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**FORT PECK COURT OF APPEALS  
ASSINIBOINE AND SIOUX TRIBES  
FORT PECK INDIAN RESERVATION  
POPLAR, MONTANA**

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FORT PECK HOUSING AUTHORITY,  
Plaintiff/Appellee,

vs.

**Appeal No. 064**

LEVI OLSON AND MARGARET OLSON,  
husband and wife,  
Defendants/Appellants,

**THIS APPEAL** is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. The Honorable Terry L. Boyd presided.

**FOR APPELLEE:** Carol Connor, Attorney at Law, 2025 Rio Grande Blvd., NW, Albuquerque, New Mexico 87104.

**FOR APPELLANT:** Levi Olson and Margaret Olson, P.O. Box 733, Poplar, Montana 59255, Pro Se.

Argued: September 5, 1989. Decided: September 5, 1989.

CIVIL: PARTIES WHO REPRESENT THEMSELVES MUST FOLLOW RULES OF PROCEDURE AND EVIDENCE; A TRIBAL COURT ORDER GIVING FIVE (5) DAYS TO VACATE A PREMISES IS ADEQUATE TIME; A HEARING IN WHICH AN ORDER ISSUED DENYING DUE PROCESS OF AND EQUAL PROTECTION UNDER THE LAW DOES NOT BAR SUBSEQUENT PROCEEDINGS UNDER THE DOCTRINE OF RES JUDICATA; AND THE CCOJ DOES NOT PROHIBIT AWARDING ATTORNEY FEES UNDER A RENTAL AGREEMENT PROVIDING FOR THE SAME.

OPINION by Arnie A. Hove, Chief Justice, joined by Gary James Melbourne and Floyd G. Azure, Associate Justices.

HELD: THE JUDGMENT OF THE TRIBAL COURT FOR APPELLEE AGAINST APPELLANTS FOR DELINQUENT RENT IN THE AMOUNT OF \$4,821.00 AND COSTS AND ATTORNEY FEES TO BE APPROVED BY THE TRIBAL COURT UPON SUBMITTING THE REQUIRED AFFIDAVIT IS HEREBY AFFIRMED. THIS MATTER IS REMANDED TO TRIBAL COURT FOR A DETERMINATION OF THOSE COSTS AND ATTORNEY FEES AND ENTRY OF A JUDGMENT FOR THE TRIBES AGAINST APPELLANTS FOR THE COST OF THE TRANSCRIPT. IN ADDITION, APPELLANTS ARE ORDERED TO REMOVE THEMSELVES AND THEIR PERSONAL BELONGINGS FROM THE PREMISES ON OR BEFORE SEPTEMBER 8, 1989.

## FACTS:

On May 19, 1989, a Complaint for Debt and Money Due and For Unlawful Detainer or Eviction dated May 19, 1989 was filed by Appellee Fort Peck Housing Authority (hereinafter referred to as Housing) against Appellants Levi and Margaret Olson.

In the Complaint, Housing alleged the parties entered into a lease on March 21, 1984 for rental of Unit No. 13-02 of Project 9-14. Housing also alleged appellants failed and refused to make rental payments as they came due, and as a result owed \$4,074.03 in unpaid rent.

In the Complaint, Housing demanded judgment against appellants for the amount of the delinquent rent then owing, plus costs of suit, interest, and a reasonable attorney fee. Housing also demanded a court's order directing Defendant(s) to vacate the premises not less than five (5) days from the date of the Complaint.

On May 24, 1989, a hearing was held in Tribal Court. At the hearing, Housing called one (1) witness the Director of Fort Peck Housing, Iva Grainger. Appellants called no witnesses. At the conclusion of the hearing, the tribal judge issued an oral judgment for appellee ordering appellants to pay \$4,074.03, court costs and attorney fees. Appellants were also ordered to peacefully remove themselves and anyone else residing in unit number 13-02 of Project 9-14, Poplar, Montana, along with all of their personal belongings by May 30, 1989.

