

BEFORE THE INDIAN CLAIMS COMMISSION

THE ONEIDA NATION OF NEW YORK, THE)	
ONEIDA TRIBE OF INDIANS OF WISCONSIN,)	
THE ONEIDA NATION BY JULIUS DANFORTH,)	
OSCAR ARCHIQUETTE, SHERMAN SKENANDORE,)	
MAMIE SMITH, MILTON BABCOCK, BERYL)	
SMITH AND AMANDA PIERCE,)	
)	
Plaintiffs,)	
)	Docket No. 301
v.)	(Claims 3 - 8)
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 18, 1971

Appearances:

Marvin S. Chapman, Attorney for Plaintiffs, Aaron, Aaron, Schimberg & Hess were on the brief.

M. Edward Bander, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

The petition consists of eight claims. The first two claims relate to sales of lands by the plaintiffs to the State of New York in 1785 and 1788, prior to the enactment of the Trade and Intercourse Act of July 22, 1790, 1 Stat. 137, 138, and are being considered in a separate proceeding solely on the issue of the defendant's fiduciary or special obligation as to transactions prior to 1790.

The Commission now has before it claims three through eight, relating to the series of sales by the plaintiffs to the State of New York after

the enactment of the Trade and Intercourse Act. These claims are brought under Clauses 3 and 5 of Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050. The plaintiffs seek additional compensation for their lands which the State of New York acquired by means of twenty-five treaties entered into with the plaintiffs between 1795 and 1846. The plaintiffs contend that by virtue of the Trade and Intercourse Act of 1790, the defendant assumed an affirmative obligation to protect the property of the plaintiffs and to assure that Indian tribes were dealt with fairly by third parties and that they received conscionable consideration when they disposed of their lands. The plaintiffs claim that they received unconscionable consideration for the sale of their lands to the State of New York and that the defendant is therefore liable for the failure to fulfill its obligations under the Trade and Intercourse Act. The defendant concedes that the plaintiffs are entitled to bring their claims before the Commission and limits its argument to the single issue of the United States' fiduciary duty and obligation to the Oneida Nation in the sale of their lands to the State of New York.

The Oneida Nation was a tribal member of the Iroquoian Confederacy in New York State located along the shore of the Oneida Lake in west-central New York. On June 28, 1785, the Oneida Nation joined with the Tuscarora Tribe to cede certain lands located in New York, about 5 miles above the Pennsylvania border, to the State of New York. Thereafter, by the terms of the Treaty of 1788, the plaintiffs ceded all their lands to

the State of New York, except for an area of approximately 100 square miles that was reserved for their own use and was to be held by them and their posterity forever. The above mentioned reserved area is referred to by both counsel as the Oneida Reservation. Between 1795 and 1846, the State of New York entered into a series of twenty-five treaties with the plaintiffs whereby the State of New York acquired virtually the entire Oneida Reservation. Two of the twenty-five treaties were made in the presence of a United States Commissioner appointed by the United States to attend the execution thereof and sanction the same.

The issue of whether the plaintiffs have recognized title to the Oneida Reservation was not contested by the defendant at the trial. By the Treaty of 1788, the State of New York recognized and acknowledged that the Oneida Nation had the right of permanent occupancy of the lands forever. But more important the defendant also acknowledged the plaintiffs' ownership of the land in question by Article II of the Treaty of November 11, 1794, 7 Stat. 44. Article II stated:

The United States acknowledge the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the state of New-York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

Since this Commission has determined that the defendant acknowledged title to the plaintiffs' land in question, our next determination will be concerned with the responsibility on the part of the United States in connection with the sale of the plaintiffs' land to the State of New York.

The Indian Claims Commission Act, 60 Stat. 1049, provides a forum for redress of Indian grievances against the United States and not for injuries done by others for which injuries the United States had no responsibility. Six Nations v. United States, 173 Ct. Cl. 899, 904 (1965). In 1790, the United States assumed certain responsibilities with respect to the Indians. The Trade and Intercourse Act of July 22, 1790, 1 Stat. 137, 138, and successor statutes forbade the sale or conveyance of Indian lands without the consent of the Federal Government.

There have been different revisions of the Act, the most recent of which is still in effect as section 2116 of the Revised Statutes, codified at 25 U.S.C. sec. 177, but federal consent under all versions has always been required in any disposition of Indian real property. The legislation has been interpreted as giving the Federal Government a supervisory role over conveyances by Indians to others. In Federal Power Commission v.

Tuscarora Indian Nation, 362 U.S. 99, 119 (1960), the Supreme Court said:

"The obvious purpose of that statute is to prevent unfair, improvident or improper disposition by Indians of lands owned or possessed by them to other parties, except the United States, without the consent of Congress . . ." Therefore, under the Indian Claims Commission Act, the United States could be held liable if, after 1790, there were any transactions involving the plaintiffs' lands in which there was an "unconscionable consideration" paid or there was a lack of "fair and honorable dealings" by virtue of the fact that the United States did not act to protect the rights of plaintiffs.

