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

David L. Zwicke,
Plaintiff,

v.

Case No.: **CV 02-66**

Roger Houghton,
Defendant.

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**ORDER
(Final Judgment)**

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INTRODUCTION

The Court must determine whether to award the plaintiff the relief requested in his initial pleading as modified by a subsequent filing. The Court afforded the defendant the opportunity to respond to the *Complaint*. The defendant filed a timely answer, admitting, in part, to an outstanding debt obligation. The Court accordingly grants a judgment against the defendant for the undisputed amount.

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PROCEDURAL HISTORY

The plaintiff, David L. Zwicke, initiated the current action by filing the *Complaint* with the Court on July 2, 2002. Consequently, the Court issued a *Summons* accompanied by the initial pleading on July 2, 2002, and delivered the documents by certified mail to the defendant, Roger Houghton. See *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*), Rule 5(C)(1)(e). One Roger Houghton affixed his/her signature to the Domestic Return Receipt.

1 The *Summons* informed the defendant of the right to file an *Answer* within twenty (20)
2 days of the issuance of the *Summons* pursuant to *HCN R. Civ. P. 5(A)(2)*. The *Summons* also
3 cautioned the defendant that a *default judgment* could result from failure to file within the
4 prescribed time period. *See HCN R. Civ. P. 54*. On July 12, 2002, the defendant submitted a
5 timely answer, acknowledging a reduced degree of indebtedness to the plaintiff. The plaintiff
6 noted his agreement with the defendant's assertions within an August 9, 2002 filing.¹
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8 9 **APPLICABLE LAW**

10 11 **CONSTITUTION OF THE HO-CHUNK NATION**

12 **Art. VII - Judiciary**

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

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15 (a) The Trial Court shall have original jurisdiction over all cases and controversies,
16 both criminal and civil, in law or in equity, arising under the Constitution, laws, customs and
17 traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its
18 officials and employees, shall be a party. Any such case or controversy arising within the
19 jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court before it is filed in any other
20 court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of
21 the Nation's sovereign immunity.

22 **Sec. 6. Powers of the Trial Court.**

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24 (a) The Trial Court shall have the power to make findings of fact and conclusions of
25 law. The Trial Court shall have the power to issue all remedies in law and in equity including
26 injunctive and declaratory relief and all writs including attachment and mandamus.
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¹ The presiding judge extends his sincerest apologies to the parties for the failure of the Court to enter a timely decision in this matter. Each trial judge maintains a duty to "dispose promptly of the business of the court." *HCN Rules of Judicial Ethics*, § 4-1(E); *see also In the Matter of Timely Issuance of Decisions*, ADMIN. RULE 04-09-05(1) (HCN S. Ct., Apr. 9, 2005) (requiring issuance of final judgments within ninety (90) days following completion of trial level process). Former Chief Judge William H. Bossman utterly failed in this regard by not issuing a judgment prior to the expiration of his legislative appointment on July 1, 2005. In the interests of justice, the Court informs the parties of the availability of seeking mandamus relief from the Ho-Chunk Nation Supreme Court in order to compel action of a trial level judge. *See In re: Casimir T. Ostrowski*, SU 05-01 (HCN S. Ct., Feb. 21, 2005) (citing CONSTITUTION OF THE HO-CHUNK NATION, ART. VII, § 6(a)).

1 HO-CHUNK NATION JUDICIARY ACT OF 1995

2 Sec. 2. Jurisdiction.

3 The Ho-Chunk Nation Judiciary shall exercise jurisdiction over all matters within the power and
4 authority of the Ho-Chunk Nation including controversies arising out of the Constitution of the
5 Ho-Chunk Nation; laws, statutes, ordinances, resolutions and codes enacted by the Legislature;
6 and such other matters arising under enactments of the Legislature or the customs and traditions
7 of the Ho-Chunk Nation. This jurisdiction extends over the Nation and its territory, persons who
8 enter its territory, its members, and persons who interact with the Nation or its members
9 wherever found.

8 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

9 Rule 5. Notice of Service of Process.

10 (A) Definitions.

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12 (2) Summons - The official notice to the party informing him/her that he/she is identified
13 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (See
14 HCN R. Civ. P. 6) and that a *Default Judgment* may be entered against them if they do not file an
15 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case
16 number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and
17 shall be served with a copy of the filed *Complaint* attached.

16 (C) Methods of Service of Process

17 (1) Personal Service. The required papers are delivered to the party in person by the
18 bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any
19 other person not a party to the action who is eighteen (18) years of age or older and of suitable
20 discretion.

21 (a) Personal Service is required for the initiation of actions in the following:

22 (i) Relief requested is over \$5,000.00, excluding the enforcement of
23 foreign child support orders

24 (e) Service by Mail. Service of process may be accomplished by sending the
25 required papers to a party by registered mail with return receipt requested, except in the instances
26 of Rule 5(C)(1)(a)(i) . . . as stated above.

