1985 WL 3999
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United States District Court, D. North Dakota.

Dwight Coleman, et al., Plaintiffs,
v.
John R. Block, Secretary of Agriculture, et al., Defendants.

Civ. No. A1–83–47.
|
June 18, 1985.

Attorneys and Law Firms

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MEMORANDUM AND ORDER

Van SICKLE, Senior Judge.

MOTION BY JOE NELSON AND LOUISE NELSON TO FIND CONTEMPT AS TO

***1** a) John Wolf, III

b) Dean Sanders

c) Clinton Kennedy

d) Robert Hopper

e) Charles W. Shuman

f) John R. Block

g) Glenn Futch

This action involves a motion by Joe and Louise Nelson for the court to find the listed defendants in contempt of this court's order of February 17, 1984 (580 F. Supp. 194). A hearing on the merits was held on January 28–29, 1985. Defendants have moved to dismiss the action on the following grounds:

1) lack of subject matter jurisdiction;

2) lack of personal jurisdiction;

3) improper venue;

4) insufficiency of service of process;

5) insufficiency of process; and

6) failure to state a claim upon which relief can be granted.

In the alternative, defendants have moved for a change of venue to the Northern District of Texas. The plaintiffs oppose both of these motions.

MOTION TO DISMISS

1. Lack of Subject Matter Jurisdiction

Defendants argue that the damages requested by the plaintiffs 'are characteristic of a tort claim' and must therefore be brought under the Federal Tort Claims Act. For relief, the plaintiffs request

a) an order requiring the defendants to release income security to pay plaintiffs' family living and farm operating expenses in accordance with their Farm and Home Plan;

b) an order requiring defendants to release security for debt repayment;

c) costs and attorneys' fees;

d) award not less than $25,000 for pain, suffering, mental anguish and loss of reputation; and

e) $100,000 in punitive damages.

Federal courts have the inherent power to enforce their orders by fine or imprisonment. 18 U.S.C. § 401(3) (1976). In actions under civil contempt, the court may require a contemnor to pay a fine to compensate the complainants' actual loss; the court also has the option, and often the duty, to imprison a contemnor until compliance. In actions under criminal contempt, the court may impose remedial as well as punitive measures. Since this action is for a finding of civil contempt, punitive damages are not recoverable, unless conditioned on future non-compliance. Remedial relief, however, is allowable. To that extent, the provision of the Federal Tort Claims Act are irrelevant.

Defendants are correct in their assertion that punitive damages cannot be recovered in this action under civil contempt. This claim for relief must therefore be stricken. On the other hand, subject matter jurisdiction exists for the purpose of remedial relief as to the other claims for relief.

Defendants also argue that subject matter jurisdiction does not exist because the plaintiffs have not exhausted their administrative remedies 'with regard to the denial of their request to release the 1984 wheat crop to pay for family living and farm operating expenses.' Defendants are incorrect. This court has jurisdiction over any claims of failure to comply with the February 17, 1984, permanent injunction. The issue of non-compliance has nothing to do with the appeal process or the merits of a possible appeal. Indeed, part of the injunction allegedly violated requires the defendants to inform borrowers of their right to appeal a decision to foreclose. In situations where a borrower received no notice of his right to appeal, sustained injury as a result, and then initiated an appeal, it is beyond reason to hold that the remedy for the violation of the order is contingent on a completion of the appeal process. Courts have the inherent power to enforce their orders, regardless of the status of collateral matters.

2. Lack of Personal Jurisdiction

***2** Defendants John Block and Charles Shuman are named defendants in this action. Block and Shuman were ordered by this court to give notice to their agents, subordinates and employees of the contents of the court's temporary and permanent injunction. As employees of the FmHA, the other alleged contemnors are bound by the terms of the injunction. Fed. R. Civ. P. 65(d). Defendants spend some effort arguing that this court has no personal jurisdiction over the defendants or their employees who are outside of the District of North Dakota, and that this court is powerless to enter a judgment binding on such individuals. This argument is without merit.

> An order granting injunctive relief is enforceable by the District Court's power of contempt.
>
> . . .
>
> It is no defense to a charge of contempt that the conduct alleged to be in violation of an injunction was committed outside the court's territorial jurisdiction. A decree of a Federal District Court is binding throughout the United States.
>
> 19 Fed. Proc., L. Ed. Injunctions and Restraining Orders §§ 47:145 and :146 (1983) (footnotes deleted), citing Leman v. Krentler-Arnold Hinge Last Co., 284 U.S. 448 (1932).

This court therefore has personal jurisdiction over the alleged contemnors.

3. Improper Venue

Defendants admit that there is proper venue if this action is for contempt. They argue, however, that the type of relief requested does not fall under a contempt action. As mentioned above, the type of relief requested has been limited to remedial measures. Venue is therefore proper.

4. Insufficiency of Service of Process

At the time the defendants submitted their brief, they had not received personal service. According to plaintiffs' response brief, the defendants have since been personally served with a copy of the court's order, plaintiffs' motion for contempt, and plaintiff's affidavit in support of the motion.

5. Insufficiency of Process

Defendants argue that even with personal service, the service of process is insufficient under Rule 4 of the Rules of Civil Procedure, which limits out-of-state service to the prerequisites of the North Dakota long-arm statute. The service of process requirements of Rule 4, however, are superseded by Rule 65(d) and 18 U.S.C. § 401. As mentioned above, this court has the power to enforce its order outside the District of North Dakota. The employees of the FmHA are bound by this court's injunction. Process in therefore sufficient.

