UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CAYUGA INDIAN NATION OF NEW YORK,

Plaintiff,

-v- Civil Action No. 11-cv-6004-CJS

SENECA COUNTY, NEW YORK,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Cayuga Indian Nation of New York (hereafter the "Cayuga Nation" or the "Nation"), through its attorneys, respectfully submits this Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56.

INTRODUCTION

The facts of this case are not in dispute, and Plaintiff Cayuga Nation is entitled to summary judgment on each of its claims. Defendant Seneca County (the "County") is seeking to foreclose on properties owned by the Nation, as to which the Nation maintains it is exempt from tax and has declined to pay property taxes. This Court already has ruled that the Nation is entitled to sovereign immunity from suit, including a foreclosure action for non-payment of taxes, and the Second Circuit affirmed that decision. *See* Decision and Order, ECF No. 23 (Aug. 20, 2012), *aff'd*, *Cayuga Indian Nation of N.Y. v. Seneca Cty., N.Y.*, 761 F.3d 218 (2d Cir. 2014). By reason of the Nation's immunity from suit, the Nation is entitled to the relief sought in its Amended Complaint: a declaration that Seneca County may not foreclose on the Nation-owned

properties in Seneca County, and a permanent injunction prohibiting the County from any further efforts to foreclose on those properties. *See* Amended Complaint for Declaratory and Injunctive Relief, ECF No. 9, Prayer for Relief.

In addition to its claim that it is immune from suit, the Nation also is entitled to summary judgment on its other claims: that the County may not foreclose on the properties by reason of the Treaty of Canandaigua and the Nonintercourse Act, 25 U.S.C. § 177, and, in addition, because the properties are exempt from tax under New York Real Property Tax Law § 454 and New York Indian Law § 6. Direct federal court authority supports each of these claims. But the Court need not ultimately address them: because the Nation is entitled to full relief on its claim of sovereign immunity from suit, the Court may dismiss its other claims without prejudice, on grounds of mootness.

BACKGROUND

As set forth in Plaintiff's accompanying Statement Of Material Facts As To Which There Is No Genuine Issue To Be Tried ("Statement of Undisputed Facts"), the Cayuga Nation is a sovereign Indian nation recognized by the United States government. Statement of Undisputed Facts, ¶ 1.

The Nation owns five properties in Seneca County, New York (hereafter "the Nation-owned properties" or "the Subject Properties"); the Nation has declined to pay property taxes on these properties; and the County has commenced foreclosure proceedings to obtain title and possession of these properties. Statement of Undisputed Facts, ¶ 2. The Subject Properties are located within the physical boundaries of land that, in 1794, the Treaty of Canandaigua established as a reservation for the Cayuga Nation. Statement of Undisputed Facts, ¶ 3.

The Nation filed this action in 2011, seeking a declaration that the County may not foreclose on the Nation-owned properties and a permanent injunction prohibiting the County from taking further efforts to foreclose on the properties. *See* Amended Complaint, ECF No. 9. The Nation also sought a preliminary injunction, which this Court granted on grounds of sovereign immunity from suit. Decision and Order, ECF No. 23 (Aug. 20, 2012). The County appealed the award of a preliminary injunction and the Second Circuit affirmed, also on grounds of sovereign immunity from suit. *Cayuga Indian Nation of N.Y. v. Seneca Cty., N.Y.*, 761 F.3d 218 (2d Cir. 2014) ("*Cayuga Indian Nation*").

Following the affirmance by the Second Circuit, the County filed an answer and counterclaim. ECF No. 37. In the counterclaim, the County sought a declaratory judgment that the reservation for the Nation established in the Treaty of Canandaigua had been disestablished. The Nation filed a motion to dismiss the counterclaim. ECF No. 39. This Court granted the motion, ruling that the County had failed to state a claim that the Nation's reservation had been disestablished. Decision and Order, ECF No. 44 (Apr. 30, 2017).

The parties have agreed to a schedule for the Nation to submit a motion for summary judgment, and for the County to submit any cross-motion for summary judgment, without the need for discovery by either party. This motion is submitted pursuant to that schedule (as modified).

