

IN THE DISTRICT COURT OF OSAGE COUNTY, Oklahoma  
STATE OF OKLAHOMA

OCT - 6 2023

JENNIFER BURD, Court Clerk  
By \_\_\_\_\_ Deput

EDDIE VIRDEN, )  
Personally, and in His )  
Capacity as Osage County )  
Sheriff, )

Plaintiff, )

Vs. )

Case No. CJ-2023-172  
Judge Estes

MIKE FISHER, )  
Personally, and in His )  
Capacity as District )  
Attorney for Oklahoma Judicial )  
District 10 )

Defendant. )

PETITION FOR DAMAGES  
AND  
MOTION TO VACATE CONFIRMATION OF SALE OF SURPLUS COUNTY PROPERTY

Comes now the Plaintiff, Eddie Virden, and for his causes of action against the Defendant, state and aver as follows:

I.

JURISDICTION AND VENUE

1. Plaintiff is the duly elected Sheriff (The "Sheriff") and a resident of Osage County, State of Oklahoma.
2. Defendant Fisher is the District Attorney for Osage and Pawnee Counties, State of Oklahoma, comprising the tenth and fifteenth judicial districts respectively and is a resident of Osage County, State of Oklahoma.
3. That the allegations contained herein occurred in Osage County Oklahoma, other than the press conference described in paragraph 9 hereof.

4. Jurisdiction and venue are proper in accordance with 12 O.S. §1651, 12 O.S. §132 and 133 respectively.

II.

NO IMMUNITY

5. That the statements of Defendant Fisher are not privileged or exempt under 12 O.S. §1443.1.
6. Statements and actions of Defendant Fisher are not protected under Oklahoma Government Tort Claim Act, Okla. Stat. tit. Sec. 151 *et.seq.*
7. That Fisher's actions and statements are not protected speech.

III.

FACTUAL BASIS FOR ALLEGATIONS FOR COUNT ONE

(LIBEL AND SLANDER)

8. That on or about September 8, 2023, Defendant Fisher issued a press release inviting various media outlets to attend a press conference he would be conducting on September 11, 2023. (See Exhibit "A").
9. That on September 11, 2023, Defendant Fisher did indeed hold a news conference in the Pawnee County Courthouse rather than the Osage County Courthouse.
10. Fisher's press conference was attended by several Oklahoma-based broadcast and print media outlets along with media outlets from Kansas and Missouri which were seen and heard by a large number of people, as intended by Defendant Fisher.
11. That at Defendant Fisher's press conference he made a number of false and defamatory statements about the Plaintiff to the media.

12. That Defendant Fisher made uninformed and ignorant comments regarding an investigation that the Sheriff has been conducting since 2007 relative to mass murderer Mr. Dennis Rader, commonly referred to as the BTK Killer, (The "Investigation").
13. That Mr. Rader is presently serving ten (10) consecutive life sentences in the Kansas Department of Corrections for ten (10) murders to which he confessed.
14. Unlike Defendant Fisher, the Sheriff has personally interviewed Mr. Rader and has potentially developed leads that may solve other murders in Oklahoma, Kansas, and Missouri.
15. At no time has Defendant Fisher offered his assistance or the assistance of his office to Sheriff Virden regarding the BTK investigation or any other investigation being conducted by the Sheriff.
16. That in Fisher's press conference he disparaged and denigrated the information and leads developed by the Plaintiff opining that he, Fisher, doesn't believe there is enough evidence to file charges and generally ridiculed the Plaintiff's work.
17. Fisher failed to admit until questioned by members of the media that he has never seen any of the information developed by Sheriff Virden prior to giving his opinion as to the quality of it.
18. No report having been submitted to Fisher pending the outcome of the investigation, Fisher has no basis for any opinion regarding the quality of the information developed by Sheriff Virden and officials with whom he coordinates the Investigation including the OSBI, U.S. Attorney, Kansas Officials, and others.
19. That Defendant Fisher, without any prior conversations with the Sheriff to discuss the BTK investigation, surreptitiously contacted Kansas authorities essentially stating that the

being done only for publicity and political purposes and cautioned Kansas authorities about cooperating with the sheriff. (See Exhibit "B")

20. That Defendant Fisher, again without meeting with the Sheriff, surreptitiously contacted elderly families of murder victims telling them that the Sheriff was only conducting his Investigation for publicity and political purposes and suggested they not cooperate with the Sheriff.
21. Defendant Fisher's actions have also been cruel to the surviving family(ies) by dashing their hope of bringing their family member's killer to justice.
22. That Defendant Fisher's actions have caused the BTK investigation to be delayed, hampered and irreparably compromised, allowing Mr. Rader to escape justice and opened the door for Mr. Rader to initiate his own publicity campaign against the very person trying to bring him to justice . . . Sheriff Virden.
23. Essentially, Fisher, rather than assisting with the Investigation has turned into Mr. Rader's savior all for the political benefit of the Defendant.
24. That while characterizing the Sheriff's Investigation as politically motivated, Defendant Fisher himself has publicly endorsed his own political ally and chosen candidate to replace Sheriff Virden in the 2024 election, Bart Perrier. (See Exhibit "C" and "D").
25. That the Defendant's statements intentionally disparaged the motivation, integrity, and reputation of Sheriff Virden and the Osage County Sheriff's Office at a time when public support for law enforcement is waning nationwide.
26. That Defendant Fisher acted with malice and reckless disregard for the truth and with the desire and intent to disparage and tarnish the name and image of Sheriff Virden, and to influence the Sheriff election in 2024.

