To be Argued by:
LEE ALCOTT
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Fourth Department

CAYUGA NATION,

Docket No.: CA 23-00739

Petitioner-Appellant,

– against –

DUSTIN PARKER and DUSTIN PARKER d/b/a PIPEKEEPERS TOBACCO & GAS,

Respondents-Respondents.

BRIEF FOR PETITIONER-APPELLANT

BARCLAY DAMON LLP
Lee Alcott, Esq.
Michael E. Nicholson, Esq.
Attorneys for Petitioner-Appellant
125 East Jefferson Street
Syracuse, New York 13202
(315) 425-2700
lalcott@barclaydamon.com
mnicholson@barclaydamon.com

Seneca County Clerk's Index No. 20210519

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

New York Cases

Federal Cases

Other Cases

New York Statutes

Federal Statutes

Addenda

QUESTION PRESENTED

Question: Whether a money judgment of the tribal court of the federally-recognized Cayuga Nation was entitled to recognition as a New York State Supreme Court judgment pursuant to the plain language of 22 N.Y.C.R.R. § 202.71.

Answer of the court below: No. The court below incorrectly imposed additional filing requirements not found in the statute, misapplied this Court's precedent on personal jurisdiction, and denied the Cayuga Nation's 22 N.Y.C.R.R. § 202.71 Petition.

PRELIMINARY STATEMENT

Recognizing that Indian nations are sovereign entities with court systems typically afforded the same comity as those of a foreign sovereign, the New York court system contains a specific rule for the recognition of tribal court judgments. Section 202.71 of the Uniform Rules establishes an expeditious and uniform procedure for the recognition of tribal court judgments in the New York State Supreme Court, and the Cayuga Nation has relied on that rule to obtain New York recognition of the Judgments of the Cayuga Nation Civil Court on at least fourteen past occasions. Here, however, Supreme Court twice refused to apply this rule as written, choosing instead to raise and opine on matters not properly before the court.

The first time, Supreme Court committed two critical errors. It imposed *ad hoc* and artificial filing requirements not found in statute. And it purported to find, *sua sponte*, a personal jurisdiction problem—in the process, plainly misapplying the applicable law providing not just that the court had personal jurisdiction but also that Supreme Court's personal jurisdiction is irrelevant.

The Cayuga Nation appealed Supreme Court's Order, and that appeal is pending. In the meantime, the Cayuga Nation also filed a motion for leave to renew and reargue, appending the documents Supreme Court improperly claimed were lacking, and directing the court to controlling precedent from this Court that it had overlooked. Supreme Court, however, simply disregarded the additional

documentation and disclaimed its ruling on personal jurisdiction. Instead, it denied the Petition on new and additional grounds that have no basis in fact or law, disavowing the existence of the Cayuga Nation Reservation and the legitimacy of the Cayuga Nation Judiciary and Police Department in the process.

This new holding was also plainly wrong. Every court to have considered the question has recognized the continued existence of the Cayuga Nation Reservation. The Nation Court had jurisdiction over the underlying dispute involving a Nation citizen and arising within the Nation's Reservation boundaries. And whether the Cayuga Nation Police Force possessed authority to enforce the judgment was irrelevant—but, in any event, it plainly did.

In short, Judgments of the Cayuga Nation Civil Court are fully entitled to recognition under principles of the common law of comity. The Cayuga Nation satisfied the filing requirements articulated in Section 202.71, and Supreme Court erred when it claimed to expand those filing requirements and ignored this Court's precedent. What is more, it abused its discretion when it wrongly opined on matters not properly before the court and ignored well-settled facts and law. For the reasons set forth more fully herein, Supreme Court's Order should be reversed and the Cayuga Nation's Petition to domesticate the Judgment of the Cayuga Nation Civil Court granted.

STATEMENT OF FACTS

The Cayuga Nation (the "Nation") is a federally-recognized sovereign Indian nation. *See* Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 88 Fed. Reg. 2112, 2112 (Jan. 12, 2023). In the Treaty of Canandaigua, the United States recognized a federal reservation for the Cayuga Nation comprising 64,015 acres (located in what today are Seneca and Cayuga Counties in upstate central New York) (the "Reservation") 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. The Treaty of Canandaigua and the Nation's Reservation fully endure to this day.

"[T]o provide a fair and impartial forum for the resolution of all matters that come before it pursuant to a grant of authorization by law" (R. 47), the Nation—through its lawful governing body, the Cayuga Nation Council—has established a Judiciary and enacted a Judiciary Law "for the administration of law, justice, judicial procedures, and practices by the Cayuga Nation as a sovereign nation by exercising the inherent power to make, execute, apply, and enforce its own law, and to apply its own customs and traditions in matters affecting Cayuga Nation citizens." (R. 47).

The Nation's Judiciary includes a Cayuga Nation Civil Court, which consists of a Trial Court presided over by Hon. Joseph E. Fahey (R. 14), and a Court of

Appeals presided over by Hon. Edward D. Carni (R. 40). Cayuga Nation Civil Court proceedings are controlled by the duly-enacted and published Cayuga Nation Rules of Civil Procedure (R. 26, 32), and the Judiciary's independence is guaranteed under a codified doctrine of separation of powers. (R. 27 ("There shall be no encroachment on or interference with the power of the Cayuga Nation Civil Court by the Nation government.")).

