
ALLEN ROY ADAMS,

Plaintiff,

14-CIV-00007

DECISION/ORDER/JUDGMENT

MICHAEL GRAY, SR.,

Defendant.

DECISION/ORDER/JUDGMENT

On April 15, 2014, Plaintiff Allen Roy Adams, by and through his attorney Lorraine White, commenced this action with the filing of a Summons with Notice and Complaint alleging “breach of contract” for failure to repay a loan made on or about April 12, 2013, by Plaintiff to Defendant in the amount of \$5000. Plaintiff further alleged that Defendant gave Plaintiff a SRMIR Use and Occupancy Deed for SRMIR lot #551-A “with the intention that a lien would be placed against Lot #551-A in the event that re[payment] of the loan was not received pursuant to the terms of the parties’ agreement.”

Plaintiff demands a judgment “adjudicating that [Plaintiff’s] lien is valid”; that “the interest on the defendant’s property be sold and the proceeds therefrom be applied after payment of the expense of the sale and payment of plaintiff’s lien of \$5000.00...”, plus interest and costs.

On May 21, 2014, the Court received responsive filings on behalf of Defendant Michael Gray, Sr., which were served upon Plaintiff in a timely manner.

On June 24, 2014 Plaintiff filed a Motion for Default Judgment based upon the contention that Defendant had not filed a valid responsive pleading as required by the SRMT Rules of Civil Procedure.

In a Decision dated August 7, 2015, this Court found that Defendant’s responsive submission, filed on May 21, 2014, sufficiently met the definition of an Answer and Counterclaim under the SRMT Rules of Civil Procedure, (RCP), Section XI [Rule 8] (A). In that decision the Court also addressed the majority of 116 separate contentions raised in Defendant’s responsive pleading/counterclaim and dismissed the vast majority of these claims pursuant to SRMT Rules of Civil Procedure Section XVI [Rule 13]. (See Adams v Gray, Motion Decision, August 7, 2015). Defendant’s jurisdictional claims/challenges (numbered 4; 7; 40; 43;44; and 45), remained, subject to proof at trial.

The Parties were afforded an additional opportunity to address the remaining claims/counterclaims or any other pretrial issue and the matter was scheduled for trial. No additional motion relief was sought by either party and the matter proceeded to trial on November 24, 2015, at 10:00 am.

On that date and time Plaintiff appeared with counsel and, over Plaintiff's objection, the Court adjourned the matter for a period of thirty minutes, (as is customary in this court and in many courts), to afford Defendant the "benefit of the doubt". Defendant nonetheless failed to appear.

Plaintiff, noting Defendant's failure to appear, proceeded to argue for a judgment in favor of Plaintiff based upon the claim of breach of contract for failure to repay the loan. Plaintiff restated his demand for the remedies of a lien on SRMIR Lot #551-A, based upon Defendant's failure to repay the loan in a timely manner AND an award of Defendant's property, SRMIR Lot #551-A, citing a precedent set by this Court, (Potter, J), in *Terrance v Oakes*, 14-CIV-00010

The Court declined to render a final judgment at that time, preferring to avail itself of the thirty day period permitted for the issuance of an order in a civil proceeding. See RCP Section XXII [Rule 19].

The Rules of Civil Procedure, Section XIII [Rule 10] shall be interpreted to address a party's default at trial. Subsection (B) states that:

"[i]n granting a default judgment, the Judge may refuse to grant relief requested by Plaintiff if granting the relief would be contrary to tribal Law or would be unjust."

As noted, the Defendant Michael Gray did not appear on the scheduled trial date and this failure to appear constitutes a default. However, on November 25, the day after the scheduled trial date, Defendant did appear at the Tribal Court at a time of day which would be consistent with Defendant's explanation of a misunderstanding regarding the date of trial. On November 25, 2015, Defendant filed with the court a handwritten submission which explained his failure to appear and made other statements which are relevant to a final determination in this matter. A copy of Defendant's submission was sent to Plaintiff who was given an opportunity to respond.

When Defendant appeared on November 25 no final order had been rendered in this matter and the Court was still in deliberation on Plaintiff's default motion. The Court notes that even if a final judgment had been rendered in this matter on November 24, the RCP Section XXII [Rule 20] provides a party an opportunity to request a "rehearing, reconsideration, correction, vacation or modification of the judgment" no later than ten (10) days after the judgment is final. In this case if a final judgment had been entered, the Court would nonetheless be permitted to consider Defendant's written submission within 10 days of the judgment.

