

SUPREME COURT  
OF THE  
ROSEBUD SIOUX TRIBE



Sicangu Wicoti Awanyakapi Corporation Plaintiff/Appellee,  v.  Robert Medearis and All Other Occupants Defendant/Appellant.	CA 2012-08  MEMORANDUM OPINION AND ORDER
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Per Curiam (Chief Justice Pat Donovan and Associate Justices Frank Pommersheim and Charles Abourezk)

**FACTS AND PROCEDURAL HISTORY**

On June 1, 1993, Appellant, Robert Medearis (hereinafter referred to as Medearis) and Appellee, Sicangu Wicoti Awanyakapi Corporation (hereinafter referred to as SWA) entered into a Mutual Help and Occupancy (hereinafter referred to as MHO) agreement. An MHO agreement is funded by the Department of Housing and Urban Development ("HUD") for SWA to develop a project under the HUD Mutual Help Ownership Opportunity Program for eligible tribal members. Under such an agreement SWA gives a homebuyer an opportunity to achieve ownership of a home in the project in return for fulfilling his obligations to make contributions to the development of the project, to make monthly payments based on income, and to provide all maintenance of the home.

On or around September 21, 2011, SWA issued a Notice of Termination of Mutual Help and Occupancy Agreement. The record seems to indicate that this document was served upon Medearis by being delivered by U.S. mail. On March 20, 2012 SWA filed a Summons and Complaint for Forcible Entry and Detainer against Medearis for his alleged failure to comply with the terms of the MHO agreement by failing to make monthly payments, by not maintaining the housing unit and by allowing excessive amounts of scrap metal and debris to accumulate in

the yard surrounding the housing unit and by engaging in criminal activity that resulted in his incarceration on federal charges. The Summons and Complaint was served on Medearis on March 28, 2012. Medearis failed to file an Answer and failed to appear at the July 11, 2012 trial. After the hearing the Court granted SWA Default Judgment and Writ of Execution entering judgment against Medearis for the monthly payment arrears and awarded SWA possession of Medearis' housing unit.

Medearis now appeals. He argues that Foreclosure is the exclusive remedy for violation of a MHO agreement and that the eviction proceeding for Forcible Entry and Detainer under Rosebud Sioux Tribe Law and Order Landlord-Tenant Code was an improper remedy.

## **DECISION**

### **A. Proper Remedy.**

Medearis argues that the sole remedy for violation of the MHO agreement is foreclosure and that the lower court erred by using eviction proceedings as the remedy for his violation of the MHO agreement. To determine the proper remedy we must look to Rosebud Sioux Law and Order Code and the MHO agreement itself.

The Rosebud Sioux Tribe Landlord Tenant Code is found at Title Eight, Chapter Three of the Rosebud Sioux Tribe Law and Order Code. 8-3-1.2 states that this code section shall apply to any and all arrangements in selling, renting, leasing, occupying or using any and all housing, dwellings or accommodations for human occupation and residence. It also gives jurisdiction to the Tribe over buildings and land within the exterior boundaries of the Rosebud Reservation. Section IV of the Landlord Tenant Code sets out procedures for evictions. 8-3-4.3 discusses giving notices to quit and notices to terminate agreements for the purchase of dwellings. 8-3-4.5 sets out the procedure for termination of MHO agreements. It would appear that eviction may be

the correct remedy for termination of a MHO agreement.

The MHO agreement executed between Medearis and SWA also would suggest that eviction is the correct remedy for violation of the agreement. The agreement defines a “Homebuyer” as a person who executed the MHO agreement and who has not yet achieved homeownership status. Clause 3.2 under Article III of the agreement refers to the term of the Homebuyers lease under the agreement commences first day following occupancy and expires when the initial purchase price is achieved or is terminated. Clause 4.1 of Article IV of the agreement requires the Homebuyer to pay monthly payments during the term of the lease.

However, Article VIII of the agreement allows an eligible Homebuyer to participate in IHA Homeownership Financing. If an eligible Homebuyer participates in this financing, they are required to execute a promissory note and a mortgage. At oral argument, SWA conceded that if an eligible Homebuyer participates in this financing then foreclosure would be the proper remedy.

The record supports that Medearis did not participate in Article VIII financing or was not eligible for such financing. Therefore, eviction was the proper remedy in this case to remove the occupant from the dwelling.

#### **B. Jurisdictional Defects in the Proceedings.**

The Court has the inherent authority sua sponte to review for jurisdictional defects in the proceedings. This inherent authority is especially strong when it involves a pro se litigant. In reviewing the record, the Court has found two such defects that prejudiced Medearis and deprived the trial court of personal jurisdiction over Medearis. SWA has argued throughout that the Landlord-Tenant Code was the proper remedy against Medearis. Because this code section applied, SWA was bound to follow the procedural requirements contained therein.

