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

**Ho-Chunk Nation Home Ownership
Program and the Ho-Chunk Nation,**
Plaintiffs,

v.

Zachary D. Thundercloud,
Defendant.

Case No.: **CV 10-17**

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**ORDER
(Denying Motion for Summary Judgment)**

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INTRODUCTION

The Court must determine whether to grant the plaintiffs' motion for summary judgment. The Court finds that there are genuine issues as to material fact and the plaintiffs are not entitled to judgment as a matter of law. Therefore, the plaintiffs' *Motion for Summary Judgment* is denied. The analysis of the Court follows below.

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PROCEDURAL HISTORY

The plaintiffs, Ho-Chunk Nation Housing Ownership Program (hereinafter HOP) and the Ho-Chunk Nation (hereinafter HCN), filed a *Complaint* and *Petition to Register and Enforce a Foreign Judgment* (hereinafter *Petition*) with the Court on February 11, 2010. Consequently the Court issued a *Summons* accompanied by the above-mentioned *Complaint*, *Petition*, and attachments on February 12, 2010, and effected personal service upon the defendant, Zachary D. Thundercloud. The *Summons* informed the defendant of his right to file an *Answer* within (20) days of the issuance of the *Summons*. *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter

1 HCN R. Civ. P.), Rule 6(A). The *Summons* also cautioned the defendant that a *Default Judgment*
2 could result from failure to file within the prescribed timeframe.

3 The defendant timely filed a motion, which the Court accepts as the *Defendant's Answer*
4 (hereinafter *Answer*) on March 1, 2010. Consequently, the Court mailed *Notice(s) of Hearing* on
5 March 10, 2010, informing them of the date, time, and location of the *Scheduling Conference*.
6 The Court convened a *Scheduling Conference* on March 31, 2010 at 10:00 a.m. CDT. *See*
7 *Scheduling Order*, CV 10-17 (HCN Tr. Ct., Apr. 1, 2010). The following parties appeared at the
8 *Scheduling Conference*: Department of Justice Attorney (hereinafter DOJ) Attorney Wendi A.
9 Huling, plaintiffs' counsel; and Zachary D. Thundercloud, defendant. The Court entered the
10 *Scheduling Order* on April 1, 2010, setting forth the timelines and procedures to which the
11 parties should adhere prior to trial.
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14 In accordance with the *Scheduling Order*, the plaintiffs timely filed *Petitioner's* [sic]
15 *Preliminary Witness List* on April 14, 2010. The defendant failed to file a witness list.
16 Subsequently, on June 3, 2010 the plaintiffs, by and through DOJ Attorney Wendi A. Huling,
17 filed *Defendant's Notice and Motion for Summary Judgment* (hereinafter *Plaintiff's Motion*) and
18 *Petitioner's* [sic] *Brief in Support of Motion for Summary Judgment* (hereinafter *Plaintiff's*
19 *Brief*). *Id.*, Rule 18. The Court convened a *Pre-Trial Conference* on June 17, 2010 at 10:15 a.m.
20 CDT. The Court afforded the plaintiffs the opportunity to argue *Plaintiff's Motion* and to provide
21 the defendant the opportunity to offer a response. The following parties appeared at the *Pre-*
22 *Trial Conference*: The plaintiffs, by and through their attorney, DOJ Attorney Wendi A. Huling;
23 and the defendant, Zachary D. Thundercloud.
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27 APPLICABLE LAW

28 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

1 Rule 6. Answering a Complaint or Citation.

2 (A) Answering a Complaint. A party against whom a *Complaint* has been made shall have
3 twenty (20) calendar days from the date the *Summons* is issued, or from the last date of service
4 by publication, to file an *Answer* with the Clerk of Court. The *Answer* shall use short and plain
5 statements to admit, admit in part, or deny each statement in the *Complaint*, assert any and all
6 claims against other parties arising from the same facts or circumstances as the *Complaint* and
7 state any defenses to the *Complaint*. The *Complaint* must contain the full names of all parties and
any counsel. The *Answer* must be signed by the party or his or her counsel and contain their full
names and addresses, as well as a telephone number at which they may be contacted. An *Answer*
shall be served on other parties and may be served by mail. A *Certificate of Service* shall be filed
as required by Rule 5(B).