On May 30, 1989, appellants filed a Petition for Appeal and Motion for Stay of Judgment. On May 30, 1989, an Order for Stay of Judgment was signed and filed. Appellants' Petition for Appeal set forth five (5) issues. The issues were as follows:

"1. Relevant and admissible evidence was improperly excluded from the record at the hearing on May 25, 1989.

"2. The Tribal Court Order issued on May 25, 1989 does not provide adequate time for vacating said premises by May 30, 1989.

"3. Defendants/Appellants believe the issues determined by the Tribal Court on May 25, 1989 were previously determined by Tribal Court Judge McClammy on October 25, 1988, and the new hearing on said issues is therefore barred by the doctrine of res judicata.

"4. The award of attorney's fees to Plaintiff is specifically prohibited by the Fort Peck Comprehensive Code of Justice.

"5. Defendants/Appellants believe that there are additional issues which may be more fully defined upon review of the transcript of the May 25, 1989 hearing. Defendants/Appellants respectfully request leave to reserve notice of said issues until the transcript has been prepared."

Oral arguments were scheduled for and heard on September 5, 1989. Iva Grainger and Carol Conner were present and represented Housing. Appellants were not present. At oral arguments, Housing addressed each of appellants' issues and established the delinquent rent was now \$4,821.00. This Court will also address each of appellants' issues below.

Whether relevant and admissible evidence was improperly excluded from the record at the hearing on May 24, 1989.

A transcript of the May 24, 1989 hearing was available to this Court and upon reviewing the transcript, it is evident, appellants first issue is without merit. Housing offered testimony and evidence through its only witness, Iva Grainger. Appellants represented themselves and Appellant Levi Olson was allowed to cross-examine Iva Grainger (Transcript, p. 7, 1. 17 to p. 15, 1. 22.). Appellant Margaret Olson was also allowed to cross-examine Iva Grainger (Transcript, p. 8, 1. 5.).

During their cross-examination of Iva Grainger, both appellants went beyond the scope of direct examination. An objection was raised by Housing, the Court properly sustained the objection and proceeded to instruct appellants on the proper handling of their case. The applicable portion of the transcript read as follows:

Levi Olson:	Does that guideline specifically say, Gross income or does it say . . . what kind of income does it include?
Iva Grainger:	Income from all sources.
Levi Olson:	Income from all sources.
Iva Grainger:	But the only thing that is not included is sporadic income, like lease income . . annual lease is not consider sporadic income.
Levi Olson:	If you work once a year (sic) for somebody. If I worked for an employer once a year for two months out of the year . . . and I draw wages on that . . . would that be sporadic?
Iva Grainger:	No, it wouldn't.
Levi Olson:	So no one has ever worked sporadic . . . one or two months out of the year, every year. They have never count those incomes of other people?
Carol Conner:	Your Honor, I think that we are going beyond the scope of direct examination.
Levi Olson:	I'm trying to get the point across that BIA income, one a year.
Judge Boyd:	Are you referring to lease income?
Levi Olson:	And also people working once or two out of the year . . it's still the same, that receive money once a year. Because there are people that do work seasonal and they do not get charged.
Carol Conner:	Your Honor, I object. This is pure speculation on his part. He's suppose to be . .
Levi Olson:	Your Honor, this is . . .
Carol Conner:	Wait a minute, Your Honor, it's not appropriate, you should hear my objection. He's going beyond the scope of direct examination. It is impermissible, unallowable for him to sit here and testify about hearsay, about somebody that he heard, did this or did that. He's got the Executive Director of the Housing Authority sitting right here that knows the rules and regulations. That she is obligated to follow in computing an individual's monthly rent. If he wants to question her about that as it relates to him, I have no objections."

Judge Boyd: Yes, Mr. Olson. The purpose of cross— examination is for you to ask questions of the adverse witness here but that is limited to the direct examination. When you get into issues that you're raising, those should be presented when you have the opportunity to present your side of the case and through the introduction of witnesses or documentary evidence.  
(Transcript p. 10, 1. 10 to p. 12, 1. 8.)

