

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

ONEIDA TRIBE OF INDIANS)
 OF WISCONSIN,)
)
 Plaintiff,)
)
 v.)
)
 VILLAGE OF HOBART, WISCONSIN,)
)
 Defendant/Third-Party Plaintiff,)
)
 v.)
)
 UNITED STATES OF AMERICA, et al.,)
)
 Third-Party Defendants.)
 _____)

Case No. 1:10-cv-00137-WCG

Affidavit of Rebecca M. Webster

Rebecca M. Webster, being first duly sworn on oath, deposes and states as follows:

1. I am employed as Senior Staff Attorney by the Oneida Tribe of Indians of Wisconsin (the “Tribe”), am admitted to practice before this Court, and have appeared in this matter. I make this affidavit in support of the Tribe’s Motion for Contempt Order. I have personal knowledge of the facts set forth in this affidavit and, if called upon, could and would testify as to these facts.

2. I have been employed as a staff attorney by the Tribe since May 2003. My duties include working with the Tribe’s administrative agencies that manage the Tribe’s fee and trust lands. As a result, I am familiar with the Tribe’s laws and records relating to management of the Tribe’s fee and trust lands. In addition, my duties require familiarity with and reliance upon Brown and Outagamie County records, as they relate to the Tribe’s fee and trust lands.

3. On May 18, 2011, the Village of Hobart submitted a demand for payment to the United States Bureau of Indian Affairs (“BIA”) containing a list of trust parcels (the “Hobart List”) for which there were outstanding stormwater taxes. The Hobart List shows a total of 143 parcels held in trust by the United States within Hobart’s boundaries, and includes 42 parcels for which Hobart now contests trust status, as further discussed below.

4. In the fall of 2011, based upon my examination of county and tribal records, I prepared a spreadsheet listing 148 parcels held in trust by the United States for the Tribe within Hobart’s boundaries. The spreadsheet includes the 143 parcels on the Hobart List, except for one parcel held in trust by the United States for an individual tribal member, and includes several additional parcels which for various reasons do not appear on the Hobart List. I also prepared an Affidavit for filing in support of the Tribe’s Motion for Summary Judgment, and attached the spreadsheet as Exhibit A to my Affidavit. ECF No. 49 ¶ 5 and Exh. A. In my Affidavit, I explained the reasons why the number of parcels on the spreadsheet differed from the number of parcels on the Hobart List. *Id.* ¶¶ 6-10.

5. On September 14, 2011, counsel for the Tribe sent counsel for Hobart a proposed stipulation of facts which stated the United States holds 148 parcels of land in trust for the Tribe within Hobart’s boundaries. On October 14, 2011, counsel for the Tribe sent counsel for Hobart a second draft of the proposed stipulation of facts, accompanied by the spreadsheet attached as Exhibit A to my Affidavit, and a statement of the reasons why the number of parcels on the spreadsheet differed from the number of parcels on the Hobart List. (A copy of counsel’s October 14, 2011 email correspondence is attached hereto as Exhibit A). The proposed stipulation of facts was the subject of detailed consideration by counsel for the parties over a period of four months, as reflected in multiple drafts and numerous communications between counsel by telephone and

email. In January of 2012, the parties reached consensus on the proposed stipulation of facts.

6. On January 23, 2012, the Tribe filed its Motion for Summary Judgment, together with my Affidavit, the Stipulation of Facts executed by the parties, and a Statement of Proposed Material Facts. ECF Nos. 47, 49, 50 and 51.

7. The Stipulation of Facts states: “The United States holds 148 parcels of land in trust for the Tribe located within the boundaries of Hobart; these parcels are referred to collectively as the subject trust lands.” ECF No. 50 ¶ 4. The Stipulation of Facts also states: “The subject trust lands total approximately 1400 acres, all of which parcels were either already held or placed into trust between 1937 and 2007.” *Id.* ¶ 5.

8. Paragraph 6 of the Tribe’s Statement of Proposed Material Facts states: “The United States holds 148 parcels of land in trust for the Tribe located within the boundaries of Hobart and the Oneida Reservation; these parcels are referred to collectively herein as the subject trust lands.” ECF No. 51, ¶ 6.

9. On March 23, 2012, Hobart filed a Response to the Tribe’s Statement of Proposed Material Facts. ECF No. 61. With respect to Paragraph 6 of the Tribe’s Statement of Proposed Material Facts, Hobart responded: “Admit.” *Id.* ¶ 6.

10. On September 5, 2012, this Court entered an Order granting the Tribe’s Motion for Summary Judgment. ECF No. 68. In the Order, the Court found that “the United States holds in trust for the Tribe 148 parcels comprising approximately 1400 acres of land that are located within the boundaries of Hobart.” *Id.* (citing Stipulation of Facts, ECF 50 ¶¶ 4, 5). On the same date, the Court entered judgment in favor of the Tribe declaring the Tribe’s trust land is immune from Hobart’s Storm Water Management Utility Ordinance, and enjoining Hobart “from attempting to impose and collect ‘charges’ under the Ordinance from the Tribe or from foreclosing on the

Tribe's lands." ECF No. 69.

11. On October 18, 2013, the United States Court of Appeals for the Seventh Circuit affirmed the Court's Order and Judgment. *Oneida Tribe of Indians of Wisconsin v. Village of Hobart*, 732 F. 3d 837 (7th Cir. 2013). In its Decision, the Seventh Circuit noted, "title to 148 parcels of land—comprising about 1400 acres...—is held by the United States in trust for the Oneida tribe." *Id.* at 838.

