

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
FEB 16 2016

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN PARKS TROWBRIDGE, JR., et al,

Defendants.

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CIVIL ACTION NO.: 9:14-CV-138

BY
DEPUTY _____

**OBJECTION TO
REPORT AND RECOMMENDATION ON
MOTION FOR SUMMARY JUDGMENT
AND MOTIONS TO DISMISS**

**I.
Background**

John Parks Trowbridge, Jr. ("Trowbridge") on September 14, 2015, properly challenged the jurisdiction of the Court by demanding the constitutional authority that gives the Court the capacity to take territorial and personal jurisdiction and enter a judgment, order, or decree in favor of the United States arising from a civil or criminal proceeding regarding a debt, in Tyler County, Texas (Dkt. # 58)—to which challenge of jurisdiction the United States has failed to respond for the last 155 days.

Trowbridge on September 30, 2015, filed a demand for dismissal with prejudice (Dkt. # 59), citing the United States' failure to respond to the aforesaid September 14, 2015, challenge of territorial and personal jurisdiction, and alleging the Court's lack of capacity, as given by the Constitution, to take territorial and personal jurisdiction and enter a judgment, order, or decree in favor of the United States arising from a civil or criminal proceeding regarding a debt, in Tyler County, Texas—to which demand for dismissal the United States failed to file an opposition.

II. Discussion and Analysis

Has the movant demonstrated the absence a genuine issue of material fact or has the non-movant demonstrated a genuine issue of material fact

The Report and Recommendation on Motion for Summary Judgment and Motions to Dismiss (Dkt. #60) (the “Report and Recommendation”) contains the following finding and recommendation, respectively, that “[T]he undersigned finds that there are no genuine issues of material fact and the United States is entitled to judgment as a matter of law,” page 10, and “It is hereby recommended that the United States’ Motion for Summary Judgment (doc. # 42) be granted and Trowbridge’s Motions to Dismiss (doc. #46 and doc. #59) be denied,” *id.*

The Report and Recommendation, however, in arriving at the above conclusion and making the above recommendation, fails to consider within its pages, several material facts and material failures on the part of the United States; specifically:

1. the fact of Trowbridge’s September 14, 2015, demand for the constitutional authority that gives the Court the capacity to take territorial and personal jurisdiction and enter a judgment, order, or decree in favor of the United States arising from a civil or criminal proceeding regarding a debt in Tyler County, Texas;
2. United States’ failure to respond to said September 14, 2015, challenge of jurisdiction and demonstrate the territorial and personal jurisdiction of the Court;
3. the fact that Trowbridge’s September 30, 2015, motion to dismiss alleges the Court’s lack of capacity, as given by the Constitution, to take territorial and personal jurisdiction and enter a judgment, order, or decree in favor of the United States arising from a civil or criminal proceeding regarding a debt in Tyler County, Texas; and
4. United States’ failure to oppose the September 30, 2015, motion to dismiss.

Trowbridge's September 14, 2015, demand for the constitutional authority that gives the Court the capacity to take territorial and personal jurisdiction and enter a judgment, order, or decree in favor of the United States arising from a civil or criminal proceeding regarding a debt, in Tyler County, Texas, evidences a genuine issue of material fact.

Title 28 U.S.C. § 3002 provides, in pertinent part:

As used in this chapter:

... (8) 'Judgment' means a judgment, order, or decree entered in favor of the United States in a court and arising from a civil or criminal proceeding regarding a debt.

The genuine issue of material fact, accurately stated, is: whether the Constitution gives the Court the capacity to take territorial and personal jurisdiction over real property and Trowbridge, respectively, and enter a judgment, order, or decree in favor of the United States arising from a civil or criminal proceeding regarding a debt, in Tyler County, Texas—or, alternatively, whether Tyler County, Texas, is situate within the geographic area in which the Constitution gives the Court the capacity to take territorial and personal jurisdiction and enter a 28 U.S.C. § 3002(8) judgment.

