

Civil Action No. 80-191, U.S. v. KENNETH SERGEANT v. CRAFT/HALL

Status Conf. 24 June 83, 11 AM

Kenneth Sergent is the owner of a parcel of land in Letcher County on which the plaintiff's agent/inspector discovered a strip-mine operation.

Sergent says he was having a house-seat built by Craft and Hall, and counter-claims against them for any mining violations.

No depos yet, but testimony of Clive G. Hall (Inspector) and Sergent from hearing is on record.

Larry Webster for Third-Party Defendants Clark and Hall;

James Pruitt for defendant Kenneth Sergeant

Goomba for Peace and Light

*Need to ~~set~~ hearing to
make decision as to individual
responsibility.*

RE: 80-151

5-6-83

USA v. Kenneth Sargent

Status Conf., Monday, 5-9-83, at 10:30.

Synnopsis: At the last Status conference on 3-16-83, the Court allowed defendant to remove timber from the property up until May 25, 1983.

The Court also gave def. leave to file an amended answer and a third party complaint no later than 4-15-83.

This conference pertains to the amended pleadings filed by def.

Donald

Civil Action No. 80-191, USA v. Kenneth Sargent (Strip mine violation)

Status Conference, Motion for Contempt

11:00 A.M. 16 March 1983

USA accused defendant of strip-mining without a permit, violating cessation order, environmental damage, etc (5 charges) on 1 Jul 80

Preliminary injunction issued on 30 October 1980.

USA says now that defendant has continued to operate in violation of the injunction and cessation order, and has moved to hold the defendant in contempt.

Defendant responds belatedly to the motion for contempt:

1. Denies that Ricky Niece was doing any strip mining for him (USA so alleged, but Niece is not a party to this action).
2. Admits that he (and not Niece) received a Notice of violation, as alleged by USA, but did not sign it.
3. Denies that he was doing any illegal strip-mining.
4. Admits he did not abate the violations.

Don't know what his defense will be. Probably that any strip-mining was being conducted by Niece or someone else, or that the operation was construction of a house-seat, or something else.

GLP

Why wasn't Hall, Blair,
Niece - craft and others
made a party to this action ??
It appears U.S. is satisfied that
Sargent is the Culpable Actor.

Issue { Why should one person be responsible
and be required to pay all the damage
when more than one person participated
and received part of the profit. ? }

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 80-191

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

PERMANENT INJUNCTION

KENNETH SERGENT,

DEFENDANT.

* * * *

Plaintiff brought this action, pursuant to the Surface Mining Control and Reclamation Act of 1977 ("Act"), 30 U.S.C. §1201, et seq. Plaintiff seeks enforcement of the Act pursuant to 30 U.S.C. §1271(c). This case was heard on April 19, 1982, in the United States District Court for the Eastern District of Kentucky, Pikeville Division. The defendant was represented by counsel Michael DeBourbon. The Court heard the testimony of witness Greg Hall and Mervin Dunn.

FINDINGS OF FACT

1. The Court adopts all the findings of fact in the preliminary injunction filed in this case on October 30, 1980.
2. The Court further finds that in the fall of 1981, Greg Hall and Mervin Dunn conducted surface coal mining operations at the mine site which is the subject of this action.
3. The Court further finds that in conducting said operations, Greg Hall and Mervin Dunn were acting in concert with Kenneth Sergent. Specifically, Kenneth Sergent approached

both Mervin Dunn and Greg Hall and entered into an agreement with each of them whereby they would go on to the Sergent property for the purpose of mining coal in return for payment to Kenneth Sergent of a fixed sum per ton of coal removed.

CONCLUSIONS OF LAW

1. The Court adopts the conclusions of law contained in the preliminary injunction filed herein on October 30, 1980.

2. The Court further concludes that the defendants have ceased their mining activity, which was in violation of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §1201, et seq., and in violation of Notice of Violation 80-2-30-28 and Cessation Order 30-2-30-22, which were issued by authorized representatives of the Secretary of Interior on July 1 and August 4, 1980, respectively.

