UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ONEIDA INDIAN NATION,

Plaintiff,

v.

MELVIN L. PHILLIPS, SR. et al.,

Defendants.

Civil Action No.:
5:17-CV-1035 (GTS/ATB)

PLAINTIFF ONEIDA INDIAN NATION'S MEMORANDUM OF LAW SUPPORTING MOTION FOR JUDGMENT ON THE PLEADINGS

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Plaintiff Oneida Indian Nation submits this memorandum of law in support of its Rule 12(c) motion for entry of a judgment on the pleadings. The same legal rules the Court applied in the November 15, 2018 Decision and Order dismissing Defendants' Counterclaim to the disputed 19.6 acres of land, ECF 30, require entry of judgment in favor of the Nation on its Complaint seeking to quiet title to the same 19.6 acres.

Defendants acknowledge that their Counterclaim for the 19.6 acres and the Nation's Complaint for the 19.6 acres present "the exact same issues" and that each "essentially mirrors the relief" sought by the other. ECF 27 at 9 (Defendants' Opposition to Motion to Dismiss). Defendants' Counterclaim failed as a matter of law. The Court dismissed Defendants' claim, explaining (1) that Defendants admit that the 19.6-acre tract was part of the Oneida Nation's reservation acknowledged in the federal 1794 Treaty of Canandaigua and was never conveyed by the Nation in a federally-approved transaction (or at all) and (2) that "Orchard Party Oneidas" for whom Defendants claim to hold the land in trust are not a separate Indian tribe that could have separate rights in the land. Defendants' Answer should fail for the same reasons – reasons that establish the Nation's right to judgment on its Complaint as a matter of law.

Procedural History

On January 12, 2018, Defendants filed an Answer and Counterclaim. ECF 17 (Answer & Counterclaim). Both Defendants' Counterclaim and the Nation's complaint concern the same 19.6-acre tract of land. ECF 1 (Complaint); ECF 17 (Counterclaim). The Complaint seeks to establish that the tract is Nation land, not Defendants' land, and that Defendants' had no right to quitclaim the land to a trust. The Counterclaim sought to establish that the land is Defendants' and to validate their transfer of it to a trust, and also sought the following with respect to the Nation in its Prayer for Relief:

> Declaring that OIN does not own []or ha[ve] any property interest in the 19.6 acres . . . [and] Enjoining OIN (i) not to claim the 19.6 acres for itself, (ii) not to assert that OIN owns or has a property interest in the 19.6 acres, and (iii) not to create or cause to be created, or file or cause to be filed, in land records any document asserting that OIN owns or has a property interest in the 19.6 acres. . . .

ECF 17. The Court dismissed Defendants' Counterclaim for failure to state a claim. ECF 30.

Because the Court has dismissed the Counterclaim, the Complaint and the Answer are now the only pleadings in this case, and consequently the pleadings are closed. A Rule 12(c) motion for judgment on the pleadings is ripe. Moreover, the motion will efficiently resolve the litigation because there are no new issues for the Court to address. Defendants' Answer presents the same legal positions asserted in their Counterclaim, and the Court has rejected them. Rule 12(c) is the correct "procedural device to determine the sufficiency of the [remainder of Defendants'] case before proceeding any further and investing additional resources in it." 5C Wright & Miller, Federal Practice & Procedure 3d § 1367, at 217 (2004).

LEGAL STANDARD

Like a Rule 12(b)(6) motion to dismiss for failure to state a claim, **"**[i]n considering plaintiff's Rule 12(c) motion for a judgment on the pleadings, the Court must draw all reasonable inferences in favor of the non-moving party. Therefore, plaintiff is entitled to judgment on the pleadings only if it has established that there remains no material issue of fact to be resolved and that it is entitled to judgment as a matter of law." *United States v. Lankford*, 1998 WL 641350, at *1 (N.D.N.Y. Sept. 10, 1998) (citations omitted); *accord Barber v. RLI Ins. Co*., 2008 WL 5423106, at *2 (N.D.N.Y. Dec. 24, 2008). For purposes of Rule 12(c), "[p]leadings include attached exhibits and documents incorporated by reference." *Barber*, 2008 WL 5423106 at *2.

