

David Roy and the Monument

My Side of the Story

The Town Crier and local rumors have distorted the information so much that people are understandably upset with what they THINK I've done. Here is what really happened. Unlike the Newspaper and the rumor spreaders, I can back up everything I'm saying here. Can they? I'm putting my cards on the table. Are they?

Off to a Bad Start

When the monument contest began, the Chamber was going to supply the tree to be carved. The agreement drafted by the Chamber staff did not specifically mention the tree being supplied, because that was already promised. It only mentioned that I would supply "materials," which I understood to mean chainsaws, gas, oil, glue, and so forth, in plain English. I trusted the Chamber to supply the wood I would carve.

The original contemplated tree was the right size, but I would have to buy it. Another tree was located, but was cut too short for the sculpture I intended. The Chamber shrugged its shoulders and told me that I was on my own to pay for my own wood. Then-President Geoffrey Caine forgave me on the deadline, since Chamber had not supplied the tree. I didn't have the money to buy the tree I needed, which would exceed the total \$15,000 price I was being paid to do just the carving.

While the new Chamber continued to scold me for not having the monument done on time, the Town Crier amplified public discontent arising from that misinformation. I found three smaller trees to join with what was usable from the Lufkin tree, and with great difficulty glued them all together with Gorilla Glue. The glue had to cure, which took more time, but I formed the final composite and began carving. The Chamber and Town Crier gave me no praise for having taken such positive steps, instead of walking away from the entire project in disgust, as most people would have done. Only negative press ran and ran.

When it was completed, Chamber didn't want to pay me the \$4,000 balance. I had to get legal help to negotiate even that. I informed the Chamber that, although my contract included one year of maintenance, I would thereafter charge about \$500 for the contemplated treatment. I never indicated in any way that I would work free for the Chamber. The way they had treated me all this time, I certainly owed them no favors. That was where it was left until the current dispute.

The Monument Fund

The Chamber put on the contest for the Monument, collecting far more than the \$15,000 they were paying me. The extra money was placed in a separate bank account, held in trust by the Chamber on behalf of the donors, to pay for future maintenance of the Monument. All of the Chamber Boards through Ken Carlson's presidency kept that money sacrosanct, not commingled with the Chamber's general fund nor used for other purposes. Everyone knew it was held in trust for that sole purpose. When Ken left the Chamber, the fund had approximately \$11,000 in it. \$4,000 of that was later paid to me, but another \$1,000 was donated to pay for moving the monument to its current location. I helped secure the monument in place as part of my contract without additional pay. Very few expenses were incurred in that process. Accordingly, deducting the \$4,000 from the donated \$12,000, there should still be \$8000 left in that fund. Instead, it's only about \$3,000. I don't know for sure because the Chamber has refused to disclose that information, even under its duty to do so in litigation. What do they have to hide? It's embezzlement, a felony, if they spent the money elsewhere.

I learned about the Monument Fund depletion when we had the Monument Dedication Ceremony planning sessions at Ken's house. There, David Jerome as the Chamber's representative, revealed to me, Ken, Jack Detzel and Carlos Reynosa that the monument fund had only about \$3,000 left in it. When asked how that could be, he said that the Chamber was free to use that money in any way it pleased, and had done so.

The Raffle Money

Shocked by David Jerome's disclosure about the Chamber's embezzlement or at least misappropriation of the Monument Fund, I was understandably concerned that the Chamber would neglect my creation, for which I had worked so hard for so little. At the Dedication Ceremony meeting, we agreed that I would carve a bear to raffle off. The proceeds of that money would then be used to pay for future monument restoration. It was clear to everyone at that meeting, including David Jerome, that the Chamber would NOT have this money because Chamber had proven itself untrustworthy. I alone would control that money. Indeed, it was my own carving of the bear that created the money collected, so I was in reality making a piece, selling it, and then donating all of my money from it to the townsfolk. This was for the Monument preservation which the Chamber would, I understood, otherwise neglect.

When the collection of the raffle proceeds began, David Jerome approached me with donation jar labels and donation containers that said that the proceeds would go to the Chamber's Monument Fund. I explained to him that, as he knew, that was not the case. He told me that I would "get in trouble" if I did not put those signs out. I didn't know what he was talking about, but not wanting to get in trouble, I let him do that. But I confirmed that he knew I would be keeping all of the money for the stated purpose, and he understood that. The raffled bear drew \$1035 and the happy winner took it home. I held the \$1035.

The next day, David Jerome came to my lot and demanded the raffle funds. At first, I thought he was kidding. I reminded him that we had all agreed that this was NOT a Chamber raffle, that I alone was to keep the money. The Chamber had not paid me for the carved bear, such that it would have been theirs to raffle in the first place. He threatened to make a criminal complaint against me for theft if I did not immediately turn over that money to him. That in itself was a felony, extortion, as well as being dishonest and contrary to the entire agreement. At that point, I needed legal help and contacted Ken, again.

