

RALPH DAVID,

Complainant/Appellant

DECISION on Motion  
Seeking Joinder of Necessary Parties  
AND Motion to Dismiss

ST. REGIS MOHAWK TRIBE,

14-LND-00003

Respondent/Cross-Appellant

Procedural History

On October 16, 2014, Complainant/Appellant/Respondent Ralph David, represented by Counsel Lorraine M. White, filed a form “Notice of Appeal (Land Dispute Ordinance)”, appealing from the land dispute decision of the SRMT Land Dispute Tribunal and/or the SRMT Tribal Council land dispute decision dated, September 17, 2014.” (See, Ralph David, Notice of Appeal)

Complainant/Appellant David contends in support of his appeal that the Land Dispute Tribunal, (LDT), erred in invalidating the 1938 Will of Hattie Laffin/Laughing , and seeks reversal of this determination. Mr. David also seeks a determination of “full ownership rights and privileges to Tribal Lot #606 in its entirety and pursuant to the directives of the 1938 Will...” See, *Ralph J. David, Notice of Appeal*

Appellant David also argues that the Land Dispute Tribunal was correct in accepting and exercising jurisdiction over this case and seeks affirmance of the LDT determination that the St Regis Mohawk Tribal Council could be named as a Respondent in this matter.

On October 17, 2014, Respondent/Cross-Appellant SRMT Tribal Council, represented by the SRMT Office of General Counsel, (Danielle Lazore Thompson, of counsel), filed a cross-appeal from the LDT Decision/Order dated September 17, 2014. SRMT argues in support of its appeal that: (I) Federally recognized Indian Tribes such as the SRMT possess sovereign immunity from suit; and (II) the SRMT never waived its sovereign immunity.

On November 10, 2014, SRMT Tribal Council, (as Respondent in this Appeal), filed a Motion to DISMISS this appeal on the ground that “the Land Dispute Tribunal had no jurisdiction to consider the claim filed against the tribe”.

On January 15, 2015, SRMT Tribal Council, (as Respondent in this Appeal), filed a Motion seeking Joinder of Parties. specifically Judith David Printup, (Appellant Ralph David’s sister), and her husband David Printup.

On February 12, 2015, SRMT Tribal Council, (as Respondent), filed a Motion seeking a Default Judgment upon the grounds that Appellant's counsel failed to respond to /answer the Appeal in a timely manner.

On February 20, 2015, Appellant David filed an Affidavit in Reply to the SRMT February 12, 2015 submission, (Motion seeking Default Judgment) contending that service upon Appellant David had been improper and that the SRMT Rules of Civil Procedure, (hereinafter RCP), provide no basis to grant the relief requested.

On April 1, 2015, the SRMT Court rendered a Decision denying the Motion for a Default Judgment, and directing General Counsel for the SRMT to re-file and serve the remaining Motions seeking an Order of Dismissal of the Appeal AND seeking Joinder of Parties on Appellant David on Notice, pursuant to SRMT Rules of Civil Procedure.

On or about April 9, 2015, General Counsel for the SRMT re-filed both motions, i.e., a Motion seeking an Order joining Judith and David Printup as necessary parties in this action, and a Motion to Dismiss the Appeal, on Notice to Complainant/Appellant Ralph David and his counsel in accordance with this Court's April 1, 2015 Decision.

On or about May 15, 2015, Appellant David's Counsel filed a Reply in opposition to the Motion to Dismiss and the Motion seeking Joinder.

**(I) Motion to Join Necessary Parties**

SRMT argues in support of this motion seeking joinder of Judith David Printup, (sister to Appellant Ralph David), and her husband David Printup, that although neither Judith nor David Printup are named in the subject case brought before the SRMT Land Dispute Tribunal, (LDT), each has a "direct interest in the property that is the subject of the dispute". (SRMT Motion to Join Necessary Parties, p 3, filed January 16, 2015)

Counsel for Mr. David contends in her Reply that Judith and David Printup should not be named as parties in place of the SRMT, but concedes that the Printups "*may* have an interest in the case because their property *may* be affected by any decision of this court but so too would the property of Charles David, brother of both Ralph and Judith". (Appellant/Respondent David's Reply, dated May 12, 2015)

**Factual Background**

Appellant Ralph David's challenge to the underlying LDT Decision essentially seeks to assert a claim to an estimated 1.5 acres of property which were apparently left to him in a 1938 Will executed by his grandmother, Hattie Laffin/ Laughing.<sup>1</sup> The record before the LDT includes a "competing" document: a Will, dated July 18, 2008, in which Testator Sarah David, (mother to

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<sup>1</sup> At some time after its discovery, the 1938 Will was received by and made part of the SRMT Tribal Clerk's records.

Ralph David, Judy David Printup and Charles David), gives, devises and bequeaths certain property from her estate, i.e., the Estate of Joseph and Sarah Cook David, as follows: to daughter "...Judith H. Printup my house, garage, barn, lot and contents thereof located at 970 State Route 37, Akwesasne, NY...subject to the following exception: I give and devise to my son Charles David a strip of land..." described as being bordered by property of Sarah David and Judith Printup with right of way also described.

