

appears to be his signature. Given that both Respondents received continual notice, the trial proceeded without them.

Applicable Law

On December 3, 2009, the Tribal Council enacted SRMT TCR 2009-69, Land Dispute Resolution Ordinance (LDRO), amended in 2011, (SRMT TCR 2011-20). A new land law, the Land Laws and Land Dispute Ordinance (SRMT LL&LDO), was enacted on December 21, 2016, which repealed and rescinded the LDRO.

Under the new ordinance, “[a]ll cases filed with but **not finally resolved** by the Land Dispute Tribunal under the Prior Ordinance [LDRO] shall be transferred to the Tribal Court to be heard under this Ordinance.”² The Ordinance draws a distinction between cases “not” finally resolved and those that have been finally resolved by the Tribunal.

In regards to the case at bar, the SRMT LDT did NOT enter a final decision. It was transferred from the SRMT LDT to the Tribal Court pursuant under the new Ordinance. Thus, the SRMT LL&LDO shall apply. The Court notes the SRMT LL&LDO has a statute of limitations of six years.³ However, given this is a case that was not filed originally with the Court under the SRMT LL&LDO, but originally filed with the SRMT LDT under the SRMT LDRO, the Court finds the six year statute of limitations does not apply to this case.

Jurisdiction

The SRMT LL&LDO states that the “Saint Regis Mohawk Tribal Court shall have jurisdiction over land disputes.”⁴ The present matter comes to the Court as a land dispute, thus the Court exercises its jurisdictional authority over the present dispute pursuant to the SRMT LL&LDO.

DISCUSSION

Standing

In the case before the Court, the Claimants, Victoria Conners and Sydney Armstrong, are challenging the Deeds issued to Anthony R. David, Jr. and Phillip Gray, Jr. They argue the Respondents are encroaching upon the land owned by their mother, Agnes Armstrong Cree. Agnes Armstrong Cree died on September 13, 1998. The Claimants provided the Court with a SRMT Tribal Clerk statement dated September 23, 1998, stating the SRMT Tribal Council, pursuant to their authority, appointed Victoria J. Conners and Sydney F. Armstrong as Co-Executrix/Executor.⁵ In the past, the SRMT Tribal Council has handled matters regarding deceased Tribal Members’ Estates. The Court recognizes the

² *Id.*

³ SRMT Land Laws and Land Dispute Ordinance § VI. A. 2.

⁴ SRMT Land Laws and Land Dispute Ordinance § VI. A.

⁵ Claimants’ Exhibit 3, September 13, 1998 Letter from the Saint Regis Mohawk Tribal Clerk’s Office.

SRMT Tribal Council possessed the authority at the time to appoint Executors for the Agnes Armstrong Cree Estate. Thus, the Claimants, as Co-Executors have standing to pursue a boundary dispute on behalf of the Agnes Armstrong Cree Estate.⁶ The Court also notes the Estate of Agnes Armstrong Cree is pending before the Court.

Issue

In the SRMT LDT Complaint Form, the Claimants state that Mr. David, Jr. and Mr. Gray, Jr. are encroaching on the property owned by their mother, Agnes Armstrong Cree, or in other words, challenging their SRMT Use and Occupancy Deeds. A SRMT Use and Occupancy Deed may only be challenged if there has been a substantial error made by the Tribal Clerk or Tribal Council in its issuance, there is evidence of fraud in the documents used to substantiate the issuance of the deed, or there is evidence of fraud, deceit, coercion or duress in the signing of documents or in the transfer made in the deed.⁷ The person challenging the deed has the burden of proof, which is clear and convincing evidence, that the deed was not properly issued or recorded.⁸

The Claimant, Mrs. Conners, introduced evidence that the eastern and western boundaries of Mrs. Cree's property were 180 feet wide, which would overlap into Mr. David, Jr.'s and possibly Mr. Gray, Jr.'s property, pursuant to the property descriptions of their Deeds. Evidence presented by the Saint Regis Mohawk Tribal Clerk's Office included Mr. David, Jr.'s and Mr. Gray, Jr.'s Deeds, along with numerous land records of the prior owners, which describe their property as overlapping the Deeds offered by the Claimants. The issue presented is whether the Saint Regis Mohawk Tribal Clerk and/or Tribal Council made a substantial error in the issuance of Mr. David, Jr.'s and Mr. Gray, Jr.'s Deeds which resulted in the encroachment upon Mrs. Cree's property. Prior to examining the evidence, the Court must address what constitutes evidence of ownership.

Evidence of Ownership

Claimants have the burden of proof to "show with clear and convincing evidence that a deed was not property issued or recorded."⁹ Clear and convincing evidence indicates that "the thing to be proved is highly probable or reasonably certain."¹⁰ In other words, the Claimants must show that it is highly probable or reasonably certain that there was a substantial error made by the SRMT Tribal Council or Clerk when they issued the Deeds to Mr. David, Jr.

Valid evidence of land ownership includes an official SRMT Use and Occupancy Deed, valid land contracts, valid wills, valid bill of sale, valid receipt for the purchase of property if accompanied by other evidence to substantiate a sale of property, prior Tribal Council finding, prior Tribal Court finding, decisions from other Courts, sworn written testimony, sworn oral testimony, and any other relevant evidence.¹¹

⁶ See also *Lori Ann David v. Charity Benedict*, 10-LND-00003 (June 12, 2013).

⁷ SRMT Land Laws and Land Dispute Ordinance § IV. 6. (b).

⁸ SRMT Land Laws and Land Dispute Ordinance § IV. 6. (b).

⁹ SRMT Land Laws and Land Dispute Ordinance § IV. 6. (b).

¹⁰ *Black's Law Dictionary*, (10th ed. 2014), available at Westlaw BLACKS.

