

# ONEIDA JUDICIARY

Tsi nu téshakotiya?tolétha?  
COURT OF APPEALS

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Franklin L. Cornelius,  
Appellant,

v.

Edward J. Delgado,  
Respondent,

Case No. 15-AC-004

Date: June 17, 2015

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## DECISION

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This case was refiled from the Oneida Tribal Judiciary System which was dissolved as of March 1, 2015 pursuant to Oneida General Tribal Council Resolution 01-07-13-B. Said Resolution provided, among other things, that pending cases that could not be completed by March 1, 2015 by the Oneida Tribal Judicial System be dismissed, without prejudice, and permitted to be refiled with the Oneida Judiciary. This case was timely filed with the Oneida Judiciary, Court of Appeals and was accepted. Both parties moved the Court for an Expedited Review, based upon the record, briefs, and evidence below. The parties were granted an expedited review on April 17, 2015. We have carefully reviewed the record and all pleadings and we deny the Motion for Reconsideration.

It is upon the authority of Oneida General Tribal Council Resolution 01-07-15-B and the Oneida Code of Law Chapters 150 and 154 that the Oneida Judiciary, Court of Appeals asserts the jurisdiction to hear this case.

### Background

The original case was first filed on June 10, 2014 in the Oneida Tribal Judicial System, Trial Court and dismissed on September 9, 2014. Appellant, Frank Cornelius, alleges that Respondent, then-Chairman Edward Delgado, denied him certain rights by not permitting him to be involved in the dissolution of the Oneida Seven Generations Corporation. The Oneida General Tribal Council, by motion from the floor, named Frank Cornelius as an agent representative to assist and work with the Oneida Business Committee in the dissolution of the Oneida Seven Generations Corporation. The merits of Appellant's claim were not reached because the complaint was dismissed on the basis of Sovereign Immunity. On Appeal to the Oneida Tribal Judicial System, the Appellate Court affirmed the Trial Court's decision on January 20, 2015. On February 9, 2015, the Appellant filed a Motion for Reconsideration. On February 16, 2015 the Respondent answered the motion. On February 18, 2015 Respondent's attorney filed a Revised Response to Appellant's Motion for Reconsideration and moved the Court for dismissal asserting that the Appellant presented no new evidence that would change the outcome

below. It was at that point that the Oneida Tribal Judicial System, Appellate Court determined that they would be unable to complete the case. The decision to dismiss without prejudice was handed down on February 26, 2015. The Motion for Reconsideration was not ruled on and that is the reason this case is pending today.

#### Synopsis of Original Trial

In the original trial before the Oneida Tribal Judicial System the Appellant set forth several dozen separate claims which he alleged as the basis of his case against former Tribal Chairman, Edward Delgado. The merits of those issues were not reached because the Respondent filed a Motion to Dismiss based on Sovereign Immunity and other procedural grounds. The primary issues addressed by the Trial Court were; (1) whether the appellant presented a case on which relief could be granted, (2) whether he had standing to bring the case, and (3) whether the Respondent, Oneida Tribal Chairman Edward J. Delgado, was protected by Sovereign Immunity from suit because he was acting in his official capacity.

The Trial Court ruled that the Appellant had not presented a case on which relief could be granted, nor had he established standing to bring the case and, finally, that the Respondent was, in any case, protected by Sovereign Immunity because he was acting within the scope of his official capacity. The final decision of the Trial Court was to grant the Motion to Dismiss.

In arriving at this decision, the Trial Court addressed the issue of Sovereign Immunity; specifically whether and when the Respondent is protected from suit. The Court held that Sovereign Immunity protected the officers of the Tribe, among others, who were acting within their delegated authority. This is an accurate interpretation of Sovereign Immunity by the Trial Court who did not cite Chapter 14 of the Oneida Code of Laws. We regard this omission as harmless error. This holding rendered the other issues moot. The Trial Court, after consideration of arguments, law and facts set forth in the briefs and record in this case ruled that Sovereign Immunity is an absolute defense that protects the Respondent. In issuing its final decision on September 9, 2014, the Trial Court recited: *"Petitioner seeks special privileges and rights that are not permitted by law and have not been granted by the General Tribal Council. The Court finds the rest of the Petitioner's claims moot. Chairman Delgado is protected by sovereign immunity."* This decision was appealed to the Oneida Tribal Judicial System, Appellate Court.