Appellant's mother, Testator Sarah David, further devised and bequeathed "[a]ll the rest, residue and remainder of my Estate both real and personal and wheresoever situate in three (3) equal shares to my daughter, Judith Printup and my two (2) sons, Charles David and Ralph David, per stirpes"

The LDT determined in its Decision that on April 7, 1937 Hattie Laffin/Laughing purchased "an acre of land" from Thomas Ransom, (presumably a neighbor who owned adjoining property). (See LDT Decision, page two). Several months later, on January 11, 1938, Ms Laffin/Laughing executed the subject Will in which she gave and bequeathed to "her grand child Ralph Joseph David, Jr. a tract or parcel of land containing 1 ½ acre..." and appointed her daughter-in-law Sarah David "to act as guardian over this property as long as she lives." (See, 1938 Will of Hattie Laffin/Laughing). There appears to be no evidence in the record to support any conclusion with respect to the origin or location of the 1.5 acres that Ms Laffin/Laughing bequeathed to her grandson, Appellant Ralph David. (See LDT Record, Document #2) Because this recently "discovered" Will was not known of prior to August, 2013, it appears that everyone involved believed that when Hattie Laffin/Laughing died on August 2, 1941 she did so without a will. Accordingly, her property appears to have passed to her son and daughter-in-law Joseph and Sarah David. No evidence has been provided as to the amount or source of property conveyed by Hattie Laffin/Laughing to her son and daughter-in-law, but the record does reflect that Joseph and his wife Sarah may have inherited at least a portion of their land from the Estate of Hattie Laffin/Laughing.<sup>2</sup> It is fair to conclude that the bequests in these two wills, (Hattie Laffin/Laughing's 1938 Will and Sarah David's July 18, 2008 Will), pose a conflict and may have conveyed the same property to more than one individual.

As the Tribal Court decides the substantive issues on this appeal and ultimately takes a "fresh look" at this land dispute decision, it is permitted to "request evidence or testimony as necessary to develop a full and complete record upon which to base its final decision...". (LDRO Section XV(C) It will, at that time, be incumbent upon Appellant David to provide proof as to the existence and location of this 1 ½ acre parcel as of the 1938 Will date and as of the date the

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<sup>2</sup> The record reflects that Joseph David also purchased a one (1) acre parcel from Thomas Ransom on August 31, 1946 –separate and apart from property he may have inherited from the Estate of his mother, Hattie Laffin/Laughing. The record also indicates that this may be the same Thomas Ransom from whom Hattie Haffin/Laughing purchased property.

will was located, in August 2014. We see nothing in the record to prove the exact location of the 1 ½ acre parcel referenced in the 1938 Will. This leaves to the Court the task of deciphering ownership of the land, (in which Ralph David, Judith and David Printup and Charles David are likely to share an interest), based upon available sources of documentation, to support a claim of ownership. (*Oakes v Oakes*, 11-LND-00008)

By a SRMT Use and Occupancy Deed dated May 10, 1994, Sarah David conveyed to her daughter, Appellant's sister Judy David (Printup) a parcel described as Lot # 606 consisting of 1.5 acres. (See LDT Record, Document #13) This appears to be consistent with language in Sarah David's Will which left to her daughter "my house, garage, barn, lot and contents thereof located at 970 State Route 37, Akwesasne". On January 31, 2001, Judy David (Printup) conveyed .998 acres described as "part of that property known as Lot #606" to the SRMT Housing Authority. (See LDT Record, Document #14).

This remained the status of the property until the recent "discovery" of a Will apparently executed by Ms Hattie Laffin/Laughing in 1938 which bequeathed "a tract or parcel of land containing 1 ½ acres..." as described to Appellant Ralph David. (See 1938 Will)<sup>3</sup>

The record reflects that at some time in August of 2013, the St. Regis Mohawk Tribal Clerk called Appellant David to notify him that she had discovered a document described as a will dated January 11, 1938 which was executed by Appellant David's grandmother Hattie Laffin/Laughing. Appellant David testified before the LDT that the Tribal Clerk told him that he "was now the owner of the Estate of his grandmother Hattie Laughing and also of the homes occupied by his two siblings." (LDT Decision/Order, page four). Other witnesses before the LDT also testified that the Tribal Clerk "affirmed that Complainant Ralph David was clearly the owner of the three properties". *Id.* The record does not appear to contain any basis for the Tribal Clerk's conclusion.

Mr. David initially solicited the help of the Tribal Council in his efforts to obtain a SRMT Use and Occupancy Deed for the property in issue. (See Counsel's letter to Tribal Clerk Jacco, dated December 2, 2013; and SRMT Tribal Council letter to Mr.Appellant, dated December 17, 2013) The record reflects that from August to December 2013 several meetings were held with SRMT Chiefs, the Tribal Clerk, Complainant and "family members", and that on December 3, 2014, a Tribal Council "Work Session" was held, at Complainant's request. (See LDT Decision, page 4; and December 17, 2013 SRM Tribal Council letter to Ralph David)<sup>4</sup>

During this "Work Session" Appellant reportedly requested that the SRMT Tribal Council "correct alleged errors made in the issuance of Use and Occupancy Deeds in May, 1988

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<sup>3</sup> It appears that when this bequest was made Appellant was a small child.

