

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

Catherine J. Leaf)	
)	
)	
Claimant,)	Case No.: 18-LND-00004
)	
v.)	
)	DECISION AND ORDER
Irving Papineau, Todd Papineau)	
)	
Respondent(s).)	

Procedural Background

On August 14, 2018, Catherine Leaf, Claimant, filed a written Land Dispute Complaint with the Court naming Irving Papineau and Todd Papineau as the Respondents. Catherine Leaf, Claimant, alleged that Todd Papineau and Irving Papineau, Respondents, were encroaching on her property [REDACTED] by mowing grass on her property and planting cedar trees. In her Complaint she also listed [REDACTED] as a disputed property. The Claimant requests that the Respondents cease and desist from her property. Moreover, the Claimant is requesting a boundary survey.

On August 28, 2018, Irving Papineau and Todd Papineau, Respondents, filed an Answer denying part of what is claimed by the Claimant, Catherine Leaf. Respondents admitted that Todd Papineau mowed a small portion of the [REDACTED] Claimant's property, and stated that the Claimant may commission a land survey of her property at any time.

On August 30, 2018, Catherine Leaf, Claimant, filed with the Court a request for all land documentation involving the land dispute documents which pertain to herself and Irving Papineau, Respondent, regarding [REDACTED]

On November 20, 2018, the Court scheduled an initial appearance on the matter. The Claimant, Catherine Leaf, and Respondents, Irving Papineau and Todd Papineau, were present and self-represented. The parties expressed an interest in attending mediation.

On February 8, 2019, the Court held a status conference on the matter. The parties did not go through mediation. Catherine Leaf, Claimant, and Respondents, Irving Papineau and Todd Papineau, were present. Claimant was self-represented. Respondents were represented by Vaughn Aldrich, Esq. The Court set a briefing schedule for the present matter. Both parties have filed motions.

On February 11, 2019, Vaughn Aldrich, Esq. on behalf of the Respondents, Irving Aldrich and Todd Papineau, filed a Notice of Appearance.

On February 22 and 28, 2018, the Court received an Answer and Motion for Summary Judgment and attached exhibits from Vaughn Aldrich, Esq. on behalf of the Respondents, Irving Papineau and Todd Papineau.

On February 27, 2019, the Claimant, Catherine Leaf, filed with the Court a motion alleging that she would like to show proof that she is the sole executor of the Estate of Robert G. Laffin including [REDACTED], requested that Todd Papineau cease and desist from trespassing on [REDACTED] she contended that the Respondents do not have a legitimate claim to the property, and contended that there are no boundaries on record. Claimant, Catherine Leaf, also filed other exhibits involving the property in dispute.

Factual History

The exhibits and pleadings demonstrate that the disputed property and the adjoining property and its boundaries has a longstanding history that has been previously brought to the Saint Regis Mohawk Tribal Council and this Court for resolution. These properties are described as [REDACTED] and [REDACTED]. The record demonstrates that in September 1994, after a meeting with Robert Laffin, Claimant's father, Chief Norman Tarbell sent a letter to Irving Papineau requesting Mr. Papineau to provide documentation as to any property interest he might own aside from the [REDACTED] that was conveyed to him by his father Alec Papineau.

On September 14, 1994, Irving Papineau responded and provided proof of his property interest alleging that his property includes all cedars directly north and northwest and that the western boundary line extended along an old barbwire fence toward the barn. Following Irving Papineau's response there was no subsequent immediate action taken by Robert Laffin and Catherine Leaf, Respondent, or Tribal Council. On January 3, 1995, a Saint Regis Mohawk Tribe Right to Use and Occupancy for [REDACTED] was issued to Catherine Leaf. On July 19, 2002, Robert Laffin executed a statement on Saint Regis Mohawk Tribe letterhead that was also signed by the Tribal Clerk stating that Joyce Leaf is a co-owner of his Estate.¹ The next formal "event" with respect to the disputed property described as [REDACTED] and adjoining property described as [REDACTED] occurred in early and mid-September 2002. Sub-Chief Harry Benedict met with the landowners in order to resolve the dispute regarding the boundaries. On September 27, 2002, Irving Papineau sent a letter to the Akwesasne Housing Authority advising them that it had come to his attention that the Claimant, Catherine Leaf, was in the process of obtaining a HUD home to be constructed on [REDACTED] and notified them that there was a dispute over the boundary lines. On February 27, 2003, the Tribal Council met with the landowners to resolve the land dispute. Following the meeting, on February 28, 2003, the Tribal Council issued a decision.