#### Synopsis of Original Appeal

On September 23, 2014 the Appellant, Frank Cornelius, filed a Notice of Appeal alleging the Trial Court's Decision was "clearly erroneous." The Initial Review accepted the appeal on September 25, 2014. The exchange of Appellate briefs was completed on November 12, 2014. On January 20, 2015, the Appellate Court affirmed the decision of the Trial Court. In their

words: *"Mr. Cornelius has failed to argue the dismissal, instead attempts to argue his original complaint allegations which became moot after the Trial Court's decision of sovereign immunity was entered."*

The Oneida Tribal Judicial System, Appellate Court, after consideration of the record and briefs provided by the attorneys for both parties, affirmed the Trial Court's dismissal. The critical determination was that the Appellate Court agreed that the Respondent was protected by the Sovereign Immunity of the Tribe as the duly elected Chairman while acting in his official capacity. The Appellate Court, noting the omission of the Trial Court in providing citation to a particular law, cited Chapter 14.4-1 of the Oneida Code of Laws which sets forth elements of Sovereign Immunity that governed their appellate holding. The Court further noted that the Appellant did not address the dismissal but continued to argue allegations contained within his initial petition.

The issues addressed on appeal were: (1) Whether the Appellant, Frank Cornelius, had stated a claim upon which relief can be granted, (2) Whether the Appellant had standing to bring the case, and (3) Whether Respondent is protected by the Sovereign Immunity of the Oneida Tribe.

The appellant argued in his brief that each of the 32 allegations were the specific causes for which he sought relief. He later filed a Motion to Include Additional Exhibits alleging six (6) more claims against the Respondent, dated July 22, 2014. However, nothing in the record indicates that the Motion to Include Additional Exhibits was served on the Respondent or his attorney or ruled on by the court. The Appellant asserted, among other allegations, that he was elected by the Oneida General Tribal Council to work with the Oneida Business Committee to dissolve a tribal corporation in a motion passed by the Oneida General Tribal Council. The action of the Oneida General Tribal Council referred to was a motion at a Special Meeting of the Oneida General Tribal Council on December 15, 2013 that included the phrase "for Frank Cornelius to assist and work with the (Oneida) Business Committee on the dissolution."

The Respondent's brief argued that the Appellant was not "elected" but voted by the Oneida General Tribal Council to assist and work with the Oneida Business Committee and pointed out his refusal to sign a Confidentiality Agreement. The Appellant's refusal to sign the Confidentiality Agreement limited the Oneida Business Committee's ability to share confidential materials related to the requirements of dissolution of the Seven Generations Corporation. Moreover, it was pointed out that the Appellant was granted no special powers or authority other than to "assist and work with the (Oneida) Business Committee." The Respondent's brief, nevertheless, addressed each of the allegations individually arguing that they provided no legal basis upon which relief could be granted. The Appellate court agreed. In addressing the matter of standing, the Trial Court determined that the Appellant had not established any basis to show he was authorized to do no more than to "assist and work with the (Oneida) Business

Committee.” The Appellate Court also agreed with that ruling. The Appellant’s general claims that the Tribe would, could, or might lose millions of dollars did not confirm his standing to bring suit as he was named to “assist and work with the (Oneida) Business Committee” and, as pointed out in the Trial Court’s decision, he was not granted any special powers or authority to veto or otherwise interfere with any actions that the Oneida Business Committee, as a body, deemed necessary and appropriate in carrying out the directive of the Oneida General Tribal Council to dissolve the corporation. The Appellate Court affirmed the Trial Court’s decision, the Respondent was protected by Sovereign Immunity.

#### The Motion to Reconsider

The Motion for Reconsideration is governed by Rule 24 of the Oneida Tribal Judicial System Rules of Appellate Procedure, which provides (A) timelines for filing, (B) criteria, i.e. new evidence, (C) definition of new evidence, and (D) Process for opposing party’s response. In this case, the Motion for Reconsideration was pending before the Oneida Tribal Judicial System, Appellate Court. Rule 24 was in effect at the time the Motion for Reconsideration was filed. The Motion for Reconsideration was filed by the Appellant, Frank Cornelius, on February 9, 2015 and the response to the motion was filed by the Respondent on February 16, 2015 asserting that it was untimely and should be dismissed. On February 18, 2015 the Respondent filed a Revised Response to the Motion for Reconsideration again asserting that the Motion for Reconsideration failed to present new evidence as well as being untimely. The revised response cited both the Oneida Tribal Judicial System Rules of Appellate Procedure, specifically Rule 24 (B) setting forth the criteria for reconsideration, as well as 154-10-4 of the Oneida Code of Laws, Rules of Appellate Procedure, to address the timeliness issue. The revised response requested dismissal of the Motion for Reconsideration. Rule 24 (B) was the law at the time the Motion for Reconsideration was filed with the Oneida Tribal Judicial System. Rule 154.10-4 would be applicable in this case when the case was refiled here. Under 154.10-4 the Respondent would have been out of time, however, we will apply the rule in effect at the time of motion was made, Rule 24 (D), which obviates the timeliness issue.