<sup>4</sup> The LDT did not receive a transcript of this "work-session" into evidence at the LDT proceeding. (See LDT Decision)

to Mr. Charles David and, in May, 1994 to Mrs. Judith David.” (See Tribal Council letter to Appellant, dated December 17, 2015).

On December 17, 2013, SRMT Tribal Council corresponded with Appellant by letter in response to his request for review. In that letter the Tribal Council “...made a determination on the seventy-six year old Will of Mrs. Hattie Laughing and the dispute of her estate” which validated the 1938 Will, thereby rendering a ‘decision’ in this land dispute matter. (See LDT Decision, page 5).

By letter dated January 7, 2014, Appellant David corresponded with the “Tribal Chiefs” to “formally state” his disagreement with Tribal Council decision’s “overall reasoning” and particularly with Tribal Council’s refusal to “correct this longstanding error <sup>5</sup> and issue [Appellant his ] rightful deed to the entire portion of [his]property...”. This would likely require that Tribal Council rescind Appellant’s siblings’ existing deeds. Appellant also expressed his intent to proceed to the LDT to pursue “these remaining issues”. (See Ralph David letter to Tribal Council, dated January 7, 2014)

Tribal Council’s December 17, 2013 letter also stated that the decision to decline Complainant/Appellant’s “request to rescind deeds issued to Charles and Judy David as issued in error” was based upon the amount of time that has lapsed since deeds were issued to Complainant’s siblings and a “lack of clarity as to the boundaries and size of the original parcels at issue in this situation”. (Supra) <sup>6</sup>

This Court notes that this “lack of clarity” appears to extend back in time to cloud the boundaries and dimensions of land transfers made, not only to Appellant and his siblings, but also to Sarah and Joseph David, and Hattie Laffin/Laughing herself.

We find that this lack of clarity as to the boundaries, and apparently competing interests in what may be the same parcel of land, are clearly the type of circumstance which will require that all three siblings/heirs be joined or brought into any process to resolve this dispute. Failure to include Judith David Printup, her husband David Printup AND sibling Charles David – individuals who each currently have an interest in the land which may have been left to their parents, (or spouse in the case of David Printup) by the Estate of Hattie Laffin/Laughing – could deprive any one of them, (as well as other potential heirs), of their property without notice of the proceedings or an opportunity to participate in the process as provided for in the LDRO. This could result in a fundamentally unfair and egregious taking of property without due process. <sup>7</sup>

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<sup>5</sup> Any “error” cannot be characterized as “longstanding” since the conflict was discovered in August of 2013

<sup>6</sup> It is uncertain as to how or why a new deed would be issued to Appellant with the existing “lack of clarity” as to the relevant boundaries.

<sup>7</sup> We also note that Judy and David Printup did in fact attend the LDT hearing and were apparently heard on some issues.

## Authority For Joinder

*SRMT Civil Code, Section V(A)* directs the Court in the application of various principles/bodies of law which are listed in (1) through(6) from highest priority and precedence. In (1) the Civil Code permits the Court to rely upon portions of the Constitution of the United States and federal law, which the Code describes as “clearly applicable”. Listed next in precedence are “Written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe”. In this case the relevant written Mohawk laws would include the SRMT Civil Code; the SRMT Rules of Civil Procedure and the SRMT Land Dispute Resolution Ordinance. However, no written Mohawk law adopted by the SRMT currently addresses joinder of parties in a civil action.

The SRMT Civil Code does however permit the SRMT Tribal Court to apply Federal Rules of Civil Procedure “[u]ntil the Court adopts its own rules of procedure or when not otherwise in conflict with a specific rule adopted by the Tribal Court or the Tribal Council...”, (emphasis added). The Civil Code also gives the Court authority to “modify, set or direct any specific rule or procedure for individual cases as the Court deems appropriate” *SRMT Civil Code, Section VI(A)*; see also *Jackson v Baker/Roundpoint*, 11-LND-00006/11-CIV-00006; *Oakes v Oakes*, 11-LND-00008.<sup>8</sup>

SRMT land dispute cases have also recognized that the Tribal Court “may suspend the Rules of Civil Procedure...” in land dispute cases, as permitted in LDRO Section XV(A)(4). The Court has not seen fit to suspend those rules and in fact has held, (in a Decision on a Motion seeking a Default Judgment in this case, dated April 1, 2015), that in the absence of procedural rules under the LDRO, the Court will apply SRMT Rules of Civil Procedure and/or the Civil Code laws. *Cook v Cook*, 13-CIV-00006.<sup>9</sup>

Because SRMT Tribal Law does not address the joinder of necessary parties, and because of the potential consequence of failing to join certain parties under the facts of this case, the Court will apply the applicable Federal Rule, specifically, the *Federal Rules of Civil Procedure*, (*Fed. R. Civ. P.*), which address the “Required Joinder of Parties” in Rule 19.

