

TURTLE MOUNTAIN COURT OF APPEALS

BELCOURT, NORTH DAKOTA

TURTLE MOUNTAIN JURISDICTION

TMAC 19-011

JAMES PARISIAN, ET AL,  
APPELLANT,

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)  
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)

ORDER

V.

DAKOTA METAL FABRICATION,  
APPELLEES.

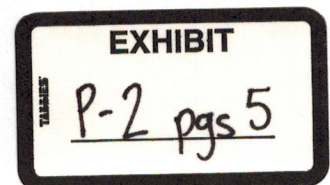
The Appellant, respondent in the lower court, James Parisian, et al, request the Appellate Court to overturn a decision of the Tribal court that they claim carves out an exemption from Tribal TERO fees, without support of the Tribal code and in excess of the courts authority.

The Appellate Court in review of the trial courts' order finds the judge erred as a matter of law in his opinion at paragraph 15 wherein he states that

“Although TERO substantively applied to contractors performing work for the School District, Petitioner is not required to pay the TERO fees because Petitioner reasonably relied on the School Board’s Representation that TERO may not apply to his contract when it submitted its bid without including TERO fees. Requiring Petitioner to pay the TERO fee in this circumstance would be manifestly unjust.”

The trial courts' opinion is substantively correct except where its exempts the contractor from paying TERO fees because he relied on the school boards representation that TERO fees *may* not apply.

The Tribal TERO law has been in effect for years. The trial court cites the law and it clearly states that the Tribe has regulatory authority and adjudicatory jurisdiction under the Tribal Employment Rights Ordinance over contractors performing work within the exterior boundaries



of the Turtle Mountain Band of Chippewa Reservation including those contractors who have entered into transactions with state entities or agencies.

The question as to whether TERO rules and fees apply to a project should be addressed to TERO and not a school board or a representative of the school board.

At all stages it appears that the TERO representative was present at the pre bid meetings and advised the parties that the TERO fees apply to this particular project and Dakota Metal

Fabrication, the Appellee in this appeal, point to no authority that exempts them from the TERO fees except a representative of the school board.

Dakota Metal Fabrication is apparently no stranger to the application of TERO and its fees on the Turtle Mountain Reservation of Chippewa Indians having done prior work on the reservation and obtaining a license on the reservation.

In order to dispute the application of the fees, the contractor must follow procedures set up by the TERO law and its commission. While the record does not clearly show a smooth flow through an appeal process, what is reflected is that that Appellee availed himself of the jurisdiction of the Tribal Court to avoid paying the fee and requesting an injunction from the court.

The trial court issued its ruling and now the appellate court finds that the trial court exceeded its authority by exempting this contractor from paying TERO fees and also ruling that “enforcement of TERO fees on other contractors on the project will be determined on a case by case basis.”

The trial court cannot assume the administrative functions of TERO and rule that fees and regulations apply to one situation and not the other. The TERO law and fees apply to all situations unless the law says otherwise.

TERO contains an administrative procedure that must be followed by the contractors and others that wish to do business on the reservation. Title 32, Tribal Employment Rights Ordinance, 32.03 and this matter is remanded to the TERO commission for proceedings in relation to this matter.

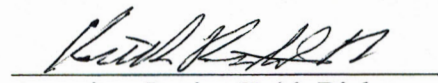
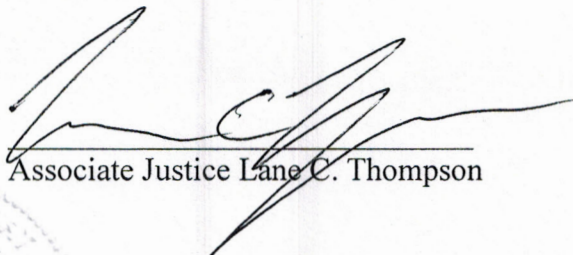
If there is any question whether the TERO law or fees apply, that question should be addressed to the TERO agency and Commission and not a school board letting out a bid.

The trial courts order as to fees and review on a case by case basis is vacated.

So Ordered this 15 day of November 2019.



Chief Justice El Marie Conklin

  
Associate Justice Keith Richotte

Associate Justice Lane C. Thompson



TURTLE MOUNTAIN APPELLATE COURT

BELCOURT, ND

TURTLE MOUNTAIN JURISDICTION

APPELLATE DIVISION

James Parisien, ET AL, )

Appellant(s), )

**NOTICE OF ENTRY OF  
APPELLATE ORDER**

VS )

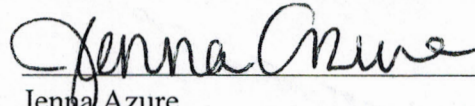
TMAC-19-011

Dakota Metal Fabrication, )

Appellees (s), )

**YOU WILL PLEASE TAKE NOTICE, that the APPELLATE ORDER DENYING MOTION TO APPEAL in the above-entitled action was entered and docketed in the office of the Turtle Mountain Appellate Court in Belcourt, North Dakota, on the 18<sup>th</sup> day of November 2019, a copy which Response is so entered is hereto attached and herewith served upon you.**

Dated this 18<sup>th</sup> day of November, 2019



Jenna Azure  
Appellate Clerk



TURTLE MOUNTAIN TRIBAL COURT  
TURTLE MOUNTAIN JURISDICTION

BELCOURT, NORTH DAKOTA  
APPELLATE DIVISION

James Parisien, ET AL,	)	
Appellant(s),	)	
	)	AFFIDAVIT OF SERVICE
-Vs-	)	BY MAIL
	)	TMAC-19-011
Dakota Metal Fabrication,	)	
Appellee (s),	)	

Jenna Azure, Appellate Clerk of Court, being first duly sworn on oath, deposes and says that she is a citizen of the United States, over the age of twenty-one years and not a party to the above-entitled matter.

That on the 18<sup>th</sup> day of November, 2019, this Affiant deposited in the mail department of the United States Post Office in Belcourt, North Dakota, a true and correct copy of the following:

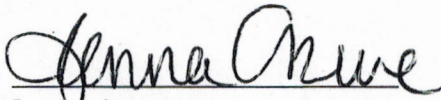
Affidavit, Appellate Order and Notice of Entry

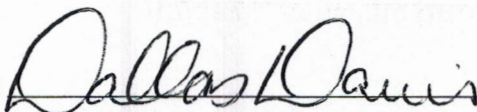
In the above entitled action, in the United States Post Office at Belcourt, North Dakota. Postage prepaid, directed to:

Don Bruce  
Attorney at Law  
PO Box 674  
Belcourt, ND 58316

Levitan Law  
Paige Tomaselli  
Attorney at Law  
719 Golden Gate Ave  
Richmond, CA 94801

Alysha LaCoute  
PO Box 900  
Belcourt, ND 58316

  
Jenna Azure  
Appellate Clerk

Witnessed by:  Date November 18, 2019