

Plains Commerce Bank v. Long Family Land and Cattle Company (2008)

554 U.S. 316

Plains Commerce Bank, a non-Indian bank, sold land it owned in fee simple on a tribal reservation to non-Indians. The Longs, an Indian couple who had been leasing the land with an option to purchase, claimed the bank discriminated against them by selling the parcel to nonmembers of the tribe on terms more favorable than the bank offered to sell it to them. The couple sued in the tribal court of the Cheyenne River Sioux Indian Reservation, asserting discrimination, breach of contract, and bad-faith claims. Over the bank's objection, the tribal court concluded that it had jurisdiction and proceeded to trial, where a jury ruled against the bank on three claims, including the discrimination claim. The court awarded the Longs damages plus interest. In a supplemental judgment, the court also gave the Longs an option to purchase that portion of the fee land they still occupied, nullifying the bank's sale of the land to non-Indians. After the Tribal Court of Appeals affirmed, the bank filed suit in federal district court, contending that the tribal judgment was null and void because the tribal court lacked jurisdiction over the Longs' discrimination claim. The district court granted the Longs summary judgment, finding tribal court jurisdiction proper because the bank's consensual relationship with the Longs and their company brought the bank within the first category of tribal civil jurisdiction over nonmembers outlined in Montana v. United States (1981). The Eighth Circuit affirmed, concluding that the tribe had authority to regulate the business conduct of persons voluntarily dealing with tribal members, including a nonmember's sale of fee land. The U.S. Supreme Court granted certiorari.

Opinion of the Court: Roberts, Scalia, Kennedy, Thomas, Alito.

Concurring in part (Part II), concurring in the judgment in part, and dissenting in part: Ginsburg, Stevens, Souter, Breyer.

THE CHIEF JUSTICE delivered the opinion of the Court.

This case concerns the sale of fee land on a tribal reservation by a non-Indian bank to non-Indian individuals. Following the sale, an Indian couple, customers of the bank who had defaulted on their loans, claimed the bank discriminated against them by offering the land to non-Indians on terms more favorable than those the bank offered to them. The couple sued on that claim in tribal court; the bank contested the court's jurisdiction. The tribal court concluded that it had jurisdiction and proceeded to hear the case. It ultimately ruled against the bank and awarded the Indian couple damages and the right to purchase a portion of the fee land. The question presented is whether the tribal court had jurisdiction to adjudicate a discrimination claim concerning the non-Indian bank's sale of fee land it owned. We hold that it did not.

I

The Long Family Land and Cattle Company, Inc. (or Company), is a family-run ranching and farming operation incorporated under the laws of South Dakota. Its lands are located on the Cheyenne River Sioux Indian Reservation. Once a massive, 60-million acre affair, the reservation was appreciably diminished by Congress in the 1880s and at present consists of roughly 11 million acres located in Dewey and Ziebach Counties in north-central South Dakota.

The Long Company is a respondent here. The Longs and their Company have been customers for many years at Plains Commerce Bank (Bank), located some 25 miles off the

reservation as the crow flies in Hoven, South Dakota. The Bank, like the Long Company, is a South Dakota corporation, but has no ties to the reservation other than its business dealings with tribal members. The Bank made its first commercial loan to the Long in 1989, and a series of agreements followed. As part of those agreements, Kenneth Long—Ronnie Long’s father and a non-Indian—mortgaged to the Bank 2,230 acres of fee land he owned inside the reservation. At the time of Kenneth Long’s death in the summer of 1995, Kenneth and the Long owed the Bank \$750,000.

In the spring of 1996, Ronnie and Lila Long began negotiating a new loan contract with the Bank in an effort to shore up their Company’s flagging financial fortunes and come to terms with their outstanding debts. After several months of back-and-forth, the parties finally reached an agreement in December of that year—two agreements, to be precise. The Company and the Bank signed a fresh loan contract, according to which Kenneth Long’s estate deeded over the previously mortgaged fee acreage to the Bank in lieu of foreclosure. In return, the Bank agreed to cancel some of the Company’s debt and to make additional operating loans. The parties also agreed to a lease arrangement: The Company received a two-year lease on the 2,230 acres, deeded over to the Bank, with an option to purchase the land at the end of the term for \$ 468,000. . . .

