

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

Louis Francis)	
)	Case No.: 19-CIV-00015
)	
Plaintiff)	
)	
v.)	DECISION AND ORDER
)	
Wanita Swamp)	
Respondent)	

Procedural Background

On August 6, 2019, Louis Francis, Plaintiff, filed a civil complaint and documents with the Court naming Wanita Swamp as the Respondent.¹

On August 29, 2019, Louis Francis, Plaintiff, submitted a copy of a document demonstrating that UPS had delivered a package to Hogansburg, NY.

On October 3, 2019, Louis Francis, Plaintiff, submitted a copy of a text message he had received from UPS substantiating that a package was delivered to UPS.

On October 29, 2019, the Court held an initial appearance on the matter. Louis Francis, Plaintiff, appeared and was self-represented. Wanita Swamp, Respondent, failed to appear. On the record, the Court found that the service was insufficient pursuant to the SRMT Rules of Civil Procedure.

On October 30, 2019, Louis Francis, Plaintiff, submitted proof that his civil complaint and documents were personally served on the Respondent.

On November 26, 2019, the Court held an appearance on this matter. Louis Francis, Plaintiff, appeared and was self-represented. Wanita Swamp, Respondent, failed to appear.

On December 16, 2019, the Court held a pre-trial conference on this matter. Louis Francis, Plaintiff, appeared and was self-represented. Wanita Swamp, Respondent, appeared and was self-represented. The matter was scheduled for a trial to take place on January 13, 2020. Prior to the scheduled trial, Wanita Swamp, Respondent, requested a continuance; however, she did not convey her request to the Plaintiff. On or about January 10, 2020, Louis Francis, Respondent, asked for a continuance. The Court granted his request.

On January 27, 2020, the Court held a trial in this matter. Louis Francis, Plaintiff, was present and self-represented. Wanita Swamp, Respondent, failed to appear. The Court heard

¹ The Court notes that the Court Clerk committed an error and crossed off the initial date of filing.

testimony from Louis Francis, Plaintiff; Rolanda Jackson; Robin Thompson; and Valerie Francis and accepted evidence.

Jurisdiction

The Court possesses civil jurisdiction over civil disputes involving contracts negotiated, executed, or performed in Mohawk Indian Country pursuant to the Saint Regis Mohawk Tribe Civil Code (SRMT Civil Code).² The instant matter involves an oral contract entered into and performed within the borders of the Saint Regis Mohawk Indian Reservation. Thus, the Court possesses the requisite jurisdiction.

Applicable Law

The SRMT Civil Code delineates the applicable law for civil disputes and the order in priority of which they should be applied. First the Court is required to look to portions of the United States Constitution and federal law.³ In this matter, the parties do not request the Court to apply the United States Constitution and federal law to their claims. Next, the Court may apply written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe.⁴ At this time, the Saint Regis Mohawk Tribe has not enacted a law addressing contracts. The Court may also look to unwritten and written Mohawk customs, traditions, and practices.⁵ In this matter, neither party has requested the Court to apply Mohawk customs, traditions, and practices. Next, the SRMT Civil Code allows the Court to apply generally recognized principles of the law of contract as reflected by the most recent Restatement of Contracts or in such expert treaties as the Court may choose to recognize.⁶ Since there is no written Mohawk laws which would supersede the use of the most recent Restatement of Contracts, the Court will utilize the Restatement as necessary to resolve this matter.

Findings of Fact

The Plaintiff, Louis Francis, bears the burden of proof by preponderance of evidence.⁷ Preponderance of the evidence is met “by providing superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”⁸ After reviewing the record and testimony the Court finds the following facts were proven by a preponderance of evidence.

1. In or around May 2016 Wanita Swamp, Respondent, and Winston Swamp went to Louis Francis, Respondent’s, house and offered to sell a trailer to Louis Francis, Plaintiff, for \$5,000.

² SRMT Civil Code § II. B.

³ SRMT Civil Code § V. A. 1.

⁴ SRMT Civil Code § V. A. 2.

⁵ SRMT Civil Code § V. A. 3.

⁶ SRMT Civil Code § V. A. 4.

⁷ SRMT Rules of Civil Procedure § XX. A.-B.

⁸ SRMT Rules of Civil Procedure § XX. B.

2. Louis Francis, Plaintiff, paid a portion of the amount in May 2016 to Wanita Swamp, Respondent, and Winston Swamp.
3. Wanita Swamp, Respondent, and Winston Swamp agreed that Louis Francis, Plaintiff, could make payments to pay for the trailer.
4. Louis Francis, Plaintiff, made payments to Wanita Swamp, Respondent, and Winston Swamp.
5. Louis Francis, Plaintiff, hired individuals to remove the skirting and renovated the roof and to locate axles to make the trailer moveable.
6. Louis Francis, Plaintiff, replaced the locks on the doors.
7. Wanita Swamp, Respondent, rented out the trailer to tenants while Louis Francis, Plaintiff, was paying for the trailer.
8. On or around February 2017, Louis Francis, Plaintiff, paid for the trailer in full.
9. Once it was paid in full, the trailer was broken into and items were removed by Wanita Swamp, Respondent, and Doris Burns.
10. Wanita Swamp, Respondent, later sold the trailer to Doris Burns.
11. Louis Francis, Plaintiff, has not obtained possession of the trailer.

