

**ONEIDA JUDICIARY**  
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**TRIAL COURT**

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**Anita Barber**  
**Petitioner,**

v.

**CASE NO: 18-TC-011**

**Lisa Summers & Et Al.,**  
**Respondents,**

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**ORDER**

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This case has come before the Oneida Trial Court, Honorable Layatalati Hill presiding.

Appearing in person: Petitioner, Anita Barber and Attorney Kelly McAndrews on behalf of the Respondents, Lisa Summers and Et Al.

**BACKGROUND**

A Complaint for a Preliminary Injunction was filed by the Petitioner on March 29, 2018. A Preliminary Hearing was held on April 5, 2018.

**FINDINGS**

1. The Petitioner is seeking to stop any movement, development or relocation of the Cultural Heritage until the Oneida General Tribal Council (GTC) can hear the topic.

**PRINCIPLES OF LAW**

**OCL Chapter 803.35 Injunctions and Restraining Orders**

803.35-1 *Preliminary Injunction.*

- (a) *Notice.* The Court may issue a preliminary injunction only on notice to the adverse party.
- (b) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the Court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

(c) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order shall proceed with the motion; if the party does not, the Court shall dissolve the order.

### **ANALYSIS**

The Petitioner is seeking a Preliminary Injunction. Section 803.35-1 of the Oneida Judiciary Rules of Civil Procedure governs Preliminary Injunctions, but does not define it. A Preliminary Injunction is a temporary injunction issued before or during trial to prevent an irreparable injury from occurring before the Court has a chance to decide the case. (See Black's Law Dictionary, 9<sup>th</sup> edition, 2009). By this definition, it reasons that for the Court to issue a Preliminary Injunction there must be a case before it. Here, the Petitioner is asking the Court to issue a Preliminary Injunction to stop an action that is, according to the Petitioner, going to be or should be heard by the GTC. Since the "case" is to be decided or heard before the GTC and not before this Court, the Court does not have jurisdiction over the matter to be heard and must dismiss the action.

### **ORDER**

Case no. 18-TC-011 is dismissed with prejudice.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council and Order signed on April 6, 2018 in the matter of *Anita Barber v Lisa Summers & Et Al.* Case #18-TC-011.