

ST. REGIS MOHAWK TRIBAL COURT

<p style="text-align: center;">Vicki A. Wood, v. Allen F. Terrance,</p>	<p>Plaintiff</p> <p>Defendant</p>	<p style="text-align: center;">Case No.: 11-CIV-00019</p>
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DECISION AND ORDER

I. PROCEDURAL HISTORY

Plaintiff, Vicki A. Wood, brought action in the Saint Regis Mohawk Tribal Court against Defendant, Allen F. Terrance, on December 20, 2010, for recovery of personal property that remains in the home Plaintiff and Defendant resided in together, located at 331 McGee Road, and for filing and other court fees she has incurred. (*See*, Plaintiff's Complaint) Plaintiff alleges that Defendant knows that certain personal property belongs to her; but, refuses to let her in to retrieve it. (*See, Id.*)

Defendant was timely served the complaint and 20-day summons by the Plaintiff on December 27, 2010. Defendant filed a timely Answer with the Court on January 10, 2011. In his Answer, Defendant states that Plaintiff has received about 90% of her personal belongings. (*See, Defendant's Answer dated Jan. 10, 2011*). Defendant also states he does not accept the jurisdiction of the Tribal Court. (*See, Id.*) While the Defendant did file an answer with the Court, pursuant to St. Regis Mohawk Tribe (TCR) 2008-20, Rules of Civil Procedure §XI [Hereinafter SRMT Civ. Pro.] he did not serve the Plaintiff his Answer, nor did he file proof of such service with the Court.

The first pre-trial conference in this matter was set for February 23, 2011, at 10 o'clock AM and the Court sent a notice of hearing, by certified return receipt mail, to the parties advising them of the aforementioned court date and time. Both parties signed for delivery of said notice. Plaintiff appeared; however the Defendant failed to appear. As is customary in the SRMT Court, at the scheduled time the Court further advised the Clerk of the Court to contact Defendant which she did and Defendant was advised of his required appearance. Defendant advised the SRMT Clerk that he was not going to appear, and he did not. At this hearing the Plaintiff requested that she have access to get her remaining belongings from the home she and Defendant shared on McGee Road located on the Saint Regis Mohawk Indian Reservation (SRMIR), she also asked for access to get her property that is being stored at Defendant's brother, also believed to be on the SRMIR.

The Court set a new date for March 17, 2011 at 9 o'clock AM and a Notice of Hearing was sent to the parties by certified return receipt mail, which was confirmed delivered and signed for by the parties. However, Defendant again failed to appear for said Court hearing. The Court

provided the Plaintiff with a copy of Defendant's Answer; and, at this hearing the Plaintiff filed a Notice of Motion asking the Court to "...grant me the ability to retrieve my lawful and rightful possessions from Mr. Terrance's residence. Mr. Terrance does not deny that these belongings are mine but is denying me access to the home." (*See Plaintiff's Notice of Motion*).

On March 17, 2011, the Court received a letter from Defendant stating, amongst other things, that he "...will not submit to the St. Regis Mohawk Tribal Court..." (*See, Defendant's Letter dated March 16, 2011*) And, that he is seeking from a New York State Family Court, in part, a petition to demand, "...the removal of the rest of her personal belongings from my residence...." (*Id.*)

This decision and order is based upon whether the SRMT Court, as requested in Plaintiff's complaint on December 20, 2010, shall provide Plaintiff, an enrolled member of the Saint Regis Mohawk Tribe, an order to retrieve her personal property from the home the parties once shared together, which is located within Saint Regis Mohawk Reservation, and to address the allegations contained in the only 'writing' provided by the Defendant to the Court.

II. DISCUSSION

Pursuant to SRMT Civ. Pro the Plaintiff carries the burden of proof (*See, § XX*)(A)). "He who pleads must prove¹." The burden moving forward is one of proving a cause of action upon which relief may be granted by this Court. In doing so the Plaintiff, Ms Vicki Wood, must prove that she is entitled to the recovery of personal property that remains in the home she and the Defendant, Mr. Allen Terrance, shared which is located at 331 McGee Road on the Saint Regis Mohawk Indian Reservation (SRMIR) and for property being stored by his brother also located on the SRMIR.

