

St. Regis Mohawk Tribal Court

Brenda Hathaway)	
Plaintiff)	DECISION AND ORDER
)	
-V-)	12-LND-00007
)	
Faith Thomas)	
Defendant)	

PROCEDURAL HISTORY

Brenda Hathaway, acting as Executrix on behalf of the Louis Hathaway estate, filed an appeal of a St. Regis Mohawk Tribe Land Dispute Tribunal (hereinafter SRMT LDT) decision (dated April 26th, 2012) in St. Regis Mohawk Tribal Court on May 24th, 2012. In the appeal Ms. Hathaway named Faith Thomas as the respondent in the matter. A twenty (20) day civil summons was issued on May 24th, 2012 to accompany the complaint. On June 12th, 2012 the Respondent's answer was received and filed with the Court, and it included a counterclaim.

Pre-trial hearings were conducted on July 10th, 2012; August 15th, 2012; and September 12th, 2012 in St. Regis Mohawk Tribal Court with the parties in this case to clarify issues prior to a decision being rendered by the Court. A letter written by the Appellant raising objections relating to this matter was received by the Court on June 21st, 2013. On June 13th, 2013 a letter written by the respondent in this matter was received by the Court. In the letter the respondent requests that the case be dismissed based on the appellant having no standing in the matter.

DISCUSSION

Today the Court is called upon to decide the case of *Hathaway v. Thomas* which comes to us from an appeal of a decision made by the St. Regis Mohawk Tribe's Land Dispute Tribunal (hereinafter SRMT LDT). In our decision we affirm most of the LDT decision in this matter, but with respect to certain parts of the decision which we will discuss, we "vacate" those portions of the decision and "substitute" it with our own decision.¹

Based upon the record before us it appears that in May of 2001 Mr. Louis Hathaway and Ms. Faith Thomas, the respondent in this case, entered into an agreement where Mr. Hathaway was going to sell a portion of land to Ms. Thomas for a set amount, and in this agreement payments

¹ See, SRMT land Dispute Resolution Ordinance XV (B.)(2.)

were going to be made until November 2003.² These payments were subsequently made³ thereby indicating that the agreement was completed between Ms. Thomas and Mr. Hathaway by 2003. Thereafter, as the LDT noted: “There is no documentation of any Land Dispute between the Late Louis Hathaway and Faith Thomas.”⁴

In June of 2008 Mr. Hathaway passed away, and just 2 months later his son (Thomas Hathaway) passed away as well. Following the passing of Mr. Louis Hathaway the Appellant, Ms. Brenda Hathaway Coughlin, was appointed the executrix of his will on August 26, 2008 by the SRMT Council in a SRMT Tribal Council Resolution.⁵ Although there is within the record of this case two wills signed by Mr. Louis Hathaway, for current discussions we deem the most recent will dated January 10, 2007 to be the valid applicable will in the case at bar.⁶ It is in this will that the Appellant is named as the executrix of Mr. Louis Hathaway’s estate.

In October of 2009 the respondent, Ms. Faith Thomas, received a SRMT Use & Occupancy Deed for the property that was acquired by her from Mr. Louis Hathaway pursuant to their 2001 agreement. This occurred, as the Appellant argues in her submission to the Court, after she was appointed Executrix and after she delivered a letter to the SRMT Clerk’s Office indicating that she did not want any deeds issued with respect to her deceased father’s property.⁷

We will begin by addressing the arguments made by the appellant, Ms. Brenda Hathaway Coughlin, as they have been presented to the Court by her.

In the Appellant’s application to the court she argues that the respondent’s (Ms. Thomas) 2009 SRMT Use and Occupancy Deed should be revoked and the matter set ‘anew’. For the reasons provided below we do not find merit in revoking in its entirety the 2009 Use and Occupancy Deed issued to the respondent, Ms. Thomas. We must note however that that in this decision we will provide that a corrected SRMT Use and Occupancy Deed must be issued. *Supra*

The Appellant emphasizes in her submissions to the Court that this 2009 SRMT Use & Occupancy Deed was issued over not only her objections, but against her directive to the SRMT Clerk that no deed should have been issued. It appears that the Appellant fails to recognize that this is an issue of timing.

First, Ms. Thomas and Mr. Hathaway entered into an agreement in 2001, and based upon receipts in the record, the agreement was completed by 2003. As the SRMT LDT found, after 2003 there does not appear to have been any conflict between Ms. Thomas and Mr. Hathaway over the land or the agreement.⁸

² See, May 31, 2001 agreement between Louis Hathaway and Faith Thomas part of record

³ Receipts for the same are contained in the record and the SRMT LDT held the same.

⁴ See, April 26, 2012 SRMT LDT decision.

⁵ It does not appear that appellant was ever appointed executrix of her brother’s (Mr. Tommy Hathaway) estate.

⁶ This is further supported by a clause in this will indicating that it was to supercede any prior will. See, January 10, 2007 Will contained in the record.

⁷ See, Notice of Appeal May 24th, 2012.

⁸ See, April 26, 2012 SRMT LDT decision noting that: “Thomas Hathaway Jr. said Faith Thomas and his grandfather had a good relationship and there were no disputes.”

Next, it appears that the Appellant believes that her appointment as Executrix in 2008, following her father's passing, gave her the authority to stop all transactions involving her father's estate, including that of Ms. Thomas' which was entered into in 2001 and completed by 2003. This is a mistake on the Appellant's part for it is clear that even in light of her appointment as Executrix of her Father's Estate in 2008, this appointment came with the potential obligation of the estate having to honor and abide by the 2001 agreement made by the testator (Mr. Louis Hathaway) with Ms. Thomas. Mr. Hathaway's estate would NOT be freed from honoring this obligation by the simple fact that the Appellant was named Executrix in 2008. Furthermore, although the role of the executrix is not currently provided for in SRMT law, it is clear from the record that the prior will of Mr. Louis Hathaway indicated that the "Executrix and Trustee", which was Brenda Coughlin, was "To pay my debts, funeral and testamentary expenses".⁹ Therefore, irrespective of the Appellant's appointment as Executrix, it is clear that the Louis Hathaway estate would come attached with it the obligation to meet the 2001 agreement entered into by Mr. Hathaway and Ms. Thomas.