Then came the punishing winter of 1996–1997. The Longs lost over 500 head of cattle in the blizzards that season, with the result that the Long was unable to exercise its option to purchase the leased acreage when the lease contract expired in 1998. Nevertheless, the Longs refused to vacate the property, prompting the Bank to initiate eviction proceedings in state court and to petition the Cheyenne River Sioux Tribal Court to serve the Longs with a notice to quit. In the meantime, the Bank sold 320 acres of the fee land it owned to a non-Indian couple. In June 1999, while the Longs continued to occupy a 960-acre parcel of the land, the Bank sold the remaining 1,910 acres to two other nonmembers.

In July 1999, the Longs and the Long filed suit against the Bank in the Tribal Court, seeking an injunction to prevent their eviction from the property and to reverse the sale of the land. They asserted a variety of claims, including breach of contract, bad faith, violation of tribal-law self-help remedies, and discrimination. The discrimination claim alleged that the Bank sold the land to nonmembers on terms more favorable than those offered the Company. The Bank asserted in its answer that the court lacked jurisdiction and also stated a counterclaim. The Tribal Court found that it had jurisdiction, denied the Bank’s motion for summary judgment on its counterclaim, and proceeded to trial. Four causes of action were submitted to the seven-member jury: breach of contract, bad faith, violation of self-help remedies, and discrimination.

The jury found for the Longs on three of the four causes, including the discrimination claim, and awarded a \$750,000 general verdict . . . plus interest. The Bank appealed to the Cheyenne River Sioux Tribal Court of Appeals, which affirmed the judgment of the trial court. The Bank then filed the instant action in the United States District Court for the District of South Dakota, seeking a declaration that the tribal judgment was null and void because the Tribal Court lacked jurisdiction over the Longs’ discrimination claim. The District Court granted summary judgment to the Longs. The court found tribal court jurisdiction proper because the Bank had entered into a consensual relationship with the Longs and the Long Company. According to the District Court, this relationship brought the Bank within the first category of tribal civil jurisdiction over nonmembers outlined in *Montana v. United States*, 450 U.S. 544 (1981). The Court of Appeals for the Eighth Circuit affirmed [and w]e granted certiorari and now reverse.

II

Before considering the Tribal Court’s authority to adjudicate the discrimination claim, we must first address the Longs’ contention that the Bank lacks standing to raise this jurisdictional challenge in the first place. . . . We begin by noting that whether a tribal court has adjudicative authority over nonmembers is a federal question. If the tribal court is found to lack such jurisdiction, any judgment as to the nonmember is necessarily null and void. The Longs do not contest this settled principle but argue instead that the Bank has suffered no “injury in fact” as required by Article III’s case-or-controversy provision.

The Longs appear to recognize their argument is somewhat counterintuitive. They concede the jury found the Bank guilty of discrimination and awarded them \$750,000 plus interest. . . .

We are not persuaded. . . . Both with respect to damages and the option to purchase, the Bank was injured by the Tribal Court’s exercise of jurisdiction over the discrimination claim. Those injuries can be remedied by a ruling in favor of the Bank that the Tribal Court lacked jurisdiction and that its judgment on the discrimination claim is null and void. . . . The Bank has Article III standing to pursue this challenge.

III

For nearly two centuries now, we have recognized Indian tribes as “distinct, independent political communities,” qualified to exercise many of the powers and prerogatives of self-government. We have frequently noted, however, that the “sovereignty that the Indian tribes retain is of a unique and limited character.” It centers on the land held by the tribe and on tribal members within the reservation.

As part of their residual sovereignty, tribes retain power to legislate and to tax activities on the reservation, including certain activities by nonmembers, to determine tribal membership, and to regulate domestic relations among members. They may also exclude outsiders from entering tribal land. But tribes do not, as a general matter, possess authority over non-Indians who come within their borders: “[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.” As we explained in *Oliphant v. Suquamish Tribe* (1978), the tribes have, by virtue of their incorporation into the American republic, lost “the right of governing . . . person[s] within their limits except themselves.”

