

Supreme Court of South Dakota

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Deputy Clerk

October 20, 2010

Ms. Carol Foster
Shannon County Clerk of Courts
906 N River St
Hot Springs SD 57747-1387

Re: #25648, Native American Bank,
National Association vs.
Cangleska, Inc. (CIV 10-19)

Dear Ms. Foster:

Enclosed please find a certified copy of the Order of Remand dated October 20, 2010 and the appeal record in the above-referenced matter.

Kindly acknowledge receipt of the enclosed items.

Very truly yours,

Casey J. Deibert
Deputy Clerk

Enc.

CC: Mr. Steven D. Sandven ✓
Mr. Brian D. Hagg

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

NATIVE AMERICAN BANK,)	ORDER OF REMAND
NATIONAL ASSOCIATION,)	
Plaintiff and Appellant,)	#25648
)	
vs.)	
)	
CANGLESKA, INC.,)	
Defendant and Appellee.)	

This case includes a factual attack on jurisdiction, which mandates the circuit court's resolution of factual disputes. See *Osborn v. United States*, 918 F.2d. 724 730 (8th Cir. 1990). Therefore, the circuit court's existing decision is inadequate to permit appellate review of both the factual and legal arguments presented on appeal. It is therefore

ORDERED that the matter is remanded for an evidentiary hearing, reconsideration, and the entry of findings of fact and conclusions of law on all issues raised by both parties. Such findings and conclusions shall address each underlying dispute including, but not limited to, the following:

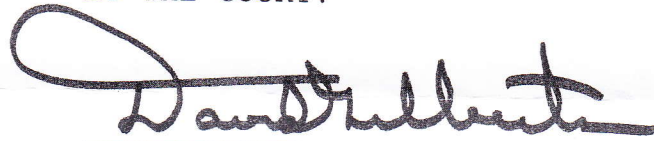
- Is there a forum selection clause that governs this litigation?
- If yes, what is the operative language that governs?
- Is that language permissive or mandatory (exclusive)?
- If it is mandatory, what is the required forum?
- May Cangleska, Inc. assert the operative language as a defense in this litigation?
- What is the effect of the USDA's approval or failure to approve the commercial loan guarantee?

- Does the circuit court have subject matter jurisdiction over Native American Bank's suit?
- Would the Oglala Sioux Tribal Court have subject matter jurisdiction over Native American Bank's suit as filed in the circuit court? Do the *Montana* exceptions apply?
- Has Native American Bank, through its activities or otherwise, consented to jurisdiction of the Oglala Sioux Tribal Court?
- Is Cangleska, Inc. a "tribe, its members," or a "tribal entity" within the meaning of *Montana*?
- Is Cangleska, Inc. a tribally chartered entity?
- If yes, when did Cangleska, Inc. receive its charter, and had it maintained its status as a tribally chartered entity prior to this litigation?
- What is the specific legal relationship between Cangleska, Inc. and Project Medicine Wheel a/k/a Cangleska, Inc.? Are they separate legal entities?
- Does Cangleska, Inc. have a tribal charter separate from Project Medicine Wheel a/k/a Cangleska, Inc.?
- What is the specific nature and location of the loan collateral that Native American Bank seeks to acquire through this litigation?
- Does Native American Bank seek to obtain loan collateral located within the boundaries of the Pine Ridge Indian Reservation? Does Native American Bank's disclaimer of claiming any property interests on the Reservation affect the jurisdiction issue?
- What is the location of each place that Cangleska, Inc. provides services in South Dakota? What physical facilities are utilized, and what services are provided in each location?

- What is the racial make-up of women who receive Cangleska, Inc.'s services at each location?

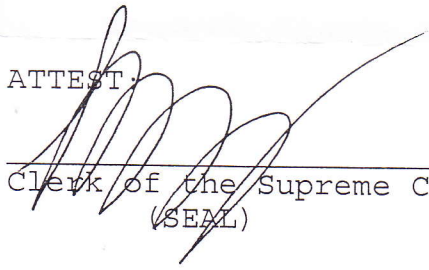
DATED at Pierre, South Dakota, this 20th day of October, 2010.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

PARTICIPATING: Chief Justice David Gilbertson, Justices John K. Konenkamp, Steven L. Zinter, Judith K. Meierhenry and Glen A. Severson.

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

OCT 20 2010



Clerk