In light of the foregoing, it is uncertain as to which mechanism the Appellant as Executrix would find appropriate to challenge the 2009 SRMT Use & Occupancy Deed issued to Ms. Thomas. We say this because it is clear that a forum has been provided to the Appellant to challenge the 2009 SRMT Deed issued to Ms. Thomas. This was the SRMT LDT process as provided for in the SRMT Land Dispute Resolution Ordinance.¹⁰ It was at this forum/process that the Appellant, and Appellant as Executrix, could challenge the issuance of the 2009 SRMT Use and Occupancy Deed. From the record of this case it appears that she has done so. Therefore, for the Appellant to simply reiterate that the 2009 deed was issued after her appointment as Executrix, and therefore should be rescinded is missing the obvious: A mechanism to seek redress of that perceived wrong was provided to the Appellant.

Next, in this appeal we can also note that the appointment of Appellant as Executrix occurred in 2008 and the SRMT issuance of the Use and Occupancy deed was in 2009. In either event, it appears these actions are consistent with SRMT authority[ies] in this regard to a certain extent. First, the Court is unaware of any law[s] of the SRMT with respect to the appointment of Executors or Administrators of wills, or to make such appointments in the absence of a will. Nonetheless, in numerous cases before the Court it appears that the SRMT has made these appointments to various individuals. Therefore, this appears to have become a 'custom' engaged in by the SRMT Council to assist the family of deceased SRMT members and residents.¹¹ The authority to do so appears to be consistent with those provided in the SRMT Land Dispute Resolution Ordinance (hereinafter LDRO), with authorities which emanate from any inherent authorities of the SRMT government, and the recognized principle that a Tribal Government and its members can 'pass their own laws and be bound by them'.¹²

⁹ See, July 8, 2002 Will

¹⁰ Inclusive of the present Appeal.

¹¹ See, SRMT LDRO XIV Evidence and Use of Tribal Customs and Traditions

¹² Similar authority can be found in the Indian Child Welfare Act, 25 USC § 1903 et.al., in particular § 1911 which gives full faith and credit to not only the laws of a Tribal Nation but also its "public acts, records, and judicial proceedings". Clearly a Tribal Council resolution would meet such a provision.

It is important to also note that in our reading of the appointment of Appellant as Administrator, *See* SRMT TCR #2008-65, there does not appear to be any authorities given to the Appellant which would empower her to prevent the SRMT Clerk from certifying any deeds, or any authority which would empower the Appellant as Executrix to prevent the SRMT Council from issuing a deed if it so desired. In this appeal, the Appellant points to no authorities or sources which support her claim that as Executrix of her father's estate she had the authority to prevent the issuance of any deeds touching upon this estate. Particularly against the SRMT which gave her the authority to act as executrix of her father's estate in the first instance.

In this appeal the Appellant also argues that she has 'repeatedly' requested that an SRMT Deed be issued to her for her father's estate. In this regard we can note at this time that Appellant would not be 'entitled' to a deed for the entirety of her father's estate. Should the Appellant be given such a deed this would make the Appellant both an Executrix and Beneficiary of her father's estate. Although this has long been the subject of many problems with land disputes on the SRMIR, it is clear from the record of this case that this was the intention of the testator Mr. Louis Hathaway. For it is in his January 10, 2007 will that he provided to "appoint my daughter Brenda Hathaway to act in the capacity of Administrator for my estate."¹³ This is then followed by the following "Second, I, give to Brenda the land where my home is located, and I give Brenda the home, and the garage." *Id.* Based upon this it is pretty clear that the only SRMT Use & Occupancy Deed that the Appellant should receive is limited to that portion of her Father's estate provided for in the will, the plot affixed to the Testator's home. This is supported by the next provision in the will which provides: "Thirdly, I authorize Brenda not to sell the land, it is only to be given (handed down) to my grandchildren and she will insure that the land is to stay within the family and be given to my grandchildren for generations to come." It is in this context that we must note that this provision does not require the Appellant be given an SRMT Use and Occupancy deed for the entirety of her Father's estate. In fact, this would be contrary to the will itself as it provides that it is the testators grandchildren who are to receive the estate (being primarily land), with some type of restriction to keep it within the Testator's grandchildren's families.¹⁴ We do not equate giving the Appellant a deed to the entirety of her father's estate to be consistent with the conscriptions contained in the Testator's will. The Appellant is therefore entitled to a deed only for "the land where my home is located" which in the current record would appear to be Lot # 204 or a part thereof.

Next, just as we have found that the Appellant is only entitled to a SRMT Use & Occupancy deed for that plot of land as provided in the Louis Hathaway will, we must also add certain persons named in this record as "interested persons" as that term is used in the SRMT LDRO.¹⁵ These persons are Jonathan Hathaway, Thomas Hathaway Jr., and Amy Coughlin-Rugar. It appears from the record of this case that these three are grandchildren of Louis Hathaway and are potential beneficiaries under his will.¹⁶ As such, they are entitled to receive lands under the Louis Hathaway will/estate and therefore their deed[s] would be in contrast to that which Appellant is requesting in

¹³ *See*, Record of January 10, 2007 will of Louis Hathaway

¹⁴ Long the bane of any law student: the "springing interest". We at this time offer no opinion as to how such a restriction can be structured in an SRMT Use & Occupancy Deed.

¹⁵ *See* SRMT LDRO VII (B.)(3.), XIII (C.)(2.)

¹⁶ *See* 2007 Will of Louis Hathaway

this action. As such, this decision as well as a copy of the 2007 Louis Hathaway will shall be forwarded to the above named individuals.

