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Land claim tossed: Federal court throws out McCurn's $248 million award

By DENISE M. CHAMPAGNE

Finger Lakes Times
dchampagne@fltimes.com

It's all comes down to time — and the nation's second-highest court ruled Tuesday that the Cayuga Indian Nation of New York ran out of it long ago.

In a 2-1 decision, the 2nd U.S. Circuit Court of Appeals in Manhattan rejected federal Judge Neal McCurn's 1994 determination that the passage of time was not an issue; he awarded the tribe $248 million.

The higher court — in keeping with the March 29 U.S. Supreme Court decision in "City of Sherrill v. the Oneida Indian Nation of New York" — ruled that an Indian tribe cannot reclaim land 200 years after the fact and assert sovereignty.

The Nation will appeal; its successors in interest, the Seneca-Cayuga Tribe of Oklahoma, is reviewing the decision and its options.

"The Cayuga Nation is disappointed, respectively disagrees with (Tuesday's) decision and will appeal," said Syracuse attorney Daniel French who represents Clint Halftown, the federally recognized Nation spokesman.

"We're obviously very disappointed with the court's 2-1 decision," said Glenn Feldman, an Arizona lawyer representing the Seneca-Cayuga Tribe of Oklahoma. "The two-judge majority interpreted the recent Sherrill decision far more broadly than the Supreme Court intended, in our view.

“The dissenting judge’s opinion is far closer to our view ...”

The decision throws out the tribes’ claim to 64,015 acres in Seneca and Cayuga counties, which a federal court had ruled the state illegally obtained more than 200 years ago; also gone is the $247.9 million award granted jointly to the two tribes, which later requested it be upped to $1.7 billion.

Gov. George Pataki, who tried to negotiate Catskill casino deals with the two tribes to settle the **land claim**s, called the decision “a tremendous victory for the property owners and taxpayers in Central New York.

“For years, we’ve been fighting to protect the interests of homeowners and businesses in Cayuga and Seneca counties, and we’re pleased that the court has ruled in our favor,” Pataki said in a statement issued by his office yesterday.

“We will continue to take whatever steps are necessary to protect New Yorkers — from Grand Island to Long Island — as we move forward to resolve any remaining **land claim**s with the state.”

Sen. Michael Nozzolio, R-54 of Fayette, said the decision completely throws out McCurn’s earlier rulings, affirms the rights of property owners in Seneca and Cayuga counties and “ends the judicial harassment that homeowners have faced for the last three decades.

“Taken on the heels of the U.S. Supreme Court decision in Sherrill, this is a dynamic one-two punch that sends a knock-out blow to the Cayuga case,” he said. “It’s a tremendous victory for our homeowners and it was a very well-fought battle in our courts and at home.”

Nozzolio said the decision focuses on an issue on everybody’s mind: How can a group bring a lawsuit for something that happened 200 years ago?

“The court basically said, ‘You can’t do that. You can’t abandon property and come back 200 years later.”

Nozzolio said his office will immediately be reviewing the options with legal counsel, but it appears the decision knocks out any Indian enterprise in the Cayuga claim.

The Cayuga Indian Nation owns four businesses — two gas station/convenience stores and electronic bingo facilities each — in Seneca Falls and Union Springs which they claimed as sovereign and have not been paying taxes on. The land is in the claim area.

“What they own on the corner of Route 89 (and Garden Street Extension in the town of Seneca Falls) is their property, the same as any other private property,” said Seneca County Attorney Steven Getman.

“We’re still studying the full impact of the decision, and we want to proceed carefully, as we would against any other landowner, but the decision in this case certainly appears to stand for the proposition that this is private property, no different than any other private property in Seneca County.”

The Nation’s gaming operations are in question, though, because gambling is illegal in New York.

“The gaming is clearly something that has to be looked at, and I’m sure the sheriff and district attorney and [I] will be looking at it very stringently in the days and weeks to come,” Getman said.

He noted the tribes have a right to appeal to the U.S. Supreme Court but he’s optimistic it will continue to side with the landowners.

Getman said it’s also important that, hopefully with the true impacts of the case, county residents can reside with the Cayugas as neighbors and equals, as long as the Cayugas are willing to obey the same laws and pay the same taxes as any other landowner.

“I’m sure the people of Seneca County would welcome them as friends and neighbors,” he said.

William Dorr, of the Pittsford Harris Beach law firm, which Nozzolio works for, represented the two counties. He said that when the firm took on the case around 1997, it analyzed it and said the undue delay in asserting a right or privilege — called the doctrine of laches — should be a good defense.

He said that when the U.S. government was later brought into the case as a plaintiff, it asked for the ejectment of the citizens of Seneca and Cayuga counties.

“That is just beyond the most contemptible position that our government could ever take," Dorr said.

Ejectment, allowing the eviction of citizens in the claim area, was one of the few things McCurn threw out in the **land claim**, which was part of the tribes’ failed appeal.

Dorr also said there can’t be gaming on land owned by private citizens and that all land purchased by the tribes is not “Indian country” and, therefore, cannot have gaming facilities.

“That should be stopped forthwith,” he said, noting the decision has “been a long time coming.

“It’s clearly the right decision,” Dorr said. “And it’s clearly the fair decision. For [25] years, to have the people of Seneca and Cayuga counties live under this cloud, particularly when the U.S. government has been against its own citizens, is just contemptible. The court has put it right.”

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