

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

EARL G. CONLEY,

Plaintiff,

vs.

CONRAD SOVIG COMPANY, a Co-Partnership,
and C. R. SOVIG and A. R. SOVIG, Partners,

Defendants.

Civil 6273

FILED

AUG 1 1968

M. M. EWING
Clerk, U. S. District Court

ORDER FIXING COURT COSTS AND OTHER COSTS

This cause comes on for consideration by the Court upon the question of the allowance or disallowance of costs as set forth in the bill of costs filed herein by Conrad Sovig Company, a co-partnership, and C. R. Sovig and A. R. Sovig, partners, defendants, and upon exceptions filed by the plaintiff to the proposed Bill of Costs and upon plaintiff's Motion to Review and Retax Costs.

The Court having carefully examined the Bill of Costs filed herein by the defendants, affidavits filed by the defendants, and the briefs of the respective parties with respect to the allowance or disallowance of such costs, and the Court having considered the entire file in this case, and being otherwise full and sufficiently advised in the premises, does find:

1. All of the costs incurred by the defendants and as set forth in the "Bill of Costs" filed by the defendants were incurred by said defendants, and
2. That all of said costs as set forth in the Bill of Costs were properly incurred and were necessary and proper for the adequate defense to this cause of action, and the claims of the plaintiff, and
3. It would be unfair, inequitable and unjust under all the facts and circumstances in this case to disallow such costs.

IT IS, THEREFORE, ORDERED AND ADJUDGED BY THE COURT that the "Bill of Costs" filed herein by the defendants should be and the same is hereby allowed in the amount of \$2,736.56, and the Clerk of this Court is ordered and directed to tax this cost against the plaintiff in this case all as set forth in the Bill of Costs.

Dated this 31st day of July, 1968.

LUTHER BOHANON

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

IRISH KEVIN KELLY,)
)
) Plaintiff,)
 vs.)
)
 HALLIE RUTH KELLY, et al.)
)
) Defendant.)

No. 68-C-54

FILED

AUG 1 1968

M. M. EWING
Clerk, U. S. District Court

ORDER

This is an application by the plaintiff, Irish Kevin Kelly "To File and Proceed on Appeal in Forma Pauperis."

This is a civil action wherein the plaintiff seeks to recover from his former wife, Hallie Ruth Kelly, certain property the value of which is not stated, which he alleged belongs to him, and wherein he further alleges that the defendant, Hallie Ruth Kelly, through fraud obtained a divorce from the Plaintiff and that the judge entering the divorce decree acted unlawfully and that plaintiff's attorney acted fraudulently in obtaining the divorce.

The plaintiff is incarcerated in the Kansas State Penitentiary at Lansing, Kansas. The plaintiff has deluged the Court and the Court Clerk with letters constantly complaining about finding his property. The Court upon its own motion, and through the probation officer, obtained possession of all of the claimed property which he could find in the possession of the defendant, Hallie Ruth Kelly, and took control over the same, depositing it with the United States Court Clerk for the Northern District of Oklahoma, and numerous requests have been made of the plaintiff as to what he desires should be done with this property, but no satisfactory solution has been provided by the plaintiff.

This attempted appeal in Forma Pauperis is totally without merit, is frivolous, and in the opinion of the Court is taken only for the purpose of harassment.

The application for Leave to File and Proceed on Appeal In Forma Pauperis is denied.

Dated this 31st day of July, 1968.

United States District Judge

In this motion he complains that the sentencing judge (Judge Royce Savage), (1) did not inquire if the Petitioner's pleas of guilty were voluntarily made with understanding of the nature of the charges, (2) did not advise the Petitioner of the consequences of his pleas of guilty, (3) did not advise the Petitioner that he would be unable to receive a parole or probation under a conviction for the offenses involved, and that (4) his privately retained counsel advised him that he would probably receive the minimum sentence on each count by pleading guilty.

Under 28 United States Code 2255, supra, the Petitioner is entitled to a prompt hearing on his Motion unless the Motion and the files and records of the case conclusively show that the Petitioner is entitled to no relief. A copy of the proceedings had in the case before Judge Savage is attached.

As to (1) above, the record shows the following:

At the arraignment:

"Mr. Hanlon: If the Court please, we will waive the reading of the indictment . . ."

