

)	
Saint Regis Mohawk Tribe)	
Plaintiff)	Case No.: 21-CIV-00009
)	
v.)	DECISION AND ORDER
)	
Brett Hart,)	
Smoke Show Dispensary)	
Respondent(s))	
)	

On July 6, 2021, the Saint Regis Mohawk Tribe, Plaintiff, filed a civil complaint with a request for declaration and permanent injunction and named Brett Hart and Smoke Show Dispensary as Respondents. On the same day Plaintiff filed an application for a temporary restraining order with a memorandum in support of the temporary restraining order and the declaration of Marsha K. Schmidt, Esq.

On July 14, 2021, the Saint Regis Mohawk Tribe, Plaintiff, filed a request for a new schedule to hear this matter.

On July 21, 2021, the Saint Regis Mohawk Tribe, Plaintiff, filed an amended complaint and motion to withdraw the injunction motion without prejudice. Proof of service was filed on July 23, 2021 and July 26, 2021.

On August 5, 2021, Michael Rhodes-Devey, Esq. filed a Notice of Appearance on behalf of Brett Hart and Smoke Show Dispensary, Respondents.

On August 23, 2021, Russell Barr, Esq. filed a Notice of Appearance on behalf of the Saint Regis Mohawk Tribe, Plaintiff.

On August 31, 2021, the Court held a status conference on the matter. Russell Barr, Esq. appeared on behalf of the Saint Regis Mohawk Tribe. Brett Hart, Respondent, and his legal counsel, Michael Rhodes-Devey, Esq., failed to appear. On the same day, Michael Rhodes-Devey, Esq. submitted a letter to the Court providing an explanation for his absence.

On September 30, 2021, the Court held a status conference on the matter. Russell Barr, Esq. appeared on behalf of the Saint Regis Mohawk Tribe. Michael Rhodes-Devey, Esq. appeared on behalf of Brett Hart and Smoke Show Dispensary, Respondents.

On October 25, 2021, the Court held a status conference on the matter. Russell Barr, Esq. appeared on behalf of the Saint Regis Mohawk Tribe, Plaintiff. Michael Rhodes-Devey, Esq. appeared on behalf of Brett Hart and Smoke Show Dispensary, Respondents. On the same day, the legal counsels for the parties submitted a stipulated discovery schedule. The schedule was accepted by the Court.

On December 1, 2021, the Saint Regis Mohawk Tribe, Plaintiff, filed its First Request For Admissions to Brett Hart, Respondent, Request to Produce Documents, and First Set of Interrogatories.

On December 2, 2021, Brett Hart and Smoke Show Dispensary, Respondents, filed a letter notifying the Court that Respondents will no longer participate in these proceedings.

On February 2, 2022, the Saint Regis Mohawk Tribe, Plaintiff, filed a Disclosure of Expert Witness.

On April 4, 2022, the Court held a status conference on the matter. Russell Barr, Esq. appeared on behalf of the Saint Regis Mohawk Tribe, Plaintiff. Brett Hart and Smoke Show Dispensary, Respondents, and their legal counsel failed to appear.

On May 4, 2022, the Saint Regis Mohawk Tribe, Plaintiff, filed a Motion for Summary Judgment and proof of service.

On June 10, 2022, the Court held a hearing on the matter and heard arguments on the Saint Regis Mohawk Tribe, Plaintiff's, Motion for Summary Judgment. Russell Barr, Esq. appeared on behalf of the Saint Regis Mohawk Tribe, Plaintiff. Brett Hart and Smoke Show Dispensary, Respondents, and their legal counsel failed to appear.

Applicable Law

The Saint Regis Mohawk Tribe Tribal Adult Use Cannabis Ordinance¹ (SRMT Tribal Adult Use Cannabis Ordinance) and Tribal Council Resolution 2021-25 to Delegate Authority to the Tribe's Compliance Department and Approve the Imposition of Fines and Penalties for the Unauthorized Sale of Adult-Use Marijuana.

¹ SRMT Tribal Adult Use Cannabis Ordinance (enacted on June 28, 2021).

