

**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 October 23, 2019, Dwayne Lazore, Plaintiff, revised his civil complaint and submitted it to the Court.

On December 9, 2019, the Court held an initial appearance on this matter. Dwayne Lazore, Plaintiff, appeared and was self-represented. Orestes Rios III, Respondent, failed to appear.

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 Hogsburg, 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. Both parties appeared and was self-represented. Orestes Rios III failed to appear. 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.

Discussion

In the instant case, Orestes Rios III, Respondent, has requested the Court to dismiss Dwayne Lazore, Plaintiff's, complaint in its entirety. In his motion to dismiss and other documentation he contends that the Court lacks jurisdictional authority, that Plaintiff's complaint and summons was not timely served, the alleged claims are beyond the statute of limitations, and that Plaintiff has not stated a legitimate basis of relief. Respondent has also moved the Court to strike an unauthorized second response filed by Plaintiff. Moreover, Plaintiff has filed a request for a cease and desist in this case.

Prior to assessing Orestes Rios III, Respondent's, motion to dismiss the Court will start with addressing the motion to strike an alleged an unauthorized second response filed by Plaintiff. In his motion, Respondent alleges that Plaintiff filed a second response to Respondent's motion to dismiss without approval by this Court and noted that he was not served attachments that were described to be filed with Plaintiff's second response.

In this case, the Court issued a scheduling order directing Dwayne Lazore, Plaintiff, to submit a response brief to Respondent's motion to dismiss by March 9, 2020. The Court did not provide the parties with an additional submission date. Thus, the Court grants the Respondent's request and the Plaintiff's second response will not be taken under consideration.

The Court will start its analysis with first addressing whether it has the requisite jurisdictional authority to address this matter. Next, the Court will address the remaining allegations raised in the Respondent's motion to dismiss. Lastly, the Court will take up Plaintiff's motion for a cease and desist.

Analysis

As this Court has demonstrated in its case law, it must first be determined that the Court possesses jurisdiction before it may proceed. In the instant case, Dwayne Lazore, Plaintiff, has alleged that starting March 15, 2015, Orestes Rios III, Respondent, entered into agreements. It is alleged that the agreements involved boarding, showing, training, and breeding various American Kennel Club registered dogs and that Respondent breached the terms of the agreement. Plaintiff also alleges that Respondent slandered him and his business or in other words committed a tort. Plaintiff alleges the alleged breach of the agreements and slander has resulted in losses. The Court has to determine whether it possess jurisdiction over the contract claim and tort claim raised by Plaintiff.

In general, jurisdiction is defined as “a court’s power to decide a case or issue a decree.”¹ The scope of a Court’s jurisdiction is outlined in the applicable law. 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 (“Tribe”) or any of its subordinate entities, agencies, or agents is a party (except that this provision does not waive Tribal sovereign immunity).”² Moreover, the SRMT Rules of Civil Procedure notes in the case of oral contracts the statute of limitations is three (3) years.³

The aforementioned requires the Court to assess where the alleged contract was entered into by the parties or whether the parties performed. In the instant case, Dwayne Lazore, Plaintiff, has provided the Court with a detailed account of the events that occurred between the parties and others in his filings. In his motion in opposition to Orestes Rios III, Respondent’s motion for dismiss, Plaintiff, notes that there was an alleged contract between Michelle Smith-Barber, Plaintiff, and Respondent for dog breeding in 2015. Respondent argues that this agreement was entered into in Miami, Florida. Plaintiff also stated that there was an agreement entered into between Michelle Smith-Barber, Plaintiff, and Respondent that involved a breeding program. Based on the filing, it is unclear whether this is the same agreement as mentioned earlier that was alleged entered into in 2015. The third agreement Plaintiff includes describes an alleged contract between Plaintiff and his father. The filing also demonstrates that dogs were bred and the Plaintiff has dogs on the reservation; however, it is unclear when the breeding occurred and whether the breeding is part of the aforementioned breeding contract. Furthermore, Respondent noted that the dogs were a gift. The crux of this case centers on whether there was a valid contract entered into by the parties.

Based on the aforementioned facts it is difficult to discern when the dogs breeding occurred, where the breeding occurred, or when the oral contract was allegedly entered into by the parties based on the filings. Without these facts resolved, the Court cannot determine whether the alleged contract was negotiated, executed or performed within the borders of the Saint Regis Mohawk Reservation or whether the contract survives the statute of limitations. Based on the

¹ Jurisdiction definition, *Black’s Law Dictionary* (9th ed. 2009), available at Westlaw.

² SRMT Civil Code § II. B.

³ SRMT Rules of Civil Procedure § VIII. A. 1.

aforementioned, the Court finds that an evidentiary hearing is necessary in this case in order to determine whether this Court possesses jurisdiction. Next, the Court will address the tort claim raised by the Respondent.

In his filing, Dwayne Lazore, Plaintiff, also raises a slander claim and requests to be compensated for his losses. Slander is a defamatory assertion expressed in a transitory form such as orally.⁴ Similar to the contract claim, the Court must determine whether it possesses jurisdiction over the tort claim. The SRMT Civil Code states that the Court possesses jurisdiction in regards to “[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, 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).”⁵

In this case, Plaintiff did not prove that the slander injury occurred or was inflicted within the borders of the Saint Regis Mohawk Indian Reservation. All of the arguments raised by the Plaintiff point to alleged slander happening with regards to the American Kennel Club in Florida. Thus, the Court holds that it is barred from exercising jurisdiction over the tort claim raised by the Respondent. Next, the Court will address Plaintiff’s motion for a cease and desist.

In regards to the case at bar, on February 14, 2020, Dwayne Lazore, Plaintiff, filed a motion for a cease and desist. Plaintiff contends that Orestes Rios, 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 Orestes Rios III, 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.⁶ Based on the aforementioned, the Court denies Plaintiff’s request for a cease and desist against Respondent.

In closing, the Court notes that in this Decision and Order, it did not make a finding on the validity of the alleged agreements. This Decision and Order only examined whether this Court may exercise jurisdiction over the claims raised by the Plaintiff. At the evidentiary hearing on the alleged contract, the parties may raise their arguments that were submitted in their filings.

ORDER

Based on the foregoing, it is **ORDERED, ADJUDGED AND DECREED** that the slander claim raised in the civil complaint dated October 22, 2019 filed by Dwayne Lazore, Plaintiff, is hereby **DISMISSED WITH PREJUDICE** and the Court will address the remaining

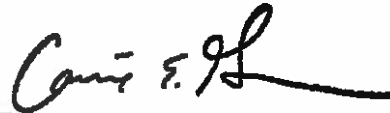
⁴ Slander definition, *Black’s Law Dictionary* (9th ed. 2009), available at Westlaw. The Court notes that it addressed a defamation claim in the matter of Francine Gray et. al. v. Alicia Cook 18-CIV-00022 (Feb. 20, 2019).

⁵ SRMT Civil Code § II. C.

⁶ Andrew G. Lazore Preliminary Injunction Order 17-CIV-00015 (June 20, 2018).

contract allegation; and the Court **DENIES** Plaintiff's request for a cease and desist. Due to scheduling uncertainties because of the coronavirus pandemic, the evidentiary hearing on the contract claim is scheduled for **May 11, 2020 at 1:00 p.m.** Parties are **ORDERED** to appear on the aforementioned hearing date. All requests to appear via teleconference or phone must be made prior to the scheduled hearing. 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 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 17th day of April, 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.

