

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

Mohawk Distribution LLC,

Complainant

Case No.: 15-CIV-00007

v.

DECISION AND ORDER

**Alexander Garrow III,
individually and doing
business as BIG BOY'S, and BIG BOY'S,**

Respondent(s)

Procedural History

On May 19, 2015 the Complainant, Mohawk Distribution, LLC, by its attorney Virginia A. Gettmann, filed a complaint in Saint Regis Mohawk Tribal Court against Alexander Garrow III and Big Boy's seeking monetary relief in the amount of \$58,875.00 for non-payment on an agreement for goods and merchandise consisting of American Brave cigarettes. The Court issued a 20 day civil summons on June 5, 2015 to accompany the complaint.

On June 18, 2015 a proof of service was filed with the Court affirming that the complaint and civil summons were served up on the Respondents in this matter on June 12, 2015 via personal service.

On July 8, 2015 the Respondents, Alexander Garrow III, individually and doing business as Big Boy's, by and through his Attorney Thomas B. Wheeler, filed an answer with the Court denying all allegations for money owed. A pretrial conference was held in Saint Regis Mohawk Tribal Court on February 5, 2016 and September 20, 2016 at which both parties were in attendance.

The Court scheduled a trial in this matter for October 24, 2016 with notice sent via certified mail to the parties. A trial was held on that day and the Court reconvened on November 15, 2016 for the conclusion of the trial. Both parties were in attendance for the proceedings.

DISCUSSION

In the cause of action, the Complainant, alleges the Respondents have an outstanding debt in the amount of \$58,875.00 for tobacco products, consisting of American Brave cigarettes that were ordered and delivered on or about June 14, 2013 to the principal place of business of Big Boy's.

The Complainant requests the Court to grant an Order in the sum of \$58,875.00 with interest and the legal costs accumulated from this action.

Applicable Law

The Saint Regis Mohawk Tribe Civil Code (hereinafter SRMT Civil Code) delineates the applicable law for civil disputes and the order in priority of which they should be applied. The SRMT Civil Code allows for application of “[g]enerally recognized principals of the law of contracts, as reflected by the most recent Restatement of Contracts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine.”¹ There are no written Mohawk laws, which would supersede the use of general principals of contract law as recognized by the most recent Restatement of Contracts.

The Court will use the most Restatement of Contracts not as binding law, as it is not binding on the Tribe, but rather as persuasive authority to resolve this matter, as there is no written Mohawk law that addresses this issue.

Findings of Fact

The Complainant, Mohawk Distribution, LLC, bears the burden of proof by preponderance of evidence.² Preponderance of the evidence is met “by providing superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”³

The Court finds the following facts were proven by a preponderance of the evidence.

1. The Complainant, Mohawk Distribution, LLC, was and is a foreign limited liability corporation, doing business on the Saint Regis Mohawk Reservation, with a principal place of business being located at 26 Eagle Drive, Hogansburg, New York 13655.
2. The Respondent, Alexander Garrow III, individually and doing business as Big Boy’s, was and still is a resident of the Saint Regis Mohawk Reservation.
3. Big Boy’s was and continues to be an unincorporated business entity with a principal place for the transaction at issue being located on the Saint Regis Mohawk Reservation.
4. The business protocol between the Complainant and the Respondent involved the Respondent or a Big Boy’s employee contacting the Complainant’s customer service in order to place an order for goods and merchandise. The Complainant was responsible for acquiring, handling, and delivery of the merchandise and products to the principal place of business of Big Boy’s. The order was memorialized in an invoice, prepared by the Complainant and signed by the parties at the time of the delivery. The Complainant was required to collect the applicable tribal taxes. The Respondent was required to pay the amount stated on the invoice before ordering more products and merchandise from the Complainant.

¹ SRMT Civil Code § 5 (4).

² SRMT Rules of Civil Procedure, Rule 17 (A) – (B).

³ *Id.* at Rule 17(B).

5. The manner in which business has been transacted between the parties show prior occurrences in which a Big Boy's employee did not sign an invoice at the time of the delivery and/or the Complainant failed to collect the applicable tribal tax.
6. On June 14, 2013 the Complainant delivered, at the Respondent's request, goods and merchandise consisting of American Brave cigarettes for the value price of \$77,775.00 to the principal place of business of Big Boy's. The American Brave cigarettes were accepted and retained by the Respondent.
7. The Respondent has made a partial payment in the amount of \$18,900.00 on the agreed upon sale price on or about July 19, 2013.
- ~~8. In a discussion between Brandon Tarbell and the Respondent, the Respondent acknowledged the disputed agreement. The Respondent agreed to the proposed payment arrangement with the Complainant.~~
9. The Respondent was named a Defendant in a case brought forth by *Philip Morris* involving the sale of counterfeit cigarettes at the principal place of business of Big Boy's. The Respondent in a Deposition acknowledged he owed the Complainant money on an existing account.
10. There is no evidence submitted that the Respondent did not make the partial payment in the amount of \$18,900.00.
11. The Complainant, by and through its general counsel, made repeated demands to the Respondent for payment of the remainder of the amount owed of \$58,875.00.

