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

Sunrise Lumber

Plaintiff/Appellee

vs.

Appeal No. 165

Gerald Johnson

Defendant/Appellant

OPINION AND O R D E R

This appeal comes on from an order issued as a result of a hearing on July 8, 1992, wherein the Tribal Court, the Honorable Robert Welch, presiding, calculated the life of a default judgment which was issued against defendant on June 6, 1986. **Mary L. Zemyan, Esq.**, appearing on behalf of defendant/appellant and **Laura Christoffersen, Esq.**, appearing on behalf of plaintiff/appellee.

PROCEDURAL HISTORY

This is the third time our Court has been asked to review some aspect of a default judgment issued on June 6, 1986. The first appeal was brought on by defendant challenging a Writ of Execution (**FPCOA #118**). The second appeal was also brought on by defendant challenging the validity of a Writ of Execution. (**FPCOA #146**). Defendant, for his third appeal, challenges the calculated life of this default judgment.

A brief procedural history of this matter follows:

Jun 6, 1986 Default judgment issued against defendant.

Feb 12, 1988 Plaintiff's first Writ of Execution issued.

Feb 26, 1988 Defendant obtains stay of Writ of Execution.

Apr 5, 1988 Defendant claims that Plaintiff withdrew Writ on this date. Due to a change in counsel for plaintiff¹, it was unclear from the record whether there was an effective withdrawal. Nonetheless, Plaintiff, through its latest counsel denies the alleged withdrawal.

Oct 12, 1988 Plaintiff claims that a hearing was scheduled on this date for the Motion to Set Aside the Writ of Execution, however, no evidence of this hearing appears in the file.

Jun 12, 1990 Plaintiff files for second Writ of Execution.

Aug 24, 1990 Defendant obtains stay of Writ of Execution pending appeal.

Jul 19, 1991 Ft Peck Court of Appeals issues its opinion remanding the matter to the Tribal Court for a hearing pursuant to **Title IV §304(a)** of the **CCOJ.(FPCOA #118)**

Aug 22, 1991 Ft Peck Court of Appeals issues an amended opinion deleting that portion of the earlier opinion that stated that the judgment had been renewed on August 10, 1990.

Sep 23, 1991 Over the next two months, the remanded hearings took place and Plaintiff collected approximately \$200.00 from property that was sold.

Nov 20, 1991 The Tribal Court issued its order finding that Rainbow Junction was not defendant's property; that the judgment was still valid; and that defendant's income should be garnished to satisfy the judgment. Both parties appealed.

Mar 12, 1992 Ft Peck Court of Appeals issued its second opinion, upholding the decision of the Tribal Court regarding the Rainbow Junction property; stayed the order of the lower court regarding the garnishment of wages; and remanded the matter to the Tribal Court for determination of the life of the judgment, specifically the commencement and expiration dates of the judgment. **(FPCOA #146)**

Jul 8, 1992 Tribal Court hearing on remand to determine the commencement date of the life of the judgment.

Jul 23, 1992 Tribal Court order stating that the judgment "is a valid judgment and remains in full force and effect and shall not expire until April 6, 1993; "(j)udgment is reaffirmed in the amount of \$13,461.04 with ten per cent (10%) interest per annum as authorized by law; that defendant's income, in the form of wages or profit vis-à-vis his involvement in a partnership doing business as "E.M.C. Construction" be garnished in the amount of 25% and paid directly into the Court pending satisfaction of the judgment.

Aug 7, 1992 Defendant files his Notice of Appeal and Request for Stay.

Sep 8, 1992 Ft Peck Court of Appeals grants the appeal, issues a briefing schedule, and stays enforcement of the Tribal Court's Jul 23, 1992 order.

Sep 1992 -

Apr 1996 Various motions from both parties seeking to disqualify various members of the Court of Appeals panel, suspension from practice of defendant's counsel and a variety of other motions not particularly germane to the issue before us.