IV.

ALLEGATIONS FOR COUNT TWO

(INTERFERENCE WITH OFFICIAL INVESTIGATION)

27. That Defendant's slanderous and libelous statements were made to willfully delay or obstruct Sheriff Virden in the discharge or attempted discharge of the duty of his office, in violation of Okla. Stat. tit. 21 sec. 540, a misdemeanor.

V.

ALLEGATIONS FOR COUNT THREE

(MALICIOUS INTERFERENCE WITH OSAGE SHERIFF OFFICE OPERATIONS,  
OPPRESSION IN OFFICE FOR THE POLITICAL GAIN OF THE DEFENDANT AND HIS  
POLITICAL ALLIES)

28. That Sheriff Virden was approached by a national media company, Mulholland, Inc. ("Mulholland"), to produce a television show called "The Force", comparable to "Cops" and "Patrol Live", and other law enforcement reality shows.
29. Such an opportunity would show Osage County deputies in the performance of their duties patrolling in the largest county in Oklahoma which is also the subject of the soon to be released movie "Killer of the Flower Moon" which portrays a much less professional type of law enforcement injurious to Osage County from a century ago.
30. It is the Plaintiff's information and belief that outside of a duly called BOCC meeting, Fisher advised individual members of the BOCC to not approve the contract with Mulholland Inc., presumably because "The Force" would highlight Sheriff Virden's employees and administration.
31. However, at the same time, it is the belief of the Plaintiff that Defendant Fisher directed Fisher's own preferred sheriff candidate, Bart Perrier, to provide all aid and assistance to Mulholland.

32. At a minimum Defendant's actions constitute gross partiality as set forth in Okla. Stat. tit. 22 Sec. 1181.

VI.

ALLEGATIONS FOR COUNT FOUR  
THE KENNEDY BUILDING – 2017 AUCTION  
FRAUDULENT AUCTION

33. That from 2017 to the present date, Defendant Fisher directed and participated in the sale of a county owned building located at 550 Kihakah Avenue, Pawhuska, Oklahoma, 74056 , commonly known as the Kennedy Building, (The "Property" or the "Kennedy Building").

34. That the original public auction of the Kennedy Building in 2017 was improper in that the Property was not duly declared as surplus property in accordance with Okla. Stat. Tit. 19 § 342 which provides,

The Board of County Commissioners is authorized to sell any unused town lots or parcels of ground not needed for courthouse or jail purposes of any county to the highest bidder for cash, in the manner hereafter provided. Before any such sale shall be made, the board of County Commissioners, in regular or special session, shall adopt a resolution declaring that said real estate is not needed for courthouse or jail purposes of the county; Said resolution to be published with other proceedings of said board and a copy of said resolution shall be certified by the county clerk to the judge of the District Court of such county, and said judge shall appoint 3 disinterested freeholders of said county to appraise said real estate, said Appraisal to be returned by said appraisers to the board of County Commissioners. (Emphasis added)

35. That in 2017 the appraisers for Osage County appraised the Kennedy Building at a value of ONE HUNDRED-THIRTY-TWO THOUSAND AND NO/100 DOLLARS (\$132,000.00), eighty percent (80%) of which is \$105,600.00 which would be the statutory minimum bid required to sell the Property. (See Exhibit "E").

36. Mr. Jay Mitchell (Hereinafter "Mitchell") was the winning bidder having bid TWO-HUNDRED-THIRTY-TWO AND NO/100 DOLLARS (\$232,000.00) \$126,400.00 more than the required minimum.

37. That immediately following the 2017 auction the former BOCC and Mitchel entered into a sales contract however the BOCC never conveyed title to Mitchell presumably because of the irregularities in the auction proceedings such as failing to properly declare the Kennedy Building as “Surplus Property”.

VII.

ALLEGATIONS FOR COUNT FIVE

(THE MITCHELL LITIGATION)

38. Approximately a year after the 2017 auction and execution of the sales contract, on August 24, 2018, Mitchell sued the former BOCC for breach of contract, specific performance, and quiet title and requested damages exceeding \$75,000.00. (“The Mitchell Litigation”).

39. In Mitchell’s Petition he states the County set a “Reserve Price” of \$118,000.00, a number that has no relationship to the appraisal other than it exceeds 80% of appraised value. (See Exhibit “F”).

