

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

Oneida Nation,

Plaintiff

v.

Case No. 16-CV-1217

Village of Hobart, Wisconsin,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Oneida Nation (“Nation”), by and through its undersigned counsel, states and alleges as follows:

NATURE OF THE ACTION

1. The Nation brings this action for declaratory, permanent and preliminary injunctive relief under 28 U.S.C. §2201 and Fed. Rul. Civ. Proc. 65 against the Village of Hobart, Wisconsin (“Village” or “Hobart”) for a declaration of the parties’ legal rights with regard to Hobart’s assertion of authority to regulate the Nation and its officials with respect to activities occurring on trust land within the Nation’s Reservation. Specifically, the Nation seeks a declaration that the Nation, its officials, and its trust lands are not subject to the Hobart Special Event Ordinance, ch. 250, and an injunction against attempts by Hobart to impose its ordinance on these trust lands and enforce the provisions of its ordinance against the Nation, its officials,

and employees.

2. The Court has jurisdiction over this action under 28 U.S.C. §§1331 and 1362. The Nation maintains a government-to-government relationship with the United States and has a governing body duly recognized by the Secretary of the Interior. 81 Fed. Reg. No. 86, at 26829 (“Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin”)), May 4, 2016. The Nation asserts claims arising under the Constitution, laws and treaties of the United States, including but not limited to Art. I, §8, cl. 3, Art. II, §2, cl. 2, and Art. VI of the United States Constitution; the Treaty with the Oneidas, February 3, 1838, 7 Stat. 566; the Indian Reorganization Act of 1934, 25 U.S.C. §461 *et seq.*; and the federal common law.

VENUE

3. Venue is proper in this district under 28 U.S.C. §1391(b) inasmuch as the Nation’s trust lands and the Village of Hobart are located within the district and the events giving rise to the claims made by the Nation occurred within the district.

PARTIES

4. Plaintiff Nation is a successor in interest to the Oneida Nation recognized by the United States in the Treaty of Fort Stanwix, Oct. 22, 1784, 7 stat. 15, the Treaty of Fort Harmar, Jan. 9, 1789, 7 Stat. 33, and the Treaty of Canandaigua, Nov. 11, 1794, 7 Stat. 44. The Nation has continuously since 1794 received or been entitled to receive annuity payments under the Treaty of Canandaigua. The Nation is organized pursuant to a constitution adopted under the Indian Reorganization Act of 1934, 25 U.S.C. §476, and approved by the Secretary of the Interior on December 31, 1936. The Nation’s principal government offices are located at N7210 Seminary Road, Oneida, Wisconsin 54155.

5. Defendant Village of Hobart is an incorporated municipality in Brown County, State of Wisconsin. Its principal offices are located at 2990 South Pine Tree Road, Oneida, Wisconsin 54155.

ALLEGATIONS COMMON TO ALL CLAIMS

6. On February 3, 1838, the United States executed a treaty with the First Christian and Orchard Parties of the Oneidas to set aside a tract of recently ceded Menominee territory for the Oneidas. 7 stat. 566. Under Article 2 of the treaty, the reserved tract was “to be held as other Indian lands are held...” containing approximately 65,400 acres (“Oneida Reservation”). *Id.* The First Christian and Orchard Parties are now organized as the Oneida Nation pursuant to the Indian Reorganization Act.

7. On June 18, 1934, Congress enacted the Indian Reorganization Act (the “IRA”), which, among other things, authorizes the Secretary of the Interior to take lands into trust for tribes. 48 stat. 984, codified as amended at 25U.S.C. §461, *et seq.* As authorized by the IRA and in accordance with governing regulations, the Nation from time to time since 1934 applied for certain lands to be placed into trust by the United States for the benefit of the Nation. 25 C.F.R. Part 151.

8. Specifically, the Nation applied for and in 1996 and 1995, respectively, parcels HB-1355 and HB-1355-1, as identified in Brown County tax records, were placed into trust by the United States for the Nation. These trust parcels are identified herein as the Nation’s Apple Orchard.

9. Specifically, the Nation applied for and in 2006, the following parcels, as identified as Brown County tax records, were placed into trust by the United States for the Nation: 6H-765-2-

1; 6H-765-2; 6H-765-1; 6H-765-1-1; HB-753; HB-753-2; HB-746; HB-745; HB-746-3. These parcels are identified herein as the Cultural Heritage Site.

10. In 2015, citing an ordinance repealed and replaced in 2016, the Hobart Chief of Police advised employees of the Nation that the Nation was obliged to apply for a special event ordinance for the 2015 Big Apple Fest. By letter dated September 3, 2015, Chairwoman Danforth of the Nation advised the Hobart President that the Nation would not apply for such a permit. The 2015 Big Apple Fest took place with no further objection and no interference from Hobart.

11. On March 1, 2016, the Village of Hobart adopted Ordinance No. 03-2016, its Special Event Permit Ordinance. Ch. 250, Village of Hobart Municipal Code. The ordinance purports to apply to all private and public land located within the Village. Further, the ordinance purports to require “any person, firm, partnership association, corporation, company, governmental entity, or organization of any kind” to obtain a permit from the Village, setting conditions for the conduct of any event where fifty (50) or more persons might gather on any such land. Further, the ordinance purports to impose upon any person or entity subject to the ordinance penalties in an amount up to \$10,000.00 per violation and, by reference to §1-3 of the Village code and upon failure to pay the penalty, imprisonment for up to 90 days, for each violation of the ordinance.

