

ST. REGIS MOHAWK TRIBAL COURT

Robert G. Laffin and)	
Catherine Leaf,)	
Appellant)	Case No.: 10-LND-00003
)	
v.)	
)	
Irving Papineau)	
Appellee.)	
<i>By Vaughn Aldrich, Esq.</i>)	

DECISION AND ORDER

I. PROCEDURAL HISTORY

Catherine Leaf on behalf of herself and her father, Robert G. Laffin, filed on March 17, 2012, an appeal with the St. Regis Mohawk Tribe (SRMT) Court against Mr. Irving Papineau, who is represented by Attorney Vaughn Aldrich, stemming from a Tribal Council decision dated February 28, 2003. Ms. Leaf and her father are *pro se* litigants and they allege that they were unaware of the Tribal Council's 2003 decision and final resolution for the land. (*See*, Appellant's Filing)

Attorney Aldrich filed a timely answer on March 27, 2012. Attorney Aldrich alleges that the appeal is frivolous and without merit in that Robert G. Laffin should be stricken because he has not executed a formal pleading as part of this Appeal and Catherine has no standing or legal authority to act on his behalf. (*See*, Attorney Aldrich's Ans.). As such, Attorney Aldrich requests the matter be dismissed and defendant's costs and Attorney fees be granted.

A pre-trial conference was set for May 2, 2012, prior to that date Ms. Leaf requested to reschedule due to her father being ill, the Court rescheduled the pre-trial conference for May 23, 2012. During this period, on May 4th, 2012, Mr. Robert G. Laffin passed away. The next pre-trial conference on the matter was rescheduled for June 12, 2012 at 10 a.m.

On June 12, 2012, Catherine Leaf, Mr. Papineau, and his Attorney Aldrich appeared at a pre-trial conference of this matter. During this initial appearance, it was stipulated by the parties that Mr. Robert G. Laffin had in fact 'passed away', and that Ms. Leaf was not the sole heir or child of Mr. Laffin, but that she in fact had twelve (12) step siblings and one full sibling. After the stipulation of these facts, Mr. Papineau through his attorney made a motion to dismiss the case at bar alleging that the Appellant does not have standing. The SRMT Court then adjourned the matter to research and decide the motion made by Mr. Papineau.

II. DISCUSSION

The Court having researched and deliberated upon the motion agrees to the request made in the motion in so much as the SRMT Court orders that the present action is dismissed without prejudice and without the awarding of requested attorney fees made by Mr. Papineau.

First, as in any case at bar, the Court has to determine if it properly has jurisdiction over the case. (*See*, St. Regis Mohawk Tribe TCR 2008-19 Civil Code [hereinafter SRMT Civ. Code] § II. Jurisdiction must be included in any action filed in the SRMT Court. As such, this action is filed under the Land Dispute Ordinance of the SRMT.

On December 3rd, 2009 the SRMT Council enacted SRMT TCR 2009-69, Land Dispute Resolution Ordinance (Amended by SRMT TCR 2011-20 Land Dispute Resolution Ordinance)¹, [hereinafter SRMT LDRO], and delegated its authority to resolve land disputes to the Land Dispute Tribunal [hereinafter Tribunal] and the Tribal Court. The SRMT LDRO also lays out the procedure for resolving land disputes,² and provides the Tribunal with the applicable law to be used in resolving all disputes that come before them. Finally, pursuant to the SRMT Land Ordinance the SRMT Court may hear land dispute cases on appeal from either: A Tribunal decision or a Council decision.³ The SRMT Tribal Court, pursuant to the SRMT LDRO, acts as a court of last resort in that there is no appeal to the Tribal Court of Appeals.⁴ As a Court of last resort, the Court must be diligent in addressing errors and insuring that the possessory interests of all parties are equally heard and protected.

The unique nature of the SRMT LDRO with respect to the case at bar is the following provision:

The Tribal Court **may** suspend the Rules of Civil Procedure and shall adopt such rules as may be appropriate to review cases brought pursuant to this Ordinance.⁵
[emphasis added]

It is the interplay of this provision with the other rules the SRMT Court is required to interpret and follow that will guide the SRMT Court in deciding the motion with respect to the case at bar.

¹ SRMT TCR 2011-19, Land Dispute Resolution Ordinance (Amends SRMT TCR 2009-69). After the Tribunal completed its first full year in existence, Council enacted the following amendments to improve the Ordinance: Amendments included such things as adding alternatives, procedures to allow for Tribunal members whose terms have expired to serve until reappointed or replaced, and providing clarification on who may remove a Tribunal member. (*See*, §§VII(D)(1);(D6);(D10)) In addition, the Amendment clarified the duties and expectations of the Tribal Clerk in fully researching and providing information filed in the Tribal Clerk's Office. (*See*, §VIII(B)(5)-(6)). Responsibility is on the Complainant to provide valid address for the respondent (*See*, §VIII(D)). Service of Notice was clarified and added was that if the Tribal Clerk could not effectuate service within 30 days, a notice in a newspaper would effectuate service. (*See*, §VIII.F). Service of Process was extended from 10 to 30 days public notice period. (*See*, §X(A)). Issuance of deeds was clarified in that deeds shall only be issued when all judicial remedies have been exhausted. (*See*, XIII.D.6H).

