IN THE COURT OF APPEALS

FOR THE

ROSEBUD SIOUX TRIBE

CA88-02

ROSEBUD HOUSING AUTHORITY, Plaintiff and Appellee,

v.

LeROY GREAVES and ELIZABETH REIFLE, Jointly and Severally, Defendants and Appellants,

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O R D E R

This case having received complete appellate review, including oral argument, and the Court having issued opinion and being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED, that the judgment of the Tribal Court be, and the same is hereby, affirmed, and this case is remanded to the trial court for further proceedings consistent with the court's opinion.

Dated this 8th day of February, 1989.

BY THE COURT:

ACTING CHIEF JUDGE

ATTEST:

(SEAL) CLERK

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APPEAL FROM THE ROSEBUD

SIOUX TRIBAL COURT OF THE

ROSEBUD SIOUX TRIBE

HONORABLE SHERMAN J. MARSHALL
Presiding Judge

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OPINION FILED 2-9-89

Case # CA88-02

ROUBIDEAUX, Acting Chief Justice

This is an interlocutory appeal from an order of the tribal court denying the Defendant-Appellant's Motion to Dismiss upon jurisdictional grounds.

The Rosebud Housing Authority (hereinafter referred to as RHA) Appellee herein, brought an action against Defendant (hereinafter referred to as Greaves) in the trial court to evict him and collect money damages arising out of a lease duly entered into by RHA and said Greaves who is a tribal member and who resided at that time within the exterior boundaries of the Rosebud Sioux Reservation.

Greaves was served personally with process on the Cheyenne River Indian Reservation on April 15, 1987. On April 17, 1988, Greaves filed a Motion to Dismiss. A hearing was held on June 15, 1987, when Greaves moved to dismiss the action based upon claimed lack of personal jurisdiction. Oral argument was heard from both parties, briefs were ordered, duly considered and the Court issued a Memorandum Decision dated November 3, 1987, constituting the Findings of Fact and conclusions of Law of the trial court, and Order denying the Motion to Dismiss notice of which was duly served on November 5, 1987. This Appeal followed.

The pleadings contain several other assignments of error, most of which relate to the merits, however, we will consider the following:

1. Are interlocutory appeals proper to the Rosebud Sioux

Tribe Appellate Court when such issues may be appealed after Final Judgment is entered?

2. Did the trial court err, as a matter of law, in holding that it acquired jurisdition over the Appellant by the purported personal service of April 15, 1987, off the Rosebud Sioux Reservation?

3. Did the trial court err, as a matter of law, in allowing the RHA to be initially represented by the Chief Appellate Court Judge for the Rosebud Sioux Tribe?

1. ARE INTERLOCUTORY APPEALS PROPER TO THE ROSEBUD SIOUX TRIBAL APPELLATE COURT WHEN SUCH ISSUES MAY BE APPEALED AFTER FINAL JUDGMENT IS ENTERED?

Appellant claims that it is quite clear from his cited statute, (28 USC § 1292 (b), that discretionary appeals in federal court cases are allowed where appropriate statement from the District Court Judge is permitted. 28 USC § 1292 (b) states:

> "(b) When a district judge, in making a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is discretionary, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, that application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order."

28 USC § 1292 (b).[1] Although, Appellant is accurate in his state-

[1] The trial court has not issued any writing as to the materiality of the issues.

ment, the application to this case is entirely incorrect. The United States Supreme Court has recently ruled on this issue in Cauwenberghe v. Baird, 56 LW 4545, No. 87-336 (June 13, 1988).

In Cauwenberghe, the Petitioner filed a Motion to Dismiss based upon the fact he was immune from civil process because he was in this country due to an extradition order and of forum non convenience.

The United States Supreme held:

> "Because the right not to be subject to binding judgment may be effectively vindicated following final judgment, we have held that the denial of a claim of lack of jurisdiction is not an immediately appealable collateral order."

