

United States District Court
FOR THE

NORTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA

v
JOE E. SIMMONS

Magistrate's Docket No.

Case No.

COMPLAINT for VIOLATION of

U.S.C. Title 18

Section 2314 & 1343

BEFORE ALLEN L. CHANCEY

Name of Magistrate

505 Old Post Office Building, Atlanta, Georgia

Address of Magistrate

The undersigned complainant being duly sworn states:
beginning

That on or about October 1, 1972, and continuing until the present

in the

Northern District of Georgia

(1) JOE E. SIMMONS, having devised a scheme to defraud a group of investors, of a sum in excess of \$5,000 did cause the following things ~~to~~ to happen:

A) Did cause on February 9, 1973, to be transported in interstate commerce from Atlanta, State of Georgia, to New York, State of New York, by interstate bank wire \$19,500 and knowing it to have been taken by fraud, in violation of 18 U.S.C. 1343 & 2314.

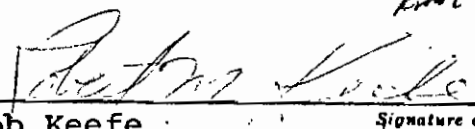
B) Did cause on November 10, 1972 to be transported in interstate commerce from Atlanta, State of Georgia, to Grand Cayman, British West Indies, \$19,500 knowing the money to be taken by fraud, in violation of 18 U.S.C. 2314.
~~And the complainant states that this complaint is based on~~

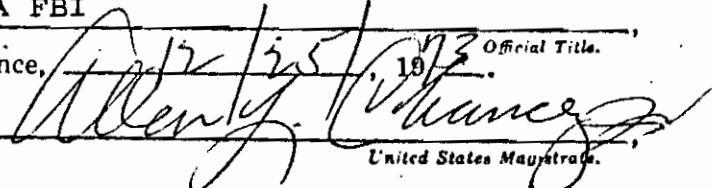
C) Did cause on January 25, 1973, to be transported in interstate commerce from Atlanta, State of Georgia to the Cayman Islands, British West Indies \$49,920, knowing the money to have been taken by fraud, in violation of 18 U.S.C. 2314.

D) Did cause on or about May 11, 1973, the following victims of the schemes to travel in Interstate Commerce from Atlanta, to Grand Cayman in the British West Indies: Pat Crowe, Marshal Ledbetter and Dr. James Russell, in violation of 18 U.S.C. 2314.

And the complainant further states that he believes that Bob Keefe, FBI (2) Wayne Trice (3) Doyle Savage, Kemmons Wilson Construction Co. (4) Dr. Marvin Mitchell (5) Dr. Alexis Davidson (6) Dr. Jim Russell (7) Marshall Ledbetter (8) Dan Matthews (9) John Borden (10) Dr. Harold McDonald (11) Pat Crowe (12) Dr. Harrison Reeves (13) Taylor Jones Jim Stone C&S Bank,

are material witnesses in relation to this charge.


Bob Keefe
S/A FBI
Signature of Complainant.

Sworn to before me, and subscribed in my presence, 
Allen L. Chancey
Official Title.
United States Magistrate.

(1) Insert name of accused.
(2) Insert statement of the essential facts constituting the offense charged.

The complainant states that this complaint is based on the following:

I. The substance of the fraud is set out in three parts below with the acts in furtherance thereof included therein.

(1) In the Fall of 1972 and early Spring of 1973 the defendant, Joe Simmons, aided by Dr. Fred Allman and Dr. Harold McDonald, solicited approximately 180-240,000 dollars from a group of approximately 20 investors for the purpose of building condominiums on a piece of property located next to the Holiday Inn on Grand Cayman Island, British West Indies. (2) It was represented to the investors that Simmons had a 99-year lease on the property and, in the Fall of 1972, that a contract had been executed between the condominium group and Kemmons-Wilson Construction Company of Memphis, Tennessee, whereby construction would begin no later than November 1972, and be completed by December 31, 1973. Simmons claimed into the Spring of 1973 that this contractor was the builder. (3) Many of these investors were flown to the Cayman Islands on a chartered trips in the Winter and early Spring including a flight on or about May 11, 1973, which included the men in paragraph D above and were shown the property upon which the condominiums were to be built. (4) The funds of the investors were supposed to be held in escrow by Simmons for construction of the condominiums. (5) A condominium payment of \$19,500 of Dr. Marvin Mitchell was made payable to the First World Investment Company and was wired ^{from ATLANTA VIA NEW YORK} to the Cayman Islands on February 9, 1973. (6) A payment of \$19,500 was also collected from Taylor Jones an Atlanta Attorney, as well as about 18 other investors. (7) The brochure used to promote sales of the property lists Joe Simmons as a financial consultant (8) The condominiums were to be a distinct and separate project from any other undertaking and was a project conceived and managed by Simmons in association with Dr. Allman

