

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20030262

20030251

United Community Bank of)
Leeds, DeWayne Streyle,)
J. Thomas Traynor)
Appellee)
vs.)
Leo Delorme,)
Appellant)

Supreme Court # 20030251

District Court # O2-C-142

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SEP 24 2003

STATE OF NORTH DAKOTA

APPELLANT'S BRIEF

APPEAL FROM JUDGEMENT
by THE DISTRICT COURT
DONOVAN FOUGHTY- LEE A.
CHRISTOFFERSON
DATED: JULY 1, 2003

Leo Delorme
St. Michael, ND 58370

ORAL ARGUMENT REQUESTED

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THE TRIAL COURT WAS WITHOUT SUBJECT MATTER JURISDICTION

Second Issue:

THE TRIAL COURT ERRED IN DENYING APPELLANT DUE PROCESS OF LAW.

Third Issue:

THE TRIAL COURT ERRED IN ITS FAILURE TO RECOGNIZE AND RULE AGAINST UNITED COMMUNITY BANK OF LEEDS, DEWAYNE STREYLE AND J THOMAS TRAYNOR IN THEIR SCHEME OF REFUSAL TO ACCEPT PAYMENT AHEAD OF LITIGATION, DURING LITIGATION AND AFTER LITIGATION.

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STATEMENT OF VENUE:

The District Court may have had proper venue for this action, pursuant to the provisions of The North Dakota Constitution, Article I, Section 9, and the North Dakota Century Code, Section 28-04-03.

While a defect in venue may be waived by the parties, lack of jurisdiction can not be waived. Venue does not refer to jurisdiction at all.; Arganbright v. Good, 46 Cal App 2d Supp 877, 116 P 2d 186. Venue designates the particular county or city in which a court with jurisdiction may hear and determine the case.; Stanton Trust and Savings Bank v. Johnson, 104 Mont. 235, 65 P 2d 1188.

JURISDICTION STATEMENT

Jurisdiction is the right and power of a court to adjudicate concerning the subject matter in a given case within the confines of The Constitution; Biddinger v. Fletcher, 224 Ga. Jurisdiction is conferred upon the Supreme Court of the State of North Dakota, pursuant to the provisions of The Constitution of the United States of America.

STATEMENTT OF AUTHORITIES

The Constitution of the United States of America;

Article VI Paragraph 2# 6

United States Code;

Title 5, Section 556(d) 10
 Section 557 10
 Section 706 10
Title 28, Section 1446(d) 8

Blacks Law Dictionary

Infringement 10

North Dakota Rule;

NDRC 3.2 9

Applicable case-law;

Arganbright v. Good, 46 Cal App 2d Supp 877,
116 P 2d 186. ii
Biddinger v. Fletcher, 224 Ga. iii
Byars v. United States, 273 US 28, 71 L Ed, 47 S Ct 248
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Dejarnette v. Hospital Authority of Albany,
195 GA. 189, 23 SE 2d 716. 9
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104 Mont. 235, 65 P 2d 1188. ii

CERTIFICATE OF SERVICE

The Undersigned does here certify that on the 24th day of September, 2003, that they did file, and/or did serve, the following document(s):

Eight: APPELLANT'S APPEAL BRIEFS

Upon;

The Clerk of Court, The Supreme Court of North Dakota,
600 East Boulevard Avenue, Bismarck, North Dakota 58505

Also one copy of the above document(s) on;

J Thomas Traynor
P.O. Box 838
Devils Lake, ND 58301

By person, or by placing same in addressed, stamped envelopes,
and depositing them in the United States Mail.

By: Leo Delaine

STATEMENT OF THE ISSUES

First Issue:

THE TRIAL COURT WAS WITHOUT SUBJECT MATTER JURISDICTION

Second Issue:

THE TRIAL COURT ERRED IN DENYING APPELLANT DUE PROCESS OF
LAW.

Third Issue:

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PAYMENT AHEAD OF LITIGATION, DURING LITIGATION AND AFTER
LITIGATION.

STATEMENT OF THE CASE

The Appellant has a constitutional right to Due Process of Law, pursuant to the First and Fifth Amendments of the Constitution of the United States of America, the supreme law of this country.

There has been two appeals filed in this case to make the record perfectly clear that all decisions by the court and others are strongly objected to and appealed therefrom.

The case appears to be a foreclosure action that disguises itself in a most devious manner to cover up United Community Bank's official's actions.

