IN THE COURT OF APPEALS

FOR THE

ROSEBUD SIOUX TRIBE

FIRST COMPUTER CONCEPTS, INC., a South Dakota Corporation,	)	CA 89-02
Plaintiff/Appellee	)	
vs.	)	ORDER
THE ROSEBUD SIOUX TRIBE,	)	
Defendant/Appellant.	)	

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

ORDERED AND ADJUDGED, that the appeal in the above entitled matter is dismissed.

Dated this 17th day of September, 1990.

BY THE COURT:

Michael T. Swallow
Associate Justice

Attest:

Clerk of Courts

IN THE COURT OF APPEALS

OF THE ROSEBUD SIOUX TRIBE

FIRST COMPUTER CONCEPTS, INC., a
South Dakota Corporation,

Plaintiff and Appellant,

vs.

THE ROSEBUD SIOUX TRIBE,

Defendant and Appellee.

Appeal from the

Rosebud Sioux Tribal Court

The Honorable Sherman J. Marshall

Presiding

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Before Justices Roubideaux, Pommersheim and Swallow

I. Facts

The Plaintiff/Appellant in this appeal is First Computer Concepts, Inc., (Appellant), which is a corporation organized under the laws of South Dakota and having its place of business in Rosebud, South Dakota, which is located wholly within the boundaries of the Rosebud Sioux Indian Reservation.

The Defendant/Appellee, Rosebud Sioux Tribe (Tribe) entered into a lease with the Appellant on August 31, 1987. This lease was signed by Howard D. Valandra, President, on behalf of First Computer Concepts, Inc., and Alex D. Lunderman, President, on behalf of the Rosebud Sioux Tribe.

The property leased by the Tribe is situated within the boundaries of the Rosebud Sioux Indian Reservation, and described as follows:

> The lots South of the Episcopal Church, commencing at the Southwest Corner of Section Twenty-seven (27), Township Thirty-eight (38) North, Range Thirty (30) West of the Sixth Principal Meridian, Todd County, South Dakota. Thence North 0°, 00' West, a distance of 513.8 feet; thence North 90°, 00' East, a distance of 3,283.0 feet; thence North 7°, 14' West, a distance of 578.20 feet; thence South 83°, 54' East a distance of 370.5 feet; thence North 5°, 08' West, a distance of 16.0 feet to the point of beginning; thence North 5°, 08' West, a distance of 50 feet; thence South 83°, 54' East a distance of 100 feet; thence South 5°, 08' East a distance of 50 feet; thence North 83°, 54'

West, a distance of 100 feet to the point of beginning. Containing 0.11 acres, more or less.

The agreement provided that the Tribe was to pay the Appellant $500 per month as rent due and payable on the 1st day of each month with the first payment to be made on or before September 1, 1987. The Tribe failed to pay the rent for the month of January and February, 1988 as required by the terms of the lease. The Tribe further vacated the premises without paying all rental sums required.

Appellant commenced their action against the Tribe on February 19, 1988 for breach of the lease agreement. The Complaint alleged the Tribe failed to abide by the terms of the lease by refusing to pay the rent as agreed. The Tribe filed an Answer in which the basic facts surrounding the breach of the lease agreement were admitted. However, the Answer filed by the Tribe contained various Motions to Dismiss under the Doctrine of Sovereign Immunity, lack of approval by the Department of Interior, Bureau of Indian Affairs, and failure to exhaust administrative remedies.

Thereafter, the facts were stipulated by agreement of the parties and the case submitted to the lower Court on a Motion for Summary Judgment filed by the Appellant and the Motion to Dismiss contained in the Answer by the Tribe.

In an Order dated March 28, 1989, the lower Court denied Appellant's Motion for Summary Judgment and granted the Tribe's Motion

to Dismiss. No Memorandum Decision was issued nor were Findings of Fact and Conclusions of Law entered by the lower Court.

All pertinent facts surrounding the contents of the lease agreement and the breach of said agreement are contained in the record, which includes the Statement of Uncontested Facts and the Lease Agreement.

The Appeal was filed by the Appellant on March 29, 1989.

