

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

Alexander C. Garrow III,)	
)	
)	Case. No.: 11-LND-00001
)	
Appellant)	
)	
v.)	DECISION AND ORDER
)	
Shawn E. Garrow,)	
)	
Appellee)	

Procedural History

This matter comes before the Saint Regis Mohawk Tribal Court¹ on appeal from a final decision of the Saint Regis Mohawk Tribe Land Dispute Tribunal (hereinafter LDT).² This land dispute was initiated in accordance with the Saint Land Dispute Resolution Ordinance (LDRO), upon the filing of a Land Dispute Complaint Form on June 28, 2010, in which Appellee/Complainant Shawn Garrow sought relief in the form of a Saint Regis Mohawk Tribe, (SRMT), deed for property "...currently own[ed by Complainant] and occupied by Alexander C. Garrow,"³ described as Lot "91-C (91-G)." No response was submitted by Respondent/Appellant.⁴ The SRMT LDT convened to hear this matter on October 6, 2010, and on November 17, 2010, and rendered a final decision on December 29, 2010. The LDT determined that "Lot #91-C belongs to Mr. Shawn Garrow."⁵

On January 27, 2011, the Appellant Alexander Garrow III, filed an appeal with the Saint Regis Mohawk Tribal Court. The Appellant requested this Court to set aside the LDT's final decision dated December 29, 2010.⁶ On March 7, 2011, the Appellee Shawn Garrow filed an

¹ The Court takes Judicial Notice that Judge Carrie E. Garrow is not directly related to either of the parties. This was noted on the record upon the first hearing when upon taking over the case.

² *Garrow v. Garrow*, LD2010-004GAR (Dec. 29, 2010).

³ Shawn E. Garrow's Land Dispute Tribunal Complaint, undated.

⁴ On September 10, 2014, the Saint Regis Mohawk Tribal Court determined that service of process upon Appellant was inadequate. *Alex Garrow, III v Shawn Garrow*, 11-LND-00001, (September 10, 2014).

⁵ *Id.*

⁶ *Alex Garrow III v. Shawn Garrow*, LND 11-LND-00001, 1 (October 24, 2014). (Mr. A. Garrow III's appeal is based on several allegations including: 1) that he did not receive proper notification as the SRMT Tribunal served his father A. Garrow Jr. rather than A. Garrow III; 2) the Complainant and the SRMT Tribunal acted with malicious intent by pursuing this land dispute during the time his nephew was missing and that there was at the time of the SRMT Tribunal process a search and/or recover effort being conducted for his nephew; 3) that his land was legally purchased from his Uncle and registered with the Kanienkehaka Kaianerekowa Kononsesneh; and 4) that the SRMT Tribunal's decision will impact two prior land transfers to HUD.) (citing to Appellant's Complaint dated January 27, 2011).

Answer contending that the Appellant was properly served and, therefore, was precluded from offering additional evidence. Further, the Appellee contended the Appellant chose not to attend the LDT's scheduled hearing and is not entitled to appeal the Final Decision based on his failure to respond. The Appellee alleges that the Appellant's claim of malicious intent was unsubstantiated.⁷ The Appellee counterclaimed the Appellant owes back rent in the amount of \$33,000.00 and reimbursement for expenses in the amount of \$830.00.⁸

On September 10, 2014, the Court determined that due to the lack of adequate service the LDT decision is "effectively a 'default judgment' against Appellant, Alexander C. Garrow III, and that the case has not been decided on the merits."⁹ The Court further found that there remained "sufficient questions of fact that need to be addressed prior to the Court rendering a 'final' unappealable decision."¹⁰ In particular, the Court stated the factual issues as to the description and size of the parcel sold by Lewis Garrow and then sub-allotted amongst subsequent purchasers, including the parties [Alexander C. Garrow III and Shawn Garrow], need to be resolved in a future matter.¹¹

Since the record established by the LDT was insufficient due to the lack of proper notice, the Court vacated the LDT final decision and scheduled further proceedings in order to provide an opportunity for both parties to submit documentation or provide oral testimony to afford due process.¹² The Court scheduled a conference, in which both parties were supposed to appear, for October 24, 2014.

On July 17, 2015 the Appellant appeared before the Court and the Appellee appeared by telephone, both parties requested adjournments for the purpose of retaining counsel. Accordingly, a status conference was scheduled for August 14, 2015 and a hearing was scheduled for September 18, 2015.