² *See*, SRMT LDRO§ III.

³ *See*, SRMT Land Ordinance XV (B)-(C).

⁴ *Id.* §XV (D).

⁵ *Id.* at XV (4.) Appeals to the Tribal Court

Pursuant to the SRMT Civ. Code § II (A)(G) the Tribal Court shall have civil jurisdiction over civil disputes, and in deciding civil disputes initiated in the SRMT Court, the SRMT Civ. Code provides that:

Until the Court adopts its own rules of procedure **or** when not otherwise in conflict with a specific rule adopted by the Tribal Court or the Tribal Council, **the Federal Rules of Civil Procedure** shall be deemed to be the rules of procedure for the Tribal Court, but the Court may modify, set or direct any specific rule or procedure for individual cases as the Court deems appropriate. (*See*, SRMT Civ. Code §VI (A)). [**emphasis added**].

In addition to the foregoing, the SRMT TCR 2008-20 Rules of Civil Procedure [hereinafter, SRMT Civ. Pro.] provide as follows:

The Tribal Court may apply interpretation of like provisions in the **Federal Rules of Civil Procedure** in construing these rules. (*See*, SRMT Civ. Pro. § XXV). [**emphasis added**]

When reading these provisions of SRMT law together, the SRMT LDRO/ SRMT Civ. Code/ and SRMT Civ. Pro., it is clear that the SRMT Court may apply interpretation of like provisions in the Federal Rules of Civil Procedure in construing SRMT Laws and may modify or direct rules or procedures as the SRMT Court deems appropriate.

Finally, the SRMT Court must also recognize that under the SRMT laws a party may make a motion at any time after a case is filed and appropriately initiated. As SRMT Civ. Pro. §XVI (A)-(C) provides:

[A.] Any questions regarding procedure or the rights of the parties which arise during a lawsuit and which cannot be settled by agreement of the parties may be presented to the judge in a motion, which is a request for an order.

[B.] Motions may be made in writing or orally. If the motion is not made during and as a consequence of events at a trial or other hearing, the moving party shall notify other parties of the nature and basis of the motion and the hearing time at least ten (10) days before the motion is presented in Court, so the responding party has a chance to plan a response. The notice required by this section shall be called a Notice of Motion, shall be in writing, and shall be served upon the party, or, if the party is represented by counsel, upon the party's counsel, according to Section 4, Rule 1 (b). Persons who are unable to prepare their own written Notice of Motion may be assisted by the Clerk in the filling out of a Notice of Motion form, provided for that purpose by the Rules of the Court.

[C.] Motions to dismiss the lawsuit because the Court lacks jurisdiction or because the plaintiff has not stated a legitimate basis for relief may be made at any time. All other pretrial motions which would determine the procedures used at trial must be made at least five (5) days before the trial. The judge may deny a motion which could and should have been made earlier in the case if it appears that the moving party knew or should have

known earlier about the basis for the motion and has raised it late because of negligence or an intent to harass the other party.

What is missing from these provisions of SRMT law is that which would squarely address the issues we are faced with in the present case: A properly filed land dispute in SRMT Court which is subject to a motion to dismiss due to the ‘complainant’ not possessing the requisite standing to file such a dispute.

III ANALYSIS

As indicated, there is no specific mention of a motion to dismiss included in the SRMT LDRO, yet there is clearly an indication that the SRMT Court **may** suspend the Rules of Civil Procedure. (*See*, SRMT LDRO at XV (4) Appeals to the Tribal Court). As provided below, the SRMT Court will not suspend the application of the Rules of Civil Procedure.

In the case at bar the respondent, Mr. Papineau, has made a motion to dismiss based upon what he alleges to be Ms. Leaf’s, the appellant’s, lack of standing to bring this dispute. This originally, as of the date of filing of this case, likely would have to been considered and decided by the SRMT Court. Wherein, Mr. Papineau’s motion would originally have been made towards Ms. Leaf and her standing to bring a claim that should have been made by Mr. Laffin himself.⁶ As indicated herein though, is the fact that since the filing of this case and as stipulated by the parties, Mr. Robert Laffin has passed away.⁷ This though does not render the ‘standing’ issue moot.