ARGUMENT

A. The Nation's Complaint and Defendants' Answer

The Nation's claim in its Complaint (which it also argued in support of dismissal of Defendants' Counterclaim) is that the 19.6-acre tract is part of the Oneida reservation acknowledged in the 1794 Treaty of Canandaigua and therefore that the Nation's rights in the land are federally protected, that the Nation never alienated the 19.6 acres with federal approval or otherwise, and that Defendants therefore have no lawful claim to the land on behalf of so-called Orchard Party Oneidas who, in any event, are members of the Nation lacking independent tribal rights in land. ECF 1; *see* ECF 30 at 2 (Court's summary of Nation's claim). Defendants' Answer asserts to the contrary that Defendant Phillips and others identified as Orchard Party Oneidas were recognized as succeeding to the Nation's rights in the land by the 1838 federal Treaty of Buffalo Creek and by an 1842 state treaty, that the land is properly held by the Defendant trust for the benefit of Orchard Party Oneidas, and that the land does not belong to the Nation. ECF 17. The Answer, accordingly, asserts the same legal position that was asserted in Defendants' Counterclaim, which the Court described as follows: "that Defendant Trust, as successor-in-interest to the historic Oneida Party, has a right to possess the 19.6 acres and other lands pursuant to the deed, which right arises from, and is protected by federal treaty, state treaty, statutory and common law, and the Constitution, and that Defendant Phillips' conduct in executing and recording the trust declaration, quit claim deed, and other documents in county land records was a lawful action to maintain possession and control over the 19.6 acres in dispute and other Orchard Party lands. . . ." ECF 30 at 3.

B. The Court's Prior Rulings

In dismissing the Counterclaim as a matter of law, the Court accepted that the 19.6-acre tract is a part of the Nation's reservation and rejected Defendants' claim to the 19.6 acres. The

Court found it fatal that Defendants had admitted that "the land was Plaintiff's (Dkt. No. 17 at ¶60) and did not allege that Plaintiff ever ceded rights to the land or that the federal government gave its consent to such a transaction." ECF 30 at 17 & n.8 (Decision & Order).[1] The Court further rejected Defendants' arguments "that the Court should consider Orchard Party Oneidas as a separate tribe from Plaintiff [Oneida Indian Nation], with independent tribal rights to the 19.6 acres in dispute." *Id.* The Court relied on clear precedent establishing the Nation's right to continued possession of land to which it holds Indian and treaty title (absent a federally-approved conveyance) and establishing that the federal government at all relevant times treated with the Nation as a single Indian tribe including Orchard Party Oneidas, who never have been a separate tribe with separate land rights. *Id.* at 16-17 & n.8; *see, e.g., Oneida Indian Nation v. Oneida County*, 414 U.S. 661 (1974); *Oneida Indian Nation v. New York*, 194 F. Supp.2d 104 (N.D.N.Y. 2002).[2]

[1] Defendants' admission at paragraph 60 of the Answer and Counterclaim, which the Court referenced, is that "[t]he property at issue in this case was part of the original Oneida reservation" acknowledged by the federal government in the 1794 Treaty of Canandaigua. ECF 17 at ¶60. The Oneida reservation was never disestablished. *Upstate Citizens for Equality v. Jewell*, 841 F.3d 556, 562 (2d Cir. 2016); *Oneida Indian Nation v. Madison County*, 665 F.3d 408, 442 (2d Cir. 2011).

[2] For further support for the propositions (1) that the Nation holds unextinguished, treaty-recognized Indian title to the 19.6 acres, (2) that its title cannot be extinguished or impaired absent approval by federal statute or treaty, (3) that no such treaty or statute diminished the Nation's rights or vested them elsewhere, and (4) that Defendant Phillips and the Orchard Party Oneidas he claims to represent are not a separate Indian tribe and did not ownership rights in the land by treaty or by living on it, we incorporate herein by reference pursuant to Rule 10(c) pages 6-17 of the Nation's memorandum in support of dismissing Defendants' counterclaim and pages 3-7 of the Nation's reply memorandum in support of dismissal. ECF 24-2 (memorandum) & 28 (reply memorandum). The Court detailed these arguments in its Decision & Order, ECF 30 at 3-6 & 8-11, and indicated its acceptance of them as alternative bases for dismissal of Defendants' counterclaim, ECF at 16.

