

TRIBAL COURT
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

HERITAGE INTERIORS,
Plaintiff,

Case No. C-043-0803

v.

G. P. GRAHAM CONSTRUCTION CORP.,
Defendant.

*Ruling on Plaintiff's Motion
For Default Judgment*

RULING ON PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

This matter comes to this Court on Plaintiff's *Motion For Default Judgment* based upon Defendant's failure to file an answer to Plaintiff's complaint. A hearing on the *Motion For Default Judgment* was held by this Court on Tuesday, September 30, 2003. The parties were duly notified of the hearing. Defendant failed to appear. The proceedings were conducted on the record. This Court, after making an inquiry about notice and service on the parties, focused the proceedings on three (3) primary issues. Those were in the following order: (1) the jurisdiction of this Court, (2) the claim against Defendant by the Plaintiff, and (3) the alleged damages claimed by Plaintiff.

Jurisdiction:

A. Issue Presented: Whether this Court has jurisdiction over Plaintiff's claim?

B. Findings of Fact:

(1) The parties to the present action entered into a written contract called "*Subcontract Agreement*".

(2) The contract expressly provides for the following:

(a) that the written contract is the only and complete agreement between the parties;

(b) that any dispute arising under the agreement be resolved pursuant to the laws of the State of Michigan; and

(c) that any claim or dispute will be settled by arbitration in the County of Saginaw, State of Michigan.

(3) The only nexus between the Little Traverse Bay Bands of Odawa Indians, the parties, and this action is that the work by Plaintiff, Subcontractor, was performed on tribal trust land and that Defendant, Contractor, has entered into a construction contract with the Tribe.

C. Jurisdictional Rule of Law:

Indian tribes were once recognized to possess the full attributes of sovereignty. In 1981 the United States Supreme Court determined that Indian tribes even continued to possess some forms of civil (regulatory) jurisdiction over non-Indians and their activity on non-Indian land within the exterior boundaries of a tribe's reservation. See *Montana v. United States*, 450 U.S. 544, 565 (1981). This decision was viewed as a minor exception to the general proposition that Indian tribes could regulate non-Indian conduct within their reservations.

Three recent United States Supreme Court cases, however, have sharply curtailed tribal jurisdiction over non-Indians. See *A-1 Contractors v. Strate*, 520 U.S. 438 (1997), *Nevada v. Hicks*, 533 U.S. 353 (2001), and *Atkinson Trading Company v. Shirley*, 532 U.S. 645 (2001). The jurisdictional rule now seems to be that a tribe may only exercise jurisdiction over non-Indians if not to do so would have a direct effect on the health, welfare, or political integrity of the tribe; or if the non-Indian enters into a consensual relationship with the tribe such the law should recognize tribal jurisdiction.

D. Application of the Instant Facts to the Law:

There is no direct effect on the health, welfare, or political integrity of the Little Traverse Bay Bands of Odawa Indians such as to invoke the jurisdiction of this Court. Likewise, it cannot be said that non-Indian Defendant here has entered into a consensual relationship with the Tribe such as to invoke the jurisdiction of this Court, when the parties have entered into a written contract that expressly provides that disputes and claims be submitted to arbitration in Saginaw County, State of Michigan.

FOR ALL OF THE FOREGOING, THIS COURT DENIES PLAINTIFF'S *MOTION FOR DEFAULT JUDGMENT* AND DISMISSES PLAINTIFF'S ACTION DUE TO LACK OF JURISDICTION. There is no authority to consider Plaintiff's claim against Defendant. Plaintiff is left to pursue his claim under the contract by submitting it to arbitration as agreed to in the *Subcontract Agreement*.

10/02/03

DATED

MICHAEL PETOSKEY
TRIBAL JUDGE