12. The Nation has publicly announced that the 2016 Big Apple Fest will take place between the hours of 10 a.m. to 4 p.m. on September 17, 2016. Big Apple Fest activities take place at the Nation’s Apple Orchard and the Cultural Heritage Site, both of which are held in trust by the United States for the Nation are located on State Highway 54.

13. Transportation between the two sites for the event is offered by the Nation. Traffic

on Highway 54 for the event is detoured onto a county road, in accordance with permits obtained by the Nation from the Wisconsin Department of Transportation and Brown County.

14. All activities at the 2016 Big Apple Fest, the seventh such annual event conducted by the Nation, are subject to the Nation's immediate control and supervision in the person of the Nation's Special Event Coordinator. It is not a money-making enterprise but is a family oriented event that is free and open to the public. Activities include a farmer's market, a petting zoo, an apple pie contest, art programs for children, hay-rides, tours of historic Oneida log homes, food vendors, and apple picking.

15. All activities are governed by laws of the Nation and all vendors are subject to permitting (which requires, among other things, the maintenance of liability insurance) and inspection by the Nation.

16. Security and traffic management for the Big Apple Fest are provided by officers of the Oneida Security Department and the Oneida Police Department, twelve (12) from the former department and three (3) from the latter department. Officers from the Oneida Police Department are independently authorized to enforce state law on the Reservation and are also cross-deputized by Brown County to enforce state criminal law. In addition, three (3) nurses in the employ of the Nation will be present and staff a first aid station.

17. On August 18, 2016, the Hobart Chief of Police emailed the Nation's Special Event Coordinator to advise that the Nation is obliged to obtain a permit under Hobart's Special Event Permit Ordinance.

18. On September 2, 2016, Counsel for Hobart wrote the Nation's Special Event Coordinator to advise that the Nation must apply for a permit under Hobart's Special Event

Permit Ordinance no later than 4 p.m., Friday, September 9, 2016, for the Big Apple Fest.

Counsel for Hobart further advised that, in the event the Nation failed to do so, the Nation and “all responsible officials” will be prosecuted for violation of the ordinance, as authorized under §1-3; this provision, in turn, authorizes fines up to \$10,000.00 per offense and imprisonment for up to ninety (90) days for failure to pay the fines.

FIRST CLAIM FOR RELIEF

(Federal pre-emption)

19. The Nation repeats and incorporates by reference herein the allegations in paragraphs 1 through 18.

20. Under federal common law and rules governing construction of Indian statutes, including the IRA, federal law pre-empts the application of state and local law and regulation to recognized tribes and their trust property located within Indian country, 18 U.S.C. §1151.

21. Federal regulation of the Nation’s trust lands is comprehensive and pervasive and precludes state and local regulation by virtue of the Supremacy Clause of the United States Constitution. U.S. Const., Art. VI, §2.

22. Hobart’s attempt to regulate activity on and the use and enjoyment of the Nation’s trust lands through its Special Event Permit Ordinance is pre-empted by the pervasive and comprehensive federal regulation of the Nation’s trust lands.

SECOND CLAIM FOR RELIEF

(Infringement of tribal self-government)

23. The Nation repeats and incorporates by reference herein the allegations in paragraphs 1 through 18.

24. The Nation holds inherent powers of self-government, including the authority to manage and regulate the Oneida Reservation and the Nation's trust lands.

25. Another of the Nation's inherent powers of self-government is immunity from local and state regulation as an entity and efforts to prosecute the Nation, its elected officials, and its employees for alleged violations of state and local laws when acting in accordance with tribal authority.

26. The Nation's interest in regulating its trust lands, including the conduct of special events thereon, far outweighs any interest the Village has in regulating the Nation's trust lands for the same purpose.

27. The Nation comprehensively manages and regulates the conduct of special events on its trust lands in general, and the annual Big Apple Fest in particular, leaving no opportunity for the interstitial exercise of any local or state authority in that regard.

28. It is overriding federal policy and law to protect the Nation in the exercise of its inherent powers of self-government, including regulation of its trust lands for purposes of special events and immunity of the Nation, its officials, and employees in the exercise thereof.

29. Hobart's attempt to impose its Special Event Permit Ordinance on the trust lands and thereby regulate 2016 Apple Fest violates the Nation's inherent powers of self-government and is, therefore, pre-empted by federal law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Oneida Nation respectfully prays for the following relief:

1. A declaration that the Nation, its officials, and its trust lands are immune from Hobart's Special Event Permit Ordinance and that Hobart lacks authority to enforce the

ordinance against the Nation, its officials, and employees;

2. A permanent injunction against Hobart's attempt to impose its Special Event Permit Ordinance on the Nation's trust lands and any effort by Hobart and its officials to enforce the ordinance as to the Nation, its officials, and its employees;

3. A preliminary injunction against any attempts by Hobart and its officials to impose its Special Event Permit Ordinance on the Nation, its official, and its employees in relation to the conduct of the 2016 Apple Fest on the Nation's trust lands;

4. Attorneys' fees and costs of the action; and

5. All relief available, at law or in equity to enforce the rights of the Tribe as alleged in this Complaint, and such other and further relief, both special and general, at law or in equity as the Court may deem just and proper.

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