

**St. Regis Mohawk Tribal Court**

**Physical Address:**

Tribal Justice  
Building  
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Akwesasne, NY  
(518) 358-6300  
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9692

**Website:** <http://www.srmt-nsn.gov/tribalcourts.htm>

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

**Case # 12-CIV-00007**

August 13, 2012

**RE: Sample Lumber v Arrow White:**

**Motion for Summary Judgment**

On June 28, 2012, the Court received a letter from Attorney Nathan Race regarding the case of *Sample Lumber v. Arrow White*. In this letter, Attorney Race, who represents Sample Lumber, LLC, made a request to the SRMT Court on the proper procedure to make a motion for summary judgment in the above referenced case. The Court researched this issue and provides the following to the above noted parties.

First, as in any case at bar, the Court has to have jurisdiction over the case. (See, St. Regis Mohawk Law TCR 2008-19 Civ. Code [hereinafter SRMT Civ. Code] § II. Jurisdiction must be included in any such motion for summary judgment submitted to the SRMT Court. Pursuant to SRMT Civ. Code § II (A)(G) the Tribal Court shall have civil jurisdiction over civil disputes as follows:

- A. Disputes arising in, connected with, or substantially affecting Mohawk Indian Country;
- B. Disputes involving contracts (i) negotiated, executed, or performed in Mohawk Indian Country, or (ii) whose subject matter substantially involves Mohawk Indian Country, or (iii) under which substantial performance would occur in Mohawk Indian Country, or (iv) in which the Saint Regis Mohawk Tribe ("Tribe") or any of its subordinate entities, agencies, or agents is a party (except that this provision does not waive Tribal sovereign immunity);
- C. Disputes involving torts in which (i) a proximate cause (or the last component in a chain or sequence of proximate cause) occurred or was carried out in Mohawk Indian Country, or, (ii) the effect or injury occurred or was inflicted in Mohawk Indian Country, or (iii) the Saint Regis Mohawk Tribe or any of its subordinate entities,

agencies, or agents is the injured party or alleged to be the party causing the injury (except that this provision does not waive Tribal sovereign immunity);

D. Disputes involving claims against (i) the Saint Regis Mohawk Tribe or any of its subordinate entities, or agencies (except that this provision does not waive Tribal sovereign immunity), or (ii) against Tribal officers, agents, or employees for acts, omissions, or within their official capacity (except that this provision does not waive the sovereign immunity or governmental official immunity of Tribal officials, agents, or employees);

E. Claims against the Saint Regis Mohawk Tribe (but not against individual Indians, officials, officers, employees or agents of the Tribe) under the federal Indian Civil Rights Act, in which case the Court may grant equitable relief only (injunctive or declaratory remedies, excluding monetary damage or monetary relief of any kind);

F. Review of the denial of a gaming license by the Tribal Gaming Commission to the limited extent, and only to the limited extent, that a petition for the review of such denial is filed with the Court within 30 days of notice of the denial to the applicant, where after the Court shall grant equitable relief to direct approval of a license only if it finds upon review of the record before the Tribal Gaming Commission (in the nature of an appellate proceeding not involving de novo evidence) that the denial was a violation of due process by being wholly arbitrary and capricious and without any basis whatsoever in law or fact; and

G. Except as limited by St. Regis Mohawk Tribal laws, to the fullest extent, reach, and scope of civil jurisdiction otherwise permitted under applicable principles of American Indian law for Indian tribes located within the territorial boundaries of the United States, as recognized by the Supreme Court of the United States.

Next, 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, 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).

When reading these provisions of SRMT law together, 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 Court deems appropriate.

What we are currently dealing with is that under the SRMT Rules of Civil Procedure, a party may make a motion at any time after a case is filed and appropriately initiated. SRMT Civ. Pro. §XVI (A)-(C) provides as follows:

[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 this provision of SRMT law is identifying or specifying certain types of motions. One such motion, that is very common to New York Civil Procedure and the Federal Rules of Civil Procedure, is a motion for summary judgment. Or, as we would have to consider, an order for Summary judgment.

