

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

Oneida Nation,

Plaintiff,

v.

Case No. 16-CV-1217 (WCG)

Village of Hobart, Wisconsin,

Defendant.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Oneida Nation (“Nation”), by and through its undersigned counsel, states and alleges as follows:

NATURE OF THE ACTION

1. The Nation brings this action for declaratory, permanent and preliminary injunctive relief under 28 U.S.C. §2201 and Fed. Rul. Civ. Proc. 15(a) & 65 against the Village of Hobart, Wisconsin (“Village” or “Hobart”) for a declaration of the parties’ legal rights with regard to Hobart’s assertion of authority to regulate the Nation and its officials with respect to activities occurring on trust land and within the Nation’s Reservation. Specifically, the Nation seeks a declaration that the Nation, its officials, its trust lands, and the Oneida Reservation (“Reservation”) are not subject to the Hobart Special Event Permit Ordinance, ch. 250, and an injunction against attempts by Hobart to impose its ordinance upon the Nation regarding activities on these trust lands or within the boundaries of the Reservation and enforce the

provisions of its ordinance against the Nation, its officials, and employees in Hobart Municipal Court or otherwise.

2. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1362. The Nation maintains a government-to-government relationship with the United States and has a governing body duly recognized by the Secretary of the Interior. 81 Fed. Reg. No. 86, at 26829 (“Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin”)), May 4, 2016. The Nation asserts claims arising under the Constitution, laws and treaties of the United States, including but not limited to Art. I, § 8, cl. 3, Art. II, §2, cl. 2, and Art. VI of the United States Constitution; the Treaty with the Oneidas, February 3, 1838, 7 Stat. 566; the Indian Reorganization Act of 1934, 25 U.S.C. § 461 *et seq.*; and the federal common law.

VENUE

3. Venue is proper in this district under 28 U.S.C. § 1391(b) inasmuch as the Nation, its trust lands, the Reservation and the Village of Hobart are located within the district and the events giving rise to the claims made by the Nation occurred within the district.

PARTIES

4. Plaintiff Nation is a successor in interest to the Oneida Nation recognized by the United States in the Treaty of Fort Stanwix, Oct. 22, 1784, 7 stat. 15, the Treaty of Fort Harmar, Jan. 9, 1789, 7 Stat. 33, and the Treaty of Canandaigua, Nov. 11, 1794, 7 Stat. 44. The Nation has continuously since 1794 received or been entitled to receive annuity payments under the Treaty of Canandaigua. The Nation is organized pursuant to a constitution adopted under the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and approved by the Secretary of the Interior on December 31, 1936. The Nation’s principal government offices are located at N7210

Seminary Road, Oneida, Wisconsin 54155.

5. Defendant Village of Hobart is an incorporated municipality in Brown County, State of Wisconsin. Its principal offices are located at 2990 South Pine Tree Road, Oneida, Wisconsin 54155.

ALLEGATIONS COMMON TO ALL CLAIMS

6. On February 3, 1838, the United States executed a treaty with the First Christian and Orchard Parties of the Oneidas to set aside a tract of recently ceded Menominee territory for the Oneidas. 7 stat. 566. Under Article 2 of the treaty, the reserved tract was “to be held as other Indian lands are held...” containing approximately 65,400 acres, commonly known as the Reservation. *Id.* The First Christian and Orchard Parties are now organized as the Oneida Nation pursuant to the Indian Reorganization Act.

7. On June 18, 1934, Congress enacted the Indian Reorganization Act (the “IRA”), which, among other things, authorizes the Secretary of the Interior to take lands into trust for tribes. 48 Stat. 984, codified as amended at 25U.S.C. § 461, *et seq.* On December 15, 1934, the Secretary conducted an election at which the Nation voted to accept the IRA. Theodore H. Haas, U.S. Indian Service, *Ten Years of Tribal Government Under I.R.A.*, at 20 (1947). As authorized by the IRA and in accordance with governing regulations, the Nation from time to time since 1934 applied for certain lands to be placed into trust by the United States for the benefit of the Nation. 25 C.F.R. Part 151.

