

Anything two people know is not a secret

CHEYENNE HERALD

FREE-TAKE ONE

the local advocacy journal

August 2, 2011 -- Issue No. 223 -- Next issue August 16, 2011 -- established January 30, 2002

Is the Airport Board trying to evict Sky Harbor for blowing the whistle on them?

This action initiated by the Cheyenne Airport Board, the City of Cheyenne and Laramie County against Sky Harbor, the local airport's FBO, makes the one between the City and Post 6 Baseball look like child's play.

And the battle may hold the key reason the City is fighting so hard to break the lease with Post 6 and avoid repaying federal grant money.

Sometimes it's better to be lucky than good. And lucky I was on this matter. I was tipped about a court appearance on the subject of eviction of Sky Harbor from their facilities at the airport. I had heard nothing about the matter but the source is my highest paid stringer.

Not even knowing the bases for the dispute, I journeyed to circuit court - the court level I was told was hearing this matter - on Friday before printing and pulled the unusually large case file. Unusually large for circuit court that is - district court files are often several volumes (the WNU case file is seven volumes).

The Cheyenne Regional Airport Board was trying to get a second bite of the apple. They had already filed in district court but government never satisfies itself with a one-pronged attack when multiple assaults are possible. And, this is a government claim. City and county against a local private business operator.

(The Docket No. in district court is 177-557 and, unfortunately, I did not have time Friday afternoon to review it. I had arranged a long distance telephone interview that had been postponed one day and I was unwilling to postpone it another. If the district court case is much different from the one in circuit court, I'd be surprised. It just represents a scattergun attack on Sky Harbor.)

The Circuit Court Docket is CV-2011-2064 and was filed on July 5, 2011.

It is a COMPLAINT FOR FORCIBLE ENTRY AND DETAINER. The defendant in the matter is Sky Harbor Air Service, Inc., and Paul Martin is Sky Harbor's president. In other data, it is stated that Sky Harbor has been the Cheyenne FBO for 22-23 years.

The two page COMPLAINT alleges, "The reason for this action is that the Defendant has failed to pay base rent from December 1, 2010 through June 1, 2011, at the rate of \$3,824.55 per month for seven (7) months for a total of \$26,771.85. In addition, default rent is due for six (6) months (\$3,824.55 per month) in the amount of \$22,947.30."

The claimed "rent arrearage" is \$49,719.15.

(Note: December 1, 2010 through June 1, 2011 is not seven months, it is six and January 1, 2011 through June 1, 2011 is not six months as the filing stated, it is five.)

The Plaintiff (Airport Board, City, County) sought a judgment in the amount of \$49,719.15.

The Claim is amateurish, a first-year-law-student-capable filing.

Then it gets interesting.

The Defendant's MOTION TO DISMISS was filed on July 14, 2011.

Paragraph 2 of this MOTION: "Sky Harbor asserts the default claims underlying the Ejectment and FED* are pretextual to take Sky Harbor's valuable lease rights, are disputed, and only began when Sky Harbor instigated federal investigations of Board and its airport manager, Mr. Haring."

It goes on from there: "It has been evidenced to the District Court that Plaintiff Board is under investigation by the Department of Commerce Office of Inspector General (IG), the

Federal Aviation Administration (FAA), and the Securities and Exchange Commission (SEC) for failure to comply with its agreements with the United States for federal funding to develop the airport and for related material non-disclosures in municipal bond issuance and on-going reporting. Plaintiff Board has admitted violations and acknowledged investigations are ongoing."

More, "On June 24, 2011, Board counsel was informed by the Regional Department of Commerce Economic Development Administration (EDA) counsel that the IG investigation into Board conduct of an Economic Development Administration grant to develop an airport property had concluded unfavorably for the Board. The next day, the Board initiated this FED action."

And, "Sky Harbor's IG complaint detailed how the Board's illegal mortgage of a federally developed property, unapproved lease contracts charging excessive rents, false audit certifications of grant compliance, and material nondisclosures that obtained valuable agency action and forbearance ended the EDA project with the loss of over 30 jobs and \$800,000 Sky Harbor invested."

Now, the coup de grace: **"Applicable statute and grant contract provides for Board repayment of \$1.9 million dollars and potential interruption of federal funding for the airport, city, and county, and debarment from federal grant program application, as a result of grant violations."**

Because of Sky Harbor's heavy borrowing from United Western Bank and a SBA federal loan guarantee, the Airport Board had previously agreed to an Assignment and a 60 day notice to cure - provided to both the SBA lender and Sky Harbor.

Sky Harbor also claims to have

"paid monthly rent to Board since December 1, 2010 through June 30, 2011 totaling \$24,826.40." One of these litigants is wrong. One may have lied in their brief. Which one? Sky Harbor also alleges that the Airport Board has charged excessive base rent in the amount of \$93,000.00 and excessive additional rent (on fuel commissions) in the amount of \$128,000.00.

By requiring the lengthy notice and opportunity to cure, the lender can protect its interest by stepping in and paying the rent itself or finding an alternate tenant to do so. There is about \$500,000.00 at stake here.

The MOTION TO DISMISS also states: **"... this Board's federal grant violations diverted federal funding from federal purposes to prohibited local gain."**

In Sky Harbor president Paul Martin's sworn AFFIDAVIT filed July 14, 2011, he states: "I have reviewed Sky Harbor's business records kept in the ordinary course of business and determined that each month since December 1, 2010, Sky Harbor has remitted to Board rent payments totaling \$24,826.40."

And, "A Department of Commerce Inspector General (IG) investigation has concluded unfavorably for the Board." Next, "By June 24, 2011, the EDA attorney had advised me, Board counsel Ray Martin, and City Attorney Daniel White that the EDA intended to send to Board and City a demand for grant repayment and penalties in the amount of \$1.9 million, and other penalties including civil and criminal and permanent debarment for entities and individuals might issue." And, "At the same time, the EDA attorney advised each of us that Board had issued an illegal municipal bond mortgage that was the subject of a SEC investigation."

* Notes: FED is Forcible Entry and Detainer.

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