A final word with respect to this issue is that the Court can note that the SRMT LDRO was actually ratified in December of 2009, and was not fully implemented until 60 days after its passage.¹⁷ As indicated, the issuance of the 2009 SRMT Use & Occupancy Deed at issue occurred on October 14th which is prior to the effective date of the SRMT LDRO. The Court can note that since passage of the SRMT LDRO we have not scene a similar circumstance that this case presents on appeal: Whereby, the SRMT has issued a deed while a land dispute case is pending which also involves the appointment of an estate Administrator over the same land.¹⁸ Particularly a deed which purportedly grants land from a deceased SRMT member to another SRMT member which does not bear the signature of any heir or administrator of the deceased SRMT member, but rather, that of the SRMT Council itself.¹⁹

As Appellant has repeatedly taken issue with never having received a deed, the Court would like to further point out that the authority to issue a SRMT Use & Occupancy Deed still 'resides' with the SRMT. This is clearly provided in the SRMT LDRO:

"The power to make land assignments and to issue Use and Occupancy Deeds is vested in the St. Regis Mohawk Tribal Council. All land assignments and deeds previously made or issued, and not presently in dispute, are presumptively valid, absent evidence to the contrary." See SRMT Land Dispute Resolution Ordinance [hereinafter SRMT LDRO] (V) (A.)

There may be some confusion as to this issue with respect to the LDT or the SRMT Court and the authority to decide and/or adjudicate land disputes. We can note that this is resolved by other provisions contained in the SRMT LDRO. For example, after passage of the SRMT LDRO it provided that "Henceforth, no cases may be presented directly to, nor may any case be taken directly by Tribal Council." See, SRMT-LDRO XIII (D.)(5.) The only avenues provided to pursue a land dispute, after passage of the SRMT LDRO, are the SRMT LDT or SRMT Court. For cases pursued in the SRMT LDT, much like the case at bar, they must reach a "Final Decision". When an appeal from the LDT is made there can be a "review by the Tribal Court" of the "Final Decision". See, SRMT LDRO XIII (D.)(4). The SRMT Court then: "will review the appeal based upon the record developed before the Tribunal." See, SRMT LDRO XV (B.)(2.) Finally, it must be noted that there is no further appeal once a SRMT Court decision has been rendered.²⁰

What must be noted for current discussions is that both the SRMT LDT and the SRMT Court do *NOT* have the authority to issue a SRMT Use and Occupancy Deeds under the SRMT LDRO. Decisions made in those two bodies must be returned to the SRMT & SRMT Clerk so that Use & Occupancy deeds can be issued (by SRMT Council) and certified (by SRMT Clerk).

¹⁷ See, SRMT LDRO XX Effective Date

¹⁸ Furthermore, the Court can note that effective May/2014 the SRMT Court is now receiving nearly all probate/will matters that were formally presented to the SRMT Council.

¹⁹ See 2009 SRMT Use & Occupancy deed

²⁰ "Decisions of the Tribal Court in any case will be final and there shall be no appeal to a Tribal Court of Appeals" See, SRMT LDRO XV (D)

See, SRMT LDRO (V)(A.) as *provided above*. These ‘new’ deeds would be based upon the finding made by either the LDT or SRMT Court pursuant to the SRMT LDRO. In fact, enforcement of the SRMT LDT and SRMT Court land dispute findings and decisions comes from the following provision in the SRMT LDRO:

“Failure of the Tribal Council to issue a deed pursuant to a valid Tribunal or Tribal Court decision and order shall be a per se violation of the Ethics Ordinance and shall result in appropriate sanctions.” See, SRMT LDRO XIII (D.)(6.)

In the case at bar the LDT was correct in stating that “The Tribal Council reserves the right to correct or amend prior deeds...”, See, April 26, 2012 SRMT LDT decision.²¹ To this we can add that the SRMT Court also does NOT issue SRMT Use & Occupancy deeds.²² As such, it is not within the lawful authorities of either the SRMT LDT or the SRMT Court to issue to the Appellant an SRMT Use & Occupancy deed. For such a deed the Appellant must make an application to the SRMT Council as provided for in the SRMT LDRO, and that deed must be consistent with the findings and decision of either the SRMT LDT or SRMT Court. As we have provided in this decision: Appellant is only entitled to a deed associated with the lands of the Testator’s [Mr. Louis Hathaway] home, Lot # 204 or a part thereof. See, record plot map.

To summarize to this point, the Appellant’s request to rescind the 2009 SRMT Use and Occupancy deed issued to Ms. Faith Thomas is denied. As we have provided the estate of Mr. Louis Hathaway was obligated to honor this obligation which was the primary focus of the SRMT LDT decision which is being appealed. Appellant’s argument that as Administrator of her father’s estate she could ‘prohibit’ the issuance of any deeds touching upon this estate is also unavailing. Appellant’s appointment as administrator by the SRMT did not empower her with such authorities, particularly against the SRMT itself. Appellant is entitled to a SRMT Use and Occupancy deed for only that portion of her father estate which is identified and provided for in her father’s will “the land where my home is located,”²³ Application for this deed must be made to the SRMT as provided for in the SRMT LDRO.

With respect to the Appellant’s request to be reimbursed for the cost of completing a land survey of the Louis Hathaway estate we must also turn this down. It is clear that the benefit of the survey is going to inure to the benefit of the estate. Therefore, the Appellant as executrix, can seek any reimbursement from the estate itself with the consent of the lawful heirs of the estate.

In regard to this issue we can stress that we see no lawful authorities for either the SRMT Clerk or the SRMT LDT to mandate that a land survey be undertaken.²⁴ Further, it is clear that due to the nature of land disputes it would in most instances be premature to require a land survey that could very well be required to be changed upon completion of the land dispute. In a recent land dispute case we recognized this issue, *Ransom v. Jacobs*, and we noted that a surveyor is only

²¹ This appears to paraphrase the SRMT-LDRO See, V General Provision (F.)(2.).

²² Clearly this could potentially cause a showdown between the SRMT Court, LDT, parties to a case, and the SRMT itself, but it would appear that any SRMT deed issued ‘sue sponte’ would be subject to collateral attack and potentially be deemed ‘un-ethical’.

