

## SAINT REGIS MOHAWK TRIBAL APPELLATE COURT

LORRAINE GAMBILL, RICHARD  
SKIDDERS, MATTHEW SKIDDERS &  
HONEY SKIDDERS,

Appellants,

v.

JULIA BACK, KATHLEEN PAPINEAU,  
JULIANNE SKIDDERS, SARAH LEE  
SKIDDERS, SAMANTHA SKIDDERS,  
LARRI-LEE SKIDDERS, JEREMY SCOTT  
MCDONALD, MORRIS N. OAKES,  
LAZORE & BLAKE CARL TARBELL,

Appellees.

19-CIV-00008

(Lower Court Case 17-LND-00002)

ORDER DISMISSING APPEAL  
AND AFFIRMING TRIAL  
COURT DECISION

Majority Opinion by: *Lenzi, Chief Justice*

In this case, Appellants claim the Tribal court erred in dismissing the case based on a determination that waiver of the statute of limitations was not a matter of right, but a matter of equity, and erred by concluding that equity in this case required the statute of limitations not be extended. For the reasons stated in this opinion, we find waiver of the statute of limitations as set forth in the St. Regis Mohawk Tribe's Land Laws and Land Dispute Ordinance (SRMT LL&LDO), Section VI (G)(1) requires this Court to first consider whether it is *equitable* to waive the statute of limitation. In this case, we find equity weighs in favor of the Appellees and against Appellants. The Tribal court properly dismissed this case for lack of jurisdiction because the statute of limitations had expired. The Tribal court properly ordered the Tribal Clerk to issue an amended SRMT Use and Occupancy Deed as indicated in the Tribal court order. Therefore, we affirm the lower court decision and dismiss this appeal.

### Questions Presented

Appellants list six claims, all of which essentially collapse into one question: should the statute of limitation be waived in this case and should the court consider Appellants' claims *de novo*? The remaining five claims ask:

- Did procedural irregularities deny Appellants<sup>1</sup> a fair opportunity to present their case?

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<sup>1</sup> The parties variously refer to themselves and each other as "Claimants," "Claimant," "Appellants," and "Appellant," or "Respondent," "Respondents," "Appellees," and "Appellee." This Court will refer to them as Appellants and Appellees.

- Did the Appellants have a right to bring this claim?
- Does the doctrine of “unclean hands” mitigate against providing relief to the Appellees?
- Does the documentary evidence support Appellants’ claim?
- Does a finding that this claim should not be heard *de novo* frustrate the rights of Appellants and the traditions of the St. Regis Mohawk Tribe?
- Are all Appellants entitled to proceed on the amended claim?<sup>2</sup>

### **Background**

The decision appealed from was issued on March 29, 2019 by Hon. Potter. Appellants claim the court failed to allow appropriate relief under the SRMT LL&LDO. Appellants asked the court to decide that the property at issue be found to be the property of the claimants (Appellants) or alternatively to remand for a factual hearing. Appellants allege six issues: (1) The Tribal court erred by allowing an oral motion to dismiss at the December 3 settlement conference, without allowing full briefing and argument and evidentiary hearing, nor allowing the parties to respond to documents filed by the opposing parties; (2) LL&LDO matter of equity is mandatory and not discretionary “as a matter of equity, the statute of limitations will be waived...”; (3) the doctrine of “unclean hands” should preclude Appellees from receiving relief; (4) the documentary evidence<sup>3</sup> supports the claims of Appellants; (5) failure to proceed on the claim *de novo* would frustrate rights of claimant and violate the traditions of the SRMT; (6) all claimants should be allowed to proceed on the amended claim because the Appellees were given additional time to compel adding additional parties.

### **Procedural posture**

Appellants filed their Notice of Appeal on April 24, 2019, within 30 days of the decision by the Tribal court. The parties requested extended time to file opening briefs. The SRMT Court of Appeals granted the request, extending time to file opening brief by Appellants to January 2, 2020. The Appellants filed their Opening Brief on January 2, 2020, with transcripts from the lower court. Appellees filed their brief on January 30, 2020.

