complete application. Under separate cover, we are again sending a copy of 25 CFR 103.

Area Director

PLAINTIFF'S EXHIBIT 11

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anagerial ability and expe-

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, where past operations or
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ic enterprise for which fi-
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ion.

Mar. 19, 1975. Redesignated at 47
r. 30, 1982, as amended at 54 FR
3, 1989; 57 FR 46473, Oct. 8, 1992]

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formation in an application
nteed or insured loan indi-
the applicant may obtain
ithout a guaranty or insur-
Commissioner may deny the
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Oct. 8, 1992]

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.cations to refinance loans to
ic enterprise will be accom-
financial and cash flow state-
tired in §103.15(a) (1) through
ranty of a loan to refinance
ndebtedness will be consid-
if the loan will result in a
.ly lower lender's interest
borrower, or provide a sub-
longer term for repayment
n, or decrease the loan-to-
e ratio of the business being

.cations for refinancing loans
nteed or insured under this
ill not be approved for guar-
surance if, in the opinion of
issioner, the submittal of the
a is motivated primarily to

obtain guaranty or insurance of a loan which otherwise would be made.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§ 103.18 Furnishing additional information.

The Commissioner may require either the lender or the borrower, or both, to furnish additional information or justification for a loan prior to issuance of a guaranty certificate or insurance agreement where Commissioner approval of an individual insured loan is required.

§ 103.19 Approval of guaranteed loans.

(a) Upon a lender's approval of an application for a guaranteed loan, the lender will forward the application in duplicate to the Commissioner with a "Request for Guaranty". The Commissioner will approve the application by issuance of a "Guaranty Certificate" which will show the percentage amount of the loan guaranteed, the premium to be paid to the Commissioner and the interest subsidy to be paid on the loan by the United States.

(b) If the application is not approved, the original will be returned to the lender with an explanation, and a copy furnished the loan applicant.

§ 103.20 Approval of insured loans.

After a lender approves a loan eligible for insurance in accordance with an approved insurance agreement, the lender will proceed as authorized by the agreement. Applications for insured loans which require approval by the Commissioner as prescribed in § 103.14 will be forwarded in duplicate to the Commissioner with a "Request for Insurance" signed by the lender. The Commissioner will approve the application by issuance of an "Insurance Agreement". If the application is not approved, the original will be returned to the lender with an explanation.

§ 103.21 Modification of loan agreements.

(a) Guaranteed and insured loans may be modified with the approval of the parties to the original loan agreement. Modification of guaranteed loans and those insured loans which required Commissioner approval, requires the Commissioner's approval only if the modification involves:

(1) Change of the repayment schedules,
(2) Changes in the prime security,
(3) Change of interest rate,
(4) Change in the use of loan funds,
(5) Increase in the principal amount of a loan, except as provided in § 103.22,
(6) Change of the plan of operation,
(7) Amendment or changes in the organization papers of the borrower,
(8) Changes in partnership agreements, and
(9) Change in the location of an enterprise.

(b) Lenders making insured loans which under the provisions of an approved insurance agreement do not require Commissioner approval shall use prudence in approving requests for modifications of loan agreements and follow the lender's customary procedures and practices which are used in connection with noninsured loans made by it. Modifications are to be in compliance with the provisions of §§ 103.13, 103.14, and 103.24. Lenders making insured loans under the provisions of such an insurance agreement shall notify the Commissioner not later than 20 days after approval of a modification of such insured loan. Modifications of the organization papers of corporations or cooperative associations and partnership agreements and plans of operation which originally required Commissioner approval, require approval by the Commissioner upon modification.

§ 103.22 Protective advances.

When provided for in a loan agreement, and subject to the limitations on the amounts and terms of loans as provided in §§ 103.13, 103.14, and 103.24, lenders may advance, for certain purposes, up to 10 percent of the amount for which a guaranteed or insured loan originally was approved. If the borrower is unable to provide the funds or refuses to do so, an advance may be made for purposes necessary and proper for the preservation, maintenance or repair of the property purchased with or given to secure the loan; for accrued taxes, special assessments, ground and water rents, and hazard and liability insurance premiums; and for any other

purpose necessary for the protection of the interest of the lender or borrower. The additional advance will be charged against the borrower. Repayment of the protective advance shall be automatically guaranteed or insured at the same percentage rate as applied to the original amount of the loan upon the Commissioner's receiving notice from the lender that an additional amount has been advanced with a statement as to the necessity and purpose(s) of the advance. Such documentation shall be furnished along with the premium for the additional amount pursuant to §103.43(b). The amount of any additional advance shall be scheduled for repayment proportionately over the remaining installments of the unpaid principal balance of the loan. The interest rate charged on protective advances as provided for in this section will be determined in accordance with the provisions of §103.41.

§103.23 Increase in principal of loans.

(a) Borrowers requiring additional funds may apply for an increase in a guaranteed or insured loan with the same lender. Applications to increase the amount of guaranteed and insured loans which originally were approved by the Commissioner, require his approval upon increases in amounts. Lenders making insured loans which under the provisions of an approved insurance agreement which did not require Commissioner approval, may approve applications for an increase in the principal of such loans subject to compliance with the limitations contained in §§103.14 and 103.24. Such insured lenders shall immediately notify the Commissioner upon approval of an increase in the principal of a loan and remit the premium on the increase pursuant to §103.43(b).

(b) The application for an increase in the amount of a loan must show the reasons why an increase is needed, the amount and purposes for which the funds will be used, and the repayment schedule. If the financing involves an economic enterprise, the application must be accompanied by the information required in §103.15(a)(1) through (17) of this part.

(c) The interest rate to be charged on principal increases will be determined in accordance with the provisions of §103.41.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§103.24 Maturity.

The period of maturity of guaranteed and insured loans will be determined according to the circumstances, but may not extend beyond 30 years from the date of the first advance. All maturities will be consistent with sound business practices and customs of lenders in the area.

§103.25 Amortization.

All loans shall be scheduled for repayment at the earliest practicable date consistent with the purpose(s) of the loans and the repayment capacity of the borrowers. Lenders will require amortization in accordance with customary practices in the area for loans for the same purposes. Loan payments may be scheduled for repayment either monthly, quarterly, semi-annually or annually. Balloon installments shall be avoided.

§103.26 Prepayments.

Borrowers whose loans are guaranteed or insured under this part 103 shall have the right to prepay all or any part of the indebtedness at any time without penalty unless otherwise provided for in the loan agreement. Lenders and borrowers may agree that prepayments applied to the latest loan installments may be reapplied to current installment(s) to cure or prevent any subsequent default. The Commissioner shall be notified promptly by the lender when payments are made in advance of the due dates.

§103.27 Amount of security.

Lenders will require borrowers to give security, if available, up to an amount adequate to protect the loan, without consideration of the guaranty or insurance. The lender shall itemize and describe the collateral given as security as described in §§103.15(a)(5) and (10) of this part.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

12/01/98

Steve Hageman, CEO
Bank of Hoven
P. O. Box 7
Hoven SD 57450

Dear Steve:

This letter is a request for a 60 day extension on the land that Ronnie long has deeded to Bank of Hoven. I have 4 possibilities of refinancing and paying the debt off against the land that the bank holds the deed on. This will allow me the necessary time to try and secure financing for this endeavor. I have a bank interested and will be looking at the land in the next day or two. I also have been working on investors and have a individual out of Nebraska that is interested and this will allow me time to work out the necessary details to make this a reality.

