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

GAMBLES (FINNICUM'S) FURNITURE
Plaintiff/Appellant,

vs.

Appeal No. 071

LOUIS YOUPEE,
Defendant/Appellee,

THIS APPEAL is from an order dismissing Appellant's Civil Complaints filed in the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. The Honorable Mary Gourneau presided.

FOR APPELLANT: Melissa G. Melton, Lay Advocate, P. O. Box 214, Wolf Point, Montana 59201.

FOR APPELLEE: Lewellyn J. Cantrell, Attorney at Law, P. O. Box 1442, Poplar, Montana 59255.

CIVIL: THE FILING OF A CIVIL COMPLAINT IS THE BRINGING OF AN ACTION CONTEMPLATED BY IV CCOJ 601 AND TOLLS THE STATUTE OF LIMITATIONS UNTIL A FINAL ORDER OR JUDGMENT IS ENTERED BY THE TRIBAL COURT AS REQUIRED BY IV CCOJ 301; AND THE TRIBAL COURT ERRED IN DISMISSING THE CIVIL COMPLAINT FILED IN COMPLIANCE WITH IV CCOJ 601 AND WITHIN THREE (3) YEARS AFTER THE CAUSE OF ACTION AROSE FOR THE REASON THE STATUTE OF LIMITATIONS HAS EXPIRED.

ARGUED: July 10, 1989. **DECIDED:** July 10, 1989.

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

THIS MATTER IS HEREBY REMANDED TO TRIBAL COURT FOR THE HEARING REQUIRED BY IV CCOJ 103 WITHIN FIFTEEN (15) DAYS OF THE FILING OF THIS OPINION. AT THE HEARING, THE PRESIDING JUDGE SHALL ASCERTAIN THE ANSWERS TO IV CCOJ 103(a), (b), (c), (d) AND (e). IN THE EXTENT A TRIAL IS ORDERED, IT SHALL BE HELD WITHIN THIRTY (30) DAYS OF THE IV CCOJ 103 HEARING.

FACTS:

On January 14, 1986, Appellant filed a complaint entitled Civil Action in Tribal Court against Appellee for the sum of \$3,752.53 including finance charges for miscellaneous merchandise including furniture, carpet and a go-cart. The complaint was signed by LaVonne Scotson, Bookkeeper for Appellant and sworn to before the Honorable Mary Gourneau. There is no record of a IV CCOJ 103 hearing or the entry of a final order or judgment in this matter on this Civil Action.

On February 6, 1989, a second complaint entitled Civil Complaint was filed by Appellant against Appellee for the sum of \$2,925.95, filing fees in the amount of \$10.00 and legal fees in the amount of \$424.00. Appellee filed a Motion to Dismiss this Civil Complaint based on the following:

"Motion based on Title IV, Chapter 6, Sec. 601 of the Fort Peck Tribe's Comprehensive Code of Justice. More than three (3) years have lapsed since Plaintiff initiated court action.
'The Court shall have no Jurisdiction (sic) over any action brought more than there years after the cause of action arose.'"

The Appellee attached to his Motion to Dismiss the Notice of Action dated January 14, 1986, which was served upon him the 15th day of January, 1986 by Law Enforcement Officer Andrew Azure and the Notice of Civil Complaint and Civil Summons dated February 27, 1989 and served upon Appellee on the 27th day of February, 1989. At a hearing on March 3, 1989, Appellee's Motion to Dismiss was granted.

Appellant filed a Petition for Review of the Tribal Court's order of dismissal on the following grounds:

"1. Bias and Discrimination

Petitioner feels the court judgment was biased and discriminating. In that the Statute of Limitations was set aside where the complainant was a Tribal Entity. (Fort Peck Housing Authority-VS-Cantrell)

"2. Equal Protection

Petitioner feels that equal protection of the laws was not afforded. (ICRA-25 USC Section 1302 (8)

"(a) (FPHA VS Cantrell) The collection was based on open account at Fort Peck Housing Authority and was beyond the Statute of Limitations; allowing FPHA to compute open account beyond the three (3) year Statute of Limitations.

