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

GAMBLE'S (FINNICUM'S) FURNITURE,
Plaintiff/Appellant,

vs.

Appeal No. 072

HENRY BUCK ELK JR.,
Defendant/Appellee,

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. The Honorable William McClammy presiding and entering the original judgment. The Honorable Mary Gourneau presiding and entering the order of dismissal with prejudice which is appealed from.

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

FOR APPELLEE: Clayton Reum, Lay Advocate, 821 6th Ave. South, Wolf Point, Montana 59201

CIVIL: PURSUANT TO IV CCOJ 306, A PARTY'S FAILURE TO ENFORCE A JUDGMENT AND EXECUTE THEREON DOES NOT ENTITLE THE PARTY AGAINST WHO THAT JUDGMENT WAS ENTERED TO ITS DISMISSAL WITH PREJUDICE BEFORE FIVE (5) YEARS AFTER THE DATE OF ITS ENTRY.

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.

THE JUDGMENT FOR MONEY ENTERED IN THIS CASE AGAINST APPELLEE IS STILL ENFORCEABLE UNDER IV CCOJ 306. THE TRIBAL COURT'S ORDER DISMISSING THE PREVIOUS JUDGMENT WITH PREJUDICE IS HEREBY REVERSED AND THIS MATTER IS REMANDED TO TRIBAL COURT WITH DIRECTIONS FOR ENTRY OF A MONEY JUDGMENT IN FAVOR OF APPELLANT 111 THE AMOUNT OF \$5,147.18 PLUS SERVICES CHARGES AND COSTS AS PROVIDED FOR IN IV CCOJ 309.

FACTS:

On or about September 27, 1985, a Civil Action was filed in this matter. In the Civil Action, LaVonne Scotson, Bookkeeper for Appellant alleged Appellee was in arrears and delinquent in his account payable in the amount of \$5,147.18 including service charges for miscellaneous merchandise.

On or about October 23, 1985, the Honorable William McClammy entered judgment for Appellant and ordered Appellee to pay \$143.00 a month. The first payment was to be made November 8, 1985.

On or about February 6, 1989, Appellant filed a Civil Complaint. The complaint alleges Appellee did charge and sign a contract for merchandise at the Gambles store and has made a partial payment in the past, but has failed to bring his account current. The complaint further alleges the outstanding balance is \$3467.09.

In the complaint, Appellant requested Appellee be order to pay the remaining unpaid balance in the amount of \$3467.09. Appellant further requested Appellee be ordered to pay filing fees in the amount of \$10.00 and legal fees in the amount of \$520.00, for a combined total of \$3997.09.

A hearing was held on March 3, 1989. The Tribal Court informed all parties a judgment had been entered in a previous action. The Tribal Court dismissed the present action as well as the previous judgment with prejudice. The reason given for the dismissal was Appellant had never sought enforcement. Appellant appeals from the order and requests this Court overrule the dismissal and enforce the previous judgment.

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

(1) WHETHER APPELLANT'S APPEAL IS OUTSIDE THE FIFTEEN (15) DAYS AS PROVIDED FOR IN I CCOJ 207(a).

(2) WHETHER THE TRIBAL COURT ERRED IN DISMISSING THE PRESENT ACTION AND PREVIOUS MONEY JUDGMENT ENTERED AGAINST APPELLEE BECAUSE APPELLANT NEVER SOUGHT ENFORCEMENT.

I.

The time for filing a petition for review of a civil case is provided for in I CCOJ 207(a). This section reads in full as follows:

"A party to a civil case may petition for review. Upon appellant's request, the Tribal Public Defender shall prepare the petition for review. The petition for review must be taken within fifteen (15) days from the date of entry of the final order or judgment appealed from by filing such petition with the clerk of the Tribal Court together with the docket fee and any bond required pursuant to this Section. No extensions of the fifteen (15) day period shall be granted." (Emphasis Added.)

