

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

Harvey Thompson

Plaintiff

v.

**Francis Conners III,
Jennifer Smoke**

Respondent

Case No.: 19-LND-00004

DECISION AND ORDER

Procedural Background

On July 23, 2019, Harvey Thompson, Plaintiff, filed a land dispute complaint with the Court naming Francis Conners III and Jennifer Smoke as the Respondents. On the same day, Terrance Hoffman, Esq. filed a Notice of Appearance on the Plaintiff's behalf.

On August 20, 2019, Francis Conners III, Respondent, filed an answer and counterclaim to Harvey Thompson, Plaintiff's, land dispute complaint.

On September 23, 2019, the Court held an initial appearance on this matter. Francis Conners III and Jennifer Smoke, Respondents, were present and self-represented. Harvey Thompson, Plaintiff, appeared and was represented by Terrance Hoffmann, Esq.

On October 23, 2019, Harvey Thompson, Plaintiff, filed a reply to Francis Conners III, Respondent's, counterclaim.

On October 25, 2019, the Court held a pre-trial on this matter. Francis Conners III and Jennifer Smoke, Respondents, were present and self-represented. Harvey Thompson, Plaintiff, appeared and was represented by Terrance Hoffmann, Esq.

On November 8, 2019, Eli Tarbell submitted a land dispute complaint naming Jennifer Smoke, Francis Connors III, Terrance Hoffmann, and Harvey Thompson as the Respondents.

On November 25, 2019, Harvey Thompson, Respondent, filed an answer to Eli Tarbell's complaint, a copy of a letter that was sent to Mr. Tarbell, a copy of an Affidavit signed by Ramona Shenandoah, a witness list, a copy of an email to the Court requesting an adjournment of the trial of the above matter, and a letter requesting that Ramona Shenandoah, daughter of Plaintiff Harvey Thompson, be included as a named Plaintiff in this action.

On December 6, 2019, the Court held a hearing on Eli Tarbell and Ramona Shenandoah's party status in this case. Francis Conners III and Jennifer Smoke, Respondents, were present and self-represented. Harvey Thompson, Plaintiff, appeared and was represented by Terrance Hoffmann, Esq. Ramona Shenandoah was also present. Eli Tarbell was absent. On the record, the Court granted Terrance Hoffmann's, Esq. request to have his name stricken from the complaint filed by Eli Tarbell. At the hearing, Harvey Thompson's legal counsel requested

clarification regarding Eli Tarbell's written submission. Francis Conners III and Jennifer Smoke, Respondents, asked for time to respond to Ramona Shenandoah and Plaintiff's request to name her as a party to this case through a written submission.

On December 9, 2019, the Court issued a Scheduling Order directing Eli Tarbell to submit a filing clarifying his claim and Francis Conners III and Jennifer Smoke, Respondents, to submit a written objection to Ramona Shenandoah's request to be named a party to this action. All submissions were ordered to be submitted by December 16, 2019.

On December 12, 2019, Harvey Thompson, Plaintiff, submitted a letter brief objecting to Eli Tarbell being granted the status of an "interested party."¹

Applicable Law

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

Jurisdiction

In order to address the instant case, the Court must first determine whether it possesses jurisdiction over the matter. Pursuant to the SRMT LL&LDO, the Court has jurisdiction to resolve matters involving tribal members' land interests.² In regards to the case at bar, the filings by the parties demonstrate that the property 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, Eli Tarbell and Ramona Shenandoah have requested to be named parties to this action. The issue of whether the aforementioned individuals may intervene and be named parties must first be resolved prior to this matter moving forward. The Court will first determine whether Ramona Shenandoah may be joined as a Plaintiff to this matter. Lastly, the Court will assess whether Eli Tarbell may be joined as an interested party or party to this case.

In regards to the case at bar, Harvey Thompson, Plaintiff, has asked for permission to allow Ramona Shenandoah, daughter of Harvey Thompson, to be included as named Plaintiff. To support his request, Plaintiff has filed a copy of Ramona Shenandoah's sworn affidavit. In her Affidavit, she provides her personal opinion about the land dispute and states that her father, Harvey Thompson, has asked her to help with this case because it needs to be settled. She further states that this has taken a toll on her father and contends that the Plaintiff has asked her to step

¹ The Court also notes it received on December 13, 2019, Francis Conners III, Respondent, filed a submission with the Court. The Court received no proof this was served on Harvey Thompson, Plaintiff, or his legal counsel. Furthermore, on December 13, 2019, the Court received a submission from Eli Tarbell. There was no proof this was served on Harvey Thompson, Plaintiff, or Francis Conners III, Respondent, or Jennifer Smoke, Respondent. The aforementioned filings have not been reviewed nor made part of the record based on the filing party's failure to serve the other named parties.

² SRMT LL&LDO § VI. A. 1.

in and take over this case for him. In her Affidavit, she also states that she is the owner [REDACTED] an adjoining lot.