1/ - Cont'd

"The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

"An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

"An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

At the change of plea:

"Mr. Hanlon: If the Court please, at this time Mr. Jenkins wishes to withdraw his plea of not guilty and enter a plea of guilty to this charge.

"The Court: Is that your desire, Jenkins?

"The Defendant: Yes, sir.

"The Court: How many counts in the indictment?

"Defendant: Four. Two purchases and two sales.

"Mr. Hanlon: Four. Two purchases and two sales.

"The Court: You enter a plea of guilty as to each of the four counts of the indictment?

"Defendant: Yes, sir."

At sentencing:

The Petitioner stated: "Your Honor, it is true, I am guilty of what the charge is; that is why I came in here and plead guilty."

The Petitioner makes no claim herein that his pleas of guilty were obtained by means of promises, threats, coercion, force or duress. He makes no claim that he involuntarily pleaded guilty. He only complains that the Court failed to ask him if his pleas of guilty were voluntarily made. Pursuant to Rule 11, F.R.Cr.P., 28 U.S.C., the Court ". . . shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge." The Court inquired if a plea of guilty was the desire of the Petitioner and received an unequivocal affirmative reply. The Defendant himself recited the charges in open court. While it is now the custom of the courts to go into more detail than did Judge Savage in 1961, it is clear from this record that Judge Savage satisfied himself as to the voluntariness of Petitioner's plea of guilty, and that the plea of guilty was made with understanding of the nature of the charges. The Peti-

tioner had previously waived reading of the indictment. He acknowledged the general nature of the charges: two purchases and two sales of narcotics. The record as a whole shows that the Petitioner in his own mind had determined that he was guilty as described in the indictment, and that his principal interest in these proceedings was in the sentence which could be imposed. In reviewing this record, the Court has indulged in every inference favorable to the Petitioner, yet it cannot say that this record does not conclusively show that the Petitioner is entitled to relief under this heading. The record conclusively shows that he understood the nature of the charges against him and voluntarily plead guilty to the same.

As to (2) above, the record shows that the Petitioner at the time of sentencing stated:

"I have figured out that there is a minimum of five years on the count to sell or to purchase, which carried five to twenty, and two to ten."

This correctly stated the range of imprisonment prescribed in the two federal statutes involved.^{2/} The Petitioner also said:

"In the penitentiary, that is where I am going right now."

The record therefore conclusively shows that the Petitioner knew the consequences of his pleas of guilty, namely, that he would be sentenced to the penitentiary and he knew the minimum and maximum penitentiary sentence for each of the four charges against him.

^{2/} The two statutes involved were Title 26, United States Code, Sections 4704(a) and 4705(a), with sentencing per Title 26, United States Code, Section 7237.

As to (3) above, the Petitioner cites *Munich v. United States* (Ninth Cir. 1964), 337 F. 2d 356.^{3/} Other circuits do not go this far. See *Trujillo v. United States* (Fifth Cir. 1967), 377 F. 2d 266. cert. den. 389 U. S. 899, and *Smith v. United States* (D.C.Cir. 1963), 324 F. 2d 436, cert. den. 376 U. S. 957. The Tenth Circuit has not passed on this point. It is felt that the better rule and the one that the Tenth Circuit would adopt is that a failure to advise that probation cannot be granted in a narcotics conviction does not constitute a failure to adequately advise the accused of the "consequences" of a plea of guilty. This is the holding in *Trujillo v. U. S.*, supra, and *Smith v. U. S.*, supra. In *Latham v. United States* (Fifth Cir. 1958), 259 F. 2d 393 it was held that probation is a matter of legislative grace. These views are adopted and applied herein. As to ^{NOT} being eligible for parole, and the Court not mentioning this at the time of sentencing, it is sufficient to say that a parole is also a matter of legislative grace and is not a "consequence" of a plea of guilty. *Latham v. United States*, supra; *Simon v. United States* (D.C.La. 1967), 269 F. Supp. 738. The result is that this complaint of the Petitioner is without merit as a matter of law.

