

**CAYUGA INDIAN NATION OF NEW YORK \*\*\* v. GEORGE PATAKI \*\*\***  
**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**  
*413 F.3d 266; 2005 U.S. App. LEXIS 12764*

**March 31, 2004, Argued**

**June 28, 2005, Decided**

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**OPINION BY: JOSE A. CABRANES**

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We are here confronted by land claims of historic vintage—the [\*\*4] wrongs alleged occurred over two hundred years ago, and this action is itself twenty-five years old—which we must adjudicate against a legal backdrop that has evolved since the District Court's rulings. The United States District Court for the Northern District of New York (Neil P. McCurn, *Judge*), determined (1) that treaties between the Cayuga Nation and the State of New York in 1795 and 1807 were not properly ratified by the federal government and were thus invalid under the Nonintercourse Act, 25 U.S.C. § 177; and (2) that none of defendants' other arguments barred plaintiffs' suit. After ruling in plaintiffs' favor on liability, the District Court conducted a jury trial on damages, which resulted in a verdict for plaintiffs of approximately \$ 36.9 million, representing the current fair market value of the land as well as fair rental value damages for 204 years. The District Court then concluded, following a month-long hearing, that plaintiffs were entitled to about \$ 211 million in prejudgment interest, resulting in a total award of \$ 247,911,999.42.

In another case raising land claims stemming from late-eighteenth-century treaties between Indian tribes and the State of New York, the Supreme Court recently ruled that equitable doctrines -- such as laches, acquiescence, and impossibility -- can be applied to Indian land claims in appropriate circumstances. See *City of Sherrill v. Oneida Indian Nation*, 161 L. Ed. 2d 386, 125 S. Ct. 1478, 1494 (2005). Based on *Sherrill*, we conclude that the possessory land claim alleged here is the type of claim to which a laches defense can be applied. Taking into account the considerations identified by the Supreme Court in *Sherrill* and the findings of the District Court in the remedy stages of this case, we further conclude that plaintiffs' claim is barred by laches. Accordingly, we reverse the judgment of the District Court and enter judgment for defendants.

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#### **DISCUSSION**

The Supreme Court's recent decision in *City of Sherrill v. Oneida Indian Nation*, 161 L. Ed. 2d 386, 125 S. Ct. 1478 (2005), has dramatically altered the legal landscape against which we consider plaintiffs' claims.

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We understand *Sherrill* to hold that equitable doctrines, such as laches, acquiescence, and impossibility, can, in appropriate circumstances, be applied to Indian land claims.\*\*\*

Although we recognize that the Supreme Court did not identify a formal standard for assessing when these equitable defenses apply, the broadness of the Supreme Court's statements indicates to us that *Sherrill*'s holding is not narrowly limited to claims identical to that brought by the Oneidas, seeking a revival of sovereignty, but rather, that these equitable defenses apply to "disruptive" Indian land claims more generally.

In their post-*Sherrill* briefs, both the Cayugas and the United States maintain that the *Sherrill* decision "does not affect the award of monetary damages," Cayuga Letter Br. at 1, and "concerned particular equitable remedies" which are not at issue here as "the district court confined its judgment to an award of damages." United States Letter Br. at 6. Our reading of *Sherrill* suggests that these assertions do not present an entirely accurate assessment of its effect on the present case. While the equitable remedy sought in *Sherrill* -- a reinstatement of Tribal sovereignty -- is not at issue here, this case involves comparably disruptive claims, and other, comparable remedies *are* in fact at issue.

