

**SAINT REGIS MOHAWK TRIBAL COURT  
IN AND FOR THE SAINT REGIS MOHAWK TRIBE**

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<b>Viki Curotte</b>	)	
	)	
<b>Plaintiff</b>	)	<b>Case. No.: 18-CIV-00019</b>
	)	
<b>v.</b>	)	<b>DECISION AND ORDER</b>
	)	
<b>Loran Thompson</b>	)	
	)	
<b>Defendant</b>	)	

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**Procedural Background**

On June 20, 2018, Viki Curotte, filed a Complaint with the Court naming Loran Thompson as the Defendant. The Plaintiff, Viki Curotte, states that the Defendant, Loran Thompson, was the Plaintiff, Viki Curotte’s, landlord and alleges that the Defendant, Loran Thompson, [REDACTED] The Plaintiff, Viki Curotte, moves this Court to order the Defendant, Loran Thompson, to pay damages for the moving expenses incurred and the court costs.

On July 12, 2018, Loran Thompson, the Defendant, filed a written answer with the Court denying the allegation made by the Plaintiff, Viki Curotte.

The Court held a status conference on July 30, 2018. Viki Curotte, Plaintiff, was present and Loran Thompson, Defendant, failed to appear. The matter was scheduled for a trial on September 5, 2018. Loran Thompson was served notice of the trial via certified mail and was personally served by the Saint Regis Mohawk Tribal Police Department.

On September 5, 2018, both parties appeared, offered evidence, and were self-represented. The Court heard testimony from: Viki Curotte, Plaintiff, and Loran Thompson, Defendant.

**Jurisdiction**

In order to address the instant case, the Court must first determine whether it possesses jurisdiction over the matter. The SRMT Civil Code states “[t]he Tribal Court shall have civil jurisdiction over . . . [d]isputes 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 . . .”<sup>1</sup>

In the present matter, the alleged assault occurred near the Plaintiff, Viki Curotte’s, residence that she was renting from the Defendant, Loran Thompson. The residence is located on Thompson Lane near Thompson Marina. Thus, the tort occurred within the Mohawk Indian Reservation. Based on the foregoing, the Court possesses jurisdiction over this matter.

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<sup>1</sup> SRMT Civil Code § II. C.

## Applicable Law

In the instant case, the Plaintiff, Viki Curotte, and the Defendant, Loran Thompson were in a landlord-tenant contractual relationship. It is alleged that the Plaintiff, Viki Curotte [REDACTED] was assaulted by Loran Thompson, the Defendant. In response, the Plaintiff, Viki Curotte, moved her family out of the apartment she was renting from the Defendant, Loran Thompson. As a result of the move to another residence, the Plaintiff, Viki Curotte, alleges that she incurred moving costs. Here, the Complaint is based upon tort law.

The Saint Regis Mohawk Tribe Civil Code (SRMT Civil Code) delineates the applicable law for civil disputes and the order in priority of which they should be applied.<sup>2</sup> The SRMT Civil Code requires that the Court must look to first portions of the Constitution of the United States and applicable federal law.<sup>3</sup> The Plaintiff's Complaint is not based on a constitutional claim, nor is the Plaintiff, Viki Curotte, alleging a claim based on a federal law. The second prong requires the Court to look to written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe.<sup>4</sup> At this time, the Saint Regis Mohawk Tribe has not enacted a written law that addresses tort claims.

The SRMT Civil Code allows for the application of “[g]enerally 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.”<sup>5</sup> As previously noted, at this time, there is no written law that addresses the claim brought by the Plaintiff, Viki Curotte, thus, the Court will apply the Restatement (Second) of Torts to the present matter.<sup>6</sup> The Restatement provides the relevant legal rule in regards to assault. However, the instant case, presents an issue of first impression for the Court.<sup>7</sup> Consequently, this means that the Court does not have case law to provide guidance in interpreting the relevant portions of the Restatement (Second) of Torts.

