

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

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

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.

On April 22, 2020, the Court issued a Decision and Order holding that the Court possesses jurisdiction, dismissing Dwayne Lazore, Plaintiff's, requests for a cease and desist, and set an evidentiary hearing to address whether 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.

On May 13, 2020 and June 3, 2020, the Court held the evidentiary hearing. The parties appeared and were self-represented. The Court received evidence and heard testimony from Dwayne Lazore, Plaintiff; Graeme Burdon, Respondent; Orestes Rios III; Emily Burdon; Wayne Stehlin; Mary Nicholas; and Theresa Cole.

Discussion

In a previous Decision and Order, dated April 22, 2020, the Court determined that it possessed jurisdiction and concluded that 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 needs to be addressed before Graeme Burdon, Respondent's, motion to dismiss may be assessed. After a review of the evidence and testimony, the Court finds in favor of Respondent based on the following analysis and holds that the Court may proceed with the Respondent's counterclaim.

Analysis

In this case, Dwayne Lazore, Plaintiff, is requesting \$91,000 in back rent from Graeme Burdon, Respondent. Plaintiff argues that they rented the house together and that Respondent had his personal and client's dogs at the house and that Respondent ran his business out of the house. Respondent contends that he never resided at the house and that he did not regularly house his client's dogs at the premises. Moreover, Respondent contends that the lease is not enforceable because Skywalker Handling, LLC is the listed tenant and it was not incorporated until December 22, 2016. As demonstrated in the previous Decision and Order, the crux of this case centers on the lease dated March 1, 2016.

In regards to the case bar, Dwayne Lazore, Plaintiff, and Graeme Burdon, Respondent, showed dogs together as handlers at various dog shows. Eventually, this evolved into a business and this led to the creation of Skywalker Handling, LLC a limited liability company that was incorporated in Florida on December 22, 2016 by the parties and Orestes Rios III. The testimony submitted demonstrates that the parties bred dogs to offset business costs. Out of necessity and a city ordinance, the dogs were kept and many are still today at the house located on Helena Road.

Plaintiff's family took care of the dogs while the parties were traveling to dog shows. Eventually, the parties separated and paperwork for dissolution of Skywalker Handling, LLC was filed on September 28, 2018. The disputed lease agreement was signed on March 1, 2016 for a one year term and lists Wayne Stehlin, Plaintiff's father, as the landlord and Skywalker Handling, LLC as a tenant. The parties are listed as occupants. The Court accepts the aforementioned as fact. The issue becomes whether Respondent is liable for back rent for the lease term. The analysis utilized by the Court shall focus on the terms and dates found in the submitted evidence.

In this case, Graeme Burdon, Respondent, has proven that the incorporation documents for Skywalker Handling, LLC became effective on January 1, 2017 and the lease was signed on March 1, 2016 by Dwayne Lazore described as an Officer of Skywalker Handling, LLC. This means that Skywalker Handling LLC did not exist until January 1, 2017. During the evidentiary hearing, when asked about the fact that the lease was signed before the date of incorporation, Respondent stated that the parties and Orestes Rios III were in the process of naming their company and on December 22, 2016 they filed their paperwork in Florida. However, the aforementioned testimony does not negate from the date issue. In this case, the lease lists Skywalker Handling LLC as a tenant. Skywalker Handling, LLC did not exist until January 1, 2017 approximately nine (9) months after the lease was signed by Plaintiff and Wayne Stehlin. This means that the entity or agents could not enter into agreements until January 1, 2017. It does not matter if the parties intended to file the paperwork and incorporate in March 2016. Thus, the Court holds that this lease is not legally binding and that the Respondent is not obligated to pay back rent.

The Court is aware that, Graeme Burdon, Respondent, stayed at the premises and is listed as a co-owner of many of the dogs that are at the premises. Furthermore, the Court is also aware that Respondent may have had a few of his client's dogs at the premises and that Emily Burdon, his daughter, had dog crates delivered to the house. However, in order for an individual to be legally responsible for rent they must have entered into an agreement. There is no proof that demonstrates that Respondent entered into an agreement with Dwayne Lazore, Plaintiff, which would render him to be liable for rent.