Apr 26, 1996 Oral arguments before the Ft Peck Court of Appeals

STANDARD OF REVIEW

"The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgment 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 if such determinations are supported by substantial evidence". **Title I Ft Peck CCOJ § 201**. The issues presented in this appeal involve questions of law arising from the Tribal Court's determination of which events, if any, toll the statutory life of the judgment. Additionally, questions of fact regarding the chronology used by the Tribal Court in determining the life of the judgment also arise. As set forth in **§ 201** above, we apply the "substantial evidence" rule in reviewing questions of fact and we review "de novo" the questions of law.

ISSUES PRESENTED

1. (Legal question) Which events, if any, toll the statutory life of a monetary judgment?

2. (Factual question) Did the Tribal Court use the correct chronology in determining the life of the judgment?

DISCUSSION

The Tribal Court, in its July 23, 1992 order, determined that the life of a monetary judgment is tolled whenever the judgment, or the enforcement thereof, is "effectively stayed". (id. "Findings of Fact", paragraph 7.) Defendant contends that the Tribal Court had no express legal authority to extend the life of the judgment in view of the plain language of **Title IV §306**, which provides:

"Life of Judgment.

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 have been filed before the date of expiration pursuant to Section 307."

We agree with defendant that the language in **§306** is clear and unequivocal. We also agree with defendant that the Tribal Court had no express authority to extend the life of the judgment. We also note that **Title I §205(c)** provides:

"Unless the Court stays an order pursuant to Section 206(e) or Section 207(e) of this Title, all final orders of the Court shall be carried out while appeals are pending. An application for a stay of an order shall temporarily stay the order." (our emphasis)

In reviewing the transcript from the July, 1992 hearing, we note that the Tribal Court stated:

"...if civil action has been heard and adjudged and decreed by the Court...and it's appealed... that litigation is stayed. Once, it's in the Appellate Court, the lower Court cannot intervene and take any legal action to enforce a judgment that is being litigated at the Appellate stage..." (id. @page 23, lines 18 through 24)

If the Tribal Court was stating that enforcement of a judgment is automatically stayed upon the filing of an appeal, then the statement is legally incorrect. Candidly, we understand fully the confusion that results in allowing for the continuing enforcement of a judgment while some aspect of the judgment or it's enforcement is on appeal. Nonetheless, the language in **§205(c)** is both clear and mandatory. To fully understand and appreciate the confusion and tension created in our Tribal Courts by allowing the continuing viability of a judgment when there is an appeal pending, we review post judgment proceedings.

At the outset we note two major differences in our Tribal Court system as contrasted with most State Courts². First, in most State courts it is purely ministerial to obtain a Writ of Execution. The trial is over, the judgment has been issued. The party to whom the judgment is owed needs only to go to the Clerk's office and for a nominal fee, obtains a Writ of Execution. In our Tribal Court system, obtaining a Writ of Execution is not ministerial, but rather, requires that the judgment creditor petition the Tribal Court for a determination of assets, owned by the defendant, that are available to satisfy the judgment. This proceeding is pursuant to **Title IV § 304(a)**³ of the **CCOJ** and is in the nature of a "Creditor's Examination" of the judgment debtor. The language in **§ 304(a)** does not require that the judgment creditor utilize this section, however, we find no other avenue available in our **CCOJ** whereby a Writ of Execution can be obtained. Thus, if the judgment creditor wishes to obtain a Writ of Execution, the only way is through the judicial gates of **§ 304(a)**.

Secondly, the renewal of the judgment as provided by **Title IV § 307**⁴, also requires a trip to our Tribal Court. While the language of **§ 307** makes the renewal of the judgment mandatory upon Tribal Court, still, the process of issuing the renewal is judicial, not ministerial.

Further, we note that a Writ of Garnishment also requires judicial approval, unlike most State court systems. (**CCOJ Title IV § 311**).

Thus, if a judgment is on appeal in one of these aforementioned States Courts, and there has been no stay issued, it is entirely reasonable that the judgment continues to be viable. No confusion will result because while the matter is on appeal, no trial court will be called upon to take any potentially contrary action inasmuch as the post judgment proceedings are handled by clerks in a ministerial fashion. And there are usually protective statutes in place that guard against abuses of the post judgment proceeding process.

