

**St. Regis Mohawk Tribal Court**

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<b>Tanya Barilko,</b>	)	
<b>Appellant</b>	)	<b>DECISION AND ORDER</b>
	)	
-V-	)	<b>Case No.: 11-LND-00005</b>
	)	
<b>Jolene Adams,</b>	)	
<b>Appellee</b>	)	

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**Procedural History**

Tanya Barilko on behalf of herself, filed an appeal on July 15<sup>th</sup>, 2011 of a St. Regis Mohawk Land Dispute Tribunal Decision (dated June 13<sup>th</sup>, 2011) in St. Regis Mohawk Tribal Court. Ms. Jolene Adams was named as the Appellee in the notice of appeal.

A 20 day civil summons was issued to Tanya Barilko by the St. Regis Mohawk Tribal Court on July 22<sup>nd</sup>, 2011 to accompany the notice of appeal to be served upon the Appellee, Ms. Jolene Adams. On July 25<sup>th</sup>, 2011 Ms. Tanya Barilko filed a proof of service with the St. Regis Mohawk Tribal Court, showing that the notice of appeal and 20 day civil summons was served upon the Appellee, Ms. Jolene Adams by certified mail/return receipt.

The St. Regis Mohawk Tribal Court received notice on August 19<sup>th</sup>, 2011 that Ms. Lorraine White would be acting as Ms. Jolene Adams attorney in the appeal before the Court. On August 25<sup>th</sup>, 2011 the St. Regis Mohawk Tribal Court received an answer from the Appellee, Ms. Jolene Adams, by her counsel, Ms. Lorraine White. Accompanying the answer was a proof of service that the answer was served upon the Appellant, Ms. Tanya Barilko.

Ms. Tanya Barilko filed a motion with the St. Regis Mohawk Tribal Court on September 15<sup>th</sup>, 2011 requesting that Ms. Lorraine White be removed as counsel for the Appellee, Ms. Jolene Adams. Proof of service that the motion was served upon the Appellee and her counsel via certified mail/return receipt was filed with the Court on the same day. On October 5<sup>th</sup>, 2011 a supplemental request for the motion to disqualify Ms. Lorraine White as counsel for the Appellee, Ms. Jolene Adams was filed with the Court by Ms. Tanya Barilko.

A pre-trial conference was held with the parties in St. Regis Mohawk Tribal Court on November 16<sup>th</sup>, 2011.

**Factual Background**

We can begin by noting that in the record of the case is a Letter of Intention and Direction dated April 19<sup>th</sup>, 1996 from Richard Adams to the Mohawk Council of Akwesasne. This letter states that Mr. Richard Adams grants power of attorney to his parents, Mr. Roy Adams and Ms.

Jolene Adams. The power of attorney given to his parents assigns them the authority to transfer, acquire title and handle mortgages for all of Mr. Richard Adams' property in Akwesasne. This document was executed in Canada.

The next document is a draft St. Regis Mohawk Tribe Use and Occupancy deed for Lot #511-C, which is comprised of 2 acres, and the document is dated for some time in 1997. There is no month and day on the draft document. The document was apparently intended to transfer Lot #511-C from Mr. Richard Adams to Ms. Tanya Barilko. The draft document is signed by Richard Adams, Tanya Barilko and Carol Herne as a witness, but **no** Tribal Council Chiefs signatures are on the document.

Next appearing is a draft SRMT Use and Occupancy Deed which was written on October 15<sup>th</sup>, 1997. This apparently intended on transferring Lot #511-C-1 from Tanya Barilko to Jean Jacobs. It is for 1 acre of land. This document was signed by Tanya Barilko, Jean Jacobs, witnessed by Julius Herne and signed by SRMT Tribal Clerk Carol Herne, but is **not** signed by **ANY** SRMT Tribal Council member.

On December 15<sup>th</sup>, 1998 another draft St. Regis Mohawk Tribe Use and Occupancy Deed is written to apparently transfer Lot #511-C from David and Edith McDonald, to Richard Adams. The lot contains 2 acres of land. The document is signed by four SRMT Tribal Council Members and the SRMT Tribal Clerk. The document is also signed by David and Edith McDonald, but **NOT** by Richard Adams.