On November 13, 2015, having had no contact with either party or any counsel, the Court generated correspondence which scheduled appearances before the Court on December 11, 2015, providing the parties with a "final opportunity to present evidence, argue their positions and supplement the record developed before the Land Dispute Tribunal." The Court also advised that a failure to appear would be deemed a waiver of the parties' right to present evidence and would result in the Court resolving the matter on the existing record.

On December 11, 2015, the Appellant Alexander C. Garrow III, appeared before the Court. The Appellee Shawn Garrow informed the Court by telephone that he was out of the area and, as

⁷ Shawn E. Garrow Answer, p. 1 – 2 (Received March 7, 2011).

⁸ *Id.*

⁹ *Alex Garrow III*, LND 11-LND-00001 at 12.

¹⁰ *Id.*

¹¹ *Id.* at 13.

¹² *See* SRMT LDRO § XV. B.2. ("The Tribal Court will review the appeal based upon the record developed before the Tribunal. The Tribal Court may affirm the decision or may vacate the decision and substitute its own decision, which shall be final and not subject to appeal.").

a result, unable to return in time for the proceeding. However, he expressed he would rely on the record and forgo his opportunity to offer additional evidence.¹³

At the December 11, 2015 hearing, after a discussion with the Court about whether the Appellant wanted to proceed with the appeal, the Appellant stated he did not want to withdraw the appeal. The Appellant offered evidence of a hand-drawn map, super-imposed over what appears to be undated pre-printed topographical map (Exhibit 1), which was contained in the LDT record. The Appellant also entered into evidence what he termed a Bill of Sale, which was the letter from Lewis “Porky” Garrow, which was part of the LDT record (Exhibit 2).¹⁴

The Land Dispute Tribunal Complaint

Appellee’s complaint with the LDT alleged that he owns property that is occupied by Appellant Alexander C. Garrow, III, the Appellant. Appellee requested a land deed. Appellee also filed an Answer to Appellant’s appeal on March 7, 2011. In his Answer to the Appeal, Appellee raised several counterclaims, including that the Appellant owed back rent to Appellee in the amount of \$33,000.

Analysis

I. The Issues

The Court begins where its last decision left off. The Court previously held that the LDT decision was “effectively a ‘default judgment’ against Appellant, Alexander C. Garrow III, and that the case has not been decided on the merits.”¹⁵ The Court further found that there remained “sufficient questions of fact that need to be addressed prior to the Court rendering a ‘final’ unappealable decision.”¹⁶ In particular, the Court stated the factual issues as to the description and size of the parcel sold by Lewis Garrow and then sub-allotted amongst subsequent purchasers, including the parties [Alexander C. Garrow III and Shawn Garrow], need to be resolved in a future matter.¹⁷

The Court notes that the LDT decision was vacated but not the record. The LDRO states “[t]he Tribal Court will review the appeal based upon the record developed before the Tribunal. The Tribal Court may affirm the decision or may vacate the decision and substitute its own decision, which shall be final and not subject to appeal.”¹⁸ The LDRO does not allow the Court to remand a case back to the LDT upon the vacating of their decision. Now with both parties

¹³ The Court notes the December 11, 2015 proceedings were recorded on an audio disc and are referenced accordingly.

¹⁴ See Appellant Exhibit #2. The Court notes the Appellant Dec. 11, 2015 Hearing Exhibit #2 appears to be a copy of the untitled July, 9, 2009 letter executed by Lewis “Porky” Garrow that is included in the established LDT record and referenced in the LDT Final Decision.

¹⁵ *Alex Garrow III*, LND 11-LND-00001 at 12.

¹⁶ *Id.*

¹⁷ *Id.* at 13.

¹⁸ SRMT LDRO § XV.B.2.

having received due process the Court may now as the LDRO directs “substitute its own decision.”¹⁹

The Court does note the Appellant offered testimony stating he and other members of his family “had liens” on the Appellee’s property for debts allegedly owed that total over \$290,000. Moreover the Appellant contends that “because of those liens [Appellant and family members] own everything [Appellee] owns.”²⁰ However, the Appellant produced no legal document issued by the Tribal Council or a Court that proves the liens are legally valid. There is no tribal law that provides a process to obtain liens on a tribal member’s property. Moreover, the liens would be a separate action from this case which is focused on determining ownership of the land. Thus, at this time the Court declines to address the allegations of debts owed to the Appellant or make a decision based on the merits of the claim of liens.