On February 3, 2020, Appellants requested an additional extension to file their reply brief. The SRMT Court of Appeals may grant an extension order under SRMT Rules CAP VI (Rule 4) B, and five days more are added to the deadline for filing if service is by mail under SRMT Rules CAP VI (Rule 4) C. The extension was not granted. No reply brief was filed. Under SRMT Rules CAP XIII(A), Appellants must file their reply within 15 days of the filing of the brief by Appellees. The case is considered “at issue” once the 15 days lapse if no reply brief has been filed.

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<sup>2</sup> These claims can be addressed briefly as equating to the same question asked a half dozen different ways.

<sup>3</sup> To get to this you have to get past the stature of limitations, which is jurisdictional

As noted above, the transcripts have been prepared and are filed with the Appellants' Opening Brief.

### **Oral Arguments Were Not Requested**

This Court may, within its discretion, decide appeals on the basis of the briefs alone and without oral argument. SRMT Rules CAP, Section XVII.D. Neither party has requested oral argument before this Court. This Court determines the issues are sufficiently briefed and this Court exercises its discretion to decide this case on the briefs alone, without oral arguments.

### **Background**

This case involves an appeal of the Tribal court's dismissal of Appellants' challenge to the issuance by the Tribal Council of a decision, in the form of Tribal Council Resolution 99-21, regarding the property in question. The Tribal court dismissed the action based on application of SRMT LL&LDO Section VI (G)(1) which states that: "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."

The subject of this case is the property known as [REDACTED] originally owned by Margarette Hopps and her husband Peter Hopps. Margarette passed away in 1970, survived by her husband Peter. The Hopps had no children, and it is alleged that Marita Skidders (his niece) lived with Mr. Hopps and took care of him until the time of his death in 1974.

- On January 11, 1978, the SRMT Tribal Council issued a "Settlement, M&P Hopps Estate" providing Marita Skidders with a life use of the property. The settlement also stipulated that the property "may not be sold, or transferred by will to anyone else in this time frame ... (and) after (Marita's) passing, the council will then make another determination as to the fair and proper disposal of said property."
- On April 15, 1979, Marita Skidders signed a "Guardianship of Property" document purporting to place the property under the guardianship of the "Longhouse Council of Chiefs for the People of the Mohawk Nation of the Five Nations Iroquois Confederacy," also known as the Mohawk Nation Council of Chiefs. The Mohawk Nation Council of Chiefs, on the same date sent a letter to the SRMT Tribal Council stating that the estate of Peter and Margarette Hopps was settled by these actions and no longer open to any claim.
- At some point, Marita Skidders moved from [REDACTED] to Cornwall Island, and Richard Skidders, and his family lived on the property from 1981 to 1987.

When he departed in 1987, Marita allowed her son Lawrence Skidders, with his family (Appellees/Defendants in this action) to take possession of the premises. Lawrence and his family lived on the property from 1987 until his death on February 3, 1993.

- After Lawrence Skidders' death, a Ten-Day Feast was held, as per custom of the Longhouse. A written record of this distribution was created stating that "all is to be left in hands of wife/spouse for the children" (p11 Decision). "[I]f the children are small, the wife or mother has to make sure all that is left in her care until the children are of age. She has the right to all that is in hand... Then the speaker will make LAW that all is to be left in the hands of the wife/spouse for the children."
- Between 1993 and the time of this suit, there were meetings between Julie Back Skidders, Marita Skidders, and the Saint Regis Mohawk Tribal Council. At one point a contract was signed between the two, where Marita gave Julia a 25-year lease to utilize the property for her businesses.
- Discord continued, and on October 31, 1999, a second document was issued on Haudenosaunee letterhead in which Marita Skidders was given a "Land Title."
- On November 3, 1999, the Saint Regis Mohawk Tribal Council issued Resolution 99-21, Land Dispute Settlement in the matter of Marita Skidders v. Julia Back Skidders. The Tribal Council determined that the disputed property would become the property of "Kathleen Skidders and her sisters, daughters of Lawrence Skidders" subject to the life use of said property in Julia Back Skidders.
- On March 25, 2003, the SRMT issued a SRMT Right to Use and Occupancy Deed on behalf of the Estate of the Late Lawrence Skidders transferring the [REDACTED] to Kathleen Skidders and her sisters, Julianne, Larri Lee, Samantha and Saralee.