In a civil proceeding, a party can elect to represent themselves or retain counsel. Although a party elects to represent themselves and are without the benefit of counsel, they will be bound by the rules of procedure and evidence during the hearing or trial.

In this case, because the tribal court properly advised the appellants after sustaining the objection, there was no improperly excluded relevant and admissible evidence since appellants could still have presented the evidence after Housing's case and during their case. Despite being specifically advised of the right to present a case, appellants declined to present any witnesses. The applicable portion of the transcript reads as follows:

Levi Olson: I have no further questions.  
Judge Boyd: Okay.  
Carol Conner: I rest my case, Your Honor.  
Judge Boyd: Okay. You may step down. Mr. Olson, do you have any witnesses to present?  
Levi Olson: Pardon?  
Judge Boyd: Do you have any witnesses you would like to present?  
Levi Olson: Nothing."  
(Transcript p. 22, 1. 20 to p. 23, 1. 3.)

In conclusion, the record before this Court reflects appellants made no attempt to properly present evidence to the tribal court. Therefore, appellants' contention that relevant and admissible evidence was improperly excluded from the record at the hearing on May 24, 1989 is not support by the evidence and is without merit.

## II.

Whether the Tribal Court Order issued on May 24, 1989 does not provide adequate time for vacating said premises by May 30, 1989.

Up to May 24, 1989, appellants had failed to pay \$4,074.03 in rent to Housing. At the time of oral arguments appellants had failed to pay \$4,821.00 in rent to Housing. The tribal court order of May 24, 1989 ordered appellants to vacate and remove all their personal property from Unit No. 13-02 of Project 9-14 by May 30, 1989. Whether appellants were provided adequate time to vacate the premises depends on whether the CCOJ was followed and what it provides is adequate time under the circumstances.

The procedure for properly evicting a tenant is set forth in VII CCOJ 102 and 103. Title VII CCOJ 102 reads in part as follows:

"An action of forcible detainer, or eviction, to recover the possession of real property is maintainable in the Tribal Court when:

" ...

"(4) A lessee, or tenant, in person or by subtenant, holds over after the termination of the lease or expiration of the term, or fails to pay the rent for seven (7) days after the same shall be due;

" .... "

In the instant case, appellants had failed to pay rent for more than seven (7) days and therefore an action of eviction was maintainable in tribal court. However, before the action could be commenced, a notice to quit as provided for in the CCOJ must have been served.

Title VII CCOJ 103(a) discusses notice to quit and the proper serving on a tenant in possession. The record reflects Housing complied with this section which reads as follows:

"In all cases arising under subsections (4), (5) and (6) of Section 102, three (3) days written notice to quit or remove must be given to the lessee, tenant, subtenant, or party in possession, before proceedings can be instituted for forcible detainer or eviction. Notice shall be in writing and must be served and returned by a person at least eighteen (18) years of age, by delivering the notice to the tenant or delivering the notice to the tenant or person in possession, or to some person of suitable age residing on the premises, or, if neither can be found with reasonable diligence, the notice may be served by affixing it on a conspicuous part of the premises where it may be read conveniently. The person making service shall make a return of service, which need not be verified, and which shall be filed in the case if suit is instituted."

On May 15, 1989, Housing had served upon appellants the required written notice entitled Notice to Surrender Premises or Pay (Three (3)day Notice to Vacate). The notice read in part as follows:

"YOU ARE HEREBY NOTIFIED that the FORT PECK HOUSING AUTHORITY hereby demands that you surrender and move out of your Fort Peck Housing Authority Unit No. 13-02 (9-14) within THREE (3) DAYS, if you have not paid all rents, housing payments, or charges now due and owing on this unit, in the amount of \$4,074.03, within that time."

This notice complied with VII CCOJ 103(a) and appellee complied with the other requirements of the section when the person making service made a return of service which reads as follows:

"I HEREBY CERTIFY that I delivered a true copy of this Notice to the above-named Defendant(s), or that I posted a true copy thereof in a conspicuous and convenient place on the premises on the 15 day of May, 1989, and that I am over the age of eighteen (18) years.

