

Timothy Bechtold
Bechtold Law Firm, PLLC
P.O. Box 7051
Missoula, MT 59807
406-721-1435
tim@bechtoldlaw.net

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

JAMES LEACHMAN AND SETH
LEACHMAN,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

CV-19-82-GF-BMM

**PLAINTIFFS' RESPONSE TO
MOTION TO DISMISS**

Introduction

Plaintiffs Seth Leachman and James Leachman filed this matter alleging civil rights violations by the Fort Peck Tribal Court after the Fort Peck Tribal Court of Appeals ruled that the Leachmans' rights to due process and equal protection had been violated by the Fort Peck Tribal Court. The Fort Peck tribal courts are administered and funded with a 638 contract by the Bureau of Indian Affairs, part of the United States Department of the Interior. Here the government

asks the Court to dismiss the Leachmans' case on a number of bases, including that this Court does not have subject matter jurisdiction.

Background

As alleged in the Complaint, Dkt#1, and as outlined in the Fort Peck Court of Appeals Order, Dkt#1.1, James Holen and Richard Holen essentially appropriated over one hundred of the Leachmans' horses in 2012 through a series of rulings by the Fort Peck Tribal Court. The Leachmans appealed the Tribal Court's rulings to the Fort Peck Court of Appeals, which eventually reversed the lower court on May 10, 2017, and ruled further that the lower court violated the Leachmans' rights to due process and equal protection. Further, the appellate court ruled that the Holens had to return the Leachmans' horses or pay the Leachmans the value of the horses. By the time the appellate court ruled, the Holens had already sold most of the horses, so return of the horses is problematic. Moreover, the Holens also have spent the proceeds of the sale of the horses and have limited assets, leaving the Leachmans with no viable options for collection of the value of their lost horses. The Leachmans filed for relief in this Court, since it was the rulings of the Fort Peck Tribal Court, funded and administered through the Bureau of Indian Affairs with a 638 contract, as the government allows is the case, *see* Dkt#4 at 20, that actually gave the Holens carte blanche to dispose of the Leachmans' horse herd.

Here, the government argues that the Leachmans are simply out of luck and it was just really unfortunate for them that the tribal court violated their civil rights – which were not really federal civil rights since it was a tribal court and whatever federal civil rights the Leachmans may have do not apply in a tribal court, so it must have been the Leachmans’ due process and equal protection rights under the Fort Peck Tribal Constitution that were violated – and gave away their property but there is simply nothing the federal government or this Court can do about it. Too bad. So sad. Good luck with that. The government hides behind an implied legal fiction that the Fort Peck court system is not an arm of the federal government, even though the Fort Peck court system is set up, funded, and administered by the federal government. The government argues that the federal government has not waived its sovereign immunity for suits of this nature, and the common law cited by the government in its brief militates strongly in favor of dismissal based on the doctrine of judicial immunity.

The Leachmans have expressly implored undersigned counsel to express to this Court their profound frustration with court systems that leave them with no recourse after first ratifying the theft of their horse herd, then acknowledging the error of the ratification, but offering no relief and taking no financial responsibility for the profound loss of property suffered by the Leachmans because of the initial judicial ratification of the theft of their horse herd.

Avenues of relief in the tribal court system in this matter have yielded inaction and empty pockets. The Leachmans seek justice in this case from the federal government that funds and administers the Fort Peck courts that have caused the Leachmans harm. The federal government claims it is incapable of providing justice and has no desire to provide justice. That indeed is so sad and too bad.

Dated this 13th day of March, 2020.

/s/Timothy M. Bechtold
Attorneys for Plaintiff