

SAINT REGIS MOHAWK TRIBAL APPELLATE COURT

Brenda J. Hathaway, as Executor of the Estate)	
of Louis Hathaway, and)	
Thomas L. Hathaway, Jr.)	DECISION AND ORDER
Appellants,)	
)	Case No. 19-APP-00006
v.)	
)	
Allan T. Jones)	
Appellee.)	
)	

Opinion by: Garabedian, L, *Associate Appellate Judge*

Jurisdiction

This matter comes before the Appellate Court on appeal from a Decision and Order issued by the Saint Regis Mohawk Tribal Court (the “Tribal Court”), signed by Hon. Carrie E. Garrow on October 30, 2019. The Saint Regis Mohawk Tribal Appellate Court possesses jurisdiction to hear all appeals from the Tribal Court. SRMT Tribal Court and Judiciary Code, Section V(2).

Procedural History

This Court has thoroughly reviewed the record on appeal and all court hearing recordings in this case. The record of these proceedings establishes that all documents in support of the appeal were properly served and filed in a timely manner.

Therefore, this Court will not require written transcripts of the proceedings,¹ and will not

¹ SRMT Rules of Civil Appellate Procedure (“SRMT Rules CAP”) Section XVII [Rule 15] (A) and (D) provide that an “[a]ppeal granted may be scheduled for oral argument”, and permit that the “Appellate Court may, within its discretion or if the parties stipulate, decide the appeal on the basis of the briefs alone.” Neither party in this case has requested oral appellate argument. This court’s review and consideration of the appellate briefs submitted and the trial court record, including audio recordings of the motion arguments held on October 10, 2019, provide a clear basis for this Court to conclude that the facts and legal arguments are adequately presented in the briefs and record and that the decisional process would not be significantly aided by oral argument.

SRMT Civil Code Section VI(A) permits the court to deem the Federal Rules of Civil Procedure (“FRCP”), to be the rules of procedure for the Court until 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. This Court may consider adopting FRCP Rule 34(a)(2) which provides that oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary because the appeal is: (A) frivolous; (B) the dispositive issue or issues have been authoritatively decided; or (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. These standards may further assist the court in determining the need for oral appellate argument.

hear oral arguments in this case.²

On April 24, 2019, Appellants Brenda J. Hathaway, as executor of the estate of her father Louis Hathaway, and Thomas L. Hathaway, Jr. filed a Complaint in the form of a Land Dispute Claim and Statement of Facts naming Allan Jones as the Respondent. Appellants sought relief in the following forms:

- (1) That the respective interests of the parties be determined in the real property passing from Angus “Chief” Laughing;
- (2) That the estate of Louis Hathaway (the “Estate”) be adjudicated the sole owner of that property; and
- (3) That a division of the property take place allocating lands: (i) to the Estate and a portion to Appellee consistent with Appellee’s one-sixth interest in the property derived from properties of Cecelia Laughing; (ii) such that such allocation be in full satisfaction of Appellee’s interest; and (iii) such that the allocation be made in such a manner so as not to infringe on the portion of the premises improved by Louis Hathaway. *See* Compl. at 4.

Appellee filed an Answer denying Appellants’ claims on May 23, 2019. *See generally*, Answer.

On June 21, 2019, the initial Tribal Court appearance was held at which Appellants appeared self-represented. Appellee appeared with counsel Virginia A. Gettmann, Esq.

On July 23, 2019, a status conference was held at which Appellants appeared with counsel Thomas B. Wheeler, Esq. Appellee was also present with counsel.

On September 16, 2019, Appellee’s counsel filed a Motion to Dismiss Appellants’ action claiming:

- (1) The claim is barred by the applicable statute of limitations;
- (2) The right to use and occupancy of the disputed lands was previously determined (a) by the Saint Regis Mohawk Tribal Council in decisions, dated October 5, 2004 and April 26, 2006, and (b) by the Saint Regis Mohawk Land Dispute Tribunal, Case # 2012-004-JON, Decision and Order, dated August 2, 2012, and an Addendum to said Decision, dated November 15, 2012; and/or
- (3) Such dismissal is required pursuant to the doctrine of equity and laches. *See* Appellee Mot. to Dismiss at 9.

² Appellant has submitted an Affirmation in Lieu of Transcripts in this case, without objection, in accordance with SRMT Rules CAP, Section X [Rule 8] (D). The Appellate Court is also authorized to decide this case without transcripts of the proceedings pursuant to the Saint Regis Mohawk Tribal Appellate Court Administrative Order of the Court permitting audio recording in lieu of transcript, effective 07/17/19. Audio recordings of the proceedings in this case, which are part of the record on appeal, are audible and otherwise adequate. The Appellate Court finds that no transcripts are necessary in this case.