In its decision, the Tribal Council found that "[REDACTED] formerly owned by Louise Laffin, was jointly owned by Bobby Laffin and Catherine Leaf and was subdivided and sold on two separate occasions." The first sale occurred in 1960 when Louise Laffin sold approximately [REDACTED] an acre to her brother Alec Papineau. This property was later conveyed to Irving Papineau in 1970. The second sale occurred in 1980. In 1980, Louise Laffin sold [REDACTED] adjoining to Irving Papineau. It was noted that Irving Papineau and his father, Alec Papineau, restored and

¹ The Court notes that Joyce Leaf and Catherine Leaf refer to the same individual.

cleared the property without any objection from the Laffin family. In its decision, the Tribal Council stated that no one advised Irving and Alec Papineau that they were trespassing on the Laffin Estate. The only objection raised occurred in 1994. In conclusion, the Tribal Council directed Irving Papineau to have the land surveyed and required that he submit the completed survey and land descriptions to the Tribal Clerk's Office. Lastly, the Tribal Council noted that it must be done in a manner that does not interfere with the property survey being done by the Akwesasne Housing Authority for Catherine Leaf's HUD home.

On June 16, 2003, Irving Papineau provided proof that his property had been surveyed and submitted a copy of the documents as required by the Tribal Council's decision. On June 24, 2003, a Saint Regis Mohawk Tribe Right to Use and Occupancy Deed was issued to Irving Papineau for property described as [REDACTED]. The record demonstrates that the property owned by Louise Laffin was described as [REDACTED] however, the deed issued to Irving Papineau is for property described as [REDACTED]. Thus, the lot numbers changed. The record also demonstrates that the property held by the Claimant, Catherine Leaf, is described as [REDACTED]. On July 16, 2002, a Right to Use and Occupancy Deed was issued between Robert Laffin and Catherine Leaf for [REDACTED]. A subsequent Right to Use and Occupancy Deed was issued between Catherine Leaf and the Akwesasne Housing Authority for [REDACTED] as required for a HUD home to be built on the property.²

On March 17, 2012, Catherine Leaf and Robert G. Laffin filed an appeal with the Tribal Court naming Irving Papineau as the Respondent. Catherine Leaf and Robert G. Laffin in their appeal were disputing the February 28, 2003 decision made by the Tribal Council.³ During litigation, Catherine Leaf notified the Court that her father, Robert Laffin, was in poor health and the matter was rescheduled.⁴ On May 4, 2012, Robert G. Laffin passed away.⁵ Subsequently, Catherine Leaf, Claimant, was recognized by the Tribal Council as the Executrix to the Estate of Robert G. Laffin through SRMT TCR 2012-32. On October 19, 2012, the appeal was dismissed without prejudice.⁶ On May 17, 2017, the ownership of [REDACTED] was transferred from Irving Papineau to Todd Papineau as documented by a Saint Regis Mohawk Tribe Right to Use and Occupancy Deed. The Court accepts this all as fact.

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 Claimant is alleging that the Respondents are encroaching on her property located within the Saint Regis Mohawk Indian Reservation. Pursuant to the Saint Regis Mohawk Tribe Land Laws and Land Dispute Ordinance (SRMT LL&LDO), the Court has jurisdiction over land disputes.⁷ As previously stated, the issue raised by the Claimant, Catherine Leaf, involves a claim of alleged encroachment of real

² See, e.g. Estate of David L. Swamp, 16-CIV-00017, 4 – 6 (Sept. 22, 2017).

