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PROCEDURAL HISTORY

The plaintiff initiated this action by filing a *Complaint* with the Court on June 17, 2010. Consequently, the Court issued a *Summons* accompanied by the above-mentioned *Complaint* on June 18, 2010. On June 23, 2010, Mr. Eric M. Aflerbach, a Pennsylvania State Process Server, personally served the *Summons* and *Complaint* on Mr. Mark Wolfington, Chief Operating Officer of the defendants, Money Centers of America, Inc. (hereinafter MCA) and MCA of Wisconsin, Inc. at 700 South Henderson Road, Suite 325, King of Prussia, PA, 19406.

On July 14, 2010, the parties filed a *Joint Motion of Money Centers of America, Inc., and MCA of Wisconsin, Inc., For Extension of Time to File Answer to Plaintiff's Complaint or Otherwise Plead*. The Court granted the *Joint Motion* and extended the defendants' response deadline to July 23, 2010. *Order (Granting Joint Mot. For Time Extension)*, CV 10-54 (HCN Tr. Ct., Jul. 14, 2010). The defendants filed a timely *Answer with Affirmative Defenses and Counterclaims* on July 23, 2010.¹

On July 29, 2010, the defendants filed a *Motion to Dismiss for Lack of Jurisdiction*. The parties filed a *Joint Motion of Ho-Chunk Nation, Money Centers of America, Inc., and MCA of Wisconsin, Inc., for Extension of Time* on July 30, 2010. The Court mailed a *Notice of Hearing* to both parties informing them that a *Scheduling Conference* would be held on August 26, 2010, at 2:30 p.m. CST. On August 12, 2010, the plaintiff filed its *Reply to Counterclaim*.

The Court convened a *Scheduling Conference* on August 26, 2010. Attorney Matthew McBride appeared telephonically on behalf of the plaintiff. Attorneys James Beausoliel, Jr. and Carla Bennett appeared telephonically on behalf of the defendants. The Court issued a *Scheduling Order* on August 26, 2010, setting all deadlines with regards to discovery,

¹ There apparently is some confusion as to the Court's address for filing. Please send all future filings to: Ho-Chunk Nation Trial Court, Attn: Clerk of Court, P.O. Box 70, Black River Falls, WI 54615.

1 amendments to pleadings, and motions. The *Scheduling Order* also set a *Motion Hearing* for
2 September 29, 2010, at 10:00 a.m. CDT. On September 3, 2010, both parties timely filed their
3 respective *Preliminary Witness Lists*. Both parties timely filed their respective *Required*
4 *Disclosures* on September 9, 2010. On September 10, 2010, the plaintiff timely filed *Plaintiff's*
5 *Memorandum of Law in Opposition to Defendants' Motion to Dismiss for Lack of Jurisdiction*
6 *or, in the Alternative, Failure to Establish a Right to Relief*.

8 On September 23, 2010, the parties filed a *Joint Motion to File Amended Reply to*
9 *Counterclaim*. After a delay due to unforeseen circumstances, the Court granted said *Joint*
10 *Motion* on December 6, 2010. *Order (Granting Joint Motion to File Amended Reply to*
11 *Counterclaim)*, CV 10-54 (HCN Tr. Ct., Dec. 06, 2010). On September 24, 2010, the
12 defendants' timely filed *Defendants' Reply in Further Support of Their Motion to Dismiss*
13 *Plaintiff's Complaint*. The plaintiff filed *Ho-Chunk Nation's Amended Witness List* and *Plaintiff*
14 *Ho-Chunk Nation's Amended Rule 31 Disclosures* on October 8, 2010.

16 The Court convened a *Motion Hearing* on September 29, 2010, at 10:00 a.m. CDT to
17 hear the defendants' *Motion to Dismiss for Lack of Jurisdiction*. Attorney Matthew McBride
18 appeared personally on behalf of the plaintiffs. Attorney Jim Beausoleil appeared personally on
19 behalf of the defendants.
20

21 22 **APPLICABLE LAW**

23 24 **CONSTITUTION OF THE HO-CHUNK NATION**

25 **Article VII – Judiciary**

26 **Sec. 5. Jurisdiction of the Judiciary**

- 27 (a) The Trial Court shall have original jurisdiction over all cases and controversies, both
28 criminal and civil, in law or in equity, arising under the Constitution, laws, customs,
and traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk

1 Nation, or its officials and employees, shall be a party. Any such case or controversy
2 arising within the jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court
3 before it is filed in any other court. This grant of jurisdiction by the General Council
shall not be construed to be a waiver of the Nation's sovereign immunity.

