

IN THE  
HO-CHUNK NATION SUPREME COURT

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

SEP 29 2000

*Missy J Elk*  
Clerk of Court/Assistant

Ho-Chunk Nation,  
Appellant,

Decision

vs.

SU 00-04

Harry Steindorf and Jess Steindorf,  
Appellees.

Heard before Chief Justice Mary Jo B. Hunter, Associate Justice Rita A. Cleveland and Associate Justice Debra C. Greengrass.

This matter comes before the Ho-Chunk Nation Supreme Court on Appellant's Notice of Appeal filed March 9, 2000. The Appellant's are appealing Judge Matha's Order (Granting Motion to Dismiss) CV99-82, issued February 11, 2000 ruling that the Ho-Chunk Nation Tribal Court does not have subject matter jurisdiction over this matter. Appellant's also filed a Notice & Motion to Enlarge Time For Filing Brief. On March 17, 2000 the Supreme Court granted the Appellant's Notice of Appeal for appellate review, granted their Motion for Enlargement of Time and reserved scheduling oral arguments. Appellant's filed a Notice and Motion to Certify A Question of Law seeking to certify a question of law to the Ho-Chunk Nation Traditional Court on March 29, 2000. Appellee, Harry Steindorf, submitted his Answer in Opposition to Appellant's Notice of Appeal and Motion on April 10, 2000. The Supreme Court denied Appellant's Motion to Certify a Question of Law on April 18, 2000 pursuant to HCN Const. Art. VII, Sec. 6, "(t)he Trial Court shall have the power to make findings of fact and conclusions of law". On May 12, 2000 the Supreme Court issued an Order scheduling the matter for oral arguments on May 26, 2000 to be heard at the Ho-Chunk Nation Tribal Court Building in Black River Falls, Wisconsin. Appellee, Harry Steindorf, filed a Motion to Postpone Oral Arguments on May 16, 2000 due to Mr. Steindorf's prior out-of-state engagement. The

Court's May 18, 2000 Order granted the Appellee's Motion to Postpone Oral Arguments until further notice. The Supreme Court subsequently issued an Order on June 13, 2000 Rescheduling Oral Arguments to be heard by the full court on July 15, 2000. Oral Arguments were held as scheduled, the Appellant's was represented by Attorney John S. Swimmer, Appellee Harry Steindorf, appeared pro se with non-appearance by Appellee Jess Steindorf. On August 9, 2000 the Supreme Court issued an Extension Order, on its own motion, requesting additional time to render a final decision. The Court has reviewed the trial court's record, taped recordings, transcripts, appellate briefs and the oral argument transcripts. The Supreme Court hereby AFFIRMS Judge Matha's Order (Granting Motion to Dismiss) dated February 11, 2000 for lack of subject matter jurisdiction.

On October 15, 1999 the Ho-Chunk Nation Department of Justice filed a seven (7) page complaint with the Ho-Chunk Nation (hereinafter HCN) Trial Court against Co-defendants Harry and Jess Steindorf. The complaint alleges Breach of Fiduciary Duty against Defendant's/Appellee's, Intentional Misrepresentation against Defendant's/Appellee's, Unjust Enrichment Against the Steindorf's Jointly and Severally and Civil Conversion Jointly and Severally Against the Defendant's/Appellee's. On November 8, 1999 Appellee Harry Steindorf filed his Answer to the Complaint including a Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim upon which Relief can be Granted. The Trial Court conducted a Motion Hearing on December 15, 1999 at which time the Court addressed the Appellee's Motion to Dismiss. In the Order (Granting Motion to Dismiss) Judge Matha made the following finding of fact, at #3 and #4, the defendants Harry and Jess Steindorf, are enrolled members of the Ho-Chunk Nation. Finding of fact # 6, states "DJ Hosts, Inc. was a corporation chartered under Wis. Stats. Ch. 180, with its principal place of business ... in Madison, Wisconsin". At finding of fact #11, "All causes of action set forth in the October 15, 1999 *Complaint* arose from alleged conduct of the defendants which occurred during the

period of June 1996 until September 1998. *Id.* At 3,4. At all relevant times, the defendants were employees of DJ Hosts, Inc.” Finding of fact # 13 states, “DJ Hosts, Inc. abided by its separate Articles of Incorporation and Bylaws.”

Appellant asserts that the HCN Court has subject matter jurisdiction over the above captioned matter. Appellant refers to Black’s Law Dictionary 1425 (6<sup>th</sup> ed. 1990), in defining subject matter as it “refers to the court’s power to hear and determine cases of general class or category”. See Reply Brief at 1. The Court looks to the definition of subject matter, preceding Appellant’s cite as “(t) he subject, or matter presented for consideration; the thing in dispute; the right which one party claims as against the other...”

According to the Ho-Chunk Nation Constitution, Art. VII, Sec. 5, the “Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation”. Appellant misunderstands this provision to mean a granting of subject matter jurisdiction over all cases and controversies. A controversy is ‘the thing in dispute’; a dispute of law that grants the HCN courts subject matter jurisdiction. A dispute in law in which the HCN Trial Court can apply.