ARGUMENT

I. Standard For Summary Judgment Under Fed. R. Civ. P. 56.

The standard for summary judgment is well established. *See, e.g., United States v. Gates-Chili Central School District*, 198 F. Supp. 3d 228, 232-33 (W.D.N.Y. 2016) (Siragusa, J.). Summary judgment may be granted "if the movant shows that there is no genuine dispute as to

any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986). A party seeking summary judgment bears the burden of establishing that no genuine issue of material fact exists. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). Summary judgment is appropriate only where, "after drawing all reasonable inferences in favor of the party against whom summary judgment is sought, no reasonable trier of fact could find in favor of the non-moving party." *Lund's, Inc. v. Chemical Bank*, 870 F.2d 840, 844 (2d Cir. 1989).

II. The Nation Is Entitled To Summary Judgment On Its Claim That It Is Immune From Suit, Including A State Court Foreclosure Action For Non-Payment Of Taxes.

On August 20, 2012, this Court entered a Decision and Order finding that the Nation was entitled to sovereign immunity from the County's tax foreclosure proceedings, and granting a preliminary injunction enjoining those state court proceedings. Decision and Order, ECF No. 23 (Aug. 20, 2012). The Court held: "Even assuming that Seneca County has the right to impose property taxes on the subject parcels owned by the Cayuga Indian Nation, it does not have the right to collect those taxes by suing to foreclose on the properties, unless Congress authorizes it to do so, or unless the Cayuga Indian Nation waives its sovereign immunity from suit." *Id*. at 5. The Court continued: "Congress has not authorized Seneca County to sue the Cayugas, and the Cayugas have not waived their sovereign immunity." *Id*. Therefore, "the Cayugas' motion for an order enjoining the foreclosure actions must be granted." *Id*.

In its decision, the Court recognized that the doctrine of sovereign immunity from suit is not dependent on the reservation status of the land, noting that the Second Circuit had "indicated that sovereign immunity from suit applied even to foreclosure actions involving property that was never part of an Indian reservation." *Id*. at 12 n.5. In its ruling dismissing Defendant's

counterclaim, this Court again recognized that although certain of Plaintiff's claims were dependent on reservation status, "[a]lternatively, the Cayugas contend that regardless of the reservation status of the subject land, the Cayuga Nation possesses 'tribal sovereign immunity, which bars administrative and judicial proceedings against the Nation and bars Seneca County from taking any assets of the Nation.'" Decision and Order, ECF No. 44, at 3-4 (Apr. 30, 2017) (quoting Amended Complaint, ECF No. 9, at ¶ 17). The Nation makes clear and reiterates that, although the Subject Properties are in fact located within the boundaries of the reservation for the Cayuga Nation established in the Treaty of Canandaigua, the Nation's sovereign immunity from suit claim is *not* dependent upon reservation status – as the Court has held.

The Second Circuit affirmed this Court's grant of a preliminary injunction. *Cayuga Indian Nation*, 761 F.3d 218. It rejected the County's arguments "that the Cayuga Nation has either waived sovereign immunity or should be otherwise estopped from asserting the defense based on the Nation's arguments before the New York Court of Appeals in *Cayuga Indian Nation of New York v. Gould*, 14 N.Y.3d 614 (2010)." 761 F.3d at 221 n.1. The Court concluded that "[n]one of the statements cited by the County represents an unequivocal expression by the Cayuga Nation that it has waived its immunity from suit with respect to the parcels in question." *Id*.

On the merits, the Second Circuit unequivocally affirmed that the Cayuga Nation is entitled to sovereign immunity from suit, and that the Subject Properties – owned by the Nation – therefore are not subject to foreclosure. Relying on the Supreme Court's recent decision in *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024 (2014), the Second Circuit held that "[w]e need not attempt to discern the implied message communicated by the vacatur of our prior opinion [in a similar suit involving the Oneida Nation] because the Supreme Court has since

issued further guidance regarding both the continuing vitality of the doctrine of tribal sovereign immunity from suit and the propriety of drawing distinctions that might constrain the broad sweep of that immunity in the absence of express action by Congress." *Cayuga Indian Nation*, 761 F.3d at 220. The Second Circuit emphasized that the Supreme Court's "treatment of tribal sovereign immunity from suit is an avowedly 'broad principle,'" and that the Supreme Court, like the Second Circuit, "has 'thought it improper suddenly to start carving out exceptions' to that immunity, opting instead to 'defer' to the plenary power of Congress to define and otherwise abrogate tribal sovereign immunity from suit." *Id*. (quoting *Bay Mills*, 134 S. Ct. at 2031).