Ronnie Long

BANK OF HOVEN

FAX (605) 948-2198

TELECOPIER COVER LETTER

TO John Lemke or Harley Henderson DATE 12-7-98

FROM: Charles Simon, BOH # OF PAGES 1

RECEIVED
DEC 4 1998
C.R.S.T. TRIBAL COURT

RE:

COMMENTS/ACTION This letter will notify you and Ronnie Long that there will be no extension of time from the December 5, 1998 deadline for option to purchase. Possession of this property by lessee, Long Family Land and Cattle Company, Inc., will terminate on December 5,1998.

Charles R. Simon, VP

REPLY REQUESTED: YES ( ) WHEN:
NO ( )

P.O. BOX 7 • Hoven, South Dakota 57450 • Phone (605) 948-2198

FDIC

PLAINTIFF'S EXHIBIT 18

37-188
3-22-99

QUIT CLAIM DEED—Short Form

Bank of Hoven, A Corporation, PO Box 7

grantor of Potter

County, State of South Dakota for and in consideration of

Forty Nine Thousand Six Hundred Dollars and no/100---------- Dollars,

convey and quit claim to Ralph H Pesicka Jr. and Norma J. Pesicka the

grantees of Timber Lake SD P. O. all interest in the following described real

estate in the County of Dewey in the State of South Dakota:

East Half of Section One, Township Fifteen, Range Tventy Four
(E½ 1-15-24) Dewey County, South Dakota.

Transfer Fee
$50.00 pl.

PLAINTIFF'S EXHIBIT 19

Dated this 17th day of March 1999

Bank of Hoven, A Corporation

By: [signature] VP

64494

STATE OF SOUTH DAKOTA }
County of Dewey } ss.

OFFICE of REGISTER of DEEDS

Filed for record the 22nd day of March 1999, at 9 o'clock and 30 Minutes A. M., and recorded in Book 37 of Deeds on page 189

[signature]
Register of Deeds.

By [signature] Deputy.
Fee $10.00

Prepared by Nancy Rausch
Bank of Hoven
Box 7, Hoven, SD 57450
Phone 605-948-2216

STATE OF SOUTH DAKOTA }
County of Potter } ss.

On this the 17th day of March 1999 before me Nancy K. Rausch, A Notary Public the undersigned officer, personally appeared Brent Heinert

known to me or satisfactorily proven to be the person whose name subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

[signature]
A Notary Public

Title of Office

NANCY K. RAUSCH
Notary Public, POTTER COUNTY, S. DAK.
My Commission Expires APRIL 10, 2001

My commission expires

(10)

DAVID A. VON WALD
ATTORNEY-AT-LAW
P.O. BOX 468
HOVEN, SOUTH DAKOTA 57450

Telephone: (605) 948-2550
Fax: (605) 948-2236
E-Mail: dvonwald@sullybuttes.net

June 4, 1999

Cheyenne River Sioux Tribal Court
Attention: Dale Charging Cloud
P.O. Box 120
Eagle Butte, South Dakota 57625

Re: Bank of Hoven v. Long Family Land & Cattle Co., Inc.

Dear Mr. Charging Cloud:

Enclosed please find a Notice to Quit which I would like served on Long Family Land & Cattle Co, Inc., Ronnie Long, President. Send your Return of Service with your billing to my office after service has been completed. I would appreciate it if you would serve it immediately. Thank you.

Sincerely,

David A. Von Wald

DAVW/jh
Encl.

10

NOTICE TO QUIT

TO: Long Family Land & Cattle Co., Inc. and
Ronnie Long

Notice is hereby given and demand made by Bank of Hoven to Long Family Land & Cattle Co., Inc. and Ronnie Long that you must immediately quit possession of the real estate described below and to remove all cattle or other livestock owned by you. Notice is further given that Bank of Hoven intends to seek the damages set out by SDCL 21-3-8 in the event you do not immediately terminate your possession of the real estate.

The East Half (E½) of Section One, Township Fifteen North, Range Twenty-four (1-15-24), East of the Black Hills Meridian;

The Northwest Quarter (NW¼) of Section Twenty-five (25), all of Section Twenty-eight (28), the East Half (E½) of Section Thirty-two (32), the Northeast Quarter (NE¼), the West Half of the Northeast Quarter of the Northwest Quarter (W½NE¼NW¼), the Southeast Quarter of the Northeast Quarter of the Northwest Quarter (SE¼NE¼NW¼), the West Half of the Northwest Quarter (W½NW¼) and the Southeast Quarter of the Northwest Quarter (SE¼NW¼) and the South Half (S½) of Section Thirty-three (33); and the Southwest Quarter (SW¼) of Section Thirty-four (34), all in Township Seventeen (17) North, Range Twenty-five (25), East of the Black Hills Meridian, subject to easements, reservations and conveyances, if any, existing and of record, all in Dewey County, SD.

Dated this 19th day of May, 1999.

BANK OF HOVEN

By: Steve Hageman,
Its President

Timber L.

EXHIBIT (10)

CHEYENNE RIVER SIOUX TRIBE

CERTIFICATE OF SERVICE

I the undersigned CRST Tribal Officer received and served the NOTICE TO QUIT for Long Family Land & Cattle Co. on this 16 day of June 1999 at 1:25 am (pm) at Timber Lake, SD

Lee Mann C.R.S.
OFFICER, CHEYENNE RIVER SIOUX TRIBE

CASE INFORMATION

Letter of request from David A. Von Wald, Attorney At Law., P.O. Box 468, Hoven, SD 57450.

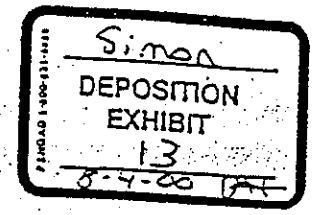
RESIDENCE - Timber Lake Area

Reviewed and approved for service

Bessan Bluespruce, Chief Judge

6/15/99
Date approved

Will be billed for $20.00 upon proof of service. Please return the Certificate of Service to the Court Administrator.



