
**FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
WOLF POINT, MONTANA**

IN THE MATTER OF
CALVIN RED THUNDER, SR.,
PLAINTIFF/APPELLEE,

vs. **Appeal No. 162**

ALLEN F. BOYD,
DEFENDANT/APPELLANT.

THIS APPEAL is from an Order of the Tribal Court awarding attorney fees and towing and impound charges on a vehicle contract dispute, the Honorable Robert Welch presiding.

APPEARING FOR APPELLANT ALLEN F. BOYD: Rene A. Martel, Attorney at Law, Montana Legal Services, 204 First Avenue South, Wolf Point, Montana 59201.

APPEARING FOR APPELLEE CALVIN RED THUNDER, SR.: Mary L. Zemyan, Attorney at Law, P. O. Box 1094, Wolf Point, Montana 59201.

CIVIL:

Argued: November 20, 1992

Decided: December 4, 1992

HELD:

1. The award of attorney fees to Plaintiff was improper absent the findings of a specific contractual, statutory or procedural rule authorization. **REVERSED.**

2. The award of impound and towing charges was not within the discretion of the Court and is reversed. **REVERSED.**

FACTS

Appellant entered a written contract to purchase a vehicle from Appellee. The terms of the agreement were that Appellant would pay \$1,000.00 down and make bi-weekly payments of \$100.00 until the agreement was satisfied. There was a dispute as to the payments made (TI. 4; 14 et seq.).

Appellee filed his complaint requesting impoundment of the vehicle, payment of contract balance and costs. The Court issued an order of impoundment. Appellant filed an answer and counter complaint; the Court at hearing granted Appellee \$500.00 under the contract, \$100.0 as late charges, \$10.00 filing fee and \$250.00 attorney fees. Appellant was awarded possession of the vehicle, subject to towing and impoundment charges.

This appeal followed on those portions of the order directing payment of attorney fees and to pay impound and towing charges.

ISSUE 1: ATTORNEY FEES

To answer the question of award of attorney fees, we look to the contract between the parties, or the Tribal code. The contract between the parties here did not mention award of attorney fees, and no security agreement was filed. **REF. AGREEMENT**, dated January 21, 1992. Therefore, if fees are awarded, they must be authorized by the code or procedure thereunder. **XIX CCOJ §806 (b)**.

Title IV CCOJ §309 provides:

In civil actions costs shall be awarded the prevailing party as part of the final judgment unless the Court otherwise orders. No costs shall be awarded against the Tribe, or against any officer of the Tribe or member of the Tribal Council sued in his/her official capacity. Costs shall include filing fees, reasonable and necessary expenses of involuntary witnesses, costs associated with compensation and expenses of the jury, and such other proper and reasonable expenses, **exclusive of attorney' s fees to the prevailing party in a civil suit unless the Court determines that the case has been prosecuted or defended solely for harassment and without any reasonable expectation of success.**
(emphasis added)

Here, the Tribal Court made no finding that the case was " defended solely for harassment or without any reasonable expectation of success..." **Judgment Order**. We therefore reverse as to the issue of award of attorney fees.

ISSUE 2: IMPOUND AND TOWING CHARGES.

The issue of impound and towing charges is more difficult for the Court. It appears here that a petition was filed, requesting impoundment, and that the Court issued an order of impoundment, without hearing. REF. **Order of Impoundment** dated April 28, 1992. REF. **ORDER**; hearing set for May 21, 1992. The Court has broad discretion under **XIX CCOJ 805** (c) (1) in preserving property, and that appears to be the intent of the Court here, although the order itself recites XIX CCOJ 105 (c) (1). **REF. ORDER**. However, no hearing was held pursuant to the code prior to the order of impoundment, and the Court is without authority to order the impoundment on the basis of the petition alone. The code envisions a hearing under IV CCOJ §103 prior to impoundment. **REF. XIX CCOJ §805.**

We reverse as to the award of impoundment and towing charges.

The judgment of the Tribal Court awarding attorney fees and impoundment and storage charges is **REVERSED**.

DATED this _____ day of December, 1992.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, CHIEF JUSTICE

DEBRA A. JOHNSON, ASSOCIATE JUSTICE

JONI MCCLAMMY, ALTERNATE ASSOCIATE JUSTICE
