

**ORIGINAL**

1

IN THE  
**United States Court of Claims**

No. **392-52**

MAGNOLIA RANCH, INC., a corporation, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *Defendant*.

**PETITION.**

(Filed July 24, 1952)

*To the Honorable Chief Justice and the Associate  
Justices of the United States Court of Claims:*

The plaintiff, Magnolia Ranch, Inc., by this, its petition, respectfully represents and alleges:

1. Plaintiff is now, and was at all times hereinafter mentioned, a corporation organized and existing under the laws of the State of Florida, having its principal office and place of business near Orlando, Orange County, Florida.

2. In 1942 plaintiff acquired ownership of some 65,000 acres of land located in the Lake Hart section

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**COURT OF CLAIMS**

**2**

of the eastern part of Orange County, Florida, for the production of timber, the raising of beef cattle, and to a limited extent for the growing of citrus fruits. At considerable expense, research and effort, plaintiff initiated a continuing scientific program of pasture and timber improvement.

3. Negotiations with the defendant (through the Corps of Engineers, U. S. Army) for the use of 11,833 acres, more or less, of the plaintiff's land began in the summer of 1943. A condemnation proceeding was begun by the defendant against plaintiff and other land owners to acquire the possession of 13,760 acres of land in Orange County, Florida. The petition, filed July 15, 1943, in the United States District Court for the Southern District of Florida (No. 183, Orl. Civil) stated that the proposed use of the land was:

“in connection with the Pinecastle turret, rifle, and air-to-ground gunnery range, Pinecastle, Florida, and for related military purposes.”

4. Thereafter responsible Army officials advised plaintiff that the land was needed for a rifle and machine gun range and that the term “related military purposes” was meant to refer to necessary adjuncts such as an access road, temporary roads of steel matting, latrines, mess halls, etc., and particularly a large earthen and concrete structure called a “jeep range” to enable moving targets to be towed around inside an elliptical track. After receiving this advice on or about October 30, 1943 (as of April 23, 1943) the plaintiff and the defendant entered into Lease No. W-09-026-eng-945 covering 11,833 acres of land. A copy of said lease is annexed hereto and marked Exhibit “A”. The agreed use under the terms of the lease was for:

“TURRET GUN AND RIFLE RANGE AND OTHER REQUIREMENTS OF THE WAR DEPARTMENT.” On September 1, 1944, the U. S. District Court dismissed the condemnation proceedings.

5. The defendant entered into the land prior to the execution of the lease, built an access road and the jeep range, and erected targets for pistol, rifle and machine gun practice. At this time defendant's troops used the land in the manner and for the purposes specified in the lease. Later, and at a date unknown to plaintiff, but sometime in 1944 the defendant ceased the authorized use of the land under the lease as a small arms firing range and commenced using it as an aerial bombardment range. Such usage was completely outside the scope of the lease and was not authorized by plaintiff and has caused plaintiff great damage.

6. Instead of the relatively minor damage contemplated by the parties (i.e., destruction of a few trees in the rear of the target area, etc.) the defendant's unwarranted and unauthorized use of the leased area for aerial bombardment resulted in fires from bombs and de-dudding operations, the presence of duds in the soil making it dangerous to conduct normal operations; the presence of steel shell fragments in the timber throughout the area rendering it valueless; the creation of shell craters and churning up the top soil; burning of timber; destruction of young trees just starting; the burning of the seeds on and in the ground, burning of humus out of the soil; and the disturbance of the feeding and breeding habits of cattle on adjoining land.

7. From, and after the execution of the lease plaintiff, its officers and agents, were excluded from the

**4**

leased area until the latter part of the year 1948 and had no opportunity to ascertain the extent of damages until that date. It is believed that the defendant continued to use the leased area as an aerial bombardment range until late 1945 or early 1946.

**Damage to Timber (leased area).**

8. The defendant has refused to comply with the provisions of paragraph 11 of the lease (Exhibit "A") and has failed, neglected and refused to jointly estimate the amount and value of timber as of April 1943 and has refused to conduct a joint survey to ascertain the present condition of the timber.

9. As a result of the unauthorized use of the leased area for aerial bombardment by the defendant, the timber located therein has been either destroyed or rendered valueless because of the presence of steel shell fragments; and the destruction of seedlings by fire caused by said bombs and the plaintiff has been damaged thereby in the amount of \$170,170.90 which sum is due and unpaid.

**Damage to Hunting Lodge.**

10. On the leased area was located a large hunting lodge consisting of the main lodge, kitchen building, tables and other buildings. Although unoccupied at the time of the lease, these buildings were structurally sound and in good repair. During the time defendant was in possession of the area several severe tropical storms occurred and plaintiff was not permitted to protect the property by boarding windows and doors, repair storm damage, replace missing shingles, etc. The defendant failed to take reasonable steps to pro-

tect the property. As a result of defendant's failure to protect these buildings against the elements and against depredations, doors, windows and other appurtenances have disappeared, the roof of the lodge has leaked damaging the interior, and the buildings have fallen into disrepair beyond normal wear and tear. The plaintiff has been damaged by this failure of the defendant in the amount of \$6,334.00 which sum is due and unpaid.