As to (4) above, the Petitioner states that his privately retained counsel stated to him that he would probably receive the minimum sentence on each count by entering a plea of guilty. This

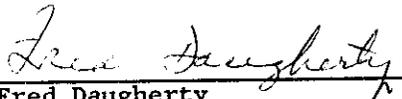
3/ This case provides in part:

"In our opinion one who, at the time of entering a plea of guilty, is not aware of the fact that he will not be eligible for probation or parole does not plead with understanding of the consequences of such a plea."

is not an assertion by the Petitioner that he was offered a promise by the United States for his pleas of guilty. An attorney's stated opinion to his client as to what he estimates, guesses or thinks the sentence of the Court may be will not support a collateral attack on the sentence if he happens to estimate, guess or think wrong. There is no merit in this complaint of the Petitioner as a matter of law.

In view of the foregoing, the Petitioner's Motion pursuant to 28 United States Code 2255 is denied without an evidentiary hearing.

It is so ordered, this 2^d day of August, 1968.



Fred Daugherty
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 13,626

FILED

The United States of America,

Plaintiff,

vs.

FEB 20 1961

Clyde W. Jenkins,

NOBLE C. HOOD
Clerk, U. S. District Court - Defendants.

Be It Remembered, that on Friday, February 17, 1961
in the above-designated Court, sitting at Tulsa, Oklahoma, the
Honorable Royce H. Savage, United States District Judge, pre-
siding, this above-styled and numbered cause came on regularly
for imposition of sentence

The United States was present and represented by the
District Attorney, N.D., Oklahoma, Robert S. Rizley Esq.,
and by Assistants District Attorney Esq.,
Esq.,
Attorneys and Counselors at Law of the Bar of this Court.

Each of the defendants was present in person, and those
represented by counsel, and their respective counsel, were

by Thomas G. Hanlon Esq.,
by Esq.,
by Esq.,

Attorneys and Counselors at Law, of Tulsa, Oklahoma.

And, thereupon, the following proceedings, limited to
pleas and/or sentences, were had, to wit:

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The Court: Do you desire to make a statement?

Defendant: Please. Your Honor, it is true I am guilty of what the charge is; that is why I came in here and plead guilty. But I talked it over with my wife, first, before I did. We have got three children. We haven't had too good a home life because I wouldn't tend to business and go get a job like she said, but I have got the education. In the Penitentiary -- that is, where I am going right now -- when I get out of there I can get an engineering degree while I am in there, I can take care of my family in the way they should be taken care of. That is why I came in here and put myself on the mercy of the Court and plead guilty. I am wrong -- I have done wrong. I am not denying that; I don't intend to. I have figured out that there is a minimum of five years on the count to sell or to purchase, which carried five to twenty, and two to ten. I believe I could make myself a good citizen -- there are officers in this court room, some of the officers that helped make this case, will tell you I can be rehabilitated, can be made a good citizen, and take care of my family.

The Court: I recall making a pact with you on one occasion --

Defendant: Yes, sir

The Court: When you were placed on probation.

1 Defendant: Yes, sir, I served the probation out.

2 The Court: And, of course, needless to say, you have
3 been a great disappointment to me.

4 Defendant: I am sorry, but I -- I lived the proba-
5 tion out. I ran a car lot for two years with my father's
6 money -- my father is here in the court room now and my wife
7 is here in the court room. They will stand behind me.
8 Of course there are people in here that will vouch for me --
9 business people, people of means, here in town that believe
10 in me. I believe -- I know that I won't let you down. I
11 place myself on your mercy. That is why I came in here
12 and plead guilty.

13 The Court: It will be the judgment of the Court that
14 you serve a total of twenty years on Counts 1 and 2 -- I
15 believe Counts 1 and 2 carry --

16 Mr. Hanlon: 1 and 3 carry two to ten

17 Mr. Rizley: 1 and 3 are the sale counts; 2 and 4 are
18 the purchase counts.

19 The Court: Twenty years on Count 1; ten years on
20 Count 2; twenty years on Count 3; and ten years on Count 4,
21 the sentence imposed on each count to run concurrently with
22 each other.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 13626 ✓ cr.

The United States of America,

FILED

Plaintiff,

vs.

FEB 17 1961

Clyde W. Jenkins

NOBLE C. HOOD Defendants.
Clerk, U. S. District Court

Be It Remembered, that on Friday, February 10, 1961

in the above-designated Court, sitting at Tulsa, Oklahoma, the
Honorable Royce H. Savage, United States District Judge, pre-
siding, this above-styled and numbered cause came on regularly
for change of plea, imposition of sentence set for 2-17-61

The United States was present and represented by the
District Attorney, H.D., Oklahoma, Esq.,
and by Assistant District Attorney Rodney G. Buckles Esq.,
Esq.,
Attorneys and Counselors at Law of the Bar of this Court.

