

RUDOLPH JOHN REZNER, SR., * IN THE CIRCUIT COURT FOR
ET AL., * BALDWIN COUNTY,
Plaintiffs, * ALABAMA.
-vs- * CONSOLIDATED CASE NUMBERS
FAIRHOPE SINGLE TAX * CV-79-500061 &
CORPORATION, ET AL., * CV-80-500061
Defendants. *

* * *

FINAL DECREE

This matter having come on for hearing; testimony taken
ore tenus; exhibits offered and received in evidence; the
demand for jury trial on issues of fact having been withdrawn
by consent during the course of the trial; the Court having
considered and understood the same.

FINDINGS OF FACT

1. The Plaintiffs Rudolph John Rezner, Sr., Mark Williams and Sybil Tobias are each non-member lessees and owners of improvements located on lands owned by the Defendant Fairhope Single Tax Corporation, hereinafter referred to as FSTC; and are proper representatives of the plaintiff class (non-member lessees of FSTC). They are each resident citizens of Baldwin County, Alabama.

2. FSTC is an Alabama corporation organized and existing under the laws of the State of Alabama, specifically

Section 10-4-190 et seq., Code of Alabama (1975), in 1904, and has its principal place of business in Baldwin County, Alabama, where it owns approximately 4,300 acres of land which it acquired from its predecessor, Fairhope Industrial Association, (FIA), an Iowa corporation, to carry on the purposes of FIA which were essentially the same as FSTC, and the remainder principally from charitable gifts made to it by followers of the single-tax theory of Henry George as set forth in the book by Henry George,

Progress and Poverty.

3. The Defendants Thomas H. Brown, Frederick I. Boone, Robert G. Mason, John S. Parker are members of the Executive Council of FSTC; the Defendants Claude Arnold, John Weinand and E. B. Gwin, Jr., are former officers (Vice-Presidents) of FSTC; the Defendants Ernest Bailey, Leonard Oppenheim, Allen Hoffman and Bartlette Jennings are Trustees or former Trustees of FSTC; the Defendants Donald W. Gooden, William C. Lucey and Mary G. Godard are former officers of FSTC; the Defendant Charles B. Ingersoll is President of FSTC; and the Defendant Gale Rowe is Secretary of FSTC. All of the above named individuals are members of FSTC.

4. FSTC has admitted in its Answer and the Court so finds that it has contracted with the lessees to apply the single-tax principles of Henry George in the conduct of a model community and so represents to each lessee.

5. The purpose of FSTC under its Declaration of Incorporation and its Constitution is to demonstrate the

beneficence, utility and practicability of the single-tax theory with the hope of its general adoption by the governments in the future and to conduct a model community free from all forms of special privilege, securing to its members therein equality of opportunity, the full reward of individual efforts and the benefits of cooperation in matters of general concern.

6. FSTC in accomplishing its purposes as set out above must apply the single-tax theories of Henry George.

7. FSTC leases its lands to members as well as nonmembers.

8. FSTC conducts its model community through applications for land and leases issued pursuant thereto which incorporate and extend to all lessees the benefits and other provisions of the FSTC Declaration of Incorporation and Constitution.

9. Under Clause 5, which appeared in all leases issued by FSTC (with minor modifications not here relevant) from its inception until September of 1977, FSTC obligated itself to distribute the same benefits in the model community to nonmember lessees as member lessees with strict equality, with the exception, however, of the right of members to participate in the government of FSTC.

10. In the early history of FSTC it provided a number of services normally thought of as governmental services which were funded from the rent proceeds. However, the City of Fairhope was incorporated in 1908 and it, together with Baldwin County and the State of Alabama, began providing the same services and gradually FSTC ceased providing such services so that for many years now FSTC, except for some "public improvements" occasionally

made, only pays the real property and personal property taxes (not to exceed the rent charge on the land) for its lessees, although the criteria for rent determination remains the same.

