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

**Ho-Chunk Nation and HCN DeJope  
Gaming,**  
Plaintiffs,

v.

Case No.: **CV 10-37**

**Nicole Koenig,**  
Defendant.

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**ORDER  
(Addressing the Summary Judgment Motion Hearing)**

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The Court determined to convene a hearing so as to grant the plaintiffs the ability to argue the September 10, 2010 *Motion for Summary Judgment*, and provided the defendant the opportunity to offer a response at the hearing. The defendant has not corresponded with the Court regarding anything substantive. The Court convened the hearing on October 12, 2010 at 3:00 p.m., and the plaintiff and the defendant appeared. The Court inquired as to whether any material fact existed, and the defendant referred to a particular form and subsequent documentation. *Mot. Hr'g* (LPER, Oct. 12, 2010, 03:16:10 CDT). However, the defendant did not provide such a form or documentation.

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The *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*) provide an explanation of the motion process.<sup>1</sup>

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Rule 19. Filing and Responding to Motions.

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(A) Filing. *Motions* may be filed by a party with any pleading or at any time after their first pleading has been filed. A copy of all written *Motions* shall be delivered or mailed to other parties at least five (5) calendar days

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<sup>1</sup> Parties may obtain a copy of the *HCN R. Civ. P.* by contacting the Court at (800) 434-4070 or (715) 284-2722 or by visiting the judicial website at [www.ho-chunknation.com](http://www.ho-chunknation.com).

1 before the time specified for a hearing on the *Motion*. *Motions for*  
2 *Extension of Time* and *More Definite Statement* may be filed before the  
3 initial pleading.

4 (B) Responses. A *Response* to a written *Motion* must be filed at least one  
5 (1) day before the hearing. If no hearing is scheduled, the *Response* must  
6 be filed with the Court and served on the other parties within ten (10)  
7 calendar days of the date the *Motion* was filed. The party filing the  
8 *Motion* must file any *Reply* within three (3) calendar days.

9 Rule 55. Summary Judgment.

10 Any time after the date an *Answer* is due or filed, a party may file a  
11 *Motion for Summary Judgment* on any or all of the issues presented in the  
12 action. The Court will render summary judgment in favor of the moving  
13 party if there is no genuine issue as to material fact and the moving party  
14 is entitled to judgment as a matter of law.

15 The Court did not properly alert the defendant to her need to set forth specific material  
16 facts capable of contradicting the plaintiffs' recounting of events in the motion. *See Sherry*  
17 *Wilson v. HCN Dep't of Pers.*, CV 05-43 (HCN Tr. Ct., Dec. 21, 2006) at 14, n.2. The Court  
18 failed to inform the *pro se* litigant that the case may not proceed to trial since the Court could  
19 determine any issues of law upon the factual record available. The defendant cannot merely rely  
20 upon previous submissions or assertions, but must refer to evidence contained in affidavits,  
21 business records, discovery responses, and other comparable forms of physical evidence. *See*  
22 *Aleksandra Cichowski v. Four Winds Ins. Agency, LLC*, CV 01-90 (HCN Tr. Ct., Dec. 15, 2003)  
23 at 15-18, *aff'd*, SU 04-01 (HCN S. Ct., Aug. 20, 2004); *see also Donna L. Peterson v. HCN*  
24 *Compliance Div.*, CV 98-51 (HCN Tr. Ct., June 22, 1999) at 3-4. The Court shall employ the  
25 standard articulated in the *HCN R. Civ. P.* to determine the *Motion for Summary Judgment*,  
26 assessing whether "there is no genuine issue as to material fact and [whether] the moving party is  
27 entitled to judgment as a matter of law." *HCN R. Civ. P. 55.*  
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1 In light of these procedural errors, the Court shall provide the defendant a two (2) week  
2 timeframe to provide the aforementioned documentation. The Court will allow the defendant to  
3 request an additional hearing in order to contradict the plaintiffs' assertions. If the defendant  
4 requests a hearing, then the Court will grant the plaintiff an opportunity to respond to any  
5 documents submitted. *HCN R. Civ. P.*, 19(B). If the Court does not receive any documentation  
6 from the defendant prior to November 4, 2010, then the Court will consider the lack of response  
7 as an indication that there is no dispute as to fact. The Court will then determine whether the  
8 moving party may prevail as a matter of law.  
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11 **IT IS SO ORDERED** this 21st day of October 2010, by the Ho-Chunk Nation Trial  
12 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

SgPlus1

13 *Amanda L. Rockman*  
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10/20/2010 04:13:39 pm

15 Honorable Amanda L. Rockman  
16 Associate Trial Court Judge

Ho-Chunk Nation Court System  
P.O. Box 70  
Black River Falls, WI 54615  
(715) 284-2722 or 800-434-4070