³ Robert G. Laffin and Catherine Leaf v. Irving Papineau, 10-LND-00003, 1 (Oct. 19, 2012).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 5.

⁷ SRMT LL&LDO § VI. A. 1.

property located within the Saint Regis Mohawk Indian Reservation; thus, the Court assumes jurisdiction over the allegations raised by the Claimant.

Discussion

In the instant case, the Claimant, Catherine Leaf, alleges that the Respondents, Irving Papineau and Todd Papineau, are encroaching on her property [REDACTED]. She contends that the Respondent, Todd Papineau, mowed grass and planted cedar trees on her property. She also included [REDACTED] as a disputed property in the instant case. In a subsequent motion, the Claimant stated that she would like to show proof that she is the sole executor of the Estate of Robert G. Laffin's Estate and stated there are no boundaries for the disputed property. Further, she requests that she wants Respondent, Todd Papineau, to cease and desist from trespassing on [REDACTED]. She argues that the Respondents do not have a legitimate claim to the property.

The Respondents, Todd Papineau and Irving Papineau, have admitted that on or about July 28, 2018, Todd Papineau mowed grass on the Claimant's property, [REDACTED]. The Respondents allege that the Claimant's land dispute complaint fails to state a cause of action and that any claim against Irving Papineau cannot be legally sustained because he has conveyed his interest in [REDACTED] to Todd Papineau. Further, the Respondents allege that the Claimant has failed to submit any sufficient proof that she is the titled owner of the land designated as [REDACTED]. Moreover, the Respondents allege that any claim regarding the ownership or interest in [REDACTED] is barred by the doctrine of res judicata. Furthermore, the Respondents allege that by mowing the grass Todd Papineau, Respondent, alleviated a safety hazard and this action cannot be construed as a type of encroachment. The Respondents move this Court to rule in summary judgment in their favor and dismiss the Claimant's claims with prejudice.

As previously noted, the Claimant, Catherine Leaf, included [REDACTED] as a disputed property and listed Irving Papineau as a Respondent in this matter. In its analysis, the Court will first address the issue of Irving Papineau as a party to this matter. Next the Court will address the issue involving [REDACTED]. Finally, the Court will evaluate the Claimant's Land Dispute Complaint and the Respondent's request for dismissal and summary judgment.

Analysis

In the instant case, Irving Papineau is listed as a Respondent to this matter. The record demonstrates that on May 17, 2017, the ownership of [REDACTED] was transferred from Irving Papineau to Todd Papineau as documented by a Saint Regis Mohawk Tribe Right to Use and Occupancy Deed. There is no evidence before the Court demonstrating that Irving Papineau possesses any remaining interest in [REDACTED]. The Claimant, Catherine Leaf, has not disputed the validity of the May 17, 2017 SRMT Right to Use and Occupancy Deed. Thus, the Court holds that Irving Papineau has no legal interest in this matter.

In regards to the issue involving the ownership of [REDACTED], the record demonstrates that the land dispute "formally" was initiated in September 1994. At that time, the Saint Regis Mohawk Tribe was and is still governed by a three-Chief system of government. As the tribal government, the Tribal Council was the arbiter and possessed the authority to resolve and make

determinations regarding estate matters and land disputes. The Tribal Council possessed this authority until the development and establishment of the Tribal Court in 2007 by TCR 2007-01, Authority of the Tribal Court System, adopted January 3, 2007. The Tribal Council later enacted the Land Dispute Ordinance (SRMT LDRO) by TCR 2009-69 on December 3, 2009. The authority to resolve land disputes was conveyed to the Land Dispute Tribunal and the Tribal Court by the enactment of the SRMT LDRO. The current Saint Regis Mohawk Tribe Land Laws and Land Dispute Ordinance (SRMT LL&LDO) was enacted by TCR 2016-91 on December 21, 2016 and rescinded TCR 2009-69 and delegated the authority to resolve land disputes within the reservation solely to the Tribal Court.⁸

