

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

**Brenda J. Hathaway,
Thomas L. Hathaway, Jr.**

Claimant(s)

v.

Allan T. Jones

Respondent

Case No.: 19-LND-00003

DECISION AND ORDER

Procedural Background

On April 24, 2019, Brenda Hathaway and Thomas Hathaway, Jr., Claimants, filed a land dispute complaint naming Allan Jones as the Respondent.

On May 23, 2019, Allan Jones, Respondent, filed an answer denying claims raised by Brenda Hathaway and Thomas Hathaway, Jr., Claimants.

On June 21, 2019, the Court held an initial appearance on the matter. Brenda Hathaway and Thomas Hathaway, Jr., Claimants, appeared and were self-represented. Allan Jones, Respondent, appeared and was represented by Virginia Gettmann, Esq. Ms. Gettmann filed on Respondent's behalf a Notice of Appearance the same day.

On July 23, 2019, the Court held a status conference on the matter. Brenda Hathaway and Thomas Hathaway, Jr. Claimants, appeared and were represented by Thomas B. Wheeler, Esq. Mr. Wheeler filed on Claimants' behalf a Notice of Appearance the same day. Allan Jones, Respondent, appeared and was represented by Virginia Gettmann, Esq.

On September 16, 2019, Virginia Gettmann, Esq., Respondent's legal counsel, filed a motion to dismiss.

On September 25, 2019, the Court held a status conference on the matter. All parties were in attendance and represented by legal counsel.

On October 3, 2019, Thomas Wheeler, Esq., Claimants' legal counsel, filed an Answer to Respondent's motion to dismiss.

On October 10, 2019, the Court held a hearing on the Claimants' motion to dismiss. All parties were in attendance and represented by legal counsel. The Court heard oral arguments from Virginia Gettmann, Esq. and Thomas Wheeler, Esq. on their clients' behalf.

On October 30, 2019, the Court issued a Decision and Order holding that the 2004 and 2006 Tribal Council Resolutions and that the portions of the August 2, 2012 Land Dispute Tribunal decision and the Addendum decision dated November 15, 2012 are valid and controlling and granted Respondent's motion to dismiss. In its Decision and Order, the Court did not address the remaining issue involving the property improved by Louis Hathaway and the driveway in dispute, thus, the issue was reserved for further hearings.

On November 19, 2019, Brenda J. Hathaway and Thomas L. Hathaway, Jr., Claimants, filed an appeal with the Saint Regis Mohawk Tribe Court of Appeals appealing the aforementioned Decision and Order. On November 19, 2019, the Court issued a Scheduling Order taking this matter off the calendar until the Saint Regis Mohawk Court of Appeals rendered a decision. On February 4, 2019, the Saint Regis Mohawk Court of Appeals issued a decision affirming the decision without prejudice entered on October 30, 2019 and remanded the case to the Court to hear the issue that was reserved for further hearings.

On March 1, 2020, the Court held an initial appearance on the issue. Brenda Hathaway and Thomas Hathaway, Jr. were present and represented by their legal counsel, Thomas Wheeler, Esq. Allan Jones was present and represented by his legal counsel, Virginia Gettmann, Esq. During the appearance, the parties asked that the Court request that the Saint Regis Mohawk Tribe appear as an interested party.

On March 18, 2021, the Court issued a Scheduling Order.

On March 31, 2021, Virginia Gettmann, Esq. filed a Notice and motion to Dismiss/Join on behalf of her client, Allan Jones.

On April 23, 2021, Johanne Sullivan, Esq. filed an Attorney Affirmation on behalf of the Saint Regis Mohawk Tribe.

On April 26, 2021, Thomas Wheeler, Esq. filed an Affirmation in response to the Respondent's motion to dismiss.

On May 4, 2021, the Court held a hearing on this matter. Brenda Hathaway and Thomas Hathaway, Jr., appeared and were represented by Thomas Wheeler, Esq. Virginia Gettmann, Esq. appeared on behalf of her client, Allen Jones, Respondent. The Court heard oral arguments presented by parties' legal counsel.

Applicable Law

The Saint Regis Mohawk Tribe Land Laws and Land Dispute Ordinance ("SRMT LL&LDO") governs this matter.

Jurisdiction

In regards to the case at bar, the filings submitted by the parties demonstrate that the roadway and property at issue is located within the Saint Regis Mohawk Indian Reservation. Therefore, the Court holds that it possesses jurisdiction to resolve the instant matter.