Despite the eventual award by the District Court of monetary damages, we emphasize that plaintiffs' claim is and has always been one sounding in ejectment; plaintiffs have asserted a continuing right to

immediate possession as the basis of all of their claims, and have always sought ejectment of the current landowners as their preferred form of relief. As noted above, in their complaint in this case the Cayugas seek "immediate possession" of the land in question and ejectment of the current residents. Indeed, the District Court noted early in the litigation that it was "clear" that the complaint "presents a possessory claim, basically in ejectment." *Cayuga I*, 565 F. Supp. at 1317 (internal quotation marks omitted). Plaintiffs continue to maintain, on appeal in this Court, that ejectment is their preferred remedy. It was not until 1999, nineteen years after the complaint was filed, and eight years after the District Court's decision on liability, that the District Court determined that the ejectment remedy sought by the Cayugas was, "to put it mildly, . . . not an appropriate remedy in this case." *Cayuga X*, 1999 U.S. Dist. LEXIS 10579, at \*97. The District Court thus effectively "monetized" the ejectment remedy in concluding that "monetary damages will produce results which are as satisfactory to the Cayugas as those which they could properly derive from ejectment." *Id.* at \*79.

The nature of the claim as a "possessory claim," as characterized by the District Court, underscores our decision to treat this claim like the tribal sovereignty claims in *Sherrill*. Under the *Sherrill* formulation, this type of possessory land claim -- seeking possession of a large swath of central New York State and the ejectment of tens of thousands of landowners -- is indisputably disruptive. Indeed, this disruptiveness is inherent in the claim itself -- which asks this Court to overturn years of settled land ownership -- rather than an element of any particular remedy which would flow from the possessory land claim. Accordingly, we conclude that possessory land claims of this type are subject to the equitable considerations discussed in *Sherrill*.

This conclusion is reinforced by the fact that the *Sherrill* opinion does not limit application of these equitable defenses to claims seeking equitable relief. We recognize that ejectment has been characterized as an action at law, as opposed to an action in equity. *See, e.g., New York v. White*, 528 F.2d 336, 338 (2d Cir. 1975) (discussing "the legal remedy of ejectment"); *but see Bowen v. Massachusetts*, 487 U.S. 879, 893, 101 L. Ed. 2d 749, 108 S. Ct. 2722 (1988) (stating in dicta that "our cases have long recognized the distinction between an action at law for damages -- which are intended to provide a victim with monetary compensation for an injury to his person, property, or reputation -- and an equitable action for specific relief -- which may include an order providing for . . . ejectment from land . . ."). Plaintiffs urge us to conclude that, as a legal remedy, [\*28] ejectment is not subject to equitable defenses, relying, *inter alia*, on the Supreme Court's statement in *Oneida II* that "application of the equitable defense of laches in an action at law would be novel indeed." *Oneida II*, 470 U.S. at 244 n.16. In response to this claim, we note *Sherrill*'s that "no similar novelty exists when the specific relief [the Tribe] seeks would project redress . . . into the present and future." 125 S. Ct. at 1494 n.14. Whether characterized as an action at law or in equity, any remedy flowing from this possessory land claim, which would call into question title to over 60,000 acres of land in upstate New York, can only be understood as a remedy that would similarly "project redress into the present and future."

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Inasmuch as the instant claim, a possessory land claim, is subject to the doctrine of laches, we conclude that the present case must be dismissed because the same considerations that doomed the Oneidas' claim in *Sherrill* apply with equal force here. These considerations include the following: "generations have passed during which non-Indians have owned and developed the area that once composed the Tribe's historic reservation," *Sherrill*, 125 S. Ct. at 1483; "at least since the middle years of the 19th century, most of the [Tribe] have resided elsewhere," *id.*; "the longstanding, distinctly non- Indian character of the area and its inhabitants," *id.*; "the distance from 1805 to the present day," *id.* at 1494; "the [Tribe's] long delay in seeking equitable relief against New York or its local units," *id.*; and "developments in [the area] spanning several generations." *Id.*; *see also id.* at 1492-93 ("[T]his Court has recognized the impracticability of returning to Indian control land that generations earlier passed into numerous private hands.") (citing *Yankton Sioux Tribe v. United States*, 272 U.S. 351, 357, 71 L. Ed. 294, 47 S. Ct. 142, 63 Ct. Cl. 671 (1926) [\*33] ("It is impossible . . . to rescind the cession and restore the Indians to their former rights because the lands have been opened to settlement and large portions of them are now in the possession of innumerable innocent purchasers . . .")). We thus hold that the doctrine of laches bars the possessory land claim presented by the Cayugas here. The District Court, after serious consideration of this exact question, explicitly agreed with this assessment. *Cayuga X*, 1999 U.S. Dist. LEXIS 10579, at \*86 ("Thus, even though some delay on the part of the Cayugas is explainable, in the context of determining

whether ejectment is an appropriate remedy, . . . the delay factor tips decidedly in favor of the defendants.").