¹¹ *Id.*

Three SRMT Use and Occupancy Deeds are at issue in this case, thus it is useful to review the definition of a SRMT Use and Occupancy Deed. The SRMT LL&LDO states that a SRMT “Use and Occupancy Deed is an official Tribal document granting the holder the right to use and occupy land at the will of the Tribe, signed by the Tribal Council and certified by the Tribal Clerk.”¹² SRMT Use and Occupancy Deeds are presumptively valid.¹³

There are also some land documents offered as evidence from the 1950s that do not conform to the SRMT LL&LDO requirements for a SRMT Use and Occupancy Deed. It is not clear what the Tribe’s requirements were for deeds prior to the SRMT LL&LDO or its predecessor the SRMT LDRO. It is clear that not all land transactions were recorded by the Tribe. The SRMT Tribal Clerk testified that their Office does not always have all of a person’s land records because not everyone recorded them with the Clerk’s Office and also one book of records has disappeared.¹⁴ Moreover, as illustrated by some of the offered documents, even if the land transactions were recorded with the Tribal Clerk, the Tribal Chiefs were not always involved in the signing of deeds. Thus, it is clear that some of the admitted documents must be assessed under a different standard as they made prior to the SRMT LL&LDO and its predecessor, the SRMT LDRO.

The Court will look to general principles of property law to assess the documents. Under general principles of property law,¹⁵ a deed is a written document that transfers one’s interest in real property to another. The essential elements of a deed include, the naming of the grantor and grantee; words granting or transferring the property; a description of the property involved; and a signature of the grantor.¹⁶ Also, a deed must be delivered which simply means there must be an act by the grantor demonstrating that the deed is effective.¹⁷ Often the act of handing the signed deed to the grantee is enough to demonstrate delivery.¹⁸ The act of recording the deed can also constitute legal delivery.¹⁹ The Court will use these principles in its examination of the various documents to determine whether they are deeds, therefore constitute evidence of ownership.

Real property deeds, other than the SRMT Use and Occupancy Deeds, are not specifically listed as valid evidence of ownership under the SRMT LL&LDO. However, as noted above, under the SRMT LL&LDO, valid evidence of land ownership also includes “[a]ny other relevant evidence.”²⁰ Thus, the Court will review each document to determine if it meets the general standards for a deed, as established by general principles of property law, and if it meets these standards, the Deed will be considered relevant evidence of ownership.

¹² SRMT Land Laws and Land Dispute Ordinance § IV 6.

¹³ SRMT Land Laws and Land Dispute Ordinance § IV. E.6.(a).

¹⁴ Transcript in the Matter of the Victoria Conners, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 29 (Betty Roundpoint Testimony) (May 31, 2017).

¹⁵ The Court has previously looked to general principles of property law. See *Lorie David v. Charity Benedict*, 11-LND-00003, 18 (February 9, 2015) (Court addressed the legal axiom ‘one can only sell what one owns.’)

¹⁶ JESSE DUKEMINIER, ET AL., PROPERTY 615 (8th ed. 2014).

¹⁷ *Id.* at 955.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ SRMT Land Laws and Land Dispute Ordinance § IV. E. 3. (k).

Other documents reviewed in this case include several surveys. The SRMT LL&LDO provides that surveys can be used by the Court to support claims regarding boundary lines.²¹ The Claimants offer a land survey from 2010 and challenge its credibility as evidence of Mr. David, Jr.'s and Mr. Gray, Jr.'s boundaries. The records from the Tribal Clerk's Office include a 2009 survey as evidence of Phyllis Terrance's and Linda Tessier's boundaries, which were subsequently sold to Mr. David, Jr. and Mr. Gray, Jr. In addition, at the Court's request, the Tribal Clerk's Office approved and conducted a survey of Mrs. Cree's property and it was offered as evidence of Mrs. Cree's boundaries. The Court will review all of these surveys as evidence of land boundaries, which may or may not be credible evidence of the parties' land ownership.

With this framework of the law, the Court now turns to an examination of the evidence offered to prove Mrs. Agnes Armstrong Cree owned a swath of land on St. Regis Road that was 180 feet wide along St. Regis Road and the St. Regis River.

Agnes Armstrong Cree's Purchase of Land in 1950

The Claimants offer a document describing a land transfer on May 9, 1950.²² The transfer was from Joseph Sawatis, Rita LaFrance, and Angus Bonaparte to Agnes Armstrong Cree. It was typed on a Quit Claim Deed form.²³ Handwriting on the document states was copied into the Tribal Record Book by Lawrence Terrance, the Clerk of the Tribe.²⁴ The SRMT Tribal Clerk's Office provided the Court with a copy of the page from the SRMT Tribal Record Book which contains a handwritten copy of the document.²⁵ The document was signed by the grantors, Joseph Sawatis, Rita LaFrance, and Angus Bonaparte and designated Agnes Armstrong Cree as the grantee.²⁶ Six witnesses also signed the document.²⁷ The property is described as being located on the east side of St. Regis Road with the following boundaries.

Commencing at a point located in the East boundary line of the said St. Regis Road, said point being the southwest corner of the LaFrance property, so called, and running thence southerly along the East boundary line of the St. Regis Road a distance of 100 feet to a point in said boundary line; thence Easterly and on a line parallel to a southerly line of the LaFrance property, so called, to the waters of the St. Regis River; thence northerly and along the waters of the St. Regis River a distance of approximately 100 feet to a point, at the waters of the St. Regis River, said point being the southeast corner of the LaFrance property, so called; thence westerly and along the southerly boundary line of the LaFrance property, so called, to the point of beginning."²⁸

Given that the document describing the May 9, 1950 land transaction contains a property description, was signed by the grantors, and recorded by the SRMT Tribal Clerk, which is evidence of

²¹ SRMT Land Laws and Land Dispute Ordinance § IV. D. 9. (c)(2).

²² Claimants' Exhibit #4.

²³ *Id.*

²⁴ *Id.*

²⁵ Tribal Clerk's Exhibit #13.

²⁶ Claimants' Exhibit #4.

²⁷ *Id.*

²⁸ Claimants' Exhibit #4 and Tribal Clerk's Exhibit #13.

delivery, the Court finds this is a valid Deed and relevant evidence of ownership. There was no evidence presented to the Court to challenge this transfer of land or Deed. The Deed is clear and convincing evidence that Mrs. Cree owned this property. Thus, the Court finds that on May 1950, Agnes Armstrong Cree obtained a piece of property that contained 100 feet along St. Regis Road and approximately 100 feet along the St. Regis River. The property was located to the south of the LaFrance property.

Mrs. Agnes Armstrong Cree's Purchase of Land in 1951

Claimants offered as evidence of Mrs. Cree's ownership of an additional piece of land, a document regarding a 1951 purchase of property from Mr. James (Jake) Cree, her husband. But prior to assessing that document the Court will examine a document regarding Mr. Cree's ownership of that property.

The Tribal Clerk's land records included a document dated June 9, 1950.²⁹ The document states that Joseph and Josephine Sawatis transferred a tract of property to James (Jake) Cree. James (Jake) Cree was the husband of Agnes Armstrong Cree. It was recorded with the Franklin County and was copied into the Saint Regis Mohawk Tribal Clerk's Record Book.³⁰ The tract of land was located on St. Regis Road and described as follows:

Commencing at a point located in the East boundary line of said St. Regis Highway, said point being the southwest corner of the LaFrance Property, so called, and running thence southerly along the East boundary line of said St. Regis Highway a distance of one hundred (100) feet to a point in said boundary line, easterly and a line parallel to a southerly line of the LaFrance property, so called to the waters of the St. Regis River; thence Northerly and along the waters of the St. Regis River to a distance of approximately one hundred (100) feet to a point at the waters of the St. Regis River, said point being the Southeast corner of the LaFrance property, so called, thence Westerly and along the Southerly boundary line of the LaFrance property, so called, to the point of beginning.³¹

This document identifies the grantors, Joseph and Josephine Sawatis, and the grantee, James (Jake) Cree. It contains a description of the property and the signatures of the grantors, Joseph and Josephine Sawatis. It was also recorded twice, with Franklin County and the SRMT Tribal Clerk, evidence that it was delivered. Thus, the document describing the 1950 transfer is a Deed, under the general principles of property law. As it is a Deed it is relevant evidence that James (Jake) Cree owned this land. There was no evidence submitted to the Court challenging this Deed. This Deed is clear and convincing evidence that as of June 9, 1950, James Cree owned this tract of land.

The Court now turns to the impact of the sentence contained in the 1950 James (Jake) Cree Deed, noting it was a replacement for a lost and unrecorded Deed from 1944. It states that "[t]his deed is drawn to replace a deed which was lost conveying the same property, the previous deed having been made in

²⁹ Tribal Clerk's Exhibit #10

³⁰ Danielle Mayberry Affidavit and Tribal Clerk Exhibit #10.

³¹ Danielle Mayberry Affidavit and Indenture. (The Court notes that in the version copied into the SRMT Tribal Record Book a sentence in the description was missing.)

August of 1944 and not recorded.”³² As previously stated, a deed must be delivered. Delivery is simply an act by the grantor demonstrating the deed is now in effect. The Court has no evidence about whether the lost Deed was handed to Mr. Cree, which would constitute evidence of delivery. In fact, the 1950 Deed states the 1944 Deed was not recorded. Thus, there is no evidence that delivery happened in 1944. There is evidence of delivery in 1950, as the Deed was recorded with Franklin County and with the SRMT Tribal Clerk. Thus, the Court must be bound by the date of delivery, which is June 9, 1950, meaning the transfer of land legally occurred in 1950.

The Court now turns to Mr. Cree’s sale of this land to his wife, Agnes Armstrong Cree. Claimants’ Exhibit #1 is a handwritten document describing a transaction between James Cree and Agnes Armstrong Cree. The Claimant, Mrs. Conners, testified that she found this document in her mother’s house after Agnes Armstrong Cree died.³³ It contains a notation that it was copied by the Tribal Clerk into the Tribal Record Book on February 27, 1951.³⁴ Claimants’ Exhibit #5 is a handwritten document describing the same transaction. Mrs. Conners testified she obtained this from the Tribal Clerk’s Office.³⁵ Claimants’ Exhibit #5 contains a notation that it was copied from the original by the Clerk of the Tribe on February 27, 1951 and it appears to have been signed by Lawrence Terrance, a Clerk of the Tribe.³⁶

Both of these Exhibits state that James Cree transferred to Agnes Armstrong Cree, his wife, all of his interest in a parcel of land located on the east side of St. Regis Road. They contain James (Jake) Cree’s and Agnes Armstrong Cree’s signatures.³⁷ Mrs. Florence Thomas and Joseph Cook, designated as parties of the First Part, also signed the document, conveying any and all of their interest in this property to Agnes Cree.³⁸ Both Exhibits describe the property as follows:

[C]ommencing at a point located in the East Boundary Line of the said St. Regis Road. Said point being the South west boundary of the LaFrance property, so called and running southerly along the East Boundary Line of the St. Regis Road a distance of 80 ft to a point in said boundary line. Thence Easterly and on a line parallel to a southerly line of the LaFrance property, so called, to the waters of the St. Regis River. Thence northerly and along the waters of the St. Regis River a distance of approximately 80 feet to a point at the waters of the St. Regis river, said point being the Southeast corner of the LaFrance property so called. Thence Westerly and along the Southerly boundary line of the LaFrance property so called, to the point of the beginning.³⁹

Given that these documents contain a description of the property, identifies the grantors and grantee, was signed by the grantor, James Cree, and was recorded by the SRMT Tribal Clerk, providing

³² Danielle Mayberry Affidavit and Tribal Clerk Exhibit #10.

³³ Transcript in the Matter of the Victoria Conners, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 12 (Victoria Conners Testimony) (May 31, 2017).

³⁴ Claimants’ Exhibit #1.

³⁵ Transcript in the Matter of the Victoria Conners, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 63-66 (Victoria Conners Testimony) (November 20, 2017). (The Court notes that it originally marked Claimants’ Exhibit #5 as Claimants’ Exhibit #4, however this was changed when it discovered there was already a Claimants’ Exhibit #4.)

³⁶ Claimants’ Exhibit #5.

³⁷ Claimants’ Exhibit #1, #5.

³⁸ Claimants’ Exhibit #1, #5.

