

**SAINT REGIS MOHAWK TRIBAL COURT
IN AND FOR THE SAINT REGIS MOHAWK TRIBE**

Saint Regis Mohawk Tribe)	
)	Case No.: 21-CIV-00008
)	
Plaintiff)	
)	
v.)	DECISION AND ORDER
)	
Seth Oakes,)	
)	
Golden Nugget Dispensary)	
)	
Respondent(s))	

Procedural Background

On July 1, 2021, the Saint Regis Mohawk Tribe, Plaintiff, filed an application for a temporary restraining order and preliminary and permanent injunction naming Seth Oakes and the Golden Nugget Dispensary as the Respondents.¹

On July 7, 2021, the Court issued a Temporary Restraining Order against Seth Oakes and the Golden Nugget Dispensary, Respondents. The documents filed by the Saint Regis Mohawk Tribe, Plaintiff, and a copy of the Temporary Restraining Order issued by the Tribal Court were served on Respondents on July 6, 2021.

On July 12, 2021, Michael Rhodes-Devey, Esq. filed a notice of appearance on behalf of Seth Oakes and the Golden Nugget Dispensary, Respondents.

On July 14, 2021, Seth Oakes and the Golden Nugget Dispensary, Respondents, filed an affidavit in opposition to the injunction and memorandum of law.

On July 15, 2021, the Saint Regis Mohawk Tribe, Plaintiff, filed a reply to Respondents' opposition to motion for preliminary injunction and a second declaration by Attorney Schmidt.

On July 16, 2021, the Court held a hearing on the Saint Regis Mohawk Tribe's request for a permanent injunction. Marsha Schmidt, Esq. appeared on behalf of the Saint Regis Mohawk Tribe. Michael Rhodes-Devey, Esq. appeared on behalf of Seth Oakes and the Golden Nugget Dispensary. On the record, the Court vacated the Temporary Restraining Order dated July 7, 2021. The Court also took judicial notice of the arguments submitted in the matter of the Saint Regis Mohawk Tribe v. Morris Oakes et. al.²

¹ The Court notes that the filing was date stamped at a later date by Court staff.

² Saint Regis Mohawk Tribe v. Morris Oakes et. al., 21-CIV-00007.

Jurisdiction

In order to address the instant case, the Court must first determine whether it possesses jurisdiction over the matter. In regards to the case at bar, the matter involves a request for a permanent injunction against an individual and business alleged to be selling marijuana without obtaining a license pursuant to the recently enacted Tribal Adult Use Cannabis Ordinance and not adhering to the cease and desists issued by the Tribe's Compliance Department. The Saint Regis Mohawk Tribe Civil Code ("SRMT Civil Code") states that the Tribal Court "shall have civil jurisdiction over civil disputes over disputes arising in, connected with, or substantially affecting Mohawk Indian Country."³ In this case, the matter involves alleged conduct that is occurring within the borders of the Saint Regis Mohawk Indian Reservation that is argued to substantially affect the Saint Regis Mohawk Tribe. Furthermore, TCR 2021-25 allows for the Court to assure compliance with the cease and desist orders issued by the Tribe's Compliance Department.⁴ Attorney Schmidt argued that Respondents were not complying with the cease and desist orders. Thus, the Court possesses jurisdiction over this matter.

Discussion

In this case, the Saint Regis Mohawk Tribe, Plaintiff, move for a permanent injunction against Seth Oakes and the Golden Nugget Dispensary, Respondents. Plaintiff seeks an order from this Court to: (1) declare that Respondents are in violation of tribal law; (2) enforce the cease and desist orders issued by the Tribe; (3) issue a permanent injunction against Respondents to vacate and close the dispensary; and (4) issue an order requiring each Respondents to pay the fine with the amount to accumulate on a daily basis until the unlicensed operation is closed. For the following reasons, this Court denies Plaintiff's motion for a permanent injunction.