1. The record is clear that SWA served the Notice of Termination of Mutual Help and Occupancy Agreement by U.S. mail.

The Eviction procedures are found in the Rosebud Sioux Tribe Landlord Tenant Code at Title Eight Chapter Three Section IV of the Rosebud Sioux Tribe Law and Order Code. 8-3-4.3(b) provides that notices to quit or to terminate an agreement must be in writing, and must be delivered to the tenant. 8-3-4.3(b) (1) requires that delivery of notices must be made by (a) a law enforcement officer of the Tribe, an agency of the U.S. or where otherwise provided by law, the State; (b) Any person authorized by the Tribal Court to complete service of process; or (c) any adult member of the Tribe who resides on the reservation who is not a party to the action. 8-3-4.3(b) (2) provides that delivery will be effective when it is: (a) personally delivered to a tenant; (b) personally delivered to any person over 14 years of age in the premises. If notice cannot be given by means of personal delivery or the tenant cannot be found after one attempt the notice may be delivered by (a) Certified mail, return receipt requested, at the last known address or (b) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store or other commonly frequented place. 8-3-4.2 entitles a tenant by reason of any purchase agreement with an Indian Housing Authority to such notice as may be required by such purchase agreement.

Clause 11.5 Article XI Clause 11.5 found on page 31 of the HMO agreement provides:

“Any notice by the IHA to the Homebuyer required hereunder or by law shall be delivered in writing to the Homebuyer personally or to any adult member of his family residing in the Home, or shall be sent by certified mail, return receipt requested, properly addressed, postage prepaid...”

The only thing in the record to indicate the manner of service of the Notice of Termination is Allegation Number 7 in SWA's Complaint which avers that: "SWA served a Notice of Termination of Mutual Help and Occupancy on the Defendant on September 21, 2011. A true and correct copy of said Notice is attached hereto as Exhibit 'B'. In said Notice, demand was made upon the Defendant to vacate the Unit within thirty (30) days after receipt of the Notice. The Notice was served by U.S. mail."

There is no evidence or averments that the Notice of Termination was personally served on Medearis. There is no evidence or averments that the Notice mailed to Medearis was sent by certified mail return receipt requested. No return receipt is found in the record.

2. SWA failed to serve a Notice to Quit on Medearis.

Allegation Number 7 in SWA's Complaint avers: "SWA served a Notice of Termination of Mutual Help and Occupancy on the Defendant on September 21, 2011. A true and correct copy of said Notice is attached hereto as Exhibit 'B'. In said Notice, demand was made upon the Defendant to vacate the Unit within thirty (30) days after receipt of the Notice. The Notice was served by U.S. mail."

The trial court found in Findings of Facts and Conclusions of Law Number 5 that "A Notice of Lease Termination and Demand to Vacate was served on Defendant (Medearis) via on ordering that the Defendant and all other occupants vacate the premises within fourteen (14) days of receipt of the notice." This appears to be boilerplate language and is clearly erroneous. A reading of the Notice of Termination of Mutual Help and Occupancy Agreement served on Medearis does not warrant such a finding. There is no mention of notice to quit in the Notice of Termination of Mutual Help and Occupancy Agreement nor does it order Medearis to vacate the premises. The Notice of Termination of Mutual Help and Occupancy Agreement merely

terminated the agreement. It did not order Medearis to vacate the premises. There is nothing in the appellate record to suggest that a Notice to Quit was served on Medearis before the filing of the summons and Complaint. A Notice to Quit was required to be served upon Medearis before SWA filed its summons and complaint.

SWA has argued the Landlord-Tenant Code is the proper remedy against Medearis. Because the Landlord-Tenant Code section applies, SWA is bound to follow the procedural requirements contained therein. This section sets out grounds for eviction (i.e. failure to pay rent, to maintain the premises, and to comply with all provisions of an occupancy agreement).

8-4-4.4 sets out the procedure for termination of a lease. 8-3-4.5 sets out the procedure for termination of an MHO agreement. 8-3-4.6 states "Following any notice which terminates or cancels an agreement a tenant may be given notice to quit possession of the premises."

Section V sets out the judicial procedure to be used in eviction actions. 8-3-5.3 requires that a Complaint for an eviction action must contain a statement showing that any required notices and the notice to quit have been served in accordance with the provisions of the code requiring them. Although SWA's complaint avers that in the Notice of Termination demand was made upon the Defendant to vacate the Unit within thirty (30) days after receipt of the Notice, there is no such language in the Notice provided in the record.

There was insufficient proof of service of the Notice to Terminate the MHO agreement on Medearis. There was no Notice Quit served on Medearis. These jurisdictional defects deprived the lower court of personal jurisdiction over Medearis and to enter a writ of execution. The writ of execution should be voided.

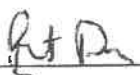
#### ORDER

It is hereby Ordered; Adjudged; and Decreed that the Writ of Execution is voided and the

proceedings in this matter be dismissed for lack of personal jurisdiction over the Appellant for failure to follow eviction procedures.

Dated this 21st day of March, 2013.

FOR THE COURT:

  
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Pat Donovan, Chief Justice