

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

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<b>Dwayne Lazore</b>	)		
	)		
<b>Plaintiff</b>	)		
	)		<b>Case No.: 19-CIV-00016</b>
<b>v.</b>	)		
	)		<b>DECISION AND ORDER</b>
<b>Graeme Burdon</b>	)		
	)		
<b>Respondent</b>	)		
	)		

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**Procedural Background**

On October 10, 2019, Dwayne Lazore, Plaintiff, filed a civil complaint with the Court naming Graeme Burdon as the Respondent.

On November 12, 2019, Graeme Burdon, Respondent, filed an Answer denying all allegations raised and a Counterclaim.

On December 19, 2019, the Court held a status conference on the matter. Dwayne Lazore, Plaintiff, and Graeme Burdon, Respondent, were both present and self-represented.

On January 3, 2020, Graeme Burdon, Respondent, filed with the Court a request for a continuance on the matter. On the same day, Dwayne Lazore, Plaintiff, filed a request asking the Court to deny Respondent's request.

On January 3, 2020, the Court issued a scheduling order directing the parties to submit discovery and pretrial motions by January 24, 2020 and set a pretrial hearing on this matter to take place on January 29, 2020.

On January 29, 2020, the Court held a pretrial on this matter. Dwayne Lazore, Plaintiff, and Graeme Burdon, Respondent, were both present and self-represented. During the hearing, the parties agreed that email communication was sufficient for documents to be sent to the other. The trial was set for February 25, 2020.

On February 14, 2020, Dwayne Lazore, Plaintiff, filed a request for a cease and desist against Graeme Burdon, Respondent. On the same day, Graeme Burdon, Respondent, filed a motion to dismiss. Dwayne Lazore, Plaintiff, notified the Court that he had received the motion to dismiss.

On February 24, 2020, Dwayne Lazore, Plaintiff, filed his written response in opposition to Respondent's motion to dismiss.

On February 28, 2020, Graeme Burdon, Respondent, filed his written response in opposition to Plaintiff's motion for a cease and desist.

On March 2, 2020, Graeme Burdon, Respondent, filed a reply in support of his motion to dismiss.

On March 3, 2020, Dwayne Lazore, Plaintiff, submitted a reply to Respondent's motion in support of his request for a dismissal.

On March 10, 2020, Dwayne Lazore, Plaintiff, filed a request for a cease and desist against Basenji Club of America and Lisabeth McCargo.

### **Discussion**

In the instant case, Dwayne Lazore, Plaintiff, alleges that Graeme Burdon, Respondent, owes him \$91,000 in back rent from March 1, 2016 to current for a house they rented that is located at 149 Helena Road, Hogansburg, New York. In response, Graeme Burdon, Respondent, has filed a motion to dismiss arguing that this Court lacks civil jurisdiction over this matter and that the Plaintiff is not the landlord, nor is he Skywalker Handling LLC. Plaintiff has also filed a request for a cease and desist. The Court will start its analysis with first determining whether it possesses jurisdiction. Second, the Court will address Respondent's motion to dismiss. Lastly, the Court will address Plaintiff's requests for a cease and desist.

### **Analysis**

As this Court recently demonstrated in *Dwayne Lazore v. Orestes Rios III*, in order to address the merits of a case, it must first be determined that the Court possesses jurisdiction.<sup>1</sup> Graeme Burdon, Respondent, points to the Saint Regis Mohawk Tribe Civil Code (SRMT Civil Code) and contends that the Court lacks jurisdiction because the alleged lease agreement could not have been negotiated or executed on March 1, 2016. Furthermore, Respondent alleges that the lease agreement does not substantially involve Mohawk Indian Country or that the performance would not occur in Mohawk Indian Country. Moreover, Respondent contends that the Plaintiff failed to demonstrate that the Tribe or any of its subordinate entities, agencies, or agents are parties to the agreements.