Each of the defendants was present in person, and those
represented by counsel, and their respective counsel, were

by Thomas G. Hanlon Esq.,

by Esq.,

by Esq.,

Attorneys and Counselors at Law, of Tulsa, Oklahoma.

And, thereupon, the following proceedings, limited to
pleas and/or sentences, were had, to wit:

1 The Court: Are you ready to proceed with this plea in
2 the Jenkins case?

3 Mr. Hanlon: If the Court please, at this time Mr.
4 Jenkins wishes to withdraw his plea of not guilty and enter
5 a plea of guilty to this charge

6 The Court: Is that your desire, Jenkins?

7 Defendant: Yes, sir.

8 The Court: How many counts in the indictment?

9 Defendant: Four. Two purchases and two sales

10 The Court: You enter a plea of guilty to each of the
11 four counts of the indictment?

12 Defendant: Yes, sir.

13 The Court: I will postpone imposition of sentence until
14 one week from today. /

15 Mr. Hanlon: At 1:30

16 Defendant: May I have a chance to make a statement
17 before sentence is pronounced?

18 The Court: Yes, you will, and counsel also
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 13626 cr.

The United States of America,

Plaintiff,

vs.

Clyde W. Jenkins

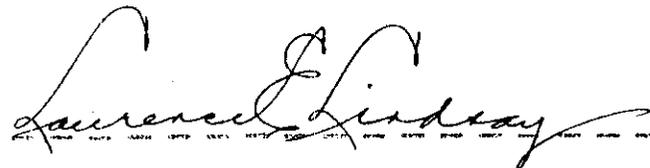
Defendants.

I hereby certify that on **Friday, February 10, 1961** at Tulsa, Oklahoma, in the above-named Court, the Honorable Royce H. Savage, United States District Judge, presiding, I correctly reported by means of shorthand the proceedings then and there had in the above-styled and numbered cause;

That I have since correctly transcribed from my said shorthand notes of said proceedings so much thereof as pertains to plea-upon-arraignment and/or sentence of the defendant upon either plea of guilty or trial and conviction; and,

That the above and foregoing pages of typewritten matter contain a full, true, complete and correct transcript thereof.

In Testimony Whereof, I hereunto subscribe my name, on this date.



Reporter, U.S.D.C., N.D., Oklahoma.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 13,626

cr.

FILED

The United States of America,

Plaintiff,

vs.

JAN 19 1961

Clyde W. Jenkins

NOBLE C. HOOD
Clerk, U. S. District Court

Be It Remembered, that on Wednesday, January 18, 1961
in the above-designated Court, sitting at Tulsa, Oklahoma, the
Honorable Royce H. Savage, United States District Judge, pre-
siding, this above-styled and numbered cause came on regularly
for arraignment of the defendant

The United States was present and represented by the
District Attorney, N.D., Oklahoma, Robert S. Rizley Esq.,
and by Assistants District Attorney Esq.,
Esq.,
Attorneys and Counselors at Law of the Bar of this Court.

Each of the defendants was present in person, and those
represented by counsel, and their respective counsel, were

by Thomas G. Hanlon Esq.,

by Esq.,

by Esq.,

Attorneys and Counselors at Law, of Tulsa, Oklahoma.

And, thereupon, the following proceedings, limited to
pleas and/or sentences, were had, to wit:

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Mr. Hanlon: If the Court please, we will waive the reading of the indictment, and enter a plea of not guilty to counts 1, 2, 3, and 4, and ask for a jury trial and reserve the right to file any motion that we may deem proper as to the indictment itself.

The Court: All right, that's all.

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 13,626 CP.

The United States of America,

Plaintiff,

vs.

Clyde W. Jenkins

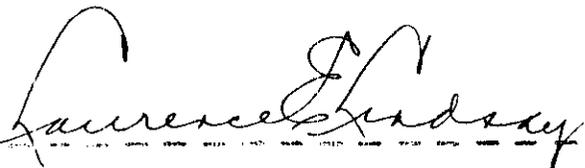
Defendants.

