

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES,)
)
Plaintiff,)
) Civil No. 18-cv-1035
v.)
)
WILLIAM HUBBARD, JR., AND)
HUBBARD'S FISHING FLOAT &)
CAFE, LLC,)
)
Defendants.)

COMPLAINT FOR EJECTMENT AND INJUNCTIVE RELIEF

The United States brings this action to eject Defendants from property owned by the United States upon which Defendants are trespassing and unlawfully occupying. In support of its complaint, the United States alleges as follows:

Nature of this Action

This is a civil action for trespass and unlawful occupancy brought by the United States against the Defendants to eject the Defendants from the property owned by the United States, to compel immediate removal of all structures and personal property, and to enjoin Defendants from using or occupying – without lawful authorization – Upper Mississippi River National Wildlife and Fish Refuge lands.

Jurisdiction

(1) This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1345.

(2) Venue is proper under 28 U.S.C. § 1391(b) because the actions by which the claims arise occurred, or are occurring, on real property located in Allamakee County, which is in the Northern District of Iowa.

Facts

(3) This action involves National Wildlife Refuge System (System) lands owned by the United States and located in the Upper Mississippi River National Fish and Wildlife Refuge (Refuge). The Refuge is located in the Northern District of Iowa as well as in Illinois, Minnesota, and Wisconsin and is part of the System. The United States Fish and Wildlife Service (Service) operates the System, which is comprised of a national network of lands and waters set aside to conserve America's fish, wildlife, and plants.

(4) Acting through its authority under the Property Clause, U.S. Const. Art. IV, Sec. 3 cl. 2, Congress provided for the acquisition, administration, management, and protection of the Refuge through the Upper Mississippi River National Wildlife and Fish Refuge Act of 1924, codified as amended at 16 U.S.C. §§ 721 *et seq.*, and the entire System through the National Wildlife Refuge System Administration Act of 1966, codified as amended at 16 U.S.C. §§ 668dd *et seq.*

(5) Congress has empowered the Secretary of the Interior to make provisions for the protection of System lands through regulations governing the occupancy and use of these public lands, and Congress has required compliance with the Secretary's rules and regulations. *E.g.* 16 U.S.C. §§ 668dd, 725.

(6) The land at issue in this action is described as Government Lot 11, Section 17, Township 97 North, Range 2 West, 5th Principal Meridian, Allamakee

County, Iowa (Property). The Property is a riparian lot fronting on the Mississippi River and is within the Northern District of Iowa.

(7) The United States acquired the Property by direct purchase in 1930 under the authority of the Upper Mississippi River National Wildlife and Fish Refuge Act. The Property is administered by the Service as part of the Refuge. A copy of the deed is attached as Exhibit A.

(8) Defendant William Hubbard, Jr., operates what is known as a fishing float on the portion of the Mississippi River that fronts the Property and is below Lock and Dam No. 9. On information and belief, Defendant Hubbard's Fishing Float & Café, LLC, an inactive limited liability company formed in Iowa, is the legal entity formed by William Hubbard, Jr., to own and operate the float.

(9) The fishing float operates like a large dock that extends across the river. People wanting to fish on the float pay Defendant William Hubbard, Jr., and he then allows them access to the float. He also sells them various refreshments and gear.

(10) The float attaches to and is constructed on the Property. Specifically, surveys confirm that several feet of the float attach to and are located on the Property. A copy of a survey dated November 15, 2016 is attached as Exhibit B.

(11) It is unlawful to trespass on a national wildlife refuge, to occupy a private structure on a national wildlife refuge, or to conduct a commercial enterprise on a national wildlife refuge. Although individuals wanting to operate a commercial fishing float can, in certain circumstances, obtain a permit to operate a

float in or on a national wildlife refuge, the last permit issued to Defendants to operate the float at issue expired on July 31, 2008.

Ejectment and Equitable Relief

(12) The United States incorporates the allegations in the above paragraphs and realleges the same as if fully set forth herein.

(13) The United States is the owner, in fee simple, of the Property.

(14) Defendants have unlawfully entered upon and withheld portions of the Property from the United States' exclusive possession.

(15) Defendants have unlawfully placed personal property and erected a structure on the Property.

(16) The United States has no adequate remedy at law.

(17) The United States is entitled, as a result, to an order ejecting Defendants from the Property, ordering Defendants to remove all personal property and structures from the Property, and enjoining Defendants from future unauthorized occupancy and use of Upper Mississippi River National Wildlife and Fish Refuge lands.

Prayer for Relief

Specifically, the United States requests that the Court enter an Order for Ejectment and Injunctive Relief, as follows:

(1) Requiring Defendants to vacate the Property within 60 days of entry of the Order for Ejectment;

(2) Requiring Defendants to remove all personal property and structures from the Property within 60 days from the entry of the Order for Ejectment;

(3) Authorizing the United States to physically remove Defendants and any personal property and structures from the Property if Defendants fail to comply with the Order for Ejectment within 60 days of its entry;

(4) Authorizing the United States to take title to and possession of all personal property and structures not removed from the Property within 60 days of entry of the Order for Ejectment and to dispose of the same without further order from this Court;

(5) Awarding the United States any costs incurred to enforce its right of possession and for any necessary restoration or cleanup of the Property;

(6) Enjoining Defendants from using or occupying – without lawful authorization – Upper Mississippi River National Wildlife and Fish Refuge lands; and

(7) Awarding any further relief the Court may deem just and proper.

Respectfully submitted,

PETER E. DEEGAN
United States Attorney

By: */s/ Jacob A. Schunk*

JACOB A. SCHUNK
Assistant United States Attorney
111 Seventh Avenue SE, Box 1
Cedar Rapids, IA 52401
319-363-6333 (Phone)
319-363-1990 (Fax)
jacob.schunk@usdoj.gov