It must be stressed that this 'deed' would be for the parcel that was the subject of the prior aforementioned transactions (Adams/Barilko and Barilko/Jacobs.) Further, from the record before us it is clear that David and Edith McDonald are the owners of this parcel. This is because it does not appear that Mr. Richard Adams ever acquired ownership of this parcel. Therefore, a majority of the dealings regarding this parcel which we are forced to address herein are a legal nullity.

On October 10<sup>th</sup>, 1999 an SRMT Use and Occupancy Deed was issued to Tanya Barilko for Lot #511-C-1. The lot, which contains 1 acre, was transferred from Jean Jacobs back to Tanya Barilko. The document is signed by Jean Jacobs, Tanya Barilko, witness Marian Bero, three SRMT Council Members and the SRMT Tribal Clerk.

In an October 12<sup>th</sup>, 2004 St. Regis Mohawk Tribe Use and Occupancy Deed, Germaine Phillips transfers Lot #511-G to Richard Adams, which is comprised of .75 acres. The document is signed by Germaine Phillips and Richard Adams. The Use and Occupancy Deed also contains the signatures of three SRMT Tribal Council Chiefs and the SRMT Tribal Clerk. This appears to be the only document in the record of this case having all the required and customary signatures. However, it does not 'cover' the parcel that is in dispute.

On July 10<sup>th</sup>, 2009 Richard Adams went missing and has not been heard from or seen since that date. *See*, Indian Time Newspaper October 22<sup>nd</sup>, 2009.

On September 20<sup>th</sup>, 2010 the St. Regis Mohawk Tribe, on behalf of Richard Adams, issued an SRMT Use and Occupancy Deed to Tanya Barilko for Lot #511-C which states that the lot

contains .79 acres. The document is signed by Tanya Barilko, two SRMT Tribal Chiefs and the SRMT Tribal Clerk.

On November 24<sup>th</sup>, 2010 Jolene Adams filed a complaint with the St. Regis Mohawk Tribe Land Dispute Tribunal (hereinafter SRMT LDT) against Tanya Barilko. This complaint was to have all of the properties that were in Mr. Richard Adams name remain that way.

On January 24<sup>th</sup>, 2011 while this matter was **STILL** pending before the SRMT LDT, an SRMT Use and Occupancy Deed was issued to Kenneth B.J.K. Cree and Logan J.W.S. Cree for Lot #511-C-1 containing 1 acre of land. The transfer of this property is from Tanya Barilko to Kenneth B.J.L. Cree and Logan J.W.S. Cree.

The SRMT LDT issued a decision in the matter of Jolene Adams v Tanya Barilko on June 13<sup>th</sup>, 2011. Thereafter, Ms. Tanya Barilko filed an appeal of the SRMT LDT decision dated June 13<sup>th</sup>, 2011 in St. Regis Mohawk Tribal Court on July 15<sup>th</sup>, 2011.

As this matter is an Appeal from the SRMT LDT we now write to have our decision replace the SRMT LDT decision.<sup>1</sup> We can note that although we affirm the conclusions reached by the LDT, we write in large part to clarify their analysis and to provide what we feel is a more appropriate review of the documents presented in the case at bar.

### **Discussion**

Ms. Tanya Barilko filed an appeal of an SRMT LDT decision dated June 13<sup>th</sup>, 2011 in St. Regis Mohawk Tribal Court. Ms. Barilko asks the St. Regis Mohawk Tribal Court to “find in my favor and overturn the previous decision made by the Land Tribunal when they: 1. Declared both land deeds between Jean Jacobs and myself as null and void, and 2. Ordered that these two acres of land remain in Richard Adams name and held from any land transactions, transfers, leases, or developments.” *See*, Notice of Appeal July 15<sup>th</sup>, 2011.

### **The Land Transfers**

In considering Appellant’s, (Ms. Tanya Barilko) arguments, the Court must review the record developed by the SRMT LDT. *See*, SRMT LDRO XV (B) (2).

There appears in the record a draft SRMT Use and Occupancy Deed, apparently transferring Lot #511-C from Mr. Richard Adams to Ms. Tanya Barilko.<sup>2</sup> We say “draft” because there is no month and date ascribed to this draft document but the year 1997 does appear. While this document contains the signatures of Richard Adams, Tanya Barilko and the SRMT Tribal Clerk at the time, there are **NO** signatures of the SRMT Tribal Council which would recognize the document as a legally valid instrument.<sup>3</sup> The Court must also note that in examining this particular draft SRMT Use and Occupancy deed, it isn’t until December 15<sup>th</sup>, 1998 that there appears to be

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<sup>1</sup> *See*, SRMT LDRO XV (B) (2).