*Section (a)(1) of Rule 19* states as to a “Required Party” that:

“A person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party if:

(A) in that person’s absence, the court cannot accord complete relief among existing parties; or

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<sup>8</sup> The Court has also held that “it is appropriate to rely upon the SRMT Rules of Civil Procedure (and the Civil Code) to provide procedural guidelines ...” where the LDRO is silent. *David v SRMT*, Motion Decision, 14-LND-00003

<sup>9</sup> The law of this case, specifically SRMT’s Motion seeking Default Judgment, sought to rely upon or invoke the Fed.R.Civ.P.

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

- (i) as a practical matter impair or impede the person's ability to protect the interest.

Upon consideration of the facts in this record, the Court finds:

(1) that joinder of Judith and David Printup, (AND/OR sibling Charles David) will not deprive the SRMT Court of subject-matter jurisdiction as the property which is the subject of this dispute is located on the SRMIR Territory. It also appears that these parties are eligible to claim said property in accordance with the LDRO provisions. (See LDRO Section V[B])

(2) that in the absence of the participation of Judith and David Printup (AND Charles David) in this action the Court cannot accord "complete relief among the existing parties". (See *Fed. R. Civ. P., Rule 19(a)(1)[A]*) AND

(3) that Judith and David Printup, (AND Charles David), appear to "claim an interest" related to the property which is subject of the action. <sup>10</sup> (See *Fed. R. Civ. P., Rule 19(a)(1)[B]*); AND

(4) that disposing of the action in their absence may as a practical matter impair or impede Judith and David Printup (AND Charles David)'s ability to protect their "interests" in their lands. <sup>11</sup>

Therefore we find that the *SRMT Civil Code* and *Fed. R. Civ. P., Rule 19(a)(1)(B)(i)* require that Judith and David Printup AND Charles David be joined as parties to this action.

In addition, we note that *Rule 19, Section (a)(1)(B)(ii)* also requires joinder where the person's absence may:

"leave an existing party subject to substantial risk of incurring double, multiple or otherwise inconsistent obligations because of the interest."

The facts of this case, specifically the "lack of clarity as to the boundaries and size of the original parcels at issue", fall squarely within the purview of this section. In fact, because this matter has proceeded without the participation or input of other heirs to this property, the "existing party", Mr. David, remains at "substantial risk" of defending multiple actions brought before the LDT or the Tribal Court, in multiple disputes, with either or both siblings or their

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<sup>10</sup> On May 13, 1988 Charles David was issued an SRMT Use and Occupancy deed for a 1.15 acre parcel identified as Lot #606A (this deed was amended in 6/10/2004 to reflect a ROW); AND on May 10, 1994 Judith David Printup was a deed issued for a 1.5 acre parcel identified as Lot #606-B

<sup>11</sup> See *White v White*, 10-LND-00009 and subsequent land dispute cases recognizing SRMT members' right to property.

heirs. This could result in double, multiple or otherwise inconsistent obligations because of competing interests in this property.

This Court finds that Judith David Printup (and her husband David Printup) are determined to be required parties within the meaning of *Fed. R. Civ. P., Rule 19, Section (a)(1)(b)(i) and (ii)*

As to sibling Charles David, the Court relies upon *Fed. R. Civ. P.* which addresses “Joinder by Court Order” in Section (a)(2) of Rule 19, stating:

“If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.”

Although SRM Tribal Council’s motion seeks an Order joining only Judith David Printup and her husband David Printup as necessary parties in this action, this Court finds that *Fed. R. Civ. P., Rule 19, Section (a)(2)* requires that Charles David also be joined as a party for all of the aforementioned reasons. Charles David also appears to have an interest in the land at issue, and disposing of this appeal without his input could potentially impair or impede his ability to protect that interest.<sup>12</sup> Further, failure to join Charles David would also leave an existing party subject to substantial risk of incurring double, multiple or otherwise inconsistent obligations because of the interest. *Fed. R. Civ. P. Rule 19, Section (a)(1)(B)(i); (ii)*

Despite Complainant David’s Counsel’s argument that Mr. David’s siblings “remain free” to pursue an action beyond the present matter, this Federal Rule is clearly intended to avoid the multiplicity of proceedings Counsel encourages.

#### SRMT As A Party

In SRMT Tribal Court land dispute decisions, the Court has held that members of the SRMT have historically and customarily exercised individual rights to property within the SRMIR. (See *White v White*, 10-LND-00002; *Point/White v Peters*, 10-LND-00005) Although the “power to make land assignments and to issue [SRMT] Use and Occupancy Deeds” to SRMT members is “vested in the St Regis Mohawk Tribal Council”, (See LDRO Section V(A) and [B]), it remains clear that the SRMT does NOT use or occupy ANY of the property which is in dispute in the case at bar. As SRMT Counsel points out, the Tribal Council does not share an interest in the subject parcel.