(9) Up until the present, the condominiums have not been built or construction even begun. (10) The money taken in is not accounted for by Simmons who refuses to make the records available to the investors or to make an accounting of the funds despite repeated requests. (11) Simmons told Taylor Jones in November that he wanted him to take over as president or legal counsel for the company; however, not only has Simmons refused to turn over the records as promised to Jones, he has also failed to refund his money, and in fact has proved impossible to contact in recent weeks. Additionally, after repeated requests by Jones for a refund, Simmons bounced a check on Jones for the refund. (12) According to Simmons' former assistant, Wayne C. Trice, Simmons never had a 99 year lease on the beach property, but only an option on the lease, if that. Therefore, in February 1973, he bought another piece of property, different from that represented to the investors, and paid for this property from funds collected from other investors in the corporation known as First World Properties, which was not made known at the time of the transaction to the original investors of either organization. (13) As investors began to inquire about the lack of progress on the project, in the Spring and Summer of 1973, they were told that the architectural plans for the project had been rejected by Cayman Island authorities. According to Wayne Trice, who was operating with Mr. Simmons during this period, there were no architecture plans available at the time these representations were being made, this being only an excuse and in fact, Simmons then went out and hired an architect with funds from another corporation, First World Properties, the use of these funds for that purpose being unauthorized. (14) During the Spring of 1973, Mr. Trice states that Mr. Simmons

had sole control over the assets of the condominium project and that the funds collected, \$180,000 to \$240,000, were spent by Simmons on personal trips and to sell condominiums to others, as well as to sell stock in an entirely different entity from the condominium project, the First World Properties Corporation, without any of the funds being used as intended on building the condominiums.

(15) Simmons in his brochure represented that once the condominiums were built, an organization entitled Holiday Management Services, Inc. was to handle the maintenance and renting of the condominiums (renting for the owners when they weren't in use). The \$19,500 payment of Taylor Jones went into this account. Mr. Trice states that, to his knowledge, Holiday Management Services, ostensibly a Cayman Islands Corporation, was never actually in existence, particularly since the condominiums have never been built, and the account was purely a personal account for Joe Simmons and his wife. FBI agent Bob Keefe has examined this account and finds it had a balance of \$89.79 as of 8/31/73, whereas deposits of \$46,650.00 had been made to the account and essentially all dispersed. (16) In the brochure which Simmons used to induce investors to buy condominiums, Dr. Fred Allman, Jr. was held out ^{as} the person in charge of Holiday Management, thus, according to Mr. Jones, inducing him to not question making his condominium check payable to Holiday Management Services. In fact, according to Dr. Allman, he never had anything to do with this entity, which in truth functioned as Simmons own personal account.

(17) As a result of pressure from investors, Simmons did negotiate the purchase of a piece of property up the beach from the original site. Although the property was purchased, according to Trice, with a \$50,000 down payment from First World Properties Funds, a contract was prepared between the investors and the seller and sent to Simmons for immediate execution in February. However, according to Taylor Jones and John Borden, an associate of Simmons from the island, Simmons has refused or neglected to execute the contract since then and the seller is now claiming default. As a result, the condominium project has no land, since this matter is tied up in litigation. However, the investors put their money into this project under representations by Simmons that the land was already owned and available and the condominiums would go up immediately.

(18) Therefore, although 180-240,000 dollars, allegedly in escrow, was put into this project, according to Trice, there is none left, there has been no construction started on the condominiums, Simmons refuses to turn over the books or make an accounting as promised, and now there doesn't even appear to be a piece of land to build on.

(19) On May 11, 1973, one of several plane trips was made to the islands to induce investors to invest in the condominiums and real estate transactions among others, Pat Crowe of Chattanooga, Tennessee, Marshall Ledbetter of Tennessee and Dr. James Russell of Atlanta all flew from Atlanta to the Cayman Islands. (20) Doyle Savage of Kimmons-Wilson Construction Company states that the only contact his company had with Simmons was ^{one} conversation in October of 1972 and that no contract was ever signed for building the condominiums, and further that ^{the} ~~this~~ ^{one} conversation is the last contact he ever had with Simmons.