Because all the requirements of VII CCOJ 103(a) were met and appellants refused to surrender and move out of Housing's

Unit No. 13-02 in Project 9-14, Housing was authorized to institute appellants to vacate the premises by May 30, 1989 was proper depends on VII CCOJ 104 and the procedure and time limits contained therein. This section reads in applicable part as follows:

"(a) Complaint. Eviction proceedings may be instituted in the Tribal Court by filing a complaint setting forth the facts supporting the demand for eviction and supporting such other relief as may be demanded. The complaint shall request the Court to issue an order requiring the defendant and persons in possession to vacate the premises not less than five (5) days from the date of filing the complaint on penalty of forcible eviction from the premises.

"(b) Order and notice. Promptly when the complaint is filed the Court shall issue an order and notice setting the demand for eviction for hearing on a date not more than three (3) days after service of the order and notice. The service of the order and notice. The order and notice shall inform the defendant that unless the defendant appears at the hearing and makes defenses satisfactory to the Court, the defendant and all other occupants of the premises and their personal belongings will be forcibly evicted. The order and notice shall also fix a date, not more than fifteen (15) days after the complaint is filed, for a hearing on the demand for a judgment for money or other relief, unless the defendant consents that such matters be heard at the hearing set on the demand for eviction.

"(c) Service of complaint, order and notice of Tribal Court. The order and notice of the Court, together with the complaint, shall be served without delay and at least within twenty four (24) hours after the complaint is filed. The service and return shall be by a person at least eighteen (18) years of age, by delivering a copy of the complaint, order and notice to defendant, or to some person of suitable defendant, or to some person of suitable age residing on the premises, or, if neither can be found with reasonable diligence, by affixing a copy of the complaint, order and notice on a conspicuous part of the premises where such papers can be seen. The person making service shall make a return of proof of service promptly, and in any event before the days set for hearing. The return of proof of service need not be verified.

"...."

The record before this Court reflects Housing and the tribal courts actions complied with the applicable portions of VII CCOJ 104. The extent of the compliance was enough to insure the parties were not denied due process of law or equal protection under the law.

First, on May 19, 1989, Housing filed a Complaint for Debt and Money Due and For Unlawful Detainer or Eviction setting forth facts supporting the demand for eviction and supporting the other requested relief. This complaint also requested an order issue requiring the defendant and persons in possession to vacate the premises not less than five (5) days from the date of filing the complaint. This complied with VII CCOJ 104(a)

Second, the tribal court complied in part with VII CCOJ 104(b) when on May 19, 1989 it issued an Order of Eviction and Notice of Hearing. Although the tribal court held the hearing more than three (3) days after service of the order and notice as provided for in VII CCOJ 104(b), neither party has raised this as an issue. This Court does recognize that at the May 24, 1989

hearing the tribal court allowed the presentation of evidence on Housing's demand for a judgment for money and other relief which was within the required fifteen (15) days provided for in VII CCOJ 104(b). Therefore, because neither party raised the issue that this defect in procedure was prejudicial to their case, the May 24, 1989 hearing met the basic due process requirements of VII CCOJ 104(b).

Finally, the requirements of VII CCOJ 104(c) were met. The order and notice of the tribal court, together with the complaint, were served within twenty—four (24) hours after the complaint was filed. In addition, the return was made by a person over eighteen (18) years of age on Appellant Margaret Olson, individually and for Levi Olson and the person making service made a return of service on May 24, 1989.

The May 24, 1989 hearing was properly conducted. At the hearing's conclusion, the tribal court advised appellants to remove themselves and anyone residing in unit number 13-02 of Project 9-14, along with all of their personal belongings by May 30, 1989. The Order and Judgment which ordered the following:

1. Plaintiff is given judgment against Defendant(s) in the amount of \$4,074.03.
2. Plaintiff is awarded an amount of money against defendant(s) for attorneys fees and costs incurred in bringing this action. Plaintiff shall submit to the court by affidavit (sic) a bill of costs and attorneys fees to be approved by the court within 10 days from this date.
3. Defendant(s) are ordered to peacefully remove themselves and anyone else residing in unit number 13— 02 of Project 9-14, along with all of their personal belongings by May 30, 1989.
4. If Defendant(s) fail to vacate themselves from the premises as above described, the Fort Peck Tribal Police are hereby ordered to forcibly (sic) evict them.

