No. 12-10-00021-CV and No. 12-10-00050-CV

IN THE COURT OF APPEALS
FOR THE TWELFTH DISTRICT OF TEXAS
AT TYLER

THOMAS D. SELGAS AND MICHELLE L. SELGAS,

Appellants,

v.

HENDERSON COUNTY APPRAISAL DISTRICT,

Appellee.

From the 173rd Judicial District Court, Henderson County, Texas
Trial Court Cause Nos. 2008A-813, 2008A-814
The Honorable Dan Moore Presiding

APPELLEE'S BRIEF

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

The Appellants' Brief correctly identifies the parties and counsel in this matter.

REQUEST FOR ORAL ARGUMENT

Honestly, this case does not merit oral argument. However, in the event the court is inclined to grant the Appellants' (Selgases) request for oral argument, the Appellee, Henderson County Appraisal District (HCAD), also requests the opportunity to present oral argument.

TABLE OF CONTENTS

PAGE

INDEX OF AUTHORITIES

PAGE

CASES

CONSTITUTIONS

STATUTES

STATEMENT OF THE CASE

The statement of the case as phrased by the Appellants (Selgases) is, as is most of Selgases' brief, misleading. This case is not brought "to construe whether the price paid for a piece of real property in an arms-length transaction is the 'Market Value'." It is brought to attempt to establish that the United States, and presumably derivatively the Henderson County Appraisal District, should be using gold dollars as opposed to Federal Reserve Notes for all economic transactions and standards of value. The Selgases phrase the argument as a challenge to the appraised value of this property under Chapter 42 of the Texas Property Tax Code. The trial court granted summary judgment and no evidence summary judgment in favor of HCAD.

ISSUES PRESENTED

1. Did the trial court properly grant summary judgment in favor of HCAD?

2. Did the trial court properly grant no evidence summary judgment in favor of HCAD?

3. Is the proper standard for units of appraisal and other economic transactions in this country the Federal Reserve Note?

4. Did the trial court properly exclude the testimony of Dr. Edwin Vieira?

5. Should this court impose sanctions on the Selgases?

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APPELLEE'S BRIEF

To the Honorable Court of Appeals:

The Appellee, HCAD, presents its brief to support the judgment below to the effect that HCAD was correct in utilizing units of Federal Reserve Notes to value the subject property as opposed to gold dollar coin increments.

STATEMENT OF FACTS

The Selgases purchased a property from Bryant for a designated purchase price of 1660 ten-dollar gold coins. C.R. 64-84. HCAD appraised the property for 2008 and 2009 in units of Federal Reserve Notes. C.R. 31-32. The Selgases protested that value to the Henderson County Appraisal Review Board, and ultimately brought the suit that leads to this appeal for the sole purpose of establishing that HCAD should have valued his property in units of ten-dollar gold coins instead of Federal Reserve Notes. C.R. 39-40, 46-47.

All record references herein are to the record in appeal no. 12-10-00021-CV. Exhibit references are to HCAD's motion for summary judgment unless otherwise stated.

SUMMARY OF ARGUMENT

The Selgases have no quarrel with the appraisal on the property in question by HCAD other than the fact it was not phrased in units of gold dollar coins as opposed to units of Federal Reserve Notes. There was no evidence introduced to controvert the appraisal established on the subject property by HCAD. Federal Reserve Notes are the lawful money of the United States which HCAD was required to use to appraise the subject property.

The trial court properly excluded Dr. Vieira's testimony which was purely legal in nature.

This appeal is frivolous.

ARGUMENT

I. Summary Judgment was appropriate: gold is not the coin of the realm

A summary judgment movant has the burden of showing that no genuine issue of any material fact exists and that it is entitled to a judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Sysco Food Services, Inc. v. Trapnell*, 890 S.W.2d 796, 800 (Tex. 1994). In deciding whether a material fact issue exists precluding summary judgment evidence available to the non-movant is taken as truth. On page 9 of the Selgases brief they argue that the movant must negate "each and every element" of the non-movant's cause of action. Actually, the movant need only negate any necessary element of the cause of action. *Sysco* at 800.

