

1 **STOCKBRIDGE-MUNSEE TRIBAL COURT OF APPEALS**

2 **MOHICAN NATION**

**STOCKBRIDGE-MUNSEE COMMUNITY**

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4 **STOCKBRIDGE-MUNSEE**  
5 **COMMUNITY, on behalf of its Division of**  
6 **Community Housing,**  
7 **Plaintiff/Appellee,**

8 **v.**

Case No.: AP-2012-CV-0061

9 **VINCENT NINHAM,**  
10 **Defendant/Appellant.**

11 **JUDGMENT REMANDING &**  
12 **STAYING WRIT OF EXECUTION AND RESTITUTION**

13 Under TRIBAL COURT CODE, §1.6(L)(3), the principal grounds for appeal are that the  
14 Trial Court made a serious error of fact or law and/or there was an abuse of discretion. The  
15 Tribal Court of Appeals (hereinafter the Appellate Court) contends that a serious error of law  
16 occurred. Specifically, the Court held a hearing on January 4, 2013, and it dealt with the eviction  
17 of the defendant/appellant. The defendant/appellant requested a continuance in order to obtain  
18 counsel; however, the Court denied a continuance.

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20 The defendant/appellant received service of the complaint on December 12, 2012,<sup>1</sup> and  
21 the *Civil Summons* indicated that he had twenty (20) days to respond. *Civil Summons*, 2012-CV-  
22 0061 (Stockbridge-Munsee Tribal Court, Dec. 11, 2012). The hearing dealt with the matter of  
23 the “eviction, and to determine whether the plaintiff was entitled to possession, the order for  
24 judgment shall be for the restitution of the premises to the plaintiff and for such other relief that  
25 the court orders in accordance with this Ordinance.” STOCKBRIDGE-MUNSEE TRIBAL LAW  
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1 HOUSING, § 46.6-10(A)(1). At that time, the Court found in favor of the plaintiff, the plaintiff  
2 requested a *Writ of Restitution* and the Court entered its *Writ of Restitution*. *Id.*, § 46.6-10(A)(2),  
3 *see also Compl. for Eviction* at 2. The Court was then to “provide the defendant with reasonable  
4 notice and opportunity to be heard on the matter of the issuance of a writ.” STOCKBRIDGE-  
5 MUNSEE TRIBAL LAW HOUSING, § 46.6-10(A)(3). The Court did not provide the  
6 defendant/appellant “with reasonable notice and an opportunity to be heard” regarding the  
7 issuance of the writ. Rather, the defendant/appellant had ten (10) days to vacate the premises or  
8 law enforcement was authorized to forcibly remove the defendant/appellant, along with his  
9 family, as well as all personal property. *Writ of Restitution*, 2012-CV-0061 (Stockbridge-  
10 Munsee Tribal Court, Jan. 4, 2013).

13 The law indicates that “[a]ll tenants shall be given fourteen [*sic*] (14) days from the date  
14 of service to quit possession of the premises in the case of non payment of rent.” STOCKBRIDGE-  
15 MUNSEE TRIBAL LAW HOUSING, § 46.4-2(D). The Appellate Court does not believe that a tenant  
16 should be given less time in the instance of an eviction. Rather, the law allows that a *Writ of*  
17 *Restitution* may be delivered to law enforcement within thirty (30) days, and in other instances  
18 forty-five (45) days. *Id.*, § 46.6-10(A)(2), *but see* § 46.7-10. The Appellate Court believes that  
19 an extended timeframe should be given in these instances due to potential safety issues; the  
20 defendant/appellant, his mate, and his minor child should be given an opportunity to find  
21 alternate housing, particularly during harsh winter months and additionally, the  
22 defendant/appellant has added time to obtain counsel.

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28 <sup>1</sup> The record reflects that Scott Brown served a copy of a *Complaint for Eviction and Civil Summons* on the  
defendant/appellant on December 12, 2012. However, the defendant/appellant alleges that he received service on  
December 18, 2012. *See Hearing* (Court Recording Program, Jan. 4, 2013, 1:41:13 CST).

1 Given the abbreviated timeframe, coupled with the lack of an opportunity to be heard, the  
2 Appellate Court finds that the Tribal Court made a serious error of law. The Appellate Court  
3 therefore remands the instant case, in order for the Tribal Court to hold a hearing consistent with  
4 the contents of this judgment and furthermore, under STOCKBRIDGE-MUNSEE TRIBAL LAW  
5 HOUSING, § 46.6-12, the Appellate Court stays the *Writ of Restitution*, pending the outcome of  
6 the aforementioned hearing.  
7

8 **IT IS SO ORDERED** this 28th day of January 2013, by the Wisconsin Tribal Judges  
9 Association panel composed of pro tempore judges herein serving as the Stockbridge-Munsee  
10 Court of Appeals in accordance with §1.6(L) of the Stockbridge-Munsee Code of Law.  
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12 SigPlus1  
13 *Amanda L. Rockman*  
14 01/28/2013 02:02:00pm

15 \_\_\_\_\_  
16 Honorable Amanda L. Rockman, Judge Pro Tempore

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18 Honorable Richard Ackley, Judge Pro Tempore

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20 Honorable Candace Coury, Judge Pro Tempore



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Given the abbreviated timeframe, coupled with the lack of an opportunity to be heard, the Appellate Court finds that the Tribal Court made a serious error of law. The Appellate Court therefore remands the instant case, in order for the Tribal Court to hold a hearing consistent with the contents of this judgment and furthermore, under STOCKBRIDGE-MUNSEE TRIBAL LAW HOUSING, § 46.6-12, the Appellate Court stays the *Writ of Restitution*, pending the outcome of the aforementioned hearing.

**IT IS SO ORDERED** this 28th day of January 2013, by the Wisconsin Tribal Judges Association panel composed of pro tempore judges herein serving as the Stockbridge-Munsee Court of Appeals in accordance with §1.6(L) of the Stockbridge-Munsee Code of Law.

sgPlus1  
*Amanda L. Rockman*  
01/28/2013 02:02:00 pm

Honorable Amanda L. Rockman, Judge Pro Tempore

Honorable Richard Ackley, Judge Pro Tempore

*Candace Coury*  
Honorable Candace Coury, Judge Pro Tempore



Honorable Richard L. Ackley, Judge Pro Tempore Hon. Richard L. Ackley