Legal Conclusions

In order to address the merits of the action, it must be first determined that the Court possesses jurisdiction over this matter. The standard put forth by Mohawk laws that define this Court's jurisdiction in civil matters are articulated in the SRMT Civil Code Section II. The SRMT Civil Code Section II states in relevant part that "[t]he Tribal Court shall have civil jurisdiction over civil disputes [d]isputes involving contracts (i) negotiated, executed, or performed in Mohawk Indian Country."⁴

In regards to the case at bar, the dispute at issue involves a contract that was entered into by the parties within Mohawk Indian Country. Furthermore, the products were delivered to a business located within the Saint Regis Indian Reservation. The foregoing reasons establish that this Court possesses jurisdiction over this matter.

For a contract to exist there must be a manifestation of mutual assent to an exchange that ordinarily comes in the form of an offer or proposal by one party followed by an acceptance by the other party.⁵ In cases where neither offer nor acceptance can be clearly identified and the moment contract formation cannot be readily determined, mutual assent can be established by the course of conduct between the parties.⁶

⁴ SRMT Civil Code § II (B).

⁵ RESTATEMENT (SECOND) OF CONTRACTS § 22(1) (1981).

⁶ *See id.* RESTATEMENT (SECOND) OF CONTRACTS § 22 cmt. b (Assent by course of conduct. Problems of offer and acceptance are important primarily in cases where advance commitment serves to shift a risk from one party to the

At issue in this case is the alleged sale of American Brave cigarettes for the value price of \$77,775.00. Complainant's witness testified that the goods and merchandise, consisting of American Brave cigarettes, were delivered to the principal place of business of Big Boy's. The Respondent testified that no such order was placed or delivered to Big Boy's. The Respondent testified that this is proven by the lack of his or another Big Boy's signature on the invoice. As noted in the factual findings and articulated by the parties' testimony, there have been prior instances in which the Respondent or a Big Boy's employee did not sign the invoice at the time of the delivery and/or the Complainant failed to collect a tax on the tobacco products. Further, the Complainant entered evidence of a receipt of a partial payment, made by the Respondent, in the amount of \$18,900 for the debt owed. Although the Respondent testified that a partial payment was not made toward the alleged amount owed, he offered no evidence to support this claim such as providing the Court with a bank account record or a business record. In light of these findings, the Complainant has proven by preponderance of evidence that the disputed transaction occurred.

In the case at bar, the Complainant and the Respondent had a longstanding business relationship. The business protocol was not memorialized in a formal contract. Rather, the parties operated by the established course of conduct. Here the "offer" occurred when the Respondent, doing business as Big Boy's, or a Big Boy's employee placed an order for the American Brave cigarettes by contacting the Complainant's customer service. The "acceptance" of the "offer" occurred when the Complainant, delivered the products to the principal place of business of Big Boy's. As stated in the factual findings of the Court, the "acceptance" requirement, as established by the prior business dealings of the party, did not mandate the invoice to be signed by the Respondent or a Big Boy's employee. As indicated by the parties' testimony, it was an ideal business practice for the invoice to be signed by the Respondent or a Big Boy's employee at the time of delivery. However, as demonstrated by the prior business dealings, a signature was not mandatory to conduct business or to constitute acceptance of the products and merchandise.

In this case, there was manifestation of mutual assent to the exchange by the parties. The Court finds by preponderance of evidence there is an existing contract between the parties and, therefore Alexander Garrow III, individually and doing business as Big Boy's, breached his obligation by not paying the money owed for the American Brave cigarettes.

ORDER

The Court hereby finds the Respondent breached his contractual obligation by not paying the debt owed and **ORDERS** the following:

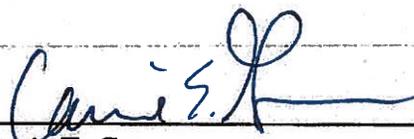
1. The Respondent is hereby **ORDERED** to pay the Complainant \$58,875.00 for the remaining amount owed for the American Brave cigarettes. The Respondent is **ORDERED** to reimburse the Complainant the court filing fee used to initiate this action.

other, as in sales of goods which are subject to rapid price fluctuations, in sales of land, and in insurance contracts. Controversies as to whether and when the commitment is made are less likely to be important even in such cases once performance is well under way. Offer and acceptance become still less important after there have been repeated occasions for performance by one party where the other knows the nature of the performance and has an opportunity for objection to it. "...").

2. Due to the lack of evidence and testimony put forth, by the Complainant, to guide the Court of standard business interest rates imposed on this type of transaction the Complainant's request for interest is **DENIED**.

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

Signed by my hand this 13th day of January, 2017.



Carrie E. Garrow
Chief Judge
Saint Regis Mohawk Tribal Court

The parties have 30 days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals.