Analysis

In the instant matter, Louis Francis, Plaintiff, agreed to purchase a trailer from Wanita Swamp, Respondent, and her son Winston Swamp for \$5,000. Respondent and Winston Swamp agreed to accept payments until the total amount was paid in full. These facts are undisputed; therefore, the Court holds that the parties entered into a legally binding oral contract.

The testimony provided demonstrates that Louis Francis, Plaintiff, paid Winston Swamp and Wanita Swamp, Respondent, \$5,000 for the trailer and hired individuals to remove the skirting and renovate the roof and help make the trailer moveable and he changed the trailer's locks. In his filed civil complaint, he alleges that he owns the trailer and wishes to take possession of the asset. Plaintiff also requests to be reimbursed for the moving costs and items taken from the trailer.

During the trial, Plaintiff stated that he wants possession of the trailer that he purchased or he wants to be reimbursed \$5,000 he paid. However, the documents provided demonstrate that the trailer at issue were the property of the Estate of Raymond Swamp at the time of purchase.

As it has done in previous matters, the Court takes judicial notice of its decisions and orders in other cases.

In the *Estate of Raymond Swamp*, Hon. Barbara R. Potter issued a Decision and Order on August 17, 2017 and a Final Distribution Order on June 18, 2019. Notably, the record for the Estate of Raymond Swamp is absent of any order approving a sale of a trailer and/or ordering the sale of an Estate asset.⁹ In its probate and land cases, this Court has clearly demonstrated in its case law that an individual cannot sell or bequeath property that one does not own. This concept also applies to personal property. In matters involving an Estate asset, or in other words property owned by an Estate, a beneficiary or heir does not own any property from an Estate until the property has been conveyed to them by and through a Court Order.

In this case, the record demonstrates that Wanita Swamp, Respondent, and Winston Swamp entered into an oral contract to sell an asset from the Estate of Raymond Swamp on or around May 2016. The record also demonstrates that Louis Francis, Respondent, paid the total amount in around February 2017. The record from the Estate of Raymond Swamp clearly demonstrates that the trailer was not owned by Wanita Swamp, Respondent, or Winston Swamp at the time of the transactions. Therefore, applying the principles articulated in its cases, the Court holds that Wanita Swamp, Respondent, nor Winston Swamp did not possess the authority to sell the trailer to Louis Francis, Plaintiff, or any other individual until after the final distribution was issued on June 18, 2019. The Court is aware that the witness testimony indicates that Wanita Swamp acknowledged that she sold the trailer to Louis Francis, Plaintiff, and that he was the owner; however, as indicated the trailer was not hers to sell at the time she entered into the agreement with the Plaintiff or at the time the Plaintiff paid the amount in full. As a result, Louis Francis, Plaintiff, may not recover the trailer.

The Plaintiff's civil complaint alleges that he will be taking possession of the personal property missing from the trailer. The Court heard testimony demonstrating that the trailer had items located inside prior to purchase. There was no evidence admitted demonstrating that this is property that was previously owned by the Plaintiff prior to him purchasing the trailer or that he acquired the property and placed it in the trailer. Thus, the Court will assume that these items came with the trailer. Therefore, it is included as an Estate asset. As a result, Louis Francis, Plaintiff, may not recover the \$500.00 requested in damages for the missing property. Thus, the issue before the Court is whether the Plaintiff is entitled to the damages requested.

In regards to the case at bar, the Plaintiff entered into evidence copies of receipts and testified that he paid \$5,000 for the trailer to Wanita Swamp, Respondent, and Winston Swamp. This is also substantiated by witness testimony. A receipt submitted by Plaintiff indicates that Winston Swamp was paid individually \$1,500 for the trailer. As previously demonstrated, Respondent and Winston Swamp were not owners of the property; therefore they may not benefit from an illegal contract. In this case, Plaintiff has only named Wanita Swamp as the Respondent. The evidence admitted demonstrates that Winston Swamp accepted funds in the amount of \$1,500 from the Plaintiff. As a result, Plaintiff may not recover these funds from the named

⁹ Estate of David L. Swamp, 16-CIV-00017, 4-5 (Sept. 22, 2017).


Respondent. Rather, the Plaintiff will have to file an action naming Winston Swamp as the Respondent to recover the \$1,500. Thus, the Court finds that the Respondent is liable for the remaining damages in the amount of \$3,500. Next, the Court will address the remaining damages requested in the amount of \$4,000 for roof renovation and skirt removal and trailer axles.

To substantiate his claim, Plaintiff and Valerie Francis provided testimony indicating that they hired individuals to remove the skirt around the trailer and renovate the roof and to prepare the trailer to be moved. Plaintiff testified that in order to be moved this required a specific axle to perform the job. The Respondent failed to appear to offer testimony to counter this request for damages. The Plaintiff further testified that he was acting under the belief that it was his property. With no contrary evidence before it, the Court holds that the amount of \$4,000 is reasonable and finds that the Respondent is liable for the remaining damages in the amount of \$4,000.

ORDER

Based on the foregoing the Respondent, Wanita Swamp, is **ORDERED** to pay the Plaintiff, Louis Francis, \$7,500 for damages owed.

Signed this 30th day of January, 2020.


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

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

This is to certify that this is a true copy
of the original that is on file with the
Saint Regis Mohawk Tribal Court.
Date: January 30, 2020
Signed: Bruno L. Boisjoly
Name: Bruno L. Boisjoly

