

St. Regis Mohawk Tribal Court

Dennis Chubb,)	
Complainant)	DECISION AND ORDER
)	
-V-)	Case No.: 14-CIV-00013
)	
Malcolm Chubb,)	
Respondent)	

Jurisdiction

The St. Regis Mohawk Tribal Court has original jurisdiction over cases, matters or controversies arising under the laws, ordinances, regulations, customs and judicial decisions of the Tribe.¹ The Court possesses civil jurisdiction over disputes arising in, connected with, or substantially affecting Mohawk Indian Country.² This dispute arises in Mohawk Indian Country and thus the court possess jurisdiction.

Summary of Facts

Plaintiff Dennis Chubb filed a complaint against Defendant Malcolm Chubb on May 14, 2014. Dennis Chubb alleged that Malcom Chubb owed him \$4900. Dennis Chubb stated in his claim the original loan was \$7000 and that Malcolm Chubb had made some payments, but then began to refuse to make payments. Dennis Chubb requested \$4900 plus filing and other court fees as a remedy.

On July 18, 2014, Malcom Chubb filed an answer. He claimed he did not owe Dennis Chubb any money as the loan of \$6,000 was in his mother's name. He also stated in his answer that he paid Dennis Chubb \$3600 towards the loan. He further stated he could pay only \$25 a month, because that was all he could afford. He also claimed the other \$900 was a gift.

After filing his response, Malcom Chubb left two money orders for a total of \$125 with the St. Regis Mohawk Tribal Police for Dennis Chubb towards his claim. The Court took control of the money orders. At the court hearing on December 12th, 2014, the money orders were given to Dennis Chubb and the complaint was amended to \$4775.00 to reflect the payment received. The Court informed the Tribal Police and Dennis Chubb that it would not accept any more money orders, as this is not the responsibility of the Court.

At the hearing on December 12th, 2014, Malcom Chubb failed to appear. He received notice of the hearing. And it is clear he knew of the pending case as he filed an answer and made subsequent payments to Dennis Chubb via the Tribal Police. The Court informed Dennis Chubb he could file a motion for a default judgment. The motion was filed on December 12th, 2014 and

¹ The Saint Regis Mohawk Tribal Court and Judiciary Code § V.1. (2012).

² SRMT Civil Code § II.A. (2008).

a copy was served on Malcolm Chubb on December 23rd, 2014, pursuant to SRMT Rules of Civil Procedure XIII. A hearing was set for January 22, 2015. Malcolm Chubb's notice of hearing was returned to the Court "unable to forward".

At the hearing on January 22, 2015, Dennis Chubb and his brother Carl Chubb were placed under oath and testified to the following. Dennis Chubb testified that the St. Regis Mohawk Tribe gave Malcolm Chubb a trailer, but there was a land dispute that needed to be settled before Malcolm Chubb could place the trailer on the property. Dennis Chubb stated that \$6000 was needed to settle the land dispute. Dennis Chubb further testified that he gave his mother \$6000, which was then given by Dennis' mother to Malcom Chubb. This occurred at the St. Regis Mohawk Tribe's building in the Clerk's Office. Dennis Chubb testified that he attempted to get a receipt for the loan, but Malcolm Chubb would not sign the receipt. Dennis Chubb testified the loan occurred three years ago and since that time he has received payments totaling \$2400. He further testified in addition to the initial loan of \$6000, he loan Malcom Chubb \$900 to fix the driveway.

Carl Chubb testified that he was standing outside the Clerk's Office and he witnessed Dennis give the money to their mother. Their mother then went into the Clerk's Office to give the money to Malcom Chubb. Carl testified there were numerous other people present, including Ron LaFrance, Corlene Jacobs, Steve Chubb, and Bev Cook. Carl also testified that he was present when the additional \$900 was loaned to Malcom Chubb for the driveway.

Motion for Default Judgment

The SRMT Rules of Civil Procedure require that when a written motion for default is filed by the plaintiff and served on the defendant, and no answer has been filed by the hearing of the motion a default judgment shall be entered.³ It should be noted that the Court erred in telling Dennis Chubb he could file for a default judgment, as an answer had already been filed in this case. The proper procedure would have been simply to set the case for trial. However, filing of the Motion for Default Judgment actually benefited Malcom Chubb as it ensured by personal service of the motion which gave him notice the case was proceeding forward and he needed to act. The actual notice for the hearing date was returned as no one accepted it at the address given to the Court by the defendant. The Motion will be treated as a request for judgment by the Plaintiff.

³ SRMT Rules of Civil Procedure Section XIII.

Judgment

The Plaintiff is required to prove his case by a preponderance of the evidence.⁴ Dennis Chubb met this burden at the hearing on January 22, 2015. The evidence was uncontroverted that he initially loaned Malcom Chubb \$6000 and a subsequent \$900, for a total of \$6900. Malcom Chubb admitted he was given a loan of \$6000 in his answer, while contesting the \$900 as a gift. However, he failed to appear and offer any evidence it was a gift. Dennis and Carl Chubb both testified that the \$6000 and \$900 were given as a loan to Malcom Chubb.

Since the loans of \$6000 and \$900, Malcom Chubb made payments of \$2525, which includes the amount he left with the Court. Thus, an outstanding amount owed to Dennis Chubb is \$4375.

Order

It is hereby ORDERED that Judgment for Dennis Chubb is GRANTED in the amount of \$4375, plus court filing fees of \$50. Malcom Chubb is ORDERED to pay Dennis Chubb \$4425.

Signed by my hand this 4 day of February 2015



Carrie Garrow, St. Regis Mohawk Tribal Court Judge

⁴ SRMT Rules of Civil Procedure Section XX.