4 JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT

5 12. Traditional Dispute Resolution. The Judiciary shall provide for the establishment, operation,
6 and funding of the Nation's Traditional Court to assist the Judiciary whenever possible with the
7 resolution of cases or controversies involving Tribal members.

8 CODE OF ETHICS ACT

9 4. Declaration of the Code of Ethics Act.

10 b. In addition, to following all other laws of the Nation, this Code shall be applied to all
11 elected, appointed, contract, or exempt employees of the Ho-Chunk Nation.

12 STATUTE OF LIMITATIONS AND COMMENCEMENT OF CLAIMS ACT

13 2. Purpose. This Act establishes the maximum time periods in which civil action must be
14 commenced or be forever barred.

15 4. Civil Action and Time Limitation. Civil actions may be commenced only within the periods
16 as prescribed here:

17 d. Torts. An action in tort must be filed in Court within three (3) years from the date of
18 discovery or six (6) years from the date of the incident in which the injury arose.

19 HO-CHUNK RULES OF CIVIL PROCEDURE

20 Rule 8. Requests to Appear before the Traditional Court

21 (B) Requests for Assistance on Matters of Custom and Tradition. Upon a motion of the Court or
22 by a party, the Trial Court may request assistance from the Traditional Court on matters relating
23 to custom and tradition of the Nation, pursuant to the HO-CHUNK NATION JUDICIARY
ESTABLISHMENT AND ORGANIZATION ACT, 1 HCC § 1.12.

24 Rule 56. Dismissal of Action

25 (B) Involuntary Dismissal. After an *Answer* has been filed, a party must file a *Motion to*
26 *Dismiss*. A *Motion to Dismiss* will be granted at the discretion of the Court. A *Motion to*
27 *Dismiss* may be granted for lack of jurisdiction; if there has been no order or other action in a
28 case for six (6) months; if a party substantially fails to comply with these rules; if a party
substantially fails to comply with an order of the Court; if a party fails to establish the right to

1 relief following presentation of all evidence up to and including trial; or, if the plaintiff so
2 requests.

3 **FINDINGS OF FACT**

4 1. The plaintiff, Ho-Chunk Nation, is a federally recognized Indian tribe located within the
5 boundaries of the State of Wisconsin. Its principal governmental offices are located at the Tribal
6 Executive Office Building, W9814 Airport Road, Black River Falls, WI 54615. *Compl.* at 1.

8 2. The defendant, Money Centers of America, Inc., is a Delaware corporation with its
9 principal office located at 700 South Henderson Road, Suite 325, King of Prussia, Pennsylvania
10 19406. *Id.*

11 3. The defendant MCA of Wisconsin, Inc., is a Wisconsin corporation with its principal
12 office located at 700 South Henderson Road, Suite 325, King of Prussia, Pennsylvania 19406.
13 *Id.*

14 4. The defendants moved to dismiss the instant action on the basis that the Court lacks
15 jurisdiction, or in the alternative, that the plaintiff failed to establish a right to relief. *Mot. to*
16 *Dismiss for Lack of Jurisdiction.*

17 5. The plaintiff and the defendants received proper notice of the September 29, 2010 *Motion*
18 *Hearing.*

21 **DECISION**

22
23 The CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION or HCN
24 CONSTITUTION) demarcates the spheres occupied by each coequal branch of government as
25 delegated by the General Council. CONST., ART. III § 3, ART. IV § 2. For purposes of the instant
26 case, the Legislature possesses the authority to make laws, *Id.*, ART. IV § 2, ART. V § 2 (a), and
27 negotiate and enter into contracts, *Id.*, ART. V § 2 (i); the President of the Ho-Chunk Nation
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1 (hereinafter President) possesses the authority to execute, administer and enforce the laws, *Id.*,
2 ART. IV § 2, ART. VI § 2 (a), (l), represent the Ho-Chunk Nation on matters that concern its
3 interests and welfare, *Id.*, ART. VI § 2 (k), and exercise those powers delegated by the
4 Legislature, *Id.*, ART. VI § 2 (l). The General Council delegated “the judicial branch the
5 authority to interpret and apply the laws and Constitution of the Nation in accordance with
6 Article VII.” CONST., ART. IV, § 2. The CONSTITUTION vests in the Trial Court the right to
7 “have original jurisdiction over all cases and controversies.” *Id.*, ART. VII, § 5.
8