### **The Decision by the Tribal Court**

The Tribal court, in its lengthy decision, reviews the history of the dispute, including the traditions of the SRMT applicable to this dispute, in great detail. The Appellants base their appeal on an erroneous reading of the language of the SRMT LL&LDO. The Appellants sought to have the Tribal court waive the statute of limitations and review the 1999 Land Dispute Settlement (Resolution 99-21) de novo. The Tribal court ruled that the SRMT LL & LDO does not automatically require a de novo review of the 1999 decision of the Tribal Council, but instead permits the Tribal court to dismiss the action, based on equitable considerations. The Court concluded the equitable considerations in this case weighed in favor of Appellees. As a result of this finding the

Tribal court dismissed the action for lack of jurisdiction, and ordered the Tribal Clerk to issue a corrected deed to defendants, to include the life estate rights of Julia Back Skidders that was included in the 1999 decision.

### Analysis

The SRMT LL&LDO of 2016 specifically directs the Tribal court, and therefore this Court of Appeals, to apply the customs and practices of the SRMT “where it is relevant to resolve a land dispute.” SRMT LL&LDO of 2016, Section IV(A). In this case, those very customs and practices are highly relevant to resolve this land dispute, as the Tribal court found.

We conclude that the Tribal court was correct in its determination that the customs and practices of the Tribe were “relevant to resolve” this land dispute, specifically the Kanienkehaka Longhouse,<sup>4</sup> custom or practice which provided for Lawrence Skidders’ traditional ten-day feast and the speaker’s declaration that “all is to be left in hands of wife/spouse for the children.”

SRMT LL&LDO of 2016 Sections IV(A), VI(A)2 and VI(G)(1) must be read as part of the whole of the Ordinance. See *John Hancock Mut. Life Ins. Co. v Harris Trust & Sav. Bank*, 114 S.Ct. 517, 523 (1993); *Pavelic & Leflore v. Marvel Entertainment Group*, 493 U.S. 120, 123-24 (1989); *Massachusetts v. Morash*, 490 U.S. 107, 114-15 (1989); *Smith v. United States*, 113 S.Ct. 2050, 2057 (1993); *United Sav. Ass’n. v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 371 (1980). The Tribal court found the customs and traditions relevant to the decision in this case. This Court gives great deference to the findings of fact of the Tribal court. The relevant SRMT customs and traditions determination in this case must be considered as part of the whole of the Tribal court’s determination of facts that the appeal was filed on June 20, 2018, and that the injury was known to Appellants /accrued when Resolution 99-21 was issued.

The SRMT LL and LDO of 2016 contains two distinct provisions regarding the statute of limitations. Section VI (A) 2, creates a statute of limitation of six years from the time 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. The Tribal court has the 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.” Here, the accrual of the alleged injury is well-documented to be more than six years. Appellants filed this case in 2018, two years after the statute of limitations ran, as the injury accrued in 1999 when Resolution 99-21 was first issued. Under this Section of the SRMT LL&LDO, the claim by Appellants is untimely.<sup>5</sup>

Alternatively, Appellants claim that SRMT LL&LDO Section VI(G)(1) permits this claim as timely because it states “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.” This case was filed on

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<sup>4</sup> Also known as the Mohawk Nation Council of Chiefs

<sup>5</sup> However, if the determination was actually made in 1993 at the ten-day feast for Lawrence Skidders, then the harm or injury was actually known in February of 1993.

