

10702667070308-RCVBYU

**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
TRIBAL COURT-CIVIL DIVISION**

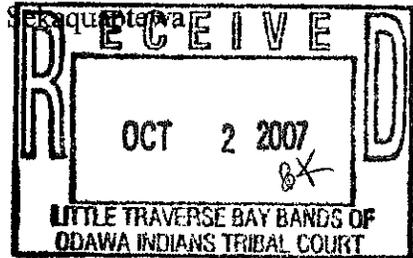
LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS,

Plaintiff,

Case No. C-035-0902

Hon. Pat Sekaquaptewa

v.



FREDERICK ROY HARRINGTON, JR. AND
FREDERICK ROY HARRINGTON, JR.
D/B/A ODAWA CONTRACTING,
Defendant.

STANLEY A. HARWOOD (P52891)
Attorney for Plaintiff
Pine River Building
103 Bridge Street
Charlevoix, MI 49720
Telephone: (231) 237-7000

FREDERICK ROY HARRINGTON, JR.
d/b/a ODAWA CONTRACTING
Defendant
1111 Howard
Petoskey, MI 49770

ORDER

Hon. Pat Sekaquaptewa, Judge Pro Tempore

PROCEDURAL HISTORY

On September 10, 2002, the Little Traverse Bay Band of Odawa Indians (hereafter "Tribe") filed a civil complaint against Frederick Roy Harrington individually and Frederick Roy Harrington doing business as Odawa Contracting, for breach of contract and for four counts of fraudulent misrepresentation. Plaintiff claims that defendant breached a software installation contract, under which he was paid \$2,000, by

failing to actually install software for a library cataloguing system. Plaintiff also claims relief for losses sustained as a result of alleged fraudulent misrepresentation with respect to Defendant's representations that: (1) The library software was properly installed and functioning; (2) Adult Vocational Training (hereafter "AVT") funding was obtained in a proper manner and in compliance with applicable rules and regulations; (3) Higher Education Scholarship (hereafter "Higher Ed") funding was obtained in a proper manner and in compliance with applicable rules and regulations; and (4) Higher Ed and/or Voc Ed funding was obtained for employees and family members in a proper manner and in compliance with applicable rules and regulations.

Plaintiff demands payment of \$2,000 plus costs, reasonable interest and attorneys fees. Additionally, with respect to each of the four counts for fraudulent misrepresentation, Plaintiff requests judgment for "whatever amount the court deems fair and just, including consequential damages, exemplary damages resulting from Defendant's intentional and malicious actions plus interest, costs, and actual attorneys fees."

On September 30, 2002, Defendant Harrington filed an untitled pleading asserting that "The plaintiffs have no standing in this court to take the actions listed in their complaints since the statute of limitations has expired for action in this court. Defendant also moved "to have a hearing on the statute of limitations."

A status conference was held on November 22, 2002. The Court ordered that all dispositive motions and briefs were due on or before December 23, 2002 with responses due on or before January 22, 2003, and replies due February 24, 2003. A hearing on dispositive motions was set for March 7, 2003.

Plaintiff Tribe filed a Motion for Authorization of Court Rules on December 12, 2002, requesting that the Court enter an order authorizing the use of Michigan Court Rules "or other rules the Court deems appropriate."

Defendant Harrington filed a second untitled pleading on December 13, 2002, opposing the use of the Michigan Court Rules, arguing that the Court lacks the authority to do so under tribal law absent approval by the Tribal Council, and that such use and application at this time would constitute an unconstitutional ex post facto law, also a violation of the Indian Civil Rights Act. He argues that these rules are very complicated and cannot be followed by those who are not educated in the practice of law. Defendant requests that the Court deny Plaintiff's Motion for Authorization of Court Rules and continue to rely on general rules as it has in the past.

On December 23, 2002, Defendant Harrington filed a third untitled pleading renewing, among others, his argument that Plaintiff lacks standing to file the original complaint due to the expiration of the statute of limitations for such actions. Defendant proffers multiple sources for the statutory period including the 90 day period for appeals to federal Interior Board of Contract Appeals (hereafter "IBCA"), the 12 month period for

actions filed in the U.S. Claims Court, the one year statute of limitations for prosecuting crimes under the LTBB criminal code, and the filing deadline for motions for summary disposition in C-023-1200 (with a deadline of July 29, 2002). He argues that the statutory period has run and that Plaintiff's claims are now barred.

On January 22, 2003, Plaintiff filed a Response to Defendant's Motion for Summary Disposition. Plaintiff requests that the Court deny Defendant's motion dated December 23, 2002, arguing that Defendant failed to cite any statute or laws creating a limitation period; that this is a civil, not a criminal action; that this suit is unrelated to Defendant's action for wrongful discharge - and is not barred by res judicata as the facts and circumstances are separate and distinct; and that Plaintiff, as the aggrieved party, does have standing to pursue these claims.

On February 24, 2002, Defendant filed a fourth untitled pleading reiterating arguments made in his earlier filed pleadings.

A hearing on dispositive motions was scheduled for Friday, March 7, 2003. On May 30th, 2003, the Court extended the deadline for the submission of written arguments from both parties in response to Defendant's presentation of two cases on March 7, 2003. Plaintiff was given 21 days to submitted a written argument regarding this caselaw and Defendant was given 21 days to respond to Plaintiff's written argument.

On May 30, 2003, the Court ordered that Michigan Court Rules would apply but that "it is the intention of this court to liberally construe the court rules so as not to cause injustice."

FINDINGS OF FACT

The Court makes the following findings:

- (1) The record for C-035-0902 lacks further pleading from either party beyond the Friday, March 7, 2003 hearing on dispositive motions; and
- (2) More than five years have elapsed since the filing of the original complaint in this case.

IT IS HEREBY ORDERED:

- (1) Allowing the parties a renewed pleading schedule as follows: Plaintiff has 30 days from the filing of this order to file an amended complaint or the original complaint will be dismissed for lack of prosecution. Should Plaintiff file an amended complaint, Defendant has 30 days from the date the complaint is filed with the Court to file a response.
- (2) The parties are ordered to brief on the following questions:

- (i) Is there a statute of limitations under tribal law for contract and/or tort claims?

- (ii) Is it within the powers of this Court to import a statute of limitations from foreign law (other tribal, federal, or state law) into the tribal common law?

- (iii) If it is within the power of this Court to import a foreign limitations period, what period should be imported and what persuasive arguments support this choice?

IT IS SO ORDERED.

Entered: September 28, 2007.

Honorable Pat Sekaquaptewa
Judge Pro Tempore