

**TURTLE MOUNTAIN TRIBAL COURT
TURTLE MOUNTAIN JURISDICTION**

**CIVIL DIVISION
BELCOURT, NORTH DAKOTA**

**Sandra Ann Poitra, and all Persons
Unknown, claiming any Estate or
Interest In, or Lien or Encumbrance
Former Belcourt Lumber Yard Adjacent
To the One Stop Market,**

CA #: RO-09-1005

Petitioner(s),

**JUDICIAL DETERMINATION,
MANDATE AND ORDER
ON COLLATERAL MATTERS
AND EXTENSION OF
TEMPORARY RESTRAINING
ORDER**

vs.

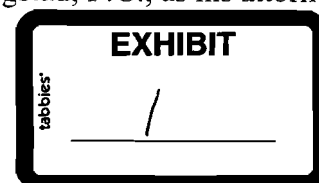
**Darrel Gustafson and Tony Sims in his
Capacity as Rolette County Sheriff,**

Defendants.

OPENING STATEMENT

Before this Court is a Petition for Restraining Order filed by Sandra Ann Poitra. A Temporary Restraining Order was entered by this Court on April 1, 2009 and a Show Cause Hearing scheduled for April 14, 2009. The Show Cause Hearing was rescheduled at the petitioner's request to April 23, 2009 at 1:00 pm.

This Show Cause Hearing was held, as scheduled. Petitioner Sandra Ann Poitra and defendants Darrell Gustafson and Tony Sims were present. A Notice of Entry of Appearance was submitted to this Court on April 22, 2009 by Attorney Don Bruce representing petitioner Sandra Ann Poitra in this action, and Mr. Bruce entered the Court late with an explanation that was accepted by the Court. Please note that a Notice of Representation has not been received to date by this Court from the defendants, but defendant Darrell Gustafson, in Special Answer to the Temporary Restraining Order on April 2, 2009, declared Debra L. Hoffarth, of Pringle and Herigstad, P.C., as his attorney



and the Court accepts that declaration. Mr. Tony Simms appeared without representation and notice has not been received by this Court, to date, relative to representation.

Before this Court could proceed, it was necessary to deal with motions and declarations before it. Each of these issues are put forth here in the same order they were dealt with at the hearing.

1. **Special Motion to Recuse Judge Andrew Laverdure.** This motion was filed by Debra L. Hoffarth on April 2, 2009 on behalf of defendant Darrell Gustafson. The motion specifically states that Andrew Laverdure be “disqualified to try the case” to “promote impartiality in proceedings and to avoid the appearance of pre-existing knowledge, potential, and perceived bias in the case”. The motion is based on the Tribal Code of 1968, which has not been in existence since the adoption of the Tribal Code of 1976, and Turtle Mountain Rules of Court, Section 2.10. Upon reading the Rule, specifically to part (a), this Court finds that the section merely limits the request to receive a different judge to one time only. It does not address a standard requirement in all Courts as to reasonable rationale for recusal and whether or not a conflict of interest exists.

Additionally, the Code of Judicial Conduct, Canon 3, subsection E, applicable to Disqualification and Recusal of Judges was established by Judicial Board action through passage of Resolution # TMJB-06-21-301 on September 22, 2005. This Code of Judicial Conduct creates process for recusal and disqualification of Judges, and describes basis for each request. It also clearly describes the procedures that all Attorneys and Tribal Advocates

licensed to practice in Tribal Court need to follow in order to request disqualification.

Disqualifying a Judge from a case should not be done haphazardly or with disregard to the rules. The Special Motion to the Court for disqualification of Judge Laverdure is submitted without basis or justification. During the hearing, Judge Laverdure took notice of the manner in which the written motion was made, its lack of substance and the fact that the motion, without basis, implies that Judge Laverdure is incompetent. One question for all to ponder: would this motion pass muster in any other Court or Jurisdiction? Without showing of specific prejudice, this Court will deny said motion. For these reasons, the demand to recuse and disqualify Judge Andrew Laverdure by Debra L. Hoffarth, Attorney for the respondent is hereby invalidated.

2. **Letter from the Office of States Attorney, Mary K. O'Donnell.** On April 14, 2009, this Court received a letter from the Office of State's Attorney in reference to Rolette County Sheriff Tony Sims. The letter was presented to the Court as representation of Special Appearance by Mr. Sims in the matter. The letter declared that Sheriff Sims "has no personal involvement in the matter" and that his only involvement is in "the performance of his statutory duties as Sheriff of Rolette County". The letter also stipulates that "the Sheriff respectfully declines to make a General Appearance in this case".

This letter is taken, on face value, as a general representation that a motion will be properly made to the Court concerning the Court's jurisdiction over Mr. Sims. Special appearance is a process. When properly requested and

executed, notice is given and opportunity extended to the individual making the Special Appearance to present their motion to the Court for consideration. In this instance, notice was made, by letter, but a motion to the Court was not submitted.