8. Specifically, the Nation applied for and in 1996 and 1995, respectively, parcels HB-1355 and HB-1355-1, as identified in Brown County tax records, were placed into trust by the United States for the Nation. These trust parcels are located within the Reservation and are

identified herein as the Nation's Apple Orchard.

9. Specifically, the Nation applied for and in 2006, the following parcels, as identified as Brown County tax records, were placed into trust by the United States for the Nation: 6H-765-2-1; 6H-765-2; 6H-765-1; 6H-765-1-1; HB-753; HB-753-2; HB-746; HB-745; HB-746-3. These parcels are located within the Reservation and are identified herein as the Cultural Heritage Site.

10. In 2015, citing an ordinance repealed and replaced in 2016, the Hobart Chief of Police advised employees of the Nation that the Nation was obliged to apply for a special event permit for the 2015 Big Apple Fest. By letter dated September 3, 2015, Chairwoman Danforth of the Nation advised the Hobart President that the Nation would not apply for such a permit since, in the Nation's view, Hobart lacked authority to impose its ordinance upon the Nation. The 2015 Big Apple Fest took place with no further objection and no interference from Hobart.

11. On March 1, 2016, the Village of Hobart adopted Ordinance No. 03-2016, its Special Event Permit Ordinance. Ch. 250, Village of Hobart Municipal Code. The ordinance purports to apply to all private and public land located within the Village. Further, the ordinance purports to require "any person, firm, partnership association, corporation, company, governmental entity, or organization of any kind" to obtain a permit from the Village, setting conditions for the conduct of any event where fifty (50) or more persons might gather on any such land. Further, the ordinance purports to impose upon any person or entity subject to the ordinance penalties in an amount up to \$10,000.00 per violation and, by reference to § 1-3 of the Village code and upon failure to pay the penalty, imprisonment for up to 90 days, for each violation of the ordinance.

12. The Nation publicly announced that the 2016 Big Apple Fest would take place between the hours of 10 a.m. to 4 p.m. on September 17, 2016. As in the past six years that the

Nation has conducted this event, the Nation announced that the Big Apple Fest activities would take place at the Nation's Apple Orchard and the Cultural Heritage Site, both of which are held in trust by the United States for the Nation are located within the Reservation on State Highway 54.

13. Transportation between the two sites for the event was offered by the Nation. Traffic on Highway 54 for the event was detoured onto a county highway, in accordance with road closure permits obtained by the Nation from the Wisconsin Department of Transportation and Brown County.

14. All activities at the 2016 Big Apple Fest, the seventh such annual event conducted by the Nation, were subject to the Nation's immediate control and supervision in the person of the Nation's Special Event Coordinator. The Big Apple Fest has never been a money-making enterprise but is a family oriented event that is free and open to the public. Each year, activities include a farmer's market, a petting zoo, an apple pie contest, art programs for children, hay-rides, tours of historic Oneida log homes, food vendors, and apple picking.

15. All activities at the annual Big Apple Fest are governed by laws of the Nation and all vendors are subject to permitting (which requires, among other things, the maintenance of liability insurance) and inspection by the Nation.

16. Security and traffic management for the annual Big Apple Fest are provided by officers of the Oneida Security Department and the Oneida Police Department, eleven (11) from the former department and three (3) from the latter department for 2016 Big Apple Fest. Officers from the Oneida Police Department are independently authorized to enforce state law on the Reservation and are also deputized by Brown County to enforce state criminal law. In addition,

three (3) nurses in the employ of the Nation were present and staffed a first aid station at 2016 Big Apple Fest.

17. On August 18, 2016, the Hobart Chief of Police emailed the Nation's Special Event Coordinator to advise that the Nation was obliged to obtain a permit under Hobart's Special Event Permit Ordinance.

