

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

Dwayne Lazore)		
)		
Plaintiff)		
)		Case No.: 19-CIV-00017
v.)		
)		DECISION AND ORDER
Orestes Rios III)		
)		
Respondent)		
)		

Procedural Background

On October 22, 2019, Dwayne Lazore, Plaintiff, filed a civil complaint naming Orestes Rios III as a Respondent.

On January 28, 2020, Orestes Rios III, Respondent filed a motion to dismiss with the Court contending that this Court lacks jurisdiction and that Dwayne Lazore, Plaintiff, has failed to state a legitimate basis for relief. Respondent also contended that the complaint and summons was not served in the sixty (60) day time frame as required under the Saint Regis Mohawk Tribe Rules of Civil Procedure. For proof of service, Respondent filed a UPS tracking document on February 4, 2020 that states an item was delivered to Hogansburg, New York.

On February 11, 2020, Respondent emailed a picture of a completed Proof of Service Form to the Court.

On February 14, 2020, Dwayne Lazore, Plaintiff filed a request for a cease and desist and submitted other documents.

On February 18, 2020, Orestes Rios III, Respondent, submitted a copy of a completed Proof of Service Form to the Court. On the same day, Respondent submitted a response to Dwayne Lazore, Plaintiff, request for a cease and desist. The Court issued a scheduling order providing submission dates to the parties.

On February 24, 2020, the Court held an initial appearance on the matter. The parties appeared and were self-represented. On the same day, Dwayne Lazore, Plaintiff, submitted a response brief, a police report, and several other documents.

On February 25, 2020, Orestes Rios III, Respondent submitted a response to Dwayne Lazore, Plaintiff's, request for a cease and desist.

On March 2, 2020, Orestes Rios III, Respondent, filed a reply in support of his motion to dismiss Dwayne Lazore, Plaintiff's, complaint.

On March 4, 2020, Dwayne Lazore, Plaintiff, filed a response to Orestes Rios III, Respondent's submissions.

On March 5, 2020, Orestes Rios III, Respondent, resubmitted a motion to dismiss Plaintiff's complaint.

On March 9, 2020, Dwayne Lazore, Plaintiff, filed a response to Orestes Rios III, Respondent's, motion to dismiss.

On March 11, 2020, Dwayne Lazore, Plaintiff, filed additional documentation.

On March 16, 2020, Orestes Rios III, Respondent, submitted a motion to strike Plaintiff's unauthorized second response in opposition to Respondent's motion to dismiss.

On April 17, 2020, the Court issued a Decision and Order dismissing Dwayne Lazore, Plaintiff's, slander claim and his request for a cease and desist. The Court scheduled an evidentiary hearing on the jurisdictional issue.

On May 11, 2020, the Court held a hearing on the matter. The Court received evidence and heard testimony from Dwayne Lazore, Plaintiff; Orestes Rios III, Respondent; Wayne Stehlin; Mary Nicholas; and Theresa Cole.

Discussion

In the instant case, Orestes Rios III, Respondent, has requested the Court to dismiss Dwayne Lazore, Plaintiff's, civil complaint for a number of reasons. Respondent mainly contends that this Court lacks the requisite jurisdictional authority over the matter because there was no written agreement or agreements executed within the borders of the Saint Regis Mohawk Indian Reservation. In response, Dwayne Lazore, Plaintiff, alleges that there were conversations back and forth that demonstrate there was an oral contract entered into between the parties. Specifically, Plaintiff contends that there was an agreement that he was to provide a service such as showing the dogs and Respondent was obligated to pay for the service.

In regards to the case at bar, the Court is charged with assessing whether the Court possesses jurisdiction. The Saint Regis Mohawk Tribe Civil Code ("SRMT Civil Code") states that the Tribal Court shall have jurisdiction over civil disputes involving contracts that are "(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."¹

In this case, Orestes Rios III, Respondent, simply contends that there were no agreements negotiated within the borders of the Saint Regis Mohawk Indian Reservation. Respondent alleges that the only agreement was the written agreements between him and Michelle Smith Barbour to purchase two Basenji puppies, Lexi and Jedi. Dwayne Lazore, Plaintiff, contends that Respondent knew that he wanted to move back to Akwesasne and that he intended to breed and

¹ SRMT Civil Code § II. B.

show Lexi and Jedi. Plaintiff also argues that there were text message conversations back and forth that establishes an oral contract and he argues that many of those text messages were sent while he was on the reservation. In response, Respondent contends that Plaintiff was traveling frequently to dog shows and that he was not always at his home located on the reservation.

