



On June 30, 2020, Russell Barr, Esq. filed a notice to appear on behalf of the Akwesasne Mohawk Casino, Akwesasne Mohawk Casino Resort, and the Saint Regis Mohawk Tribal Police.

On July 1, 2020, Gilbert Terrance, Esq. filed a notice to appear on behalf of Jacques Nicolas. On the same day, Steven Shan filed a notice to appear on behalf of the Seaway Valley Ambulance Service.

On July 6, 2020, Russell Barr, Esq. filed an additional Notice of Appearance that is identical to his notice that he submitted on June 30, 2020.

On July 16, 2020, Gilbert Terrance, Esq. on behalf of Jacques Nicolas submitted a copy of a Saint Regis Mohawk Tribal Police Incident Report and a Prehospital Care Report.

On July 17, 2020, Gilbert Terrance, Esq. on behalf of Jacques Nicolas submitted a response to the Respondents' motion to dismiss.

On August 17, 2020, the Court held a hearing on the Respondents' motion to dismiss. Jacques Nicolas appeared and was represented by Gilbert Terrance, Esq and Joseph Daoura, Esq. Russell Barr, Esq. appeared and represented the Akwesasne Mohawk Casino, Akwesasne Mohawk Casino Resort, and the Saint Regis Mohawk Tribal Police. Steven C. Shahan, Esq. appeared and represented the Seaway Valley Ambulance Service. Prior to the hearing, Gilbert Terrance, Esq. submitted a medical report created by Dr. Fadi Basile, M.D. The Court heard arguments from Russell Barr, Esq., Steven Shahan, Esq, and Joseph Dauora, Esq. regarding the medical report and motions to dismiss. On the record, the parties agreed that the Respondents may submit a response in writing regarding the medical report by Dr. Fadi Basile following the hearing.

On August 24, 2020, Steven Shahan, Esq. filed an objection to the medical report created by Dr. Fadi Basile, M.D. on behalf of the Seaway Valley Ambulance Service.

On August 31, 2020, Gilbert Terrance, Esq. filed a reply to the Seaway Valley Ambulance objection to Dr. Fadi Basile, M.D. medical report.

### **Jurisdiction**

The Saint Regis Mohawk Tribe Civil Code states that the Tribal Court shall have civil jurisdiction over civil disputes in regards to 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).<sup>1</sup>

In the instant case, Jacques Nicolas on behalf of the Estate of Joseph Nicolas filed a complaint alleging a wrongful death and negligence case. It is undisputed by the parties that the

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<sup>1</sup> SRMT Civil Code § II. C.

incident occurred at the Saint Regis Mohawk Tribe Casino and events took place within the Resort. Thus, the Court possesses the requisite jurisdiction.

## DISCUSSION

In the instant case, the Akwesasne Mohawk Casino, Akwesasne Mohawk Casino Resort, Saint Regis Mohawk Tribal Police,<sup>2</sup> and Seaway Valley Ambulance Service, Respondents, move this Court to dismiss the civil complaint dated December 23, 2019 based on their arguments that Jacques Nicolas, Plaintiff, has failed to state a legitimate basis for relief and the legal counsel for Seaway Valley Ambulance Service has contended that Plaintiff failed to meet the service requirements as expressed in the Saint Regis Mohawk Tribe Rules of Civil Procedure.

In this Decision and Order, the Court will provide the moving parties' arguments and assess the Plaintiff's civil complaint and briefs in order to determine whether the claims raised in his filing may be dismissed for failure to state a claim for relief. Prior to addressing the Respondents' motion to dismiss the Court is going to first start with evaluating the argument put forth by Seaway Valley Ambulance Service regarding the alleged failure of the Estate to effectuate service. Next, the Court will address whether it will take into account Dr. Fadi Basile, M.D. medical report and the demand letter attached to the civil complaint dated December 23, 2019.

In this case, the Court record demonstrates that a civil complaint was submitted to the Court on December 23, 2019. The Court issued a summons in this matter on December 23, 2019. The Court record demonstrates that on February 20, 2020, Todd Conners attempted to serve the Seaway Valley Ambulance Service twice and was unable to complete service. Service was not completed on Seaway Valley Ambulance Service, Respondent, until February 24, 2020. The Saint Regis Mohawk Tribe Rules of Civil Procedure states that "[w]ithin sixty (60) days after plaintiff files a civil complaint, plaintiff shall cause a copy of the complaint, together with the summons, to be served upon (delivered to) each defendant named in the complaint."<sup>3</sup> As a result, Respondent contends that his client was not served within the sixty (60) day requirement. Plaintiff contends that Todd Conners made two attempts to serve Seaway Valley Ambulance Services and was unable due to unknown reasons and asks this Court to dismiss the argument of a lack of service raised by Respondent. The proof of service document filed by Todd Conners notes the time of the failed attempts. The attempts made by Mr. Conners were within the sixty (60) day time requirement. Thus, the Court declines to agree with Respondent and dismiss the claims against Seaway Valley Ambulance Services due to the failure to complete service within the sixty (60) day requirement. Next, the Court will address Dr. Fadi Basile, M.D. medical report and the demand letter attached to the civil complaint dated December 23, 2019.