Appellant cites *C& B Investments vs. HCN Dept. of Health*, CV96-06 (HCN Tr. Ct. 1996), a commercial property lease agreement case as a grant of jurisdiction. C & B Investments filed an action in state district court for breach of the lease agreement. The HCN moved the district court to dismiss the action based upon the HCN Sovereign Immunity. The district court granted the Nation’s Motion to Dismiss based on that the Nation’s Sovereign Immunity was not waived in the lease agreement. The Motion to Dismiss was not based on the Appellant’s view of tribal sovereignty.

Appellant’s brief in support of subject matter jurisdiction cites the HCN Const. Art. I sec. 2 as it pertains to territorial boundaries to include all lands for the interest of the HCN. Appellant argues that

jurisdiction extends to and over any additional lands acquired by the Nation for the benefit of the people under Art. I, sec. 1. Appellant contends that since DJ Hosts, Inc. is a tribal organization authorized by the HCN to operate a Ramada Inn within its territorial boundaries is therefore part of the HCN subject to the jurisdiction of the court. DJ Hosts, Inc. is located within the territorial boundaries of the HCN does not grant the court subject matter jurisdiction over the dispute. Appellant cites *Giedosh vs. Little Wound School Board*, 995 F. Supp. 1052 (1997), as to whether incorporation under the state law of South Dakota comes within the definition of an Indian Tribe exempt from the ADA. See Brief at p. 7. The Court in *Giedosh* ruled that the state law was irrelevant reasoning that the incorporation "was with the consent and authorization of the Tribe". *Id.* at 1055. *Giedosh* further states that "(t) he Little Wound School must adhere to the Oglala Sioux Tribal Council's resolutions and ordinances". *Id.* at 1055. The Court also recognizes the governing federal laws and the exemption clause in the American with Disabilities Act.

Appellant's further contends that since the Appellees' are tribal members they are subject to the personal jurisdiction of the courts. The Appellant contends that the HCN thus has subject matter jurisdiction over the matter. The Court disagrees and affirms Judge Matha's decision at p. 10, "... personal jurisdiction alone does not confer subject matter jurisdiction."

Appellant asserts that Appellees are employees of the Nation and subject to the HCN Personnel Policy and Procedure Manuel. The Court agrees with Judge Matha's ruling that the civil cause of action in *HCN v. Tammy Lang*, CV98-46 (HCN Tr. Ct. April 1, 1999) arose from a specific violation of the HCN Personnel Policy and Procedure Manuel (hereinafter PPM), Standards of Conduct for employees at Chapter 12. Ms. Lang was an employee of the HCN Dept of Education-Head Start Program at the time of the violations. In *Lang*, the Court found the HCN could recover for civil conversion and breach of fiduciary duty for monies misappropriated by the defendant. Appellant

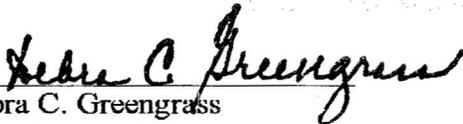
asserts that the misusing of tribal funds for the Appellee's own personal gain falls under the Nation's PPM. The PPM is HCN law governing actions of its employees. Ms. Lang was an employee of the Nation and governed by the PPM. In the present case, Harry Steindorf held the offices of Chairman of the Board and President of DJ Hosts, Inc. and not governed by the PPM. Likewise, Jess Steindorf was an employee of DJ Hosts, Inc. and not governed under the PPM.

The Court is persuaded by *Worcester vs. Georgia*, 31 U.S. (6 Pet) 515, 8 L.Ed. 483 (1831), that "(a) bsent acts of Congress, tribes have the inherent right to make their own laws and to be ruled by them". The HCN Const. Art. V, Sec.2 (a), 'the Legislature shall have the power to make laws...' The HCN Legislature have not enacted a law to which the HCN Trial Court can apply to this case on appeal. The HCN Supreme Court hereby affirms Judge Matha's ruling that Wisconsin State law governs this matter and the HCN lacks subject matter jurisdiction.

**EGI HESHKEKJET.**

**IT IS SO ORDERED** this 29<sup>th</sup> day of September 2000.

Per Curiam.



Debra C. Greengrass  
Associate Justice  
HCN Supreme Court

SEP 29 2000

*Missy Elk*  
Clerk of Court/Assistant

## CERTIFICATE OF SERVICE

I, Missy Elk, Clerk of the Ho-Chunk Nation Supreme Court of the Ho-Chunk Nation, do hereby certify that on the date set forth below I served a true and corrected copy of the attached paper filed in Case No. SU-00-04 (CV-99-82), by the United States Postal Service, upon all persons listed below:

John Swimmer  
HCN Dept. Of Justice  
P.O. Box 667  
Black River Falls, WI 54615

Harry and Jess Steindorf  
460 Bonnie Road  
Cottage Grove, WI 53527

Hon. Rita A. Cleveland  
367 River Street  
Black River Falls, WI 54615

Hon. Debra Greengrass  
6200 West Locust Street  
Milwaukee, WI 53210

Hon. Mary Jo Brooks Hunter  
4 Linder Court  
Saint Paul, MN 55106

Date: September 29, 2000

*Missy Elk*  
Missy Elk, Clerk of Court  
Ho-Chunk Nation Supreme Court

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OCT-02 2000

*Missy Elk*

~~Clerk of Court/Assistant~~

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Indian Law Reporter  
319 Mc Arther Blvd.  
Oakland, CA 94610

Date: October 2, 2000

*Missy Elk*

Missy Elk, Clerk of Court  
Ho-Chunk Nation Supreme Court