

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Arletta J. Kurowski,
PETITIONER,

v.

CASE NO: 18-TC-005

Norma Kurowski,
DEFENDANT

ORDER

This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding.

Appearing in Person: Petitioner, Arletta J. Kurowski and Daniel Hawk.
Appearance by Phone: Defendant, Norma Kurowski and Attorney Curtis Clark.

STATEMENT OF THE CASE

A complaint was filed by Petitioner on February 12, 2018. On March 5, 2018, Norma Kurowski filed an answer to the complaint and Motion to Dismiss. A Pre-Trial hearing was held on March 12, 2018. The Petitioner was not provided a copy of the Defendant's answer to the complaint; therefore the court allotted time for both parties to prepare a response. The Court received the Petitioner's response to Defendant's answer. The Court received the Defendant's reply to the Petitioner's response. A Jurisdictional hearing was scheduled for April 26, 2018 at 1:30 p.m. CST.

On March 23, 2018, the Defendant filed a motion to change the hearing date and time, due to a scheduling conflict, the court granted the Defendant's administrative request. On April 30, 2018, the court held a Jurisdictional hearing.

The Court granted Daniel Hawk and Attorney Curtis Clark a one-time waiver to represent the Petitioner and the Defendant at the March 12, 2018 Pre-Trial hearing. Neither Mr. Hawk nor Attorney Clark is approved to practice as an Advocate or Attorney in the Judiciary. In order to continue as Advocate or Attorney, both are required to be approved to practice in the Judiciary prior to any further hearings. Attorney Clark was approved to practice within the Judiciary by the

April 30, 2018 Jurisdictional hearing. Mr. Hawk did not complete the approval to practice process; therefore, he was not allowed to represent the Petitioner at the April 30, 2018 Jurisdictional hearing.

ISSUE

Does the Oneida Judiciary Trial Court possess Subject Matter Jurisdiction to hear this complaint?

FINDING OF FACTS

1. Notice was given to all parties entitled to notice.
2. The Petitioner marked complaint: Other Tribal Law- Fraud.
3. Petitioner requests a monetary judgment of \$100,000.00.
4. The Petitioner did not produce a written contract.

PRINCIPLES OF LAW

1. **801.3 Definitions**

(a) "Agency" means any Tribal board, committee, commission, department, or officer acting on behalf of such an entity and where relevant, a hearing body of such an entity.

2. **801.5-2 Subject Matter Jurisdiction.**

The Tribe is a sovereign nation and reserves all sovereign rights, authority and jurisdiction consistent with being a sovereign nation. The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following:

(a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction.

(b) the Constitution.

(c) where an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person, and the person has exhausted the process provided by law, if any, for review of the action, and

(1) a hearing body has not been designated by law for the purpose of an appeal; or

(2) there is no law providing that the agency's decision is final and/or not appealable.

(d) where a disagreement over the terms, interpretation or enforcement of a written contract, where at least one (1) of the parties is an agency or where both parties meet the personal jurisdiction requirements listed in 801.5-4.

(1) *Statute of Limitations.* In all cases requiring interpretation or enforcement of a contract, the suit must be filed within twenty-four (24) months of either:

(A) the date a party breaches the terms of the contract; or

(B) in actions for declaratory relief, the date a dispute arises as to the interpretation of the contract.

(e) where a declaratory judgment is sought to determine the validity of a Tribal law. The Trial Court shall render a declaratory judgment in such action only when it appears from the petition and the supporting evidence that the law or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the petitioner. The Trial Court shall declare the law invalid if it finds that:

(1) the law violates Constitutional provisions; or

(2) the law was adopted without compliance with law making procedures required under Tribal law.

(f) small claims actions where the amount in controversy is five thousand (\$5,000) or less.

ANALYSIS

The burden is on the Petitioner to meet subject matter jurisdiction requirements identified in Chapter 801.5-2. The Petitioner seeks a Trial Court ruling, judgment and other corrective actions. The Petitioner identified in her complaint as subject matter jurisdiction: Other Tribal Law – Fraud, but failed to identify a specific Tribal Law with regard to fraud. Therefore, the Court looked at 801.5-2 (c) when evaluating fraud and subject matter jurisdiction.

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: Where an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person, and the person has exhausted the process provided by law, if any, for review of the action.

The Petitioner has brought this suit forward against Norma Kurowski. 801.5-2 (c) requires that an *agency* has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person... Therefore it requires an agency to take some form of action. Based on the definition of “agency” outlined in 801.3, Norma Kurowski does not meet any of the criteria identified in the definition “agency”. Therefore Norma Kurowski is not an agency and subject matter jurisdiction is not established under 801.5-2 (c).

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: where a disagreement over the terms, interpretation or enforcement of a written contract.

The Petitioner has not produced a written contract in regards to fulfilling the requirements in 801.5-2 (d); therefore, disagreements over the terms, interpretation or enforcement are moot.

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: Small claims actions where the amount in controversy is five thousand (\$5,000) or less.

In the complaint, the Petitioner requests a monetary judgment of \$100,000.00 to the Petitioner for illegally taking Oneida Nation decedent death precedes that otherwise allegedly legally belong to the Petitioner. This far exceeds the maximum amount of \$5,000.00 for small claims and must be denied for these reasons.

The Defendant is requesting the court to address an alleged improper filing Lis Pendens, “Notice of Lis Pendens and Notice of Action Pending”. This Court will not address any filings in another Jurisdiction.

CONCLUSIONS OF LAW

The Petitioner did not establish the Trial Court has Subject Matter Jurisdiction to hear this complaint.

ORDER

1. Case no. 18-TC-005 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 5/30/2018 in the matter of Arletta J. Kurowski v. Norma Kurowski Case #18-TC-005.

The Petitioners has the right to appeal within thirty (30) calendar days after the date this order or judgment is signed.