I hereby certify that on **Wednesday, January 18, 1961** at Tulsa, Oklahoma, in the above-named Court, the Honorable Royce H. Savage, United States District Judge, presiding, I correctly reported by means of shorthand the proceedings then and there had in the above-styled and numbered cause;

That I have since correctly transcribed from my said shorthand notes of said proceedings so much thereof as pertains to plea-upon-arraignment and/or sentence of the defendant upon either plea of guilty or trial and conviction; and,

That the above and foregoing pages of typewritten matter contain a full, true, complete and correct transcript thereof.

In Testimony Whereof, I hereunto subscribe my name, on this date.



Reporter, U.S.D.C., N.D., Oklahoma.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ELMER DAVIS, Regional Director of the
Sixteenth Region of the National Labor
Relations Board, for and on behalf of
the NATIONAL LABOR RELATIONS BOARD

Petitioner *

v. *

TULSA GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION 523

Respondent *

CIVIL NO. 67-C-221

FILED

AUG - 5 1968

M. M. EWING
Clerk, U. S. District Court

ORDER DISMISSING PETITION FOR TEMPORARY INJUNCTION

The Petitioner having filed a petition for a temporary injunction under Section 10(1) of the National Labor Relations Act, as amended; a hearing thereon having been held on November 21 and November 29, 1967; an Order Continuing Case having issued on December 5, 1967 as a result of the execution on that date by the Respondent and Petitioner of a settlement agreement; and it appearing to the Court that the Respondent has complied with all terms and provisions of the aforesaid settlement and the parties having consented to the entry of the within order,

IT IS THEREFORE ORDERED that the petition for temporary injunction under Section 10(1) of the National Labor Relations Act, as amended, filed herein on November 14, 1967, should be, and is, hereby dismissed without prejudice.

Done at Tulsa, Oklahoma, this 12 day of March, 1968.


United States District Judge

The entry of the foregoing Order

is hereby consented to:

Norman W. Eckhardt 2/20/68
Attorney for Petitioner Date

Raymond M. Hughes 2/23/68
Attorney for Respondent Date

David W. Graham 2/23/68
Attorney for David W. Graham Date
and James J. Carter
d/b/a Coronado Enterprises

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Elmer Davis, Regional Director of the
Sixteenth Region of the National Labor
Relations Board, for and on behalf of
the NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

OIL, CHEMICAL AND ATOMIC WORKERS INTER-
NATIONAL UNION (AFL-CIO) LOCAL 5-669

Respondent

Civil No. 68-C-60

FILED

AUG - 6 1968

M. M. EWING
Clerk, U. S. District Court

ORDER DISMISSING PETITION FOR TEMPORARY RESTRAINING ORDER

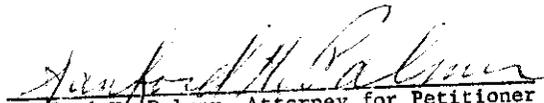
The Petitioner having filed a Petition and Amended Petition for a Temporary Restraining Order and Injunction under Section 10(1) of the National Labor Relations Act, as amended, on March 4, 1963, and April 10, 1963, respectively, and a hearing having been held on April 23, 1963, by the Court concerning the matters alleged therein, and the Court having ruled that the issuance of an injunction was appropriate, but was subsequently advised by counsel for all the parties that the Union and the Company named in the Petition had adjusted and settled their dispute, and the parties having consented to the entry of the within order: it is therefore

ORDERED, that the Petition for Temporary Restraining Order and Injunction under Section 10(1) of the National Labor Relations Act, as amended, filed herein be and the same hereby is dismissed, and the injunction dissolved without cost to either party.

DONE at Tulsa, Oklahoma, this 6 day
of August, 1968.

FRED BOGERT
United States District Judge

The entry of the foregoing order is
hereby consented to this 27 day
of July 1953.


Sanford H. Palmer, Attorney for Petitioner


Maynard I. Ungerman, Attorney for Respondent

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Delbert R. Crosswhite,)
Plaintiff,)
vs.)
Tulsa County, Oklahoma,)
Defendant.)

