

Factual Findings

The parties entered into an agreement dated November 26, 2006 which stated:

"I agree to allow my brother Arrow White to build and rent the 2nd floor on my property located at 254 St. Rte 37 in exchange for work on property."¹

This agreement was signed by both parties and witnessed by a separate individual. The agreement was not notarized. The building was completed in the fall of 2007. Respondent paid for materials and labor for the first floor space and the Complainant paid for the materials and labor for the second floor space.

Complainant leased the second floor to several tenants from the fall of 2007 until January 2013. The Complainant collected rent for the second floor of the Respondent's property for these years.

The Complainant in his testimony and evidence to the Court stated that he was not reimbursed for materials and labor which he provided to the Respondent in constructing the rental dwelling on the second floor of his property.

In January 2013 the Complainant went to jail and the Respondent took items out of his house, which included a large amount of paperwork. Upon his release from jail the Respondent prohibited him from accessing the second story and Complainant received no rental monies from the time he went to jail until the present time.

Complainant provided one rental contract between himself and Wanda Johnson. The monthly rent for the second floor space was \$800.

The Complainant asked the Respondent for rent from January 2013 until the present. The amount of rent for January 2013 until the date of the amended complaint is \$34,400.

The Complainant spent \$13,425.46 for materials during the construction of the second floor space. Complainant also spent \$14,767.50 for labor in the construction of the second floor rental space. Complainant also estimated that he spent approximately \$20,000 of his own time on constructing the building, but had no documentation to support this estimate.

Legal Conclusions

The Courts jurisdiction in civil matters are articulated in the SRMT Civil Code Section II. The Code states,

"[T]he Tribal Court shall have civil jurisdiction over civil disputes... [d]isputes involving contracts (i) negotiated, executed or performed in Mohawk Indian Country."²

¹ Agreement November 26, 2006.

² SRMT Civil Code § II (B).

The dispute at issue involves a contract that was entered into by parties within Mohawk Indian country. Furthermore the contract involves property located within the Saint Regis Mohawk Indian Reservation. The foregoing reasons establish that this Court possesses jurisdiction over this matter.

For a contract to exist there must be an offer, acceptance and consideration.³ Moreover, the agreement needs to be reasonably clear and certain as to its terms so the parties' full intention can be ascertained to a reasonable certainty.

Here the parties entered into an agreement that contained consideration.⁴ The Respondent offered to hire the Complainant to build a one story building. The Complainant counteroffered with building a two story building. The Respondent would pay for the first story and the Complainant would pay for the materials and labor for the second story and then be allowed to rent out the second story. The Respondent accepted the counteroffer and the agreement was written down and signed by both parties and a witness.

The challenge is the terms of the contract.⁵ It is clear the parties intended to allow the Complainant to build the second story, at his own cost, and then he would be allowed to rent it out.⁶ However, the agreement is silent as to the length of the contract and ownership of the second story. Complainant testified that he believed there was no time limit on the contract. Respondent failed to appear and offer his intent. However, Complainant testified that the Respondent told him that he intended the contract to only last five years. But the Complainant countered this intent by stating that he would not enter into a five-year contract because this would only allow him to essentially be reimbursed for the costs and not make any profit from renting out the second story of the building.

Despite the lack of specifying these terms, the Court finds there was a contract between the parties, as there was an offer, acceptance and consideration. However, the vagueness of these terms impacts the remedies available to the Complainant.⁷ Given that there is no term limit in the written contract, and the parties could have written it in there had they intended to, the Court finds there was no specific end date to the contract. Thus, the Court finds that the Respondent by refusing to give the Complainant any of the lease money while the Complainant was in jail and by refusing him access to the property to rent it out upon his release from jail, the Respondent breached the contract. The Respondent continues to breach the contract by refusing to allow the

³ In deciding this matter the Court is following generally recognized principles of Contracts, as recognized by the most recent Restatement. *See* SRMT Civil Code § V (A)(4) ([Applicable Law] Generally recognized principles of the law of contracts (including quasi-contracts or imperfectly formed invalid contracts), as reflected by the most recent Restatement of Contracts in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine.)

⁴ RESTATEMENT (SECOND) OF CONTRACTS § 17 (1981) (“...” [T]he formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.)

⁵ *See id.* § 1 (A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.)

⁶ The Court notes the agreement was signed by both parties, both parties performed, and the building was completed in the fall of 2007. *See id.* § 18 (Manifestation of mutual assent to an exchange requires that each party either make a promise or begin or render a performance.) (emphasis added).