As demonstrated by this Court's decisions and this case, land dispute and estate decisions made by the Tribal Council occasionally are challenged in this Court.⁹ Both the SRMT LDRO and the SRMT LL&LDO included sections that provided a window which gave the Court authority to review any land dispute decisions made by the Tribal Council. The SRMT LL&LDO states that:

1. As a matter of equity the statute of limitations will be waived and the Tribal Court shall have the authority to review any land dispute decisions made by the Tribal Council between December 1, 1998 and December 3, 2009 (the original Effective Date of the prior Land Dispute Ordinance). Such review shall be de novo. This authority shall expire on June 30, 2018.¹⁰
2. As of December 3, 2009, the Tribal Council no longer had authority to resolve land disputes. If, between December 4, 2009, and the date of the adoption of this Ordinance, the Tribal Council took action on a land dispute despite this bar, the party seeking to file a claim regarding such action must first establish that Tribal Council actually resolved a land dispute as defined herein before a claim may be brought. The Tribal Court shall have the discretion to waive the statute of limitations regarding a land dispute in such case, but in no instance, may the Tribal Council or Tribe be named as a party except as permitted under this Ordinance. Tribal Court shall not entertain cases where the Tribal Council simply executed a Use and Occupancy Deed.¹¹

In this instant matter, the formal decision made by the Tribal Council was issued on February 28, 2003. At that time, the Tribal Council possessed the exclusive authority to make determinations with respect to land within the reservation. The decision on February 28, 2003, falls between the December 1, 1998 and December 3, 2009 window as stated in the SRMT LL&LDO. However, this land dispute was initiated by Claimant, Catherine Leaf, on August 14, 2018. In order for the Court to address the February 28, 2003 decision made by the Tribal Council, it must have been initiated by June 30, 2018. There is also no evidence before the Court

⁸ The SRMT Probate Law was adopted August 16, 2017, by TCR 2017-52, which conveyed authority regarding decedent's Estates to the Tribal Court.

⁹ See, e.g. Lorraine Gambill et. al. v. Julia Back et. al, 18-LND-00002 (March 29, 2019).

¹⁰ SRMT § VI. G. 1.

¹¹ SRMT § VI. G. 2.

demonstrating that the Tribal Council took any action that may be construed as resolving a land dispute between December 4, 2009 - December 21, 2016. The record involving [REDACTED] demonstrates that a Saint Regis Mohawk Tribe Right to Use Occupancy Deed has been issued to Todd Papineau, Respondent on May 17, 2012; however, the SRMT LL&LDO states that the Court shall not entertain cases where “. . . the Tribal Council simply executed a Use and Occupancy Deed” and furthermore, as previously mentioned, the Claimant, Catherine Leaf, has not raised any argument to the Court that she is disputing this deed issued by the Tribal Council.

The Court is also aware that Claimant, Catherine Leaf, and her father, Robert Laffin, brought an action to this Court on March 17, 2012. This action was dismissed without prejudice on October 19, 2012.¹² The action brought by and through the March 17, 2012 land dispute complaint does not have any effect to the present matter because the date it was initiated does not carry over to this case. Based on the fact that the Court is barred from addressing the 2003 Tribal Council decision by the provision found in the SRMT LL&LDO, the Court need not address the argument to apply the res judicata doctrine raised by the Respondents. Finally, the Court will now evaluate the Claimant's land dispute complaint and subsequent motion. As previously indicated, in response the Respondents have requested a dismissal of the Claimant's Complaint with prejudice and moved for summary judgment. The Court will also address in its analysis whether such motions may be granted.