1. To create criminal process without cause against Appellant for the purpose of obtaining a mortgage on Native American property and then thereafter United Community Bank (DeWayne Streyle) to cancel the frivolous criminal process,

2. DeWayne Streyle's refusal to accept payment by every means possible including to obstruct deed recording and payment of taxes. That five sincere attempts were made at DeWayne Streyle's insistence to appear and to pay a claim. That at each occurrence Streyle obstructed and instructed that no payment in full was to be accepted,

3. This case is predominantly about caring on through quasi court process to continue to take property away from Native Americans,

4. This High Court is being asked to rise above the intended theft of property by the use of a State Chartered Bank and determine that when a banker refuses to accept payment, and steals Tribal Funds to thwart payment and refuses to issue a Cashier's Check on deposited

funds to make timely payment on the Sheriff's sale and fails to file any original promissory note in this proceeding that the State bank not be allowed to take property after refusing to accept payment. It is time for this High Court to determine the following "Mr. Banker if you refused payment in full for any purported debt of this Appellant you have waived your right to collect".

STATEMENT OF THE FACTS

Approximately two years ago DeWayne Streyle, CEO of United Community Bank, hereafter called Streyle, violated his fiduciary duty to Turtle Mountain Ready Mix located at Belcourt, North Dakota by mishandling loan funds that were borrowed for a specific purpose. That being to purchase equipment to make and deliver cement. That \$40,000.00 of those funds showed up on the bank's records as having been spent purchasing cattle. That neither your Appellant nor his associates ever purchased cattle. That it appears from Appellant's records that a total of \$125,000.00 of loan funds have been misplaced or stolen by Mr. Streyle. These actions by Mr. Streyle have negatively effected the operation of the cement company. Mr. Streyle, in an attempt to cover up the disappearance of funds caused criminal process to be commenced against Appellant by the Benson County States Attorney. That after Mr. Streyle requested Appellant and his wife appear at his bank he had a mortgage prepared on 40 acres of property and informed Appellant that if he and his wife signed the mortgage Mr. Streyle would see to it that the charges were dropped. At that time Appellant was without Counsel and was concerned that he may go to jail and not be able to provide for his family. Appellant and his wife signed the mortgage thinking that it was the only thing they could do and thereafter DeWayne Streyle had the Benson County States Attorney, Mr. Wang, cancel the criminal process. Appellant asked the Chief of the Tribe if there was any way the Tribe could help relieve the economic pressure on the 40 acres of

which Streyle obtained the mortgage. The Chief informed Appellant that if Appellant and his wife Quit Claimed the 40 acres to the Tribe that the Tribe would record the deed, pay the taxes current and that the Tribe already had \$40,000.00 deposited in escrow with Streyle's bank as equity to support the BIA loan only and being that the BIA loan was denied the Tribe's funds are more than enough to settle this claim.

Mr. Streyle interfered with the recording of the deed and had it returned. Mr. Streyle interfered with the payment of taxes after the taxes were paid in full by the Chief. Mr. Streyle then commenced foreclosure proceedings by providing a Notice before foreclosure and then Streyle requested Appellant appear at the bank. When Appellant appeared he took an additional Trustee and witnesses with him who had ability to extend funds to make payment. Mr. Streyle terminated the meeting before we sat down to settle the matter. Awhile later, Mr. Streyle set another meeting stating he wanted to resolve this matter. Appellant, his brother and the Trustee appeared and Mr. Streyle's attitude had completely changed by the time we got there. Mr. Streyle set a third meeting at the bank for the third of July 2003. Appellant attended with two brothers and the Trustee. That it appeared that Mr. Streyle was making an offer. That pursuant to the discussions, the Trustee submitted a deposit to Mr. Streyle well in excess of the amount needed. Mr. Streyle then terminated the meeting citing he would reset it later, however, in the meantime Mr. Streyle had changed his mind as the deposited funds had actually been collected by the

bank and Mr. Streyle was not interested in accepting payment. All of this time Mr. Streyle was conducting ex parte court process to obtain an ex parte Judgement. The Trustee went to see Mr. Streyle in a last attempt to straighten the matter out and Mr. Streyle made it quite clear he was not interested in receiving payment. He wanted the property. On the 25th of August 2003 a Sheriff's sale was held at 10am on the courthouse steps in Minnewaukan, North Dakota. The Trustee was the high bidder and the Sheriff demanded a Cashier's Check. Appellant and others accompanied the Trustee to the bank in Leeds where the demand funds were deposited and the Cashiers refused to issue a Cashier's Check in the amount of the Sheriff's sale price. That the bank's records showed that more than six times the money was on deposit to cover the Cashier's Check, however, Mr. Streyle had disappeared pursuant to instructions from his attorney, Mr. J. Thomas Traynor, who was the only other bidder. The bank refused to allow a draw on the Trustee's funds at the bank. That further, with the Chief present at the bank the Trustee asked the cashiers to check on the \$40,000.00 that had been deposited in escrow on July 8th 2002 and the Trustee displayed to the cashier the canceled check and the monthly statement from the credit union that the check had been drawn on and the cashiers went to their computer and could not even find that the \$40,000.00 had even been deposited. It was clear that the money had either been stolen by Mr. Streyle to whom it was handed to or some other way mishandled as it could not be found on the banks records.