Jurisdiction

The Saint Regis Mohawk Tribe Civil Code (SRMT Civil Code) states that the Tribal Court shall have jurisdiction over civil disputes arising in, connected with, or substantially affecting Mohawk Indian Country.² The record demonstrates that the Smoke Show Dispensary, Respondent, is located within the Saint Regis Mohawk Indian Reservation and that the disputed activities are occurring within the reservation. Commercial activity involving marijuana is a matter that substantially affects Mohawk Indian Country as indicated by the actions of the Saint Regis Mohawk Tribal Council in enacting the SRMT Tribal Adult Use Cannabis Ordinance and TCR 2021-25 to Delegate Authority to the Tribe's Compliance Department and Approve the Imposition of Fines and Penalties for the Unauthorized Sale of Adult-Use Marijuana. Thus, the Court possesses the requisite jurisdiction.

Discussion

The instant case involves an alleged unlicensed adult use marijuana dispensary called Smoke Show Dispensary that is allegedly being operated by Brett Hart, Respondent. The Saint Regis Mohawk Tribe, Plaintiff, argues that Respondent is in violation of tribal law because Brett Hart, Respondent failed to obey two Cease-and-Desist Orders issued by the Compliance Department and obtain a tribally issued license to operate a dispensary. Plaintiff argues there is no issue of material fact and requests the Court to issue a summary judgment. Thus, the crux of this case is whether summary judgment is appropriate.

Analysis

As noted in this Court's *Saint Regis Mohawk Tribe et. al. v. John Bero* decision, "[i]n ruling on a motion for summary judgment, the function of the Court is not to decide the issues of material fact, but rather to determine whether such issues exist. If a genuine material issue exists it must be left to a later determination. The party seeking summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which under the applicable principals of tribal law entitle the moving party a summary judgment as a matter of law. The party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact."³

In its motion for summary judgment, the Saint Regis Mohawk Tribe, Plaintiff, contends that there is no issue of material fact. To substantiate its argument, Plaintiff, points to Brett Hart and Smoke Show Dispensary, Respondents, failure to respond to discovery requests, including the Requests to Admit, pursuant to the terms of the parties Stipulated Discovery Schedule dated October 22, 2021. Plaintiff argues that by failing to respond that the material facts must be determined to be admitted by Respondents pursuant to Rule 36 of the Federal Rules of Civil Procedure. The first issue before the Court is whether Rule 36 of the Federal Rules of Civil Procedure may be applied.

² SRMT Civil Code § II. A.

³ Saint Regis Mohawk Tribe et. al. v. John Bero, 14-LND-00006, 2 (Dec. 16, 2016).

This Court's precedent demonstrates that it has allowed for the application of provisions found in the Federal Rules of Civil Procedure to resolve disputes based on Section XXV of the Saint Regis Mohawk Tribe Rules of Civil Procedure (SRMT Rules of Civil Procedure). Rule 36 of the Federal Rules of Civil Procedure covers the scope and procedure for written requests to admit and the consequences for not filing an answer to a request to admit. The SRMT Rules of Civil Procedure does not contain a provision directly addressing requests to admit. However, a review of Rule 36 of the Federal Rules of Civil Procedure demonstrates that this provision involves a discovery request. The SRMT Rules of Civil Procedure includes a section addressing discovery. Section XIV of the SRMT Rules of Civil Procedure states that "[m]ethods of discovering and exchanging information may include, but need not be limited to written questions, oral examination, requests for witness' names, requests for admissions, physical inspection of property, requests to perform scientific or physical tests, and requests for documents."⁴ Furthermore, in the same provision, the SRMT Rules of Civil Procedure require that the information must be shared within ten (10) days of receiving the request.⁵ Clearly, the SRMT Rules of Civil Procedure require parties to take part in the discovery process and comply with discovery in order to ensure that information relevant to the case is shared with the other party. Furthermore, the SRMT Rules of Civil Procedure contain deadlines pertaining to discovery that parties must meet. Thus, the application of Rule 36 of the Federal Rules of Civil Procedure is not improper. Therefore, the Court will apply Rule 36 to address this issue.