Following trial court proceedings in the Cayuga Nation Civil Court, the Nation Court (Fahey, J.) entered a December 2, 2021 Order against Dustin Parker and Dustin Parker d/b/a Pipekeepers Tobacco & Gas ("Respondents") assessing a civil fine of $1,000 per day for Respondents' ongoing violation of the Cayuga Nation Amended and Restated Business License and Regulation Ordinance. (R. 14–15). On December 6, 2021, the Clerk of the Cayuga Nation Court entered a Judgment against Respondents in the amount of $45,000 based upon the December 2, 2021 Order (the "Nation Court Judgment"). (R. 12–13).

Two days later, the Nation filed a Notice of Petition and Verified Petition (the "Petition") in the Seneca County Supreme Court pursuant to 22 N.Y.C.R.R. § 202.71 seeking recognition of the Nation Court Judgment. (R. 7–15). Section 202.71 of the Uniform Rules provides, in full:

> Any person seeking recognition of a judgment, decree or order rendered by a court duly established under tribal or federal law by any Indian tribe, band or nation recognized by the State of New

> York or by the United States may commence a special proceeding in Supreme Court pursuant to Article 4 of the CPLR by filing a notice of petition and a petition with a copy of the tribal court judgment, decree or order appended thereto in the County Clerk's office in any appropriate county of the state. If the court finds that the judgment, decree or order is entitled to recognition under principles of the common law of comity, it shall direct entry of the tribal judgment, decree or order as a judgment, decree or order of the Supreme Court of the State of New York. This procedure shall not supplant or diminish other available procedures for the recognition of judgments, decrees and orders under the law.

22 N.Y.C.R.R. § 202.71.

The Nation specifically complied with Section 202.71's filing requirements by commencing a CPLR Article 4 special proceeding in Supreme Court and attaching to its Verified Petition a copy of the Nation Court Judgment and underlying Order. (R. 7–15).

Although Respondents did not appear in the action and the Nation's Petition was unopposed, Supreme Court (Porsch, A.J.S.C.) issued a July 19, 2022 Decision and Order (R. 17–18) denying the Petition on two grounds. First, Supreme Court held the Nation "failed to establish that the 'Nation Civil Court' is a 'court duly established under [Cayuga Nation] . . . or federal law'" (R. 17) (alterations in original) because, it maintained, "when th[e] Court is usually presented with a Judgment from a court of foreign jurisdiction, they [*sic*] are accompanied by a certification of the state or country in which that court sits, the papers are overtly endorsed stamped or attested to [and] [s]uch is not the case here." (R. 17). Second,

Supreme Court held, *sua sponte*, "Petitioner has not shown, or even alleged, that Respondents' property and/or business reside on tribal land (defined as a federally-recognized reservation or land held in trust by the federal government) [and] [a]s such, Petitioner has failed to establish, even at a minimum, that this Court has personal jurisdiction over Respondents." (R. 18).

On August 5, 2022, the Nation timely filed a motion for leave to renew and reargue the July 19, 2022 Decision and Order (R. 19) (the "Motion"). The Motion was supported by an Attorney Affirmation (R. 21–24) which directed the court to binding Fourth Department precedent it overlooked in reaching its decision. It also attached as exhibits the Ordinance and Resolution establishing the Cayuga Nation Civil Court (R. 26–32) and a "Clerk's Certification of a Judgment to Be Registered in Another District" by which the Cayuga Nation Court Clerk officially certified and attested to the Nation Court Judgment. (R. 33). With the Motion still pending some three months later, the Nation filed an Attorney Affirmation in further support of the Motion (R. 37–39), attaching as additional exhibits a Memorandum and Order of the Cayuga Nation Court of Appeals (Carni, J.) (R. 40–45) and a full copy of the Cayuga Nation Judiciary Law (R. 46–59).

On April 7, 2023, Supreme Court issued a Decision and Order denying the Motion (R. 4–6) (the "Order"), claiming to take judicial notice that the Nation does not have a Reservation; finding, therefore, that the Cayuga Nation Civil court "does

not operate within the bounds of due process [and] its judgments are not entitled to recognition by [New York] state courts"; and affirming dismissal of the Petition. (R. 4–6). The Nation timely appealed the Order. (R. 1).

STANDARD OF REVIEW

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination," CPLR 2221(e)(2), while a motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion," CPLR 2221(d)(2). "A motion for leave to renew or reargue is addressed to the sound discretion of the Supreme Court," *Cent. Mortg. Co. v. McClelland*, 119 A.D.3d 885, 886 (2d Dep't 2014), and Supreme Court's determination of such a motion may be reversed where it constituted an abuse of discretion. *Whelan v. GTE Sylvania, Inc.*, 182 A.D.2d 446, 450 (1st Dep't 1992); *Matter of Piacente v. DiNapoli*, 198 A.D.3d 1026, 1027 (3d Dep't 2021). Supreme Court abuses its discretion when it fails to consider submissions that directly respond to its prior concerns, *Whelan*, 182 A.2d at 450, or when it commits legal error, *Leonard Johnson & Sons Enters. v. Brighton Commons P'ship*, 171 A.D.2d 1059, 1060 (4th Dep't 1991).

ARGUMENT

Supreme Court committed three key errors: First, it imposed filing requirements beyond those establish by Section 202.71 of the Uniform Rules, and failed to even acknowledge when the Nation subsequently satisfied those requirements. Second, it refused to recognize the Nation Court judgment under principles of comity because it wrongly concluded that the Nation's Reservation no longer exists. Third, it erroneously determined that it needed personal jurisdiction over Respondents to recognize the Nation Court Judgment, and that it lacked such personal jurisdiction. These errors require reversal.