²³ Provided that appellant meets the other criteria contained in the SRMT LDRO.

²⁴ In SRMT Court we make no such requirement, nor do we see the need to make such a requirement as a condition of filing a case.

as good as “what is placed in their hands” for the proper and lawful laying out of boundaries and measurements. Therefore, to require a survey before measurements or boundaries are determined may simply cause undo expenses to land dispute parties.

Next, under the SRMT LDRO surveys are only “preferred” and that in their place “GIS Mapping” is permitted in lieu of a land survey.²⁵ Currently the SRMT Clerk’s Office offers GIS Mapping to members of the SRMT, the SRMT Court, and the SRMT LDT. Within the record of this case there is a document with the heading “PROCEDURES FOR LAND TRANSACTIONS” which is on SRMT Letterhead, and one section provides: “3. MUST HAVE CERTIFIED SURVEY OF THE PROPERTY, INCLUDING A DESCRIPTION.” We find this is contrary to the provisions of the SRMT LDRO, and furthermore, based upon the record of this case it appears to have been applied unequally. In reviewing the case at bar it appears that the Respondent received the 2009 SRMT Use & Occupancy Deed without having completed a survey. Therefore, we hope that the “PROCEDURES FOR LAND TRANSACTIONS” is harmonized with the holdings of this decision and those provisions contained in the SRMT LDRO which do not require a certified survey.

Now, as we have indicated there are some portions of the April 26, 2012 SRMT LDT Decision which we must revoke and substitute with our own decision.

First, it appears that the SRMT LDT gave too broad of an interpretation to the SRMT LDRO provision with respect to any importance given to “filed” SRMT Use & Occupancy Deeds. The Respondents filing relies heavily upon her having an issued deed. In the April 26, 2012 decision the SRMT LDT noted the following:

“A general provision of the Land Dispute Resolution Ordinance is the presumptive validation of all Tribal Use and Occupancy Deeds previously issued. In the event a land dispute should arise over the issuance of a deed, the deed that is recorded first with the Tribal Clerk will supersede all other deeds. The Tribal Council reserves the right to correct or amend deeds due to error and prior Tribal Council decisions are accepted as evidence of land ownership.” See April 26, 2012 SRMT LDT Decision

We include this language because the SRMT LDT Decision also noted the following:

“The Respondent’s file has proof of property ownership, paid in full receipts, *A Right to Use and Occupancy Deed*, and witnesses of the property boundaries lines.”

First, it may be best to include the entire provision of the SRMT LDRO that was referenced by the SRMT LDT:

“The power to make land assignments and to issue Use and Occupancy Deeds is vested in the St. Regis Mohawk Tribal Council. All land assignments and deeds previously made or issued, and *not presently in dispute*, are presumptively valid, *absent evidence to the contrary*.” See SRMT LDRO V (A.) [*our emphasis*]

²⁵ See, SRMT LDRO V (I.)

Applying this provision to the case at bar there is a couple of issues that need to be highlighted. In reviewing the record of the case there does not appear to be, nor may there ever have been, a SRMT Use & Occupancy Deed issued to Mr. Louis Hathaway. Therefore there is no competing deed with the 2009 SRMT Use & Occupancy deed issued to the Respondent Ms. Thomas.²⁶ In this light, any arbiter of these disputes should be mindful of what parcel of land was Lot 201-F carved out from. Meaning, where did the lands which are contained in the 2009 Deed originate from. We feel that it is in this light which one should approach a case where there is only one issued deed.²⁷

Next, the filing of a land dispute with the SRMT LDT effectively puts the property “in dispute”. Thus, we take an opposite reading then that which the SRMT LDT made. In that, when a person files a land dispute they have effectively called into question the land assignment and/or issued deed that may exist. For it is in this light that the last section makes the most sense: That the presumed validity can be overcome by “evidence to the contrary”. It is the SRMT LDRO land dispute process that is the opportunity to present “evidence to the contrary” of an issued SRMT deed. This is then harmonized by the SRMT LDRO provision that: “The party initiating a land dispute shall carry the burden of proof throughout the entire proceeding.” *See* SRMT LDRO V (D). Again, the only way there can be such a “burden of proof” is in challenging a presumably valid issued deed. We believe this is the intention of the language used in the SRMT LDRO. Likewise, if there has been NO land dispute filed, and if there has been a SRMT Use & Occupancy Deed issued, THEN there is the presumption that the SRMT Deed is valid.

Next, the filing of a land dispute is only the first part of challenging a presumably valid deed. This is evident by other provisions of the SRMT LDRO:

“Use and Occupancy Deed- A Use and Occupancy Deed is an official Tribal document granting the holder the right to use and occupy land, signed by the Tribal Council and certified by the Tribal Clerk.

1. In the event that a land dispute should arise over the issuance of a deed, the deed that is recorded first with the Tribal Clerk of the St. Regis Mohawk Tribe will supersede all other deeds.
2. The issuance of deeds is not challengeable unless the deeds are found to have been issued due to, but not limited to the following: fraud, deceit, coercion, or duress. The Tribal Council reserves the right to correct or amend deeds due to error. All recorded deeds must bear the signature of the Tribal Council along with signatures and seal of the Tribal Clerk.” *See*, SRMT LDRO V (F.)

In the case at bar, and as we noted above, there appears to be only one (1) SRMT Use & Occupancy Deed issued: The 2009 Deed issued to Ms. Thomas. Therefore, in this context it would be impossible for the issued deed to actually be in conflict with another deed. E.g.

²⁶ Respondent’s deed was ‘recorded first’ because, based on the record in this case, it is the **only** recorded deed to exist.

²⁷ *See*, Ransom v. Jacobs: Where a parcel in 1959 was never divided by heirs resulting in a land dispute between subsequent holders 50+ years later.

“Recorded first.” As there has only been one recorded deed the Appellant cannot initiate a land dispute under subsection (1.) to submit “relevant evidence” “to the contrary”.

