

Oneida Tribal Judicial System

Onayote ? a-ka Tsi? Shakotiya? Tolé hte

APPELLATE COURT

**Looney and Lizzie Mouse,
Appellant**

Docket No. 13-AC-009 -002

v.

**Division of Land Management,
Land Commission,
Respondent**

Date: January 31, 2014

DECISION

This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers Janice L. McLester, Lois Powless, Jennifer Webster, Stanley R. Webster and James Van Stippen (Pro Tem) presiding.

I. Background

On January 21, 2014, Appellants, Looney and Lizzie Mouse, filed Motion to Stay of Enforcement of Oneida Appeals Commission decision, Docket No. 13-AC-009 of November 19, 2013, affirming a May 13, 2013 Land Commission action of foreclosure and termination of lease. The Oneida Land Commission Decision was based on a Motion for Reconsideration in Case No. 2013-LCCV-002.

We deny the Motion to Stay of Enforcement.

On January 22, 2014, Appellants filed their Request for Injunction/Temporary Restraining Order to prevent the Oneida Division of Land Management from 1) changing the locks, 2) taking possession of the home located at 2418 Ironwood Drive and 3) enforcing the Oneida Appeals Commission decision dated November 19, 2013 until the Oneida General Tribal Council has a chance to review the November 19, 2013 decision. This matter is now being reviewed in the Trial Court under Docket No. 14-TC-002.

A. Jurisdiction

This case came to us as an appeal of an original hearing body decision in 2013, the Oneida Land Commission.

B. Factual Background

The May 13, 2013 decision of the Land Commission denied Appellants' Motion for Reconsideration of their original foreclosure decision of February 11, 2013. Appellants appealed on June 28, 2013 to the Oneida Tribal Judicial System, Appellate Court alleging the May 13, 2013 decision contained procedural irregularities in that the Land Commission erroneously based their decision on new information that was not included in the original foreclosure prior to the reconsideration hearing.

An Initial Review was held on July 10, 2013 and the case was accepted under Rules of Appellate Procedure, Rule 9(D)(5) which permits accepting an appeal when there is exhibited a procedural irregularity and a Stay Upon Appeal granted in accordance with Rule 17 Relief Pending Appeal.

After an exchange of briefs a deliberation was held to review the merits of the appeal and on November 19, 2013 the Appellate Body of the Oneida Tribal Judicial System filed their decision to affirm the Land Commission's decision and lifted a Stay thereby allowing the foreclosure and lease cancellation to proceed.

On November 27, 2013, the Mouse's were formally noticed by the Oneida Police Department that on January 27, 2014 the Division of Land Management would change the locks and take possession of the home located on 2418 Ironwood Drive, Green Bay, Wisconsin. This was a sixty-one (61) day notification of possession.

On January 21, 2014, fifty-four (54) days after being noticed of possession, the Mouse's filed a Motion to Stay the Enforcement of November 19, 2013 affirming decision at the Oneida Tribal Judicial System, Appellate Court. In accordance with Oneida Tribal Judicial System, Rules of Appellate Procedure, Rule 11(A)(2)(4) Motions: (2) The moving party must serve the other side with a copy of the motion in accordance with Rule 3(A). (4) Response to the motion is due within ten (10) days of the receipt of the motion, after which time the appellate court will deliberate upon the arguments/positions of the parties, and render a decision which will grant or deny the motion...

On January 22, 2014 the Mouse's filed an Injunction and Restraining Order at the Oneida Tribal Judicial System, Appellate Court indicating the documents to be part of the Appellate case under review, Docket No. 13-AC-009.

On January 28, 2014, the Respondent, Division of Land Management, filed their answer to the January 21, 2014, Motion to Stay the Enforcement.

On January 29, 2014, the Appellate body deliberated and files it's denial of the Motion.

II. Issues

Was there exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would have altered the final decision?

III. Analysis

Was there exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would have altered the final decision?

Our rules do not contemplate a Motion for Stay after a decision has been issued. Therefore we will treat Appellant's motion as a Motion for Reconsideration under Rule 24. We find the Motion for Stay of Enforcement to be untimely received under the Oneida Tribal Judicial System, Rules of Appellate Procedure, Rule 24 Reconsideration:

(A) Time: Either party may file a motion for reconsideration of a final appellate court decision within fifteen (15) days of receipt of the final decision or twenty (20) days from publication, whichever time is lesser.

On November 19, 2013 the Oneida Tribal Judicial System, Appellate Court entered their decision to affirm the May 13, 2013 decision of the Oneida Land Commission. The decision was mailed on November 19, 2013 and by allowing three (3) days for receipt, should have been received by November 22, 2013. According to Rule 24 Reconsideration, they would have had fifteen (15) days of this receipt to file, or twenty (20) days from publication. This would have been by December 9, 2013. The motion for Stay of Enforcement was received on January 21, 2014, sixty (60) days after receipt and is untimely.

On January 22, 2014, Appellants filed their Request for Injunction/Temporary Restraining Order to prevent the Oneida Division of Land Management from 1) changing the locks, 2) taking possession of the home located at 2418 Ironwood Drive and 3) enforcing the Oneida Appeals Commission decision dated November 19, 2013. Appellant's claim they are seeking a General Tribal Council meeting and ask for the proceedings to be put on hold until the Oneida General Tribal Council has a chance to review the November 19, 2013 decision.

There is no rule of law that authorizes a review of a final decision of the Appellate Court other than Rule 24 Reconsideration. The timeliness of the January 21, 2014 Motion to Stay of Enforcement is beyond the time frame required and fails to meet the requirements of Reconsideration.

IV. Decision

The Motion for Stay of Enforcement is denied based on untimely filing.

It is so ordered.