The Selgases have alleged that their property is over-valued for 2008 and 2009. See Exhibit D, C.R. 98-102, Plaintiffs' Petition, C.R. 3. Thus, they have attempted to invoke the jurisdiction of the court arising from TEX. PROP. TAX CODE ANN. §§ 42.24, 42.25 (Vernon 2009). For the two tracts, the Selgases allege that they paid $16,670.00 in gold ten dollar coins, or, more exactly, 1667 ten dollar gold coins. See Exhibit B, deposition of Thomas Selgas, p. 10-11, C.R. 36; Exhibit E, Plaintiffs' responses to Defendant's interrogatories, Interrogatory 2, C.R. 105. What the Selgases fail to mention is that each one of those gold dollars trades for Federal Reserve Note dollars at approximately 25 to 1. Exhibit B, deposition of Thomas Selgas, p. 39, C.R. 43. At least according to the Selgases, each of those ten dollar gold coins ought to be worth around $250.00. HCAD does not admit that that states the totality of the value but asserts the value is not less than $250.00 per ten dollar gold coin.

The Selgases' brief so mischaracterizes the issue before the court as to be deceptive to the court. The whole of the Selgases' cause of action concerns the refusal of HCAD to value their property in units of gold dollar coins or other gold or silver coins of the United States. They refuse to recognize Federal Reserve Notes as being legitimate currency. Exhibit B, deposition of Thomas Selgas, p. 25-26, 52-54, C.R. 39-40, 46-47. Furthermore, neither Selgas expressed any opinion or idea of what the property is worth as valued in Federal Reserve Notes. Exhibit B, pp. 45-47, C.R. 44-45:

> Q. . . . Do you have any reason to believe that any general member of the public who is not as convicted as you are regarding the efficacy of gold coinage would not be willing to pay as much in Federal Reserve Notes as what the Henderson county Appraisal district has appraised this properties?
>
> A. I don't understand the – I don't understand the question.
>
> Q. Let's assume that I don't know about gold coinage –
>
> A. Ignorance of the law is no excuse.
>
> Q. Okay, well, that's not where I'm going. Let's just assume for a minute that I have no clue that gold coinage is the legal money of the United States and that I only know about Federal Reserve Notes. Do you have any reason to believe that I would not be willing to give as many Federal Reserve Notes for the property that we're here to talk about today as what the Henderson County Appraisal District as it appraised at?
>
> MR. GREEN: Objection. Calls for speculation and totally irrelevant. If you know the answer, go ahead and tell him.
>
> **A. I really don't know the answer.**
>
> Q. (By Mr. Swinney) Okay. And let's broaden that question to – let's assume hypothetically, every citizen in Henderson County doesn't know about gold coinage and every one of them are potential buyers for the properties in question, the two tracts.
>
> A. Okay.
>
> Q. Do you have any reason to believe that we couldn't find some citizen in Henderson County willing to give the number of Federal Reserve Notes for those properties as what the Henderson County Appraisal District has it appraised at?
>
> . . . . . .
>
> Q. Okay. But I'm just asking you to assume for the purposes of this hypothetical that regardless how wrong all these people might be, all the

> potential purchasers in Henderson County are dealing in Federal Reserve Notes and the Henderson County Appraisal District is appraising in Federal Reserve Notes. Would the property in question sell – or could it sell for the number of Federal Reserve Notes that the Henderson County Appraisal District has it appraised on?
>
> A. **I have no idea**. . . .

See also Exhibit C, p. 8, C.R. 92. Furthermore, other than expressing their desire to have the property valued in ten dollar gold coins for a total value of $16,670.00, the Selgases articulated no position nor responded with any facts, nor designated any expert willing to testify what the value of the subject property is in United States dollars as denominated by Federal Reserve Notes. See Exhibits B – G, C.R. 33-129. In fact, the Selgases essentially stipulated away their case by admitting that the gold dollars which they paid for the property, and which they admit the property is worth, exchange for Federal Reserve Notes at about 25 to one. That being the case, the Selgases admitted a value of their property in excess of that at which HCAD appraised the property. See the affidavit of Bill Jackson, Exhibit A, C.R. 31-32.