"(b) Code of Ethics for Judges and Justices of the Fort Peck Tribal Courts.

(reads in part) 'A judge should accord to every person who is legally interested in a proceeding, or his lawyer or advocate, the full right to be heard under the Code, the Indian Civil Rights Act, and any other relevant source of law....'"

The issues to be addressed by this Court are as follows:

I. Whether the Tribal Court erred in dismissing Appellant's Civil Complaints.

II. Whether this matter should be remanded to the Tribal Court for a hearing.

I.

On January 14, 1986, the original complaint entitled Civil Action was filed by Appellant's bookkeeper. Appellee's statement reflects the various transactions between the parties. Appellee's statement reflects the last charge as Invoice No. 24 in the amount of \$115.14 on February 26, 1985. Appellee's statement also reflects that finance charges were computed and added to the statement at the end of each month. The last finance charges was on December 30, 1985.

Title IV CCOJ 601 addresses the period of time in which a civil action must be brought before the Tribal Court has jurisdiction. This section reads as follows:

"The Court shall have no jurisdiction over any action brought more than three (3) years after the cause of action arose, except that no statute of limitation shall bar an action commenced by the Tribes."

As previously discussed, the dates of the last invoice and monthly finance charge are February 26, 1985 and December 30, 1985, respectively. Both dates are within the three (3) year statute of limitations because Appellant's original complaint entitled Civil Action was filed January 14, 1986. Therefore, the Tribal Court had jurisdiction.

Appellee's lay counselor filed a Motion to Dismiss on February 28, 1989 and based the reason for the motion on IV CCOJ 601. Attached to the motion was the Notice of Action dated January 14, 1986 which was served upon Appellee January 15, 1986. Also attached to the motion was the Civil Complaint, Civil Summons dated February 6, 1989 and Certificate of Service served upon Appellee February 27, 1989. At the hearing March 3, 1989, Appellee's Motion to Dismiss was granted.

Appellant claims the Tribal Court, "During the hearing on March 3, 1989 the Court stated there was never a judgment entered in the 1986 Notice of Action." Appellant further claims, "The Court dismissed Civil Complaint stating the basis for dismissal being that the Statute of Limitations had expired."

On appeal, Appellant contends the statute of limitations was set aside in the case of Fort Peck Housing Authority -vs- Cantrell. In the Brief in Support of Appeal Appellant specifically alleges, "The Statute of Limitations was set aside in this case; in which F.P.H.A. was allowed to compute open account beyond the Statute of Limitations and was so awarded."

Appellant's understanding of Fort Peck Housing Authority -vs- Cantrell is incorrect since no statute of limitations was set aside to allow the computing of interest for finance charges. A party is allowed to compute finance charges for the full period of any agreement even if the same extends beyond three (3) years.

The statute of limitation referred to in IV CCOJ 601 requires a cause of action be filed within three (3) years of when it arose. This cause of action arose after Appellee's refusal to pay on his account when demand was made by Appellant after the last invoice or finance charge. The Civil Action filed January 14, 1986 was within the three (3) year statute of limitation in IV CCOJ 601 from the dates of the last invoice and finance charges.

In conclusion, the Tribal Court was correct in dismissing the Civil Complaint filed February 6, 1989 in that Appellant previously filed a complaint which had not been properly handled by the Tribal Court. However, the Tribal Court erred when it dismissed the Civil Action filed January 14, 1986. The appropriate disposition of this case will be discussed in Issue No. II.

II.

The file in this case and which was presented to this Court was incomplete. In the file there was only copies of the original Civil Action and Appellee's statement from the documents filed January 14, 1986. As previously discussed, there is nothing on the Civil Action document or any document which reflects whether a IV CCOJ 103 hearing or a final order or judgment as required by IV CCOJ 301 was entered.

