

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,
Filer: Van E O'Neal,
Respondent.

PETITIONER'S BRIEF IN SUPPORT OF PETITION

State: Florida)
) SS. Affidavit by Charles Dewey Tobias, Jr.
County: Seminole)

I, Charles Dewey Tobias, Jr., your affiant herein, being an adult and qualified to testify and having first hand knowledge of the facts as set forth herein, state that this declaration is true and correct under the penalties of perjury under the laws of the United States of America, and state as follows:

1. That the Petitioner filed this case in the state circuit court, Case number 00-CA-1491-16-G on or about August 4, 2000, service was made by a qualified process server to Van E O'Neal, hereafter "O'Neal" or to a person qualified to receive service for O'Neal, on August 7, 2000, and the return of service was made timely to the Clerk of court.

2. That this case is an action "in rem" in the nature of a counterclaim against the paper titled "Notice of Federal Tax Lien," hereafter "the thing," filed in the County records department by the

entity defined thereon as " Van E. O'Neal" who, by filing such in the county records, made a claim to interest in property in Seminole County within the purview of the state circuit court, and "O'Neal" had opportunity to show cause within 20 days why such claim is valid and should not be canceled pursuant to Florida Statutes 713.21(4), and O'Neal is now in default of a response.

3. That "the thing" involves "the legality of a tax assessment" over which the state circuit court has "exclusive original jurisdiction" as set forth in the Florida Constitution, Article V, Section 20(c)(3), which states in pertinent part as follows:

SECTION 20

(C) After this article becomes effective, and until changed by general law consistent with sections 1 through 19 of this article:

(3) "Circuit courts....shall have exclusive original jurisdiction....in all cases involving legality of any tax assessment; and in all actions involving....right of possession of real property."

4. That, by filing "the thing," namely, the alleged "Lien," into the Seminole county records,"O'Neal" became subject to the jurisdiction of the state courts pursuant to Florida Statutes 48.193 (1)(a), (b) and (c), which states as follows:

48.193 Acts subjecting person to jurisdiction of courts of state.-

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

(a) Operating, conducting, engaging in, or carrying on a business venture in this state or having an office or agency in this state.

(b) Committing a tortious act within this state.

(c) Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.

5. That "O'Neal" did not make an appearance in this case and did not show cause why the alleged "lien" should not be canceled within the time prescribed by Florida Statutes 713.21(4).

6. That the U.S. Attorney or his assistant does not have first hand knowledge to give evidence for the purpose of showing cause why "the thing" should not be canceled of record.

7. That "O'Neal" is *not* being sued civilly as a defendant or prosecuted by this action and is, therefore, without standing to remove this action to the federal district court pursuant to Title 28 U.S.C. Secs. 1442(a)(1) and 1446(a) or (b).

8. That the Petitioner does not consent for this action to be removed from the state circuit court that has "exclusive original jurisdiction" of the issues.

9. That "the thing" is in the possession of the Clerk of the Eighteenth Circuit Court, in and for Seminole County, Florida, by voluntarily depositing "the thing" therein pursuant to Florida Statutes, Chapter 713.

10. That the state circuit court has exclusive jurisdiction of "the thing" in this action as previously ascertained by law at Florida Statutes 713.901 and not removable therefrom.

11. That "O'Neal" is named as the Respondent for the limited purpose of settling the issue of whether "the thing," namely, the alleged "lien," filed into the county records should or should not be canceled pursuant to Florida Statutes 713.21(4) providing opportunity to "show cause."

12. That the Petitioner herein relies upon the foregoing "exclusive original jurisdiction" as being the controlling law in relation to the courts, whether local, state or federal, and neither "O'Neal" (or his agent if represented) has given evidence that the sovereign Florida state has ceded the "exclusive original jurisdiction" of the state circuit courts to the district courts of the United States, and this case must be remanded back to the state circuit court for this cause alone.

13. That "the thing" remains in the Seminole County records and has not been removed therefrom by any lawful means to a records department in the federal courts to gain possession of "the thing" by the District Court of the United States.