I. Supreme Court Erred When It Denied the Petition for Lack of Supporting Documentation by Imposing Additional Filing Requirements, and Its Denial of the Motion Was an Abuse of Discretion

The United States Supreme Court has made clear that sovereign Indian nations have the authority to establish their own court systems, which may adjudicate both civil and criminal matters. *See, e.g., Iowa Mut. Ins. Co. v. LaPlante,* 480 U.S. 9, 14–15 (1987) ("Tribal courts play a vital role in tribal self-government, and the Federal Government has consistently encouraged their development." (citation omitted)); *Bowen v. Doyle*, 230 F.3d 525, 530 (2d Cir. 2000) ("Tribal courts, which play a vital role in tribal self-government, must therefore be permitted to resolve pending cases without federal court interference." (citation and internal quotation marks omitted));

Stathis v. Marty Indian School Bd. Inc., 560 F. Supp. 3d 1283, 1291 (D.S.D. 2021) ("[T]ribal courts are an important part of tribal sovereignty and self-determination").

Consistent with this federal authority and encouragement, the federally-recognized Cayuga Nation—through its lawful governing body, the Cayuga Nation Council—established the Cayuga Nation Civil Court, enacted the Cayuga Nation Rules of Civil Procedure to safeguard due process rights, and guaranteed an independent judiciary in the Nation Court's establishing Ordinance. (R. 26–27, 32). In just the past year, the Nation Court has been acknowledged and recognized by the United States District Court for the Northern District of New York, which stayed federal RICO proceedings under the tribal exhaustion rule until such time as proceedings before the Cayuga Nation Civil Court had been fully exhausted. *Cayuga Nation v. Dustin Parker*, *et al.*, 605 F. Supp. 3d 414, 431 (N.D.N.Y. June 2, 2022). The Nation Court has also twice been recognized by the Cayuga County Supreme Court,[1] and by the Seneca County Supreme Court (Odorisi, J.) on more than a dozen occasions.[2] Both of those courts have readily enforced Nation Court judgments in situations identical to the one here.

---

[1] *Cayuga Nation v. Dustin Parker, et al.*, Index No. E2022-0209, and *Cayuga Nation v. Dustin Parker, et al*., Index No. E2022-0560.

[2] *Cayuga Nation v. Leanna Kettle*, Index No. 20210297; *Cayuga Nation v. Kelsey Van Every*, Index No. 20210296; *Cayuga Nation v. Wanda John*, Index No. 20210293; *Cayuga Nation v. Amber Parker*, Index No. 20210292; *Cayuga Nation v. Dakota Miller*, Index No. 20210291; *Cayuga Nation v. Michele Seneca*, Index No. 20210290; *Cayuga Nation v. Dylan Seneca*, Index No. 20210289; *Cayuga Nation v. Dustin Parker*, Index No. 20210288; *Cayuga Nation v. Warren John*,

Section 202.71 of the Uniform Rules provides an express vehicle to seek domestication by the New York State Supreme Court of an order or judgment of a tribal court duly established by any Indian nation recognized by the State of New York or the United States. 22 N.Y.C.R.R. § 202.71. In other words, courts such as the Cayuga Nation Civil Court. And while there are no reported cases addressing Section 202.71, the Advisory Committee's Memorandum dated July 15, 2014 regarding the proposed adoption of the Uniform Rule (the "Advisory Memorandum")[3] is informative.

In the Advisory Memorandum, the Committee states "[t]he purpose of this rule is to establish an expeditious and uniform procedure for the recognition of appropriate tribal court judgments under the substantive common law or Article 53 of the CPLR." (Add. A, p. 2). It further explains that Section 202.71 is "designed to provide a roadmap for the parties and the court as to how to seek recognition of these judgments." (*Id.*).

The "roadmap" for any party with a judgment, decree, or order from a tribal court "duly established under tribal or federal law by any Indian tribe, band or nation recognized by the State of New York or by the United States," such as the Cayuga

Index No. 20210287; *Cayuga Nation v. Darren Kettle*, Index No. 20210286; *Cayuga Nation v. Elijah Jimerson*, Index No. 20210284; *Cayuga Nation v. Danel Jimerson*, Index No. 20210283.

[3] A copy of the Advisory Memorandum is annexed herewith as "Addendum A" pursuant to 22 N.Y.C.R.R. § 1250.8(k).

Nation Civil Court, is straightforward. The party may "commence a special proceeding in Supreme Court pursuant to Article 4 of the CPLR by filing a notice of petition and a petition with a copy of the tribal court judgment, decree or order appended thereto in the County Clerk's office in any appropriate county of the state." 22 N.Y.C.R.R. § 202.71. Absent from the Rule are any requirements or specifications regarding additional accompanying certifications, endorsements, stamps, or attestations. *See id.*

The Nation strictly followed that roadmap and commenced an action pursuant to Section 202.71 by filing in the Seneca County Supreme Court a Notice of Petition and Petition that attached a copy of the Nation Court Judgment and the underlying Order (R. 7–15). Nevertheless, in its July 19, 2022 Decision and Order, Supreme Court imposed filing requirements not found in Section 202.71. It maintained that "when this Court is usually presented with a Judgment from a court of foreign jurisdiction, [it is] accompanied by a certification of the state or country in which that court sits, the papers are overtly endorsed, stamped and attested to." (R. 17). And based upon this, the court concluded "[n]otwithstanding the fact that the Cayuga Nation is recognized by the United States Bureau of Indian Affairs (BIA), Petitioner has failed to establish that the 'Nation Civil Court' is a 'court duly established under [Cayuga Nation] . . . or federal law" and dismissed the Petition. (R. 17–18).

