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IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION, PABLO, MONTANA

Lewis Alexander McLeod,
Plaintiff-Appellee,

vs.

Kevin Dupuis,
Defendant-Appellant.

CAUSE NO. AP-02-315-CV.

OPINION

Before, Associate Appellate Justices, Margaret Hall (Substitute), D. Michael Eakin and Brenda C. Desmond.

DESMOND, J.

This is an appeal of an October 10, 2002 Order for eviction and payment of monies due, entered by Tribal Trial Court Judge Gary Acevedo in favor of Appellee Lewis McLeod and against Appellant Kevin Dupuis. Appellee McLeod is a member of the Confederated Salish and Kootenai Tribes. Appellant Dupuis is a tribal descendant. The parties represented themselves both in their pleadings and at oral argument. The Tribal Trial Court is affirmed in accordance with the following. The case is remanded to the Tribal trial Court for re-calculation of the amount due from Appellant Dupuis to Appellee McLeod.

On August 26, 2002, Appellee McLeod filed a Complaint for Eviction and Request for Order of Preservation against Appellant Dupuis. The Complaint was served on Appellant Dupuis on August 27, 2002. The Complaint requested payment of a total of \$1213.50 in unpaid rent and

1 late fees, eviction of Appellant Dupuis from Appellee's property located at 5307 Whispering Pines
2 Drive in Ronan, (within the exterior boundaries of the Flathead Reservation), payment for any
3 damages found after inspection of the property, (out of a \$500 damage deposit), and for other
4 relief, "deemed appropriate under the circumstances." Complaint, page 3.

5 The Complaint alleged that as of August 23, 2002, Appellant Dupuis's total unpaid rent
6 was \$500 and that late fees of \$713.50 had accrued at the rate of \$12.50 per day. In addition to the
7 unpaid rent and late fees claimed, an August 28, 2002 Statement of Fees filed by Appellee
8 McLeod included the costs of filing and service of process as well as \$164.80 for an unpaid
9 electric bill. Appellant Dupuis did not respond to the Complaint.

10 On October 10, 2002, Appellee McLeod filed an Amended Complaint both clarifying the
11 basis of his money claim and seeking additional damages for continued unpaid rent and late fees as
12 well as \$377.87 for repairs referred to in the original Complaint and now performed. The court
13 entered default judgment on that day in the amount of \$2153.67. On October 28, 2002, Appellant
14 Dupuis filed a Notice of Appeal to the Court of Appeals.

15 Appellant Dupuis contends that this lawsuit is in part based on a lease that is no longer in
16 effect, since it expired on its own terms as of December 4, 2001. Appellant Dupuis also appears to
17 argue that some of the increased amount requested in the Amended Complaint is not substantiated.

18 Appellee McLeod essentially contends that his actions were reasonable and in accordance with the
19 law. The parties' briefs and oral arguments also address the facts leading up to this lawsuit and
20 present opposing views on some of those facts.

21 The parties represented themselves, as is their right by custom and under § 1-2-506, CSKT
22 Laws Codified. This Court has analyzed the parties' pleadings and arguments and determined that
23 the following are the issues properly on appeal:
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- (1) Did the Tribal Trial Court err by exercising jurisdiction over this matter?
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- (2) Did the Tribal Trial Court err by Ordering that Appellant Dupuis be evicted
- 3
- from the premises located at 5307 Whispering Pines Drive, Ronan?
- 4
- (3) Did the Tribal Court err by Ordering that Appellant Dupuis pay \$2,153.67, to
- 5
- Appellee McLeod when that amount is composed of unpaid rent, late fees, cost
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- of repair to the premises, court costs and an unpaid utility bill?
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1. JURISDICTION

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The Tribal Trial Court did not err in exercising jurisdiction over this proceeding. Article I,

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Territory, of the Confederated Salish and Kootenai Tribes provides that the Tribes' jurisdiction

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"shall extend to the territory within the original confines of the Flathead Reservation as defined in

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the Treaty of July 16, 1855" as well as to other lands not relevant to this proceeding. Section 2-1-