No. 68-C-125

FILED

AUG - 6 1968

ORDER GRANTING MOTION TO DISMISS, M. M. EWING
Clerk, U. S. District Court

Plaintiff Crosswhite brings this action under the provisions of the Civil Rights Act, 42 U.S.C. §1983 et seq. The Defendant County has moved to dismiss same on the ground that it is not a "person" within the meaning of the Civil Rights Act and is not subject to suit brought under its provisions.

The Defendant has the correct view of the law. Garrison v. County of Bernalillo, 338 F. 2d 1002 (Tenth Cir. 1964); Sires v. Cole, 320 F. 2d 877 (Ninth Cir. 1963); Haigh v. Snidow, 231 F. Supp. 324 (Cal. 1964) all hold that a County is not a person which may be sued under the Civil Rights Act. Accordingly, this Court is without jurisdiction to entertain this suit against the Defendant.

Defendant's Motion to Dismiss is granted and the Plaintiff's Civil Rights Tort Complaint is hereby dismissed.

Dated this 30 day of August, 1968.

FRED DAUGHERTY

Fred Daugherty
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA

ARTHURS POSTER and W. LAIRD STABLER, JR.,)
Co-Administrators of the Estate of ROBERT)
L. RITCHIE, Deceased,)
)
Plaintiffs,)
)
-vs-)
)
CHICAGO, ROCK ISLAND AND PACIFIC RAIL-)
ROAD COMPANY,)
)
Defendant.)

FILED

AUG - 6 1968

M. M. EWING
Clerk, U. S. District Court

No. 68-C-176

ORDER NUNC PRO TUNC

On the second day of August, 1968, the Court had for consideration the Motion for Dismissal filed by the attorneys representing plaintiffs: which Motion was properly sustained.

The Court finds that the Order therein contains a typographical error which is hereby corrected by amending that Order to read as follows: IT IS, THEREFORE, ORDERED that this action is dismissed without prejudice.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PARKER L. WINTON, Father and Next)
Friend of Tony G. Winton, Minor,)
Plaintiff,)

vs.)

MERLE MOORE and THE PRUDENTIAL)
INSURANCE COMPANY OF AMERICA,)
Defendants.)

No. 68-C-130

FILED

AUG 7 1968

M. M. EWING
Clerk, U. S. District Court

ORDER OF REMAND

This is an action by the representative of the beneficiary of an insurance policy issued by the Defendant Prudential Insurance Company of America (Prudential). Plaintiff is a citizen of Oklahoma. Defendant Prudential is a corporation organized under the laws of the State of New Jersey, with its principal place of business in Newark, New Jersey. Defendant Merle Moore is Defendant Prudential's agent and is a citizen of Oklahoma. The action was initiated in the District Court of Craig County, Oklahoma, and is here on Defendant Prudential's Removal Petition. Defendant Moore did not join in the Removal Petition.

Plaintiff's suit is based on Defendant Moore's alleged failure to transmit insurance premiums paid him to the Defendant Prudential, thus allowing the policy to lapse and, alternatively, on Defendant Prudential's failure to pay the face of the policy upon the death of the insured.

Defendant Prudential's grounds for removal are, fraudulent joinder of the agent Moore, or that the Plaintiff has stated separate and independent causes of action, in either of which

cases, removal is permitted by 28 U.S.C. §1441(c).^{1/}

Plaintiff has moved for remand on the grounds that there is a cause of action stated against the agent Moore as well as against the Defendant Prudential, that is, the agent has not been fraudulently joined, and that there is a lack of diversity of citizenship because of the presence of the Defendant Moore.

Where the removing party claims fraudulent joinder, he has the burden of pleading such fraudulent joinder with particularity and supporting it by clear and convincing proof.^{2/} Such is the nature of the facts that are required to be proved under this rule that the Court, if it retains jurisdiction of the case, must be able to dismiss the complaint against the nondiverse Defendant.^{3/}

^{1/} 28 U.S.C. §1441 provides in part:

"(b) . . . Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

"(c) Whenever a separate and independent claim or cause of action, which would be removable if sued on alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction."

^{2/} Parks v. New York Times Co., 308 F. 2d 474 (Fifth Cir. 1962), cert. den. 376 U. S. 949, 11 L. Ed. 2d 969, 84 S. Ct. 964; Barron & Holtzoff, Federal Practice and Procedure (Wright Ed.), Vol. I § 103, pp. 478-479.