To summarize: the import of *Sherrill* is that "disruptive," forward-looking claims, a category exemplified by possessory land claims, are subject to equitable defenses, including laches. Insofar as the Cayugas' claim in the instant case is unquestionably a possessory land claim, it is subject to laches. The District Court found that laches barred the possessory land claim, and the considerations identified by the Supreme Court in *Sherrill* mandate that we affirm the District Court's finding that the possessory land claim is barred by laches. The fact that, nineteen years into the case, at the damages stage, the District Court substituted a monetary remedy for plaintiffs' preferred remedy of ejectment n7 cannot salvage the claim, which was subject to dismissal *ab initio*. To frame this point a different way: if the Cayugas filed this complaint today, exactly as worded, a District Court would be required to find the claim subject to the defense of laches under *Sherrill* and could dismiss on that basis.

Although we conclude that plaintiffs' ejectment claim is barred by laches, we must also consider whether their other claims, especially their request for trespass damages in the amount of the fair rental value of the land for the entire period of plaintiffs' dispossession, are likewise subject to dismissal. In assessing these claims, we must recognize that the trespass claim, like all of plaintiffs' claims in this action, is predicated entirely upon plaintiffs' possessory land claim, for the simple reason that there can be no trespass unless the Cayugas possessed the land in question. *See, e.g., West 14th Street Commercial Corp. v. 5 West 14th Owners Corp., 815 F.2d 188, 195 (2d Cir. 1987)* (holding that a trespass cause of action must allege possession). Inasmuch as plaintiffs' trespass claim is based on a violation of their constructive possession, it follows that plaintiffs' inability to secure relief on their ejectment claim alleging constructive possession forecloses plaintiffs' trespass claim. In other words, because plaintiffs are barred by laches from obtaining an order conferring possession in ejectment, no basis remains for finding such constructive possession or immediate right of possession as could support the damages claimed. Because the trespass claim, like plaintiffs' other requests for relief, depends on the possessory land claim, a claim we have found subject to laches, we dismiss plaintiffs' trespass claim, and plaintiffs' other remaining claims, along with the plaintiffs' action in ejectment.

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**DISSENT:** JANET C. HALL, *District Judge*, dissenting in part and concurring in part in the judgment:  
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While *City of Sherrill* may have "dramatically altered the legal landscape" of Indian land claims, Maj. Op. at , it does not reach as far as the majority reads it. *City of Sherrill* holds that laches can bar a tribe from obtaining the disruptive remedy of re-assertion of tribal sovereignty. Furthermore, the case supports the proposition that the nature of forward-looking, disruptive remedies generally will serve as equitable considerations that can bar such equitable remedies as re-possession, even against the United States. An award of money damages is not an equitable remedy, nor is it forward-looking or disruptive in the way dispossession inherently is. Nothing in *City of Sherrill* suggests a total bar on the ability of Indian tribes to obtain damages for past wrongs where Congress has explicitly provided for it.

*City of Sherrill* serves as strong support to affirm the District Court's refusal to award possession to the plaintiffs, and I join in the judgment to that extent. However, I respectfully dissent from that part of the majority opinion which dismisses the Tribe's claim for money damages. While there remain issues as to the nature or amount of the money damages awarded, I cannot join the majority in reading *City of Sherrill* to bar all remedies.

While I do not join entirely in the majority's resolution of this case, I wholeheartedly concur in its comments concerning Judge McCurn's tireless and thoughtful attention to this complex and challenging case for over two decades.