Discussion

In the instant case, the Saint Regis Mohawk Court of Appeals affirmed the decision entered by this Court on October 30, 2019 and it appears the Appellate Court remanded it back in order for the Court to address the remaining issues it reserved involving the roadway and the property improvements done by Louis Hathaway. The arguments submitted by Brenda Hathaway and Thomas Hathaway, Jr., Claimants, ask this Court to essentially rehear the issues it resolved in its October 30, 2019 decision based on their interpretation of the Court of Appeals decision. Claimants point to the fact that the Court of Appeals dismissed the matter without prejudice to support their assertion that the Court must rehear issues involving the 2004 and 2006 Tribal Council Resolutions and the August 2, 2012 Land Dispute Tribunal decision and the Addendum decision dated November 15, 2012.

In its review of the Court of Appeals decision dated February 4, 2021, the Court notes that the Appellate Court dismissed the appeal without prejudice and affirmed this Court's decision.¹ The Appellate Court also recognized that this Court reserved the issue involving the roadway and the improvements done by Louis Hathaway and it seems to have remanded it for this purpose. There is no indication that the trial level must take up the issues resolved in its October 30, 2019 decision. Moreover, the Court of Appeals did not include in its decision instructions to this Court. In another case, *Alicia Cook v. Francine Gray*, the Court of Appeals reversed this Court's decision and remanded it.² In their decision, the Appellate Court included instructions that specifically asked this Court to make factual determinations on specific matters.³ In this case, the Court of Appeals neglected to do so. Rather, it seems that the Court of Appeals simply remanded it to the Court to address the remaining issue regarding the roadway and the property improvements done by Louis Hathaway. Thus, in this Decision and Order, the Court will limit its review to the Claimants' claim regarding the roadway and the property improvements done by Louis Hathaway.

Analysis

In their land dispute complaint and during the course of the litigation, Brenda Hathaway and Thomas Hathaway, Jr., Claimants, allege that "Louis Hathaway expended substantial sums in improvements on the lands and on that basis he should, in the division of property, receive the benefits from the lands he improved. This included a roadway into the property at a cost of at [REDACTED] none of which [REDACTED]"

¹ The Court notes that the Court of Appeals also dismissed an appeal *without prejudice* and affirmed the trial level decision in the matter of *The Community Governance Committee et. al. v. Saint Regis Mohawk Tribe et. al.* In that case, the involved parties did not attempt to relitigate the issue before the trial level. The Community Governance Committee et. al. v. Saint Regis Mohawk Tribe et. al. 19-CIV-00013 (June 5, 2020) (emphasis added). It is unclear why the Court of Appeals is choosing to dismiss appeals without prejudice. This Court notes it is not typical for an Appellate Court to dismiss an appeal without prejudice. Dismissing appeals without prejudice does not provide the parties with a final decision. Rather, it creates a maze that this Court and the parties are left with to interpret and it is unfair to the parties. There is also no mechanism found in the Saint Regis Mohawk Tribe Rules of Civil Procedure that would allow for this Court to request the Court of Appeals to clarify their decision.

² *Alicia Cook v. Francine Gray* 19-CIV-00002, 12 (July 30, 2020).

³ *Id.*

was paid by the Respondent [Allen Jones]. None of that roadway is located on the premises which by resolution of February 9, 2006 were to be allocated to Allen Jones.”⁴ In a later filing, Claimants, allege that “[i]nstead of unimproved land without access the Respondent was awarded lands with full access and an improved road running through.”

In response, Allen Jones, Respondent, argues that there is no indication of how Louis Hathaway’s construction or improvement imposes any liability on Respondent and there is no recognizable legal claim against Respondent. Moreover, Respondent points out that Brenda Hathaway and Thomas Hathaway, Jr., Claimants are not requesting monetary damages or other relief relating to the improvements and focuses their arguments on the division of the property. Thus, the issue becomes whether Claimants have stated a cause of action against Respondent.

The Saint Regis Mohawk Tribe Rules of Civil Procedure (“SRMT Rules of Civil Procedure”) state that “[t]o start a civil lawsuit in Tribal Court, a person shall first file a written complaint with the Court Clerk. . . The complaint shall describe the injury or breach the plaintiff is complaining of, name or describe the person responsible for such injury or breach, who shall be known as the defendant, and state the relief requested.”⁵ In regards to Brenda Hathaway and Thomas Hathaway, Jr., Claimants, claims’ regarding the roadway and improvements, the Court finds no allegations of how Allen Jones, Respondent, is responsible for the injury. Their claim is simply that Louis Hathaway expended substantial sums on building a road. There is no allegation of an agreement between the parties or that Respondent was remotely involved with the improvements. Moreover, the Court notes that in their land dispute complaint, Claimants, admit that none of the roadway is located on the premises that was allocated to Respondent. Furthermore, the relief requested focuses solely on the division of the property and Claimants do not request any remedy with regards to the road. The issue regarding the Tribal Council and Land Dispute Tribunal decisions is no longer before this Court. Thus, the Court holds that the Claimants have failed to state a cause of action against Respondent regarding the roadway and the property improvements done by Louis Hathaway.

