

REAL ESTATE CLAIMS BOARD
OFFICE OF THE QUARTERMASTER GENERAL

December 28, 1925.

CLAIM NO. 97

J. J. Gentry, }
Asheville, N. C. }

The Board proceeded to the consideration of the claim of J. J. Gentry of Asheville, N.C. for \$73.92 for use and occupation of 55 acres of land at former Camp Wedgworth, S. C., from July 1, 1919 to August 19, 1919.

The facts in this case are substantially as follows:-

On July 18, 1919 a lease was executed between the United States, represented by Louis B. Koop, Captain, Q.M.C., Contracting Officer, and J. J. Gentry for a tract of land containing 55 acres at Camp Wedgworth, S.C., for the fiscal year ended June 30, 1919, at a rental of \$45.85 per month. Rent was paid to the lessor under the lease to and including June 30, 1919.

On June 21, 1919 Fred L. Ackerson, Captain, Q.M.C., Utilities Officer, served a notice of renewal of the lease upon the lessor, J. J. Gentry, as follows:-

"You are notified that the United States of America does hereby exercise the privilege of renewal contained in said lease, and does hereby renew same for the Government fiscal year 1920, namely, July 1st, 1919 to June 30, 1920, or if the said renewal privilege does not grant the right of renewal to June 30, 1920, then to such intermediate period nearest to June 30, 1920, as is granted in said lease."

No new instrument of renewal was executed.

On July 10, 1919 Capt. Ackerson wrote the lessor, J. J. Gentry, withdrawing the notice of renewal and cancelling the lease effective July 1, 1919, as follows:-

"I am in receipt of instructions from the real estate section in Washington to notify you that the Government desires to withdraw renewal notice covering the 55 acres of your property at Camp Wedgworth, and to cancel said lease as of July 1st, 1919.

If this is satisfactory to you, I request that you advise me in writing that you will cancel this lease and relieve the Government from all charges as a result of said cancellation."

Paragraph 8 of the issue for the March 1 year ended June 30, 1919 contained the following provisions authorizing the Government to relinquish the premises at any time during the term of the lease:-

"8. That the lessee renounces the right to quit, relinquish and give up the said premises at any time within the period for which this lease is made or may be renewed, by giving to the said lessor or agent thirty days' notice in writing.

In the records of this case there is an affidavit of the Claimant, J. J. Gentry, to the effect that the United States continued to use the 66 acres for a sewage disposal plant until after August 10, 1919, the date to which rent is claimed. He further swears in said affidavit that owing to the fact that the Government was still using said tract he did not use or occupy it for any months later.

The ovements in the affidavit of J. J. Gentry are confirmed by affidavit of F. Gentry Harris, the Claimant's attorney, who, in affidavit was employed in a civilian capacity at Camp Radnorville, and who swears of his own knowledge that the Government used the land for a sewage disposal system until some months after August 10, 1919. The Claimant has also furnished the affidavit of Frank Hodges, the purchaser of Camp Radnorville, who swears of his own knowledge that the Government used the land for the purpose referred to during the demobilization of the Camp, until late in the year 1919 and certainly until August 10, 1919, and that the Claimant did not occupy or use the said tract during the year 1919.

During the World War the Government constructed on the above land a sewage tank of two and one-half million gallons capacity, together with sewer lines leading from the main camp site. This sewage tank only occupies a very small portion of the 66 acres.

The records of the War Department show that another claim was heretofore made by J. J. Gentry for damage to building owned by him on the land involved in this claim and that on July 24, 1919 a Land Board of 66 acres investigated and reported thereon, recommending payment in the sum of \$40,000. Payment of the said sum was made to Mr. Gentry by C. E. Gray, Major, G.S.C., on voucher #2310, Army accounts of November, 1919. Attached to said report is a release executed by J. J. Gentry, which report and release is also attached to the voucher. This release purports to apply only to the 27.61-acre tract owned by J. J. Gentry, providing a part of the 1920-24 taxes levied by the United States from the City of Spartanburg on January 26, 1925, but apparently the release was intended to extend to the damage to the 66-acre tract also, inasmuch as damage to the land from the sewage tank and sewer lines therein, and there appears to have been a mistake of fact in the preamble to said release in referring only to the 27.61 acre tract. This release, in addition to releasing the United States, also releases the City of Spartanburg and Frank Hodges, the purchaser of Camp Radnorville. The last paragraph of said release reads "this release does not include rents due me by the U. S. Government or the City of Spartanburg."

A copy of a minutely worded release was furnished by the purchaser, Frank Rodgers, as required in the Contract of sale to him dated July 1, 1919, the original of the release, according to the records of the War Department, having been transmitted to the Auditor for the War Department (now the General Accounting Office). That release was executed on the same day as the release above referred to, but that release apparently only was intended to apply to the \$7,41-dollor tract and not the land involved in this claim.

There is another release attached to the said report of the Local Board of officers and the voucher referred to, which was executed by J. J. Conroy on July 24, 1919 in contemplation of the payment of \$40,00 for damages to building, the said release covering the 66-acre tract involved in this claim. The following is an excerpt from said release:--

"I, J. J. Conroy, * * * agree to accept the sum of \$40,00 in full for all damages to said land by reason of the occupancy of said land by troops, erection of buildings thereon, cutting of timber, laying of roads, water pipes and sewers, construction of trenches and rifle ranges or any other act of the Government, and

herby release the Government of the United States from any and further obligations and responsibility for the said land from this date, but not including any subsequent damage. If the Government remains in possession and not effect removal of its force of said land."

It appears from the release that it was the intention of the latter release of J. J. Conroy to reserve claim for further occupancy after July 1, 1919 and to release the Government from all other damages.