The Court turns to addressing the issue raised by the Appellee in his original complaint to the LDT. The Appellee sought a deed to land he claimed to own that was occupied by Appellant, known as Lot# 91-C (91-G).²¹ The Court notes that Appellee attempts to raise counterclaims in his Answer to Appellant’s Appeal, namely back rent in the amount of \$33,000 and reimbursement for \$830 in LDT and Court fees.²² The parties are reminded that this is an appeal and counterclaims are not allowed on an appeal. To do so would subject the opposing party to brand new issues and require the Court to expand the record beyond the issues heard by the LDT and to essentially hold an entirely new trial. Moreover, the party who attempts to raise the new claims is not without recourse, as the party may pursue subsequent legal remedies in the Tribal Court for any claims not addressed by the LDT appeal.

Thus, the Appellant’s claims regarding liens upon the Appellee’s land are dismissed without prejudice. And the Appellee’s counterclaims raised in his answer to the Appellant’s appeal are dismissed without prejudice.

II. *Ownership of Lot #91-C (91-G)*

As such the Court will focus on the issue raised to the LDT, the ownership of Lot #91C (91G). To resolve the dispute, the Court must take into account the applicable provisions of the LDRO. The SRMT LDRO, in relevant part, delineates the accepted evidence of land ownership and the order in priority of which it should be considered.²³ The LDRO lists the forms of evidence of land ownership that is to be accepted and an official and valid deed is listed first.²⁴ Thus, it is given a higher priority as evidence. There are numerous deeds contained in the LDT record that make reference to the land boundaries of the land in dispute. In order to determine ownership and boundaries of the land in dispute, the Court reviews in painstaking detail all of the

¹⁹ SRMT LDRO § XV.B.2.

²⁰ Alexander C. Garrow III Testimony from the December 11, 2015 Hearing.

²¹ Appellee’s Land Dispute Complaint Form, undated.

²² Defendant’s Answer, March 30th, 2011.

²³ SRMT LDRO § XIV. D. 1.

²⁴ SRMT LDRO § XIV. D. 1.

deeds contained within the LDT record. The Appellant did not submit a deed for his land. His evidence of ownership, a bill of sale and map, are also reviewed in detail in subsequent sections below. Since deeds are given first priority as evidence of ownership, the deeds are reviewed first.

A. The Deeds

In 1979 Agnes Garrow died and willed all her property to Lewis Lawrence (Porky) Garrow. Subsequently Lewis Garrow engaged in numerous land transactions with other members of the Garrow family. There are numerous deeds issued by the Saint Regis Mohawk Tribe involving these transactions contained within the record. The Court uses them solely to examine the boundaries of Lot #91-C (91-G). They are also used in an attempt to determine the Lot numbers of the land in dispute. The Court makes no findings as to the actual ownership of these various lots other than the Lot in dispute in this case and only uses them to examine boundaries. The deeds are reviewed in chronological order. And all of the reviewed SRMT deeds meet the LDRO requirements: they are signed by the Tribal Council and certified by the Tribal Clerk.²⁵

1. November 15, 1986 Alexander J. Garrow Jr.'s SRMT Deed

A land deed dated November 15, 1986 memorializes a land transaction where Lewis Garrow sold 4+/- acres to Alexander J. Garrow Jr., Appellant's and Appellee's father. This Lot was initially recorded on the deed as Lot #91A. At some point in time the Lot number was written over and changed to #91-D. For an unknown reason, this has happened to many of the deeds contained within the record. There is never any notation contained in the deeds as to who made these changes and when they were made. As a result, the Lot numbers are not viewed as reliable evidence as to the determination of ownership. Rather, the Court will focus on the boundaries contained within the deeds. The boundaries are described as:

- Northern border - Roosevelttown Road and is 208.7 +/- feet.
- Eastern border - Geraldine (Debbie) and Walter Bero's Lot #91-B and is 838 +/- feet and it is this property which is the focus of this dispute.
- Southern border - Edwards/Wheeler for 208 +/- feet.
- Western border - Lewis Garrow Lot #91 for 838 +/- feet

The Court finds this SMRT deed is probative evidence that Walter and Debbie Bero's land lay directly east of Alexander J. Garrow, Jr.'s land.

2. November 15, 1986 Walter and Geraldine (Debbie) Bero's SRMT Deed

A SRMT deed for Walter and Geraldine (Debbie) Bero's land, which was sold to them by Lewis Garrow, was also signed on November 15, 1986. The Lot's dimensions are identical to Alexander J. Garrow Jr.'s land which was transferred on the same date. As noted above these two Lots share a boundary. Similar to the Alexander J. Garrow, Jr. deed, the Beros' deed was labeled

²⁵ SRMT LDRO § V. F. 2.

as Lot #91-B, but it was relabeled by pen or pencil as Lot #91-C. There is no notation as to who or when this occurred. The Lot was 4 +/- acres. The boundaries of the lot are described as:

- Northern border - Rooseveltown Highway for 208.7+/- feet.
- Eastern border is Lewis Garrow, Lot #91 for 838+/- feet.
- Southern border - Lewis Garrow, Lot #91 for 208.7+/- feet.
- Western border - Alexander J. Garrow, Lot #91-A for 838+/- feet.