40. That over a year later, on or about October 21, 2019, the Oklahoma Supreme Court ordered that the Mitchell Litigation be transferred to Mayes County District Court Judge Shawn Taylor. There is no court record showing that the Mitchell Litigation was ever transferred from Judge Taylor back to any Osage District Court Judge.

41. That on May 17, 2022, an assistant district attorney under the supervision and control of Defendant Fisher conducted a private meeting in Tulsa with Mr. Mitchell, Mitchell’s attorney, and one Osage County Commissioner, Darren McKinney.

42. At the conclusion of the private meeting in Tulsa, the Assistant District Attorney hand wrote a one-page agreement (The “Agreement”) on notebook paper which essentially states that once the Osage BOCC properly declares the Kennedy Building as surplus a new auction will be held.

43. The Agreement essentially guarantees that Mr. Mitchell will be either the winning bidder or, if he is not the winning bidder, all sales proceeds over \$232,000.00 (The amount of Mitchell's 2017 bid) will be paid to Mitchell rather than retained by Osage County. (See Exhibit "G").
44. The hand-written agreement was reduced to a formal "Agreed Order" and filed of record on or about October 11, 2022, having been signed by Judge Taylor. (See Exhibit "H").
45. It is the belief of the Plaintiff that there is no official approval by either the prior or current BOCC authorizing Defendant Fisher or anybody acting on his behalf to conduct settlement negotiations or to unilaterally settle the Mitchell Litigation. Plaintiff has been unable to discover any official BOCC meeting minutes approving the terms of the Agreed Order.

#### VIII.

ALLEGATIONS FOR COUNT SIX  
(THE KENNEDY BUILDING – 2023 AUCTION)  
(FRAUD AND MOCK AUCTION)

46. On November 28, 2022, the current BOCC declared the Kennedy Building as surplus property even though the BOCC again did not consult with the Sheriff of Osage County to determine if the Kennedy Building was needed by the County Jail in accordance with 12 O.S. § 342.
47. That Ben West, Gary Weyl, and Les Potter, (Collectively, the "Appraisers") were hired to appraise the Kennedy Building.
48. It is the information and belief of the Plaintiff that for the 2017 auction of the Kennedy Building Chupp Auction and Real Estate Services, ("Chupp") advertised that auction by delivering 5,000 flyers, placing ads in newspapers, posting the auction on Facebook, posting on Chupp's personal website, and conducted a mailout advertising the sale.

49. That Rather than have the auction extensively advertised by Chupp as in 2017, Defendant Fisher took over the advertising and provided notice of the auction only by advertising in the Pawhuska Journal Capital (\$111.70) and Fairfax Chief (\$98.00). (See Exhibit "I")
50. For the 2023 auction, the vacant Kennedy Building remained empty and deteriorating for the additional six years from 2017 to 2023, as evidenced by the need for Osage County officials having to pump water out of the building.
51. Despite the well-known decline in the value of commercial office buildings, the Appraisers placed a value on the Kennedy Building of NINE-HUNDRED-TEN-THOUSAND AND NO/100 DOLLARS (\$910,000.00) requiring the winning bid to be at least SEVEN-HUNDRED-TWENTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$728,000.00), (80% of the appraisal) compared to the 2017 "reserve price" of \$118,000.00 or the 2017 statutory minimum bid of \$105,600.00. (See Exhibit "J").
52. That it is the belief of the Plaintiff that the alleged appraisal for the 2023 auction, if it exists, is in the possession of the Defendant rather than the BOCC.
53. At the 2023 auction an attendee directly asked Defendant Fisher if there was any prior agreement with any citizen regarding the dispersal of the anticipated auction proceeds. Fisher said "No."
54. Fisher's statement was knowingly false because he was responsible for the "Agreed Order" that provided Mitchell would receive all proceeds above \$232,000.00.
55. Fisher was also directly asked how the auction proceeds would be distributed. Fisher's response was that "There is a process" and that "a Judge will make that decision."

56. Again, Fisher's statement was knowingly false because he already knew how the auction proceeds were going to be distributed . . . Fisher's office negotiated the distribution process.
57. Mr. Mitchell submitted the only and winning bid of \$728,000.00, \$496,000.00 more than the 2017 bid. (See Exhibit "K").
58. Since Jay Mitchell was again the successful bidder, he has to pay the County only \$232,000.00, not the entire \$728,000.00, a fact of which Fisher was and is aware.
59. Had someone else been the successful bidder, that bidder would have had to pay the full \$728,000.00; Osage County would have kept only \$232,000.00 and paid \$496,000.00 to Mitchell. Osage County loses either way.
60. That Mitchell indeed paid only \$232,000.00.
61. Fisher's actions constitute a mock auction which ensures that Mitchell is unjustly enriched, and the citizens of Osage County are deprived of \$496,000.00 which Oklahoma requires to be paid back to the county fund from whence the purchase of the Kennedy Building was originally paid.
62. Mock Auctions are a violation of 21 O.S. §1506, which is a felony punishable by three years on the Oklahoma Department of Corrections and/or \$1000.00 fine.