Id. at 4548. The Court determined the due process restrictions on the exercise of personal jursidiction is an interest in "not being subject to binding judgment." Id. at 4548. Thus, Appellant's interest on appeal is whether it should be subject to a judgment, if in fact, one is issued. The Appellant's interest is the same as the Petitioner in Cauwenberghe. Both appealed orders denying Motions to Dismiss are based upon personal jursidiction claims.

The Cauwenberghe Court exercising proper judicial restraint stated:

> "The issue on which we granted certiorari however, and on which the Court of Appeals based its decision, is not whether Petitioner's underlying claim of immunity is meritorious, but the denial of Petitioner's Motion to Dismiss on grounds of immunity from service of process is immediately appealable. For purposes of determining appealability, therefore, we will assume, but do not decide, that Petitioner has presented a substantial claim of immunity from

> civil service of process that warrants Appellate consideration. Making this assumption, we conclude athat Petitioner's claim of immunity from service is effectively reviewable on immediately appealable collateral order under Cohen and Coopers & Lybrand."

Id. at 4547. The rule of finality is one of long standing and of valid purposes.

> The purposes behind the rule that a party must ordinarily raise all claims of error in a single appeal following final judgment are by now well-known: "(The rule) emphasizes the deference that appellate courts owe to the trial judge as the individual initially called upon in the course of trial. Permitting piecemeal appeals would undermine the independence of the district judge, as well as the special role that individual plays in our judicial system. In addition, the rule is in accordance with the sensible policy of 'avoid(ing) the obstruction to just claims that would come from permitting the harrassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise, from its initiation to entry of judgment.'" Firestone Tire & Rubber Co. v. Rubber Co. v. Risjord, 449 U.S. 368, 374 (1981), quoting Cobbledick v. United States, 309 U.S. 323, 325 (1940).

Id. at 4546 n.3. Finally, the Cauwenberghe Court listed three conditions which must be met in order to come within the collateral order doctrine:

1. conclusively determine the disputed questions;

2. resolve on important issue completely separate from the merits of the action; and,

3. be effectively unreviewable on appeal from a final judgment.

Id. at 4546 and 4547. It is the third criteria upon which Appellant fails in this case just as the Petitioner failed in Cauwenberghe. We hold that the issue upon review here may be reviewed on appeal of the Final Judgment.

This court fails to discern any practical reason to hold the reasoning of Cauwenberghe as unsound. Its applicability to this Court is sound and just.[2]

Our answer to the first question is in the negative.

2. DID THE TRIAL COURT ERR, AS A MATTER OF LAW, IN HOLDING THAT IT ACQUIRED JURISDICTION OVER GREAVES BY THE PURPORTED PERSONAL SERVICE OF APRIL 15, 1987, OFF THE ROSEBUD SIOUX RESERVATION?

The Appellant cites numerous cases which he claims state the "black letter law" that the only way to obtain jurisdiction over Greaves is to serve him within the boundaries of the Rosebud Sioux Reservation:

> "It is within the power of a state . . . to authorize its Courts to take jurisdiction over its residents on the basis of service of process, but . . . cannot ordinarily form the basis of such judgment against an non-resident unless he voluntarily appeared or otherwise waived personal service."

The entire discussion of Appellant completely ignores the significant case law interpreting long arm statutes. In so ignoring, he claims a case on constructive notice is on point. Constructive notice is not involved here. Constructive notice is usually associated with imputed notice received through publication or other means. In this case, Appellant received personal service.

The United States Supreme Court recently reiterated its position upon what constitutes due process in service of process

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2 Our Court has recently added a provision regarding interlocutory appeals to Rule 2 of the Rules of Procedure for the Rosebud Sioux Tribal Court of Appeals. This change was adopted on September 19, 1988, thus has no application to this case but is substantially the criteria set forth in Cauwenberghe, supra.

matters. See, Volkswagenwork Aktlengesellshaft v. Schlunk, 57 LW 4595 (June 19, 1988). In Schlunk, the Court stated the Due Process Clause requires that all the methods of service of process must give

> " notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objectives."