In regards to this case, the Saint Regis Mohawk Tribe, Plaintiff, alleges that Seth Oakes, Respondent, is operating Golden Nugget Dispensary, an unlicensed marijuana business, and disregarded cease and desists issued by the Tribe's Compliance Department. Thus, Plaintiff contends that Respondents are violating tribal law. Plaintiff also argues that the Tribe is being irreparably harmed because there are people engaged in a business that is unregulated and that this hurts tribal members that want to get licensed legitimately. Plaintiff points to the recently enacted SRMT Tribal Adult Use Cannabis Ordinance and DOJ guidance and policies on the enforcement of the Controlled Substance Act on tribal lands and the actions of the Respondents to demonstrate that Plaintiff has a good chance to win the suit. Plaintiff also argues that only the Tribe has jurisdiction regarding marijuana and that the Longhouses lack the authority to issue business licenses. Moreover, Plaintiff argues that the Saint Regis Mohawk Tribe is trying to meet federal criteria established by the federal government and that allowing these businesses to stay open invites the federal government to come in. Based on the aforementioned, Plaintiff requests a permanent injunction ordering Respondents to close and vacate the dispensary and be ordered to pay fines.

³ SRMT Civil Code § II. A.

⁴ TCR 2021-25 To Delegate Authority to the Tribe's Compliance Department and Approve the Imposition of Fines and Penalties For the Unauthorized Sale of Adult-Use Marijuana (signed May 18, 2021).

In response, Seth Oakes and the Golden Nugget Dispensary, Respondents, allege that the Saint Regis Mohawk Tribe, Plaintiff, is making conclusory allegations that do not demonstrate irreparable harm and as a result Plaintiff fails to meet their burden under the law. Respondents took issue with the case law being applied by the Plaintiff and the procedural process of the issuance of the Temporary Restraining Order by this Court and allege that there was no evidence to do so. Respondents argue that there was no tribal law in place at the time the Respondents started to engage in their business. Respondents also pointed to the history of the Tribe to substantiate their argument regarding the role and legitimacy of the Longhouse. Respondents request that this Court deny the request for a permanent injunction and set it for a hearing regarding the issues involving the Longhouse.

The Saint Regis Mohawk Tribe Rules of Civil Procedure (“SRMT Rules of Civil Procedure”) state that injunctive relief shall be granted “if the person requesting it shows there is a good chance that he or she will win the suit and that he or she will suffer irreparable loss or injury if the injunction is not issued.”⁵ In its case, the Saint Regis Mohawk Tribe, Plaintiff, submitted arguments by written motion and its legal counsel submitted oral argument and no other evidence during the hearing.

In its relevant case law, this Court has demonstrated that the moving party carries the burden and must provide evidence proving that the moving party will suffer irreparable harm. In *William Clute v. Lorne Clute*, the parties both requested injunctive relief.⁶ In *Clute*, Respondent was granted the injunctive relief requested because he demonstrated that he owned the land and testified of the actions by the Plaintiff through his submitted evidence.⁷ In that case, Respondent had witnessed the actions by the Plaintiff.⁸ In another case, a party petitioned the Court to halt the actions taking place on property he alleged to belong to an Estate.⁹ In that case, Plaintiff failed to name a Respondent and offered no evidence to demonstrate that there would be irreparable harm.¹⁰ As a result, the Court denied the request for injunctive relief. Moreover, in *Corleen Jackson v. Nancy Oakes*, the Court further demonstrated the need for the moving party to prove the alleged irreparable harm. In *Jackson*, Plaintiff argued that Respondent had personal property on her land and requested injunctive relief.¹¹ In evaluating the Plaintiff’s argument in *Jackson*, the Court noted that the Plaintiff failed to provide any evidence that the Respondent caused the gravel or backhoe at issue to be placed on the property and that injunctive relief could not be issued without some evidence that Respondent is responsible.¹²

In reviewing the arguments submitted in this case, the Court finds that the Saint Regis Mohawk Tribe, Plaintiff, has not offered evidence demonstrating that it is likely to succeed on the merits because it has not shown that the Respondents are in fact in selling marijuana and/or

⁵ SRMT Rules of Civil Procedure § XII. A.

