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

IN THE MATTER OF

GERALD JOHNSON
Appellant,

Appeal No. 146

vs.

SUNRISE LUMBER,
Appellee.

FINDINGS OF FACT, CONCLUSIONS OF LAW, and ORDER

THIS MATTER comes before the Appeals Court on cross petitions-for-review of the Tribal Court's ORDER of November 20, 1991, Honorable Robert Welch, presiding, No. CV-P-541.

The Court takes judicial notice of its previous OPINION issued herein on July 19, 1990, as **revised** on reconsideration on August 22, 1991, REF. Appeals File No. 118, Fort Peck Appeals Court.

The Court has considered the cross-briefs and cross-responding briefs of the parties, and, based thereon, make the following **FINDINGS OF FACT**:

I.

Judge Welch, in his November 20, 1991 ORDER, having heard the testimony before the Court and arguments of counsel, made the following **ORDERS**:

1. " This Court has ruled the Life of Judgment is valid and in full force and effect from the date of Judgement rendered on the 6th day of June, 1986. Due to the fact that this has been an ongoing matter with different counsel representing both parties at different stages of said cause."

3. "Judgment in the amount of \$12,622.88 is hereby granted to Plaintiff with 10 per cent per annum as authorized by law. This amount reflects the \$20.00 deduction for property executed and sold in reference to this cause . "

Reference is made to the Appeal ' s Court remand order in Appeal No. 118, Fort Peck Appeals Court, wherein said matter was remanded:

3 . "The matter is rfttganded to Tribal Court for an evidentiary hearing under VI CCOJ 5304 and applicable law to determine what, if any, property of Appellant is available for execution." Appeals Court Order, No. 118, Page 5.

It appears that the hearing held pursuant to said order in Tribal Court on November 12th went beyond the scope of the remand order, since the Court ruled the life of judgment was valid and in full force and effect; and granted judgment in the amount of \$12,622.88 with interest at 10 per cent per annum. REF. ORDER, Page 3 . We have reviewed the order at length and are unable to determine by such review any ascertainable date on which the life of judgment lien imposed by IV CCOJ §307 either commences or expires .

The Jurisdiction of the Court of Appeals is stated in part pursuant to I CCOJ 202 as follows:

"The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review de. novo all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court is such determinations are supported by substantial evidence...."

There appears to be no final order in that there is no judgment effective date. The Court adjudges and decrees..."This Court has ruled the life of judgment is valid and in full force and **effect from the date of judgment rendered or the 6th of June,, 1986.**" (emphasis made) The Court goes on to award judgment in the amount of **\$12,622.88. REF. ORDER**, Page 3. Until "there' is a final order of the Court setting the life of judgment commencement date, and a timely filed appeal of that order, this Court will not rule on the issue of whether the judgment dated June 6, 19986 has expired. For this issue, the matter is **REMANDED** to the Fort Peck Tribal Court 'for further findings and order.

II.

The Court has ruled that:

2. "The defendant's spouse, Debbie Johnson, is hereby exonerated from any liabilities and/or responsibilities for the debt accrual by her husband, Gerald Johnson, in reference to this matter."

Under **IV CCOJ §305**, a judgment shall constitute a lien on any nonexempt property of the **judgment debtor** (emphasis made). Here, the judgment debtor is Gerald Johnson.

We concur with the Tribal Court's order regarding this portion of the order. The defendant, appellant herein, Gerald Johnson,, has repeatedly testified under oath that the property he owned was listed on the inventory filed with the Court in September of 1990. **REF. TRANSCRIPT** of October 21, 1991, Page 35. Also, there is nothing in the record indicating that Gerald Johnson had or has an interest in the building or business known as Rainbow Junction at Poplar, Montana, although several hearings have been held in regard to his property and employment. **REF. TRANSCRIPT**, September 12, 1991; October 21, 1991; November 12, 1991. After the lengthy hearings concerning the property of Gerald Johnson available for execution, Judge Welch concluded and ordered:

9. "The merchandise and/or construction material received by the defendant through the business dealings with the plaintiff would not, and is not feasible to be return and/or ordering of its return can not be accomplished, due to the materials in reference to this cause is without identifying markings and/or registered numbers filed prior to their release to the defendant. Therefore, it is not ordered."

There has been submitted documentary evidence that said building is the separate property of Debra Johnson, spouse of Defendant/Appellant Gerald Johnson and that documentation and testimony have not been disputed. "This Court shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence..." I CCOJ 202.

FROM THE FOREGOING FINDINGS OF FACT and CONCLUSIONS OF LAW> THE COURT HEREBY ENTERS THE FOLLOWING ORDER:

1. THE ORDERS OF THE TRIBAL COURT DESIGNATED AS 1 AND 3 IN THE NOVEMBER 20, 1991 ORDER ARE REMANDED FOR FURTHER DETERMINATION AS TO THE LIFE OF JUDGMENT COMMENCEMENT DATE. THESE ORDERS OF THE TRIBAL COURT ARE:

1. "This Court has ruled the Life of Judgment is valid and in full force and effect from the date of Judgment rendered on the 6th day of June, 1986. Due to the fact this has been an ongoing matter with different counsel representing both parties at different stages of said cause."

3. "Judgment in the amount of \$12,622.88 is hereby granted to plaintiff with 10 per cent per annum as authorized by law. This amount reflects the \$20.00 deduction for property executed and sold""In "reference to this cause."

2. THE ORDERS DESIGNATED AS 2 AND 9 ARE AFFIRMED. THESE ORDERS ARE:

2. "The defendant's spouse, Debbie Johnson is hereby exonerated from any liabilities and/or responsibilities for the debt accrual by her husband, Gerald Johnson, in reference to this matter."

9. The merchandise and/or construction material received by the defendant through the business dealings with the plaintiff would not, and is not feasible to be return and/or the

ordering of its return can not be accomplished, due to the materials in reference to this cause is without identifying markings and/or registered numbers filed prior to their release to the defendant. Therefore, it is not ordered."

Accordingly, the previous orders of the Court regarding closure, and sale or removal of property from the premises known, as Rainbow Junction are lifted and the owner of said premises may assume full ownership and property rights therein.

3. THE GARNISHMENT PROVISIONS OF THE NOVEMBER 20, 1991, ORDER ARE STAYED PENDING A FINAL DETERMINATION OF THE LIFE OF A JUDGEMENT COMMENCEMENT DATE.

4. EACH PARTY SHALL BEAR THEIR OWN FEES HEREIN.

DATED this 12th day of March, 1992.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, Chief Justice

GARY JAMES MELBOURNE, Associate Justice