As noted by the Court, in its previous decisions and orders, the applicable SRMT written law does not include a provision that addresses summary judgment.¹³ However, the Court has allowed motions for summary judgment utilizing the Federal Rules of Civil Procedure.¹⁴ Therefore, similar as in other cases, the Court will apply the guidelines proscribed in Rule 56 of the Federal Rules of Civil Procedure. “In ruling on a motion for summary judgment, the function of the Court is not to decide the issues of material fact, but rather to determine whether such issues exist. If a genuine material issue exists it must be left to a later determination. The party seeking summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which under the applicable principals of tribal law entitle the moving party a summary judgment as a matter of law. The party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact.”¹⁵ In sum, “[s]ummary judgment is only permitted if the established record indicates there is no genuine issue of material fact.”¹⁶ In order to make a determination whether summary judgment is appropriate in this matter the Court will look to the established record.

In the instant case, the Claimant's filings demonstrate that she requests that Todd Papineau and Irving Papineau cease and desist from encroaching on her property. The Claimant's filings and testimony demonstrate that by alleging encroachment she is referring to an incident in which Todd Papineau, Respondent, mowed grass that is within [REDACTED] The

¹² Robert G. Laffin and Catherine Leaf v. Irving Papineau, 10-LND-00003, 5 (Oct. 19, 2012).

¹³ See e.g. Constance Tarbell v. Timothy Hillyard, 18-LND-00008 (Feb. 6, 2019).

¹⁴ *Id.* at 6. (citing to Saint Regis Mohawk Tribal Council v. John Bero, 14-LND-00006, 2 (Nov. 25, 2015)).

¹⁵ Saint Regis Mohawk Tribal Council v. John Bero, 14-LND-00006, 2 (Nov. 25, 2015) (citing to Fed. R. Civ. P. 56(a)).

¹⁶ Richard Francis v. Jeff Tarbell et. al. 17-LND-00007, 6 (Nov. 21, 2017).

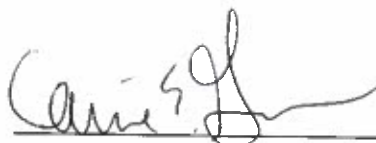
Respondent has admitted to such action. The Claimant has also alleged that the Respondents planted cedar trees on her property. The Respondents deny the allegations regarding the cedar trees. Here, the Claimant has failed to prove that the Respondents planted the cedar trees and she does not request any damages for such encroachment or actions. As a remedy, it appears that the Claimant wishes to obtain a land survey. This remedy does not require a Court action. The Claimant may at any time commission for a land survey to be done for her property. Thus, the Court finds that the Claimant's filings do not rise allegations of a land dispute or provide a remedy that requires judicial intervention.

After examining the relevant tribal law and the record, the Court finds that there is no genuine issue of material fact regarding the ownership of [REDACTED]. The documents submitted demonstrates that the Claimant owns [REDACTED] and that she was recognized as the Executrix of the Robert Laffin Estate. The record also demonstrates that the Respondent, Todd Papineau, is the owner of [REDACTED] and there was a survey completed for this property. Furthermore, the Claimant's status as the Executrix of the Robert Laffin is irrelevant to this matter. If there are any remaining real property in the name of the decedent, Robert Laffin, or any matters related to the decedent's Estate remain unresolved a probate action may be an avenue pursued by the Claimant or any of the decedent's heirs in this Court. Thus, the Respondents, request for summary judgment involving the land dispute in regards to [REDACTED] is granted. However, the Court cannot make any determination as to any claims related to the [REDACTED] [REDACTED] or any [REDACTED] properties because it is unclear as to what the Claimant's allegations are based on her written filings.

ORDER

Based on the foregoing, the Claimant, Catherine Leaf's, Complaint involving real property [REDACTED] is **DISMISSED WITH PREJUDICE** and the above-entitled action be, and the same hereby are, **DISMISSED**.

Signed this 16th day of April, 2019.



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

The parties have ten (10) days to file a motion for reconsideration and the parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals.