IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BGA, LLC and THE WESTERN MOHEGAN TRIBE AND NATION OF THE STATE OF NEW YORK, Plaintiffs, v. ULSTER COUNTY, NEW YORK, Defendant.	Case No. 06-CV-0095 (GLS) (RFT)

***AMICUS CURIAE* THE UNITED STATES OF AMERICA'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES:

RULES:

Amicus curiae the United States of America respectfully submits this brief in opposition to Plaintiffs' Motion for Reconsideration of the Court's August 22, 2007 Memorandum-Decision and Order dismissing the complaint for lack of subject matter jurisdiction.

Plaintiffs have failed to identify any error of fact or law that warrants reconsideration of the Court's decision. This Court properly held that there was no legitimate case or controversy before it, as the County presented no opposition to any of Plaintiffs' claims. August 22, 2007 Memorandum-Decision and Order at 6-7 ("Mem. Order"). In addition, the Court correctly recognized that the relief sought by the Plaintiffs – recognition of the Western Mohegan group as a sovereign Indian tribe with a government-to-government relationship with the United States, as well as declarations regarding the group's land and its federal and state tax status – could not be granted by the County. Mem. Order at 7. Furthermore, the Court properly exercised its substantial discretion under the Declaratory Judgment Act to refuse to allow plaintiffs to bootstrap claims for broad declarations regarding the Western Mohegan group's tribal status, lands, and federal and state tax status onto what is, at most, a narrow contract and county tax dispute. Mem. Order at 6. Plaintiffs' Motion for Reconsideration should be denied.

I. Standard for Rule 59(e) Motions

A motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) "should only be granted where the court has overlooked factual issues or controlling decisions which were presented to it on the underlying motion." *Walker v. United States*, 321 F. Supp. 2d 461, 463 (N.D.N.Y. 2004) (citations omitted). It "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Id.* (citing *FDIC v. World Univ., Inc.*, 978 F.2d 10, 16 (1st Cir. 1992)).

Here, plaintiffs raise five grounds on which they believe the Court should vacate its August 22 Memorandum-Decision and Order. *See* Plaintiffs' Memorandum of Law in Support of Motion for Reconsideration at 7-15 ("Plaintiffs Mem."). Of these five grounds, only the first even arguably suggests that the Court has overlooked a factual issue that was presented to it in the parties' previous briefing. *See* discussion *infra* at 2-3. The remaining arguments are merely a restatement of the arguments that plaintiffs have already presented to this Court, are not appropriate for a motion under Rule 59(e), and should be disregarded by the Court. *Walker*, 321 F. Supp. 2d at 463 (citing *Ades v. Deloitte and Touche*, 843 F. Supp. 888, 892 (S.D.N.Y. 1994)) ("Rule 59(e) is to be narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the court.").

II. The Court Correctly Found That There Is No Case or Controversy

A. The Parties Did Not Present a Factual or Legal Dispute Before this Court

As this Court correctly recognized, its jurisdiction extends only to "actual controversies," which should include "a dispute ... between two parties having adverse legal interests." Mem. Order at 5 (citing *S. Jackson & Son, Inc. v. Coffee, Sugar & Cocoa Exch., Inc.*, 24 F.3d 427, 431 (2d Cir. 1994)). Here, the Court found that plaintiffs and defendant do not have adverse legal interests with respect to the issues presented to this Court.

This Court identified several grounds for this conclusion. Among these is that "[b]y settlement agreement, the County previously stipulated that it would take no position on the factual and/or legal conclusions set forth in the tribe's motion for summary judgment." Mem. Order at 6. Plaintiffs argue that the Court erred, because the parties' settlement agreement states

that the County will not "take any position that is contrary to any of the factual allegations set forth in [plaintiffs' complaint]." Plaintiffs' Mem. at 7.

As an initial matter, the Court did not misstate the content of the settlement agreement. The Court described the County's position as agreeing to "take no position on the factual and/or legal conclusions" of the plaintiffs; thus, the Court did not state that the agreement necessarily covered both elements.

But whatever the exact language of the parties' settlement agreement, the Court correctly found that the parties presented no adverse legal positions to the Court. Ulster County did not deny the vast majority of the allegations in plaintiffs' amended complaint, which included numerous allegations containing conclusions of law that go to the heart of this case. For example, defendants did not deny allegation 48, which characterizes the plaintiff Western Mohegan group as a "sovereign Indian Nation"; allegation 52, which characterizes the Western Mohegan group's property as "Indian Country"; or allegation 59, which asserts that the Western Mohegan group is "exempt from paying taxes pursuant to the laws of the United States of America and the law of the State of New York." Thus, there was no dispute between the parties regarding the key legal issues in this case. Most notably, Ulster County never made any argument – legal or factual – in opposition to plaintiffs' motion for summary judgment, or at oral argument, or on the subsequent Court-ordered briefing addressing the Court's jurisdiction.

As a result, the parties' briefing before this Court – in which the United States' narrowly tailored amicus brief addressing jurisdictional issues presented the only dissenting voice – did not present the "clash of adversary argument exploring every aspect of a multifaced situation embracing conflicting and demanding interests" demanded by the Supreme Court.

Flast v. Cohen, 392 U.S. 83, 96-97 (1968); *see also Princeton Univ. v. Schmid*, 455 U.S. 100 (1982) (where a party asks the Supreme Court to decide an issue, but does not express an opinion on the merits of the case, there is no case or controversy). Thus, regardless of the exact language of the parties' settlement agreement, its effect was clear – the County presented no opposition, legal or factual, to plaintiffs' claims. This Court correctly determined that there was no case or controversy.