Moreover, the Court is aware that Dwayne Lazore, Plaintiff, alleged that he takes on the full responsibility for the care of the dogs and pays for all of the expenses. Mary Nicolas, Wayne Stehlin, and Theresa Cole testified to this fact. Graeme Burdon, Respondent, did not dispute this, but testified that he has dropped off dog food in the past and alleges that Plaintiff does not let Respondent have access to the dogs. Respondent also argued that he never wanted that many dogs in the first place and that Plaintiff would not part with them even after they had located prospective buyers. In his arguments, Plaintiff seems to allege that Respondent is responsible for the cost. As previously noted, the parties testified that many of the dogs on the premises are co-owned by the parties. However, Plaintiff has not provided any proof of an agreement that obligates Respondent to pay for the expenses. The Court also received ample testimony that Wayne Stehlin took care of the dogs while Plaintiff and Respondent were traveling to dog shows. Similar as to the above, the Court finds there is no proof that demonstrates that Wayne Stehlin or

Plaintiff entered into an agreement with Graeme Burdon, Respondent, which causes him to be liable for these costs.

In regards to the case at bar, Dwayne Lazore, Plaintiff, called Wayne Stehlin, his father, as a witness. As previously noted, Mr. Stehlin is the listed landlord. In his testimony, Mr. Stehlin testified that the parties; Mary Nicolas, his fiancé; and him were part of the lease agreement negotiations and that the reason that Graeme Burdon, Respondent, did not sign the lease was because he is a Non-Native.¹ In response, Respondent does not contest that he is Non-Native and contended that he was not there when the lease was negotiated and any lease agreement was between Mr. Stehlin and Plaintiff. Essentially, he argues that this agreement only involves Mr. Stehlin and Plaintiff. In this Decision and Order, the Court has found that the disputed lease is not binding. However, due to this testimony and in order to address Plaintiff's other arguments, the Court will highlight additional issues with the disputed lease.

As in every contract, terms used have significance and legal ramifications. The parties are described in the lease as "occupants." Specifically, the lease states that "[t]he Premises is to be occupied strictly as a residential dwelling with the following Two (2) *Occupants* to reside on the Premises in addition to the Tenant(s) mentioned above: Dwayne Lazore and Graeme Burdon, hereinafter known as the "Premises."² In general, an *occupant* is someone that is not the tenant or the tenant's immediate family who lives on the premises with the consent of the landlord. There is no *legal relationship* between the occupant and landlord, unlike a tenant who is a person with whom the landlord has a legal relationship.³ This means that the listed tenant is the individual responsible for the obligations provided under the lease, not the occupant. As a result, even if the Court found that this was a valid lease, Graeme Burdon, Respondent, in his individual capacity, would not be liable for the rent owed because he is described as an occupant. As an occupant, he was allowed to be at the premises during the term of the lease agreement. This does not mean he is legally responsible for rent. Furthermore, the evidence demonstrates that Wayne Stehlin is the named landlord. In order to recover rent for the lease term, this would require the landlord to file a case against the listed tenant. In this case, Dwayne Lazore, Plaintiff, has requested to be compensated for the back rent. The terms used in the lease name Wayne Stehlin as the landlord

¹ The Court notes that Wayne Stehlin's testimony seems to imply that as a Non-Native, Graeme Burdon, Respondent, could not sign the lease at issue in this case. The lease submitted is a residential lease. There is no written law barring Non-Natives from renting a house or apartment that is located within the borders of the reservation from a Saint Regis Mohawk Tribal Member. As a result, Respondent could have signed as a tenant in 2016 as a Non-Native. However, following the enactment of the Saint Regis Mohawk Tribe Tribal Residency Ordinance on July 3, 2019, all Non-Mohawks are responsible for obtaining the applicable permit in order to reside within the borders of the Saint Regis Mohawk Indian Reservation for long term residency purposes. SRMT Tribal Residency Ordinance (enacted July 3, 2019).

² Respondent Exhibit #1.

³ At this time, the Saint Regis Mohawk Tribe has no written Landlord-Tenant Law; however, the Court has looked to New York landlord-tenant law for guidance. *See* Constance Tarbell v. Shirley Thomas-Bourque 19-CIV-00002 (June 17, 2019). In this case, the Court looked to the definitions of occupant, tenant, and landlord found in New York Consolidated Laws, Real Property Law – RPP § 235-f. Unlawful restrictions on Occupancy. In its cases, the Court has looked to for guidance and applied concepts of law found in other expert sources so long as the application of the source is consistent with principles of tribal sovereignty, self-government, and self-determination. *See* Francine Gray et. al. v. Alicia M. Cook, 18-CIV-00022 (Feb. 20, 2019). Similar to other cases, the Court finds the application of these definitions is consistent with the aforementioned principles.

and Dwayne Lazore as an occupant. Thus, even in the event that the Court found the agreement binding, Plaintiff is not the party allegedly owed rent. Thus, the Court holds that he does not have standing to request back rent or in other words he does not possess the legal authority bring forth a Court action request rent.

