

OCT 21 1998

Willa Red Cloud
Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

HO-CHUNK NATION GAMING COMMISSION,
Appellant,

DECISION

vs.

WALLACE JOHNSON,

Appellee,

SU-98-05

This Interlocutory Appeal was filed on September 3, 1998 with the Ho-Chunk Nation (herein HCN) Supreme Court pursuant to the HCN Rules of Appellate Procedure, Rule 7.5. This Court reviewed Appellant's challenge to a Trial Court's decision, dated August 24, 1998, as committing reversible error by allowing the Appellee's appeal of an HCN Gaming Commission action despite the doctrine of laches. The Appellant's served Appellee, through Lay Advocate Rick McArthur, on September 4, 1998. The Court accepted this matter for appeal and issued a Scheduling Order according to Appellate Rule 7.5. The Appellee did not submit an 'Answer in Opposition', within 10-day time limit of September 14, 1998. This Court proceeded with reviewing the Trial Court record, applicable law and case law precedent. It is the decision of the HCN Supreme Court to **REVERSE** the Trial Court Judgement dated August 24, 1998 and **REMAND** back to the Trial Court for final disposition in accordance with the instructions.

Appellee files a Complaint with HCN Trial Court against the HCN Gaming Commission based upon a memorandum dated January 14, 1997. The complaint refers to a specific action that the HCN Gaming Commission undertook to affect his employment. In the Trial Court's decision at page 1, "...this Court had determined that since he was arguing a Gaming Commission decision, the Trial Court is governed by the HO-CHUNK NATION AMENDED AND RELATED GAMING ORDINANCE (herein Gaming Ordinance).

On February 20, 1996, the HCN Legislature duly adopted the Gaming Ordinance, Resolution 2/20/96B, pursuant to HCN Constitution, Article V, Section 2 (a) and (x). The Gaming Ordinance, General Provisions and Purpose, Ch. 1, Sec. 104 reads (emphasis added):

"The regulations and rules set forth in this Ordinance shall govern all gaming Operations conducted on the Nation's Land. To the extent that the Nation's existing or subsequently adopted personnel manuals, policies and procedures are inconsistent with this Ordinance or with actions of the Commission pursuant to this Ordinance, this Ordinance shall supersede such personnel manuals, policies and procedures."

The HCN Supreme Court also reviewed HCN Gaming Ordinance, Ch. 11, Sec. 1101 (c)(i), which states (emphasis added):

"Filing Appeal. An Appellant may file a petition of review and three (3) duplicate copies with the Clerk of the Ho-Chunk Nation trial court requesting that the trial court review a decision of the Commission....The Petition must be filed within forty-five(45) days of the decision unless additional time is granted by the court and shall include a copy of the Commission's Decision and Order appealed from and contain a short statement of the reason for the appeal."

The Trial Court committed the error by ignoring the statute of limitations in which to appeal a Gaming Commission decision. The Court also created an exception to the time limitations required under Ch. 11, Sec. 1101 (c)(i) of the Gaming Ordinance. This exception was based upon a change of circumstances on behalf of the licensee. The Appellee's recourse was to file a Motion for Reconsideration before the HCN Gaming Commission who makes decisions regarding employees gaming license.

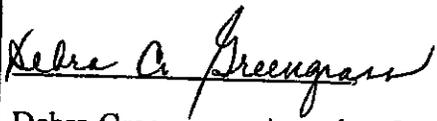
The Trial Court's own precedent case followed the doctrine of laches in Jacqueline R. Nichols v. Randy Snowball CV97-167(HCN Tr. Ct. Apr.15,1998). The Order of Dismissal at page 2 states "....this suit is time barred by the doctrine of laches." The plaintiff in this suit filed a complaint with Trial Court two (2) years after the challenged action. Same Order at page 5, " This Court finds that too much time has lapsed." Similarly, in Lance Meronek V. HCN and Rainbow Casino, CV 98-15 (HCN Tr. Ct. Jul. 17,1998), the Court at page 3 "....the doctrine of laches would bar the suit, due to the untimely nature of the suit." Case was Dismissed.

Appellee filed his complaint on April 28, 1998 fifteen months after the January 14, 1997 memorandum, in question. The interlocutory appeal before the HCN Supreme Court is **REVERSED** according to the doctrine of laches enacted by the HCN Legislature Resolution 2/20/96B, HCN law. It is ordered **REMANDED** back to the Trial Court for Dismissal consistent with our decision, HCN law and case law precedent.

IT IS ORDERED. EGI HESHKEKJENET.

Per Curiam.

Dated this 21st day of October 1998.



Debra Greengrass, Associate Justice
Ho-Chunk Nation Supreme Court