In light of the claims and complexity of this litigation, the Court will also point out an additional defect with Brenda Hathaway and Thomas Hathaway, Jr., Claimants’, claim regarding the roadway and property improvements. In this case, as previously noted, the Court is limiting its review to Brenda Hathaway and Thomas Hathaway, Jr., Claimants’, claim regarding the roadway and the property improvements done by Louis Hathaway. A review of the filings demonstrate that their claim is based on an argument that Allen Jones, Respondent, is somehow unjustly enriched by the improvements. This argument and their claim raises an issue of a contract. In response, Respondent has focused his argument on demonstrating that the claim is outside three (3) year requirement as stated in the SRMT Rules of Civil Procedure. The Court notes that the SRMT LL&LDO also has a statute of limitations provision and that this case comes to the Court as a land dispute. The statute of limitations found in the SRMT LL&LDO is substantially different and allows the Court to waive it for good cause.⁶ Claimants have offered

⁴ Brenda J. Hathaway and Thomas L. Hathaway, Jr. Claimants Land Dispute Claim filed April 24, 2019.

⁵ SRMT Rules of Civil Procedure § IX. A.

⁶ SRMT LL&LDO § VI. A. 1. – 2.

no arguments to the Court regarding the appropriate statute of limitations provision to apply. In their written submissions, Claimants' argument focuses on unjust enrichment. Thus, this argument raises oral contract principles, not a land dispute claim. Therefore, the Court will apply the statute of limitations provision found in the SRMT Rules of Civil Procedure to address the remaining claim.

The SRMT Rules of Civil Procedure state that "[t]he time within which a civil lawsuit must be filed shall be counted from the date on which the injury or breach was first known to the injured party or should have been known to a reasonably aware person in the position of the injured party."⁷ Moreover, the SRMT Rules of Civil Procedure notes that in the case of torts and oral contracts actions must be commenced within three (3) years.⁸ During oral arguments, Claimants contended that Louis Hathaway had no reason to believe in 1993 that he was the owner of the property and points out that Respondent never took any actions to get a deed. Claimants did not provide any additional arguments as to when they believe the statute of limitations should start. In response, Allen Jones, Respondent, argued that the earliest that Louis Hathaway should have known and could have claimed injury was following the improvements he made in 1993. Moreover, Respondent argues that he could have made a claim against Respondent when he received the property certification in 1999 declaring him the sole owner of the lands or following the issuance of the Tribal Council and Land Dispute Tribunal decisions. Specifically, Respondent points out that the Estate of Louis Hathaway could have made a claim in 2012 when the Land Dispute Tribunal issued its Decision and Order and Addendum.

In this case, the record clearly demonstrates that this case was filed on April 24, 2019; therefore, under no circumstances does this action fall within the statute of limitations timeline because it falls outside the three (3) year limit. The Court notes that Louis Hathaway had the opportunity to petition the Tribal Council to address his claim in 1993 and 1999. The record also demonstrates that the Tribal Council and/or Land Dispute Tribunal made decisions in 2004, 2006, and 2012 that involved the property at issue. Therefore, Louis Hathaway or his Estate following his death had ample time to pursue a claim regarding these decisions entered by the Tribal Council and/or Land Dispute Tribunal within the statute of limitations at the Tribunal or this Court. The Court also notes that the inaction of Respondent to receive a deed has no impact to the statute of limitations. A review of this Court's probate cases would demonstrate a plethora of instances where tribal members have not taken the steps to obtain a deed from the Saint Regis Mohawk Tribal Clerk's Office. Tribal written law does not require landowners to obtain a deed. Based on the foregoing, the Court holds that Claimants' claim regarding the roadway and property improvements against Respondent is barred by the Statute of Limitations.

ORDER

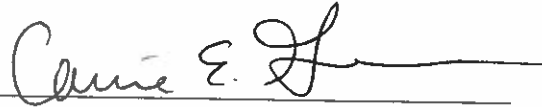
Based on foregoing, it is **ORDERED, ADJUDGED AND DECREED** that Brenda Hathaway and Thomas Hathaway, Jr., Claimants', claim against Allen Jones, Respondent,

⁷ SRMT Rules of Civil Procedure § VIII. B.

⁸ SRMT Rules of Civil Procedure § VIII. A. 1.

regarding the roadway and improvements to the property is hereby **DISMISSED WITH PREJUDICE** and this case is closed.

Signed this 20th day of May, 2021.



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: May 26, 2021

Signed: Takalaketon Buons

Name: Takalaketon Buons

