

Oneida Appeals Commission

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Trial Court

Ronda L. Skenandore,
Petitioner

Docket No. 03-TC-244

vs.

Division of Land Management,
Respondent

Date: July 22, 2003

Decision

This case has come before the Oneida Appeals Commission Trial Court. Judicial Officers Mary Adams, Janice McLester, and Marjorie Stevens, presiding.

I Background

On February 11, 2003, the Petitioner, Ronda Skenandore, received a 30-day notice to vacate the premises at 2592 Oakwood Drive, Green Bay, Wisconsin. This notice was based on a decision made by the Oneida Land Commission due to a Green Bay water utility debt allegedly unpaid by the appellant. The Appellant claims she satisfied the debt within the allowed time, but the paperwork was not forwarded to the Oneida Land Commission. The Appellant further argues that the Oneida Land Commission violated her due process by not affording her the right to a fair hearing.

On April 14, 2003 the court granted a Temporary Restraining Order and the case was accepted as an appeal. A hearing was held on April 28, 2003, to establish the issues in this case and offer

peacemaking or settlement as a means to dismiss this case. The parties agreed to enter into a peacemaking environment, and a forty-five day stay was issued to allow parties time for settlement. On May 1, 2003 the Land Commission rejected Peacemaking. On May 2, 2003 the Petitioner requested a ten (10) business day extension to prepare her brief. At the May 8, 2003 hearing, the motion for a ten-day extension was approved by both parties and a new hearing was scheduled for June 17, 2003, this hearing has since been rescheduled for July 1, 2003 at 3:00 pm.

In the court order dated May 29, 2003 several issues were identified: (1) this case was transferred to the Trial Court; and (2) the motion for the injunction was clarified when the court issued a stay on the eviction until this case is finalized with a written decision. On June 25, 2003 the court granted a Motion for Postponement, the pre-trial was rescheduled for July 10, 2003 at 3:00 pm.

II Issues

1. **The Motion for Summary Judgement.**
2. **The Motion for the Injunction.**
3. **The Motion to Dismiss.**

III Analysis

The Motion for Summary Judgement filed by the Petitioner. According to Rule 15 of the Rules of Civil Procedure, the trial court shall grant the motion of summary judgement if it finds that there are no genuine issue or material fact.¹ The Petitioner argues that the Oneida Land Commission violated its internal Standard Operating Procedures (SOP) 714.1.2-2, which was approved by the Oneida Land Commission on November 11, 2000. The Petitioner argues the violation occurred according to the flow chart within the following steps:

Step 1. File being sent to the attorney to prepare foreclosure or other type of complaint

¹. Rule 15(A) When; Grounds: Any time after the commencement of an action, but at least fifteen days prior to the scheduled trial, any party may move the trial court for summary judgement as to any or all of the issues presented in the case and such shall be granted by the trial court if it is found that there are no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

for judicial proceeding;

- Step 2. Land Commission approves, denies or changes staff recommendation after hearing any arguments the defaulting client might have;*
- Step 3. Staff person implements final decision of the Land Commission; and*
- Step 4. Attorney files the complaint with Appeals Commission and monitors it until decision is made.*

The Petitioner argues that Oneida Land Commission must petition the Oneida Appeals Commission in order to issue an eviction. The Petitioner argues, once a hearing is held and if the complaint is upheld, the client can then be evicted and the client is given the right to appeal the decision to the Oneida Appeals Commission. The Petitioner argues that this process was not followed and therefore is in violation.

The Petitioner further argues that if this case is allowed to continue then the Respondents would be receiving a second opportunity to argue their case, which violates her due process. The Petitioner argues that the first hearing was held at the Oneida Land Commission meeting on February 10, 2003 and then another hearing was held on March 10, 2003, both hearings gave the Respondents several opportunities to argue their case.

The Petitioner argues that the Oneida Land Commission committed procedural irregularities that are inconsistent with rule of law. The Petitioner argues according to SOP 714.1.2.-2, the Oneida Land Commission does not have the authority to evict, under that policy the only authority allowed is to inform the client that they intend to pursue an eviction.

The Petitioner requests the court (1) enter a Summary Judgement in favor of the Petitioner; (2) to bar the Oneida Land Commission from pursuing the eviction; and (3) grant the requested damages.