When looking at the plain language of the civil jurisdiction section of the SRMT Civil Code, it is clear that the Court possesses jurisdiction over contracts that are negotiated and performed within the borders of the Saint Regis Mohawk Indian Reservation. Here, Orestes Rios III, Respondent, is asking the Court to dismiss Dwayne Lazore, Plaintiff's, complaint because he contends no contract was negotiated within the borders of the Saint Regis Mohawk Indian Reservation and that the only contract entered into was for the purchase of two dogs which was negotiated in Florida. On the other hand, Plaintiff, focuses his arguments on demonstrating that an oral contract existed and proving that performance occurred within the borders of the Reservation. As previously noted, the clear and plain language of the SRMT Civil Code, allows for the Court to exercise jurisdiction over contracts that are *performed* within the borders of the Reservation. As a result, if proven, the arguments put forth by the Plaintiff could mean that the Court may possess the requisite jurisdiction. However, in order to assess performance this requires that it must first be proven that a contract exists. This requires the Court to start by determining whether there was a valid contract entered into between the parties. After finding that a contract exists, the Court may assess whether the contract was performed within the borders of the Reservation. Thus, the Court will start with first determining whether a valid contract was entered into by the parties.

In the *Estate of Allan J. Gorrow*, the Court explained that “[i]n general, for there to be a contract, there must be an offer, acceptance, and consideration. The formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration. The typical contract is a bargain and is binding without regard to form. The two essential elements of a bargain are agreement and exchange. An agreement is a manifestation of mutual assent on the part of two or more persons. In order for there to be an agreement there must be a “meeting of the minds.” At the meeting of the minds, it must be demonstrated that is a “manifestation of intention” to enter into the agreement. To assess the intention this requires an objective standard for interpreting the conduct.”²

In the instant case, Dwayne Lazore, Plaintiff's, complaint alleges that Orestes Rios III, Respondent, and him “entered into agreements that involved Plaintiff boarding, showing, training, and breeding various American Kennel Club registered breeds/dogs together.” As previously noted, Plaintiff did not submit exhibits demonstrating that a written contract exists. Rather, Plaintiff, submitted into evidence exhibits described as the Contract for Purchase of Basenji Puppy dated March 15, 2015.³ The contracts are signed by Michelle Smith Barbour and Orestes Rios III, Respondent, and were for the purchase of Lexi and Jedi. Lexi and Jedi were purchased as a gift for Plaintiff. The contracts do not include language that obligates Respondent to pay for the dogs' expenses or health care. Respondent does not object to the validity of the

² Estate of Allan J. Gorrow, 16-CIV-00011, 12 (Sept. 25, 2019).

³ Plaintiff Exhibits #1 & #2.

contracts. The parties do not dispute the aforementioned facts and the Court accepts the aforementioned as fact. Thus, the Court holds that the contracts for the purchase of Lexi and Jedi are irrelevant because the documents were for purchase of the Basenji puppies and not relevant to the dogs' expenses or care.

At the evidentiary hearing, Dwayne Lazore, Plaintiff, seemed to allege that there was an oral contract created when Lexi and Jedi were purchased because the parties were planning on breeding and showing the dogs. It is clear that the parties both had an interest in making sure that the Basenji puppies won their championships and that goal was met because of Plaintiff's efforts. The Court accepts this as fact. However, there is no evidence proving that an oral contract was entered into by the parties in March 2015. The Court is aware that it was likely that the parties discussed it before or after the purchase of the dogs; however, as the Court noted in the *Estate of Allan J. Gorrow* it has to be proven that there was a meeting of the minds or in other words that there were elements of an offer and acceptance by the parties. Orestes Rios III, Respondent, demonstrated a lack of an agreement for the breeding, showing, and training of dogs entered into by the parties in March 2015. Thus, the Court holds that an oral contract for the boarding, showing, training, and breeding of dogs was not entered into following the purchase of Lexi and Jedi in March 2015.

In addition, Dwayne Lazore, Plaintiff, contends that he was not compensated for showing a dog named Honey at various dog shows. Plaintiff contends that he was able to help her obtain her championship by showing her at dog shows. It is clear that Orestes Rios III, Respondent, did not show Honey at the various dog shows. Plaintiff submitted text message exchanges between him and Orestes Rios III, Respondent, to substantiate his claim.⁴ Orestes Rios III, Respondent, disputes this claim by contending that there was no contract; that Honey was shown by Graeme Burdon, a professional handler, not Plaintiff; and that the text exchange did not occur within the Reservation because Plaintiff was traveling to dog shows. The Court notes that at the evidentiary hearing, parties focused on the location of where these messages were sent; however, those arguments are not relevant to the analysis of proving whether an oral contract was entered into between the parties. Thus, the Court will not address those arguments in its analysis.

At the evidentiary hearing, Dwayne Lazore, Plaintiff, focused on proving to the Court that he was not compensated for showing Honey by pointing to the fact he did not receive the entire litter of Honey's puppies. Respondent admits that Plaintiff did not receive the entire litter of Honey's puppies. However, as previously noted, the Court cannot assess performance or in other words determine whether there was a breach of a contract before determining whether there was an agreement between the parties that Respondent breached by not giving Plaintiff the entire litter of puppies. Thus, the issue before the Court is whether there was a valid contract entered into between the parties regarding the showing, breeding, or training of Honey.

