

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

CAYUGA NATION,

Plaintiff,

v.

No. _____

CHARLES DIEBOLD, IN HIS OFFICIAL
CAPACITY OF AS CHIEF OF THE SENECA-
CAYUGA NATION; CURT LAWRENCE,
IN HIS OFFICIAL CAPACITY AS SECOND
CHIEF OF THE SENECA-CAYUGA NATION;
KIM GUYETT, IN HER OFFICIAL CAPACITY
AS SECRETARY-TREASURER OF THE
SENECA-CAYUGA NATION; CYNTHIA
DONOHUE BAUER, IN HER OFFICIAL
CAPACITY AS COUNCILPERSON OF THE
SENECA-CAYUGA NATION; AMY
NUCKOLLS, IN HER OFFICIAL CAPACITY
AS COUNCILPERSON OF THE SENECA-
CAYUGA NATION; HOYIT BACON, IN HIS
OFFICIAL CAPACITY AS COUNCILPERSON
OF THE SENECA-CAYUGA NATION;
TONYA BLACKFOX, IN HER OFFICIAL
CAPACITY AS COUNCILPERSON OF THE
SENECA-CAYUGA NATION; DUSTIN
PARKER, AND WARREN JOHNS.

Defendants.

COMPLAINT

INTRODUCTION

1. Indian nations exercise certain exclusive sovereign rights on their federal reservations, including the right, in certain circumstances, to sell goods without paying or collecting state taxes. Plaintiff the Cayuga Nation (the “Nation”) has exercised this exclusive sovereign right by manufacturing and selling “Cayuga” brand cigarettes on its federal reservation recognized by the 1794 Treaty of Canandaigua in upstate New York.

2. The Seneca-Cayuga Nation—a separate Indian nation with a reservation in Oklahoma—has from time to time unlawfully operated, and authorized, a competing smoke shop on the Cayuga Nation’s New York reservation, even though the Seneca-Cayuga Nation has no sovereign rights on the Cayuga Nation’s reservation. In 2013, federal agents shut down this smoke shop as illegal.

3. Recently, however, the Seneca-Cayuga Nation authorized the smoke shop’s reopening under a new name, acting in concert with several individuals who operate the store, including Dustin Parker and Warren Johns. The Cayuga Nation has requested that the Seneca-Cayuga Nation cease its support, participation, and involvement in the smoke shop’s unlawful sales; the Seneca-Cayuga Nation, however, has failed to do so.

4. Now, the Cayuga Nation brings this suit to vindicate its sovereign rights. The Treaty of Canandaigua and federal law protect the Cayuga Nation’s exclusive right to exercise its sovereign rights on its reservation and provide a cause of action to redress the violation of those rights by the Seneca-Cayuga Nation, Parker, and Johns. The Cayuga Nation has sued the members of the Seneca-Cayuga Nation’s Business Committee—which acts on behalf of the Seneca-Cayuga Nation in all matters on which the Seneca-Cayuga Nation is empowered to act—in their official capacities and seeks injunctive and

declaratory relief only. The Cayuga Nation has also sued Parker and Johns seeking damages, as well as injunctive and declaratory relief.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1362.

6. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district, and this district is where the property that is the subject of the action is situated.

FACTUAL BACKGROUND

A. The Parties

7. Plaintiff Cayuga Nation is a federally recognized Indian nation. *See* Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs, 86 Fed. Reg. 7554, 7555 (Jan. 29, 2021). The federal government recognizes the Nation as the same entity with which it entered the Treaty of Canandaigua of 1794, 7 Stat. 44.

8. Defendant Charles Diebold is Chief of the Seneca-Cayuga Nation and is a member of the Seneca-Cayuga Nation's Business Committee. He is sued in his official capacity.

9. Defendant Curt Lawrence is Second Chief of the Seneca-Cayuga Nation and is a member of the Seneca-Cayuga Nation's Business Committee. He is sued in his official capacity.