This general rule restricts tribal authority over nonmember activities taking place on the reservation, and is particularly strong when the nonmember’s activity occurs on land owned in fee simple by non-Indians—what we have called “non-Indian fee land.” Thanks to the Indian General Allotment Act of 1887, there are millions of acres of -non-Indian fee land located within the contiguous borders of Indian tribes. The history of the General Allotment Act and its successor statutes has been well rehearsed in our precedents. Suffice it to say here that the effect of the Act was to convert millions of acres of formerly tribal land into fee simple parcels, “fully alienable” and “free of all charge or encumbrance whatsoever.”

Our cases have made clear that once tribal land is converted into fee simple, the tribe loses plenary jurisdiction over it. We have recognized two exceptions to this principle, circumstances in which tribes may exercise “civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.” First, “[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.” Second, a tribe may

exercise “civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” These rules have become known as the *Montana* exceptions, after the case that elaborated them. By their terms, the exceptions concern regulation of “the activities of nonmembers” or “the conduct of non-Indians on fee land.”

Given *Montana*’s “general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe,” efforts by a tribe to regulate nonmembers, especially on non-Indian fee land, are “presumptively invalid.” The burden rests on the tribe to establish one of the exceptions to *Montana*’s general rule that would allow an extension of tribal authority to regulate nonmembers on non-Indian fee land. . . . The Bank contends that neither exception authorizes tribal courts to exercise jurisdiction over the Longs’ discrimination claim at issue in this case. We agree.

According to our precedents, a tribe’s adjudicative jurisdiction does not exceed its legislative jurisdiction. We reaffirm that principle today and hold that 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.

The Longs’ discrimination claim challenges a non-Indian’s sale of non-Indian fee land. . . . [T]he Longs brought their discrimination claim “seeking to have the land sales set aside on the ground that the sale to nonmembers ‘on terms more favorable’ than the bank had extended to the Longs” violated tribal tort law. That discrimination claim thus concerned the sale of a 2,230-acre fee parcel that the Bank had acquired from the estate of a non-Indian.

The status of the land is relevant “insofar as it bears on the application of . . . *Montana*’s exceptions to [this] case.” The acres at issue here were alienated from the Cheyenne River Sioux’s tribal trust and converted into fee simple parcels as part of the Act of May 27, 1908. . . . *Montana* does not permit Indian tribes to regulate the sale of non-Indian fee land. *Montana* and its progeny permit tribal regulation of nonmember conduct inside the reservation that implicates the tribe’s sovereign interests. *Montana* expressly limits its first exception to the “activities of nonmembers,” allowing these to be regulated to the extent necessary “to protect tribal self-government [and] to control internal relations.” “*Montana* does not grant a tribe unlimited regulatory or adjudicative authority over a nonmember. Rather, *Montana* limits tribal jurisdiction under the first exception to the regulation of the activities of nonmembers.”

Our cases since *Montana* have followed the same pattern, permitting regulation of certain forms of nonmember conduct on tribal land. . . . Tellingly, . . . in no case have we found that *Montana* authorized a tribe to regulate the sale of such land. Rather, our *Montana* cases have always concerned nonmember conduct on the land. . . . The distinction between sale of the land and conduct on it is well-established in our precedent . . . , and entirely logical given the limited nature of tribal sovereignty and the liberty interests of nonmembers. . . .

Neither the District Court nor the Court of Appeals relied for its decision on the second *Montana* exception. . . . The second *Montana* exception stems from the same sovereign interests that give rise to the first, interests that do not reach to regulating the sale of non-Indian fee land. . . .

The second exception authorizes the tribe to exercise civil jurisdiction when non-Indians’ “conduct” menaces the “political integrity, the economic security, or the health or welfare of the

tribe.” The conduct must do more than injure the tribe, it must “imperil the subsistence” of the tribal community. . . . The sale of formerly Indian-owned fee land to a third party is quite possibly disappointing to the tribe, but cannot fairly be called “catastrophic” for tribal self-government. The land in question here has been owned by a -non-Indian party for at least 50 years, during which time the project of tribal self-government has proceeded without interruption. The land’s resale to another non-Indian hardly “imperil[s] the subsistence or welfare of the tribe.” Accordingly, we hold the second *Montana* exception inapplicable in this case.

