

**ST. REGIS MOHAWK TRIBAL COURT
IN AND FOR THE ST. REGIS MOHAWK TRIBE**

Cecilia B. Cook, Carmen Cook,
Charlotte Cook, Janet Caldwell
And Dorothy Cole,

Appellants,

-vs-

Raymond Oakes,

Appellee.

Case No. 15-LND-00003

DECISION AND ORDER

**PRESENT: HON. BARBARA R. POTTER
Associate Judge**

This matter comes before the Court by the filing on March 5, 2015, of a Notice of Appeal of a Decision of the St. Regis Mohawk Tribe Land Dispute Tribunal (SRMT LDT or Tribunal) dated February 3, 2015. That Decision "upheld" the St. Regis Mohawk Tribal Use and Occupancy Deed of Appellee, Raymond Oakes, dated February 13, 2006. The Decision of the SRMT LDT was rendered after two hearings were conducted on January 14, 2015, and January 28, 2015. Transcripts of those hearings were provided to this Court and have been reviewed. Counsel for Appellants filed his Brief on January 14, 2016, and counsel for Appellee filed her Reply on February 3, 2016. The matter came on for argument before the Court on March 22, 2016.

Appellants, by their attorney, Michael Rhodes-Devey, Esq., argue that SRMT LDT erred in failing to locate a six-acre parcel conveyed by Bill of Sale dated August 22, 1949, from George Laffin to Christie Herne; in failing to obtain the research papers of one Paul Doxtator from the St. Regis Mohawk Tribe (SRMT) clerk's office; and in failing to grant additional time to Appellants herein to obtain counsel, a request that was made

by Appellants after they proceeded *pro se* at the initial hearing and just prior to the second hearing.

Appellee, by his attorney, Lorraine M. White, Esq., argues that the Decision of the SRMT LDT must be affirmed. He argues that it is not the duty of the SRMT LDT to identify and locate specific property; that it is not the duty of the SRMT LDT to obtain specific records or research except as provided by the Tribal clerk's office in accordance with SRMT Land Dispute Resolution Ordinance (LDRO); and that although Appellants were provided with the opportunity to obtain counsel prior to the first hearing and thereafter, they chose knowingly to proceed *pro se* until an untimely request for an adjournment of the final hearing was made just prior to that hearing.

The SRMT LDRO provides that the SRMT LDT is vested with the authority to, and for the sole purpose of, settling land disputes which arise on the Reservation, and it possesses the authority to hear all aspects of a land dispute case which may include receiving written or oral testimony and receiving document submissions. *SRMT LDRO Sections VII(A) and (B)*. The Tribal clerk's office is responsible for docketing any claims and for transferring such claims to the SRMT LDT. *SRMT LDRO Section XIII(A)*. The Tribal clerk's office is also required to "research and retrieve any and all known documents held and maintained by the Tribal Clerk's Office with respect to the land dispute, and add certified copies of these documents to the case file. This may include . . . interpretation of discovered documents, . . . and whatever else competent, relevant, and necessary for the Tribunal to render its decision" It is also required to provide

to the complainant and the respondent copies of materials provided to the Tribunal. *Id.* *Section XIII(B)*. The Ordinance then provides that the LDT shall hold two hearings, the initial one for the parties to appear and submit evidence, both written and oral. The initial hearing is a "fact gathering" meeting. All evidence is supposed to be presented at that time. The final hearing is for the purpose of final arguments and "(n)o new evidence should be submitted at the Final Meeting." *SRMT LDRO Sections XIII(C) and (D)*.

The initial hearing by the SRMT LDT occurred on January 14, 2015. The parties acknowledged receiving copies of the materials provided to the Tribunal by the Tribal clerk's office. At that hearing the Tribunal heard the unsworn testimony of Carmen Cook, Dan Cook, Charlotte Cook, Dorothy Cole, and Janet Caldwell. Ms. White, counsel for Mr. Oakes, also answered questions directed at her by the Tribunal. All material was to have been presented to the Tribunal at that initial hearing.

The final hearing was held on January 28, 2015. Despite the fact that the SRMT LDRO provides that no new evidence should be submitted at the final hearing, someone, either the Tribal clerk's office or the Appellants, it is not clear which, produced three additional documents for consideration by the Tribunal: a bill of sale from George Laffin to Christie Herne dated August 22, 1949, attached to a document entitled "Research for Carmen Cook"; a notarized statement signed by Rita Swamp; and a notarized statement signed by Dawn LaFrance. *See Final Hearing transcript pgs. 5-6.*

Without objection from the Respondent/Appellee those documents were also considered by the Tribunal.