<sup>2</sup> *See*, Record 1997 Draft SRMT Use and Occupancy Deed.

<sup>3</sup> It is the custom of the SRMT for an SRMT Use and Occupancy Deed to be recognized as valid it must be signed by at least two out of three SRMT Tribal Council Members AND the SRMT Tribal Clerk.

an effort made to transfer Lot #511-C from David and Edith McDonald to Richard Adams. That means transferring Lot #511-C from Richard Adams to Tanya Barilko in 1997 would be wholly impossible, as Mr. David McDonald and Mrs. Edith McDonald would still be the owners of record for Lot #511-C in 1997! Therefore, the 1997 draft SRMT Use and Occupancy deed from Richard Adams to Tanya Barilko is invalid because there are no SRMT Tribal Council signatures to validate the document, and from the record before the Court, there was not even an attempt to transfer Lot #511-C from David and Edith McDonald to Richard Adams until December 15<sup>th</sup>, 1998. Thereby, Mr. Adams had nothing to transfer to Ms. Barilko in 1997.

The foregoing is further complicated by the fact that on October 15<sup>th</sup>, 1997 another draft SRMT Use and Occupancy Deed concerning Lot #511-C appears in the record. In this draft document, Tanya Barilko attempts to transfer Lot #511-C-1 (containing one acre that was a part of Lot #511-C) to Jean Jacobs. The Court notes again, this transfer would not be possible as the record of this case reflects that David and Edith McDonald were still the owners of record for Lot #511-C. As such, there could be no transfer of this property by Tanya Barilko because David and Edith McDonald were still the owners of record at this point.

In examining the Appellant's claim that Richard Adams was the owner of Lot #511-C which is comprised of approximately 2 acres, we note that on December 15<sup>th</sup>, 1998 a draft deed was written apparently transferring Lot #511-C from David and Edith McDonald to Richard Adams.<sup>4</sup> We say draft deed because this document lacks the signature of Richard Adams. In order for this document to be deemed legally binding, the lack of a signature by Richard Adams is a glaring omission, one which prohibits us from recognizing the deed as being valid.

Yet another draft SRMT Use and Occupancy Deed was written on October 10<sup>th</sup>, 1999 in an attempt to transfer Lot #511-C-1.<sup>5</sup> In this document, Jean Jacobs attempted to transfer Lot #511-C-1 back to Tanya Barilko which consisted of 1 acre. The Court reiterates that this transfer was not possible as the December 15<sup>th</sup>, 1998 transfer of Lot #511-C from David and Edith McDonald was never completed because of the lack of Richard Adams' signature on the document. Therefore, although this SRMT Use and Occupancy Deed document contained the signature of Tanya Barilko, Jean Jacobs, and the required signatures of the SRMT Tribal Council and the SRMT Tribal Clerk, the fact remains that the preceding attempted transactions were never completed as the signatory requirements to transfer property were never met.

At this point the Court would like to highlight a land transaction in the record that appears to meet all the requirements to be considered legally valid. On October 12<sup>th</sup>, 2004 Germaine Phillips transferred Lot #511-G to Richard Adams which is comprised of .75 acres.<sup>6</sup> An SRMT Use and Occupancy Deed was issued to Richard Adams for this land, and the document was signed by Germaine Phillips, Richard Adams, three SRMT Tribal Council members, and the SRMT Tribal Clerk. The Court highlights this transaction and SRMT Use and Occupancy Deed because it contains the signatures of the two individuals completing the transaction, at least the required two out of three SRMT Tribal Council signatures, and the SRMT Tribal Clerk. As the Court has

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<sup>4</sup> See, Record December 15<sup>th</sup>, 1998 Draft SRMT Use and Occupancy Deed.

<sup>5</sup> See, Record October 10<sup>th</sup>, 1999 Draft SRMT Use and Occupancy Deed for Lot #511-C-1.

<sup>6</sup> See, Record October 12<sup>th</sup>, 2004 SRMT Use and Occupancy Deed for Lot #511-G.

pointed out previously, all of the other attempts to transfer Lot #511-C and Lot #511-C-1 were missing at LEAST one of these required signatures.

On September 20<sup>th</sup>, 2010 an SRMT Use and Occupancy Deed was issued to Tanya Barilko from the SRMT Tribal Council **on behalf of** Richard Adams for Lot #511-C containing .79 acres.<sup>7</sup> The Court must point out that because Lot #511-C was never transferred in a valid manner to Richard Adams by David and Edith McDonald, and, as Mr. Adams signature was not on the document, and that there is nothing in the record indicating that Mr. Adams was deceased, the SRMT Use and Occupancy Deed issued to Tanya Barilko on September 20<sup>th</sup>, 2010 is invalid as the lawful owners of record for Lot #511-C would still be considered to be David and Edith McDonald.

That brings the Court to an SRMT Use and Occupancy Deed issued on January 24<sup>th</sup>, 2011.<sup>8</sup> This is an apparent transfer of Lot #511-C-1 from Tanya Barilko to Kenneth B.J.K Cree and Logan J.W.S. Cree. This lot contains 1 acre of land. This transfer, while containing the signatures of Tanya Barilko and Kenneth Cree for his minor children, also is signed by two SRMT Tribal Council Chiefs, and the SRMT Tribal Clerk. The Court must find this SRMT Use and Occupancy Deed invalid because as the Court has made clear throughout this discussion, Lot #511-C and Lot #511-C-1 were never transferred in a legal manner from David and Edith McDonald to Richard Adams, therefore, Richard Adams could never transfer those lots to Tanya Barilko. She could therefore not transfer to Mr. Kenneth Cree. Further, because of the shortcomings of the multiple ATTEMPTS to transfer those lots to Richard Adams, Tanya Barilko, and Jean Jacobs, and the fact that those transfer attempts were never validly completed, Tanya Barilko could never transfer Lot #511-C-1 to Kenneth Cree OR his minor children. Therefore, the Court finds that the SRMT Use and Occupancy Deed for Lot #511-C-1 from Tanya Barilko to Kenneth Cree on behalf of his minor children is invalid.

As the Court has already explained in the previous discussion regarding the multiple attempted transfers of Lot #511-C and Lot #511-C-1, these transactions were never valid for a myriad of reasons that the Court has laid out. By reason of the evidence in the record before the Court regarding these transfer attempts, the Court finds that the owners of Lot #511-C and Lot #511-C-1 are STILL David and Edith McDonald. If there is a land dispute over these Lots, it appears to the Court it originates with David and Edith McDonald and Richard Adams. All subsequent attempts to transfer these lots were never valid as the owners of the property known as Lot #511-C and Lot #511-C-1 never appear to have validly transferred it to Richard Adams.

### **The Missing Person**

The Court will now address the Appellant's second argument on appeal that the LDT "ordered that these two acres of land remain in Richard Adams name and held from any land transactions, transfers, trades, leases, or developments." *See*, Notice of Appeal July 15<sup>th</sup>, 2011.

Richard Adams has been declared a missing person in Canada and from the record before the Court, Mr. Richard Adams has not been seen or heard from by his family since about July 10<sup>th</sup>,

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<sup>7</sup> *See*, Record September 20<sup>th</sup>, 2010 SRMT Use and Occupancy Deed for Lot #511-C.

<sup>8</sup> *See*, Record January 24<sup>th</sup>, 2011 SRMT Use and Occupancy Deed for Lot #511-C-1.

2009. The Court understands that this is a sensitive issue for all of the parties involved as Ms. Jolene Adams (Appellee) is Mr. Richard Adams mother, and Ms. Tanya Barilko (Appellant) is Mr. Richard Adams longtime companion.

