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A CHIPPEWA CREE OF THE ROCKY BOY'S RESERVATION OF MONTANA JURY RETURNS VERDICT THAT KEN ST. MARKS IS NOT LIABLE FOR CLAIMS OF FRAUD, EQUITABLE ESTOPPEL OR BREACH OF CONTRACT, BUT THE TRIBE IS LIABLE FOR OVER \$200,000 THAT IT WRONGFULLY FAILED TO PAY ST. MARKS

Louisville, CO August 18, 2015

On August 13, 2015 at approximately 6:00 p.m., a Chippewa Cree jury returned a verdict in favor of Ken St. Marks determining he was not liable for the charges brought against him by the Chippewa Cree Tribe of the Rocky Boy's Reservation of Montana ("Tribe") and the Chippewa Cree Construction Corporation ("Corporation"), which included claims of fraud, equitable estoppel, breach of contract and unjust enrichment. The Tribe and the Corporation, through Philadelphia-based attorneys from Pepper Hamilton, LLP, brought claims against St. Marks and his company, asserting that St. Marks had defrauded the Tribe and Corporation in the amount of \$2.9 million for work he performed when he was a private contractor working on the North Central Montana Rural Water System. The Tribe and some of its Council members then used the factually unsupported allegations as a pretext to repeatedly remove St. Marks from office; unsuccessfully used the unsupported allegations in an attempt to influence voters and prevent St. Marks' repeated reelections to office; and unsuccessfully used the allegations to try to defend against St. Marks' federal whistleblower case.

"While we were prevented at trial from presenting evidence showing that the Tribe's actual motives for spending vast sums of tribal money to litigate these unsupported fraud allegations, we were still able to show the jury that the Tribe and Corporation's claims were unsupported by evidence," according to trial attorney, Jeffrey S. Rasmussen. In fact, the exact same claims were already rejected by the United States Department of Interior in a 23-page *Final Disposition in the Matter of U.S. Department of Interior, Office of Inspector General Report of Investigation U.S. Bureau of Reclamation ARRA Funds – Case No. 01-CO-13-0243-I (St. Marks)* ("Final Disposition"). The *Final Disposition* at 3 provided:

[The Tribe's] allegations include that St. Mark's (1) defrauded [the Tribe] and the Federal Government through his company, Arrow Enterprises, by inflating equipment rental rates charged to the US Department of Agriculture, engaging in bribery, and otherwise inflating costs on the Sewer Lagoon project; ... (4) failed to

perform certain contractual obligations subcontracted to Arrow Enterprises by the [Tribe].

Id. at 3, 9. It went on to state that the situation between St. Marks and the Tribe was rife with threats and intimidation against individuals in the tribal community, including St. Marks, by those ultimately shown to have engaged in criminal wrongdoing. *Id.* at 11. “Indeed, [the Tribe’s] continued pursuit of all seven charges [including the counterclaims and defenses in this matter] despite evidence either challenging or failing to support their veracity calls into question the Business Committee’s credibility and motive and renders the charges as pretext,” it found. *Id.* at 14.

Regarding allegations by the Tribe of Arrow’s fraud and misuse of federal funds, the Department attached a December 4, 2014 letter from Assistant U.S. Attorney Carl Rostad advising the Tribe’s counsel that the U.S. Department of Agriculture Inspector General had conducted an inquiry into allegations against St. Marks with respect to the Sewer Lagoon wastewater project, but that inquiry “was closed after finding no credible evidence for further investigation.” *Id.* at 15. Rostad further stated that with respect to allegations of bribery that may have affected “the fresh-water pipeline project,” allegations that had been the “focus of several investigations” and “a review of thousands of financial records, produced no information that St. Marks transferred funds to tribal officials.” *Id.* Regarding allegations that St. Marks’ company, Arrow, had performed inadequate or substandard work on the Tiber Project, the Department attached documentation that there was no credible basis for those claims either. *Id.* at 16-17. The *Final Disposition* also documented other instances where the Department had contacted the Tribe’s counsel for supporting information but the Tribe was unable to produce any information supporting its allegations against St. Marks. *Id.* at 17. The *Final Disposition* ruled that the Tribe and Corporation’s claims were pretextual and in violation of the American Recovery and Reinvestment Act.

The claims have been used by the Chippewa Cree Tribal Business Committee to remove Ken St. Marks as Chairman on three (3) occasions. Each time he was removed, the Chippewa Cree Tribal electorate returned him to the Office of Chairman. Now a jury of his peers has unequivocally rejected the Tribe and Corporation’s claims against St. Marks, as well. In response to the decision, St. Marks said:

“Over and over my name has been cleared but the Tribe and Corporation, through their law firm, General Counsel and Attorney General, maintained these malicious claims. They used substantial public funds to maintain a vendetta against me, even when it was leading to trouble with the United States. What’s even more troubling is they didn’t once seem to consider the welfare of the Chippewa Cree Tribe, its government, or its members. I realize these claims weren’t initiated by the current composition of the Business Committee, but we sure are left to clean up the mess!”

Ken St. Marks was represented by Jeffrey S. Rasmussen, Martha L. King, and Peter Breuer of Fredericks Peebles & Morgan LLP. The Chippewa Cree Tribe and the Chippewa Cree Corporation was represented by Richard J. Zack, Jay A. DuBow, Derek E. Hines, Krysten L. Connon, Christina O. Hud, Brian H. Callaway, all of Pepper Hamilton, LLP; along with Dan Belcourt and LeAnn Montes, General Counsel and Attorney General of the Tribe, respectively.

For more information on the contents of this press release, please contact Jeffrey S. Rasmussen or Martha L. King of Fredericks Peebles & Morgan LLP at: (303) 673-9600.