The Report and Recommendation states, on page 8, that "*The United States has jurisdiction pursuant to 28 U.S.C. § 1345 which explicitly grants jurisdiction for civil suits commenced by the United States.*"

That 28 U.S.C. § 1345 explicitly grants the United States jurisdiction for civil suits commenced by the United States is not sufficient to vest jurisdiction in this Court; to wit:

So, we conclude, as we did in the prior case, that, although these suits may sometimes so present questions arising under the Constitution or laws of the United States that the Federal courts will have jurisdiction, yet the mere fact that a suit is an adverse suit authorized by the statutes of Congress is not in and of itself sufficient to vest jurisdiction in the Federal courts. *Shoshone Mining Co. v. Rutter*, 177 U.S. 505, 513 (1900).

For the United States to take the real property (the “Real Property”) in Tyler County, Texas, to which Trowbridge holds title,¹ the Court must exercise territorial jurisdiction over the Real Property and personal jurisdiction over Trowbridge.

Hornbook law, however, provides that no court of the United States, such as the Court, can take jurisdiction unless the capacity to do so is given by the Constitution; to wit:

It remains rudimentary law that “[a]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. . . . To the extent that such action is not taken, the power lies dormant.” *The Mayor v. Cooper*, 6 Wall. 247, 252, 18 L.Ed. 851 (1868) (emphasis added); accord, *Christianson v. Colt Industries Operating Co.*, 486 U.S. 800, 818, 108 S.Ct. 2166, 2179, 100 L.Ed.2d 811 (1988); *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379-380, 101 S.Ct. 669, 676-677, 66 L.Ed.2d 571 (1981); *Kline v. Burke Construction Co.*, 260 U.S. 226, 233-234, 43 S.Ct. 79, 82-83, 67 L.Ed. 226 (1922); *Case of th [sic] Sewing Machine Companies*, 18 Wall. 553, 577-578, 586-587, 21 L.Ed. 914 (1874); *Sheldon v. Sill*, 8 How. 441, 449, 12 L.Ed. 1147 (1850); *Cary v. Curtis*, 3 How. 236, 245, 11 L.Ed. 576 (1845); *McIntire v. Wood*, 7 Cranch 504, 506, 3 L.Ed. 420 (1813). (Underline-emphasis only added.) *Finley v. United States*, 490 U.S. 545, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989).

What is conspicuously missing from the United States’ pleadings and the Report and Recommendation, is that which has given rise to the genuine issue of material fact: whether there is a provision of the Constitution that gives the Court the capacity to take territorial and personal jurisdiction in Tyler County, Texas.

The geographic area in which the Government—of which the United States and the Court are a part—has the capacity to take territorial and personal jurisdiction can be no greater than, and is equal to, the geographic area in which the Constitution confers upon Congress power of territorial and personal legislation.

¹ The United States and United States Magistrate Judge Keith F. Giblin are estopped from denying that Trowbridge holds title to the Real Property; to wit: “Ideal Abilities holds title to the Tyler County Property merely as a nominee of John Parks Trowbridge Jr.” John Malcolm Bales and Joshua David Smeltzer, United States’ Rule 26(f) Report, Dkt. #23, p. 3.

The Constitution confers upon Congress power of territorial and personal legislation only at Articles 1 § 8(17) and 4 § 3(2).

The full extent of the geographic area described in and comprehended by Articles 1 § 8(17) and 4 § 3(2) of the Constitution consists of “Territory or other Property belonging to the United States,” *id.*

The geographic area occupied by the body politic of Tyler County, Texas, wherein the Real Property is located and Trowbridge resides, is situate without “Territory or other Property belonging to the United States,” *id.*

For the United States to take the Real Property, the Court would have to extend its territorial and personal jurisdiction beyond the boundaries fixed by the Constitution at Articles 1 § 8(17) and 4 § 3(2), into geographic area occupied by the several commonwealths united by and under authority of the Constitution and admitted into the Union, of which Texas is one.

