

**ST. REGIS MOHAWK TRIBAL COURT
IN AND FOR THE ST. REGIS MOHAWK TRIBE**

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Chief Judge P.J. Herne, JD
Hon. Steven B. Cook
Hon. Lois Terrance
Court Atty. Barbara Gray, JD, PhD
Court Clerk Jennifer Brown

DATE: January 23, 2012

RE: **Case NO: 11-LND-0006/ 11-CIV-00006**

Ms. Johanne Jackson, on August 2, 2012, filed suit against Ms. Arlene Baker and Mr. Louis Roundpoint concerning the house located at Lot #681, also known as the homestead located at 1520 State Route 37 in Akwasasne, on behalf of the Howard Porter estate. (*See, Plfs. Complaint/Appeal*). The Saint Regis Mohawk Tribe (SRMT) issued a Use and Occupancy Deed to Ms. Arlene Baker on behalf of the Estate of the late Margaret Porter to Ms. Arlene Baker for Lot # 681 located at 1520 State Route 37 Akwasasne. (*See, Right to Use and Occupancy deed dated 7-27-11*).

Attached to that deed is a notarized statement by Mr. Louis Roundpoint relinquishing all rights, title and interest of the estate (including the house) of his late mother Margaret (Chubb) Porter also known as Lot# 681 (1.636 acres +/-) located at 1520 State Route 37 Akwasasne. (*See Roundpoint dated July 23, 2011*).

Mr. Louis Roundpoint, on October 3, 2011, filed a notarized statement with the Court requesting to be released from the lawsuit at bar, the statement alleges that Ms. Arlene Baker promised to buy him out for his half of the house and property and that this promise had not yet taken place on November 9, 2011. Subsequent to this Mr. Louis Roundpoint, via conference call at a pre-trial conference on this matter, in Court on November 9, 2011, alleged that his sister Ms. Arlene

Baker has not paid him for his share of the property, that he filed papers with the Tribal Clerk's office to that effect, alleges that he still has an interest in the property, and that signing the paper was a mistake. (*See*, Court recording 11/9/2011). Ms. Lorraine White, Attorney for Ms. Arlene Baker, denies this allegation.

Pursuant to the SRMT TCR 2008-18, Civil Code, there exists a choice of law provision identifying which law, with precedence, can be applied to a case before the Court:

1. Such portions of the Constitution of the United States and federal law are clearly applicable in Mohawk Indian Country 2. Written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe; 3. Unwritten Mohawk laws, and written and unwritten Mohawk customs, traditions and practices; 4. Generally recognized principles of the law of contracts as reflected by the most recent Restatement of Contracts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine; 5. Generally recognized principles of the law of torts, as reflected by the most recent Restatement of Torts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine; 6. New York State law (but only if) consistent with principles of Tribal sovereignty, self-government, and self-determination and it is consistent with the aforementioned. (*See*, § V (A) (1)-(6)).

In addition, "the Court may modify, set or direct any specific rule or procedure for individual cases as the Court deems appropriate," including using the Federal Rules of Civil Procedure. (*See*, SRMT Civ. Code §VI (A)). Although the Federal Rules of Civil Procedure provide guidance in the issue at hand, it should also be noted that the Court has authority to control its docket and discretion to determine who is or is not a 'necessary' party in the present litigation. (*See*, SRMT Civ. Code §VI (D)). Likewise, in the interest of saving time and avoiding unnecessary litigation, the Court may have pre-trial conferences to narrow issues; and, it is through such a conference that the present matter has arisen. (*See*, SRMT Civ. Pro. §XV).

This raises two points. Is Mr. Louis Roundpoint a 'necessary party,' and what steps should be taken to avoid duplicitous litigation over the same property in 'dispute.' Pursuant to the Federal Rules of Civil Procedure there is a determination to be made if a person is a 'necessary party.' They are: (1) in the absence of the party complete relief cannot be provided to existing parties. Or, (2) the absent party claims an interest relating to the subject of the action and a disposition of the action without that person may: (i) as a practical matter impair his ability to protect that

interest; or (ii) leave the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations. (See, Fed. R. Civ. P. 19(a)(1)).

The issue whether Mr. Louis Roundpoint is a 'necessary party' with respect to the suit filed by Ms. Arlene Jackson, and, in light of his stated desire to revoke the agreement he has with his sister can determine whether he should remain a co-defendant with his sister, Ms. Arlene Baker. Obviously linking these issues together is the parcel of property, known as Lot #681, located on the St. Regis Mohawk Indian Reservation.

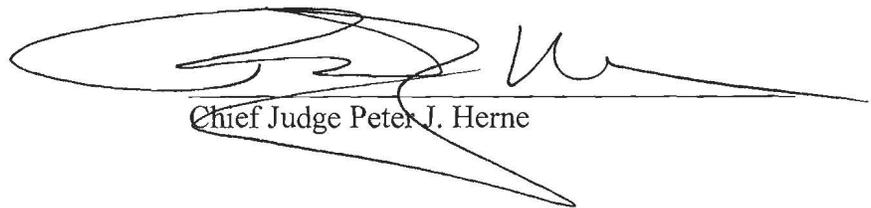
Mr. Louis Roundpoint, in open Court, stated on November 9, 2011, that the relinquishment of his rights was based on a promise by his sister, Co-Defendant in the case at bar, to pay him off for his share of said property and home, known as lot #681. In addition, Mr. Louis Roundpoint has promised to speak with his sister to straighten out the alleged promise. To date the Court is not unaware, nor does the Court need to know, if this has occurred.

Pursuant to SRMT TCR 2008-20 Rules of Civil Procedure the oral statement made in open Court, in the presence of the Judge and parties, can be recognized under the civil rules as a lawful claim. (See, SRMT Civ. Pro. §VI). One must remember that it is the Plaintiff who said Mr. Roundpoint should be involved in the case, not the Court. It is also the Co-Defendant Ms. Arlene Baker who denies that Mr. Louis Roundpoint has an interest in the case.

As such, the Court deems that the issue as to whether the Co-Defendant Mr. Louis Roundpoint is a 'necessary party,' will affect his 'standing' in this case as a defendant, must be resolved first. Particularly since all pending matters involve the same parcel of property that allegedly links the Plaintiff and two co-defendants together. Nonetheless, it is still imperative that Mr. Louis Roundpoint decide if he is going to take whatever action he feels are necessary on his own behalf. In any event, neither Ms. Johanne Jackson, as a Plaintiff in the case at bar, or Ms. Arlene Baker as Defendant, should be compelled to await Mr. Louis Roundpoint's decision(s) with respect to an issue he is clearly aware of and has been advised of in Court, and one he has made a claim of but has not as of yet prosecuted.

THEREFORE, it is ORDERED that Mr. Louis Roundpoint has **30 days within** delivery of this order to initiate proceedings or, if Mr. Roundpoint fails to do so, the Court will proceed to decide the existing Motion made by Defendant Ms. Arlene Baker to have Mr. Louis Roundpoint removed as a co-defendant in the pending litigation of Jackson v. Baker, and the Court will then proceed to address the matter of Jackson v. Baker.

Entered by my hand on this the 24th day of January 2012



Chief Judge Peter J. Herne