Supreme Court's July 19, 2022 Decision and Order imposing *ad hoc* filing requirements is inconsistent with the plain language of 22 N.Y.C.R.R. § 202.71 and the Advisory Memorandum's pronouncement that the Rule is designed to establish "an expeditious and *uniform* procedure." (Add. A, p. 2) (emphasis added). In fact, by imposing filing requirements beyond those found in Section 202.71, Supreme Court upended the uniform procedure set out by the Rule—which, as noted above, has been properly applied by the Seneca County Supreme Court and the neighboring Cayuga County Supreme Court on a total of fourteen occasions, where those courts expeditiously recognized Nation Court judgments when presented with substantively identical commencement documents to those filed here. *Supra* n.1 and 2.

Even motions seeking to domesticate tribal courts judgments pursuant to the general provisions of CPLR 3213 are not subject to the broadened filing requirements or skeptical approach taken by Supreme Court. *See e.g., Mashantucket Pequot Gaming Enter. v. Renzulli*, 188 Misc. 2d 710, 713 (Sup. Ct. Suffolk Cnty. 2001) (domesticating $5,160 tribal court judgment under CPLR 3213); *Mashantucket Pequot Gaming Enter. v. Shing Chun Yau*, 2010 NY Slip Op 30320(U), 5 (Sup. Ct. N.Y. Cnty. 2010) (domesticating $106,984 tribal court judgment under CPLR 3213).

All told, Supreme Court's July 19, 2022 Decision and Order was erroneous, is inconsistent with an extensive body of New York case law, and should be reversed. While the Nation timely appealed, it also filed a Motion explaining that it "did not have reason to believe the copies of the orders and judgment submitted to this Court would have to bear a visibly-raised seal or embossment, as such imprimaturs are not contemplated or required by 22 N.Y.C.R.R. § 202.71." (R. 23). In addition, the Nation submitted with the Motion a copy of both the Nation's Ordinance and Resolution establishing the Cayuga Nation Civil Court (R. 26–32) and the "Clerk's Certification of a Judgment to Be Registered in Another District" bearing an embossed seal, signed by the Clerk of the Nation Court, and attesting to the validity of the Nation Court Judgment. (R. 33). Thus, the Nation provided what Supreme Court requested—to ensure no possible obstacle to recognizing the Nation Court Judgment remained.

But when presented with precisely the documentation Supreme Court had claimed was needed to satisfy Section 202.71, Supreme Court did not even acknowledge it, and denied the Motion on entirely new and independent grounds. That refusal to recognize or consider the documentation and deny the Motion was an abuse of discretion. *See Whelan*, 182 A.2d at 450. Moreover, as discussed in the following section, Supreme Court's new grounds for denying the Petition were erroneous as a matter of law and require reversal on the merits.

II. Supreme Court Erred When It Refused to Recognize the Nation Court Judgment Under Principles of the Common Law of Comity and Abused Its Discretion When It Claimed to Rule the Nation's Judiciary and Police Force Cannot Enforce Judgments

Rather than rely on the claimed lack of supporting documentation that primarily underlay the July 19, 2022 Decision and Order, Supreme Court announced a new and different basis in its April 7, 2023 Order: that the Nation's Court "does not operate within the bounds of due process," and thus "its judgments are not entitled to recognition by our state courts." (R. 5).

Although CPLR 5304(a)(1) provides that "[a] court of this state may not recognize a foreign country judgment if . . . the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law," Supreme Court did not engage in any analysis or discussion of the Cayuga Nation Civil Court's impartiality or the due process rights afforded to parties before the Nation Court. Had it done so, it would have necessarily concluded the Nation Court's impartiality is guaranteed by its enabling Ordinance (R. 27), and that parties before it are assured due process rights (in the form of both notice and the opportunity to be heard) by the duly-enacted Cayuga Nation Rules of Civil Procedure. (R. 32); *see Cayuga Nation v. Jimerson*, Lead Index No. CV-008-21, Mem. and Order in Cons. Cases (Cayuga Nation Court of Appeals Sep. 29, 2022) (Carni, J.) (R. 40–45) (confirming due process afforded

to litigants in Cayuga Nation trial court). Certainly, "[d]ue process of law is not restricted to [New York State's] laws; it presupposes an objective system of rules with no unfair surprises, where a prospective litigant has notice of the applicable law and its consequences" and "CPLR 5304(a)(1) does not demand that the foreign tribunal's procedures exactly match those of New York." *Blacklink Transp. Consultants PTY Ltd. v. Von Summer*, 18 Misc. 3d 1113(A), 1113A (Sup. Ct. N.Y. Cnty. 2008).

More broadly, the Nation Court Judgment is entitled to recognition under the "principles of the common law of comity" test that Section 202.71 prescribes, and that Supreme Court erred in failing to apply. 22 N.Y.C.R.R. § 202.71 ("If the court finds that the judgment, decree or order is entitled to recognition *under principles of the common law of comity*, it shall direct entry of the tribal judgment, decree or order as a judgment, decree or order of the Supreme Court of the State of New York." (emphasis added)). "Historically, New York courts have accorded recognition to the judgments rendered in a foreign country under the doctrine of comity absent some showing of fraud in the procurement of the foreign country judgment or that recognition of the judgment would do violence to some strong public policy of this State." *Abu Dhabi Commercial Bank PJSC v. Saad Trading*, 117 A.D.3d 609, 610 (1st Dep't 2014) (citation and internal alterations omitted).

