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B-131120, Jul. 26, 1957

Number: B-131120

Date: 1957-07-26

B-131120, JUL. 26, 1957

TO CHARLES R. NESBITT, ATTORNEY AT LAW:

YOUR LETTER OF JANUARY 21, 1957, TO THE HONORABLE W. R. WALLACE, UNITED STATES DISTRICT JUDGE, OKLAHOMA CITY, OKLAHOMA, CONCERNING THE INDEBTEDNESS OF $829.98 PLUS INTEREST DUE TO THE UNITED STATES FROM FRANK MURRELL SICKLES ON ACCOUNT OF DEFAULT ON LOAN NO. LH-10687-OK OC, GUARANTEED BY THE VETERANS ADMINISTRATION UNDER THE PROVISIONS OF THE SERVICEMEN'S READJUSTMENT ACT OF 1944, AS AMENDED, HAS BEEN REFERRED TO OUR OFFICE FOR CONSIDERATION.

YOU SAY THAT YOU HAVE CONSISTENTLY ADVISED MR. SICKLES NOT TO PAY THE CLAIM OF THE VETERANS ADMINISTRATION BECAUSE YOU BELIEVE THAT ADMINISTRATIVE COLLECTION ACTION IS IMPROPER AND UNWARRANTED FOR THE FOLLOWING REASONS:

"1. THE CLAIM IS DISPUTED AS TO THE AMOUNT, AND THE VETERANS ADMINISTRATION HAS CONSISTENTLY REFUSED TO FURNISH TO MR. SICKLES, OR TO ME AS HIS ATTORNEY, ANY INFORMATION CONCERNING THE CLAIM OF THE NEW YORK LIFE INSURANCE COMPANY AND THE CIRCUMSTANCES UNDER WHICH IT WAS PAID. MOREOVER, THE GOVERNMENT'S OWN RECORDS APPARENTLY ESTABLISH THAT MR. SICKLES, EVEN IF LIABLE ON THE CLAIM, IS ENTITLED TO A SUBSTANTIAL SET- OFF.

"2. MR. SICKLES IS NOT UNDER PRESENT CIRCUMSTANCES, THE PRIMARY OBLIGEE. IT IS NOWHERE DISPUTED THAT AT LEAST ONE SOLVENT PURCHASER, MR. A. G. MEYERS, ASSUMED AND AGREED TO PAY THE MORTGAGE. INASMUCH AS THE PRIMARY DEFAULT WAS OCCASIONED BY SUBSEQUENT PURCHASERS AFTER THE ASSUMPTION BY MR. MEYERS, MR. SICKLES IS ENTITLED TO REQUIRE, BY THIRD PARTY COMPLAINT OR OTHERWISE, THAT ANY VALID CLAIM OF THE GOVERNMENT IS ACTUALLY PAID BY THE PERSON PRIMARILY RESPONSIBLE.'

SINCE THE RECORD INDICATES THAT YOU HAVE INFORMATION CONCERNING THE DETAILS OF THE VARIOUS TRANSFERS OF THE SUBJECT PROPERTY, AND INASMUCH AS SUCH TRANSFERS DO NOT CHANGE THE LIABILITY OF MR. SICKLES UNDER THE GUARANTY AGREEMENT HERE INVOLVED, THE FACTS WILL BE STATED IN DETAIL HERE ONLY WITH RESPECT TO THE CLAIM OF THE NEW YORK LIFE INSURANCE COMPANY OVER WHICH YOU HAVE SPECIFICALLY EXPRESSED CONCERN. ON AUGUST 10, 1948, SICKLES AND WIFE EXECUTED A SECOND MORTGAGE AND NOTE TO THE AMERICAN-FIRST TRUST COMPANY FOR $1,450. THE NOTE AND MORTGAGE WERE ASSIGNED BY AMERICAN -FIRST TRUST COMPANY TO FEDERAL NATIONAL MORTGAGE ASSOCIATION. FNMA ASSIGNED THIS SECOND MORTGAGE AND NOTE TO NEW YORK LIFE INSURANCE COMPANY. THIS SECOND MORTGAGE WAS GUARANTEED 100 PERCENT BY THE VETERANS ADMINISTRATION UNDER SECTION 505A OF THE SERVICEMEN'S READJUSTMENT ACT OF 1944 (38 U.S.C.A. 694E (A), BEFORE THE AMENDMENT OF APRIL 20, 1950). THE PROPERTY WAS SUBSEQUENTLY CONVEYED TO ANTHONY G. MEYERS, SR., AND WIFE, WHO ASSUMED AND AGREED TO PAY ALL MORTGAGE INDEBTEDNESS; BY THEM CONVEYED TO JOHN