In 2008, the SRMT Court requested from Tribal Council that a certified copy of the laws the Court is to utilize be sent to the Court. The Court received a bundle of certified laws, which included the following: SRMT TCR 2008-16 Rules of Civil Appellate Procedure, SRMT TCR 2008-17 Rules of Evidence, SRMT TCR 2008-18 Attorney Practice Requirements, SRMT TCR 2008-19 Civil Code [hereinafter, SRMT Civ. Code], SRMT TCR 2008-20 Rules of Civil Procedure [hereinafter, SRMT Civ. Pro.], SRMT TCR 2008-21 Court Filing Fees [Amended 2010-40] , and SRMT TCR 2008-22 Tribal Court and Judiciary Code. In 2009, the Court received a certified copy of SRMT TCR 2009-51 Animal Control Ordinance [Amended 2011-19], SRMT TCR 2009-69 Land Dispute Ordinance [Amended Apr. 14, 2011].²

The SRMT TCR 2008-19 Tribal Civil Code (herein after SRMT Civ. Code) specifically lays out, in a hierarchal fashion, the choice of law to be applied by the SRMT Court, which gives precedence to those first appearing in the list. The Court must first determine by examining § V (A) (1)-(6), in sequence, which law is controlling in the case at bar.³ The first of which provides:

¹ *Actori incumbit onus probandi*. The burden of proof is upon on the Plaintiff.

² These SRMT certified laws can be found at the Court's webpage. *See, http://srmt-nsn.gov/divisions/justice/tribal_court/*

³ *See, 1.* Such portions of the Constitution of the United States and federal law are clearly applicable in Mohawk Indian Country; *2.* Written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe; *3.* Unwritten Mohawk laws, and written and unwritten

Such portions of the Constitution of the United States and federal law are clearly applicable in Mohawk Indian Country (with great weight given at all times to principles of the United States Constitution and federal Indian law which recognize Indian sovereignty, self-determination, and self-government, which render many federal and state laws inapplicable to federal Indian Country, which provide for a federal trust responsibility to Indian tribes, and which provide rules of legal interpretation favorable to Indian tribes);

Plaintiff's Complaint is an action, in most respects, in equity based on a Constitutional claim, which is due process to protect and retrieve her property. This request must be weighed against Tribal self-determination and self-government.

Here the Plaintiff has sought the assistance of her Tribal Government to retrieve property against a Tribal member on a parcel of land deeded by the SRMT to what is believed to be a Tribal member within the jurisdiction of the Saint Regis Mohawk Tribe. Plaintiff's claim must be allowed to go forward to protect her Constitutional and Civil rights, as well as protecting the right of the SRMT to Tribal self-determination and self-governance. Thus, this Court must first give preference to the applicable provisions of the United States Constitution, Federal laws, and the SRMT laws cited herein in determining the case at bar.

The Defendant's Answer which has been his only response to the Court, lists quite a number of allegations for why he believes that he is not subject to the Tribal Court's jurisdiction. The Court will now address these arguments:

- 1.) Defendant makes an allegation citing what he incorrectly alleges to be federal law for why he refuses to subject himself to the jurisdiction of the SRMT Tribal Court. As the Defendant states:

“My position is based upon Federal case law that establishes the fact that ‘the informal assembly of the elected body of the St. Regis Tribe does not constitute a Court, like the Peacemakers Court inside Seneca County, within the meaning of NYS Indian Law sect. 5, *Terrance vs. Gray* 165App.Div. @ page 636, 151 NYS 136 and 138.” (*Defendant's Response dated 1/10/11 and 3/16/11*).

Defendant also cites *Peters v Tallchief*, 121 A.D., 309, 106 N.Y.S. 64, again alleging it to be federal law and standing for what the Defendant alleges: “Unless state courts have jurisdiction, in these matters, the parties would be without remedy, the state courts have this right is clear”. (*See, Defendant's Letter dated 3-16-11*).

Mohawk customs, traditions and practices; 4. Generally recognized principles of the law of contracts as reflected by the most recent Restatement of Contracts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine; 5. 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; 6. New York State law (but only if) consistent with principles of Tribal sovereignty, self-government, and self-determination and it is consistent with the aforementioned. § V (A) (1)-(6).