11. There are approximately 1,300 lessees of which only 140 are members of FSTC. There are only 60 members who actually reside as lessees on FSTC land and the balance of approximately 80 members include approximately 40 who are not lessees.

12. More than 30% of the FSTC members are spousal members due to Section 2, Article III, of the FSTC Constitution which provides that spouses shall be considered a member and entitled to vote in the government of the corporation while such relationship exists and while such member remains in good standing.

13. The original intent of the founders of FSTC was that all lessees would be members and residents upon the lands of FSTC constituting the model community it is supposed to conduct.

14. Taking the Henry George course is not a stated prerequisite for membership and not all members have taken it.

15. FSTC has not established objective criteria for approval by the Executive Council of membership applications, and instead, the Executive Council accepts or rejects applications arbitrarily.

16. Henry George intended that all lessees be members of and fully participate in the affairs of FSTC.

17. Under the single-tax theory of Henry George, which FSTC is to demonstrate, and Under Article 4 of the FSTC

Constitution it was intended that all voting members of FSTC in matters affecting the operation of the model community or colony be lessees.

18. Oil and gas are products of the land and the payments received by FSTC for leasing the minerals under its lands are bonuses or advance royalties which are products of the lands and/or values attaching to the land.

19. Upon the organization of FSTC it adopted a form lease, hereinafter referred to as "Original Lease", to be used for leasing its lands to member and/or nonmember lessees. Said Original Lease contained no reservation of minerals by FSTC.

20. FSTC changed its Original Lease in about 1915 and again around 1932 and thereafter utilized the same lease format, hereinafter referred to as "Standard Lease", until September 1977, at which time it revised the lease substantially, hereinafter referred to as "Revised Lease", and has continued to utilize the Revised Lease to the present.

21. FSTC utilized an Application for Land which was revised in September 1977 and which restricts the sale of improvements by lessees to a price which is approved by FSTC.

22. The Revised Application for Land and Revised Lease eliminated the trust provisions contained in the Standard Application for Land and Standard Lease.

23. Plaintiffs Rezner and Tobias have the Standard Lease form and Plaintiff Williams has the Revised Lease form.

27. The Revised Lease, among other things, expanded the beneficiaries of the rents from only the lessees as provided for in the Standard Lease to the lessees, FSTC and the community, as determined by the Executive Council.

28. FSTC has now converted approximately 43% of the outstanding leases to the Revised Lease.

29. The single-tax theory has three fundamental requirements:

- (a) All land must be common property.
- (b) There shall be only one tax - a single tax, i.e., Rent.
- (c) All lessees shall have the security of their improvements.

30. FSTC maintains three funds, namely, (1) A Rent Fund, which is also known as the General Fund and which FSTC acknowledges is a trust for the benefit of all lessees; (2) A Land Fund, which is to be used for the acquisition of land by FSTC, which FSTC denies is a trust fund; and, (3) A Mineral Fund, which is used to hold the money from oil and gas leases given by FSTC on its lands and which FSTC maintains is not a trust fund.

31. FSTC has invested the money in the Land Fund, the Mineral Fund and parts of the Rent Fund in interest bearing accounts.

32. Commencing in 1971 FSTC began transferring the interest from the Rent Fund to the Land Fund and such practice continued through 1984, whereupon, it was discontinued as a

a result of this lawsuit and advice of FSTC's counsel. In 1985 FSTC transferred \$217,700 from the Land fund to the Rent Fund to reimburse the rent fund for said interest taken.

33. FSTC paid from the Rent Fund until 1983 the income taxes attributable to the taxable income of the Land Fund and the Mineral Fund, without reimbursement to the Rent Fund.

34. The rent for said land, under Section 2, Article VIII of the FSTC Constitution and under Clause 1 of the original Lease is an "annually appraised rental which shall equalize the varying advantages of location and natural qualities of the different tracts."

35. The rental for said land under Section 3 of the Declaration of Incorporation is the "fair rental value."

36. The rents are annually determined by the Executive Council of FSTC as is the expenditure of such rents, all without any voice or representation of the nonmember lessees.