C. Application of the Court's Prior Rulings

Applying the foregoing rulings, the Nation is entitled to judgment as a matter of law. The Nation's right to possession is based on its unextinguished Indian title. Defendants admit that "the property at issue in this case was part of the original Oneida reservation" acknowledged in the Treaty of Canandaigua. ECF 17 at ¶60; *see* 7 Stat. 44 (Nov. 11, 1794). They admit that the 19.6 acre tract was "wholly within Lot 3" and was never conveyed to the State at all – with or without federal approval. *Id.* at ¶¶16 & 17. Thus, the Nation's possessory rights are governed by the rules "that Indian title is a matter of federal law and can be extinguished only with federal consent." ECF 30 at 16 (quoting *Oneida Indian Nation v. Oneida County*, 414 U.S. 661, 670 (1974); *see* ECF 24-2 (quoting Cohen's Handbook of Federal Indian Law § 15.04[2] at 1002 (2012 ed.)). Put most simply, it is clear as a matter of law that the Nation had Indian title to the 19.6 acres, never conveyed it away, and so still has it.

Defendants' claim that Oneidas known as the Orchard Party succeeded to the Nation's Indian title (absent a conveyance) fails because the Orchard Party is not a separate tribe. Indeed, the Orchard Party does not claim to be a tribe at all. *See* ECF 30 at 17 & n.8; *id.* at 4 (Court's explanation for one ground for dismissing the Counterclaim, that the Orchard Party is not a tribe); *id.* at 5 (summarizing another ground for dismissing the Counterclaim, that the Orchard Party is part of the Nation). The alleged occupancy by Nation members in an area that includes the 19.6 acres could not create any individual rights to tribal land that Phillips could convey to a state law trust. "[A]n individual tribal member has no alienable or inheritable interest in the communal holding," and "no tribal member can claim a federal right against the tribe to any

specific part of the tribal property." Cohen's Handbook of Federal Indian Law § 15.02 at 996 92012 ed.).[3]

It follows from the foregoing that nothing in Defendant's Answer stands in the way of a judgment awarding the Nation declaratory and injunctive relief to quiet title to the 19.6-acre tract and to eliminate the cloud on title arising from Defendant Phillips' recordation of a quitclaim deed he created. Well-established legal principles recognize that the Nation's land remains its land unless lawfully conveyed, and here it is admitted that the land never was conveyed at all, lawfully or otherwise. Moreover, the Court accepted all other reasons the Nation advanced regarding dismissal of the Counterclaim, ECF 30 at 16, reasons the Court summarized, ECF 30 at 4-6 & 8-11, which now support judgment in favor of the Nation (including without limitation that the settlement approved by Judge Kahn and unsuccessfully challenged by Defendant Phillips establishes the disputed land as the Nation's land).

[3]Defendants supported their Counterclaim by also arguing that "OIN's quiet title action would dispossess Philips from real property, a remedy that OIN is precluded from obtaining by" the *Sherrill* and *Cayuga* decisions even if the Nation had never lost title to the land. ECF 27 at 2, 4 & 7 (Defendant's Opposition). *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005), and *Cayuga Indian Nation v. Pataki*, 413 F.3d 266 (2d Cir. 2005), have no relevance here, where it has been conceded that there was no conveyance of title by the Nation with respect to the 19.6 acres. Those cases involved considerations held to apply where, despite the absence of federal approval, land was conveyed to the State of New York and then sold to non-Indian citizens who recorded a long chain of fee simple titles and had justifiable expectations that their market acquisitions and prior conveyances vested good title in them. *Sherrill* and *Cayuga* do not concern the relationships of tribal members and their tribes, or land that was never conveyed. In its Decision & Order, the Court acknowledged and rejected Defendants' argument. ECF 30 at 7. The Court accepted the Nation's argument "that Defendants' reliance [upon] the equitable considerations applied in the *Sherrill* and *Cayuga* decisions is misplaced because (a) those two decisions were based on reliance interests created by cession of Plaintiff's land to non-Indians, (b) here it is undisputed that the land in question was never ceded by Plaintiff, and (c) in any event, equitable principles cannot be applied to transfer ownership of tribal land to tribal members who live on it." ECF 30 at 11 (describing the Nation's argument regarding inapplicability of equitable considerations applied in *Sherrill* and *Cayuga)* & 16 (dismissing Counterclaim "for each of the numerous alternative reasons" urged by the Nation).

CONCLUSION

Plaintiff Oneida Indian Nation is entitled to entry of judgment in its favor containing the declarations and the injunction prayed for in Plaintiff's Complaint.

Date: November 26, 2018

Respectfully submitted,

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