CV33467

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Kristie Montgomery
Clerk of the District Court
Erath County, Texas

CAUSE NO. CV33467

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
V.	§	
	§	
20.58 ACRES OF LAND AND	§	
IMPROVEMENTS LOCATED IN	§	266th
ERATH COUNTY, TEXAS; 21.76	§	~~226th~~ JUDICIAL DISTRICT
ACRES OF LAND AND	§	
IMPROVEMENTS LOCATED IN	§	
ERATH COUNTY, TEXAS; AND	§	
19.08 ACRES OF LAND AND	§	
IMPROVEMENTS LOCATED IN	§	
ERATH COUNTY, TEXAS	§	ERATH COUNTY TEXAS

NO EVIDENCE MOTION FOR SUMMARY JUDGMENT

Now come Consolidated Rural Properties, Ltd., Jay Dickens, Dana Dickens, and First State Bank of Central Texas and file this No Evidence Motion for Summary Judgment and would respectfully show as follows:

Specific Summary Judgments Requested

This forfeiture proceeding is governed by the Texas Rules of Civil Procedure. Texas Criminal of Criminal Procedure Chapter 59. Pursuant to Rule 166a(i) Movants are entitled to a summary judgment under Rule 166a(i) without presenting any evidence. The State has the burden of proof on all issues. Texas Code of Criminal Procedure Art. 59.05. The State has no evidence on one or more of these essential elements of its claims:

1. That the property was acquired with the proceeds from the commission of a crime as required by Code of Criminal Procedure 59.01(2)(C).

2. That Movants used the Property or intended to use the Property in the commission of a crime as required by Code of Criminal Procedure 59.01(2).

Standard for No Evidence Summary Judgment

Once the plaintiff has had adequate time for discovery (in this case 6 months), the defendant may move for summary judgment because there is no evidence of any one or more essential element to the plaintiff's claim. Tex. R. Civ. P. 166a(1); City of the Colony v. N. Tex. Mun. Water Dist., 272 S.W.3d 699, 718 (Tex. App. – Fort Worth 2008). If the motion states specifically the elements for which there is no evidence, the trial court must grant the motion unless the nonmovant produces summary judgment evidence that raises a genuine issue of material fact.

The summary judgment evidence must "rise to a level that would enable reasonable and fair-minded people to differ in their conclusions". The evidence must be legally competent, more than a scintilla or conclusively establish the opposite of the vital fact. King Ranch, Inc. v. Chapman, 118 S.W.3d 742, 751 (Tex. 2003).

The State's Specific Problem

In this particular case, the State has no evidence that Movants, who claim an ownership interest in the properties subject to this suit, committed any of the crimes required by Texas Code of Criminal Procedure 59. The State has seized the property for remedial reasons only which is specifically prohibited by the applicable law.

WHEREFORE, PREMISES CONSIDERED, Consolidated Rural Properties, Ltd., Jay Dickens, Dana Dickens, and First State Bank of Central Texas seek a summary judgment dismissing all claims against the property and seek such other and further relief to which they may be entitled.

Respectfully Submitted,

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Attorney for Consolidated Rural Properties, Ltd., Jay Dickens, Dana Dickens, and First State Bank of Central Texas

Certificate of Service

I certify that a true copy of the above was served on M. Alan Nash via facsimile at 254-965-5543 in accordance with the Texas Rules of Civil Procedure on July 26, 2016.

NANCY ANGLIN YATES

Notice of Hearing

The above motion is set for hearing on August 30, 2016 at 9:00 a.m. in the ~~226th~~ 266th Judicial District Court, Erath County, Texas.

SIGNED on 7/28/16.

Judge or Clerk

FILED FOR RECORD
AT_____O'CLOCK____M

JUL 28 2016

Wanda Pringle
CLERK DISTRICT COURT ERATH COUNTY, TEX