The Beros' western border description is consistent with the Alexander J. Garrow Jr.'s SRMT deed described above. Hence, we know that these two plots share a boundary and are identical in length, 838 +/- feet. Only the Beros border Alexander J. Garrow Jr.'s property on the east and only Alexander J. Garrow Jr. borders the Beros' property on the west. This deed meets all the requirements under the LDRO; it is signed by the Tribal Council and certified by the Tribal Clerk. Thus, the Court finds that beginning on November 15, 1986, the Beros owned 4 +/- acres that contained the boundaries described above. Moreover, once Lewis "Porky" Garrow relinquished this 4+/- to the Beros in 1986, he could only sell whatever remaining land he had left.²⁶

3. *January 23, 1992 Shawn Garrow SRMT Deed*

A subsequent SRMT deed encompassing a land transaction from Geraldine (Debbie) and Walter Bero to Appellee Shawn Garrow was issued on January 23, 1992, conveying a 2+/- acres described as #91-B(1). This deed meets all the requirements under the LDRO; it is signed by the Tribal Council and certified by the Tribal Clerk. The boundaries are described as:

- Northern border Rooseveltown Road for approximately 180 feet.
- Eastern border - Lewis Garrow Lot #91 for approximately 484 feet.
- Western border – Walter and Debbie Bero's Lot #91-B for approximately 484 feet.
- Southern border – Walter and Debbie Bero's Lot #91-B and no measurement is given. The Court assumes it is approximately 180 feet.

The Court notes several things from this deed. First, the Lot is taken from Lot #91-B, which was the land the Beros bought from Lewis Garrow and thus is appropriately labelled to as Lot #91-B-(1). Second, the remaining land that borders this subplot is still referred to as Lot #91-B. Third, the deed only transfers approximately half of the original lot. Fourth, none of the Lot numbers designate any of this property as Lot #91 – G, which the Appellant claims he owns, which the Court addresses in a subsequent section.

Finally, the Court notes that the LDT record contains numerous maps, none of which are labelled as to when they were drawn or where they came from. However, they all are consistent in that they draw Lot #91B-(1), the land sold by Walter and Debbie Bero to Appellee Shawn Garrow in the deed above, incorrectly. The maps draw this subsection of land as the entire top half of the original lot. However, reading the deed description it is clear that Lot #91-B(1) is in

²⁶ *David v. Benedict*, 11-LND-00003, 18 (Feb. 9, 2015) (An older legal axiom that 'one can only sell what one owns.')

the northeast corner of the original Lot #91-B. The original Lot #91-B was 838 feet in length and 208 feet wide. Lot #91-B(1) is only 484 feet in length, approximately half of the original lot. AND it's only 180 feet wide, while the original Lot #91-B is 208 feet wide. The deed accurately notes this by recognizing the western and southern border as Walter and Debbie Bero, who had retained property on the western and southern sides of Appellee's property. Thus, the Court finds that the maps contained within the record are not accurate, according to the written description of the deed. The Court also finds that the Appellee owned Lot #91-B(1), as described above, beginning on January 23, 1992.

4. *July 23, 1992 Andra Louine Garrow Lyons' SRMT Deed*

On July 23, 1992 Lewis Garrow transferred to Andra Louine Garrow Lyons two acres, known as Lot #91-F. The boundaries are described as:

- Northern border – Alexander C. Garrow III, Lot #91-G with no dimensions.
- Eastern border - Samuel A. Garrow and Hazel Garrow Terrance, Lot #91. No dimensions are given.
- Southern border - Samuel A. Garrow and Hazel Garrow Terrance, Lot #91. No dimensions are given.
- Western border – Shawn Garrow, Lot #91-H. This is a different lot than the lot in dispute.

Although Appellant offered no deed for his claim to the disputed land, this deed is evidence that possibly Appellant owns Lot #91-G. However, this deed does not demonstrate that Lot #91-G is the land in dispute.

5. *April 28, 1994 Donita Roxanne Garrow's SRMT Deed*

On April 28, 1994 Lewis Garrow transferred one acre, labelled as Lot #91-E to Donita Roxanne Garrow. The boundaries are described as:

- Northern border - Roosevelt Road, no dimensions are given.
- Eastern border - Thomas and Hazel Garrow Terrance, Lot #91-C. No dimensions are given.
- Southern border - Lewis Garrow, Lot #91. No dimensions are given.
- Western border - Lewis Garrow, Lot #91. No dimensions are given.