37. All improvements made upon the land by the lessees are the property of the lessees, not subject to rent, and FSTC leases only its bare land.

38. The method of rent determination now used by FSTC, including the use of the "Sommers System" is overly complex and not completely understood by the Executive Council members who testified in this matter.

39. FSTC does not individually appraise each leasehold each year.

40. FSTC divides its leaseholds into two categories,

namely, City and Country.

41. FSTC has a Rent Study Committee which is responsible for making annual recommendations to the Executive Council for the annual rent to be charged the lessees and in the 21 years from 1964 to 1984, both inclusive, the Executive Council accepted such recommendations only three times.

42. Country land rents were increased at a greater rate than city land rents in the following proportions: 2-1/2 times during the period 1963 to 1971, both inclusive; over 4 times during the period 1971 to 1976, both inclusive; and 1.38 times during the period 1976 to 1979, both inclusive.

43. Since 1979 there have been no rental increases to any lessees of FSTC; however, FSTC has increased its "total equity" according to its annual financial statements from \$1,109,183 on December 31, 1979, to \$1,712,256 as of December 31, 1984, (excluding land values). Furthermore, during said period FSTC's net worth has increased by \$427,115 even after allowing for capitalization of property and equipment. Furthermore, each year since 1979, FSTC's revenues have exceeded its operating expenses and in 1984 the excess of revenue over expenses, after taxes, was \$125,379.

44. The requirement that lessees must first get approval of the sales price of their improvements violates FSTC's Constitution and the single-tax theory of Henry George that lessees must be given the security of their improvements.

45. FSTC accumulated a large cash surplus of about \$1.1 Million as of December 1984, which is far in excess of its needs.

46. FSTC, by its own admission, needs no more than twice its annual expenses in cash surplus, which totals approximately \$600,000 based upon 1984 year-end figures.

47. FSTC has used over \$139,000 from the Rent Fund to develop Fairland Subdivision on unused, unleased FSTC land.

48. FSTC has a policy of first offering new leaseholds to members and then to the general public, as it did in Fairland Subdivision.

49. Under FSTC policy clearing land is not considered an improvement for the purposes of subleasing it.

50. In April 1979, FSTC attempted to dissolve and reorganize as a "FOR PROFIT" corporation without notice to the lessees and in doing so, paid Ernest M. Bailey, a member of FSTC and attorney, \$2,600.00 from the Rent Fund for legal work on said attempted dissolution.

51. FSTC refuses to arbitrate rent disputes with lessees as called for under Section 10-4-194, Code of Alabama (1975).

52. The Plaintiffs have incurred approximately \$ 116,787.77 in legal fees and expenses during the course of this case through December 30, 1985. Such fees and expenses incurred by the Plaintiffs are reasonable.

CONCLUSIONS OF LAW

1. A nonprofit corporation whose purpose is charitable is a charitable corporation. The dissemination of a rational belief or doctrine constitutes an educational purpose. FSTC is a nonprofit corporation created under the laws of Alabama for the charitable purposes expressed in its Articles of Incorporation and is therefore a charitable corporation. Ross, et al. v. Freeman, 180 A. 527 (Del. 1935); George et al. v. Braddock, 18 A. 881 (N.J. 1889); In Re: Los Angeles County Pioneer Society, 257 P. 2nd 1 (Cal. 1953)

2. Gratuitous transfers to a corporation organized for a charitable purpose which contain no reference to a trust and no specification of the use to which the gifts are to be put are given in trust to carry out the purposes and objectives for which the corporation was created. The charitable corporation holds such gifts as a trustee in trust for the purposes specified in its corporate charter. The legal title to lands and other assets transferred to FSTC by deeds of gift are therefore held by it in trust to carry out the objects expressed in its Articles of Incorporation.

3. Clause 4 of the Standard Lease (and the original lease), standing alone, creates a trust for the administration of the rents for the equal benefit of those leasing FSTC lands. The Revised Lease removed, among other things, Clause 4 of the Standard Lease.

