

The Appellant requests the Court to use the Federal Rules of Civil Procedure.⁷ When reading the SRMT law together, it is clear the Court may apply interpretation of like provisions in the Federal Rules of Civil Procedure in construing SRMT Laws and may modify or direct rules or procedures as the Court deems appropriate.⁸ As Section XXV of the SRMT Rules of Civil Procedure allows for the use of the Federal Rules of Civil Procedure, this Court hereby allows for the Appellant's motion to be considered requesting partial summary judgment in accordance with the guidelines proscribed in Rule 56 of the Federal Rules of Civil Procedure.

In ruling on a motion for summary judgment, the function of the Court is not to decide the issues of material fact, but rather to determine whether such issues exist. If a genuine material issue exists it must be left to a later determination. The party seeking summary judgment has the burden of showing the absence of any genuine issue as to all the material facts,⁹ which under the applicable principals of tribal law entitle the moving party a summary judgment as a matter of law. The party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact.¹⁰

The Appellant asks this Court to take into account that at the time the 1962 Agreement was entered into "land ownership" was based on custom and tradition. The Appellant further contends it was common for tribal members that held deeds to regularly transfer land interests among themselves using various written instruments. The Appellant argues the Articles of Agreement constitutes a deed because it contains all of the requirements of a conveyance of title. Furthermore, the Appellants argue the Articles of Agreement constitutes a "Bill of Sale" pursuant to tribal law and, therefore, is equally as binding as a Deed. For these reasons, the Appellant asks the Court to determine the Articles of Agreement constitutes a binding deed under Mohawk law and grant partial summary judgment.¹¹

The Appellee contends the Appellant is making "broad and sweeping" declarations of tribal customs regarding land transactions. Further the Appellee argues under tribal law recorded land transaction documents are clearly distinguished by different titles such as either "deeds" or "sales/purchase agreements" or a "bill of sale" and are not used interchangeably. Moreover the Appellee raises the argument Agnes J. Bero was a non-tribal member and the purchase agreement memorialized the sale of property, but it was not an official tribal deed. Furthermore the Appellee contends that Agnes J. Bero did not initiate and complete the overt act of formally transferring her

⁷ *Id.* at 4.

⁸ See SRMT Rules of Civ. Procedure § XXV.

⁹ Fed. R. Civ. P. 56(a) ((a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT (A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion).

¹⁰ The Court is guided by the analysis set forth in a letter written by former SRMT Chief Judge Peter J. Herne, dated August 13, 2012, addressing a question posed by a party regarding a motion for summary judgment in the case of *Sample Lumber v. Arrow White*, 12-CIV-00007, available at, http://www.srmt-nsn.gov/_uploads/site_files/Sample_Lumber_v_White_12-CIV-00007.pdf.

¹¹ See Appellant Saint Regis Mohawk Tribe's Memorandum of Law in Support of Motion for Partial Summary Judgment, p. 5-8.

tribal property to all of her three children. Therefore, the Appellee argues that the transaction between the parties was “nothing more or less” than a “record of sale.”¹²

Rule 56 of the Federal Rules of Civil Procedure requires a finding that the moving party, the Appellant, has shown that “it is entitled to a judgment as a matter of law.” In the case at bar, this requires a finding of legal sufficiency that the 1962 Articles of Agreement constitutes a “deed” pursuant to Mohawk law. Partial summary judgment is only permitted if the established record indicates there is no genuine issue of material fact. As the Court of second instance for those seeking to appeal LDT final decisions, we take into account the record established by the hearings conducted before the LDT and the information gathered from the hearings conducted before this Court.¹³

After examining the relevant tribal law, land purchasing customs and arguments raised by the Parties the Court is convinced that Agnes J. Bero status as a non-tribal member demonstrates a genuine material issue in assessing whether the 1962 Articles of Agreement constitutes a Deed pursuant to Mohawk Law.¹⁴ The Court has determined the Appellant, as the moving party, has failed to carry its burden and demonstrate that there is an absence of a genuine material issue.

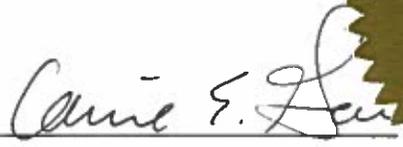
ORDER

Therefore, it is **ORDERED**;

Based upon the aforementioned reasons, this Court **DENIES** the Appellant’s motion for partial summary judgment. In assessing the property ownership of Lot #85, the Court has determined that the question of tribal membership is an important issue in this case. The Court orders the Appellee to submit a brief addressing the issue created by Agnes J. Bero and her three children’s lack of tribal membership in the Saint Regis Mohawk Tribe on May 2, 1962, when the agreement was entered into by Solomon Gorrow and Agnes J. Bero, by **January 13, 2017**.¹⁵ The Appellant’s response must be submitted by **January 27, 2017**.

The parties may request the Court to hear oral argument on this issue.

Entered by my hand this 16th day of December, 2016.


Carrie E. Garrow
Chief Judge
Saint Regis Mohawk Tribal Court



¹² See Reply Memorandum in Opposition to Appellants Motion for Partial Summary Judgment, p. 2-5.

¹³ SRMT LDRO § XV.B (1) & (2).

¹⁴ The Court notes the issue of Agnes J. Bero’s lack of membership at the time the transaction was entered into was not discussed until the Final Hearing conducted by the LDT. See Final Hearing Transcript, p. 26 – 31 (Sept. 24, 2014).

¹⁵ The Tribal Clerk’s records indicate Agnes J. Bero, Leroy Bero and John Bero were enrolled in 1985, Carol (Bero) Jacobs was enrolled in 1988 and John Bero, Sr. was not enrolled in the Saint Regis Mohawk Tribe.