Ken wrote 2 letters to the Chamber about this, and the Chamber responded that it would not pursue collection of the raffle money, but asserted that I should give the money to the Chamber. The new legal case addresses this issue, which remains unresolved.

The Monument Preservation Dispute

With the Monument Dedication Ceremony impending, we all agreed that it should look its best, since the public officials, press and general public would be invited. I had discovered a new product with a 20-year guarantee that we could use to give the Monument a coat before the Ceremony. It had been over 2 years since I had completed the Monument, and my one-year maintenance obligation had expired. I discussed this product with David Jerome, and he agreed to have me do the work to apply the coating, while Chamber would pay directly for the coating. No price was discussed, but I was clearly not doing the work for free, as my earlier letter to the Chamber had made clear. David Jerome was aware of my prior hostility with Chamber, such that he had no reason to expect me to do the work for free. It was what the law calls "quantum meruit," the obligation to pay for the reasonable value of the work done where that price has been omitted from the discussion. A "contract" would have been for that exact amount.

When the dispute arose over the raffle money, this was included in Ken's letters, too, because even if depleted, the Monument Fund still had enough to cover the reasonable value of my services, \$1500. I presented an invoice for the \$1500, showing exactly where that money was going: two helpers, equipment, and supplies. I have not paid my helpers yet, because I have been waiting for this money to do so. \$1500 was a very reasonable price for what I did. It saved \$500 every year for a normal treatment.

Chamber had the money in the Monument Fund, which was there for this very purpose, as the donors intended. As the trustees over that money, the Chamber was obligated to use that money for its intended purpose and pay for my work. However, the Chamber's responses to Ken's two letters did not even mention paying me for my work, despite a clear request for it. Ken's letters made it clear that a lawsuit WOULD be filed if I was not paid the \$1500. At that point, Chamber dared me to do it, intentionally escalating it. They wanted a fight.

I filed the lawsuit and served all the parties. The Chamber Board bears personal responsibility, maybe even

more than the Chamber, because everyone signed the letters back to Ken, and it was the Board members who had refused to pay, essentially defrauding me into working for free, and now in lockstep remained defiant.

The Lawsuits

Realizing that their bluff had been called, the Chamber and Board might then reconsider informal resolution. I made yet another offer to settle the dispute early on: Pay me the \$1500, pay \$5,000 for the fraud, restore the embezzled Monument Fund, and turn the Monument and Fund over to me as the new trustee. Had Chamber used \$1500 from the Monument Fund, and the Board members and Chamber had chipped in about **\$714 each** at that time, this would have been over. Since I am the only one taking care of the Monument, anyway, that was not a ridiculous suggestion. (The Chamber had turned over the Recreation Fund to the ICRC to handle recreation activities, because the Chamber had been misusing that money.) I would keep the Monument in place, of course, so the public would see no change. Chamber's response was (1) they would not pay me a cent and (2) they threatened to take action against me if I dared to approach the Monument. A large bird was torn from the Monument at that time, probably to punctuate Chamber's resolve against me.

Obviously, in retrospect, my offer was far better than the collective Defendants have since incurred in legal expenses and ongoing stress. Instead, the Chamber and Board members chose not only to fight, but to spend thousands of dollars on lawyers, and even exacerbate the litigation by refusing straight-forward production of evidence. Chiefly, the Chamber refused to produce such documents as the Monument Fund accounting, Chamber minutes, Chamber membership lists, Chamber contracts and communications with me, all on grounds that it was "burdensome and oppressive" to do so. Chamber has the files in its office, and only needed to photocopy them. There was no burden, so why did they take that position? It was simply to force me to make the further effort to compel their responses, with yet more legal action. The Board members were no better in their responses to discovery, again forcing me to file motions to compel against them as well. The strategy of the Chamber was to run up my legal bill, and make it more expensive than it was worth to collect my money. The Chamber and Board members lawyers unnecessarily charged them for thousands of dollars, exploiting their anger and fear, where \$714 would have ended it for their client, a matter they need to discuss with the State Bar. Apparently, that process is continuing, rather than settling for far less than the legal costs. Why?