⁷ *See id.* § 33(2) (The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy.)

Complainant access to the second story and lease out the second story. Thus the Court turns to remedies available to the Complainant for this breach of contract.

The Complainant places before the Court a request for two different types of remedies, a remedy for the past breach of the contract and a remedy for continued future breach of the contract.⁸ Turning first to remedies for the loss of past rent. Respondent breached the contract by refusing to allow the Complainant to collect the rent or access the second floor from January 2013 until now. The Complainant testified at trial that the amount of back rent was \$32,800, due to receiving \$800 a month. Upon further calculation by the Court the amount of back rent from January 2013 to the date of the amended complaint filed with the Court in July 2016 is actually \$34,400. This was not contradicted by the Respondent due to his failure to appear at the scheduled trial, even though he was properly notified by the Court of the trial date. Thus, the Court finds the appropriate remedy for past breach of the contract to be \$34,000.

The Complainant has also requested relief for his future interest in renting the apartment. As noted above, is unclear from the contract itself as to who owns the second floor of the building. The agreement only grants Complainant the right to build and rent the second floor space. Even though the second story was built by the Complainant, it is not chattel.⁹ It is affixed to the Respondent's building which is upon the Respondent's property.¹⁰

While considering the other request for relief in the amended complaint, the Court is assisted by the Complainant himself. In the amended complaint the Complainant suggested as several possible methods of relief, two of which would require access to the building. In the amended complaint and in testimony offered at trial, the Complainant has requested that he be granted future access to the rental revenue generated by the rental space which he constructed. In the alternative he requested that he be allowed to, "...allowed to in the unit and take out all my material in 2nd floor i.e. = flooring, insulation, windows, cabinets, bathroom fixtures, shower toilet and vanity, wiring, doors and 2nd floor porch and stairs."¹¹ To grant Complainant his request to access the apartment may only rekindle the dispute. However, Complainant is entitled to compensation for his future interest in the rental.

For the sake of equity in this matter the Court has determined that ordering the Respondent to either forward the rental payments collected by himself from the tenant, or allowing the Complainant to enter the property and collect rental money from the current or future tenant is not only unrealistic, but potentially lead to future conflicts down the road.

The testimony of the Complainant at trial regarding the amount of personal capital expended to construct the rental dwelling on the Respondent's property was not contradicted by the Respondent via his failure to appear at the scheduled trial, even though he was properly notified by the Court of the trial date. The Court finds that the appropriate remedy for his future interest is

⁸ See *id.* § 346 (The injured party has a right to damages for any breach by a party against whom the contract is enforceable unless the claim for damages has been suspended or discharged.)

⁹ See *Thomas v. Votra*, 15-CIV-00012, 2 (Jan. 27, 2016) (Personal Chattel is defined as Moveable things. Personal property which has no connection with real estate) (citing to Black's Law Dictionary Abridged Sixth Edition.)

¹⁰ Plaintiff testified that the real property is owned by the Respondent.

¹¹ Amended Complaint July 8, 2016.

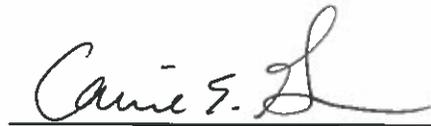
his request for reimbursement of the costs of the materials provided out of his own pocket for the construction of the second floor rental space.

This leaves the Court with the inevitable conclusion that due to the uncontroverted testimonial evidence of the Complainant regarding the costs of the materials and labor for the rental space, the Complainant must prevail in his requested relief for materials and labor in the amount of \$28,192.96. This includes the documented costs for materials and labor, but does not include the Complainant's labor as this was undocumented and he could only provide an estimation as the number of hours the Complainant worked on the second story.

Conclusion

Therefore, it is **ORDERED**, the Respondent pay the Complainant \$34,400 in back due rental monies generated from the second floor rental space. It is also **ORDERED** that the Respondent pay the Complainant \$28,192.46 for reimbursement of expenses incurred for materials and labor used in constructing the rental space which resides on the Respondent's property. It is also **ORDERED** that the Complainant's request for future interest in the rental monies is hereby **DENIED**.

Signed by my hand this 1st day of January 2017.



Carrie E. Garrow
Chief Judge
Saint Regis Mohawk Tribal Court

All parties have thirty (30) days after the entry of judgment to file a Notice of Appeal pursuant to the Saint Regis Mohawk Rules of Civil Appellate Procedure.