CONTRACT FOR DEED

* * * * * * * * * * * * * * *

This Agreement, made and entered into and executed in duplicate this 25th day of June, 1999, by and between **Bank of Hoven, a South Dakota Banking Corporation**, of P.O. Box 7, Hoven, South Dakota 57450, Seller, and **Edward Maciejewski** and **Mary Jo Maciejewski**, husband and wife, as tenants in common and not as joint tenants, of HCR 64, Box 6, Timber Lake, South Dakota 57656, Buyers, WITNESSETH:

That for the consideration hereinafter named, the Seller has sold and does hereby agree to convey to the Buyers, by good and sufficient Warranty Deed, free and clear of all taxes, liens, and encumbrances, except as hereinafter provided, the real estate situated in Dewey County, South Dakota, described as follows:

Parcel One:

> The Northwest Quarter (NW¼) of Section Twenty Five (25), all of Section Twenty Eight (28), and the the Southwest Quarter (SW¼) of Section Thirty Four (34), all in Township Seventeen (17), Range Twenty Five, East of the Black Hills Meridian;

Parcel Two:

> The East Half (E½) of Section Thirty Two (32), the East Half (E½), the Southwest Quarter (SW¼), the South Half of the Northwest Quarter (S½NW¼), the Northwest Quarter of the Northwest Quarter (NW¼NW¼), the South Half of the Northeast Quarter of the Northwest Quarter (S½NE¼NW¼), and the Northwest Quarter of the Northeast Quarter of the Northwest Quarter (NW¼NE¼NW¼) of Section Thirty Three (33), all in Township Seventeen (17), Range Twenty Five (25), East of the Black Hills Meridian;
>
> all subject to easements, reservations, and conveyances if any, existing and of record,

upon the terms hereinafter stated, and the Buyers do hereby agree to purchase said real estate from the Seller, at the price, in the manner, and upon the terms hereinafter set forth.

PURCHASE PRICE:

The purchase price for the real estate described in Parcel One above is Two Hundred One Thousand Six Hundred Dollars ($201,600.00), and shall be paid as follows, to-wit: The sum of Forty Thousand Three Hundred Twenty Dollars ($40,320.00) shall be paid as a down payment, upon the execution of this contract and the remaining balance of purchase price in the amount of One Hundred Sixty One Thousand Two Hundred Eighty Dollars ($161,280.00) shall be paid in ten (10) equal amortized annual installment payments, with the first such installment payment due and payable on March 1, 2000, in the amount of Twenty Three Thousand Two Hundred Twenty Nine and 59/100 Dollars ($23,229.59), and thereafter the sum of Twenty Two Thousand Two Hundred Twenty Nine and 59/100 Dollars ($23,229.59) is due and payable on the first day of March in each succeeding year until the final payment of Twenty Three Thousand Two Hundred Twenty Nine and 54/100 ($23,229.54) shall be due and payable on March 1, 2009. The deferred balance of purchase price in the amount of One Hundred Sixty One Thousand Two Hundred Eighty Dollars ($161,280.00) shall draw interest at the rate of 7.75% per annum, upon the balance thereof remaining unpaid from and after June 25, 1999, interest being included in the above mentioned installment payment, all according to the schedule thereof hereto annexed as Schedule "A", and by this reference thereto made a part hereof.

The purchase price for the real estate described in Parcel Two above is the sum of One Hundred Ninety Nine Thousand Five Hundred Dollars ($199,500.00) and shall be payable as follows: The sum of Thirty Nine Thousand Nine Hundred Dollars ($39,900.00) as a down payment shall be paid upon Buyers obtaining possession of Parcel Two, and the remaining balance of purchase price in the amount of One Hundred Fifty Nine Thousand Six Hundred Dollars ($159,600.00) shall be paid in ten (10) equal annual amortized installment payments with the first such payment due on March 1, after the year Buyers obtain possession for the crop year, and thereafter an equal annual amortized payment shall be due on the 1st day of March in each succeeding year, until the full purchase price has been paid. The deferred balance of purchase price in the amount of One Hundred Fifty Nine Thousand Six Hundred Dollars ($159,600.00) shall draw interest at the rate of 7.75% per annum, upon the balance thereof remaining unpaid from and after the date of possession of said real estate.

ITEMIZED PURCHASE PRICE:

It is agreed between the parties hereto that the depreciable assets located on Parcel One are sold for $18,050.00 and on Parcel Two for $22,684.00.

PREPAYMENT:

The Buyers shall have the option or privilege of making payments in advance on either purchase price or interest, at any time, and in any amount.

POSSESSION DATE:

The Buyers shall be entitled to possession of Parcel One upon the payment of the down payment, and shall be entitled to possession of Parcel Two when the current lessee quits possession of the real estate, either voluntarily or involuntarily. It is specifically understood that Long Family Land & Cattle Company, Inc., is currently grazing cattle on Parcel Two, and Rhonda Long is living in a house located on Parcel Two and that the Bank of Hoven is in the process of evicting the lessee and Rhonda Long from said real estate. Due to the uncertainties of litigation, it is impossible to accurately predict when the lessee shall be evicted from the real estate, but that upon either eviction or voluntary surrender of the real estate, by the past lessee, Buyers shall be entitled at that time to possession of said real estate or if eviction is not accomplished prior to June 1st of any year, then Buyers shall be entitled to possession by June 1st of the year following eviction.

MINERAL RIGHTS:

All right, title and interest which the Seller now has and holds in and to all oil, gas, and other minerals in and under said real estate, of every nature, are sold to the Buyers as part of the property sold under this Contract for Deed, for the consideration hereinbefore named, and shall pass to the Buyers by virtue of the Warranty Deed hereinafter referred to.

TAXES:

The Seller will pay the first half of the 1999 real estate taxes and the taxes for all prior years for Parcel One, and the Buyers shall pay the second half of the 1999 real estate taxes for Parcel One, which become due and a lien on January 1, 2000,

and the taxes for all subsequent years before the same shall become delinquent.

FARM PAYMENTS:

The Seller shall be entitled to keep one-half of the agricultural subsidy payments or any other governmental farm payment for the year 1999 for Parcel One, and the Buyers shall be entitled to receive the remaining one-half.

PARCEL TWO:

In the year that Buyers obtain possession of Parcel Two, for the crop year, (which is defined as prior to June 1st of any year) the Buyers shall receive all government payments attributable to that year and pay the real estate taxes attributable to that year and the taxes for all subsequent years. Interest on the unpaid balance shall then commence on the date of possession of Parcel Two.

MACHINERY:

Currently Long Family Cattle Company, Inc., or Ronald Long, has machinery located on some of the above described real estate, and Seller, or its agent, or agents, shall be entitled to enter upon the real estate for the purposes of removing any machinery owned by Long Family Cattle Company, Inc., or Ronald Long.

TITLE INSURANCE AND WARRANTY DEED:

The Seller shall pay the costs of a policy of title insurance, and that when the full purchase price, together with all interest and taxes have been paid in full, the Seller shall make, execute and deliver to the Buyers, a good and sufficient Warranty Deed conveying said real estate to Buyers. Seller shall also pay the transfer fee.

TIME OF ESSENCE:

The time of payment of said annual payments of purchase price, together with principal and interest, along with all taxes, shall be considered as of the essence of this contract and that a failure to pay such purchase price, interest or taxes before they become delinquent, shall constitute a default in the terms and conditions of this contract, and thereupon the Seller may, at its option, declare the full amount unpaid under this

contract to be due and payable forthwith, and may, at its option, proceed to foreclose this contract, or to pursue any other remedy accorded to it by law.

BINDING EFFECT:

All of the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, personal representatives, successors and assigns of the respective parties hereto.

IN TESTIMONY WHEREOF, all of the parties have hereunto set their hands and seals this day and year first mentioned above.