This High Court Shall Take Judicial Notice that the \$40,000.00 of Tribal funds handed to Streyle, with five witnesses verifying that at the time the deposit was made and a full audio recording thereof to verify the transaction, has disappeared. These Funds were Tribal Trust Funds.

That Further, This High Court Shall Take Judicial Notice that Mr. Streyle has done everything within his power to manipulate the courthouse personnel and bank personnel to deny the use of funds deposited to be used to pay Streyle's claim.

Lastly, The Court Shall Take Judicial Notice that Appellant was informed by the Sheriff that only 60 days would be allowed to redeem the property.

This Court is being asked to extend the Redemption time until the Appeal has been heard and a decision rendered plus 30 days.

Lastly, This High Court Shall Take Judicial Notice that Mr. Streyle wrote a threatening letter to the Trustee assisting Appellant demanding that all funds deposited in Streyle's bank be withdrawn by the 10th of September 2003. That all funds were withdrawn except the missing \$40,000.00 which had been hand carried to the Bank by the Trustee. Appellant has filed a report to the Comptroller of the Currency and FDIC.

LAW AND ARGUMENT

First Issue:

THE TRIAL COURT WAS WITHOUT SUBJECT MATTER JURISDICTION

Early in the case Appellant requested Discovery. That Discovery was not provided by United Community Bank, DeWayne Streyle or its purported attorney J. Thomas Traynor, Jr. That thereafter, objection was entered upon the record as to the use of Rule 3.2 of the North Dakota Rules of Court and further a Demand was made that all Motions be scheduled for oral argument and timely Notice given. Upon review of the Clerk of District Court's file Appellant requested the answers to interrogatories, request for admissions and production of documents.

On 9-8-03 a copy of the Index sheet was obtained from the Clerk of the District Court depicting 80 entries upon the Index. At that time upon a complete search of the record in the Clerk of District Court's office the file did not have within it the alleged Promissory Note. The Clerk of District Court was questioned as to whether or not she had ever received the original alleged Promissory Note and if so had she canceled said purported document prior to the issuance of the Judgement. The Clerk responded "no, the original Note was never placed in Trust in the Clerk's file, therefore it was not canceled".

The Promissory Note, if one exists, is the Contract. That further, the Promissory Note is itself the creation of capital. That in courts of equity the court must have the contract to obtain Subject Matter Jurisdiction. Appellant cannot take a hundred dollar bill

to a copy machine, make copies and pay his debts with it. As a copy is not a contract in Fact. If the court does not hold the contract in Fact it cannot have Subject Matter Jurisdiction. That Appellant knows that United Community Bank and DeWayne Streyle do not possess the original purported Promissory Note.

For the court to obtain Jurisdiction it also had to serve all indispensable Parties. Appellant was never personally served a Summons and Complaint even though a Deputy claims to have provided the service. The problem is the Sheriff's Deputy falsified the document. How can we trust any so-called law enforcement personnel if they are willing to lie for a banker?

Streyle knew that the Chief and the Tribe were involved in Appellant's all out efforts to settle a claim by supplying payment. Nevertheless, neither the Chief nor the Tribe who hold in their possession the Quit Claim Deed, have never received Notice that their property interests were being taken. The Chief with a witness filed the Quit Claim Deed with the Benson County Recorder on the 14th day of October 2002 and paid the filing fee as well as all of the back taxes. The Chief had the ability to pay the claim on the property and the Tribe had \$40,000.00 deposited in Streyle's bank to cover the claim. The money disappeared. It is suspected that DeWayne Streyle took the Credit Union check and went to the Credit Union and cashed it, and that is why the money doesn't appear on the bank's computer. Streyle had significant reason not to include the Tribe and its Chief in the above entitled matter. Over the years the Government made agreements, some of them called

Treaties, with the Indigenous People with the Government's full intent not to live up to the agreement. The District Court could not have had Jurisdiction and the Court knew that, so ex parte secret meetings were held for the purpose of denying Appellant's Motion to Dismiss. Public Notice was on the Public Record and filing fee paid to provide the background to prove that Indispensable Parties were not Summoned to the District Court and the purported Contract has not as of 9-8-03 been tendered upon the Court record. The bank cannot lawfully hold the original Contract and have Judgement (Doctrine of Double Enrichment) The Bank (One Appellee) has provided no Claim in Fact.

