

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

<b>Lorne Clute</b>	)	
	)	
<b>Claimant</b>	)	
	)	
<b>v.</b>	)	<b>Case No.: 19-LND-00005</b>
<b>Myra Maracle,</b>	)	
<b>William Clute</b>	)	<b>DECISION AND ORDER</b>
	)	
<b>Respondent(s)</b>	)	
	)	

**Procedural Background**

On August 1, 2019, Lorne Clute, Claimant, filed a land dispute complaint naming Myra Maracle and William Clute as the Respondents. Claimant provided an address for Myra Maracle, Respondent, but did not provide an address for William Clute, Respondent.

On August 22, 2019, the Court received completed proof of service forms indicating that Myra Clute, Respondent, was personally served and that Jenna Clute was served a copy of the summons and land dispute complaint at [REDACTED]

On September 18, 2019, the Court held an initial appearance on the matter. Lorne Clute, Claimant, and Myra Maracle, Respondent were in attendance and self-represented. William Clute did not appear. The parties indicated that they wished to go to trial on the matter.

On October 7, 2019, Myra Maracle, Respondent, submitted a written letter, an aerial map, and a copy of a hand drawn map of [REDACTED]

On October 21, 2019, the Court held a trial on the matter. Lorne Clute, Claimant, and Myra Maracle, Respondent, were in attendance and self-represented. William Clute did not appear. The Court heard testimony from Lorne Clute, Claimant; Myra Maracle, Respondent; Jonathon Maracle, Respondent's witness; and Derrick King, SRMT Deputy Tribal Clerk. The Court also received exhibits into evidence submitted by the parties.

**Applicable Law**

The Saint Regis Mohawk Tribe Civil Code (SRMT Civil Code) provides the applicable law the Court may utilize to resolve civil disputes before it. The SRMT Civil Code requires the Court to first look to portions of the United States Constitution and federal law.<sup>1</sup> Here, Lorne Clute, Claimant, land dispute complaint does not raise an issue that requires the Court to apply the United States Constitution and/or federal law. Next, the SRMT Civil Code allows the Court

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<sup>1</sup> SRMT Civil Code § V. 1.

to apply written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe.<sup>2</sup>

In the instant case, Claimant, Lorne Clute, has brought a boundary dispute involving real property that is located within the borders of the Saint Regis Mohawk Indian Reservation. On December 21, 2016, the Saint Regis Mohawk Tribe, enacted by and through Tribal Council Resolution 2016-91, the Land Laws and Land Dispute Ordinance. This Ordinance was intended to set forth the general rules for the issuance of deeds and the transfer of title and land interests on the Reservation. The instant matter, requires the Court to assess the parties' boundary dispute. Thus, the Court will apply the Saint Regis Mohawk Tribe Land Laws and Land Dispute Ordinance (SRMT LL&LDO) when necessary to resolve 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 within the reservation.<sup>3</sup> In regards to the case at bar, the filings submitted 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.

### **Factual Findings**

Lorne Clute, Claimant, bears the burden of proof by preponderance of evidence.<sup>4</sup> 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."<sup>5</sup> The Court has reviewed the record and evidence admitted during the trial and finds the following facts were proven by a preponderance of the evidence.

1. Lorne Clute, Claimant, was issued a Saint Regis Mohawk Tribe Right to Use and Occupancy deed on May 1, 1991 for [REDACTED]
2. Myra Maracle, Respondent, was issued a Saint Regis Mohawk Tribe Right to Use and Occupancy deed on May 5, 1991 for [REDACTED]
3. Lorne Clute, Claimant's, property was surveyed by Louis Maine, a certified NY land surveyor.
4. Myra Maracle, Respondent, presently has a house located within the boundaries of Lorne Clute, Claimant's, property.

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<sup>2</sup> SRMT Civil Code § V. 2.

<sup>3</sup> SRMT LL&LDO § VI. A. 1.