Because no final judgment was rendered and the Court remained in deliberation, the Court deems it proper to consider Defendant's written submission. In that submission Defendant acknowledges that "if I had the money right now I would pay back right away..." and states that "there was no verbal agreement that [Plaintiff] could take the land...". Defendant also states that he "went Bank[rupt]" on November 20th in Plattsburgh, NY. (Defendant's November 25 submission)

The Court finds that Defendant Michael Gray Sr., did enter into an oral agreement to borrow \$5000 from the Plaintiff on April 12, 2013, "for bail for [his] son who lost because of some reason" and that Defendant did not, at any time, repay the \$5000.00 owed to Plaintiff, thereby committing a breach of that contract.

Accordingly, it is hereby

ORDERED and ADJUDGED that Plaintiff ALLEN ROY ADAMS' motion for Default Judgment is GRANTED and Plaintiff Adams is awarded the amount of five thousand dollars, (\$5,000.00), which Defendant Gray is ORDERED to pay to Mr. Adams. The Court will decline to order any costs upon consideration of Defendant's "bankrupt" status. SRMT RCP Section XXIV [Rule 21].

As to Plaintiff's demands made in the Complaint, and at the conclusion of the trial that: (a) a lien be placed on Defendant's "Lot 551-A" and, (apparently in the conjunctive), (b) that "the interest on the defendant's premises owned and occupied by the defendant be sold", the Court notes a concerning inconsistency in the description of the property offered as "collateral". In the Complaint paragraph #3 Plaintiff states Defendant "further provided the plaintiff with an original St Regis Mohawk Tribe Use and Occupancy Deed for Lot #551-A with intention that a lien would be placed against Lot #551-A in the event that repayment...was not received...". In Complaint paragraphs # 5 and 9, Plaintiff describes the Lot offered as "collateral" as "Lot 551-A-3",

This ambiguity in the identification of the property which is the subject of this demand cannot be overlooked. This is particularly true where there exists no writing to substantiate the existence of a purported contract to transfer an interest in land. Common law principles embodied in the 'Statute of Frauds' require that agreements for the sale or exchange of any real estate be in writing. This requirement is clearly intended to avoid the type of confusion which exists here.

Civil Code Section V "Applicable Law", sets forth a prioritized list of bodies or principles of law to be applied in civil disputes over which the Tribal Court has jurisdiction. First on this list in sub-section (1) are such portions of the Constitution of the United States and federal law....which recognize Indian sovereignty, self-determination, and self- government, which render many state and federal laws inapplicable..." Sub-section (A)(3) permits the Court to apply "Unwritten Mohawk laws, and written and unwritten Mohawk customs, traditions and practices, whenever such Mohawk laws, customs, traditions or practices are found by the Mohawk Court to be (i) "well-established within the Tribe and recognized by tribal members, (ii) applicable or relevant to the dispute in issue, and (iii) not inconsistent with due process and other rights established under Tribal law.


Whether in reliance upon the common law, as codified in the Statute of Frauds or the Uniform Commercial Code, (both requiring a writing for the transfer of land), or upon unwritten customs, traditions and practices, or simply upon a determination as to what is "just", this Court cannot and will not authorize the sale of Defendant's property to satisfy this judgment. This case is distinguishable from *Terrance v Oakes* for several reasons. As noted in this case there exists no writing which speaks of the land in issue, only a "receipt" dated April 12, 2013, attesting to a "loan for bail money for his son", received from Allen R. Adams by Michael Gray. In *Terrance*, both parties executed a Promissory Note clearly setting forth the parties agreement as to the terms of a loan; the terms of repayment and an explicit agreement that "if any payment obligation ...is not paid when due, the 'Borrower' agrees to immediately transfer and convey legal title to all of that real property..." specifically and particularly described as a particular tribal lot."

Under the circumstances in this case, and upon consideration of RCP Section XIII [Rule 10]B, the Court finds that the default relief sought in the form of a determination that a lien is valid" and that

“the interest on the defendant’s property be sold and the proceeds therefrom be applied after payment of the expense of the sale and payment of plaintiff’s lien of \$5000.00...” would be unjust and in contravention of SRMT law, and hereby ORDERS that this relief shall be DENIED.

This constitutes the Decision, Order and Judgment of the Court.

Entered by my hand this 28th day of December, 2015.



Peter J. Herne, Chief Judge
Saint Regis Mohawk Tribal Court