CHARLES DENNY, JR., AND WIFE, WHO ALSO ASSUMED AND AGREED TO PAY ALL MORTGAGE INDEBTEDNESS; BY THEM RECONVEYED TO SICKLES AND WIFE SUBJECT TO THE MORTGAGES; AND BY THEM CONVEYED TO M. DALE TROGLIN AND WIFE WHO ASSUMED AND AGREED TO PAY ALL MORTGAGE INDEBTEDNESS. THERE WAS A DEFAULT IN THE PAYMENT OF BOTH MORTGAGE DEBTS FOLLOWED BY FORECLOSURE AND PURCHASE BY THE NEW YORK LIFE INSURANCE COMPANY. THE NEW YORK LIFE INSURANCE COMPANY FILED A CLAIM ON ITS GUARANTY OF THE SECOND MORTGAGE AND THE VETERANS ADMINISTRATION PAID ITS CLAIM FOR $829.98 ON JUNE 30, 1954. THIS CLAIM CONSISTED OF AN UNPAID PRINCIPAL BALANCE OF $808.45, PLUS INTEREST DUE FROM THE VETERAN OF $21.53.

IN SECURING THE GUARANTY OF THE LOAN, MR. SICKLES EXECUTED A VETERANS ADMINISTRATION LOAN FORM AND THEREBY AGREED THAT THE REGULATIONS ISSUED UNDER THE SERVICEMEN'S READJUSTMENT ACT OF 1944, AS AMENDED, WOULD GOVERN THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE LOAN. IT IS UPON THAT AGREEMENT THAT THE GOVERNMENT BASES ITS CLAIM AND THE SUBSEQUENT TRANSFERS OF THE PROPERTY IN NO WAY AFFECTED THE LIABILITY THEREUNDER. THE APPLICABLE VETERANS ADMINISTRATION REGULATIONS, TITLE 38, SEC. 36.4323 (E) CODE OF FEDERAL REGULATIONS (1949 EDITION), PROVIDE THAT:

"ANY AMOUNTS PAID BY THE ADMINISTRATOR ON ACCOUNT OF THE LIABILITIES OF ANY VETERAN GUARANTEED OR INSURED UNDER THE PROVISIONS OF THE ACT SHALL CONSTITUTE A DEBT OWING TO THE UNITED STATES BY SUCH VETERAN.'

IT THUS IS CLEAR THAT THE CLAIM AGAINST MR. SICKLES REPRESENTS AN INDEPENDENT DEBT WHICH IS DUE AND OWING TO THE UNITED STATES UNDER THE PROVISIONS OF THE STATUTE AND REGULATIONS. SEE UNITED STATES V. HENDERSON, 121 F.SUPP. 343.

YOUR LETTER REFERS TO TWO LETTERS FROM MR. LESTER H. THOMPSON, CONTROLLER, FEDERAL HOUSING ADMINISTRATION, ONE DATED FEBRUARY 15, 1955, TO MR. A. G. MYERS, JR., AND THE OTHER DATED JUNE 29, 1955, TO YOU, INDICATING THAT AN EXCESS WOULD BE AVAILABLE FROM THE FORECLOSURE SALE FOR REFUND TO THE MORTGAGOR. YOUR VIEW IS THAT ANY SUCH EXCESS SHOULD BE SET OFF AGAINST THE INDEBTEDNESS OF MR. SICKLES. INFORMATION NOW OF RECORD ESTABLISHES THAT NO EXCESS, IN FACT, EXISTED. THEREFORE, IF OTHERWISE PROPER, THERE IS NO AMOUNT AVAILABLE FOR SET-OFF AS SUGGESTED BY YOU.

IN VIEW OF THE FOREGOING COMMENTS, WE REQUEST THAT MR. SICKLES BE ADVISED TO LIQUIDATE HIS ..END :