

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

Oneida Nation,

Plaintiff,

v.

Case No. 16-CV-1217

Village of Hobart, Wisconsin,

Defendant.

**DEFENDANT VILLAGE OF HOBART’S LOCAL RULE 56 STATEMENT OF
ADDITIONAL PROPOSED UNDISPUTED MATERIAL FACTS IN OPPOSITION TO
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Defendant, Village of Hobart (“Village”), by its attorneys, hereby provides additional proposed undisputed material facts, pursuant to Civil L.R. 56(b)(2)(B)(ii), in opposition to Plaintiff Oneida Nation’s Motion for Summary Judgment:

1. In 1836 at a council between United States and Oneida representatives, the Oneida requested to remain in Wisconsin as equal-footing with non-Indians in the area; hoping to farm, receive education for their children, and “become a part of the people of the United States.” (Ex. 1 to Sept. 5, 2018 Declaration of Frank Kowalkowski (hereafter “Sept. 5, 2018 Kowalkowski Decl.”) ¶ 2 at VH-GRE003683; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 9.)

2. A visitor and observer, Cyrus Curtis, of the Oneida settlement at Duck Creek reported in 1837 that Oneida had among their people “some 15 or 20 good mechanics, such as carpenters, blacksmiths, [and] shoemakers.” (Ex. 2 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003699; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 9.)

He further reported “the agricultural improvements of the Oneida Indians at Duck Creek far exceeds that of any other part of the territory . . . [and] no better claim for ceded rights & indeed for citizenship than that now asked for by the Oneida Indians living at Duck Creek.” (Ex. 2 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003700; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 9.)

3. On July 17, 1838, seven Oneida chiefs wrote to Superintendent Henry Dodge: “In exchange for our interest here of (100) acres for each individual we propose to accept according to the treaty made at Buffalo last February . . . 320 acres of land” (Ex. 3 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003701; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 10.)

4. On October 23, 1838, the Nation submitted a petition to the President noting that the Treaty of 1838 reserved “100. acres of said land to each Individual Indian” and that “the Undersigned Chiefs and Head men of the First Christian and Orchard parties of the Oneida Tribe of Indians, are willing and hereby propose to exchange all their right and title to the lands they are separately or in a national point of view intitled to under the Treaty of 3d of February 1838; that is to say, that each Indian who owns 100. acres, of land near Green Bay, is to have in exchange for the same, 320 acres of Land West of Missouri” (Ex. 4 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003703-04; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 10.)

5. In his 1838 annual report, Commissioner of Indian Affairs T. Hartley Crawford discussed the Oneida treaty. He noted that the treaty reserved “a tract of one hundred acres for each individual” and that “the United States further agreed to have the reservations surveyed as

soon as practicable.” (Ex. 5 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003740, 747; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 10.)

6. In November 1838, treaty commissioner R. H. Gillet reported to the commissioner of Indian affairs that he had received a visit from “two Oneida Chiefs who reside at Green Bay,” requesting to exchange individual lands in Wisconsin for lands elsewhere. Gillet believed he could negotiate a treaty with that half of the tribe “without interfering with the other party” and recommended that the new treaty allow parties to receive 320 acres of land each west of the Mississippi River “on relinquishing & surrendering to the Government their respective rights at Green Bay.” He calculated that half of the tribe agreeing to the proposed treaty terms “would immediately extinguish the Indian title to thirty thousand acres of land at Green Bay.” (Ex. 6 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003713-17; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 10.)

7. On December 4, 1838, Commissioner of Indian Affairs T. Hartley Crawford responded to Gillet and authorized him to proceed with negotiations on the following principles, among others: “1st That they cede for themselves and those they represent, the tracts of land, of 100 acres, reserved to each individual by the 2d article of [the Treaty of 1838]”; “2d In consideration of this grant the United States engage to pay the appraisal value of their improvements on the said reservations at Green Bay, to the persons respectively who hold said lands”; and “3d That the United States agree to give to each Oneida holding 100 acres of land at Green Bay, which shall be ceded by the treaty, 320 acres in lieu thereof west of the Mississippi.” (Ex. 7 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003718-19; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 10-11.)

8. On December 17, 1838, Gillet and Oneida representatives signed a treaty which provided that the signatories and “those whom they represent” agreed to “cede to the United States the tracts of land of one hundred acres reserved to each individual by the second article of the treaty concluded at Washington on the third day of February 1838 between the Oneidas of Green Bay & Car[e]y A. Harris, Commissioner on the part of the United States.” As part of the treaty, the United States would “give to each Oneida Indian holding one hundred acres of Land at Green Bay” 320 acres of land in the West. (Ex. 8 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003781-82; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 11.)

9. In January 1839, Gillet forwarded the treaty to the commissioner of Indian affairs and explained: “By the very terms of the Treaty itself, the Indians are to act voluntarily, if at all, under it. Hence those who do not approve of its provisions, have only to let it alone & it will not apply to them, as each of the Oneidas holds his lands separately at Green Bay.” (Ex. 9 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003767; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 11.)

10. On January 25, 1839, Commissioner Crawford summarized the possibility of allowing Oneidas to exchange their individual tracts of land to the Secretary of War J. R. Poinsett. Commissioner Crawford stated that “The 2d article of the treaty of 3d February 1838, gave to each individual of the First Christian and Orchard parties of Indians at Green Bay 100 acres of land, ‘to be held as other Indian lands are held.’” Crawford also stated that “[t]he 100 acre reservations at Green Bay are individual property,” and that “the individual reservees” who chose to take advantage of the treaty “shall cede and relinquish each for himself his 100 acres.”

(Ex. 10 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003770-73; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 11.)

11. The December 1838 Treaty ultimately was not presented to the Senate or the President for approval because the treaty was “imperfectly executed” because two of the four Oneida representatives allowed proxies to sign the treaty on their behalf. (Ex. 11 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2 at VH-GRE003774; *see also* Ex. 154 to July 19, 2018 Kowalkowski Decl., ECF No. 89-154 at 11.)

12. As of December 28, 2017, approximately 14,078.612 acres are held in trust on behalf of the Oneida Nation. (Ex. 17 to Sept. 5, 2018 Kowalkowski Decl., ¶ 2.)

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