It should be first stated that the aforementioned cases are New York State cases, not Federal case law as is alleged by the Defendant, and the *Peters v. Tallchief* quote could not be located in the majority opinion.⁴ Nonetheless, both of these New York State cases were decided, in part, on the fact that unlike the Seneca Nation of Indians *who had an established Peacemaker's Court in 1892*, neither the St. Regis Mohawk nor the Tuscarora had a formal Court system in 1915 and 1907, during the time the opinions were written. In addition, Defendant fails to take into consideration that during the time in which the cases occurred, this was a period when the federal government and New York State were trying to terminate Tribal Nation authority⁵, inclusive of judicial authority vested in the Tribal Nations. Defendant should also take note that almost a century has passed since these decisions were made and the St. Regis Mohawk Tribe now does have a formal Court in place for parties to have their cases adjudicated. The Tribal Court has come a long way since 1987 when committees were first formed to plan, draft laws, and seek funding.⁶ In 2007, all the members of Tribal Council, as per the 2005 community referendums, signed a resolution recognizing “the Tribal Court system as an independent decision-making entity with independent judicial authorities” (*TCR 2007-01, Authority of the Tribal Courts System; see also, TCR 2005-35 Tribal Referendum on Tribal Courts; TCR 2005-64 Referendum on the Tribal Family Tribal Court*).

As such, the concerns in *Terrance v Gray* are no longer at issue since the SRMT Court has a formal Tribal Courts system. Furthermore, to rely upon or give precedential value to the cases cited by the Defendant would be contrary to the laws and ordinances enacted by the Saint Regis Mohawk Tribe, which first provide that federal constitutional provisions and federal laws are only applicable if they further Indian sovereignty, self-determination, and self government. To rely upon New York cases that were decided at a time when New York was opposed to Tribal Nation authority, including juridical authority is contrary to the laws provided to this Court and said position is therefore rejected by this Court. This even more so, for State court decisions that the Defendant tries to paint as federal law which would diminish Indian sovereignty, self-determination, and self-governance. (See SRMT Civ. Code §V (A) (6)-(B)).

Furthermore, pursuant to SRMT Tribal law New York State law is not automatically applied in the Tribal Court, and is only applicable when:

Principles of New York State law for resolving private civil disputes may be applied in Mohawk Courts for the purpose of resolving a private civil dispute over which the Mohawk Court has jurisdiction if (but only if) the Mohawk Court finds: (i) there is no

⁴ Precedence is given to the majority opinion as it gives rise to its judgment (an explanation of the reasoning behind the majority's reasoning). Whereas, a concurring opinion is not binding precedence, as well as a dissenting opinion, which also does not become part of case law.

⁵ During this period the federal policy was to abolish traditional forms of governance, free-up Indian held lands, and to assimilate and civilize Indians, which sought was through the enactment of such federal acts as the Dawes Allotment Act of 1887 and the Citizenship Act of 1924. *See in general, Felix Cohen's HANDBOOK OF FEDERAL INDIAN LAW, §104, 75-84 (2005)[hereinafter cited HANDBOOK INDIAN LAW]; See also, New York Const. Convention, Proposal to Amend §15. (1915). (The proposal failed but it was an attempt by NY State to extend New York law unto Tribal Nation territories and abolish Tribal sovereignty and to take any judicial authority away from the Tribal Nations, inclusive, and in particular, the Seneca Nation of Indians).*

⁶ *See generally, SRMT TCR-87-8, Judicial Committee to Draft Legal Codes; TCR 1989-16 Akwesasne Funding Committee BIA Funding Request; TCR 90-32 Grants for Law Enforcement and Tribal Court; TCR 91-14 Grant for Start of Tribal Court; TCR 92-122 -92-123 Tribal Courts Contract*

other controlling principle of Mohawk law; (ii) **application of the New York State law is consistent with principles of Tribal sovereignty, self-government, and self-determination**; and (iii) application of the New York State law is in the overall interest of justice and fairness to the parties. (SRMT Civ. Code § V (B)[bold emphasis added]).