SELLER:

BANK OF HOVEN, a South Dakota Banking Corporation,

By: _____
Its President

BUYERS:

_____
Edward Maciejewski

_____
Mary Jo Maciejewski

State of South Dakota)
) ss
County of Potter)

On this 25th day of June, 1999, before me, the undersigned officer, personally appeared Stephen A. Hageman, who acknowledged himself to be the President of the Bank of Hoven, a South Dakota Banking Corporation, and that he, as such president, being authorized so to do, executed the foregoing instrument for the purposes therein contined, by signing the name of the corporation by himself as President.

In Witness Whereof, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:
11/1/2004
(SEAL)

BRENT HEINERT
NOTARY PUBLIC
SOUTH DAKOTA

State of South Dakota)
) ss
County of Potter)

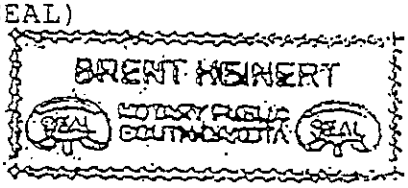
On this 25th day of June, 1999, before me, the undersigned officer, personally appeared Edward Maciejewski and Mary Jo Maciejewski, Buyers, known to me to be the persons whose names are subscribed to the within and foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:
11/1/2004

(SEAL)



Prepared By: David A. Von Wald, Attorney
Address: P.O. Box 468
Hoven, South Dakota 57450
Telephone: (605) 948-2550
Fax: (605) 948-2236

Payment #	Date	Interest	Principal	Balance
10	06/25/99	7.750%	$161280.00	$161280.00
1	03/01/00	8561.10	14668.49	146611.51
YEAR	2000	8561.10	14668.49	146611.51
2	03/01/01	11362.39	11867.20	134744.31
YEAR	2001	11362.39	11867.20	134744.31
3	03/01/02	10442.68	12786.91	121957.40
YEAR	2002	10442.68	12786.91	121957.40
4	03/01/03	9451.70	13777.89	108179.51
YEAR	2003	9451.70	13777.89	108179.51
5	03/01/04	8406.88	14822.71	93356.80
YEAR	2004	8406.88	14822.71	93356.80
6	03/01/05	7235.15	15994.44	77362.36
YEAR	2005	7235.15	15994.44	77362.36
7	03/01/06	5995.58	17234.01	60128.35
YEAR	2006	5995.58	17234.01	60128.35
8	03/01/07	4659.95	18569.64	41558.71
YEAR	2007	4659.95	18569.64	41558.71
9	03/01/08	3229.62	19999.97	21558.74
YEAR	2008	3229.62	19999.97	21558.74
10	03/01/09	1670.80	21558.74	0.00
YEAR	2009	1670.80	21558.74	0.00

Payment Amount $ 23229.59
Final Payment Amount $ 23229.54

SCHEDULE "A"

DEED RECORD No. 40

Book

Page 318

WARRANTY DEED

67699

PRINTED BY BROWN & SAENGER, SIOUX FALLS, SD

Plains Commerce Bank, a South Dakota Banking Corporation, formerly known as Bank of Hoven, grantor of P.O. Box 7, Hoven, Potter County, State of South Dakota 57450, for and in consideration of for a good and valuable consideration, and One Dollar ($1.00), ~~Dollars~~, GRANTS, CONVEYS AND WARRANTS TO Edward Maciejewski and Mary Jo Maciejewski, husband and wife, as joint tenants with the right of survivorship and not as tenants in common, grantees, of HCR 64, Box 6, Timber Lake, South Dakota 57656, P. O., the following described real estate in the County if Dewey, in the State of South Dakota:

The Northwest Quarter (NW¼) of Section Twenty Five (25), all of Section Twenty Eight (28), and the Southwest Quarter (SW¼) of Section Thirty Four (34), all in Township Seventeen (17), Range Twenty Five (25), East of the Black Hills Meridian, subject to easements, reservations and conveyances, if any, existing and of record.

Transfer Fee: $202.00

Dated this 11th day of January, 2002.

(Corporate Seal)

Plains Commerce Bank, a South Dakota Banking Corporation
By: s/ Stephen A. Hageman
Its President

STATE OF South Dakota)
)ss
County of Potter)

On this the 11th day of January, 2002, before me, David A. Von Wald, the undersigned officer, personally appeared Stephen A. Hageman, who acknowledged himself to be the President of the Plains Commerce Bank, a South Dakota Banking Corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

(SEAL)

s/ David A. Von Wald
David A. Von Wald, Notary Public

My Commission Expires: July 22, 2007

Prepared by:
David A. Von Wald
Attorney-at-Law
Box 468
Hoven, So. Dak 57450
Tel. (605) 948-2550

STATE OF SOUTH DAKOTA, County of Dewey, ss.

Filed for record this 16th day of January A. D., 2002, at 10:50 o'clock A. M., and recorded in Book 40 of Deeds on page 318

Register of Deeds Seal

Jean Holdahl Tibke
Register of Deeds.

Fee, $10.00

By _____ Deputy.

PLAINTIFFS' DAMAGES

1997

230 bred cows died January & February 1997 @ $620 =	$142,600.00
260 mixed steer & heifer yearlings died January & February 1997 @ $700 =	182,000.00
10 yearling culls @ $700 =	7,000.00
CRP Annual Payment =	4,000.00
	$335,600.00
-FEMA Payment	-48,000.00
	$287,600.00
Operating Expense (34%)	-112,744.00
	$174,856.00

1998

230 bred cows died January & February 1997 @ 90% calf crop = 207 calves which would have been born in 1998	
207 yearlings would have been born in 1997 @ $600 =	$124,200.00
Operating Expenses (34%)	-42,228.00
	$ 81,972.00
CRP Annual Payment =	6,000.00
1998	$ 87,972.00

1999

330 bred cows @ 90% calf crop = 297 calves born 1999	
207 yearlings would have been born in 1998 @ $700 =	$144,900.00
Operating Expenses (34%)	-49,266.00
	$ 95,634.00
FSA Payment =	23,000.00
Use of Land =	65,000.00
	$183,634.00

2000

330 cows @ 90% calf crop = 297 calves that would have been born in 2000		
297 yearlings would have been born in 1999 @ $800 =	$237,600.00	
Operating Expenses (34%)	-80,786.00	
	$156,814.00	
FSA Farm Program Payment =	23,000.00	
Use of Land =	65,000.00	
	$244,814.00	
2000	$244,814.00	Loss

2001

330 cows @ 90% calf crop = 297 calves that would have been born in 2001		
297 yearlings would have been born in 2000 @ $800 =	$237,600.00	
Operating Expenses (34%)	-80,784.00	
	$156,816.00	
FSA Payment =	23,000.00	
Use of Land =	55,000.00	
	$234,816.00	
2001	$234,816.00	Loss

2002

330 cows @ 90% calf crop = 297 calves that would have been born in 2002 @ $420	
330 x $420 =	$138,600.00
297 yearlings would have been born in 2001 @ $700 =	207,900.00
Operating Expenses (34%)	-117,800.00
	$228,700.00
FSA Payment =	23,000.00
Use of Land =	50,000.00
Replace Fences =	9,000.00
	$310,700.00