In regards to the case at bar, the Court is charged with assessing whether the claims raised against Respondents may be dismissed for failure to state a claim. This Court has demonstrated in its case law that these motions require the Court to review the complaint and

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<sup>2</sup> The Court notes that Russell Barr, Esq. filings have the incorrect spellings for his clients the Akwesasne Mohawk Casino and Akwesasne Mohawk Casino Resort.

<sup>3</sup> SRMT Rules of Civil Procedure § IX C.

pleadings submitted to make its determination.<sup>4</sup> At this stage in litigation, the Court's analysis is limited to the allegations raised in the complaint. Thus, the Court shall set aside the medical report conducted by Dr. Fadi Basile, M.D. and the demand letter attached to the civil complaint dated December 23, 2019. The Court reminds the parties that by doing so it does not mean that the documents may not be later admitted at an evidentiary hearing or trial. The Court will now assess the Respondents' motion to dismiss.

The Saint Regis Mohawk Tribe Rules of Civil Procedure (SRMT Rules of Civil Procedure) states that a "complaint shall describe the injury or breach the plaintiff is complaining of, name or describe the person responsible for injury or breach, who shall be known as the defendant, and state the relief requested."<sup>5</sup> The SRMT Rules of Civil Procedure state that "[m]otions to dismiss the lawsuit because the Court lacks jurisdiction or because the plaintiff has not stated a legitimate basis for relief may be made any time."<sup>6</sup> In this case, the Respondents do not put forth arguments that the Court lacks jurisdiction. Rather, the Respondents contend that the Plaintiff failed to state a claim that meets the standard expressed in the SRMT Rules of Civil Procedure.

As previously noted, the Court is charged with assessing whether the Estate has stated a legitimate basis for relief. In this case, the Estate has named four Respondents. The Court will assess each claim raised against the specific Respondent and take into account the arguments raised by the Respondent in making its determination.

#### **Akwesasne Mohawk Casino**

In the Estate's filings, it is alleged that the Akwesasne Mohawk Casino staff was not adequately trained in providing first aid. The submitted documents demonstrate that the decedent, Joseph Nicolas, left the casino and the coronary event took place in his hotel room at the Akwesasne Mohawk Casino Resort. In his response to the Respondents' motion to dismiss, the Estate argues that the Casino did not have an adult and child CPR mask on site or any other CPR or resuscitation equipment. Furthermore, the Estate claims that when casino staff assisted in the decedent's hotel room, they laid him on his back from a sitting position making it difficult to breathe. The Respondent, Akwesasne Mohawk Casino, alleges that there are no claims in the complaint that the deceased or his family requested any care or assistance at the Casino and that there are no allegations that the Casino breached a duty or that such duty was the proximate cause of Plaintiff's injury.

The filings in this case demonstrate that the decedent was staying at the Akwesasne Mohawk Casino and was escorted to his room at the Akwesasne Mohawk Casino Resort and passed away following a coronary incident. The Estate's pleadings allege that Casino employees were involved with his medical care while he was in his room at the Akwesasne Mohawk Casino Resort and laid the decedent, Joseph Nicolas, on his back. The Estate argues that this was reckless and negligent and resulted in the decedent having difficulty breathing. The SRMT Rules

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<sup>4</sup> Richard Francis v. Jeff Tarbell et. al 17-LND-00007, 4 (Nov. 21, 2017).

<sup>5</sup> SRMT Rules of Civil Procedure § IX A.

<sup>6</sup> SRMT Rules of Civil Procedure § XVI C.

of Civil Procedure require a civil complaint to describe the injury or breach the plaintiff is complaining of, name or describe the person responsible for injury or breach, who shall be known as the defendant, and state the relief requested. In this case, the decedent passed away following a coronary incident. It is alleged that Akwesasne Mohawk Casino employees were involved with the decedent, Joseph Nicolas', medical care and that no oxygen was on site. The Akwesasne Mohawk Casino, Respondent, does not offer an argument related to the actions of the Casino employees, rather their argument focuses on the fact that it appears the decedent did not seek care at the Casino. The Court finds that it can be reasonably inferred that the Akwesasne Mohawk Casino, Respondent, may be liable due to actions they took while the decedent was having difficulty breathing. Thus, the Court holds that a motion to dismiss is not proper at this time.