9 The defendants move to dismiss the underlying *Complaint* for lack of jurisdiction. *Mot.*
10 *to Dismiss for Lack of Jurisdiction*. The Court appreciates the plaintiff’s concern that an
11 involuntary dismissal under *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ.*
12 *P.*), Rule 56(b) is a harsh sanction, especially prior to the completion of discovery. The plaintiff
13 emphasizes that “no formal discovery,” other than the required initial disclosures, “has taken
14 place and there certainly has been no presentation of all the evidence up to and including trial.”
15 *Pl.’s Mem. of Law in Opp’n to Defs.’ Mot. to Dismiss for Lack of Jurisdiction or, in the*
16 *Alternative, Failure to Establish a Right to Relief* at 7-8. This Court joins other courts in holding
17 that involuntary dismissals should only be used in clear-cut circumstances. *United States ex rel.*
18 *Drake v. Norden Sys.*, 375 F.3d 248 (2d Cir. 2004). However, Rule 56(b) does not require a
19 *Motion to Dismiss* to wait until discovery has been completed or a trial has taken place. In fact,
20 “[a]fter an *Answer* has been filed, a party must file a *Motion to Dismiss*.” *HCN R. Civ. P.* 56(b).
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24 FORUM SELECTION

25 The defendants move this Court to dismiss the instant action based on improper forum
26 selection. *Mot. To Dismiss for Lack of Jurisdiction* at 1. The defendants point out that under the
27 License Implementation and Support Agreement (hereinafter LISA), all actions must be brought
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1 in the Federal Courts of the District of Wisconsin. *Id.* at 5. However, the plaintiff points out that
2 the terms of the Financial Service/ONswitch Agreement (hereinafter FSA) state that nothing
3 within the document shall be construed as a grant of jurisdiction from the Ho-Chunk Nation to
4 any other authority. *Pl.'s Mem. of Law in Opp'n to Defs.' Mot. to Dismiss for Lack of*
5 *Jurisdiction or, in the Alternative, Failure to Establish a Right to Relief* at 3. Therefore, the
6 proper forum for this dispute depends largely upon which contract, or contracts, are operable.
7

8 The plaintiff argues that Joseph Decorah, the Executive Director of Business for the
9 Nation, was not authorized to execute the LISA. *Compl.* at 3. The plaintiff also argues that the
10 LISA is inapplicable because “[at] the time the Nation terminated the parties’ agreement, the
11 ONswitch system was not fully installed and operational.” *Pl.'s Mem. of Law in Opp'n to Defs.'*
12 *Mot. to Dismiss for Lack of Jurisdiction* at 6. Conversely, the defendants argue that Joseph
13 Decorah had the authority to execute the LISA, and that the LISA is applicable as to choice of
14 forum for dispute resolution. *Mot. To Dismiss for Lack of Jurisdiction* at 2, 3, 5.
15

16 A judgment on these arguments requires the Court to make important factual
17 determinations. This will require the presentation of evidence, including witness testimony.
18 Determination of the operative contract, or contracts, could be accomplished at *Trial*. However,
19 because a finding that the LISA is valid and its forum selection clause is applicable would
20 effectively remove this case to Federal Court, the Court desires to address these issues prior to
21 *Trial* on the surviving claims and counterclaims. Therefore, the Court shall schedule a *Fact*
22 *Finding Hearing* to determine the validity of the contract or contracts, and the applicability of
23 their respective forum selection clause.
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1 **THE PLAINTIFF’S BREACH OF CONTRACT CLAIM**

2 The Court has jurisdiction over the plaintiff’s breach of contract claim as it arises under
3 the customs and traditions of the Ho-Chunk Nation. The HCN Trial Court first dealt with
4 contract claims in *Ho-Chunk Nation v. Ross Olsen*, CV 99-81 (HCN Tr. Ct., Sept. 18, 2000).
5 This case involved a dispute over a “Purchase Agreement” for cigarettes. *Id.* at 1. The Court
6 determined that “neither the HCN CONSTITUTION, nor the laws, statutes, codes, or ordinances of
7 the Ho-Chunk Nation addressed the rights and responsibilities concomitant with the formation of
8 a contract.” *Id.* at 13. Former Chief Trial Court Judge Mark Butterfield consulted the Ho-Chunk
9 Nation Traditional Court as to whether Ho-Chunk “custom and tradition recognized agreements
10 analogous to the modern day ‘contract.’”²

11 The Traditional Court held that “in the tradition and custom of the Ho-Chunk Nation,
12 agreements between parties for the exchange of goods or services were recognized as binding.”
13 *Id.* Therefore, the Court has subject matter jurisdiction over contract claims as they arise from
14 custom and tradition. The HCN Supreme Court has upheld and adopted this precedent, using the
15 contract in question as the operative law for the Trial Court to apply. *See e.g., Marx Advertising*
16 *Agency, Inc., v. Ho-Chunk Nation*, SU 04-07 (HCN S. Ct., Apr. 29, 2005) (affirming the Trial
17 Court’s interpretation of a contract between the Ho-Chunk Nation and its advertising agency,
18 Marx Advertising Agency, Inc.).

