

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

IN CIVIL COURT

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

#R-120-99

vs.

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

ANSWER OF DEFENDANTS EDWARD AND MARY MACIEJEWSKI AND
BANK OF HOVEN AND COUNTERCLAIM

Comes now Edward and Mary Maciejewski, hereinafter referred to as "Maciejewskis" and Bank of Hoven, hereinafter referred to as "Bank", by and through their attorney, David A. Von Wald, and for their Answer to Plaintiffs' Amended Complaint state and allege as follows:

I.

This Court lacks jurisdiction over the parties and the subject matter of this action.

II.

That this Court lacks jurisdiction as to Maciejewskis, due to the fact that they are Non-Indians, residing on deeded land and not tribal members of the Cheyenne River Sioux Tribe.

III.

That this Court lacks jurisdiction as to Bank in that the Bank is a South Dakota banking corporation, having its main place of business in Hoven, Potter County, South Dakota, lying outside the boundaries of the Cheyenne River Sioux Indian Reservation. That further, there has been no personal service of process on the Bank.



IV.

For all of the reasons mentioned above, Defendants Maciejewskis and Bank hereby move the Court to dismiss the Plaintiffs' Complaint and Amended Complaint.

V.

That Plaintiffs fail to state a cause of action upon which relief can be granted.

VI.

That Defendants deny each and every other thing and allegation contained in Plaintiffs' Amended Complaint, except as is hereinafter specifically admitted.

VII.

Defendants admit that portion of Plaintiffs' Amended Complaint, factual allegations that Kenneth Long owned 2,225 acres of deeded agricultural land and the same was mortgaged as collateral for certain loans that the Long Family Land & Cattle Company, Inc. had at the Bank. Bank further admits that Kenneth Long died on or about July 17, 1995. Bank admits that the Kenneth Long Estate, through its personal representative, deeded the above-described agricultural, land along with decedent's home in Timber Lake, South Dakota, to the Bank, in lieu of foreclosure. That there was a CRP Enhancement Mortgage to the State of South Dakota that was a first mortgage lien against said agricultural real estate when the same was deeded to the Bank.

VIII.

Bank admits that there was a loan agreement and lease with option to purchase with Long Family Land and Cattle Company, Inc., however, Bank states that these were separate and distinct agreements. Defendants deny each and every other allegation and thing contained in Plaintiffs' factual allegations except as is hereinabove admitted.

IX.

Defendants admit Paragraph 2 of Count I of Plaintiffs' Amended Complaint and deny each and every other allegation contained in that Count and every other allegation contained in

Plaintiffs' Amended Complaint except that the Bank admits that it sold 320 acres of land to Ralph H. and Norma J. Psicka on or about March 17, 1999, and approximately 1,905 acres to Edward and Mary Jo Maciejewski under a Contract for Deed.

X.

That as an affirmative defense, Defendant Maciejewskis allege they were innocent purchasers in good faith and without knowledge of any claim of Plaintiffs in certain land which they purchased and described as Parcel One under the Contract for Deed hereinabove mentioned.

XI.

That as a second affirmative defense, Defendant Bank alleges they did not breach any contract, however, if a breach did exist, which is denied, Plaintiffs failed to mitigate damages.

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XII.

That as a third affirmative defense, Defendant Bank claims that Plaintiffs did not exercise their option to purchase the real estate above-described and that they are barred from any claim therein.

COUNTERCLAIM

That although Defendants deny jurisdiction of the Court, in the event the Court finds that it does have jurisdiction, both Defendants make this Counterclaim against Plaintiffs:

I.

That Plaintiffs are wrongfully retaining the real estate described in Plaintiffs' Amended Complaint in that they have failed to tender payment for the option to purchase said real estate in a timely manner and the term of the lease has expired. A copy of said lease with option to purchase is hereto attached and marked as Exhibit "A" and made a part hereof.

II.

That Maciejewskis and Bank have both been damaged by not having the use of said real estate for the 1999 crop year and

may additionally sustain damages in the future while Plaintiffs are wrongfully remaining in possession of said real estate.

III.

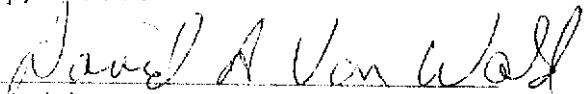
That both answering Defendants are entitled to damages as a result of Plaintiffs' wrongful possession of said real estate.

IV.

That both answering Defendants are entitled to immediate possession of said real estate, and that Plaintiffs should be evicted from possession of the same.

WHEREFORE, Defendants pray that Plaintiffs' Complaint and Amended Complaint be dismissed, with prejudice, and that the Court enter an Order evicting Plaintiffs from the real estate described in Plaintiffs' Amended Complaint, granting the Defendants possession of the same. That additionally, the Court enter a Judgment against Plaintiffs for damages sustained by Defendants for the wrongful possession of said real estate by Plaintiffs, and for attorney fees, costs, and whatever other relief as to the Court is deemed just and equitable in the premises.

Dated this 3^d day of February, 2000.


David A. Von Wald
Attorney for Defendants
Edward and Mary Maciejewski
and Bank of Hoven
P.O. Box 468
Hoven, South Dakota 57450
605-948-2550

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 (E $\frac{1}{2}$) of Section One (1), Township Fifteen (15) North, Range Twenty Four (24), East of the Black Hills Meridian;

The Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty Five (25), all of Section Twenty Eight (28), the East Half (E $\frac{1}{2}$) of Section Thirty Two (32), the Northeast Quarter (NE $\frac{1}{4}$), the West Half of the Northeast Quarter of the Northwest Quarter (W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$), the Southeast Quarter of the Northeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$), the West Half of the Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) and the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) and the South Half (S $\frac{1}{2}$) of Section Thirty Three (33); and the Southwest Quarter (SW $\frac{1}{4}$) 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.

Prepared by:
David A. Von Wald
Attorney-at-Law
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Hoven, So. Dak. 57450

(6) b

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,

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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} ~~lessor~~ 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

