

**Saint Regis Mohawk Tribal Court**

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**Francis Conners III,  
Complainant(s)**

**Case No.: 15-CIV-00009**

**-V-**

**DECISION AND ORDER**

**Ian Tarbell,  
Respondent(s)**

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**Procedural History**

On August 13, 2015 Francis Conners, on behalf of himself, filed a complaint in Saint Regis Mohawk Tribal Court against Ian Tarbell seeking monetary relief in the amount of \$2,800 for non- payment of contracted services. A 20 day civil summons was issued by the Court the same day to accompany the complaint.

On August 21, 2016 a proof of service was filed with the Court affirming that the complaint and civil summons were served upon the Respondent in this matter on August 20, 2016 via personal service.

On August 31, 2016 the Respondent filed an answer with the Court denying any liability for money owed. The Respondent also stated in their answer that they would counter claim against the Complainant, but no relief amount was requested.

A pre-trial conference was held in Saint Regis Mohawk Tribal Court on December 11, 2015 at which both parties were in attendance.

The Court scheduled a trial in this matter for April 22, 2016 with notice sent via certified mail/return receipt to both parties. Signed return receipts were received by the Court from all of the parties involved. At the scheduled trial on April 22, 2016 the Complainant was in attendance, however the Respondent did not appear.

On May 2, 2016 the Respondent filed a notice of motion for default with the Court.

The Complainant filed a proof of service with the Court on May 11, 2016 affirming that the notice of motion for default judgment was served upon the Respondent via certified mail/return receipt.

On May 16, 2016 the Court received an answer by the Respondent to the Complainant's request for a motion of default judgment. No proof of service was provided to show that service of this document was made upon the Complainant by the Respondent.

On July 7, 2016 the Court issued a decision denying the Complainant's motion for default judgment. The decision and order included a trial date of July 27, 2016 for the matter to be heard by the Court.

The decision on the motion for default judgment was sent to the parties via certified mail/return receipt on July 7, 2016.

A receipt signed by the Complainant was received by the Court on July 12, 2016 showing that the decision and order on the motion for default issued by the Court on July 7, 2016 was received by the Complainant.

On July 13, 2016 the Respondent's copy of the Court's July 7, 2016 decision and order on the motion for default was returned to the Court as it was not signed for by the Respondent.

The Court convened for the scheduled trial in this matter on July 27, 2016. While the Complainant was in attendance, the Respondent failed to appear.

### **Findings of Fact**

Based on the complaint, answer & testimony from the hearing on July 27, 2016 the Court finds the following:

- The parties agreed Respondent would pay the Complainant \$2,600 for the demolition of the former residence of Joanne King (Respondent's mother)<sup>1</sup>
- The Complainant, in addition to the agreed upon demolition work, trimmed trees on the Respondents property<sup>2</sup>
- Complainant was to salvage most of the house during the course of the demolition work<sup>3</sup>
- Demolition of the building by the Complainant began on March 20, 2015<sup>4</sup>
- The Complainant loaned the Respondent \$250 in cash and also gave the Respondent home heating fuel subsequent to the start of demolition of the building<sup>5</sup>
- Respondent repaid the loan in an untimely fashion<sup>6</sup>
- Due to untimely repayment of the loan, the Complainant stopped demolishing of the building and requested half of the agreed upon amount for the dismantling work be paid by the Respondent before work on the building would resume<sup>7</sup>

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<sup>1</sup> Complaint August 13, 2015

<sup>2</sup> Complaint August 13, 2015; Defendants Answer August 31, 2015

<sup>3</sup> Defendants Answer August 31, 2015; Audio Trial July 27, 2016

<sup>4</sup> Complaint August 13, 2015

<sup>5</sup> Audio Trial July 27, 2016

<sup>6</sup> Audio Trial July 27, 2016

<sup>7</sup> Audio Trial July 27, 2016

- The Complainant and a witness testified that more than half of the building was demolished<sup>8</sup>
- The Respondent acknowledged a large portion of the building was demolished<sup>9</sup>

### Discussion

In bringing resolution to this matter, the Court notes that although the decision and order of July 7, 2016 was sent to the parties via certified mail/return receipt, the Respondent did not appear. We note again that the July 7, 2016 decision and order sent to the Respondent was returned to the Court as unclaimed.

While it is not an ideal situation for the Court to proceed at trial without the appearance of one of the parties, we also note that in the record there are multiple instances of the Respondent failing to appear for appearances, even failing to appear for a prior scheduled trial in April 2016. That failure to appear on the part of the Respondent is what led to the subsequent filing of a motion for default judgment by the Complainant, which the Court denied in its July 7, 2016 decision and order on the motion for default judgment.

The Court has provided the Respondent every opportunity for due process available to him. While the Court is careful in its consideration to protecting the due process rights of ANY party involved in a matter before it, we must at some point take into account the due process rights of the Complainant in this matter. To continually provide the Respondent with opportunity after opportunity in light of the persistent failure to comply with the Court's directives would unduly delay this matter from resolution.

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<sup>8</sup> Audio Trial July 27, 2016

<sup>9</sup> Defendants Answer August 31, 2015

### Conclusion

Therefore, the Court finds that due to a preponderance of the evidence, the Complainant did provide services in partially demolishing the building as agreed upon by the parties in this matter and did also provide services in the form of trimming trees on the Respondents property. As the agreed upon price for the demolition of the building was \$2,600 and the record of this case reflects the Complainant completed approximately 60 percent of the demolition of the building, we **ORDER** the Respondent pay the Complainant \$1,560 which constitutes 60 percent of the agreed upon \$2,600. We also **ORDER** the Respondent to pay the Complainant \$200 for the tree trimming services which the Complainant provided. The Respondent is **ORDERED** to pay the Complainant a total of \$1,760 for demolition services and tree trimming services. This constitutes the final decision and order of the Court.

Signed by my hand this 29<sup>th</sup> day of July 2016.



Carrie E. Garrow, Chief Judge Saint Regis Mohawk Tribal Court