^{3/} Covington v. Indemnity Ins. Co. of North America, 251 F. 2d 930 (Fifth Cir. 1958), cert. den. 357 U. S. 921, 2 L. Ed. 2d 1365, 78 S.Ct. 1362.

In the instant case, the Plaintiff's cause of action against the Defendant Moore would survive both a motion to dismiss as well as a motion for summary judgment; as to the dismissal because a claim is stated in the complaint on which relief can be granted, and as to the summary judgment because there remains to be determined a genuine material fact issue, that of the payment of the premium, which is hotly disputed by the parties.

It appears that Plaintiff has a sound legal basis for his action against the Defendant Moore, although this conclusion is not absolutely clear under Oklahoma law.^{4/} If the facts which support the Plaintiff's cause of action against the Defendant Moore do not exist, then there is a circumstance indicative of fraudulent joinder, even though a valid cause of action may have been stated in the complaint. Thus, the Court may seek to resolve the issue of whether the factual basis of the cause of action exists by any means, however, this does not mean that the Court will pre-try

^{4/} The agent of an insurance company may owe a duty to the insured to remit the premiums. This duty seems to have been recognized, at least implicitly, in DeWees v. Cedarbaum, 381 P. 2d 830 (Okla. 1963), at page 836. This precise question was before the Oklahoma Supreme Court in Loveless v. Holloway, 348 P. 2d 170 (Okla. 1959), but was not decided. In that case, the court held that the trial court's dismissal of the insured's suit against the agent was contrary to law. In the DeWees case, the court cited an annotation in 29 A.L.R. 2d 171 entitled "Duty and Liability of Insurance Broker or Agent to Insured with Respect to Procurement, Continuance, Terms, and Coverage of Insurance Policies," where at p. 199 cases are collected which support the existence of such a duty in other jurisdictions. These references by the Oklahoma Supreme Court indicated that it would recognize this duty in a proper case. Of course, the fact that the insured and beneficiary in the instant case before the Court are not the same person is not relevant.

doubtful issues of fact: the fact issues must be capable of summary determination.^{5/} Defendant Prudential has attempted to marshal the evidence of nonpayment by deposing Plaintiff, Defendant Moore, and a third person, Mr. Goodwin. Plaintiff states the payment was made, but is not clear as to which period it might relate. Defendant Moore states that he never received the payment. Mr. Goodwin knows nothing of his own knowledge about the payment, except what Defendant Moore told him. This is hardly the sort of clear and convincing evidence on which a summary determination that there is no factual basis for Plaintiff's cause of action against the Defendant Moore can be made. Accordingly, the Defendant Prudential has failed to make out a case of fraudulent joinder.

Defendant Prudential further contends that Plaintiff has stated separate and independent causes of actions against it and Defendant Moore, thus allowing removal of its part of the case or the entire case. While it is true that Plaintiff states one cause of action in tort, against the Defendant Moore, and another on the basis of contract, against the Defendant Prudential, only a single recovery is sought. Under these circumstances this case is indistinguishable from Finn v. American Fire & Cas. Co., 341 U. S. 6. 95 L. Ed. 702, 71 S.Ct. 534 (1951):

^{5/} Dodd v. Fawcett Pub. Co., 329 F. 2d 82 (Tenth Cir. 1964).

"Where there is a single wrong to Plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no separate and independent claim or cause of action under [28 U.S.C.] §1441(c)." 341 U. S. at p. 14, 95 L. Ed. at pp. 708-709.

A most interesting discussion of fraudulent joinder and separate and independent claim or cause of action appears in El Dorado Springs R-2 School Dist. v. Moos, 264 F. Supp. 815 (Mo. 1967), which was a case much like the present one, and in which remand was granted.

Accordingly, it is ordered that this case be remanded to the District Court for Craig County, Oklahoma, from whence it was improvidently removed. The Clerk of this Court will take the necessary action to effectuate this Order.

Dated this 7 day of August, 1968.