4. While nonmember lessees are not automatically entitled to membership in FSTC, FSTC cannot arbitrarily or capriciously reject an applicant for membership.

5. Nonmember lessees of FSTC have no right to vote in the affairs of FSTC.

6. All Officers, Executive Council Members, Trustees, Committe Members, et cetera, shall be lessees of FSTC.

7. The significantly greater percentage of increases in the rents on country leaseholds compared to the rents on city leaseholds for the same periods of time, as aforesaid, indicates discrimination by the corporation against country lessees.

8. Restriction on transfer of improvements whereby FSTC must approve the sales price thereof is not only contrary to Sections 3 and 4 of Article VIII of the FSTC Constitution but also violates the single-tax principle requiring the lessees to be given the security of their improvements.

9. The policy of FSTC whereby clearing of land is not considered an improvement and thus the lessee is not allowed to sublet such cleared land for any additional rental than FSTC charges the lessee is another violation of the lessee's right to the security of his improvements.

10. Under Section 2, Article VIII of the FSTC Constitution FSTC is obligated to convert into the treasury of the corporation for the common benefit of its members, all values attaching to the lands, not arising from the efforts and expenditures of the lessees. And, under Section 3 of Article VIII of the FSTC

Constitution all land leases shall convey full and absolute right to the use and control of lands and to the ownership and disposition of all improvements made or products produced thereon. Oil and gas are products produced from the land and are values attaching to it.

11. The money derived from the lease or sale of mineral rights are trust funds because they are values attaching to the land which must be used for the benefit of all lessees. Under Section 2, Article VIII, aforesaid, and Clauses 1 and 5 of the Standard Lease.

12. The transfer of interest from the Rent Fund to the Land Fund, the revision of the Standard Lease and Application for Land eliminating therefrom the trust provisions, the utilizing of trust funds for development of Fairlands Subdivision, the payment of income taxes from the Rent Fund for taxes due on the Land Fund and the Mineral Fund and the attempted dissolution of the corporation are evidence of a breach of a fiduciary duty by FSTC and the individual Defendants, for which compensatory and punitive damages should be assessed.

13. The adoption of the Revised Lease was a breach of the contract FSTC had with each lessee under the Standard Lease to maintain a trust for the rent money received from all lessees for the equal benefit of all lessees.

14. That Section 10-4-194 Code of Alabama (1975) is unconstitutional in that it only applies to "corporations demonstrating the single-tax principle" and does not apply to

other associations incorporating under Section 10-4-190, et seq.,
Code of Alabama (1975).

15. Mrs. J. E. Gaston was dismissed as a defendant by oral motion of the plaintiffs made in chambers prior to the trial in the presence of the defendants' (including Mrs. J. E. Gaston) attorney and without objection.

16. The plaintiffs are entitled to recover their reasonable attorney's fees and expenses and their attorney is entitled to enhancement of his fees.

The Court has considered the pleadings, the testimony taken at trial, the demeanor and credibility of witnesses, the documentary evidence introduced at the trial, and the briefs of counsel for both plaintiffs and defendants, whether or not recited hereinabove in the Findings of Fact and Conclusions of Law. Therefore, in the event the Court has failed to recite any fact or conclusion of law which may be pertinent to the Order hereinbelow entered, the Court hereby makes known that such omission was unintentional and does not necessarily mean the Court did not consider such fact or conclusion of law. Therefore, the Order hereinbelow entered is based upon the case as presented in its entirety.

O R D E R

It is hereby ORDERED, ADJUDGED and DECREED as follows:

1. FSTC is a charitable corporation.

2. Nonmember lessees are not entitled to vote in the affairs of FSTC.

3. The criteria for membership in FSTC shall be established as follows:

- (a) An applicant shall be over the age of eighteen (18) years.
- (b) An applicant shall successfully complete the Henry George course as offered by FSTC or provide other acceptable evidence of knowledge of the single-tax precept.
- (c) An applicant shall tender a One Hundred Dollar (\$100.00) contribution to FSTC, refundable if application rejected.
- (d) An applicant shall take an oath to support the corporate purposes of FSTC.