³⁹ Claimants’ Exhibit #1 and Exhibit #5.

evidence of transfer, the Court finds that Claimants' Exhibit #1 is a Deed and relevant evidence of land ownership. The Deed is credible evidence that Mrs. Cree purchased a second piece of property on St. Regis Road. No evidence was submitted to challenge this Deed. Thus, the Deed is clear and convincing evidence that Mrs. Cree owned a portion of the property that Mr. Cree purchased from Joseph and Josephine Sawatis.

The Court notes that Mr. Cree transferred only a piece of property or an area that was 80 feet wide, whereas the property he purchased in 1950 was 100 feet wide. It is unclear what happened to the remaining property. The Claimant, Mrs. Conners, testified she believed Mr. Cree had sold a piece that was 20 feet wide to the Cooks, for a driveway, who lived on their southern border.⁴⁰ Regardless, James (Jake) Cree sold all of his interest in the land described in the Deed to his wife, Agnes Armstrong Cree. And the property described is 80 feet wide along the road and approximately 80 feet wide along the St. Regis River.

The challenge is locating precisely where this piece of property was located. Both property descriptions in Mrs. Cree's 1950 and 1951 Deeds state that the LaFrance property was the northern boundary. The Claimant, Mrs. Conners, testified that her mother, Agnes Armstrong Cree, and James Cree lived side by side.⁴¹ No evidence was offered to contradict this. It is not entirely clear whether the property owned by Mr. Cree was on the north or south side of Mrs. Cree's property she purchased in 1950. However, the Court finds that this is not relevant, because regardless of which side of Mr. Cree's property was located, the Court finds that once Mrs. Cree purchased her second piece of property in 1951, she consolidated the two properties into one landholding measuring 180 feet of road frontage and approximately 180 feet of river frontage.

Confirmation of Agnes Armstrong Cree's Purchases

In addition, the Court examined the records presented by the Tribal Clerk, which included the Deeds discussed above and a Saint Regis Mohawk Tribal Clerk's Office Ownership Certification. The Certification states that according to the records of the Saint Regis Mohawk Tribe, Mrs. Cree was the owner of a house and land known as Lot #356.⁴² It does not contain a description of the property, but as noted above, both Deeds, which contained property descriptions, were recorded with the SRMT Tribal Clerk and provided to the Court. An Ownership Certification by the Tribal Clerk is not specifically listed as an item of evidence that can prove ownership by the SRMT LL&LDO.⁴³ However, the SRMT LL&LDO permits the Court to consider "[a]ny other relevant evidence."⁴⁴ Given that the SRMT Tribal Clerk is the official repository of tribal land records and records land transactions,⁴⁵ the Court finds Tribal Clerk's Exhibit #2 to be relevant evidence of land ownership. No evidence was offered to contradict the

⁴⁰ Transcript in the Matter of the Victoria Conners, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 71 (Victoria Conners Testimony) (November 20, 2017).

⁴¹ Transcript in the Matter of the Victoria Conners, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 16 (Victoria Conners Testimony) (June 14, 2017).

⁴² Tribal Clerk's Exhibit #2.

⁴³ SRMT Land Laws and Land Dispute Ordinance § IV. E. 3.

⁴⁴ SRMT Land Laws and Land Dispute Ordinance § IV. E. 3. (k).

⁴⁵ Transcript in the Matter of the Victoria Conners, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 25-29 (Betty Roundpoint Testimony) (May 31, 2017).

Ownership Certification. Thus, the Court finds that the Tribal Clerk's Ownership Certification is credible evidence of Mrs. Cree's ownership of a piece of property on St. Regis Road.

In sum, the Court finds the 1950 and 1951 documents regarding Mrs. Cree's purchases of land on St. Regis Road are valid Deeds and, thus, are credible evidence of ownership under the SRMT LL&LDO. The Court finds the 1994 Tribal Clerk's Ownership Certification is credible evidence of ownership. The Court finds that the Claimants have proven by clear and convincing evidence that Agnes Armstrong Cree owned Lot #356 on St. Regis Road and that Lot measures 180 feet along St. Regis Road and approximately 180 feet along the St. Regis River. The Court now turns to whether the Claimants have proven by clear and convincing evidence that the SRMT Tribal Council or Clerk made a substantial error in the issuance of Mr. David, Jr.'s and Mr. Gray, Jr.'s Use and Occupancy Deeds.

Mr. Anthony David, Jr.'s Purchases of Land from Phyllis Terrance and Linda Tessier

The Court now turns to the evidence regarding Mr. David, Jr.'s ownership of land, his SRMT Use and Occupancy Deeds. His first Deed is for land located on Mrs. Cree's northern boundary, which he purchased from Phyllis Terrance. His second purchase, from Linda Tessier, is located directly north of his first purchase. SRMT Use and Occupancy Deeds are presumed valid.⁴⁶ To review, the Claimants are required to prove by clear and convincing evidence that a substantial error was made by the SRMT Tribal Council or Clerk in the issuance of his two Deeds.⁴⁷ Clear and convincing evidence indicates that "the thing to be proved is highly probable or reasonably certain."⁴⁸ In other words, the Claimants must show that it is highly probable or reasonably certain that there was a substantial error made by the SRMT Tribal Council or Clerk when they issued the Deeds to Mr. David, Jr.

In order to assess the land ownership interest of Mr. David, Jr., the Court is required to trace the previous ownership of Mr. David, Jr.'s land to determine whether the boundaries are correct and whether the prior owners owned the property described in the Mr. David, Jr.'s Deeds. As the evidence shows, Mr. David, Jr. eventually purchased part of what was known as the LaFrance property. The dispute boils down to whether Rita LaFrance owned the property between her house and Mrs. Cree's house and, thus, upon her death the land became a part of her Estate, which was given to Phyllis Terrance.⁴⁹ Phyllis Terrance sold a portion to Linda Tessier.⁵⁰ Phyllis Terrance subsequently sold her entire Lot to Mr. David, Jr.⁵¹ Linda Tessier sold a portion of her property to Mr. David, Jr.⁵²

The Court begins with the fact that Rita LaFrance transferred a portion of her property to Mrs. Cree in the May 9, 1950 Deed. It is not clear where Ms. LaFrance obtained this land. The Tribal Clerk's

⁴⁶ SRMT Land Laws and Land Dispute Ordinance § IV. E.6.(a).

