

**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.

**PLAINTIFF’S ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED
COUNTERCLAIMS**

Plaintiff Oneida Nation (“Nation”), by and through its undersigned counsel, answers the Amended counterclaims of Defendant Village of Hobart, Wisconsin (“Defendant”), filed September 10, 2018 (ECF No. 108), as follows:

PARTIES

1. The Village is an incorporated municipality in Brown County, Wisconsin, with a principal office located at 2990 South Pine Tree Road, Hobart, Wisconsin, 54155.

Response: Admit.

2. The Nation purports to be a federally recognized Indian tribe with principal government offices at N7210 Seminary Road, Oneida, Wisconsin, 54155.

Response: Deny, insofar as Defendant alleges plaintiff’s status as “purported.”

VENUE AND JURISDICTION

3. The Village restates and incorporates as if stated in full herein all of the allegations contained in paragraphs 1 through 31 of its Answer; paragraphs 1 through 7 of its Affirmative

Defenses; and paragraphs 1 through 2 of its Counterclaim.

Response: Insofar as Defendant incorporates Defendant's amended responses to Plaintiff's First Amended Complaint, Plaintiff reasserts and incorporates allegations made by it in its First Amended Complaint. Insofar as Defendant incorporates Defendant's Amended Affirmative Defenses to Plaintiff's First Amended Complaint, Plaintiff answers that the affirmative defenses contain legal conclusions to which no answer is required, but in any event denies them.

4. Subject matter jurisdiction is based upon 28 U.S.C. § 1331 (controversy arising under a federal statute) and 28 U.S.C. § 2201(a) (action for a declaratory judgment). The Court further has authority to award injunctive relief under Rule 65 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2202 (further necessary or proper relief based on a declaratory judgment).

Response: Admit, except that Plaintiff denies any implication that the Court has jurisdiction to award monetary damages against Plaintiff as demanded in Defendant's Second Cause of Action.

5. Venue in this action is proper pursuant to 28 U.S.C. § 1391(b), and 28 U.S.C. § 1391(e) because the Village, the tribe and the land titled in the name of the United States are all located in this district, and a substantial part of the events or omissions giving rise to the claim occurred in this district.

Response: Deny that the Oneida Nation is known as "the tribe"; otherwise admit.

ALLEGATIONS COMMON TO ALL COUNTS

6. The Village restates and incorporates as if stated in full herein all of the allegations contained in paragraphs 1 through 31 of its Answer; paragraphs 1 through 7 of its Affirmative

Defenses; and paragraphs 1 through 5 of its Counterclaim.

Response: Plaintiff repeats its answer in paragraph 3, above.

7. The Nation's 2016 Big Apple Fest included activity on several fee parcels including, but not limited to, designated primary parking with signage on Parcel No. HB-1396- 15; designated primary parking with signage for elderly and disabled on Parcel No. HB-1391-1; parking on Parcel No. HB-1356; apple picking on a significant portion of the Nation's orchard located on Parcel No. HB-1356, which included repeated and continuous shuttling of attendees, via tribally operated extended passenger golf carts, to and from Parcel No. HB-1356, as well as vehicular traffic, vehicular parking, and pedestrian foot traffic, in and out of this area during the entire event; unauthorized closure by the Nation of a Village road without the consent of, or notice to, the Village; the closure of State Highway 54 in violation of the Wisconsin Department of Transportation's approval relative to such closure; blocking of the entrance to State Highway 54 at the intersection of State Highway 172 without authorization; upon information and belief, trespassing by attendees on parcel(s) not owned by the Nation nor held in trust for its benefit; and road closures impacting businesses and residents on property owned in fee, by persons or entities other than the Nation.

Response: Plaintiff admits that incidental use of its fee land took place on September 17, 2016, associated with the conduct of the 2016 Big Apple Fest on Plaintiff's trust land, including parking on parcel no. HB-1396-15. Plaintiff further admits that apple-picking took place on fee land parcel nos. HB-1356 and HB-1391-1. Plaintiff further admits that shuttling of participants, vehicular traffic, and foot traffic occurred among these parcels. Plaintiff further alleges compliance with terms of the Wisconsin Department of Transportation closure permission for State Highway 54 for the event. Otherwise, denies.

8. The Nation failed to adequately notify surrounding jurisdictions of the scope and nature of the event including anticipated road closures.

Response: Deny.