Appellee's motion further sought an order directing: (1) the Tribal Clerk to prepare a Use and Occupancy Deed to Appellee in accordance with the aforementioned Decisions and Orders; and (2) that the Court grant any such other and further relief as the Court deems just and proper. *Id.*

On October 3, 2019, Appellants filed their opposition to Appellee's Motion to Dismiss, contending that:

(1) Appellee's only claim to interest in the property derives from an agreement to purchase property from Cecelia Laughing;

(2) Appellant has no legitimate claim to an interest in property derived from the "[Cecilia] Laughing parcel";

(3) the Land Dispute Tribunal's Land Dispute Resolutions of October 5, 2004 and April 28, 2006 were erroneous [based upon improper assumptions or reasoning];

(4) the 2012 Land Dispute Tribunal Resolution should be a nullity as to any portion of the Louis Hathaway Estate because the notice of the proceeding regarding [REDACTED] was defective;

(5) Appellee was unjustly enriched by [REDACTED] for work done on the road by Louis Hathaway; and

(6) Appellee failed to sign the April 28, 2006 Land Dispute Resolution and is "guilty" of laches. *See* Appellant Attorney Affidavit, at 2-9.

A status conference scheduled for September 25, 2019, was adjourned to October 10, 2019, at which time motion arguments were heard from both parties. On October 3, 2019, Appellants' counsel responded in opposition to the motion to dismiss. On October 10, 2019, the Tribal Court heard Appellee's Motion to Dismiss the Complaint. On October 30, 2019, the Tribal Court issued a Decision/Order granting the Motion to Dismiss, *inter alia*, which is the subject of this appeal.

On November 19, 2019, the Tribal Court issued a "Scheduling Order" directing that issues which remained unresolved by the October 30, 2019, Decision/Order "shall not be scheduled for a hearing until the Saint Regis Mohawk Court of Appeals renders a decision." *Hathaway v. Jones*, 19-LND-00003, Scheduling Order (SRMT Tribal Court, Nov. 19, 2019).

Factual History

The facts, as set forth and accepted by the Tribal Court are as follows:

On or about February of 1982, Cecelia Laughing sold approximately [REDACTED] acres of land, known as [REDACTED], to Appellee Allan Jones, Richard Laughing, and Louis Hathaway.

In 1998, the SRMT issued a Use and Occupancy Deed to Gilbert Jones; Richard (Dickie) Laughing; Appellee Allan Jones; and Louis Hathaway. At this time Louis Hathaway began selling portions of the property.

In 2004, the land dispute between Louis Hathaway and Appellee over ownership of [REDACTED] was brought before the SRMT Tribal Council for resolution.

On October 5, 2004, the Tribal Council issued a Land Dispute Resolution stating that: "based upon a review of the evidence, a 1999 Property Certification issued to Louis Hathaway was

incorrect; that Appellee was entitled to a portion of the lands of [REDACTED]; and “re-appropriation of land will be made to [Appellee] of the land still available including the plot of land reserved for him as [REDACTED]” SRMT Tribal Council Land Dispute Resolution (Oct. 5, 2004).

Despite this resolution, the dispute between Appellee and Louis Hathaway continued, and in 2006 the Tribal Council was again asked to address the issue.

On October 30, 2006, the Tribal Council issued another Land Dispute Resolution stating that “[Appellee] is to receive his share of the estate, [REDACTED] acres of land located on North Road [REDACTED].” SRMT Tribal Council Land Dispute Resolution (Oct. 30, 2006). Decedent Louis Hathaway was a party to this proceeding and agreed to this disposition. A Land Dispute Resolution Affidavit was signed by Louis Hathaway but was not signed by Appellee.

In June of 2008, Louis Hathaway passed away and on August 26, 2008, Appellant Brenda Hathaway was appointed Executor of the Louis Hathaway Estate.

Disputes continued over the ownership of portions [REDACTED] and, in 2012, disputes were brought before the then-existing Land Dispute Tribunal (“LDT”) in the matters of: (1) *Brenda Hathaway v. Faith Thomas*; and (2) *Jones-Thompson and (Appellee) Jones v. Buckshot*.

The *Hathaway v. Thomas* LDT decision was appealed to Tribal Court as was permitted by the Land Dispute Resolution Ordinance (the “LDRO”), which governed the LDT and land dispute procedures at that time. On appeal to the Tribal Court, the court found in *Hathaway v. Thomas* (12-LND-00007, July 18, 2014) that Faith Thomas was entitled to the property that she purchased from Louis Hathaway during his lifetime, and ordered that Ms. Thomas’ SRMT Use and Occupancy Deed be corrected in accordance with a sales agreement between the parties. This 2012 Tribal Court Decision is not subject to this appeal.

