

TRIBAL CODE

CHAPTER 86:

ENFORCEMENT OF FOREIGN COURT JUDGMENTS

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HISTORY NOTE:

Current Ordinance:

Resolution 96-39, adopted February 20, 1996, enacts Tribal Code Chapter 86: Enforcement of Foreign Court Judgments, effective immediately.

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CHAPTER 86:

ENFORCEMENT OF FOREIGN COURT JUDGMENTS

86.101 Purpose.

The purpose of this Chapter is to facilitate, improve and extend by reciprocal legislation or court rule the enforcement and/or recognition of judgments between the State of Michigan, the various Indian tribes and the Tribe, as well as to make uniform the law relating thereto.

86.102 Definitions.

For the purpose of this Chapter, certain terms are defined in this section. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, words in the plural include words in the singular, and words in the masculine gender include the feminine gender. The word shall is always mandatory and not merely director.

(1) "Code" means the Tribal Code of the Tribe.

(2) "Court" means the Sault Ste. Marie Chippewa Tribal Court.

(3) "Foreign Court" means all other courts including federal, state, or tribal courts and courts of a foreign country.

(4) "Foreign Judgment" means any judgment, decree, or order by any United States federal court, state court, other tribal court or court of a foreign country which is final in the rendering jurisdiction, regardless of whether such judgment is for money, injunctive, declaratory or other relief.

(5) "Judgment Creditor" means one who has had a judgment rendered in his favor; judgment creditor is synonymous with the term judgment holder.

(6) "Judgment Debtor" means the party against whom a judgment has been rendered.

(7) "Lay Advocate" means a person who is a non-lawyer and who has been qualified by this Court to serve as an advocate on behalf of a party. Further, a lay advocate must be admitted to practice before this Court.

(8) "Rendering Jurisdiction" means the jurisdiction in which the foreign judgment was entered.

(9) "Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

86.103 Michigan Court Judgments.

The judgments of a Michigan state court shall have full faith and credit in the Court of this Tribe, provided that:

(1) the applicable Michigan state court and/or Michigan legislature have not declined reciprocal full faith and credit to the judgments of the Tribe; and

(2) the person seeking full faith and credit complies with the conditions and procedures set forth in §86.107.

86.104 Tribal Court Proceedings.

The judgments of another tribal court of a federally recognized tribal shall have full faith and credit in the Court of the Tribe, provided that:

(1) the applicable tribal court provides reciprocal full faith and credit to the judgments of the Tribe; and

(2) the person seeking full faith and credit complies with the conditions and procedures set forth in §86.107.

86.105 All Other Court Proceedings.

The judgments of a U.S. federal court, courts in foreign countries, or the court in a state other than Michigan may have, in the discretion of this Court, full faith and credit in the Court of the Tribe, provided that:

(1) the foreign court in which the judgment originated has not declined or refused to accord full faith and credit to the judgments of the Court; and

(2) the person seeking full faith and credit complies with the conditions and procedures set forth in §86.107.

This Court shall have full discretion as to whether full faith and credit shall be granted and shall be guided by the best interests of the Tribe and parties, as well as the other provisions of this Chapter.

86.106 Application of Full Faith and Credit to Final and Conclusive Judgments.

In accordance with the full faith and credit provisions set forth in §§86.103 through 86.105, a foreign judgment that is final and conclusive is enforceable in this Court pursuant to §86.107.

86.107 Registration of Foreign Judgment.

A person seeking enforcement of a foreign judgment shall file:

(1) A copy of the foreign judgment, which has been authenticated by the clerk or registrar of the foreign court in the following manner:

(a) The clerk or registrar of the foreign court must attest in writing that he:

(i) is the clerk or registrar of the subject foreign court;

(ii) is the custodian of the records of the subject foreign court; and

(iii) has compared an annexed copy of the foreign judgment from the case with the original(s) on file and of record in the foreign court, and has found the copy of the foreign judgment to be a true copy of the whole of such original(s).

(b) Upon completing the written attestation referenced above, the clerk or registrar of the foreign court must:

(i) sign and date said attestation;

(ii) affix the seal of the foreign court to said attestation; and

(iii) annex a true copy of the foreign judgment to said attestation.

