

Supreme Court Declines to Review Tax Dispute, Preserves Important Second Circuit Victory for Cayuga Nation

News

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On June 7, the US Supreme Court announced that it refused to take up a petition from a New York county seeking to reverse a Second Circuit opinion holding that the Cayuga Nation's sovereign immunity from suit blocks the county from foreclosing on Nation-owned properties based on a tax dispute.

The decision not to pick up Seneca County's petition preserves an important victory for the Cayuga Nation that resolves nearly a decade of litigation in the first federal appellate decision to address the Supreme Court's 2018 decision in *Upper Skagit Indian Tribe v. Lundgren*.

The dispute concerns properties that the Nation in 2007 acquired in fee simple within its federal reservation established by the 1794 Treaty of Canandaigua. New York state law exempts from property taxes "reservation" lands owned by Indian tribes. But Seneca County nonetheless assessed taxes on the Nation's properties and moved to foreclose on them. In 2011, the Nation sought declaratory and injunctive relief to prevent these foreclosures in the US district court for the Western District of New York. The district court granted a preliminary injunction, holding that the Nation's sovereign immunity barred the foreclosures. In 2014, the Second Circuit affirmed. In 2018, the district court entered a permanent injunction barring the county's foreclosures, and the county again appealed to the Second Circuit.

In the meantime, the Supreme Court decided *Upper Skagit Indian Tribe v. Lundgren*. That case concerned whether tribal sovereign immunity barred a "quiet title" action that sought to resolve ownership of a disputed tract. The plaintiff argued that sovereign immunity did not apply because "[a]t common law ... sovereigns enjoyed no immunity from actions involving immovable property located in the territory of another sovereign." The Court declined to address this alleged "immovable property" exception, deeming the argument waived, and ruled for the tribe. Justice Thomas, in dissent, concluded that the immovable-property exception applied and would have ruled for the plaintiff. On appeal to the Second Circuit, Seneca County invoked the immovable property exception and claimed that this exception permitted its foreclosure actions to proceed.

The Second Circuit, however, ruled for the Nation once again. The Second Circuit found that it did not need to resolve whether the common-law immovable-property exception applied to tribal sovereign immunity—because “even were we to recognize the County’s proposed exception ..., the Foreclosure Actions lie outside its bounds.” After surveying treatises and caselaw dating back centuries, the Second Circuit explained that the “immovable-property exception[’s]” “animating concern” is adjudicating “*rights* in real estate”—as in cases like *Upper Skagit* itself, concerning disputes over who owns what. The Second Circuit agreed with the Nation that Seneca County’s foreclosure actions were not of that type: “Although a foreclosure action certainly *involves* real property, the Cayuga Nation observes—and we are convinced—that these tax enforcement actions are—fundamentally—about money, not property.” Because Seneca County’s actions were “best seen as the functional equivalent of an action to execute on a money judgment,” the Second Circuit held that they “lie well within the categories of suits from which sovereigns were traditionally immune under the common law.” The Second Circuit therefore affirmed the permanent injunction against the County’s foreclosures.

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