IX.

ALLEGATIONS FOR COUNT EIGHT  
(ABUSE OF POWER AND OPPRESSION IN OFFICE)

63. Defendant Fisher commenced the process of filing criminal charges against members of an Osage County family who Fisher believed were supporters of his opponent.

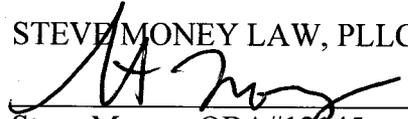
64. Fisher proclaimed publicly and privately that members of the family had removed some campaign signs for Fisher ally, Randall Jones.
65. Despite law enforcement officers showing Fisher videos and providing information that the family members had not removed Jone's signs, Fisher continued his efforts until another law enforcement agency could not produce the evidence Fisher desired.
66. That on another occasion, then assistant District Attorney Fisher confronted a citizen of Osage County who had placed campaign signs for Fisher's opponent on private property near Fisher's home.
67. The citizen later returned to the private property and seeing her candidate's signs removed to the trash and replaced by Fisher's signs, the citizen proceeded to replace Fisher's signs with her candidate's signs.
68. Fisher physically confronted the citizen in a kinetic manner, attempted to block the citizen's car, and attempted to make a citizen's arrest for "stealing" his signs. A report to law enforcement was made by the private citizen.
69. <sup>This matter</sup> referred this matter to the then District Attorney who referred it to another county for prosecution, however the District Attorney of that county declined to file charges.
70. It is the belief of the Plaintiff that Defendant Fisher's prosecutorial decisions are based upon personal and political considerations and not upon legal considerations.
71. These actions and others constitute abuse of power and oppression in office as set forth in 22 Okla. Stat. tit. Sec.1181.

#### PRAYER FOR RELIEF

WHEREFORE, as to Counts 1 through 10, Plaintiff prays for judgment against the Defendant as follows: (1) Compensatory damages in an amount of not less than TEN-THOUSAND and NO/100 Dollars (\$10,000.00), (2) punitive damages in an amount of not less than TEN-THOUSAND and NO/100 Dollars (\$10,000.00), (3) All costs and attorney fees, (4) Plaintiff requests an order vacating the 2023 auction and conveyance of the Kennedy Building, (5) Such other relief as the Court deems appropriate.

Respectfully submitted,

STEVE MONEY LAW, PLLC.

A handwritten signature in black ink, appearing to read "Steve Money", is written over a horizontal line.

Steve Money, OBA#12145

430 Court St.

Muskogee, OK 74401

Ph. 918-610-8088

Fax. 918-664-5059

[Steve@stevemoneylawpllc.com](mailto:Steve@stevemoneylawpllc.com)

Attorney for the Plaintiff

VERIFICATION

The undersigned, does hereby state and affirm that the contents of the foregoing Petition for Damages are true and correct to the best of my information, knowledge, and belief.

  
Sheriff Eddie Virden

Subscribed and sworn to before me this \_\_\_ day of October, 2023.

  
Notary Public

\_\_\_\_\_  
Notary Seal

My Commission Expires: 1/9/2025

JENNIFER DUPONT  
NOTARY PUBLIC - STATE OF OKLAHOMA  
MY COMMISSION EXPIRES JAN. 09, 2025  
COMMISSION # 17000216

CERTIFICATE OF MAILING/DELIVERY

Now on this \_\_\_\_ day of October 2023, the undersigned does hereby certify that a true and correct copy of the foregoing instrument was delivered by,

- First-Class U.S. Mail with postage fully pre-paid thereon
- Attorney Mailbox in Court Clerk Office
- Hand delivery
- Email
- Facsimile
- Licensed Process Server
- Courier

To:

Mr. Mike Fisher  
District Attorney  
550 1/2 Kihekah Avenue  
Pawhuska, Oklahoma 74056

Courtesy Copy to:

Honorable Genter Drummond  
Attorney General For  
The State of Oklahoma  
313 NE 21<sup>st</sup> St.  
Oklahoma City, OK 74103

  
\_\_\_\_\_  
Steve Money

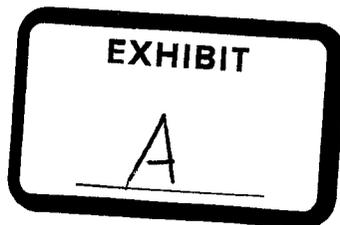
## New conference regarding BTK on Monday

NEW CONFERENCE – PAWNEE COUNTY, OK

The Pawnee County (Oklahoma) attorney's office says the county attorney will be holding a news conference at 11 a.m. Monday on the 3<sup>rd</sup> floor of the Pawnee County Courthouse regarding allegations of a connection between BTK and an Osage County (OK) cold case.

Courthouse is at 500 Harrison Street in Pawnee, Oklahoma.