Schlunk, supra at 4598, quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1980). Certainly personal and actual service upon Greaves comports to such requirements.

Jurisdiction of a Court is, in a broad and general sense, the power or capacity given by law to a Court to hear and determine cases in controversy. See, e.g. Wabash R. Co. v. Duncan, 170 F.2d 38, 41 (8th Cir. 1948) cert denied 69 S.Ct. 490; citing Illinois Central Railroad Co. v. Adams, 180 U.S. 28; United States v. United States Gypsum Company, 124 F.Supp. 573 (D.C.D.C. 1954) mod. on other grounds, 134 F.Supp. 69, reversed on other grounds, 77 S.Ct. 490. This power to adjudicate particular cases is quite simply judicial power. See e.g. Thomas v. Hunter, 78 F.Supp. 925, 930 (D.C. Kan. 1948) remanded on other grounds, 173 F.2d 810 (9th Cir.); McCoy v. Siler, 205 F.2d 498, 499-500 (3rd Cir. 1953) cert denied 74 S.Ct. 120. In any particular case, jurisdiction includes not only the power to hear a cause of action, but likewise, the power to enter a particular judgment. See, Bustos-Ovalle v. Landon, 112 F.Supp. 874, 876-77 (D.C. Cal. 1953) aff'd 225 F.2d 878 (9th Cir. 1955). Jurisdiction also includes the power of a Court to determine whether it has, in

fact, the authority to hear and determine a controversy presented and the right to decide whether the state of facts exist which confer jurisdiction. See e.g. In re National Relations Board, 58 S.Ct. 1001.

There are principally three (3) types of jurisdiction:

a. In personam;

b. In rem;

c. Quasi in rem.

In personam jurisdiction is an action which is against a person based upon a personal liability. See e.g. Harnischfeger Sales Corporation v. National Life, 72 F.2d 921, 923 (7th Cir. 1934).

In rem action is an action against a thing or property, rather than a person. See, e.g. Corham v. United Engineering & Contracting, 95 N.E. 805, 807 (N.Y. 1911) reversing 121 N.Y.S. 1132.

Quasi in rem jurisdiction involves a proceeding which is not strictly and purely in rem, but is brought against an entity personally, although the real object is to deal with particular property or subject property to the discharge of claims that may be asserted. See, e.g. Combs v. Comb, 60 S.W.2nd 368, 370 (KY. 1933).

The authority to assume jurisdiction over causes of action is implicit within the concepts of sovereignty of a Tribal Government. This concept of implicit authority to establish

Tribal Courts with general jurisdiction was affirmed in the enactment of the Wheeler-Howard Act, more commonly known as the Indian Reorganization Act, found at 25 U.S.C. §§ 476-79; Indian Civil Rights Act, 25 U.S.C. §§ 1302 et. seq. See e.g. Iowa Mutual Insurance Company v. LaPlante, _____ U.S. _____, 107 S.Ct. 971 (1987); Three Affiliated Tribes v. Wold Engineering, 106 S.Ct. 2305 (1986); Weeks Construction, Inc. v. Oglala Sioux Housing Authority, 797 F.2d. 668 (8th Cir. 1986). Deriving its authority from its status as a sovereign nation and the powers under the Indian Reorganization Act, Indian Self-Determination Act, and the Indian Civil Rights Act, to establish a constitution, the Rosebud Sioux Tribe did form and establish a Reservation Court and authorized the Rosebud Sioux Tribal Council to define the duties and powers thereof. See, Article VI, Section 1(k). These federal statutes and the precepts of sovereignty recognize that Tribal Courts play a significant and vital role in a Tribal government's ability to self govern. Iowa Mutual, supra, at _____ U.S. _____, 107 S.Ct. at 976; see also 25 U.S.C. § 1311(4) (showing the federal government's policy of enhancing Tribal Courts by establishing educational classes for the training of Tribal Judges).

