

St. Regis Mohawk Tribal Court

Faith Thomas,)	
Plaintiff)	DECISION AND ORDER
)	
-V-)	Case No.: 15-CIV-00012
)	
Shelley Votra,)	
Defendant)	

Procedural History

The Plaintiff, Faith Thomas filed a complaint in St. Regis Mohawk Tribal Court on September 3, 2015 seeking relief in the amount of \$3,000 plus all court fees and surcharges from the Defendant, Shelley Votra for an alleged theft committed by named Defendant at the Plaintiff's retail store where the Defendant was employed by the Plaintiff. Supporting depositions completed by the Plaintiff with the St. Regis Mohawk Tribal Police, which the Plaintiff included with her complaint, indicate that the total amount of the alleged theft was \$802.10. A 20 day civil summons was issued the same day by the Court.

A proof of service was filed with the Court on September 3, 2015 indicating that the complaint and summons filed by the Plaintiff was served upon the Defendant via personal service.

On September 21, 2015 the Defendant filed an answer with the Court denying each and every claim of the Plaintiff and submitting that the total amount of the alleged theft was \$802.10.

On December 9, 2015 the Court received a copy of a letter from Mr. Charles Nash, Esq. who represented the Defendant, to the Plaintiff in which an escrow check in the amount of \$802.10 was made payable to. Mr. Nash indicated that the amount enclosed in the check represents the restitution amount as set forth in the criminal complaints against the Defendant in Bombay Town Court.

The Plaintiff filed an amended complaint with the Court on December 9, 2015 indicating a desire to continue the civil complaint and now seeking relief in the amount of \$2,197.90 for pain and suffering inflicted upon the Plaintiff and Plaintiff's business from the alleged theft.

A proof of service was filed with the Court on December 10, 2015 indicating that the amended complaint was served upon the Defendant.

On December 31, 2015 the Plaintiff submitted a letter to the Court requesting a motion of judgment in favor of the Plaintiff due to the Defendant's failure to respond to the amended complaint.

A proof of service was filed with the Court on January 4, 2016 indicating that the letter requesting a motion of judgment in favor of the Plaintiff was served upon the Defendant.

On January 4, 2016 a request for a motion of summary judgment was filed with the Court by the Plaintiff due to the Defendant's failure to respond to the amended complaint. A copy of a return receipt was included indicating service via certified mail/return receipt upon the Defendant.

Discussion

The issue of pain and suffering as a relief remedy that is allowable in a civil case in St. Regis Mohawk Tribal Court is an issue of first impression to the Court. Following an extensive reading of the SRMT Rules of Civil Procedure and the SRMT Civil Code, the Court can find no mention of pain and suffering as relief in EITHER body of law which the Court is bound to apply and follow. In fact, pain and suffering is not discussed in ANY law which has been certified as a legally applicable tribal law in St. Regis Mohawk Tribal Court.

The only SRMT law provision touching upon this issue is the 'applicable law' section of the SRMT Civil Code. *See*, SRMT Civil Code V.

The applicable law section of the SRMT Civil Code lays out in hierarchal fashion the bodies of law that may be applied in SRMT Court. One body of law that is specifically included in the SRMT Civil Code as potentially being applicable is the Restatement of Torts.¹ As there is no mention of pain and suffering in any official SRMT law, the Court will now rely upon the Restatement of Torts to resolve the matter at bar.

When reviewing the Restatement of Torts, we note that this case is one involving employee theft. Or, as the Restatement of Torts would call Trespass to Chattels. In the matter at bar, Plaintiff's supporting depositions provide that the items they were dispossessed of were cigarettes, which in the current context are personal chattel. Personal Chattel is defined as:

"Movable things. Personal property which has no connection with real estate."²

The first threshold that must be discussed is the person in possession of Chattel, which is defined in the Restatement of Torts as:

"a person who is in "possession of a chattel" is one who has physical control of the chattel with the intent to exercise such control on his own behalf, or on behalf of *another*."³

¹ *See*, SRMT Civil Code V (A) (5).

² *See*, Black's Law Dictionary Abridged Sixth Edition.

³ Restatement (Second) of Torts § 216 (Am. Law Inst. 1965)

The Restatement expounds further on person in possession of chattel:

“One who has physical control either of a chattel with the intent to exercise such control either on his own behalf or on behalf of another is in possession of chattel. Thus, an agent may have possession of a chattel for his principal...”⁴

In the case at bar it is clear that the Defendant was delegated an agent to act on behalf of the Plaintiff at the retail store where the alleged theft occurred. As part of the Defendant’s duties as agent for the Plaintiff, one could deduce that the Defendant was responsible for the physical chattel which consisted of various retail items (here in particular cigarettes). This chattel (cigarettes) were made available for sale to the public, which would in turn be converted by the Defendant acting as an agent for the Plaintiff, into monetary recompense for said retail inventory items for the benefit of the Plaintiff’s business interests.

Plaintiff through her complaint alleges that there was a dispossession of chattel by the Defendant acting as agent for the Plaintiff. When determining liability for the dispossession of chattel the Court again relies on the Restatement of Torts:

“One who dispossesses another of a chattel is subject to liability in trespass for the damage done. If the dispossession seriously interferes with the right of the other to control the chattel, the actor may also be subject to liability for conversion.”⁵

The Restatement discusses dispossession of chattel further:

“A dispossession is always a trespass to chattel, and subjects the actor to liability for at least **nominal damages** for the interference with the possession. He will be liable for any harm done to the chattel, and **for the loss of the value of its use.**”⁶

The Court finds that it is clear the Defendant, who as an employee of the Plaintiff and acting as an agent for the Plaintiff, did indeed dispossess the Plaintiff of its chattel. This is evidenced by the Plaintiff’s complaint and supporting depositions, and also the fact that the Defendant in their answer to the Court indicated that the amount of restitution that might be owed to the Plaintiff was for the retail value of the chattel (cigarettes) they were dispossessed of.