26 Rule 53. Relief Available.

27 Except in a *Default Judgment*, the Court is not limited to the relief requested in the pleading and
28 may give any relief it deems appropriate. The Court may only order such relief to the extent
allowed by Ho-Chunk Nation enactments. The Court may order any party to pay costs,

1 including attorney's fees, filing fees, costs of service and discovery, jury and witness costs.
2 Findings of fact and conclusions of law shall be made by the Court in support of all final
3 judgments.

4 Rule 54. Default Judgment.

5 A *Default Judgment* may be entered against a party who fails to answer if the party was
6 personally served in accordance with Rule 5(C)(1)(a)(i) . . . or obtained judicial authorization to
7 pursue other means of service such as publication or if a party fails to appear at a hearing,
8 conference or trial for which he/she was given proper notice. A *Default Judgment* shall not
award relief different in kind from, or exceed the amount stated in the request for relief. A
Default Judgment may be set aside by the Court only upon a timely showing of good cause.

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

10 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request
11 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*
12 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.

13 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not
14 later than ten (10) calendar days after entry of judgment, the Court may amend its findings or
15 conclusions or make additional findings or conclusions, amending the judgment accordingly.
16 The motion may be made with a motion for a new trial. If the Court amends the judgment, the
17 time for initiating an appeal commences upon entry of the amended judgment. If the Court
18 denies a motion filed under this rule, the time for initiating an appeal from the judgment
19 commences when the Court denies the motion on the record or when an order denying the
motion is entered, whichever occurs first. If within thirty (30) days after the filing of such
motion, and the Court does not decide a motion under this Rule or the judge does not sign an
order denying the motion, the motion is considered denied. The time for initiating an appeal from
judgment commences in accordance with the Rules of Appellate Procedure.

20 (C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for*
21 *Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion*
22 must be based upon new information that has come to the party's attention that, if true, could
23 have the effect of altering or modifying the judgment. Upon such motion, the Court may modify
24 the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal
25 commences when the Court denies the motion on the record or when an order denying the
26 motion is entered, whichever occurs first. If within thirty (30) calendar days after the filing of
such motion, and the Court does not decide the motion or the judge does not sign an order
denying the motion, the motion is considered denied. The time for initiating an appeal from
judgment commences in accordance with the Rules of Appellate Procedure.

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

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

6 Rule 59. Satisfaction of Judgment.

7 (A) Complete. The person owing money under a judgment must file proof of satisfaction of
8 judgment with the Court stating the amount and date of payment and whether the payment was in
9 full or partial satisfaction of the judgment. The satisfaction must be signed by the person who
10 was owed the money.

10 Rule 61. Appeals.

11 Any final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk Nation
12 Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*
13 *Procedure*, specifically *Rules of Appellate Procedure*, Rule 7, Right of Appeal. All subsequent
14 actions of a final *Judgment* or Trial Court *Order* must follow the HCN *Rules of Appellate*
15 *Procedure*.

15 Rule 71. Execution of Judgment.

16 (A) Judgment. *Judgments* may be executed through a writ of execution on the property of a
17 person against whom the money *Judgment* is entered. The party requests an execution of the
18 *Judgment* by filing a *Motion* and documenting that the judgment has not been fully satisfied.

19 (B) Hearing. When such a *Motion* is filed, the Court shall order the person owing the money to
20 appear and *Answer* under oath describing his money, property, and income. Failure to appear
21 may be deemed a contempt of Court and the Court may proceed with the execution of *Judgment*
22 without the person. Money and property may be seized by the Court and held to satisfy the
23 *Judgment*. Any money and property seized shall be held for thirty (30) calendar days before
24 being turned over to the party to whom the money is owed. The Court, in its discretion, may
25 release the money or property in less than thirty (30) days, if the release will not cause harm to
26 either party.

24 (C) Satisfaction of Judgment. The person owing the money may redeem whatever is seized by
25 paying to the Court the full amount of the *Judgment*, plus interest and any costs to the other
26 parties and the Court in executing the *Judgment*. This includes the costs of storing and
27 maintaining whatever is seized.
28

1 Rule 72. Garnishments and or [sic] Liens.

2 Garnishment/lien is a proceeding to obtain satisfaction of a *Judgment* for money out of property
3 or money in the possession or control of a third party. A *Judgment* may be collected through a
4 writ of execution on the income or other funds being held by someone other than the person
5 owing the debt. The person requesting execution of *Judgment* shall ask the Court to serve the
6 *Writ of Execution* and an *Order* directed to the third party which requires them to turn over
7 property or money in their possession or control belonging to the person owing the debt. The
8 property of [sic] money shall be turned over to the Court and held as under the above rule on
9 execution of judgments.

10 **FINDINGS OF FACT**

11 1. The plaintiff, David L. Zwicke, is a non-member, and maintains a residence at 2620
12 Sampson Street, Wisconsin Rapids, WI 54494. *Compl.* at 1.

13 2. The defendant, Roger L. Houghton, Sr., is an enrolled member of the Ho-Chunk Nation,
14 Tribal ID# 439A005893, and maintains a mailing address of P.O. Box 1193, Wisconsin Rapids,
15 WI 54495. *Summons.*

16 3. The defendant received proper service of process of the July 2, 2002 *Complaint*.