As demonstrated in other decisions involving landlord tenant cases, the Saint Regis Mohawk Tribe does not currently have a written code addressing this matter.<sup>2</sup> Thus, there is no law on point to provide the Court with clear direction on the issue of jurisdiction in regards to landlord tenant cases. However, as demonstrated in *Constance Tarbell v. Shirley Thomas-Bourque*, the Court has utilized the SRMT Civil Code to determine jurisdiction. The SRMT Civil Code states that this Court possesses jurisdiction over 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

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<sup>1</sup> Dwayne Lazore v. Orestes Rios III 19-CIV-00017 (April 17, 2020).

<sup>2</sup> Connie Tarbell v. Shirley Thomas-Bourque 19-CIV-00002 (June 17, 2019).

("Tribe") or any of its subordinate entities, agencies, or agents is a party (except that this provision does not waive Tribal sovereign immunity)."<sup>3</sup>

In this case, Graeme Burdon, Respondent, points to the SRMT Civil Code to make his argument. Furthermore, he argues that Skywalker Handling, LLC is a Florida registered company and that he is a resident and a citizen of Canada. Based on the filings, it is unclear whether Respondent was within the borders of the Saint Regis Mohawk Indian Reservation to negotiate the contract or whether he was present when the contract was executed. However, the Court holds it possesses jurisdiction over the claims alleged by Dwayne Lazore, Plaintiff, based on the following reasoning.

The basis of landlord tenant law is grounded in both property and contract law. In some matters involving landlord tenant issues, the facts presented demonstrate that the requisite parties executed a lease agreement within the borders of the Reservation.<sup>4</sup> It is clear that is not the issue in regards to this case. Here, we have a Respondent that is a resident and citizen of Canada and a Florida registered company and no proof that both parties were both within the borders of the Reservation when the alleged lease agreement was executed. However, the property and house that was leased is within the borders of the Saint Regis Mohawk Indian Reservation.<sup>5</sup> In regards to landlord tenant cases, this includes disputes over land lease agreements, exclusive jurisdiction attaches to where the land is located. Based on those principles, this Court has jurisdiction over this case.

In his filings, Respondent states a number of times that Skywalker Handling, LLC is a registered Florida Company and that he is a resident and citizen of Canada. The Court accepts that as fact. However, that does not remove jurisdiction because the state of Florida and province of Quebec could not exercise jurisdiction over this lease agreement. The property at issue is not located within those jurisdictions. Thus, by applying Respondent's logic, that would leave both parties without a venue to file a case to dispute this alleged lease agreement if the Court did not exercise jurisdiction. That is nonsensical. Here, the property and house are located on Helena Road, Hogansburg, New York, 13655. As a result, regardless if Skywalker Handling, LLC is a Florida registered company and that the Respondent is a resident of citizen of Canada, the location of the property leased in the disputed agreement is within the boundaries of the Saint Regis Mohawk Indian Reservation. Thus, the Court holds that it possesses jurisdiction over this matter.

In this case, Graeme Burdon, Respondent, has alleged a number of deficiencies he believes are in the alleged lease agreement in his motion to dismiss. Respondent alleges that the Dwayne Lazore, Plaintiff, is not the landlord and highlights that the agreement was entered into by Skywalker Handling, LLC on March 1, 2016. However, Respondent points out that

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<sup>3</sup> SRMT Civil Code § II. B.

<sup>4</sup> See *Connie Tarbell v. Shirley Thomas-Bourque* 19-CIV-00002 (June 17, 2019).

<sup>5</sup> The Court notes that the Saint Regis Mohawk Tribe regularly defines 'reservation' as "both the Saint Regis Mohawk Indian Tribe Reservation as established by the 1796 Treaty with the Seven Nations of Canada (7 Stat. 55) and any other lands over which the Tribe exercises jurisdiction now or in the future." See SRMT Probate Law (Enacted Aug. 16, 2017). The Court also notes that Mohawk Indian Country is synonymous with Saint Regis Mohawk Indian Reservation.

Skywalker Handling, LLC was not registered and incorporated until December 22, 2016. Thus, Respondent argues that the agreement is a fraud. Based on those deficiencies, he requests this Court to dismiss Plaintiff's, complaint.