B. Plaintiffs Fail to Raise Any Other Valid Grounds for Reconsideration

The remainder of plaintiffs' motion for reconsideration is largely a restatement of arguments that were already presented to, and properly rejected by, this Court. These arguments are not properly raised by a motion for reconsideration, and also fail on their merits.[1/]

Plaintiffs again suggest that the County and the plaintiffs disagree on the County tax status of plaintiffs' property, and whether that property may be foreclosed upon. Plaintiffs' Mem. at 10-11. However, even if true, the County tax status of the property and issues sounding in the contract between the parties are more appropriately considered in state court. *See Niagara Mohawk Power Corp. v. Tonawanda Band of Seneca Indians*, 94 F.3d 747, 753 (2d Cir. 1996) (finding that no genuine dispute existed between the parties regarding the Nonintercourse Act issues presented to the court; instead, the parties were simply seeking "a judicial determination of [plaintiff's] obligations under the terms of [their] agreement," which the court determined was "a cause of action sounding in contract that arises solely under state law.")

[1/] Plaintiffs argue that the Court improperly found that the "Settlement Agreement mooted the controversy between the parties." Plaintiffs' Mem. at 12-13. Plaintiffs misread the Court's opinion. The Court properly held that it did not have subject matter jurisdiction over the case. Thus, it did not have the authority to consider plaintiffs' motion for summary judgment, making that motion "moot."

Furthermore, while plaintiffs argue that their suit is seeking to "settle its underlying contract dispute with the County," in fact, this is not the dispute that plaintiffs presented to the Court. Plaintiffs' Mem. at 15. None of plaintiffs' requested relief even refers to the parties' contracts. Rather, plaintiffs seek to turn a simple state law contract dispute into a mechanism to try and obtain extraordinarily broad declarations regarding tribal status, tax status, and land status that could have far-reaching effects on citizens, landowners, and local governments throughout the region. In such a circumstance, the Supreme Court has instructed that "[i]t is the court's duty [to dismiss the case] where, as here, the public interest has been placed at hazard by the amenities of parties to a suit conducted under domination of only one of them." *United States v. Johnson*, 319 U.S. 302, 305 (1943). This Court correctly dismissed plaintiffs' complaint.

Plaintiffs also challenge the Court's finding that the County is not the appropriate defendant to provide the relief sought by the plaintiffs. Plaintiffs' Mem. at 14-15. However, the plaintiffs do not point to any mechanism by which Ulster County could grant plaintiffs' requested relief – which includes broad declarations regarding the plaintiff Western Mohegan group's federal and state tax status, their relationship with the United States Government, and the federal status of their lands.[2/] The Court correctly held that the defendant could not grant the

---

[2/] Plaintiffs cite four state and federal cases in support of the argument that "[i]n similar situations where governmental entities have no control over tax status, courts enter declaratory judgments to resolve controversies concerning taxes." Plaintiffs' Mem. at 14. None of these cases support the proposition that a court could change the tax status of an entity without the appropriate governmental authorities present. For example, *Board of Educ. v. Alexander*, 92 N.Y.S.2d 471 (1949) involved a dispute regarding whether the Village of Alexander could tax school property. However, the taxing authority – the Village – was a defendant in the suit. Similarly, in *Crow Tribe of Indians v. State of Montana*, 819 F.2d 895 (9th Cir. 1987), the dispute concerned state taxes, and the State of Montana is a defendant. *See also Matter of McCorkle*, 209 B.R. 773

requested relief, and that this presented additional grounds for finding that there was no case or controversy before the Court.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Motion for Reconsideration.

Dated: October 1, 2007

Respectfully Submitted,

RONALD J. TENPAS

Acting Assistant Attorney General
Environment and Natural Resources Division

/s/ Amber Blaha
AMBER BLAHA, No. 514322
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 4390, Ben Franklin Station
Washington, D.C. 20044-4390
Telephone: (202) 616-5515
Facsimile: (202) 514-4231
E-mail: amber.blaha@usdoj.gov

GLENN T. SUDDABY
United States Attorney
WILLIAM H. PEASE, No. 102338
Assistant United States Attorney
P.O. Box 7198
100 S. Clinton Street
Syracuse, NY 13261-7198

Of Counsel:

Jason Roberts
Attorney-Advisor
Office of the Solicitor

(Bankr. M.D. Ga. 1997) (Georgia Department of Revenue and U.S. Internal Revenue Service were parties to case involving state and federal tax dispute); *Gifford Mem'l Hosp. v. Town of Randolph*, 118 A.2d 480 (Vt. 1955) (Town was defendant in dispute involving municipal taxes). Thus, none of these cases support the proposition that plaintiffs should be entitled to a judgment regarding their state or federal tax status in a proceeding where only the County is a party.

U.S. Department of the Interior 315-448-0672

CERTIFICATE OF SERVICE

I, Amber Blaha, do hereby certify that on October 1, 2007, I filed the foregoing document using the CM/ECF system, which indicates that a Notice of Electronic Filing was sent to all opposing counsel as follows:

Barton Nachamie
Jill L. Makower
Todtman, Nachamie Law Firm
425 Park Avenue, 5th Floor
New York, NY 10022
Bnachamie@tnsj-law.com
Jmakower@tnsj-law.com

Lanny E. Walter
Walter, Thayer Law Firm
756 Madison Avenue
Albany, NY 12208
Lwwtm@nycap.rr.com

Respectfully submitted,

/s/ Amber Blaha
Amber Blaha, No. 514322