Title IV CCOJ 103 reads in full as follows:

"At the time the verified complaint is filed, the clerk shall schedule a hearing on the claim not less than fifteen (15) days after the complaint is filed. The clerk shall furnish the plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. At the hearing the presiding judge shall ascertain whether:

"(a) The defendant has any defenses to the claim, or wishes to present any counterclaim against the plaintiff or cross-claim against any other party or person concerning the same transaction or occurrence:

"(b) Any party wishes to present evidence to the Court concerning the facts of the transaction or occurrence;

"(c) The interest of the justice require any party to answer written interrogatories, produce any documents or other evidence, or otherwise engage in any pre-trial discovery considered proper by the judge;

"(d) Some or all of the issues in dispute can be settled without a formal adjudication; and

"(e) The claim is ready for trial:

"(1) If the claim is ready for trial, the judge may try it immediately or set a subsequent date for trial.

"(2) If the claim is not ready for trial, the judge shall set a subsequent date for trial and order such preparation by the parties as he/she deems necessary."

Title IV CCOJ 301 reads in full as follows:

"A judgment shall be entered in each civil case. The judgment shall be for money or other relief or for dismissal. A judgment is complete and shall be deemed entered when it is signed by the judge and filed with the clerk."

It was the Tribal Court clerk's duty to schedule the IV CCOJ 103 hearing on this civil action not less than fifteen (15) days

after the complaint was filed. It was the clerk's duty to furnish a plaintiff, in this case Appellant, with a copy of the notice showing the time and place of the hearing and affix a copy to the complaint served on each defendant. There is no record of any such notice being given either Appellant or Appellee.

Appellant raised the issue of whether equal protection of the laws was afforded. Although this issue was not to be specifically addressed, the Tribal Court did deny Appellant equal protection of its laws or deprived Appellant of its property without due process of law by failing to follow IV CCOJ 103 and 301. Title 25 U.S.C.S. Section 1301(8) reads as follows:

"No Indian tribe in exercising powers of self-government shall ---
"
"...
"deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
"
"...."

In the instant case, Appellant was within the jurisdiction of the Tribal Court when it had to bring this action in Tribal Court to collect money from Appellee. Title I CCOJ 107 in part reads, "The Court shall have jurisdiction over any action where one party to the action shall be an Indian...." Because Appellee was required to bring its action in Tribal Court, it should have been afforded equal protection of its laws and due process. The Tribal Court's failure to hold the IV CCOJ 103 hearing and enter a final order or judgment as required by Iv CCOJ 301 on Appellant's Civil Action dated January 14, 1986 is a denial of equal protection of its laws and due process.

In conclusion, the Tribal Court's dismissal of Appellant's January 14, 1986 Civil Action was reversible error. The Tribal Court's dismissal of the January 14, 1989 Civil Action is hereby vacated. This matter is appropriately remanded to the Tribal Court with specific directions to hold the IV CCOJ 103 hearing to ascertain the answers to IV CCOJ 103(a), (b), (c), (d), and (e) and enter an appropriate judgment as required by IV CCOJ 301.

THIS MATTER IS HEREBY REMANDED TO TRIBAL COURT FOR A HEARING REQUIRED BY IV CCOJ 103 WITHIN FIFTEEN (15) DAYS OF THE FILING OF THIS OPINION. AT THE HEARING, THE PRESIDING JUDGE SHALL ASCERTAIN THE ANSWERS TO IV CCOJ 103(a), (b), (c), (d) AND (e). IN THE EVENT A TRIAL IS ORDERED, IT SHALL BE HELD WITHIN THIRTY (30) DAYS OF THE IV CCOJ 103 HEARING.

DATED this _____ day of September, 1989.

BY THE COURT OF APPEALS:

ARNIE A. HOVE, Chief Justice

GARY JAMES MELBOURNE, Associate Justice

FLOYD AZURE, Associate Justice
