

AMERICAN INDIAN LAW & POLICY ALERT



SUPREME COURT LIMITS TRIBAL COURT JURISDICTION OVER NON-INDIANS

Plains Commerce Bank v. Long Family Land & Cattle Co., Inc., et al

On June 25, 2008, the Supreme Court issued its decision in *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc., et al*. The Court reversed an Eighth Circuit Court of Appeals decision, favorable to Indian Country, that the bank was subject to tribal court jurisdiction and instead held that the Cheyenne River Sioux Tribal Court does not have jurisdiction over a non-Indian bank doing business on the reservation.

The Long Family Land & Cattle Company, a ranching and farming corporation operating on the Cheyenne River Sioux Reservation, was owned by enrolled Cheyenne River Sioux tribal members. Plains Commerce Bank, a non-Indian bank located off the Reservation, negotiated a loan on which the Long Company defaulted after two years, resulting in the Bank taking control of, and selling to non-Indians, fee land within the Reservation. The Longs filed suit in the Cheyenne River Sioux Tribal Court against the Bank, alleging, among other matters, that the Bank discriminated against them by offering more favorable loan terms to the nonmembers who purchased the property than were originally offered to them.

Throughout the suit, the bank asserted that the Tribal Court did not have jurisdiction over the claim. However, the Tribal Court, and later the Cheyenne River Sioux Tribal Court of Appeals, U.S. District Court for the District of South Dakota and the Eighth Circuit Court of Appeals, held that the Tribal Court had jurisdiction because of the consensual relationship between the Bank and the Long Company. The Supreme Court granted review of the case and heard argument in April of this year.

The case involved the well-known *Montana* test, which prohibits tribal court jurisdiction over non-Indians on fee land within Indian reservations unless two narrow exceptions are satisfied - regulation of activities of non-members who enter "consensual relationships" with the tribe or its members, or regulation of the conduct of non-Indians which threatens the "political integrity, the economic security, or the health or welfare of the tribe."

In an opinion by Chief Justice John Roberts and joined by Justices Scalia, Thomas, Kennedy and Alito, the Court characterized the dispute as concerning the regulation and sale of a fee land on a reservation, rather than one that affects a tribe's authority to regulate the activities of non-

Indians on the reservation. Thus, the Court ruled that neither *Montana* exception was satisfied. According to the Court, “the Tribal Court lacks jurisdiction to hear the Longs’ discrimination claim because the Tribe lacks the civil authority to regulate the Bank’s sale of its fee land.”

Although the Court left open the possibility that “certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight,” it also noted that “with only one minor exception, we have never upheld under *Montana* the extension of tribal civil authority over nonmembers *on non-Indian land*.” (emphasis added by the Court).

Justice Ruth Bader Ginsburg wrote a dissent joined by Justices Souter, Breyer and Stevens. She said tribal courts are the proper place to resolve a dispute involving a non-Indian bank that voluntarily entered into a business agreement with tribal members.

CONTACT INFORMATION

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