13-3069-cv

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

STOCKBRIDGE-MUNSEE COMMUNITY,

Plaintiff-Counter Defendant-Appellant,

v.

STATE OF NEW YORK, MARIO CUOMO, AS GOVERNOR OF THE STATE OF NEW YORK, NEW YORK STATE DEPARTMENT OF TRANSPORTATION, FRANKLIN WHITE, AS COMMISSIONER OF TRANSPORTATION, MADISON COUNTY, THE COUNTY OF MADISON NEW YORK, ONEIDA COUNTY, NEW YORK, TOWN OF AUGUSTA, NEW YORK, TOWN OF LINCOLN, NEW YORK, VILLAGE OF MUNNSVILLE, NEW YORK, TOWN OF SMITHFIELD, NEW YORK, TOWN OF STOCKBRIDGE, NEW YORK, TOWN OF VERNON, NEW YORK,

Defendant-Counter Claimant-Appellees,

and

ONEIDA INDIAN NATION OF NEW YORK,

Defendant-Intervenor-Appellee.

On Appeal from the United States District Court
for the Northern District of New York (Albany)

PETITION FOR REHEARING EN BANC AND APPENDIX

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INTRODUCTION

The panel decision conflicts with the May 19, 2014 decision of the United States Supreme Court in *Petrella v.Metro-Goldwyn-Mayer, Inc.*, 134 S.Ct. 132; 188 L.Ed.2d 979 (2014) (*Petrella*). *Petrella* held that courts may not override Congress' judgment and apply equitable defenses to summarily dispose of claims at law filed within a statute of limitations established by Congress. The panel's *Per Curiam* decision ruled that Plaintiff-Appellant Stockbridge-Munsee Community's (Stockbridge) damages claims, which were filed within the congressionally established limitations period, are barred by the *Sherrill* equitable defense. *Stockbridge-Munsee Cmty. v. New York*; Slip Op. at 8, 2014 WL 2782191 (2d Cir. June 20, 2014) (Slip Opinion attached as Appendix). The panel's failure to follow *Petrella* warrants en banc review under Fed. R. Civ. P. 35.

ARGUMENT

A. The Panel's Decision Cannot be Reconciled with the Supreme Court's Decision in *Petrella*.

The panel affirmed the judgment below based on this Court's *Sherrill* defense, which holds that, even if Indian claims at law are brought within the applicable federal statute of limitations, equitable doctrines such as laches, acquiescence and impossibility can apply to bar the claims in their entirety if they are disruptive and upsetting to justifiable expectations. *Cayuga Indian Nation of N. Y. v. Pataki*, 413 F.3d 266, 273 (2d Cir. 2005) (*Cayuga*).

This defense is premised entirely on *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), which applied the defense to bar claims for declaratory and injunctive relief to re-establish the Oneida Indian Nation's (OIN) sovereign governmental authority (and immunity from the obligation to pay local property taxes) over recently re-acquired reservation land that had been out of its possession for generations. *Sherrill* involved only equitable claims and remedies to which no federal statute of limitations applied.

Importantly, *Sherrill* did not disturb the Supreme Court's earlier holding in *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 230 (1985) (*Oneida II*), that "an Indian tribe may have a live [common law] cause of action for a violation of its possessory rights that occurred 175 years ago." 544 U.S. at 221. *Oneida II* left open the question of "equitable considerations limiting the relief available to OIN," *id* at 214, but noted that "application of the equitable defense of laches in an action at law would be novel indeed." 470 U.S. at 244, n. 16. *Sherrill* distinguished *Oneida II* as an "action at law," emphasized that "the distinction between a claim or substantive right and a remedy is fundamental," and lauded the District Court's decision in a related Oneida land-claim action to take the remedy of evicting 20,000 private landowners off the table (while allowing the claim for damages to proceed). 544 U.S. at 213.