Rule 36 of the Federal Rules of Civil Procedure states that a matter *is admitted* unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.⁶ In this case, the record demonstrates that the parties' legal counsels filed a Stipulated Discovery Schedule on October 25, 2021. Pursuant to the terms, Russell Barr, Esq., legal counsel for the Saint Regis Mohawk Tribe, filed his written requests, including a Request to Admit, with the Court and the documents were provided to Respondents on December 1, 2021. The following day, December 2, 2021, Michael Rhodes-Devey, Esq., legal counsel for Brett Hart and Smoke Show Dispensary, filed a letter notifying the Court that the Respondents will no longer participate in these proceedings. The record has no evidence demonstrating that Respondents answered the request for admissions, request to produce documents, and the first set of interrogatories submitted by Plaintiff on December 1, 2021 pursuant to the Stipulated Discovery Schedule. The Court notes that Respondents also did not deny any of the information requested in Russell Barr, Esq. Request to Admit in the letter submitted on December 2, 2021 by Michael Rhodes-Devey, Esq., legal counsel for Respondents. Rather, in the letter, the parties contested the venue of the proceedings and stated that Respondents "have, at all times, acted in full compliance with, and have been fully licensed by, Kanien keha ka in Akwesasne." Based on the foregoing and Rule 36 of the Federal Rules of Civil Procedure, the Court holds that the matters included in the Requests to Admit submitted on December 1, 2021 are admitted by

⁴ SRMT Rules of Civil Procedure § XIV. B.

⁵ SRMT Rules of Civil Procedure § XIV. C.

⁶ Rule 36(1)(3) Federal Rules of Civil Procedure

Respondents due to their failure to respond. Thus, the Court finds the following facts have been proven by Plaintiff and are no longer in dispute:

1. Brett Hart, Respondent, is the owner of Smoke Show Dispensary.
2. Brett Hart, Respondent, works at Smoke Show Dispensary.
3. Brett Hart, Respondent, derives monetary payments from Smoke Show Dispensary.
4. Smoke Shop Dispensary, Respondent, is engaged in the distribution of marijuana.
5. Brett Hart, Respondent, distributed marijuana in 2021.
6. Marijuana is stored at Smoke Show Dispensary, Respondent.
7. Marijuana is available for sale at Smoke Show Dispensary, Respondent.
8. Smoke Show Dispensary, Respondent, has not conducted any testing for any products the company distributed in 2021.
9. Brett Hart and Smoke Show Dispensary, Respondents, does not test for THC.
10. Brett Hart, Respondent, possessed marijuana in 2021.
11. Brett Hart, Respondent, does not have a license for the distribution for marijuana and did not apply for a license for the distribution of marijuana.
12. Brett Hart and Smoke Show Dispensary, Respondents, received the Cease and Desist letters dated April 23, 2021 and May 21, 2021.

With regards to summary judgment, as previously mentioned, in ruling on a motion for summary judgment, the function of the Court is not to decide the issues of material fact, but rather to determine whether such issues exist. If the movant shows that there is no genuine dispute as to any material fact, the movant is entitled to judgment as a matter of law. In *Alicia Cook v. Francine Gray et. al.*, the Saint Regis Mohawk Tribe Court of Appeals demonstrated that “a party asserting that a fact cannot be or is genuinely disputed must support the assertion that there is no issue of material fact must cite to particular parts of materials in the record or show that the materials cited do not establish the absence or presence of a genuine dispute or that the adverse party cannot produce admissible evidence to support the fact.”⁷

The Saint Regis Mohawk Tribe, Plaintiff, contends that the material facts are not in dispute and that the record demonstrates that Brett Hart owns the Smoke Show Dispensary, is engaged in the distribution of high THC content marijuana from the dispensary, has no license or

⁷ *Alicia Cook v. Francine Gray et al.* 19-CIV-00002, 9 (July 30, 2020).

legal authority to do so, and ignored two validly served Cease and Desist Orders by the Saint Regis Mohawk Tribe Compliance Department.⁸