It is under subsection (2.) that the case at bar gets somewhat complex. This paragraph of the sub-section begins with the phrase that “The issuance of deeds is not challengeable...” Our reading of this part of the SRMT LDRO is simply recognizing and reiterating that all prior issued SRMT deeds which are “not in dispute” are “presumptively valid”. See SRMT LDRO V(A.), *Infra*. As we have discussed though, this does not ‘close the door’ to challenging the issuance of a deed under the SRMT LDRO. *Infra*. This is consistent with next part of subsection (2.) which provides “*unless* the deeds are found to have been issued due to...” This part of sub-section (2.) of the SRMT LDRO is simply recognizing the opportunity for a person to challenge the issuance of an SRMT Use and Occupancy Deed. In this light, the last part of the first sentence “..,but not limited to the following: fraud, deceit, coercion, or duress” is simply providing the grounds upon which a person can challenge, and put into dispute, an issued SRMT Use & Occupancy Deed. In this light there are at least four (4) grounds for a person to challenge an issued and “presumptively valid” SRMT Use & Occupancy Deed: 1) fraud 2.) deceit 3) coercion 4) duress.

In addition to these four grounds (fraud, deceit, and coercion, duress) to challenge the issuance of a deed we must add a fifth ground under the SRMT LDRO. This comes from the very next sentence used in subsection (2.): “The Tribal Council reserves the right to correct or amend deeds due to *error*.” An “error” is synonymous with mistake, and mistake is NOT one of the previous enumerated grounds in which to challenge and/or put into dispute an issued deed. Furthermore, the language used in the SRMT LDRO does not limit a person to just those four (4) grounds we have enumerated as the LDRO also provides: “...but not limited to the following...” See SRMT LDRO V (F.)(2.) Therefore, in our reading of the SRMT-LDRO we add “error” to the other four (4) grounds [1. fraud 2.deceit 3. coercion 4. duress] to challenge a presumptively valid issued deed.

Reading the SRMT LDRO in this manner is buttressed by the fact that if ALL SRMT Use and Occupancy Deeds are presumptively valid, then there would never be an “error” which needs ‘correcting’ or ‘amending’ as provided for under this section of the SRMT-LDRO! We do not give the SRMT LDRO such a reading. Further supporting our reading is to recall that the only two (2) entities under the SRMT LDRO that can hear and decide land disputes are the SRMT LDT and SRMT Court. As such, it is certain that only those two (2) entities can make the ‘finding’ of fraud, deceit, coercion, duress, or error as provided in subsection (2.). See SRMT LDRO V (F.)(2.) which provides “The issuance of deeds is not challengeable unless the deeds are *found* to have been issued due to, but not limited to the following: fraud, deceit, coercion, or duress.” When this finding has been made, then it is the SRMT Council which needs to “correct or amend deeds”. See SRMT LDRO V (F.)(2.) By logical extension, if the matter has followed this path and the LDT or SRMT Court has made such a finding, the issued deed is no longer “presumptively valid”.²⁸

²⁸ In cases decided by the SRMT Court the most common finding in cases, which ‘lifts’ the presumption of validity, have been mistakes of fact [e.g. boundaries not properly laid out, erroneous contradicting boundaries, taking too much land, not having enough land] or mistake of law [e.g. incomplete contract, failure to execute will]. It is akin to old legal axioms: It is not that “The King does no wrong” (*Rex non potest peccare*), it is “To see it that the King does no wrong”

Therefore, the person initiating a land dispute challenging the issuance of a deed, like the Appellant, has to begin by putting the Deed into “dispute”. Next, the grounds for challenging and/or disputing the issued deed can be based upon at least five (5) recognized grounds under the SRMT-LDRO: fraud, deceit, coercion, duress or error. The person making this challenge and/or dispute then has the burden to prove these grounds, *See* SRMT LDRO V (D.), by the use of “only relevant evidence”, *See* SRMT-LDRO XIV (A.). The entity which must decide whether the person has met this burden is either the SRMT LDT or the SRMT Court. If the person has met this burden, either of those entities must then find (“found”) that the issued deed is invalid due to fraud, deceit, coercion, duress, or error. Such a ‘finding’ can then be put into a written “Final Decision” or order which can be forwarded to the SRMT Council and SRMT Clerk so that: “The Tribal Council” can “correct or amend deeds”. Should Tribal Council fail: “...to issue a deed pursuant to a valid Tribunal or Tribal Court decision and order shall be a per se violation of the Ethics Ordinance and shall result in appropriate sanctions.” *See* SRMT LDRO XIII (D.)(6.)

In reviewing the record of this case we believe the SRMT LDT may have put too much weight upon the fact that there was an issued deed and they misconstrue the weight to be given an issued deed. In addition, the record developed by the LDT in the case at bar does not permit the 2009 SRMT Use & Occupancy Deed to remain ‘un-changed’, and therefore it must be ‘amended’ and/or ‘corrected’ to be reissued by the SRMT Council and recertified by the SRMT Clerk.

In the case at bar we must first recognize that the Appellant was free to challenge the issuance of the 2009 SRMT Use & Occupancy Deed issued to the respondent, Ms. Faith Thomas. Here though we must make a distinction. In the case at bar the Appellant has argued that because she was appointed Administrator by the SRMT Council that no deed should have been issued. As we have found, we reject this as a valid ground for rescinding the 2009 SRMT Use and Occupancy Deed pursuant to the SRMT LDRO. This does not end the inquiry though. The next analytical step is to determine if what appears on the issued deed is consistent with the facts of the case at bar. It is here that we find there is substantial “error” with the facts of the case at bar and the 2009 deed. Since there is an “error” the deed must be ‘corrected’.

