

**ST. REGIS MOHAWK TRIBAL COURT
IN AND FOR THE ST. REGIS MOHAWK TRIBE**

Ma's Excavation)	
975 State Route 37)	Case No.: 10-CIV-00001
Akwesasne, NY 13655)	
Plaintiff,)	
vs.)	
Wanda Jacobs)	
P.O. Box 712)	
Akwesasne, NY 13655)	
Defendant.)	

DECISION AND ORDER

Pursuant to St. Regis Mohawk Tribal Council Resolution 2008-17 Adoption of Civil Code, which governs disputes arising in Mohawk Indian Country or over which the St. Regis Mohawk Tribal Court otherwise would have jurisdiction, a hearing was conducted with respect to the above referenced matter.

For the reasons specified below the Court hereby enters an Order directing Respondent Ms. Wanda Jacobs to remit payments of \$37.50 per pay period, on a bi-weekly basis, to Plaintiff Ma's Construction for an outstanding debt of \$811.65, which is inclusive of Court fees, until such time as the debt is paid in full.

Plaintiff, Ma's Excavation, represented by Mr. and Mrs. Garrow initiated proceedings in Tribal Court against Respondent Ms. Wanda Jacobs, on January 8, 2010, for an outstanding debt concerning material delivered by Plaintiffs to Respondent; alleging that Ma's Excavating performed work consisting of delivery of six runs of gravel to Ms. Jacobs residence for which they have not received payment in satisfaction of the debt incurred by Respondent. Plaintiff seeks damages totaling \$1021.69 including interest, court and mail fees. A hearing was held February 22, 2010 in Tribal Court during which the Court urged the Parties to work toward an agreement, as there appeared no unresolved issues, and hopefully settling the matter with a return to Tribal Court at a later date.

The parties reconvened on March 8, 2010. The facts are undisputed and uncontroverted. In August 2009, Ma's Excavation delivered six runs of gravel to the residence of Mrs. Wanda Jacobs, at a rate of \$150.00 per load, for which there is an outstanding debt, the original amount being \$900.00. Respondent does not deny the delivery of material, the original amount due, or that there remains an unpaid balance due to Ma's Excavation for the aforementioned deliveries.

The record shows that the Plaintiff received four separate payments from Respondent, evidencing a good faith effort on Respondents' part to pay off the balance, in the amount of \$37.50 dated January 9, 2010, January 30, 2010, February 13, 2010 and February 27, 2010 totaling \$150.00, with the Plaintiff returning one of the four bi-weekly payments, dated February 27, 2010, apparently due to insufficient funds being remitted¹. There appears to be a "missing of the minds" in regards to the exact amount of payment due per pay period, with Plaintiff alleging that the agreed upon amount per pay period would be \$75.00 and Respondent insisting that they agreed to \$37.50, or \$75.00 per month until the amount due was paid in full. As will be elaborated on below the court finds that the amount Respondent has been remitting is satisfactory. The Court directs Plaintiff to accept the payment of \$37.50 towards the outstanding balance. The Court finds the current amount due to Plaintiff totals \$811.69, minus the four payments of \$37.50 and including Tribal Court fees and mailing fees.

In addition to the underlying debt, court fees and mailing fees Plaintiff seeks interest rate of 6.75% on the amount due. The Court finds, based on testimony and invoices entered into the record, Respondent agreed to purchase a delivery of six runs of gravel at a rate of \$150.00 per load and nothing else indicating addendums or caveats regarding late payment. Respondent, however, acknowledges the receipt of gravel and the amount due of \$900.00 at a rate of \$150.00 per load. Based on the above factors the Court finds that the Plaintiff is not entitled to interest on the balance of the amount due, however Plaintiff is entitled to Court costs and mailing fees.

Plaintiff also seeks an amount of \$75.00 per pay period, or \$150.00 per month, toward the outstanding balance. Respondent has been remitting \$75.00 per month, or \$37.50 per pay period. The Court finds that based upon Respondents income, which has been verified, the amount of \$75.00 per pay period would prove too burdensome on Respondents income and that the current payment schedule of \$37.50 per pay period is appropriate. Accordingly, the Court directs Respondent continue to remit payments until such time as balance is paid in full. This translates into $\$811.69/\$37.50 = 21.64$ payments or 10.5 months of bi-weekly payments of \$37.50.

Should Respondent not comply with this order or fail to make such bi-weekly payments this court will move to issue a garnishment order directing the Saint Regis Mohawk Tribe deduct said amount automatically per pay period until such time as the amount is satisfied.

The Court issues this order contemplating that Plaintiff will be put in as good a position as would have been had the full payment been received and no other cost had accrued to the business.

Be it So Ordered

¹The record shows a hand written note dated 1/30, which reads "[W]e cannot accept your payment of \$37.50. We mailed you a letter requesting a payment of \$76.49 per pay period." Signed Ronald Garrow.

Entered by my hand on this the 5th day of April 2010



Peter J. Herne, Chief Judge,
St. Regis Mohawk Tribal Court

A copy of this decision and order shall be provided to Mr. Garrow, owner of Ma's Excavation,
and Ms. Wanda Jacobs.

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SEAL