The Supreme Court, in *Pennoyer v. Neff*, 95 U.S. 714, 722 (1878), effectively declares that, in respect of Trowbridge and the Real Property, Texas possesses exclusive personal and territorial jurisdiction; to wit:

The several States of the Union are not, it is true, in every respect independent, many of the right [*sic*] and powers which originally belonged to them being now vested in the government created by the Constitution. But, except as restrained and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is that every State [of the Union] possesses exclusive jurisdiction and sovereignty over persons and property within its territory. . . .

Pennoyer operates to confirm the aforementioned genuine issue of material fact.

Pennoyer explains why the United States (a) failed to respond to Trowbridge’s September 30, 2015, demand for the constitutional authority that gives the Court the capacity to take territorial and personal jurisdiction and enter a judgment, order, or decree in favor of the

United States arising from a civil or criminal proceeding regarding a debt, in Tyler County, Texas, and (b) failed to oppose Trowbridge's September 30, 2015, demand for dismissal.

The conclusions and recommendation (the "Conclusions and Recommendation"), in Part IV of the Report and Recommendation, stand in contradiction to blackletter law, i.e., *Shoshone*, *Finley*, and *Pennoyer*, *supra*, page 3, 4, and 5, respectively, material to this lawsuit.

Because the Report and Recommendation cites no affirmative showing in the record of the Court's territorial and personal jurisdiction in Tyler County, Texas, it is not possible to know how the inference was drawn that the Court has the capacity, as given by the Constitution, to take such territorial and personal jurisdiction.

The Report and Recommendation in Part II, Legal Standard, beginning on page 3 thereof, provides, among others, the following authorities from the Supreme Court of the United States and United States Court of Appeals for the Fifth Circuit re summary judgment:

The [summary-judgment] movant's burden is only to point out the absence of evidence supporting the nonmoving party's case. *Stults v. Conoco, Inc.*, 76 F.3d 651, 655 (5th Cir.1996). Once, [sic] the moving party makes a properly supported motion for summary judgment, the nonmoving party must look beyond the pleadings and designate specific facts in the record showing that there is a genuine issue for trial. *Id.* Neither "conclusory allegations" nor unsubstantiated [sic] assertions" will satisfy the nonmovant's burden. *Id.*

Summary judgment is inappropriate if the evidence before the court, viewed as a whole, could lead to different factual findings and conclusions. *Honore v. Douglas*, 833 F.2d 565 (5th Cir.1987). The district court must look to the full record, including the pleadings, affidavits, and depositions. *Williams v. Adams*, 836 F.2d 958, 961 (5th Cir.1988). Under this standard, fact questions are considered with deference to the nonmovant. *Reid v. State Farm Mutual Automobile Insurance Co.*, 784 F.2d 577, 578 (5th Cir.1986). The evidence of the nonmovant is to be believed and all inferences are to be drawn in his favor. *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986). The Court resolves factual controversies for purposes of summary judgment in favor of the nonmoving party, but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts. *Little v. Liquid Air Corp.*, 37 F.3d at 1075 [5th Cir. 1994]. . . .

When the above citations are reconciled with the record of this lawsuit: None work in favor of the movant, the United States, and each and every one works in favor of the non-movant, Trowbridge, and corroborates the discrepancies in the Report and Recommendation cited *supra* and confirms that the United States is not entitled to summary judgment.

The Report and Recommendation also makes certain patently false allegations, or cites certain patently false allegations, which are inapposite to the matter of whether the United States is entitled to summary judgment and for which there exists no evidence in the record of this or any other case; e.g.: “*Trowbridge’s basis for lack of jurisdiction is that he is a citizen of Texas but not of the United States*” (pp. 8–9), and “*Trowbridge’s argument that he is not a citizen of the United States is equally frivolous*” (p. 9).

III. Conclusion and Prayer

The United States has failed to demonstrate the absence of a genuine issue of material fact—and Trowbridge has demonstrated a genuine issue of material fact: whether the Constitution gives the Court the capacity to take territorial and personal jurisdiction over the Real Property and Trowbridge, respectively, and enter a judgment, order, or decree in favor of the United States arising from a civil or criminal proceeding regarding a debt, in Tyler County, Texas.