In *Jones-Thompson and Jones v. Buckshot*, the record reflects that the Land Dispute Tribunal reviewed the previous Tribal Council Resolutions of 2004 and 2006, along with other evidence, and on August 2, 2012, directed the Tribal Clerk to issue a SRMT Use and Occupancy Deed to Appellee for [REDACTED] acres (“August Resolution”). An issue arose as to the location of this property and on November 15, 2012, the Land Dispute Tribunal issued an Addendum to their August Resolution which determined that the location of the property would be as was set forth in a 2004 “preliminary survey” conducted by Dana Drake.

On April 24, 2019, nearly 7 years later, Appellants filed the most recent land dispute claim, which is the subject of this appeal.

Analysis

This Court will exercise plenary review over the Tribal Court’s decision. *Community Governance Committee v. Saint Regis Mohawk Tribe and Saint Regis Mohawk Tribe Election Board*, No. 19-cv-00013, at 3 (SRMT Court of Appeals, June 5, 2020). Subject matter jurisdiction is a threshold issue that a court must determine at the outset of a case. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95 (1998)(“The requirement that jurisdiction be established as a threshold matter spring[s] from the nature and limits of the judicial power...and is inflexible and without exception.”)(internal quotation and citation omitted). “Without jurisdiction the court

cannot proceed at all in any cause.” *Id.* at 94. “Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” *Id.* (quoting *Ex parte McCardle*, 74 U.S. 506 (1869)). “On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of th[e] court, and then of the court from which the record comes.” *Id.* (quoting *Great South Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 453 (1900)). “This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it.” *Id.*

Here, Appellants claim error by the Tribal Court in four ways:

- (1) That the 2012 procedures in the Land Dispute Tribunal violated due process;
- (2) That the decision of the Tribal Council, issued on October 30, 2006, erroneously allocated lands to Allan Jones on the western portion of [REDACTED];
- (3) That the Tribal Court failed to consider the prior land history brought forward by Appellants; and
- (4) That laches does not bar the claim presented in this case. *See* Appellant Br. at 10-16.

The SRMT Land Laws and Land Dispute Ordinance (the “SRMT LL&LDO”) provides that the Tribal Court “shall have jurisdiction over any land dispute that is commenced within six years of accrual of the injury or the date the party knew or should have known of the injury that serves as the basis of the claim.” SRMT LL&LDO, Section VI(A)(2)(emphasis added).

The Tribal Court Decision of October 30, 2019, affirmed the following decisions: (1) that Tribal Council Decisions rendered in 2004 and 2006 regarding Appellee’s ownership of SRMT [REDACTED] remained valid and controlling; and (2) that the portions of the August 2, 2012 Land Dispute Tribunal decision and the Addendum decision dated November 15, 2012 are likewise valid and controlling. *See Hathaway v. Jones*, No. 19-LND-00003, at 6-8 (SRMT Tribal Court, Oct. 30, 2019)(the “Tribal Court Decision”). The Tribal Court Decision also ordered: (1) that the Appellee’s motion to dismiss be granted in part; and (2) that “the Court will address the remaining issue involving property improved by Louis Hathaway and the driveway in dispute” (impliedly at a future date and time).³ *Id.* at 9.

The Tribal Court Decision relied upon SRMT LL&LDO, Section VI(G)(1), which addresses the review of prior Tribal Council Land Dispute Decisions, stating:

“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. This authority shall expire on June 30, 2008.”

In this case the Tribal Court declined to exercise jurisdiction over Appellants’ claims contesting the 2004 and 2006 Tribal Council Resolutions, finding (in reliance upon the

³ On November 19, 2019, Tribal Court issued a Scheduling Order, directing that “this matter shall not be scheduled for a hearing to resolve the remaining claims until the Saint Regis Mohawk Court of Appeals renders a decision.”

aforementioned section of the SRMT LL&LDO) that “the statute of limitations bars the claim.” Tribal Court Decision, at 6-7.

The SRMT LL&LDO addresses Tribal Court jurisdiction in Section VI(A)(1) and (2) and in Section VI(G)(1). SRMT LL&LDO, Section VI(A)(2) provides that: “Tribal Court shall have jurisdiction over any land dispute that is commenced within six years of the date of the injury or the date the party knew or should have known of the injury that serves as the basis of the claim. The Tribal Court has discretion to waive the statute of limitations for good cause, such as where the party could not have known or was prevented from knowing of his or her injury.” SRMT LL&LDO, Section VI(G)(1) states that: “As a matter of equity, the statute of limitations will be waived and the Tribal Court shall have authority to review any land dispute decisions made by Tribal Council between December 1, 1998 and December 3, 2009...This authority shall expire on June 30, 2018.”

