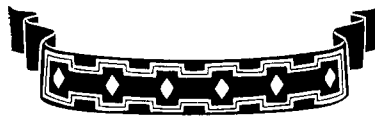


Oneida Appeals Commission

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Trial Court

George W. Webster Jr.,
Petitioner

Docket No. 06-TC-003

vs.

Oneida Tribe - Central Payroll,
Respondent

Date: March 14, 2006

Motion for Temporary Restraining Order

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Mary Adams, Anita Barber, and Gerald Cornelius presiding.

I Background

On January 27, 2006, Petitioner, George W. Webster, filed a Motion for Injunction to stop the Respondent, Oneida Tribe - Central Accounting from enforcing an Internal Revenue Service (IRS) levy against his wages. The Trial Court scheduled an Injunction hearing for February 9, 2006, to hear Petitioner's allegations.

On February 2, 2006, Petitioner filed a Temporary Restraining Order to stop Respondent from attaching his wages and to order the Respondent to reimburse \$830.61, and to order the Payroll Department to cease and desist enforcing the IRS tax levy until this matter is adjudicated. The Trial Court denied the Motion for a Temporary Restraining Order on February 6, 2006.

On February 15, 2006, Respondent filed a Motion to Dismiss claiming two issues: (1) the present

action is barred by the Tribe's Sovereign Immunity Ordinance, BC# 05-04-04-D and, (2) the Oneida Appeals Commission precedent established the principle that the hearing body will not prohibit compliance with an Internal Revenue Service levy in Ronda Skenandore v. Oneida Central Accounting, 05-TC-141 (11/10/05).

On March 2, 2006, Petitioner filed his Response to Motion to Dismiss requesting that the Tribe honor and protect his right to due process, as an enrolled Tribal member, before depriving him of his property without due process of law.

On Thursday, February 9, 2006, a pre-trial was held. However, the court was unable to formulate an opinion due to missing documentation. Therefore, a second pre-trial hearing was scheduled for March 7, 2006, to review the full record.

II Issues

Is Petitioner's Motion for an Injunction an appropriate remedy to stop the IRS from levying his wages?

Is Respondent violating Petitioner's due process rights by complying with the IRS levy?

Is Respondent's Motion to Dismiss proper?

III Analysis

Motion to Dismiss

Respondent filed a Motion to Dismiss claiming two issues: (1) the present action is barred by the Tribe's Sovereign Immunity Ordinance, BC# 05-04-04-D and, (2) the Oneida Appeals Commission precedent established the principle that the hearing body will not prohibit compliance with an Internal Revenue Service levy in Ronda Skenandore v. Oneida Central Accounting, 05-TC-141 (11/10/05).

Respondent claims according to the Tribe's Sovereign Immunity Ordinance, BC #05-04-04-D, Section 14.4-1, states:

The sovereign immunity of the Tribe, including sovereign immunity from suit in any state, federal or tribal court, is hereby expressly reaffirmed. 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. No suit or other proceeding, including any tribal proceeding, may be instituted or maintained against officers, employees or agents of the Tribe for actions within the scope of their authority, unless the Tribe has specifically waived sovereign immunity for purposes of such suit or proceeding.

Respondent cited several cases to support their argument that federal courts have consistently held that Indian tribes have a right to exercise inherent sovereign authority over their members and territories. Respondent contends that this immunity extends to tribal officials and agents who are acting within the scope of their authority.

Respondent asserts that the Appeals Court has recognized the Tribe's sovereign immunity and protections afforded to Tribal Officials, departments and employees who act within their official capacity. Respondent argues that according to William Gollnick v Debra Powless et al., 6 O.N.R. 3-22, 00-AC-003, 2/14/00, the Court quashed the Oneida Personnel Commission's decision to subpoena the Oneida Business Committee and recognized that sovereign immunity protects the tribe and its elected representative body. Respondent claims according to Matthew J. Denny, et al. v. Oneida Business Committee, 9 O.N.R. 2-74, 03-TC-001, 7/28/03, as the Legislative Branch of the Oneida Government, the Business Committee was established by the Oneida Constitution and is therefore generally immune from suit.

Respondent contends the Tribe has not waived its immunity, Congress has not authorized this action, Petitioner did not prove Respondent acted outside its scope of authority, and Petitioner did not show why Respondent should not receive the Tribe's sovereign immunity protections. Respondent argues doctrine of tribal sovereign immunity bars this action and this Court is precluded from exercising jurisdiction over Respondent.

Respondent asserts that Court precedent established the principle that the hearing body will not prohibit compliance with an Internal Revenue Service levy in the Ronda Skenandore v. Oneida

Central Accounting, 05-TC-141 (11/10/05). Respondent claims this request for an injunction should be denied for the same reason in the Skenandore case, the court decided it is not for Central Accounting or the Court to determine whether to comply with the levy. Respondent argues the Court should dismiss Petitioner's request for an Injunction to stop the IRS from levying his wages.

Petitioner argued Respondent is violating his due process rights by complying with the IRS levy. Petitioner claims that since he applied for an appeal with the IRS, denying he owes the IRS, and that the IRS should stop the levy action in accordance to their IRS Appeal Rights Booklet, Notice of Levy. *"You may appeal before or after the IRS places a levy on your wages, bank account or other property. Before a levy is issued, you may have additional Collection Due Process appeal rights."* Petitioner contends that he submitted his request for an appeal with the IRS several times, on June 28, 2005 and October 7, 2005. Furthermore, Petitioner claims that no federal court order has been issued regarding this levy. Therefore, Petitioner argues that Respondent has no authority to enforce the levy.

The Court's Findings of Fact and Conclusion of Law

Petitioner failed to cite an Oneida law, rule or custom that prevents Respondent from abiding with a levy from the IRS. Generally when the tribe receives a levy, the tribe must comply with that levy. As in the Skenandore case, *"When the IRS issues a levy, it is not within this court's authority to stop that levy. All IRS disputes must be made directly to them."* In the Skenandore case, Skenandore provided a full brief to support her claim that she is disputing the charges and has not received a final decision from the IRS. Facts indicated Skenandore's charges stemmed from a 2001 and 2002 income tax issue. Because Petitioner provided a full brief the Trial Court was able to make a decision. In this case, two hearings were held before a full brief was provided, which revealed Petitioner received at least two notices prior to Respondent's action to comply with levy. Documentation supports Petitioner is disputing an unpaid income charge stemming from December 31, 2004. Petitioner offered no evidence to support his claim that the Respondent violated tribal law and is therefore prevented from enforcing an IRS levy.

In his filings, Petitioner cited Schulz v. IRS, 395 F.3d 463 (2nd Cir.2005), a federal court case from the appellate court in New York. The case is not persuasive for several reasons: 1) It does not address Oneida tribal law; 2) It is from another jurisdiction outside the Oneida Nation and; 3) It deals with an IRS summons, not a levy, the subject of Mr. Webster's case. For those reasons, we find no support for Petitioner's position in Schulz.

This case is a law suit against the Oneida Tribe for complying with a Notice of Levy on Wages, Salary, and Other Income received from the IRS on January 20, 2006. Respondent's motion to dismiss is granted based on the Tribe's sovereign immunity ordinance and the Skenandore case.

III Decision

Respondent's motion to dismiss is granted.

It is so ordered.