FIRST DIVISION
October 13, 2015

No. 1-14-3443
2015 IL App (1st) 143443-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ACF LEASING; ACF SERVICES, LLC; and GENERATION CLEAN FUELS, LLC,	)	Appeal from the Circuit Court of Cook County
Plaintiffs-Appellants,	)	
v.	)	
	)	14 L 2768
ONEIDA SEVEN GENERATIONS CORPORATION and THE ONEIDA TRIBE OF INDIANS OF WISCONSIN,	)	Honorable Margaret Ann Brennan, Judge Presiding.
Defendants-Appellees.	)	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

ORDER

Held: Trial court properly granted defendants' section 2-619 motion to dismiss for lack of subject matter jurisdiction where sovereign immunity applied; and trial court properly found that defendants did not expressly waive sovereign immunity by virtue of a forum selection clause in the contract agreements between plaintiffs and GBRE.

¶ 1 Plaintiffs ACF Leasing, LLC, ACF Services, LLC, and Generation Clean Fuels, LLC, appeal from the circuit court's dismissal of defendants Oneida Seven Generations Corporation (OSGC) and The Oneida Tribe of Indians of Wisconsin (Tribe) for lack of subject matter jurisdiction. This case arose out of a business relationship between plaintiffs and defendants for the lease and service of three liquefaction machines for use in a plastics-to-oil energy project. Plaintiffs filed suit against defendants for breach of the lease and service agreements, and defendants claimed sovereign immunity. The trial court granted defendants' motion to dismiss based on sovereign immunity, and therefore lack of subject matter jurisdiction, and plaintiffs now appeal. On appeal, plaintiffs contend that sovereign immunity was not available under the circumstances of this case, and that there was at least a question of fact as to whether sovereign immunity was waived. For the following reasons, affirm.

¶ 2 BACKGROUND

¶ 3 Plaintiffs filed a complaint against Green Bay Renewable Energy, LLC (GBRE), OSGS, and the Tribe. In their complaint, plaintiffs alleged that GBRE was a wholly owned subsidiary of Oneida Energy Blocker Corporation, which was a wholly owned subsidiary of Oneida Energy, Inc., which was a wholly owned subsidiary of OSGC. Plaintiffs alleged that ACF Leasing entered into a "Master Lease" with GBRE on May 24, 2013, which involved the leasing of three liquefaction machines by GBRE for use in a plastics-to-oil energy project. Plaintiffs claimed that the Master Lease provided that ACF Leasing would lease the three liquefaction machines to GBRE for $22.2 million for a 21-year term.

¶ 4 Plaintiffs further alleged in their complaint that ACF Services entered into a "Maintenance Agreement" with GBRE on May 24, 2013, which provided for ACF Services to operate and maintain the three liquefaction machines.

¶ 5 Plaintiffs contended that Kevin Cornelius, chairman and chief executive officer of GBRE, acted on behalf of GBRE in executing the Master Lease and Maintenance Agreement. Plaintiffs claimed that they presented facts regarding the project to GBRE, OSGC, and the Tribe numerous times in 2012 and 2013.

¶ 6 Plaintiffs argued that on December 15, 2013, the Tribe voted to dissolve OSGC, which caused the Wisconsin Bank & Trust, the entity that had committed to providing GBRE with financing, to withdraw from its commitment to finance the project. As a result, plaintiffs complained that they suffered irreparable damages and brought claims for breach of contract, promissory estoppel, unjust enrichment, vicarious liability, tortious interference with contract, tortious interference with prospective economic advantage, and tortious interference with business expectancy.

¶ 7 OSGC and the Tribe filed a motion to dismiss for lack of subject matter jurisdiction. In their motion, they stated that OSGC was the sole owner of Oneida Energy, which was the sole owner of Oneida Blocker, which was the "sole owner and member" of GBRE. They stated that GBRE was set up as a "single asset LLC for purposes of developing the Project." Defendants claimed that because neither OSGC nor the Tribe were parties to the Master Lease or the Maintenance Agreement, and because the Tribe is a sovereign Indian Nation, and OSGC is a subordinate entity created by the Tribe, sovereign immunity applied. They further alleged that they did not waive this sovereign immunity, and thus there was no subject matter jurisdiction over them.