18. On September 2, 2016, Counsel for Hobart wrote the Nation's Special Event Coordinator to advise that the Nation must apply for a permit under Hobart's Special Event Permit Ordinance no later than 4 p.m., Friday, September 9, 2016, for the Big Apple Fest. Counsel for Hobart further advised that, in the event the Nation failed to do so, the Nation and "all responsible officials" would be prosecuted for violation of the ordinance, as authorized under § 1-3; this provision, in turn, authorizes fines up to \$10,000.00 per offense and imprisonment for up to ninety (90) days for failure to pay the fines.

19. On September 17, 2016, the 2016 Big Apple Fest took place as advertised at the Nation's Apple Orchard and Cultural Heritage Site, in accordance with the Nation's laws and regulations and road closure permits obtained by the Nation from the Wisconsin Department of Transportation and Brown County. As in past years, the event was well attended and no incidents occurred implicating the health, safety, or welfare of those in attendance or the public in general.

20. On September 21, 2016, the Village Chief of Police issued a citation against the Oneida Nation for failure to obtain a special event permit. Citation No. 7F80F51TJS, attached hereto as Exhibit 1. The citation orders that the Nation must appear before the Hobart/Lawrence Municipal Court on November 10, 2016. The citation advises that, if the Nation fails to appear,

the court may issue a warrant for arrest, issue a summons to appear in court, or find the Nation guilty and order payment of forfeiture in the amount of \$5,000.00 and costs.

FIRST CLAIM FOR RELIEF

(Federal pre-emption)

21. The Nation repeats and incorporates by reference herein the allegations in paragraphs 1 through 20.

22. Under federal common law and rules governing construction of Indian statutes, including the IRA, federal law pre-empts the application of state and local law and regulation to recognized tribes, their trust property, and their reservations located within Indian country, 18 U.S.C. § 1151.

23. Federal regulation of the Nation, its trust lands, and Reservation are comprehensive and pervasive and precludes state and local regulation by virtue of the Supremacy Clause of the United States Constitution. U.S. Const., Art. VI, § 2.

24. Hobart's attempt to regulate activity of, and enjoyment by, the Nation on its trust lands and Reservation through imposition of its Special Event Permit Ordinance is pre-empted by the pervasive and comprehensive federal regulation of the Nation, its trust lands, and Reservation.

SECOND CLAIM FOR RELIEF

(Infringement of tribal self-government)

25. The Nation repeats and incorporates by reference herein the allegations in paragraphs 1 through 20.

26. The Nation holds inherent powers of self-government, including the authority to

manage and regulate the Oneida Reservation and the Nation's trust lands.

27. Another of the Nation's inherent powers of self-government is sovereign immunity from local and state regulation and efforts to prosecute the Nation, its elected officials, and its employees for alleged violations of state and local laws when acting in accordance with tribal authority.

28. The Nation's interest in regulating its trust lands and Reservation, including the conduct of special events thereon, far outweighs any interest the Village has in regulating the Nation's activities on its trust lands and Reservation for the same purpose.

29. The Nation comprehensively manages and regulates the conduct of special events on its trust lands and Reservation in general, and the annual Big Apple Fest in particular, leaving no opportunity for the interstitial exercise of any local or state authority in that regard.

30. It is overriding federal policy and law to protect the Nation in the exercise of its inherent powers of self-government, including Nation activity on its trust lands and Reservation in the conduct of special events, and immunity of the Nation, its officials, and employees in the exercise thereof.

31. Hobart's attempt to impose its Special Event Permit Ordinance and citation against the Nation for alleged violation of the Hobart ordinance in the Nation's conduct of the 2016 Apple Fest violates the Nation's inherent powers of self-government and is, therefore, pre-empted by federal law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Oneida Nation respectfully prays for the following relief:

1. A declaration that the Nation, its officials, and employees are immune from Hobart's

Special Event Permit Ordinance in the conduct of special events on the Nation's trust lands and Reservation and that Hobart lacks authority to enforce the ordinance against the Nation, its officials, and employees;

2. A permanent injunction against Hobart's attempt to impose its Special Event Permit Ordinance on the Nation, its officials, and employees and any effort by Hobart and its officials to enforce the ordinance as to the Nation, its officials, and its employees, through citation and proceedings thereon in municipal court or otherwise;