Shortly after *Sherrill*, this Court applied the defense to bar the Cayuga

Nation's land claim in its entirety. The *Cayuga* majority's sole justification for this about-face in Second Circuit land-claim jurisprudence was its conclusion that *Sherrill* "had dramatically altered the legal landscape against which" tribal land claims are considered. 413 F.3d at 273, 279-80. That conclusion, in turn, was premised entirely upon the understanding that *Sherrill* "hold[s] that equitable doctrines, such as laches, acquiescence, and impossibility, can, in appropriate circumstances, be applied to Indian land claims, even when such a claim is legally viable and within the statute of limitations." *Id*. at 273. *Cayuga* asserted that, as the Supreme Court in *Oneida II* merely cautioned against applying laches to bar claims at law but left the question open, *Sherrill* had "answered the question left open" in *Oneida II* and *Sherrill's* statement that it was not disturbing *Oneida II's* holding did not control whether laches applied to the Cayugas' claim. *Id*. at 274.[1]

The panel's application of the *Sherrill* equitable defense to summarily dispose of Stockbridge's legal claims and foreclose the possibility of any form of relief cannot be reconciled with the Supreme Court's recent ruling in *Petrella*. There, the Court held that "we adhere to the position that, in the face of a statute of limitations enacted by Congress, laches cannot be invoked to bar legal relief." 134 S.Ct. at 1974. Critically, the panel decision overlooked the fact that Justice

[1] This Court subsequently applied *Cayuga* to dismiss in their entirety two other land-claim actions. *Oneida Indian Nation of N.Y. v. County of Oneida*, 617 F.3d 114 (2d Cir. 2010) (*Oneida 2010*) and *Onondaga Nation v. New York*, 500 F. App'x 87 (2d Cir. 2012) (summary order). Slip Op. at 5.

Ginsburg, writing for the Court in *Petrella* as she had in *Sherrill*, was expressly adhering to the Supreme Court's earlier admonition in *Oneida II* (among other cases) that laches may not be invoked to bar legal relief. *Petrella* stated that the substantive and remedial principles that applied before the merger of law and equity in 1938 have not changed, *id*. at 1974, and that the Court has "never applied laches to bar in their entirety claims for discrete wrongs occurring within a federally prescribed limitations period." *Id*. at 1975.

This directly contradicts *Cayuga's* fundamental premise. *Petrella* establishes that *Sherrill* neither dramatically altered the legal landscape nor did it hold that Indian claims at law brought within the applicable federal statute of limitations can be completely barred by equitable doctrines.

Nor was the *Petrella* analysis limited to copyright law. *Petrella* announced a general rule that applies any time Congress has provided a statute of limitations. The cases that *Petrella* relied on as support for its adherence to the rule that laches cannot bar legal relief in the face of a federal statute of limitations involve a broad spectrum of federal statutes: the Federal Farm Loan Act (*Holmberg v. Armbrecht*); the Securities & Exchange Act (*Merck v. Reynolds*); the Prohibition Act (*U.S. v. Mack*); the Civil Rights Act (*Nat'l RR Pass. Corp*.); and, most significantly here, the Indian Claims Limitations Act of 1982 (ICLA)(*Oneida II*). 134 S.Ct. at 1973. Indeed, *Petrella* explicitly stated that "[t]here is nothing at all different . . . about

copyright cases in this regard." *Id*. at 1974.

It is significant that in *Petrella*, the dissent, citing *Cayuga*, argued that modern litigation rules and practice often sanctioned the applicability of laches despite a fixed federal statute of limitations. The dissent asserted that the Court did not mean for "any of its statements in *Holmberg*, *Merck*, or *Oneida* to announce a general rule about the availability of laches in actions for legal relief, whenever Congress provides a statute of limitations." *Id*. at 1984 (Breyer, dissenting) (emphasis added). The dissent cited *Cayuga* for the proposition that laches was available to dispose of a possessory land claim where the District Court had awarded damages, regardless of whether it was an action at law or in equity. *Id*. But, rejecting the contemporary trend exemplified by *Cayuga*, the *Petrella* majority replied that, "tellingly, the dissent has come up with no case in which this Court as approved the application of laches to bar a claim for damages brought within the time allowed by a federal statute of limitations." *Id.* at 1974.[2]

B. The Panel's Ruling that Congress has not Established a Limitations Period for Indian Land Claims is in Error: Stockbridge Asserts Money Damages Claims that have been Expressly Preserved by Congress.