*This isn't reportable until the time of the news conference.*





P.O. Box 311  
El Dorado, KS 67042

Jeff Zmuda, Secretary  
Tommy Williams, Warden

September 12, 2023

Enforcement, Apprehension, and  
Investigations  
Kate Hussey, Special Agent  
Phone: (316) 322-2016

Laura Kelly, Governor  
Doug Woods, EAI Director

**RE:** Communication with Mike Fisher

In May of 2023, I, Special Agent Kate Hussey, was present for a phone call between Special Agent Supervisor T.K. O'Brien and Mike Fisher regarding KDOC resident Dennis Rader #0083707. In the call, we were informed that the Osage County Sheriff's Office may be contacting the agency to try and set up interview access with resident Dennis Rader #0083707. The interview concerns a surfacing cold case investigation naming Rader as a potential suspect. Mr. Fisher stated that the case is a "political move" due to it being an election year for Sherriff. We were asked to consider that when permitting access to the resident.



KDOC Enforcement, Apprehensions and Investigations  
El Dorado Correctional Facility

1737 SE US HW 54, P.O. Box 311 El Dorado, KS 67042  
Office Phone: 316-322-2017

EXHIBIT

B

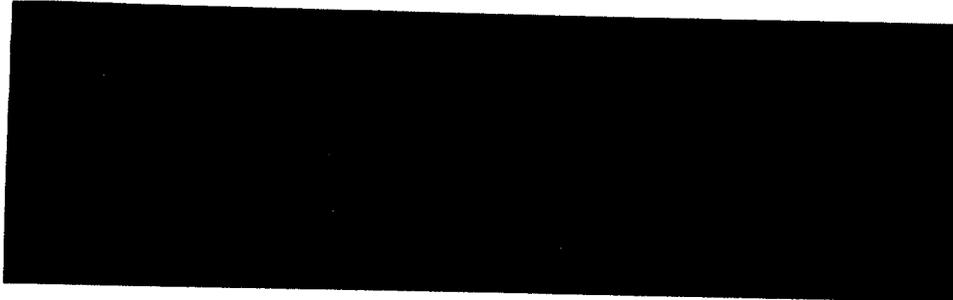


EXHIBIT  
C



**Mike Fisher, Osage County  
District Attorney - Skiatook,  
OK**

Osage County is blessed to have one of its own, Bert Ferrer, running for Sheriff. As a lifelong resident of Osage County and a man of integrity and vast law enforcement experience, Bert will be an excellent Sheriff. I have had the privilege of knowing Bert for twelve years now, and have seen the quality of his work and his dedication to service. The single greatest attribute that someone can bring to the office of Sheriff is their commitment to serving the citizens. It is that commitment that will guide Bert to honestly and fairly serve the citizens of Osage County, because that is the kind of man he is and because Osage County is his home!

**EXHIBIT**

**Elsberry Appraisals, LLC  
2020 North Crescent Drive  
Stillwater, Oklahoma 74075  
(918) 287-8539**

February 10, 2017

Osage County Commissioners  
P.O. Box 87  
Pawhuska, Ok  
74056

Dear Sirs:

The appraisal report on the old downtown DHS building in Pawhuska, Oklahoma has been completed. The purpose of this report was to determine the estimated market value for the property. The appraisal has been sent electronically to your office on February 10, 2017.

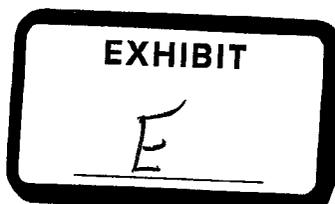
This appraisal report is on the following legally described property: Lots 43 and 44 Block 84 Original Town of Pawhuska, Oklahoma, Osage County, Oklahoma

This appraisal was completed in summary format in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) as published by the Appraisal Foundation. By USPAP definition, the individual appraisal report is a summary report of a complete appraisal.

The value arrived at in the appraisal report is \$132,000. If you have any questions after reviewing the report please feel free to contact this appraiser.

Please remit \$2,200, the agreed upon fee, for this appraisal report at your earliest convenience. If I can of further service to your office please feel free to contact me.

*Stephen Elsberry*



S

IN THE DISTRICT COURT IN AND FOR OSAGE STATE OF OKLAHOMA

District Court Osage County, Okla  
FLED  
AUGUST 24 2018  
By Jennifer Burd Court Clerk  
MB Deputy

JAY MITCHELL,

No. CJ-18-165

)  
)  
)  
) Plaintiff,

vs.

OSAGE COUNTY BOARD OF COMMISSIONERS, JURY  
DOE II,

)  
)  
)  
) Defendants.