There are two (2) distinct jurisdictional statutes within the Rosebud Sioux Tribal Code. The first jurisdictional statute is a general jurisdictional statute found at Title IV, Chapter 2, Section 6, which reads as follows:

> "JURISDICTION OVER PERSONS--The Rosebud Sioux Court will exercise civil and criminal jurisdiction over

all persons within its territorial jurisdiction to the extent allowed by federal statutory law and Federal Court decisions. It is recognized that decision such as Oliphant (55 Lawyers Ed 2nd 209) limit the jurisdiction of this Court over certain non-Indians. However, the Rosebud Sioux Tribal Court will continue to exercise all of the civil and criminal jurisdiction over all persons allowed to it by federal statute and federal judicial Court decisions."

Section 4-2-6 is a interesting statute. In that statute, the initial two (2) sentences relate to jurisdiction over non-Indians. The intent is clear, the first two sentences are a response to Oliphant v. Susquamish Indian Tribe, 435 U.S. 191, S.Ct. 1011 (1978). The Oliphant case refers to the United States Supreme Court decision stating that Tribal Courts do not have jurisdiction over non-Indians in criminal matters. By referring to Oliphant in those two sentences, the intent is that the first two sentences refer to jurisdiction of non-Indians and that the Rosebud Sioux Tribe intends to exercise all jurisdictional authority over non-Indians allowed by federal law. Federal law acknowledges that jurisdiction does exist over non-Indians for transactions arising within the exterior boundaries of the Reservation where there are vitial interests of the Tribal government. Even though criminal jurisdiction of Tribal Courts is substantially limited by federal law, "civil jurisdiction is not similarly restricted". Iowa Mutual, supra, at _____ U.S. _____, 107 S.Ct. at 976. See, National Farmer's Union Insurance Company v. Crow Tribe of Indians, _____ U.S. _____, 105 S.Ct. 2447 (1985); Weeks Construction, supra. Any claim that the established law is that Tribal Courts do not have jurisdic-

tion over non-Indians is not recognized by this Court.

The last sentence of Section 4-2-6 would be purely surplusage and repetitive if it is not interpreted to apply to all other actions, i.e. actions between enrolled members. The logical interpretation is that the last sentence is all inclusive and intends to give this Court all jurisdictional authority authorized by federal law, which goes beyond the territorial claim made in the first two sentences. This is a logical explanation because there may be serious jurisdiction concerns if the Tribe attempted to exercise jurisdiction over non-Indian non-residents. That concern does not exist where members are involved. Where members are involved, there are strong self government interests to support. See, Williams v. Lee, 358 U.S. 217 (1959). To disenfranchise the Tribal Court in a factual situation such as the case at hand would clearly violate the Willians v. Lee infringement and the interests of the IRA, ICRA, and ISDA discussed above.

Section 4-2-6 clearly permits jurisdiction over this matter. However, that section is not alone. There is a jurisdictional statute of specific purpose and intent found within the Rosebud Sioux Landlord-Tenant Code at Section 8-3-1.2, which states as follows:

> "Jurisdiction. This code shall apply to any and all arrangements, formal, written, or agreed to orally or by the practice of the parties, in selling, renting, leasing, or occupying or using any and all housing, dwellings or accommodations for human occupation and residence.

a. Jurisdication is extended over all buildings and lands or residence which may lie within

   1. the exterior boundaries of the Rosebud Reservation;

   2. lands owned by, held in trust for, leased or used by the Rosebud Tribe, its Indian Housing Authority, or any other entity of the Tribe;

   3. the Indian Country of the Rosebud Tribe, as may be defined from time to time by the laws of the Tribe or of the United States.

b. Jurisdiction is extended over all persons or entities within the jurisdiction of the Tribe who sell, rent, lease or allow persons to occupy housing, dwellings, or accomodations for the purpose of human dwelling, occupation or residence, and all persons who buy, rent, lease or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether they are members of the Rosebud Sioux Tribe or not, whether they are Indian or non-Indians, and whether or not they have a business within the Rosebud Reservation. Any act within the Rosebud Reservation dealing with the subject matter of this code shall be subject to the jurisdiction of the Rosebud Tribe.

c. Jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this code, and jurisdiction with respect to any person or entity acting or causing actions which are within the code shall be exercised by the Rosebud Tribal Court of the Rosebud Tribe."