¶ 8 Attached to their motion to dismiss was the affidavit of Patricia Ninham Hoeft, the secretary of the Business Committee of the Tribe. In her affidavit, Hoeft stated that the General Tribal Council had the power to charter subordinate organizations for economic purposes, and

that they chartered OSGC as a subordinate organization of the Tribe. Its board members included Kevin Cornelius as Chief Executive Officer, but he resigned in August 2013. Hoeft further stated that in 2004, the Tribe adopted a Sovereign Immunity Ordinance, which states:

> "14.6 Waiver of Sovereign Immunity
>
> 14.6-1. All waivers of sovereign immunity shall be made in accordance with this law.
>
> 14.62. *Waiver by Resolution.* The sovereign immunity of the Tribe or a Tribal Entity may be waived:
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> (a) by resolution of the General Tribal Council;
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> (b) by resolution or motion of the Oneida Business Committee; or
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> (c) by resolution of a Tribal Entity exercising authority expressly delegated to the Tribal Entity in its charter or by resolution of the General Tribal Council or the Oneida Business Committee, provided that such waiver shall be made in strict conformity with the provisions of the charter or the resolution governing the delegation, and shall be limited to the assets and property of the Tribal Entity."

¶ 9 The "Tribal Entity" is defined as "a corporation or other organization which his wholly owned by the Oneida Tribe of Indians of Wisconsin, is operated for governmental or commercial purposes, and may through its charter or other document by which it is organized be delegated the authority to waive sovereign immunity."

¶ 10 Hoeft claimed in her affidavit that neither the Tribe nor OSGC were parties to the lease agreements in question, and that the business committee had never seen the agreements until after it passed a resolution dissolving OSGC on December 15, 2013. Hoeft stated that neither the

General Tribal Council nor the business committee had passed a resolution authorizing waiver of the Tribe's or OSGC's sovereign immunity in connection with the lease agreements.

¶ 11 Defendants also attached the affidavit of Gene Keluche, the managing agent of OSGC, who stated that he reviewed the resolutions maintained by OSGC's board of directors meetings from 2010 to the present, and that OSGC did not pass a resolution authorizing the waiver of OSGC's, or the Tribe's, sovereign immunity in connection with the lease agreements at issue.

¶ 12 Plaintiffs responded by filing affidavits of Michael Galich and Eric Decatur. Galich stated that at all relevant times, he was the operations executive of ACF Leasing and ACF Services. He stated that on or about August 7, 2012, he attended a U.S. Department of Energy conference regarding renewable energy for tribal communities on behalf of ACF entities. Kevin Cornelius, (a member of the Tribe, the CEO of OSGC, and the president of GBRE), as well as Bruce King (a member of the Tribe, CFO of OSGC, and treasurer of GBRE) gave a presentation regarding energy projects of the Tribe, and Galich met with them to discuss projects related to the Tribe. Galich stated that Cornelius and King held themselves out as representatives of the Tribe and OSGC. Galich then detailed several other meetings and conference calls he had with Cornelius and King throughout 2012 and 2013. He claimed that Cornelius, King, and other members of the Tribe represented that they were acting on behalf of the Tribe and OSGC, and repeatedly referred to the Tribe as though it was acting in concert with OSGC and GBRE. Galich believed he was dealing with the Tribe and OSGC throughout negotiations, and Galich stated that Cornelius and King corresponded with him repeatedly using OSGC's email address and letterhead. Galich stated that he relied on the representations of Cornelius and King that they had the authority of the Tribe to enter into the agreements in question.

¶ 13 Eric Decatur, counsel for the ACF entities, stated in his affidavit that in October 2012, King arranged for $50,000 to be wired to the bank account of Equity Asset Finance (EAF), the entity providing financing for the project, and that the bank statements of EAF demonstrate that such funds were wired to EAF from the bank account of OSGC. Decatur stated that King and Cornelius told him that the Tribe and OSGC would utilize GBRE to lease the equipment for the Project on behalf of the Tribe and OSGC, and that they were utilizing GBRE for internal tax purposes to avoid jeopardizing the tax exempt status of the Tribe and Oneida by generating more than an insignificant amount of unrelated business taxable income. Decatur further stated that during the negotiations, Cornelius repeatedly stated that he could not do anything regarding the project without the approval of OSGC's board of directors. Plaintiff attached an email from Cornelius to Decatur stating that the loan commitment letter had been approved by OSGC's board of directors, but that he needed one more board member's signature before he could sign it.