)  
) ATTORNEY LIEN CLAIMED  
) TRIAL DEMANDED JOHN DOE I, AND JOHN

PETITION

Plaintiff Jay Mitchell ("Plaintiff") for his claims for relief against the abovenamed Defendants and each of them, states and alleges as follows:

I. Statement as to Parties, Jurisdiction, and Venue

1. Plaintiff resides in, and is a citizen of, California. Plaintiff owns various parcels of real estate located in the vicinity of Pawhuska, Osage County, Oklahoma.
2. Defendant Osage County Board of Commissioners ("the Board") is a political subdivision of Osage County, Oklahoma ("the County"), with its principal offices located in Pawhuska, Osage County, Oklahoma.
3. The real property and premises that is the subject matter of the dispute is owned by the County, held in fee simple title and located in Osage County, State of Oklahoma.
4. This Court has jurisdiction of the subject matter of, and the parties to, these proceedings by virtue of OKLA. CONST. Art. 7, 7 and enacting legislation.

EXHIBIT  
F

5. Venue is proper in this County under 12 O.S. 131 and 132.

II. Background Facts and Facts Common to Multiple Claims

6. Plaintiff has acquired various parcels of real estate in the vicinity of Pawhuska, Osage County, Oklahoma for purposes of investment and commercial development.

7. Osage County, Oklahoma recently has experienced exponential growth in tourism and economic development due in large part to the "Pioneer Woman Mercantile," a restaurant and retail operation located in downtown Pawhuska (hereinafter referred to as "the Mercantile"). The commercial real estate market also has spiked, bringing new attention to long abandoned and blighted properties.

8. On or about July 10, 2017, the Board convened at a public meeting, duly noticed and had, by and through elected commissioners, Darren McKinney, Kevin Paslay and Jerry Howerton.

9. Upon motion duly made and seconded, the Board authorized the sale of certain premises, located within the city limits of Pawhuska, Osage County, Oklahoma, legally described as follows:

The North 6.5 feet of Lot 42, and all of lots 43, 44, Block 84, in the Original Townsite of Pawhuska, Osage County, State of Oklahoma

(also known as 550 Kihekah Avenue) (hereinafter referred to as "the Kennedy Building").

10. The Kennedy Building is adjacent to the Mercantile. On information and belief, the Kennedy Building is one of the only buildings on the commercial corridor of Kihekah Street that is not under the ownership or control of the Mercantile or its

affiliates. During all times relevant to the allegations of this Petition, the Kennedy Building has remained unoccupied and has experienced deterioration commiserate with its age.

11. The Board engaged Chupps Auction Company to conduct the public sale of the Kennedy Building.

12. The public auction for the sale of the Kennedy Building was advertised in a newspaper of general circulation in Osage County, Oklahoma.

13. The Board established a reserve sale price of \$118,000.00.

14. The public auction occurred on or about August 16, 2017.

15. Plaintiff was the successful bidder at the public auction for the sum of \$232,000.00, which was significantly greater than the reserve price of \$118,000.00.

16. On or about August 16, 2017, at a Special Meeting, duly noticed and had, the Board convened and confirmed the sale of the Kennedy Building to Plaintiff for the sum of \$232,000.00.

17. The parties entered into a Real Estate Contract on that date (herein referred to as "the Contract"), a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. The deal called for an initial down payment of five percent of the purchase price as earnest money, with the sale to completed on or before September 15, 2017.

18. On the same date, Plaintiff deposited earnest money in the amount of \$1 1,600.00 as consideration or partial consideration for the purchase of the Kennedy Building.

19. The terms of the transaction described hereinabove also included a waiver of the Board's immunity from suit, to the extent of its contractual obligations, authorizing Plaintiff to pursue any "remedy available at law or in equity, including specific performance."

20. Plaintiff has performed his obligations under the Contract. Plaintiff is ready, willing and able to close on the sale, accepting the Kennedy Building as is, both in condition and title.

21. Defendants have refused to close on the sale of the Kennedy Building to Plaintiff.

22. The Board's records indicate that, between August 16, 2017 and the date of filing of this petition, public discussions occurred regarding the Plaintiff's intended use of the building and whether the Board or any other governmental authority could impose restrictions upon said use.

23. On or about October 3, 2017, the Pawhuska City Council enacted a resolution intended to direct the Board to impose new and different "guidelines on the sale and usage of the Kennedy Building" with the purpose of ensuring that the Kennedy Building "conforms to the Historic Downtown District aesthetic and provides a function which continues to drive economic development."

24. Defendants have refused to act in good faith. Commissioner Howerton stated in public, "I wouldn't mind seeing it [the Kennedy Building] go to someone else."

25. On information and belief, other unnamed parties conspired with Defendants to interfere with the closing of the real estate transaction that is the subject of this dispute and to deprive Plaintiff of ownership of the Kennedy Building.

26. Plaintiff reserves the right to add additional Defendants as they are identified.

27. Plaintiff has attempted to submit the dispute to mediation pursuant to paragraph 13 of the Contract. However, Defendants wholly have refused.

**FIRST CLAIM FOR RELIEF BY PLAINTIFF AGAINST ALL DEFENDANTS**  
(Breach of Contract)

28. Defendants, and each of them, have breached the Contract by, inter alia, the conduct and actions described in paragraphs 8 through 25 hereinabove.