In this case, Graeme Burdon, Respondent, has filed a motion to dismiss. As noted in the previous Decision and Order, 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. The Court finds that the Respondent has met his burden as the moving party. The Court holds that the lease is not legally binding, that Respondent is not obligated to pay back rent, and that Dwayne Lazore, Plaintiff, does not have standing to bring forth this claim. Therefore, the Court holds that dismissal is appropriate because Plaintiff has failed to state a claim for which relief can be granted. Next the Court will address Respondent's counterclaim.

In regards to the case at bar, Graeme Burdon, Respondent, has filed a counterclaim requesting that various dogs and personal items be returned to him. In this case, the Court has dismissed the allegations raised by Dwayne Lazore, Plaintiff, and disposed of his case. However, Graeme Burdon, Respondent's, counterclaim remain. The issue becomes whether the Court may proceed and address the remaining counterclaim. In *Francine Gray et al. v. Alicia Cook*, the Court addressed an identical issue and applied Rule 13 of the Federal Rules of Civil Procedure to resolve the matter.⁴ The Court will apply the same analysis in this case. In *Gray*, the Court noted the following:

Rule 13 demonstrates that the Federal Rules of Civil Procedure divides counterclaims into two (2) separate groups. The first group are those claims that will be lost if not asserted as a counterclaim. These claims are those that are described in Rule 13 as a compulsory claim.⁵ In the typical case, these claims are taken under consideration in the immediate action because it stems from the same claim raised by the Claimant/Plaintiff. By the Court considering these claims in assessing the Claimant/Plaintiff's case, this means that res judicata would bar a subsequent suit on the defending party's claim. In other words, the defending party cannot bring forth a separate action raising identical claims that have already been addressed in a prior action.⁶ This ensures that a party is not afforded another shot at the trial level to relitigate claims previously raised and addressed in a prior case. Other remedies are available to litigants that wish to contest the interpretation of this Court's decision on their claims. The SRMT Rules of Civil Procedure provides that in instances where a litigant wishes to contest this Court's decision may do so by filing a motion for reconsideration to vacate, request for modification, correction, or a rehearing⁷ or appeal this Court's final decision to the Saint Regis Mohawk Court of Appeals.⁸

⁴ *Francine Gray et. al. v. Alicia Cook*, 18-CIV-00022, 9 (Feb. 20, 2019).

⁵ Fed. R. Civ. P. Rule 13. (a) (1) (A) – (B).

⁶ *Black's Law Dictionary* (10th ed. 2014), available at Westlaw BLACKS.

⁷ SRMT Rules of Civil Procedure § XXIII. A.

⁸ SRMT Rules of Appellate Procedure § III. A.

The second group are those claims that the defending party gets to choose whether to assert as a counterclaim in the pending matter or save for a later case. A defending party may choose to, but need not, assert unrelated claims it has against the Claimant/Plaintiff. A counterclaim need not diminish or defeat the recover[y] sought, it may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.⁹ Rule 13 of the Federal Rules of Civil Procedure indicates that these type of counterclaims are referred to as permissive claims and are any claim that is not compulsory, or in other words, not related to the same transaction or have a connection to the Claimant's/Plaintiff allegations.¹⁰

At this time, the Court must determine whether the claims raised by the Respondent, Graeme Burdon, are compulsory or permissive. In order to determine whether a claim is compulsory or permissive, federal courts have created some form of logical relationship tests.¹¹ As noted in *Gray*, "a number of circuit courts have appeared to determine that a counterclaim is compulsory if it meets one of the four following test: (1) Are the issues of fact and law raised by the claim and counterclaim largely the same?; (2) would res judicata bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule?; (3) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?; and (4) Is there a logical relation between the claim and the counterclaim?"¹² Other courts appear to review the four tests as factors to be considered in the overall analysis.¹³ In determining whether the claims have a logical relationship, courts generally often look to whether they will raise the same issues of fact or law, or whether they will rely on the same evidence.¹⁴ In general, the facts raised do not need to be identical, just sufficiently related that fairness and efficiency dictate that the claims be tried together."¹⁵ The Court will apply this test as it did in *Gray*, to address Graeme Burdon, Respondent's, counterclaims.

The first factor requires the Court to determine whether the issues of fact and law raised by the claim and counterclaim are largely the same. The filings before the Court demonstrate that Graeme Burdon, Respondent's, counterclaim on its face are different. Respondent is requesting that his alleged personal items and specific dogs be returned to him. This is vastly different from Dwayne Lazore, Plaintiff's, claim for back rent. Thus, the issues of fact and law presented to the Court are different.