¶ 14 Decatur further stated that the forum selection provisions contained within the agreements in question were negotiated in good faith by him, attorney Joseph Kavan, King, and Cornelius, and that it was represented to him that Cornelius had the authority to waive sovereign immunity on behalf of the Tribe and OSGC

¶ 15 Defendants filed the affidavits of Bruce King, Joseph Kavan, and Kevin Cornelius in response to the affidavits submitted by plaintiffs. King stated in his affidavit that he was the Vice President and Treasurer of GBRE, and also the CFO of OSGC. He stated that while he was one of 16,000 members of the Tribe, he held no official position with the Tribe and had no authority to speak on behalf of the Tribe. King averred that he never represented that the Tribe or OSGC would be participants in the project between GBRE and ACF entities, and he never represented that he had the authority to waive sovereign immunity because the Tribe has a

specific mechanism for doing so that must be followed. King further stated that he had no discussions with Decatur about a waiver of sovereign immunity because GBRE did not have sovereign immunity as a limited liability company incorporated under Delaware state law.

¶ 16 Joseph Kavan, counsel for GBRE, stated in his affidavit that he did not represent OSGC in the negotiations and that he never represented to anyone that he had any authority to speak on behalf of OSGC or the Tribe. He averred that there was never a discussion that the standard, boilerplate forum selection clause in the agreements would serve as a waiver of sovereign immunity, and that it was not logical to negotiate waiver of sovereign immunity since there was no sovereign entity involved in the project.

¶ 17 Finally, Kevin Cornelius stated in his affidavit that from January 2012 through August 2013, he was the president of GBRE. He was also the CEO of OSGC, and a member of the Tribe. Cornelius averred that he had no authority to waive sovereign immunity on behalf of the Tribe, and he never indicated he did to anyone else. Cornelius denied any discussion of waiver of sovereign immunity or choice of law provisions.

¶ 18 On October 8, 2014, a hearing was held on defendants' motion to dismiss pursuant to subject matter jurisdiction. The trial court found that there was no dispute sovereign immunity would apply to OSGC and the Tribe, but that the question was whether or not they had waived sovereign immunity. On a section 2-619 motion, the trial court noted that it was looking at the competing affidavits and that a knowing waiver was not shown. The trial court noted that none of the case law cited stated that the waiver could be implied, or that it could be inferred from a subsidiary entering into a forum selection clause in an agreement. Accordingly, the trial court found that there was no subject matter jurisdiction over OSGC or the Tribe. Because litigation

was still pending against GBRE, the trial court granted defendants a Rule 304(a) finding and this appeal followed.

¶ 19 ANALYSIS

¶ 20 Plaintiffs appeal from the trial court's grant of defendants' section 2-619(a)(1) (735 ILCS 5/2-619(a)(1) (West 2012)) motion to dismiss for lack of subject matter jurisdiction. A section 2-619 motion to dismiss admits as true all well-pleaded facts, as well as reasonable inferences to be drawn therefrom. *Wackrow v. Niemi*, 231 Ill. 2d 418, 422 (2008). We must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Wackrow*, 231 Ill. 2d at 422. When supporting affidavits have not been challenged or contradicted by counter-affidavits, the facts stated therein are deemed admitted. *Zedella v. Gibson*, 165 Ill. 2d 181, 185 (1995). "A section 2-619 dismissal resembles the grant of a motion for summary judgment; we must determine whether a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether the dismissal was proper as a matter of law." *Shirley v. Harmon*, 405 Ill. App. 3d 86, 90 (2010). We review the trial court's dismissal *de novo*. *Wackrow*, 231 Ill. 2d at 422.