29. As a result of Defendants' breaches of contract, Plaintiff has suffered damages in amounts not yet fully ascertained, but which amounts exceed the sum of Seventy-five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

**SECOND CLAIM FOR RELIEF BY PLAINTIFF AGAINST ALL**  
**DEFENDANTS**  
(Specific Performance)

30. Plaintiff is entitled to specific performance pursuant to paragraph 14 of the Contract, including an order of title to the Kennedy Building.

**THIRD CLAIM FOR RELIEF BY PLAINTIFF AGAINST ALL**  
**DEFENDANTS**  
(Quiet Title and Declaratory Judgment)

31. This Court can and should quiet title in favor of Plaintiff as to the Kennedy Building and/or declare that Plaintiff is the owner of the land pursuant to the Contract.

WHEREFORE, Plaintiff prays for relief as follows:

(I) On the First Claim for Relief:

For judgment in Plaintiff's favor and against Defendants for contract damages to be proved at trial or on dispositive motion, for any attorneys' fees allowed by law, for the costs of this action and for such other relief as may be appropriate.

(II) On the Second Claim for Relief:

For judgment in Plaintiff's favor and against Defendants for specific performance transferring the land to them, for any attorneys' fees allowed by law, for the costs of this action and for such other relief as may be appropriate.

(III) On the Third Claim for Relief:

For judgment in Plaintiff's favor and against Defendants to quiet title to the real estate, for any attorneys' fees allowed by law, for the costs of this action and for such other relief as may be appropriate.

Respectfully Submitted,

Bransford H. Shoemake, OBA No. 8195  
SHOEMAKE LAW OFFICES  
106 W. Main Street  
Pawhuska, OK 74056  
Telephone: (918)-287-1812  
Facsimile: (918)-287-1815

--And--

Todd A. cone, OBA No. 15208  
CONE LAW OFFICES  
PO Box 720, 116 SE Delaware  
Nowata, OK 74048  
Telephone: (918) 273-2020  
Facsimile: (918) 273-0853  
—And—

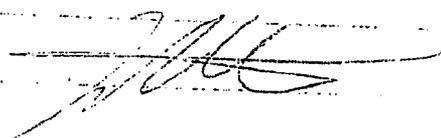
Amand S. Proc r, OB 0. 210 3  
SHIEL LAW GROUP PLC  
300 Riverwalk Terrace, Suite 200  
Jenks, Oklahoma 74037  
Telephone: (800) 655-4820  
Facsimile: (800) 619-2107

Mitchell v. OSAGE CO.  
Agreement

5-17-2023

- A. County to follow Sale Procedures  
& ~~to~~ Sell property pursuant to  
~~the~~ Statute - "Public Auction"
- B IF not sold reauction until sold  
Auction & expenses all of the County.
- C. ~~Complete~~ Hold funds in escrow  
Settle JE that reflects  
County receives \$232,000 for  
Sale to ~~to~~ make whole from  
Contract.
- D. Plaintiff receive all proceeds  
as damages in excess of  
\$232,000.
- E County maintain current insurance  
on Building until transfer of deed.  
\* Any loss  $\rightarrow$  insurance paid into case.
- F Each Party pay own Atty fees  
& costs.

Judd A. Crane



Amberly J. Kane, ADA

Amberly Kane

EXHIBIT

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proceedings of the board; and (2) a copy of the resolution shall be certified by the County Clerk to the Judge of the Osage County District Court; and (3) the judge shall appoint three disinterested freeholders of Osage County to appraise the real estate, and (4) the appraisal shall be returned to the Commissioners; and (5) upon the return of the appraisal, as provided in Section 342 of title 19, the Commissioners shall give notice by publication in a newspaper of general paid circulation in Osage County, for two (2) successive weekly issues, that the real estate is about to be sold at a public auction. If the Kennedy Building is not sold, or a sum of less than \$232,000.00 is the highest bid, Osage County shall re-sell until a sale is finalized.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Osage County shall receive the sum of \$232,000.00, from the sale proceeds.

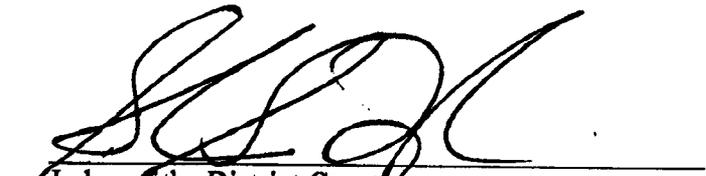
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Mitchell shall receive all sums in excess of \$232,000.00, at time of closing, from the sale proceeds.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** all the expenses of the sale of the Kennedy Building shall be born solely by Osage County.

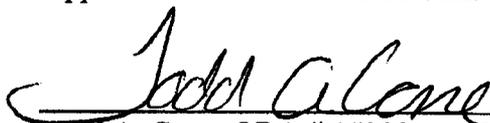
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Osage County shall maintain the Kennedy Building in its current condition, regular wear and tear excepted.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Osage County shall maintain a policy of insurance on the Kennedy Building until the property has been transferred to a new owner by deed. In the event of a loss, all insurance proceeds shall be paid into the case for distribution to the parties, upon order of this Court, commensurate with the provisions herein.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** each party shall be responsible for their own respective attorney fees and costs.