In similar situations, the Court has looked to New York Courts' case law for guidance because this Court's case law is silent.<sup>8</sup> The SRMT Civil Code allows for the application of New York state law to be applied in instances where there is no other controlling principle of Mohawk law, the application of New York State law is consistent with principles of sovereignty, self-government, and self-determination and application of the New York State law is in the overall interest of justice and fairness to the parties.<sup>9</sup> This provision does not address the application of other jurisdictions' case law; however, this standard has been applied in assessing the application

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<sup>2</sup> SRMT Civil Code § V. A. 1. – 6.

<sup>3</sup> SRMT Civil Code § V. A. 1.

<sup>4</sup> SRMT Civil Code § V. A. 2.

<sup>5</sup> SRMT Civil Code § V. A. 5.

<sup>6</sup> The Court is aware that the Restatement (Third) of Torts is the most recent Restatement. At this time, in regards to assault and battery, the language is still in draft form and not finalized. Thus, the Court will not apply the draft language found in the Restatement (Third) of Torts to the present matter.

<sup>7</sup> The Court's case law is limited to assessing claims brought by parties regarding damages to one's real property, animals, and domestic pets. *See Burns v. Ward*, 9-SC-00003 (June 9, 2011), *see also*, *Costello v. Cree*, 10-CIV-0008 (Jan. 4, 2016), *see also*, *Cook v. Cree*, 16-CIV-00014 (Jan. 23, 2018).

<sup>8</sup> *See, e.g.*, *Estate of George White*, 17-CIV-00008 (June 18, 2018).

<sup>9</sup> SRMT Civil Code § V. B.

of New York Courts' case law in instances where the Court's case law is silent.<sup>10</sup> The Court notes that other jurisdictions' case law is not binding authority, rather the Court looks to it for guidance.

In the instant matter, utilizing New York Courts' case law solely as a guide helps aid the Court in assessing the Plaintiff, Viki Curotte's, allegation and her request for damages and, the Defendant, Loran Thompson's, defenses. As previously noted, this Court's case law is silent on this particular issue. New York Courts have long recognized a person's right to live in a society free from hostile assaults that place him or her in fear of personal harm.<sup>11</sup> The New York Courts define the tort of assault as an intentional placing of another person in fear of imminent harmful or offensive conduct.<sup>12</sup> There is no evidence demonstrating to the Court that the New York Courts' case law is inconsistent with principles of sovereignty, self-government, and self-determination. Furthermore, the Court finds it is in the overall interest of justice and fairness to the parties in this case. Thus, similar to other cases, the Court will look to New York Courts' case law in this decision.

### **Factual Findings**

The Plaintiff, Viki Curotte, bears the burden of proof by preponderance of evidence.<sup>13</sup> Preponderance of the evidence is met "by providing superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."<sup>14</sup> The Court has reviewed the record and evidence admitted during the trial and finds the following facts were proven by a preponderance of the evidence.

1. The Plaintiff, Viki Curotte, [REDACTED]
2. The Plaintiff, Viki Curotte, rented a three (3) bedroom apartment from the Defendant, Loran Thompson, for approximately four (4) to five (5) years.
3. The Plaintiff, Viki Curotte's, residence that she rented from the Defendant, Loran Thompson, is located at Thompson Lane near Thompson Marina.
4. On or around 6:30 p.m. on March 21, 2018, a winter weather type day, the Defendant, Loran Thompson's, grandchildren [REDACTED], Viki Curotte's, [REDACTED] to play near Thompson Marina. The Plaintiff allowed [REDACTED] to play with the Defendant's grandchildren.
5. The Defendant, Loran Thompson, was in close proximity [REDACTED] and his grandchildren on March 21, 2018.

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<sup>10</sup> See, e.g., Estate of George White, 17-CIV-00008 (June 18, 2018).

<sup>11</sup> 14 N.Y. Prac., New York Law of Torts § 1:2.

<sup>12</sup> 14 N.Y. Prac., New York Law of Torts § 1:2 & 1:3.

<sup>13</sup> SRMT Rules of Civil Procedure § XX. A. – B.

<sup>14</sup> SRMT Rules of Civil Procedure § XX. B.