Meanwhile, through a combination of court clerk errors, misrepresentations by the Defendants' lawyers, and my inability to address such tactics, I was not able to get the information I needed in that first case in order to prove my case. The Chamber and other Defendants remained defiance to disclose anything, and remained belligerent. During the first case, the Defendants' responses raised new issues that were not addressed by my Complaint there. My only solution was to dismiss the first case and immediately start a new case, and include those new issues in that new case. I didn't want to do that, but where the Chamber and other Defendants were so resistant to answering simple questions and turning over copies of paperwork they had in their own files, I had no choice but to start over. The Defendants whine and complain bitterly about having to spend money on the new lawsuit, but they intentionally brought it on themselves by the way they misbehaved in the first case. They have had the chance to settle for less than they are spending, but they insist on fighting the case, and wasting Chamber funds protecting themselves and their bad decisions from public disgrace.

The future of the dispute

I am not belligerent, nor trying to exacerbate the plight of the Chamber nor its members. I am not trying to ruin Chamber, nor is Ken "taking revenge" on Chamber as some silly rumors have contended. Ken is my lawyer, helping me informally, since being a witness he cannot be my formal lawyer in court. I have tried repeatedly to settle this matter, but at every phase have been met with a belligerent opposition who insists on exacerbating the conflict and them complaining to everyone how much I am costing them over a "frivolous lawsuit," and trying to further damage my reputation.

I have already settled the case with Mike Lackey, who was open minded and reasonable. I am open to settling the case with other individual Defendants, if that is possible. So far, there has been little interest in doing that. In the first case, an express invitation to settle was flatly ignored. Now with the new case, and the looming magnified costs

with former expenses incurred having failed to defeat or discourage me, there might be some interest in simply settling the dispute, one by one, leaving only those who truly want to fight to get what they wanted, or hoped not to happen.

It appears that most of the Board members were unaware of what had actually happened. None of them had approached me to find out, surprisingly, but it appears that David Jerome had been the sole source of the other Board members' information, and that they had trusted him to tell the truth. Thus, the Chamber and other Board members may have been acting under false information, incurring egregious legal expenses to protect the guilty. If that is what happened, it is truly tragic for the other Defendants. Some decisions had to be made by other than David Jerome, such as directing the Chamber's lawyer to refuse to produce the paperwork under the "burdensome and oppressive" excuse. I don't know who that was, but it doesn't sound innocent.

The most recent Chamber ploy, to cut down and sell the monument in pieces, is ridiculous. It's not theirs to sell. The People of Idyllwild own it, not the Chamber. Ask the donors. They weren't just giving money to the Chamber. Selling the monument is just more embezzlement by the Chamber, and yet another lawsuit they bring upon themselves by the donors. Whoever buys it becomes a felon, by receiving stolen property. The Chamber has also threatened to interfere with my relationship with Gorilla Glue, inviting yet another lawsuit for that misconduct. Chamber is acting like a spoiled brat, but then complains about having to face the discipline for repeated misconduct.

On February 22, 2013, I made this offer to the Chamber to resolve the entire dispute: mutual dismissals and releases, they would pay me \$1500, and I would replace the vandalized hawk on the Monument. Chamber would promise not to destroy the Monument and not to interfere with Gorilla Glue's national advertising of it. Chamber would restore the missing Monument funds, and make me the trustee over the monument and the Fund. They flatly refused, threatening even more litigation. When they claim to be victims, they are, but of their own decisions.

My Future

Despite the Town Crier's attempts to defame me, my life goes on. While I was carving the Monument on my lot, my sculpting was the main attraction in town, with hundreds of people stopping by weekly to watch me work and return to Idyllwild to see the progress. Now in place, the Monument that I carved is the most photographed item in the entire town. It is the Eiffel Tower of Idyllwild. Although I was paid only \$15,000 to carve it, most art appraisers would put its value into six figures. Yes, I am proud of it. It was my vision. I have helped bring people to Idyllwild, something that Chamber is supposed to be doing. People show those pictures of themselves in front of the Monument to their friends and tell them about the wonderful time they had here. Then the friends come and visit Idyllwild, and they repeat the cycle. What is Chamber doing to bring up visitors? And it's their job! Rather than attacking me, they should be supporting me. So should the Town Crier, since a better economy up here means more advertising income for them, but they haven't thought that one out, yet.

The San Diego Zoo has now a life-sized Condor that I carved on its Condor Ridge. They appreciate my work, even if Idyllwild doesn't. The Gorilla Glue company not only attended the Dedication Ceremony all the way from Cincinnati, but created a video of him on their website, making me their poster boy [see "Monumental Task" on www.gorillatough.com] with a whole promotional campaign coming up. I am entering contests which will gain me more prominence, but where will I say I'm from? Idyllwild? Not if the town doesn't want me here.

If you agree with me, please speak up about it. Write letters to the editor, or boycott the Town Crier. Tell your friends and neighbors about this. Obviously, the Town Crier has chosen to only represent one side, and not be the neutral paper we expected and hoped it would be. This is how I have to communicate with you, to tell you my side. Thank you in advance for your support.

David Roy