

No. 11671

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA, APPELLANT

v.

**SHOFNER IRON AND STEEL WORKS, A CORPORATION,
APPELLEE**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON**

REPLY BRIEF FOR THE UNITED STATES

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REPLY BRIEF FOR THE UNITED STATES

In our opening brief we pointed out that the United States was the proper party to institute the present action for two reasons: First, because by virtue of the Surplus Property Act Congress has given to the War Assets Administration the right to possession of this property and has imposed upon that agency the duty of preserving and protecting it; and, second, because the United States, by virtue of its relationship with its wholly-owned corporation, may assert a cause of action of RFC. Appellee does not directly challenge these propositions, but it seeks to avoid their effect by reference to local law relating to actions for forcible entry and detainer and ejectment. In so doing appellee is urging a ground

not taken by the court below and for reasons to be given, we submit that appellee's argument lacks merit.

I

The right of the United States to bring an action to recover possession of surplus property of one of its Government corporations is not dependent upon or governed by State law

The United States may maintain suits in its own courts for the purpose of protecting and enforcing its governmental rights and to aid in the execution of its governmental policies. *Cramer v. United States*, 261 U. S. 219, 232-233 (1923); *United States v. New Orleans Pac. Ry. Co.*, 248 U. S. 507, 518 (1919). When the United States appears as a litigant asserting a right arising out of its governmental activities, its rights are determined by federal not state law. *United States v. Standard Oil Co.*, 91 L. Ed. adv. op. 1507, 1509-1513, No. 235, October Term 1946, decided June 23, 1947; *United States v. Allegheny County*, 322 U. S. 174, 182-183 (1944); *Clearfield Trust Co. v. United States*, 318 U. S. 363, 366-367 (1943); *D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp.*, 315 U. S. 447, 455-456 (1942); *Deitrick v. Greaney*, 309 U. S. 190, 200-201 (1940); *United States v. Shaw*, 309 U. S. 495 (1940); *Board of Comm'rs v. United States*, 308 U. S. 343, 349-351 (1939). Thus, in ascertaining the obligation of the guarantor of a forged endorsement on a check drawn by the United States, the Supreme Court stated in the *Clearfield* case, *supra*, at pp. 366-367:

The rights and duties of the United States on commercial paper which it issues are governed

by federal rather than local law. When the United States disburses its funds or pays its debts, it is exercising a constitutional function or power. * * * The authority to issue the check had its origin in the Constitution and the statutes of the United States and was in no way dependent on the laws of Pennsylvania or of any other state. * * * The duties imposed upon the United States and the rights acquired by it as a result of the issuance find their roots in the same federal sources. * * * In the absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards.

Similarly in determining whether the United States had title to certain machinery so as to exempt it from state taxation the Court said in *United States v. Allegheny County, supra*, at pp. 182-183:

Every acquisition, holding, or disposition of property by the Federal Government depends upon a proper exercise of a constitutional grant of power. * * * The validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any state.

Erie R. Co. v. Tompkins, 304 U. S. 64 (1938), and similar cases cited by appellee (Br. 5-6) have no application in determining the rights and powers of the Federal Government in the performance of its

governmental functions. *United States v. Standard Oil Co.*, and other cases cited *supra*.

Appellee states (Br. 5): "But the Government is a stranger to both the lease and the deed. Its only relation to these instruments is that it owns the stock of RFC." Elsewhere it asserts (Br. 9) that there is no relation of landlord and tenant between the United States and Shofner but only between RFC and Shofner. Again (Br. 13) it emphasizes that legal title is in RFC and not the United States. Thus, appellee's entire argument is based upon the assertion that RFC and the United States are entirely separate and distinct entities and must be so treated by the courts. But whether RFC and the United States are to be considered independently is a matter upon which federal law is controlling.

Congress in the exercise of its power to provide for national defense authorized the acquisition of property by its government-owned corporations (Govt. Br. 6).¹ Acting under its power to dispose of that property once it was no longer needed for the governmental purposes for which it was acquired, Congress, by enacting the Surplus Property Act, set up a procedure and declared a policy for the disposal of surplus government property, a procedure and a policy which apply to property of RFC as well as to property

¹ Every action of the United States within its constitutional powers is governmental action whether it acts itself through one of its departments or through a corporation which it owns or controls. *Graves v. New York ex rel. O'Keefe*, 306 U. S. 466, 477 (1939); *Pittman v. Home Owners' Loan Corporation*, 308 U. S. 21, 32 (1939).

administered by the regular departments of the Government. And, as we have shown (Govt. Br. 7-11) Congress has given the War Assets Administration the right to possess the federal property here involved and has imposed upon it the duty of caring for and disposing of that property.

Moreover, the fact that bare legal title is in RFC does not make the property any less the property of the United States. As this Court recently pointed out in holding that Defense Supplies Corporation² was entitled to ship benzol at land grant rates applicable to "military or naval property of the United States," "there was such identity of interest and function between Supplies and the United States that ownership of the benzol by Supplies was equivalent to ownership by the United States." *Southern Pac. Co. v. Reconstruction Finance Corporation*, 161 F. 2d 56, 57-60 (1947). See also *King County, Wash. v. United States Ship. Board E. F. Corp.*, 282 Fed. 950, 953 (C. C. A. 9, 1922). Like the gold involved in *United States Grain Corp. v. Phillips*, 261 U. S. 106, 113 (1923) the property here involved is in substance the property of the United States although legal title is in the corporation. Just as it may sue to recover rents due under a lease executed by a government corporation as it did in *United States v. Skinner & Eddy Corp.*, 35 F. 2d 889, 894 (C. C. A. 9, 1929), so the United States may sue to recover possession of the leased

² RFC created Defense Supplies Corporation under the same statutory authority under which it created Defense Plant Corporation.

premises wrongfully withheld by the lessee. State law cannot defeat the right of the United States to protect its governmental interests. Cf. *United States v. Summerlin*, 310 U. S. 414 (1940).³

II

Oregon law does not preclude a suit by the United States to recover possession of the surplus property of one of its Government corporations

In the foregoing discussion we have assumed that appellee is correct in its contention that the United States is not a proper party to bring the action under Oregon law. It is submitted, however, that it does not follow from the state statutes and decisions relied upon (Br. 6, 13) that the United States may not bring this action.

