

**SAINT REGIS MOHAWK TRIBAL COURT**

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Estate of ██████████ Swamp )

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DECISION AND ORDER  
16-CIV-00017

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**PROCEDURAL HISTORY**

On December 1, 2016, ██████████ Swamp filed a petition to be named the administrator of the Estate of ██████████. Swamp and to probate the Estate. On December 7, 2016, ██████████ Swamp filed a request to withdraw his petition. The case was never closed. On January 23, 2017, ██████████ Swamp filed a petition to be named administrator of the Estate and to probate the Estate. The Court accepted his petition as a substitution. Also filed with the petition were notarized consent forms for the appointment of ██████████ Swamp as Administrator, signed by both ██████████ Swamp and ██████████ Swamp. ██████████ and ██████████ are the remaining three sons of the decedent, ██████████ Swamp.

Along with the petition was a notarized letter signed by the three sons of ██████████ Swamp that stated they agreed ██████████ Swamp would be the administrator. It also stated that ██████████ Swamp, their brother was to receive their father's land and that if anything happened to ██████████ the land would revert to ██████████ Swamp. Subsequently if anything happened to ██████████ Swamp the land would go to ██████████ Swamp and the land was to remain in the Swamp family.

██████████ Swamp also filed a copy of ██████████ Swamp's death certificate and he died on ██████████, 2016. ██████████ Swamp did not have a will.

Letters of Administration were granted on March 30<sup>th</sup>, 2017 by the Court to ██████████ Swamp.

The Court held several status conferences to provide assistance with developing an agreement as to the division of the property pursuant to the terms of the notarized letter. However, when the Court individually questioned the brothers, particularly ██████████ Swamp, there was a disagreement as to how the pension would be divided. The Court requested the brothers attend mediation and initially all three brothers agreed. However, prior to the mediation the Saint Regis Mohawk Tribal Police reported to the Court that ██████████ Swamp had erected a speed bump on the road leading to the home, which is part of the Estate.

All three brothers appeared at the mediation appointment, however ██████████ Swamp left prior the start of mediation. As a result, the mediation was cancelled. ██████████ Swamp also failed to appear at a status conference held on May 31<sup>st</sup>, 2017. The Court indicated to ██████████ and ██████████ Swamp that due to tribal law that all of the personal property would be divided equally and that all three brothers would have equal possessory interest in the real property, unless the brothers came to an agreement how to distribute the entire Estate, which did not happen. The Court indicated it would issue a final order distributing the property in this manner.

At 1 pm on May 31<sup>st</sup>, 2017, ██████████ Swamp appeared at Court and presented the Court Clerk with a deed in his name for Lot # ██████████, which is part of the Estate. He also indicated he thought the hearing was at 1 pm.

## JURISDICTION

The Tribal Court has original jurisdiction over cases, matters or controversies arising under the laws, ordinances, regulations, customs and judicial decisions of the Tribe.<sup>1</sup> The Court possesses civil jurisdiction over disputes arising in, connected with, or substantially affecting Mohawk Indian Country.<sup>2</sup> Given that the resolving a person's estate is a civil issue that substantially affects Mohawk Indian Country and there is no SRMT law limiting the Court's jurisdiction,<sup>3</sup> the Court assumes jurisdiction over this Estate.

## ANALYSIS

The deed presented to the Court Clerk by heir ██████████ Swamp is for Lot # ██████████. The deed is a quitclaim deed that transfers Lot # ██████████ from the Tribe to ██████████ Swamp. The Lot is part of the ██████████ Swamp Estate as a April 1, 1995 deed names ██████████ Swamp and ██████████ (now deceased) as the owners. The new deed transfers the Lot from the Tribe to ██████████ Swamp. The deed is signed by Retha Herne, Executive Director of the Akwesasne Housing Authority ██████████ Swamp, who is listed as a Grantor, ██████████ Swamp, listed as the Grantee, the Tribal Clerk and Tribal Council. It is dated March 29<sup>th</sup>, 2017. Due to the issuance of this deed, the Court finds it necessary to issue an interim order regarding the deed prior to a final distribution order.

It could be contended that the transfer was attempted because the brothers had initially agreed to the division of real property. However, no heir has authority to transfer real property without the Court's final distribution order. The Court is cognizant the Tribal Clerk and Tribal Council may issue may issue deeds "upon request of a Tribal Member with the presentation of proper documentation."<sup>4</sup> But this is not applicable to this case for the aforementioned reasons.

At this time the Court has not finalized the Swamp Estate. The deed was not issued pursuant to the terms set forth in a final distribution order by this Court. This is not to be taken as ██████████ Swamp does not possess an interest in Lot # ██████████. However, ██████████ Swamp shares an equal possessory interest in the land with his brothers. Until the Court issues a final order distributing the property in accordance with tribal law, none of the brothers have the proper document to submit to the Tribal Clerk to obtain a deed. As a result, the deed issued by the Tribal Council on March 29<sup>th</sup>, 2017, naming ██████████ Swamp as the sole owner of Lot # ██████████ is premature because it was not issued in accordance with the procedures set forth in the Saint Regis Mohawk Land Laws and Land Dispute Ordinance. Thus, the Court finds it invalid based on procedural grounds. Finally, the Court notes that the Letters of Administration are not the proper document required in a probate case to obtain a deed and but rather the parties must wait for a final distribution order from the Court.

<sup>1</sup> The Saint Regis Mohawk Tribal Court and Judiciary Code § V.1. (2012).

<sup>2</sup> The Saint Regis Mohawk Tribe Civil Code § II.A. (2008).

<sup>3</sup> The Saint Regis Mohawk Tribal Court and Judiciary Code § V.1. (2012).

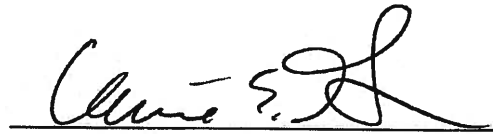
<sup>4</sup> The Saint Regis Mohawk Tribe Land Laws and Land Dispute Ordinance § IV. E. 2.

**ORDER**

Based on the above, the Court ORDERS the following:

1. As the deed issued on March 29<sup>th</sup>, 2017 is procedurally defective because it was issued based on the Letters of Administration and not the Court's final distribution order, the deed is invalid.
2. [REDACTED] and [REDACTED] Swamp are prohibited from distributing, selling, changing, destroying or giving away any of the personal or real property attached or contained in the [REDACTED] Swamp Estate.
3. [REDACTED], and [REDACTED] Swamp shall have access to Lot # [REDACTED]. No brother shall prevent another from entering the property.
4. Any material blocking the right of way that leads to Lot # [REDACTED] shall be removed.
5. Given that [REDACTED] Swamp missed the hearing on May 31<sup>st</sup>, 2017 due to confusion as to the time of the hearing, all the heirs are ordered to appear for a distribution hearing at the Court on June 14<sup>th</sup>, 2017 at 2 pm.

Signed by my hand this 15<sup>th</sup> day of June, 2017.



Carrie E. Garrow, Chief Judge  
Saint Regis Mohawk Tribal Court