Lastly, during the time that the ex parte process was being conducted to obtain Judgement, the State court had no Jurisdiction as the case had been Removed to the United States District Court in which the US District Court continued to have Jurisdiction pending its exparte decision to Vacate its Remand.

There should be no question but on the day of the Order for Judgement and Judgement the State District Court was without Jurisdiction as the US District Court Jurisdiction had not expired pursuant to USC 1446(d).

That the Constitution should receive a liberal interpretation in favor of a Citizen, is especially true with respect to those provisions which were designed to safeguard the liberty and security of the Citizen In regard to both person and property.

Byars v United States. 273 US 28, 71 L Ed 520, 47 S ct 248. And a constitutional provision intended to confer a benefit should be

liberally construed in favor of the clearly intended and expressly designated beneficiaries. Dejarnette v. Hospital Authority of Albany, 195 Ga 189, 23 SE 2d 716;

Similarly, a provision intended to afford a remedy to those who have just claims shall receive a beneficial construction for the purpose of extending the remedy to all who might fairly come within the meaning of its terms. Rider v. Fritchey. 49 Ohio St 285, 30 NE 692.

This High Court must take notice that the Appellant is demanding that the purported contract be enforced to his benefit, because the Appellant is the Beneficiary of the Purported Contract and that in contract law pursuant to the Statute of Frauds, the contract shall be enforced most favorably in favor of the non preparer.

WHEREFORE, THIS HIGH COURT SHOULD DETERMINE THAT THE DISTRICT WAS WITHOUT JURISDICTION AND ORDER THE STATE DISTRICT COURT VACATE ITS FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGEMENT, JUDGEMENT AND NOTICE OF ENTRY THEREOF.

Second Issue:

THE TRIAL COURT ERRED IN DENYING APPELLANT DUE PROCESS OF LAW.

Appellant was entitled to obtain personal service of process, answers to Interrogatories, Admissions and Production of Documents. The court ignored Appellant's Pleadings for Due Process. Appellant expected that he would be given Notice pursuant to his Timely objection to the use of Rule 3.2 of the North Dakota Rules of

Court. Appellant was entitled to a Hearing on his Motion to Dismiss. Appellant was entitled to attend Appellee's Motion to Amend Complaint and was certainly entitled to obtain Notice and Time for Hearing on Appellee's Motion for Judgement. Appellant has the absolute Right to be heard. That pursuant to the Bill of Rights, (the first 10 Amendments of the Constitution), the Second Amendment states: "the right of the people", pursuant to the United States Supreme Court means the right each of every single citizen to possess the right equally and to be not infringed upon.

The Appellant is stating that the Appellee is infringing upon his rights, and is stealing his rights. Appellant claims infringement, encroachment, impingement, and usurpation of his rights. Appellant asks again, what doesn't the Appellee understand about the word infringement? According to Black's Law Dictionary "Infringement" is defined as:

A breaking into; a trespass or encroachment upon; a violation of a law, regulation, contract, or right.

Appellant shall not be deprived of life, liberty or property, without due process of law. This is the equal protection clause in the Constitution. Appellant has equal right to all rights under the law and has a right to due process of law and if the Appellant does not receive due process of law, Title 5, USC 556(d), 557 and 706 is clear and specific that if the Appellant is not provided due process of law, all jurisdiction ceases automatically. That the Appellant has been made aware that he is being denied due process of law, therefore the District court had no jurisdiction.

In the heretofore described process Appellant has been treated as

a Native American with not even the court standing up for Due Process of Law. The court has merely executed a slam dunk based on heresy and without a Contract in Fact, without requiring Notice to all Indispensable Parties, to cover up that acts of a dishonest banker and his refusal to take payment in order that Mr. Streyle can steal Native American property and cover up the theft of the \$40,000.00 of Tribal Money. If this High Court believes Due Process of Law has been administered here then Appellant will not and cannot expect justice in the courts of the State. It has now become common knowledge that the State of North Dakota is and has Quit Claimed Tribal Property to the State of North Dakota. If this High Court doesn't stand up on this issue then no one in this State has any property rights and the property all belongs to the State and its Instrumentalities without having to pay for any of it. WHEREFORE, APPELLANT RESPECTFULLY REQUEST THIS HIGH COURT DETERMINE THAT APPELLANT DID NOT RECEIVE DUE PROCESS OF LAW AND WAS BEEN DENIED THE RIGHT TO PAY THE PURPORTED CLAIM OR HAVE SOMEONE ELSE PAY ON APPELLANT'S BEHALF.