10. Kim Guyett is Secretary-Treasurer of the Seneca-Cayuga Nation and is a member of the Seneca-Cayuga Nation's Business Committee. She is sued in her official capacity.

11. Cynthia Donohue Bauer is a Councilperson of the Seneca-Cayuga Nation and is a member of the Seneca-Cayuga Nation's Business Committee. She is sued in her official capacity.

12. Amy Nuckolls is a Councilperson of the Seneca-Cayuga Nation and is a member of the Seneca-Cayuga Nation's Business Committee. She is sued in her official capacity.

13. Hoyit Bacon is a Councilperson of the Seneca-Cayuga Nation and is a member of the Seneca-Cayuga Nation's Business Committee. He is sued in his official capacity.

14. Tonya Blackfox is a Councilperson of the Seneca-Cayuga Nation and is a member of the Seneca-Cayuga Nation's Business Committee. She is sued in her official capacity.

15. Defendant Dustin Parker is a citizen of New York who is acting in concert with the Seneca-Cayuga Nation to unlawfully sell tax-free cigarettes.

16. Defendant Warren Johns is a citizen of New York who is acting in concert with the Seneca-Cayuga Nation to unlawfully sell tax-free cigarettes.

B. The Cayuga Nation And Its Reservation.

17. From time immemorial, the Cayuga Nation and its people resided in what is now upstate central New York.

18. In 1794, the United States entered the Treaty of Canandaigua with the Cayuga Nation and certain other Indian nations in New York, to resolve significant disputes that existed between the United States and those Indian nations. *See* Treaty of Canandaigua of 1794, 7 Stat. 44.

19. In the Treaty of Canandaigua, the United States recognized a federal reservation for the Cayuga Nation comprising 64,015 acres—located within what today are Seneca and Cayuga Counties in upstate central New York—and pledged that the “reservation[] shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.” Treaty of Canandaigua of 1794, art. II, 7 Stat. 44, 45.

20. The Cayuga Nation’s reservation is within the Nation’s ancestral homelands, which originally comprised more than 3 million acres.

21. Congress has not disestablished the Cayuga Nation’s federal reservation, nor authorized the sale of the Nation’s reservation lands. *See generally Cayuga Indian Nation of N.Y. v. Seneca Cnty.*, 260 F. Supp. 3d 290, 307-15 (W.D.N.Y. 2017) (collecting authorities). “[E]very federal court that has examined whether the Cayuga reservation was disestablished or diminished by Congress has answered that question in the negative.” *Cayuga Indian Nation of N.Y. v. Gould*, 14 N.Y.3d 614, 639 (2010).

22. The Treaty of Canandaigua recognized that the lands “reserved” to the Cayuga Nation were for the Nation’s “free use and enjoyment thereof.” Treaty of Canandaigua of 1794, art. IV, 7 Stat. 44, 45.

23. With regard to these lands, the Supreme Court “has consistently recognized that Indian tribes retain attributes of sovereignty over both their members and their territory.” *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 206 (1987) (internal quotation marks omitted), *superseded by statute as stated in Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014).

24. Among those attributes of sovereignty, Indian nations enjoy exclusive privileges to conduct certain economic activity on their own reservations free from interference by the State, including with regard to the application of state tax obligations. As summarized by the Supreme Court in *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973), “in the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan v. Arizona State Tax Commission*, [411 U.S. 164 (1973)], lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent.” Thus, state taxes on personal property located within a reservation, a state license fee sought to be applied to a reservation Indian conducting a cigarette business for the Tribe on reservation land, and state cigarette sales taxes, as applied to an Indian nation’s on-reservation sales to its own members, are foreclosed. *Moe v. Confederated Salish and Kootenai Tribes of the Flathead Reservation*, 425 U.S. 463, 480 (1976); *Washington v. Confederated Tribes of the Colville Indian Rsrv.*, 447 U.S. 134, 160-61 (1980).