The Second Circuit further held that "we decline, as has the Supreme Court, to read a 'commercial activity' exception into the doctrine of tribal sovereign immunity from suit, and we decline to draw the novel distinctions – such as a distinction between *in rem* and *in personam* proceedings – that Seneca County has urged us to adopt." *Id*. at 221 (internal citations omitted). The Court also emphasized that "[n]otwithstanding Seneca County and the State of New York's vigorous argument, we read no implied abrogation of tribal sovereign immunity from suit into *City of Sherrill, N.Y. v. Oneida Indian Nation of N.Y.*, 544 U.S. 197 (2005), or *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251 (1992)." *Cayuga Indian Nation*, 761 F.3d at 221. The Second Circuit's conclusion was unequivocal: "In short, in the absence of a waiver of immunity by the tribe, '[u]nless Congress has authorized [the] suit, . . . precedents demand' that we affirm the district court's injunction of the County's foreclosure proceedings against the Cayuga Nation's property." *Id*. (alterations by court; internal citations omitted).

These same principles compel the conclusion that the Cayuga Nation is entitled to summary judgment on its claim that, regardless of the reservation status of the land, the Nation's

sovereign immunity from suit bars Seneca County from foreclosing on any assets of the Nation. The County admits that the Nation owns the properties for which the County has instituted foreclosure proceedings. Statement of Undisputed Facts, ¶ 2; Amended Answer to Amended Complaint, ECF No. 51, at ¶ 4. In light of the Second Circuit's controlling decision in *Cayuga Indian Nation*, that admission is dispositive of the Nation's claim that sovereign immunity bars such proceedings.

III. The Nation Also Is Entitled To Judgment On Its Other Claims.

In addition to its reliance on sovereign immunity from suit, the Nation has pleaded two other grounds upon which it is entitled to the same declaratory and injunctive relief: one, that the County may not foreclose on the Subject Properties by reason of the Treaty of Canandaigua and the Nonintercourse Act, 25 U.S.C. § 177 (a federal claim); and two, that the County may not foreclose on the Subject Properties because the State has chosen to exempt them from tax through New York Real Property Tax Law § 454 and New York Indian Law § 6 (a state law claim). This Court may dismiss these claims without prejudice on grounds of mootness, *if* it grants the Nation the declaratory and permanent injunctive relief sought in the Amended Complaint on the basis of the Nation's sovereign immunity from suit. Should the Court nonetheless elect to reach the merits, however, it should conclude that the Nation is entitled to summary judgment on each of these claims.

A. If The Court Grants Summary Judgment For The Nation On The Basis Of Sovereign Immunity From Suit, It May Dismiss The Nation's Other Claims Without Prejudice As Moot.

Courts may dismiss claims seeking duplicative relief that already has been awarded on other grounds, as moot. *See, e.g., Delprado v. Sedgwick Claims Mgmt. Servs., Inc.*, No. 1:12-cv-00673, 2015 WL 1780883, at *39 (N.D.N.Y. Apr. 20, 2015) (dismissing claims "as duplicative

and moot"); *Bank of Am., N.A. v. Teicher*, Civ. A. No. 09-3068, 2010 WL 2516570, at *3 n.3 (D.N.J. June 14, 2010) ("as BofA has been accorded complete relief as to its breach of contract claim, the Court will dismiss the Second Claim and Third Claim as moot"); *Marquette Bus. Credit, Inc. v. Gleason*, Civ. No. 14-354, 2015 WL 3450113, at *9 (D. Minn. May 29, 2015) ("The Court need not reach Count II . . . because in light of the foregoing recommendation, the additional count is entirely redundant, immaterial, and, accordingly, moot. Summary judgment on Count I alone entitles Plaintiff to a judgment in the amount of $150,000 in damages and encompasses all other requested relief.").