June 20, 2018, a mere ten days before the authority for possible *de novo* review expired. Appellants failed to consider the language “as a matter of equity” and skipped directly to the language “this review shall be *de novo*.” Read in light of this Court’s ruling in *Hathaway v. Jones*, 2021, No.19-APP-00006, at 6 (SRMT Court of Appeals, February 7, 2021), this Court must look to whether “in equity” the statute of limitations should be waived in this particular case. Appellants seek *de novo* review of a decision that was made by Tribal Council resolution in 1999 (Resolution 99-21), and after which a land use and occupancy deed was issued on March 25, 2003. As a matter of equity, it would be inequitable to disturb decisions made and acted upon for over twenty years by a strained reading of the language of this section of the SRMT LL&LDO.

Read as a whole, the customs and traditions of the SRMT, the date the injury first accrued, and the matter of equity necessitated before reviewing the Tribal court’s decision *de novo*, all support a finding this appeal should be denied. Additional facts found by the Tribal court bolster this determination.

The Tribal court found that Marita Skidders was never granted anything more than a life estate [REDACTED] previously owned by Peter Hopps and Margarette Hopps. The decision of the lower court painstakingly and repeatedly reviewed each document presented to support the claims of the Appellants, concluding each time that the extent of the interest transferred to Marita Skidders remained a life estate. The initial determination made in 1978 by the SRMT Tribal Council found the property was for her use until her death, but could not be “sold, or transferred to anyone else in this time” requiring the [Tribal Council] to determine after her death to whom the property should be transferred.<sup>6</sup> Despite this ruling, Marita Skidders exceeded her authority over the property when she placed the land under “guardianship of the Longhouse Council of Chiefs for the People of the Mohawk Nation of the Five Nations Iroquois Confederacy.” Nevertheless, thereafter she permitted her son Richard to reside on the property, until 1997 when she allowed her son Lawrence to reside on the land.<sup>7</sup> Although Marita Skidders and her daughter sought a land use and occupancy deed in 1993, and there is a limited reference to a Tribal Council determination which granted her that status, no land use and occupancy deed was ever issued, and none was produced in this litigation. Once again thereafter, Marita Skidders and her daughter Julia Back Skidders exceeded their claim to this land when they entered into a contractual agreement in 1993 to allow others to use the land for Skidders’ businesses. Again the Tribal court found that Marita Skidders had nothing more than a life estate in the property at this time.<sup>8</sup> The Tribal court concluded that any findings of the Saint Regis Mohawk Council in 1994 that Marita Skidders held any more title than a life estate to be “a misinterpretation of the original [January 11, 1978, Settlement M & P Hopps Estate] determination and erroneous.”<sup>9</sup> Appellants thereafter acknowledged the life estate in 1995.<sup>10</sup> In 1996, an informal panel hearing before Tribal Council further reference was made to the title held by Marita Skidders as a life estate.<sup>11</sup> Marita Skidders was directed by the Tribal Chiefs

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<sup>6</sup> 18-LND-00002 at 3.

<sup>7</sup> The facts, as found by the Tribal court, are somewhat truncated in this decision’s reiteration of the status of the land and related decisions..

<sup>8</sup> 18-LND-00002 at 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

and the Constitutional government of the SRMT to seek redress for her dispute in June of 1999 in Tribal court. The Tribal court found that her litigation did not change the nature of her title from a life estate.<sup>12</sup> Despite the litigation in Tribal court, in October of 1999, Marita Skidders obtained a "Land Title" from the Longhouse that acknowledged the Guardianship of Property" she was previously and erroneously granted through the Longhouse. The Longhouse/Mohawk Nation Council of Chiefs erroneously transferred back to Marita Skidders - a title she never held, since all she ever was granted was a life estate.<sup>13</sup>

