

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

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**Ho-Chunk Nation,**

Appellee,

v

**ORDER DENYING APPEAL**

Case No. SU03-06

**Bank of America, N.A.,**

Appellant

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This matter came before the full Court on Thursday, June 26, 2003 to determine whether or not to accept this case for appeal. The Court reviewed the appellate record. The record consists of the *Notice of Appeal* filed by Attorney Thomas E. Harms of Moss & Barnett, a Professional Association on June 18, 2003. Mr. Harms is appealing the May 19, 2003 *Order (Denying Motion to Dismiss)* signed by the Honorable William Bossman in *CV-02-93*. The opposing party has not filed any pleadings.

**APPLICABLE LAW**

The Appellant's *Notice of Appeal* is filed pursuant to *HCN R. App. P. 7(c)*.

*HCN R. App. P. 7* sets forth the Right of Appeal. 7 (a) states:

All parties have the right to appeal a final judgment or order of the Trial Court. Any party to a civil action, who is dissatisfied with the judgment or verdict may appeal to the Supreme Court.

*HCN R. App. P. 7(c)* states:

In any case in which an appeal is reflected as required by this Rule, the appellant may petition the Supreme Court for an order staying the judgment or order. A stay shall be granted in all cases in which it is requested unless manifest injustice would result therefrom. The Supreme Court may render a stay conditioned upon execution of a bond to guarantee performance of the judgment or order when deemed necessary.

HCN R. App. P. 7.5 states:

An appeal from an interlocutory order may be sought by filing a petition for permission to appeal with the clerk of court within ten (10) calendar days after the entry of such order with proof of service on all other parties to the action. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the trial court; a statement of the question itself; and a statement of the reasons why substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed a copy of the order from which appeal is sought and of any findings of fact, conclusions of law and opinion relating thereto. Within ten (10) calendar days after service of the petition an adverse party may file an answer in opposition.

### DECISION

It is the opinion of this Court that the matter now before us is not an appeal from a final judgment or order of the Trial Court, which is an appeal of right. Rather, this matter is an interlocutory appeal of a decision of the Trial Court, which properly should have been brought pursuant to *HCN R. App. P. 7.5*.

Upon review of the Appellant's *Notice of Appeal*, this Court is not convinced that the issues brought before this Court are the result of the final decision of the Trial Court. *HCN R. App. P. 7* would not apply and therefore the filing timelines applicable under *HCN R. App. P. 7* do not apply.

As this Court has clearly stated in *Margaret G. Garvin v. Donald Greengrass and Margaret G. Garvin v. Ho-Chunk Nation*, and *Donald Greengrass in his official and individual capacity*, and *Evans Littlegeorge in his individual capacity*, SU 01-04 (HCN S. Ct., April 05, 2001), it prefers to accept appeals from after Trial Court has fully considered and disposed of all

of the issues based on the facts of the case. Like the Court in the *Garvin* case, this Court favors the complete development of the record rather than dealing with a case on a piecemeal basis.<sup>1</sup>

In this matter, HCN *R. App. P. 7.5* sets forth the applicable timeline. Pursuant to that rule, the Appellant's *Notice of Appeal* is untimely in that the *Order Denying Motion to Dismiss* was issued on May 19, 2003. Had the Appellant's legal counsel followed the appropriate rule, HCN *R. App. P. 7.5*, any *Notice of Appeal* would have to be filed within ten days of that date or by May 28, 2003. In this instance the *Notice of Appeal* was not filed until June 18, 2003, well after the deadline under the applicable rule.

Members of the Ho Chunk Nation Bar are provided with a copy of the Nation's *Rules of Appellate Procedure* by the Clerk of the HCN Supreme Court and Appellant's counsel is not an exception. As an attorney representing clients before the Ho Chunk Nation bar, there is a responsibility to acquire the legal knowledge to zealously represent the client. This includes the acquisition of all pertinent rules of the court, thus assuring that all matters have the opportunity to be heard and all justiciable issues are addressed.

Pursuant to HCN CONSTITUTION ART. VII § 7 the Supreme Court is charged with establishing written rules regarding qualifications to practice before the Ho-Chunk Courts. This Court has verified that Attorney Thomas E. Harms has been an admitted member of the Ho Chunk Nation Bar since November 06, 2002. An individual becomes eligible to practice before the Ho-Chunk Courts through compliance with the *HCN Rules for Admission to Practice*. Applicants swear to an Oath that states, in part, that "I do solemnly swear: I am familiar with and will support the Constitution and laws of the Ho-Chunk Nation. I will maintain the respect due

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<sup>1</sup> Moreover, Tribal Courts which are frequently under attack must be cognizant of the importance of the development of a full factual record. See *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) a case that was decided upon a Motion to Dismiss and factual record poorly and inadequately developed.

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

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Ho-Chunk Nation,  
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v.