The Selgases' affidavits attached to their response to HCAD's motion for summary judgment and no-evidence motion for summary judgment, Exhibits I and J to their response, C.R. 300-305, do nothing more than reiterate that they purchased the property in question for $16,670 in "American Eagle Gold Coin." That fact is undisputed. For the reasons stated above and below, it simply raises no issue of material disputed fact.

Exhibit A, the affidavit of Bill Jackson, C.R. 31-32, establishes that the values placed on properties such as the subject by HCAD are in units of United States dollars,

Federal Reserve Notes. Indeed, as Mr. Jackson established, all properties in Henderson County are appraised by HCAD in Federal Reserve Note U.S. dollar units.

Pursuant to 31 U.S.C. § 5103, the United States Congress has authorized the Federal Reserve to issue Federal Reserve Notes as legal tender for all debts public and private. An example of one of those Federal Reserve notes is found at Exhibit 4 to the deposition of Thomas Selgas, Exhibit B, C.R. 86. (Similar examples can probably be found in wallets, money clips, purses, or other means of carrying currency by any person examining this brief.)[1] The Congress of the United States is authorized to issue currency pursuant to the United States Constitution at Article I, § 8, cl. 5. The authority of Congress to issue currency and state its value has been affirmed by the United States Supreme Court in *Guaranty Trust Co. of New York v. Henwood*, 307 U.S. 247, 59 S.Ct. 847 (1939). Furthermore, in a case remarkably similar to this one, a Colorado Appellate Court held that Federal Reserve Notes, and not gold coins, are the proper unit for assessment and payment of taxes. *Walton v. Keim*, 694 P.2d 1287 (Colo. App. 1984).

While HCAD is flattered by the Selgases' assessment of HCAD's ubiquitous influence over the monetary policy of the United States, HCAD disclaims that influence. See the affidavit of Bill Jackson, Exhibit A, C.R. 31-32. If the Selgases have a quarrel with the United States authorizing the Federal Reserve to issue notes as legal tender for all debts public and private, they need to take that up with the United States government.

[1] A lawyer with the Appellee's law firm once handled a property-tax case before the esteemed Harlan Martin, former judge of the 192nd District Court in Dallas County. The *pro se* property owner made the same argument that the Selgases make now, that property must be appraised for taxation in gold dollars. Judge Martin responded by removing a one-dollar Federal Reserve Note from his pocket, stapling it to a piece of paper and placing it in the court's file. "The court takes judicial notice that this is a dollar," he explained; "It will be in the file if you want to look at it." Judge Martin proceeded to issue a summary judgment in favor of the appraisal district.

HCAD is in poor position to influence that policy. Furthermore, any judgment in favor of the Selgases herein on that point would not likely have significant influence with the United States government. The Selgases also failed to note that the same section of the federal code that authorizes minting of the ten dollar gold coins to which they are so affected also directs that they be sold, not for ten dollars in Federal Reserve Notes, but at their market value. 31 U.S.C. § 5112(i)(2)(A).

Furthermore, as is established in Exhibit A, affidavit of Bill Jackson, C.R. 31-32, were HCAD to value only the subject property in units of gold coins, as opposed to units of Federal Reserve Notes, or the court order such appraisal of this property in question, an inherent inequity of appraisal would result violate of TEX. CONST. Art. VIII, § 2. That section requires all properties to be appraised equally and uniformly. Valuing the Selgases' property in units that are worth at least 25 times what everyone else's property is valued at would hardly be equitable.

