

LTBB V SNYDER UPDATE
FEBRUARY 1, 2019

On January 31, 2019, Judge Maloney of the U.S District Court for the Western District of Michigan, issued two orders *LTBB v. Snyder*.

The first order denied without prejudice the Tribe's motion for partial summary judgment. In that motion, the Tribe urged the Court to find that Congress' 1994 reaffirmation of the Tribe's status *also* restored any rights that had been diminished or abrogated -- including the existence of a supposed reservation -- despite 1870's Congressional Acts that gave rise to the "diminishment/disestablishment defense." Essentially, the Tribe argued that the 1994 Act wiped away any Congressional acts or actions of the federal government that in any way negatively affected the Tribe's rights between 1855 and 1994.

Central to Judge Maloney's decision was the fact that the Tribe's motion assumes a Court ruling that the reservation still exists. Judge Maloney stated that "[t]he [1994] Reaffirmation Act only becomes relevant once it is determined that a reservation was created and that it was subsequently diminished or disestablished." The Court has yet to resolve this initial question, so it dismissed the Tribe's motion as premature. The Court viewed this as a matter of case management, and could revisit the argument later.

The second order denied the city and county defendants' motion for judgment on the pleadings. This motion focused on the Indian Claims Commission (ICC) and argued that the Tribe's reservation claim fails under the doctrines of judicial estoppel, issue preclusion, and the ICC Act's statute of limitations. The city and county defendants' argument was based on the notion that, in obtaining compensation for underpayment of land sold by the Tribe's predecessors, the Tribe's predecessors conceded that all of the land being claimed as a reservation had been sold, and they could not now assert that the land is a reservation. The Associations, like the other defendants, concurred in the relief sought by the city and county defendants, recognizing, however, that there is a distinction between claims for title to land (which would be clearly precluded) versus claims regarding jurisdiction over lands that are non-tribally owned (which is how the Tribe characterizes this case).

The city and county defendants first argued that judicial estoppel barred any reservation claim because during certain proceedings of the ICC, the Tribe was compensated for its lands and if the Tribe retained a reservation from its ultimate award at the ICC, the United States government would have been entitled to a set-off to deduct the value of such reservation. It did not. Judge Maloney rejected this claim because, he said, it "cannot be said with certainty" that the parties at the ICC understood that the claims at issue may have encompassed the right to exercise jurisdiction over the land in question (as opposed to just title).

The city and county defendants' issue preclusion argument was rejected largely for the same reasons. The Court found that the Tribe's right to a reservation under 1855 Treaty was never "actually litigated" at the proceedings of the ICC.

Lastly, the Court held that the ICC Act's statute of limitations did not bar the Tribe's reservation claim. Judge Maloney reasoned that (1) the ICC lacked authority to decide the jurisdictional claim now brought by the Tribe, (2) the ICC would not have been able to hear claims for relief against the State of Michigan (it is limited to adjudicating claims against the United States), and (3) that the Tribe's claim does not fall under any of the five general categories the ICC was authorized to adjudicate. The Tribe's case, rather, arises from the State of Michigan's failure to recognize the Tribe's alleged reservation. Accordingly, the Court denied this motion.

The Court's decisions on these motions represents only the first step of determining whether the case will proceed to trial. The primary motions for summary judgment—to rule in the defendants' favor without a trial—are due in mid-March of this year, with argument before the Court to take place in late June. Should a trial be necessary, the Court has indicated that it will likely be scheduled to begin sometime in 2020.