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**IN THE
HO-CHUNK NATION SUPREME COURT**

HCN TREASURY DEPARTMENT, Ho-
Chunk Casino Hotel & Convention Center
and the Ho-Chunk Nation,

Appellants,

vs.

CORVETTES ON THE ISTHMUS and
Brian Newlun,

Appellees.

DECISION

Case No.: **SU 07-03**

This matter came before the full Court for *Oral Argument* on June 2nd, 2007 at a regularly scheduled meeting in Black River Falls. Associate Justice Mark D. Butterfield, Associate Justice Dennis Funmaker and Chief Justice Mary Jo B. Hunter heard *Oral Argument* from Alysia LaCounte of the HCN Dept. of Justice for the Appellant and Brian Newlun for the Appellee.

PROCEDURAL HISTORY

This case is an appeal from a decision of the Trial Court in Case No. CV 05-82 rendered January 5, 2007. The appellants are the Ho-Chunk Nation Treasury Dept. and the Ho-Chunk Nation Convention Center who claim to have validly entered into a contract with the appellees. The Trial Court dismissed the action on the contract holding that there was no properly delegated authority to enter into the contract by the agents of the appellant and therefore there was no subject matter jurisdiction for the Court to exercise. The appellants filed their appeal on March 9, 2007. The appeal was accepted at a regularly scheduled meeting of the HCN Supreme Court on March 31, 2007 and a *Scheduling Order* reflecting that fact was entered into on April 6, 2007.

1 After briefing was completed, *Oral Argument* was heard in this matter on June 2, 2007.
2 The matter was set for decision within sixty days, but due to the turn over of the seat of
3 Associate Justice Mark Butterfield, who did not stand for election, the doubt about whether he or
4 newly elected Associate Justice Greendeer-Lee would complete the case was not resolved until
5 August. A *Notice of Extension* of 30 days to issue the decision was entered on August 2, 2007.
6 This case is now overdue for decision.

8 DECISION

9 This case comes to the Court as a contract dispute but with an important twist. The Trial
10 Court held that it did not have subject matter jurisdiction over this dispute because the appellant
11 was unable to demonstrate that it had the properly delegated authority to enter into the contract in
12 dispute. Remarkably, the contract in dispute is a rather routine one between a Hotel and
13 Convention Center to rent space in the appellant's place of business in the ordinary course of
14 business.

15 The problem with this simple recitation of the issue is that there is no signed contract.
16 Both parties proceeded on the basis that they thought they had the authority to enter into
17 contracts. It is a given that the Ho-Chunk Nation Courts only have jurisdiction over "all cases
18 and controversies, both criminal and civil in law or in equity, arising under the Constitution,
19 laws, customs and traditions of the Ho-Chunk Nation." HCN CONST. ART. VII, § 5(a).

20 The appellant's claim that the Trial Court committed an error in law by dismissing this
21 case for lack of subject matter jurisdiction. The problem with its claim is that there is no signed
22 contract in evidence, no proof of properly delegated authority to sign contracts to the Ho-Chunk
23 Hotel and Convention manager, no statute of frauds, no uniform commercial code to apply ¹and
24

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¹ While there is a Uniform Commercial Code, its breadth is so truncated as to be nearly useless. *See* 5 HCC§ 7.

1 a dearth of evidence of custom and tradition to apply in the absence of positive statutory law.
2 Instead the appellant posits that this is not a case in law, i.e., a suit for damages, but rather a suit
3 in equity. It claims this is an oral contract yet fails to cite the law, custom or tradition which
4 gives the Court's of this Nation subject matter jurisdiction.

5 If this contention were it true would allow this Court to exercise its jurisdiction in the
6 absence of a contract. The problem the Court notes is that this is a confusion of principles. The
7 appellant has sued for breach of contract but desires a remedy in equity, quantum meriut, which
8 is measured in monetary terms, damages. This is still fundamentally a legal remedy which
9 requires the Court's to have substantive law to apply. It is said that equity does not assist a party
10 with unclean hands. In other words, a party who creates the problem should not be able to claim
11 foul for its own misdeeds.
12

13 In this case, the problem is manifold. The manager of the Ho-Chunk Convention Center
14 assumed they had the authority to contract without first confirming that it did, or that there was a
15 commercial law to apply and proceeded to negotiate a contract, which was not approved either
16 by the use of an approved standard form reviewed and approved by the HCN Department of
17 Justice in general, or reviewed by them specifically. To compound the error the Ho-Chunk Hotel
18 and Convention Center neither signed the contract itself nor got the appellees Corvettes on the
19 Isthmus to sign the contract, leaving the Court without a clear indication that there was a meeting
20 of the minds as to the substance of the contract. Both sides claimed the other was in breach at
21 least to some of the terms, none of which were memorialized in writing.
22

23 The appellant makes several rather strained arguments that since the HCN Legislature
24 approves position descriptions including that of the Ho-Chunk Hotel and Convention Center
25 Manager and appropriates funds to operate the hotel, that is sufficient to implicitly authorize the

1 manager to sign contracts. The problem is that the HCN Legislature is constitutionally charged
2 with entering into contracts for the Nation, HCN CONST. ART. V. § 2(a) & (i) and has the
3 authority to delegate that authority to the Executive Branch. *Id.* @ § 2(a). The Trial Court found
4 no evidence that authority to contract had been properly delegated to the Manager who
5 negotiated the contract with Corvettes on the Isthmus. The appellant failed to cite any such
6 explicit delegation.

7
8 This problem is of the Nation's own making and can be solved by having the HCN
9 Legislature enact a commercial code that explicitly and not implicitly delegates authority to enter
10 into contracts to sub-entities of the Nation. While the appellant cites a parade of horrors that
11 any person can refuse to pay the Nation and get away with it, this is highly overblown given that
12 the Nation has operated for nearly 13 years under the current Constitution with no such litany of
13 broken contracts evident. It is not for the Court's to make positive law. It can recognize custom
14 and tradition as a basis of law, but given the fact that Ho-Chunk people did not develop an
15 advanced commercial system which gave clear rules on what to do in case of a breach leaves this
16 Court with little recourse. The HCN Constitution is explicit in giving the authority to make laws
17 to the HCN Legislature. The Courts cannot exceed the authority which created them.

18
19 The Ho-Chunk Nation courts have looked at the issue who in the Nation has the authority
20 to enter into contracts as a vital safeguard of the Nation's resources. *See C & B Investments vs.*
21 *Ho-Chunk Nation Health Board*, SU96-13 (HCN Trial Ct. CV96-06). In various contexts where
22 value has been given and a property interest has vested such as when annual leave was earned it
23 has recognized the principle of quantum meruit, a Latin and not Ho-Chunk term to prevent the
24 Nation from unjustly taking a property interest without compensation. *See Ujke v. HCN*
25 *Legislature*, SU98-06 (HCN Tr. Ct. CV96-63).

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CONCLUSION

For the forgoing reasons the Court upholds the decision of the Trial Court.

IT IS SO ORDERED Dated this 19th day of November 2007.

Hon. Mark Butterfield, Associate Justice
HCN Supreme Court