3. The Court also concludes that the defendants have failed to reclaim the property on which their mining activity was conducted, also in violation of the aforementioned "Act".

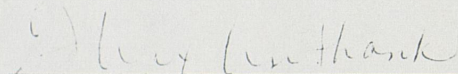
ORDER

IT IS HEREBY ORDERED that the defendant, Kenneth Sergent, and the third-party defendants, Billy Don Craft and Greg Hall, as well as Ricky Neace, Mervin "Trigger" Dunn, and all of their agents and employees in active concert and participation with them are PERMANENTLY ENJOINED from conducting any further mining

activities at the Kenneth Sergent mine site. It is further ORDERED that Kenneth Sergent, Billy Don Craft, Greg Hall, Ricky Neace, and Mervin "Trigger" Dunn shall be held jointly and severally liable to perform the remedial activities required by the Mining Regulations for Surface Mining.

This permanent injunction shall remain in effect until (1) the affirmative remedial obligations have been completed and the notice of violation and cessation order terminated by an authorized representative of the Secretary of the Interior, and (2) the defendants have obtained a surface mining permit from the Commonwealth of Kentucky for the operation of said mine site.

This the 17th day of January, 1984.



G. WIX UNTHANK, JUDGE

TO: Judge
FROM: Maggie
DATE: 15 June 1982
RE: Civil #80-191

US v. KENNETH SERGENT

I believe I goofed on this one:

1. You scheduled a hearing for Wednesday on the issue of whether this deft had notice of the preliminary injunction which you entered and which plttf wants him to be held in contempt for violating.
2. Deft then filed exceptions to the findings of fact and conclusions of law contained in the proposed permanent injunction offered by plttf. Deft asked for time in which to respond to the proposed permanent injunction.
3. I granted deft until June 1, and he complied.
4. I granted plttf ten days thereafter in which to respond to what deft had to say. Plttf didn't feel the need to respond.
5. At the time I gave deft until June 1, I also said that they should get in any motion for a hearing by June 18, or else we'd decide the matter on the record.
The goof-up: I overlooked the fact that you'd already scheduled a hearing on another matter for tomorrow, June 16.

Therefore:

In addition to the matter you ordered them to address at the hearing, i.e., whether deft had notice of the prelim. injunction, they may come in ready to address the substance of this thing. They may want to fight out the actual contents of the permanent injunction.

TO: Judge
FROM: Maggie
DATE: 16 April 1982
RE: Civil action #80-191

UNITED STATES v. KENNETH SERGENT

Hearing on default judgment motion
and on motion that defendant show cause
for not being held in contempt

Monday, 9:30 a.m.

Nothing appears to be unusual about this case, which is one
for alleged violations of strip mine laws.

Although the marshal's return shows service upon defendant's
wife, who lives with him, defendant has not answered and he did not
appear until the Show Cause hearing on March 23.

There is currently in effect a prelim. injunction against
further violations by defendant. He did not appear at the prelim.
injunction hearing.

The US now wants a permanent injunction and for defendant
to be held in contempt for violating the preliminary one.

NOTE:

In scheduling today's hearing, you specifically
ordered:

"All parties, namely, Bill Craft,
Greg Hall, Kenneth Sergent, Trig Blair,
Rick Niece, as well as counsel for the
plaintiff, are to appear at the . . .
hearing."

ASSIGNED FOR SHOW CAUSE HEARING

AT PIKEVILLE, KENTUCKY

ON ~~APRIL 12, 1982~~

AT ~~1:00 P.M.~~

APRIL 19, 1982

9:30 A. M.