⁶ *William Clute v. Lorne Clute*, 21-LND-00001 (May 6, 2021).

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Andrew Glenn Lazore*, 17-CIV-00015 (August 31, 2017).

¹⁰ *Id.* at 2.

¹¹ *Corleen Jackson v. Nancy Oakes*, 19-LND-00008, 2 (Oct. 16, 2019).

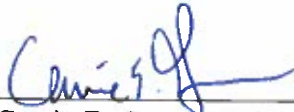
¹² *Id.*

other marijuana products or even that Seth Oakes, Respondent, is the owner of the Golden Nugget Dispensary. The written submissions by Plaintiff demonstrate that the Tribe's Compliance Department identified Seth Oakes, Respondent, as the owner of the Golden Nugget Dispensary. However, Plaintiff, offered no evidence to demonstrate how the Compliance Department came to that conclusion or how that the Compliance Department determined that the Respondent is selling marijuana and/or marijuana products on the premises. Rather, Plaintiff requests that the Court accept the written and oral submissions of it's legal counsel as fact and issue a permanent injunction and order Respondents to pay a substantial civil fine. There was no evidence submitted indicating that Attorney Schmidt was involved with the Compliance Department's processes. The Court is aware that it is against the public interest for individuals to violate the law. However, Plaintiff has offered no proof demonstrating that Respondents are violating the law. The Court notes that Seth Oakes, Respondent, submitted an Affidavit and copy of a business license issued by the Onkehonwehneha Kanonhsesne Longhouse. Plaintiff did not address the Affidavit and business license submissions. The Court notes that Respondent does not admit to selling marijuana and/or marijuana products. Moreover, the business license submitted does not indicate that it is for marijuana related business. Rather it states that it is for Haudensosaunee/Ohskare Trade Goods. As this Court's case law demonstrates, injunctive relief is an extraordinary remedy and that requires that the moving party meet the standard set forth in the SRMT Rules of Civil Procedure. As set forth above, the Court holds that Plaintiff failed to demonstrate that it is entitled to such relief. At this time, the Court also makes no finding on the legitimacy of the Longhouse business licenses.

ORDER

Based on the foregoing, it is **ORDERED, ADJUDGED AND DECREED** that the Saint Regis Mohawk Tribe, Plaintiff, request for a permanent injunction is **DENIED** and as stated on the record the Plaintiff's request for an extension is **DENIED** and the Temporary Restraining Order issued on July 7, 2021 is **DENIED** and the Temporary Restraining Order is vacated.

Signed this 11th day of July, 2021.



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

No later than ten (10) days after a judgment is final, a party may ask the Judge for a rehearing, reconsideration, correction vacation, or modification of the judgment. The parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals. Due to the coronavirus pandemic, please consult the Administrative Orders found on

the Court's webpage for information on how to submit a motion for reconsideration or appeal at this time.



Saint Regis Mohawk Tribal Court

Physical Address:
Tribal Justice Building
882 State Route 37
Akwesasne, NY 13655
Phone: (518) 358-6300

Chief Judge Carrie E. Garrow
Associate Judge Barbara R. Potter
Associate Judge Patrick Solomon
Associate Judge Lisa Garabedian

Website: https://www.srmt-nsn.gov/tribal_court

SENT VIA CERTIFIED MAIL

Seth Oakes
128 McNeil Road
Akwesasne, N.Y. 13655

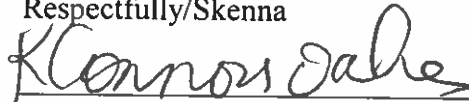
Golden Nugget Dispensary
42 Helena Road
Akwesasne, N.Y. 13655

July 16, 2021

Greetings/Sekon,

Please be advised that the attached decision in the matter of 21-CIV-00008 Saint Regis Mohawk Tribe v Seth Oakes & Golden Nugget Dispensary was entered into the docket book on July 16, 2021 in accordance with the Saint Regis Mohawk Tribe Rules of Civil Procedure.

Respectfully/Skenna



Ms. Karen Connors-Oakes Court Clerk
Saint Regis Mohawk Tribal Court