Typically, grounds for dismissal include insufficient service of process, lack of jurisdiction, improper venue, and failure to state a claim for which relief can be granted. In *Dawn LaFrance v. Raymond Oakes*, this Court noted that in considering a motion to dismiss for failure to state a claim is whether the proponent of the pleading has a cause of action, not whether he has stated one.<sup>6</sup> Respondent does not raise allege that Plaintiff failed to serve him in accordance with the applicable law or venue and the Court has addressed the issue raised regarding jurisdiction. Thus, the issue before the Court becomes whether Plaintiff has failed to state a claim for which relief can be granted.

In this case, it is alleged by Graeme Burdon, Respondent, that the lease was entered into prior to the incorporation of Skywalker Handling, LLC. Specifically, he points to the fact that the lease was signed on March 1, 2016 and that Skywalker Handling, LLC was not incorporated until December 22, 2016. Notably, Skywalker Handling, LLC is listed in the agreement, neither party is listed as the landlord, and the parties are listed as occupants. Based on the aforementioned, it is unclear whether Dwayne Lazore, Plaintiff, has standing to bring forth this action or whether the lease may be enforced based on the fact that the agreement was entered into before Skywalker Handling, LLC was incorporated. In order to assess whether Plaintiff has stated a claim for which relief can be granted these issues need to be resolved. Thus, the Court requires that the parties appear for an evidentiary hearing on these issues. Next the Court will address Plaintiff's requests for a cease and desist.

In regards to the case at bar, on February 14, 2020, Dwayne Lazore, Plaintiff, filed a motion for cease and desist. Plaintiff contends that Graeme Burdon, Respondent, had access to his social security number, bank account information, and credit numbers and used that information to access his Driver's License records at the Florida Highway Safety and Department of Motor Vehicles. Plaintiff provided proof that his records have been accessed by a third party; however, he failed to demonstrate that Graeme Burdon, Respondent, is responsible for the action. The Court's case law clearly demonstrates that in order for a cease and desist or an injunction to be granted it requires evidence proving that the party being asked to halt their actions is the one responsible for the harm.<sup>7</sup> Based on the aforementioned, the Court denies Plaintiff's request for a cease and desist against Respondent. Next, the Court will address the additional request for a cease and desist.

In the instant case, Dwayne Lazore, Plaintiff, has filed for a cease and desist against Basenji Club of America and Lizabeth McCargo on March 10, 2020. The Court notes that Basenji Club of America and Lizabeth McCargo are not listed parties to this action and the filing indicates that it was filed for this case.<sup>8</sup> It is also unclear on how Basenji Club of American and Lizabeth McCargo are involved in this matter. Thus, the Court denies Plaintiff's request for a

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<sup>6</sup> Dawn LaFrance v. Raymond Oakes, 10-CIV-00010, n. 1 (Aug. 13, 2010).

<sup>7</sup> Andrew G. Lazore Preliminary Injunction Order 17-CIV-00015 (Jun. 20, 2018).

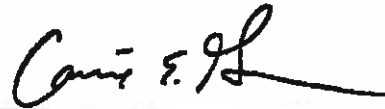
<sup>8</sup> The Court notes that the Case Number on the filing is 19-CIV-00016.

cease and desist due to the fact that the parties are not named in this action. In order for the Plaintiff to obtain a cease and desist against those parties, he may file a new motion with the Court and pay the applicable filing fee.

**ORDER**

Based on the foregoing, it is **ORDERED, ADJUDGED AND DECREED** that the parties must appear for an evidentiary hearing on **May 13, 2020 at 1:00 p.m.** and that Plaintiff's requests for a cease and desist are hereby **DISMISSED**. The Court notes that Court staff will contact parties in the event that only electronic appearances will be allowed for this hearing due to the coronavirus pandemic and will provide the parties with an opportunity to reschedule if they wish to appear in person. Please consult the Court's Administrative Orders found on the Court's webpage for updates and information on directions on how to make filings or contact Court staff at this time.

Signed this 22<sup>nd</sup> day of April, 2020.