Summary

1997	$ 174,856
1998	87,972
1999	183,634
2000	244,814
2001	234,816
2002	310,700
	$1,236,792

NOTES AND COMPUTATIONS

We are using $31.50 per acre x 1,905 acres = $60,000 (Parcels 1 and 2) = $31.50 per acre

For 2 quarters, 320 acres we are using $15.62 per acre = $5,000 = $15.62 per acre

1,905 acres =	$60,000
320 acres =	5,000
Use value per year	$65,000

Lost	230	cows
Bought	110	(supposed to buy)
	340	
	-10	cull heifers
	330	head of cows

Parcel 1 – 6 quarters, 960 acres
Parcel 2 – 6 quarters, 960 acres
Parcel 3 – 320 acres

ANNUAL FSA FARM PROGRAM PAYMENTS

6/30/01	Maciejewski, Inc. (PFC) FSA Farm Program Payment, Parcel 1	$5,896.00
9/5/00	Maciejewski, Inc. (MLA) FSA Farm Program Payment, Parcel 1	6,397.00

Parcel 1: 960 acres (6 quarters)

6/30/00	Bank of Hoven (PFC) Parcel 2	$5,098.00
9/5/00	Bank of Hoven (MLA) Parcel 2	5,531.00

Parcel 2: 945 acres (6 quarters minus 15 acres)

$22,922.00

TRIBAL ENROLLMENT
PO BOX 325
EAGLE BUTTE, SOUTH DAKOTA 57625
605-964-6612/6613
FAX: 605-964-6614

December 9, 2002

TO WHOM IT MAY CONCERN:

This is in regards to Edward and Mary Jo (Kraft) Macijewski and Ralph and Norma (Long) Pesicka. They are not enroll with the Cheyenne River Sioux Tribe.

Should you have any question please feel free to call.

Thanking you for your time and consideration of this letter.

Sincerely,

CHEYENNE RIVER SIOUX TRIBE

Charlene Anderson
Enrollment Research Specialist

CHEYENNE RIVER SIOUX TRIBAL COURT)
CHEYENNE RIVER SIOUX TRIBE : SS
CHEYENNE RIVER INDIAN RESERVATION)

****

LONG FAMILY LAND AND CATTLE COMPANY-RONNIE AND LILA LONG
PLAINTIFFS

VS.

EDWARD AND MARY MACIEJEWSKI, RALPH AND NORMA J. PSICKA, And THE BANK OF HOVEN, nka PLAINS COMMERCE BANK
DEFENDANTS

NOTICE OF ENTRY OF ORDER

Case No.: R-120-99

****

To: James P. Hurley, Attorney for Plaintiffs and David Von Wald, Attorney for Defendants and Kenneth E. Jasper, Attorney for Maciejewski and Pesicka

YOU ARE HEREBY NOTIFIED that a JUDGMENT and SUPPLEMENTAL JUDGMENT was entered in the above-entitled matter and entered in the office of the Clerk of Court for the Cheyenne River Sioux Indian Reservation, on or about the 25th day of February, 2003 as more fully appears by the attached copy of same JUDGMENT and SUPPLEMENTAL JUDGMENT.

Dale Charging Cloud.
DALE CHARGING CLOUD, CLERK
CHEYENNE RIVER SIOUX TRIBE

CERTIFICATE OF SERVICE

I, Dale Charging Cloud, do hereby certify that I served a true and correct copy of the foregoing JUDGMENT and SUPPLEMENTAL JUDGMENT on the persons next designated by mailing same by first class mail, postage prepaid, addressed as follows:

Mr. James P. Hurley
Attorney at Law
PO Box 2670
Rapid City, SD 57709-2670

Mr. Kenneth E. Jasper
Attorney at Law
PO Box 2093
Rapid City, SD 57709-2093

Mr. David A. Von Wald
Attorney at Law
PO Box 468
Hoven, SD 57450

Dated this 25th day of February, 2003.

Dale Charging Cloud
DALE CHARGING CLOUD, CLERK
CHEYENNE RIVER SIOUX TRIBE

CHEYENNE RIVER SIOUX TRIBAL COURT — IN CIVIL COURT
CHEYENNE RIVER SIOUX TRIBE
CHEYENNE RIVER INDIAN RESERVATION

****

LONG FAMILY LAND AND CATTLE
COMPANY, INC.-RONNIE AND LILA LONG,

Plaintiffs,

vs.

JUDGMENT

EDWARD AND MARY MACIEJEWSKI
and RALPH H. AND NORMA J. PSICKA,
and THE BANK OF HOVEN,

R-120-99

Defendants.

****

The above-captioned matter came before this Court for trial on December 6, and 11, 2002. Plaintiffs' causes of action for breach of contract, bad faith, discrimination, and violation of self help remedies were submitted to the jury, and Defendant's counterclaim for unlawful entry and detainer was heard by the Court at the same time as the trial evidence was presented to the jury. The jury returned its verdict in the form of interrogatories: (1) for the Plaintiffs on breach of contract, bad faith, and discrimination; (2) for the Defendants on violation of self help remedies; (3) for the Plaintiffs advising the Court that Defendant Bank's breach of contract prevented the Plaintiffs from performing the lease with an option to purchase; (4) for the Plaintiffs a verdict in the amount of $750,000 against the Defendant, Bank of Hoven, nka Plains Commerce Bank; and (5) directing the Court to award prejudgment interest to the Plaintiffs on the verdict amount of $750,000. Defendant Bank moved this Court post trial for judgment notwithstanding the verdict, or in the alternative for a new trial, and this Court denied the Defendant Bank's motions by an Order dated January 3, 2003, which was recorded January 7,

2003. Now, therefore, based on the decisions of the jury and upon good cause having been shown, it is

ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of the Plaintiffs, Long Family Land and Cattle Company, Inc. and Ronnie and Lila Long, and against Defendant, Bank of Hoven, nka Plains Commerce Bank, in the sum of $750,000; and it is further

ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of the Plaintiffs, Long Family Land and Cattle Company, Inc. and Ronnie and Lila Long, against Defendant, Bank of Hoven, nka Plains Commerce Bank, for prejudgment interest in the sum of ~~$[illegible],[illegible],~~ and it is further

$123,131.81
BJ Jones
ORDERED, ADJUDGED, AND DECREED that judgment
Plaintiffs, Long Family Land and Cattle Company, Inc. and Ronnie
Defendant, Bank of Hoven, nka Plains Commerce Bank, for costs a
of $2,850.65.

So ordered this 18th day of ~~January~~ Feb., 2003.

Plaintiff's calculation is rejected; Defendant's is accepted.

BY ORDER OF THE C

B.J. JONES
Special Judge

ATTEST: Dale Charging Cloud
Dale Charging Cloud, Clerk

Dale Charging Cloud Clerk of the Cheyenne River Sioux Tribal Court, do hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears on file and of record in my said office.

