

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

Hattie Renee Hart,

Plaintiff,

v.

Saint Regis Mohawk Tribe
Chief Eric Thompson
Chief Beverly Cook
Chief Ronald LaFrance,

Defendants.

Case No.: 16 CIV 00004

ORDER

This matter was commenced by the filing of a *pro se* complaint on May 3, 2016, upon which a summons was issued May 3, 2016. Said complaint alleges that plaintiff was denied her right to vote by defendants' failure to place a Referendum¹ before the tribal members with respect to the expenditure for a capital contribution to Te wa' tha ho'n:ni Corporation, (hereinafter "TWTH") the "for profit" or economic development entity² that oversees and administers the Saint Regis Mohawk Tribe's (hereinafter called SRMT or the Tribe) revenue-generating operations.³ Thereafter on May 6, 2016, plaintiff, again *pro se*, filed a request for a preliminary injunction prohibiting the Tribe from "spending any revenue belonging to the SRMT and its entities,"

¹ Plaintiff claims a Referendum is required pursuant to SRMT Tribal Procedures Act passed June 1, 2013.

² The economic development arm of the Tribe itself established in 2006.

³ Plaintiff claims the Tribe expended \$3,500,000.00.

Marsha K. Schmidt, Esq., defendants' attorney, filed a notice of appearance on their behalf on May 23, 2016. Defendants also filed on May 23, 2016, two separate notices of motions: one to dismiss the complaint for lack of sufficient service;⁴ the other for failure to state a cause of action for which relief can be granted, for lack of an applicable waiver of sovereign immunity, and for lack of subject matter jurisdiction, together with a memorandum of law and opposition to plaintiff's May 6, 2016, request for a preliminary injunction.

On May 31, 2016, plaintiff "requested" a "preliminary injunction" seeking suspension of the three defendant Tribal Chiefs, without pay, alleging "Embezzlement and Theft from Tribal Organization." Plaintiff, at this point, continued to appear *pro se*.⁵

On June 10, 2016, plaintiff filed "plaintiffs' (*sic*) motion to stay the complaint and motion to stay the preliminary injunction" wherein plaintiff asks the Court to "stay my complaint" and "stay" the order of removal requested previously; she requests the "removal of tribal council"; she requests the "stopping of spending tribal funds"; she asks the Court to "review the Investigation done by the Ethics Officer"; and she asks the Court to "void the TCR 2016-01 [the Tribal Council Resolution that approved a capital contribution for Te wa' tha ho'n:ni Corporation], and to return three million five hundred thousand dollars (\$3,500,000.00) to the tribal funds, and to identify the person or persons who allegedly received five hundred thousand dollars (\$500,000.00) of those funds. However, despite the title given to the document by plaintiff, it appears to not be

⁴ Defendants subsequently withdrew said motion on June 20, 2016.

⁵ Although the Court generally grants *pro se* litigants some leeway, such "request" is confusing at best.

a motion to stay anything, but an answer to the defendants' motion to dismiss and a reiteration of plaintiff's demands for relief in her complaint and in her request seeking suspension or removal of the three defendant Tribal Chiefs.

On June 20, 2016, defendants filed a response to plaintiff's "various pleadings filed."

Subsequently on August 30, 2016, the parties appeared before the Court for a status conference. At that time, plaintiff appeared with counsel, Lillian Anderson-Duffy, Esq., and defendants appeared by their counsel, Marsha K. Schmidt, Esq. Plaintiff was granted leave to file an amended complaint which was subsequently filed, together with plaintiff's opposition to defendants' motion to dismiss, on September 20, 2016. Plaintiff in her amended complaint sets out six separate causes of action, and in addition, adds several defendants: Saint Regis Mohawk Tribal Council; Te wa' tha ho'n:ni Corporation; Mark Martin as Ethics Officer of SRMT;⁶ and she also names each of the original three Tribal Chief defendants individually as well as in each's capacity as Tribal Chief.⁷

On September 30, 2016, the original four defendants filed their reply to plaintiff's opposition to defendants' motion to dismiss, motion to strike allegations from the complaint as moot, and affidavit of Dale T. White, Esq., General Counsel for the SRMT,

⁶ Plaintiff did not seek permission from the Court to add defendants nor did she file proof of personal service of the amended complaint upon the additional defendants.