25. Where state taxes are imposed on *non-Indians*—such as a state cigarettes sales tax imposed upon a non-Indian purchaser of cigarettes—state taxes may sometimes be applied, even for transactions a non-Indian conducts with an Indian nation on its reservation. *See Moe*, 425 U.S. at 481-82. And a State may impose certain “burdens” on an Indian nation to aid the State’s collection and enforcement of such taxes. *Id.* at 483.

26. But even with regard to transactions with non-Indians, Indian nations remain entitled, on their own reservation lands, to conduct certain transactions with non-

Indians free from state tax and regulatory obligations. Thus, the Supreme Court has explained that state interests in taxation and regulation must at times yield to an Indian nation’s legitimate “interest in raising revenues for essential governmental programs,” 447 U.S. at 156, which “is strongest when the revenues are derived from value generated on the reservation by activities involving the Tribes and when the taxpayer is the recipient of tribal services,” *id.* at 156-57.

27. In line with these principles, the Cayuga Nation conducts certain economic activity on its own reservation free from state tax and regulatory laws, even in transactions with non-Indians. In particular and as relevant here, the Nation manufactures “Cayuga brand” cigarettes on its reservation—and thus generates value on the reservation—which it sells to enrolled Cayuga members and to non-Indians without being required to comply with state cigarette sales tax obligations. The State of New York has never sought to impose its cigarette sales tax obligations on the Cayuga Nation’s sales of these or other “native brand” cigarettes.

28. The Nation uses the proceeds of its cigarette sales to raise critical revenues for essential governmental programs for its members and the public. These revenues help fund many governmental programs, including the Cayuga Nation Police Force, which protects Nation members, Nation properties, and non-Indian customers who come to the reservation for gaming, purchases of cigarettes and other goods, and other activities.

C. Activities of the Seneca-Cayuga Nation of Oklahoma on the Cayuga Nation’s New York Reservation.

29. The Seneca-Cayuga Nation (previously known as the “Seneca-Cayuga Tribe of Oklahoma”) is a separate sovereign Indian nation also recognized by the United States. *See* Indian Entities, 86 Fed. Reg. at 7557.

30. The Seneca-Cayuga Nation's governing body is the Business Committee, which acts on behalf of the Seneca-Cayuga Nation in all matters on which the Seneca-Cayuga Nation is empowered to act. This Complaint refers to the members of the Business Committee, who are sued here in their official capacities, as the "Seneca-Cayuga Business Committee."

31. Although the Seneca-Cayuga Nation claims to trace its historical roots to New York, its people moved away (first to Ohio), formed a separate government, and eventually settled in Oklahoma.

32. The Indian Claims Commission ruled in 1973 that ancestors of the Seneca-Cayuga Nation were not a party to the treaties between the Cayuga Nation and the State of New York, which preceded the federal Treaty of Canandaigua. *See Strong v. United States*, 31 Ind. Cl. Comm. 89, at 114-117 (1973). The Commission ruled that the ancestors of the Seneca-Cayuga Nation had already left New York before 1794. As a result, the Commission found that the Seneca-Cayuga did not have any claim based on the loss of land that the Cayuga Nation suffered in New York as a result of the 1794 Treaty of Canandaigua.

33. The Seneca-Cayuga Nation has its own federally-recognized reservation in Oklahoma. It has a casino and conducts other business activities on that reservation. On its reservation, the Seneca-Cayuga Nation enjoys the competitive advantages of its exclusive right to conduct economic activities, free from application of certain Oklahoma tax and regulatory laws.

34. In late 2011 or 2012, the Seneca-Cayuga Nation opened a "smoke shop" and gas station on the Cayuga Nation's reservation in New York.

35. The store was operated as the “Skydancer Smoke Shop” or “Skydancer Convenience Store” and was located at 126 East Bayard Street in Seneca Falls, New York.

36. The Seneca-Cayuga Nation claimed a sovereign right to sell native brand cigarettes at the Skydancer store without compliance with New York cigarette sales tax obligations, even though the store was located on the Cayuga Nation’s reservation.

