

Oneida Tribal Judicial System

Onλyote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

TRIAL COURT

**Shelley Corey,
Robert Corey,
Petitioners,**

Docket # 14-TC-001

v.

**Oneida Tribe of Indians of Wisconsin,
Lexington Insurance Company (formerly Chartis Casualty Co.),
Plumber & Steamfitters Local 400,
MCS of North Central Wisconsin
Health & Welfare Fund,
XYZ Insurance Companies, and
ABC Insurance Companies,
Respondents.**

DECISION

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers: Jean M. Webster, Mary Adams, and Kathy Hughes presiding.

The above-captioned matter came before the Oneida Tribal Judicial System for a pre-trial hearing on the 30th day of June, 2014.

Appearing in person: Petitioners: Shelley and Robert Corey represented by Attorney Brian Stevens. Respondents: Oneida Tribe of Indians of Wisconsin represented by Attorney Kelly McAndrews; and Lexington Insurance Company represented by Attorney Brad Markvart.

I. BACKGROUND

This case arises out of injuries that occurred to Mrs. Shelley Corey on September 13, 2009 while on Oneida Tribal property. Mr. and Mrs. Corey (the Corey's) allege that Respondents' negligence was the proximate cause of her injuries. For the reasons discussed below, we grant the Oneida Tribe's motion to dismiss the Corey's claim.

A. Factual Background

For the purposes only of deciding the Tribe's motion to dismiss, we accept the facts in the complaint as true. Ms. Shelley fell on tribal property and sustained extensive injuries, some of which are allegedly permanent. The Corey's first sued the Tribe (and presumably other Defendants) in Brown County Circuit Court in summer of 2011. That suit was dismissed in March of 2012.

This action was then filed in January 2014. The complaint in this matter is identical to the complaint filed in Brown County Circuit Court.

B. Relevant law

The relevant laws include the Tribe's Chapter 14, Sovereign Immunity and Resolution 8-19-91A and Addendum which created the Oneida Tribal Judicial System.

Chapter 14 contains broad language affirming the Tribe's sovereign immunity: "No suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against the Tribe unless the Tribe has specifically waived sovereign immunity for purposes of such suit or proceeding." Sec. 14.4-1.

The relevant portion of the Addendum to Resolution 8-19-91A states: "A subcommittee of the Oneida Appeals Commission shall have authority to hear and attempt to resolve actions that are subject to ordinance or rules that have no specified hearing forum within the Oneida Tribe." Sec. I.C.

D. Positions of the Parties

Petitioners

Petitioners argue that this suit against the Tribe is allowed despite the plain language of Chapter 14; they cite no waiver of the Tribe's immunity. Petitioners argue that the statute of limitations should be long enough to permit the suit even though it was over four years from the time of the incident to the time of filing in Oneida Tribal Court. Finally, due to the Tribe's lack of tort laws, Petitioners seems to selectively import or exclude Wisconsin statutes where convenient.

Respondent

Respondent the Oneida Tribe argues that Chapter 14 is clear that no suits are allowed against the Tribe and that there is no waiver here. It also argues there is no body of tort law under the Tribe which can be applied or which grants the Oneida Tribal Judicial System jurisdiction to hear the case.

II. ANALYSIS

We agree with the Tribe that this action must be dismissed. Chapter 14 makes it clear that suits against the Tribe are prohibited. While there have been some minor exceptions, we have drawn a clear line regarding suits for money damages against the Tribe. See e.g., *Oneida Internal Security Dept. et al. v. Owen Somers*, Case No. 06-AC-11 (5/23/2006). Petitioners can point to no waiver of immunity which permits this suit to go forward.

The case of *Cornelius v. Oneida Nation Library, et al.*, Case No. 06-AC-022 (12/4/2006), is cited by plaintiffs in support of their argument that their case should be allowed to go forward. However, the plaintiff in the *Cornelius* case sought to enforce well-established Oneida law in the form of preference in hiring under the Blue Book. Such an action falls squarely within the

Addendum to Resolution 8-19-91A, Sec. I.C's grant of jurisdiction to the OTJS for cases that are subject to ordinances or rules but have no specified hearing body.

Sec. I.C's grant of jurisdiction is related to the second reason for our dismissal which is that tort actions are not subject to any specified rules or ordinances. There is no Oneida tort law cited by Petitioners. Petitioners do not attempt to establish that there are any ordinances or common law on torts. It may be a tradition of our people to remedy wrongs when a person is injured as Mrs. Corey was. However, without any guidance, laws or rules to apply, were the Court to allow this case to go forward, it would essentially be making up the rules as it went along or adopting another jurisdiction's laws. Neither is a good choice.

As further support for our interpretation of the jurisdiction of the OTJS, we note that the latest expression of Oneida Tribal Court jurisdiction by the General Tribal Council establishes not a court of general jurisdiction, but an Oneida Tribal Court more akin to the jurisdiction in federal court. The Court has jurisdiction "over cases and controversies arising under the following:" Sec. 150.5-2. The ordinance then lists the various subject matter areas of court jurisdiction. Tort claims is not one of them.

III. DECISION

Therefore, on the basis of sovereign immunity, the Tribe is dismissed from this action. Due to lack of subject matter jurisdiction over tort claims the claim is dismissed without prejudice.

IT IS SO ORDERED.