In view of the time limits in section VII CCOJ 103 and 104, Appellants were given adequate time to vacate the premises. In the instant case the appellants had been given a three (3) day notice to quit and the minimum five (5) days from the date of filing the complaint. Therefore, the tribal court order issued on May 25, 1989 did provide additional and therefore adequate time when requiring the premises be vacated by May **30** 1989. In addition to the above, on May 30, 1989, Appellants asked for and received a stay of judgment and Appellee has alleged damage as a result of the stay.

In conclusion, appellants were entitled to the time provided in VII CCOJ 103 and/or 104 in proceedings to vacate the premises. Appellants received this time and more. In order to avoid further delay and prevent damage to the premises, appellants are ordered to vacate the premises in the minimum amount of time allowable in the CCOJ which is three (3) days as provided for in a notice to quit under VII CCOJ 103(a). Therefore, appellants shall vacate the premises on or before September 8, 1989.

### III.

Whether the issues determined by the Tribal Court on May 25, 1989 were previously determined by Tribal Court Judge McClammy on October 25, 1988, and the new hearing on said issues is therefore barred by the doctrine of res judicata.

This issue raises the fact of an October 21, 1988 hearing which is reflected in the record. This hearing addressed a Petition for Restraining Order and resulted in an Order to Restrain dated October 25, 1988. The tribal court's Order to Restrain ordered the following:

A. The Judgment and Order Civil No. 9-14 1302 supporting stipulations for Judgment dated 26th day of August, 1987 is hereby vacated on the Courts own motion.

B. The Secretary Accountant, Paula Brien shall not deduct any rental for Fort Peck Housing authority from Mr. Olson's wages and the Director of Fort Peck Housing Authority, Iva Grainger shall return all rental deducted from Mr. Olson's wages since October 10, 1988.

C. The Housing Authorities request for Attorney fees and costs in defending this action are hereby denied.

The Order to Restrain was not appropriate under the circumstances. On August 26, 1987, Carol A. Conner, Mary L. Zemyan, attorney for Levi Olson, and Levi Olson stipulated to a judgment being entered against him in the amount of \$2,037.50 and automatic payroll deductions to pay on the judgment and to keep his monthly rental payments current. The parties agreed the Court could enter judgment in accordance with the terms of the stipulation. Because of the stipulation, Chief Judge McClammy entered a Judgment and Order on August 27, 1987. This judgment ordered the following:

"1. Judgment in the amount of Two Thousand and Thirty-Seven dollars and 50/100 (\$2,037.50) is hereby given for Plaintiffs and against Defendant.

"2. Defendant shall make payment against this judgment by means of automatic payroll deductions of Fifty dollars and No/100 (\$50.00) per pay check until this judgment is satisfied. In addition, Defendant shall keep his monthly house payments current by means of automatic payroll deductions in the amount of One Hundred and Twenty-Three dollars and No/100 (\$123.00) per pay check.

"3. Defendant stipulates and is hereby ordered that a hold be placed n his Individual Indian Money account through the Bureau of Indian Affairs until such time as this judgment has been paid in full or is otherwise satisfied."

Because of the original stipulation and resulting judgment, Chief Judge McClammy should not have granted the restraining order on a voluntary wage assignment executed by Appellant Levi Olson pursuant to a stipulated judgment. Chief Judge McClammy's subsequent order did not properly consider and deal with the adverse effect to Housing. The order required Housing to allow appellants to continue to occupy the premises without any obligation to pay rent. Housing was actually being restrained from exercising its legal rights under the CCOJ to protect a property interest which denied it due process and equal protection of the law. Therefore, the restraining order was inappropriate.