II. No-evidence Summary Judgment was appropriate: We left the gold standard in the 1930s.

HCAD also prevailed on a no-evidence summary judgment pursuant to TEX. R. CIV. P. 166a(i). The Selgases presented no evidence to support their cause of action. There being no genuine issue of material fact for trial, summary judgment in favor of HCAD was appropriate.

No evidence summary judgment is proper when the party with the burden of proof can provide no evidence of one or more essential elements of a claim on which it would have the burden of proof at trial. TEX. R. CIV. P. 166a(i). Under Rule 166a(i), a defendant's no-evidence motion for summary judgment shifts the burden to the plaintiffs

to raise a triable issue on each element essential to the plaintiff's case against the defendant. *Esco Oil & Gas, Inc. v. Sooner Pipe & Supply Co,* 962 S.W.2d 193, 197, fn. 3 (Tex. App. - Houston [1st Dist.] 1998, pet. denied).

Once the defendant has established a right to a summary judgment, the burden shifts to the plaintiff. The plaintiff must respond to the motion for summary judgment and present to the trial court any issues that would preclude summary judgment. *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex.1979); *Marchal v. Webb,* 859 S.W.2d 408, 412 (Tex. App. - Houston [1st Dist.] 1993, no petition). A plaintiff's conclusory statements of belief, however, are not enough to overcome summary judgment. *Brownlee v. Brownlee,* 665 S.W.2d 111, 112 (Tex. 1984). A plaintiff must produce evidence that its allegations are true, as mere conclusory statements do not constitute effective summary judgment proof and need not be given the same presumptive force as allegations of fact. *Abbott Laboratories, Inc. v. Segura,* 907 S.W.2d 503, 508 (Tex. 1995).

In this case, as alleged above, the Selgases have alleged that HCAD over appraised their property. Being the plaintiffs in such a cause, they had the burden of proof of establishing that over appraisal. A sufficient time for the conduct of discovery passed and discovery was, in fact, conducted. Note exhibits B, C, E, F, and G, C.R. 33-97, 103-129. In response to that discovery, the Selgases identified no evidence that their property was over appraised in United States dollars as represented by Federal Reserve Notes. Indeed, their only allegations concern their claims that HCAD should be utilizing gold dollars for appraisal instead of Federal Reserve Notes. See exhibits E,

interrogatories 2, 3, 10, and 13, C.R. 105-6, 109-111. Neither did the Selgases identify any document showing the subject property to be over appraised in Federal Reserve Notes. See Exhibit G, C.R. 118-129. Neither did the Selgases identify any expert with an opinion of value of the subject property in Federal Reserve Notes. See exhibit F, C.R. 114-117. Indeed, the Selgases have no opinion of the value of the subject property in Federal Reserve Notes. Their only quarrel with HCAD is the claim that HCAD should be utilizing using gold dollars instead of Federal Reserve Notes. See exhibit B, pp. 43-44, 49-50, C.R. 44-46:

> p. 44, C.R. 44:
>
> Q. Well, let me rephrase my question. Do you have any reason to believe that the appraisal set forth by the Henderson County Appraisal District on the two properties in question is erroneous for – other than the fact that you paid 1667 gold coins for them and you believe, therefore, they should not be worth more than $16,670?
>
> A. Yes.
>
> Q. And what is that reason?
>
> A. The Constitution requires only gold and silver coin to be used in the states, and your – and the state has a duty, therefore, to ensure that its measurement is based on that gold and silver coin and its payment can be accepted – I mean, if they want to accept Federal Reserve Notes, that's up to them; but if they want to accept the gold or silver coin, then so be it. But their valuation has to be made based on the Constitution. They have a constitutional obligation – it's a contract between we, the people – and when they choose to use an uncon – I mean, Article I, Section 10, Clause 1 is very specific; no state shall make anything but gold and silver coin a tender in payment of debts. End of story.

> p. 49-50, C.R. 45-46:
>
> Q. . . . Do you have any quarrel with the valuation placed on the properties in question by the Henderson County Appraisal District other than the fact it is not in units of coinage such as you consider –
>
> A. Well, yeah –
>
> Q. Just a second. – such as you consider legal, lawful money such as is depicted on Exhibit 3?
>
> A. Yes. The fact is that I purchased it; purchase price was $16,670.