The second factor is whether res judicata would bar a subsequent suit on Graeme Burdon, Respondent's, claim absent the compulsory counterclaim rule? This factor requires the Court to determine whether the claims have been previously litigated. In its analysis on this matter, the Court did not address the counterclaim raised by Respondent. Thus, Respondent's counterclaim would not be barred by the doctrine of res judicata if he were to bring them in a separate action.

⁹ Fed. R. Civ. P. Rule 13. (c).

¹⁰ Francine Gray et. al. v. Alicia Cook, 18-CIV-00022, 10, 11 (Feb. 20, 2019).

¹¹ Fed. R. Civ. P. Rule 13. (a) "Various tests for "same transaction."

¹² Francine Gray et. al. v. Alicia Cook, 18-CIV-00022, 11 (Feb. 20, 2019).

¹³ Fed. R. Civ. P. Rule 13. (a) "Various tests for "same transaction."

¹⁴ Fed. R. Civ. P. Rule 13. (a) "Logical Relationship."

¹⁵ Fed. R. Civ. P. Rule 13. (a) "Logical Relationship."

The third factor for the Court to address is will substantially the same evidence support or refute Dwayne Lazore, Plaintiff's, claims as well as Graeme Burdon, Respondent's, counterclaim. As demonstrated in this Decision and Order, Plaintiff's claim is focused on a lease agreement. To support his claim that Respondent owed him back rent he offered evidence demonstrating that parties were involved in a business and personal relationship and that Respondent occupied the premises. It is likely that the evidence that will be used by Respondent to prove his counterclaim is different than what he used to dispute Plaintiff's claim. As previously noted, Respondent is requesting that personal items and certain dogs be returned to him that are in the Plaintiff's possession. The counterclaim is not linked to the lease agreement. Thus, the counterclaim brought by Respondent is separate and will require substantially different evidence.

The final factor asks the Court to determine whether there is a logical relationship between the claim and the counterclaim. As noted above, Dwayne Lazore, Plaintiff's, claim focused on proving he was owed back rent. In regards to Graeme Burdon, Respondent's, counterclaim, it appears that he is requesting the Court to evaluate his ownership claim to personal items and various dogs and order that Plaintiff return these items and the dogs to him. The only logical link between the claim and counterclaim are that these items and the dogs are most likely at the premises that was the subject of the lease agreement. Therefore, the Court holds that the relationship between the claim and counterclaim is insufficient. Thus, the Court holds that the counterclaim raised by Respondent are permissive and may be addressed in this case or a separate action because the Court possesses jurisdiction.¹⁶ Based on the aforementioned, the Court finds it may proceed on the Respondent's counterclaim.

ORDER

Based on the foregoing, it is

ORDERED, ADJUDGED AND DECREED that Dwayne Lazore, Plaintiff's, civil complaint dated October 10, 2019 is hereby **DISMISSED WITH PREJUDICE**; it is further

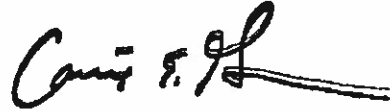
ORDERED, ADJUDGED AND DECREED that Graeme Burdon, Respondent, submit any documentation he wishes to admit to evidence that has not already been submitted to support his counterclaim to the Court and serve Dwayne Lazore, Plaintiff, by **July 13, 2020**; it is further

ORDERED, ADJUDGED AND DECREED that parties must appear for an evidentiary hearing on Respondent's counterclaim on **July 20, 2020 at 9:30 a.m.**

¹⁶ The Court notes that the evidence demonstrates that Dwayne Lazore, Plaintiff, resides at 149 Helena Road, Akwesasne, New York, 13655. This is within the borders of the Saint Regis Mohawk Indian Reservation. Furthermore, the Court has received vast testimony indicating that Respondent kept personal items at the premises and that dogs he co-owns with Plaintiff are currently at this property. The Court has no evidence before it demonstrating that the personal items or dogs that are the subject of Respondent's counterclaim are located outside the boundaries of the reservation. Therefore, the Court possesses jurisdiction to assess Respondent's counterclaim.

Graeme Burdon, Respondent's, failure to appear for the evidentiary hearing may result in the action being dismissed without prejudice. If the counterclaim is dismissed for failure to appear, it may be addressed in a separate action pursuant to Rule 13 of the Federal Rules of Civil Procedure as outlined in this Decision and Order. In the event that Respondent does not wish to pursue his counterclaim, he must submit a request to withdraw in writing and submit it to the Court and serve Plaintiff.

Signed this 25 day of June, 2020.



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.