

UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ST. REGIS MOHAWK TRIBE)
412 State Route 37)
Akwesasne, New York 13655)
518-358-2272)

Plaintiff,)

v.)

CIVIL ACTION NO. _____

GOVERNOR DAVID A. PATERSON)
The State Capitol)
Albany, New York 12224)
518-474-5481)

and)

FRANKLIN COUNTY, NEW YORK)
C/O CLERK OF FRANKLIN COUNTY)
355 West Main Street)
Malone, New York 12953)
518-481-1640)

Defendants)

COMPLAINT

This is an action for declaratory relief wherein the St. Regis Mohawk Tribe alleges as follows:

A. NATURE OF THE ACTION

1. The St. Regis Mohawk Tribe ("the Tribe") files this action seeking a declaration that the boundaries of the reservation set aside for the Indians of the Village of St. Regis in the 1796 Treaty with the Seven Nations of Canada, 7 Stat. 55, are currently in place and encompass an area known as the Hogansburg Triangle.

2. The exercise of jurisdiction within an Indian reservation in New York is exclusively governed by federal law, 25 U.S.C. § 233. Congress prohibits the exercise of state civil jurisdiction within an Indian reservation in New York with the proviso that New York state civil courts have jurisdiction over certain Indian cases. Congress stated however that § 233 was not to be construed "as subjecting the lands within any Indian reservation in the State of New York to taxation for state or local purposes, nor as subjecting any lands ...to execution of any judgment rendered in the State courts" [and] nothing herein shall be construed as authorizing the alienation from any Indian nation...any lands within any Indian reservation in the State of New York."

3. In the past few years, the State and County have sought to more vigorously enforce their civil laws against the Tribe and its members who live and work in the Hogansburg Triangle, an area of land located within the Tribe's original 1796 reservation but which the State and County have long considered to be outside of the reservation and therefore not within the purview of §233. In order to clarify the application of § 233 to its lands, the Tribe seeks a declaration that the 1796 reservation has never been diminished by an Act of Congress and that the land within the Hogansburg Triangle is located within an "Indian reservation in New York" as referenced in 25 U.S.C. § 233.

B. JURISDICTION and VENUE

4. This action arises under the Constitution and laws of the United States. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, and relief may be awarded pursuant to 28 U.S.C. §§ 2201 and 2202. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) because the events giving rise to the claims herein arose within the Northern District of New York, and the land comprising the Tribe's reservation is located in that District.

C. PARTIES

5. The St. Regis Mohawk Tribe is a federally recognized Indian tribe whose federal reservation, set aside by the 1796 Treaty with the Seven Nations of Canada, 7 Stat. 55, is located in Franklin and St. Lawrence Counties, in northern New York. The Tribe's reservation was established in a federal treaty approved and ratified by the United States, Exh. 1.

6. David A. Paterson is the Governor of New York and is charged with the duty of implementing the laws of the State of New York. As part of that duty the Governor and the Executive Branch and its agencies have purported to exercise sovereignty and jurisdiction over that part of the Tribe's 1796 reservation known as the Hogansburg Triangle

7. Franklin County is the local political subdivision that has historically asserted jurisdiction over that part of the reservation known as the Hogansburg Triangle.

D. DESCRIPTION OF THE LAND AT ISSUE

8. For hundreds of years, the St. Regis Mohawks have lived along the St. Lawrence River, in what are now Franklin and St. Lawrence Counties, New York. As was true of all lands within the original colonies, settlers pressured the Mohawks to move from these lands but the Tribe refused to do so. Even so, in the late 1700's non-Indian speculators purported to purchase from the State land that was actually owned and occupied by the Mohawks. The Mohawks

protested these purported purchases. In an effort to set aside land for the Mohawks that would be federally protected from any further encroachment, the State of New York agreed in the 1796 Treaty with the Seven Nations of Canada, 7 Stat. 55, that land would be set aside for the Mohawks as a federal reservation. Lands consisting of a six mile square and other identified areas occupied by the Mohawks were identified in the treaty, which was ratified by Congress. Congress has never enacted any law, which would change the boundary of the 1796 reservation.