Appellants argue that the Tribunal had an obligation to obtain the original research which formed the basis of the Tribal clerk's office's production of documents (the Doxtator research). The Tribal clerk's office has the burden of producing all known documents with respect to the land claim. All information provided by the Tribal clerk's office to the Tribunal was also provided to the Appellants and Appellee as acknowledged by them at the initial hearing. The burden of proof with respect to all land disputes lies in the "party initiating a land dispute." *SRMT LDRO Section V(D)*. In this case, that is the Appellants herein. They were aware of all of the documents produced by the Tribal clerk's office to the Tribunal. Appellant Carmen Cook is the one who initiated the research by Doxtator. Upon Appellants' review of the documents submitted by the clerk's office to the Tribunal, they should have been aware of any claimed missing documentation. It is their burden to make sure the Tribunal has all the information and documentation they wish considered. Indeed, they did make sure that additional evidence/documents were presented to the Tribunal at the final hearing. And despite the claim by the Appellants that the Tribunal did not have all of the Doxtator research, and despite the fact that Appellants should have made sure that was presented to the Tribunal if they wished to have it considered, it appears from the Tribunal Decision that the Doxtator research notes were considered. The LDT stated in

its Decision "According to Tribal records and research completed for Carmen Cook allegedly by Paul Doxtator for the Tribal Clerk's office In an attempt to identify the history and location of the six acre parcel in dispute, we can only rely on the notes provided by the researcher." *SRMT LDT February 3, 2015 Decision pg. 6*. In fact, the Decision of the SRMT LDT indicates that it received and considered numerous pieces of evidence, including 11 separate documents provided by the Tribal clerk's office.

Appellants argue that the Tribunal had an obligation to "locate" the six-acre parcel. The Tribunal had before it all of the documents provided by the Tribal clerk's office as well as sworn statements provided by Appellants and unsworn testimony of Appellants. Based upon all of that, the Tribunal was unable to determine the location of the six-acre parcel transferred to Christie Herne in 1949. Appellants argue that the 1949 Bill of Sale was acknowledged as binding. That is true. But then Appellants argue that once the Tribunal finds a Bill of Sale binding it has the obligation of determining where the land that is the subject of the Bill of Sale is located. It is not incumbent upon the Tribunal to locate any parcel of land. The Tribunal's job is to determine land disputes. It is always incumbent upon the party initiating a land dispute (in this case the Appellants) to carry the burden of proof throughout the entire proceeding. That burden does not transfer to the decision maker. Appellants were unable to prove the location of the six acres transferred by the 1949 Bill of Sale and to carry that burden of proof.

Lastly, Appellants argue that they should have been afforded an adjournment to obtain counsel, and by reason of the denial thereof were denied their due process of law. Section VII(B) of the SRMT LDRO grants the Tribunal the authority to grant extensions of time as may be requested by one of the parties, but it does not require any such extensions. Appellants (at least Carmen Cook) in 2013 apparently commissioned some research by Doxtator to locate a six-acre parcel of land deeded to Christie Herne in 1949, which was subsequently transferred from Herne to John A Cook June 11, 1977. That research was identified in the Tribunal's evidence list as "Undated Tribal Document 'Research for Carmen Cook' allegedly prepared by the Tribal Clerk's Office in 2013, identifying twenty documents in the Tribal Clerk's Land files". Subsequently, Appellants filed their original claim with the SRMT LDT on May 14, 2014. Respondent Oakes, by his attorney Lorraine White, filed an answer to the complaint/claim on July 2, 2014. Appellants became aware, at least in July 2014 that Respondent/Appellee was represented by counsel.

The Tribunal held the initial hearing on January 14, 2015, some eight months after the filing of the original complaint and six months after Appellants became aware Appellee was represented by counsel. Furthermore, the initial hearing had been scheduled for October 15, 2014, but was adjourned at the request of Appellee's attorney, giving further notice to the Appellants that Appellee was represented by counsel. At the initial hearing, despite being aware that Appellee was represented by

counsel, Appellants chose to proceed *pro se*. Counsel for Appellants agrees that his clients had not sought legal counsel before the initial hearing, but when they went to the hearing and found Ms. White, a "very able attorney" who was able to speak in "legal jargon", there, and after it being recommended by the general chair of the Tribunal that they consult an attorney, complainants decided to seek counsel. Admittedly, at that point with the final hearing being scheduled for January 28, there was not much time for Appellants to obtain counsel. However, they did not seek an adjournment to get counsel at the conclusion of the January 14 hearing. Instead they waited until "late Friday," January 23, to obtain a postponement of the final hearing. In its discretion, the Tribunal denied the adjournment stating "they are the party that initiated the action over eight months ago and they've had adequate time to prepare for this hearing." See *Final Hearing transcript pg. 2*.

Based upon the foregoing, the Court finds that the SRMT LDT did not err in its Decision, and further that the Appellants were not denied their due process of law.

NOW, THEREFORE, upon the Decision of this Court, it is

ORDERED that the Decision of the St. Regis Mohawk Tribe Land Dispute Tribunal dated February 3, 2015, be, and the same hereby is, **affirmed** in its entirety.

Dated this 2nd day of June, 2015


Barbara R. Potter, Associate Judge
St. Regis Mohawk Tribal Court