Q. Okay. So if I hear, you have two quarrels with the Henderson County Appraisal District's appraisal: one, it is not stated in units of what you consider lawful money; and, two, it is in excess of the $16,670 that you paid for it in – in gold coinage.

A. In the lawful money of the United States, yes.

Q. And do you have any other quarrel with the appraisal set forth on that property by the Henderson County Appraisal District?

A. The other ones have been resolved.

See also, exhibit C, p. 6, C.R. 92. That issue is non-justifiable, at least with regards to HCAD.

III. The trial court correctly excluded the testimony of Dr. Vieira

On objection of HCAD, the trial court correctly excluded the testimony of Dr. Edwin Vieira. Dr. Vieira offered only legal opinions in his testimony. Dr. Vieira testified *ad nauseam* in his deposition about what constitutes dollars, money, and the monetary policy of the United States. Dr. Vieira did not speak for the United States or the State of Texas but admitted to offering only legal opinions regarding the matter. See Deposition of Dr. Vieira, 78:21-79:12, C.R. 255. Pure legal opinions are not admissible under the rule for expert testimony. TEX. R. EV. 702. *Great Western Drilling, Ltd. v Alexander,* 305 S.W.3d 688, 696 (Tex. App. – Eastland 2009, no petition); *Mega Child Care, Inc. v Tex. Dept. of Protective & Regulatory Services,* 29 S.W.3d 303, 309 (Tex. App. – Houston [14th Dist.] 2000, no petition).

Dr. Vieira is unqualified to offer any opinion on the ultimate issue herein. That ultimate issue is the value of the property at issue herein. Dr. Vieira admitted to having no appraisal training, having never seen the property in question, having never investigated the factors of its value, and having never been in Henderson County, Texas.

He admitted that his only opinion was based upon a contract which he had viewed at the time of the deposition. See Deposition of Dr. Vieira at 82:20-84:19, C.R. 256. Furthermore, his opinion that the property was worth the contract price, must also be tempered by his testimony that the gold coins which were specified in the contract price are worth each in the "upper two hundreds" in Federal Reserve notes. See Deposition of Dr. Vieira at 81:9-14; 82:1-10, C.R. 255-6.

No *Daubert* motion was appropriate or necessary because Dr. Vierra claimed no expertise as a real estate appraiser and because he offered no opinion on the property's value in Federal Reserve Notes. The opinions he did offer are irrelevant. He opined on the Constitutionality of the monetary policy of the United States. That is inconsequential to the value determination before the trial court.

IV. Request for sanctions

The Selgases' appeal is frivolous. HCAD requests this court to impose sanctions pursuant to TEX. R. APP. P. 45. When determining whether to impose sanctions, the court should consider from the viewpoint of the advocate whether there was reasonable grounds to believe the case could be reversed. *Smith v. Brown*, 51 S.W.3d 376, 381 (Tex. App. – Houston [1st Dist.] 2001, pet. denied). A court may award "just damages" under Rule 45 if, considering the record and documents filed with the court, the "appeal is objectively frivolous and injures the appellee." *Mid-Continent Cas. Co. v Safe Tire Disposal Corp.*, 2 S.W.3d 393, 396-7 (Tex. App. – San Antonio 1999, no. pet.).

As is detailed above, the basis of the Selgases' claims is that HCAD is not using gold coins as its standard in valuing property. They offered no actual contest to the

appraised value of the property. In fact, as mentioned above, their own testimony indicated that they paid more for the property than the 2008 appraisal by HCAD, at least after converting gold dollars to Federal Reserve Note equivalencies. The Selgases ignore 31 U.S.C. § 5103 by which Congress establishes the Federal Reserve Note as currency of the United States. They do not challenge the constitutionality of that statute, nor do they even honestly confront the issue in their brief.