#### **Damage to Pasturage (leased area).**

11. The unauthorized usage of the leased area by the defendant as an aerial bombardment range has resulted in the presence of unexploded aerial bombs or "duds" throughout the leased area. The plaintiff has requested defendant to remove these dangerous duds and to date, despite several minor attempts, the defendant has failed or neglected to do so. As a result of the defendant's failure or neglect to restore the premises, the entire leased area contains numerous "duds" the presence of which has rendered the land unfit for use and unsaleable.

12. For three months prior to May, 1945, rainfall was subnormal for that period of the year producing a drought condition. On or about May 4, 1945, members of the United States Army Air Force, acting within the scope of their employment while engaged in practice bombardment, and knowing of the risk and hazard involved, willfully set fire to the pastures in the leased area. This fire burned for 10 days and destroyed the organic matter in the soil, permanently damaging the land for agriculture or use as a cattle range. As a result of the known presence of unexploded bombs and

the known destruction of the organic matter in the soil because of fire, this land is now unsaleable for any use to which it was formerly suited. The plaintiff has thereby been damaged in the amount of \$74,100.00 which sum is due and unpaid.

#### **Damage to Adjoining Land.**

13. The fire referred to in paragraph 12 above spread from the leased area to adjoining property owned by plaintiff and caused severe damage to both the pasturage and the timber located on said property.

14. On June 8, 1948, a U. S. Army Bomb Disposal Unit, under the command of an officer acting within the scope of his duty, set fire to portions of the leased area to clear the underbrush. These fires ignited some unexploded incendiary bombs which spread the fire to adjoining property owned by plaintiff. This second fire also caused severe damage to the pasturage and the timber located on plaintiff's property amounting to \$103,020.00 which sum is due and unpaid.

#### **Damage to Transverse Fence.**

15. As a result of the fires referred to in paragraphs 12 and 14 above, approximately seven miles of transverse fencing were burned and partially destroyed and plaintiff has been damaged thereby in the amount of \$2,808.40 which sum is due and unpaid.

16. On or about April 11, 1949, the plaintiff duly filed its claim with the defendant (Corps of Engineers) pursuant to the provisions of the Act of July 3, 1943, (57 Stat. 372). The claim was referred to the Office of the Judge Advocate General of the Army. On March 5,

1951, that office rendered its opinion (JAGD/D-333545 (Magnolia Ranch, Inc.)) approving the claim in the amount of \$9,797.00. On April 3, 1951, the plaintiff duly appealed this decision to the Office of the Under Secretary of the Army. Upon review, the Under Secretary of the Army approved the appeal in the amount of \$15,630.00 in full settlement of the claim. Plaintiff has not accepted this decision.

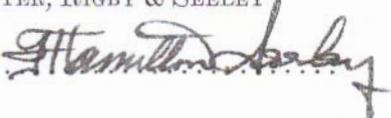
17. Plaintiff has sustained an expense and loss in the amount of \$305,705.30 being the damages that resulted from the defendant's action as above set forth.

18. Plaintiff avers that it has at all times borne true allegiance to the Government of the United States and has not voluntarily aided, abetted, or given encouragement to rebellion against the said Government; there has been no action upon the said claim in the Congress of the United States or in any department of the Government other than as herein stated, and plaintiff is sole owner of the claim here presented, no assignment or transfer of which has at any time been made and that it is justly entitled to recover from the United States of America the full amount of its claim as above set forth after allowing all just credits and offsets.

WHEREFORE, Plaintiff prays judgment against the defendant, United States of America, for the sum of Three Hundred and Five Thousand, Seven Hundred and Five Dollars and Thirty Cents (\$305,705.30), together with interest and costs herein expended.

MAYER, RIGBY & SEELEY

By



8

CITY OF WASHINGTON }  
DISTRICT OF COLUMBIA } SS

F. Hamilton Seeley, being duly sworn, deposes and says: I am one of the attorneys for the plaintiff in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge, information and belief.

...*F. Hamilton Seeley*...  
F. HAMILTON SEELEY

Subscribed and sworn to before me this 24 day of  
*July*, 1952.

