

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

Jason Hanson, & Dakota Metal Fabrication,)
312 3rd Street, PO Box 66, Manvel,)
North Dakota 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 AND COSTS**

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 or Tribal), Turtle Mountain Tribal Court (Tribal Court), and the Tribal Appellate Court.

General Description of the Action

1. Plaintiffs are not members of the Tribe. 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 owned and 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 vendors providing services over an amount of \$10,000.00, and all contractors performing all types of construction contracts over an amount of \$10,000.00, within the Reservation to pay a percentage on the annual vendor revenues or 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 Courts is titled *Dakota Metal Fabrication, 312 3rd Street, P. O. 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. The Tribal Appellate Court held Plaintiffs needed to file a grievance with the TERO Commission to exhaust administrative remedies.
5. Plaintiffs filed a grievance with the TERO Commission on October 1, 2020, and hearing was held on April 14, 2021.

6. The TERO Commission issued its decision on July 21, 2021.
7. 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. *Dakota Metal Fabrication v. James Parisien Individually, et al. And Turtle Mountain Band of Chippewa Indians Tribal Employment Rights Office v. Dakota Metal Fabrication, et al*, TMAC-21-010 and TMAC- 21-013.

The Parties

8. 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
9. Defendant Parisien is the Director of the Tribal TERO Office for Defendant Tribe. Defendant TERO is the tribal entity which attempted to regulate and tax Plaintiffs. Defendant Tribe is the government for Turtle Mountain Band of Chippewa Indians.
10. Defendants Turtle Mountain Tribal Court, and the Tribal Appellate Court, are the court

¹Belcourt Public School District is located in Belcourt, North Dakota. It was established under the authority 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.

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

11. 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. § 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.
12. 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

13. Plaintiffs bid on the Project, which was advertised by the School District.
14. 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.
15. As a result, Plaintiffs did not include any TERO fees or taxes in its bid on the Project.
16. 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.

17. Defendant Parisien utilized the full force of his authority through Defendant TERO Office to impose the TERO taxes and fees against or on Plaintiffs.
18. As mentioned *supra* in paragraphs 1 & 8, and in Footnote # 1, the Project is owned by the School District, which operates on the Reservation under a memorandum of agreement with the Tribe that was approved by the Bureau of Indian Affairs and/or the Federal Government under federal law.
19. Any TERO taxes and fees assessed 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.
20. Plaintiffs contract with the School District was for \$1,488,000.00. On January 16, 2018, Director Parisien assessed Plaintiffs a 3% fee on the contract amount \$1,488,000.00, amounting to \$44,640.00, pursuant to TERO § 32.0501.
21. Any TERO taxes and fees assessed by Defendants against Plaintiffs will have an adverse impact on the School District which may be out of step with the Eight Circuit Court's order and mandate in *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).
22. When Plaintiffs refused to comply with the fee, Defendant James Parisien harassed Plaintiffs by attempting to have the Bureau of Indian Affairs (BIA) or Department of Justice Indian Police arrest Plaintiff Jason Hanson and Defendant Dakota Metal Fabrication's employees arrested at the Project job site.

23. Defendant James Parisien harassed Plaintiffs by calling Brandon Heider, Frandsen Bank & Trust (hereinafter Bank) on or about November 1, 2018, in an attempted to freeze Plaintiffs' funds at the bank.
24. Defendants discriminated against Plaintiffs by not applying the TERO law evenly on all non-Indian business entering the Reservation.
25. In an interview, Ms. Shelly Harris, Chief Executive Officer (CEO) for the Quentin N. Burdick Memorial Hospital, (Indian Health Service Belcourt Hospital, or Belcourt IHS Hospital) Belcourt, North Dakota, indicated off Reservation vendors providing services on the Reservation to the Belcourt Hospital are not paying TERO fees or taxes, according to their invoices. Ms. Harris stated the Belcourt Hospital pays Guardian Flight - Devils Lake, ND, over \$150,000.00 per year for medical transports from the hospital ER to surrounding hospitals. Ms. Harris stated the Belcourt Hospital pays Trinity Health, Minot, ND, over \$150,000.00 per year for medical transports from the hospital ER to surrounding hospitals. Ms. Harris stated the Belcourt Hospital pays Northland Imaging-Mobile MRI well over \$150,000.00 per year to provide magnetic resonance imaging. The mobile clinic parks on the south parking lot of the Belcourt Hospital. The Northland Imaging Mobile Clinic comes to Belcourt three (3) time per month. Not one of the three vendors have a TERO license and not one of the 3 vendors pays a TERO tax. All 3 vendors' revenue is over the \$10,000.00 base amount that TERO assesses on vendors and contractors such as Plaintiffs, Jason Hanson, and Dakota Metal.
26. The facts discussed in paragraph # 25 were raised at the TERO hearing and on appeal with the Turtle Mountain Tribal Court of Appeals.

27. The TERO Commission and the Turtle Mountain Tribal Court of Appeals ignored the facts regarding the IHS Hospital vendors.
28. 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).

Count One: Declaratory Judgment

29. Paragraphs 1 through 27 are incorporated herein by reference.
30. 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.
31. There is an actual controversy within the jurisdiction of this Court because declaratory and injunctive relief will effectively adjudicate the rights of the parties.
32. 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 regarding the Project 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

33. Plaintiffs Incorporate paragraphs 1 through 27 herein by reference.
34. 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.
35. The actions and threatened actions of Defendants in Defendants Turtle Mountain Tribal Courts will cause Plaintiffs irreparable injury.
36. 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 regarding the Project 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' reasonable costs incurred in this matter; and
4. For such further relief as the Court deems just and proper in the circumstances.

DATED October 6, 2022

FOR PLAINTIFFS


/s/ Don Bruce (electronic signature)

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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.