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

*No later than ten (10) days after a judgment is final, a party may ask the Judge for a rehearing, reconsideration, correction vacation, or modification of the judgment. The parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals. Due to the coronavirus pandemic, please consult the Administrative Orders found on the Court's webpage for information on how to submit a motion for reconsideration or appeal at this time.*

# Saint Regis Mohawk Tribal Appellate Court

**Physical Address:**  
Tribal Justice Building  
545 State Route 37  
Akwesasne, NY 13655  
Phone: (518) 358-6300

Chief Judge Michele Mitchell  
Associate Judge Patricia Lenzi  
Associate Judge Karla General  
Associate Judge Lisa Garabedian  
Associate Judge Patrick Solomon

## **RE: Appellate Filing Procedure**

Under the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure, any aggrieved party may file an appeal from a final judgement, order, or administrative decision of the Tribal Court. If you wish to file an appeal, you must follow the requirements outlined in the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure. The appeal process is governed by the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure and the United States Federal Rules of Appellate Procedure in instances the Saint Regis Mohawk Tribe Court of Appeals finds appropriate. A current version can be found on the Tribal Court's website at [https://www.srmt-nsn.gov/tribal\\_court](https://www.srmt-nsn.gov/tribal_court) or may be requested by contacting the Court.

Under the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure, you must satisfy filing requirements in order for your appeal to be taken by the Saint Regis Mohawk Tribe Court of Appeals.

When you are the one filing the appeal, you are called the Appellant. The side opposing or responding to the appeal is called the Appellee.

Please note the following appellate filing procedures:

1. Everything you file must be filed with the Appellate Court Clerk.
2. Unless you request an extension of time and the request is granted, you as the Appellant, the party initiating the appeal, must file (a) a Written Notice of Appeal that conforms to the standard set forth in Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure and (b) attached to the Notice must be a certified copy of the signed judgment, order, or administrative decision being appealed, (c) which all must be completed within thirty (30) calendar days of when the order, judgement, or administrative order is dated and signed by the Judge or Hearing Officer. (d) You also must pay the required fee (\$100.00) to the Appellate Court Clerk at the same time. *See SRMT Rules of Civil App. Procedure Rule(s) 6 and 7.*

3. In addition, you must make copies of the Notice, the order being appealed, and proof of fee payment. Either before or at the same time you file your appeal, either you or a person acting for you who is over the age of eighteen (18) must serve these documents personally or by mail on all other parties to the appeal. Then you must file the proof you served them with the Clerk of the Court of Appeals. This is called a "Proof of Service." "Proof of service may appear on or be annexed to the paper filed and be filed with the Appellate Court Clerk." See *SRMT Rules of Civil App. Procedure Rule 3 B. – C.*
4. Moreover, after filing the Notice of Appeal, you must request the audio from the Court in order to obtain a written transcript. Unless you request an extension of time and the motion is granted, no later than ten (10) calendar days after filing the Notice of Appeal with the Court, the Appellant must order one original copy of the transcript of the proceedings from a third party and provide proof of that request to the Court within the ten (1) calendar day timeframe. The appealing party is responsible for the cost of the transcript. In the event, that the Court possesses a copy of the transcript, a copy will be made available for the appealing party. The Appellant must file an original and one (1) copy of the transcript with the Appellate Court Clerk within thirty (30) days from the date of filing the Notice of Appeal with the accompanying documentation. In the event a transcript is unavailable, the Appellant may prepare and file with the Saint Regis Mohawk Court of Appeals a sworn narrative statement of the evidence or proceedings from the best available means, including Appellant's recollection, within thirty (30) days after filing the Notice of Appeal. See *SRMT Rules of Civil App. Procedure Rule 8 A. – C.*
5. Once all of the documents described above and the transcript are received by the Clerk of the Appellate Court by the appealing party, the Clerk must file the record, give notice to all the parties of the date of the filing, and you will receive information regarding how your case will proceed. See *SRMT Rules of Civil App. Procedure Rule 9 B.*

This document is not to be taken as legal advice, rather it is merely meant to provide a broad description as to the appellate filing procedure. As previously stated, all appeals are governed by the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure, therefore, in order to ensure that you comply with the appellate filing procedures, it is necessary for you to read and understand the applicable sections of the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure.

If you have any questions regarding the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure, please call the Tribal Court at (518) 358-6300.



Tribal Clerk  
Saint Regis Mohawk Appellate Court