(2) A sworn affidavit by the judgment creditor, or his lawyer or lay advocate, which includes the following:

(a) the name and last known post office address of the judgment debtor and the judgment creditor;

(b) that the judgment is final and that no appeal is pending;

(c) that no subsequent orders vacating, modifying or reversing the judgment have been entered in the rendering jurisdiction;

(d) proof that the person against whom the foreign judgment has been rendered (i.e., judgment debtor) is subject to the jurisdiction of this Court with regard to enforcement of said judgment.

(3) A filing fee for registering said foreign judgment in the amount of thirty (\$30.00) dollars.

86.108 Notice of Registration of Foreign Judgment.

Upon the filing of the foreign judgment, attestation, affidavit and filing fee, the clerk of the Court shall promptly mail notice of the filing of the foreign judgment along with a copy of the foreign judgment, attestation, and affidavit referenced in §86.107 to the judgment debtor at the address provided by the judgment creditor and shall make a note of the mailing in the docket and/or complete a proof of mailing. The notice to the judgment debtor shall include the following:

(1) the name and post office address of the judgment creditor and the judgment creditor's lawyer or lay advocate, if any, in this Court; and

(2) a directive that an order entering the enforcement of the foreign judgment shall be entered by the Court within twenty-one (21) days of the same having been served on the judgment debtor unless the judgment debtor files written objections with the Court along with a request for a hearing on the same within said twenty-one (21) day period.

In addition, the judgment creditor shall also mail a notice of the filing along with a copy of the foreign judgment, attestation, and affidavit referenced in §86.107 judgment debtor and shall file proof of mailing with the Clerk of the Court. Such notice shall be served on the judgment debtor in a manner consistent with the proof of service provision set forth in this Code.

86.109 Objections; Hearing; Entry of Order Where Objections.

In the event that the judgment debtor files written objections within the twenty-one (21) day period set forth in above along with a request for a hearing, the clerk of the Court shall send by first-class mail a copy of said objections to the judgment holder or his lawyer. In addition, the clerk of the Court shall send by first-class mail a notice of hearing setting forth the date and time of hearing to the judgment holder and judgment debtor, or their respective lawyer(s) or lay advocate(s). The judgment debtor at the hearing will be required to show cause why the foreign judgment shall not be enforced by this Court. At the scheduled hearing, after reviewing all the relevant evidence concerning the foreign judgment, the Court shall issue an order either granting or denying enforcement of the foreign judgment.

86.110 Entry of Order Where no Objections.

In the event that the judgment debtor does not file any written objections within the twenty-one (21) day period set forth in above, an order granting the enforcement of the foreign judgment shall be issued by the Court.

86.111 Not Enforceable or Non-recognizable Foreign Judgment.

A foreign judgment is not enforceable or is non-recognizable under the following circumstances, including but not limited to:

(1) the judgment was rendered by a process that does not assure the requisites of an impartial administration of justice including but not limited to due notice and a hearing;

(2) the foreign court did not have both personal jurisdiction over the judgment debtor and the jurisdiction over the subject matter;

(3) the judgement was obtained by fraud;

(4) the cause of action on which the judgment is based is repugnant to the public policy or tribal customs of the Tribe;

(5) the judgment involves enforcement of child custody provisions, and

(a) the foreign court did not have jurisdiction over the child(ren); or

(b) the provisions of the Indian Child Welfare Act [25 USC §§1901-1963], if applicable, were not properly followed; or

(c) due process was not provided to all interested persons participating in the foreign court proceeding; or

(d) the foreign court proceeding violated the public policies, customs or common law of the Tribe.

86.112 Appeal; Stay of Execution; Stay of Proceedings.

If the judgment debtor satisfies the Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court may stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

86.113 Postjudgment Proceedings regarding Foreign Judgment; no Waiver of Immunity.

(1) The entry of the order enforcing the foreign judgment by this Court shall entitle the judgment holder to enforce its judgment against the judgment debtor in any manner currently available for judgment creditors or judgment holders in this Code.

(2) The Tribe does not waive its immunity from suit with regard to the enforcement of a foreign judgment in any postjudgment proceedings even when said Tribe is served as a garnishee

Defendant for the wages or property of an employee who is a judgment debtor.

86.114 Child Support Orders.

Nothing in this Chapter shall alter the obligations of the Court with regard to child support orders as required by federal law pursuant to 28 U.S.C.A. §1738B.