

ORIGINAL

IN UNITED STATES COURT OF FEDERAL CLAIMS

FILED

JAN 21 2016

U.S. COURT OF
FEDERAL CLAIMSVERNON MOODY AND ANITA)
MOODY,)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)
_____)No. 16-107 L

COMPLAINT

The above named plaintiffs, for their complaint against the defendant, United States, hereby states and alleges as follows:

I. PRELIMINARY STATEMENT

1. This is an action by plaintiffs against defendant for unlawful termination and breach of lease agreements that they had with defendant for the use of land on the Pine Ridge Indian Reservation in South Dakota.

II. JURISDICTIONAL STATEMENT

2. This Court has jurisdiction over this matter pursuant to 28 USC § 1491 (a) (1) & (2). This action is one involving an express or implied contract with the United States. Venue is property in this Court under 28 USC § 1491 (a) (1). This Court has authority under 28 USC § 1491 (a) (1) to issue such equitable relief as it within its jurisdiction.

III. PARTIES

3. Plaintiffs, Vernon Moody and Anita Moody, husband and wife, entered into a number of leases with the Department of the Interior, Bureau of Indian Affairs, Pine Ridge Agency, Pine Ridge, South Dakota.

4. Defendant, United States of America, through its Department of the Interior, Bureau of Indian Affairs (BIA), Pine Ridge Agency, Pine Ridge, South Dakota, for consideration granted plaintiffs a number of leases of land on the Pine Ridge Indian Reservation, Oglala Lakota County. Employees and agents of the United States committed the breaches and violations set forth in this Complaint.

IV. FACTUAL ALLEGATIONS

5. In 2011, plaintiffs entered into four (five) leases with the Bureau of Indian Affairs for

a period of five years each.

6. The leases are identified as follows:

1-00218-11-15, 152.42 acres, Pine Ridge Allotment, E 1/2NW1/4 and Lots 1 and 2, Section 6, T. 35 N., R. 43 W., 6th P.M., Shannon County, S.D., entered into on June 1, 2011, farm land, Vernon Moody, referred herein as Exhibit 1

1-T0561-11-15, 640 acres, Pine Ridge Allotment T561, Section 12, T. 37 N., R. 42 W., 6th P.M., Shannon County, S.D., entered into on June 1, 2011, farm land, Vernon Moody, referred herein as Exhibit 2 (modification)

1-TB367-12-16, 80 acres, 344 T 367 B, Section 20, T. 36 N., R. 41 W., 6th P.M., Shannon County, S.D., entered into on June 8, 2011, farm land, Vernon Moody, referred herein as Exhibit 3

1-UNT19 11-15, 541.2 acres, 344 T 613A, 613B, 7616A, 10289, 6159, 6159A, Shannon County, S.D., entered into on June 1, 2011, farm land, Anita Moody, referred herein as Exhibit 4

1-UNIT5 11-15, 437.5 acres, 344 T 3120, 3268A, 2280A, 3280B, 3281, 3282, Shannon County, S.D., entered into on June 1, 2011, farm land, Anita Moody, referred herein as Exhibit 5

7. The leases were share leases with a certain amount of cash guaranteed for each lease.

8. All payments for the leases were made for the year 2011.

9. On November 1, 2012, plaintiffs, as instructed by the BIA, sent \$25,000 to Farmington, Missouri, the BIA collection repository, for the cash payment for the year 2012. See Exhibit 6 attached hereto and incorporated herein as if specifically set out.

10. Plaintiffs knew that the \$25,000 was sufficient to pay for Anita Moody's leases at Lease 4 and 5, but believed that further amounts would be due on the leases in Vernon Moody's name. Plaintiffs had sufficient funds to pay all leases due because they had received a \$94,000 insurance check.

11. The BIA was informed by plaintiffs of the payment and requested the BIA to advise them of further amounts due to complete lease payments for the year 2012.

12. Plaintiffs were not advised that any further amounts were due.

13. In December, 2012, the \$25,000 check was returned to plaintiffs and BIA through

their employee, Dorothy Tobacco, told plaintiffs that payment in full was required. See Exhibit 7 attached hereto and incorporated hereby by reference.

14. Plaintiffs, several times over a period of about 6 weeks, asked for the specific amounts that BIA was requesting of them, but no answer was given.

15. On February 27, 2013, Vernon Moody went to the BIA Pine Ridge Agency Office to settle up for the 2012 lease years. He was told that he should send \$43,465.64 to Farmington, Missouri, and that amount would be full payment for the 2012 lease year.