Date this 25th day of Feb 2003

Dale Charging Cloud
Clerk, Cheyenne River Sioux Tribal Court

By DCC

CHEYENNE RIVER SIOUX TRIBAL COURT
CHEYENNE RIVER SIOUX TRIBE
CHEYENNE RIVER SIOU INDIAN RESERVATION

IN CIVIL COURT

IN GENERAL SESSION

LONG FAMILY LAND AND CATTLE COMPANY- RONNIE AND LILA LONG,

R-120-99

Plaintiffs,

vs.

SUPPLEMENTAL JUDGMENT

EDWARD AND MARY MACIEJEWSKI,
RALPH AND NORMA J. PSICKA,
And THE BANK OF HOVEN, nka PLAINS COMMERCE BANK,

Defendants.

This Court entered its judgment in this matter awarding the amount of principal awarded by the jury plus interest, as directed by the jury, and costs and disbursements. This supplemental judgment will address the Plaintiff's request to exercise its option to purchase all of the land conveyed by administrator's deed from the estate of Kenneth Long to the Bank of Hoven, including the land purchased by the Pesickas and Maciejewskis from the Bank. The Bank opposes the motion with regard to the land that was conveyed to the other parties, and also with regard to the land the Plaintiffs presently occupy.

The Court first notes that the tribal jury returned a verdict for the Bank and against the Plaintiffs on the Plaintiffs' claim that the Bank violated tribal law against self-help remedies when it sold certain parcels of the land the Plaintiffs had an option to purchase. The Court construes this to mean that the jury found that the sale of the land to the other parties was not done in violation of tribal law and therefore the other Defendants were good faith purchasers of the land

The Plaintiffs contend that the jury's verdict coupled with this Court's denial of the Defendant Bank's counterclaim for eviction, due to the jury's finding that the Bank's breach of the loan agreement prevented them from exercising their option to purchase, preserves them the option to purchase the land including the land that was sold to the other Defendants after the Bank determined that the Plaintiffs' option to purchase had expired. Were it not for the intervening purchases, the Court may well be inclined to agree with the Plaintiffs. However, the Court does not feel it has the authority to set aside the contracts for deed the Bank entered into with the other Defendants if those Defendants entered into those contracts in good faith and without knowledge of the existing legal dispute between the Bank and the Plaintiffs. Additionally, the only legal issue presented by the counterclaim was whether the Court should evict the Plaintiffs

from the 960 acres they presently occupy. The jury ruled against the Plaintiffs on their theory that the conveyances to the other Defendants violated the law.

In light of this, the Court finds that the Plaintiffs continue to possess an option to purchase the 960 acres they presently occupy at the amount per acre contemplated in the original option, but that they do not have a right to purchase the lands sold the other Defendants. The Court rejects the Bank's argument that enforcing the original option to purchase would be inequitable because land values have gone up because the Plaintiffs were denied the right to exercise the option because of the Defendant Bank's breach. The Court also finds that under the original agreement the proceeds from the sale of the house as well as the CRP payments were to be applied to the purchase price for the entire parcel. However, those amounts were pled in the request for the monetary judgment and a further reduction here would result in the Plaintiff achieving a double recovery.

WHEREFORE, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Plaintiffs are entitled to exercise the option to purchase the 960 acres they presently occupy in the amount of $201,600 and said amount shall be reduced from the judgment entered on their behalf against the Defendant Bank. The Plaintiffs shall file a partial satisfaction of judgment in that amount and the Bank shall, within 30 days of that filing, convey a quit claim deed to the Plaintiffs for the 960 acres they presently occupy, and it is further

ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' request to exercise the option on the remaining balance of land referenced in the option to purchase is DENIED.

So adjudged this 18th day of February 2003.

B.J. Jones
Special Judge

ATTEST: Dale Charging Cloud
Clerk of Courts

Dale Charging Cloud Clerk of the Cheyenne River Sioux Tribal Court, do hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears on file and of record in my said office.

Date this 25th day of Feb 20 03

Dale Charging Cloud
Clerk, Cheyenne River Sioux Tribal Court

By DCC

CHEYENNE RIVER SIOUX TRIBAL COURT CHEYENNE RIVER SIOUX TRIBE CHEYENNE RIVER SIOU INDIAN RESERVATION	IN CIVIL COURT IN GENERAL SESSION
LONG FAMILY LAND AND CATTLE COMPANY- RONNIE AND LILA LONG, Plaintiffs, vs. EDWARD AND MARY MACIEJEWSKI, RALPH AND NORMA J. PSICKA, And THE BANK OF HOVEN, nka PLAINS COMMERCE BANK, Defendants.	R-120-99 ORDER

The Defendant Bank has moved this Court for judgment notwithstanding the verdict, or in the alternative a new trial, on several causes of action asserted in the Plaintiffs' complaint and tried to a seven-member jury[1] on December 6 and 11, 2002. This Court dismissed several counts of the complaint, including one for fraud, one for failure of consideration, one pleading an unconscionable contract, and one praying for rescission of contract, after submission of the Plaintiffs' case, but permitted four counts- breach of contract, bad faith, discrimination, and violation of self-help remedies- to be submitted to the jury.[2] The Defendant's counterclaim for unlawful entry and detainer was heard by the Court at the same time as the legal issues were tried to the jury. The jury returned its verdict in the form of six interrogatories finding for the Plaintiffs on the causes of action alleging breach of contract, bad faith, and discrimination and finding for

[1] Although the Court impaneled six jurors and one alternate in this case, the Parties during the trial stipulated that all seven jurors could deliberate the case.

[2] The Court also dismissed, prior to trial, the count of the complaint alleging fraud in the inducement of a personal representative's deed from the estate of Kenneth L. Long to the Bank prior to trial on the ground that this count was an attempt to collaterally attack state court probate proceedings and should have been brought in the state court.

the Defendants on the count alleging violation of self-help remedies. The jury also issued an advisory verdict on the issue of whether the Defendant Bank's breach of contract prevented the Plaintiffs from performing on a lease with an option to purchase, finding that it did. That verdict informs the Court with regard to the counterclaim of the Bank to evict the Plaintiffs from certain real property it had acquired title to in the probate proceedings of Kenneth L. Long. The jury also returned a verdict for damages in the amount of $750,000 and directed the Court to award interest on that amount. The Defendant Bank timely filed its motion for JNOV and for a new trial on all counts the jury returned against it. This order will also address the Defendant Bank's counterclaim seeking to evict the Plaintiffs from certain fee lands within the Cheyenne River reservation.

The Defendant Bank's first argument is that the finding that it breached a loan agreement (Plaintiff's Exhibit 6) is legally insufficient because the loan agreement is not a legally-enforceable contract because the Defendants failed to give consideration. Although this defense was not pled by the Defendant Bank prior to trial, it did make an oral motion to conform its pleadings to the evidence submitted and that motion was granted by the Court. The Defendant Bank also moved for a directed verdict on the issue and the motion is therefore appropriate. The issue of want of consideration was therefore appropriately submitted to the jury and is therefore now resolvable by the Court.