### **Akwesasne Mohawk Casino Resort**

The Estate alleges that all hotels in New York that have a recreational pool are required to have at minimum, an adult and child CPR mask and gloves and other CPR or resuscitation equipment on-site. The Estate also alleges that the Akwesasne Mohawk Casino Resort, Respondent, is required to have qualified and trained personnel to administer first aid. Based on the aforementioned, the Estate contends that Respondent was negligent and reckless and that failure to have oxygen on site or have trained personnel contributed to the decedent's death. In response, Respondent argues that the Resort management and employees are not caregivers and there is no requirement that such employees be trained in first aid. Moreover, the Resort argues that the Estate's complaint does not state that the Resort breached any duty by not having oxygen on site or that the failure to have oxygen on site was the proximate cause of the decedent, Joseph Nicolas's, death. Many of the Respondent's arguments raise the questions of factual issues that are better suited to be addressed at an evidentiary hearing or at trial. The Estate has argued that there was no oxygen on site and that the Resort failed to provide appropriate care and assistance. Similarly, the Court holds that a motion to dismiss is not proper at this time.

### **Saint Regis Mohawk Tribal Police**

The allegation raised by the Estate in the complaint is that there was no oxygen or air supply in the Police car unit that was on site of the incident. It appears that the Estate abandons this allegation by not responding to the Saint Regis Mohawk Tribal Police's argument in his response brief. The Court record does not clearly demonstrate how the Saint Regis Mohawk Tribal Police was involved in the medical care of the decedent aside from responding to the incident. Therefore, there is no legitimate basis for relief. Thus, the Court grants the motion to dismiss and the Saint Regis Mohawk Tribal Police are no longer a party to this action.

### **Seaway Valley Ambulance Services**

The Estate alleges that the Seaway Valley Ambulance Service failed to bring all advanced life support (ALS) tools, including oxygen, when it arrived on scene. The Estate argues that when the Ambulance arrived, the paramedics did not provide adequate services and that Seaway Valley Ambulance Services failed to train their staff properly on ALS training. The Estate alleges that when the ALS paramedics arrived, they failed to bring oxygen but brought

intubation equipment. Similarly, to the claims raised against the other Respondents, the Estate argues that the Seaway Valley Ambulance Services was negligent and acted recklessly and negligently. The Seaway Valley Ambulance Services, Respondent, argues in its motion to dismiss, that the allegations raised are too vague and does not identify what the appropriate care/assistance should have been nor does it identify what was inappropriate about the care. The Respondent argues that the Estate has not articulated what duty of care was owed to the decedent, who breached the duty, how it was breached or in what manner the breach caused injury or death to the decedent. Moreover, the Respondent argues that in order to plead and prove reckless conduct, the plaintiff must show that the defendant intentionally committed “an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow.” The Respondent also provides the applicable New York law in regards to medical malpractice cases. In this case, the Estate has described the injury or breach the plaintiff is complaining of, named or described the person responsible for injury or breach, and stated the relief requested. The Court finds that it can be reasonably inferred that the actions of the Seaway Valley Ambulance Services, Respondent, may have caused the injury claimed by the Estate as described in the Estate’s filings. Thus, the Court holds that a motion to dismiss is not proper at this time.

In closing, the Court notes that the crux of this case is whether the Akwesasne Mohawk Casino, Akwesasne Mohawk Casino Resort, and the Seaway Valley Ambulance Services and their employees had a legal duty in this incident, breached their duty, and acted negligently or recklessly. The Estate is responsible for proving their case by addressing these issues and whether the conduct was the proximate cause of the decedent, Joseph Nicolas, death.

### **ORDER**

Based on the foregoing, it is

**ORDERED, ADJUDGED AND DECREED** that the Akwesasne Mohawk Casino, Akwesasne Mohawk Casino Resort, and the Saint Regis Mohawk Tribal Police Department, Respondent’s, motion to dismiss is **PARTIALLY GRANTED** and that the claim against the Saint Regis Mohawk Tribal Police is **DISMISSED WITH PREJUDICE**; it is further

**ORDERED, ADJUDGED AND DECREED** that the Seaway Valley Ambulance Service, Respondent’s motion to dismiss is **DENIED**; it is further

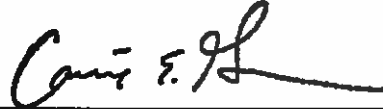
**ORDERED, ADJUDGED AND DECREED** that the matter shall proceed with the following case caption: Estate of Joseph Nicolas, Plaintiff v. Akwesasne Mohawk Casino, Akwesasne Mohawk Casino Resort, and Seaway Valley Ambulance Services, Respondent(s); it is further

**ORDERED, ADJUDGED AND DECREED** that all discovery for this case must be completed by **October 30, 2020**; it is further

**ORDERED, ADJUDGED AND DECREED** that the parties and their legal counsel must appear for a pre-trial conference on **November 4, 2020 at 1:00 p.m.** At that time, the Court will address any discovery issues raised by the parties or legal counsel or set a briefing schedule

for any pre-trial motions that the parties or their legal counsel wish to file, or set the matter for trial.

Signed this 28<sup>th</sup> day of September, 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.***