Tribal Courts are currently considered equal in status to State Courts in this great Nation of ours and the Turtle Mountain Tribe is a tribe of laws. Many of our laws are much older than the United States itself. Refusal to acknowledge our Tribe's laws and processes, while demanding respect for laws that exist outside the Tribe's jurisdiction, is not only disrespect for our laws and our Tribe, but for our People.

As a matter of course, and due to the fact that Mr. Sims did enter our Court under General Appearance, without verbally declaring or submitting a Motion for Special Notice of Appearance, this Court hereby establishes and asserts jurisdiction over Tony Sims in this matter.

Additionally and importantly, this matter does not restrict Mr. Sims from his statutory duties as Rolette County Sheriff. It is certainly not the intent of the Order or this Court to do so. The Temporary Restraining Order merely restrains him from serving process until he complies with the Tribe's laws in reference to service.

3. **Notice to the Court of Special Appearance filed by Debra L. Hoffarth, on behalf of the respondent, Darrel Gustafson.** On April 3, 2009, this Court received filing for a Special Notice of Appearance from Debra L. Hoffarth,

attorney for Darrel Gustafson, one of the respondents. The Notice also objects to the jurisdiction of the Court over Mr. Gustafson.

In order to properly establish our Tribe's jurisdiction and its application in this instance, the following findings are in order:

The Constitution and Bylaws of the Turtle Mountain Band of Chippewa Indians specifically states under ARTICLE II – JURISDICTION (Amendment XXVIII approved August 27, 2007) that:

Section 1. Band Territory, the Territory of the Band shall extend to *all lands within the Turtle Mountain Indian Reservation*, all Lands outside the exterior boundaries of the Reservation including the public domain allotments wherever located, held by the United States for the benefit of the Band or the People, including all lands, air, skies above, surface and subsurface water, minerals, natural resources and any other interest therein notwithstanding the issuances of any patent or right of way by the U.S. Government or any other entity to the fullest extent allowable and consistent with Federal Law.

Section 2. The jurisdiction of the band shall extend to *all land on the Turtle Mountain Indian Reservation*, all public domain allotments and to such other lands in Indian Country as defined in 18 U.S.C. 1151(a), (b) and (c) as may be acquired by or on behalf of said Tribe and be added thereto under the laws of the United States, including all lands, air, skies above, surface and subsurface water, minerals, natural resources and any other interest therein notwithstanding the issuance of any patent or right of way by the U.S. Government or any other entity to the fullest extent allowable and consistent with Federal Law. (emphasis added)

This article was amended to the Constitution pursuant to ARTICLE XII – AMENDMENT, specifically:

Section 1. This Constitution and Bylaws may be amended by a majority of the qualified voters of the Turtle Mountain Band of Chippewa Indians at an election called for that purpose; provided that at least twenty percent (20%) of the resident voters of the Tribe entitled to vote shall vote in such election, *but no amendment shall become effective until it shall have been approved by the Secretary of the Interior or his delegated representative.* (emphasis added)

Amendment XXVIII, to the Turtle Mountain Band of Chippewa Constitution and Bylaws was passed as provided by Tribal Law and was

approved by the Secretary of the Interior on August 27, 2007, as required by our law.

The Turtle Mountain Tribal Code, Title 1, Criminal Procedure, Chapter 1.05, Creation, Jurisdiction and Powers, Section 1.0502, Jurisdiction clearly states:

For the purpose of enforcement of this Code, the Turtle Mountain *Jurisdiction shall be deemed to include all territory within the boundaries of the Turtle Mountain Indian Reservation, including fee patented lands*, roads, waters, bridges and lands used for Bureau of Indian Affairs purposes, and shall also include all Indian trust and restricted lands, specifically located within Townships 161N, 162N, 163 N, and 164 N and Ranges 70W, 71 W, 72W, and 73W except lands located within incorporated cities, Rolette County, North Dakota. (emphasis added)

During the hearing, the fact that jurisdiction and powers is located in the Criminal Procedure title was brought forward. Please note that the jurisdiction is defined under the first title “for the purpose of enforcement of this Code”, a clear declaration that the jurisdictional statement covers the entire Code.

On April 4, 2003, the Turtle Mountain Tribe issued Resolution No. TMBC2376-03-03. This resolution was issued “in an effort to provide due process for tribal members” and to define “it’s jurisdiction regarding civil procedures”. The Tribe resolves as follows:

The county Sheriff or any other person or official on behalf of the state and any county shall not come into the Tribe’s jurisdiction: 1) To serve civil process papers; 2) Regulatory Process papers from the state; or 3) Execute any warrant involving a tribal member for a matter that arose within the Tribe’s jurisdiction, without going through Turtle Mountain Tribal Court.

This resolution was passed in clear response to encroachment on lands within the Tribe’s jurisdiction that demonstrated blatant disregard to the

Tribe's laws. Vehicles were being yanked from individual yards and properties without replevin action being processed through Tribal Court as required by law. In some instances, State Courts were not involved either. Homes were foreclosed on, without affording individual access to any Court. As a judge, I have referred to this as an "Outlaw Cowboy Mentality" and always note that this is not the Wild West anymore. Our Tribe is a tribe of laws, and those laws need to be respected.