As previously noted, Harvey Thompson, Plaintiff, moves this Court to join Ramona Shenandoah as a Plaintiff to this action. At the hearing on December 6, 2019, Francis Connors III, Respondent, orally objected to the motion to join Ramona Shenandoah as a Plaintiff to this case. The Court notes that the Respondents failed to submit a timely submission to the Court providing the reasoning for his objection. However, as this Court's precedent demonstrates an individual's standing must be assessed. The Court notes that it applies this analysis even in cases where the other party failed to raise the argument.³ Since this case is a land dispute, this requires the Court to determine whether Ramona Shenandoah has a legal interest in the disputed property. The record does not provide any documentation indicating that Ramona Shenandoah has a legal interest in the disputed property. Harvey Thompson, Plaintiff's, filing and Ms. Shenandoah's Affidavit clearly indicates that she has a personal interest in this land dispute; however, that does not rise to a *legal* interest. Further, in her Affidavit she alleges that she owns an adjoining property. However, there is no evidence demonstrating how she is experiencing irreparable harm by the alleged actions of the Respondents. The Court notes that Ms. Shenandoah may participate in this case as a witness or if she wishes to pursue her own land dispute against the Respondents she may file a case at this Court. Based on the foregoing, the Court dismisses Harvey Thompson, Plaintiff's, motion to join Ramona Shenandoah as a Plaintiff to this action. Next, the Court will address Eli Tarbell's request to be named as a party to this case.

In the instant case, Eli Tarbell filed a land dispute complaint form naming all the named parties in this action as Respondents, lists [REDACTED] the disputed property, and states that on behalf of his late uncle Hughes Tarbell it is his right to distribute the said property to the survivors of his family. Based on the confusion of the appearance of the filing and a request made by Harvey Thompson, Plaintiff, the Court ordered Eli Tarbell to clarify his claim. Here, Eli Tarbell failed to submit file a written submission and serve it on the other parties. Thus, the Court will address the issue applying the applicable law to the records that have been submitted. As previously noted, the Court is charged with addressing whether Mr. Tarbell may be named as an interested party or party to this action. The Court will first start with addressing whether Mr. Tarbell may be named as an interested party.

The SRMT LL&LDO states that an interested party "is any Tribal Member who claims to have a legal interest in disputed property and who seeks to participate in a land dispute proceeding. "Interested party" does not include a Tribal member without a recognizable interest in resolution of the case."⁴ In his November 8, 2019 filing, Mr. Tarbell provides a list of reasons why he believes that he has the right to possess [REDACTED] In his filing, he seems to articulate that [REDACTED] is his late Uncle Hughes Tarbell property and as an heir it is his right to distribute the property to the survivors of his family. For purposes of determining whether Mr. Tarbell may be named as an interested party, the Court shall assume that Mr. Tarbell is in fact a nephew of the late Hughes Tarbell. Furthermore, the Court notes that the land records provided by the Saint

³ See Michelle Cole et. al. v. Loran Thompson, 18-CIV-00026 (Sept. 26, 2019).

⁴ SRMT LL&LDO § III. E.


Regis Mohawk Tribal Clerk's Office indicate that the Estate of Hughes Tarbell may have to be addressed to resolve this matter. However, at this time, the Court is not able to discern a recognizable legal interest held by Mr. Tarbell based on the following reasoning.

In this case, it is unclear whether Hughes Tarbell has an interest in the disputed property. Without that first being resolved, it is unclear whether his Estate holds an interest. Furthermore, the Court is unaware of whether Eli Tarbell has been appointed by the Saint Regis Mohawk Tribal Council as an Executor to his Estate. The Court also notes that it has not presided over the Estate of Hughes Tarbell. Therefore, Mr. Tarbell is without the legal authority to act on behalf of a decedent's Estate. The Court is aware that this may be an issue that must be resolved in this case; however, without it first being addressed, Mr. Tarbell's legal interest in the disputed property is unclear. Based on identical reasoning, the Court also holds that Mr. Tarbell lacks the requisite standing to be named as a Plaintiff or Respondent to this case. There is no evidence demonstrating that Mr. Tarbell has a legal interest in the disputed property without the aforementioned issues being resolved. Similar to Ms. Shenandoah it is clear that he has a personal interest in the matter, but this does not rise to a legal interest. The Court notes that Mr. Tarbell was provided the opportunity to file a written submission to this Court to clarify his interest; however, he failed to do so.

ORDER

Based on the foregoing, it is hereby **ORDERED, ADJUDGED AND DECREED** that Plaintiff, Harvey Thompson's, motion to join Ramona Shenandoah and Eli Tarbell's request to be named a party or interested in this matter are hereby **DISMISSED**; it is further **ORDERED, ADJUDGED AND DECREED** that Plaintiff must submit a brief addressing whether his claims are barred by principles of res judicata based on Hon. Frank T. Horn's decision, dated April 26, 1999, by **January 31, 2020**; it is further **ORDERED, ADJUDGED AND DECREED** that Respondents must submit a response brief by **February 14, 2020**. Any request for oral argument on this matter must be requested in writing. Otherwise the Court may issue a decision based on the submissions.

Signed this 2nd day of January, 2020.



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