These two aforementioned provisions of Tribal law address circumstances under which the Tribal Courts may waive of the applicable statute of limitations. Specifically, SRMT LL&LDO, Section VI(A)(2) permits the Court to do so for “good cause shown”, while SRMT LL&LDO, Section VI(G)(1) permits such waiver “[a]s a matter of equity.” SRMT LL&LDO, Section VI(G)(1) also clearly states, however, that the authority to waive the statute of limitations as a matter of equity “[s]hall expire on June 30, 2018.” Therefore, the Tribal Courts no longer have authority to waive the applicable statute of limitations as a matter of equity.

The only remaining basis for the Tribal Court to exercise authority to waive the statute of limitations arises from SRMT LL&LDO, Section VI(A)(2), “for good cause, such as where the party could not have known or was prevented from knowing of his or her injury.” In the Tribal Court Decision that is subject of this appeal, the Tribal Court correctly acknowledged that the “[SRMT] LL&LDO allows the Court to waive the statute of limitations” and proceeded to decline to waive the time bar based on a detailed analysis. Tribal Court Decision, at 5-6. The Tribal Court also relied upon this Court’s Decision in *Leaf v. Papineau*, 19-CIV-00009, at 3-4 (SRMT Court of Appeals, Sept. 11, 2019), which interpreted the SRMT LL&LDO time limitations on filing challenges to land dispute resolutions made by the Tribal Council as a jurisdictional defect. Similarly, in *Leaf v. Papineau*, 19-CIV-00010, at 5 (SRMT Court of Appeals, Sept. 11, 2019), this Court referenced *Bowles v. Russell*, 551 U.S. 205, 215 (2007), for the rule that “federal courts treat timely filing of an appeal as a pre-requisite to exercising jurisdiction.” In this case, the Tribal Court correctly interpreted *Leaf* as holding that where “the claim was time barred...the Court does not possess jurisdiction to hear the case.” Tribal Court Decision, at 6.

Likewise, Appellant has not demonstrated appropriate good cause to this Court to waive the statute of limitations. This case was filed on April 24, 2019, well after the sunset date of June 30, 2018 under SRMT LL&LDO, Section VI(G)(1). In addition, this case was filed well after six years of the alleged harm as required under SRMT LL&LDO, Section VI(A)(2). Both the Tribal Council and Land Dispute Tribunal addressed the material issues presented in this case. Accordingly, both limits set forth in the SRMT LL&LDO act as a bar to the claims in this case. See also *Leaf v. Papineau*, 19-CIV-00010, at 5 (stating that expending Court resources on a matter that a party could reasonably believe was settled years ago is contrary to the goals of procedural rules encouraging court efficiency). “In this case, finality should outweigh flexibility as this Court does not have jurisdiction over Appellant’s underlying claims.” *Id.*

As to any challenge to the August 2, 2012 Land Dispute Tribunal Decision and the November 15, 2012 Addendum, the Tribal Court correctly relied on SRMT LL&LDO, Section VI(H)(1-2) in finding that the court was barred from rehearing the *Jones-Thompson and Jones v. Buckshot* final decisions from the Land Dispute Tribunal, which were not appealed to the Tribal Court. *See* Tribal Court Decision, at 8. SRMT LL&LDO, Section VI(H)(1) states that “[a]ll cases filed with but **not finally resolved** by the Land Dispute Tribunal under the prior ordinance [Land Dispute Resolution Ordinance, effective February 1, 2010 through December 21, 2016] shall be transferred to the Tribal Court to be heard under [the SRMT LL&LDO].” (emphasis in original). However, “[a]ll cases that were previously filed under the prior Ordinance [LDRO] with the Land Dispute Tribunal that resulted in final decisions from the Land Dispute Tribunal or for which appeals have been exhausted may not be filed in, nor reheard by, Tribal Court.” *Id.* at Section VI(H)(2).

We hold that the Tribal Court properly declined to exercise jurisdiction over these claims in reliance upon the aforementioned SRMT land dispute laws and affirm the precedent established by *Leaf v. Papineau*. In *Leaf*, this Court interpreted the SRMT LL&LDO statute of limitations set forth in SRMT LL&LDO, Section VI(A)(2), as imposing a jurisdictional limit. This Court reiterates that the SRMT LL&LDO precludes the Tribal Court and this Court from exercising jurisdiction over these statutorily barred claims. For that reason, we affirm the lower court decision.

Order

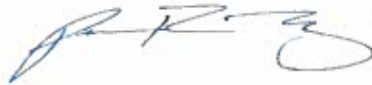
It is hereby:

ORDERED that, this appeal is dismissed without prejudice and is remanded to the Tribal Court to conclude the remaining issues as outlined in the October 30, 2019 Tribal Court Decision.

Dated: February 4, 2021



Lisa Garabedian, Associate Appellate Judge
SRMT Court of Appeals



Patricia Lenzi, Chief Appellate Judge
SRMT Court of Appeals



Kyle Montour, Associate Appellate Judge
SRMT Court of Appeals