

In the District Court of the United States
Middle District of Florida
Orlando, Florida

Case No. 6:00-CV-###-ORL-YYY
In re: State in rem action,
Case no. 00-CA-1491-16-G

Charles Dewey Tobias, Jr.,
Petitioner,

vs.

In rem: alleged lien,
VAN E. O'NEAL,
Respondent.

NOTICE OF NON-ACCEPTANCE OF REMOVAL AND
PETITION TO REMAND CASE BACK TO STATE JURISDICTION

I, Charles Dewey Tobias, Jr, Petitioner herein, hereby petitions for dismissal and remand of this removal action that is defective pursuant to Rule 12(h)(3), Fed.R.Civ.P., and pursuant to Title 28 U.S.C. Sec. 1447(c), for lack of subject matter jurisdiction and other causes.

Federal Court Without Subject Matter Jurisdiction

(1) This case is an "in rem" action and is not removable from the state circuit court in that: (1) the state circuit court is in possession of the paper upon which this "in rem" action operates;

(2) This action involves "the legality of a tax assessment" and "right of possession of real property" in Seminole county of which the state circuit court has "exclusive original jurisdiction,"

and

(3) the person filing the paper alleging a lien has submitted to the state circuit court's jurisdiction by such filing.

(4) That the place for recording and the validity of the documents is a matter totally controlled by state law as there is no federal law that provides a remedy in the state.

Officer Acted Outside of Delegated Authority

(1) That Van E O'Neal acted outside scope of office, scope of employment, and his specific delegated authority by creating and filing the alleged "liens" in the public record in Seminole County records, therefore his actions are *ultra vires*.

(2) That "removal" depends on the certification that the "act" performed is within the scope of office and scope of authority of the officer in question.

(3) That the absence of the specific authority to perform the act makes it "personal".

(4) That there is no "discretionary authority" for the "officer" to commit the act in question.

(5) That the absence of specific authority removes and nullifies any claim of immunity from prosecution by the officer in question.

(6) That Van E. O'Neal was duly Noticed of this violation of specific delegated authority and willfully failed to correct his actions. A copy of said Notice is incorporated in the brief in support.

(7) This rule that agents are personally liable for their acts outside the scope of their authority has not been changed in any way over the years.

(8) That a federal agent who exceeds his delegated authority and commits a tort within a state may be sued in state court.

Petition Supported by Brief

This Petition is supported by "Petitioner's Brief in Support of Petition" filed herewith which is incorporated herein by reference as though fully reproduced herein.

Notice of Non-acceptance of Removal

The Petitioner hereby gives notice of non-acceptance of the alleged removal action for the following causes:

1. The Petitioner does not give consent for this action to be removed from the "exclusive original jurisdiction" in the state circuit court to the federal legislative court that is without injunctive powers for such removal or for the remedy hereto.
2. The Petitioner's state case is an action "in rem" and operates upon a paper that is in the possession of the Clerk of Circuit court in the Eighteenth Circuit of Florida.
3. The said paper involves the "legality" of an alleged "tax assessment" over which the state circuit court has "exclusive original jurisdiction."
4. The said paper also involves the "right of possession of real property" within County over which the state circuit court has "exclusive original jurisdiction."
5. The adjudication of this cause specifically requires an order from the state "circuit court" which is beyond the jurisdiction and power of the federal court to provide.

Dismissal of Removal Action

Pursuant to the foregoing causes for non-acceptance and additional causes set forth in "Petitioner's Brief in Support of Petition," this removal action must be dismissed and the case remanded back to the state circuit court in Case number 00-CA-1491-16-G forthwith.

Conclusion

Sufficient cause exists for this removal action to be dismissed and remanded back to the state circuit court as the only court of competent jurisdiction for lack of subject matter jurisdiction in the federal court.

Wherefore, pursuant to the foregoing and the causes set forth in the "Petitioner's Brief in Support of Petition," this federal court is without subject matter jurisdiction of the "res" and/or the issues of this action and the Petitioner hereby petitions for this removal action to be dismissed and remanded back to the state circuit court forthwith as a matter of law and subject matter jurisdiction.

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