On the other hand, if the validity of a Tribal Court judgment is being attacked on appeal and no stay has been issued, and the judgment creditor wishes to execute upon the judgment, then a hearing is scheduled upon that matter. And at the conclusion of that matter, should the judgment debtor disagree with the findings of the Tribal Court, he/she has every right to appeal that decision as well. We now have two appeals pending.

We acknowledge that it would be extreme, however, there would be nothing preventing the judgment creditor to proceed with filing for a Writ of Garnishment pursuant to **Title IV §311**. Assuming that the judgment debtor's demeanor is that of a legal contrarian, we would then have three (3) appeals pending. Not to mention the utter confusion in our Tribal Court with the potentiality of a myriad of actions, all owing to the same case, taking place in the Tribal Court and the Appeals Court, within the same time frame. Attempting to withstand the confusion from this type of scenario is a burden that our Tribal Court judges should not be asked to bear. Nonetheless, **§205(c)** is the law and our sole responsibility is to uphold it.

In the aforementioned scenario, if stays were granted and these appeals were all pending concurrently, that would be one thing. If, however, those appeals, each with their own stay, were all pending consecutively, it would be quite possible, if not likely, that a substantial amount of the period of life given to a judgment might be "effectively" snuffed out. We note that, as extreme as our exemplar might be, the case herein bears more than a close resemblance.

As previously stated, we agree that no express authority exists to extend the life of a monetary judgment. We also agree that the language contained in **§306** is plain and unambiguous. Thus, if there is to be any authority extending the life of a judgment, it must spring forth from something other than the "statutory well".

We note here that every legal analysis should begin at the point of reason, continue along a path of logic and arrive at a fundamentally fair result. We are convinced that this analytical path should be traveled when testing any rule of law. And we make no exception here.

Thus, if we were to interpret **§306** as defendant contends, there would be absolutely no event which would, or could, toll the statutory life of a judgment. The clock would commence running upon entry of the judgment and the statutory period would expire five (5) years later, unless the judgment was renewed pursuant to **§307**. The judgment debtor could contest every attempt to execute on the judgment, thwart any and all attempts by the judgment creditor to execute, secrete himself, or be otherwise unavailable due to illness or injury. Yet, according to defendant, not one of these events would serve to add one day to the life of the judgment. This line of reasoning is a bit too rigid and

legalistic to arrive at a "fundamentally fair" result.

On the other hand, we are not unmindful of the judgment creditor's option of going into Tribal Court pursuant to **§307** and renewing the judgment for an additional five (5) years. However, as we have previously pointed out, even the renewal requires judicial monitoring. And who is to say that if the application for renewal was filed four (4) years and eleven (11) months after entry of the judgment but the Tribal Court did not schedule a hearing on the matter until five (5) years and one (1) month after entry of the judgment, the judgment debtor might want to challenge whether the judgment had expired before the Tribal Court acted upon the renewal? Or, even more compelling, would defendant be heard to make his "lockstep argument" against tolling if the judgment creditor made his application four (4) years, nine (9) months after entry, and the Court, wanting all parties present before performing even the mandatory task of renewal, is notified that the judgment debtor is incapacitated and cannot attend the hearing, at which point the Court continues the matter beyond the five (5) year period before actually issuing its order of renewal? Defendant's strictly construed interpretation of **§306** could deliver the death knell to that renewal application.

To suggest that actions by the judgment debtor to delay or prevent execution on the judgment should inure to his benefit is both unreasonable, illogical and finds its way to an unfair and unacceptable result.

Accordingly, we believe, and so hold, that when a judgment debtor has appealed, either the judgment or any enforcement thereof, and either the judgment or the enforcement of the judgment, was stayed pending the appeal process, the statute of limitations on the judgment is tolled until the matter is resolved and the stay lifted. Further, the number of days that the judgment, or enforcement thereof, was stayed, shall be added to the life of the judgment.