⁴⁷ SRMT Land Laws and Land Dispute Ordinance § IV. E.6.(b).

⁴⁸ Black's Law Dictionary, (10th ed. 2014), available at Westlaw BLACKS.

⁴⁹ Transcript in the Matter of the Victoria Conners, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 6 (Phyllis Terrance Testimony) (March 12, 2018).

⁵⁰ Transcript in the Matter of the Victoria Conners, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 6-7 (Phyllis Terrance Testimony) (March 12, 2018); Tribal Clerk's Exhibit #15.

⁵¹ Transcript in the Matter of the Victoria Conners, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 6 (Phyllis Terrance Testimony) (March 12, 2018); Tribal Clerk's Exhibit #8.

⁵² Tribal Clerk's Exhibit #21.

records contain the Last Will and Testament of Ms. LaFrance's father, Peter LaFrance.⁵³ He bequeathed some property on St. Regis Road to his wife and two daughters, Rita and Phoebe LaFrance. There is no record of the will being probated and the land being transferred to Ms. Rita LaFrance. However, given that there is a valid Deed transferring property owned by Ms. LaFrance to Mrs. Cree and the May 9, 1950 Deed refers to remaining LaFrance property, as does the James Cree Deed, the Court recognizes that Rita LaFrance owned a piece of property on St. Regis Road, north of Agnes Armstrong Cree, with unknown boundaries.

The Tribal Clerk's records are silent as to any further transactions by Rita LaFrance. Rita LaFrance died on July 28, 1991⁵⁴ and there are several documents indicating a disagreement between Rita LaFrance's heirs as to who should inherit her real property.⁵⁵ The Court finds these are not relevant as this dispute is not part of this case and none of the documents regarding the dispute include a description of Rita LaFrance's real property. Phyllis Terrance, Rita LaFrance's niece, was appointed as the Administrator of the Rita LaFrance Estate by the SRMT Tribal Council on May 20, 1994 and subsequently inherited Rita LaFrance's land.⁵⁶ As noted earlier, the SRMT Tribal Council previously exercised the authority to appoint Administrators.

The next record appears on February 1, 1996, when the SRMT Tribal Clerk's Office issued an Ownership Certification stating that Phyllis Terrance owned the land and house, Lot #357. It does not include a boundary description.⁵⁷ Mrs. Agnes Armstrong Cree's land was Lot #356⁵⁸ and as discussed above was south of the Rita LaFrance property. As noted earlier, a Tribal Clerk's certification of property ownership is relevant evidence of land ownership. Given that this Ownership Certification involves property that is involved in this dispute and it is signed by the Tribal Clerk, the Court finds the Ownership Certification is credible evidence and that as of February 1, 1996, Phyllis Terrance owned Lot #357, but the boundaries were unknown.

On December 14, 2001, Linda Tessier, a niece of Rita LaFrance, received a SRMT Use and Occupancy Deed transferring property from Phyllis Terrance to Linda Tessier.⁵⁹ The land was described as .76 acres and was designated as Lot #357-B. The property description was as follows:

Point of beginning commencing at the Southern boundary along the St. Regis Road and proceeding Easterly along the property of Phyllis Terrance Lot #357-A for a distance of 504' to the St. Regis River and that point thence, proceeding along the shoreline of said St. Regis River for a distance of 81.0' to the Phillip and Mary Gray Property Lot #358 and that point; Thence, continuing in a Westerly direction for the distance of 504' along the said property of Phillip and Mary Gray to the St. Regis Road and a point; Thence,

⁵³ Tribal Clerk's Exhibit #25.

⁵⁴ Tribal Clerk's Exhibit #19.

⁵⁵ Tribal Clerk's Exhibits #17 and #18.

⁵⁶ Tribal Clerk's Exhibit #19.

⁵⁷ Tribal Clerk's Exhibit #20.

⁵⁸ Tribal Clerk's Exhibit #2.

⁵⁹ Tribal Clerk's Exhibit #15.

continuing along said St. Regis Road for a distance of 66' to THE POINT OF BEGINNING.⁶⁰

Attached to the Deed is a hand drawn map with the above stated boundaries. There is no indication who drew the map. It is unclear where this boundary description came from, as there is no survey attached to the Use and Occupancy Deed. As noted above, the Ownership Description certifying that Phyllis Terrance was the owner of Lot #357 did not contain a boundary description. And all the surveys presented to the Court were conducted at a later time.

The SRMT LL&LDO states that a Use and Occupancy Deed "is an official Tribal document granting the holder the right to use and occupy land at the will of the Tribe, signed by the Tribal Council and certified by the Tribal Clerk."⁶¹ This Deed is an official Tribal document granting Linda Tessier the right to the property designated as 357-B. It is signed by the SRMT Tribal Council and the Tribal Clerk. Thus, it is a valid SRMT Land Use and Occupancy Deed and evidence of ownership. However, it is challenged based on a substantial error made in the description of the Deed, as the Claimants' have argued that Agnes Armstrong Cree's purchases from Rita LaFrance and James (Jake) Cree were not taken into account when this Deed was issued.

On January 27, 2005, Phyllis Terrance received an SRMT Use and Occupancy Deed transferring .76 acres from the Estate of Rita LaFrance to her. The property was designated Lot #357-A. The property's boundaries are described as:

Commencing, at the point beginning located along the St. Regis Road and proceeding in an easterly direction for a distance of 504' to meet the St. Regis River and a point; Thence, continuing along the aforementioned St. Regis River for an undetermined distance to meet the lands of Agnes Armstrong and a point; Thence continuing in a westerly direction for a distance of 504.0' to meet the above noted St. Regis Road and a point; Thence continuing along the St. Regis Road for a distance of 66.0' to meet the point of beginning.⁶²

There is a hand drawn map attached to the Deed. It is similar to the hand drawn map attached to Linda Tessier's Deed. However, on Linda Tessier's map, both properties' riverfront boundary was labelled at 81 feet. On the hand drawn map attached to Phyllis Terrance's Deed, there is no measurement of the riverfront boundary. And there is no measurement of the riverfront boundary contained in the written description within Phyllis Terrance's Deed. There is nothing on the document that indicates who made the map.

