

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

FILED-9  
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DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

ACF LEASING, LLC, ACF SERVICES,  
LLC, GENERATION CLEAN FUELS, LLC,

Plaintiffs,

v.

GREEN BAY RENEWABLE ENERGY,  
LLC, ONEIDA SEVEN GENERATIONS  
CORPORATION and THE ONEIDA TRIBE  
OF INDIANS OF WISCONSIN,

Case No. 14 L 002768

Defendants.



**THE ONEIDA TRIBE OF INDIANS OF WISCONSIN'S  
AND ONEIDA SEVEN GENERATIONS CORPORATION'S  
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Defendants The Oneida Tribe of Indians of Wisconsin ("Tribe") and Oneida Seven  
Generations Corporation ("OSGC"), by and through their attorneys, respectfully move this  
Court, pursuant to 735 ILCS 5/2-301(a), to dismiss Plaintiffs' Complaint for lack of personal  
jurisdiction.<sup>1</sup> The grounds for this motion are as follows:

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1. Illinois Courts do not exercise personal jurisdiction over non-resident defendants  
unless jurisdiction is proper under the Illinois Long-Arm Statute, 735 ILCS 5/2-209 *et seq.*, and  
the exercise of jurisdiction comports with due process of law. *Stein v Rio Parismina Lodge*, 296  
Ill.App.3d 520, 695 N.E.2d 518, 521-22 (1<sup>st</sup> Dist. 1998).

<sup>1</sup> This motion is brought in combination with the Tribe's and OSGC's motion to dismiss for lack of  
subject matter jurisdiction under 735 ILCS 5/2-619(a)(1). Facts necessary to support the motion to  
dismiss are contained in the Affidavits of Patricia Ninham Hoeft and Gene Keluche, and the exhibits  
attached thereto.

2. If jurisdiction is lacking under the express provisions of the Long-Arm Statute, the inquiry ends. *International Business Machines, Corp. v. Martin Property & Cas Ins Agency, Inc.*, 281 Ill.App.3d 854, 858, 666 N.E.2d 866, 869 (1<sup>st</sup> Dist. 1996).

3. If jurisdiction exists under the statute, this Court must then determine whether the exercise of jurisdiction satisfies due process. *Id.* The Illinois Supreme Court, as well as the United States Supreme Court, have held that the exercise of personal jurisdiction offends the due process clause unless the defendants “purposefully directed [their] activities at residents of the forum.” *Wiles v. Morita Ironworks Co.*, 125 Ill.2d 144, 150, 530 N.E.2d 1382, 1385 (1988) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). This standard was formulated to ensure foreign defendants are not forced to litigate in a forum solely as a result of “attenuated contacts.” *Wiles*, 125 Ill.2d at 151, 530 N.E.2d at 1385. Rather, “[j]urisdiction will only be proper where the contacts proximately result from actions by the *defendant[s]* [*themselves*] that create a substantial connection with the forum State.” *Id.* (emphasis in original); *see also Hansen v. Denckla*, 357 U.S. 235, 253 (1958).

4. When personal jurisdiction is contested, the burden of proof falls on the plaintiff to establish facts warranting the exercise of jurisdiction. *R.W. Sawant and Co. v. Allied Programs Corp.*, 111 Ill.2d 304, 310, 489 N.E.2d 1360, 1363 (1986). That burden must be met by a preponderance of the evidence and “the complaint must allege facts which would bring the nonresident defendant under Illinois jurisdiction.” *Olinski v. Duce*, 155 Ill.App.3d 441, 443, 508 N.E.2d 398, 400 (1<sup>st</sup> Dist. 1987).

5. To bring the Tribe or OSGC within this Court’s long-arm jurisdiction, they must have undertaken one of the enumerated acts in the Illinois Long-Arm Statute, so as to justify the exercise of jurisdiction over them. *See* 735 ILCS 5/2-209(a)(1)-(14).

6. Plaintiffs claim damages arising out of two contracts: a) a Master Lease Agreement, dated May 24, 2013, (“Lease”) entered into between defendant Green Bay Renewable Energy, LLC (“GBRE”) and ACF Leasing, LLC for the lease of three, forty-ton liquefaction machines and pretreatment equipment for purposes of processing waste plastic to generate electricity and create oil-based fuel products at locations in Monona, Wisconsin and Cheboygan, Michigan (the “Project”); and b) an Operation and Maintenance Agreement, dated May 24, 2013, (“O&M Agreement”) entered into between GBRE and ACF Services, LLC for the operation and maintenance of the Project.