We now examine whether the Tribal Court calculated the chronology correctly and whether it was applied consistent with the holding contained herein.

The Tribal Court found that "(t)here have been several stays ordered since entry date of the judgment and in considering the stays ordered, this matter had been stayed for a total combined period of twenty two (22) months." (id. "Findings of Fact", paragraph 3, page 2). From this we conclude that the Tribal Court calculated and excluded, only those periods during which there was a stay ordered. A handwritten note in the lower Court file, which we take as belonging to Judge Welch, indicates the following periods are to be excluded in calculating the life of the judgment:

From: February 26, 1988	(stay of Writ of Execution issued by Judge McClammy)
To: October 12, 1988	(claimed by Plaintiff as the hearing date on Motion to Set Aside
(8 MONTHS OR 225 days)	Writ of Execution)
From: August 24, 1990	(stay of Writ of Execution pending appeal issued by Judge Boyd)
To: July 19, 1991	(Ft Peck Court of Appeals issues it's decision remanding the matter
(10 MONTHS OR 322 days)	to the Tribal Court for a §304(a) hearing {see FPCOA#118 })

From: November 20, 1991 (stay of Writ of Execution pending appeal issued by Judge Welch)
To: March 12, 1992 (Ft Peck Court of Appeals issues it's decision remanding the matter
(4 MONTHS OR 113 days) to the Tribal Court for determination of life of the judgment
(22 MONTHS OR 660 days) {FPCOA#146})

Due to the incomplete record before us and the conflicting chronology submitted by counsel, we cannot be certain whether the Tribal Court's chronology is supported by substantial evidence or not. We assume that the Tribal Court used figures based upon documents or testimony that was before it. Therefore, in the absence of evidence to the contrary, we will not set aside the Tribal Court's calculation insofar as it concluded that a stay had been issued on the dates shown. We also confirmed that the number of months calculated by the Court (22) is consistent with the total number of days which we calculated ($225 + 322 + 113 = 660$ days divided by $30 = 22$ months).

We conclude that the Tribal Court properly excluded from the expired life of the judgment, those periods during which the judgment, or the enforcement thereof, was stayed. We further conclude that the Tribal Court's calculation of the dates to be excluded was correct. Nonetheless, If either party can show by documentary evidence that no stay existed during the periods shown, we will entertain a Motion to Reconsider this Opinion pursuant to Rule 9 FPCOA Rules of Procedure.

The Tribal Court order appealed from is affirmed and all Tribal Court orders heretofore stayed or not acted upon because of, or pursuant to, the pendency of this appeal, are herewith restored and shall be given full force and effect without further delay.

Date: June 30, 1999

FOR THE FORT PECK COURT OF APPEALS:

By: _____
GARY P. SULLIVAN
CHIEF JUSTICE

CONCUR:

GERARD M. SCHUSTER
ASSOCIATE JUSTICE

GARY M. BEAUDRY
ASSOCIATE JUSTICE

¹Plaintiff had three (3) different counsels regarding this matter. Defendant's counsel claims that plaintiff's first counsel withdrew the Writ during an open session in Court. The transcript is unclear as to whether the Writ was withdrawn. Plaintiff's

second and third counsel both denied the alleged withdrawal.-

²Defendant argued post judgment proceedings practice from both California and Montana, submitting sound case law from both jurisdictions in support of his contention that, in the absence of a timely application for renewal, the life of the judgment expires at the end of the statutory period notwithstanding stays during the appellate process. While we agree with the reasoning set forth in those cases presented, we note that both of these states' post judgment proceedings are ministerial. We also note that California judgments are given a life of ten (10) years, while Montana allows six (6) years.-

³**Title IV §304(a)** provides: "**Execution.** (a) If any final judgment for money rendered by the Court is not satisfied within sixty (60) days of entry, or such other time fixed by the Court, the judgment creditor may apply to the Court for an order directing the judgment debtor to appear before the Court for purposes of itemizing his/her property."-

⁴**Title IV §307** provides: "**Renewal of Judgment.** 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."
