UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE CANADIAN ST. REGIS BAND OF MOHAWK INDIANS,

Plaintiffs,

Civil Action

UNITED STATES OF AMERICA,

Plaintiff/Intervenor.

82-CV-783 (Lead)
82-CV-1114
89-CV-829
(LEK)(TWD)

vs.

STATE OF NEW YORK, et al.,

Defendants.

THE ST. REGIS MOHAWK TRIBE, by THE ST. REGIS MOHAWK TRIBAL COUNCIL and THE PEOPLE OF THE LONGHOUSE AT AKWESASNE, by THE MOHAWK NATION COUNCIL OF CHIEFS,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff/Intervenor.

vs.

STATE OF NEW YORK, et al.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT OF PLAINTIFF THE PEOPLE OF THE LONGHOUSE, BY THE MOHAWK NATION COUNCIL OF CHIEFS

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INTRODUCTION

The claims asserted in this matter inure to the Mohawk Indians of Akwesasne as successors in interest to the "Indians of the Village of St. Regis," whose lands are guaranteed in the Treaty with the Seven Nations of Canada of May 31, 1796, 7. Stat. 55 ("Treaty of 1796"). *See* Case No. 89-CV-00829-LEK, ECF No. 1 ("Unified Complaint"); Case No. 82-CV-783, ECF No. 1. The three Mohawk Plaintiffs -- the People of the Longhouse at Akwesasne by the Mohawk Nation Council of Chiefs ("Nation" or "Longhouse"), the St. Regis Mohawk Tribe ("Tribe"), and the Mohawk Council of Akwesasne ("MCA") -- have joined in this litigation to ensure that the rights and interests of all constituent successors in interest are fully vindicated and that these longstanding land claims are finally resolved. Comprehensive resolution of the Mohawk claims -- whether through litigation or settlement -- requires the participation of all three Mohawk governing Councils.

On January 19, 2021, the Parties joined in a letter request to U.S. Magistrate Wiley Dancks noting that, based on the case's procedural history, "discovery requests [made in 2004] will need to be revised" and that "the parties have agreed that there are issues that can be resolved as a matter of law and need not be the subject of discovery." ECF No. 757 at 2. The letter proposed scheduling dispositive motions on legal issues related to liability and defenses that the Court could resolve without further factual development, reserving other issues that require such development for additional discovery and subsequent motions. *Id*. During a telephone discovery conference held on January 25, 2021, the Magistrate granted the Parties' request. ECF No. 758.

Pursuant to the Magistrate's Order and to Federal Rule of Civil Procedure 56(a) and Local Rule 7.1, the Nation now seeks summary judgment on two legal issues central to the claims asserted by the Mohawk Plaintiffs under the Trade and Intercourse Act, 25 U.S.C. § 177

("NIA"), and for which no relevant material facts are in dispute:[1] that the subject land is "Indian land" and that the United States has not consented to its alienation.[2]

BACKGROUND

Plaintiffs' motions should be viewed against the backdrop of the relationship among the three Mohawk Councils, as set out in the allegations of the Unified Complaint. These factual allegations, which the Nation will prove following discovery, illuminate the unity with which the legal interests here are asserted. The three Mohawk Councils assert a unified interest in the subject lands. Case No. 89-CV-00829-LEK, ECF No. 1 at ¶¶ 7-8. The Nation is "an Indian nation or tribe of Indians" within the meaning of the NIA. *Id*. at ¶ 6. Its members reside on both sides of the border between the United States and Canada. *Id*. The Nation has continuously used and occupied its territory at Akwesasne since prior to the Treaty of 1796, and remains there today. *Id*. at ¶ 8. Alone among the three Mohawk Councils, the Nation is a constituent nation of the Haudenosaunee (or Six Nations Iroquois Confederacy), *id*. at ¶ 6, an entity recognized by the United States for its contribution to the development of the United States Constitution. *See* H.R. Con. Res. 331, 100th Cong. (1988) at https://www.senate.gov/reference/resources/pdf/hconres331.pdf.