The panel attempted to sidestep *Petrella* by noting that *Petrella's* holding was confined to prohibiting the invocation of laches to bar legal relief in the face of

[2] Justices Ginsburg and Sotomayor voted to grant the petitions for a writ of certiorari filed in *Oneida 2010. Oneida Indian Nation v. County of Oneida*, 132 S.Ct. 452 (2011) (Order List, Oct. 17, 2011 at 6 (No. 10-1420)).

a statute of limitation enacted by Congress and ruling that, in the case of Indian land claims, Congress has not fixed a statute of limitations. Slip Op. at 8 (quoting that portion of a sentence in *Oneida II* that stated that "neither petitioners nor we have found any applicable statute of limitations . . . ."). *Petrella* is not so easily avoided, however, because the *Oneida II* language quoted by the panel is actually part of a more expansive statement that no limitations period barred the Oneidas' land claim. 470 U.S. at 253. It does not state that Congress did not provide a statute of limitations for Indian land claims generally. Indeed, the panel overlooked the fact that this Court has at least twice recognized – including once in *Cayuga* – that 28 U.S.C. § 2415 provides a federal statute of limitations applicable to suits such as this. See *Cayuga*, 413 F.3d at 279 ("[T]here is now a statute of limitations, *see* 28 U.S.C. §2415(a) . . . ."); *Oneida Indian Nation of N.Y.v. State of New York*, 691 F.2d 1070, 1081-1082 (2d Cir. 1982).

Moreover, the Supreme Court in *Oneida II* expressly recognized that Congress had established a statute of limitations for Indian claims and that it had defined precisely the circumstances under which damages claims concerning Indian lands will be treated as time-barred. *Oneida II* correctly observed that in 28 U.S.C. § 2415(g) Congress had mandated that Indian claims accruing before July 18, 1966 shall be deemed to accrue on that date, 470 U.S. at 242, and that, "[w]ith the enactment of the 1982 amendments, Congress for the first time imposed a

statute of limitations on certain tort and contract claims for damages brought by . . . Indian tribes. These amendments, enacted as the Indian Claims Limitations Act of 1982, . . . established a system for the final resolution of pre-1966 claims cognizable under §§ 2415(a) and (b),” 470 U.S. at 242-43 (citation omitted), which expressly included actions for “money damages” resulting from trespass to Indian lands. *Oneida II* went on to summarize the detailed statutory limitations scheme established by Congress, noting that the ICLA directed the Secretary of the Interior to compile and publish two lists of all Indian claims to which the statute of limitations applied and established new limitations periods for claims that operate differently depending on the Secretary’s listing decisions.[3]

Oneida II explained that no statute of limitations applied to the damages claims of the Oneida tribal plaintiffs because “[t]he Oneidas commenced this suit in 1970, when no statute of limitations applied to claims brought by the Indians themselves.” *Id.* In contrast, Stockbridge filed this land-claim action in 1986; four years after Congress imposed a statute of limitations on tort and contract claims filed by Indian tribes. The Stockbridge-Munsee land claim is among the Bureau of Indian Affairs’ Eastern Area claims listed on the first list published by the Secretary in the Federal Register in 1983. 48 Fed. Reg. 13698, 13920 (March 31,

[3] 28 U.S.C. § 2415(c) provides that “[n]othing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real and personal property.” *See* 470 U.S. at 243, n. 15.

1983). It was not subsequently identified by the Secretary as unsuitable for litigation or a proposed legislative resolution, *see Oneida II* at 243, and is therefore among the claims preserved by Congress in 1982. It is a valid claim brought at law within the congressionally imposed limitations period.