As indicated in the procedural history, it is clear that Ms. Leaf is not the only potential surviving heir of Mr. Laffin. As stipulated at the pre-trial conference, at which point Mr. Papineau made the motion to dismiss due to lack of standing, it was also stipulated that Ms. Leaf has 12 step siblings and 1 full sibling.⁸ As such, it is clear that there may be more than one person who could potentially make a claim upon, or in furtherance of, Mr. Laffin’s estate. This does not mean that Ms. Leaf does not have the requisite standing to bring this claim, but rather there is a likelihood that there may be 13 other potential complainants who could do the same. Therefore, it is not solely that Ms. Leaf lacks the requisite standing, but there is in fact other siblings who may be ‘necessary parties’ to the case at bar.

The Court references ‘necessary party’ and understands it to be those persons who should be joined in a suit so that a court can grant complete relief to existing parties, or, so that a person who should be present is afforded that opportunity so that their interests are protected, and thereby inconsistent or multiple obligations stemming from the original action are not created.

⁶ In reviewing the SRMT LDRO this may have been permissible as even non-members are permitted to file a land dispute on behalf of a physically handicapped family member. (*See*, SRMT LDRO at VI, Who May File a Land Dispute Claim).

⁷ *See*, SRMT Court digital recording dated 6-12-12 on file with the Court (Ms. Catherine Joyce Leaf stipulates that her father is the late Robert Laffin; *See also*, Donaldson Funeral home Obituary on file with the SRMT Court. (Mr. Leaf passed on May 4, 2012).

⁸ *See, Id.* (Ms. Catherine Joyce Leaf stipulates that she has 12 step brothers and sisters and 1 full sibling).

As one can imagine, there is a Federal Civil Procedure rule covering such parties. (*See* Federal Rules of Civil Procedure, Rule 19: Required Joinder of Parties).

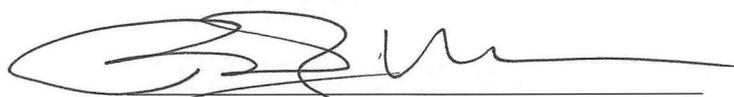
In the case at bar it is clear that this is what is of concern to the Court. As provided above, Ms. Leaf originally brought this claim 'in conjunction' with Mr. Robert Laffin. During the pendency of these proceedings Mr. Laffin passed away. This did not 'vest' Mr. Laffin's claim into Ms. Leaf's claim though, for as was indicated and stipulated, there may be up to 12 step-siblings and 1 full sibling of Ms. Leaf who could join Ms. Leaf in a claim, or they could even oppose Ms. Leaf in the claim being made.

Next, as indicated in this decision, the SRMT Court could suspend the SRMT laws and rules that would normally be applied. This would be in reference to the SRMT Civ. Code and SRMT Civ. Pro law. In the alternative, as indicated above, there is referenced and permitted, under SRMT laws, for the Court to use the Federal Rules of Civil Procedure where deemed appropriate. Clearly parties may make motions under SRMT Civ. Pro §XVI, as referenced above; and, it is also clear that the provision does not define the different types of motions, such as a motion to dismiss for lack of standing. However, since sections VI (A) and XXV of the SRMT Civ. Code allows the use of the Federal Rules of Civil Procedure, the SRMT Court writes now to confirm that such a motion on order for dismissal due to lack of standing, as requested by the respondent Mr. Papineau, is permitted pursuant to the above referenced SRMT laws.

Furthermore, the Court finds that the request made by Mr. Papineau through his attorney, must be granted as it is supported by the fact that there is currently nothing before the Court evidencing that Ms. Leaf has sole or complete authority over Mr. Laffin's estate. This would, by local SRMT Custom, often be evidenced by a letter appointing Ms. Leaf as administrator of Mr. Laffin's estate. In addition and when necessary, the consent of any other interested persons who could also be appointed administrator. Next, the exact size or nature of the claim that could be made, or could have been made, by Mr. Laffin, is not known at this time. Again, that would have to be brought by the person administering his estate. Finally, and one of the more relevant factors considered by the Court, is that there appears to be multiple children of Mr. Laffin. Clearly each of these children could present a claim on behalf of Mr. Laffin's estate. If the Court were to permit Ms. Leaf to proceed solely, this could result in adverse ruling effecting those other persons/parties who are siblings of Ms. Leaf. This of course could spurn further litigation against both Ms. Leaf and Mr. Papineau. Something that the SRMT Land Dispute Resolution was envisioned to help stop.

Wherefore, the SRMT grants Mr. Papineau's motion to dismiss for the foregoing reasons, but does not award the requested attorney fees, and that this decision is without prejudice as to any future claim that may be made by Ms. Leaf or the heirs of Mr. Laffin.

Signed by my hand on this the 19th day of October 2012



Chief Judge Peter J. Herne