*Hattie S. Cleaveland*  
Notary Public

**EXHIBIT.**

CR Form 206

No. W 09-026-eng-954

NEGOTIATED LEASE

BH

(Contracting Officer)

**LEASE**

Between

**MAGNOLIA RANCH, INC.**

and

**THE UNITED STATES OF AMERICA**

1. THIS LEASE, made and entered into as of this 23 day of April, in the year one thousand nine hundred and forty-three by and between Magnolia Ranch, Inc., whose address is Orlando, Florida and whose interest in the property hereinafter described is that of owner for itself, its heirs, executors, administrators, successors, and assigns, hereinafter called the Lessor, and THE UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned covenant and agree as follows:

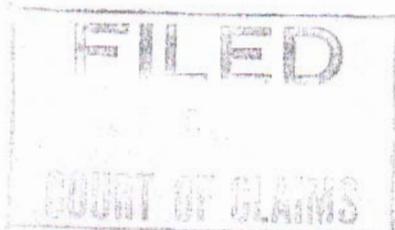
2. The Lessor hereby leases to the Government the following described premises, viz:

\* \* [Description of property] \* \*

to be used for the following purpose:

Turret Gun, and Rifle Range, and other Requirements of the War Department.

3. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning April 23, 1943 through June 30, 1944, provided that, unless and until the Government shall give notice of termination in accordance with provision 12 hereof, this lease shall



remain in force thereafter from year to year without further notice; provided further that adequate appropriations are available from year to year for the payment of rentals; and provided further that this lease shall in no event extend beyond six months after the date of termination of the Unlimited National Emergency as declared by the President of the United States on May 27, 1941 (Proclamation 2487).

4. \* \* \*

4a. The Government shall pay the lessor rent at the following rate: Nine Thousand Seventy Five Dollars (\$9075.00) per annum for any period of occupancy that does not extend beyond April 23, 1944; Five Thousand Seven Hundred Fifty Dollars (\$5750.00) per annum for any period of occupancy extending from April 24, 1944 to April 23, 1945, inclusive; Three Thousand Seven Hundred Seventy-Five Dollars (\$3775.00) for any period of occupancy extending from April 24, 1945 through April 23, 1946; and in the event the lease continues in effect for a period subsequent to April 23, 1946, the rental rate shall be One Thousand Seven Hundred Seventy-Five Dollars (\$1775.00) per annum, and in consideration thereof the lessor hereby releases the Government from liability for all damages to the premises resulting from the use thereof by the Government, except damages to buildings and timber on premises; the damage to buildings shall be covered by Paragraph 7 hereof; and the damage to timber shall be determined by the difference in the amount of timber as shown by timber cruises made upon the date that possession is taken by the Government and the date the premises are returned to lessor which damages to timber, if any, shall be provided for by a Supplemental Agreement hereto entered into at the termination of this lease; and the lessor further releases the Government from all claim for restoration to this property except the buildings upon said premises. Payment shall be made at the end of each calendar month by the Finance Officer, United States Army, 449 West Peachtree Street, Atlanta, Georgia.

5. \* \* \*

6. \* \* \*

7. The Government shall have the right, during the existence of this lease, to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which fixtures, additions, or structures so placed in, upon or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. The Government shall surrender possession of the premises upon the expiration or termination of this lease and, if required by the Lessor, shall, within 30 days thereafter, or within such additional time as may be mutually agreed upon, return the buildings on the premises in as good condition as that existing at the time of entering upon the same under this lease, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control, excepted; provided that, if the Lessor requires the return of the premises in such condition, the Lessor shall give written notice thereof to the Government at least 30 days before the expiration or termination of the lease, said notice to specify the exceptions of the Lessor to the then existing condition.

8. \* \* \*

9. \* \* \*

10. \* \* \*

11. As of the commencement date of this lease, a joint inventory and condition report of all personal property of the Lessor included in this lease, and also a joint physical survey and inspection report of the demised premises shall be made, said reports to reflect the then present condition, and to be signed on behalf of the parties hereto.

12. The Government may terminate this lease at any time by giving thirty (30) days notice in writing

to the Lessor, and no rental shall accrue after the effective date of termination.

13. Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Government shall be addressed to the Lessor at Orlando, Florida and if given by the Lessor shall be addressed to Division Engineer, South Atlantic Division, P. O. Box 4114, Atlanta, Georgia.

14. The Lessor warrants that he has not employed any person to solicit or secure this lease upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the lease, or, in its discretion, to deduct from the rental the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by lessors upon contracts or leases secured or made through bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business.

15. No Member of or Delegate to Congress or Resident Commission shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

Changes Before Execution: Paragraphs 4, 5, 6, 8, 9 and 10 deleted, Paragraph 4a added.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date above written.

MAGNOLIA RANCH, INC.

By: GEORGE TERRY,

*President.*

In presence of:

PAUL J. SLATON, JR.

LOIS G. TAFT

THE UNITED STATES OF AMERICA

By JOHN E. HOLLIMAN,

*Major, C of E.*

Contracting Officer

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to procurement authority, 8-30349 P 330-05 A 0905-24.

The available balance of which is sufficient to cover cost of same.

(If Lessor is a corporation, the following certificate shall be executed by the secretary or assistant secretary.)

I, Max Knispel, certify that I am the Secretary of the corporation named as Lessor in the attached lease; that Geo. Terry, who signed said lease on behalf of the Lessor, was then President of said corporation; that said lease was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

MAX KNISPEL,

*Secretary*

(Corporate Seal)