The United States has failed to produce any legal authority that shows that Texas no longer possesses exclusive jurisdiction and sovereignty over persons and property within its territory, *Pennoyer, supra*, page 5, and shares personal and territorial jurisdiction with the United States within the exterior limits of Texas—evincing the above genuine issue of material fact.

The Report and Recommendation cites numerous facts from the record of this action in arriving at the Conclusions and Recommendation—facts, however, which Trowbridge either

confessed or admitted in the beginning, or would now, because they are inapposite, subordinate, and immaterial to the instant overarching jurisdictional question, the above genuine issue of material fact; to wit:

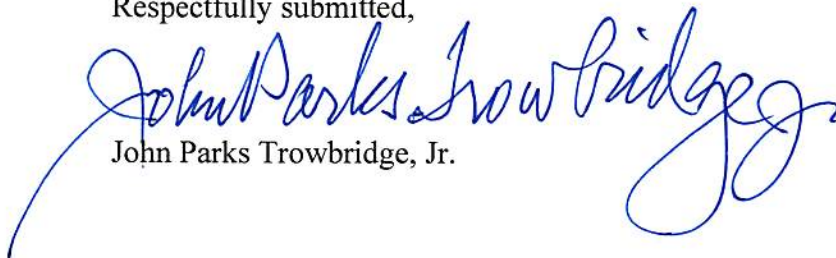
Defendant hereby confesses the truth of the facts recited in the instant Complaint and admits the apparent truth of Plaintiff's allegations and right of action . . .
"Defendant John Parks Trowbridge, Jr.'s Amended Answer," Dkt. #10, p. 1.

In terms of materiality to the question of whether the United States is entitled to summary judgment, the Report and Recommendation's failure to include in Part III, Discussion and Analysis, the material facts and material failures on the part of the United States enumerated *supra* in paragraphs 1-4, page 2, and genuine issue of material fact, *supra*, pages 3 and 7, supersedes adversely the contents of the Report and Recommendation that led to the Conclusions and Recommendation.

For the reasons stated herein, Trowbridge respectfully objects to the Report and Recommendation, demonstrates the above genuine issue of material fact, and prays the Court that the Court deny United States' motion for summary judgment and grant Trowbridge's demand for dismissal with prejudice of this action for lack of constitutional authority that gives the Court the capacity to take territorial and personal jurisdiction and enter a judgment, order, or decree in favor of the United States arising from a civil or criminal proceeding regarding a debt, in Tyler County, Texas, in keeping with *Shoshone*, *Finley*, and *Pennoyer*.

Date: February 16, 2016

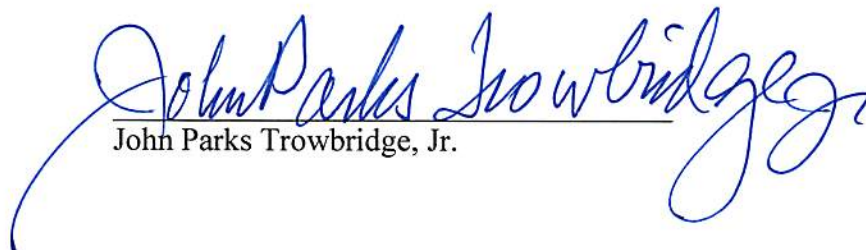
Respectfully submitted,


John Parks Trowbridge, Jr.

CERTIFICATE OF SERVICE

I certify that on February 16, 2016, the foregoing OBJECTION TO REPORT AND RECOMMENDATION ON MOTION FOR SUMMARY JUDGMENT AND MOTIONS TO DISMISS was served via United States Mail, postage pre-paid, as follows:

Joshua Smeltzer
Department of Justice, Tax Division
717 N. Harwood, Suite 400
Dallas, Texas 75201


John Parks Trowbridge, Jr.