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Justices Say Tribe Is Immune To Energy Project Lease Suit

By [Aebra Coe](#)

Law360, New York (October 14, 2015, 3:46 PM EDT) -- The forum selection clause in a lease agreement does not waive a Native American tribe's sovereign immunity, an Illinois appellate court found Tuesday, refusing to revive claims against the [Oneida Tribe](#) of Indians of Wisconsin over a \$22 million lease contract for renewable energy equipment.

A three judge panel of the appellate court concluded that ACF Leasing LLC, ACF Services LLC and Generation Clean Fuels LLC failed to show that the forum selection clause in their lease agreement with Green Bay Renewable Energy LLC — a subsidiary of a tribe-owned business — constitutes a waiver of the tribe's sovereign immunity bestowed upon it by federal law.

“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. To relinquish its immunity, a tribe's waiver must be clear,” the court's opinion said. “Accordingly, we maintain that the tribe and [Oneida Seven Generations Corp.] did not expressly waive sovereign immunity through the forum selection clauses.”

The leasing companies filed their suit against Green Bay Renewable Energy, the tribe and OSGC, a tribe-owned business, alleging they'd violated a 2013 contract in which ACF Leasing leased three liquefaction machines to GBRE for \$22.2 million for a 21-year term.

The companies argued that when the tribe voted to dissolve OSGC in December 2013, the entity that had committed to providing GBRE with financing withdrew from its commitment to finance the project and, as a result, the contract could not be upheld.

They brought claims of 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.

The tribe claimed that because neither it nor OSGC were parties to the lease 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.

Both the trial court and the appellate court agreed with those contentions. Citing “clear precedent” from the [U.S. Supreme Court](#), the appellate court said it is “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.”

Counsel for the plaintiffs, Gerald M. Dombrowski of [Sanchez Daniels & Hoffman LLP](#), said he and his clients are weighing their options after the decision, including an appeal to the state supreme court “and beyond.”

“We still feel our case is very strong and defendant GBRE remains firmly in the case,” Dombrowski said. “We will also likely be adding a number of defendants to the suit who do not enjoy the benefit of sovereign immunity.”

Justices Maureen E. Connors, Laura C. Liu and Joy V. Cunningham sat on the panel.

ACF Leasing LLC, ACF Services LLC and Generation Clean Fuels LLC are represented by Gerald M. Dombrowski and Heather Erickson of Sanchez Daniels & Hoffman LLP.

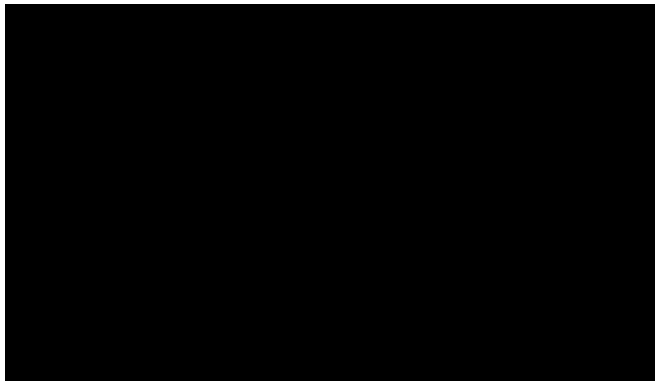
The defendants are represented by James B. Vogts and Thomas J. Verticchio of [Swanson Martin & Bell LLP](#) and Thomas M. Pyper of Whyte Hirschboeck Dudek SC.

The case is ACF Leasing et al. v. Oneida Seven Generations Corp. et al., case number 143443-U, in the Appellate Court of Illinois, First District.

--Editing by Kelly Duncan.

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