4. An application for membership shall be filed upon the completion of the Henry George course, together with the tender of the One Hundred Dollar (\$100.00) contribution and taking of the oath to support the FSTC Constitution. Upon receipt of said application, the Executive Council shall have sixty (60) days from the date of the submitting of the application to accept or reject said application. In the event the application is not rejected within said sixty (60) day period, then the application will be deemed to have been accepted. In the event the Executive Council rejects the application, it must notify the applicant in writing within said sixty (60) day period of its decision and state in such notification the reasons for the rejection, which shall only be for good cause. Said Henry George course shall be offered by FSTC at least twice per year.

5. The application for membership shall be in the form used in 1971, as shown by the application of Gale Rowe contained in Plaintiff's Exhibit 30, with the exception that the prohibition against buying and selling land near FSTC shall be deleted.

6. Those nonmember lessees who have previously taken the Henry George course shall not be required to retake said course. They shall be reconsidered for membership upon submitting an application, tendering the One Hundred Dollar (\$100.00) contribution and subscribing to the aforementioned oath.

7. There shall be two categories of membership in FSTC: (i) members who are lessees of FSTC lands who shall have all rights of membership, including the right to vote on all issues that may come before the corporation and the right to hold any office in said corporation; (ii) members who do not lease FSTC lands and who shall enjoy benefits of membership, except they shall not be entitled to hold any office in FSTC nor vote on any issue that may come before the corporation other than a change(s) in the Constitution.

8. The present method of determining rents is hereby abolished. The Executive Council shall appoint a Rent Study Commission to develop a more equitable system of rent determination. Said system shall be presented to the Executive Council for approval and shall be presented to the voting membership for its approval at the regular annual election on the first Thursday in February, 1987. The Rent Study Commission as appointed by the Executive Council shall contain a minimum of two members who lease country land.

10. All rents shall be frozen at the present rates until said new system of determining rents is approved by the membership and recommendations for annual rentals are made and approved under said new system. In no event shall any rent increase become effective prior to January 1, 1988, and in the event of an appeal of this matter, prior to a ruling by the Appellate Court.

11. FSTC shall not accumulate a cash surplus in excess of two times its annual expenses.

12. The policy of FSTC whereby it restricts the sale of improvements by its lessees to a purchase price approved by FSTC is hereby declared void. That part of all instruments outstanding seeking to enforce said policy, including but not limited to the Lease Application Affidavit, is hereby declared unenforceable.

13. All Oil, Gas and Minerals shall be for common benefit of all members and lessees. All revenues received from the leasing of said mineral interests or production of said minerals are for common benefit of all members and lessees and shall be held in trust and used for said benefit.

14. The clearing of unimproved land by a lessee shall be considered an improvement by the lessee for all purposes.

15. The use of the Revised Lease shall be discontinued and the Standard Lease substituted therefor. Any holder(s) of a Revised Lease may demand FSTC substitute a Standard Lease.

16. That Section 10-4-194, Code of Alabama (1975) is unconstitutional.

17. The preliminary injunction heretofore entered in this action against FSTC and the individual defendants is hereby made permanent; and FSTC, acting through its officers as described above in the Findings of Fact, from time to time in office, and the individual defendants, are permanently enjoined from dissolving or attempting to dissolve FSTC in any manner whatsoever.

18. For the original authorization and subsequent authorizations for the development of Fairland subdivision with trust money and thereafter offering the lots first to members, compensatory damages of One Hundred Thirty-Nine Thousand Dollars (\$139,000.00) are assessed against defendants FSTC, Lucey, Brown, Parker, Boone, Mason and Ingersoll, who were the President of FSTC and the members, respectively, of the Executive Council who made such authorizations and defendants Jennings, Bailey and Oppenheim, who were trustees of FSTC when Fairland Subdivision was authorized as aforesaid and developed, separately and severally. Said compensatory damages shall be paid into the Rent Fund to reimburse said Fund for monies wrongfully spent.