Next, the Court must determine the amount of liability the Defendant, acting as an agent of the Plaintiff and dispossessing the Plaintiff of the chattel already discussed, can be found responsible for in the applicable body of law, the Restatement of Torts.

The Court can find assistance in the Restatement of Torts to determine liability in the case at bar through the topic of conversion in the Restatement of Torts which provides:

⁴ Restatement (Second) of Torts § 216 cmt. b (Am. Law Inst. 1965)

⁵ Restatement (Second) of Torts § 222 (Am. Law Inst. 1965)

⁶ Restatement (Second) of Torts § 222 cmt. a (Am. Law Inst. 1965)

“Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.”⁷

As for determining the seriousness of the offense and the action required to be taken because of the conversion the Restatement of Torts states:

“In determining the seriousness of the interference and the justice of requiring the actor to pay the full value, the following factors are important:

- (a) the extent and duration of the actor’s exercise of dominion or control;
- (b) the actor’s intent to assert a right in fact inconsistent with the other’s right or control;
- (c) the actor’s good faith;
- (d) the extent and duration of the resulting interference with the other’s right of Control;
- (e) the harm done to the chattel;
- (f) the inconvenience and expense caused to the other.⁸

In the case at bar the Defendant is accused of converting the Plaintiff’s chattel into monetary form and instead of being deposited into the business’s coffers (as they were acting as an agent of the Plaintiff), the money converted from the sale of the chattel was instead kept by the Defendant.

As the Defendant was endeavored with the authority by the Plaintiff to act as her agent on behalf of her business, any chattel or inventory of the business for which the agent was in possession of and did dispossess and convert of in violation of the Plaintiff’s rights, the Defendant is nominally/at a minimum, liable for restitution to the Plaintiff for the value of the chattel they were dispossessed of.

The Restatement of Torts does not provide that the dispossession of personal chattel and the subsequent liability of the agent who is accused of improperly disposing and converting said chattel is entitled to pain and suffering. In fact, the Restatement of Torts provides that:

“Either the person in possession of the chattel at the time of the conversion or the person then entitled to its immediate possession may recover the full value of the chattel at the time and place of conversion.”⁹

Based upon the foregoing discussion, the Defendant was indeed in possession of chattel at the time of the alleged offense, which was owned by the Plaintiff as part of their business’s personal chattel (inventory). It is apparent to the Court as well that the Defendant while acting as an agent for the Plaintiff in the operating of the business did in fact dispossess and convert the chattel improperly as evidenced by the Defendant’s payment of restitution in the amount of

⁷ Restatement (Second) of Torts § 222A (1) (Am. Law Inst. 1965)

⁸ Restatement (Second) of Torts § 222A (2) (a-f) (Am. Law Inst. 1965)

⁹ Restatement (Second) of Torts § 225 cmt (d) (Am. Law Inst. 1965)

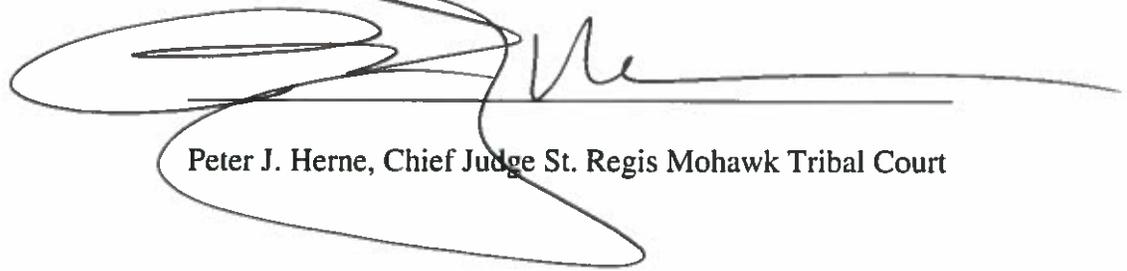
\$802.10 which by all accounts is the value of the chattel (cigarettes) improperly dispossessed and converted by the Defendant.

In no event is there any indication that the Plaintiff suffered any physical or psychological injury due to Defendant's actions. Therefore, we find there are no grounds in which to award plaintiff damages for pain and suffering. The only nominal damages which Plaintiff is eligible for is for the value of the chattel which was converted, something that has already been done by the Town of Bombay Court.

Conclusion

Wherefore, the Court finds that the Defendant did dispossess and improperly convert chattel which was owned by the Plaintiff for their own benefit. The Court finds that the value of this chattel was \$802.10, which was paid by the Defendant via escrow check to the Plaintiff for restitution of dispossessed chattel. The Court finds that the repayment for the value of the chattel which the Plaintiff was dispossessed of by the Defendant in the amount of \$802.10 is the only liability due the Plaintiff, as repayment for the full value of the chattel the Plaintiff was dispossessed of is what the applicable law provides for.

Signed by my hand this 27th day of January, 20 16



Peter J. Herne, Chief Judge St. Regis Mohawk Tribal Court