In conclusion, the restraining order, which permitted appellants to continue to occupy a premise and fail to pay their monthly rental to where the amount owed had increased to \$4,074.03 and restrained Housing from exercising its legal rights under the CCOJ, denied due process under and equal protection of the law. Because of the above, the issues determined by the tribal court on May 24, 1989 were not barred by the doctrine of res judicata because of the October 21, 1988 hearing.



#### IV.

Whether the award of attorney's fees to Plaintiff (Appellee) is specifically prohibited by the Fort Peck Comprehensive Code of Justice.

The award of attorney's fees is not specifically prohibited by the Fort Peck Comprehensive Code of Justice. Title IV CCOJ 309 addresses when attorney's fees can be properly awarded by the tribal court. This section reads in full as follows:

"In civil actions costs shall be awarded the prevailing party as part of the final judgment unless the Court otherwise orders. No costs shall be awarded against the Tribes, or against any officer of the Tribe or member of the Tribal Council sued in his/her official capacity. Costs shall include filing fees, reasonable and necessary expenses of involuntary witnesses, costs associated with compensation and expenses of the jury, and such other proper and reasonable expenses, exclusive of attorneys' fees to the prevailing party in a civil suit unless the Court determines that the case has been prosecuted or defended solely for harassment and without any reasonable expectation of success.

The tribal court did not specifically determine the case had been defended solely for harassment or without any reasonable expectation of success, therefore, attorney fees under Title IV CCOJ 309 would not have been appropriately awarded. However, in this case on March 21, 1984 the parties entered into a contract entitled Rent Dwelling Lease. In the lease, attorney fees are provided for in the event of legal action. This provision of the lease reads as follows:

"13. In the event Management must begin legal action against the Tenant for either possession of the dwelling unit or other action arising from the Tenant's use of the premises, the necessary court costs, including Management's attorney fees, will be charged to the Tenant's account."

In conclusion, appellants agreed to the provisions of the lease agreement when they signed the same. The CCOJ does not prohibit awarding attorney fees provided for in contracts such as the Rent Dwelling Lease which contain a provision in which attorney fees are provided for in the event of legal action to enforce the contract. Therefore, the award of attorney fees was not prohibited by the CCOJ and appropriate in the instant case since agreed to by the parties at the time of the signing of the lease.

#### V.

Whether there are additional issues upon review of the transcript of the May 25, 1989 hearing.

Appellants were not present at the September 5, 1989 hearing. Despite appellants failure to appear (or file a brief) and raise additional issues, this Court reviewed the transcript of the May 24, 1989 hearing. Upon reviewing the transcript, this Court found no additional issues.

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IT IS THE UNANIMOUS DECISION OF THIS COURT TO AFFIRM THE JUDGMENT OF THE TRIBAL COURT FOR APPELLEE AGAINST APPELLANTS IN THE AMOUNT OF \$4,821.00 AND COSTS AND ATTORNEY FEES TO BE APPROVED BY THE TRIBAL COURT UPON SUBMITTING THE REQUIRED AFFIDAVIT AND PERMITTING THE GARNISHMENT OF APPELLANTS WAGES AS PREVIOUSLY STIPULATED OR IN A GREATER AMOUNT IF PROVIDED FOR BY CURRENT LAW. THIS MATTER IS REMANDED TO TRIBAL COURT FOR A DETERMINATION OF THOSE COSTS AND ATTORNEY FEES AND ENTRY OF A JUDGMENT FOR THE TRIBES AGAINST APPELLANTS FOR THE COST OF THE TRANSCRIPT. IN ADDITION, APPELLANTS ARE ORDERED TO REMOVE THEMSELVES AND THEIR PERSONAL BELONGINGS FROM THE PREMISES ON OR BEFORE SEPTEMBER 8, 1989.

DATED this \_\_\_\_ of October, 1989.

**BY THE COURT OF APPEALS:**

\_\_\_\_\_  
Arnie A. Hove, Chief Justice

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Gary James Melbourne, Associate Justice

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Floyd G. Azure, Associate Justice

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