The SRMT Tribal Council was the only governing body with authority over determining title to the land at the time. The SRMT Tribal Council issued Tribal Council Resolution 99-21, Land Dispute Settlement, that determined the property would become the property of Kathleen Skidders and her sisters, the daughters of Lawrence Skidders, subject to life use of their mother, Julia Back Skidders."<sup>14</sup> Thereafter, the Tribal Clerk issued a statement affirming the life estate status of the land as to Marita Skidders.<sup>15</sup> Even so, ten days later, the Tribal Clerk issued an additional statement that the land had not been transferred but remained in Marita Skidders' name. Again, the Tribal court properly concludes the only title Marita Skidders held was a life estate.<sup>16</sup>

"On March 25, 2003, the SRMT issued a right to use and occupancy deed between the [SRMT] on behalf of the Estate of the Late Lawrence Skidders to Kathleen Skidders and her sisters Julianne, Larri Lee, Samantha and Sarahlee."<sup>17</sup>

The Tribal court next provided historical context to the changes in government and lawful authority over land claims at the SRMT during the relevant time period from 1978 to the present, and discusses which land use laws, customs, and agencies were vested with authority at the relevant times. The Tribal court also described the relationship between the SRMT's government over time and the Longhouse/ Mohawk Nation Council of Chiefs.<sup>18</sup> In its analysis, the court acknowledged the invalidity of the Saint Regis Mohawk Tribe's Constitutional government, and the likewise invalidly issued court decisions under that government.<sup>19</sup> The court looked to the traditions of the Mohawk community in determining how traditional claim to land is made, finding Lawrence Skidders had validated a claim to the land under Mohawk tradition,<sup>20</sup> thereby supporting the Resolution issued by the SRM Council in Resolution 99-21, and the later issuance of the right to use and occupancy deed issued to the heirs of Lawrence Skidders on March 25, 2003.

Here, the claimed harm was known to Marita Skidders on November 3, 1999 when Resolution 99-21 was issued. More than six years have lapsed since that date.

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<sup>11</sup> Id. at 6.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id. at 7.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id. at 8.

<sup>18</sup> Id. at 9.

<sup>19</sup> Id. at 8.

<sup>20</sup> Id. at 9-11.

SRMT LL&LDO bars claims that are made more than six years after the harm occurs or is first known to have occurred. SRMT LL&LDO Section VI(A)(2).

SRMT LL&LDO Section VI(G)(1) requires this Court to weigh the equitable impact of a decision to waive the statute of limitations. Here, to overturn the past decisions would be inequitable in that it ignores the original intent of Peter Hopps to leave only a life estate to Marita Skidders. The inequity of such a decision would be compounded if this Court was to further ignore and disregard the SRMT Tribal Council decision that determined in 1999 that Lawrence Skidders' heirs should inherit the land, particularly when viewed through the lens of Mohawk traditional transfer of land to people who have been granted authority to occupy land, who then cultivated and significantly developed land, over those who chose not to live there and held a mere life estate.

Marita Skidders repeated attempts to transmute the nature of her claim to the land to be anything other than a life estate simply never changed the nature of her title. This is particularly true since she did not reside on, develop, or cultivate the property for much of the time after 1978 "Settlement" that clearly stated that the [Tribal Council] "would make another determination as to the fair and proper disposal of said property" upon her death.<sup>21</sup> By contrast, Lawrence Skidders' labor, cultivation, and development of the land did transmute his claim to the land, as recognized by the SRMT Tribal Council in Resolution 99-21, and later in the land use and occupancy deed issued to him and his heirs on March 25, 2003.

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<sup>21</sup> *Id.* at 15.

### **Appellants Lack Standing**

The Appellants lack standing to bring this claim since, as this Court concluded above, Marita Skidders held a life estate that expired upon her death on October 13, 2013. Despite her death being less than six years before this case was filed, the claim that her title was anything more than a life estate accrued in 1978 when it was granted, or 1999 when Resolution 99-21 was issued, or at the latest in 2003 when the land use and occupancy deed was issued.