9. The Nation failed to properly notify Brown County Dispatch, as is normally done for events of this nature, of the existence of the event and the anticipated road closures.

Response: Deny.

10. The Nation's road closure relative to State Highway 54 was in contravention to the limited approval obtained from the Wisconsin Department of Transportation.

Response: Deny.

11. Only as a result of the Village's police chief's efforts relative to notifying other communities, issuing press releases to inform the public of road closures and safety concerns, contacting the Wisconsin Department of Transportation in 2015, and other measures, did traffic, parking and pedestrian safety concerns get significantly addressed.

Response: Deny.

12. The purpose of the special event application and permitting process is for the Village to gain an understanding of the scope of the proposed event so that health, safety and welfare concerns can be addressed by the Village and the sponsor of the event including, but not limited to, the type of information the Nation included within its Complaint, but failed to previously give to the Village, as part of the permitting process or otherwise.

Response: Deny.

13. The Nation was informed by the Village that it needed to abide by the Village's Special Events Ordinance, designed to ensure the health, safety, and welfare of all residents of the Village, as well as all individuals visiting the Village.

Response: Plaintiff admits that Defendant informed Plaintiff that it was obliged to obtain a permit from Defendant for the conduct of the 2016 Big Apple Fest; otherwise, deny.

14. The Nation refused to abide by the Special Events Ordinance or give information relative to its handling of the event and the Village first obtained some of this information as part of the Nation's pleadings filed in federal court to commence this action.

Response: Plaintiff admits that it refused to apply for a special event permit from Defendant from the 2016 Big Apple Fest; otherwise, deny.

15. The Nation, through its officials, indicated that it would not abide by the Special Events Ordinance because Big Apple Fest was conducted on trust land.

Response: Plaintiff admits that it advised Defendant in 2016 that it would not apply for a permit from Defendant, but otherwise deny. Chairwoman Danforth's letter advised that: "Big Apple Fest is held within the Oneida Reservation boundaries and it is also taking place on a 'trust' parcel. It is our opinion as a Sovereign Nation that Hobart lacks authority to require the Oneida Tribe to obtain permits for such activities." Affidavit of Nathaniel S. King, ECF No. 3.

16. As a result of the Nation's refusal to abide by the Village's Special Events Ordinance, Chapter 250, the Nation was issued Citation No. 7R80F51TJS ("Citation") on September 21, 2016 in the amount of \$5,000, in accordance with that ordinance and the Village penalties for the violation of ordinances, as stated in §§ 1-3 of the Village Municipal Code.

Response: Admit that Citation No. 7F80F51TJS was served on the Nation; otherwise, deny.

17. The Village police chief and others, spent numerous hours in both 2015 and 2016, to the best of their ability and despite the Nation's refusal to abide by the Special Events Ordinance, ensuring the safety of the general public relative to the event including, but not limited

to, instructing the Nation of their need to obtain permission from the Wisconsin Department of Transportation to block traffic on Highway 54; notifying other local policing authorities, property owners, and others, of the fact the event was occurring and that roads would be closed; issuing press releases as is a standard practice for such an event; notifying Brown County Dispatch of the event and road closures so it could better dispatch emergency vehicles, including fire and rescue, if needed; having a Village police officer stationed at the event to help ensure the safety of the public; and convincing the Nation to hire a qualified company to place traffic control barrels and blockades.

Response: Deny.

18. Without the Village's involvement, safety concerns would not have been adequately addressed by the Nation.

Response: Deny.

19. Even with the Village efforts, and because the Nation refused to abide by the Special Events Ordinance, significant safety concerns arose at the 2016 Big Apple Fest.

Response: Deny.

20. At the 2016 Big Apple Fest, there was a lack of coordination between the Nation's police officers relative to road closures and parking to such an extent that unauthorized road closures occurred only to later be abandoned; manned road closures were abandoned simply because the Nation's police officers shifts ended prior to the event ending; the Nation's police officers referring to the road closures, traffic concerns, and pedestrian safety as "a cluster," or "a mess," or "a disaster," and indicating that shuttle busses were going to hit pedestrians because of improper direction from the Nation's police officers; the Nation's police officers allowing cars to go through barricades into areas with significant pedestrian traffic; and disagreements and

arguments occurring between the Nation's police officers, relative to vehicular and pedestrian safety.

Response: Deny.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

21. The Village realleges and incorporates by reference paragraphs 1 through 20 of the Counterclaim.

Response: Plaintiff incorporates its answers to paragraphs numbered 1 through 20 above.