Such a dismissal is without prejudice. *See, e.g., Families for Freedom v. Napolitano*, 628 F. Supp. 2d 535, 539 (S.D.N.Y. 2009) ("Because I find for plaintiffs on the first count of their complaint, I dismiss as moot, and without prejudice, the second count."); *The Cadle Co. v. Fletcher*, No. 3:11-cv-00794, 2014 WL 1165821, at *2 (D. Conn. Mar. 20, 2014) ("For the reasons stated above, I dismiss Count Four of the complaint as moot. In the event that my ruling on Count Three of the complaint is reversed, Count Four of the complaint will no longer be moot, and I will adjudicate that claim.").

Here, as set forth above, the Nation's sovereign immunity from suit entitles the Nation to summary judgment (in the form of declaratory and injunctive relief) that the County may not pursue foreclosure proceedings as to the Nation-owned properties. That is the full scope of relief that the Nation seeks here. Thus, if the Court grants summary judgment on the basis of sovereign immunity from suit, the Court may dismiss as moot, without prejudice, the Nation's remaining claims.

B. If The Court Elects To Reach The Issue, The Nation Is Entitled To Summary Judgment On Its Claim That Seneca County May Not Foreclose On The Subject Properties By Reason Of The Treaty of Canandaigua And The Nonintercourse Act.

In its Amended Complaint, the Nation claims that (a) the Subject Properties are included within the physical boundaries of land that, in 1794, the Treaty of Canandaigua established as a reservation for the Cayuga Nation, and (b) the federal Nonintercourse Act, 25 U.S.C. § 177, precludes a transfer of title or imposition of an encumbrance upon such properties without the consent of the United States, which has not been given. The physical boundaries of the Nation's reservation established by the Treaty of Canandaigua are a matter of federal law. *See* Treaty of Canandaigua, 7 Stat. 44 (Nov. 11, 1794). Although the County has contended that the Nation's reservation has been disestablished, the County cannot (and does not) dispute that the Subject Properties are located within the physical boundaries of land that, in 1794, the Treaty of Canandaigua established as a reservation for the Cayuga Nation. And this Court already has ruled that the County has failed to state a claim that the Nation's reservation has been disestablished. Decision and Order, ECF No. 44 (Apr. 30, 2017).

Thus, this case presents the question whether parcels of land owned by an Indian nation within its reservation may be seized in a foreclosure proceeding. That precise question was presented in *Oneida Indian Nation of New York v. Madison County*, 401 F. Supp. 2d 219 (N.D.N.Y. 2005), *affirmed on other grounds*, 605 F.3d 149, 160 (2d Cir. 2010), *vacated on grounds of abandonment of claim*, 665 F.3d 408, 426 (2d Cir. 2011). In the District Court decision that reached the merits of the issue, Judge David Hurd recognized that the Nonintercourse Act, 25 U.S.C. § 177, "prohibits the 'purchase, grant, lease, or other conveyance' of land from 'any Indian nation or tribe of Indians' unless it is pursuant to a 'treaty or convention entered into pursuant to the Constitution.'" 401 F. Supp. 2d at 227 (quoting 25 U.S.C. § 177).

Thus, the court restated, "land owned by an Indian nation is inalienable (except with the approval of Congress, a circumstance not present here)." *Id.* Judge Hurd therefore concluded: "Proceeding with the state court foreclosure would result in the transfer of title to land owned by the Nation to the County − alienation of Indian land. This is precisely what is prohibited by the Nonintercourse Act." *Id.*

Judge Hurd also emphasized that "nothing in *Sherrill* [*City of Sherrill, N.Y. v. Oneida Indian Nation of N.Y.*, 544 U.S. 197 (2005)] explicitly or implicitly rejects the validity of the Nonintercourse Act or its applicability with regard to the land in question." 401 F. Supp. 2d at 227. The court explained: "The Supreme Court in *Sherrill* simply foreclosed the Nation from obtaining the remedy of immunity from taxes. . . . This does not address the issue of alienability." *Id.* at 228. The court's holding was clear and unequivocal: "The Nonintercourse Act, in plain language, prohibits the conveyance of lands from any Indian nation. The foreclosure sought by the County would be a conveyance of lands from the Nation. Accordingly, the foreclosure is prohibited by the Nonintercourse Act." *Id.* Under the same reasoning, the County's efforts to foreclose on the Cayuga Nation's properties are prohibited by the Nonintercourse Act.

