

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

Thomas Cook)	Case No.: 16-CIV-00014
Plaintiff(s),)	
)	
)	
-V-)	DECISION AND ORDER
)	
)	
Clyde Cree, Sr.)	
Respondent(s))	

Procedural History

On November 2, 2016, Thomas Cook filed a complaint in Saint Regis Mohawk Tribal Court which named Clyde Cree Sr. as the Respondent. The original complaint alleged that the Respondent's dogs entered the Plaintiff's property on August 2, 2016 and attacked his pigs, resulting in the death of six of the animals and also required the attention of a veterinarian.

The Respondent filed an answer with the Court on November 17, 2017 denying all claims alleged in the complaint.

An amended complaint was filed by the Petitioner on January 13, 2017. The amended complaint alleged that a second incident occurred on January 7, 2017 in which the Respondent's dogs again entered Plaintiff's property and attacked Plaintiff's pigs resulting in serious injuries that required the attention of a veterinarian.

Status conferences were held in Saint Regis Mohawk Tribal Court on May 30, 2017, July 6, 2017, November 15, 2017 and December 13, 2017. The Respondent received notice and failed to appear for any of the scheduled status conferences, although his daughter Cheryl Cree appeared on May 30, 2017. The Court advised Ms. Cree if she wished to represent her father in the matter she would need a power of attorney from her father.

A trial was scheduled for and commenced on January 10, 2018 in Saint Regis Mohawk Tribal Court. The Plaintiff appeared and represented himself. The Respondent did not appear for trial. Notice of the trial date was sent to the Respondent and was returned to the Court unclaimed.

Findings of Fact

1. Thomas Cook is a member of the Saint Regis Mohawk Tribe.
2. Thomas Cook owned the pigs who were attacked on August 2, 2016 and January 7, 2017 by the black dog and red dog.

3. The pigs who were attacked received veterinary care for the injuries sustained in the two attacks by the black dog and red dog.
4. The veterinarian bills totaled \$255.
5. The 6 pigs killed in the initial attack were valued at \$100 each for a total of \$600.
6. The black dog and the red dog attacked the pigs on August 2, 2016 and January 7, 2017.
7. Brady Hankins, Plaintiff's son-in-law, testified the Respondent's grandson admitted the black dog was owned by the Respondent.
8. Mr. Hankins testified he witnessed the black dog enter the pig pen and commit the second attack on the Plaintiff's pigs, which were the personal property of the Plaintiff.
9. After the second attack, Mr. Hankins subsequently shot and killed both the red dog and black dog.¹

Jurisdiction

In order to address the merits of the action, it must be first determined that the Court possesses jurisdiction over this matter. The SRMT Civil Code Section II states in relevant part that.

"The Tribal Court shall have civil jurisdiction over civil disputes ... [d]isputes involving torts in which (i) a proximate cause (or the last component in a chain or sequence of proximate cause) occurred or was carried out in Mohawk Indian Country, or (ii) the effect or injury occurred or was inflicted in Mohawk Indian Country, or (iii) the Saint Regis Mohawk Tribe or any of its subordinate entities, agencies, or agents is the injured party or alleged to be the party causing the injury (except that this provision does not waive Tribal sovereign immunity);²

The attack on the Plaintiff's pigs which are his personal property occurred within Mohawk Indian Country, specifically the Saint Regis Mohawk Indian Reservation. Due to the foregoing, the Saint Regis Mohawk Tribal Court asserts jurisdiction over this matter.

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.

"Generally recognized principles of the law of torts, as reflected by the most recent Restatement of Torts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine;

There are no written Mohawk laws, which would supersede the use of general principals of Tort Law as recognized by the most recent Restatement of Torts.

¹ Plaintiff's Exhibit #1 and #2.

² SRMT Civil Code Section II (C).

The Court will use the most recent Restatement of Torts 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.

Analysis

A determination of whether or not there is sufficient evidence to find the two dogs who committed the attacks on the Plaintiff's personal property were owned by the Respondent is required for the Court to find fault and assess damages, as well as whether or not the actions of the dogs who committed the attack were guilty of trespass, and damaged the Plaintiff's property.

In the amended complaint, the Plaintiff alleged the red dog and black dog who illicitly entered his property and attacked his pigs were recognizable to him and that they were owned by the Respondent Clyde Cree Sr. During the trial, the Plaintiff testified that the black dog who attacked his pigs was well known to be in long term possession of the Respondent. The Respondent had a dog house which was where the black dog was domiciled.

Plaintiff also stated for the record that after the first incident in which six of the Plaintiff's pigs were killed, the dog who Plaintiff stated committed the attack was seen by the Plaintiff at the Respondent's home and looked guilty.

The son in law of the Plaintiff, Brady Hankins, was called to testify by the Plaintiff and stated that he witnessed the second attack by the Respondent's dogs. Mr. Hankins stated that a black dog and red dog were in the pig pen and the black dog had one of the pig's head's in his mouth.

The Plaintiff incurred a veterinarian bill after the first attack on his pigs by the black dog and red dog of \$119.³

A veterinary bill of \$136 was incurred by the Plaintiff following the second attack on his pigs by the black dog and red dog.⁴

The Plaintiff also testified that his son in law Brady Hankins had a conversation with the Respondent's grandson who confirmed that the black dog in question was owned by the Respondent.

Both the Plaintiff and Mr. Hankins stated in their testimony that they contacted the Saint Regis Mohawk Tribe Animal Control Department to report the attacks and that no citation was ever issued to the Respondent for failure to contain his dogs.

The Court notes that the St. Regis Mohawk Tribe Animal Control Ordinance provides that their Animal Control Officers may issue a summons for violating the ordinance.⁵ In this case no such summons was issued to the Respondent for either of the attacks committed by the dogs.

³ Plaintiff's Exhibit #3.

⁴ Plaintiff's Exhibit #4.

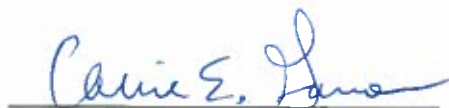
⁵ St. Regis Mohawk Tribe Animal Control Ordinance Section 5. Issuance of Summons.

The Court finds that there is a preponderance of evidence to determine the black dog in question was in fact owned by the Respondent in this matter, trespassed onto the Plaintiff's property, and attacked his pigs which are Plaintiff's personal property, which is a tort.

Conclusion

It is hereby **ORDERED** the Respondent pay the Plaintiff \$905 for the value of the six pigs killed by the Respondent's dogs, the veterinary costs incurred by the Plaintiff, and the filing fees paid by the Plaintiff.

Signed by my hand this 23rd day of January 2018.



Carrie E. Garrow
Chief Judge
Saint Regis Mohawk Tribal Court