Again the Court notes the inconsistency of lot numbers, as the lot in dispute is also referred to as Lot #91-C. The Court notes this deed due to the fact that Donita Garrow's land is mentioned in Appellant's bill of sale discussed subsequently.

6. *September 19, 1994 Hazel Garrow Terrance and Sam Garrow's SRMT Deed*

On September 19, 1994 Lewis Garrow transferred the remaining lands of the Alexander and Agnes Garrow Estate, Lot #91 to Hazel Garrow Terrance and Sam Garrow. The dimensions of this land transfer are not relevant to the land in dispute. However, the deed notes that out of Lot #91 four acres were sold to Alexander Garrow, Jr., which would have been the 1986 deed. And

four acres were sold to Debbie and Walter Bero, which was the 1986 deed discussed above. Thus, this deed confirms that Debbie and Walter Bero received four acres, the dimensions described in the 1986 deed, and that Alexander Garrow Jr. received four acres, as described in a 1986 deed.

7. *September 28, 2009 Shawn Garrow's SRMT Deed*

The record also contains a September 28, 2009 deed transferring 1.98 acres from the Tribe to Appellee. This must be a deed for HUD purposes and involves the land Appellee bought from the Beros in 1992. This deed now labels the land as Lot #91-C-1, whereas the 1992 deed designated it as Lot #91-B(1). However, the description of the land mostly mirrors the deed for the 1992 transaction between Walter and Debbie Bero, where they sold him the northeast section of their four-acre lot. The deed describes boundaries as:

- Northern border - Rooseveltown Road, spanning 180 feet.
- Eastern border - Lot #91 and Lot #91-E (Donita Roxanne Garrow) spanning 484 feet.
- Southern border – Lot #91-C (Geraldine and Walter Bero) for 180 feet.
- Western border – Alex Lane for 484 feet.

The Court notes that Donita Roxanne Garrow's 1994 deed fails to acknowledge that Shawn Garrow borders her property. However, the Appellee's eastern border is not at issue in this case. The land at issue is his western and southern border, which is land that Beros initially retained and did not sell to Appellee in 1992. The Court notes that the original deed recording the transaction between the Beros and Appellee did not describe the western border as Alex Lane, but rather as the Beros remaining property. However, since the 1992 deed was the first recorded deed in time²⁷ and involved the initial purchase, the Court finds that the land description in the 1992 deed is the correct description.

The Court notes that the 2009 Deed, between the Saint Regis Mohawk Tribe and the Appellee does not reflect the second land transaction between the Beros and Appellee recorded by the 2008 bill of sale, as discussed below. But this is not surprising as the 2008 transfer was done through a Bill of Sale and for unknown reasons a SRMT Deed was never obtained.

B. The Court's Findings Based on the SRMT Deeds

The SRMT LDRO states that the "issuance of deeds is not challengeable unless the deeds are found to have been issued due to, but not limited to the following: fraud, deceit, coercion, or duress."²⁸ The Court added mistake to this list.²⁹ The LDRO also states that "[i]n the event that a land dispute should arise over the issuance of a deed, the deed that is recorded **first** with the Tribal Clerk of the St. Regis Mohawk Tribe will superseded all other deeds."³⁰ The Appellant does not challenge that the 1986 Deed to the Beros and the 1992 and 2009 Deeds issued to the Appellee on any of these grounds. Appellant at one point argues that the Beros did not tell him they owned the

²⁷ SRMT LDRO § V. F. 1.

²⁸ SRMT LDRO § V. F. 2.

²⁹ *Hathaway v. Thomas*, 12-LND-0007, 9 (July 18, 2014).

³⁰ SRMT LDRO § V. F.1.

land where he built his home.³¹ However, the LDRO does not specifically list lack of knowledge as a grounds to challenge a deed. And this is not identical to the lack of knowledge due to failure of a government entity to provide notice, such as in *Thompson v. Terrance*.³² Appellant had reason to know that the Beros owned Lot #91-B (also known as Lot #91-C) as of 1986. He could have checked the SRMT deeds in the Tribal Clerk's Office, conducted a survey of his property, or recorded his own deed. As a result, his lack of knowledge challenge to the deeds fails.