C. If The Court Elects To Reach The Issue, The Nation Is Entitled To Summary Judgment That Seneca County May Not Foreclose On The Subject Properties Because New York State Tax Law Exempts Them From Taxation.

In the Amended Complaint, the Nation also asserted a state law claim over which the Court has supplemental jurisdiction under 28 U.S.C. § 1367(a). *See, e.g., Montefiore Med. Ctr. v. Teamsters Local 272*, 642 F.3d 321, 332 (2d Cir. 2011). The Nation contends that the properties are exempt from taxation by reason of New York Real Property Tax Law ("NYRPTL") § 454 and New York Indian Law ("NYIL") § 6. The first provision provides in

relevant part that "[t]he real property *in any Indian reservation* owned by the Indian nation, tribe or band occupying them shall be exempt from taxation." NYRPTL § 454 (emphasis added). The second provides that "[n]o taxes shall be assessed, for any purpose whatever, upon *any Indian reservation* in this state, so long as the land of such reservation shall remain the property of the nation, tribe or band occupying the same." NYIL § 6 (emphasis added).

In the Oneida case discussed above, Judge Hurd relied on these provisions to hold that indistinguishable properties owned by the Oneida Nation were exempt from tax as a matter of state law. *Oneida Indian Nation*, 401 F. Supp. 2d at 231, *affirmed on other grounds*, 605 F.3d 149, 160 (2d Cir. 2010), *vacated*, 665 F.3d 408, 436-40 (2d Cir. 2011) (discussed below). Judge Hurd's analysis was straightforward: "The properties at issue are located within the Nation's reservation. Pursuant to state law, taxes should not have been assessed against the Nation's properties and such properties are exempt from taxation. Therefore, the County's assessment of taxes upon the property and its attempts to foreclose for non-payment of such taxes is contrary to state law." 401 F. Supp. 2d at 231.

The same logic entitles the Cayuga Nation to summary judgment on its identical state law claim. This Court already has ruled that the Cayuga Nation's reservation has not been disestablished. Decision and Order, ECF No. 44 (Apr. 30, 2017). Therefore, under the language of NYRPTL § 454 and NYIL § 6, and the authority of Judge Hurd's decision in *Oneida Indian Nation*, this Court should award summary judgment on the Nation's state law claim.

In *Oneida Indian Nation*, the Second Circuit ultimately vacated Judge Hurd's state law ruling. *See Oneida Indian Nation*, 665 F.3d at 436-40. As explained by the Second Circuit, the Oneida Nation abandoned its federal immunity from suit and Nonintercourse Act claims, and the Second Circuit rejected a federal due process claim. *Id*. at 424-36. This left *only* the state law

claim, with one narrow exception, as "'the real body of a case, to which the federal claim is only an appendage.'" *Id*. at 439 (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 727 (1966)). For reasons discussed at length, the Second Circuit concluded that, in the circumstances presented, "the proper course is to decline to exercise jurisdiction over the [Oneida Nation]'s supplemental state-law claims" and "to dismiss these claims without prejudice to re-filing in state court." 665 F.3d at 439, 440.

Here, if this Court elects to reach the issue, the Court has jurisdiction over substantial federal claims that remain in the case, and therefore an exercise of supplemental jurisdiction would be appropriate. However, as set forth above, the Court may dismiss the Nation's state law claim as *moot*, so long as such a dismissal is without prejudice.

CONCLUSION

For the reasons set forth in this memorandum, the Cayuga Nation is entitled to summary judgment on each of its claims. Should the Court grant the Nation summary judgment on its claim of sovereign immunity from suit, however, it may dismiss the Nation's other claims as moot, without prejudice.

Dated: December 7, 2017

Respectfully submitted,

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