13

104, Civil Jurisdiction, CSKT Laws Codified provides in relevant part:

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- (1) The Tribal Court of the Confederated Salish and Kootenai Tribes of the
- 16
- Flathead Reservation, Montana, shall have jurisdiction over all suits wherein
- 17
- the parties are subject to the jurisdiction of this Court....
- 18
- (2) To the fullest extent possible, not inconsistent with federal law, the Tribes may
- 19
- exercise their civil, regulatory, and adjudicatory powers. To the fullest extent
- 20
- possible, not inconsistent with federal law, the Tribal Court may exercise
- 21
- subject matter and personal jurisdiction. The jurisdiction over all persons of the
- 22
- Tribal Court may extend to and include, but not by way of limitation, the
- 23
- following:
- (a) All persons found within the Reservation.
- (b) All persons subject to the jurisdiction of the Tribal Court and involved
- directly or indirectly in:
- ...
- (ii) The ownership, use or possession of any property, or interest
- therein, situated within the Reservation;
- (iii) The entering into of any type of contract within the Reservation
- or wherein any aspect of any contract is performed within the
- Reservation.
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1 Thus, under this governing law, the Tribal Trial Court had both personal and subject matter
2 jurisdiction over this proceeding. At the time the lawsuit was filed, both parties resided on the
3 reservation. As indicated above, the leased property is located within the exterior boundaries of
4 the reservation. The dispute arises from the lease of that property and concerns the use of the
5 property.

6 **2. The Eviction Order**

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8 The Tribal Trial Court did not err by ordering that Appellant Dupuis be evicted from the
9 premises located at 5307 Whispering Pines Drive, Ronan. The Complaint was filed in accordance
10 with Title 1, Chapter 2, Part 7, Rule 8, CSKT Laws Codified. A summons was issued on August
11 26, 2002, in accordance with Rule 8. The Complaint and Summons were served on Appellant
12 Dupuis in accordance with Title 1, Chapter 2, Part 7, Rule 9, CSKT Laws Codified. The
13 Summons and Order of Preservation clearly states that Appellant Dupuis had ten working days to
14 respond to the Complaint. The Summons further and clearly stated that if Appellant Dupuis did
15 not respond to the Complaint within ten working days, Appellee McLeod would be granted an
16 Order of eviction and the other relief he had requested in the Complaint. Despite this clear notice,
17 Appellant Dupuis did not respond to the Complaint. The Summons states that if, “you disagree
18 with anything in the Complaint and want the Court to hear your side of the case, you must write
19 your answer and file it with the Court...” Despite this understandable and unambiguous notice to
20 Appellant Dupuis, he did not respond to the Complaint within the thirty working days that elapsed
21 before Appellee McLeod sought the Order of eviction on October 10, 2002.
22

23
24 Had Appellant Dupuis filed an answer, he might have raised the question of the validity of the
25 lease agreement the parties entered into on December 5, 2000 for a period of one year, to
26 December 4, 2001 as he did on appeal. He would not have prevailed on this argument. The

1 general rule in this situation is that when a tenant remains on the premises after the expiration of a
2 written lease when rent is payable monthly, the tenancy is converted into month by month tenancy
3 under that same conditions as were in force under the lease. Certainly Appellant Dupuis, since he
4 continued to pay rent, did not argue that the expiration of the lease relieved him of the duty to pay
5 monthly rent. Nor did he appear to be arguing that the eviction Order itself was a violation of the
6 law or his rights. He does seem to disagree with the basis for some of the payment he has been
7 ordered to make. This will be addressed in Part 3 of this Opinion.