¶ 21 To evaluate defendants' challenge to the trial court's subject matter jurisdiction, we return to first principles. By the power of the Illinois Constitution, our circuit courts are courts of general jurisdiction and have the power to hear " 'all justiciable matters.' " *Wauconda Fire Protection District v. Stonewall Orchards, L.L.P.*, 214 Ill. 2d 417, 426 (2005) (quoting Ill. Const. 1970, art. VI, § 9)). The circuit courts' jurisdiction is not limited only to State law causes of action, but rather, they " 'have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the law of the United States.' " *Haywood v. Drown*, 556 U.S. 729, CITE (2009) (quoting *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990)). This "strong"

presumption of concurrent State-federal jurisdiction is overcome only where Congress claims exclusive jurisdiction over a federal cause of action, or where a State court refuses jurisdiction for a neutral administrative purpose. *Id.*

¶ 22 As a matter of federal law, however, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 754 (1998). Indian tribes are " 'domestic dependent nations' " that exercise "inherent sovereign authority." *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Oklahoma*, 498 U.S. 505, 509 (1991) (quoting *Cherokee Nation v. Georgia*, 5 Pet. 1, 17 (1831)). As dependents, the tribes are subject to plenary control by Congress. *Michigan v. Bay Mills Indian Community*, 52 U.S. — (2014). Thus, unless and "until Congress acts, the tribes retain" their historic sovereign authority. *United States v. Wheeler*, 435 U.S. 313, 323 (1978).

¶ 23 Among the core aspects of sovereignty that tribes possess is the "common law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). That immunity, as the Supreme Court has explained, is "a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 476 U.S. 877, 890 (1986). The Supreme Court has time and again treated the "doctrine of tribal immunity [as] settled law" and dismissed any suit against a tribe absent congressional authorization or a waiver. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 756 (1998). In doing so, the Court has held that tribal immunity applies no less to suits brought by States than to those by individuals, and that tribal immunity "is a matter of federal law and is not subject to diminution by the States." *Kiowa*, 523 U.S. at 756. In *Kiowa*, the Supreme Court declined to make an exception for suits arising from a

tribe's commercial activities, even when they took place off tribal lands. In that case, a private party sued a tribe in State court for defaulting on a promissory note. The plaintiff asked the Court to confine tribal immunity to suits involving conduct on "reservations or to noncommercial activities." *Kiowa*, 523 U.S. at 755. The Court said no. *Id.* Accordingly, unless Congress has authorized the suit before us in the present case, or defendants have waived sovereign immunity, United States Supreme Court precedent demands that this case be dismissed. *Michigan v. Bay Mills Indian Community*, 52 U.S. — (2014).

¶ 24 Plaintiffs nevertheless contend that the Supreme Court has never decided the applicability of sovereign immunity to non-contractual activity, and continues to leave this question open. They rely on the following passage from *Kiowa*:

> "There are reasons to doubt the wisdom of perpetuating the doctrine [of sovereign immunity]. At one time, the doctrine of tribal immunity from suit might have been thought necessary to protect nascent tribal governments from encroachments by the States. In our interdependent and mobile society, however, tribal immunity extends beyond what is needed to safeguard tribal self-governance. This is evident when tribes take part in the Nation's commerce. Tribal enterprises now include ski resorts, gambling, and sales of cigarettes to non-Indians. [Citations omitted]. In this economic context, immunity can harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims." *Kiowa*, 523 U.S. at 758.

¶ 25 However, the Court went on in *Kiowa* to explain that these considerations might suggest a need to abrogate tribal immunity as at least an overarching rule, but that it declined to do so

and would instead "defer to the role Congress may wish to exercise in this important judgment." *Id.*

¶ 26 More recently, the Court visited this issue in *Michigan v. Bay Mills Indian Community*, 52 U.S. — (2014), where it specifically discussed its holding in *Kiowa* which stated: "We decline to draw [any] distinction" that would "confine [immunity] to reservations or to noncommercial activities." *Id.* (quoting *Kiowa*, 523 U.S. at 765). The Court noted that it ruled that way "for a single, simple reason: because it is fundamentally Congress's job, not ours, to determine whether or how to limit tribal immunity. The special brand of sovereignty the tribes retain – both its nature and its extent – rests in the hands of Congress." *Id.* Accordingly, where there is clear precedent from our highest court, we are unwilling to extend our State's subject matter jurisdiction in this case over defendants, and we find that sovereign immunity applies to both the Tribe and OSGC, a tribal entity.