6. Approximately between 6:30 and 7:30 p.m. [REDACTED], Plaintiff [REDACTED], and Loran Thompson, Defendant, had a disagreement. The Defendant [REDACTED], Plaintiff's [REDACTED].
7. Approximately between 6:30 and 7:30 p.m., the Defendant, Loran Thompson, [REDACTED]
8. On or around 7:30 p.m., Viki Curotte, Plaintiff, took four photographs that depict the [REDACTED]<sup>15</sup>
9. On or around 8:00 p.m. Viki Curotte, Plaintiff, messaged Loran Thompson, Defendant, asking him "[d]id [REDACTED] [REDACTED]???" Defendant responded with "[REDACTED] walked away with an attitude turn his back on me while I was talking [REDACTED]"<sup>16</sup>
10. On or around 10:35 p.m. Viki Curotte, Plaintiff, reported a claim of child abuse to the Saint Regis Mohawk Tribal Police and Family Support. On March 22, 2018, Saint Regis Mohawk Tribal Police Officers spoke to the Plaintiff and conducted an investigation where the child and all potential witnesses were interviewed. The Defendant was arrested and charged.<sup>17</sup>
11. On March 22, 2018, Viki Curotte, Plaintiff, and her family stayed at a hotel for a one night stay for an amount of [REDACTED]<sup>18</sup>
12. On April 6, 2018, a Temporary Order of Protection was issued by Judge C. Curtis Smith of the Bombay Town Court in Franklin County ordering the Defendant Loran Thompson, to stay away from the home of Viki Curotte, the school of the children of Viki Curotte, and the place of employment of Viki Curotte.<sup>19</sup> Judge C. Curtis Smith gave a time frame of one (1) day for the Plaintiff and her family to move from the premises.
13. On April 7, 2018, the Plaintiff, Viki Curotte, hired Ray Curotte, her father, and Joel Herne to move her family's possessions from the three (3) bedroom apartment that she was renting from the Defendant, Loran Thompson. The moving expenses totaled [REDACTED]

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<sup>15</sup> Plaintiff Exhibit #1 – 4.

<sup>16</sup> Plaintiff Exhibit #5 – 6.

<sup>17</sup> Plaintiff Exhibit #10.

<sup>18</sup> Plaintiff Exhibit #9.

<sup>19</sup> Plaintiff Exhibit #11.

<sup>20</sup> Plaintiff Exhibit #7 – 8.

## DISCUSSION

In regards to the case at bar, the Plaintiff, Viki Curotte, rented for three (3) to four (4) years, from the Defendant, Loran Thompson. The Plaintiff, Viki Curotte, alleges that the Defendant, Loran Thompson, [REDACTED] and is requesting the emergency moving expenses. In the instant case, the Court is charged with assessing whether the Plaintiff, Viki Curotte, is entitled to monetary relief for emergency moving expenses sought from the Defendant, Loran Thompson.<sup>21</sup>

As previously noted, the Plaintiff, Viki Curotte's, Complaint is based upon tort law. The Restatement (Second) of Torts addresses liability for intentional misconduct. Examples of intentional conduct include assault and battery. Notably, the general principles outlined in the Restatement (Second) of Torts includes an element of imminent apprehension.<sup>22</sup> Apprehension means awareness that an injury or offensive contact is imminent. In the instant case, the Plaintiff, Viki Curotte, alleges that the Defendant, Loran Thompson, assaulted [REDACTED]. Specifically, the Plaintiff alleges that the Defendant [REDACTED]. To substantiate her claim, the Plaintiff testified and entered into evidence photographs and copies of messages between her and the Defendant following the incident.<sup>23</sup> The Court was not provided evidentiary testimony from the Plaintiff [REDACTED]. Thus, the Court was not provided evidence that demonstrates [REDACTED], was aware that an [REDACTED] contact was imminent. However, there is a recognized general principle of intentional tort liability applied by Courts when no particular intentional tort law applies.<sup>24</sup>

Section 870 of the Restatement (Second) of Torts states:

One who intentionally causes injury to another is subject to liability to the other for the actual harm incurred, if his conduct is culpable and not justifiable. This liability may be imposed despite the fact that the actor's conduct does not come within one of the traditional categories of tort liabilities.<sup>25</sup>