Thus the Court makes the following findings based on the deeds contained in the record:

- On November 15, 1986 a SRMT deed was issued recording the sale of 4+/- acres from Lewis Garrow to Alexander J. Garrow Jr., Appellant's and Appellee's father.
- The description of Alexander J. Garrow Jr.'s property is as follows:
 - The northern boundary is Rooseveltown Road for 208.7 +/- feet.
 - The eastern border is Geraldine (Debbie) and Walter Bero's Lot #91-B and is 838 +/- feet.
 - The western border is Lewis Garrow Lot #91 for 838+/- feet.
 - The southern border is Edwards/Wheeler for 208+/- feet.
- Also on November 15, 1986, a SRMT Deed was issued recording the transfer of 4+/- acres from Lewis Garrow to Walter and Geraldine Debbie Bero.
- The description of the Beros' Lot is as follows:
 - The northern border is Rooseveltown Highway for 208.7+/- feet.
 - The eastern border is Lewis Garrow Lot #91 for 838+/- feet.
 - The southern border was also land owned by Lewis Garrow, labelled as Lot #91 for 208.7+/- feet.
 - The western border is Alexander J. Garrow, Lot #91-A for 838+/- feet,
- The Alexander J. Garrow Jr.'s Lot and the Beros' Lot share a boundary and are identical in length. Alexander J. Garrow Jr.'s lot is the only lot on the Beros' western boundary. And the Beros' lot was the only lot on Alexander J. Garrow Jr's lot eastern boundary.
- On January 23, 1992, a SRMT Deed was issued recording the sale of a 2 +/- acres parcel, identified as Lot #91-B(1) and Lot #91-C-1, from Walter and Geraldine Bero to Appellee Shawn Garrow.
- The maps contained within the record are not accurate with regards to the 1992 transfer from the Beros to Shawn Garrow, as the 1992 deed describes the land transferred as the northeastern section, not the entire top half of the Beros' lot as drawn in the maps.
- The Beros' Lot was never known as Lot #91-G, rather it was only known as either Lot #91-B or Lot #91-C.

³¹ Oral Argument, December 11, 2014.

³² *Thompson v. Terrance*, 13-LND-00011 (November 11, 2015).

III. *The Remaining Two Acres*

Now, the Court must address the issue of the remaining land Geraldine (Debbie) and Walter Bero received from Lewis Garrow in 1986, known as the “remaining two acres.” The Appellee Shawn Garrow offered as evidence of his ownership of the “remaining two acres” a bill of sale, between Walter Bero and Geraldine Bero and himself, that conveys the “remaining two acres” of Lot # 91-C. The bill of sale is dated March 30th, 2008, signed by all the involved parties, and by the Tribal Clerk. It is not notarized or signed by witnesses. Although the bill of sale includes language that states a “description or map of the property is attached” there is no such description or map of the property in the record. This finding is supported by a Tribal Clerk employee attesting to the fact that no map or description was attached.³³

The SRMT LDRO states that a bill of sale must be “signed, witnessed or notarized and then recorded with the Tribal Clerk in order to be valid.”³⁴ The LDRO also states that a bill of sale is considered a binding document when there is a land dispute where there are no recorded deeds with the Tribal Clerk.³⁵ The LDRO also directs the Court that when there are “two Bills of Sale for one particular property, the valid Bill of Sale dated **first** will superseded any and all other Bills of Sale.”³⁶

As noted, the LDRO lists deeds prior to a bill of sale as an acceptable form of evidence of ownership.³⁷ There is no deed recorded for the 2008 transaction between the Beros and the Appellee. Rather, the Appellee is seeking a deed for this property. Thus, the Court must turn to the offered bill of sale. The Appellee’s bill of sale contains a defect because, it is not signed by witnesses or notarized. The Court notes that even if this defect were to result in nullifying the transaction, the Court has found that the “remaining two acres” belonged to the Beros, not the Appellant. Thus any defect that would nullify the transaction would result in returning the land to the Beros not the Appellant. But before determining whether the bill of sale is sufficient evidence of Appelle’s ownership of the “remaining two acres” the Court must examine the Appellant’s offered bill of sale.

Appellant’s bill of sale (Exhibit #2), appears in the form of a notarized letter signed by Lewis “Porky” Garrow and dated July 9, 2009, and was also part of the LDT record. The letter states Lewis Garrow sold the Appellant a 4 acre lot known as 91-G. Lewis Garrow was unsure of the date of sale but to the best of his knowledge it was in the 1990s. Although the letter is signed and notarized, it is not clear whether it was recorded with the Tribal Clerk as the LDT record only indicates it was mailed to and received by the Tribal Clerk.

