

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

Jason Hanson, & Dakota Metal Fabrication,)
312 3rd Street, PO Box 66, Manvel,)
ND 58256,)

Plaintiffs,)

v.)

James Parisien, Director of the Turtle)
Mountain Band of Chippewa Indians)
Tribal Employment Rights Ordinance)
(TERO), The TERO Office, the Turtle)
Mountain Band of Chippewa Indians)
(Tribe), Turtle Mountain Tribal Court,)
And the Tribal Appellate Court,)

Defendants.)

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF**

Case No. _____

COMES NOW the Plaintiffs, and file their Complaint against James Parisien, Director of the Turtle Mountain Band of Chippewa Indians Tribal Employment Rights Ordinance(TERO), The TERO Office, the Turtle Mountain Band of Chippewa Indians (Tribe), Turtle Mountain Tribal Court, and the Tribal Appellate Court, the Turtle Mountain Tribal Court, respectfully showing Defendants as follow:

General Description of the Action

1. Plaintiffs are not members of the Turtle Mountain Band of Chippewa Indians (hereinafter Tribe or Tribal), Plaintiff Hanson is the owner of Plaintiff Dakota Metal Fabrication, and had a construction contract with Belcourt Public School District # 7, (hereinafter School District). The contract required Plaintiffs to perform metal work on the Pre-K and Wrestling Facility Project (hereinafter Project), which is located on trust property within

the exterior boundaries of the Turtle Mountain Indian Reservation (hereinafter Reservation). The Project is occupied by the School District under a memorandum of agreement with Defendant Tribe. Defendants enforced the Tribal TERO ordinance against Plaintiffs. The TERO ordinance requires all contractors performing all types of construction contracts within the Reservation to pay a percentage of the contract price or tax to the TERO office, or Tribe.

2. Plaintiffs filed an action in Defendant Tribal Court seeking declaratory and injunctive relief, arguing Defendants lacked personal and subject matter jurisdiction to regulate or tax Plaintiffs. After a somewhat favorable decision from Defendant Tribal Court, Defendants appealed the tribal court decision to Defendant Tribal Court of Appeals. Defendant Tribal Court of Appeals reversed the tribal court decision, holding Defendant Tribal TERO office had jurisdiction to regulate and tax non-Indians.
3. The case before the Tribal Court is titled *Dakota Metal Fabrication, 312 3rd Street, PO Box 66, Manvel, ND 58256, v. James Parisien Individually as Director of the Turtle Mountain Band of Chippewa Indians Tribal Employment Rights Ordinance (TERO), And the TERO Office, and the Turtle Mountain Band of Chippewa Indians (Tribe)*, CIVIL NO. 18-1054.
4. Plaintiffs have exhausted their tribal remedies by having obtained a ruling on jurisdiction from the Turtle Mountain Appellate Court, which held that the Turtle Mountain Tribal TERO office has jurisdiction to regulate and tax non-Indians. (Turtle Mountain Appellate Ct. Feb. 8, 2012). See *Dakota Metal Fabrication, James Parisien, et al.*, TMAC- 19-011 (Turtle Mountain Appellate Court, November 15, 2019).

The Parties

5. Plaintiffs are non-Indian, and had a construction contract to perform metal work on the Project, located on trust property occupied by the School District. Plaintiffs' business location is at the address shown in the title of this action. The School District has a memorandum of agreement, under federal and state law with Defendant Tribe to operate the school system on the Reservation. The Project is under the School District and located within the exterior boundaries of the Reservation.¹
6. Defendant Parisien is the Director of the Tribal TERO Office for Defendant Tribe. Defendant TERO is the tribal entity which attempting to regulate and tax Plaintiffs. Defendant Tribe is the government for Turtle Mountain Band of Chippewa Indians.
7. Defendants Turtle Mountain Tribal Court, and the Tribal Appellate Court, are the court systems for Defendant Tribe on the Reservation. Organized pursuant to Article XIV of the Turtle Mountain Chippewa Constitution and is the Judicial Branch of government for the Turtle Mountain Band of Chippewa Indians.

Jurisdiction and Venue

8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution, laws, or treaties of the United States, *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985); and under 28 U.S.C. §

¹ Belcourt Public School District is located in Belcourt, North Dakota. It was established under the powers of the North Dakota Constitution and is a political subdivision of the State of North Dakota organized under and governed by the laws of the State of North Dakota for the purpose of the administration, support, and maintenance of public schools. As part of North Dakota's Constitutional mandate to provide education for all North Dakota citizens, the School District operates within the boundaries of the Turtle Mountain Indian Reservation.

2201 because it involves an actual controversy. The District Court reviews the Turtle Mountain Appellate Court's decisions and the Turtle Mountain Tribal Court's exercise of jurisdiction as a matter of federal law.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the Defendants reside or are located in this District and the events giving rise to the claim occurred in this District.