Phyllis Terrance's Deed meets all the requirements of the SRMT LL&LDO for a Use and Occupancy Deed. It is an official Tribal document signed by the Tribal Council and the Tribal Clerk and thus evidence of ownership. However, the Deed is being challenged on the basis of substantial error committed in its issuance, for not taking into account Mrs. Agnes Armstrong's land.

⁶⁰ Tribal Clerk's Exhibit #15.

⁶¹ SRMT Land Laws and Land Dispute Ordinance § IV. E. 6.

⁶² Tribal Clerk's Exhibit #12.

On June 14, 2010, Phyllis Terrance sold her lot to Anthony R. David, Jr. He received a SRMT Use and Occupancy Deed for .71 acres. It meets the requirement for SRMT Use and Occupancy Deeds, as it is an official Tribal document signed by the Tribal Council and the Tribal Clerk. However, it violates one of the basic requirements for land deeds, the property description is inaccurate. Although this is not listed in the definition of a SRMT Use and Occupancy Deed, it is clear the SRTM LL&LDO requires an accurate property description, as any new property transfers require a survey describing the boundaries, unless one of three conditions are met.⁶³

Attached to the Deed is a 2009 survey conducted by Debra Oakes.⁶⁴ On August 26, 2009, Debra Oakes completed a survey of Phyllis Terrance's property, Lot #356-A.⁶⁵ The Court notes the survey is labelled incorrectly, as the correct Lot number for Phyllis Terrance's property is #357-A. The correct lot numbers are penciled onto the survey. It is not clear who penciled the lot numbers onto the survey. The survey map includes Linda Tessier's property, but there are no measurements included on the survey for her property.

The 2009 Debra Oakes' survey of Lot #357-A is problematic. It does not match Phyllis Terrance's Deed description for Lot #357-A. As stated earlier, the Phyllis Terrance Deed states that Lot #357-A has a western boundary running along St. Regis Road of sixty-six (66) feet. For reasons unknown, the Debra Oakes' survey expands this boundary to eighty (80) feet.⁶⁶ And as shown by a 2017 survey discussed below, this overlaps Mrs. Cree's property. Given that the 2009 Debra Oakes' survey is not based on the actual dimensions in Phyllis Terrance Deed and overlaps Mrs. Cree's property, the Court finds that it's boundary lines are not accurate and, thus it is not credible evidence of the land boundaries.

The boundaries set by the Debra Oakes' survey are then used in Mr. David, Jr.'s property description for his SRMT Use and Occupancy Deed, rather than the original land description contained in Phyllis Terrance's Deed. As a result, his Deed's property description contains boundary descriptions that are inaccurate and encroaches upon Mrs. Cree's property.

On March 21, 2012, Mr. David, Jr. received a SRMT Use and Occupancy Deed for .28 acres, or the road frontage portion of Lot #357-B. Mr. David, Jr. obtained the land from Linda Tessier.⁶⁷ It is signed by the SRMT Tribal Council and certified by the SRMT Tribal Clerk. Similar to his first Deed, the 2012 Deed meets the requirement for SRMT Use and Occupancy Deeds, however, the property description is inaccurate.

The Deed's property description is based on a 2010 survey conducted by Louis Maine. It is attached to the Deed. This survey was also introduced by the Claimants, who argued the survey is inaccurate.⁶⁸ Phillip Jr. and Mary Gray obtained this survey from Louis Maine. The survey included Lots # 357-A, belonging to Phyllis Terrance, and #357-B, belonging to Linda Tessier. The surveyed boundaries for Phyllis Terrance's Lot again do not match the SRMT Use and Occupancy Deed

⁶³ SRMT Land Laws and Land Dispute Ordinance § IV. E. 9.

⁶⁴ Tribal Clerk's Exhibit #16.

⁶⁵ Tribal Clerk's Exhibit #3 and Tribal Clerk's #16.

⁶⁶ Tribal Clerk's Exhibit #3.

⁶⁷ The Court notes with this transaction, Linda Tessier transferred all of her interest in the property she received from Phyllis Terrance to the Grays and Mr. Anthony David, Jr.

⁶⁸ Claimants' Exhibit #2.

description for Phyllis Terrance. The Deed describes the road frontage as sixty-six (66) feet, but 2010 survey measures it as eighty (80) feet. The surveyed boundaries for Linda Tessier's Lot also do not match the boundary descriptions in the Deed for Linda Tessier. Linda Tessier's Deed describes the river frontage as eighty-one (81) feet and the road frontage as sixty-six (66) feet. But, the 2010 survey plots the river frontage as fifty-two (52) feet and the road frontage as eighty-seven point twenty-one (87.21) feet.

Mr. Maine testified how he conducted his 2010 survey. He stated he relied on the 2009 Debra Oakes' survey and happened to meet Debra Oakes in the field while he was conducting his 2010 survey for the Grays.⁶⁹ Mr. Maine testified, "She said that the line she put in, at least as far as I was concerned at the time, were put in by agreement—boundary-line agreement, which was good enough for me at the time."⁷⁰ Given that the 2010 Louis Maine survey relies on the 2009 Debra Oakes survey, which does not contain accurate information, and it does not match the descriptions contained in the Phyllis Terrance and Linda Tessier Deeds, the Court cannot accept the 2010 survey as accurate evidence of boundary descriptions of the Phyllis Terrance and Linda Tessier Lots.

The boundaries set by the 2010 Louis Maine survey are then used in Mr. David, Jr.'s property description for his 2012 SRMT Use and Occupancy Deed, rather than the original land description contained in Linda Tessier's Deed. As a result, his 2012 Deed's property description contain boundary descriptions that are inaccurate and may encroach upon Mrs. Cree's land.

The Court finds that substantial error was committed by the SRMT Tribal Council and Tribal Clerk with the issuance of the 2010 Deed to Mr. David, Jr. The Court finds that it was substantial error to issue the June 14, 2010 Deed to Mr. David, Jr. with an inaccurate boundary description. The 2009 survey was inaccurate and thus the property description was wrong. Ms. Rita LaFrance could not sell what she did not own and her sale of land to Mrs. Cree was not reflected in the survey and Mrs. Cree's purchase of land in 1951 from her husband was also not reflected in the survey. The Court also finds that at this point, the inaccurate description does not invalidate the Deed, but that due to the inaccurate description, it is unclear what Mr. David, Jr. purchased on June 14, 2010.