The aforementioned provision of the Restatement (Second) of Torts is intended to "supply a generalization for tortious conduct involving harm intentionally inflicted. . . More than that, it is intended to serve as a guide for determining when liability should be imposed for harm that was intentionally inflicted."<sup>26</sup> The principle set forth in the Restatement (Second) of Torts has been utilized by New York Courts and "been given the appellation of a "prima facie tort."<sup>27</sup> In regards to this matter before the Court, the arguments put forth by the parties focus on whether

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<sup>21</sup> Pursuant to the SRMT Rules of Civil Procedure, in the case of torts, actions must meet the three (3) year statute of limitation. SRMT Rules of Civil Procedure § VIII A. 1. In the instant case, the alleged tort occurred on March 21, 2018. The action was filed by the Plaintiff, Viki Curotte, in this Court on June 20, 2018. Thus, the Plaintiff met this requirement by timely filing her complaint.

<sup>22</sup> See Restatement (Second) of Torts § 13 (Am. Law Inst. 1965), see also Restatement (Second) of Torts § 21 (Am. Law Inst. 1965).

<sup>23</sup> Plaintiff Exhibit #1 – 4 and Exhibit #5 – 6.

<sup>24</sup> Curiano et. al. v. Suozzi, 63 N.Y.2d 113 (N.Y. 1984).

<sup>25</sup> Restatement (Second) of Torts § 870 (Am. Law Inst. 1979).

<sup>26</sup> Restatement (Second) of Torts § 870 cmt. a (Am. Law Inst. 1979).

<sup>27</sup> Curiano et. al. v. Suozzi, 63 N.Y.2d 113, 470 (N.Y. 1984).

the alleged harm occurred. In its other tort cases, this Court has assessed whether the actual harm occurred in order to determine whether the Plaintiff is entitled to damages.<sup>28</sup> Therefore, the Court will address the matter by following the guidelines provided in the aforementioned provision of the Restatement (Second) of Torts.<sup>29</sup> In order to recover the hotel and moving expenses totaling [REDACTED] and the court costs, the Plaintiff, must prove that the Defendant, Loran Thompson, [REDACTED]

In most cases, the Court would begin its analysis with assessing the intent of the Defendant, Loran Thompson.<sup>30</sup> However, in this case, the arguments put forth regarding whether the injury occurred and the Defendant, Loran Thompson's, intent are intertwined. In general, the Plaintiff, Viki Curotte, needs to prove that the Defendant, Loran Thompson, intentionally caused the alleged injury. The burden then shifts to the Defendant, Loran Thompson, to show some justification or excuse. Thus, the Court is going to focus its analysis on determining whether the alleged injury occurred and then assess the Defendant, Loran Thompson's, intent.

In regards to the case at bar, there are no witnesses that testified before the Court that saw the incident. It is not uncommon for this Court to not have direct evidence provided by the parties.<sup>31</sup> Similar to other cases where there is no direct evidence, an allegation may be proved through circumstantial evidence. It is the role of the Court to make its determinations based on the testimony provided by the Plaintiff, Viki Curotte, and the Defendant, Loran Thompson, and to weigh the reasonable yet competing inferences which can be drawn from the testimony and evidence.

In the instant case, the Plaintiff, Viki Curotte, testified that on or around 6:30 p.m. on March 21, 2018 the Defendant, Loran Thompson's, grandchildren invited the Plaintiff [REDACTED] to play outside near the Thompson Marina. The Plaintiff testified that the Defendant was in close proximity to the children. She further testified that she heard the Defendant yelling [REDACTED]. Moreover, she testified that [REDACTED] told her that the Defendant [REDACTED]. The Plaintiff entered into evidence four (4) photographs she took following the incident,<sup>32</sup> a copy of messages between the Plaintiff and Defendant,<sup>33</sup> and a copy of the Incident Verification Report completed by the Saint Regis Mohawk Tribal Police Department.<sup>34</sup> The four (4) photographs show [REDACTED]. The copy of the messages admitted into evidence shows proof of a conversation that took place on or around 8:00 p.m. on March 21, 2018 following the incident.