22. The Nation alleges that the property at issue was placed into trust via the IRA.

Response: Admit.

23. The Nation was not federally recognized or under federal jurisdiction on June 18, 1934, and is, therefore, not eligible to use the IRA to obtain trust status for real property it owns.

Response: Deny.

24. Some or all of the property at issue was not within an existing reservation or within the present boundaries of a reservation at the time the IRA was enacted and the Nation was, therefore, not eligible to use the IRA to obtain trust status for real property it owns.

Response: Deny.

25. In the event it is determined that the property upon which the Nation's Big Apple Fest was held is in trust. The Secretary of Interior has no authority under any statute to remove lands from state jurisdiction. Once land has ceased to be territorial land by Congressional cession or act, and is under state jurisdiction, there is no federal authority to nullify state jurisdiction. Therefore, the Village has the authority to enforce its Special Events Ordinance for the entire Big Apple Fest event.

Response: The allegation states a legal conclusion to which no response is required;

otherwise, deny.

26. The Village's interest in protecting the health, safety, and welfare as everyone within the Village, via its Special Events Ordinance, outweighs the Nation's interest in refusing to abide by the Ordinance. The Nation is obligated to abide by the Ordinance just like any other resident of the Village, regardless of whether the property on which Big Apple Fest occurred, is found to be held in trust or fee or within a reservation.

Response: The allegation states a legal conclusion to which no response is required; otherwise, deny.

27. The Nation's 2016 Big Apple Fest did not occur only on tribal trust land and, therefore, the Village's Special Events Ordinance is applicable, at the very least, to all activities occurring on fee land owned by the Nation, as well as for activities and disruptions occurring on roadways, rights-of-way, and neighboring properties.

Response: Deny, except admit that incidental use of parcels of Plaintiff's fee land took place associated with the 2016 Big Apple Fest.

SECOND CAUSE OF ACTION
(Money Judgment)

28. The Village realleges and incorporates by reference paragraphs 1 through 27 of the Counterclaim.

Response: Plaintiff incorporates by reference its answers to paragraphs 1 through 27.

29. The Village was authorized to assert a monetary penalty against the Nation, pursuant to the Village's Special Events Ordinance, as a result of the Nation's refusal to abide by the Ordinance.

Response: The allegation states a legal conclusion to which no response is required; otherwise; deny.

30. The Village has not received payment from the Nation for the penalty stated in the Citation.

Response: Admit.

31. The Village is entitled to a monetary judgment against the Nation in the amount referenced within the Citation, as well as all costs, exclusive of attorney's fees, incurred in prosecuting the Citation.

Response: The allegation states a legal conclusion to which no response is required; otherwise, deny.

AFFIRMATIVE DEFENSES

1. Plaintiff asserts the indispensability of the United States and United States' sovereign immunity to involuntary joinder as an affirmative defense to Defendant's First Cause of Action.

2. Plaintiff asserts the political-question doctrine as an affirmative defense to Defendant's First Cause of Action, insofar as Defendant alleges that Plaintiff is not a federally recognized Indian Tribe.

3. Plaintiff asserts a time bar to Defendant's First Cause of Action based upon 28 U.S.C. § 2401(a).

4. Plaintiff asserts its sovereign immunity from suit for money damages as an affirmative defense to Defendant's Second Cause of Action.

5. Plaintiff reserves right to raise other defenses, affirmative or otherwise.

WHEREFORE, Plaintiff Oneida Nation requests the following relief:

A. Judgment against Defendant dismissing its claims and in favor of Plaintiff declaring that the Plaintiff is a federally recognized Indian tribe, that Big Apple Fest occurred

within the boundaries of the Plaintiff's Reservation, and that the Defendant lacked jurisdiction or authority to regulate the Plaintiff under the Defendant's Special Events Ordinance.

- B. Judgment against the Defendant declining to enforce the citation issued by Defendant to the Plaintiff because Defendant lacks jurisdiction to enforce its Special Events Ordinance against Plaintiff and because Plaintiff is immune from any monetary judgment.
- C. Award the Plaintiff attorneys' fees and costs incurred in defending the counterclaims;
- D. Award the Plaintiff attorneys' fees and costs incurred in defending against enforcement of Citation No. 7R80F51TJS; and
- E. Award all other relief the Court deems appropriate.

Dated this 26th day of September 2018.

Respectfully submitted,

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