ALEXIS DAVISON, Medical Doctor (M.D.), who is aware of the official identity of the interviewing Special Agent and of the nature of the investigation being conducted by the Federal Bureau of Investigation (FBI), furnished the following information in the presence of his brother, PETER DAVISON:

Investors in the corporation known as First World Properties, Limited (FWPL), have succeeded in obtaining the services of a Certified Public Accountant (CPA), who is willing to undertake an audit of FWPL. On December 5, 1973, JOE ED SIMMONS, made all of the records of FWPL available to the CPA, who is WILLIAM BENSON of Decatur, Georgia. BENSON has advised Dr. DAVISON that his audit will be complete within thirty days.

Dr. DAVISON furnished photocopies of two checks from his personal account maintained in the Citizens and Southern National Bank (C&S), Atlanta, Georgia. Check number 152, dated November 10, 1970, is made payable to the First World Investment Company, in the amount of \$19,500, and bears the notation that it is for a condominium in the Cayman Islands. Bank endorsements on the reverse side of this check indicates that the check was credited to the account of the within named payee, by Mercantile Bank and Trust Company (Cayman) LTD, at Georgetown, Grand Cayman B.W.I., endorsement also appears of the Bank of Nova Scotia, dated November 17, 1972, also at Georgetown, Grand Cayman.

Check number 157, dated January 25, 1973, is made payable to First World Investment Company, Limited, in the amount of \$49,920. Dr. DAVISON advised that this was for the purchase of 19,200 shares of FWPL, Capital Stock. Endorsement material contained on the reverse side of this check indicates that it was used to purchase Federal Reserve check number 01863797 from the C&S, and bears a date which is partially illegible, but appears to be January 30, 1973.

II. (1) The defendant also, beginning in February 1973, began soliciting money for the formation of a real estate company to purchase, hold for appreciation or development and/or sell land on Grand Cayman Island. Mr. Trice advises that he personally deposited \$500,000 of the money and that he thinks more was collected. (2) Mr. Trice states that Mr. Simmons, without the knowledge or authority of the other stockholders (Simmons owned 20% of the stock), squandered between \$250,000 and \$300,000 of this money by using it for himself, to promote further sales of the condominiums, which was his own unrelated project, and to pay transportation expenses for himself to obtain architectural drawings from a Ft. Lauderdale Architect for the condominiums and obtain permanent financing for the condominiums from Liberty Mutual Insurance Company of Philadelphia. (3) The original accountant, Bill Franze of Touche-Ross, refused to certify an audit of the company, according to an investor, Dr. Harrison Reeves, due to difficulty in getting information from Simmons and an audit is only now in the final stages of preparation. (4) Dr. Ed. Bivens states that at a meeting of interested stockholders of First World Properties, held December 22, 1973, with an Caymanian, John Borden, who was to merge his company with First World Properties, it was the consensus of the investors that approximately \$250,000 dollars of the funds collected are unaccounted for. (5) Simmons was the chief executive officer and "Chairman" of First World Properties during the tenure of Mr. Trice, who left in July of 1973, because he states he became very suspicious of the way Simmons was running things. During this period, Simmons was the sole authorized signor of all checks disbursing funds from the First World Properties account. Additionally, Mr. Trice states that some of the funds went into an account, solely under Simmons control, known as First World Investments which also was to buy land for First World Properties. (6) Agent Bob Keefe has examined these two Atlanta accounts and found that of \$303,708.08 in deposits going into First World Investments, \$5,503 is left and of \$136,444.08 going into First World Properties only \$10,159.57 was left on August 31, 1973. Trice stated that Simmons, as well, controlled the Cayman accounts of these two "entities". (7) Simmons told the investors that First World Properties owned 2000 - 4000 acres of land in the Caymans. Mr. Trice could never verify any such purchases. Simmons has refused to divulge the land owned up until last week. It now turns out that most of the land acquired is not owned but only is tied up through contracts to purchase. The consensus of the executive group who met on 12/22/73, is that if the payments known to have been made on land and land contracts are deducted from the funds collected, the result is \$250,000 which Simmons has yet to account for, despite repeated requests that he do so by the investors. (8) Simmons has paid back some individuals who had sunk money into the condominiums. However, according to Mr. Trice, the money to pay back these individuals after the condominium funds were gone, came from the First World Properties funds, unknown to the stockholders. (9) When questions began to be raised by stockholders, particularly as to why Simmons was not producing deeds for the land, the explanation was given by Simmons that (a) the deeds were not being recorded to avoid the 7 1/2% Cayman Island real estate transfer tax and (b) that the property was being held by various real estate men and lawyers so that no one would be aware of the extent of Simmons and the First World Properties acquisitions. This device served to quiet the investors, according to Mr. Trice. (10) Mr. Simmons had represented to the shareholders, through the use of a map with shadings to indicate holdings, and desired holdings, that one particular area owned by the corporation would be