Clearly, Defendant's reliance on New York case law, *Terrance v. Gray* and *Peters v Tallchief*, as federal law is incorrect because they are state law cases. Second, SRMT Tribal law delineates how choice of law is selected with New York law being last on the list and only used when it will not infringe on Tribal rights. If Defendant is asking the Court to apply State law in the current context, to do so, with the cases stated herein, would violate SRMT Civ. Code § V(A)(1)-(6)⁷ for selecting applicable law and also violate § V(B) for its use would infringe on Tribal sovereignty, self-government, and self-determination, which is not permissible under SRMT Tribal law.

2. As an additional defense the Defendant states that he will not subject himself, family or property to the jurisdiction of the tribal court and has filed this civil matter in the Franklin County Family Court. (*See, Defendant's Response dated 1/10/11*).

Tribal Court's jurisdiction is clearly defined within the SRMT's Tribal law. (*See* SRMT TCR 2008-22 Tribal Court and Judiciary Code [hereinafter, SRMT Judiciary Code]; SRMT Civ. Code § II (A)-(G); SRMT TCR 2007-01 Authority of the Tribal Court⁸) which provide:

The Tribal Court shall have original jurisdiction extending to all cases, matters or controversies arising under and as may be limited by the laws, ordinances, regulations, customs and judicial decisions of the Saint Regis Mohawk Tribe. (SRMT Judiciary Code §V(1)).

Disputes arising in, connected with, or substantially affecting Mohawk Indian Country; (SRMT Civ. Code § II (A)).

Except as limited by St. Regis Mohawk Tribal laws, to the fullest extent, reach, and scope of civil jurisdiction otherwise permitted under applicable principles of American Indian law for Indian tribes located within the territorial boundaries of the United States, as recognized by the Supreme Court of the United States. (SRMT Civ. Code § II (G))

Pursuant to SRMT Civ. Code §II, in reference to civil jurisdiction, it is clear that the SRMT Court has jurisdiction over civil disputes arising in, connected with, or substantially affecting Mohawk Indian Country. (SRMT Civ. Code § II (A)).

Here, the issue at bar involves a dispute arising within the SRMIR, involving personal property of a tribal member, and the Defendant.⁹ The Plaintiff, a tribal member residing on the

⁷ See, FN. 3.[to view the list].

⁸ The St. Regis Mohawk Tribe hereby recognizes the Tribal Court system as an independent decision-making entity with independent judicial authorities.

reservation has rightly filed in the Tribal Court against Defendant, who resides on said reservation and is believed to be an enrolled tribal member for a dispute arising on said reservation for recovery of her personal property. While it is true that in 1950, Federal law conferred New York State Courts concurrent civil jurisdiction under 25 U.S. §233¹⁰, numerous Courts have held that concurrent jurisdiction does not eclipse, supplant, or extinguish the Tribe's right of self-determination and sovereignty to hear disputes, and where disputes are of an internal manner, such as the case at bar, they remain the exclusive jurisdiction of the Tribe. (*See, Bowen v. Doyle*, 880 F. Supp. 99 (W.D.N.Y. 1995) *aff'd* 230 F.2d 525 (2d Cir. 2000)). Under federal law, the correct forum for the case at bar is the Tribal Court because it involves an internal tribal matter, a Plaintiff seeking to recover property from another tribal member within the exterior boundaries of the reservation. The Supreme Court has stated that as a matter of federal policy and comity, matters within the tribe's jurisdiction "presumptively" lie in tribal court. (*Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 18 (1987); *See also, Bowen v. Doyle*, 880 F. Supp. 99 (W.D.N.Y. 1995) (interpreting 25 U.S.C. § 233)). As such, the Plaintiff, Defendant, and dispute are within the jurisdiction of the SRMT Courts, and pursuant to SRMT Tribal law, and Federal Indian law, the Court clearly has jurisdiction over the Defendant and the dispute.