12. Hobart filed a petition for a writ of certiorari seeking review of the Seventh Circuit's Decision by the United States Supreme Court. On May 27, 2014, the Supreme Court denied Hobart's petition. *Village of Hobart v. Oneida Tribe of Indians of Wisconsin*, 134 S.Ct. 2661 (2014).

13. On February 26, 2013, counsel for the Tribe sent counsel for Hobart a letter noting that stormwater taxes had recently been assessed against the subject trust lands, and requesting that Hobart remove the stormwater taxes from the subject trust lands. (A copy of counsel's February 26, 2013 letter is attached hereto as Exhibit B).

14. On March 6, 2013, counsel for Hobart sent counsel for the Tribe a letter stating that Hobart had "no intention of doing anything in violation of Judge Griesbach's Order." (A copy of counsel's March 6, 2013 letter is attached hereto as Exhibit C).

15. From June 4, 2014 through August 11, 2014, following the Supreme Court's denial of Hobart's petition for a writ of certiorari, counsel for the Tribe attempted to address implementation of the Court's Order and Judgment with counsel for Hobart. Counsel for Hobart did not respond to several inquiries sent by email.

16. On October 9, 2014, Hobart Village President Richard Heidel sent a letter to Tribal Chairwoman Cristina Danforth with an enclosed list of 22 trust parcels. In his letter, President

Heidel requested documentation that the 22 parcels “were truly and properly transferred into trust and that transfer was accepted by the United States.” President Heidel also indicated, “Absent the provision of such information, it is the Village’s intention to treat these parcels the same as any other fee parcel within the Village boundaries.” (A copy of President Heidel’s October 9, 2014 letter is attached hereto as Exhibit D). The 22 parcels appear on the spreadsheet attached as Exhibit A to my Affidavit (ECF No. 49) and are part of the 148 parcels constituting the subject trust lands. The 22 properties are also on the Hobart List.

17. On October 21, 2014, Hobart adopted Resolution 2014-16 titled, “A Resolution Authorizing the Cancellation of Stormwater Fees for Proven Trust Parcels” (the “Hobart Resolution”). The Hobart Resolution resolves that “the 2007-2013 stormwater fees for parcels proven to be USA IN TRUST be cancelled,” and further resolves that “the 2007-2013 stormwater fees for the 42 parcels (EXHIBIT ‘A’ TO THIS RESOLUTION) that were placed in TRUST by the Oneida Tribe of Indians, but have no proof of trust status, shall remain on the roll until proof of trust status is provided...” (A copy of the minutes for the October 21, 2014 Hobart Board meeting is attached hereto as Exhibit E; Hobart has not provided a copy of the Hobart Resolution to the Tribe, but the Tribe has obtained an unsigned copy, which is attached hereto as Exhibit F).

18. The 42 parcels identified in Exhibit A to the Hobart Resolution include the 22 parcels identified in President Heidel’s October 9, 2014 letter, and 20 parcels which were previously subject to a railroad right-of-way. All 42 parcels appear on the spreadsheet attached as Exhibit A to my Affidavit (ECF No. 49) and are among the 148 parcels constituting the subject trust lands. All 42 parcels are also on the Hobart List.

19. In 2006, Hobart sued the Tribe in the Brown County Circuit Court seeking to quiet title to the 20 parcels which were previously subject to the railroad right-of-way. The Circuit

Court dismissed Hobart's claims due to Hobart's lack of standing, and Wisconsin Court of Appeals affirmed. *Village of Hobart v. Oneida Tribe of Indians of Wisconsin*, 303 Wis.2d 761, 736 N.W.2d 896 (2007). Prior to allotment of the Oneida Reservation, the United States Congress passed an Act approving the grant of the railroad right-of-way. Pursuant to the Act, the railroad company received a limited fee interest in the right-of-way land, and the right-of-way land was thereafter not available for allotment. Upon abandonment of the right-of-way, the railroad company's limited fee interest reverted to the United States, which continues to hold the land in trust for the Tribe pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566.

20. On November 18, 2014, Tribal Chairwoman Cristina Danforth sent a letter to Village President Heidel accompanied by a chart listing the BIA recording numbers and the Brown County recording numbers for the 22 parcels identified in President Heidel's October 9, 2014 letter, and accompanied by copies of the trust deeds for each of the 22 parcels. (A copy of Chairwoman Danforth's November 18, 2014 letter and the chart and deeds are attached hereto as Exhibit G).

21. On January 14, 2015, counsel for the Tribe sent counsel for Hobart a letter notifying him that the 42 trust parcels identified in the Hobart Resolution were among the 148 parcels constituting the trust lands subject to the Court's Order, that all charges as to those parcels should be immediately expunged, and that the Tribe may seek judicial relief if Hobart does not remove the stormwater taxes from the 42 parcels. (A copy of counsel's January 14, 2015 letter is attached hereto as Exhibit H).

22. To date, Hobart has not responded to Tribal Chairwoman Danforth's November 18, 2014 letter, or to counsel's January 14, 2015 letter. Hobart also has not taken any action to remove the stormwater taxes from the 42 parcels. The stormwater taxes on these properties now

appear as delinquent, and may be subject to delinquency and foreclosure proceedings.

FURTHER AFFIANT SAYETH NOT.

s/ Rebecca M. Webster
Rebecca M. Webster

State of Wisconsin)
)ss
County of Brown)
Subscribed and sworn to before me
this 4th day of May, 2015.

s/ Heidi M. Wennesheimer
Notary Public, State of Wisconsin
My commission expires: June 20, 2017