19 The Court makes no ruling as to the merits of the plaintiff’s breach of contract claim.
20 However, the Court has subject matter jurisdiction to hear such a claim. The Court also finds
21 that the plaintiff has alleged sufficient facts, that if viewed in a light most favorable to the non-
22 moving party, could constitute a breach of contract by the defendants.
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1 **THE COURT HEREBY DISMISSES THE PLAINTIFF’S COMMON LAW TORT**
2 **CLAIMS: FRAUDULENT INDUCEMENT/RESCISSION, FRAUDULENT**
3 **CONCEALMENT, AND CONVERSION/CIVIL THEFT**

4 The “Court cannot begin to adjudge [a] claim in the absence of subject matter
5 jurisdiction.” *Ho-Chunk Nation v. Harry Steindorf et al.*, CV 99-82 (HCN Tr. Ct., Feb. 11,
6 2000) at 10; *aff’d Ho-Chunk Nation v. Harry Steindorf et al.*, SU 00-04 (HCN S. Ct., Sept. 29,
7 2000). The HCN CONSTITUTION grants the Trial Court “original jurisdiction over all cases and
8 controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws,
9 customs, and traditions of the Ho-Chunk Nation.” ART. VII § 5(a). Although the Court
10 sometimes looks to federal and state case law as persuasive authority, such case law is not
11 binding. The Court has no constitutional authority to base its subject matter jurisdiction on state
12 statutory or common law. *HCN v. Steindorf*, CV 99-82 at 11-12 *aff’d HCN v. Steindorf*, SU 00-
13 04 (HCN S. Ct., Sept. 29, 2000).

14
15 To date, the HCN Legislature has not passed any laws conferring jurisdiction on this
16 Court over the tort claims of fraudulent inducement, fraudulent concealment, or conversion. The
17 Traditional Court has never articulated such claims as arising from tradition and custom and
18 therefore the Supreme Court and Trial Court have not adopted them as such.³ The HCN
19 STATUTE OF LIMITATIONS AND COMMENCEMENT OF CLAIMS ACT provides for statutes of limitations
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24 ²*HCN R. Civ. P.* 8(B) allows Trial Court judges to request assistance from the Traditional Court on matters relating
25 to custom and tradition of the Nation, pursuant to the HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND
ORGANIZATION ACT, 1 HCC § 1.12.

26 ³In *Ho-Chunk Nation v. Tammy Lang*, the Trial Court found in favor of the plaintiff on defendant’s civil conversion
27 of tribal monies. CV 98-46 (HCN Tr. Ct., Apr. 1, 1999) at 1. The Trial Court apparently found the Wisconsin state
28 common law of civil conversion as persuasive. *Id.* at 12. However, the actual source of subject matter jurisdiction
in this case came from a tribal employee’s violations of HCN PERSONNEL POLICY AND PROCEDURES
MANUAL. These violations ultimately led the Trial Court to find in favor of the plaintiff. *Id.* at 14, 15. The Trial
Court judge did not seek a ruling from the Traditional Court on whether or not the violations could have arisen
under tradition and custom. Therefore, the tort of civil conversion has not been adopted as a basis for subject matter
jurisdiction arising from tradition and custom.

1 on tort actions. 2 HCC § 14.4.d. However, articulating a statute of limitations as an affirmative
2 defense is not the same as conferring subject matter jurisdiction.

3 The plaintiff argues that the Court has subject matter jurisdiction over these torts because
4 “there would be no other reason to have a statute of limitations in the statutes if tort claims
5 weren’t permitted in this jurisdiction.” *Mot. Hr’g* (LPER at 9, Sept. 29, 2010, 10:17:07 CDT).
6 The Court acknowledges that tort claims are permitted in this jurisdiction. However, in order for
7 the Trial Court to have jurisdiction over a case, it must arise under the Constitution, laws, or
8 traditions and customs of the Ho-Chunk Nation. CONST., ART. VII, §. 5(a). A case cannot arise
9 from the HCN STATUTE OF LIMITATIONS AND COMMENCEMENT OF CLAIMS ACT. The purpose of
10 this act is only to establish “the maximum time periods in which civil action must be commenced
11 or be forever barred.” 2 HCC § 14.2. At present, there are very few torts for which the Court
12 has subject matter jurisdiction over, but that does not mean that more will not become available
13 in the future.