A motion for summary judgment under the Federal Rules of Civil Procedure is defined as:

A motion asking the Court to issue a summary judgment on at least one claim. If the motion is granted, a decision is made on the claims involved without holding a trial. Typically, the motion must show that no genuine issue of material fact exists, and that the opposing party loses on that claim even if all its allegations are acceptable as true. (See. E.g., Federal Rules of Civil Practice 56).

The actual language of Fed. R. Civ. Pro 56 is:

A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should

state on the record the reasons for granting or denying the motion. (See, Fed. R. Civ. Pro 56 (a)).

As indicated, there is no specific mention of this type of motion under SRMT law. However, 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, including that of summary judgment. However, since sections VI (A) and XXV of the SRMT Civil 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 summary judgment, as requested by the Plaintiff is permitted pursuant to SRMT laws.

Next, the motion for summary judgment to the SRMT Court, may in general, follow the established rules and procedures for summary judgments, as found in the Federal Rules of Civil Procedure, Rule 56.

To have matters remain consistent under the SRMT Civ. Code and SRMT Civ. Pro., coupled with the fact that the Defendant is a *pro se* litigant, the SRMT Court will allow Mr. Arrow White twenty (20) days from the date of service to make a response to the motion as customary by SRMT Court rules in such cases. (See, SRMT Civ. Code §VI (A)).

In addition to the notice requirement, the SRMT Court also sets the following requirements on the movant, Sample Lumber, LLC, represented by Attorney Race:

1. The motion must be filed before the Court and must contain:
  - A. Identify each claim on which summary judgment is sought with supporting factual positions.
  - B. The proposed undisputed facts.
2. This motion must clearly identify the relief being requested.
3. The motion must identify if there are any issues with respect to enforcement of judgment.
4. The motion must contain the following notices regarding judgment enforcement:

Pursuant to the SRMT Civ. Code §VII, this judgment and any enforcement thereof shall be governed by the laws, rules and regulations of the Saint Regis Mohawk Tribe/ SRMT Court.

Enforcement of this judgment within the Saint Regis Mohawk Indian Reservation shall be exclusively with the SRMT Court under the laws of the SRMT.

5. The Court will cause the motion to be served to Mr. Arrow White pursuant to the Parties' request.

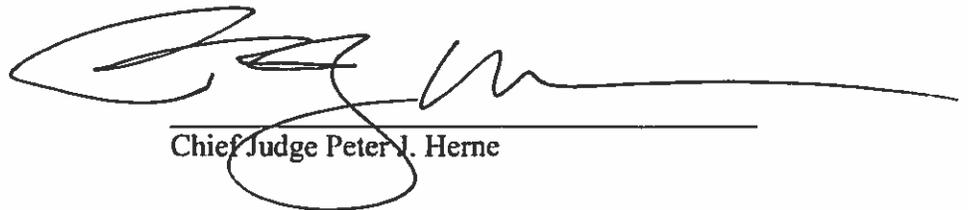
6. Mr. Arrow White shall have 20 days, rather than 10 days, from service of the Motion to make a response.
7. After the 20 day deadline has passed, the Court will determine if oral arguments are necessary. If no oral arguments are necessary, the Court will decide the motion.
8. The Motion must also contain the following notice:

To Mr./Mrs. \_\_\_\_\_, please be advised that if you fail to submit evidence contradicting the version of the facts, provided by the movant, for a "summary judgment" may be found against you without any further notice. It is therefore important that you read the movant's filings and other evidentiary materials to see if you agree or disagree with the movant's version of the relevant facts. In doing so, you are strongly urged to review the SRMT Civil Code and SRMT Civ. Pro.

Please also be advised that you have 20 days to file your response to rebut or contradict anything in the movant's papers. You should make any such response to the SRMT Court. If you fail to follow these instructions, the movant's motion may be granted.

9. Paragraph 8 shall be in Times New Roman with a minimum of size 14 font.

Signed by my hand on this the 13<sup>th</sup> day of August 2012



Chief Judge Peter J. Herne