In response to the evidence before the Court, the Defendant, Loran Thompson, argued that the alleged [REDACTED] in the photographs is attributed to the cold weather

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<sup>28</sup> See *Burns v. Ward*, 9-SC-00003 (June 9, 2011), *see also*, *Costello v. Cree*, 10-CIV-0008 (Jan. 4, 2016), *see also*, *Cook v. Cree*, 16-CIV-00014 (Jan. 23, 2018).

<sup>29</sup> Due to the fact that the provision establishes a general principle the Court will also look to the comments to this Section for elements and limits of this liability.

<sup>30</sup> Restatement (Second) of Torts § 870 cmt. b (Am. Law Inst. 1979).

<sup>31</sup> *See, e.g.*, *Estate of George White*, 17-CIV-00008 (June 18, 2018).

<sup>32</sup> Plaintiff Exhibit #1 – 4.

<sup>33</sup> Plaintiff Exhibit #5 – 6.

<sup>34</sup> Plaintiff Exhibit #10.

because the Plaintiff [REDACTED] has a light skin complexion. Further, the Defendant noted that [REDACTED], Plaintiff [REDACTED] and his grandchildren were playing a game referred to as King of the Mountain. Thus, the Defendant contended that the [REDACTED] in the photographs could be the result of the game. Moreover, the Defendant argued that the Plaintiff previously [REDACTED] permission to discipline [REDACTED]. Notably, the Defendant testified that he physically [REDACTED] twice by the collar in order to make [REDACTED] in the eye. Lastly, the Defendant alleged that if he had hit [REDACTED] that there would be bruising and [REDACTED] would not have gotten up.

As previously mentioned, in cases where there is no direct evidence, an allegation may be proven by circumstantial evidence. While the Plaintiff did not witness the Defendant, Loran Thompson, [REDACTED] the evidence before the Court demonstrates that before the incident the Defendant physically grabbed the Plaintiff [REDACTED]. The Defendant testified he conducted this act. Furthermore the evidence before the Court demonstrates that the Plaintiff messaged the Defendant and asked him, [REDACTED].<sup>35</sup> The Defendant responded to the question by stating “[b]ecause [REDACTED] away with an attitude turn [REDACTED] on me while I was talking to him.”<sup>36</sup> Following the Defendant’s answer, the Plaintiff asked “[w]hat am I supposed to do if he tells someone, ???”<sup>37</sup> The Defendant stated that “. . . I understand parents job is to protect but not only that it means so much more maybe one of the things you could tell him is this stays right here it was a lesson learned But it’s up to you I don’t wanna tell you what you should or shouldn’t do.”<sup>38</sup> Notably, the Defendant did not deny the allegation that [REDACTED], Plaintiff [REDACTED]. The time of the message indicates that this conversation occurred at 8:00 p.m., thus shortly following the incident. Moreover, the Defendant did not mention the cold weather or the possibility that [REDACTED], was struck by one of his grandchildren while they were playing outside. Additionally, the photographs entered into evidence by the Plaintiff that were taken following the incident show redness and swelling of the Plaintiff [REDACTED].<sup>39</sup> The Court does not dispute that an amount of the redness could be contributed to cold weather, however, that argument and the Defendant simply contending that it is a possibility he was struck playing with his grandchildren is not sufficient evidence.

The Court has carefully considered all of the testimony offered by the Plaintiff, Viki Curotte, and the Defendant, Loran Thompson, as well as the exhibits received into evidence. Viewing all of the evidence herein in the light most favorable to the Defendant, Loran Thompson, and after according the Defendant of all inferences which can be reasonably be drawn from it, the Court determines that the Defendant, Loran Thompson, intentionally caused an injury to the Plaintiff, Viki Curotte [REDACTED].

Intentional torts is one in which the actor intends to produce the harm it ensues.<sup>40</sup> During the hearing, the Defendant, Loran Thompson, argued that the Plaintiff, Viki Curotte, gave him

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<sup>35</sup> Plaintiff Exhibit #5.

