

IN THE  
HO-CHUNK NATION SUPREME COURT

ENDORSED  
Filed in the Ho-Chunk Nation  
Trial Court/Supreme Court this

OCT 16 2013

*U. Munder*  
Authorized

Money Centers of America, Inc. and MCA of  
Wisconsin, Inc,  
Appellants,

v.

Ho-Chunk Nation,  
Appellee.

Case No.: SU 13-07 .

**JUDGMENT (Accepting  
Appeal & Scheduling Order;  
Denying Appeal)**

On October 8, 2013, the Appellants, Money Centers of America, Inc. and MCA of Wisconsin, Inc (hereafter, "Appellants") filed a timely appeal of a final Trial Court judgment issued on September 9, 2013. *HCN R. App. P. 7(a)*; *HCN R. Civ. P. 80(A)(1)*, available at <http://www.ho-chunknation.com/?PageId=123>. "Any party to a civil action . . . who is dissatisfied with [a] judgment . . . may appeal to the Supreme Court." *HCN Const., art. VII, § 14*, available at <http://www.ho-chunknation.com/?PageId=294>. Presumptively, "this Court is required to accept appeals which state an appealable issue." *Deena M. Basina v. William P. Smith*, SU 00-08 (HCN S. Ct., July 13, 2000) at 2. The Court, however, has consistently construed the constitutional right to appeal as applying only to a review of final judgments. *HCN R. App. P. 7*; see also, e.g., *Stewart Miller v. Ho-Chunk Nation et al.*, SU 99-08 (HCN S. Ct., Sept. 15, 1999).

On October 9, 2013, Appellee Ho-Chunk Nation<sup>1</sup> filed an appeal from an April 15, 2013 Summary Judgment Order in the same case. While the Constitution "confers the right

<sup>1</sup> Ho-Chunk Nation filed an appeal one day after *Notice of Appeal* was filed by Money Center of America, Inc., and MCA of Wisconsin, Inc and is determined the Appellee for purposes of this Order. Under Ho-Chunk Nation Rules of Appellate Procedure, Rule 7(b)2, "the party taking the appeal shall be referred to as the Appellant; all other parties shall be referred to as Appellees." Further, the Federal Rule of Appellate Procedure state that "[t]he party who files a notice of appeal first is the appellant" for purposes of cross-appeals. Fed. R. App. P. 28.1(b).

to appeal . . . , that power is circumscribed by the procedures set out in the HCN Rules of Appellate Procedure. . . . [A]ny party who seeks an appeal must abide by the procedural rules established by this Court . . . .” *Bonnie Smith v. HCN Gaming Comm’n*, SU 01-03 (HCN S. Ct., Mar. 16, 2001) at 1 (citing HCN Const., art. VII, § 7(b)). ‘In this sense, “[a]ppeals are not automatically a matter of right but are within the Court’s discretion. The *HCN R. App. P.* provides the guidelines as to how parties file an appeal.” *Veronica L. Wilber v. Ho-Chunk Nation*, SU 04-02 (HCN S. Ct., Apr. 14, 2004) at 2. The Court may decline to accept an appeal for failure to adhere to clear procedural requisites. *See Gale S. White v. Jean Day et al.*, CV 07-54 (HCN Tr. Ct., Dec. 9, 2008) at 16-17. “This Court, despite its infancy, must require those who come into our court system to follow our rules and requirements.” *Leigh Stephen et al. v. Ho-Chunk Nation*, SU 99-01 (HCN S. Ct., Mar. 23, 1999) at 3.

**I. Notice of Appeal Filed by Money Center of America, Inc. and MCA of Wisconsin, Inc.**

In the instant case, the *Notice of Appeal* was filed by Appellants on October 8, 2013. The matter came before the Court for discussion on October 9, 2013. Associate Justice Tricia Zunker, Associate Justice Todd Matha and Chief Justice Mary Jo Hunter reviewed the matter and perceived no appellate procedural violations. As a result, this appeal filed by Money Center of America and MCA of Wisconsin is accepted.

Additionally, Associate Justice Todd Matha has had prior minimal contact with Appellant MCA in Justice Matha's capacity as Solicitor General for the Milles Lacs Band and has recused himself. Therefore, this Court requires that the Ho-Chunk Nation Legislature appoint a Justice *Pro Tempore* pursuant to the Ho-Chunk Nation Constitution, art. VII, § 13.

## II. Notice of Appeal Filed By Ho-Chunk Nation

Further, the appeal filed by Appellee Ho-Chunk Nation on October 9, 2013 came before the Court for discussion between Chief Justice Mary Jo Hunter and Associate Justice Tricia Zunker on October 11, 2013. The *Notice of Appeal* raises two issues, both of which were addressed in the Summary Judgment Order in this case. See *Ho-Chunk Nation v. Money Center of America, Inc. et al.*, SU 13-03, (HCN S. Ct., May 15, 2013) at 20-22. The Summary Judgment Order denying motions for summary judgment was issued on April 15, 2013. The decision issued on April 15, 2013 represented a nonfinal judgment permitting appeal to the Supreme Court within ten calendar days after entry of such an order. *HCN R. App. P. 8*. The time limit for appeal ran on April 25, 2013 at 4:30 p.m. In fact, Appellee attempted to file an appeal on April 25, 2013, but it was received at 5:15 pm and denied for untimely appeal. See *Ho-Chunk Nation v. Money Center of America, Inc. et al.*, SU 13-03, (HCN S. Ct., May 15, 2013) at 1.

The Court is denying the request for appeal submitted by Appellee Ho-Chunk Nation on October 9, 2013. The basis for this decision lies in the procedurally defective manner in which the *Notice of Appeal* was filed as it was submitted untimely.

## III. Orders of the Court

A. With respect to the *Notice of Appeal* filed by Appellants Money Center of America and MCA on October 8, 2013, the Court hereby ORDERS:

- That this matter is *accepted* for appeal.
- That the briefs should be filed in accordance with the *HCN Rules of Appellate Procedure*, Rule 12.
- Upon appointment of the Justice *Pro Tempore*, this Court will set a date for oral argument.

B. With respect to the *Notice of Appeal* filed by Appellee Ho-Chunk Nation on October 9, 2013, the Court hereby ORDERS:

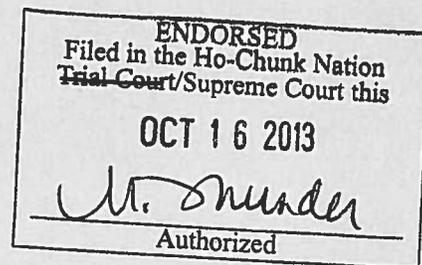
- That this matter is *denied* for appeal in accordance with the *HCN Rules of Appellate Procedure*, Rule 8.

**EGI HESKEKJET.** Dated this 16<sup>th</sup> day of October 2013.

*Tricia A. Zunker*

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Hon. Tricia A. Zunker, Associate Justice  
Per Curiam



CERTIFICATE OF SERVICE

I, Mary Thunder, Clerk for the Ho-Chunk Nation Supreme Court, do hereby certify that on the date set forth below, I served a true and correct copy of the **JUDGMENT (Accepting Appeal & Scheduling Order; Denying Appeal)** in **Case No. SU 13-07** upon all persons listed below:

By United States Postal Service:

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By Inter-office Departmental Mail:

Tribal Secretary  
Ho-Chunk Nation Legislature

Dated: October 16, 2013

*Mary Thunder*  
Mary Thunder, Clerk  
Ho-Chunk Nation Supreme Court