Finally, we address the Longs’ argument that the Bank consented to tribal court jurisdiction over the discrimination claim by seeking the assistance of tribal courts in serving a notice to quit. When the Longs refused to vacate the land, the Bank initiated eviction proceedings in South Dakota state court. The Bank then asked the Tribal Court to appoint a process server able to reach the Longs. Seeking the Tribal Court’s aid in serving process on tribal members for a pending state-court action does not, we think, constitute consent to future litigation in the Tribal Court. Notably, when the Longs did file their complaint against the Bank in Tribal Court, the Bank promptly contended in its answer that the court lacked jurisdiction. Brief for United States as Amicus Curiae 7. Under these circumstances, we find that the Bank did not consent by its litigation conduct to tribal court jurisdiction over the Longs’ discrimination claim.

The judgment of the Court of Appeals for the Eighth Circuit is reversed.

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, concurring in part, concurring in the judgment in part, and dissenting in part.

I agree with the Court that petitioner Plains Commerce Bank (Bank) has Article III standing to contest the jurisdiction of the Cheyenne River Sioux Tribal Court, and therefore join Part II of the Court’s opinion. Further, I take no issue with the Court’s jurisdictional ruling insofar as it relates to the Tribal Court’s supplemental judgment. In that judgment, the Tribal Court ordered the Bank to give Ronnie and Lila Long an option to repurchase fee land the Bank had already contracted to sell to non-Indian individuals.

I dissent from the Court’s decision, however, to the extent that it overturns the Tribal Court’s principal judgment awarding the Longs damages in the amount of \$750,000 plus interest. That judgment did not disturb the Bank’s sale of fee land to non-Indians. It simply responded to the claim that the Bank, in its on-reservation commercial dealings with the Longs, treated them disadvantageously because of their tribal affiliation and racial identity. A claim of that genre, I would hold, is one the Tribal Court is competent to adjudicate. As the Court of Appeals correctly understood, the Longs’ case, at heart, is not about “the sale of fee land on a tribal reservation by a non-Indian bank to non-Indian individuals.” “Rather, this case is about the power of the Tribe to hold nonmembers like the bank to a minimum standard of fairness when they voluntarily deal with tribal -members.”

As the basis for their discrimination claim, the Longs essentially asserted that the Bank offered them terms and conditions on land-financing transactions less favorable than the terms and conditions offered to non-Indians. Although the Tribal Court could not reinstate the Longs as owners of the ranch lands that had been in their family for decades, that court could hold the Bank answerable in damages, the law’s traditional remedy for the tortious injury the Longs experienced.

I

The history of the Bank's commercial dealings with the Long Company and the Long family is lengthy and complex. The business relationship dates from 1988, when Ronnie Long's parents—one of them a member of the Tribe—mortgaged some 2,230 acres of land to the Bank to gain working capital for the ranch. As security for the Bank's loans over the years, the Longs mortgaged both their land and their personal property. The Bank benefited significantly from the Long Company's status as an Indian-owned business entity, for the BIA loan guarantees "allowed [it] to greatly reduce its lending risk." Eventually, the Bank collected from the BIA almost \$400,000, more than 80% of the net losses resulting from its loans to the Longs.

The discrimination claim here at issue rests on the allegedly unfair conditions the Bank exacted from the Longs when they sought loans to sustain the operation of their ranch. Following the death of Ronnie's father, the Bank and the Longs entered into an agreement under which the mortgaged land would be deeded over to the Bank in exchange for the Bank's canceling some debt and making additional loans to keep the ranch in business. The Longs were given a two-year lease on the property with an option to buy the land back when the lease term expired. Negotiating sessions for these arrangements were held at the Tribe's on-reservation offices and were facilitated by tribal officers and BIA employees.

Viewing the deal they were given in comparative light, the Longs charged that the Bank offered to resell ranch land to them on terms less advantageous than those the Bank offered in similar dealings with non-Indians. Their claim, all courts prior to this one found, fit within the *Montana* exception for "activities of nonmembers who enter [into] . . . commercial dealing, contracts, leases, or other arrangements" with tribal members. I am convinced that the courts below got it right.

This case, it bears emphasis, involves no unwitting outsider forced to litigate under unfamiliar rules and procedures in tribal court. Hardly a stranger to the tribal court system, the Bank regularly filed suit in that forum. The Bank enlisted tribal-court aid to serve notice to quit on the Longs in connection with state-court eviction proceedings. The Bank later filed a counterclaim for eviction and motion for summary judgment in the case the Longs commenced in the Tribal Court. In its summary judgment motion, the Bank stated, without qualification, that the Tribal Court "ha[d] jurisdiction over the subject matter of this action." Had the Bank wanted to avoid responding in tribal court or the application of tribal law, the means were readily at hand: The Bank could have included forum selection, choice-of-law, or arbitration clauses in its agreements with the Longs, which the Bank drafted.