The Defendant alleges that he has filed in Franklin County Family Court seeking, amongst other actions, to have the Plaintiff remove the rest of her personal belongings from the residence they both shared. (*See Defendant's Answer* dated 3/16/11). Which is, ironically, what the Plaintiff seeks in the case at bar. Pursuant to federal law, defendants, native and non-native, must exhaust tribal court remedies before challenging tribal court's jurisdiction in federal or state court. (*See, Strate v. A-1 Contractors*, 117 S. Ct. 1404, 137 L. Ed. 2d 661 (1997); *National Farmers Union Insurance Companies v. Crow Tribe*, 471 U.S. 845, 85 L. Ed. 2d 818, 105 S. Ct. 2447 (1985); *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 94 L. Ed. 2d 10, 107 S. Ct. 971 (1987)).

Tribal exhaustion requirements provide Tribal Courts with an opportunity to "explain to the parties the precise basis for accepting [or rejecting] jurisdiction. (*Id.* 471 U.S. at 857, 85 L. Ed. 2d 818, 105 S. Ct. 2447; *Strate*, 137 L. Ed. 2d at 674). And, it is recognized by numerous Courts, as being a policy that supports tribal self-government, the same goal which is now codified in the SRMT Laws.

In general, the Tribal exhaustion rule applies even when an action filed in state or federal court precedes the filing of a tribal court action. (*See, Altheimer & Gray v. Sioux Manufacturing Corp.*, 983 F.2d 803 (7th Cir. 1993); But see, *Drumm v. Brown*, 716 A.2d 50 (Conn. 1998) (the federal exhaustion doctrine applies to state courts but is not required in the absence of a pending tribal court action).

Here the Defendant cannot simply claim that the Tribal Court does not have jurisdiction because he does not recognize the Tribal Court's jurisdiction or that he prefers the State Court. SRMT

⁹ Who may or may not be enrolled member of the Saint Regis Mohawk Tribe. However, pursuant to Tribal law only SRMT members are allowed to be the holder of Use and Occupancy deeds. SRMT TCR 2011-19 Land Dispute Ordinance §V (b) [Only Tribally enrolled members shall be permitted to possess a use and occupancy deed or to otherwise own land on the Reservation]. Thus, a property owner it shall be assumed here that he is a Tribal member.

¹⁰ Act of July 2, 1948, ch. 809, 62 Stat. 1224 (codified at 25 U.S.C. § 232 (1988)) (criminal jurisdiction); Act of Sept. 13, 1950, ch. 947, § 1, 64 Stat. 845 (codified at 25 U.S.C. § 233 (1988)) (civil jurisdiction).

law and federal law recognize the SRMT Court's jurisdiction, and where disputes are of an internal manner, such as the case at bar, they remain the exclusive jurisdiction of the Tribe. In addition, the federal exhaustion rule mandates that remedies be first exhausted in the Tribal Court as a matter of tribal self-government, especially those, as Plaintiff seeks, issues involving internal matters. Furthermore, it is ironic that the Defendant would allege that State jurisdiction is preferred by him, while ignoring that he is essentially consenting to the relief sought by the Plaintiff in this action, retrieval of her property, but, will only do so if it is presumptively ordered by a State court.

3. Defendant questions the integrity of the Tribal Court system and Judges in an effort to support his stance that he is not subject to the Court's jurisdiction.

"I have grave concerns about a Tribal court System that has no procedure law, or any criminal civil liability when adjudicating these civil matters." (*Defendant's Response dated 1/10/11*).

"I have grave concerns about the Tribal Council system on the basis it does not have a system of 'checks and balances.'" (*Defendant's Response dated 3/16/11*.)

As previously mentioned the SRMT has provided the Court with a bundle of certified tribal laws. (Inter, §II p.2) The SRMT Court is bound to uphold these laws of the Tribe, which define the protocol, procedures, fees, and fines for how cases are filed, heard, and decided. Therefore, the Defendant's allegation that there is no procedural law is clearly rebutted by the fact that such SRMT laws exist, and are that which the SRMT Court is applying.

These SRMT laws also provide the Court and community with a system of checks and balances, which the Defendant alleges do not exist. These include the SRMT 2008-19 Rules of Civil Appellate Procedure and SRMT Judiciary Code. Pursuant to SRMT 2008-19 Rules of Civil Appellate Procedure §III (A):

Any aggrieved party may appeal from a final judgment of the tribal court. A final judgment is one that disposes of all issues in the case.