The Court recognizes that there are any variety of actions which may be undertaken by the SRMT which may cause a land dispute. In fact the LDRO was ratified “for the sole purpose

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<sup>12</sup> A deprivation of the parties property without due process of law would violate the US Constitution, 5<sup>th</sup> Am, and the Indian Civil Rights Act, §1302(8)

of settling land disputes which arise on the Reservation”, and as of the enactment of the LDRO “no case may be presented directly to, nor may any case be taken directly by Tribal Council.” (LDRO (Section VII (A); Section XIII(D)[5]) . The LDRO provides the legal mechanism by which to challenge a “presumptively valid” SRMT Use and Occupancy Deed. *Hathaway v Thomas*, 12-LND-00007 Nonetheless, in many prior instances land dispute appeals have been brought before this Court from Tribal Council Decisions, (most typically from the issuance of Use and Occupancy Deeds), as well as from Decisions from the LDT. Often times, despite the origin of the decision, the Tribe is implicated in these land disputes although it is typically not named as a party. The Court has occasionally found that deeds which were issued by the Tribe contained an error or mistake, and found that these deeds SHOULD be amended according to the provisions of the LDRO. This SRMT authority to “correct or amend deeds due to error” as set forth in LDRO Section V(F)(2), does not however, invalidate the public mandate that, as of February 2010, (effective date of the LDRO), ”no case may be presented directly to, nor may any case be taken directly by Tribal Council.” (LDRO Section XV(D)[5])<sup>13</sup>

Appellant David argues that the “only harm inflicted to date has been harm caused by the SRMT against Ralph David” and that “[b]ut for the illegal actions/decision of the SRMT, any potential disputes and/or claims of ownership interests relating to tribal Lot #606, if any, would not have included the SRMT in any respect.”(Reply, Point III).<sup>14</sup>

It is not entirely clear what harm Appellant contends was caused by the Tribal Council. The property in issue appears to have been distributed in accordance with the terms of the 2008 Will of Sarah David, Appellant’s mother. This appears to have been the only Will any family member was aware of at that time as Hattie Laffin/Laughing’s Will, dated January 11, 1938 was not ‘discovered’ until August of 2013. It was only upon the discovery of that Will, in August, 2013, that Appellant’s claim to the 1 ½ acres arose. Furthermore, Appellant’s claim appears to conflict or overlap with the provisions of his mother, Sarah David’s 2008 Will. We also note that

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<sup>13</sup> Appellant’s counsel makes a compelling argument supported by 3 affidavits of former SRMT Chiefs reflecting the “legislative intent” of the Tribal Council in the implementation of the LDRO language “The Tribal Council reserves the right to correct or amend deeds to due error.” This language was intended to apply to ministerial error only!

<sup>14</sup> Without explanation or reference in these motion papers, Appellant’s Counsel attaches “Exhibit A, a copy of another appeal from a LDT Decision, encaptioned “John Bero, Jr. v SRM Tribal Council” LDT Decision, which includes annexed Affidavits from James Ransom; Mark Garrow; and Monica Jacobs, each a Tribal Chief in December 2009 when the LDRO was enacted. Each affidavit, dated October 22, 2013, attests to the “legislative intent” of the LDRO language in the LDRO Section V(F)(2), which states “ ‘The Tribal Council reserves the right to correct or amend deeds due to error...’ was included only to allow for the ability of the Tribal Council to address and correct ministerial or minor technical mistakes, i.e., incorrect dates, addresses and/or misspellings...[and i]t was NOT the intent of Tribal Council to reserve any legal authority for purposes of reviewing substantive questions of fact and/or law as such responsibility was clearly and specifically relinquished to the Tribal Court and the Land Dispute Tribunal on December 3, 2009”.

Mr. David himself solicited the help of Tribal Council in his efforts to obtain a SRMT Use and Occupancy Deed for the property in issue and attended several meetings with SRMT Chiefs and the Tribal Clerk, including the December 3, 2014 “Work Session” held at Complainant’s request. As a result of Appellant’s active participation and advocacy, on December 17, 2013, the Tribal Council validated the seventy-six year old Will <sup>15</sup> but refused to rescind the siblings’ deeds.

It was after the Tribal Council rendered its Decision by letter dated December 17, 2013, that Appellant sought to have the matter presented to the LDT.

Where a dispute remains after an LDT Determination, the LDRO directs that Decisions of the LDT be appealed to the SRMT Tribal Court. The Tribal Court is also authorized to review “any appeal from a Tribal Council Final Decision made no more than ten (10) years prior to the Effective Date of ...” the LDRO. (See *LDRO Section XV[C]*). The Tribal Court has been designated by the SRMT Tribal Court And Judiciary Code to “interpret, construe and apply the laws and regulations of the Tribe.” (See *Judiciary Code Section VI[1]*). Where the LDRO and other SRMT laws are silent on an issue, such as the issue of joinder or severance of party, the Tribal Court is charged to “interpret, construe and apply” relevant law and make a determination as to who – (or which party in interest) - has the right to use and occupy the property which is in dispute and to resolve the apparent conflict in ownership rights to Lot #606.

In this case, it appears that Appellant chose instead to take the matter to Tribal Council, despite the LDRO language prohibiting a land dispute case from being presented directly to, or taken directly by the Tribal Council. (LDRO Section XIII(D)[5]) Contrary to this language, Tribal Council proceeded to make a determination.