37. On January 16, 2013, federal agents executed a search warrant and seized large quantities of untaxed cigarettes and \$4,928.38 in United States currency from the Skydancer store.

38. The United States also seized \$554,058.15 from the local bank account maintained by the store. *See* Verified Complaint for Forfeiture ¶¶ 36-37, *United States v. The Sum of Approximately \$554,058.15 Seized From Community Bank NA, Acct. No. 630022416 in the Name of Seneca-Cayuga of Oklahoma, Skydancer Convenience Store*, Case No. 6:13-cv-06313 (W.D.N.Y. June 18, 2013), ECF No. 1.

39. The United States emphasized in its Complaint for Forfeiture: “The Seneca-Cayuga Tribe of Oklahoma has a federally recognized reservation in the State of Oklahoma.... The Seneca-Cayuga Tribe of Oklahoma, however, has no state or federally recognized land or status in New York.” *Id.*, ¶ 27.

40. The Complaint continued: “Further, a source knowledgeable about Native American tobacco issues indicates that most of the tribe’s members live on the tribe’s reservation in Oklahoma. Indeed, the Seneca-Cayugas have no presence in New York other than the Skydancer Smoke Shop which they operate remotely from their Oklahoma reservation.” *Id.*

41. The Seneca-Cayuga Nation ultimately entered a consent judgment in the forfeiture action. *See* Stipulation for Settlement (W.D.N.Y. June 4, 2014), ECF No. 15.

42. As part of that consent judgment, the Seneca-Cayuga Nation agreed: “The SCT [Seneca-Cayuga Tribe] agrees not to reopen the Skydancer Convenience Store until the SCT has obtained all necessary licenses, permits and other approvals from any applicable federal, state or local authority, including but not limited to a decision from the New York Court of Appeals or the United States Circuit Court for the Second Circuit permitting sales of untaxed cigarettes to non-Native Americans.” *Id.*, ¶ 9.

43. The Seneca-Cayuga Nation has never obtained a decision from the New York Court of Appeals or the Second Circuit permitting the Seneca-Cayuga Nation to sell untaxed cigarettes on the Cayuga Nation reservation in New York.

D. The Seneca-Cayuga Nation’s Smoke Shop Reopens Under A New Name.

44. For several years following the raid by federal agents on January 16, 2013, the Skydancer Smoke Shop remained shuttered.

45. On the weekend of September 4, 2021, however, the smoke shop reopened, operating under the new name “Pipekeepers Tobacco and Gas.”

46. The Pipekeepers Tobacco and Gas store located at 126 East Bayard Street in Seneca Falls, New York, continues to be owned by the Seneca-Cayuga Nation.

47. The Seneca-Cayuga Nation and the Seneca-Cayuga Business Committee are operating Pipekeepers Tobacco and Gas in concert with several individuals who work at the store, including Dustin Parker and Warren Johns.

48. The Seneca-Cayuga Nation and the Seneca-Cayuga Business Committee are deriving economic benefits from the reopening of Pipekeepers Tobacco and Gas.

49. The Seneca-Cayuga Nation and the Seneca-Cayuga Business Committee have authorized and permitted Pipekeepers Tobacco and Gas, and Parker and Johns, to sell native brand cigarettes without compliance with New York cigarette sales tax obligations.

50. As authorized by the Seneca-Cayuga Nation and the Seneca-Cayuga Business Committee, Pipekeepers Tobacco and Gas—including via Parker and Johns—is again claiming a sovereign right to sell native brand cigarettes without compliance with New York cigarette sales tax obligations.

51. The Cayuga Nation has not authorized Pipekeepers Tobacco and Gas—or the Seneca-Cayuga Nation, Parker, or Johns—to exercise sovereign rights of any kind on the Cayuga Nation’s reservation.

52. By making sales of cigarettes without tax, Pipekeepers Tobacco and Gas is undercutting efforts of the Cayuga Nation to sell Cayuga-brand and other native brand cigarettes on the Cayuga Nation reservation.

