

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

OPINION
and ORDER

02-C-0226-C

v.

SAMUEL D. LEMIEUX, JULIE A.
LEMIEUX, BAD RIVER BAND OF
LAKE SUPERIOR CHIPPEWA INDIANS,
USA FINANCIAL SERVICES, INC.
and FORD MOTOR CREDIT COMPANY,

Defendants.

This is a civil action brought by plaintiff United States of America to foreclose on a real estate mortgage on leased property to secure a promissory note. The case is before the court on plaintiff's motion for summary judgment. Principal defendant Samuel D. Lemieux and defendants Julie A. Lemieux and USA Financial Services, Inc. have failed to plead or otherwise appear in this case. Defendant Ford Motor Credit Company has filed a notice of claim. Defendant Bad River Band of Lake Superior Chippewa Indians has filed an

appearance and opposes plaintiff's motion for summary judgment. All further references to "defendant" will be to the Bad River Band.

Both parties submitted proposed findings of fact. However, defendant did not dispute any of plaintiff's proposed facts. Therefore, I accept all of plaintiff's proposals as undisputed. Plaintiff did not respond to defendant's proposals. Because defendant's proposed facts involve matters of law or are irrelevant, I have not considered any of defendant's proposed facts in deciding the pending motion.

For the purposes of deciding plaintiff's motion for summary judgment, I find from plaintiff's proposed findings of fact that the following facts are material and not disputed.

UNDISPUTED FACTS

Principal defendant Samuel D. Lemieux executed a real estate mortgage on October 16, 1984, to secure a promissory note executed to the Rural Development/Rural Housing Service, formerly known as the Farmers Home Administration. The mortgage is subject to a 25-year lease between principal defendant Lemieux and defendant Bad River Band dated September 11, 1984 (leasehold interest) and modified on November 18, 1985. Principal defendant Lemieux has defaulted and failed to comply with the terms of the promissory note and mortgage he signed. No defendant has made any payment on the promissory note since February 3, 1998.

Under the terms of the mortgage, in the event of a default by the borrower on the promissory note, the government has the option of declaring the entire amount unpaid under the note immediately due and payable, with or without notice. Alternatively, the government may foreclose on the mortgage as provided by law or exercise other options set forth in the mortgage.

On or about November 20, 1998, the Rural Development/Rural Housing Service served principal defendant Lemieux with a notice of acceleration of indebtedness and demand for payment.

Rural Development/Rural Housing Service has made the following payments as permitted by the provisions of the mortgage and such payments have become a part of the mortgage indebtedness:

Insurance:	\$839.31
Title Report:	\$125.00

As of November 15, 2002, there was and is due and unpaid on the note and mortgage described in the complaint, the following sum, with interest continuing to accrue from that date in the amount of \$11.9686 per day:

Principal:	\$36,787.94
Interest as of 11/15/02:	\$20,543.62
Total Subsidy Granted:	\$40,743.97

Expenses:	
Attorney Fees	\$200.00

Marshal Fees	\$233.60
Filing Fees	\$ 20.00
Title Search	\$ 60.00
Publishing Fees	\$233.53
Subtotal:	\$747.13
TOTAL:	\$98,822.66

The mortgaged premises are described in Attachment A to this order.

The real estate is so situated that it can be sold only as a whole without injury to the interest of the parties. The mortgaged premises have not been abandoned.

Due notice of the pendency of this action was filed on April 17, 2002, in the office of the Register of Deeds for Ashland County, Wisconsin, in the manner and form required by law, after the filing of the complaint and more than twenty days before the trial in this action.

OPINION

In opposing plaintiff's motion, defendant argues that the doctrine of laches bars this action, that the United States breached its trust obligation to the tribe and that this court lacks jurisdiction over the action. Laches is generally inapplicable to actions brought by the United States to enforce its rights. See United States v. Summerlin, 310 U.S. 414, 416 (1940) ("It is well settled that the United States is not bound by state statutes of limitation

or subject to the defense of laches in enforcing its rights.”); United States ex rel. Small Business Admin. v. Torres, 142 F.3d 962, 966 (7th Cir. 1998); United States v. Omdahl, 104 F.3d 1143, 1145-46 & n.2 (9th Cir. 1997). Defendant has not suggested any reason why this general rule should not apply in this case. I am aware of none.

As defendant asserts, the United States does have a trust obligation to the tribe. However, defendant has not shown that the trust obligation has been breached in this case. Defendant seems to argue that no potential recipients could accept the account because it was so far in arrears by the time it was offered as a result of the government’s delay in offering to transfer Lemieux’s account to the tribe, an eligible tribal member or the Indian Housing Authority servicing the tribe. As an initial matter, this appears to be little more than a repackaging of defendant’s laches argument. Moreover, defendant has cited no authority suggesting that the government violates its trust obligation when it delays offering to transfer the delinquent account to the tribe pursuant to 7 C.F.R. § 3550.211. Defendant argues that by the time plaintiff offered to transfer the account, the mortgage amount far exceeded the value of the property, but defendant’s own proposed facts indicate that when the account *first* went into default, the amount due was nearly \$40,000, double the \$20,000 value of the appraised property. Accordingly, it is not clear that defendant suffered any genuine prejudice on account of the government’s delay in offering to transfer the account.

Defendant also argues that it will be prejudiced because a nonmember of the tribe

might acquire the property at the foreclosure sale. This argument is not persuasive. The lease agreement to which the tribe is a party contemplates the possibility that someone other than a member of the tribe might be the successful purchaser at a foreclosure sale.

Finally, defendant contends that this court has no jurisdiction over this case because defendant is entitled to sovereign immunity. Indian tribes enjoy many aspects of sovereignty, but they have no sovereign immunity in a suit brought by the United States. See United States v. Red Lake Band of Chippewa Indians, 827 F.2d 380, 383 (8th Cir. 1987) (holding that tribal immunity from suit without consent is a fundamental attribute of sovereignty of which tribes may be divested as result of their dependent status in relation to federal government).

I conclude that defendant has shown no reason why summary judgment should not be granted to plaintiff.

ORDER

IT IS ORDERED that

1) Plaintiff is entitled to judgment of foreclosure and sale as prayed for in its complaint. It is entitled to recover from the principal defendant, Samuel D. Lemieux, the following sum as of November 15, 2002, together with interest that will accumulate after that date in the amount of \$11.9686 per day:

Principal:	\$36,787.94
Interest as of 11/15/02:	\$20,543.62
Total Subsidy Granted:	\$40,743.97

Expenses:

Attorney Fees	\$200.00
Marshal Fees	\$233.60
Filing Fees	\$ 20.00
Title Search	\$ 60.00
Publishing Fees	\$233.53

Subtotal:	\$747.13
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TOTAL:	\$98,822.66
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2) The mortgaged premises shall be sold as a whole and the amounts due plaintiffs shall be paid out of the proceeds of the sale;

3) Sale of the premises shall be conducted by or under the direction of the United States Marshal for the Western District of Wisconsin; notice shall be made by publication in The Daily Press, published in the City of Ashland, County of Ashland, State of Wisconsin;

4) Deficiency judgment is being sought;

5) After the filing of notice of pendency of this action, defendants and their heirs, respectively, and all persons claiming under them, shall be barred and foreclosed forever of all right, title, interest and equity of redemption in said mortgaged leasehold interest so sold;

6) The clerk of court shall enter judgment of foreclosure and sale of said mortgaged

premises and collateral in accordance with the findings of fact and this order and shall enter default judgment against defendants Samuel D. Lemieux, Julie A. Lemieux, USA Financial Services, Inc. and Ford Motor Company.

Entered this 20th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge