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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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TOWN OF SOUTHAMPTON, NEW YORK  
and CHARLES McARDLE in his official  
capacity as Superintendent of Highways,

Plaintiffs,

v.

LISA GOREE, LANCE GUMBS, SENECA  
BOWEN, BIANCA COLLINS, GERMAIN  
SMITH, DANIEL COLLINS, SR., AND  
LINDA FRANKLIN, in their official capacities  
as members of the Council of Trustees of the  
Shinnecock Indian Nation,

Defendants.

Index No. 631610/2024

**MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION**

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Defendants Lisa Goree, Lance Gumbs, Seneca Bowen, Bianca Collins, Germain Smith, Daniel Collins, Sr., and Linda Franklin (collectively “Trustees”) bring this Motion to Dismiss Plaintiffs’ Town of Southampton, New York (the “Town”) and Charles McArdle (“McArdle”) action for declaratory and injunctive relief for alleged violations of state and local laws and regulations, for failure to properly serve each and all of the Trustees pursuant to N.Y. C.P.L.R. § 3211(a)(8) in violation of N.Y. C.P.L.R. §§ 308 and 311. The Trustees, by bringing this Motion to Dismiss, specifically do not waive their sovereign immunity from suit as officials of the Shinnecock Indian Nation, nor the sovereign immunity of the Shinnecock Indian Nation.

1. On or about December 20, 2024, Plaintiffs filed their two count Complaint against Trustees for alleged violations of the Town’s zoning ordinance and state and local laws concerning development of a travel plaza, and for the alleged creation of a public nuisance. (Doc. # 1).

2. On or about December 31, 2024, Plaintiffs filed an affirmation of service from John Savage claiming that he accomplished service on all Trustees by substitute service on Wesley Collins, whom he described as a “tribal elder,” on December 26, 2024, at 31 Church Street, Southampton, NY, 11969, and by mailing copies thereof. Attached to the Affirmation of Danielle Lazore-Thompson, Esq., in Support of the Motion to Dismiss as **Exhibit A** is a true and correct copy of the Affirmations of Service filed with the Court by Plaintiffs on December 31, 2024.
3. On December 26, 2024, the tribal offices for the Shinnecock Indian Nation, which is the place of business for the Trustees, were closed for the Christmas holidays and did not reopen until January 2, 2025. The Shinnecock Indian Nation tribal offices are not located at the 31 Church Street, Southampton, NY 11969 – they are located at 1 Nations Way, Southampton, NY 11969.
4. No one by the name of Wesley Collins works for the Council of Trustees of the Shinnecock Indian Nation, nor is he an officer, director, managing or general agent, or cashier or assistant cashier or any other agent authorized by appointment or by law to receive service for any Shinnecock Indian Nation Trustee. Attached to the Affirmation of Danielle Lazore-Thompson, Esq., in Support of the Motion to Dismiss are: Affidavit of Lisa Goree at ¶ 6 (**Exhibit B**); Affidavit of Lance Gumbs at ¶ 6 (**Exhibit C**); Affidavit of Seneca Bowen at ¶ 6 (**Exhibit D**); Affidavit of Bianca Collins at ¶ 6 (**Exhibit E**); Affidavit of Germain Smith at ¶ 6 (**Exhibit F**); Affidavit of Daniel Collins, Sr. at ¶ 6 (**Exhibit G**); and Affidavit of Linda Franklin at ¶ 6 (**Exhibit H**). These Affidavits confirm Mr. Wesley Collins is not authorized by appointment or law to receive service on Trustees in their capacity as Shinnecock Nation Trustees or otherwise.

## 5. N.Y. C.P.L.R. § 311. Personal service upon a corporation or governmental subdivision -

states in relevant part:

(a) Personal service upon a corporation or governmental subdivision shall be made by delivering the summons as follows:

1. upon any domestic or foreign corporation, to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service. A business corporation may also be served pursuant to section three hundred six or three hundred seven of the business corporation law. A not-for-profit corporation may also be served pursuant to section three hundred six or three hundred seven of the not-for-profit corporation law;...
3. upon any other city, to the mayor, comptroller, treasurer, counsel or clerk; or, if the city lacks such officers, to an officer performing a corresponding function under another name;
4. upon a county, to the chair or clerk of the board of supervisors, clerk, attorney or treasurer;
5. upon a town, to the supervisor or the clerk;
6. upon a village, to the mayor, clerk, or any trustee;
7. upon a school district, to a school officer, as defined in the education law; and

...

N.Y. C.P.L.R. § 311 (McKinney).

## 6. N.Y. C.P.L.R. § 308. Personal service upon a natural person - states in relevant part:

Personal service upon a natural person shall be made by any of the following methods:

1. by delivering the summons within the state to the person to be served; or
2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served ... or...
6. For purposes of this section, "actual place of business" shall include any location that the defendant, through regular solicitation or advertisement, has held out as its place of business.

N.Y. C.P.L.R. § 308 (McKinney).

## 7. None of the Trustees' actual place of business, dwelling place or usual place of abode is

31 Church Street, Southampton, NY, 11969, nor have any of the Trustees used regular

solicitation or advertisement, to hold out 31 Church Street, Southampton, NY, 11969, as

his or her place of business. *See* Affidavit of Lisa Goree at ¶ 7 (**Exhibit B**); Affidavit of Lance Gumbs at ¶ 7 (**Exhibit C**); Affidavit of Seneca Bowen at ¶ 7 (**Exhibit D**); Affidavit of Bianca Collins at ¶ 7 (**Exhibit E**); Affidavit of Germain Smith at ¶ 7 (**Exhibit F**); Affidavit of Daniel Collins, Sr. at ¶ 7 (**Exhibit G**); and Affidavit of Linda Franklin at ¶ 7 (**Exhibit H**).

8. Handing a Summons and Complaint to a random person at 31 Church Street, Southampton, NY, 11969 one day after Christmas, when that person is not an agent of the Trustees of the Shinnecock Indian Nation, and when that person was not located at any Trustees' place of business, residence, or place of abode does not constitute proper service.
9. Service by mailing alone is insufficient, and service upon another person to a location where a Defendant does not reside and which is not Defendant's actual place of business is insufficient to effect service of process. *See, Wang v. Stony Brook Univ. Hosp. ("SUNY")*, 198 A.D.3d 1013, 1014, 156 N.Y.S.3d 384, 385 (2021); *Everbank v. Kelly*, 203 A.D.3d 138, 148, 163 N.Y.S.3d 88, 97 (2022).
10. Accordingly, there has been no proper service on any Defendant pursuant to N.Y. C.P.L.R. §§ 308(2) or 311.

#### PRAYER FOR RELIEF

**WHEREFORE**, the Trustees hereby request that the Court order the following relief and enter a judgment as follows:

1. Dismissal of the Complaint for Failure to effect service of process on any of the Trustees;
2. Grant an award of costs and reasonable attorney's fees; and
3. Grant any other relief that the Court deems just and proper.

Dated: January 27, 2025  
Akwesasne, NY

By:   
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