

Saint Regis Mohawk Tribal Court

Newton LaFrance,
Complainant(s)

-v-

Rita Cole,
Respondent(s)

Case No.: 12-LND-00005

**MOTION FOR CLARIFICATION
ORDER**

Procedural History

On August 1, 2016 the Saint Regis Mohawk Tribe's Office of General Counsel, on behalf of the Saint Regis Mohawk Tribal Clerk's Office, filed a motion for clarification of a decision in the matter of 12-LND-00005 LaFrance v Cole issued May 12, 2015 in Saint Regis Mohawk Tribal Court. The motion sought to address a portion of land which was not included in the Court's boundary description for the property that is contiguous to the property that was delineated and defined by the Court as still being a part of the Estate of Theodore LaFrance.

The Court held several hearings with the parties involved in the previously decided land dispute matter in order to gather information regarding the unallocated and undefined portion of land subject to the motion brought forth to the Court.

Motion for Clarification

The manner in which the Court finds itself addressing the unallocated portion of land is unusual as a final decision and order has been issued by this Court for the previously mentioned land dispute matter between these parties. Furthermore, a final decision on an appeal of a Saint Regis Mohawk Tribe Land Dispute Tribunal decision by the Court is final and has no further appellate mechanism.¹

The Court recognizes the finality of the previously issued decision and order in the land dispute matter between the parties. However, the Court finds this motion necessary as the Tribal Clerk is unable to issue any deeds as a small swathe of land was not addressed by the parties in the original case. The motion before the Court to clarify the definition of the unallocated portion of property is related to the original dispute, but is a separate and distinct piece of land.

The Court has inherent judicial authority to decide civil disputes which it has jurisdiction over.² It is therefore within the Court's discretion to take up issues on motion which may fall outside of the standard civil procedure practice. The Court must make it clear that although the land at issue in this motion neighbors the prior land dispute property, this is not a re-opening of

¹ SRMT LDRO XV (B) (2).

² SRMT Civil Code Section VII (A).

the already decided land dispute matter, it is merely the Court clarifying issues brought through this motion.

Location of Property and Improvements

The small swathe of property at issue in this motion is adjacent to the property identified in the Court's decision and order in the previous land dispute matter as land held by the Estate of Theodore LaFrance.³

During the course of the various hearings held by the Court regarding the current motion, testimony was given that indicated the property at issue in this matter was man made and not a part of the original river front shoreline.⁴

This man made parcel of river front property was built upon the shoreline of property that was and is, still held by the Estate of Theodore LaFrance. It is this Court's determination that while this portion was not created naturally, the shoreline of property owned by the Theodore LaFrance Estate was altered to add permanent land to that river boundary. The created portion of land must be included within the boundaries of the parcel of property still held by the Estate of Theodore LaFrance as the property is contiguous to the Theodore LaFrance Estate land and the river frontage is part and parcel to that property. To hold that this man made property belonged to someone other than the Estate of Theodore LaFrance would result in the heirs of the Estate, whomever they are, to no longer have water front access. This would deny them use of their land.

The Respondent, Ms. Cole, argued that the land belonged to her because she created it. But because the original land she built upon was not hers but the Estate of Theodore LaFrance, the land belonged to the Estate. She could possibly be due damages for any expense she incurred building up another's land.

The Respondent testified that the work done to physically alter the shoreline and build up a new permanent swath of land was completed by their family. We note that while this exact scenario may have occurred, no evidence of monetary cost incurred by the Respondent was entered into evidence. Some of the materials used to build up the land came from the land and some were a gift. The labor was done by neighbors and the Respondent's family. No money was paid to build up this property. Therefore, it is not possible for the Court to consider any monetary compensation to the Respondent for the work done to build the shoreline of the Theodore LaFrance Estate property.

Issuance of SRMT Use and Occupancy Deed

Now that the Court has determined the man made swathe of land on the river front of the Theodore LaFrance Estate property does fall within that properties boundaries, the Court must also address the issue brought forth by this motion of who shall be issued an SRMT Use and Occupancy for the Theodore LaFrance Estate property.

³ *12-LND-00005 LaFrance v Cole.*

⁴ Hearing on Motion November 9, 2016.

The Court in its decision in the land dispute matter that was previously before it, determined that the land sale agreement between the Respondent and Theodore LaFrance did not include the portion of land exempted by the Court as being held by the Estate of Theodore LaFrance. This portion of property also now includes the small parcel created on the shoreline of the Theodore LaFrance Estate property.

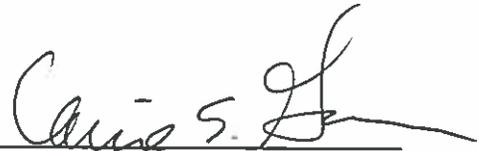
To let this matter linger any further is not in the Court's nor in the parties' interest. The difficulty the Court now faces is that no documentation has ever been given to the Court which defines who the proper owner of this property is, as no one has ever probated the Estate or brought proof to the Court that it has been probated.

Thus, the Court reiterates the fact that the disputed property belongs to the Estate of Theodore LaFrance, which now includes the man made swathe of land. The Court further adds that no SRMT Use and Occupancy Deed should be issued to any individual for the property in the Estate of Theodore LaFrance until said Estate has been probated in Saint Regis Mohawk Tribal Court.

Conclusion

It is therefore ORDERED, that the man made portion of land on the Theodore LaFrance Estate property is to be included within the boundaries of said property; ORDERED that no compensation can be made to any of the parties for the work done to build the shoreline of the Theodore LaFrance Estate property; ORDERED that no SRMT Use and Occupancy Deed for the Theodore LaFrance Estate property should be issued to any individual until the Estate of Theodore LaFrance has been probated in Saint Regis Mohawk Tribal Court.

Signed by my hand this 19th day of November 2016



Carrie E. Garrow
Chief Judge
Saint Regis Mohawk Tribal Court