This case is unique in that it is a case that remained unfinished by the Oneida Tribal Judicial System though it was heard at both the Trial Court, which dismissed it on grounds that the Respondent was protected by Sovereign Immunity, and the Appellate Court which affirmed the Trial Court. The Oneida Tribal Judicial System, Appellate Court did not rule on the Motion for Reconsideration but instead dismissed the case, without prejudice on February 26, 2015. The Oneida General Tribal Council directed, in Resolution 01-07-13-B, that any uncompleted case pending in the Oneida Tribal Judicial System as of March 1, 2015 be dismissed, without prejudice, and could be refiled in the Oneida Judiciary in the Trial Court or Court of Appeals. The case was subsequently refiled accordingly with the Oneida Judiciary, Court of Appeals and

on Initial Review accepted as an appeal of the proceedings and decisions of the Oneida Tribal Judicial System.

Both parties, in their separate Motions for Expedited Review, indicated their intent to rely on the briefs and evidence submitted to the Oneida Tribal Judicial System, Trial and Appellate Courts. This court has reviewed the record in this case of both the Trial and Appellate Courts' actions as well as all matters considered by both courts in the light of the parties' briefs.

Considering the above analysis, the only matter uncompleted by the Oneida Tribal Judicial System, Appellate Court was the matter of reconsideration. Therefore, this court addresses the Motion for Reconsideration refiled by the Appellant.

#### Oneida Judiciary Court of Appeals

On March 24, 2015, the Appellant, Franklin Cornelius, refiled his Notice of Appeal to this court. On March 30, 2015 proof of service was filed. On April 6, 2015, upon Initial Review, the case was accepted for appellate review. On April 13, 2015 the Respondent filed a Motion for Expedited Review in which he stated that the Motion for Reconsideration filed in the Oneida Tribal Judicial System, Appellate Court was dismissed when its final decision was issued on February 26, 2015. The Respondent's motion also requested that the review be based on the documents and briefs filed in the case before the Oneida Tribal Judicial System. On April 15, 2015 the Appellant submitted his own Motion for Expedited Review, also reciting that the Motion for Reconsideration was dismissed when the case was dismissed without prejudice. The Appellant also requested that the review be of the documents and briefs in the case filed with the Oneida Tribal Judicial System. On April 15, 2015 the Motion for Expedited Review was granted. The Appellant asked the court to grant their Motion for Reconsideration. The Respondent asked the court to deny the motion and to dismiss the case. No other pleadings were filed and the court took the matter under deliberation.

Although this matter was arguably filed as a new appeal, the actions of both parties make it clear they do not wish for the Court to start over by addressing the merits of the appeal. The only remaining undecided issue is Appellant's Motion for Reconsideration.

In view of the pleadings of both parties in this case since it was refiled, the Oneida Tribal General Council Resolution 01-07-13-B, and Chapters 150 and 154, Oneida Code of Laws, as well as, the record of this case only the Motion for Reconsideration will be addressed in this review.

This case was accepted upon the Appellant's allegations of "clearly erroneous" decisions arrived at by the Oneida Tribal Judicial System, Trial Court and affirmed by the Oneida Tribal Judicial System, Appellate Court. The subsequent Motion for Reconsideration by the Appellant and Response to the Motion by the Respondent was unaddressed by the Oneida Tribal Judicial System, Appellate Court which instead made the decision to dismiss the case without prejudice which provided the option to refile as well as the option of which court in which to refile with the Oneida Judiciary.

As a case refiled from the Oneida Tribal Judicial System because it was uncompleted, Resolution 01-07-13-B of the Oneida General Tribal Council and the Rules of Appellate Procedure, set forth in Chapter 154 of the Oneida Code of Laws were applied and the case was accepted as an appellate case. The jurisdiction of the Oneida Judiciary, Court of Appeals is limited to a review of the record of the proceedings below; no new evidence may be considered.

The sole exception to this is found in Rule 24 (B), Reconsideration, of the Oneida Tribal Judicial System Rules of Appellate Procedure which sets forth the circumstances under which new evidence could be considered; if it was not available to the party and which would or could change the outcome of the decision against the party seeking reconsideration. The Appellant's argument is that he has been denied basic due process and that both the Trial and Appellate proceedings and decisions were in error. The Respondent's argument is that the Appellant did not argue the issue of dismissal by the Trial Court and that no new evidence was presented to support the Motion to Reconsider and asked the court to deny the Appellant's motion and dismiss the case.

#### DECISION

The authority of the Oneida General Tribal Council is not in question in this case, but rather the extent of authority it granted by the motion that named the Appellant, Frank Cornelius to "assist and work with the (Oneida) Business Committee" in dissolving the Oneida Seven Generations Corporation.