The Culvert Arguments

In reviewing the Appellant’s statements in the notice of appeal that was filed with the Court, it appears that one of the major disputes in this matter is the location of the boundary line separating the Respondent’s property (that was purchased from Louis Hathaway), and the remaining portion of the Louie Hathaway estate land.²⁹

The May 31st, 2001 sale agreement between Mr. Louie Hathaway and Ms. Faith Thomas included a statement that the seller (Louie Hathaway) and buyer identify the parcel as:

“property located on the north road, up to the medal rod by the second unpaved driveway on the side of the house, up to the second culvert, and then cuts straight across to the river.” *See*, Sale Agreement May 31st, 2001.

²⁹ *See*, Notice of Appeal May 24th, 2012.

From the record developed by the SRMT LDT it appears that there are actually four (4) culverts located along the “unpaved driveway”. This “unpaved driveway” connects to the North Road and is perpendicular to the North Road running in a ‘east-west fashion’. This “unpaved driveway” is apparently also known as the Dickie Memorial Road. This “unpaved driveway” partially makes up the southerly boundary of the Respondent’s property and it is located upon the property of the Louie Hathaway estate. The lot created by the sale agreement has been given the number Lot #201-F.

The Appellant, Ms. Brenda Hathaway, argues that the boundary line for the property known as Lot #201-F begins at the second culvert from the North Road on the “unpaved driveway”/Dickie memorial road.

Respondent states that it was the ‘third’ culvert that was intended to be the boundary under the 2001 agreement as both her and Mr. Louis Hathaway did not count the first culvert on the “unpaved driveway”/Dickie memorial road (where it joins the North Road) when making their agreement. The Respondent reaffirms this assertion in submissions made in this appeal because “there is only 2 culverts question, not starting from the road”. *See*, Record Respondent’s Answer June 12th, 2012.

According to the SRMT LDT decision, “the fourth culvert is not in question. All the parties agreed to the boundary line as being where the third culvert is located.” *See*, SRMT LDT Decision April 26th, 2012. Appellant stated she did not agree to this, and reiterated her argument that the second culvert from the North Road is the point of boundary beginning.³⁰

According to the record before the Court, it appears that Ms. Faith Thomas and Mr. Louie Hathaway were in agreement at the time of the sale that the first culvert, located at the intersection of North Road and the “unpaved driveway”/ Dickie Memorial Road, was NOT to be counted as the first culvert to mark the boundary of the property the Respondent was purchasing. Further, our review of the record indicates that the 2001 agreement denotes a “metal rod” as being the beginning point in which to mark the boundaries.³¹ In fact in tracing the boundary it would be: ‘From metal rod to second culvert’. It would NOT be ‘First culvert at intersection, then second culvert’. This made the third culvert from the North Road as the intended mark/point disembaring the two properties from one another. This point would then run ‘straight across to the river’. The SRMT LDT says it reached this decision based on the Respondents testimony AND the testimony proffered by Mr. Louis Hathaway’s grandson[s]. The beneficiaries under his will. The Court will also note, as the LDT found, that there does not appear to have been any dispute between Mr. Hathaway and Ms. Thomas (from 2001-2008) on this culvert/boundary issue. The Court also agrees that the boundary point is the third culvert on the ‘unpaved driveway’ from the North Road is the correct point.

Next, appellant in her appeal argues that this third culvert is not correct because “the 3rd culvert has no structure or structures near it.” *See*, Notice of Appeal May 24th, 2012. The Appellant raises this argument in apparent reliance upon the language used in the 2001 sales agreement: “on

³⁰ *See*, Notice of Appeal May 24th, 2012.

³¹ This is also noted in the hand drawn map submitted by the respondent and signed by both respondent and Mr. Louis Hathaway.

the side of the house, up to the second culvert...” *Infra*. We do not read the 2001 Sale Agreement in this manner. The 2001 agreement simply provided that it had to be on “the side of the house.” We do not make the analytical leap that the Appellant requests that we need to read that ‘the side of the house’ must mean ‘closest to the house’ which would be the second culvert from the North Road. The 2001 agreement simply provides it has to be on the “side of the house”.

Finally, we must note that it does not appear that the Appellant offered her own independent evidence with respect to supporting her assertion that it is the second culvert on the “unpaved driveway”/Dickie Memorial Road. In place of that, the appellant has presented arguments with respect to interpretation of the language used in the 2001 sales agreement.

Therefore, our reading of the 2001 agreement is consistent with that of the SRMT LDT. This is buttressed by the testimony proffered by one of the heirs of the estate the Appellant is tasked with administering, the finding that the testator and Respondent were NOT engaged in a land dispute, and the other findings of the SRMT LDT in reviewing this “relevant evidence”.

Therefore, we find that the culvert identified in the 2001 agreement is the third culvert from the North Road on the “unpaved driveway”/ Dickie Memorial road.

“then cuts straight across to the river”

In the April 26th, 2012 SRMT LDT decision in this matter the SRMT Use and Occupancy Deed held by the Respondent, Ms. Faith Thomas, appears to have been upheld as being “valid”. As we have held in this decision, we also find that that Ms. Thomas is entitled to a deed for this property. However, an examination of the deed in question finds inconsistencies that must be corrected to properly set the boundaries for Lot #201-F.

As the Court has already noted there is in the record of this case what appears to be an SRMT GIS map that was used for outlining the dimensions of Lot #201-F. Upon closer examination it appears that the 2009 SRMT Use and Occupancy Deed provided these dimensions.³² The issue is that the 2009 SRMT Use and Occupancy Deed, which is represented in the GIS rendering, sets the boundary line at the **FOURTH** culvert on the “unpaved driveway”/Dickie memorial road and then it ‘cuts straight across to the river’. Confirmation of this is supported by contrasting the GIS map with the Dana Drake survey map which had the 4 culvert locations marked at the LDT hearing.³³ So initially we can note that this is clearly contradicted by the SRMT LDT finding which stated that: “*the fourth culvert is not in question*. All the parties agreed to the boundary line as being where the *third* culvert is located.” *See*, SRMT LDT Decision April 26th, 2012. Again, this would be that which was marked on the Drake survey map at the LDT hearing.