#### Misjoinder

As noted, the SRMT *Civil Code Section VI(A)* permits this Court to apply the Federal Rules of Civil Procedure “[u]ntil the Court adopts its own rules of procedure [which it has done with the SRMT Rules of Civil Procedure] or when not otherwise in conflict with a specific rule adopted by the Tribal Court or the Tribal Council...”. This section of the Civil Code also authorizes the Tribal Court to “modify, set or direct any specific rule or procedure for individual cases as the Court deems appropriate”.

As we have discussed there is currently no written SRMT law which addresses joinder of necessary parties or “misjoinder” of parties, or any law providing authority to “drop” a party from an action. The absence of any SRMT law on these subjects creates the most appropriate circumstance to, again, refer to and rely upon the Federal Rules of Civil Procedure, particularly where such portions of federal law (FRCP) appear to facilitate “sovereignty, self-determination,

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<sup>15</sup> This “validation” did not result in an affirmation of Appellant’s ownership of the 1 ½ acres, but instead affirmed a transfer of 1.02 acres. See Tribal Council December 17, 2013 letter.

and self-government". See *Civil Code Section V(A)(1)* This is particularly true with respect to the matter at bar. <sup>16</sup>

Upon applying the Federal Rules of Civil Procedure, we return to Rule 19, entitled "Required Joinder of Parties", (discussed supra, pages 5-8 in relation to "interested parties), to consider the criteria for enjoining a party in an action. Factors to be considered are whether the absence of this "Party" - in this case SRMT- will prevent the court from according "complete relief", (*Fed. R. Civ. P, Rule19(a)(1)[A]*); whether that party –the SRMT- claims an interest in the subject of the action, and disposing of the case in the absence of SRMT will impair SRMT's ability to protect that interest or leave an existing party subject to inconsistent obligations, (*Fed. R. Civ. P, Rule19(a)(1)(B)(i) and [ii]*).

As we have previously noted, there is no indication that the SRMT in any way uses or occupies the property which is the subject of this dispute. Upon also considering the Federal Rules criteria noted above, the Court finds that the SRMT is not required to be joined as a party. However, as previously discussed, the Court has "joined" into this action other persons who do meet these criteria and; who have such an interest, (Judy and David Printup and Charles David); who have tried to protect their interest pursuant to SRMT law, (Judy David Printup and David Printup), and who claim "rightful" ownership, (Appellant Ralph David).

*Fed. R. Civ. P, Rule 21* states:

"Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party."

This Court concludes that SRMT was improperly named as a party in this action before the LDT.

We also note that as per *Fed. R. Civ. P, Rule 21*, the misjoinder of SRMT does not provide a basis to dismiss the action.

## **II Motion to Dismiss the Appeal based upon the Tribe's Sovereign Immunity.**

SRMT also moves to dismiss this action upon the grounds that:

- (I) Federally recognized Indian Tribes such as the SRMT possess sovereign immunity from suit; and
- (II) the SRMT never waived its sovereign immunity.

SRMT Argues in support of this motion that:

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<sup>16</sup> We also note that in the Motion Seeking Joinder, SRMT has argued in support of the invocation of the Federal Rules .

- (A) the Tribe has not waived its immunity from suit for claims of any kind before the Land Dispute Tribunal, and that the LDT erred in finding that it had subject matter jurisdiction over the Complainant's land dispute against the Tribe;
- (B) that the doctrine of Sovereign Immunity applies to quasi-judicial bodies, such as the LDT. See, Respondent/Appellant SRMT Tribal Council Memorandum in Support of Motion to Dismiss, re-filed April 9, 2015

Appellant/ Respondent David argues in Reply that:

Point (I) the SRMT Land Dispute Tribunal is not a judicial nor quasi-judicial entity – SRMT sovereign immunity is not applicable; AND

Point (II) Sovereign immunity was explicitly waived by SRMT for purposes of review by the LDT and the SRMT Tribal Court. See Appellant David's Reply, filed May 14, 2015.

SRMT correctly contends that as a sovereign nation, the Tribe is endowed with sovereign immunity, which may be waived only under explicit and narrow circumstances as set forth in the Tribe's Civil Code, Section IV(D). SRMT also cites numerous federal authorities recognizing this inherent sovereignty and the requirement that any waiver be "unequivocally expressed". (*Michigan v Bay Mills Indian Community*, 134 S.Ct 2024 (2014); *Santa Clara Pueblo v Martinez*, 436 US 49; *C & L Enterprises Inc. v Citizen Band Potawatomi Tribe of Okla.*, 532 US 411[2001]).