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Appellants,

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**Notice of  
Extension**  
Case No. SU -3-06

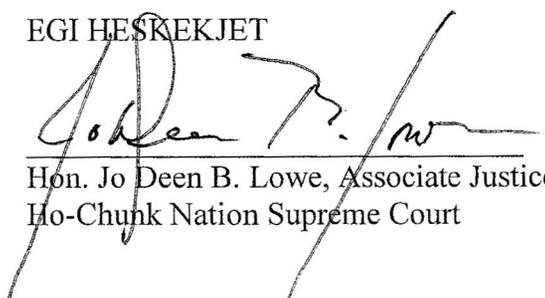
The *Appellant Bank's Notice of Motion and Motion for Reconsideration to Reinstate Appeal or in the Alternative, to Amend Order Denying Appeal* and supporting Exhibits were received by the Clerk of the Supreme Court on July 14, 2003. *Appellee Nation submitted a Brief Opposing Bank of America's Motion for Reconsideration and the Affidavit of Justice Ericson Lindell and Supporting Exhibits* on July 17, 2003. The *Appellant* submitted a *Reply Memorandum in Support of Motion to Reconsider or Modify Appeal* on July 17, 2003.

The full court has not been able to complete its deliberation on this matter due to scheduling conflicts and illness. Due to the issues presented in this case, the Court is extending the decision deadline for an additional thirty (30) days. Based on the HCN Rules of Appellate Procedure, the Court hereby **ORDERS**:

That a decision on this matter will be rendered within thirty (30) days from the date of this Order pursuant to HCN R. App. P. 15, (c).

Date this 14<sup>th</sup> Day of August 2003

EGI HESKEKJET



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Hon. Jo Deen B. Lowe, Associate Justice  
Ho-Chunk Nation Supreme Court

to the courts and judicial officers and consent to the Court's jurisdiction, including the jurisdiction to sanction attorneys....”

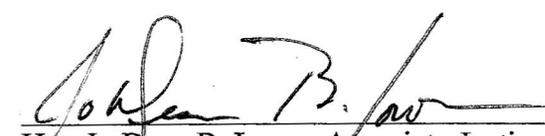
Here there is no final order of the Trial Court which may be appealed; neither is there a proper and timely pleading of an appeal by permission pursuant to HCN *R. App. P. 7.5*, therefore it is the order of this Court that the Appeal is hereby denied.

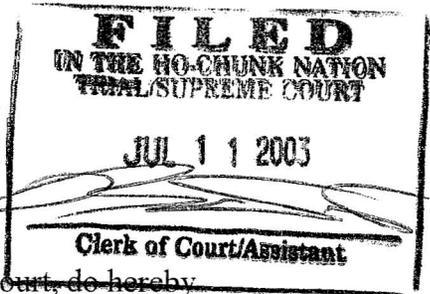
EGI HESKEKJET.

Dated this 10th day of July 2003.

  
\_\_\_\_\_  
Hon. Mary Jo B. Hunter, Chief Justice  
Ho-Chunk Nation Supreme Court

  
\_\_\_\_\_  
Hon. Mark Butterfield, Associate Justice  
Ho-Chunk Nation Supreme Court

  
\_\_\_\_\_  
Hon Jo Deen B. Lowe, Associate Justice  
Ho-Chunk Nation Supreme Court



CERTIFICATE OF SERVICE

I, Bryan Dietzler, Clerk of 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 Decision in Case No. SU- 03-07 (CV 03-42) By the United States Postal Service, upon all person listed below:

Mr. Michael Murphy  
Department of Justice  
(Fax and Mail)  
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Staff Attorney  
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Black River Falls, WI 54615

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Hon. William Bossman  
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Black River Falls, WI 54615

HCN Election Board  
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Black River Falls, WI 54615

Indian Law Reporter  
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Oakland, CA 94610

Hon. Mary Jo B. Hunter  
HCN Supreme Court Chief Justice  
4 Linder Court  
St. Paul, MN 55106

Hon. Mark Butterfield  
HCN Supreme Court Associate Justice  
1021 Ellen Dr.  
Tomah, WI 54660

Date: July 11, 2003

Hon. Jo Deen Lowe  
HCN Supreme Court Associate Justice  
N5710 Hwy 12-16  
New Lisbon, WI 53950

  
Bryan Dietzler, Clerk of Court  
Ho-Chunk Nation Supreme Court

IN THE  
HO-CHUNK NATION SUPREME COURT

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

AUG 14 2003

Clerk of Court/Assistant

Ho-Chunk Nation,  
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v.

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**Notice of  
Extension**  
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EGI HESKEKJET

  
Hon. Jo Deen B. Lowe, Associate Justice  
Ho-Chunk Nation Supreme Court

CERTIFICATE OF SERVICE

I, Bryan Dietzler, Clerk of 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 Notice of Extension in Case No. SU- 03-06 (CV 02-93) By the United States Postal Service, upon all person listed below:

Ms. Shelia Corbine  
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Moss And Barnett  
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HCN Supreme Court Chief Justice  
4 Linder Court  
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Tomah, WI 54660

Hon. Jo Deen Lowe  
HCN Supreme Court Associate Justice  
N5710 Hwy 12-16  
New Lisbon, WI 53950

Date: August 14, 2003



Bryan Dietzler, Clerk of Court  
Ho-Chunk Nation Supreme Court