

COURT OF APPEALS

Oneida Nation Indian Preference Department,
Appellant,

Case #: 16-AC-007

v.

August 30, 2016

Titletown Flooring, LLC, and
Kenneth A. Schreiber,
Respondents.

DISMISSAL ORDER and DENIAL OF MOTION FOR A STAY

Reviewing Oneida Appellate Judges: Diane House, Chad Hendricks, and Jennifer Hill-Kelley.

Procedural Background

On July 27, 2016, The Oneida Judiciary Trial Court (hereinafter “Trial Court”) accepted jurisdiction of *Titletown Flooring, LLC, and Kenneth A. Schreiber v. Oneida Nation Indian Preference Department*, Case No. 16-TC-050, and 1) issued an Order (hereinafter “Order”) denying the Oneida Nation Indian Preference Department’s (hereinafter “Indian Preference Department”) motion for dismissal; and 2) set the case to trial for September 29, 2016, along with instructions. On August 12, 2016, the Indian Preference Department filed a Petition for Permission to Appeal the Trial Court’s July 27, 2016 Order with the Oneida Judiciary’s Appellate Court pursuant to Oneida Rules of Appellate Procedure §154.6. On August 25, 2016, The Indian Preference Department further petitioned for a Stay of the Trial Court’s July 27, 2016 Order pursuant to Oneida Rules of Appellate Procedure §154.5-1(a).

The Oneida Rules of Appellate Procedure §154.6-1, *Appeal by Permission*, permits a party an

appeal from an interlocutory order “...by filing a Petition for Permission to Appeal with the Clerk within **ten (10) business days** after entry of such order with proof of service on all parties to the action” (emphasis added). The Order that is facing the interlocutory challenge was issued on July 27, 2016. This would require the Indian Preference Department to file with the Clerk the Petition for Permission to Appeal within ten (10) business days after July 27, 2016, or by August 10, 2016. The Indian Preference Department did not file their Petition for Permission to Appeal with the Clerk until August 12, 2016, two business days after the time allowed to file this appeal with the Oneida Judiciary’s Appellate Court.

Decision

This Court has the responsibility to be fair and consistent in its interpretation of existing Oneida laws. When there are timelines given, all that come to the Court must abide by these timelines. This Court, on its own motion pursuant to Oneida Rules of Appellate Procedure §154.4-2, hereby takes judicial notice of the Indian Preference Department’s failure to file the Petition for Permission to Appeal the Trial Court’s July 27, 2016 Order within the ten (10) business days after entry of such order as required by Oneida Rules of Appellate Procedure §154.6-1. Based upon this finding, this Court has determined that an entry of a dismissal order in this case is justified as a consequence for failure to file said Petition within the timelines given.

Pursuant to §154.13-1(b)(4), this Court hereby directs a dismissal order be entered in this matter and dismisses this appeal in accordance with §154.15-3(a), with said dismissal being granted with prejudice. The Motion for Stay of 16-TC-050 is also hereby denied.

By the authority vested in the Oneida Judiciary, Court of Appeals pursuant to Oneida General Tribal Council Resolution 01-07-13-B, this Dismissal Order is entered this 30th day of August, 2016 in the matter of Case # 16-AC-007, *Oneida Nation Indian Preference Department v. Titledown Flooring, and Kenneth Schreiber.*

It is so ordered.