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FACING THE ISSUES[®]

LEGAL BRIEFS FROM THE ATTORNEYS OF MACKALL, CROUNSE & MOORE, PLC

Creditors' Corner

8th Circuit Finds Tribal Court Properly Exercised Jurisdiction Over Bank - *Plains Commerce Bank v. Long Family Land and Cattle Co., Inc., et al.*, ___ F.3d ___, Eighth Circuit File No. 06-3093 (Filed June 26, 2007).

This case involved a claim brought in the Cheyenne River Sioux Tribal Court against lender Plains Commerce Bank (the "Bank"). Borrower Long Family Land and Cattle Co., Inc. ("Long") defaulted on a number of loans to the Bank. After exercising its rights under the contract, and selling the land at issue to non-tribal members at a lower interest rate, Long and its individual members sued the Bank alleging the Bank had impermissibly engaged in self help measures when it sold the land and that the Bank discriminated against Long by offering more favorable loan terms to the third party purchasers of the real estate. The jury in the tribal court awarded damages against the Bank of \$750,000, which was affirmed by the tribal court of appeals. The Bank brought an action in federal district court to void the tribal court judgment. The federal court granted summary judgment in favor of the plaintiffs, which was affirmed by the 8th Circuit Court of Appeals.

Citing Supreme Court precedent, the court noted that consideration of jurisdiction involved two separate questions. First, whether the Bank formed a consensual relationship with Long or its members. Second, whether tribal tort law invoked by Long was an appropriate subject matter for a tribe to regulate nonmember conduct. Because of the consensual relationship, the 8th Circuit held that the tribal court was an appropriate forum to hear the tribal antidiscrimination claim against the Bank. The 8th Circuit denied that the Bank was denied due process, and noted that deference is given to tribal courts.

It is important to note that the Bank did not raise the jurisdictional objection until right before the jury was charged. Furthermore, the bank failed to exercise its right to request that non-tribal members serve on the jury. Be aware of these rights if you are ever presented with a claim in tribal court.

Minnesota Bankruptcy Court Protects Full 160-Acre Homestead Exemption For Debtors Residing On Rural Subdivision On Non-Agricultural Land - *In re Engstrom*, No. 05-39536, Minn. Bankr., June 20, 2007.

In *In re Engstrom*, debtors owned a five-acre lot on the outskirts but within the city limits of Afton, Minnesota. The zoning ordinances included debtors' land within "rural-residential," which required a minimum lot size of five acres. Debtors' lot, while not platted, bordered a grouping of eight similarly-sized five-acre lots upon which the residents had built large houses, but did not use for agriculture.

The creditor argued that the 160-acre homestead exemption was inappropriate where debtors lived in an area that appeared to be a residential subdivision within the city limits and not used for agriculture. The court disagreed, and permitted the 160-acre homestead exemption. The court, relying on a 110-year-old case, found that use of the land for agriculture was not the controlling factor. Rather, the available homestead acreage depends on the use of the land surrounding the disputed homestead property, and whether the surrounding area had an urban or rural character.



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As we noted in last month's installment of the Creditor's Corner, the legislature recently enacted changes to Minnesota's homestead exemption laws. In addition to the exemptible dollar amount, the legislature also removed the language distinguishing the treatment of lots within a city. As of August 1, 2007, the statute will allow the homestead to include any quantity of land not exceeding 160 acres, regardless of location. *In re Engstrom's* applicability will therefore be short-lived.

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