¶ 27 Plaintiffs' reliance on *Hamaatsa, Inc. v. Pueblo of San Felipe*, 310 P.3d 631 (N.M. App. Ct. 2013), a New Mexico state appellate court case, and *D'Lil v. Cher-Ae Heights Indian Cmty. of Trinidad Rancheria*, 2002 WL 33942761 (N.D. Cal. 2002), a federal district court case, does not convince us otherwise. In *Hamaatsa*, an adjoining landowner brought an action against an Indian tribe, seeking declaration that a road, which crossed land outside the reservation boundaries acquired by the Indian tribe in fee simple, was a state public road. The Indian tribe filed a motion to dismiss based on sovereign immunity. The trial court denied the motion, and the appellate court affirmed, finding that permitting the Indian tribe to assert sovereign immunity in its motion to dismiss would be to permit the tribe to assert control over a state public road, and would deprive any other member of the public an opportunity for recourse. *Hamaatsa*, 310 P. 3d at 635.

¶ 28 The court found that it was not a case in which a party suing a tribe engaged in a contractual or commercial relationship with that tribe. *Id.* at 636-37. Rather, the court found that when a tribe acquires property that envelops a state public road and subsequently denies access to existing property owners, those excluded are innocent citizens who had no choice and cannot be held to have known "or anticipated a legal risk" of "a dispositive facial assertion of sovereign immunity by an Indian tribe." *Id.* at 637. Moreover, the court in *Hamaatsa* noted that the issue in the case was a matter of State law, over which the trial court had jurisdiction, because a public roadway was at the center of the controversy. *Id.* at 634.

¶ 29 Unlike *Hamaatsa*, the case at bar is one in which the parties suing a tribe are alleging that they were engaged in a contractual or commercial relationship with that tribe. *Id.* at 636-37. Additionally, the matter at hand is not purely a matter of State law.

¶ 30 In *D'lil*, two disabled plaintiffs brought suit against the Indian tribe that owned and operated a hotel outside the geographical boundaries of the tribe's reservation. The plaintiffs alleged that the hotel violated the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.* (West 2012)). The tribe filed a motion to dismiss, alleging sovereign immunity, but the district court found that "the strong federal policy and the public interest in enforcing the nation's disability-related civil rights laws outweighs any tribal interest in extending its sovereignty to commercial activities conducted off the reservation." *D'lil*, 2002 WL 33942761, at *8. There are no such federal policy and public interest considerations in the case at bar. Accordingly, we find both cases relied upon by plaintiffs to be inapposite to the case at bar, as well as non-precedential. We instead rely on the highest court in our nation until Congress tells us otherwise.

¶ 31 Plaintiffs argue in the alternative that if sovereign immunity applies to the defendants, then defendants have waived sovereign immunity, or that at least there is a question of fact as to whether they waived sovereign immunity. Plaintiffs rely on the Master Lease Agreement, which provides in pertinent part: "Lessee and lessor agree that all legal actions shall take place in the federal or state courts situated in Cook County, Illinois." Additionally, the "Operations and Maintenance Agreement" provides that "[a]ny disputes pertaining to this Agreement shall be determined exclusively in a court of competent jurisdiction in the County of Cook, State of Illinois." Plaintiffs contend that these are forum selection clauses which "undeniably constitute express waivers of sovereign immunity." Defendants respond that GBRE was a party to the contract, not OSGC or the Tribe, and thus any clauses contained within the agreements did not apply to them. Plaintiffs maintain that OSGC and the Tribe, despite not appearing on the contract, were nevertheless bound by the contract through their "close relationship" to the dispute. Without addressing this principle of "close relationship", we find that even if OSGC or the Tribe were considered parties to this contract, the forum selection clause in the agreements did not constitute an express waiver of sovereign immunity.

