

STATE OF NEW YORK
SUPREME COURT COUNTY OF CAYUGA

CAYUGA NATION,

Plaintiff,

vs.

SUMMONS

FINGERLAKES DRIVE IN, LLC, AND PAUL MEYER,

Index No.

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys an answer to the Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of the venue designated is CPLR 507.

DATED: January 24, 2024

BARCLAY DAMON LLP

By:



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STATE OF NEW YORK
SUPREME COURT COUNTY OF CAYUGA

CAYUGA NATION,

Plaintiff,

vs.

COMPLAINT

FINGERLAKES DRIVE IN, LLC, AND PAUL MEYER,

Index No.

Defendants.

The Cayuga Nation, by and through its lawful governing body, the Cayuga Nation Council (the “Nation”), as and for its Complaint against Defendants Fingerlakes Drive In, LLC and Paul Meyer (together, “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

1. As a federally-recognized sovereign Indian Nation, and in accordance with federal law, on January 10, 2024, the Nation submitted to the United States Department of the Interior, Bureau of Indian Affairs, an “Application to Place Approximately 40.18 Acres of Land within the County of Cayuga, State of New York in Trust” (the “Trust Application”)¹ pursuant to 25 C.F.R. § 151.9. Acquisition of land into trust is essential to tribal self-determination, as tribes are sovereign governments and trust lands are a primary focus of tribal authority.

2. The specific property at issue in the pending Trust Application is the 40.18 acre parcel located at 1044 Clark Street Road, Auburn, New York owned in fee simple by the Nation. Among other things, the Nation must demonstrate clear and unencumbered ownership of the property in order to have its Trust Application approved.

¹ A copy of the Trust Application is attached hereto and incorporated herein as **Exhibit A**.

3. Yet, for months now, there has been an ongoing dispute between the Nation and Defendants, as Defendants continue to operate their Finger Lakes Drive-In on part of the Nation's property, without authorization, and under the claim of an entirely invalid lease and a dispute over the boundary line. When the Nation has raised this illegal conduct to Defendants and demanded they vacate the property, Defendants have refused.

4. In sum, the matter of property's ownership is ripe for adjudication, and the Nation brings this action as a property owner pursuant to Article 15 of the Real Property Actions and Proceedings Law ("RPAPL") to establish its rights, title, and interest in the certain 40.18 acre parcel of real property located at 1044 Clark Street Road, Auburn, New York (the "Nation Property") and for relief against Defendants for trespass on, and ejectment from, the Nation Property where Defendants unlawfully operate their Finger Lakes Drive-In business.

PARTIES

5. Plaintiff, Cayuga Nation (the "Nation") is a federally-recognized sovereign Indian nation. *See* Indian Entities Recognized by and Eligible to Receive Services From The United States Bureau of Indian Affairs, 88 Fed. Reg. 54,654, 54,655 (Aug. 11, 2023). The federal government recognizes the Nation as the same entity with which it entered the Treaty of Canandaigua of 1794, 7 Stat. 44. It is governed by the Cayuga Nation Council.

6. This action is filed by the Nation at the direction of, and under the authority of, its federally-recognized Nation Council. *Cayuga Nation v. Bernhardt*, 374 F. Supp. 3d 1 (D.D.C. 2019); Letter from Assistant Secretary–Indian Affairs Tara Sweeney (Nov. 14, 2019) (recognizing the Halftown Council "as the Nation's governing body without qualification" and that "[t]he Halftown Council is the Nation's government for all purposes.").

7. Defendant Paul C. Meyer is a natural person and resident of Cayuga County, New York, who claims a legal interest in the property at issue in this litigation and operates a business thereon.

8. Defendant Fingerlakes Drive In, LLC is an active New York domestic limited liability company, owned and operated by Defendant Paul C. Meyer, with a service and mailing address of 317 Cliffside Drive, Auburn, New York 13021 that claims an ownership interest in the property at issue in this litigation and operates a business thereon.

JURISDICTION AND VENUE

9. Venue is proper in this Court as the real property which is the subject of this action is located within the County of Cayuga.

10. This Court has personal jurisdiction over Defendant under CPLR 301 and over the subject matter of this action pursuant to CPLR 3001.

FACTUAL ALLEGATIONS

A. Ownership Interests In Property

11. The Nation owns the Nation Property located a 1044 Clark Street Road, consisting of a 40.18 acre parcel that is assigned Tax Map ID# 113.00-1-29.1 and that is the subject of the Trust Application to the United States Department of the Interior.