Therefore, if a tribal member¹¹ is unhappy with an SRMT Court decision, he/she has a right to appeal. This clearly provides an additional system of 'checks and balances.' Next, the SRMT Judiciary Code defines the judiciary, the power of the Court, composition of the judiciary, and election requirements and qualification of Judges. SRMT Court Judges are elected by the community, which provides community members an additional system of 'checks and balances' in that it provides an important right in being able to elect the officials to serve in these positions. Ironically, these are some of the same methods for 'check and balances' that are used by the New York State Court, which the Defendant seems to prefer having his case heard in.

In addition, Defendant overlooks his ability, if he is unhappy with the Tribal Court system, to file a complaint, to ask for a referendum, to seek a recall of the elected Judges, or to file an appeal, all of which not only provides aggrieved parties with a remedy, but also provides a system of

¹¹ The Defendant is presumed to be a Tribal member. See, Inter, FN #9.

‘checks and balances.’ As such, Defendant’s concern that there are no ‘checks and balances’ within the SRMT Tribal Court system are erroneous and without merit.

4. Defendant alleges that the Tribal Court is immune from civil and criminal liability, questions the SRMT’s sovereignty (its ability to extend its immunity to a Tribal Judge), and makes an allegation that “forcing me [him] to accept the jurisdiction of the Tribal court is a violation of my [his] civil rights.” (Defendant’s Response dated 1/10/11)[Brackets added for clarity]. As the Defendant provides:

“There are questions about whether or not the chiefs can legally extend this immunity to a third party, or agent, like the Tribal judge. ...The present Tribal Court has the ability to render decisions with malice against Tribal members, and there is nothing that the injured Tribal member can do for remedy.” (*Defendant’s Response dated 3/16/11*).

Tribal governments possess sovereignty, which is not derived from the federal government, for it is an inherent power. Here, because those Indians of the Village of Saint Regis predate the creation of the United States, therefore sovereignty of ‘those Indians’ is recognized as being inherent, and not legislatively created or bestowed by another sovereign, e.g., the United States. With this inherent power Tribes have plenary and exclusive power over their members and their territories. (*See, United States v Lara*, 541 U.S. 193 (204)). In addition, Tribes have sovereign immunity. The Supreme Court has stated that tribal immunity “is a necessary corollary to Indian sovereignty and self governance.” (*Three Affiliated Tribes of the Ft. Berthold Reservation v Wold Eng’g, P.C.*, U.S. 877,890 (1986)). Tribal sovereign immunity protects tribal officials and tribal employees acting within the scope of their authority. However, when Tribal Officials and employees act outside their scope of authority the Courts allow for suits for at least declaratory or injunctive relief. (*See, Ex. Parte Young*, 209 U.S. 123 (1908)).

Further, Tribal Nations enjoy immunity from suit, unless they consent to suit, or where waived by Congress. (*See, C & L Enters., Inc. v. Citizen Band, Potawatomi Indian Tribe of Okla.*, 532 U.S. 411 (2001); *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998); *Okla. Tax Comm’n v. Citizen Band, Potawatomi Indian Tribe of Okla.*, 498 U.S. 505 (1991); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Puyallup Tribe, Inc. v. Dep’t of Game of State of Wash.*, 433 U.S. 165 (1977); *United States v. U.S. Fidelity & Guar. Co.*, 309 U.S. 506 (1940); *Turner v. United States*, 248 U.S. 354 (1919). See also *Oneida Indian Nation of N.Y. v. Madison Cnty.*, 605 F.3d 149, 156 (2d Cir. 2010), cert. granted, 131 S. Ct. 459, vacated and remanded, 131 S. Ct. 704 (2011) (per curiam)). Congress has limited tribal immunity in some cases. 25 U.S.C. § 450f(c)(3) (mandatory liability insurance); § 2710(d)(7)(A)(ii) (gaming activities); *See*, 28 U.S.C. §1346(b), Federal Tort Claims Act (waives immunity if a tortuous act of a federal employee causes damage).