The comprehensive limitations scheme embodied in 28 U.S.C. § 2415 and the ICLA treats Indian land-related claims for money damages differently from possessory title claims to real property. For example, 28 U.S.C. § 2415(b) provides that money damages claims resulting from a trespass on Indian lands are subject to the statute's detailed limitations scheme, while 28 U.S.C. § 2415(c) provides that nothing in the statute will limit the time for bringing a title or possessory action to real property. In drawing this distinction, Congress recognized that the money damages remedy arising from a land claim is not derivative of the claim to possession of the land itself. The ICLA therefore "does not limit the time for bringing an action to establish the title or possessory right to real or personal property but any claims for monetary relief arising from these actions must be filed before the deadline." S. Rep. No. 95-236 at 1-2 (1977) (referring to §2415(b)). *See also* S. Rep. No. 569, 96th Cong., 2d Sess. 1-2 (1980) ("It is important to note that the statute only imposes a limitation on claims seeking monetary damages. It does not bar actions involving titles to land, but any claims for monetary damages arising from these actions must be filed before the

deadline.") (referring to §2415(b)). See discussion *supra* at 6-7.[4]

In this action, although Stockbridge's Amended Complaint asserts only claims at law (ejectment and trespass damages), the remedies sound both in law and equity: they include declaratory relief, possession ("ejectment"), an accounting and trespass damages. (JA 121-22). But the panel's ruling erroneously treats the money damages claims as derivative of the possessory remedy. This failure to distinguish between rights and remedies, legal claims and equitable relief and coercive relief and damages cannot be reconciled with *Petrella*.[5]

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[4] The legislative histories of the 1972, 1977, 1980 and 1982 amendments to § 2415 show that Congress was fully aware of modern-era Indian land claims stemming from wrongful dispossessions occurring generations earlier and intended to preserve them. See, e.g., S. Rep. No. 1253, 92d Cong., 2d Sess. 2, 4-5 (1972); H.R. Rep. No. 375, 95th Cong., 1st Sess. 2-4, 6-7 (1977); H.R. Rep. No. 807, 96th Cong., 2d Sess. 9 (1980); S. Rep. No. 569, 96th Cong., 2d Sess. 3 (1980). See *Oneida II*, 470 U.S. at 253 (noting congressional acts settling Eastern Indian land claims).

[5] Nor can it be reconciled with *Oneida II* or *Sherrill*. *Oneida II* held that "an Indian tribe may have a live cause of action for [monetary damages for] a violation of its possessory rights that occurred 175 years ago." 470 U.S. at 230. *Sherrill* stated that "the question of damages for the Tribe's ancient dispossession is not at issue in this case, and therefore we do not disturb our holding in *Oneida II*." 544 U.S. at 221. *Sherrill* was careful to distinguish between legal damages relief and equitable coercive relief, emphasizing that *Oneida II* was an action at law that involved "demands for monetary compensation," whereas in *Sherrill*, "OIN sought equitable relief prohibiting, currently and in the future, the imposition of property taxes." *Id*. at 211-12. And the distinction between rights and remedies was central to *Sherrill's* analysis: "The distinction between a claim or substantive right and a remedy is fundamental," and "there is a sharp distinction between the *existence* of a federal common law right to Indian homelands and how to *vindicate* that

Petrella held that it was error to summarily dispose of plaintiff's copyright infringement claim "based on laches, preventing adjudication of any of her claims on the merits and foreclosing the possibility of any form of relief." 134 S.Ct. at 1977. The limitations period established by Congress would not permit dismissal of the suit altogether, but, "[i]n extraordinary circumstances . . . the consequences of a delay in commencing suit may be of sufficient magnitude to warrant, at the very outset of the litigation, curtailment of the relief equitably awardable." *Id.* Thus, although the copyright act provided for a range of remedies, i.e., monetary damages, coercive injunctive relief and recovery of profits, *id*. at 1968, in extraordinary circumstances the equitable *relief* provided for by Congress might be foreclosed at the outset, but the entire *claim* could not be foreclosed to deny the purely legal remedy of monetary damages.