Third Issue:

THE TRIAL COURT ERRED IN ITS FAILURE TO RECOGNIZE AND RULE AGAINST UNITED COMMUNITY BANK OF LEEDS, DEWAYNE STREYLE AND J THOMAS TRAYNOR IN THEIR SCHEME OF REFUSAL TO ACCEPT PAYMENT AHEAD OF LITIGATION, DURING LITIGATION AND AFTER LITIGATION.

Appellant asserts in this issue all of the facts contained in the

Statement of Facts heretofore stated. Appellant's Motion to Vacate Judgement carried within it sufficient facts to set forth the Dismissal of the above entitled matter.

Article 6, paragraph 2 of the Constitution of the United States of America, commonly known as the Supremacy Clause of the Constitution states to wit:

This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the constitution or Laws of any State to the Contrary notwithstanding.

That the statement "to the contrary notwithstanding" means notwithstanding at law.

The Clerk of the District Court had an intrical part in preparing and executing the denial of Appellant's Motion to Vacate Judgement. The Clerk of the District Court knew that all Motions had to be set for Hearing but why bother with that when a dishonest banker and his so-called lawyer run the courthouse and all of its officials including the Sheriff.

The Sheriff knew that he was selling Tribal Land on the courthouse steps WITHOUT NOTICE. The Chief told him so. The Sheriff did a 180 degree turn and was headed into the courthouse when J. Thomas Traynor, Jr. stepped out of the door and forced the Sheriff to turn around and read the advertisement. J. Thomas Traynor, Jr. submitted one bid (The Low Bid). The Trustee submitted the high bid. The Sheriff refused to accept a check from the Trustee demanding that the Trustee provide a Cashier's Check giving Traynor

the opportunity to Reach Streyle to see to it that the bank did not issue a Cashier's Check. Streyle then after giving strict orders to the Cashiers and the internal auditor of the bank left the bank so when the Trustee appeared with witnesses and a video camera no Cashier's Check would be issued to the Trustee and payment not be made to satisfy the instant Sheriff's demand. When the Cashier's Check could not be tendered because the TRUSTEE could not get the bank to issue it on ample deposits by 5pm on the 25th day of August 2003 the Sheriff awarded the sale to J. Thomas Traynor, Jr. who never produced a Cashier's Check, as none passed through the Sheriff's Trust Account. (Special consideration for a crooked banker and his lawyer).

When a promise to pay is made in Fact and when Appellant makes arrangements to pay the alleged promise to pay it is generally perceived that the person holding the Promissory Note and who is making the demand for payment must accept payment! If this is not the case then it is high time that this High Court tell the people residing in this State you don't have a right to pay either and let the corrupt and non-productive bankers have everything and then watch what happens to the economy and respect for the system. This High Court is hereby put on Notice that it has an inherent Conflict of Interest in this matter as the State of North Dakota and the United States Government owes this Appellant and his People for the 9 million acres sold in 1863 and the State has been selling Appellant's and his People's Tribal Property each year thereafter without compensation.

WHEREFORE, THIS HIGH COURT SHALL DETERMINE THAT THE REFUSAL TO ACCEPT PAYMENT IS UNLAWFUL BY ITS VERY NATURE AS DEMAND WAS MADE AND PAYMENT WAS REFUSED FIVE (5) TIMES.

CONCLUSION

Appellant was denied Discovery, denied an opportunity to appear, denied his right to pay a Claim, denied Due Process of Law and Discriminated against as a Native American and all for the purpose of stealing 40 acres of Native land and to foster the cover up the Theft of \$40,000.00 of Tribal Funds. To Judges Names appear on this case. The name Christopherson was used, then it appeared that Foughty appeared and then ended up with Christopherson and then allegedly the District Court Clerk placed the Judges name on the Denial of Appellant's Motion To Vacate Judgement and then who actually was the Judge who approved the Sheriff's sale. Total elapsed Judicial time spent in this case could not be more than 1 minute. Appellant declares that Discrimination has occurred and that Appellant does have a Claim in Fact and asks this High Court to Reverse the Judgement of the District Court and Sanction all Appellees involved against Appellant by Ordering Dismissal with Prejudice and seeing to it that the District Court follows this High Court's direct dictates.

CONCLUSION

WHEREFORE: This High Court In The Interest of Justice Should Order The District Court to Vacate The Judgement In This Matter and Apply Appropriate Sanctions Against Appellees And Such Other Relief As The Court Deems Fitting And Proper For Appellant.

Dated this 23rd day of September, 2003

Leo Delorme
Leo Delorme
St Micheal, ND 56370

ORAL ARGUMENT REQUESTED