As such it is unquestionable that Tribal governments, such as the SRMT, have the right to extend its sovereign immunity to its Tribal officials and employees. Here, while the SRMT Court is an independent decision-making entity with independent judicial authorities, the SRMT Court is also a recognized entity of the SRMT. (*TCR 2007-01, Authority of the Tribal Courts System; see also, TCR 2005-35 Tribal Referendum on Tribal Courts; TCR 2005-64 Referendum on the Tribal Family Tribal Court*). As such, the Tribe’s sovereign immunity extends to the Court.

It is important to note that SRMT Civ. Code defines the Tribe's sovereign immunity; and, as in *Ex. Parte Young*, when it may not be used as a bar against suit. (*See*, § IV (A)-(F)). Meaning it can be invoked by a Tribal member against the Tribe:

The officers, agents (including Tribal attorneys), and employees of the Saint Regis Mohawk Tribe are immune from suit for acts of omission within the scope of their official capacity and for acts or omissions which such officers, agents (including Tribal attorneys), or employees reasonably believed to be within their official capacity. (Civ. Code § (B).

The Mohawk Tribe does not assert sovereign immunity against claims for equitable relief brought in Mohawk Court (and only in Mohawk Court) under the federal Indian Civil Rights Act, but such claims may not be brought against individual Indians or officers, agents or employees of the Tribe and such claims must be limited to non-monetary (injunctive or declaratory) relief. (Civ. Code § (F) [underline added]).

Therefore, pursuant to the SRMT Civ. Code, Tribal Officials and employees who act outside their scope of authority are not totally immune from suit, and "the Mohawk Tribe does not assert sovereign immunity against claims for equitable relief brought in Mohawk Court..." Therefore, contrary to Defendant's allegations there is a total immunity from suit, there is in fact a limited waiver to SRMT sovereign immunity. This is akin to what many other sovereigns have enacted, e.g. NY Court of Claims and the U.S. Court of Claims.

Next, the Chief Judge and Chiefs of the St. Regis Mohawk Tribe are elected by tribal members for a term of three years. The SRMT Judiciary defines the eligibility requirements of who may be selected for election and be elected to serve as a Judge of the SRMT Court.

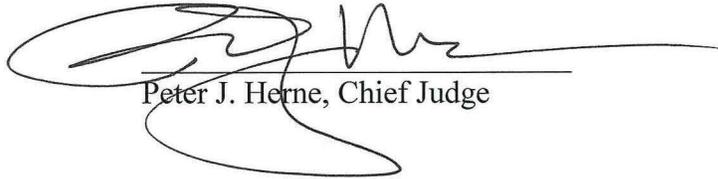
Tribal judges shall be elected pursuant to Section 7(a) for three (3) year terms. Judges shall be at least twenty five (25) years old, of good moral character and not have been convicted of a serious crime as defined by this Ordinance. The Chief Judge must be an attorney with at least five (5) years experience and knowledge working with Federal Indian and Tribal law and customs...(Judiciary Code §VIII).

Here Defendant completely ignores, his Civil Right, too select elected officials through voting or removing officials through petition or referendum, as a remedy to allegations of impropriety by a selected official. In this case, the elected officials are the Tribal Chiefs and Judges. In addition, the SRMT has put in place an Ethics Ordinance that provides procedures and forum for tribal members to have their grievances raised and heard concerning Tribal elected officers. (*See, SRMT Ethics Ordinance, TCR 2007-61*). The Defendant has avenues available to seek remedy for the allegations he has made herein. Including any alleged violation of his civil right(s). But, such allegation must have some support in that they must be based on something more than just being muttered in spoken word. Further, such allegations do not bar Defendant from being within the jurisdiction of the SRMT Tribal Court to answer the case at bar for clearly the Plaintiff has just as much right to have her grievances heard by her Tribal Court. Wherefore, the allegations made by the Defendant are rejected, and the Court shall permit the Plaintiff's claim for relief to proceed and,

IT IS ORDERED

Based upon the aforementioned reasons, this Court rejects the allegations made by the Defendant, and on the 4th day of October, 2011 at this 9:30 AM time the Court will hear from the parties as to why the Court should not issue an order allowing Plaintiff to recover all her personal belongings from the residence they shared located at 331 McGee Road and any other building where her personal belongings may have been stored.

Entered by my hand on this the 31st day of August 2011



Peter J. Herne, Chief Judge