16. On February 28, 2013, plaintiffs sent a personal check in the amount of \$43,465.74 to Farmington, Missouri.

17. On or about April 10, 2013, plaintiff Vernon Moody received notice from the BIA, not properly signed, dated April 4, 2013, threatening to cancel Lease 1 and 2 above. See Exhibit 8 attached hereto and incorporated herein by reference. At this time, the BIA still had plaintiffs personal check in the amount of \$43,465.64.

18. Between April 10 and 15, 2013, Vernon Moody was in the BIA Pine Ridge Agency Office. Dorothy Tobacco, BIA employee, handed the personal check sent on February 28 to Vernon Moody and indicated that check was required to be a cashier's check. See Exhibit 9 attached hereto and incorporated herein by reference.

19. On April 22, 2013, Vernon Moody handed Robert Ecoffey, BIA Pine Ridge Agency Superintendent, a cashier's check in the amount of \$43,465.64. See Exhibit 10. Moody was advised by his wife, Anita Moody, that they had received a notice of cancellation of Leases 1, 2, 3, and 4 and right to appeal. See Exhibits 11 (Lease 1), 12 (1 and 2), and 13 (Lease 4 and 5) attached hereto and incorporated herein by reference.

20. Vernon Moody asked Superintendent Ecoffey if they needed to appeal since the \$43,465.64 had been paid by cashier's check. Superintendent Ecoffey advised that the leases were paid and that plaintiffs could proceed to farm the leases. Moody asked that Ecoffey put this representation in writing and Ecoffey indicated that nothing in writing was needed.

21. Plaintiffs proceeded to farm the leases upon representation of the Superintendent. The plan was to plant dry land corn. Plaintiffs invested substantial money in chemicals and seed corn, fuel, and other necessities to plant. See Exhibit 21 attached hereto and incorporated herein by reference.

22. Plaintiffs received trespass notices on June 3, 2013. Shawn Woster and Travis Goings, BIA employees, came to where plaintiffs were planting and informed plaintiffs of their trespass.

23. Vernon Moody, upon receiving the trespass notices and visits from Woster and Goings, went to the BIA Pine Ridge Agency Office to visit with Cleve Her Many Horses about the trespass notices. Her Many Horses, who had succeeded Robert Ecoffey as BIA Superintendent at Pine Ridge, informed Moody that he was going to follow the previous decision of Robert Ecoffey that plaintiffs should continue to farm and that their leases were current and paid.

24. Vernon Moody talked to Diane at the Great Plains Regional Office in Aberdeen for instructions. She indicated that they did not have any cancellation notices so plaintiffs should continue to farm the leases.

25. A short time after June 3, 2013, plaintiffs were informed by the Superintendent that they should remove their belongings from the leases and cease any farming, which they did.

26. On July 9, 2013, plaintiff Vernon Moody received notice that his Lease 3 above had been canceled. See Exhibit 15 (first page) attached hereto and incorporated herein by reference.

27. Because of their inability to farm the leases that they had paid for in 2013, plaintiffs lost income in the amount of \$728,721.35. See Exhibit 16 attached hereto and incorporated herein by reference.

28. Plaintiffs in 2014 lost income in the amount of \$415,534.97 for the leases that they had been awarded and would have paid for but were kept from utilizing. See Exhibit 17 attached hereto and incorporated by reference.

29. Plaintiffs in 2015 lost income in the amount of \$392,323 for the leases that they had been awarded and would have paid for but were kept from utilizing. See Exhibit 18 attached hereto and incorporated hereby by reference.

CLAIM FOR RELIEF

30. Plaintiffs had contracts for the lease of lands held in trust by the United States on the Pine Ridge Indian Reservation in South Dakota. United States was the legal owner of the land covered by the leases. The leases were for a period of 5 years. The United States signed and, even more significantly, administered the leasing of the land encompassed within the leases in this matter. The United States breached the contracts entered into with plaintiffs by canceling the leases even though the leases were fully paid. The United States also unlawfully took plaintiff's property under the Fifth Amendment taking clause of the United States Constitution.

WHEREFORE, plaintiffs respectfully pray for judgment from this Court as follows in this action:

1. Judgment that defendant United States breached the contracts that it signed with

plaintiffs and took plaintiff's property without just compensation in violation of the Fifth Amendment to the United States Constitution.

2. Judgment for damages to be paid by the United States to plaintiffs in the amount of \$1,536,488.32 or such other amount supported by the facts of this case.

3. For all litigation costs, expenses, expert witnesses, and reasonable attorneys fees allowed by law.

4. For prejudgment and/or postjudgment interest.

5. For such other and further relief as the Court deems proper and just.

Dated January 21, 2016.

/s/ Terry L. Pechota

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