It is immaterial to the question presented on this appeal whether the action is one in forcible entry and detainer or one in ejectment.⁴ The facts alleged in the Government's complaint contain the essential elements of either cause of action. Appellee's objec-

³ Whether the interest of the United States in the property of its corporations, or more particularly their surplus property, falls within any established category of property interests sufficient to maintain a suit for its possession under state law, its rights will be recognized and enforced in the federal courts. Cf. *United States v. San Geronimo Development Co.*, 154 F. 2d 78, 85 (C. C. A. 1, 1946) certiorari denied 329 U. S. 718 (1946); *Missouri, etc., Ry. Co. v. Kansas Pac. Ry. Co.*, 97 U. S. 491, 497 (1878); *United States v. Allegheny County*, 322 U. S. 174, 182-183 (1944).

⁴ Under rule 2 of the Federal Rules of Civil Procedure, there is only one form of action. Under rule 54 (c) every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

tions to the maintenance of both actions will, therefore, be treated together. The sole question is whether the United States is the proper party to bring the action.

It is first said (Br. 6-9) that the United States cannot bring an action of forcible entry and detainer because the Oregon law limits this action to cases where the relation of landlord and tenant exists. That relationship does exist in the case at hand. It is true that the lease was not executed in the name of the United States, but rather in the name of one of its corporations for the purpose of carrying on a lawful governmental activity. Questions arising out of a relationship similar to that between the United States and its government corporations are not likely to be found in State cases. However, we know of no Oregon case which would indicate that the Oregon courts would hold, contrary to the many federal court decisions cited above and despite the provisions of the Surplus Property Act, that RFC and the United States are so separate and distinct that the United States could not bring an action of forcible entry and detainer under the circumstances presented here. The cases cited by appellee (Br. 7-9) do not so indicate. In neither *Schroeder v. Woody*, 166 Ore. 93, 109 P. 2d 597 (1941) nor *Purcell v. Edmunds*, 175 Ore. 68, 151 P. 2d 629 (1944) was there any landlord and tenant relationship. Both cases involved the rights of a vendor as against a vendee.

But regardless of whether an action of forcible entry and detainer is appropriate under the circum-

stances, the facts alleged in the complaint clearly support an action in ejectment.⁵

Appellee contends that the United States cannot maintain ejectment because the Government cannot rely on the weakness, if any, of appellee's title, but must prove "strict legal title" in itself (Br. 13). Here again, there is nothing in the cases cited (Br. 12) which indicates that the Oregon courts would hold that despite the relationship between the United States and RFC and despite the provision of the Surplus Property Act, the United States could not bring an action of ejectment to recover possession of the property. Moreover, contrary to appellee's contention, there are numerous cases in Oregon in which a party has been held entitled to maintain an action in ejectment although his interest in the property was something less than "strict legal title." E. g., *Weath-erford v. McKay*, 59 Ore. 558, 117 Pac. 969 (1911); *Kingsley v. United Rys. Co.*, 66 Ore. 50, 133 Pac. 785 (1913); *Feehely v. Rogers*, 159 Ore. 361, 372-376, 80 P. 2d 717 (1938); see also *Malony v. Adsit*, 175 U. S. 281, 288-290 (1899); *Patterson v. Hamilton*, 274 Fed. 363 (C. C. A. 9, 1921); *Carroll v. Price*, 81 Fed. 137 (D. Alaska 1896); *Ewert v. Robinson*, 289 Fed. 740, 750-754 (C. C. A. 8, 1923); 1 Tiffany, Landlord and Tenant (1910), sec. 37, p. 293. As the Oregon

⁵ The statutory proceeding of forcible entry and detainer is not exclusive and does not supersede any other remedies which the party may have, such as ejectment. 1 Ore. Comp. Laws, Ann. sec. 8-328; see also *Pioneer Coal Co. v. Bush*, 16 F. Supp. 117, 119 (E. D. Ky. 1936); 4 Thompson, Real Property (Perm. Ed.) sec. 1670, p. 170, sec. 1671, p. 172.

Supreme Court pointed out in *Feehely v. Rogers*, *supra*, at page 376, the right to possession of the land is the material issue in an ejectment action and the action should be prosecuted in the name of the real party in interest, i. e., the one who has the right. Inasmuch as the United States (acting through the War Assets Administration) has the right to possession and control of surplus property of RFC, it is the real party in interest in an action to recover its possession.

CONCLUSION

It is submitted that the right of the United States to bring an action in the federal courts to recover possession of surplus property of RFC is to be determined according to federal, not state law. It is further submitted, however, that the statutes and decisions of the state of Oregon do not preclude the bringing of such an action by the United States. The judgment below should, therefore, be reversed.

Respectfully,

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