8 Appellant Dupuis has not presented any reasons that he was incapable of responding to the
9 Complaint. His own pleadings and statements at oral argument indicate that he is quite able to
10 present his arguments to the Court. Since Appellant Dupuis chose not to respond to the Complaint
11 although he received notice of the consequences of doing so, and since the required legal steps
12 leading up to the Order of eviction were followed, the Court's Order of eviction should be
13 affirmed.
14

15 **3. The Money Judgment**

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17 The Tribal Court did not err by Ordering that Appellant Dupuis pay Appellee McLeod unpaid
18 rent, cost of repair to the premises, court costs and an unpaid utility bill. These items were
19 included in the Complaint and amended Complaint. The basis for the actual amounts requested
20 was set forth in supporting documents and the amounts were reasonable. Therefore, the Tribal
21 Trial Court's ruling on those amounts was correct and is affirmed.¹
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24 ¹ The Original Complaint did not specify that the damages for repair to the property totaled \$377.87. The Court's
25 October 10, 2002 Order, entered the same day as Complaint was amended to include the \$377.87, added that amount
26 to the total judgment due from Appellant Dupuis. The better practice would have been to give Appellant the
opportunity to respond to the specific figure in the Amended Complaint. However, since Appellant was on notice
from the time the original Complaint was filed that repair costs were sought and because Appellant did not raise this
issue, any error is harmless.

1 The late fees, however, are not reasonable under the law and should not be allowed. Section 4-
2 2-202, CSKT Laws Codified, Right to compensatory damages states in part, "Damages must be
3 reasonable." Section 4-2-206, CSKT Laws Codified, states in part, "

4 (1) no person can recover a greater amount in damages for the breach of an obligation that
5 he could have gained by the full performance thereof by both sides...

6 ...

7 (3) For breach of contract, the measure of damages, except when otherwise provided by
8 law, is the amount which will compensate the party aggrieved for all the detriment which
9 was proximately caused thereby or in the ordinary course of things would be likely to result
10 therefrom.

11 When the penalty for failure to comply with an agreement is far in excess of any provable
12 damages, some jurisdictions call the provision an unenforceable penalty clause. While the
13 Confederated Salish and Kootenai Tribal Council has not adopted a specific provision in this
14 regard, it has adopted provisions requiring that damages must be reasonable and must be set at an
15 amount that will fully, but not overly compensate the aggrieved party. Appellee McLeod is
16 entitled to compensation for lost or delayed income. But a late fee of \$12.50 per day on a monthly
17 rent of five hundred dollars is applying an interest rate of approximately 912 %, which is far in
18 excess of the current rate of borrowing money.

19 Appellee McLeod's statements at oral argument showed that he believed that his request for late
20 fees was allowable under the law. This decision should not be interpreted as a personal criticism
21 of Appellee McLeod or of his good faith in seeking what he believed to be allowed under the law.

22 Therefore, the decision of the Tribal Trial Court is affirmed, with the exception of the
23 calculation of the money due to Appellee McLeod from Appellant Dupuis under the Court's
24 Order.
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1 IT IS HEREBY ORDERED that this proceeding is remanded to the Tribal Trial Court for
2 the purpose of calculating what level of late fee can be assessed under sections 4-2-202, and 4-2-
3 206, CSKT Laws Codified.

4 IT IS FURTHER ORDERED that the Order of November 22, 2003 granting a stay of the
5 Tribal Trial Court's writ of garnishment is vacated.

6 DATED this 7th day of August 2003.



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8 Brenda C Desmond
9 Brenda C. Desmond, Justice

10 Associate Justices Hall and Eakin concur.

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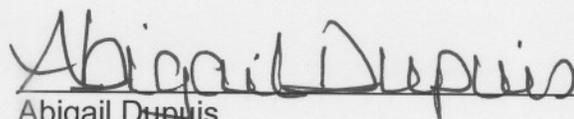
CERTIFICATE OF MAILING

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed true and correct copies of the **OPINION** to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, or hand-delivered this 7th day of August, 2003.

Kevin Dupuis
6947 # 15 East Shore Route
Polson, Montana 59860

Lewis McLeod
5309 Whispering Pines
Ronan, Montana 59864

Donna Durglo
Clerk of the Tribal Court
Confederated Salish and
Kootenai Tribes
P.O. Box 278
Pablo, Montana 59855



Abigail Dupuis
Appellate Court Administrator