14 The plaintiff seeks rescission of the contracts in the context of its fraudulent inducement
15 and fraudulent concealment claims. *Compl.* at 8, 9. As the Court does not have subject matter
16 jurisdiction over these claims, such relief cannot be granted. However, rescission of the
17 contracts may be available in the context of the plaintiff’s breach of contract claim, if such relief
18 is appropriate under the terms of the contracts.

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23 **THE COURT HEREBY DISMISSES THE PLAINTIFF’S COMMON LAW**
24 **IMPLIED AND QUASI-CONTRACT CLAIMS: MONEY HAD AND RECEIVED AND**
25 **UNJUST ENRICHMENT**

26 While the Traditional Court acknowledged contract claims as a cause of action under
27 tradition and custom, it has not extended this pronouncement to include implied and quasi-
28 contract causes of action. *Ho-Chunk Nation v. B&K Builders, Inc. and Ruka & Associates, CV*

1 00-91 (HCN Tr. Ct., June 20, 2001) at 19. Therefore, the Court must dismiss the plaintiff's
2 money had and received and unjust enrichment⁴ claims for lack of subject matter jurisdiction.

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4 **THE PLAINTIFF'S DECLARATORY JUDGMENT – BRIBERY CLAIM**

5 The Court would not have jurisdiction over a cause of action for bribery arising from
6 Wisconsin common law. However, the plaintiff states that it is not suing "MCA for common law
7 bribery nor is it seeking damages against MCA for common law bribery." *Pl.'s Mem. of Law in*
8 *Opp'n to Defs.' Mot. to Dismiss for Lack of Jurisdiction or, in the Alternative, Failure to*
9 *Establish a Right to Relief* at 9. Rather, the plaintiff argues the alleged bribe is a justification for
10 declaring the contract void. *Id.* Therefore, there is no common law bribery claim to be
11 dismissed.
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14 As the defendants acknowledge, the plaintiff cannot obtain relief on an argument that
15 both of the contracts at issue in this case are void, for it would have "effectively pleaded itself
16 out of this Court's jurisdiction." *Defs.' Reply in Further Supp. of Their Mot. To Dismiss Pl.'s*
17 *Compl.* at 2. The contracts are the only laws the Court can apply in this case. If the Court were
18 to declare both contracts void, it would be deciding it does not have any law to apply, and thus
19 no relief could be granted. The Court's lack of jurisdiction over the plaintiff's claims seeking to
20 declare both contracts void renders the defendants' related statute of limitations arguments moot.
21

22 Both parties may properly argue that both contracts are void in the context of asserting a
23 defense to a claim or counterclaim. Defenses are not subject to the STATUTE OF LIMITATIONS AND
24 COMMENCEMENT OF CLAIMS ACT, 2 HCC § 14. To be clear, the Court has the power to grant
25 damages to the plaintiff for breach of contract as articulated in COUNT I of its *Complaint*, if a
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⁴ The Trial Court underwent an unjust enrichment analysis in *David M. Ujke v. Ho-Chunk Nation*, CV 96-63 (HCN Tr. Ct., Aug. 17, 1998). This case was decided prior to the seminal *Steindorf* decision by the HCN Supreme Court.

1 valid contract exists and a material breach by the defendants occurred. The same is true for the
2 defendants' counterclaim for breach of contract.

3 The Court finds that the plaintiff is not barred by the STATUTE OF LIMITATIONS from
4 arguing that the LISA is invalid, or inapplicable, in the context of supporting its breach of
5 contract claim regarding the FSA. The STATUTE OF LIMITATIONS AND COMMENCEMENT OF
6 CLAIMS ACT "establishes the maximum time periods in which civil action must be commenced."
7 2 HCC § 14.2. The defendants have not argued that the plaintiff's breach of contract claim is
8 barred. Arguments in favor of the plaintiff's breach of contract claim are not "civil actions" and
9 should not be barred by the STATUTE OF LIMITATIONS.
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12 **THE PLAINTIFF'S DECLARATORY JUDGMENT –**
13 **VIOLATION OF HO-CHUNK NATION LAW CLAIM**