8 Rule 18. Types of Motions.

9 *Motions* are requests directed to the Court and must be in writing except for those made in Court.
10 *Motions* based on factual matters shall be supported by affidavits, references to other documents,
11 testimony, exhibits or other material already in the Court record. *Motions* based on legal matters
12 shall contain or be supported by a legal memorandum, which states the issues and legal basis
relied on by the moving party. The *Motions* referenced within these Rules shall not be considered
exhaustive of the *Motions* available to litigants.

13 Rule 19. Filing and Responding to Motions.

14 (A) Motion. *Motions* may be filed by a party with any pleading or at any time after their first
15 pleading has been filed. A copy of all written *Motions* shall be delivered or mailed to other
16 parties at least five (5) calendar days before the time specified for a hearing on the *Motion*. A
17 *Response* to a written *Motion* must be filed at least one day before the hearing. If no hearing is
scheduled, the *Response* must be filed with the Court and served on the other parties within ten
(10) calendar days of the date the *Motion* was filed. The party filing the *Motion* must file any
Reply within three (3) calendar days.

18 Rule 55. Summary Judgment.

19 Any time after the date an *Answer* is due or filed, a party may file a *Motion for Summary*
20 *Judgment* on any or all of the issues presented in the action. The Court will render *Summary*
21 *Judgment* in favor of the moving party if there is no genuine issue as to material fact and the
moving party is entitled to judgment as a matter of law.

22 Rule 58. Amendment to or Relief from Judgment or Order.

23 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request
24 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*
25 must be based on an error or irregularity which prevented a party from receiving a fair trial or a
substantial legal error which affected the outcome of the action.

26 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not
27 later than ten (10) calendar days after entry of judgment, the Court may amend its findings or
28 conclusions or make additional findings or conclusions, amending the judgment accordingly.
The motion may be made with a motion for a new trial. If the Court amends the judgment, the

1 time for initiating an appeal commences upon entry of the amended judgment. If the Court
2 denies a motion filed under this rule, the time for initiating an appeal from the judgment
3 commences when the Court denies the motion on the record or when an order denying the
4 motion is entered, whichever occurs first. If within thirty (30) days after the entry of judgment,
5 the Court does not decide a motion under this Rule or the judge does not sign an order denying
6 the motion, the motion is considered denied. The time for initiating an appeal from judgment
7 commences in accordance with the Rules of Appellate Procedure.

8 (C) Erratum Order or Reissuance of Judgment. Clerical errors in a court record, including the
9 *Judgment or Order*, may be corrected by the Court at any time.

10 (D) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a
11 party made within a reasonable time for the following reasons: (1) newly discovered evidence
12 which could not reasonably have been discovered in time to request a new trial; or (2) fraud,
13 misrepresentation or serious misconduct of another party to the action; or (3) good cause if the
14 requesting party was not personally served in accordance with Rule 5(c)(1)(a) or (b); did not
15 have proper service and did not appear in the action; or (4) the judgment has been satisfied,
16 released, discharged, or is without effect due to a judgment earlier in time.

17 **FINDINGS OF FACT**

18 1. The parties received proper notice of the June 17, 2010 *Pre-Trial Conference*.

19 2. The plaintiff, Ho-Chunk Nation, is a federally recognized Indian Tribe located at W 9814
20 Airport Road, P.O. Box 667, Black River Falls, WI 54615. *Compl.* at 1.

21 3. The plaintiff, the Ho-Chunk Nation Home Ownership Program (hereinafter HOP), is an
22 agent of the Ho-Chunk Nation, developed through the Ho-Chunk Nation Legislature with its
23 principal place of business located at 500 East Veterans, Tomah, WI 54660. *Id.* at 2.

24 4. The defendant, Zachary D. Thundercloud, is an enrolled member of the Ho-Chunk
25 Nation, Tribal ID# 439A002335, and resides at 115 Rye Bluff Road, #241, Black River Falls, WI
26 54615.

27 5. On August 22, 1997, the parties entered into a *Mortgage Note* for \$100,000.00, which set
28 forth the repayment agreement between the parties. *Compl.*, Attach., Ex. 3.