⁷ The Court agrees with counsel for the original defendants who states that while plaintiff was granted leave to file an amended complaint, it was expected to "put the complaint filed by the pro se plaintiff into a more correct legal framework" but the amended complaint filed appears to be "more akin to a new complaint and far beyond the leave granted."

together with a motion to dismiss the amended complaint. Defendants' motion to dismiss the amended complaint did not contain a return date, but indicated it would be heard at a "hearing on a date to be set by the Court." The Court has received no replies from plaintiff to the motion to strike allegations from the complaint as moot or the motion to dismiss the amended complaint, but on October 18, 2016, it did receive a "second amended complaint". On October 20, 2016, the Court received a letter from counsel for the original defendants alleging that the amended complaint and the second amended complaint have not been properly served upon all named defendants, and that the second amended complaint should not have been filed while the motion to dismiss the first amended complaint is pending. The Court agrees and will not consider the second amended complaint at this time.

Plaintiff's counsel has not addressed the original *pro se* requests made by plaintiff for preliminary injunctions seeking an order prohibiting SRMT from "spending any revenue belonging to SRMT . . ." and seeking suspension of the three defendant Tribal Chiefs, without pay or their permanent removal. Defendants responded to such requests on May 23, 2016, and June 20, 2016, respectively. This Court may grant a preliminary injunction if the plaintiff establishes that "there is a good chance he or she will win the suit and that he or she will suffer irreparable loss or injury if the injunction is not issued." SRMT Rules of Civil Procedure, Sec. XII, Rule 9. First, plaintiff has not carried her burden of proof. Further, this Court is without power to prohibit the SRMT

from spending its revenues or to remove a duly elected council member. For those reasons, plaintiff's request for each preliminary injunction must be denied.

As stated hereinabove there was no leave sought, or granted, to add Saint Regis Mohawk Tribal Council, TWTH, or Mark Martin, Ethics Officer for SRMT, as defendants to the action. Furthermore there has been no proof of service of the amended complaint upon them filed by plaintiff. Even though Ms. Schmidt, in her motion to dismiss the amended complaint, states that despite the fact that none of those proposed defendants "have been served with the amended complaint as required by SRMT Tribal Court Rules of Civil Procedure Sec. IX Rule 6.C. . . . the Tribe responds on their behalf," this Court finds that the amended complaint, as against the inappropriately added defendants, Saint Regis Mohawk Tribal Council, Te wa' tha ho'n:ni Corporation, and Mark Martin, Ethics Officer for SRMT, should be dismissed.

At this point, the Court will grant plaintiff until November 18, 2016, to respond to defendants' motions to strike allegations from the amended complaint as moot and to dismiss the complaint as to the original four defendants.

NOW, THEREFORE, it is

ORDERED that plaintiff's request for a preliminary injunction prohibiting SRMT from spending its revenues is hereby denied; and it is further

ORDERED that plaintiff's request for a preliminary injunction suspending without pay, or removing, the three Tribal Chiefs is hereby denied; and it is further

ORDERED that the amended complaint, as against the added defendants, Saint Regis Mohawk Tribal Council, Te wa' tha ho'n:ni Corporation, and Mark Martin, Ethics Officer for SRMT, is hereby dismissed; and it is further

ORDERED that plaintiff shall respond to defendants' motion to strike allegations from the amended complaint as moot and to dismiss the complaint as to the original four defendants by November 18, 2016.

Dated: November 7, 2016

Barbara R. Potter

Hon. Barbara R. Potter
SRMT Judge