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[1] The Nation does not seek summary judgment at this time on issues that require further factual development: namely, whether the Nation is an Indian tribe within the meaning of the Trade and Intercourse Act, and whether the relationship between the Nation and the United States has been terminated. Under the approach approved by the Magistrate, resolution of such issues requires additional discovery following resolution by this Court of the present dispositive motions. ECF Nos. 757, 758 (issues "that truly require factual development" to be reserved until dispositive motions on legal issues are resolved). Depending on the facts adduced through discovery, an evidentiary hearing on these issues may also be appropriate.

[2] As detailed herein, the Nation adopts by reference arguments made by the St. Regis Mohawk Tribe, ECF 768-1. The Nation also adopts by reference the undisputed material facts recited in the Tribe's Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment, ECF 768-3. The Nation notes that it understands the use of the term "Tribe" in Material Facts 37, 46, 47, and 50 to be shorthand for "St. Regis Mohawks" or "Indians of the Village of St. Regis," rather than to refer to the St. Regis Mohawk Tribe.

Together with MCA, the Nation and the Tribe represent all the Mohawk people of Akwesasne. *Id*. at ¶ 7. The Mohawks of Akwesasne are the same, continuously existing entity described in the Treaty of 1796 as "the Indians of the Village of St. Regis." *Id*. at ¶ 8. Other than the named Mohawk Plaintiffs, no government or entity exists with any claim of authority to speak for or take legal action on behalf of the Indians of Akwesasne. *Id*. at ¶ 7.

STANDARD OF REVIEW

A court may grant summary judgment where "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). "A fact is 'material' for these purposes when it 'might affect the outcome of the suit under the governing law.'" *Rojas v. Roman Cath. Diocese of Rochester*, 660 F.3d 98, 104 (2d Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)), *cert. denied*, 565 U.S. 1260 (2012). The moving party bears the initial burden of establishing the absence of any genuine issue of material fact. *See Liberty Lobby*, 477 U.S. at 256; *Holcomb v. Iona Coll.*, 521 F.3d 130, 137 (2d Cir. 2008). To determine whether the moving party has carried its burden, the Court "construe[s] the evidence in the light most favorable to the nonmoving party and draw[s] all inferences and resolv[es] all ambiguities in favor of the nonmoving party." *Doro v. Sheet Metal Workers' Int'l Ass'n*, 498 F.3d 152, 155 (2d Cir. 2007); *Woodman v. WWOR-TV, Inc.*, 411 F.3d 69, 75 (2d Cir. 2005).

ARGUMENT

I. Summary Judgment Should be Granted on Elements of Plaintiffs' NIA Claim

It is well-established that that "[t]he [Trade and Intercourse] Act created a trust relationship between the federal government and American Indian tribes with respect to tribal lands covered by the Act," and that "[t]ribal status for purposes of obtaining federal benefits is not necessarily the same as tribal status under the Nonintercourse Act." *Golden Hill Paugussett*

Tribe of Indians v. Weicker, 39 F.3d 51, 56, 57 (2nd Cir. 1994). A *prima facie* case under the Trade and Intercourse Act requires a plaintiff to show "(1) it is an Indian tribe, (2) the land is tribal land, (3) the United States has never consented to or approved the alienation of this tribal land, and (4) the trust relationship between the United States and the tribe has not been terminated or abandoned." *Id*. at 56 (citing *Catawba Indian Tribe v. South Carolina*, 718 F.2d 1291, 1295 (4th Cir. 1983), *aff'd*, 740 F.2d 305 (4th Cir. 1984) (en banc), *rev'd on other grounds*, 476 U.S. 498 (1986); *Epps v. Andrus*, 611 F.2d 915, 917 (1st Cir. 1979) (per curiam). As demonstrated below, this Court should grant summary judgment in favor of the Nation on NIA elements (2) and (3).