53. The reopening of Pipekeepers Tobacco and Gas has reduced the Cayuga Nation’s own cigarette revenues.

54. The Cayuga Nation relies on these revenues to provide essential governmental services to the Cayuga people and others.

55. The Seneca-Cayuga Nation and the Seneca-Cayuga Business Committee could immediately halt sales of untaxed cigarettes at Pipekeepers Tobacco and Gas. *See* N.Y. Real Prop. Law § 231(1) (voiding leases of property used “for any illegal trade” and authorizing landowners to “enter upon the premises”).

56. On September 15, 2021, the Cayuga Nation sent a letter to the Seneca-Cayuga Nation and the Seneca-Cayuga Business Committee requesting that the Seneca-

Cayuga Nation stop its support, participation, and involvement in the unlawful sale of untaxed cigarettes at Pipekeepers Tobacco and Gas.

57. The Seneca-Cayuga Nation and the Seneca-Cayuga Business Committee, however, have continued to authorize and permit Pipekeepers Tobacco and Gas, and Parker and Johns, to unlawfully sell untaxed cigarettes on the Cayuga Nation's reservation.

COUNT I

58. The Cayuga Nation repeats and realleges the allegations contained in Paragraphs 1 through 57 above as though specifically set forth at length herein.

59. The Cayuga Nation has the exclusive right to sell, and to authorize the sale of, Cayuga-brand and other native brand cigarettes on its reservation.

60. This exclusive right is protected by federal law, including the Treaty of Canandaigua and the federal common law.

61. The Cayuga Nation has not authorized or permitted the Seneca-Cayuga Nation, Parker, or Johns to sell native-brand cigarettes on the Cayuga Nation's reservation without compliance with state sales tax obligations.

62. The Seneca-Cayuga Business Committee, Parker, and Johns have violated and interfered with the Cayuga Nation's exclusive rights by authorizing and permitting, and conducting, sales of native-brand cigarettes on the Cayuga Nation's reservation without compliance with state sales tax obligations.

63. The actions of the Seneca-Cayuga Business Committee, Parker, and Johns have injured the Cayuga Nation by violating and interfering with the Cayuga Nation's sovereign rights and by reducing the revenues the Cayuga Nation earns from its own cigarette sales.

64. Federal law provides jurisdiction and a cause of action for the Cayuga Nation to enforce its sovereign rights protected by the Treaty of Canandaigua and federal law. *See* 28 U.S.C. § 1362 (“The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States”); *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 851 (1985) (“Federal law, implemented by statute, by treaty, by administrative regulations, and by judicial decisions, provides significant protection for the individual, territorial, and political rights of the Indian tribes”); *Oneida Cnty. v. Oneida Indian Nation of N.Y. State*, 470 U.S. 226, 235 (1985) (recognizing “that Indians have a federal common-law right to sue to enforce their aboriginal land rights”).

65. The Cayuga Nation is entitled to an injunction against the Seneca-Cayuga Business Committee, Parker, and Johns to prevent their continuing violation of the Cayuga Nation’s sovereign rights protected by federal law, as well as declaratory relief declaring that their actions are unlawful.

66. The Cayuga Nation is entitled to damages from Parker and Johns for the harm the Cayuga Nation has suffered from their violation of the Cayuga Nation’s sovereign rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court issue an order:

(A) Declaring that Defendants’ sales of tax-free cigarettes on the Cayuga Nation’s reservation violates the Cayuga Nation’s sovereign rights guaranteed by the Treaty of Canandaigua and federal law;

(B) Enjoining Defendants from selling, or authorizing or permitting the sale of, tax-free cigarettes on the Cayuga Nation's reservation.

(C) Awarding money damages against Parker and Johns and in favor of the Cayuga Nation for the harm the Cayuga Nation has suffered from their violation of the Cayuga Nation's sovereign rights.

(D) Awarding costs to the Cayuga Nation; and

(E) Granting such other relief as this Court deems just and proper.

Respectfully submitted,



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