In this case, by failing to respond to Plaintiff's Request to Admit, Brett Hart and Smoke Show Dispensary, Respondents, have admitted to the material facts that demonstrate that the Saint Regis Mohawk Tribe, Plaintiff, is entitled to a judgment as a matter of law. The Saint Regis Mohawk Tribe's law demonstrates that that in order to engage in the sale, cultivation, and distribution of marijuana and/or marijuana products on the Saint Regis Mohawk Indian Reservation the business owner must possess a tribally issued license to have the legal authority to operate a dispensary. Furthermore, the Saint Regis Mohawk Tribe Compliance Department possesses the authority to issue cease and desists to businesses and individuals that do not comply with tribal law. As previously mentioned, Plaintiff, has demonstrated that Brett Hart, Respondent, owns Smoke Show Dispensary, that marijuana products are being sold on the premises and sold in 2021, that Brett Hart lacks a tribally issued license, and that Brett Hart ignored cease and desists ordered by the Compliance Department on April 23, 2021 and May 21, 2021. The Court is fully aware that Brett Hart, Respondent, argues that the Longhouse possesses regulatory authority and that any dispute must be heard by that entity. The Court notes that by not responding to Plaintiff's Request to Admit, the issue presented by Respondent's argument cannot be reached because Respondent failed to take part in the discovery process.

ORDER

Based on the foregoing, it is **ORDERED, ADJUDGED AND DECREED** that the Saint Regis Mohawk Tribe, Plaintiff's, Motion for Summary Judgment is **GRANTED** and as such the following is **ORDERED, ADJUDGED AND DECREED**:

1. Brett Hart and Smoke Show Dispensary, Respondents, along with his agents, successors, assigns, employees, and all other persons known or unknown acting in concert, participation, or cooperation with Respondent, are in violation of tribal law by selling marijuana within the borders of the Saint Regis Mohawk Indian Reservation;⁹
2. Brett Hart, Respondent, must comply with the Cease and Desist Orders issued on April 23, 2021 and May 21, 2021 by the Compliance Department;
3. An Order of Abatement is hereby issued ordering that Brett Hart and Smoke Show Dispensary, Respondents, along with his agents, successors, assigns, employees, and all other persons known or unknown acting in concern, participation, or cooperation

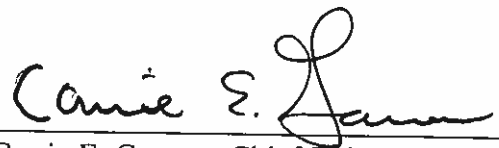
⁸ The Court notes that the Saint Regis Mohawk Tribe, Plaintiff, submitted proof that Brett Hart, Respondent, is selling high content THC marijuana products from the Smoke Show Dispensary. The products purchased by the investigator from the Smoke Show Dispensary were tested and determined to be high content THC marijuana products.

⁹ The Court notes that the Saint Regis Mohawk Tribe, Plaintiff, failed to offer arguments in his motion for summary judgment how the business constitutes a public nuisance by threatening the health, morals, safety, comfort, convenience, or welfare of the community. Moreover, it was not included in the Requests to Admit submitted by Plaintiff.

with Respondents must stop selling marijuana and marijuana products on the premises and Smoke Show Dispensary must cease operating as a marijuana dispensary.

4. In accordance with Tribal Council Resolution (TCR) 2021-25, Brett Hart and Smoke Show Dispensary, Respondents, must pay the Saint Regis Mohawk Tribe, Plaintiff, \$399,000 (US) based on the fine schedule outlined in the TCR. Failure to comply, will result in additional fines as set out in TCR 2021-25.¹⁰

Signed this 30th day of June, 2022.



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: June 30, 2022
Signed: [Signature]
Name: Sheneae Tarbell



¹⁰ Tribal Council Resolution 2021-25 authorizes and delegates the authority to the Compliance Department to issue cease and desist orders, issue fines, and to suspend any tribal licenses issued to any person it finds in violation of tribal law and states that "[a]ny person or business engaged in sales or any commercial activity involving adult use marijuana prior to obtaining a tribal licenses shall be subject to a fine of one thousand dollars (\$1,000) per day, to be applied beginning seven (7) days after being served a cease and desist order and if it is determined by the Compliance Department that its cease and desist order has not been complied with." The record reflects that Elliott Lazore, Director of Compliance, sent a second Cease and Desist to Brett Hart, Respondent, on May 21, 2021. The Cease and Desist notified Respondent that he will be subject to fines as outlined in TCR 2021-25. The record demonstrates that the second Cease and Desist was hand delivered to the dispensary on May 21, 2021. The Court's calculation takes into account the following dates based on TCR 2021-25 and Elliott Lazore, Director of Compliance, second Cease and Desist: May 28, 2021 – June 30, 2022 (date of issuance of this Decision and Order).