In Seneca Nation of Indians v. United States, 173 Ct. Cl. 917, 925 (1965), the Court of Claims stated as follows:

. . . The Trade and Intercourse Act created a special relationship between the Federal Government and those Indians covered by the legislation, with respect to the disposition of their lands, and that the United States assumed a special responsibility to protect and guard against unfair treatment in such transactions. Cf. The Oneida Tribe of Indians v. United States, 165 Ct. Cl. 487 (1964), cert. denied, 379 U.S. 946.

Both the plaintiffs and the defendant agree, and we have so found, that, except for two treaties, the United States did not participate in any of the other twenty-three treaties by which New York State acquired the plaintiffs' land. The only evidence of United States participation in the Treaty of June 1, 1798, between the Oneida Indians and the State of New York is that the treaty recited there was "Present, Joseph Hopkinson Commissioner appointed under the authority of the United States to hold the Treaty." It was stipulated in the treaty that one copy would remain

with the United States, another copy with the State of New York and another copy with the Indians. The treaty bore the signature of said Joseph Hopkinson, and an addendum by John Adams, the President of the United States, stating that the treaty was held under the authority of the United States in the presence and with the approbation of Joseph Hopkinson, the Commissioner of the United States, appointed to hold the same. The only evidence of the United States participation in the Treaty of June 4, 1802, between the Oneida Indians and the State of New York is that the treaty recited there was "Present John Taylor Agent appointed under the authority of the United States to hold the Treaty." The treaty further recited that "The said Cession is thereupon in the presence and with the approbation of the said Commissioner carried into effect at this Treaty." The treaty stipulated that one copy would "remain with the United States another to remain with the State of New York and another to remain with the said Indians" and John Taylor signed the treaty as Commissioner.

The defendant presents the following arguments which it claims precludes its liability in this case. First, the defendant is not liable to the plaintiffs if it should be proven that an inadequate consideration was received by the plaintiffs' ancestors from the State of New York. The gist of its defense is that since it did not participate in either the negotiation or the execution of the twenty-three treaties, there simply are no ties to link the Federal Government to the Indians or the State. The defendant admits it connected itself with the

treaties of 1798 and 1802 by sending its representative and approving and sanctioning them. However, the defendant contends that the Oneidas have not carried their burden of proving a meaningful participation by the United States in these two treaties which would give rise to a fiduciary obligation to protect the Indians, since the evidence merely shows the presence of an officer of the United States at the making of the treaty without indicating the making of any promises or representations on the representative's part. The defendant cites Lipan Apache v. United States, 180 Ct. Cl. 487 (1967), as the basis for the required participation on the part of the United States prior to finding government liability. This contention we find without merit. On the contrary, we interpret the Court of Claims in Lipan Apache, supra at 502, as suggesting two possible bases for holding the defendant liable to the plaintiffs. "The required nexus for liability could rest upon the Government's 'true concert, partnership, or control' with or of, the party dealing with the Indians . . . , or an established special relationship between the Government and the claimant Indians affecting the controverted subject matter." In Seneca Nation, supra, the Court of Claims discussed the nature of the "special relationship" created by the Trade and Intercourse Act:

This responsibility was not merely to be present at the negotiations or to prevent actual fraud, deception, or duress alone; improvidence, unfairness, the receipt of an unconscionable consideration would likewise be of federal concern The concept is obviously one of full fiduciary responsibility, not solely of traditional market-place morals. When the Federal

Government undertakes an "obligation of trust" toward an Indian tribe or group, as it has in the Intercourse Act, the obligation is "of the highest responsibility and trust," not that of a "mere contracting party" or a better-business-bureau. Cf. Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942).

It necessarily follows, we think, that wherever this Act applies the United States is liable, under the Indian Claims Commission Act for the receipt by the Indians of an unconscionably low consideration (173 Ct. Cl. at 925-26).

Based upon the foregoing decisions, it is the conclusion of the Commission that under the Trade and Intercourse Act the defendant has the obligation to assure that Indian tribes receive conscionable consideration for their lands. Defendant's argument is without merit in attempting to avoid liability because the United States did not participate in twenty-three of the twenty-five treaties with the State of New York. Under the Trade and Intercourse Act it had a duty to participate in these transactions and to protect the plaintiffs' interest. There is sufficient legal authority for the proposition that a fiduciary can be held liable not only for taking improper action concerning property within its care, but also for its failure to act when action is ^{1/} required on its part. Therefore the United States had a duty to come forth on its own initiative and protect the Oneidas. In Six Nations v. United States, 173 Ct. Cl. 899, 904 (1965), the Court of Claims stated as to transactions occurring after the enactment of the Trade

^{1/} See Stockbridge Munsee Community v. United States, 25 Ind. Cl. Comm. 281, 285 (1971), and authorities therein cited.