SRMT Tribal Court has also held that Tribal governments possess inherent sovereignty, which is not derived from the federal government. *Wood v Terrance*, 11 CIV-00019, The US Supreme Court has also agreed that with this inherent power Tribes have plenary and exclusive power over their members and their territories, (*United States v Lara*, 541 US 193), as well as sovereign immunity derived from a "necessary corollary to Indian sovereignty and self governance." *Three Affiliated Tribes v Wold Engineering P.C.*, 476 US 877; *Santa Clara Pueblo v Martinez*, supra. An Indian tribe enjoys sovereign immunity from suit except "where Congress has authorized the suit or the Tribe has waived its immunity." *Garcia v Akwesasne Housing*, 268 F.3d 76, citing *Kiowa Tribe v Manufacturing Techs*, 523 US 751, *Bassett v Mashantucket Pequot Tribe*, 204 F.3d 343

It is unquestionable that Tribal governments, such as the SRMT, have the right to extend its sovereign immunity to its Tribal officials and employees. *Wood v Terrance*. Tribes are immune from suit "unless they consent to suit, or where waived by Congress". *Id*.

In the case at bar, there has clearly been no "consent" to suit on the part of SRMT and absent consent, the only basis for any the exercise of jurisdiction over the Tribe would be by means of a specific waiver of sovereign immunity.

## Waiver of Sovereign Immunity

As to Point (II): SRMT argues in support of this motion to dismiss the appeal that the Tribe has not waived its immunity from suit for claims of any kind before the Land Dispute Tribunal; and that the LDT erred in finding that it had subject matter jurisdiction over the Complainant's land dispute against the Tribe.

Appellant refutes this contention arguing that Sovereign Immunity is explicitly waived by SRMT for purposes of review by the LDT and the SRMT Tribal Court.

Upon review of the applicable written laws adopted by the SRMT, it appears that the SRMT Civil Code contains the most extensive discussion on sovereign immunity to be applied in this analysis.

The SRMT Civil Code, Section IV(D) states :

“Tribal sovereign immunity is hereby found and stated to be an essential element of self-determination and self-government, and as such will be waived by the St. Regis Mohawk Tribal Council only under such circumstances as the St. Regis Mohawk Tribal Council finds to be in the interests of the Tribe in promoting economic or commercial development or for other Tribal purposes. Any such specific waivers of sovereign immunity as may from time to time be executed must be clear, explicit and in writing; any such waivers shall be interpreted narrowly and limited to the explicit terms of the waivers; and any such waivers shall not by implication be extended in any manner or fashion beyond their narrow, explicit terms.”

Section IV(F) of the SRMT Civil Code further provides that the Tribe “does not assert sovereign immunity against claims for equitable relief brought in Mohawk Court... under the federal Indian Civil Rights Act,…” noting that 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. *Civil Code, Section IV(F)*<sup>17</sup>

The SRMT Land Dispute Resolution Ordinance, (LDRO), was enacted in February 2010, with the purpose of providing “a fair and equitable procedure for resolving land disputes within the St. Regis Mohawk Tribe's jurisdiction.”

Upon enactment, the LDRO created a “limited waiver” of Tribal sovereign immunity. LDRO Section XVII, although entitled “Sovereign Immunity Not Waived”, actually provides:

“The Tribal Council agrees to a limited waiver of its immunity solely for the Tribal Court to review any decisions the Tribal Council rendered on land disputes under the standards set forth

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<sup>17</sup> It does not appear that Complainant/Appellant David is requesting any money damages as part of this action

herein. Otherwise, nothing in this Ordinance is intended nor shall be construed as any other waiver of the sovereign immunity of the St. Regis Mohawk Tribe from suit in State, Federal or Tribal Court against the St. Regis Mohawk Tribe, any Tribal entity, or any official acting in his or her official capacity.” (Emphasis added)

As noted, this limited waiver of immunity extends solely for “the Tribal Court to review any decisions of the Tribal Council rendered on land disputes under the standards set forth ...[in the LDRO].” (Emphasis added) Although sovereign immunity is explicitly waived by SRMT “solely for the Tribal Court to review any decisions the Tribal Council rendered on land disputes ...” the Tribe’s sovereign immunity IS NOT explicitly waived for purpose of review of a Tribal Council decision by the SRMT LDT. The LDRO does not provide for a waiver of immunity before any entity other than the Tribal Court and sovereign power, (including immunity), remains intact unless surrendered in unmistakable terms. *World Touch Gaming Inc, v Massena Management*, 117 F. Supp.2d 271, citing *Merrion v Jicarilla Apache Tribe*, 455 US 130

Therefore, based upon the Court’s review of the applicable law, specifically the SRMT Land Dispute Resolution Ordinance, we find that the explicit and limited waiver of the Tribe’s sovereign immunity does not extend to, or provide for a waiver of immunity before the SRMT LDT .

