

FEB 22 1999

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Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

DAVID M. UJKE,
Appellant,

vs.

HO-CHUNK NATION,
Appellee.

OPINION
Case No. SU98-06

STATEMENT OF THE CASE

This matter came before the full Court for oral argument on Saturday, December 5, 1998 at the Ho-Chunk Nation Tribal Court Building, W9598 Highway 54 East, Black River Falls, Wisconsin. The Court reviewed the Appellant's Brief, the Appellee's Brief, the Appellant's Reply Brief and the entire court record consisting of exhibits, records and transcripts from the trial court case. Justices Pro Tempore John Wabaunsee and Rebecca Weise heard and Chief Justice Mary Jo B. Hunter presided over this matter.

This case is an appeal of a judgment entered in the Ho-Chunk Nation Trial Court on August 17, 1998 by the Honorable Mark Butterfield (CV-96-63). This is an appeal of an action involving a complaint filed by former tribal attorney David M. Ujke alleging a breach of contract against his former employer, the Ho-Chunk Nation. The lower court held that the contract was not binding. (Judgment, p. 16)

On September 15, 1998, David M. Ujke appealed the judgment of the lower court for the following reasons: (1) That the Trial Court erred in determining the validity of the attorney contract at issue; (a) by ignoring the specific wording adopted in the Ho-Chunk Constitution as a

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sovereign decision of the Ho-Chunk people, approved by the Secretary of the Interior; (b) by misinterpreting and misapplying federal statutes, 25 U.S.C. sections 476 and 1331; (c) by ignoring the relevance of legislative efforts to unlawfully renege on the Ho-Chunk Nation's prior sovereign commitment; and (2) that the Trial Court erred in determining that the plaintiff could not reasonably rely on the word and decisions of the Ho-Chunk Executive and Legislature.

STATEMENT OF THE FACTS

David M. Ujke began working for the Ho-Chunk Nation on November 6, 1995 when he signed an employment contract. On or about January 30, 1996, Mr. Ujke's attorney contract was approved by the Ho-Chunk Nation (HCN) Legislature. (HCN Legislative Resolution 1-30-96F) The attorney contract was submitted to the Bureau of Indian Affairs (BIA). The BIA returned the attorney contract to the HCN Legislature and requested that minor changes be made "prior to approval". The changes were made and approved by the HCN Legislature on April 23, 1996.

On April 29, 1996, David Ujke signed the attorney contract addendum. On May 2, 1996, former HCN President Chloris A. Lowe signed the attorney contract addendum. It is unclear from the record as to why the attorney contract addendum was never forwarded to the BIA for approval after changes had been made. Nevertheless, Mr. Ujke's attorney contract addendum was not resubmitted.

On July 23, 1996, the HCN Legislature voted against passing a resolution to authorize an

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attorney contract between Mr. David Ujke and the Ho-Chunk Nation. Mr. Ujke's efforts to address the Legislature was refused. On September 10, 1996, the HCN Legislature adopted a formal resolution to ratify its action of non-approval. Various efforts were made by the former President Chloris Lowe. However, on September 20, 1996, Robert Funmaker, an HCN Legislator, formally notified President Lowe that he would not sign payroll checks for Mr. Ujke.

On October 1, 1996, Mr. Ujke wrote a letter to Chloris Lowe which indicated his belief that he had been constructively discharged as he had not received his paycheck for two weeks.

At that time, Mr. Ujke was scheduled for a vacation from September 27 to October 7, 1996. He had accumulated 56 hours of annual leave for which he was not paid.

DECISION

I. Did the trial court err in determining the validity of the attorney contract at issue?

A. Did the trial court err by ignoring the specific wording adopted in the Ho-Chunk Constitution as a sovereign decision of the Ho-Chunk people, approved by the Secretary of the Interior?

The lower court considered the case pursuant to the arguments made below.

Unfortunately, the lower court did not make a specific ruling on the question presented as to the Ho-Chunk Nation Constitution. Although this Court cannot substitute its judgment for that of the trial court, it would seem that the omission was due to a lack of relevance rather than an error by the lower court. The appellant correctly asserts that the Ho-Chunk Nation Constitution had

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been rewritten. Nevertheless, the simple rewriting of a tribal constitution does not allow for a tribe to circumvent federal laws which are applicable to Indian tribes. For example, a tribe could not rewrite their constitution to state that it would not comply with the Indian Civil Rights Act and then, the tribe could ignore that federal law by reason of it's rewritten constitution.

Thus, the argument raised by the appellant does not provide a basis for finding an error on the part of the trial court when it did not address that argument. Furthermore, the Savings Clause of the Constitution, Article XIV, states that "All actions of the Nation...shall remain in full force and effect to the extent that they are consistent with this Constitution." The omission of the particular phrase requiring secretarial approval is not necessarily inconsistent with the Constitution where no evidence is submitted to indicate an express intention to delete the phrase as a basis to no longer require that secretarial approval.

B. Did the trial court err by misinterpreting and misapplying federal statutes, 25 U.S.C. sections 476 and 1331?

This Court reviewed this argument extensively and addressed several questions to this area at oral argument. Although this Court is sympathetic to the situation of Mr. Ujke, this Court is unable to find an error in the trial court's judgment as it interprets the federal statutes applicable in this case. We, therefore, affirm that trial court's judgment in this regard.

The lower court reviewed that applicability of Section 476 and held that the Secretary of the Interior (through his agents) had "considered and rejected the submitted contract because it

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lacked certain required elements." (Judgment at p. 12) Upon review of Section 476 (e), this Court agrees with the lower court judgment that the contract is subject to the approval of the Secretary based upon the language of that section. The record below evidences the necessity of resubmitting attorney contracts with the addendums prior to the Ho-Chunk Nation enforcing them as completed contracts. We hold that the lower court did not misinterpret or misapply any federal statutes in reaching its result. Therefore, we **affirm** the trial court's judgment of August 17, 1998.

C. Did the trial court err by ignoring the relevance of legislative efforts to unlawfully renege on the Ho-Chunk Nation's prior sovereign commitment?

Based upon the reasoning above, this Court correctly applied federal law to reach its decision. The question of any legislative efforts to unlawfully renege on a commitment is not persuasive where we uphold the correct application of a federal law as the basis for not honoring an unapproved contract.

II. Did the trial court err in determining that the appellant could not reasonably rely on the word and decisions of the Ho-Chunk Executive and Legislature?

This Court is not addressing this issue as we have affirmed the lower court's decision based on the reasons stated above.

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CONCLUSION

For the foregoing reasons, the Judgment of the Honorable Mark Butterfield signed on August 17, 1998 in this matter is hereby **AFFIRMED**.

IT IS SO ORDERED. EGI MESHKEKJET.

Dated this 22nd day of February 1999.

Per Curiam.

Mary Jo B. Hunter
Hon. Mary Jo (Brooks) Hunter, Chief Justice
Ho-Chunk Nation Supreme Court