In this case, the Oneida General Tribal Council, by a motion directed that the Appellant, Frank Cornelius, "assist and work with the (Oneida) Business Committee" to dissolve the Oneida Seven Generations Corporation. The Oneida Business Committee subsequently added this item to the agenda of its on-going responsibilities. The Appellant was invited to these meetings but refused to sign a Confidentiality Agreement. His delegation to "assist and work with the (Oneida) Business Committee" did not include the authority to refuse to abide by the legal restraints to which the Oneida Business Committee, as elected representatives of the Oneida General Tribal Council, were sworn and committed nor did it require that they abandon their

responsibility to protect the Oneida Tribe, Oneida people and Oneida assets to the best of their sworn ability.

When the Motion to Dismiss was addressed by the Oneida Tribal Judicial System, Trial Court, it recited that the Respondent was protected by Sovereign Immunity. This was the basis upon which their decision to dismiss was made. At a pre-trial hearing to discuss pending motions, including the Motion to Dismiss by the Respondent, the Trial Court citing Sovereign Immunity of the Chairman, dismissed the case. In the words of the Trial Court; *"Petitioner seeks special privileges and rights that are not permitted by law and have not been granted by the (Oneida) General Tribal Council. The Court finds the rest of the Petitioner's claims moot. Chairman Delgado is protected by sovereign immunity."* This is the decision that was appealed to the Oneida Tribal Judicial System, Appellate Court. The Appellate Court affirmed the Trial Court's decision that the Respondent, Tribal Chairman, was protected by Sovereign Immunity as defined in Chapter 14.1-1 of the Oneida Code of Laws, Sovereign Immunity; *"The purpose of this Law is to protect and preserve the sovereign immunity of the Oneida Tribe of Indians of Wisconsin, to define the entities and individuals entitled to the protection of such immunity..."*

Neither the Appellant's rights nor the authority of the Oneida General Tribal Council were violated. The Appellant assumed more authority than was granted by the Oneida General Tribal Council motion to "assist and work with the (Oneida) Business Committee."

The Appellant appealed the Trial Court's decision alleging a clearly erroneous ruling. After briefs were filed and considered, the Appellate Court affirmed the Trial Court: the Chairman was protected by Sovereign Immunity, all other issues were thus moot. The Appellate Court noted that the Appellant did not argue the Dismissal by the Trial Court, which was the decision he appealed but instead continued to argue the itemized allegations of his original complaint which were moot. Furthermore, the record shows that at no time during the entire process did the Appellant contest the holding that the Respondent was protected by Sovereign Immunity.

The Appellant then filed a Motion for Reconsideration. The Respondent opposed the motion.

The Oneida Tribal Judicial System, Appellate Court dismissed the case as uncompleted citing Oneida General Tribal Council Resolution 01-07-13-B; said dismissal was without prejudice meaning it could be refiled in the Oneida Judiciary.

The Appellant filed an Appeal with the Oneida Judiciary, Court of Appeals which was accepted. Both parties separately moved the Court for Expedited Review which was granted. Both parties indicated that the review should be limited to the record, briefs, and documents filed in the Oneida Tribal Judicial System proceedings which were being appealed.

Upon a full and careful consideration of the record of the Oneida Tribal Judicial System and the briefs of the parties we find that the Appellant has not met his burden of persuasion, 150.8-3(b)

Oneida Code of Laws. The Respondent, former Tribal Chairman, Edward Delgado was protected by Oneida Sovereign Immunity at all times in this case.

The burden imposed by Oneida Tribal Judicial System, Rule of Appellate Procedure 24(B) is a high one:

B) Criteria: Reconsideration will only be granted under the circumstances where the moving party proves by a substantial weight of the evidence presented in the motion that there is new evidence in existence which was not considered by the appellate court and which is likely to have altered the final decision if this evidence had been introduced.

Mr. Cornelius has not met this high burden. Mr. Cornelius seeks to re-argue the case rather than present any new evidence which was not considered by the appellate court during the appeal on the merits. In numerous previous cases we have held firm to the high burden imposed by Rule 24 and denied requests for reconsideration where no new evidence has been presented. See e.g., *Hurst v. Oneida Bingo Casino*, 06-AC-34 (3/16/2007); *Mahn v. Oneida Gaming Commission*, 06-AC-26 (3/9/2007); *Miller v. Oneida Bingo Casino*, 06-AC-33 (5/11/2007). "Reconsideration is a narrow remedy available only in limited circumstances." *Oneida Child Care v. Gonzalez*, 09-AC-22 (5/25/2010).

Accordingly, we deny the Motion for Reconsideration.

**By Order of the Oneida Judiciary, Court of Appeals** the Motion for Reconsideration is hereby **DENIED** and the rulings of the Oneida Tribal Judicial System, Trial and Appellate Courts are **AFFIRMED**.