Factual Background

10. Plaintiffs bid on the Project, which was advertised by the School District.
11. The School district advertized bids on the Project without including the necessity of allowing Defendants Parisien and TERO to include fees in the bid forms or bid submission, or enforcing Defendants TERO's laws and regulations.
12. As a result, Plaintiffs did not include any TERO fees or taxes in its bid on the Project.
13. After Plaintiffs were awarded the bid, Defendants Parisien and TERO began enforcing the TERO laws and regulations by levying a TERO tax on Plaintiffs for its successful bid amount.
14. Defendant Parisien utilized the full force of his through Defendant TERO Office to impose the TERO taxes and fees against or on Plaintiffs.
15. As mentioned supra in paragraphs 2 & 6, and in Footnote # 1, the Project is owned by the School District, and said Project is managed and is a joint venture between the Tribe and the Belcourt School District # 7 under a memorandum of agreement approved by the Bureau of Indian Affairs and/or the Federal Government under federal law.
16. Any TERO taxes and fees accessed by Defendants against Plaintiffs, will be passed on

directly to the School District in violation of the aforementioned memorandum of agreement with Defendants, as described in Paragraph # 1, and approved by the Bureau of Indian Affairs.

17. Any TERO taxes and fees accessed by Defendants against Plaintiffs will have an adverse impact on the School District violating of the Eight Circuit Court's order and mandate. *Belcourt Public School District; Angel Poitra v. Ella Davis, Turtle Mountain Tribal Court, et al*, No. 14-1542, Circuit Court of Appeals for the Eight Circuit (Date Filed: 05/15/2015 Entry ID: 4275551).
18. Plaintiffs allege they have met the criteria for a temporary restraining order set forth in *Dataphase Sys . Inc. v. C.L. Sys. Inc.*, 640 F2d. 109, 114 (8th Cir. 1981).
19. Finally, Professor Richard Monette, Law School, University of Wisconsin, stated it very well in his July 18, 2018 email to Plaintiffs: “[I]f the tribe [sic] COURT doesn't have adjudicative jurisdiction, then the tribe can't have legislative jurisdiction.

Count One: Declaratory Judgment

20. Paragraphs 1 through 24 are incorporated herein by reference.
21. Plaintiffs are “interested parties” within the meaning of 28 U.S.C. § 2201. Plaintiffs seek a declaration of their rights and legal relations concerning whether they are subject to Defendants purportedly enforcing TERO laws and taxes against them.
22. There is an actual controversy within the jurisdiction of this Court because declaratory and injunctive relief will effectively adjudicate the rights of the parties.
23. Specifically, the Plaintiffs request a declaration that:
 - a. Defendants are prohibited from enforcing the TERO laws and taxes against

Plaintiffs in their construction contract with the School District.

- b. Defendants are prohibited from adjudicating any claims against Plaintiffs in the Defendants Tribal Courts as a result of their construction contract with the School District.
- c. Any judgment, order, decision, decree, or the like that Defendants might procure from Defendants Turtle Mountain Tribal Courts or which Defendants Turtle Mountain Tribal Courts might issue in the future are null, void, and of no force and effect.
- d. Defendants' efforts to adjudicate her claims against the Plaintiffs in Defendants Turtle Mountain Tribal Courts would violate Plaintiffs' rights, privileges, and immunities guaranteed by the Constitution, treaties, and laws of the United States and the State of North Dakota.

Count Two: Injunction

24. Plaintiffs Incorporate paragraphs 1 through 25 herein by reference.
25. Unless preliminarily and permanently enjoined, Defendants will proceed with their action to adjudicate her claims in Defendants Turtle Mountain Tribal Courts against Plaintiffs without jurisdiction over the subject matter of the claims against Plaintiffs.
26. The actions and threatened actions of Defendants in Defendants Turtle Mountain Tribal Courts will cause Plaintiffs irreparable injury.
27. Plaintiffs lack an adequate remedy at law, other than by this suit.

WHEREFORE, Plaintiffs respectfully request this Court to grant judgment as follows:

1. For a declaratory judgment stating that:

- a Defendants are prohibited from asserting claims against Plaintiffs in the Turtle Mountain Tribal Court.
 - b Defendants Tribal Courts would exceed its jurisdiction if it allowed Defendants to proceed with their claims.
 - c Any judgment, order, decision, decree, or the like that Defendants might procure from Defendants Turtle Mountain Tribal Courts or which Defendants Turtle Mountain Tribal Courts might issue in the future are null, void, and of no force and effect.
 - d Defendants' efforts to adjudicate their claims against the Plaintiffs in Defendants Turtle Mountain Tribal Courts would violate Plaintiffs' rights, privileges, and immunities guaranteed by the Constitution, treaties, and laws of the United States and the State of North Dakota.
2. For a preliminary and permanent injunction, independent and in furtherance of the requested declaratory judgment, enjoining:
 - a Defendants from prosecuting or pursuing their claims in Defendant Tribal Courts.
 - b Defendants Tribal Courts from adjudicating any claims involving Plaintiff in performing its construction contract with the School District.
 3. For Plaintiffs' costs incurred in this matter; and
 - 4 For such further relief as the Court deems just and proper in the circumstances.

DATED December 5, 2019.

FOR PLAINTIFFS"

/S/ Don Bruce

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SERVICE OF PROCESS

Initially, all Defendants, who are tribal agencies, will be personally served, by a process server, through Defendants' tribal attorney. Defendant James Parisien will be personally served, by a process server.