12. The Nation acquired the Property from Joseph Elice on January 19, 2023 in fee simple, and the deed was recorded in the Office of the Cayuga County Clerk on January 24, 2023 in Deed Book No. 4319, Deed Page 202. A copy of the deed is attached hereto and incorporated herein as **Exhibit B**.

13. Defendant Fingerlakes Drive In LLC owns the real property located immediately to the east of the Nation's Property, consisting of a 5.82 acre parcel that is assigned Tax Map ID#:

114.00-1-25.13 (the “Drive-In Property”), and from which Defendant Paul Meyer operates a drive-in movie theater through the Fingerlakes Drive In, LLC corporate entity.

14. Defendants acquired the Drive-In Property from Glenwood Movieplex Corp. on December 30, 2011, and the deed was recorded in the Office of the Cayuga County Clerk that same day in Deed Book No. 1465, Deed Page 142. A copy of the deed is attached hereto and incorporated herein as **Exhibit C**.

B. Encroachment Upon the Nation Property

15. As set forth above, the Drive-In Property consists of 5.82 acres, which is delineated on the below official government tax map provided by the Cayuga County Real Property Services and reflected by a yellow line with the numerals “5.82 A” and “25.13” within it:



A copy of the map is attached hereto and incorporated herein as **Exhibit D**.

16. As reflected by the black ovals which have been added to the above image for demonstrative purposes, significant portions of the Finger Lakes Drive-In business plainly extend beyond the western-most boundary line of the Drive-In Property and onto the Nation Property. For

example, approximately half of the movie projection screen as well as asphalt roads and vehicle parking areas are on the Nation's Property.

17. Thus, Defendants claim, or appear to claim, an interest in the Nation Property adverse to that of the Nation.

18. Further, Anderson Survey has performed a survey of the Property (the "Survey") which confirms what is represented in the above-referenced images: namely, that Defendant Fingerlakes Drive In LLC, and its owner, Defendant Paul Meyer, are unlawfully using, occupying, and encroaching upon the Nation Property. A copy of the Survey is attached hereto and incorporated herein as **Exhibit E**.

19. All told, the Nation is the sole and rightful owner of the Nation Property and no other person has any right or claim of interest in the property.

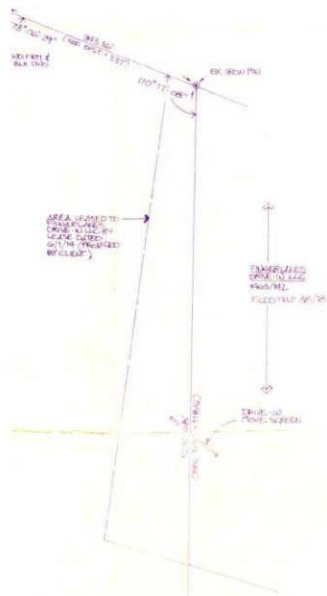
C. Invalid and Unenforceable Lease

20. When the Nation brought Defendants' encroachment upon the Nation Property to Defendants' attention by letter dated December 18, 2023, and demanded Defendants remove the encroachments immediately, Defendant Paul Meyer responded by December 20, 2023 letter enclosing a copy of a purported lease (the "Lease").

21. Dated June 1, 2014 and executed between Anthony Elice and Fingerlakes Drive-In LLC, the Lease is for the portion of what is now the Nation Property. A copy of the Lease is attached hereto and incorporated herein as **Exhibit F**.

22. The Lease was not recorded, and the Nation did not receive notice of it from the County Clerk's records when it purchased the Nation Property—nor was the Lease included in the abstract for the Nation Property. A copy of an abstract for the Nation Property is attached hereto and incorporated herein as **Exhibit G**.

23. The Lease purports to convey a lease interest in a certain tract of property as detailed more fully therein that runs adjacent to the west side of the Drive-In Property line and encompasses, in part, the Nation Property tract of land on which Finger Lakes Drive-In's asphalt roads, vehicle parking, and movie projection screen encroach, as illustrated in the below image taken from the Survey (Exhibit E):



24. The Lease is invalid and completely unenforceable for a number of reasons.

25. First, and as a dispositive matter, the Lease was required to be recorded because the term of the lease is for more than three years. N.Y. Real Property Law § 291; *U.S. Bank Natl. Assn. v. Hurtado*, 27 Misc. 3d 933, 937 (Nassau Cnty. Dist. Ct. 2010) (“When a lease with a term greater than three years is not recorded, the lease will be considered void as against any subsequent purchaser for value.” (internal citations and quotation marks omitted)). Because the lease here is for a period of twenty years, and the Lease was not recorded, it is invalid against the Nation as a subsequent purchaser for value.