The case of *Chirco v. Crosswinds Communities, Inc.*, 474 F.3d 227 (6th Cir. 2007) best illustrated the *Petrella* "extraordinary circumstances" exception to the long-standing general rule and how, in a claim at law, equitable defenses may apply at the outset to bar certain relief sounding in equity – but not to bar the claim in its entirety. There, copyright holders challenged defendants' unauthorized use of copyrighted architectural designs to build a 252-unit condominium development within the limitations period, but waited 18 months after they learned of the

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right." *Id*. at 213 (emphasis in original, citations omitted). *Sherrill* spoke only of the "remedy" of possession, never of a "right" of possession.

infringement and after 168 of the units had been constructed, 141 of them sold and 109 already occupied by buyers. The Sixth Circuit reversed the District Court's dismissal of the entire suit based on laches, holding that plaintiffs' claims for legal relief (monetary damages) could not be dismissed because they had been brought within the period established by Congress. However, plaintiffs' claims for equitable relief – an injunction mandating destruction of the housing project – had been properly dismissed at the litigation's outset because such relief would work an unjust hardship on defendants and innocent third parties. 134 S.Ct. at 1978.

Petrella's reasoning controls here. Although ejectment actions generally seek two remedies – restoration of possession and fair-rental-value damages – current possession is not an element of the legal claim in ejectment. The elements of an ejectment claim are "[p]laintiffs are out of possession; the defendants are in possession, allegedly wrongfully; and the plaintiffs claim damages because of the allegedly wrongful possession." *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 683 (1974) (Rehnquist, concurring). Thus, while Stockbridge's disruptive equitable remedy of possession might properly be foreclosed at the outset under *Petrella's* "extraordinary circumstances" exception; the unavailability of a possessory remedy of may not bar the legal claim for money damages.

Similarly, the unavailability of the equitable remedy of possession may not bar Stockbridge's separate (non-ejectment) trespass-damages claim because the

claim for trespass damages is not derivative of the ejectment claim nor does it require proof of possession. The distinction between claims and remedies lies at the heart of the *Petrella* analysis, just as it did in *Sherrill* and *Oneida II*. The panel erred in ruling that no congressional statute of limitations applied to this action. *Petrella* establishes that the panel's application of *Cayuga's Sherrill* defense to prevent the adjudication of any of Stockbridge's claims and foreclose the possibility of any form of legal relief was likewise in error.

C. The Panel's Holding that *Petrella* Does Not Apply Because the *Sherrill* Defense Does Not Focus on Traditional Laches is in Error.

The panel erroneously ruled that because *Petrella* was concerned only with the traditional laches defense, it does not apply to the equitable principle at stake here, which focuses on *Sherrill's* combination of laches, acquiescence and impossibility. Slip Op. at 9. But the elements of the traditional laches defense played no part in *Petrella's* re-affirmance of the general rule that Congress' timeliness determinations must control, nor are they the focus of *Petrella's* extraordinary-circumstances exception to the general rule permitting curtailment of relief at the outset. The elements of the traditional laches defense are concerned only with the parties, i.e., "[l]aches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Oneida 2010*, 617 F.3d at 127. In contrast, *Petrella's* extraordinary-circumstances exception, like the *Sherrill* equitable defense, extends beyond the

parties to prevent "unjust hardship[s] on innocent third parties." 134 S.Ct. at 1978.

Thus, while it is error to summarily dispose of a claim at law seeking legal relief in the form of money damages that is filed within the time period prescribed by Congress – thereby preventing a merits adjudication of any claims and foreclosing the possibility of any relief – courts may nonetheless, "[i]n extraordinary circumstances," take into account the interests of innocent third parties and, "at the very outset of the litigation, curtail[] . . . the relief equitably awardable." *Id.* at 1977.[6]

Petrella has announced the rule for the application of equitable defenses in actions at law filed within a congressionally imposed limitations period.[7] In contrast, correctly understood, *Sherrill* announced the rule for the application of

[6]As with the *Petrella* plaintiff, 134 S.Ct. at 1978, Stockbridge's claims against Defendant-Intervenor OIN should not trigger the extraordinary-circumstances exception. OIN purchased the land with full knowledge of Stockbridge's claim several years after it intervened to assert its own unextinguished possessory Indian title. Consequently, the justifiable expectations, non-Indian character of the area and its inhabitants, and the impracticability of returning the land to Indian control that underpin the *Sherrill* defense are not present here. Should Stockbridge ultimately prevail on the merits, however, at the remedies phase equitable factors might still curtail the relief available to Stockbridge.