14 At the September 29, 2010 hearing, the attorney for the plaintiff stated that the plaintiff is
15 "not claiming that MCA violated the Code of Ethics. . . but [is] claiming, [] that the court should
16 declare those contracts void at issue, because they violate the Nation's law." *Mot. Hr'g* (LPER
17 at 7, Sept. 29, 2010, 10:11:22 CDT). Despite this statement, the plaintiff alleges in COUNT V of
18 the *Complaint* that "MCA violated the Ho-Chunk Nation Code, including but not limited to, the
19 Code of Ethics of the Ho-Chunk Nation." *Compl.* at 10. In order to reconcile this inconsistency,
20 the Court finds that the HCN CODE OF ETHICS ACT only applies "to all elected, appointed,
21 contract, or exempt employees of the Ho-Chunk Nation." 2 HCC § 1.4.b. The defendants are
22 not employees of the Ho-Chunk Nation. Therefore, the HCN CODE OF ETHICS ACT is
23 inapplicable to the defendants, and the Court cannot make a ruling as to whether or not their
24 actions constituted a violation of that statute.
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28 It may be possible to reconcile *Ujke* with *Steindorf* as a constitutional takings clause case, but such reconciliation
would be irrelevant to the plaintiff's unjust enrichment claim in the instant action.

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THE DEFENDANTS’ BREACH OF CONTRACT COUNTERCLAIM

The Court has jurisdiction over the defendants’ breach of contract counterclaim for the same reasons articulated above in regards to the plaintiff’s breach of contract claim.⁵

THE COURT HEREBY DISMISSES THE DEFENDANTS’ SLANDER COUNTERCLAIM

The defendants’ slander counterclaim does not presently articulate how it arises under the CONSTITUTION, laws, or tradition and custom of the Ho-Chunk Nation, and therefore must be dismissed.

THE DEFENDANTS’ DECLARATORY JUDGMENT – SPECIFIC PERFORMANCE COUNTERCLAIM

The Court has subject matter jurisdiction to hear the defendants’ declaratory judgment, specific performance counterclaim in the context that it arises out of the alleged contracts, and thus arises under the traditions and customs of the Ho-Chunk Nation. As the plaintiff has not filed a *Motion to Dismiss* the defendants’ counterclaim, the Court only goes so far as to hold that it has jurisdiction to hear the counterclaim. The Court makes no ruling as to its merits or the appropriateness of the remedy requested.

THE COURT HEREBY DISMISSES THE DEFENDANTS’ CIVIL CONSPIRACY COUNTERCLAIM

The Court hereby dismisses the defendants’ civil conspiracy counterclaim for the same reasons articulated above in regards to dismissing the plaintiff’s tort claims.

⁵ The plaintiff has neither filed a *Motion to Dismiss* the defendants’ counterclaims, nor have the counterclaims been addressed in open court. However, parties “should fully expect the Court will independently assess whether it may exercise subject matter jurisdiction over a proceeding” to avoid acting outside of its constitutional authority. *HCN v. B&K Builders, Inc. and Ruka & Associates*, CV 00-91 (HCN Tr. Ct., June 20, 2001) at 18.

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To the extent the parties wish to amend their pleadings, such amendments must be filed on or before May 6, 2011. *Scheduling Order*, CV 10-54 (HCN Tr. Ct., Aug. 26, 2010). The parties retain the right to file a timely post-judgment motion with this Court in accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order. Otherwise, "[t]he time for taking an appeal shall begin from the date the judgment is filed with the [Trial Court] Clerk [of Court]." *HCN R. Civ. P. 57*. Since this decision represents a nonfinal judgment, "[a]n appeal from [this] interlocutory order maybe [*sic*] sought by filing a petition for permission to appeal with the Supreme Court Clerk within ten (10) calendar days after the entry of such order with proof of service on all other parties to an action." *Ho-Chunk Nation Rules of Appellate Procedure*, Rule 8.⁶

IT IS SO ORDERED this 28th day of December, 2010, by the Ho-Chunk Nation Trial Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

Honorable Amanda L. Rockman⁷
Associate Trial Court Judge

⁶ Parties can obtain a copy of the applicable rules by contacting the Ho-Chunk Nation Judiciary at (715) 284-2722 or (800) 434-4070 or visiting the judicial website at www.ho-chunknation.com/government/judicial/cons_law.htm.

⁷ The Court appreciates the assistance of Law Clerk Zachary Harold Atherton-Ely in the preparation and drafting of this opinion.

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