3. A preliminary injunction against any attempts by Hobart and its officials to enforce Citation No. 7RS0F51TJS against the Nation in municipal court or otherwise for alleged violation of the Hobart Special Event Permit Ordinance in the conduct of the 2016 Big Apple Fest on September 17, 2016, pending adjudication in this Court of Hobart's alleged authority to impose its ordinance on the Nation, its official, and its employees;

4. Attorneys' fees and costs of the action; and

5. All relief available, at law or in equity, to enforce the rights of the Tribe as alleged in this Complaint, and such other and further relief, both special and general, at law or in equity as the Court may deem just and proper.

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Dated: September 28, 2016

You Are Notified to Appear

Date

Time

Form No. and Version CTL

CITATION NO.

Appearance Required:

YES

NOV-10-2016

09:00 AM

MUNI

0405

7R80F51TJS

HOBART / LAWRENCE MUNICIPAL COURT

2990 S PINE TREE RD

HOBART, WI 54155

Juvenile

DEPOSIT

Cash - Card

\$5,000.00

N N

Court Use

Defendant (Last Name, First, Middle), Street Address, P.O. Box, City, State, Zip

Birth Date

Sex

Race

ONEIDA NATION

, PO BOX 365

ONEIDA, WI 54155

HT

WT

Hair

Eyes

lbs

Driver License/Identification Card

State Exp. Yr.

Name and Address of Parent/Guardian/Legal Custodian (If minor defendant)

Other Identification Number

ID Type

License Plate Number

Plate Type

State

Exp. Yr.

Defendant Telephone Number

Telephone Number of Parent/Guardian/Legal Custodian

Plaintiff

Ordinance Violated

Adopting State Statute

VILLAGE OF HOBART

250-9

Violation Description

Agency Space

Ordinance Description

FAIL TO OBTAIN SPECIAL EVENT PERMIT

Week Day

Date

Time

SEP-21-2016

01:04 PM

At Location

ON S PINE TREE RD AT

County

City/Village/Town

BROWN - 05

HOBART - 59, VILLAGE

Officer Name

CHIEF R BANI

Date Citation Served,

SEP-21-2016

Method

IN PERSON

Officer ID

Department

500RB

HOBART/LAWRENCE POLICE DEPT

Residence Contact Name

Age

(If left with person at defendant's address)

INSTRUCTIONS - READ CAREFULLY

MANDATORY APPEARANCE?

If your citation is marked as a mandatory court appearance, you MUST appear in court. The "appearance not mandatory" instructions do not apply to you.

APPEARANCE NOT MANDATORY?

IF YOU WISH TO DISPUTE THE CITATION. you must either appear in court or enter a "not guilty" plea by mail prior to your court date. You may do so even if you have already paid the deposit or posted a bond. Please include either:

- a photocopy of your citation, OR
- your correct name and mailing address, citation number, court appearance date listed on the citation, offense, and arresting police agency.

These should be mailed to the court address written under "YOU ARE NOTIFIED TO APPEAR". The court will schedule another court date and/or a trial before a judge without a jury.

IF YOU DO NOT WISH TO DISPUTE THE CITATION,

simply mail in the deposit amount on the citation by the court date, with a statement saying you do not wish to contest the citation. Please include either:

- a photocopy of your citation, OR
- your correct name and mailing address, citation number, court appearance date listed on the citation, offense, and arresting police agency.

Make check payable to the clerk of court and mail it to the court address written under "YOU ARE NOTIFIED TO APPEAR". You do not need to appear. The court will either:

- accept your nonappearance as a plea of no contest, find you guilty and keep the deposit amount as payment for your citation; OR
- decline to accept the deposit and order you to appear in court by summons or warrant.

IF YOU DO NOTHING, the court may either:

- issue a warrant for your arrest, OR
- issue a summons for you to appear in court, OR
- find you guilty for failing to appear in court and order you to pay the forfeiture and costs imposed by the court.

WISCONSIN NON TRAFFIC CITATION AND COMPLAINT