[7] *Petrella* plainly applies here because the Supreme Court relied in part on *Oneida II* and rejected the approach typified by *Cayuga*. Because *Petrella* was an action at law, the Court did not even mention its *Sherrill* decision. And, although *Sherrill* turned on passage-of-time and delay considerations, because it was an action in equity to which no federal statute of limitations applied, it did not mention statutes of limitations generally or 28 U.S.C § 2415(b) or the ICLA in particular.

equitable defenses to actions in equity where Congress has not prescribed a limitations period. Thus, for ejectment actions such as this (which are actions at law) that seek both purely legal relief (monetary damages) and relief sounding in equity (e.g., possession), *Petrella's* extraordinary-circumstances exception embraces the doctrines of laches, acquiescence and impossibility, fully addressing the equitable concerns of delay-caused disruption and settled expectations that lie at the heart of the *Sherrill* defense.[8] It therefore accomplishes what *Cayuga* and its progeny attempted without re-striking the balance achieved by Congress and avoids the unseemly prospect of individual judges overriding legislation by "set[ting] a time limit other than the one Congress prescribed." 134 S.Ct. at 1975.

CONCLUSION

The panel decision conflicts with the Supreme Court's recent decision in *Petrella*. Because Stockbridge filed its legal damages claims within the period prescribed by Congress, the panel erred in affirming summary dismissal, preventing a merits adjudication of any claims and foreclosing the possibility of any relief. *Petrella's* extraordinary-circumstances exception to the general rule

[8] The *Petrella* extraordinary-circumstances exception, by permitting, at the litigation's outset, the curtailment of relief equitably awardable where the consequences of a delay in commencing suit are of sufficient magnitude, also addresses a central concern of the *Cayuga* majority, which was that the District Court had not determined that a possessory remedy was inappropriate until 19 years after the suit had been filed. *See* 413 F.3d at 274-75.

that equitable doctrines cannot be invoked to defeat legal claims in their entirety suggests, however, that to the extent that Stockbridge's Amended Complaint seeks coercive equitable relief that is disruptive and upsetting to settled expectations, curtailment of that relief at the litigation's outset would be proper. Thus, contrary to *Cayuga's* understanding, it is *Petrella* rather than *Sherrill* that alters the landscape against which Indian land claims must be considered – albeit to a lesser extent – and answers the question left open in *Oneida II*.

Stockbridge's Petition for Rehearing En Banc should be granted.

Respectfully submitted:

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APPENDIX

13-3069
Stockbridge-Munsee v. State of New York, et al.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2013

(Argued: June 18, 2014 Decided: June 20, 2014)

Docket No. 13-3069

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Stockbridge-Munsee Community,

Plaintiff-Counter-Defendant-Appellant,

- v.-

State of New York, Mario Cuomo, as Governor of the State of New York, New York State Department of Transportation, Franklin White, as Commissioner of Transportation, Madison County, The County of Madison New York, Oneida County, New York, Town of Augusta, New York, Town of Lincoln, New York, Village of Munnsville, New York, Town of Smithfield, New York, Town of Stockbridge, New York, Town of Vernon, New York,

Defendant-Counter-Claimant-Appellees,

Oneida Indian Nation of New York,

Defendant-Intervenor-
Appellee.

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Before: JACOBS, STRAUB, and RAGGI, Circuit Judges.

The Stockbridge-Munsee Community ("Stockbridge"), a federally recognized Indian tribe, appeals from a judgment of the United States District Court for the Northern District of New York (Kahn, J.), dismissing its claims to title of a thirty-six square mile tract of land in upstate New York. It is well-settled that claims by an Indian tribe alleging that it was unlawfully dispossessed of land early in America's history are barred by the equitable principles of laches, acquiescence, and impossibility. We therefore affirm.