Appellant’s bill of sale has three problems; lack of recording, labelled as a different lot, and vagueness of a description of the land. As noted above, it is not clear that it was recorded by the Tribal Clerk. But this is the least of its problems. Second, the bill of sale is for a four-acre lot know as #91-G. In the deeds discussed above, the land in dispute is never recorded as Lot #91-

³³ LDT Record.

³⁴ SRMT LDRO § V.H.1.

³⁵ SRMT LDRO § V.H.1.

³⁶ SRMT LDRO § V.H.2 (emphasis contained in LDRO).

³⁷ SRMT LDRO § XIV.

G. Appellant in the hearing on December 11, 2015 repeatedly referred to Lot #91-G as the land in dispute. But as noted above, the deeds tell a different story. Although the lot numbers are not completely reliable as they've been changed over the years, the Beros land was never referred to as Lot #91-G. The Court already found that the Beros' lot was either #91-B or #91-C, which they subsequently sold to Appellee. Thus, Appellant's bill of sale appears to be for a different four-acre lot.

The third problem with the Appellant's bill of sale is what little description of the Lot #91-G that is contained within does not comport with the deeds on record and nor does it describe the Beros' land, which is the land in dispute, which only furthers the notion that Lot #91-G is a completely separate piece of property. For a bill of sale to be a probative piece of evidence, its description should match the deeds. The letter states that the land sold to Appellant Alexander C. Garrow III was bordered by Lot #91-D, which is owned by Alexander J. Garrow, Jr. This is impossible as the deeds reveal that in the early 1990s, Alexander J. Garrow Jr.'s Lot was bordered on the east side completely by the Beros and Lewis Garrow could not resell land he sold to the Beros in 1986 to the Appellant in the 1990s. The letter also states that Appellant's 4 acres are bordered by Hazel Garrow's land. However, Hazel Garrow's 1994 Deed does not include Appellant's land as a boundary or the Beros. Donita Garrow's 1994 Deed, also referenced as a boundary to Lot #91-G in Appellant's letter/bill of sale, contains no reference to Appellant Alexander C. Garrow, III or the Beros in the deed's boundary description.

Thus, the Court is faced with two bills of sale, both with slight defects.³⁸ Appellee's 2008 bill of sale is not witnessed or notarized and Appellant's bill of sale may not have been recorded with the Tribal Clerk as there is no signature on it by the Tribal Clerk. However, Appellant's bill of sale does not appear to describe the disputed property, as it refers to Lot #91-G, not Lot #91-B or Lot #91-C. Moreover, the description of the property does not match the deeds contained within the record, which are accepted as evidence of ownership. Thus, the Court finds the letter from Lewis Garrow is not probative evidence that Appellant owes the "remaining two acres." This leaves the Appellee's bill of sale as the only evidence of ownership. The defect of missing witnesses or notarization is a diminutive matter, as the bill of sale contains everything else: the sellers' and buyer's signatures, the Clerk's signature, and a description of the property - the remaining 2 acres of Lot #91-C. Thus, the Court accepts the Appellee's bill of sale as evidence that he bought "the remaining 2 acres" of Lot #91-B, also known as Lot #91-C.

The remaining evidence to be considered is Appellant's hand-drawn map (Exhibit #1). The hand drawn map shows Appellant's property as 4 acres and labels this lot as 91-G. It contains no boundary measurements. Appellant claims 91-G includes the "remaining two acres." Appellant testified the map is from the Tribal Clerk's office and is from 2005. There is what appears to be a fax transmittal date at the top that shows March 25, 2005. The map is not signed or certified by the Tribal Clerk. However, the Court notes that this map, along with some very similar variations are included in the LDT record. Minnie Garrow, a witness for the Appellant, testified the map was

³⁸ *Tanya Barilko v. Jolene Adams*, 11-LND-00005 (December 29, 2014) (The lack of a signature is a glaring omission preventing the Court from recognizing a deed as being valid.)

drawn at the time of the transfer of land from Lewis Garrow to Hazel and Sam Garrow, which was September 19, 1994. Thus, it is not clear whether the map was drawn in 1994 or 2005.

The LDRO states that land surveys are preferred over maps,³⁹ but that a GIS map can be used “so long as the boundaries of a particular parcel are clearly delineated, measurable and not in dispute.”⁴⁰ Unfortunately, that is not the case as the land is in dispute.

To afford the Appellant every opportunity, the Court will examine the map against the land deeds which are afforded a higher priority under the LDRO. For the map to be considered credible evidence it should reflect the land boundaries as they were either in 1994 or 2005 as described by deeds contained in the record.