The Court also finds that substantial error was also made in the issuance of the March 21, 2012 Deed to Mr. David, Jr., from Linda Tessier because the property description is inaccurate. The 2010 survey was inaccurate as it did not account for Mrs. Cree's ownership or use the property description from the previous owner's Deed. The inaccurate property description in the survey was included as the property description in the Deed, which makes the Deed inaccurate. The Court also finds that at this point, the inaccurate description does not invalidate the Deed, but that due to the inaccurate description, it is unclear what Mr. David, Jr. purchased on March 21, 2012 from Linda Tessier.

Mr. Phillip Gray, Jr.'s Purchase of Property from Linda Tessier

As noted above, the Complainants are also challenging Mr. Phillip Gray, Jr.'s Deed. On July 7, 2010, Mary and Phillip Gray received a SRMT Use and Occupancy Deed for approximately .5 acres.⁷¹

⁶⁹ Transcript in the Matter of the Victoria Connors, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 6-7 (Louis Maine Testimony) (November 20, 2017).

⁷⁰ *Id.*

⁷¹ Tribal Clerk's Exhibit #24.

They received this property from Linda Tessier. This is the eastern portion of her lot which borders the St. Regis River. The Deed is a valid SRMT Use and Occupancy Deed, as it is signed by the SRMT Tribal Council and Tribal Clerk. The Deed includes a boundary description from the April 5, 2010 survey conducted by Louis Maine. As stated above, the survey is not credible evidence of the boundaries, as the original Linda Tessier Deed described the property as contained 81 feet of riverfront property, but the survey contained a different measurement with no accounting for the change. Thus, the Court cannot accept the boundary description contained within the Deed as credible and accurate evidence of the Lot's boundaries. Because the boundary description is inaccurate, there was a substantial error made in its issuance. As with Mr. David, Jr.'s Deeds, the Court is not finding that the Deed is invalid, but because the boundary description is wrong, it is not clear what Mr. Phillip Gray, Jr. purchased from Linda Tessier and now owns. Based on the 2017 Louis Maine survey, there is still eighty (80) feet missing from Agnes Armstrong Cree's property. Once this property is accounted for and the survey corrected, this may impact Mr. Gray, Jr.'s boundary line.

A New 2017 Survey

The Court attempted to rectify the errors contained in Mr. David, Jr.'s Deeds and Mr. Gray, Jr.'s Deed and requested the Tribal Clerk's Office conduct a new survey, to which they agreed. Mr. Louis Maine submitted to the Court a survey dated September 14, 2017. This new survey illustrates the problems with Mr. David's Deeds. Mr. Maine included the information and detail from his 2010 survey for the Grays, which the Court has found to not be credible evidence of the boundaries. Mr. Maine, in describing how he conducted the 2017 survey, stated that he "updated a survey that I did before, in 2010, I think was the last time, for Phillip Gray."⁷² He also noted in 2017 when he went out to survey Agnes Armstrong's property that "we found a couple corners – I guess most of the corners were set by Debbie Oakes."⁷³ Thus, the boundaries for Lot #356 initially show the road frontage of Agnes Armstrong Cree at seventy-nine (79) feet, which does not match Agnes Armstrong's 1950 and 1951 Deeds for her property.

Mr. Maine testified that he did have Mrs. Cree's 1950 Deed and realized that the boundaries for the prior survey were inaccurate, as the road frontage was only 79 feet.⁷⁴ As a result, he plotted an additional boundary showing 100 feet of road frontage, based on Mrs. Cree's 1950 Deed. The addition of this road frontage, based on the boundary description in the 1950 Deed demonstrates that the 100 feet road frontage of Mrs. Agnes Armstrong Cree expands into Mr. David, Jr.'s property that he purchased in 2010 from Phyllis Terrance.

Mr. Maine testified he did not have Mrs. Cree's 1951 Deed, which added an additional 80 feet to her property, despite the fact that 1951 Deed was in the possession of the Saint Regis Mohawk Tribal Clerk's Office. Thus, the boundary lines for Lot #356 are still inaccurate in the 2017 survey. So it is unclear whether Mrs. Agnes Armstrong Cree's property expands into Mr. David, Jr.'s 2012 purchase.

⁷² Transcript in the Matter of the Victoria Connors, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 5 (Louis Maine Testimony) (November 20, 2017).

⁷³ Transcript in the Matter of the Victoria Connors, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 6-7 (Louis Maine Testimony) (November 20, 2017).

⁷⁴ Transcript in the Matter of the Victoria Connors, Sydney Armstrong v. Anthony David Jr., Phillip Gray, Jr., 7 (Louis Maine Testimony) (November 20, 2017).

Because the 2017 survey does not include the 1951 Agnes Armstrong Deed, it is not credible evidence of the boundary descriptions.

Factual Conclusions

1. On May 9, 1950, Agnes Armstrong Cree purchased real property on St. Regis Road from Joseph Sawatis, Rita LaFrance, and Angus Bonaparte. It was located south of the LaFrance property. It contained 100 feet of road frontage and approximately 100 feet of river frontage.
2. On February 21, 1951, Agnes Armstrong Cree purchased an additional piece of property from her husband, James Cree, extending her property 80 feet along the road and approximately 80 feet along the St. Regis River.
3. Mr. Cree purchased this property from Joseph and Josephine Sawatis, which he subsequently sold to his wife, Mrs. Agnes Armstrong Cree.
4. The SRMT Tribal Council and Tribal Clerk were not involved in the issuance of the Agnes Armstrong Cree Deeds.
5. The 1950 and 1951 Agnes Armstrong Deeds were recorded with the SRMT Tribal Clerk.
6. Rita LaFrance died in 1991 and is unclear how much property was contained in the Rita LaFrance Estate, as there are no descriptions of how much property she owned.
7. Phyllis Terrance inherited the land contained in the Rita LaFrance Estate. The boundaries or size of the land is unknown.