DON B. MILLER, Don B. Miller, P.C., Boulder, Colorado (Justin E. Driscoll, III, Brown & Weinraub, PLLC, New York, New York, on the brief), for Appellant.

JEFFREY W. LANG, Assistant Solicitor General (Barbara D. Underwood, Solicitor General, Denise A. Hartman, Assistant Solicitor General, on the brief), for Eric T. Schneiderman, Attorney General of the State of New York, Albany, New York, for State Defendants.

David H. Tennant (Erik A. Goergen, on the brief), Nixon Peabody LLP, Rochester, New York, for County-Municipal Defendants.

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Per Curiam:

The Stockbridge-Munsee Community ("Stockbridge"), a federally recognized Indian tribe residing on a federal Indian reservation in Wisconsin, appeals from a judgment of the United States District Court for the Northern District of New York (Kahn, J.), dismissing its claims asserting title of a tract of land in upstate New York. It is well-settled that claims by an Indian tribe alleging that it was unlawfully dispossessed of land early in America's history are barred by the equitable principles of laches, acquiescence, and impossibility. We therefore affirm.

I

In 1986, the Stockbridge filed suit against the State of New York, certain state officials and agencies (collectively, the "State defendants"), and certain

counties, towns, and villages (collectively, the "county and municipal defendants"), seeking trespass damages and eviction from roughly thirty-six square miles of land located between Syracuse and Utica, New York. The Oneida Indian Nation ("Oneida") intervened as a defendant, asserting that the land claimed by the Stockbridge is part of Oneida's historic reservation. The case has been stayed for various reasons.

The amended complaint, filed on August 5, 2004, asserts claims under federal common law, the Nonintercourse Act (25 U.S.C. § 177), and the 1794 Treaty of Canandaigua. These legal sources allegedly invalidate any sale of land by an Indian tribe without the consent of the federal government. According to the amended complaint, the State of New York's title to Stockbridge land, acquired in fifteen transactions (with the Stockbridge) between the years 1818 to 1842, are void because none of the transactions had the consent or ratification of the United States.

After the filing of the amended complaint, the case was stayed to allow the parties to pursue settlement. The stay was lifted in 2011, after settlement negotiations failed. All defendants then moved to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. In the alternative, the State defendants and

Oneida also moved to dismiss for lack of subject matter jurisdiction. The district court dismissed all claims, granting the motions of (i) the State of New York and the New York State Department of Transportation on the ground that the Stockbridge had abandoned its claims against these defendants; (ii) the other State defendants on Eleventh Amendment grounds; (iii) the Oneida on tribal sovereign immunity grounds; and (iv) the county and municipal defendants on the ground that the claims were barred by the equitable defense enumerated in City of Sherrill v. Oneida Indian Nation of New York, 544 U.S. 197 (2005) ("Sherrill"). This appeal followed.

II

The claims in this case are foreclosed by three decisions that resulted from decades-long litigation conducted by other Iroquois Nations: the Cayuga, Oneida, and Onondaga. See Sherrill, 544 U.S. at 197; Cayuga Indian Nation of N.Y. v. Pataki, 413 F.3d 266 (2d Cir. 2005) ("Cayuga"), cert. denied, 547 U.S. 1128 (2006); Oneida Indian Nation of N.Y. v. County of Oneida, 617 F.3d 114 (2d Cir. 2010) ("Oneida"), cert. denied, 132 S. Ct. 452 (2011); see also Onondaga Nation v. New York, 500 F. App'x 87 (2d Cir. 2012) (summary order), cert. denied 134 S. Ct.

419 (2013). We reach this conclusion upon de novo review of the district court's decision. See Jaghory v. N.Y.S. Dep't of Educ., 131 F.3d 326, 329 (2d Cir. 1997).

First, in Sherrill, the Oneida sought an exemption from municipal property taxes on historic reservation land that they had privately acquired at market value. The Supreme Court held that such a "disruptive remedy" was barred by the "long lapse of time, during which the Oneidas did not seek to revive their sovereign control through equitable relief in court, and the attendant dramatic changes in the character of the properties." Sherrill, 544 U.S. at 216–217. Sherrill invoked doctrines of laches, acquiescence, and impossibility, but declined to apply any rigid test. Id. at 221.