The Court first must note that the Appellant, Ms. Tanya Barilko, in a letter to the SRMT Tribal Council Chiefs, states that “I am not married to Richard but have been his common-law partner for the past 15 years and have 2 minor children with him.” *See*, Record Letter to SRMT Tribal Chiefs May 6<sup>th</sup>, 2010. In deciding land disputes the St. Regis Mohawk Tribal Court is guided by the St. Regis Mohawk Tribe Land Dispute Resolution Ordinance (hereinafter SRMT LDRO). The SRMT LDRO provides that, “the St. Regis Mohawk Tribe does not recognize “common law” marriage and so for purposes of this Ordinance, spouse shall refer to the legally married husband or wife.” *See*, SRMT LDRO IV (M). Further, in a prior case decided by this Court, we could not recognize common law spouse, as such recognition would have to be made by the SRMT Council.<sup>9</sup>

Because Ms. Barilko does not appear to be the lawfully married wife of Mr. Richard Adams, it appears that Ms. Barilko does not have any standing in the matter at bar pursuant to the SRMT LDRO. Therefore, we deny her appeal on this ground.

Next, the Court reminds the pertinent parties to this action that there are provisions in the SRMT LDRO in which a non-married spouse may have an interest. This would be the provisions contained in the SRMT LDRO which would permit a person to start an action for minor children of an enrolled SRMT member. *See*, SRMT LDRO VI (A) (2). In the case at bar there appear to be two minor children that resulted from the long term relationship between Mr. Richard Adams and the Appellant, Ms. Tanya Barilko.

In the case of intestacy (death without a last will and testament), the SRMT LDRO intestacy provision states that the estate of an enrolled SRMT member’s estate will be distributed as follows:

“Intestate Distribution – when a Tribal member dies without leaving a Will, their real property located on the Reservation shall pass to Tribal members as follows:

1. The surviving Tribal member spouse shall inherit the possessory interest formally held by the deceased spouse.
2. If there is no surviving Tribal member spouse, the surviving Tribal member children shall receive equal possessory interests in tribal lands formally held by a deceased tribal member parent.
3. In any case where minor children may be entitled to a possessory interest, the land shall be held in trust by a Legal Guardian until they reach the age of maturity, which is 18 years old.” *See*, SRMT LDRO V (E) (1) (2) (3).

Clearly the language that the Court just provided from the SRMT LDRO states that a partner who is not legally married to a decedent who passed intestate can represent the minor children’s interest in their deceased parent’s estate.

However, the Court must make clear that those intestacy provisions cannot be applied in the matter at bar because Mr. Richard Adams has not been legally declared deceased. Although

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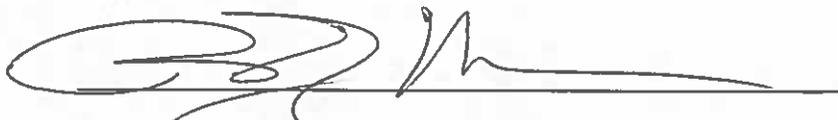
<sup>9</sup> *See*, LaFrance v Oakes 10-CIV-00010.

Mr. Richard Adams has been missing for more than 5 years, the Court cannot apply provisions of the SRMT LDRO that deal with a deceased person's estate when it is not known if the person in question is in fact deceased!

The Court must also point out that in this Appeal, Ms. Tanya Barilko asked that the SRMT LDT decision that the two acres of land in question, Lot #511-C and Lot #511-C-1 remain in Richard Adams name be overturned. As is evidenced from the record Ms. Tanya Barilko (on multiple occasions), has attempted to have that property transferred to other individuals, including herself, since Mr. Richard Adams 'disappearance'. While the Court understands that this is a time of great pain for all of the people involved in this matter because a loved one is missing, the fact remains that the property known as Lot #511-C and Lot #511-C-1 cannot remain in Richard Adams name as the Court has found that those Lots were never legally or fully/properly, transferred to Mr. Richard Adams in the first instance. Based upon the record before us, Lot #511-C and Lot #511-C-1 are still owned by David and Edith McDonald as any of the attempted transfers over the years were never completed in accordance with SRMT law or custom.

Therefore, the St. Regis Mohawk Tribal Court finds that Lot #511-C and Lot #511-C-1 were never transferred in accordance with SRMT law to Richard Adams by David and Edith McDonald. Lot #511-C and Lot #511-C-1 are still owned by David and Edith McDonald. Though Mr. Richard Adams has been missing since July 10<sup>th</sup>, 2009, there is nothing in the record indicating that Mr. Adams was ever declared deceased. Therefore, the Court will not make any determinations as to the distribution of his estate as there is no evidence that Mr. Richard Adams is deceased.

Signed by my hand this 29<sup>th</sup> day of December 2014.



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