In general, a Court should not overturn the verdict of a jury if sufficient evidence was submitted to the jury so that reasonable minds could disagree about the evidence. See Dunes Hospitality v. Country Kitchen, 623 NW2d 484 (SD 2001). As the South Dakota Supreme Court has stated with regard to judgments nov:

> Thus, the grounds asserted in support of the directed verdict motion are brought before the trial court for a second review. We review the testimony and evidence in a light most favorable to the verdict or the nonmoving party, "then without weighing the evidence [we] must decide if there is evidence which would have supported or did support a verdict.

Matter of Estate of Holan, 621 NW2d 588, 591 (SD 2000).

BREACH OF CONTRACT ACTION

The Bank makes a strong argument that the loan agreement that the jury found it breached is non-enforceable because of a lack of consideration by the Plaintiffs. If a contract is lacking in consideration, a party not giving consideration cannot recover for a breach of that contract. At first blush, it is difficult to see what consideration the Plaintiffs gave in exchange for the promises made by the Bank in the loan agreement, Trial Exhibit 6. The Bank had received a personal representative's deed to the land owned by Kenneth Long that secured the loans to Long Family Land and Cattle Company. The Plaintiffs owed the Bank the amounts reflected in the loan agreement and the agreement appears to be a method for the Bank to re-amortize the payments on the outstanding owed the Bank by the Defendants. Admittedly, the Bank was attempting to gain an increased guarantee from the BIA and needed the Longs cooperation in seeking this, but that "consideration" is not anything the Longs were giving up.

However, the Longs still occupied the land and were receiving the CRP payments on the land. It is impossible to gauge whether valid consideration was given by the Plaintiffs for the loan agreement without also viewing the lease with the option to purchase, which the Court has already ruled, in denying the Defendant's motion for summary judgment on its counterclaim for eviction, was a related document under the integrated document doctrine. See Battery Steamship Corp. v. Refineria Panama S.A.,

513 F.2d 735, 738 n.3 (2d Cir. 1975). It is possible that the jury found consideration in the fact that the Longs were agreeing to continue the operation of their cattle ranch in order to pay the entire amount of principal plus interest instead of having the Bank call the loans and collect the guarantee from the BIA in an amount substantially less than what was owed by the Plaintiffs. In addition, the Longs agreed to assign the CRP payments to the Bank as part of the plan to permit them to get on their feet again and attempt to regain title to the land that was in the Long family name for many years. The Court cannot conclude that there is no evidence that supports the jury's verdict and therefore denies the motion for judgment notwithstanding the verdict on the claim that consideration was wanting.

The Bank also contends that even if consideration existed, no evidence was submitted to the jury to support the Plaintiffs' claim that the Bank breached the loan agreement. The Bank contends that by the time it was required to perform under the loan agreement- late winter of 1997- the Plaintiffs had suffered substantial livestock losses due to the catastrophic winter of 96-97 and could not have possibly met the loan payments under the loan agreement. The Bank also contends that the only thing it promised to do in the loan agreement was to seek an increase in the BIA guarantee, which it did and the BIA delayed action on the request, and the advance of operating monies of $70,000 was contingent upon the increased guarantee by the BIA which never came.

The Plaintiffs' theory at trial was that the guarantee of $70,000 in annual operating loans was breached and that the advances were not contingent upon the increase by the BIA in the guarantee. The Plaintiffs advanced the theory that had the Bank advanced the $70,000 in operating costs to it they would not have had the

catastrophic cattle losses they experienced because they would have gotten feed to their livestock.[3] It was undisputed that the Bank did not advance the $70,000 referred to in the loan agreement and the Court believes the issue of whether that advance was contingent upon the increase in the BIA guarantee is not clear from the face of the loan agreement and was therefore a jury issue. The jury apparently felt that the Bank breached the promise to advance the operating costs and this Court cannot substitute its opinion for that of the jury when evidence does exist to support the verdict. The loan agreement is ambiguous on its face on the issue of whether the annual advance of the $70,000 in operating monies was contingent upon the BIA improving the increase in the guarantee and that ambiguity must be construed against the drafter of the document- in this case, the Bank.

The Bank also seems to be contending in its motion that it should have been excused from performing the loan agreement after the winter of 96-97 because the catastrophic livestock losses suffered by the Longs precluded them from paying the notes that were consolidated into the loan agreement. This is a legal issue that the Bank did not ask for a jury instruction on and was not therefore properly preserved at trial. Even had it been proposed as a defense, however, the success of this defense would depend upon the jury accepting the premise that the Bank had complied with the loan agreement up to the point when the Longs lost their livestock. The Plaintiffs' theory of the case appeared to be that the operating loan, had it been made prior to the cattle losses, would have prevented those losses and this was a question of fact for the jury to resolve.

---

[3] There was conflicting testimony whether the Longs had ever asked the Bank for operating monies to move hay to the livestock or to move the livestock, but this was a jury issue that was apparently resolved against the Bank.

BAD FAITH CAUSE OF ACTION

The jury also returned a verdict finding that the Bank acted in bad faith when it attempted to gain the increase in the guarantee from the BIA. The Bank contends that there is no evidence to support this conclusion and the verdict should therefore be set aside. Although there is evidence from the record that the BIA was somewhat derelict in delaying a decision on the guarantee until after the Longs had suffered substantial cattle losses,[4] the undisputed evidence presented to the jury was that the Bank failed to respond to a request from the BIA to correct the submission for the increased guarantee in accordance with federal regulations attached to the letter notifying the Bank and the Longs of the insufficient application. The Bank decided not to respond to the request because it apparently had concluded that with the Longs' cattle losses the Longs were no longer able to make the payments on the loan agreement. Admittedly, the Bank did proceed to loan more monies to the Longs and to re-amortize additional loans. However, the jury must have decided that this was not a substitute for the $70,000 in operating monies the Longs needed in order to survive the winter of 96-97.

The Bank argues that the bad faith claim is subsumed into the cause of action alleging breach of contract and a separate cause of action should not have been tried to the jury on this issue. The Court believes that the bad faith claim relates to the failure of the Bank to follow through with the promise to seek an increase in the BIA guarantee, while the breach of contract action relates to the failure of the Bank to make the operating

[4] The BIA took almost two months before it denied the Bank's request for an increase in the BIA guarantee because it was not appropriately submitted. The record is not clear regarding who submitted the documentation for the increase- the Bank or the Cheyenne River Sioux Tribe's Finance Office- but it is clear in that the Bank did not respond to the increase for a correct application.

loans as promised in the loan agreement. These are discrete claims and both impacted the ultimate inability of the Longs to purchase back the land of Kenneth Long under the lease with an option to purchase.

DISCRIMINATION

The third verdict returned against the Defendant Bank related to the claim of the Longs for discrimination in the lending practices of the Bank. During the trial a document was admitted into evidence, without objection, wherein the Vice-President of the Bank advised the Longs that the Bank would not sell them the land they obtained from the personal representative of the estate of Kenneth Long by contract for deed because of the "jurisdictional problems if the Bank ever had to foreclose on this land when it is contracted or leased to an Indian owned entity on the reservation." (Pl's Exhibit 4). This letter was dispatched after the Parties had apparently reached an understanding that the Bank would resale the Longs the land on a contract for deed. The Bank then proceeded to sell a parcel of the land to the Maciejewskis, non-Indians, on a contract for deed. The Court determined that his was prima facie evidence that the Bank denied the Longs the privilege of contracting for a deed because of their status as tribal members and thus submitted the count to the jury for determination over the objection of the Bank, which timely made a motion for a direct verdict on that issue and objected to the jury instruction and interrogatory on the issue.