II. Issues

On Appeal, the Appellants raise four issues. They are as follows:

> A. Whether or not the Tribe waived its sovereign immunity by entering into a lease agreement with the Plaintiff;
>
> B. Whether or not the Rosebud Sioux Tribal Council is required to authorize the Tribal President to enter into the lease agreement;
>
> C. Whether or not the lease agreement was required to be approved by the BIA pursuant to 25 USC §81; and,
>
> D. Whether or not the Tribal President's actions in signing the lease agreement without express authority by the Rosebud Sioux Tribal Council nevertheless binds the Tribe to the lease agreement.

III. Discussion

This matter was submitted to the lower Court upon stipulated facts agreed upon by the Appellant and the Tribe. There were no

genuine issues of fact and thus the lower Court decision was ruled upon as a matter of law.

It has been held by this Court that issues of fact in civil cases are to be determined "in accordance with the preponderance of the evidence standard...[and] is generally reversible on appeal only if it is shown that the [lower] Court's determination of dispositive facts was clearly erroneous." Farmer's State Bank of Mission v. Lloyd Boyd, Jr. and Shirley A. Boyd, RSTCA, dated July 10, 1990, pg. 4.

The standard of review for issues of law on appeal is a matter of first impression with this Court. Other jurisdictions however, have fully considered the appropriate standard and it is thus appropriate to look to them for guidance. These jurisdictions have held that when there is no dispute as to any material fact and the only issue on appeal is a question of law, the "[a]ppellate court decides questions of law independently, without deference to the trial court." Pulsfus Poultry Farms, Inc. v. Town of Leeds, 440 NW2d 329 (Wis. 1989). See also, Washington Heights Co. v. Frazier, 409 NW2d 612 (Neb. 1987) ("An appellate court has an obligation to reach independent conclusions on questions of law.")

This Court finds the above citations in accord with virtually every jurisdiction which has addressed this issue and sees no reason to depart from this standard. Having determined that this Court will

review questions of law, de novo, we turn to the issues presented by the Appellant.

Appellant raises four (4) issues which this Court finds can be condensed into only two (2) issues, i.e., sovereign immunity and Secretary of Interior approval. We believe that the issue of Secretary of Interior approval is dispositive of this case and it is therefore unnecessary to address the issue of sovereign immunity.

As stipulated and submitted to this Court, the Tribe is a party to this lawsuit. The President of the Tribe executed the lease on behalf of the Tribe. Whether the President had the authority to bind the Tribe has been amply briefed by parties. The Appellant urges detrimental reliance and estoppel as a basis for finding liability, while the Tribe argues no authorization to the President and sovereign immunity as grounds not to deny liability, but to deny accountability.

That there was a lease between the parties is undisputed. As consideration for allowing the Tribe use of the premises, the Appellant was to receive $500 per month. 25 USC §81, states, inter alia, "No agreement shall be made by any person with any tribe of Indians, ..., for the payment...of any money, ...unless such contract or agreement be executed and approved as follows:

> ... Second. It shall bear the approval of the Secretary of the Interior...
>
> Third. It shall contain the names of all parties in interest, ...and if made with a tribe, by their

> tribal authorities, the scope of authority and the reason for exercising that authority, shall be given specifically. (Emphasis added)

Furthermore, §81 states: "All contracts or agreements made in violation of this section shall be null and void...". Similarly, the Code of Federal Regulations, Title 25, Part 165, Section 5, subpart (a), states that "all leases...shall be in the form approved by the Secretary and submit to his written approval."

The lease before this Court does not contain the approval of the Secretary of Interior (or his authorized representative acting under delegated authority) or the scope and reason under which the President is authorized to obligate and bind the Tribe. It is submitted that if this lease agreement had contained the necessary endorsements and recitals, the necessity of litigating this matter would be moot.

By finding this agreement to be in violation of the applicable statutes and regulations and therefore, null and void, we are not unmindful of the chilling effect this decision has on parties doing business with the Tribe. This chilling effect must however, be balanced against the backdrop of federal regulation of trust property. Appellant was represented by counsel through all stages of this matter, including negotiation and execution of the lease. It was incumbent upon counsel for Appellant to know the status of the land and the attending requirement for its use.

IV. Conclusion

Based upon the foregoing, this Court finds that the lease agreement between the Appellant and the Tribe is in violation of 25 USC §81 and therefore void and unenforceable.

The appeal in this matter is dismissed.

Michael T. Swallow
Associate Justice

Dated September 6, 1990