Section 8-3-1.1(b) extends long-arm jurisdiction to any persons who enters into a lease of property located within the exterior boundaries of the Rosebud Sioux Reservation. That section has unlimited purpose. In fact, there is direct reference it that section to "whether or not they (the parties) have a place of business within the Rosebud Reservation". Section 8-3-1.2(b) does not require that the parties remain and be residents residing within the exterior boundaries of the Reservation.

The only inherent qualifying factors for jurisdictional purposes is the existence of minimum contacts: is there a lease that was executed and involves property within the exterior boundaries of the Reservation? This would conform to the due process requirement set forth in Pennoyer v. Neff, 95 U.S. (Otto) 714 (1911). Pennoyer required that there be a certain amount of minimum contacts with the territory. In the Pennoyer case it was a state, so as to give a justification for that territory to exercise jurisdiction over that person. In Pennoyer the concern was whether notice by publication rather than personal service violated the due process rights of a nonresident Defendant. What the United States Supreme Court was attempting to avoid was a state exercising jurisdiction over an entity which had absolutely no contact or relationship with the state. It would be unfair to that individual or entity to be brought into that State Court and be tried. However, the Pennoyer case emphasizes that if an individual, whether a resident or not, has sufficient contacts with a jurisdiction, that jurisdiction should be able to exercise its authority over that individual.

In the case a bar, Grieves entered into a contract while residing within the boundaries of the Rosebud Reservation with the RHA regarding property contained within the boundaries of the Reservation, lived within that property for an extended period of time, and he is a member of the Rosebud Sioux Tribe. All are more than sufficient contacts with the Rosebud Sioux Tribe to retain jurisdiction over the matter of the lease and damages

arising therefrom. In fact, the Landlord-Tenant Code goes beyond a mere eviction and states that, at Section 8-3-2.2(a), that a landlord has a right under this Code to any rent or monies due and owing. At Section 8-3-2.4(a), the Code gives the landlord, in this case RHA, the remedies of removal from the premises and monies due and owing under an agreement or lease of the parties and to terminate the agreement.

We, therefore, hold that this court has jurisdiction over an action to evict and terminate the lease of Greaves as well as collect money due and owing.

The evidence has shown that Greaves has never sought to terminate the lease he entered into voluntarily with the RHA. Section 8-3-4.4 sets forth the procedures in which a tenant may implement termination of the lease he has entered into with the RHA. That section requires that the tenant give a 30-day prior notice of termination to the RHA in writing. Since Greaves did not terminate the lease, the lease was in affect until terminated by the RHA. The RHA now is attempting to terminate the lease and evict Greaves from the property. The fact that Greaves has not been physically present upon the property does not, in itself, terminate the lease. Abandonment is a ground for RHA to terminate a lease, but does not, without further action, terminate the lease. The RHA must protect itself and subsequent renters from claims of interference with the enjoyment of the premises by Greaves. To accomplish this, RHA must take the properly

authorized actions to terminate the lease with Greaves and to have a proper eviction. In essence, a type of quiet title action. Should the RHA fail to obtain both of these procedures, a subsequent renter could be liable along with the RHA for violation of Greaves' rights under the lease. RHA and Greaves have a legal obligation to follow the law and terminate the lease according to that law. Greaves is a learned member of the legal profession and was, in fact, a Tribal Judge of the Rosebud Tribal Court. There is no excuse for Greaves not complying with the law and he should not be rewarded for failing to do so.

We hold that this court has authority to enter judgment against Greaves for money damages and failure to pay the rental payments as agreed upon.

As discussed above, the Rosebud Sioux Landlord-Tenant Code specifically authorizes this Court to award money damages against a tenant. Those money damages are for damages arising out of lack of payment and damages to the unit. See, Section 8-3-2.4(a) and (c). The claim for money damages brought by the RHA is a proper cause of action arising out ot the Landlord-Tenant Code.