17 4. In the initial pleading, the plaintiff alleged that the Court could adjudicate the cause of
18 action pursuant to its constitutional grant of jurisdictional authority.² *Compl.* at 3 (citing
19 CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION), ART. VII, § 5(a)); *see*
20 *also Ho-Chunk Casino & Hotel et al. v. Rory E. Thundercloud et al.*, CV 04-36 (HCN Tr. Ct.,
21 Aug. 17, 2005) at 7 n.2 (examining judicial analysis of ambiguous jurisdictional assertions). The
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24 _____
25 ² In conjunction with a prior case, the Court consulted the Ho-Chunk Nation Traditional Court to ascertain "whether
26 Ho-Chunk Nation custom and tradition recognized agreements analogous to the modern day 'contract.'" *Ho-Chunk*
27 *Nation v. Ross Olsen*, CV 99-81 (HCN Tr. Ct., Sept. 18, 2000) at 13. The Traditional Court responded by relating
28 that "according to the Ho-Chunk Nation's traditions and customs, once an agreement for the performance of services
or production of goods is made, the parties have a duty to fulfill their obligations," meaning "that it was wrong for
one party to keep a benefit obtained from an agreement without providing the agreed upon compensation." *Id.* at 9,
14 (footnote omitted).

1 plaintiff also made the following request for relief in the *Complaint*: "the sum of \$750.00 . . .
2 borrowed [to] Roger Houghton . . . for his personal and family medical problems." *Compl.* at 1.

3
4 5. On July 12, 2002, the defendant timely responded to the *Complaint*, and "acknowledge[d]
5 that he] still owe[d] Dave Zwicke [the amount of] \$375." *Answer*.

6 6. On August 9, 2002, the plaintiff expressed his agreement with the defendant's assertion,
7 stating that "Roger [Houghton] is correct, and still owes me \$375.00." *Am. Compl.*
8 Additionally, the plaintiff seeks reimbursement for the cost of filing (\$50.00). *See HCN R. Civ.*
9 *P.* 53.
10

11 DECISION

12
13 In the instant case, the plaintiff requested monetary relief, which the Court may grant
14 pursuant to its broad constitutional authority in this regard. CONST., ART. VII, § 6(a). The Court
15 exercises personal jurisdiction over the defendant by virtue of his membership in the Ho-Chunk
16 Nation. The Court exercises subject matter jurisdiction over the dispute by virtue of the
17 proclamation of the Ho-Chunk Nation Traditional Court. *See supra* note 2, at 6. The Court
18 deems that extension of the stated traditional principle into the present context proves reasonable
19 and just. Although the tribe would not have traditionally dealt in terms of currency, the sanctity
20 and attendant responsibilities of an agreement were recognized as self-evident. The
21 CONSTITUTION specifically designates customs and traditions of the Ho-Chunk Nation as a
22 source of law upon which the Court may base subject matter jurisdiction. CONST., ART. VII, §
23 5(a); *see also* HCN JUDICIARY ACT OF 1995, § 2.
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1 Consequently, the Court directs the defendant to satisfy the debt obligation of \$425.00,
2 including the filing fee, within four (4) months from the entrance of this decision.³ The
3 defendant must file proof of satisfaction of the judgment with the Court on or before March 10,
4 2006, in the manner described in *HCN R. Civ. P. 59*. Failure to abide by the terms of this
5 judgment may prompt further action as described below.
6

7 The plaintiff may request an execution of the judgment pursuant to *HCN R. Civ. P. 71-72*
8 and/or a *Show Cause Hearing* under the HO-CHUNK NATION CONTEMPT ORDINANCE if the
9 defendant fails to deliver timely repayment. The plaintiff must make any such request(s) by
10 proper motion(s) to the Court with duplicate service to the defendant. Successful motions
11 potentially could result in the imposition of fines, garnishment, and/or liens against the
12 defendant.
13

14 The parties retain the right to file a timely post-judgment motion with this Court in
15 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.
16 Otherwise, “[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk
17 Nation Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*
18 *Procedure* (hereinafter *HCN R. App. P.*), specifically [*HCN R. App. P.*], Rule 7, Right of
19 Appeal.” *HCN R. Civ. P. 61*. The appellant “shall within sixty (60) calendar days after the day
20 such judgment or order was rendered, file with the Supreme Court Clerk, a *Notice of Appeal*
21 from such judgment or order, together with a filing fee as stated in the appendix or schedule of
22 fees” *HCN R. App. P. 7(b)(1)*. “All subsequent actions of a final *Judgment* or Trial Court *Order*
23 must follow the [*HCN R. App. P.*].” *HCN R. Civ. P. 61*.
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27 ³ The Court deems this a reasonable repayment period by reference to the *Tribal Loan Fund as Established by the*
28 *Ho-Chunk Nation*, which requires a minimum repayment of \$25.00 per week for a loan of \$25.00 to \$1,500.00. *See,*
e.g., Carol Jo Garvin v. George W. Garvin, CS 98-56, CV01-27 (HCN Tr. Ct., June 4, 2003) at 15 n.8.

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



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IT IS SO ORDERED this 3rd day of November 2005, by the Ho-Chunk Nation Trial Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

Honorable Todd R. Matha
Chief Trial Court Judge