6. Subsequently, on September 4, 1997, to correct an error in the *Mortgage Note*, the parties
re-recorded the mortgage and entered into a *Real Estate Mortgage* (hereinafter *Mortgage*), for

1 \$100,000.00, which set forth the terms and responsibilities of the defendant regarding care and
2 maintenance of the property. *Id.*, Attach., Ex. 4

3 7. The property at issue was foreclosed on November 4, 2004, in the State of Wisconsin.
4 *Pre-Trial Conference*, (LPER at 3, June 17, 2010, 10:17:47 CDT). Subsequently, to obtain the
5 title for the property, on September 12, 2006, the plaintiffs attended the sheriff's auction and as
6 the only bidder purchased the home (above fair market value) in the amount of \$125,593.75.
7 *Compl.*, Attach., Ex. 5. Consequently, the Jackson County Court issued an *Order for*
8 *Confirmation of Sale* on October 19, 2006 thereby transferring title to the plaintiffs and found a
9 total indebtedness in the amount of \$125,593.75. *Id.*

10 8. On February 11, 2010, the plaintiffs filed a *Petition* to enforce the foreign court order
11 against the defendant in the amount of \$125,593.75. *Pet.* at 3; *see also Compl.*, Attach., Ex. 5.

12 9. The plaintiffs filed a *Complaint* seeking additional monetary damages against the
13 defendant in the amount of \$132,441.71 for costs associated with the taxes, debts, care,
14 maintenance, and restoration of the property. *Compl.* at 16.

15 10. The plaintiffs are requesting damages in the total amount of \$258,035.46.

16 11. The plaintiffs assert that "there [are] no issues of material fact to be settled between the
17 parties." *Pl.'s Br.* at 2. Specifically, that the since the failed to comply with the conditions of the
18 *Mortgage* by keeping the property in good and tenantable condition, he is responsible for all
19 costs associated with the restoration. *Id.* Additionally, the plaintiffs argue that: "to have clear
20 Title to the property, [the plaintiffs] had to pay the Respondent's [*sic*] debts. Without clear Title
21 to the Property, Petitioner [*sic*] would have been unable to sell the property to another Tribal
22 Member. Therefore, the Petitioners [*sic*] are also seeking to be reimbursed for these funds." *Id.*

1 12. The defendant disputes the total amount of the damages allegedly owed to the plaintiffs.
2 LPER at 9, 10:38:50 CDT. Specifically, the defendant contends that he should pay \$125,000.00
3 for a \$100,000.00 mortgage. *Id.* Additionally, the defendant argues that he should be not be
4 responsible for repairs, changes, and payments made after the house was foreclosed on. *Id.*
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6 **DECISION**

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8 The plaintiffs seek to recover the purchase price of a tribal member's foreclosed property
9 and the costs associated with repayment of debts and restoration of said property. "The Court
10 will render *Summary Judgment* in favor of the moving party if there is no genuine issue as to
11 material fact and the moving party is entitled to judgment as a matter of law." *HCN R. Civ. P.*,
12 55. Furthermore, a moving party must appropriately identify the legal and factual bases for a
13 summary judgment motion.
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15 [A] party seeking summary judgment always bears the initial
16 responsibility of informing the . . . court of the basis for its motion, and
17 identifying those portions of "the pleadings, depositions, answers to
18 interrogatories, and admissions on file, together with the affidavits, if
any," which it believes demonstrates the absence of a genuine issue of
material fact.

19 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting FED. R. CIV. P. 56(c)). In the instant
20 case, the plaintiffs assert that the defendant is indebted to the plaintiffs for over \$250,000.00.
21 Consequently, the defendant disputes the actual amount of the indebtedness and specifically
22 contests any amounts charged after the foreclosure. The plaintiffs provide documentation for all
23 of the requested debts, but fails to adequately justify how the defendant is responsible for the
24 entire amount of indebtedness (*i.e.*, property taxes, utilities, electric, etc.) charged after the
25 plaintiffs purchased the home. Additionally, as the defendant pointed out, the plaintiffs fail to
26 provide an adequate legal and factual basis regarding why the defendant should repay a
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1 \$100,000.00 mortgage for the price of \$125,593.75. The plaintiffs fail to demonstrate the
2 absence of a genuine issue of material fact. Therefore, the *Motion for Summary Judgment* is
3 denied.

4 **IT IS SO ORDERED** this 24th day of August, 2010 by the Ho-Chunk Nation Trial Court
5 located in Black River Falls, Wisconsin within the sovereign lands of the Ho-Chunk Nation.
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11 Honorable Amanda L. Rockman
12 Associate Trial Court Judge
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