#### Quasi-Judicial Determination

SRMT law makes clear that it is not simply or solely the SRMT Tribal Council <sup>18</sup> that is ‘blanketed’ by this sovereign immunity. The Civil Code provides in Section IV(A) “ the [SRMT] hereby asserts and preserves its sovereign immunity to the fullest extent possible on behalf of itself and its subordinate entities, agencies, officers agents (including its Tribal attorneys), and employees”. This language clearly encompasses the Land Dispute Tribunal which is an SRMT creation and subordinate entity. This subordinate entity, i.e, the LDT, was created by the SRMT with the express purpose of “...resolving land disputes within the St. Regis Mohawk Tribe’s jurisdiction” (LDRO Section III), but cannot resolve a dispute naming the Tribe. The Tribe’s sovereign immunity has not been explicitly waived for this purpose and the Tribe and its entities remain immune from “suit” before the LDT. See *World Touch Gaming*. However, the LDRO explicitly extends a limited waiver of sovereign immunity “solely for the Tribal Court to review any decisions the Tribal Council rendered on land disputes...” and not to the LDT for review of Tribal Council land dispute decisions. (LDRO Section XVII)

Based upon this interpretation of the limited waiver of immunity provided in the LDRO, the Court concludes that this appeal is appropriately before the SRM Tribal Court. However, we must caution that should a land dispute arise where a party seeks to protect or assert an interest in land in accordance with the LDRO, and the opposing party is in fact the SRMT who is using

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<sup>18</sup> Meaning the 6 elected Chiefs of the SRMT.

and/or occupying the land in issue, such action cannot be heard by the LDT but must be brought in SRMT Court in accordance with the LDRO, as the limited waiver of immunity set forth in the LDRO Section XVII would also preclude the LDT from hearing a land dispute involving land used or occupied by the SRMT

As to any claim that the LDT erred in finding that it had subject matter jurisdiction over the Complainant's land dispute against the Tribe, the Court notes that the LDRO appears to address the subject matter jurisdiction of the Tribunal in Section VII(A) which states, in relevant part, that the Tribunal is "vested with the authority to and sole purpose of settling land disputes which arise on the Reservation." Appellant's claim before the LDT was a land dispute which was properly put before the LDT.

This Court also finds that, upon extensive review of the LDRO, there exists no authority in the LDRO for the LDT to dismiss a land dispute, (for lack of jurisdiction or any other reason), or to remove or substitute any party in an action before the LDT.

As to Point I: SRMT argues that the doctrine of Sovereign Immunity applies to quasi-judicial bodies, such as the LDT; AND that as a quasi-judicial body, "just like an administrative tribunal", the legal requirements and fundamental principles that govern the application of Tribal Sovereign immunity apply to the LDT, and absent a waiver the Tribunal is without authority to hear a case against the Tribe. (SRMT Memo in Support of Motion, p6)

Appellant/ Respondent David argues in Reply that the SRMT Land Dispute Tribunal is not a judicial nor quasi-judicial entity; AND that there is no authority in the SRMT Judiciary Code of 2008 to support SRMT's contention that the LDT is "quasi-judiciary". (Point I, Appellant's Reply Brief)

As set forth supra in the SRMT Civil Code, tribal sovereign immunity is stated to be "an essential element of self-determination and self-government" which the Tribe "asserts and preserves...to the fullest extent possible on behalf of itself and its subordinate entities, agencies, officers, agents (including Tribal attorneys), and employees." (See Section IV) Read in conjunction with the LDRO, we are able to conclude that whether or not the LDT is designated a "quasi-judicial" body, it is clear that it is an administrative creation of the SRMT, (and a "subordinate entity"), albeit one created as a result of a community referendum. Consequently, the Tribe's sovereign immunity also "blankets" the LDT. This may do much to protect the interests of the SRMT, but it is likely to seem confusing and frustrating for individual litigants who have land disputes heard before the LDT.

The Court finds that the Tribe's waiver of its immunity extends "ONLY for the Tribal Court to review any decisions the Tribal Council rendered on a land dispute under standards set forth ...[in the LDRO]" (emphasis added), and constitutes the Tribe's consent (waiver) to be brought into Tribal Court for the purpose of review of land dispute decisions.

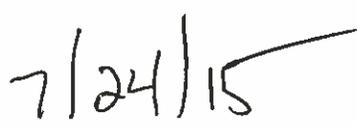
Accordingly, the SRMT Motion to Dismiss this appeal to Tribal Court must be DENIED.

This Court also finds that no SRMT law supports the conclusion that the Tribe has waived its immunity from "suit" on land disputes brought before the LDT or any other body. Therefore we hold that the Tribe could never be properly named as a party in any action before the LDT. <sup>19</sup>

Based upon the foregoing, the Court finds:

- that JUDITH DAVID PRINTUP and DAVID PRINTUP, shall be joined as parties to this land dispute;
- that CHARLES DAVID shall be joined as a party to this land dispute;
- that because the ST. REGIS MOHAWK TRIBE has no use or occupancy interest in the land in dispute, the SRMT was "misjoined" or improperly named as a party before the LDT and shall be severed from this action;
- that SRMT Motion to Dismiss the appeal before the Tribal Court based upon the Tribe's sovereign immunity is also DENIED in accordance with ~~DLRO~~ Section XVII. LDRD 

This constitutes the Decision and Order of the Court.

DATED: 7/24/15 

  
PETER J. HERNE, Chief Judge  
ST. REGIS MOHAWK TRIBAL COURT

<sup>19</sup> As noted, even if the LDT agreed that was it "without authority to hear a case against the Tribe" or that parties were improperly named, the LDRO currently provides no authority for the LDT to change a caption, or add or sever a party or issue or dismiss an action.