PIKEVILLE CIVIL ACTION NO. 80-191

UNITED STATES OF AMERICA

U. S. Attorney

VS:

KENNETH SERGENT

SHOW CAUSE HEARING

10/22/80 #1 COMPLAINT, fil

12/16/80 #7 SUMMONS w/marshal's return serv. Kenneth Sergent on 12/10/80

2/16/82 #13 MOTION, of plff for Default Judgment

ASSIGNED FOR SHOW CAUSE HEARING / on CONTEMPT
AT PIKEVILLE JUDGE UNTHANK
DATE March 22, 1982 AT 2:00 P. M.

CIVIL ACTION NO. 80-191

UNITED STATES OF AMERICA

U. S. Attorney

VS:

KENNETH SERGENT

10/22/80 #2 MOTION of plff for Prelim Injunction & for Consolidation w/Hearing on Merits fil by plff. (PASSED)

2/16/82 #13 MOTION of plff for Default Judgment (PASSED)

Rich - demands
Neace Coal - Trigger - Glatthorn Smelter
Merwin Down - Blanks working for them
August - 71
Oct 81 - Hall - pd \$9500[@] (1-2 months)
Bill by Craft - Hall - Sergent - agreement
Coal sold to Rex Fox.
Sergent to take care of Bethlehem,

TO: Judge
FROM: Maggie
DATE: 19 March 1982
RE: Civil action #80-191

UNITED STATES vs. KENNETH SERGENT

Show Cause Hearing; Monday, 2:00

It appears that this is just a hearing to do what you postponed doing last time. Nothing has developed since you held the last hearing.

ASSIGNED FOR Hearing/Motion for AT PIKEVILLE JUDGE UNTHANK
Default Judgment
DATE March 12, 1982 AT 3:00 P.M.

CIVIL ACTION NO. 80-191

UNITED STATES OF AMERICA .

U. S. Attorney
Sanford Safalkin
Charles P. Gault

VS:

KENNETH SERGENT

10/22/80	#1	COMPLAINT
10/30/80	#6	PRELIMINARY INJUNCTION (GWU)
2.16/82	#12	MOTION of plff for an order of the court directing deft to show cause why he should not be held in contempt w/affidavit
	#13	MOTION of plff for Default Judgment

DEFT TO SHOW CAUSE at hearing why he should not be held in contempt for
failure to comply w/Court's replim. injunction issued 10/30/80.

TO: Judge
FROM: Maggie
DATE: 12 March 1982
RE: 81-191

U.S. v. KENNETH SERGENT

(Show cause hearing & hearing on default judgment motion)
3:00, p.m. Mon.

1. U.S. obtained from you prelim. injunction against defendant coal mine operator, prohibiting his further violation of Surface Mining Control & Reclamation Act and assessing costs against defendant.
2. The marshal's return shows personal service upon defendant's wife, but no one appeared for defendant at your hearing on the preliminary injunction.
3. U.S. now says that defendant is still violating the injunction.
4. U.S. wants defendant to show cause why he shouldn't be held in contempt for violation of the injunction and wants us to enter a default judgment for a permanent injunction against defendant.
5. Defendant has not been heard from at all.
6. File shows that mail from our clerk to defendant gets returned to sender. But, consider: record also shows that this guy, when personally handed notice that he was violating the Act, refused to take the paper or to sign that it'd been delivered to him.
7. There's a tendered default judgment offered by U.S. on left side of record.

10/28/80

United States of America vs. Kenneth Sergeant, 80-191

Facts:

This is a motion for a TRO and a preliminary injunction for violation of the Surface Mining Control and Reclamation Act of 1977, 30 USC §1201. The government alleges that the defendant and his agents have:

1. Mined without a permit
2. Improper sediment ponds.
3. Failed to stockpile the topsoil.
4. Placed spoil on downslope.
5. Improperly maintained the haul road.
6. Failed to respond the notice of violation.
7. Failed to comply with cessation order.

This action was filed on 10/22/80.

I would guess that defendants probably will not appear.

A standard TRO is attached.