II. The Subject Land is Indian Land Confirmed to the Mohawks by the 1796 Treaty

The Municipal Defendants' Amended Answer asserts a generalized defense that because the conveyances at issue here were "valid," the Plaintiffs "released and relinquished all claims" in the land at issue in this case. Case No. 89-CV-829, ECF No. 51 at ¶¶ 98-100. The Municipal Defendants also allege as the basis for an affirmative defense and a counterclaim that the Plaintiffs' rights created by the 1796 Treaty were "ceded, released, relinquished and/or disestablished by" the State treaties at issue or by the 1838 Treaty of Buffalo Creek. *Id*. at ¶¶112-117, ¶119. The Nation hereby adopts by reference the arguments of the Tribe and requests that this Court rule as a matter of law that there is no genuine issue as to any fact material to these defenses and counterclaims: because the land confirmed to the Indians of the Village of St. Regis was recognized as Indian land by the United States via the 1796 Treaty, element (2) of Plaintiffs' NIA claim is satisfied and defenses such as "release" and "relinquishment" do not apply.[3]

[3] Because this Court need not resolve the question of the relative interests of the three Mohawk Plaintiffs on these motions, the Nation adopts the Tribe's arguments here only insofar as they show that the United States has by treaty recognized title in the "Indians of the Village of St. Regis" and their successors; not solely the St. Regis Mohawk Tribe. ECF No. 768-1 at 12-15.

III. The United States Never Consented to the Alienation of the Subject Land

A. The Reservation Confirmed by the 1796 Treaty Was Never Diminished or Disestablished

In its Amended Answer to the Unified Complaint, the State asserts counterclaims for declaratory relief on disestablishment and diminishment of the Reservation. Counterclaim I seeks a declaration that the Treaty of Buffalo Creek disestablished the reservation. Case No. 89-CV-829, ECF No. 53, ¶¶ 78-86. Counterclaim II seeks a declaration that the reservation was diminished by transactions at issue in this case. *Id*. at ¶¶ 87-93. The Nation hereby adopts by reference the arguments of the Tribe and its request that this Court rule as a matter of law that there is no genuine issue as to any material fact and that the 1796 Reservation has been neither diminished nor disestablished.

The Municipal Defendants' Amended Answer asserts a generalized defense that because the conveyances at issue here were "valid," the Mohawk Plaintiffs "released and relinquished all claims" in the land at issue in this case. Case No. 89-CV-829, ECF No. 51 at ¶98, 100. The Municipal Defendants also allege as the basis for an affirmative defense and a counterclaim that the Plaintiffs' rights created by the 1796 Treaty were "ceded, released, relinquished and/or disestablished by" the State treaties at issue or by the 1838 Treaty of Buffalo Creek. *Id*. at ¶¶112-117, ¶119. The Nation hereby adopts by reference the arguments of the Tribe and its request that this Court rule as a matter of law that there is no genuine dispute as to any material fact: the reservation has been neither diminished nor disestablished.

B. The United States Never Otherwise Consented to Alienation

Moreover, the United States has never consented to alienation of the subject land in any manner whatsoever. *See, e.g.*, ECF No. 768-1 at 19-22. The Nation hereby adopts by reference the arguments of the Tribe and its request that the Court rule as a matter of law that there is no

genuine issue as to any material fact that the United States has never consented to alienation of the subject land.

IV. The Arguments Adopted by the Nation Extend to the Entire Hogansburg Triangle

While the claims of SRMT and the United States to the 144 acres purportedly conveyed by sale on December 14, 1824 have been dismissed, the Nation and MCA retain live claims to the 144-acre parcel. *See Canadian St. Regis Band of Mohawk Indians v. New York*, 146 F. Supp. 2d 170, at 191-192 (N.D.N.Y. 2001); *Canadian St. Regis Band of Mohawk Indians v. New York*, Nos. 5:82-cv-0783, 5:82-cv-1114, 5:82-cv-0829 (LEK/TWD), 2012 WL 8503274, at *19 n.35 (N.D.N.Y. Sept. 28, 2012), *adopted in part and rejected in part*, 2013 WL 3992830 (N.D.N.Y. July 23, 2013) (as corrected and clarified). The Nation joins MCA in contending that the Tribe's arguments as to the second and third elements of the Mohawks' NIA claim apply with equal force to the 144 acres as they do to the rest of the subject land.

CONCLUSION

For all the foregoing reasons, the Nation respectfully requests that the Court grant summary judgment in its favor on the second and third elements of its NIA claim and grant summary judgment against the State as to State Counterclaims I and II and against the Municipal Defendants as to Municipal Defendants' First Counterclaim.

The foregoing is respectfully submitted on this 17th day of May 2021.

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