6. Failure to State a Claim

This court has the power to find persons in contempt of the February 17th order. Thus the application for contempt states a claim upon which relief can be granted. This court has jurisdiction over the FmHA officials and employees listed as alleged contemnors. Whether the conduct of these individuals constituted a violation of the court's order is a question of fact. Summary disposition is therefore not appropriate.

MOTION FOR CHANGE OF VENUE

In the alternative to the motion to dismiss, defendants move for a change of venue to the Northern District of Texas. Defendants argue that the case could be handled more expeditiously in Texas on the grounds that the plaintiffs and most of the defendants reside in that district. Defendants admit that the contempt action is properly venued in this district. This court issued the injunction which plaintiffs claim has been violated. There is jurisdiction over the subject matter and over the alleged contemnors. Therefore a change of venue, in the sense of transferring this case to another court in the Northern District of Texas, is not warranted.[1]

ISSUE ON THE MERITS

***3** The relevant facts in this case are few. Joe Nelson (Nelson) received a FmHA operating loan in 1983 in the amount of $40,000.[2] As is required by law, Nelson and the county supervisor developed and signed a farm and home plan which covered the period between April 6, 1983, and December 21, 1983. In September of 1983, Nelson received an additional loan in the amount of $22,000 for the purpose of planting an additional 500 acres of wheat (1984 crop). The proceeds from the wheat crop were intended to go to the retirement of this fall loan. In the event that Nelson made enough on this crop to pay off the loan, the remainder of the proceeds presumably would have been released to Nelson for living and operating expenses. Unfortunately, the 1984 wheat crop yield was only 8 bushels per acre (instead of 20), or approximately $16,000 for the 500 acres. As a result, the county supervisor insisted that all of the proceeds be applied to the $22,000 loan debt, thus preventing the release of the proceeds for family living or farm operating expenses.

Petitioner argues that defendant's refusal to release the proceeds is in contravention of this court's permanent injunction. The injunction provides that certain procedural steps must be taken before terminating 'the living and operating allowance previously determined in the administration of any existing loan . . ..' Essential to the administration of any FmHA loan are the farm and home plans developed and signed by the FmHA and the borrower. Thus any provision in an existing farm and home plan falls directly within the terms of this court's permanent injunction. In this case, the 1983 farm and home plan expired on December 21, 1983. It is apparent that the initial $40,000 loan was expended for operating expenses. The FmHA denied further financing on April 6, 1984. Subsequent to the expiration of the 1983 plan, the FmHA discontinued living and operating allowances by refusing to allow proceeds to be used for this purpose. Plaintiffs object to FmHA's refusal to release the proceeds from the sale of grain derived from the $22,000 loan.

Plaintiffs argue that FmHA is refusing to release proceeds from the sale of secured property unless there is a planned release in the current farm and home plan. This may well be true, but the relevant portion of the injunction merely prohibits the FmHA from terminating the living and operating allowances 'previously determined' in the administration of an existing loan. In this case, plaintiffs previously agreed to the proceeds being applied to the loan. As such, the terms of the injunction have not been violated.

Plaintiffs also argue that allowing the FmHA unfettered

discretion in regards to the creation, approval, and implementation of subsequent farm and home plans would result in the circumvention of this court's permanent injunction. Although this may also be true, it is clear that the wording of the injunction—i.e., the language referring to the termination of living and operating allowance previously determined in the administration of any existing loan—is directed at existing farm and home plans. The terms of the injunction do not prohibit modification of the loan program as to subsequent farm and home plans. If a general wrong to the Coleman class is committed by FmHA policy as to refusal to develop subsequent farm and home plans, the proper remedy is to modify the permanent injunction.[3] The motion for contempt must therefore be denied.

***4** Based on the entire file, IT IS ORDERED

1) that plaintiffs' claim for punitive damages is dismissed;

2) that defendants' motion to dismiss for lack of subject-matter jurisdiction, for lack of personal jurisdiction, for improper venue, for insufficiency of service of process, for insufficiency of process, and for failure to state a claim is DENIED;

3) that defendants' motion for change of venue is DENIED; and

4) that plaintiffs' motion to find defendants in contempt is DENIED.

Dated at Bismarck, North Dakota this 17 day of June, 1985.

All Citations

Not Reported in F.Supp., 1985 WL 3999

Footnotes

1 More than likely the defendants' motion was intended to change the location of the hearing while retaining this court. Given the court's tight schedule at the time of the hearing, the fact that the plaintiffs were willing to travel to this district, and few witnesses needed to be called in this matter, I find that defendants did not carry their burden of demonstrating the need for a change of location of the hearing.

2 Since 1979, Nelson has had several loans from FmHA. Although Nelson has been delinquent since 1980, he has paid off 5 of the loans.

3 It may also be necessary for the injunction to include a provision as to termination of living and operating expenses during the appeal period following denial of subsequent financing. See Court's Conclusion No. 1, 580 F. Supp. 194, 208 (D. N.D. 1984) ('The FmHA mortgagor is entitled to receive notice of, and a chance to present evidence before the county supervisor acts to liquidate the mortgage and freeze the income stream.') (emphasis added). The court appreciates the possibility that FmHA regulations or loan policy may result in the 'starving out' of delinquent borrowers. It is possible that such a situation constitutes a de facto negation of a borrower's right to deferral as well as a negation of his right to appeal.

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