There has been no allegation, let alone showing, of fraud here, and no claim or finding that recognition of the Nation Court Judgment violates any public policy of the State. To the contrary, expeditious recognition of the Nation Court Judgment vindicates the public policy specifically embodied in Section 202.71, while Supreme Court's cynical approach accomplishes the opposite. *See Wilson v. Marchington*, 127 F.3d 805, 811 (9th Cir. 1997) ("Federal courts must also be careful to respect tribal jurisprudence along with the special customs and practical limitations of tribal court systems. Extending comity to tribal judgments is not an invitation for the federal courts to exercise unnecessary judicial paternalism in derogation of tribal self-governance.").

Rather than applying any recognized comity test, Supreme Court appears to have premised its decision on the erroneous conclusion that the Nation Court lacked jurisdiction when issued its judgment. Supreme Court claimed first to "take[] judicial notice of the fact that the subject property of this action does not lie within any recognized federal reservation, nor is it part of land held in trust for the Cayuga Nation by the federal government." (R. 5). The court then continued:

> Here, the land that the Cayuga Indian Nation has purchased in Seneca County is owned and held in fee. While these purchases were completely lawful, they did not create a sovereign nation with the right to a separate recognized police force and judiciary. *It is undisputed that no federally recognized reservation, or land held in trust for the benefit of the Cayuga Indian Nation, exists within Seneca County. See*, 25 USC 2201[4]; 7 CFR 253.2.

(R. 6) (emphasis added).

This conclusion that the Nation lacks a federally-recognized Reservation is flat wrong as a matter of law. In the Treaty of Canandaigua, the United States recognized a federal reservation for the Cayuga Nation comprising 64,015 acres (located in 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.

Congress has not disestablished the Cayuga Nation's 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, 307–315 (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), and so has the New York Court of Appeals. *Id.* at 640 (2010) ("[W]e necessarily must conclude that [the Cayuga Nation properties at issue] meet the definition of a 'qualified reservation'"). And these holdings are fully consistent with the recent United States Supreme Court precedent, *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), concerning the continued existence of Indian reservations that no

longer necessarily look like a historical reservation (such as the entire city of Tulsa, Oklahoma). *Id.* at 2479. In sum, "the Cayuga Reservation has not been disestablished and persists today within the boundaries set forth in the Treaty of Canandaigua." *Cayuga Nation v. Tanner*, 6 F.4th 361, 378 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 775 (2022). Indeed, the state of affairs is the exact opposite of what Supreme Court baldly asserted: as a matter of state and federal law, it is the continued *existence* of the Nation's Reservation that is unassailable.

Supreme Court's arguments to the contrary widely miss the mark. To start, Supreme Court appears to have relied on an excerpt taken from the Cayuga Nation's official website. (R. 5). But a historical synopsis published on a website is not a valid basis for resolving whether the Reservation, as established in the Treaty of Canandaigua, continues to exist. *See McGirt*, 140 S. Ct. at 2474 ("[O]nly Congress may disestablish a reservation."). Even still, the statement on the Cayuga Nation's website is completely consistent with the continued existence of the Reservation. It explains, accurately, that the Treaty of Canandaigua "affirmed the Cayuga Nation's rightful reservation"; that New York illegally "ignored" the Treaty and refused to "return" possession of "the Cayuga homeland"; and that the Nation has begun reacquiring possession of its land "by simply purchasing it." (R. 5). That history, to be sure, shows that today the Nation lacks physical possession of much of its homelands. But *reservation status* is not tied to land possession or ownership.

Rather, just as the borders—and by extension, the territorial sovereignty—of the State of New York do not change when, *e.g.*, a New York resident sells a New York parcel to a Canadian citizen, so too the borders of an Indian reservation are unaffected by "private land ownership within reservation boundaries." *McGirt*, 140 S. Ct. at 2464.

Next, Supreme Court's passing reference to *Cayuga Nation v. Pataki*, 413 F.3d 266 (2d Cir. 2005) (R. 6) does not support the conclusion that the Nation's Reservation no longer exists. That case concerned application of laches, and "the existence of a reservation, sovereign authority over land, and laches are three distinct issues." *Cayuga Indian Nation*, 260 F. Supp. at 315. Indeed, as noted above, every decision to have addressed the *reservation* question—including decisions issued after *Pataki*—has recognized that the Nation's Reservation persists. And in any event, a laches defense certainly has no application to the present situation, where the Nation Court exercised jurisdiction over a person who has voluntarily become a *citizen* of the Nation, and thereby consented to the Nation's jurisdiction. *Cf. Oneida*, 617 F.3d 114, 135 (2d Cir. 2010) (explaining that a laches defense stems from "justified societal expectations").

