

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Unkechaug Indian Nation v. Treadwell

2021 N.Y. Slip Op. 01286 (App. Div. 2021) · No. 2020-03645; 2020-06690 · Decided March 3, 2021

SUMMARY

The Appellate Division, Second Department, affirmed orders dismissing as academic counterclaims concerning possessory rights to property within the Poospatuck Indian Reservation and denying injunctive relief. The court held that the Nation’s sovereign authority and a later tribal undesirability determination deprived the state court of subject matter jurisdiction over the underlying dispute. The court also dismissed the appeal from the denial of reargument and affirmed the denial of renewal.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; Francesca E. Connolly, J.; Valerie Brathwaite Nelson, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	March 3, 2021
DOCKET	2020-03645; 2020-06690
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from orders that, among other things, effectively dismissed their counterclaims as academic, denied their motion for a preliminary injunction, and denied leave to renew and reargue opposition to the Nation's summary-judgment motion. The Appellate Division deemed the appeal from the sua sponte dismissal of the counterclaims an application for leave to appeal, granted leave, dismissed the appeal from denial of reargument, and affirmed the orders insofar as reviewed.
STANDARD OF REVIEW	De novo review of subject matter jurisdiction and the legal effect of sovereign immunity; abuse-of-discretion review of leave to renew; reargument denial is not appealable.
PRECEDENTIAL VALUE	published

PARTIES

Danielle Treadwell, SmokesRUs, Inc. v. Unkechaug Indian Nation

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QUESTIONS PRESENTED

1. Whether the Nation's waiver of sovereign immunity in seeking judicial recognition and enforcement of the 2018 tribal determination extended to defendants' claims concerning the later 2019 tribal undesirability determination.
2. Whether the 2019 tribal undesirability determination deprived the state court of subject matter jurisdiction over the parties' dispute concerning possessory rights in reservation property.
3. Whether the state court was required or authorized to review the 2019 tribal determination under principles of comity or the Indian Civil Rights Act.
4. Whether the appeal from denial of reargument was appealable.
5. Whether defendants were entitled to leave to renew based on new facts.

HOLDINGS

1. By bringing the April 2018 tribal determination concerning Curtis's possessory rights before the state court and seeking a declaration and enforcement, the Nation waived sovereign immunity only as to that determination and its enforcement; the waiver did not extend to the separate 2019 undesirability determination.
2. Once the Nation adopted the 2019 undesirability determination and related directives under its sovereign authority, the state court lacked subject matter jurisdiction to determine Danielle's rights in the disputed property, and the claims became academic.
3. The state court properly declined to consider whether the 2019 tribal determination was entitled to comity or whether it violated the Tribal Rules or the Indian Civil Rights Act because the Nation did not ask the court to review or enforce that determination.
4. No appeal lies from an order denying reargument; the appeal from that portion of the July 9, 2020 order was properly dismissed.
5. The Supreme Court properly denied leave to renew because defendants failed to present new facts that would change the prior determination.

KEY QUOTATIONS

"Because of the retained sovereignty of Indian Nations, the subject matter jurisdiction of state courts "must be predicated on explicit authorization from Congress to address matters of tribal self-government""

“Thus, “when it comes to Indian affairs, state courts are courts of limited jurisdiction””

“However, “a waiver of sovereign immunity cannot, on its own, extend a court's subject matter jurisdiction””

FACTUAL BACKGROUND

The Unkechaug Indian Nation, a State-recognized Indian tribe occupying the Poospatuck Reservation, sought enforcement and recognition of an April 2018 Tribal Council determination confirming Curtis C. Treadwell's right to possess property within the reservation. Danielle Treadwell and SmokesRUs, Inc. claimed possessory rights to a disputed portion of that property and asserted counterclaims. While the action was pending, the Nation conducted a 2019 membership vote declaring Danielle an undesirable person under the Tribal Rules and adopted directives excluding her from the disputed property. The Nation then informed the Supreme Court of that tribal action without asking the court to validate or enforce it.

PROCEDURAL HISTORY

The Nation commenced an action seeking declarations concerning the authenticity and binding effect of a 2018 Tribal Government determination awarding possessory rights in reservation property. Defendants asserted counterclaims seeking declarations that Danielle Treadwell possessed rights to part of the property. The Supreme Court initially determined that the Nation waived sovereign immunity as to the inverse declarations, but later concluded that a 2019 tribal undesirability determination created an independent sovereign basis for excluding Danielle and rendered the dispute academic; it dismissed the amended complaint and, effectively, the counterclaims, and denied defendants' injunctive, renewal, and reargument requests. The Appellate Division affirmed, except that it dismissed the nonappealable reargument appeal.

DISPOSITION

affirmed

CASES CITED

- Matter of Spota v. Jackson, 10 N.Y.3d 46, 53, 48 n. 1 (2008)
- Gristede's Foods, Inc. v. Unkechaug Nation, 660 F. Supp. 2d 442, 445 (E.D.N.Y.)
- Montana v. United States, 450 U.S. 544, 564 (1981)
- United States v. Kagama, 118 U.S. 375, 381-382 (1886)
- Cayuga Nation v. Campbell, 34 N.Y.3d 282, 291, 292, 293, 296 (2019)
- Oneida Indian Nation v. Phillips, 981 F.3d 157, 170-171 (2d Cir.)
- Rupp v. Omaha Indian Tribe, 45 F.3d 1241, 1244 (8th Cir.)
- Cayuga Indian Nation of New York v. Seneca County, New York, 260 F. Supp. 3d 290, 299 (W.D.N.Y.)
- Wells Fargo Bank, N.A. v. Chukchansi Economic Development Authority, 118 A.D.3d 550, 551 (1st Dep't)
- Sue/Perior Concrete & Paving, Inc. v. Seneca Gaming Corp., 99 A.D.3d 1203, 1204 (4th Dep't)
- Cayuga Nation v. Tanner, 824 F.3d 321, 327 (2d Cir.)
- Bowen v. Doyle, 880 F. Supp. 99, 114 (W.D.N.Y.), aff'd, 230 F.3d 525 (2d Cir.)

- *Matter of Jimerson v. Halftown Estate*, 22 A.D.2d 417, 419 (4th Dep't)
- *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 15 (1987)
- *FMC Corp. v. Shoshone-Bannock Tribes*, 942 F.3d 916, 930 (9th Cir.)
- *MacArthur v. San Juan County*, 497 F.3d 1057, 1067 (10th Cir.)
- *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899, 903 (9th Cir.)
- *Hala v. Orange Regional Medical Center*, 178 A.D.3d 151, 166 (2d Dep't)
- *Matter of Long Island Forum for Technology v. New York State Division of Human Rights*, 85 A.D.3d 791, 794 (2d Dep't)
- *Matter of New S. Insurance Co. v. Rosado*, 125 A.D.3d 867 (2d Dep't)
- *Matter of Allstate Insurance Co. v. Robinson*, 188 A.D.3d 1186 (2d Dep't)

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