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IMLA NEWS
Issue 15 – August 14, 2014

Native Americans: Tribal Immunity Bars County's Claim for Unpaid *Ad Valorem* Taxes

Cayuga Indian Nation of New York v. Seneca County, New York, No. 12-3723 (2d Cir. July 31, 2014).

The doctrine of tribal immunity continues, as confirmed by a recent Second Circuit decision which held that the Cayuga Indian Nation could not be sued by a New York county for unpaid ad valorem taxes.

Seneca County, New York sought to foreclose on certain properties owned by the Cayuga Indian Nation of New York (Cayuga) because of the tribe's failure to pay *ad valorem* property taxes. The Cayuga answered by invoking the tribe's sovereign immunity, after which the District Court enjoined the County's actions. The County timely appealed, arguing the Second Circuit should limit the doctrine of tribal immunity.

HELD: The Second Circuit affirmed the District Court.

DISCUSSION: The County's argument focused on *Oneida Indian Nation of N.Y. v. Madison County*, 605 F.3d 149 (2d Cir. 2010), vacated, 131 S. Ct. 704 (2011). The County acknowledged that this opinion squarely confronted the issue before the Court – it held tribal that sovereign immunity bars such suits - but argued the Supreme Court's action of vacating the decision left the Second Circuit free to reevaluate the issue. It further urged the Circuit Court that the Supreme Court's action evidenced the Circuit had misconstrued the doctrine in that case, and thus this case offered the opportunity to revisit the analysis. The Circuit Court rejected this argument, pointing out that the Supreme Court, since *Madison County*, had provided further guidance on the issue and that such guidance indicated the Court's continued support of tribal sovereign immunity. Specifically, in *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024 (2014), the Court held that tribes retain, as "'a necessary corollary to Indian sovereignty and self-governance,' a common-law immunity from suit." The Court went on to state courts must

"dismiss any suit against a tribe absent congressional authorization (or a waiver)" to bring the suit, and that it believed it prudent to leave to Congress the job of "defin[ing] or otherwise abrogat[ing] tribal sovereign immunity." As a result, the Seventh Circuit refused to read the County's urged exception into the tribal sovereign immunity doctrine and instead followed *Madison County,* thus affirming the District Court.

http://www.ca2.uscourts.gov/decisions/isysquery/f06dd483-ec96-4d96-a3a2-6fdd7578f82a/1/doc/12-3723_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/f06dd483-ec96-4d96-a3a2-6fdd7578f82a/1/hilite/ (last accessed August 14, 2014)