7. Although the Lease and the O&M Agreement have forum selection clauses designating Illinois to be the venue for dispute resolution, neither the Tribe nor OSGC is a party to the Lease or the O&M Agreement, both of which contain integration clauses. Complaint, Exhs. A and B. Accordingly, neither the Tribe nor OSGC is bound by the forum selection clauses in the Lease and O&M Agreement.

8. Plaintiffs have sued the Tribe, OSGC and GBRE in the Circuit Court of Cook County Illinois for damages arising out of two contracts entered into between ACF and GBRE.<sup>2</sup> A review of the Complaint reveals no allegations supporting a conclusion that the Tribe or ACF undertook even a single act subjecting them to Illinois Long-Arm Statute jurisdiction. *See* ACF’s Complaint, *passim*.

9. The Tribe is a federally recognized Indian tribe, which has its reservation and its principal governmental offices located in Brown and Outagamie Counties, Wisconsin. Hoelt Aff. ¶ 2. OSGC, a tribally-chartered corporation, which was created and chartered pursuant to

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<sup>2</sup> The circumstances surrounding the action are more fully set forth in the Tribe and OSGC’s Brief in Support of their Motion to Dismiss for Lack of Subject Matter Jurisdiction. The defined terms as they are used in that brief are hereby incorporated by reference.

the Oneida Constitution, has its principal place of business on the Tribe's reservation. Hoeft Aff. ¶¶ 2 and 29; Keluche Aff., ¶ 3.

10. The Tribe and OSGC:

- (a) do not own, use or possess real property or any asset in Illinois;
- (b) have no business offices, address, post office box or telephone listing in Illinois; and
- (c) have no employees conducting tribal business in Illinois.

Hoeft Aff. ¶ 29.

11. To the extent the Tribe or OSGC may have contracted with an entity located in Illinois, the contract was for the performance of services or the delivery of goods in *Wisconsin*. Hoeft Aff. ¶ 29.

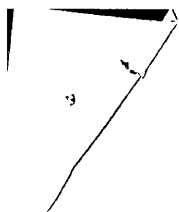
12. No member of the Tribe's Business Committee or anyone authorized to act on behalf of the Tribe visited Illinois in connection with the Plaintiffs, the Project, Lease or the O&M Agreement. Hoeft Aff. ¶ 29.

13. Because the Complaint is devoid of any allegations supporting a finding of personal jurisdiction over the Tribe or OSGC and, given that they do not have, and have had, no contacts with the State of Illinois justifying the exercise of personal jurisdiction, the motion to dismiss the Plaintiffs' Complaint should be granted. *See* 735 ILCS 5/2-301.

14. Likewise, applying the due process guidelines to this case leads to the conclusion that exercise of personal jurisdiction over the Tribe and OSGC will not satisfy constitutional requirements. First, for the reasons set forth above concerning the Illinois Long-Arm Statute analysis, the Tribe and OSGC do not have minimum contacts with Illinois justifying a finding of jurisdiction. Hoeft Aff. ¶ 29. Further, Plaintiffs have not come forward with a single factual allegation supporting the exercise of jurisdiction over the Tribe or OSGC; no jurisdictional

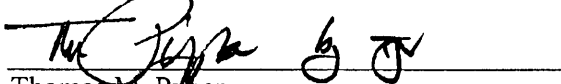
allegations are even attempted. Absent allegations supporting jurisdiction, or independent evidence supporting such a finding, the exercise of jurisdiction over the Tribe or OSGC will not comport with due process.

15. The Tribe and OSGC have today also moved the Court to dismiss ACF's Complaint on the grounds that the Tribe and OSGC have sovereign immunity depriving the Court of subject matter jurisdiction. The Tribe and OSGC filed this motion addressing personal jurisdiction grounds in accordance with 735 ILCS 5/2-301(a) to preserve the argument that the Court lacks personal jurisdiction over them. However, the Court cannot address this motion if it lacks subject matter jurisdiction over the case. Accordingly, the Tribe and OSGC respectfully request that the Court stay briefing on this motion until such time as it decides whether it has subject matter jurisdiction. Alternatively, for the reasons set forth herein and based on the facts set forth in the Affidavits of Patricia Ninham Hoeft and Gene Keluche, the exhibits attached thereto and all matters of record, the Tribe and OSGC respectfully request that the Court enter an order dismissing Plaintiffs' Complaint against the Tribe and OSGC for lack of personal jurisdiction.



Dated this 5th day of May, 2014.

WHYTE HIRSCHBOECK DUDEK S.C.



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