  
\_\_\_\_\_  
Judge of the District Court

Approved as to Content and Form:

  
\_\_\_\_\_  
Todd A. Cone, OBA # 15208

  
\_\_\_\_\_  
Ashley J. Kane, OBA # 22614

**Kennedy Building**  
message

ane, Ashley <Ashley.Kane@dac.state.ok.us>  
): Steve Talburt <stalburt@osagecountyok.com>, Cindy Murphy <district2@osagecountyok.com>  
c: "Fisher, Mike" <Mike.Fisher@dac.state.ok.us>

Tue, Jul 18, 2023 at 10:46 AM

Steve,

I talked Chupps into handling the auctioning of the Kennedy Building for us for free. Attached are the applicable court filings.

According to statute, we have to get 80% of the appraised value.

I will talk to Mitchell's attorney, but I think we should be able to convey the property (to the buyer at the auction) with a quit claim deed to avoid all the extra expense of contracts and abstracts.

The DA's office is handling the publication so that we can ensure that it runs in the Journal Capital and the Fairfax Chief. It will run for two consecutive weeks prior to the week of the auction.

I assume you will want to announce it in public meeting at some point. I will defer to you as to how you would like to handle that part of it, maybe just a non-action item such as "board's announcement of the public auction of the Kennedy Building August 15<sup>th</sup> at 10:00 a.m. on site."

Give me a call if you have any questions or want to visit about this!

EXHIBIT  
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**Ashley J. Kane**

**Assistant District Attorney | Civil Division**

**10<sup>th</sup> and 11<sup>th</sup> Judicial Districts**

**(918) 337-2860 (Washington County Office)**

**(918) 287-1510 (Osage County Office)**

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**3 attachments**

 **Oath of Commissioners.pdf**  
17K

 **Report of Commissioners.pdf**  
35K

 **Notice of Sale.pdf**  
94K

IN THE DISTRICT COURT IN AND FOR OSAGE COUNTY  
STATE OF OKLAHOMA

JAY MITCHELL,  
Plaintiff,

v.

OSAGE COUNTY BOARD OF  
COUNTY COMMISSIONERS,  
JOHN DOE, and JOHN DOE II,  
Defendants.

Case No. CJ-18-165

District Court, Osage County,  
OKLAHOMA

MAY 26 2023

JENNIFER BURTON, Clerk  
By \_\_\_\_\_

REPORT OF COMMISSIONERS

Appraised Value: \$ 910,000.00

Description of Property:

550 Kihekah Ave., Pawhuska, Osage County, Oklahoma, to wit:

The North 6.5 inches of Lot 42, and all of Lots 43 and 44, Block 84, in the Original  
Townsite of Pawhuska, Osage County, State of Oklahoma, (hereinafter, "Kennedy  
Building"),

We, the undersigned appraisers, hereby certify that we have upon actual view thereof,  
appraised the above-described lands and tenements and estimated the real value thereof to be  
estimated at the total sum of \_\_\_\_\_ Dollars.

Witness our hands this \_\_\_\_ day of \_\_\_\_\_ 2023.

Ben West  
Ben West

Gary Wile  
Gary Wile

Les Potter  
Les Potter

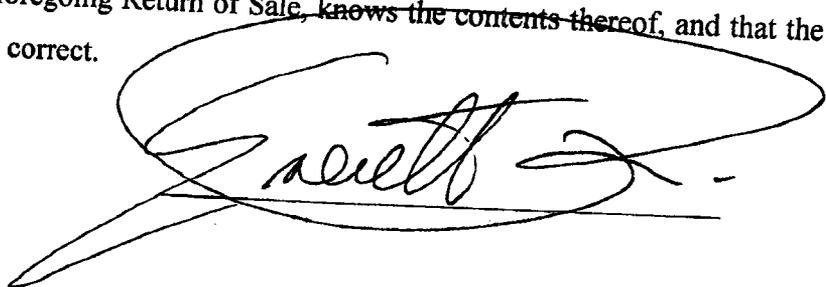
Submitted by: Ashley J. Kane, OBA #22614  
Mike Fisher, District Attorney  
10th Judicial District,  
628 1/2 Kihekah, 3rd Floor  
Pawhuska, OK 74056  
(918) 287-1510

EXHIBIT  
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STATE OF OKLAHOMA )  
 ) ss.  
COUNTY OF OSAGE )

Everett Pifer, being first duly sworn upon oath, states; that they have read the above and foregoing Return of Sale, ~~knows the contents thereof~~, and that the facts therein stated are true and correct.



Subscribed and sworn to before me on this 15 day of August 2023.

Carrie Manning  
Notary Public

My commission expires: 12-23-2025  
Commission Number: 13011424  
(SEAL)