In response to due process, the Respondent argues that the flow chart the Petitioner is referring to is for foreclosures and other types of complaints for judicial proceedings. The Respondent

argues that once the department issues three monthly notices of default, the Division of Land Management staff sends an eviction notice to the Oneida Land Commission and to the defaulting client. The Respondent further argues that the Oneida Land Commission approves, denies or changes the staff recommendation after hearing any arguments the defaulting client might have. If the client accepts the eviction then the client evacuates the premises within the time lines. If the client disagrees with the eviction, then the client can either request a reconsideration with the Oneida Land Commission or file an injunction with the Oneida Appeals Commission.

Motion for the Injunction. The Petitioner claims she paid the utility bill on time, but the paperwork was not received by the Respondent in time. The Petitioner paid the utility bill (\$215.08) after work on March 3, 2003, but by the time she received the receipt the Division of Land Management office was closed, and therefore she submitted the receipt on March 4, 2003. The Petitioner argues that the eviction will cause irreparable harm because she has small children.

The Respondent argues that on February 10, 2003, the Oneida Land Commission decided to allow the Petitioner until March 3, 2003 to submit her receipt showing her utility bill was paid and a full payment was not provided until March 12, 2003. The Respondent argues according to the stamp date, the Petitioner waited until March 4, 2003 to submit her first receipt. The Respondent claims, that the Petitioner requested a reconsideration from the Oneida Land Commission on the eviction decision. On March 10, 2003 meeting, the Oneida Land Commission upheld their decision to not accept the late payment from the Petitioner and to continue with her eviction. At that same meeting, the Oneida Land Commission decided to allow the Petitioner an additional thirty days to stay at the residence, provided the Petitioner pays the remaining balance of \$73.29 and submits the receipt to the Division of Land Management on or before March 17, 2003.

The Respondent argues that the Oneida Land Commission decided to lease to the Petitioner on a month-to-month lease due to past problems with the Petitioner. The Respondent further argues

the month-to-month lease allowed the Respondent to terminate the lease for default payments or other reasons.

The Motion to Dismiss submitted by the Respondent. A motion to dismiss this case was presented in court. The Petitioner requested a continuance of the hearing. The court denied the Motion to Dismiss and the request for a continuance. On July 11, 2003 the Respondent submitted a Withdrawal of Motion to Dismiss this case upon the following grounds:

1. The Hearing Body denied the injunction requested by the Petitioner, thereby upholding the Oneida Land Commission's authority to evict her at a hearing scheduled on June 10, 2003,
2. This decision of the Hearing Body makes the "Motion to Dismiss" moot.

According to Black's Law, a Motion for a Summary Judgement is usually granted by the court when the following conditions are provided; (1) when a prompt and expeditious disposition of the case is drawn from undisputed facts; (2) if no genuine issue of material fact is present; or (3) party is entitled to prevail as a matter of law. In this case, there were disputed facts and the court needed to hear all the facts related to the eviction prior to granting or denying the Motion for Summary Judgement. Therefore, the Motion for Summary Judgement is denied.

The motion for the injunction is denied. At the February 10, 2003 Oneida Land Commission's meeting the Commission stipulated that the Petitioner must submit a receipt to the Division of Land Management showing the utility bill was paid by March 3, 2003. The Petitioner paid the utility bill on March 3, 2003, but did not submit the receipt to the Division of Land Management until March 4, 2003, which violated the stipulation required by the Oneida Land Commission.

Tribal entities' Standard Operating Procedures (SOP) shall not violate the Oneida Tribe's ordinances or laws. The Oneida Land Commission's SOP (714.1.2.-2.) is for internal use, it identifies the steps the staff will follow in particular situations. The flow chart used to explain the procedures use through the SOP is an outline and may not be intended for use by those

unfamiliar with office procedures. The steps used in a foreclosure are not the same as for evictions. A foreclosure requires a hearing and therefore, the staff attorney is required to petition the Oneida Appeals Commission for a hearing. An eviction does not require a hearing unless the client does not agree with the eviction, however the resident may request a hearing. The Petitioner failed to show how the Oneida Land Commission's SOP violated Oneida Tribal law and how she was denied due process. The court denies the Petitioner's motion for an Injunction.

II Decision

The court upholds the Oneida Land Commission's decision to evict the Petitioner.