<sup>4</sup> SRMT Rules of Civil Procedure § XX. A. – B.

<sup>5</sup> SRMT Rules of Civil Procedure § XX. B.

5. Myra Maracle, Respondent, was made aware that the house location was on Lorne Clute, Claimant's, property.

## DISCUSSION

In the instant case, Lorne Clute, Claimant, in his land dispute complaint alleged that Myra Maracle, Respondent, is stating that she owns fifteen (15) feet of his property from the back of her house and that William Clute, Respondent, claims he owns twenty five (25) feet more than what is on his deed. Claimant alleges that Myra Maracle, Respondent, knowingly put a leach field and built a house on his property. Claimant highlighted how he has followed tribal procedures by having his property surveyed by a licensed surveyor. To substantiate his claims, Claimant has submitted into evidence his survey and a copy of his Right to Use and Occupancy deed for [REDACTED] dated May 1, 1991. Claimant requests this Court to hold that the survey submitted in this case is valid and that he possesses sole and exclusive use of the property as defined in the survey.

In response, Myra Maracle, Respondent, alleges that Myron Maracle, parties' late father, made an oral agreement with Lorne Clute, Claimant in regards to the disputed fifteen (15) feet of property behind her house. Respondent alleges that the fifteen (15) acres behind her house was to be divided by Myron Maracle's six (6) children and that this worked out to her receiving the disputed fifteen (15) feet of property. Respondent also disputes the submitted survey and asks this Court to base its decision by applying the border lines as set forth in the aerial map that she submitted into evidence.

Prior to addressing the issue regarding the boundary line dispute, the Court must first start with evaluating whether William Clute, Respondent, received adequate notice. As previously noted, William Clute, Respondent, has failed to appear for the initial appearance and trial for this matter. The record demonstrates that a copy of the summons and land dispute complaint form was served on Jenna Clute at 96 Pyke Road and a copy was personally served on Myra Maracle, Respondent. The Saint Regis Mohawk Tribe Rules of Civil Procedure (SRMT Rules of Civil Procedure) require that the complaint and summons must be served by either giving it to the other party directly or by leaving it at the other party's residence or place of employment with a person at least fourteen (14) years old who lives or works there by a person that is over eighteen (18) years of age and does not have a stake in the matter.<sup>6</sup> The Court is unaware of whether 96 Pyke Road is the address for William Clute, Respondent's, house or place of employment. Moreover, the submitted land dispute complaint form lists 112 Pyke Road as an address for Myra Maracle, Respondent. Based on the information it was provided by the Claimant, it appears that the Court sent the notices for the initial appearance and trial to 112 Pyke Road, Akwesasne, New York 13655. It also does not appear that William Clute, Respondent, lives with Myra Maracle, Respondent, at 112 Pyke Road based on the testimony provided to the Court. It is more than likely that the parties have spoken to William Clute, Respondent, about the matter; however, that itself does not constitute proof of service. Therefore, the Court holds that William Clute, Respondent, was afforded insufficient service and dismisses him as a party to this

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<sup>6</sup> SRMT Rules of Civil Procedure § IX. C.

matter. The record demonstrates that Lorne Clute, Claimant's, remaining claims may be addressed without William Clute as a party; thus, the Court will proceed on this matter.

In the instant case, Lorne Clute, Claimant, and Myra Maracle, Respondent, have submitted copies of their Saint Regis Mohawk Tribe Right to Use and Occupancy deeds for their property. Neither party is disputing the validity the submitted deeds. The Court notes that the submitted deeds dated May 1, 1991 and May 5, 1991 are signed by the tribal chiefs and certified by the tribal clerk and signed by the seller and buyer. Thus, the Court finds the deed issued to Lorne Clute, Claimant, for [REDACTED] and Myra Maracle, Respondent, for [REDACTED] to be valid.<sup>7</sup> As a result, the parties are the owners of those respective lots and possess sole and exclusive use.