### **The Court Lacks Jurisdiction to Hear This Case**

This Court concluded that the statute of limitations has lapsed, and equity weighs in favor of not waiving the statute of limitations. As a result, this Court concludes it also lacks jurisdiction to hear this case. *Leaf v. Papineau*, 2020, 19-CIV-00009 at 3 (Saint Regis Mohawk Tribal Court of Appeals, September 11, 2020).

### **Conclusion**

This Court concludes that as a matter of equity, in this case the statute of limitations should not be waived. The decision of the Tribal court is affirmed in its entirety.

Dated: May 4, 2021



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Patricia Lenzi, Chief Appellate Judge  
SRMT Court of Appeals



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Lisa Garabedian, Associate Appellate Judge  
SRMT Court of Appeals

*R. Barnes, Associate Justice, dissenting.*

When interpreting a statute or subdivision, one must look not only at the language used in one particular section, but also the language used throughout. "Generally, identical words used in different parts of the same statute are presumed to have the same meaning. But where, as here, [the Legislature] uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." *Mary Jo. C. v. New York State and Local Retirement System* (2d Cir. 2013) 707 F.3d 144, 156 (citation omitted). "We have recognized, as a general rule, that [the Legislature's] use of "certain language in one part of the statute and different language in another" can indicate that "different meanings were intended." *Sebelius v. Auburn Regional Medical Center* (2013) 568 U.S. 145, 156 (citation omitted).

The SRMT Land Law and Land Dispute Ordinance ("LL&LDO") provides for possible review of land dispute decisions dated either between December 1, 1998 and December 3, 2009, or December 4, 2009 and December 21, 2016. For the former, the LL&LDO states:

"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 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." (LL&LDO, VI.G.(1).)

In dismissing Appellants' claim, the Tribal Court held that the language, "as a matter of equity," was a qualifying introductory phrase that gave it discretion to waive the statute of limitations for equitable reasons. The Tribal Court rejected Appellants' argument that section VI.G.(1). provided Appellants with de novo review of their claim as a matter of right.

Interpreting section VI.G.(1) to give the Tribal Court discretion to waive the statute of limitations ignores the mandatory language of the subdivision, as well as the differentiating language of the next subdivision within the same statutory section.

As argued by Appellants, the language of subdivision VI.G.1 indicates that "the statute of limitations *will be waived*... [,]" directing the Tribal Court to hear claims that would otherwise be untimely. (Emphasis added.) The word "will" requires the Tribal Court to waive the statute of limitations in this particular context. The phrase "[a]s a matter of equity" is not a qualifying phrase, but rather an explanatory phrase by the Tribal Council determining that fairness required waiver of the statute of limitations. By that point in time, any Land Dispute Decisions would have already been untimely given the six-year statute of limitations and the fact that the LL&LDO was not enacted until December 2016.

Additionally, within different subdivisions of section VI.G of the LL&LDO, Tribal Council expressed its separate intent to provide the Tribal Court with discretion to waive the statute of limitations for equitable reasons in one instance and required that the statute of limitations be waived in others. Section VI.G, subdivision 2 states, in relevant part:

"[For Land Dispute decisions decided between December 4, 2009 and December 21, 2016, t]he Tribal Court *shall have the discretion* to waive the statute of limitations regarding a dispute in such case[.]" (LL&LDO, VI.G.(2). [emphasis added].)

If Tribal Council desired to give the Tribal Court discretion to waive the statute of limitations for review of Land Dispute decisions between December 1, 1998 and December 3, 2009, it would have expressly stated so as it did in subdivision 2.

For these reasons, I respectfully dissent with the majority decision. I would reverse the decision dismissing Appellants' claim, waive the statute of limitations, and conduct a de novo review.

A handwritten signature in black ink, appearing to read 'R. Barnes', followed by a horizontal line.

Rowennakete Barnes, Associate Appellate

Judge

SRMT Court of Appeals