This Court has consistently held that the fifteen (15) days hereinabove referred to means fifteen (15) working days. This construction of the section is consistent with the construction of the two (2) criminal statutes referring to the time for taking an appeal in a criminal matter. Title I CCOJ 206(a) uses the term fifteen (15) days and II CCOJ 604 clarifies the length of this

period. Title I CCOJ 206(a) reads in full as follows:

"An appeal must be taken within fifteen (15) days from the judgment appealed from by filing a written notice of appeal with the clerk of the Fort Peck Tribal Court. No extension of the fifteen (15) day period shall be granted. Upon request, the clerk of the

Tribal Court shall prepare the notice of appeal."

(Emphasis Added.)

Title II CCOJ 604 reads in full as follows:

"Following the imposition of judgment of guilty, except upon a plea of guilty, the Court shall inform the defendant that he/she has a right to appeal. If the defendant requests, the clerk of the court shall prepare and file a Notice of Appeal on behalf of the defendant. The defendant. or the clerk of the court filing on his/her behalf, must file the Notice of Appeal within fifteen (15) working days of the judgment."

Title I CCOJ Sections 206(a) and 207(a) specifically prohibit the extension of the fifteen (15) day period, however, there is no definition within either statute of whether this means fifteen days including holidays or weekends or fifteen working days. Title I CCOJ 604 when read in conjunction with II CCOJ 206(a) provides the necessary clarification as meaning within fifteen (15) working days of the judgment.

It is the intention of this Court to be consistent in its interpretation of the CCOJ. This requires consistent construction of the same terminology used in sections of the CCOJ unless a different construction is required.

The term "fifteen (15) working days" used in II CCOJ 206(a) referring to criminal appeals and II CCOJ 207(a) referring to civil appeals shall mean fifteen (15) working days from receiving notice of the entry of the final order or judgment appealed from. Therefore, Appellant's appeal is within the fifteen (15) days provided for in II CCOJ207(a).

II.

The law dealing with obtaining and entry of a judgment in tribal court is set out in IV CCOJ 301. 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." (Emphasis Added.)

In the instant case, the Civil Action was filed September 27, 1985 and the Notice of Action was served on Appellee October 8, 1985. The judgment was signed and filed on or about October 23, 1985.

The life of a judgment entered in Tribal Court is provided for in IV CCOJ 306. This section reads in full as follows:

"No judgment of the Court for money shall be enforceable after five (5) years from the date of entry, unless application to renew the judgment shall been made before the date of expiration pursuant to Section 307.

The judgment in this case was less than five (5) years old if the date of entry was October 23, 1985, or anytime immediately thereafter. This judgment is still enforceable and no application to renew the judgment is necessary. The Tribal Court's dismissal of the present action on March 3, 1989 may have been appropriate, however, the dismissal with prejudice of the previous judgment was inappropriate and reversible error. Although Appellant has not sought enforcement of its judgment, Appellant had and still has the right to avail itself of Title IV CCOJ 307. Title IV CCOJ 307 reads in full as follows:

"Upon application of the judgment creditor prior to the expiration of five (5) years after the date of the entry of a judgment for money, the Court shall order the judgment renewed and extended for an additional five (5) years."

In conclusion, the Tribal Court acted properly in dismissing the present action. However, the Tribal Court erred in dismissing with prejudice the previous money judgment entered against Appellee because Appellant never sought enforcement of the same.

THE JUDGMENT FOR MONEY ENTERED IN THIS CASE AGAINST APPELLEE IS STILL ENFORCEABLE UNDER IV CCOJ 306. THE TRIBAL COURT' S ORDER DISMISSING THE PREVIOUS JUDGMENT WITH PREJUDICE IS HEREBY REVERSED AND THIS MATTER IS REMANDED TO TRIBAL COURT WITH DIRECTIONS FOR ENTRY OF A MONEY JUDGMENT IN FAVOR OF APPELLANT IN THE AMOUNT OF \$5,147.18 PLUS SERVICES CHARGES AND COSTS AS PROVIDED FOR IN IV CCOJ 309.

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