Finally, Supreme Court's citations to 25 U.S.C. § 2201(4) and 7 C.F.R. § 253.2 are equally inapplicable. Reservation status is defined by 18 U.S.C. § 1151 and Supreme Court case law—not 25 U.S.C. § 2201(4) or 7 C.F.R. § 253.2. *See*

McGirt, 140 S. Ct. at 2459–2461. In any event, the cited provisions do not even state that a treaty-recognized reservation is not a reservation. 25 U.S.C. § 2201(4) provides a definition for "trust or restricted lands." Reservations include unrestricted lands owned in fee—even unrestricted lands owned in fee by non-Indians—so whether the lands at issue here fall within that definition is irrelevant.[4] 7 C.F.R. § 253.2, meanwhile, is (1) a federal regulation, not a statute, and (2) merely incorporates the standard definition of an Indian reservation. *See id.* ("Reservation means the geographically defined area or areas over which an [Indian tribal organization] exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or a State government as being set aside for the use of Indians.").[5]

Relying on the undeniably factually-and-legally erroneous premise that the Nation does not have a federally-recognized Reservation, Supreme Court went on to state: "For this reason, the Court finds that the Cayuga Nation Civil Court has no legal authority to issue ruling against citizens whose property lies solely within Seneca County." (R. 6). That finding is entirely wrong.

[4] Moreover, 25 U.S.C. § 2201(4)'s definition of "trust or restricted lands" applies only to the federal statute that governs "land consolidation plan[s] providing for the sale or exchange of . . . tribal lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating [an Indian nation's] tribal landholdings." 25 U.S.C. § 2203(a).

[5] Further, like 25 U.S.C. § 2201(4), 7 C.F.R. § 253.2 has limited application—specifically, administration of the federal food distribution program for households on Indian reservations.

"It is 'a bedrock principle of federal Indian law that every tribe is capable of managing its own affairs and governing itself.'" *Cayuga Nation v. Tanner*, 824 F.3d 321, 327 (2d Cir. 2016) (citation omitted). "Certain issues are, by their very nature, inherently reserved for resolution through purely tribal mechanisms due to the privilege and responsibility of sovereigns to regulate their own, purely internal affairs." *Parker*, 605 F. Supp. 3d at 431(quoting *Miccosukee Tribe of Indians of Fla. v. Cypress*, 814 F.3d 1202, 1208–1209 (11th Cir. 2015)). Thus, "federal courts lack the authority to resolve internal disputes about tribal law." *Id.* (quoting *Tanner*, 824 F.3d at 327) (additional citations omitted). And New York State courts lack the authority to adjudicate "private civil claim[s] by Indians against Indians." *People by Abrams v. Anderson*, 137 A.D.2d 259, 261 (4th Dep't 1988).

As a sovereign Indian nation, the Cayuga Nation unquestionably has the authority to establish its own judicial system, including the Cayuga Nation Civil Court. *See LaPlante,* 480 U.S. 14–15; *see also Bowen*, 230 F.3d at 530. "Although the criminal jurisdiction of the tribal courts is subject to substantial federal limitation, their civil jurisdiction is not similarly restricted." *LaPlante*, 480 U.S. at 15. It is well settled that tribal courts have jurisdiction over tribal members within reservation boundaries, *Williams v. Lee*, 358 U.S. 217 (1959), which includes the adjudication of members' violation of an Indian nation's own laws, such as the Cayuga Nation Amended and Restated Business License and Regulation Ordinance.

Indeed, as the United States District Court for the Northern District of New York made clear, the Nation Court is the *only* appropriate forum in which a violation of the Nation's Amended and Restated Business License and Regulation Ordinance can be adjudicated. *Parker*, 605 F. Supp. 3d at 431. Supreme Court manifestly erred when it found the opposite.

To end its Order, Supreme Court veered even further away from any issue before it, opining "the Cayuga Nation's so called police force has no authority to enforce any 'judgments' upon individuals who do not reside in, nor do not [*sic*] operate businesses within, sovereign national land recognized or held in trust by the United States Government." (R. 6). To start, it was legal error for the trial court to address this issue *at all*: whether the Nation's police can enforce the judgment has no bearing on whether it can be domesticated under New York law. All the same, the U.S. Department of Interior, Bureau of Indian Affairs has specifically recognized "[b]oth Federal and State Courts have ruled that the Cayuga Nation Reservation has not been diminished or disestablished"; that "all lands within the exterior boundaries of the Reservation are considered Indian Country under Federal law"; and the Nation has the right "to exercise its inherent sovereign authority to enforce its own laws

inside the Cayuga Nation Reservation boundaries through a law enforcement program."[6] Supreme Court's opinion to the contrary is without merit.

In sum, Supreme Court erred when it refused to recognize the Nation Court Judgment under the principles of comity, concluding the Nation does not have a valid Reservation and the Cayuga Nation Civil Court does not afford parties due process. Moreover, the court abused its discretion by opining that the Nation Court has no authority to issue Judgments against Nation citizens whose property lies in Seneca County and the Cayuga Nation Police Department has no right to enforce them. For all of these reasons, the Order should be reversed and the Petition granted.

III. Supreme Court Erred When It Dismissed the Petition for Lack of Personal Jurisdiction and Abused Its Discretion When It Refused to Apply Binding Precedent

In its July 19, 2022 Decision and Order, Supreme Court held, *sua sponte*, that the Nation's Petition must be dismissed because Supreme Court lacked personal jurisdiction over Respondents. It reasoned: "Petitioner has not shown, or even alleged, that Respondent's property and/or business reside on tribal land (defined as a federally-recognized reservation or land held in trust by the federal government). As such, Petitioner has failed to establish, even at a minimum, that this Court has personal jurisdiction over Respondents." (R. 18).