Next, the wording of the 2009 SRMT Deed is also contrary to the 2001 Sales Agreement relied upon by the SRMT LDT. The 2001 sales agreement provided that:

³² *See*, Record GIS Map Undated.

³³ *Id.*

“property located on the north road, up to the medal rod by the second unpaved driveway on the side of the house, *up to the second culvert, and then cuts straight across to the river.*” *See*, Sale Agreement May 31st, 2001.

The “second culvert” appears in the 2009 SRMT Deed as:

“Thence, in a Southeasterly direction along said St. Regis River for a distance of 1440.0’ to a point at Lot# 201 (Louis Hathaway Estate) thus point also being the **second culvert;**”

This language does NOT bring the ‘boundary’ to the Second culvert, but in fact brings it to the Fourth culvert as is reflected in the GIS rendering and the Dana Drake survey marked at the SRMT LDT hearing. For the 2009 Deed to be “correct” the parcel description used in the 2001 sale agreement would have to include the language “...up to the fourth culvert”. Clearly it does NOT include that language, for it simply provides “up to the second culvert”. Therefore the 2009 Deed is wrong, and needs to be amended.

The language used in the 2009 deed is also devoid of a key phrase from the 2001 sales agreement. The sales agreement first provided “up to the second culvert”, but was followed by: “and then cuts straight across to the river”. This is not only missing from the 2009 deed, but it is also missing from the SRMT LDT decision. We read this language to mean that as one is marking the boundary they travel up (easterly) the “unpaved driveway”/ Dickie Memorial road “up to the second culvert” which we have identified as being the third culvert on the “Unpaved driveway”/ Dickie memorial road from the North Road, and then “cuts straight to the river”. To make this “cut” would mean to run the line in a northerly direction to the St. Regis river. This would make this boundary line ‘parallel’ with the North Road. This we find is consistent with the 2001 sales agreement and the findings of the SRMT LDT.

Next, our reading is consistent with the notes that appear on the Dana Drake survey map which provided:

“#2 Agreement states the boundary from the second culvert ‘cuts straight across to the river’. This survey assumed direction of line to be parallel with road.” *See* Record Dana Drake Survey Map.

The error in the survey map is the selection and location at the second culvert. As we have held, the “second culvert” would actually be the third culvert on the “unpaved road”/ Dickie memorial road. Otherwise, the boundary line must be “parallel with road” as provided in the Drake survey map notes. This makes it consistent with our findings in this decision.

This reading of the 2001 sales agreement is supported by other language used in the agreement. For that other language provided: “the easterly point shall be the beginning of Louie Hathaway’s property to the other said boundary”. *See*, May 31st, 2001 Sales Agreement. When the SRMT Deed and GIS rendering set the boundary line at the fourth culvert it would effectively render Ms. Thomas’ boundary with the Louie Hathaway estate property a ‘southerly’ point and not an “easterly point” as was originally envisioned in the 2001 sale agreement.

The net effect of the “error” in the 2009 Deed and GIS rendering is to nearly double the size of Lot #201-F that was the subject of the 2001 sale agreement. This is evident by comparing the Dana Drake Survey which estimated the size of the parcel at +/- 4.5 acres, and the SRMT deed/GIS rendering which lists the parcel as being “approximately 9.24 acres”. The Courts estimation, based upon the third culvert being the correct point for the boundary line, puts the parcel at an estimated 4.5-5.5 acres. We note this because the Respondent’s filed documents include a signed letter from Ron LaFrance Jr. in which he stated that “Mr. Hathaway sold a parcel of land to Faith Thomas consisting of approximately 4-5 acres”. *See*, Record Ron LaFrance Jr. Letter March 15th, 2012. This letter from the Respondent’s witness supports the Court’s estimation that Lot #201-F should be about 4.5-5.5 acres.

In conclusion, we have determined and agree that the Respondent (Ms. Thomas) is entitled to a SRMT Use and Occupancy Deed for the parcel she purchased from Mr. Louis Hathaway. Although we have upheld SRMT LDT findings that the deed issued to the Respondent was valid, we find that the deed, as currently worded, sets Ms. Thomas’ eastern boundary at the location of the fourth culvert, which would essentially make what should be an easterly boundary with the remaining Louie Hathaway estate property, a southerly boundary. That is clearly not what was agreed upon in the May 2001 sale agreement for Lot #201-F, nor the findings of the SRMT LDT. Therefore, the description of that parcel contained in any SRMT Deed must be consistent with that contained in the 2001 sales agreement. Namely, that the point beginning the boundary line between Lot #201-F and the Louie Hathaway estate property is the third culvert along Dickie Memorial Road, and then said boundary line “cuts straight across to the river.” *See*, May 31st, 2011 Sale Agreement. Based upon a comparison of the 2001 sale agreement, the survey map provided by Mr. Dana Drake, along with the GIS image, this line should then run parallel with the North Road to the St. Regis River. Therefore, the 2009 SRMT Use & Occupancy Deed is in error and must be corrected to be consistent with the findings contained in this decision.

Furthermore, the location of the fourth culvert was never in dispute according to the SRMT LDT decision³⁴, as it was not intended to be a boundary point. Setting the boundary of Lot #201-F at the fourth culvert was never agreed upon, and being that the SRMT LDT didn’t address this issue, in this decision we reject any notion that the 4th culvert is the appropriate boundary marker under the 2001 agreement.

Based upon the Court’s examination of the record before it the Use and Occupancy Deed for Lot #201-F should be amended to reflect dimensions that truly align with the May 2001 sale agreement between Mr. Louie Hathaway and Ms. Faith Thomas, and which would be consistent with the SRMT LDT findings. The proper eastern boundary for Lot #201-F should be set at the THIRD culvert from the North Road, along Dickie Memorial Road and “cut straight across to the river”. Which is shown and noted in the Dana Drake survey³⁵ as running parallel with North Road. The Court reaffirms that the Respondent is entitled to a Use and Occupancy Deed for Lot #201-F, but it must be in accordance with the sale agreement that was entered into by Ms. Thomas with

³⁴ *See*, SRMT LDT Decision Dated April 26th, 2012

³⁵ “Agreement states the boundary from the second culvert ‘cuts straight across to the river.’ This survey assumed direction of line to be parallel with road.” *See*, Dana Drake Survey Map

Mr. Louie Hathaway on May 31st, 2001, the findings of the SRM LDT, the Respondent's witness letter, and which is reflected on the Dana Drake survey.

