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

GAMBLES (FINNICUM'S) FURNITURE
Plaintiff/Appellant,

vs.

Appeal No. 085

JONATHAN BOYD,
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: Jonathan Boyd, Pro Se, P. O. Box 879, Poplar, Montana 59255.

CIVIL: THE FILING OF A CIVIL COMPLAINT IS THE BRINGING OF AN ACTION CONTEMPLATED BY IV CCOJ 601, APPELLANT FILED NO COMPLAINT WITHIN THE THREE (3) YEAR STATUTE OF LIMITATIONS; PARTIES CAN EXTEND A STATUTE OF LIMITATIONS BY WRITTEN CONTRACT; AND THE TRIBAL COURT DID NOT ERROR IN DISMISSING THE CIVIL COMPLAINT FILED THREE (3) YEARS AFTER THE CAUSE OF ACTION AROSE FOR THE REASON THE STATUTE OF LIMITATIONS HAS EXPIRED.

ARGUED: October 13, 1989. **DECIDED:** October 21, 1989.

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

HELD: THE TRIBAL COURT IS AFFIRMED AND APPELLANT'S CIVIL COMPLAINT IS HEREBY DISMISSED WITH PREJUDICE.

FACTS:

On February 6, 1989, Appellant filed a Civil Complaint in Tribal Court against Appellee for the sum of \$1,749.36 including

finance charges for merchandise, filing fees in the amount of \$10.00 and legal fees in the amount of \$262.00 for a total of \$2,021.36. The complaint was signed by Lynne Finnicum and sworn to before Myrna First. On February 6, 1989, a Civil Summons was issued and set the date and time of the hearing for March 3, 1989 at 1:30 p.m.

The hearing was held and the Civil Complaint was dismissed for the reason that the statute of limitations had run. On March 24, 1989, appellant filed a Petition for Review. Appellant's Petition for Review of the Tribal Court's order of dismissal set forth 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)

Thereby appearing to be biased and discriminating where the complainant was not a Tribal Entity. The Statute of Limitations (CCOJ - Title IV, Ch 6 Sec. 601) was cited as cause for dismissal.

"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....'"

Oral Arguments were heard on October 13, 1989 at 9:30 a.m. at the Tribal Court Building in Poplar, Montana. Appellee was not present at oral arguments. The only issue to be addressed by this Court is as follows:

I. Whether the Tribal Court erred in dismissing Appellant's Civil Complaint dated February 6, 1989.

I.

On February 6, 1989, the Civil Complaint was signed by Lynne Finnicum. Appellee had also filed a copy of the statement which reflects the various transactions between the parties and finance charges from December 11, 1973 to August 30, 1981.

In a review of the credit and payment transactions, appellee's statement reflects the last charge as Invoice No. 24 in the amount of \$313.70 on April 28, 1977 and the last payment in the amount of \$50.00 on June 8, 1980. Finally, appellee's statement also reflects that finance charges were computed and added to the statement. The last finance charge computed and added was on August 30, 1981 in the amount of \$184.08.

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, finance charge and payment are April 28, 1977, August 30, 1981 and June 8, 1980, respectively. Because appellant's Civil Complaint was filed February 6, 1989, all of the aforementioned dates are outside the three (3) year statute of limitations. Therefore, the Tribal Court did not have jurisdiction.

This Court acknowledges that parties can extend the statute of limitations by a written contract. This general rule reads:

"Taking the view that parties who bind themselves by contracts to a certain period within which action thereon must be brought must be held strictly to the terms of their agreement...." 51 Am Jur 2d, Limitation of Actions, Section 308.

Appellant was given every opportunity to present his case and asked to provide a copy of any contract between the parties which may reflect an agreement to establish a collection period extending the three (3) year statute of limitations and provide proof of more recent activity between the parties in which appellee may have acknowledged the debt. A copy of this contract was to be provided to the Court on or before Tuesday, October 17, 1989.

Appellant provided a copy of a Retail Installment Sales Contract dated and signed March 27, 1972 by appellee and appellant's representative. In reviewing the contract, it did nothing to extend the three (3) year statute of limitations provided for in IV CCOJ 601.

As stated previously, on March 3, 1989 appellant's Civil Complaint was dismissed because of the three (3) year statute of limitations in IV CCOJ 601. Appellant continues to contend 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."

This Court previously addressed this contention in Gambles vs. Louie Youpee, (Sept. 1989), Appeal No. 071 and Gambles vs. Henry Buck Elk, Jr., (July, 1989), Appeal No. 072. Again and only briefly, 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. All parties are allowed to compute finance charges for the full period of any agreement even if the same extends beyond three (3) years.

Appellant continues to contend there was bias or discrimination or a denial of equal protection under the law. Appellant's

contention is completely without merit when it failed to take action to collect on the account as provided for under the Tribal code.

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 failed to pay on his account and/or after the last charge by appellee or finance charge by appellant which was August 30, 1981. Appellant's next act reflected in the record was to file the Civil Action on February 6, 1989, more than three (3) years from the dates of the last invoice, payment or finance charge. The record speaks loud and clear, the reason for the lack of jurisdiction by the Tribal Court is appellant's own inaction.

This Court finds further support for its position in appellee's letter. Although appellee did not appear at the date and time set for oral arguments, he did sign and file a letter on September 29, 1989 which set forth certain unrefuted facts. Appellee's letter read in part as follows:

"I was taken to court on this matter in 1976. My argument was of the \$1,900.00 I owed, \$1,500.00 was interest. The judge set a court date and the plaintiff did not appear so the case was dismissed.

"I was taken to court on this same matter in March of this year and the case was dismissed again due to the statute of Limitations had run out."

Since appellee's letter appears to be an accurate statement of the facts, in addition to being outside the statute of limitations with the present action, appellant filed a previous action and for whatever reason failed to carry through with the same. Because of appellant's inaction, appellee should not now be made to answer to appellant's Civil Complaint when he was present and prepared to proceed in Tribal Court in 1976.

In conclusion, the Tribal Court was correct in dismissing the Civil Complaint filed February 6, 1989 in that appellant failed to file the Civil Complaint within the three (3) year statute of limitations as provided for in IV CCOJ 601. Therefore, the Tribal Court did not err and appellant's Civil Complaint should have been dismissed with prejudice. Because of this dismissal, appellant's other issues will not be addressed herein.

IT IS THE UNANIMOUS DECISION OF THIS COURT TO AFFIRM THE TRIBAL COURT AND ORDER THAT APPELLANT'S CIVIL COMPLAINT BE DISMISSED WITH PREJUDICE.

DATED this ____ day of October, 1989.

BY THE COURT OF APPEALS:

ARNIE A. HOVE, Chief Justice

GARY JAMES MELBOURNE, Associate Justice

FLOYD G. AZURE, Associate Justice