We also hold that this court has jurisdiction over the person of Greaves for award of money damages and for evicton and termination of lease.

This Court has in personam jurisdiction over Greaves under the jurisdictional statutes of the Rosebud Sioux Landlord-Tenant Code for money damages and quasi in rem jurisdiction for the termination of the lease and eviction from the premises as found at

Section 8-3-1.2(b).

Every sovereign owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to adjudicate his dealing with those citizens. Pennoyer, supra, at 723. There is no question that there has been more than sufficient minimum contacts with the Rosebud Sioux Tribe by Greaves. His subsequent removal from the territorial boundaries of the Rosebud Sioux Reservation is an irrelevancy. Section 8-3-1.2(b) gives the jurisdiction to bring in Greaves on an action upon the lease.

The only qualifying factor that remains is the fact that an action arising out of the Landlord-Tenant Code is a civil action as set forth in Section 8-3-5.1. Section 8-3-5.1 states that service of process is to comply with Section 4-1-R4. Section 4-1-R4 reads as follows:

> "Service of Summons and Complaint upon any party outside the boundaries of the Rosebud Reservation may be made in the manner prescribed for service of process in that jurisdiction."

As long as the service of process was made according to Section 4-1-R4, Greaves was adequately served and brought within the jurisdiction of the Rosebud Sioux Tribal Court. It is inconceivable how an argument can be made looking at the jurisdictional statutes and the intent of Section 4-1-R4 that there is anything but jurisdiction of this Court. Clearly, references found in Section 8-3-1.2(b) referring to whether or not the parties have a place of business within the Rosebud Reservation, and Section 4-1-R4 specifically referring to service of individuals

who reside outside of the territorial boundaries of the Rosebud Sioux Reservation, establish the intent to establish a long-arm statute covering the misconduct of Greaves.

The second question must be answered in the negative.

3. DID THE TRIAL COURT ERR, AS A MATTER OF LAW, IN ALLOWING THE RHA TO BE INITIALLY REPRESENTED BY THE CHIEF APPELLATE COURT JUDGE FOR THE ROSEBUD SIOUX TRIBE?

In the above absence of a showing of actual misconduct, prejudice or relationship as defined in our Code, it is the opinion of this Court that there is nothing in our code or laws to prevent an appellate judge from practicing in the trial court of the Rosebud Sioux Tribe.

In this case, there is no such showing. Upon learning of the appeal in this case, the judge involved immediately withdrew from all representation in this case, thereby removing herself form all appearance of impropriety.

The third question must be answered in the negative.

It is the conclusion of this Court that the Tribal Court, without question, has jurisdicton over this matter. The statutes that have been cited in the RHA Brief clearly set forth the intent of the Rosebud Sioux Tribal Council to extend jurisdiction over individuals who have minimum contacts within the exterior boundaries of the Reservation, but who have removed themselves from the Reservation.

To allow the arguments of Greaves to prevail would not only fly in the face of the clear intent of the existing tribal legislation, but would violate the basic precepts of Indian law.

To allow an individual to commit extensive contacts within the boundaries of a tribal sovereign and not be subject to its jurisdiction would so greatly interfere with the Tribal government's ability to govern so as to violate any significance that was gained from Williams v. Lee, 358 U.S. 217 (1959) and its progeny. The ability of the Tribe to govern effectively would be made impossible. Individuals could come in and make huge profits upon Tribal members, incur huge liabilities, and leave with no remedy for the Rosebud Sioux Tribe and residents of the Reservation.

Whether or not the Rosebud Sioux Tribe has adopted the long-arm statutes of South Dakota is not necessary for us to decide at this time. Under the facts of this case, however, we need hold only that the Rosebud Sioux Tribe has such power as an independent sovereign.

The decision of the Trial Court denying the Motion to Dismiss is AFFIRMED and this case is remanded to the trial court for further proceedings in accordance with this opinion.

RAMON A. ROUBIDEAUX
Acting Chief Justice