19. For the attempted dissolution of FSTC in April 1979, and reorganization thereof as a "FOR PROFIT" corporation, compensatory damages of Two Thousand Six Hundred Dollars (\$2,600.00) are assessed against defendants FSTC, Brown, Parker, Boone, Mason, and Ingersoll, who were the members of the Executive

Council that recommended such action to the membership and voted for the dissolution of FSTC; and, defendants Jennings and Hoffman, who were trustees during such time; and, defendant Gooden, who was President at such time. Said compensatory damages shall be paid into the Rent Fund to reimburse said Fund for monies wrongfully spent.

20. For the wrongful acts hereinabove set forth in Paragraphs 18 and 19, the transfer of interest from the Rent Fund (a trust fund) to the Land Fund annually during the period October 21, 1971,through December 31, 1984, and the payment of taxes incurred by the Land Fund and Mineral Fund from the Rent fund punitive damages are hereby assessed against defendants Lucey, Brown, Parker, Boone, Mason, Ingersoll, Jennings, Bailey, Oppenheim, Hoffman and Gooden in the amount of One Hundred Ten Thousand Dollars (\$110,000.00), separately and severally.

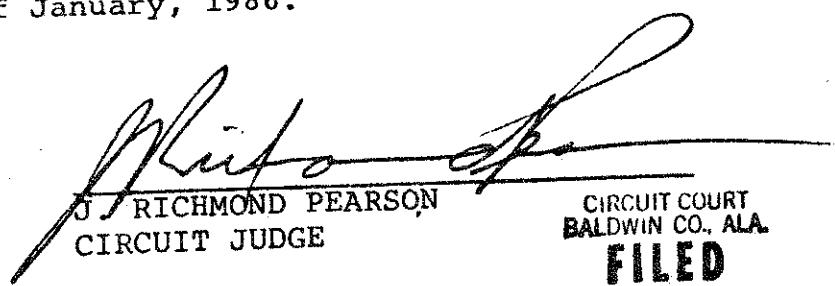
21. The punitive damages assessed in this Order shall be paid into Court to be held in trust in an interest bearing account for the benefit of the plaintiffs' class pending a subsequent order of this Court which will determine a fair and equitable distribution of the damages within the class.

22. The Court awards an attorney's fee and expenses to the attorney for the plaintiffs, J. Don Foster, of Foley, Alabama, in the amount of \$179,686.77. Plaintiffs' attorney is to reimburse the Fairhope Single Tax Lessees Association, Inc. for the attorney fees and expenses paid by them in the amount of \$116,786.77 less any amount owed J. Don Foster,

attorney for Plaintiffs, as of this date. The balance of said attorney's fee is awarded to the plaintiffs' attorney as an enhancement of his fees.

23. The Court retains jurisdiction of this case indefinitely for the purpose of implementing, reviewing, modifying and enforcing the terms hereof.

DONE this the 21st day of January, 1986.



J. RICHMOND PEARSON
CIRCUIT JUDGE

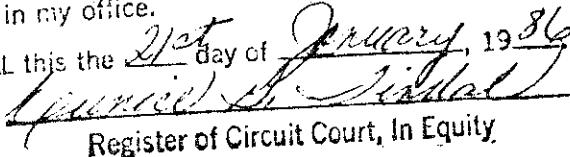
CIRCUIT COURT
BALDWIN CO., ALA.
FILED

JAN 21 1986

I, Eunice G. Tindal, Register of the Circuit Court of Baldwin County, Alabama, do hereby certify that the foregoing is a correct copy of the original decree rendered by the Judge of the Circuit Court in the stated cause, which said decree is on file and enrolled in my office.

WITNESS MY HAND AND SEAL this the 21st day of January, 19⁸⁶

EUNICE G. TINDAL
REGISTER



Eunice G. Tindal
Register of Circuit Court, In Equity.