the site of a development and golf course with good top soil. Mr. Trice stated that Simmons representative on the island, Dan Matthews, informed him after returning from the island, that the piece of property was nothing but a coral reef. (11) On September 18, 1973, a communication from D. S. Tricker of the Cayman Islands Police indicates that Simmons was declared a prohibited immigrant in 1973 and that Simmons has failed to pay the stamp duty which is required for what property he owns despite repeated requests by the authorities to do so. (12) As a result of Simmons activity, approximately \$250,000 of the funds collected are unaccounted for, the investors do not know what, if any land they own and what payments are due, and Mr. Trice states that Simmons has squandered numerous First World Properties funds on his own condominium project as well as himself, without authority of the stockholders. At the present time, due to Simmons' evasions, the stockholders are in the dark as to the disposition of better than \$500,000 in corporation funds which have been under the custody of Simmons.

III. (1) As a further part of this elaborate scheme to defraud, Simmons told the shareholders of First World Properties that they should form another corporation, making it a Georgia corporation, to buy land in the Caymans, so as to raise more money without diluting the value of their property. (2) This corporation was called Georgetown Land Company and Simmons was not an officer of Georgetown. (3) However, Simmons induced the shareholders of Georgetown to buy a 40% interest in another entity, West Indies Development Financial Company, for \$108,000. The other 60% of the company, according to Simmons, was to be bought by a major insurance company and the purpose of the company, according to Simmons presentation to the investors of Georgetown, was to provide long term mortgages for the Cayman Islands. This 60% was later purchased not by an insurance company, but by Simmons himself, for a note, according to Dr. Alex Davidson. (4) The \$108,000 in funds are unaccounted for according to Mr. Trice, and Agent Keefe has found that of the original deposit into C&S in this account of \$135,000.18 on May 1, 1973, all but \$212.16, has been drained out. (5) Mr. Trice states that he knows that between \$25 - 60,000 of this money went into the account of still another Simmons creation, called Preferred Physicians Planning Foundation, which was, in essence, a financial consulting service for doctors run by Simmons. This money went to promote this Simmons venture, entirely unrelated to Georgetown land or West Indies Development, to pay for Simmons' travel and other expenses, of course, without the knowledge of the 40% owners, Georgetown Land Company. (6) Additionally, Trice and Dr. Doug Smith were listed as (without their knowledge) Corporation officers of West Indies. It was upon discovery of this fact that Trice left Simmons in the Summer of 1973. (7) The only authorized signer on the account at the C&S Bank, however, is Joe Simmons, listed as Assistant Secretary-Treasurer.

IV. The result of the above scheme is that approximately \$500,000 of investors funds taken in by and under the exclusive control of Joe Simmons, are now unaccounted for and missing, under circumstances set forth above which set forth a fraudulent pattern of deceit and dishonest dealings and misrepresentations, establishing a scheme to defraud by this sequence of events. A scheme to defraud has been defined in this circuit as being "devoid of moral uprightness, fundamental honesty, fair play and right dealing in the general and business like of members of society" Gregory v. U.S., 253 F.2d 104, at 109 (5th Cir. 1958).

FILED at 3:15 P.M.

JUN - 7 1973
Deputy Clerk U. S. District Court
MIDDLE DISTRICT OF GEORGIA

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF GEORGIA

ATHENS DIVISION

UNITED STATES OF AMERICA :
VS : CRIMINAL NO. 2413
JOE E. SIMMONS :

NOTICE OF APPEAL

Notice is hereby given that JOE E. SIMMONS,
defendant above named, hereby appeals to the United States
Court of Appeals for the Fifth Circuit from the final judg-
ment or order, committing the defendant to the custody of the
Attorney General for a period of Three (3) Years, and imposing
a fine to be paid to the United States of America in the
sum of \$10,000.00,
entered in this proceeding on the 7th day of
June, 19 73.

Dated: June 7, 1973

R. Robider Markwalter
R. Robider Markwalter
905 Georgia Power Building
Macon, Georgia 31201
Attorney for Defendant