In regards to the case at bar, the crux of the issue before the Court is in regards to the eastern boundary line of Lorne Clute, Claimant's, property. The SRMT LL&LDO states in relevant part the following:

In resolving boundary disputes, the Tribal Court may not rely on GIS or other data to determine property boundaries. The parties shall provide the Court with surveys performed by licensed surveyors to support any claims regarding boundary lines provided that, in the case of ambiguity in a deed and relying on common law principles in drawing property boundaries, the Court may issue instructions to resolve an ambiguity so that a property survey may be performed. If neither party presents a survey to the Court in a boundary dispute or in a case involving property lines, the Court may order a survey and assess the cost to the party or parties in its discretion.<sup>8</sup>

In this case, the parties have entered into evidence a copy of a land survey done by Louis Maine of Maine Land Surveying, P.C. and Myra Clute, Respondent, has submitted an aerial map of the disputed property. A reading of the aforementioned provision of the SRMT LL&LDO clearly demonstrates that the Court may only accept land surveys performed by licensed surveyors to support boundary line claims and that the Court is barred from accepting GIS or other data. Based on this provision, the Court holds it will not consider the aerial map submitted by Myra Maracle, Respondent. The Court notes that the Respondent entered into evidence a hand drawn map; however, it is not a certified land survey and shall not be treated as such.

Here, the land survey submitted by Lorne Clute, Claimant, was performed by Louis Maine, a licensed New York surveyor. Based on the survey notes, it appears that the surveyor used the land records that are on file at the Saint Regis Mohawk Tribal Clerk's Office to support his findings. The land survey indicates that the boundary lines overlap as a result of "... the dimensions found in the deeds between the lots do not scale well on the sketch." As a result there are three (3) different colored lines indicating property boundaries found on the survey. The parties' testimony indicates that the structure identified as "existing dwelling" that is located on

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<sup>7</sup> The Court notes that the parties possess standing based on the submitted SRMT Right to Use and Occupancy deeds. *See Barney Cole, Jr. v. Karen A. White et. al.*, 19-LND-00006, 3 (Oct. 9, 2019).

<sup>8</sup> SRMT LL&LDO § IV. E. (c) (2).

the border of Lorne Clute, Claimant, and Myra Maracle, Respondent, is where the boundary line dispute exists on the eastern boundary.

In the instant case, Myra Maracle, Respondent, has disputed the land survey alleging that it fails to consider an oral agreement between Myron Clute, parties' late father, and Lorne Clute, Claimant. Based on that oral agreement, Respondent alleges that she is the rightful owner of the disputed fifteen (15) feet behind her house. Therefore, Respondent, alleges that the boundary as shown in the survey is incorrect. As a result, it may be construed that based on her argument that she requests that the survey be set aside and not be taken into account by the Court. Thus, this presents the issue of whether the alleged oral agreement entered into by Myron Maracle, parties' late father, and Lorne Clute, Claimant, is binding and must be taken into account. It is important to keep in mind that the Court is *not* evaluating whether the agreement happened, rather the issue is whether it is binding or in other words legally enforceable.

"In general, for there to be a contract, there must be an offer, acceptance, and consideration."<sup>9</sup> Myra Maracle, Respondent, testified that Myron Maracle made the agreement with Lorne Clute, Claimant, for fifteen (15) feet behind the house where the boundary line dispute exists. She further testified that "supposedly, fifteen (15) acres back there, divide it by six (6) kids that's what you get."<sup>10</sup> The deeds submitted by the parties do not note this arrangement and there is no testimony indicating when this agreement took place. Notably, there is no evidence that this was accepted by the Lorne Clute, Claimant, nor is there evidence demonstrating that there was exchange of anything of value by the Claimant or Respondent. Thus, the arrangement lacks consideration. Therefore, the Court holds that the alleged oral agreement does not constitute a legally enforceable contract and as a result the Respondent is not the rightful owner of the fifteen (15) feet of property behind the house. Therefore, the alleged oral agreement does not need to be taken into account in assessing the property boundary lines. Based on the aforementioned findings, the Court accepts the land survey as evidence and will use the submitted land survey to evaluate the boundary dispute.