9. Despite this federal set aside, the State and County have wrongfully treated parts of this reservation as removed from its exterior boundaries and within their full jurisdictional authority, specifically, an area known as the Hogansburg Triangle, even though there has been no act of Congress to permit this treatment.

10. The facts on the ground also illustrate that the Triangle remains a part of the reservation. Hogansburg Triangle has remained largely within Indian ownership, use and occupation. The Triangle is bounded on three sides by the original reservation and has a distinct Indian character. Many members of the Tribe work and live in the area today and have done so since the 1796 reservation was set aside. The majority of the Triangle population is Indian and the majority of land is Indian owned. The public school located in the Triangle serves the reservation and has a majority Indian student population.

11. The Tribe provides municipal services to the Hogansburg Triangle including road construction, water, sewage and trash collection for both Indians and non-Indians in the area. The Tribe also licenses businesses in the area. The Tribal Police Department polices the area and the Tribe also funds fire and emergency services. The fire station, built with tribal funds, is located within the Triangle.

E. ACTIONS OF THE DEFENDANTS

12. In Section 233 of Title 25, Act of Sept. 13, 1950, 64 Stat. 845, Congress defined the extent of the State's civil authority over any lands within an Indian reservation in New York. The statute does not extend full civil jurisdiction to the State, but limits it to state court jurisdiction to hear and resolve disputes involving Indians.

13. Over the years, there have been many disputes regarding the extent of local and state jurisdiction over tribal members in the Triangle. For example:

a. Local governments located within Franklin County have attempted to apply their local building codes on Mohawk construction within the Triangle.

b. The State has actively attempted to impose licensing laws on businesses in the Triangle area.

c. Franklin County has long claimed the authority to impose real property taxes on all land owned by the Tribe or tribal members within the Triangle.

F. THE CLAIM

14. Paragraphs 1 through 13 are re-alleged and incorporated herein.

15. Under U.S. Supreme Court doctrine, only the Congress of the United States may change or diminish the boundaries of a federally established reservation. *See Hagen v. Utah*, 510 U.S. 399 (1994); *Solem v. Bartlett*, 465 U.S. 463 (1984); *DeCoteau v. District Court*, 420 U.S. 425 (1975); and *United States v. Celestine*, 215 U.S. 278 (1909). Congress has not enacted any law or statute or taken any other action to diminish the Tribe's reservation since the ratification of the 1796 Treaty.

16. On information and belief, the State and County deny the boundaries of the Reservation continue to exist as set forth in the 1796 Treaty and do not treat the Hogansburg Triangle as an Indian reservation governed by Federal law 25 U.S.C. § 233.

17. On this basis, the Defendants have attempted to impose state and local laws over the Tribe and tribal members within the boundaries of the reservation in a manner inconsistent with its status as an Indian reservation in New York under 25 U.S.C. § 233.

18. On information and belief, the Defendants will continue to attempt to impose state and local laws within the Hogansburg Triangle until this court issues a declaratory judgment that the Triangle is encompassed within the 1796 reservation boundary.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

(a) A declaratory judgment that the boundaries of the St. Regis Mohawk Reservation surrounding the Hogansburg Triangle, as set forth in the 1796 Treaty, have never been diminished by Congress, and therefore, remain today as they were upon the signing of the Treaty;

(b) A declaration that the Hogansburg Triangle continues to be part of the 1796 reservation;

(c) A declaration that the jurisdiction of the Tribe, the State, and the local governments within the Hogansburg Triangle is governed by federal law, including 25 U.S.C. § 233, as applied to federal Indian reservations;

(e) A grant of such other relief as the court may deem just and proper.

s/ Marsha K. Schmidt
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