Furthermore, the Selgases' argument begs an obvious question: Why are they suing HCAD over this matter rather than the United States? It was the Congress of the United States that established the Federal Reserve Note as lawful currency, not HCAD. If the Selgases did recover a judgment on the issue against HCAD, it would be to no ultimate avail. The United States government is unlikely to change its monetary policy based on a ruling against HCAD, and would certainly be under no obligation to do so. Rather than suing a party that could actually respond to or be responsible for the situation the Selgases decry, they have plucked from the realm of governmental units an utter stranger to the issue of gold coins versus Federal Reserve Notes to sue. They have obviously caused HCAD the expense of trial and appeal on an issue that is obviously not legitimate in this context and thus has no reasonable chance of reversal at this court.

Mr. Selgas, incidentally, is no stranger to frivolous litigation in the context of taxes. Note *Selgas v. C.I.R.*, 475 F.3d 697, 701 (5th Cir. 2007) *pet. den.* 552 U.S. 824 (2007):

> Selgas's arguments are utterly lacking in merit and, as an aside, his conduct in this litigation appears to have been inconsistent with that of a litigant endeavoring to aid in the truthful and efficient resolution of contested issues of fact and law. We have no sympathy for Selgas's behavior or his

arguments in defense of what appears to have been a brazen attempt to avoid a few thousand dollars in legitimate tax liability.

HCAD does not accuse the Selgases or their attorneys of being rude or treacherous in their dealings. But, the Selgases' abuse of the litigation process to the detriment of HCAD, and hence the public, should not go un-redressed.

CONCLUSION AND PRAYER

The untenability of the Selgases' claims regarding the utilization of gold coins for valuation measures is patent. The fact that the Selgases produced no evidence below on any material fact legitimately at issue herein is equally patent. That being the case, HCAD asks this court to affirm the judgment of the trial court and award sanctions, as well as all costs of appeal, against the Selgases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been forwarded to the Appellant, by certified mail, return receipt requested, on the 7th day of May, 2010, properly addressed as follows:

John O'Neill Green
P. O. Box 2757
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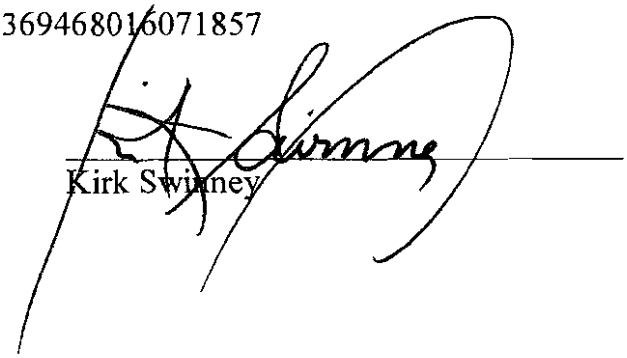

Kirk Swinney

Appendix

C

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 31. Money and Finance (Refs & Annos)
Subtitle IV. Money
Chapter 51. Coins and Currency (Refs & Annos)
Subchapter I. Monetary System (Refs & Annos)
→ **§ 5103. Legal tender**

United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 980; Pub.L. 97-452, § 1(19), Jan. 12, 1983, 96 Stat. 2477.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1982 Acts

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5103	31:392	July 23, 1965, Pub.L. 89-81, § 102, 79 Stat. 255.
	31:456	R.S. § 3584.

The words "All . . . regardless of when coined or issued" are omitted as unnecessary because of the restatement. The word "debts" is substituted for "debts, public and private" to eliminate unnecessary words. The words "public charges, taxes, duties, and dues" are omitted as included in "debts".

This restores to 31:5103 [this section] the reference to public charges, taxes, and dues because they are not considered to be debts. See, Hagar v. Reclamation District No. 108, 111 U.S. 701, 706 (1884).

Amendments

1983 Amendments. Pub.L. 97-452 added ", public charges, taxes, and dues" after "all debts".

Effective and Applicability Provisions