As previously noted, the land survey has three (3) different colored lines indicating property boundaries. However, each boundary line on the eastern boundary between Lorne Clute, Claimant, and Myra Maracle, Respondent, indicates that the house is encroaching on the Claimant's property. The Court notes that Derrick King, SRMT Tribal Clerk, testified that the correct boundary line to use is the dark blue line. Based on the aforementioned, the Court holds that Respondent's house is partially located on the Claimant's property.

Furthermore, the Court notes that it was provided testimony that the parties were both aware that the house was encroaching on the Claimant's property. Claimant testified that he knew and allowed it to continue because the house was built for the Respondent's daughter and grandchildren. The land survey notes indicate that the Respondent also knew that the house was encroaching on the Claimant's property. Furthermore, Jonathon Maracle, Respondent's witness,

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<sup>9</sup> Estate of Allan J. Gorrow, 16-CIV-00011, 12 (Sept. 25, 2019).

<sup>10</sup> The Court notes the audio recording of the initial appearance and trial are available upon request.

also testified that the house was built for the purpose of providing the Respondent's daughter a home.

The Court notes that Lorne Clute, Claimant, orally requested compensation based on the fact that Myra Maracle, Respondent's, house is on his property and he requested that the Respondent be ordered by this Court to have a survey done for her property. The Court notes that Claimant's land dispute complaint does not include a request for damages. Therefore, Respondent received no notice of the request for damages. Thus, the Court denies his request for compensation at this time. However, the Court notes that such relief may be sought in a subsequent case. The Court also declines to order Respondent to have her property surveyed by a licensed surveyor in this case. The Court notes that one may have a survey completed without judicial intervention.

During the trial both parties submitted testimony regarding the driveway. The Court declines to address this issue because it was not included in Claimant's land dispute complaint and it is not clear that the Court has all the parties before it to address the issue. However, the Court notes that this issue may be brought in a subsequent case.

The Court also heard testimony indicating that the existing driveway provides the only access for William Clute and Claimant to access their property. The Court notes that the adjoining property owners, including Respondent, may not block Claimant, William Clute, and others from accessing their property. However, it is important to keep in mind that this does not establish that the disputed driveway is now a public easement.

Lastly, the Court notes it heard testimony from the Respondent which indicated that there may be remaining land that may potentially have been owned by the late Myron Maracle and it was not addressed in the land survey. Specifically, Respondent asked about property that her late father bought from Russell Lazore. The Court notes that this specific matter may be addressed in a probate action. This would require that an heir of Myron Clute file a probate petition for the Estate of Myron Clute at this Court.

### **ORDER**

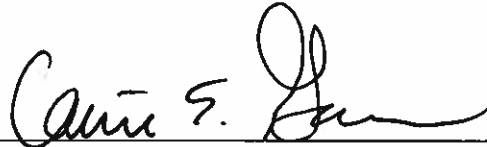
Based on the foregoing, it is

**ORDERED, ADJUDGED AND DECREED** that Lorne Clute, Claimant, possesses sole and exclusive use of [REDACTED] as defined in the land survey performed by Louis Maine of Maine Land Surveying, P.C. numbered drawing number 2017-96; it is further

**ORDERED, ADJUDGED AND DECREED** that Myra Clute, Respondent, is not the lawful owner of the property located fifteen (15) feet behind her house located on or around Pyke Road, Akwesasne, New York; it is further

**ORDERED, ADJUDGED AND DECREED** that Lorne Clute, Claimant's, claim raised against William Clute is hereby **DISMISSED WITHOUT PREJUDICE**.

Signed this 29<sup>th</sup> day of October, 2019.



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.***



Entered into the docket book

On: Oct 30 2019

Signed: Karen Conno-Sole