According to the deeds accepted by the Court, the Beros bought 4 acres in 1986 and then sold two of those acres to Appellee Shawn Garrow in 1992. Thus, according to these two deeds the Beros owned the “remaining two acres” since 1986. As noted above, this is confirmed by Appellee Shawn Garrow’s deed with the Tribe. The Beros never sold the “remaining two acres” until 2008. Thus, whether the map was drawn in 1994 or in 2005 it should reflect that the Beros owned the “remaining two acres.” But Appellant’s map (Exhibit #1) fails to show this.

The map (Exhibit #1) appears to show the Appellant Alexander C. Garrow III owns all of the land south of Appellee and the Beros owned no property, which is incorrect according to the Deeds. As the Court noted earlier, all of the maps contained with the LDT draw the 1992 land transaction between the Beros and Appellee incorrectly and assume Appellee’s original two acres was the top half portion of the Beros. But reading the 1992 Deed correctly, the Appellee bought the northeast corner of the Beros property. And Appellant’s map fails to show Appellee’s property as only a northeast corner of the Bero property. Appellant’s map purports that whenever it was drawn, 1995 or 2005, that the Beros owned no property in this area, which according to the deeds on file with the Tribe is not true. Thus, as the map (Exhibit #1) is not reliable, it is not credible evidence of Appellant’s ownership of the “remaining two acres.”

The Court has accepted Appellee’s bill of sale as evidence that he owns “the remaining two acres.” Appellant’s bill of sale (Exhibit #2) and hand-drawn map (Exhibit #1) are not probative evidence that the Appellant owns “the remaining two acres.” Thus, the Court finds the Appellee owns “the remaining two acres” of the Beros land they bought from Lewis Garrow in 1986 and subsequently sold to the Appellee in 2008.

IV. Where is 91-G Located?

It is important to note at this time, the Court does not decide the issue of whether Lewis Garrow sold the Appellant the 4 acre lot of land known as 91-G, as set forth in the letter dated July 9, 2009. The Court determined that the 4 acres in the Lewis letter cannot be the land Lewis Garrow already sold to the Beros in 1986. Therefore, whatever land Lewis Garrow sold to the Appellant, it was not the 4+ acres he sold to the Beros, who subsequently sold the land to the Appellee.

³⁹ SRMT LDRO § V.I.

⁴⁰ *Id.*

V. *The Appellant's House*

This brings the Court to the issue of the location of the Appellant's house. Appellee's LDT complaint alleges that Appellant is occupying his land, but yet Appellee only seeks a deed. Appellee further attempts to raise the issue of the location of Appellant's house in his counter claim to Appellant's appeal by requesting a remedy of rent payments. However, the only claim before the Court is the claim he raised with the LDT, which was a deed to the land.

Appellant's house may in fact be on Appellee's land that he bought in 2008 from the Beros. However, Appellee needs to bring an action to address this issue and in the process actually prove where Appellant's house is located on his land. If Appellee wishes to pursue further action regarding the location of Appellant's house, he may initiate further proceedings in the Tribal Court.

ORDER

NOW, THEREFORE, upon the decision of this Court, it is determined that the description of the property boundaries described in the Beros' November 15, 1986 Deed, the Shawn Garrow January 23, 1992 Deed, the Shawn Garrow September 28, 2009 Deed, the 2008 Bill of Sale between the Beros and Shawn Garrow, and the testimony put forth, sufficiently establish that Appellee Shawn Garrow purchased the "remaining 2 acres" originally owned by the Beros.

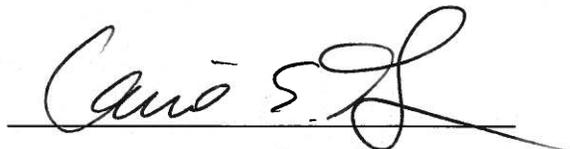
It is **ORDERED** that the Appellee owns the "remaining two acres" he bought in 2008 from the Beros. The Court has determined that the description of the property boundaries described in the Beros' November 15, 1986 Deed are the boundaries of Appellee's land as he now owns all of the property the Beros purchased from Lewis Garrow in 1986.

It is **ORDERED** that the Appellee shall obtain from the Tribal Clerk an amendment to his 1992 Deed which adds the "remaining two acres" to his Deed. The boundary description shall mirror the boundary description from the 1986 Bero Deed, except to reflect any changes as to who owns the lands that border Appellee's four plus (4+) acres. The Lot shall be known as Lot #91-C.

It is **ORDERED** that the Appellee's counterclaims presented in his Answer to Appellant's appeal are dismissed without prejudice.

It is **ORDERED** that the Appellant's claims regarding any liens on Appellee's property are dismissed without prejudice.

Signed by my hand this 9th day of May, 2017.



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