Our Tribe is also mandated by the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 – 1303, to ensure Constitutional Rights, including equal protection of its laws. It seems that this resolution, establishing a civil procedure in an effort to provide due process for tribal members is very important indeed. Without such rules and procedure, the Tribe could very well become powerless and incapable of protecting its people from ulterior outside forces.

This is where Montana v. United States, 450 U.S, 544 (1981) and Strate, 520 U.S, at 446 come into play. In Montana, Indian Tribes retain sovereignty over non-members in two specific instances and the Supreme Court further explains the rule in Strate.

In this specific instance, the second Montana exception applies: "A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its 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."

The issue at hand is not merely a property dispute between two individuals. The issue is most importantly a response to the disregard of Tribal law relative to civil jurisdiction over service of process within the boundaries of the Turtle Mountain Indian Reservation.

Our laws, establishing jurisdiction and a process for civil procedure through Turtle Mountain Tribal Resolution TMBC2376-03-03, protect tribal members and most certainly impact the political integrity of the Tribe and its ability to promulgate and enforce laws that afford those protections to its members. As such, it is certain that the second exception to Montana applies.

Resolution TMBC2376-03-03 passed with a clear majority (six in favor, one opposed, and the Chairman not voting), and was signed into law by tribal Chairman Richard Monette. Note that the resolution was forwarded to the Bureau of Indian Affairs for review and approval and received by Administration, BIA, Turtle Mountain Agency on April 14, 2003, pursuant to the Constitution and Bylaws of the Turtle Mountain Band of Chippewa Indians, ARTICLE XI – MANNER OF REVIEW:

Section 1. Any resolution or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior shall within ten (10) days of its enactment be presented to the Superintendent of the Turtle Mountain Agency who shall within ten (10) days after its receipt by him approve or disapprove it.

Section 2. If the Superintendent approves any resolution or ordinance it shall thereupon become effective, but the Superintendent shall transmit the enactment bearing his endorsement to the Secretary of the Interior, who may, within ninety (90) days of the date of its receipt by him rescind the resolution or ordinance for any cause by notifying the Turtle Mountain Tribal Council of his veto.

The resolution was properly passed, submitted to the Bureau of Indian Affairs for review and approval and is enacted into law.

The Turtle Mountain Band of Chippewa Constitution and Bylaws, along with the jurisdictional statement in the Tribal Code establishes clear jurisdiction over the matter at hand and Turtle Mountain Tribal resolution TMBC2376-03-03, relative to the Tribe's jurisdiction in civil procedure, also establishes clear venue for Tribal Court.

Now, in regards to jurisdiction over Darrel Gustafson, it is clear that the Temporary Restraining Order is issued against him to prevent direct contact with the petitioner until this matter is resolved during the Show Cause Hearing. The Temporary Restraining Order does not interfere with Mr. Gustafson's access to and possession of his real estate in Rolette County in accordance with federal, state and tribal law, but it does restrain him from serving process in disregard of tribal law.

Our tribe's laws need to be respected. The issue at hand is clear and described throughout. With that, it is also clear that Mr. Gustafson has placed himself under the tribe's jurisdiction by refusing to acknowledge the tribe's laws in reference to service of process.

Finally, this Court now takes notice of the fact that Debra L. Hoffarth was verbally notified that her license to practice law with Turtle Mountain Tribal Court may have been pulled by the Turtle Mountain Judicial Board. Notice occurred during this hearing in open court, taking everyone by surprise. To date, this Court has not been notified by either the Judicial Board or Ms.

Hoffarth concerning this situation. This hearing was continued to a later date, pending the outcome of the licensure. It should be noted that the Court takes notice of everything presented in Court prior to the notification and validates it as properly presented to the Court.

CONCLUSION OF LAW

After careful review of the record, and upon consideration of the fact that the hearing is now continued due to unforeseen circumstance, this court extends the Temporary Restraining Order for a period of ten days.

IT IS NOW HEREBY THE ORDER OF THIS COURT:

1. That the Special Motion to Recuse Judge Laverdure is invalidated.
2. That the Court asserts jurisdiction over Tony Sims in this specific matter and in this instance.
3. That this Temporary Restraining Order does not interfere with the statutory performance of Mr. Sims' duty as Sheriff of Rolette County, it merely restrains him from service of process in contravention of Tribal law.
4. That this Court asserts jurisdiction over Mr. Darrel Gustafson in this specific matter and in this instance.
5. That this Temporary Restraining Order does not interfere with Mr. Gustafson's access to and possession of his real estate in Rolette

County in accordance with federal, state and tribal law, but it does
restrain him from serving process in disregard of tribal law.

6. That the Show Cause hearing is continued to May 7, 2009 at 1:00 pm.

Dated this 26th day of April, 2009.

BY THE COURT:

A handwritten signature in cursive script, reading "Andrew Laverdure", written in black ink. The signature is positioned above a horizontal line.

Andrew Laverdure, Tribal Judge
Turtle Mountain Tribal Court