¶ 32 To relinquish its immunity, a tribe's waiver must be "clear." *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Oklahoma*, 498 U.S. 505, 509 (1991). Plaintiffs cite to several cases in support of their argument that a forum selection clause can constitute a waiver. However, in each of these cases, the clauses either explicitly waived sovereign immunity or contained an arbitration provision that waived immunity, neither of which is present in the case at bar. See *C&L Enterprises, Inc. v. Citizen Band Potowatomi Tribe of Oklahoma*, 532 U.S. 411 (2001) (arbitration provisions in contract constituted clear waiver of tribe's sovereign immunity, requiring resolution of all contract-related disputes between the parties by binding arbitration);

Altheimer & Gray v. Sioux Manufacturing Corporation, 983 F. 2d 803 (7th Cir. 1993) (a tribal entity's charter provided that sovereign immunity "is hereby expressly waived with respect to any written contract entered into by the Corporation"); *Sokaogon Gaming Enterprise Corp. v. Tushie-Montgomery Associates, Inc.*, 86 F. 3d 656 (7th Cir. 1996) (a tribe and its casino gaming subsidiary entered into agreement and the following arbitration clause was found to be an express waiver of sovereign immunity: "claims, disputes or other matters" arising out the contract "shall be subject to and decided by arbitration" and the agreement to arbitrate "shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof"); and *Ningret Development Corp. v. Narragansett Indian Wetuomuck Housing Authority*, 207 F. 3d 21 (1st Cir. 2000) ("we believe that explicit language broadly relegating dispute resolution to arbitration constitutes a waiver of tribal sovereign immunity, whereas language that is ambiguous rather than definite, cryptic rather than explicit, or precatory rather than mandatory, usually will not achieve that end.")

¶ 33 Additionally, in *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino and Resort*, 2007 WL 2701995, rev'd on other grounds, 629 F. 3d 1173 (10th Cir. 2010), the language of the parties' agreement stated that the sole and exclusive venue for any and all disputes regarding the agreement was to be located within the state of Colorado. The court found that the parties' agreement spoke only "to *where* a suit may be brought, but it does not expressly or impliedly address *whether* a suit may be brought." 2007 WL 2701995, at *5. It went on to state that unlike cases such as *C & L*, the tribe did not expressly agree to submit any dispute for adjudication; it merely agreed as to where such adjudication would take place if it were to occur. *Id.* In the case at bar, the forum selection clause in the agreements specifies Illinois as the venue for a dispute, but says nothing about expressly waiving sovereign immunity. Accordingly, we

maintain that the Tribe and OSGC did not expressly waive sovereign immunity through the forum selection clauses.

¶ 34 We are not persuaded otherwise by plaintiffs' reliance on *StoreVisions, Inc. v. Omaha Tribe of Nebraska*, 281 Neb. 238 (2011), in which the court found that a tribal member's signature on a contract containing a forum selection clause waived immunity, because that tribe's bylaws were silent concerning the authority regarding the waiver of sovereign immunity. In the case at bar, the Tribe's bylaws are clear regarding the waiver of sovereign immunity:

> "*Waiver by Resolution.* The sovereign immunity of the Tribe or a Tribal Entity may be waived:
>
> (a) by resolution of the General Tribal Council;
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> (b) by resolution or motion of the Oneida Business Committee; or
>
> (c) by resolution of a Tribal Entity exercising authority expressly delegated to the Tribal Entity in its charter or by resolution of the General Tribal Council or the Oneida Business Committee, provided that such waiver shall be made in strict conformity with the provisions of the charter or the resolution governing the delegation, and shall be limited to the assets and property of the Tribal Entity."

¶ 35 Here, there was no evidence presented that a resolution passed authorizing a waiver of sovereign immunity in connection with the agreements at issue. Moreover, if plaintiffs knew they were dealing with an Indian tribe when they entered into the agreements, then they were "charged with knowledge that the tribe possessed sovereign immunity." *Danka Funding Co., LLC v. Sky City Casino*, 329 N.J. Super. 357, 365 (1999). Accordingly, defendants' section 2-619 motion to dismiss was properly granted.

¶ 36 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 37 Affirmed.