[6] A copy of the June 17, 2019 letter from the U.S. Department of Interior, Bureau of Indian Affairs to the Seneca Falls Chief of Police is annexed herewith as "Addendum B" pursuant to 22 N.Y.C.R.R. § 1250.8(k).

As the Nation has explained in its appeal of that Order, that determination was in error for at least two reasons. First, Supreme Court plainly had general personal jurisdiction pursuant to CPLR 301 over Respondents as domiciliaries of New York who were duly served with process. (R. 16); *Deer Consumer Prods., Inc. v. Little Grp.*, 37 Misc. 3d 1224(A), 1224A (Sup. Ct. N.Y. Cnty. 2012) ("[CPLR 301] codifies a court's power to exercise a 'territorial,' or 'presence' jurisdiction over a defendant based on his domicile[.]" (internal citation omitted)). Second, and in any event, Supreme Court was not required to establish a basis to exercise personal jurisdiction over Respondents in order to grant the Petition and recognize the Nation Court Judgment. *Lenchyshyn v. Pelko Elec., Inc*., 281 A.D.2d 42, 47 (4th Dep't 2001) ("[A] party seeking recognition in New York of a foreign money judgment (whether of a sister state or a foreign country) need not establish a basis for the exercise of personal jurisdiction over the judgment debtor by the New York courts. No such requirement can be found in the CPLR, and none inheres in the Due Process Clause of the United States Constitution, from which jurisdictional basis requirements derive."). Indeed, Supreme Court's reasoning is especially perplexing because the location of Respondents' property or business on or off the Reservation is of no consequence to the question of whether *Supreme Court* had, or needed, personal jurisdiction over Respondents. CPLR 301; *Lenchyshyn*, 281 A.D.2d at 47.

Because Supreme Court raised the issue *sua sponte*, the Nation did not have the opportunity to present the court with the applicable law on personal jurisdiction prior to its ruling. Nor was it under any obligation to plead or demonstrate the basis for personal jurisdiction in its Petition. *Vicom, Inc. v. Silverwood Dev., Inc.*, 188 A.D.2d 1057, 1058 (4th Dep't 1992) ("Under New York law, a plaintiff has no obligation to plead a basis for personal jurisdiction, nor to demonstrate such a basis as a threshold matter."). By its Motion, however, the Nation directed Supreme Court to *Lenchyshyn*, 281 A.D.2d at 47, the controlling Fourth Department precedent that the court overlooked or misapprehended in dismissing the Petition. (R. 21–22).

Instead of attempting the impossible task of squaring its dismissal for lack of personal jurisdiction with *Lenchyshyn*, Supreme Court attempted to deny that it made such a holding at all. While the Order began by confirming "[o]n July 19, 2022, this Court issued an Order denying the Petition on the ground that Petitioner failed to establish that *this Court* has *personal jurisdiction* over Respondents," (R. 4) (emphasis added), it went on just two paragraphs later to insist "this Court's previous Order was *not* premised on the principle that Petitioner needs to prove that Respondents are subject to jurisdiction in New York." (R. 5) (emphasis added). This is illogical. And reference to text of the July 19, 2022 Decision and Order firmly resolves the matter. (R. 18 ("Petitioner has failed to establish, even at a minimum, that *this Court* has *personal jurisdiction* over Respondents[.]" (emphasis added))).

Simply put, Supreme Court erred when it dismissed the Petition for lack of personal jurisdiction, and it abused its discretion when it claimed it never made such a holding and refused to apply this Court's controlling precedent. Its Order should be reversed, and the Petition granted.

CONCLUSION

For the reasons set forth herein, Supreme Court's Order should be reversed and the Nation's Petition to domesticate the Nation Court Judgment pursuant to 22 N.Y.C.R.R. § 202.71 should be granted.

Dated: July 24, 2023

BARCLAY DAMON LLP

By: _____

Lee Alcott
Michael E. Nicholson
Attorneys for Petitioner-Appellant Cayuga Nation
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Tel: (315) 425-2700

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman

Point size: 14pt

Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this Statement is 6,336.

ADDENDUM A

STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2150
FAX: (212) 428-2155

A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

July 15, 2014

To: All Interested Persons

From: John W. McConnell

Re: Proposed adoption of new 22 NYCRR § 202.71 relating to establishment of a procedure for recognition of judgments rendered by tribunals or courts of tribes recognized by the State of New York or the United States.

==========

The Advisory Committee on Civil Practice has recommended adoption of a new rule (22 NYCRR § 202.71, Uniform Civil Rules for Supreme Court and County Court), relating to establishment of a procedure for the recognition of judgments rendered by tribunals or courts of federally- or state-recognized tribes (Exh. A). According to the Advisory Committee's supporting memorandum, New York is home to various Indian tribes with tribunals whose judgments may be entitled to recognition in the New York State courts under common law principles of comity and/or CPLR Article 53. The Committee has been advised that at least some courts are uncertain about whether or how to recognize tribal judgments. The proposed new rule would establish "an expeditious and uniform procedure" authorizing any person seeking recognition of a judgment rendered by a court or tribunal of a federally- or state-recognized tribe to commence a special proceeding in Supreme Court pursuant to Article 4 of the CPLR or by commencing an action pursuant to CPLR 3213. According to the Committee, the proposed new rule would not change substantive requirements for recognition of tribal judgments or amend procedures relating to their enforcement. The rule also would not apply to proceedings covered by the Indian Child Welfare Act of 1978.