Legal Conclusions

1. The 1950 and 1951 Agnes Armstrong Cree Deeds contain the required elements for deeds and thus are valid.
2. Agnes Armstrong Cree owned property on St. Regis Road that measured 180 feet along St. Regis Road and approximately 180 feet along the St. Regis River.
3. Rita LaFrance sold a portion of her property to Agnes Armstrong Cree in 1950 and this piece of property could not be included in her Estate.
4. The Rita LaFrance Estate was transferred to Phyllis Terrance. It is unclear what date this occurred. An Ownership Certification issued by the SRMT Tribal Clerk's Office was dated February 2, 1996. It did not contain a description of the property.
5. Phyllis Terrance's 2005 and Linda Tessier's 2001 Deeds contain property descriptions based on a hand drawn map. However, there is no evidence what the property descriptions were based upon, as no survey was conducted before the issuance of these Deeds.
6. The Phyllis Terrance 2005 Deed and Linda Tessier 2001 Deed cannot include the property, which was 100 feet wide along St. Regis Road and approximately 100 feet wide along the St. Regis River, Rita LaFrance sold to Agnes Armstrong Cree in 1950.
7. The Phyllis Terrance 2005 Deed and Linda Tessier 2001 Deed cannot include the property, which was 100 feet wide along St. Regis Road and approximately 100 feet wide along the St. Regis River, that James (Jake) Cree purchased from the Sawatises and subsequently sold a portion to Agnes Armstrong Cree in 1950.
8. The 2009 Debra Oakes survey is not credible evidence of the boundaries of Phyllis Terrance's property because it is not based upon Phyllis Terrance's, Linda Tessier's and Agnes Armstrong

Cree's Deeds and there is no documentation to prove the boundaries laid by Debra Oakes were correct.

9. The 2010 Louis Maine survey is not credible evidence of the boundaries for Phyllis Terrance and Linda Tessier as it relied upon the 2009 Debra Oakes survey, which contained inaccurate boundaries.
10. The boundaries contained in Mr. David, Jr.'s June 15, 2010 Deed are inaccurate because they are based on the 2009 inaccurate survey, thus there was substantial error in the issuance of this Deed as the survey used to define the boundaries was not based upon the boundaries contained in Phyllis Terrance's Deed. Moreover, the boundaries in Phyllis Terrance's Deed are questionable as it is based on a hand drawn map and there is no evidence that Agnes Armstrong Cree's land holdings were taken into account when the Phyllis Terrance Deed was issued.
11. The boundaries contained in the July 7, 2010 Mr. Gray, Jr. Deed are inaccurate. There is substantial error in the issuance of this Deed as the survey used to define the boundaries was not based upon the boundaries contained in the 2001 Linda Tessier Deed. Moreover, the boundaries in Linda Tessier's Deed are questionable as it is based on a hand drawn map and there is no evidence that Agnes Armstrong Cree's land holdings were taking into account when the Linda Tessier Deed was issued.
12. The boundaries contained in Mr. David, Jr.'s March 21, 2012 are inaccurate. There is substantial error in the issuance of this Deed as the survey used to define the boundaries was not based upon the boundaries contained in the 2001 Linda Tessier Deed. Moreover, the boundaries in Linda Tessier's Deed are questionable as it is based on a hand drawn map and there is no evidence that Agnes Armstrong Cree's land holdings were taking into account when the Linda Tessier Deed was issued.
13. The 2017 Louis Maine survey attempts to correct the problem with the prior two surveys and includes Agnes Armstrong Cree's first purchase in 1950. However, the survey does not include Agnes Armstrong Cree's second purchase of real property. Thus, the Agnes Armstrong Cree boundaries contained in the survey are incorrect.
14. The exact boundaries of the Agnes Armstrong Cree are currently unknown because it is unclear where the southern boundary, that borders the Cook property, is located. The owners of the property south of Mrs. Cree's property are not parties to this case and thus their Deeds were not evidence.
15. It is unclear what Phyllis Terrance and Linda Tessier owned and subsequently sold to Mr. David, Jr. and Mr. Gray, Jr., thus it is unclear what property Mr. David, Jr. and Mr. Gray, Jr. own. This can only be clarified with a corrected survey of Mrs. Cree's property with all of Mrs. Cree's Deeds and a proper determination of where her southern boundary line is located.
16. The northern boundaries cannot be determined without knowing exactly where the southern boundary is located. A survey using all of the Deeds, including both purchases made by Agnes Armstrong Cree, and the Cook property, which is on the southern border of the Agnes Armstrong Cree property, must be redone. This survey will clarify the location of the boundaries of the Agnes Armstrong Cree land and location of the boundaries with Mr. David, Jr. and Mr. Gray, Jr.
17. Regarding the location of the southern boundary of the Agnes Armstrong Cree property, pursuant to the SRMT LL&LDO, parties can enter into a boundary line agreement.⁷⁵ The parties would need a signed notarized description of the boundary, from property owners on both sides of the boundary, which they would provide to the surveyor and the Court. If the owners of the property that lies south of the Agnes Armstrong Cree property do not want to participate in the survey, it will be up to the Claimants to determine if they wish to seek legal remedies to resolve the location of the southern boundary.

⁷⁵ SRMT Land Laws and Land Dispute Ordinance § IV. E. 9. (2).

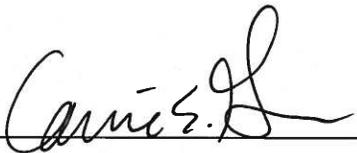
Conclusion

It is hereby **Adjudicated** and **Decreed** that there are substantial errors in the June 15, 2010 and March 21, 2012 Deeds conveying land to Mr. Anthony David, Jr., as they both contain inaccurate boundary descriptions. It is hereby **Adjudicated** and **Decreed** that there is a substantial error in the July 7, 2010 Deed issued to Mr. Phillip Gray, Jr. as it contains an inaccurate boundary description.

The Claimants are to notify the Court once a new survey is conducted and the case will be set for a status conference.

The parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals.

Signed by my hand this 20th day of June, 2018.



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