As previously stated, in order for a contract to exist there must be an offer, acceptance, and consideration. The Court is limited to assessing the evidence that was admitted at the hearing in order to determine whether these elements exist. The fact that the agreement was allegedly

⁴ Plaintiff Exhibits #6, #7, & #8.

entered by text does not alter the fundamental principles for a contract to exist. The evidence submitted in this case and the record established in *Dwayne Lazore v. Graeme Burdon*, demonstrate that the parties were involved together in the breeding and showing of Basenji dogs and other breeds of dogs.⁵ This is substantiated by the fact that the parties and Graeme Burdon, a professional handler, incorporated a limited liability company in Florida in 2017 called Skywalker Handling LLC.⁶ Based on the submitted testimony in both these matters, it seems that the business model consisted of Graeme Burdon and Plaintiff traveling and showing the dogs and Orestes Rios III, Respondent, was the accountant/office manager and not part of the showing and breeding the dogs. Furthermore, the parties and Graeme Burdon benefitted by having the dogs shown at the dog shows. Moreover, many of the dogs were co-owned by the parties, Graeme Burdon, and Michelle Smith Barbour. The Court accepts the aforementioned as fact. However, the facts established do not prove a contract existed for the showing of Honey based on the below analysis.

In the instant case, the submitted text message exchanges discuss various dogs, including Honey, and there is a reference to an agreement. Orestes Rios III, Respondent, also acknowledges that Dwayne Lazore, Plaintiff, was showing the dogs and was grateful for his handling services until there were disagreements. Based on the evidence it is clear that Plaintiff showed Honey.⁷ The text messages demonstrate that Plaintiff was at times being compensated for showing the dogs by Respondent. Plaintiff contends that there was an agreement that he was to provide a service such as showing the dogs and Respondent was obligated to pay for this service. However, that exchange is not proven by the submitted evidence. Rather, the evidence proves that Plaintiff was showing Honey, Phiphi, Gambler, and other dogs; that Plaintiff was dissatisfied with not being compensated for his time; that Plaintiff and Respondent had disagreements over the matter; that Respondent agreed to give a litter of Honey's puppies to Plaintiff; and that Plaintiff was not given the entire litter of Honey's puppies. There is no evidence demonstrating that Respondent entered into an agreement with the Plaintiff for a dog handling service and was legally obligated to give Plaintiff the litter of puppies or compensate him for his time. Thus, the record fails to demonstrate that there was an offer and acceptance by the parties. Without a legally binding agreement between the parties, Respondent was not obligated to pay the Plaintiff. As previously stated, Plaintiff at times was compensated for a service; however, there was no agreement in place that required him to do so. Payment alone does not suffice to show that there was a contract. Furthermore, as previously noted, a contract requires there to be consideration. Consideration is the benefit that each party gets or expects to receive from the contract. In this case, it appears that *after* Honey and the other dogs were shown, Plaintiff then asked Respondent to be compensated for his time and work. There was no bargained for exchange, as performance had already occurred. Thus, the Court holds that there was no valid oral contract entered into by the parties for showing Honey.

⁵ The Court takes judicial notice of the record established in *Dwayne Lazore v. Graeme Burdon*. A matter currently pending before the Court. The facts stated are not disputed by the parties involved in either case.

⁶ Plaintiff Exhibit #3.

⁷ Respondent disputes this fact; however, the submitted text messages demonstrate that Plaintiff showed Honey at dog shows.

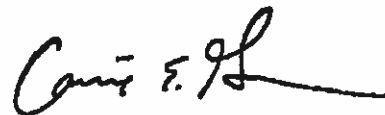
In his complaint, Dwayne Lazore, Plaintiff, did not specify a certain dog. In his filings and submitted evidence, other dogs are mentioned aside from Honey, Lexi, and Jedi. The Court notes that there is no evidence proving that there was an offer or acceptance for the breeding, showing, or training of dogs. It is entirely possible and likely that conversations did occur back and forth through text, in person, and/or over the phone regarding the breeding, showing, and training of dogs; however, the Court cannot assume that these conversations took place without evidence. The Court notes that Plaintiff contended that the conversations did occur and that Respondent did not dispute that Plaintiff showed his dogs, but this on its own does not prove a contract existed. Thus, the Court holds that there was no evidence of a valid oral contract entered into by the parties for showing other dogs. As a result, the Court does not have to assess the performance of the alleged contracts.

As previously noted, the civil jurisdiction section of the SRMT Civil Code states that the Court possesses jurisdiction over contracts that are negotiated and performed within the borders of the Saint Regis Mohawk Indian Reservation. Here, the Court has found that there were no valid oral contracts entered into by the parties involving the boarding, showing, training, and breeding of various dog breeds. As a result, the Court need not assess the arguments put forth by the parties involving performance or evaluate Plaintiff's claims any further because the Court has found that the parties did not enter into valid contracts for the breeding, boarding, training and showing of dogs.

ORDER

Based on the foregoing, it is **ORDERED, ADJUDGED AND DECREED** that Dwayne Lazore, Plaintiff's, civil complaint dated October 22, 2019 is **DISMISSED WITH PREJUDICE**.

Signed this 16th 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.