Persons wishing to comment on this proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than September 12, 2014.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

Providing a Procedure Under the Standards of Comity for the Recognition of Judgments Rendered by Tribunals or Courts of Federally-Recognized Tribes (22 NYCRR 202.71 (new))

The Advisory Committee proposes a new Rule 202.71 to provide for a procedure for the recognition of judgments rendered by tribunals or courts of federally-recognized tribes.

There are several active tribunals operated by the various federally-recognized Indian tribes within the State of New York. Increasingly, the parties that appear before these tribunals seek to obtain recognition of these judgments in New York's courts. As a judgment of a sovereign nation, a tribal judgment may be entitled to comity as a matter of common law. *See* Bird v. Glacier Electric Cooperative, Inc., 255 F.3d 1156 (9th Cir. 2001); Wilson v. Marchington, 127 F.3d 805, 807-11 (9th Cir. 1997); *see generally*, Hilton v. Guyot, 159 U.S. 113, 16 S. Ct. 139 (1895); S.B. v. W.A., 2012 WL 4512894 (S.Ct. West. Co., Sept. 26, 2012). Moreover, tribal money judgments may receive recognition pursuant to Article 53 of the CPLR, which is derived from the Uniform Foreign Money-Judgments Recognition Act.

The Committee has been advised that at least some courts are uncertain as to how to, or whether to, recognize these judgments. The purpose of this rule is to establish an expeditious and uniform procedure for the recognition of appropriate tribal judgments under the substantive common law or Article 53 of the CPLR. This procedural rule is not designed to change in any way the substantive requirements for recognition or non-recognition of any tribal judgments, or any other foreign-nation judgments. Further, it does not amend the procedures required for enforcement of judgments. It is merely designed to provide a roadmap for the parties and the courts as to how to seek recognition of these judgments.

Finally, this provision does not purport to apply to proceedings coming within the scope of the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 *et. seq.*, which requires all state courts to give full faith in credit to any judgment of an Indian tribe applicable to Indian child custody proceedings. Such proceedings would come within the scope of Article 54, which provides for enforcement of judgments entitled to full faith and credit.

Proposal

Section 202.71. Recognition of Tribal Court Judgments. Any person seeking recognition of a judgment rendered by a court duly established under tribal or federal law by any Indian tribe or nation recognized by the State of New York or by the United States may commence a special proceeding in Supreme Court pursuant to Article 4 of the CPLR by filing a notice of petition and a petition with a copy of the tribal court judgment appended thereto in the County Clerk's office in any county of the state. Alternatively, the person may commence an action pursuant to CPLR 3213. If the court finds that the judgment is entitled to recognition under the provisions of Article 53 of the CPLR or under principles of the common law of comity, it shall direct entry of the tribal judgment as a judgment of the Supreme Court of the State of New York.

ADDENDUM B

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, DC 20240

JUN 17 2019

Mr. Stuart Peenstra
Chief of Police
Town of Seneca Falls Police Department
130 Ovid Street
Seneca Falls, New York 13148

Dear Chief Peenstra:

Thank you for your letter dated March 1, 2019, addressed to Secretary Bernhardt, requesting guidance on the authority of the Cayuga Indian Nation Law Enforcement Division. In your letter, you ask six particular, but overlapping questions regarding criminal jurisdiction on the Cayuga Indian Nation Reservation. Secretary Bernhardt asked our office to respond to you on his behalf.

Currently, the Department of the Interior (Department) does not have any relationship with the Tribe's Law Enforcement Department and the Tribe does not receive any funding from the Department for law enforcement purposes. In addition, Cayuga Indian Nation officers are not federally commissioned under 25 U.S.C. § 2804. However, Federal funding or commissioning is not necessary for the Cayuga Indian Nation to exercise its inherent sovereign authority to enforce its own laws inside the Cayuga Indian Nation Reservation boundaries through a law enforcement program.

Both Federal and State Courts have ruled that the Cayuga Indian Nation Reservation has not been diminished or disestablished.[1] While the Tribe does not have lands in trust, all lands within the exterior boundaries of the Reservation are considered Indian Country under Federal law.[2] Therefore, the Department's position is that the Cayuga Indian Nation may enforce its own criminal laws against Indians within the boundaries of the Reservation. Although the New York Act, 25 U.S.C. § 232, gave the State of New York criminal jurisdiction over Indian Country within the State, the State's jurisdiction is concurrent with Cayuga Indian Nation and Federal jurisdiction. *United States v. Cook*, 922 F.2d 1026 (2nd Cir. 1991).

If you have further questions, you may contact Mr. Terrell Leonard, District IV Special Agent-in-Charge, Bureau of Indian Affairs, Office of Justice Services, at (615) 564-6605.

Sincerely,

Darryl LaCounte
Director, Bureau of Indian Affairs

cc: The Honorable Clint Halftown, Chairman, Cayuga Indian Nation
Mr. James P. Kennedy, Jr., United States Attorney, Western District of New York

[1] *Cayuga Indian Nation of N.Y. v. Seneca County*, 260 F. Supp.3d 290 (W.D.N.Y. 2017); *Cayuga Indian Nation of N.Y. v. Gould*, 14 N.Y.3d 614 (2010); *Cayuga Indian Nation of N.Y. v Cuomo*, 758 F. Supp 107 (N.D.N.Y. 1991).
[2] 18 U.S.C. § 1151; *Seymour v. Superintendent of Wash. State Penitentiary*, 368 U.S. 351 (1962).