<sup>36</sup> Plaintiff Exhibit #5.

<sup>37</sup> Plaintiff Exhibit #6.

<sup>38</sup> Plaintiff Exhibit #6.

<sup>39</sup> Plaintiff Exhibit #1 – 4.

<sup>40</sup> Restatement (Second) of Torts § 870 cmt. b (Am. Law Inst. 1979).

permission to discipline [REDACTED]. Moreover, the Defendant contended that he was providing him guidance for life. Thus, it can be contended that the Defendant argues that he was not intending to harm the Plaintiff [REDACTED] or had the intent to commit the tort. However, as noted in the aforementioned provision of the Restatement (Second) of Torts, “[o]ne who intentionally causes injury to another is subject to liability to the other . . . if his conduct is generally culpable and not justifiable under the circumstances.”<sup>41</sup> At this point, the Court has determined that the Defendant, Loran Thompson, is culpable, or in other words at fault for the harm caused to the Plaintiff [REDACTED] Logan. In the instant matter, the Court finds that the Defendant physically striking and grabbing Plaintiff [REDACTED].

During the hearing, the Defendant, Loran Thompson, argued that he did not evict the Plaintiff, Viki Curotte, and her family. Thus, the Defendant’s argument can be reasonably inferred as he is alleging that he is not liable for the moving costs incurred by the Plaintiff, Viki Curotte, because he did not evict her. In the instant matter, a Temporary Order of Protection was issued by Judge C. Curtis Smith of the Bombay Town Court.<sup>42</sup> The Defendant was ordered to stay away from the Plaintiff’s home, the Plaintiff’s children’s schools, and the Plaintiff’s employment.<sup>43</sup> This was not disputed by the Defendant. In order to comply with the terms of the Temporary Order of Protection, the Defendant could not be near the Plaintiff’s home. As previously mentioned, the Defendant was the Plaintiff’s landlord. Furthermore, the Defendant, operates a Marina near the apartment that the Plaintiff was renting from the Defendant. Thus, it is impossible for her to continue to live in a premises that he oversees.

In the instant matter, the Plaintiff, Viki Curotte, seeks monetary damages in the amount of [REDACTED] for the moving expenses and hotel cost incurred by her and the court costs. The Court has found that the Defendant, Loran Thompson, is liable for the harm caused to the Plaintiff’s [REDACTED]. At trial, the Plaintiff entered into evidence a receipt for the one night hotel stay in the amount of [REDACTED] a copy of a handwritten receipt from Joel Herne in the amount of [REDACTED] and a copy of a handwritten receipt from Ray Curotte in the amount of [REDACTED]. The Defendant, Loran Thompson, did not object to the aforementioned documents being admitted as evidence or make an argument as to the amounts. It is clear that the expenses incurred as a result of the Defendant’s conduct and the amount sought by the Plaintiff totaling [REDACTED] and the court costs, is reasonable.

### ORDER

Based on the foregoing it is hereby **ORDERED** the Defendant, Loran Thompson, pay the Plaintiff, Viki Curotte, for the hotel fee in the amount of [REDACTED], moving expenses for the amount of [REDACTED] and the court filing fee in the amount of [REDACTED] in compensatory damages for a total amount of [REDACTED].

<sup>41</sup> Restatement (Second) of Torts § 870 (Am. Law Inst. 1979).

<sup>42</sup> Plaintiff Exhibit #11.

<sup>43</sup> Plaintiff Exhibit #11.

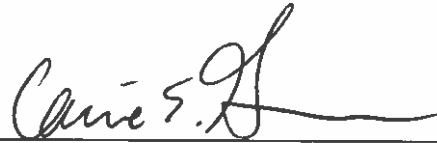
<sup>44</sup> Plaintiff Exhibit #9.

<sup>45</sup> Plaintiff Exhibit #8.

<sup>46</sup> Plaintiff Exhibit #7.



Signed by my hand this 5<sup>th</sup> day of October, 2018.



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Carrie E. Garrow, Chief Judge  
Saint Regis Mohawk Tribal Court

***The parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals.***