

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT
STATE OF NEW MEXICO, COUNTY OF SANTA FE

JOHN ETCHEVERRY,
Plaintiff,

vs.

SAGE OIL COMPANY, a Texas
Corporation,

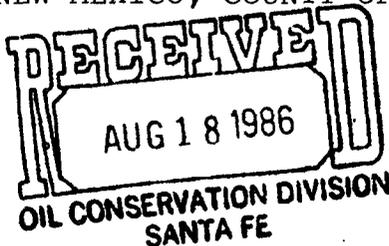
Defendant-Cross Defendant,

STATE LAND OFFICE,

Defendant-Cross Complainant,

OIL CONSERVATION DIVISION,

Defendant.



No. SF86-1509(c)

DEFENDANT STATE LAND OFFICE'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

The defendant State Land Office [hereinafter referred to as SLO] hereby moves the Court in accordance with Rules 20 and 26(a) and (b) of the Rules of the First Judicial District Court, to dismiss the plaintiff's claims against the SLO because they fail to state a claim for which relief can be granted. No request for concurrence in the motion was made to opposing counsel because such concurrence was unlikely since the success of the motion would result in a dismissal of all the plaintiff's claims against the defendant SLO. The grounds for the motion are set forth in the following statement.

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT
OF DEFENDANT SLO'S MOTION TO DISMISS

The plaintiff has failed to state a claim against the defendant SLO upon which relief can be granted in that the plaintiff cannot recover from the SLO under any state of facts, provable under the plaintiff's claims. See Hall v. Budagher, 76 N.M. 591, 592, 417 P.2d 71 (1966). The existence of a valid defense permits dismissal of a plaintiff's claims for failure to state a claim upon which relief can be granted in those instances where the defense is disclosed by an examination of the plaintiff's pleading. Roybal v. White, 72 N.M. 285, 383 P.2d 250 (1963); 5 Wright and Miller, Federal Practice and Procedure, §1357 (1969).

The plaintiff claims that the SLO has possibly participated in an alleged tort of trespass on the lands of the plaintiff by granting a salt water disposal easement on state lands. The plaintiff may not assert a claim of trespass against the SLO because, as conceded by the plaintiff in Paragraph 3 of the Complaint in Trespass, the SLO is a governmental entity. As a governmental entity the SLO is afforded immunity from suit for the tort of trespass, which immunity has not been waived by the New Mexico Tort Claims Act. §41-4-1 through -29 NMSA 1978 (1986 Repl. Pamp.).¹ This Court may not grant relief against the SLO

¹ The defendant SLO notes that not only are governmental entities subject to suit on tort claims solely within the limitations of the Tort Claims Act, §41-4-2(A) NMSA 1978 (1986 Repl. Pamp.), but such claims are barred unless brought within two years after the date of occurrence resulting in loss,
(Footnote Continued)

for the tort of trespass and the plaintiff's claims in trespass against the SLO must, therefore, be dismissed for failure to state a claim upon which relief can be granted.

The plaintiff also claims that the SLO's grant of a salt water disposal easement on state lands was an unconstitutional taking of an interest in plaintiff's property for public use without compensation. As set out in Paragraph 7 of the Complaint, the salt water disposal easement on state lands was granted to Sage Oil Company on November 12, 1982. The same paragraph notes that the injection of salt water on the easement was approved by an order of the Oil Conservation Division on December 8, 1982. As a party to the hearing before the Oil Conservation Division pursuant to which the order issued, the plaintiff was fully aware of the SLO's grant of the salt water disposal easement no later than December 8, 1982. This action was brought on June 30, 1986, more than three and a half years after the plaintiff was aware of the SLO's grant of the easement, which grant or authorization the plaintiff characterizes as an unconstitutional taking by the SLO of the plaintiff's property for public use.

(Footnote Continued)

§41-4-15(A). Furthermore, no court has jurisdiction to consider an action against the state under the Tort Claims Act unless the plaintiff has first complied with the notice requirements of the Act. §41-4-4-16(B). The plaintiff here has not alleged such compliance.

Section 42A-1-29 NMSA 1978 (1981 Repl. Pamp.) authorizes suits against those who exercise the power of eminent domain without compensation or condemnation proceedings. Section 42A-1-31(B) NMSA 1978 (1981 Repl. Pamp.) provides that no action shall be commenced pursuant to Section 42A-1-29 unless the proceeding is brought within three years of the taking of the property for public use.

In order to state a claim against the state for compensation for a taking of his property for public use by the grant of the salt water disposal easement to Sage Oil Company, the plaintiff would have had to file his cause of action on or before December 7, 1985. This the plaintiff has failed to do and his cause is barred by the statute of limitations. The plaintiff has failed to state a claim in inverse condemnation against the SLO upon which relief can be granted.

WHEREFORE the defendant SLO respectfully requests the Court to dismiss the plaintiff's claims against the SLO with prejudice because the plaintiff has failed to state claims against the SLO upon which relief can be granted.



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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing pleading was mailed to all counsel of record this 15th day of August, 1986.

A handwritten signature in cursive script, appearing to read "Louhannah M. Walker".

LOUHANNAH M. WALKER