The Bank reiterates its argument that this Court has no jurisdiction over a claim of discrimination arising under federal law against a non-Indian entity. Federal law prohibits any entity that receives the benefit of federal financial assistance from discriminating against any person in the delivery of services. See 42 U.S.C. 2000d. This statute has been

held to prevent a bank from "redlining" a certain area because of the racial composition of the residents of that area. See Laufman v. Oakley Bldg and Loan, 408 F.Supp 489 (SD Ohio 1976). The Longs are Indian residents of the Cheyenne River Sioux Indian reservation who claimed that the Bank denied them a privilege of contracting for a deed that was granted non-Indians.[5] There was uncontroverted evidence during the trial that the Bank was receiving the benefit of Department of Interior guarantees and CRP payments under federal programs and thus the Bank appears to be covered by federal law.

The Bank contends, however, that even if a prima facie case of discrimination was demonstrated, this Court lacks the jurisdiction to enforce federal civil rights laws under Nevada v. Hicks, 150 L.Ed. 2d 398, 121 S.Ct 2304(2001). In Hicks the Supreme Court held that a tribal court lacks the authority to hear claims against state officials or those acting under the color of state law who allegedly violate the rights preserved persons under federal law under the provisions of 42 USC 1983. The Defendants argue that the same logic applies to claims brought against private parties for violations of other federal laws protecting the rights of individuals to be free of discrimination.

The Court disagrees with the Bank's argument that this Court lacks the jurisdiction to enforce federal anti-discrimination laws against non-Indian entities over which the Court clearly has jurisdiction under the principles laid out in Nevada v. Hicks. It is undisputed in this case, and was conceded by the Bank, that the Bank had a consensual commercial relationship with the Longs, enrolled members of the Cheyenne

[5] In denying the Bank's motion for a directed verdict on this issue, the Court stated that it did not feel that the mere denial of the contract for deed to the Longs was conclusive evidence of discrimination and thus instructed the jury that it must find that the Bank's decision to deny the contract for deed was based "solely" upon their status as tribal members, thus permitting the jury to return a verdict for the Bank if it determined that the Bank had other non-discriminatory reasons to deny the contract for deed.

River Sioux Tribe, and their family cattle corporation, an Indian-owned entity. Even under the very proscribed view of tribal court jurisdiction over non-Indians contained in Hicks, this Court has jurisdiction over a non-Indian Bank that enters into a consensual relationship with the Band or its member or whose actions "threaten or ha(ve) some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe." Montana v. United States, 450 U.S. 544, at 566 (1981); see also Gesinger v. Gesinger, 531 N.W.2d 17 (SD 1995). In Hicks the Supreme Court found that the tribal court jurisdiction over the game warden there was wanting because he had no consensual relationship with the Tribe or its members and his actions did not meet the second prong of the Montana test.

The Court notes that the Cheyenne River Sioux Tribal Code directs this Court to apply federal law in the absence of applicable tribal law. The only anti-discrimination laws explicitly contained in the Cheyenne River Sioux Tribal Code and Constitution are those prohibiting the Tribe from discriminating or denying equal protection of the laws to persons. The Tribe does not appear to have specific code provisions prohibiting private discrimination and the Court is therefore instructed to look to relevant federal law. The Court does not believe that Hicks precludes a tribal court from exercising jurisdiction over a claim of discrimination, ultimately founded upon federal law, against a party over which the Court can exercise jurisdiction under Hicks and Montana. 42 U.S.C. 1983 is not a basis for substantive law, but merely a procedural vehicle for a federal court to exercise jurisdiction over claims of violations of federal law that find their source in other federal laws. If this Court were precluded under Hicks from enforcing all federal civil rights laws, it would be stripped of the authority to enforce the Indian Civil Rights Act,

notwithstanding the United States Supreme Court's pronouncement in Santa Clara Pueblo v. Martinez., 436 U.S. 49, 58 (1978) that it has ultimate authority to enforce that law. Merely because the genesis of a right arises under federal law does not preclude this Court from enforcing that right.

REDUCTION OF DAMAGES

The Bank argues that the verdict returned by the jury was excessive and had no basis in the law. The Court disagrees. The verdict returned was approximately $500,000 less than what was claimed by the Longs as their damages. Based upon the special interrogatory answers and the exhibits submitted, including Plaintiff's Exhibit 23, the Court cannot conclude that there was no basis for the amount of damages awarded by the jury and therefore denies the motion to reduce the amount of damages awarded.

COUNTERCLAIM FOR EVICTION

In light of the jury's verdict that the Bank did breach the loan agreement, and this Court's previous finding that the lease with an option to purchase and loan agreement were part and parcel of the same agreement, the Court must rule against the Bank on the counterclaim for eviction. A party that has failed to comply with a lease with an option to purchase cannot seek to enforce that agreement through an eviction action. The jury advised the Court that the Bank's breach prevented the Longs from performing under the lease with an option to purchase. The Court therefore concludes that the Plaintiffs did not violate the lease with an option to purchase and their option to purchase remains intact.

However, the jury concluded that the Bank did not violate the tribal law prohibiting self-help remedies when it conveyed parcels of the land covered by the lease with an option to purchase to the other Defendants. The Court has no authority therefore

to set aside the land conveyances to the other Defendants. The Court acknowledges that this leaves an ultimate resolution of this matter in a state of flux. The parties are urged to seek a resolution of the issues left pending by the jury verdict regarding ownership of the land involved herein.

Now, therefore based upon the foregoing analysis, it is hereby

ORDERED, ADJUDGED, AND DECREED that the motion of the Defendant Bank for judgments notwithstanding the verdict, or in the alternative a new trial, on the counts of breach of contract, bad faith, and discrimination are hereby DENIED, and it is further

ORDERED, ADJUDGED, AND DECREED that the motion of the Defendant Bank for a reduction in the amount of damages of $750,000 is DENIED and it is further

ORDERED, ADJUDGED, AND DECREED that the Defendant Bank's counterclaim for eviction of the Plaintiffs from the lands they presently occupy is DENIED at this time, and it is further

ORDERED, ADJUDGED, AND DECREED that counsel for the Plaintiffs shall submit a judgment conforming to the verdict of the jury in this case.

So ordered this 3rd day of January 2003.

BY ORDER OF THE COURT:

B. J. Jones

BJ Jones
Special Judge

ATTEST: Dale Charging Cloud
Clerk of Courts

Dale Charging Cloud Clerk of the Cheyenne River Sioux Tribal Court, do hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears on file and of record in my said office.

Date this 07th day of Jan 20 03

Dale Charging Cloud
Clerk, Cheyenne River Sioux Tribal Court

By DCC