

NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS

DISTRICT OF NAY-AH-SHING

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IN THE COURT OF APPEALS OF CENTRAL JURISDICTION

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Mille Lacs Band of Ojibwe  
Housing Department,  
Plaintiff,

v.

Bonita Lucas,  
Defendant.

Case File No.: 2014 APP 01

**DECISION OF THE  
COURT OF APPEALS**

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**Introduction**

The above-entitled matter came before the Court of Appeals of Central Jurisdiction upon the motion of the Mille Lacs Band Housing Department (“Housing Department”) seeking permission to depart from the procedure declared by the District Court for unlawful detainer cases. Present on behalf of the Housing Department was Trisha McKay, Deputy Solicitor General. There was no appearance by or on behalf of Defendant Bonita Lucas.

The Housing Department seeks clarification as to the appropriate court of the Court of Central Jurisdiction for initiation of unlawful detainer proceedings, the District Court or a Justice of the Court of Appeals in his or her capacity as a Magistrate pursuant to 21 MLBSA Section 4. In a recent decision in an unlawful detainer case involving the Housing Department the District Court determined that it was the proper court to hear unlawful detainer cases at the outset, and not a Justice of the Court of Appeals.<sup>1</sup> The District Court determined that through the enactment of 12 MLBSA Sections 115-122, the Mille Lacs Band legislative body repealed by implication

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<sup>1</sup> Mille Lacs Band of Ojibwe Housing Department v. Wesley Weous and Cheyenne Rushman, Case No. 2013 UD 0008.

the Mille Lacs Band Statutes found in 21 MLBSA Sections 301-312. The practical effect of the District Court's decision was to impart original and exclusive jurisdiction in the District Court over unlawful detainer proceedings, instead of original and exclusive jurisdiction in such proceedings before a Justice of the Court of Appeals acting in his or her capacity as a Magistrate. Because the District Court improperly determined that Title 12 of Mille Lacs Band Statutes *repealed by implication* the unlawful detainer provisions of Title 21 of Mille Lacs Band Statutes, this Court directs the Housing Department to proceed with the present unlawful detainer before the appropriate Justice of the Court of Appeals of the Central Jurisdiction pursuant to the provisions of Title 21.

#### **Title 21 – Real and Personal Property**

Title 21 of the Mille Lacs Band Statutes, entitled “Real and Personal Property” is a comprehensive statute pertaining to the use and recovery of real and personal property. The general provisions of Title 21 include the Band Assembly's legislative findings and determinations establishing the legislative intent, as well as the jurisdictional and procedural provisions of the Title. Of particular relevance to the present unlawful detainer case, 21 MLBSA Section 4, entitled “Magistrate Jurisdiction”, clearly establishes “*original and exclusive jurisdiction*” over unlawful detainer proceedings before the Associate Justice of the Court of Appeals from the District in which the unlawful detainer case originates acting pursuant to the title of “Magistrate”. The general procedural provisions for unlawful detainer cases are found in MLBSA Sections 301-312. These sections describe the specific steps involved in the recovery of premises, including the contents of the complaint and summons, the contents of the answer, the conduct of the hearing, the requirements of the Magistrate's judgment, the issuance and execution of a writ of restitution and the process for appeal.

As indicated above, the District Court recently ruled that the jurisdictional and procedural provisions for unlawful detainer cases found in 21 MLBSA Sections 301-312 were *repealed by implication* through the Band Assembly's enactment of 12 MLBSA Sections 115-122. Because this Court disfavors repeal of legislative actions by implication; and because there is no clear and unequivocal language by the Band Assembly specifically repealing the unlawful detainer provisions of Title 21, this Court concludes that the jurisdictional and procedural provisions of Title 21 with respect to unlawful detainer cases remain intact.

### **Title 12 – Housing**

Title 12 of Mille Lacs Band Statutes, entitled "Housing," established the Mille Lacs Band Housing Department in Chapter 1; and established the procedures for implementation of the Native American Veteran Direct Loan Program in Chapter 2. 12 MLBSA Section 102, entitled "Application of Chapter," specifies that "this chapter prescribes procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by the United States Department of Veterans Affairs under the Native American Veterans Direct Loan Program under Title 38 U.S.C. 3761, et seq." Additionally, the Preamble of Mille Lacs Band Ordinance 01-95, the source of Title 12, provides "[t]his act is intended to aid Mille Lacs Band Veterans in processing financing for the construction or purchase of single family residences on Trust lands within [ ] the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe Indians."

Clearly, the applicability of 12 MLBSA Sections 101-122, entitled "Native American Veteran Direct Loan Program," is intended to be restricted to loans issued by the United States Department of Veterans Affairs under the Native American Veterans Direct Loan Program. There is no legislative intent indicating that the unlawful detainer provisions included in 12 MLBSA Section 115-122 are intended to apply to any unlawful detainer proceedings other than

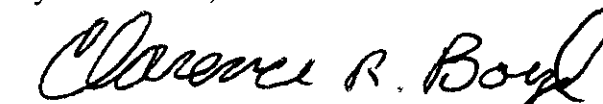
those proceedings involving loans to veterans. Additionally, there exists no other indication that the enactment of Title 12 in any way impacted the viability of Title 21 with respect to the jurisdictional and procedural provisions applicable to unlawful detainer cases. Accordingly, the jurisdictional and procedural provisions of 21 MLBSA Sections 301-312 shall be applicable to unlawful detainer proceedings that do not implicate mortgages issued by the United States Department of Veterans Affairs under the Native American Veterans Direct Loan Program.

**Decision**

The opinion of the District Court in Mille Lacs Band of Ojibwe Housing Department v. Wesley Weous and Cheyenne Rushman, Case No. 2013 UD 0008, is hereby reversed. The unlawful detainer provisions of 21 MLBSA Section 301-312 remain intact, and were not repealed by implication by the enactment of 12 MLBSA Sections 115-122. Accordingly, pursuant to 21 MLBSA Section 4, the Associate Justices of the Court of Appeals of the Court of Central Jurisdiction shall have original and exclusive jurisdiction over unlawful detainer proceedings that do not implicate Veterans Administration loans, which originate in each of their respective Districts. The Housing Department shall initiate unlawful detainer proceedings in the present case pursuant to the provisions included in 21 MLBSA Sections 301-312.

So ordered this 7<sup>th</sup> of November, 2014

  
Rayna Churchill, Chief Justice

  
Clarence Boyd, Associate Justice

ATTEST:   
Claire K. Boyd  
Clerk of Court

  
Brenda Moose, Associate Justice