RESPONDENT'S COUNTERCLAIM

In a Counterclaim filed by the Respondent, Faith L. Thomas, she states that "[Plaintiff, Brenda Hathaway] was not a party to the agreement between Faith Thomas and Louis Hathaway."³⁶ This is correct in the fact that Brenda has no authority that would allow her to void the land sale agreement made by her father, Louis Hathaway, with the Respondent. However, with the Appellant Ms. Brenda Hathaway-Coughlin being appointed by a SRMT Tribal Council Resolution as executrix of the estate of Louis Hathaway, she is entitled to make an appeal of the Land Dispute Tribunal decision to the Tribal Court in order to maintain that the 2001 agreement made by her father is being properly executed, and that the estate inures to the benefit of the named beneficiaries under her father's will. Thus, the Appellant has the requisite standing to bring this case to the SRMT LDT and to appeal its decision to SRMT Court.

The Respondent also requests "relief in the amount of \$5000.00 for the constant harassment by the Plaintiff and/or for damage to my fence."³⁷ The Tribal Court rejects this request. Appellant in the case at bar is seeking an appeal of an SRMT LDT decision which she is entitled to do under the SRMT LDRO. Lawfully pursuing one's rights pursuant to a SRMT law is not akin to harassment. Likewise, the portion of the fence removed by the Appellant was, from all appearances, on land incorrectly included in the deed for Lot# 201-F. Therefore, the fence removed could have been on lands still a part of the Louis Hathaway estate which the Appellant is Administrator over.

"Final Decision" under the SRMT LDRO

The SRMT LDT decision in this matter provided:

"Considering this can be a problem because the Lot #201-F property's Bill of Sale did not reflect any dimensions of the property. The Tribunal recommends that Faith Thomas has property Lot # 201-F surveyed by a Certified Licensed land Surveyor."

First, as we have provided in this decision we found there was sufficient boundary markers provided in the 2001 sales agreement which was confirmed by the other evidence submitted to the SRMT LDT. Some of which were made a part of the findings of the SRMT LDT. In fact, it appears to us that there has been too much weight given to some of the evidence (e.g. over reliance upon the issued 2009 SRMT Use & Occupancy Deed).

Next, the language used by the SRMT LDT that: "The Tribunal recommends that Faith Thomas has property Lot # 201-F surveyed by a Certified Licensed land Surveyor" we find is inconsistent with the SRMT LDRO that there be a "Final Decision". *See* SRMT LDRO XIII. (D.)(2.) (3.) (4.)³⁸ The use of this language gives the appearance that the SRMT LDT does no

³⁶ *See*, Defendant's Answer/Counterclaim dated June 12th, 2012.

³⁷ *Id.*

³⁸ *See*, Land Dispute Tribunal Decision and Order for Hathaway v. Thomas.

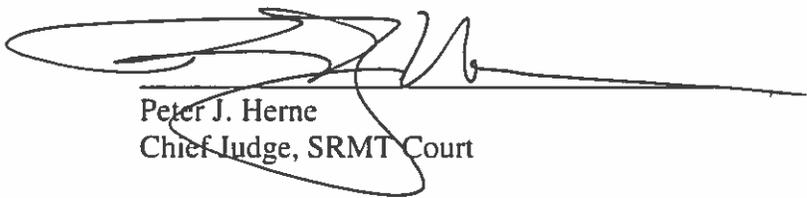
know the actual size of the lot because there are no measured dimensions given on the Bill of Sale.³⁹ Since the Tribunal did not explicitly state that there was a problem with the dimensions given on the deed issued to the Respondent, and they only recommended a survey, it has the effect of leaving their decision open-ended.

We bring these matters to light because in reviewing the case at bar it becomes clear that there is no incentive on the part of the Respondent to follow the SRMT LDT 'recommendation' with respect to a survey. As the record shows, the Respondent already has in her possession a SRMT Use & Occupancy deed which erroneously doubled the size of the parcel purchased in 2001-2003. As the SRMT LDT decision did not correct the respondent's 2009 SRMT Deed, the Respondent, as most persons in a similar situation, simply has no incentive to follow the SRMT LDT recommendation to have the land 'surveyed' as it would result in a diminishment in the size of Lot 201-F. We feel that in the future the proper method is to provide the appropriate and correct boundary and/or markers in their findings contained in a "Final Decision" so that a "preferred" survey could potentially be completed, or that "GIS Mapping" can be used to layout and mark a parcel consistent with the finding[s] made in a "Final Decision".

WHEREFORE, we find that the Respondent Ms. Faith Thomas is entitled to the 2009 SRMT Use & Occupancy deed for the parcel of land contained in her 2001 sale/purchase agreements with Mr. Louis Hathaway, BUT, said deed must be "corrected" to be laid out in conformity with that sales agreement, the findings of the SRMT LDT, and this decision. In that, the proper point to mark is the third culvert on the unpaved driveway/Dickie Memorial Road and then to run the boundary so it shall "cut straight across to the river". Meaning the boundary line shall run parallel to the North Road.

Further, the Appellant is also entitled to a SRMT Use and Occupancy Deed for only that portion of the Louis Hathaway Estate which is provided for in his 2007 will. That being "the land where my home is located" In addition, the Clerk of the SRMT Court shall cause to be mailed to Jonathan Hathaway, Thomas Hathaway Jr., and Amy Coughlin-Rugar this decision as they are to be considered interested persons under the SRMT LDRO, as they are heirs under the 2007 Louis Hathaway will.

Signed by my hand, this 18th day of July, 2014.



Peter J. Herne
Chief Judge, SRMT Court

³⁹ *Id.*