Soon after, this Court decided Cayuga, in which the Cayuga claimed ownership of historic reservation land and sought (inter alia) money damages. 413 F.3d at 269. The district court had awarded the Cayuga nearly $250 million (in an opinion published before Sherrill); but this Court reversed on the ground that the Sherrill equitable bar precluded such relief. Id. at 273, 278. We rejected the Cayuga's argument that an award of money damages (rather than ejectment) would not disrupt settled property interests: "[D]isruptiveness 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 [a] possessory land claim." Id. at 275.

Oneida presented yet another native claim to upstate ancestral land. Oneida, 617 F.3d at 114. Attempting to distinguish its case, the Oneida argued that the defendants had "failed to establish the necessary elements of a laches defense." Id. at 117. But we concluded that "[t]his omission . . . [wa]s not ultimately important, as the equitable defense recognized in Sherrill and applied in Cayuga does not focus on the elements of traditional laches but rather more generally on the length of time at issue between an historical injustice and the present day, on the disruptive nature of claims long delayed, and on the degree to which these claims upset the justifiable expectations of individuals and entities far removed from the events giving rise to the plaintiffs' injury." Id. at 127.

In the wake of this trilogy--Sherrill, Cayuga, and Oneida--it is now well-established that Indian land claims asserted generations after an alleged dispossession are inherently disruptive of state and local governance and the settled expectations of current landowners, and are subject to dismissal on the basis of laches, acquiescence, and impossibility. The claims at issue here share all

of these characteristics: the Stockbridge have not resided on the lands at issue since the nineteenth century and its primary reservation lands are located elsewhere (in Wisconsin); the Stockbridge assert a continuing right to possession based on an alleged flaw in the original termination of Indian title; and the allegedly void transfers occurred long ago, during which time the land has been owned and developed by other parties subject to State and local regulation. Such claims are barred by the Sherrill equitable defense.

The recent Supreme Court decision in Petrella v. Metro-Goldwyn-Mayer, Inc., 134 S. Ct. 1962 (2014), does not alter the analysis. Petrella establishes that the equitable defense of laches cannot be used to defeat a claim filed within the Copyright Act's three-year statute of limitations. The Supreme Court commented on the applicability of laches to actions at law generally, but ultimately confined its ruling "to the position that, in face of a statute of limitations enacted by Congress, laches cannot be invoked to bar legal relief." Id. at 1974.

Congress has not fixed a statute of limitations for Indian land claims. See, e.g., Oneida County, N.Y. v. Oneida Indian Nation of N.Y.S., 470 U.S. 226, 253 (1985) ("[N]either petitioners nor we have found any applicable statute of

limitations . . . ."). And even if a statute of limitations applied, "the equitable defense recognized in Sherrill . . . does not focus on the elements of traditional laches." Oneida, 617 F.3d at 127. Rather, laches is but "one of several preexisting equitable defenses, along with acquiescence and impossibility, illustrating fundamental principles of equity that preclude[] . . . plaintiffs 'from rekindling embers of sovereignty that long ago grew cold.'" Id. at 128 (quoting Sherrill, 544 U.S. at 214).

III

Subject matter jurisdiction is generally a "threshold question that must be resolved . . . before proceeding to the merits." Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 88–89 (1998). Here, it is undisputed that the district court had subject matter jurisdiction over the claims against the county and municipal defendants. Because "'the substantive issue decided by the District Court'"--the applicability of the Sherrill bar--"'would have been decided by that court'" in any event to dismiss those claims, we may affirm on this ground with respect to all defendants, without reaching the Eleventh Amendment and tribal sovereign

immunity issues. Steel Co., 523 U.S. at 100 (quoting Philbrook v. Glodgett, 421 U.S. 707, 721 (1975)).

For the foregoing reasons, the judgment of the district court is affirmed.