14. That the foundation for this "in rem" action is in Florida Statutes requiring "an order from the circuit court of the county where the property is located," which is beyond the power of the District Court of the United States to provide in that the federal court does not have "exclusive original jurisdiction" over issues which "the thing" involves and all interference with the state court must be abstained from pursuant to the "Abstention Doctrine," and the provisions of law in the Constitutions for Florida and the United States of America, and/or Title 28 U.S.C. § 2283, and this case must be remanded back to the state circuit court for this cause alone.

15. That the foregoing issue of "the legality of any tax assessment" is an integral and inseparable issue of this case and is ever present in relation to "the thing" until the matter is resolved in the state circuit court that has "exclusive original jurisdiction" of said issue, and this case must be remanded back to the state circuit court for this cause alone.

16. That Title 28 U.S.C. § 2283 is a bar to interfering in a state court action without both personal and subject matter jurisdiction and a cause for an injunction that is only available from the Three-judge District Court pursuant to 28 U.S.C. § 2284, all of which are lacking for the alleged removal from the state circuit court.

17. That no case or controversy has been identified by "O'Neal" with subject matter that supersedes the state circuit court's "exclusive original jurisdiction" for this federal court to obtain subject matter and personal jurisdiction over "the thing" in this "in rem" action or the "real property" in Seminole County which is being affected by "the thing."

18. That the District Court's original jurisdiction as to "an Act of Congress providing for internal revenue" pursuant to Title 28 U.S.C. § 1340 has not been invoked to adjudicate an

internal revenue issue to establish a "tax liability" and no such court order has been claimed or entered into evidence from the court of competent jurisdiction as defined at Title 26 U.S.C. §§. 6096(b) and 9010(c) requiring a Three-judge District Court pursuant to Title 28 U.S.C. § 2284 to issue an injunction in relation to a tax liability.

19. That, pursuant to *Mitchell v. Maurer*, 293 U.S. 237 (1934), holding that, "federal courts are of limited jurisdiction means that litigants in them must affirmatively establish that jurisdiction exists and may not confer nonexisting jurisdiction by consent or conduct," has not affirmatively established that subject matter jurisdiction exists in this federal court and this court must remand this action back to the state court for this cause alone.

20. That, pursuant to the summons and Complaint delivered to Van E. O'Neal ,or person capable of accepting such, by an authorized process server, is in default on the opportunity to "show cause" as to whether "the thing" should be enforced or canceled pursuant to Florida Statutes 713.21(4) by evidence based upon fact, law and regulation.

21. That, if "the thing" filed by into the Seminole County records is not based upon fraud, had an opportunity to reveal the truth as to the facts, law and regulations upon which "the thing" is founded and substantiate the matter in the court of competent jurisdiction for a just resolution of this matter.

22. That the Demandant hereby gives administrative and/or judicial notice of the laws, constitutions, and court decisions above defined.

23. That this court is without subject matter jurisdiction and such is hereby challenged requiring this federal court to dismiss the alleged removal under Rule 12(h)(3), Fed.R.Civ.P., and remand this action back to the state circuit court as the court of competent jurisdiction.

Wherefore, pursuant to the foregoing causes, this court is without subject matter jurisdiction of the issues of this case and must cease and desist further delay and dismiss this removal action

pursuant to Rule 12(h)(3), Fed.R.Civ.P., and remand this case back to the state court from which it came pursuant to Title 28 U.S.C. § 1447(c).

Further your affiant, the Petitioner, sayeth naught.

Executed on this ____ day of _____, 2000.

Sign: _____
Charles Dewey Tobias, Jr.
c/o 1745 Markham Woods Road, near
Longwood, Florida state
Non-Domestic; PZC: 338

On this ____ day of September, 2000, Charles Dewey Tobias, Jr. personally appeared before me, and is () personally known to me, or () proved by valid identification, to be the man whose name is subscribed to the above instrument, and acknowledged to me that by his signature thereon he executed the instrument.

WITNESS my hand and official seal.

Signature _____
Notary Public
Type of ID _____
(seal)