The following paragraphs are quoted from the certificate that the president of the Local Board of officers attached to and made a part of the report above referred to:--

"In the matter of reappropriation as to future occupancy, while the adjustment was in progress, a notice was sent to the owner, J. J. Conroy, by the Quartermaster Department, calling for removal of the house. It is believed that this was in error as the land would not be occupied by the Government, as the main camp had been sold to Mr. Rodgers and it was up to him to maintain the sewer disposal plant on the said Conroy land.

This land was not a part of land in the original Camp site, but was leased subsequent to acquiring the original camp and therefore was not included as a part sold to Rodgers except, it is understood by me, that Rodgers was to have the sewer system and therefore would acquire this plant and would not be required to pay damages on those buildings which were on another part of the 66 acres.

I do not believe that the Government retained in possession after July 24, 1919 and were exercising no possession on that date."

The Board has investigated the sale of Camp Hodgsworth and finds that that camp, along with twelve other National Army Campments, were advertised for sale in the early part of 1919. The Specifications of Sale required, among other things, that the purchaser either remove the sewer and sewage disposal plants or obtain the consent of the owners of the land to permit them to remain thereon. Attached to the Specifications was a description of the improvements on Camp Hodgsworth which gave a description of the sewer lines on the main Camp Site and the septic tank on the 56-acre tract involved in this claim. It also referred to another septic tank which had been constructed for the Base Hospital area and stated that tank had been abandoned, as the Base Hospital sewer system had been connected with the main camp sewer system.

It appears that Frank Hodges submitted a proposal on April 8, 1919 which did not entirely conform with the Specifications of sale in that he purported to limit it to the improvements on 1368.84 acres of land leased from the City of Spartanburg, in which the 56-acre tract involved in this claim and certain other lands incidentally leased was not included, notwithstanding that the advertisements and Specifications of Sale contemplated the sale of the improvements on the entire camp. The improvements were sold to Mr. Hodges and on July 1, 1919 a contract of sale was executed between him and the United States, with which he furnished a bond for the faithful performance of the contract in the penal sum of \$25,000.00.

The contract of sale to Mr. Hodges in the preamble and also in the body of the contract refers to the improvements on the 1368.84-acre tract, but it also refers to the sewage disposal systems and other accessories as being included in the sum and further binds the purchaser to transfer the same to the City of Spartanburg, as follows:-

"(1) In conveyance to the City of Spartanburg, S. C., without expense to the City of Spartanburg, S. C., the sewer system covered by this instrument as soon as the City of Spartanburg, S. C., can accept and maintain same."

The septic tank and sewer lines on the 56-acre tract, although not on the main Camp Site of 1368.84 acres, were an essential part of the sewer system, as all the effluent flow through the tank and sewer lines on the 56-acre tract. Therefore this contract of sale, if not expressly, certainly by implication, transferred to Hodges the septic tank and sewer lines on the 56-acre tract involved in this claim. So too, after the contract of sale, was made by the Government of the 56-acre tract, other than the septic tank and sewer lines located thereon.

The contract of sale further obligated the purchaser -

"(d) To save the Government harmless from any and all claims for rental or otherwise, arising out of the purchase or use of said lands after June 30, 1919."

Therefore, clearly the purchaser of the Camp, Frank Hodges, obligated himself to pay any claims for rent incident to the sewer lines or the septic tank on the 55-acre tract.

The purchaser, Frank Hodges, also agreed in the said contract of sale to give the Government the further use of the Base Hospital, provided the Government did not use it beyond June 30, 1922, the records of the War Department showing that use thereof was discontinued before that time. Obviously the sewer lines and the septic tank were required in the use of the Base Hospital and Mr. Hodges could also be held by the United States under this provision of the contract of sale to pay the rental on the 55-acre tract owned by Mr. Gentry and such other part of the said area as the Government might be obligated to pay rent on.

The purchaser, as above stated, was required under the contract of sale to obtain releases from the land owners of all claims for damages to land and property within the 1356.84 acres and also furnished certain releases, among which was one from J. J. Gentry as to the 27.41-acre tract owned by him, which release is the second one above referred to.

Report of survey on the present claim by Henry S. Wolfe, 1st Lieutenant, C. E., dated April 27, 1923, recommends that the claimant be paid the sum of \$75.92 for the use and occupancy of land from July 1, 1919 to August 19, 1919, being at the rate of rental stipulated in the lease above referred to.

It appears from the facts in this case that the Government did use the sewer line and septic tank on the 55-acre tract owned by the claimant and involved in the present claim for at least the period covered by this claim, namely from July 1, 1919 to August 19, 1919, and if compensation is payable for the use and occupation, the rental in the lease between J. J. Gentry and the United States, which expired June 30, 1919, should be adopted for that purpose.

RECOMMENDATION

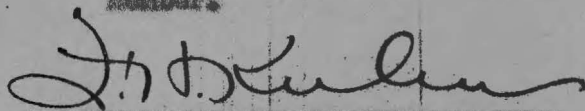
As the sewer lines and septic tank on the lands involved in the present claim were sold to Frank Hodges under the contract of sale dated July 1, 1919, and as the purchaser of these utilities was obligated by the contract to pay the rental of lands on which the improvements sold were located, it is recommended that Mr. Frank Hodges of Spartanburg, S. C., and the surety of his bond be called upon to pay or defend this claim under paragraph (d) of the contract of sale quoted above.

REAL ESTATE CLAIMS BOARD.

By:

F. J. WILBY,
Major, U.S.C.,
Chairman.

H. E. BRADY,
1st Lieut., U.S.C.,
Member.



J. H. KUHN,
2nd Lieut., U.S.C.,
Recorder.

APPROVED:

By order of the Quartermaster General:

JOHN T. KNIGHT,
Brigadier General, U.S.C.,
Chief of Construction Service.

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