II

Resolving this case on a ground neither argued nor addressed below, the Court holds that a tribe may not impose any regulation—not even a nondiscrimination requirement—on a bank's dealings with tribal members regarding on-reservation fee lands. I do not read *Montana* or any other case so to instruct, and find the Court's position perplexing.

First, I question the Court's separation of land sales tied to lending activities from other "activities of nonmembers who enter consensual relationships with the tribe or its members." Sales of land—and related -conduct—are surely "activities" within the ordinary sense of the word.

Second, the Court notes the absence of any case “[f]ind[ing] that *Montana* authorized a tribe to regulate the sale of -[non-Indian fee] land.” But neither have we held that *Montana* prohibits all such regulation. If the Court in *Montana*, or later cases, had intended to remove land sales resulting from loan transactions entirely from tribal governance, it could have spoken plainly to that effect. Instead, *Montana* listed as examples of consensual relationships that tribes might have authority to regulate “commercial dealing, contracts, [and] leases. Presumably, the reference to “leases” includes leases of fee land. But why should a nonmember’s lease of fee land to a member be differentiated, for *Montana* exception purposes, from a sale of the same land? And why would the enforcement of an antidiscrimination command be less important to tribal self-rule and dignity when the command relates to land sales than when it relates to other commercial relationships between nonmembers and members?

III

As earlier observed, I agree that the Tribal Court had no authority to grant the Longs an option to purchase the 960-acre parcel the Bank had contracted to sell to individuals unaffiliated with the Tribe. The third parties’ contracts with the Bank cannot be disturbed based on *Montana*’s exception for “the activities of nonmembers who enter consensual relationships with the tribe or its members.” Although the Tribal Court overstepped in its supplemental judgment ordering the Bank to give the Longs an option to purchase land third parties had contracted to buy, it scarcely follows that the Tribal Court lacked jurisdiction to adjudicate the Longs’ discrimination claim, and to order in its principal judgment, monetary relief. . . .

The “fighting issue” in the tribal trial court, the Eighth Circuit underscored, “was whether the bank denied the Longs favorable terms on a deal solely on the basis of their race or tribal affiliation.” . . . The Tribal Court instructed the jury to hold the Bank liable on the discrimination claim only if the less favorable terms given to the Longs rested “solely” upon the Longs’ “race or tribal identity. In response to a special interrogatory, the jury found that “the Defendant Bank intentionally discriminate[d] against the Plaintiffs Ronnie and Lila Long [in the lease with option to purchase] based solely upon their status as Indians or tribal members.” Neither the instruction nor the special finding necessitated regulation of, or interference with, the Bank’s fee-land sales to non-Indian individuals.

Tellingly, the Bank’s principal jurisdictional argument below bore no relationship to the position the Court embraces. The Bank recognized that the Longs were indeed complaining about discriminatory conduct of a familiar sort. . . . [T]he Bank insisted that the Longs’ discrimination claim could not be heard in tribal court because it arose under well-known federal antidiscrimination law. The Tribal Court of Appeals, however, held that the claim arose under Lakota common law, which resembled federal and state antidiscrimination measures.

The Longs requested a remedy the Tribal Court did not have authority to grant—namely, an option to repurchase land the Bank had already contracted to sell to nonmember third parties. That limitation, however, does not affect the court’s jurisdiction to hear the Longs’ discrimination claim and to award damages on that claim.

Under the procedural rules applicable in Cheyenne River Sioux Tribal Courts, as under the Federal Rules, demand for one form of relief does not confine a trial court’s remedial authority. A court does not lose jurisdiction over a claim merely because it lacks authority to provide the form of relief a party primarily demands.

For the reasons stated, I would leave undisturbed the Tribal Court's initial judgment awarding the Longs damages, prejudgment interest, and costs as redress for the Bank's breach of contract, bad faith, and discrimination. Accordingly, I would affirm in large part the judgment of the Court of Appeals.