26. Second, the terms of the Lease are so sparse as to be void for vagueness. To start, the Lease states “Lease payment is \$1,500 payable on signing of the lease”—it does not specify whether this is the only payment for the entire 20-year term of the Lease, or moreover, carries forward and covers every subsequent renewal. And there is no mechanism to increase rent at any point in time. What is more, there is no mention of termination of the Lease or any conceivable manner in which it can be violated, and no mention at all of a single right afforded to the landlord under the Lease.

27. Third, as written, the Lease is an impermissible universal evergreen lease. As drafted, Fingerlakes Drive In, LLC has the unilateral and unchecked right to renew for 20-year terms until the end of time without any provision for the current or future landowner to put an end to the Lease, or even increase rent.

28. Finally, there are significant issues with the signatures on the Lease being rendered both in duplicate and illegibly, raising further concerns as to the document’s validity.

29. In all events, the Lease provides Defendants with no legal right to use, occupy, possess, or encroach upon the portion of the Nation’s Property on which portions of the Finger Lakes Drive-In currently reside.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – Quiet Title)

30. The Nation repeats and realleges the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

31. This Court has authority to enter a declaratory judgment quieting title in this matter pursuant to Section 1521 of the RPAPL.

32. An actual and real controversy has arisen among the parties relative the Nation's rights to exclude Defendants from the Nation Property, and Defendants' claimed right to utilize and encroach upon the Nation's Property.

33. The ripeness of this controversy is amplified by the Nation's pending Trust Application with the United States Department of Interior to place the Nation Property into trust.

34. The Nation owns the Nation Property in fee simple, and to the complete exclusion of any other persons.

35. Defendants do not have a claim to legal ownership or interest in the Nation Property, and the Lease upon which they claim transitory rights is entirely invalid.

36. Upon information and belief, any judgment granted herein will not affect any person or persons not in being or ascertained at the commencement of this action, who by any contingency contained in a devise or grant or otherwise could afterward become entitled to a beneficial estate or interest in the Nation Property, and that every person who would have been entitled to such estate or interest has been named a party hereto.

37. Accordingly, the Nation respectfully requests that this Court quiet title pursuant to Article 15 of the RPAPL and declare the Nation to be the sole and rightful owner of the Nation Property to the exclusion of all other persons known or unknown.

AS AND FOR A SECOND CAUSE OF ACTION
(Trespass)

38. The Nation repeats and realleges the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

39. As set forth herein, Defendants have intentionally laid asphalt for driving and parking on the Nation Property, have erected a movie projector screen that extends and encroaches onto the Nation Property, and have induced and permitted vehicle traffic on the Nation Property.

40. The Survey attached hereto as Exhibit E plainly shows the encroachments.
41. Defendants, therefore, are trespassing on the Nation Property.
42. Accordingly, the Nation is entitled to an Judgment holding Defendants liable for trespass and awarding appropriate monetary damages therefore.

AS AND FOR A THIRD CAUSE OF ACTION
(Ejectment)

43. The Nation repeats and realleges the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.
44. The Nation is the sole and lawful owner of the Nation Property, and is entitled to exclusive possession thereof.
45. Defendants have no legal right or claim to possession of any portion of the Nation Property.
46. Defendants wrongfully possess the Nation Property.
47. Accordingly, the Nation is entitled to an Order from this Court ejecting Defendants from the Nation Property, together with any and all property they have placed or currently maintain thereon, and forbidding them from reentering the Nation Property at any future point and for any purpose.

WHEREFORE, Plaintiff Cayuga Nation respectfully requests this Court enter:

- (1) A Judgment quieting title and declaring the Nation to be the sole and exclusive owner of the Nation Property with an absolute right to exclusion of all other persons, including Defendants;
- (2) A Judgment holding Defendants liable for trespass on the Nation Property, and awarding appropriate monetary damages therefore;
- (3) An Order ejecting Defendants from the Nation Property and directing them to immediately remove all property from the premises; and
- (4) Such other and further relief as the Court deems just and proper.

DATED: January 24, 2024

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