Fred Daugherty
United States District Judge



FILED

AUG - 9 1968

IN THE UNITED STATES DISTRICT COURT
OF THE NORTHERN DISTRICT OF OKLAHOMA

M. M. EWING
Clerk, U. S. District Court

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action
No. 67-C-244

An article of drugs consisting of approximately 100 cases of 6 cartons each, each carton containing 6 packages, and 24 drums, more or less, labeled in part (package) "pro- anal rectal treatment active ingredients: O-Iodobenzoic Acid (Iodine content 5%) and Triethanolamine 1%" --- contents 2 individual single dose, throw-away applicators, each containing 7 CC --- A product of the R-P Company, Inc., Tulsa, Oklahoma, for the treatment of the infection which causes rectal pain, discomfort and irritation, including (piles) Hemorrhoids ---, (Drum) " --- prepared for the R-P Company Customer's Order No. 12235-03 Quantity: 15 Gals., Title: Pro-Anal our lot No. 51206, Taylor Pharmaceutical Co., Decatur, Illinois --- Shipped in the bulk drums, on or about 5-27-67, By Rayhawk Specialty Company, Inc., 117 West Fourth Street, Pittsburg, Kansas, via unknown carrier, and repacked by dealer into the packages described above,

Respondent.

CONSISTENT DECREE
OF CONDEMNATION

On December 18, 1967, A Libel of Information against the above described article of drug was filed in this Court on behalf of the United States of America by James E. Ritchie, Assistant United States Attorney for the Northern District of Oklahoma. The libel alleges violation of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), in that the article of drug proceeded against are new drugs within the meaning of 21 U.S.C. 321(b) which may not be introduced or delivered for introduction into interstate commerce pursuant to 21 U.S.C. 355(a) since no approval or an application filed pursuant to 21 U.S.C. 355(b) is effective with respect to such drug.

Pursuant to Motion issued by this Court the United States Marshal for this District seized said article of drug. Thereafter, R-P Company, Inc., 56 North Trenton, Tulsa, Oklahoma, intervened and filed a claim to the seized article. The parties now consent that a decree of condemnation as prayed for in the Libel be entered against the article under seizure for the purposes of this case only without the Respondent however admitting that the article is to be considered a new drug in any other proceeding or for any other purpose. The Court being fully advised in the premises, it is on motion of the parties hereto --

ORDERED, ADJUDGED, AND DECREED that the said article under seizure is a new drug within the meaning of 21 U.S.C. 321(p) which has been introduced into interstate commerce without an approved new drug application effective with respect to said new drug, and is therefore hereby condemned pursuant to 21 U.S.C. 334(a); and it is further

ORDERED, ADJUDGED, AND DECREED that pursuant to 21 U.S.C. 334(d) the United States Marshal for this District shall forthwith destroy said article of drug and make due return to this Court; and it is further

ORDERED, ADJUDGED, AND DECREED pursuant to 21 U.S.C. 334(e) that the United States of America shall recover from said claimant court costs and fees, and storage and other expenses, as taxed herein, to wit, the sum of \$ _____.

Dated at Tulsa, Okla on this 9th day of August, 1968.

W. Fred Dampney
UNITED STATES DISTRICT JUDGE

We hereby consent to the entry of the foregoing Decree.

Lawrence R. MGO
UNITED STATES ATTORNEY

James E. Bell
Assistant United States Attorney

W. H. P. O'Neil
Attorney for Claimant

Entered this 13th day of August, 1968.

A handwritten signature in cursive script, appearing to read "Cecil J. Brown", written over a horizontal line.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Tri-State Motor Transit Co.,)
a Delaware corporation,)
)
Plaintiff,)
v)
)
DeTar Distributing Company, Inc.,)
an Oklahoma corporation; L. F.)
Skaggs, Jr., and Goldie E. Skaggs,)
)
Defendants,)
)
The Liberty National Bank and)
Trust Company of Oklahoma City,)
a national banking corporation,)
)
Additional Defendant,)

Civil Action
No. 6219 ✓

FILED
AUG 15 1968
M. M. EWING
Clerk, U. S. District Court

FILED
AUG 15 1968
M. M. EWING
Clerk, U. S. District Court

ORDER OF DISMISSAL

On consideration of motion filed herein
by defendant, The Liberty National Bank and Trust Com-
pany of Oklahoma City:

IT IS ORDERED that said defendant's cross-
claim against other defendants in the above entitled
cause be and the same is hereby dismissed with prejudice.

Dated this ²⁴14 day of August, 1968.

Luther Bohannon
UNITED STATES DISTRICT JUDGE

OK:

Val L. Miller
ATTORNEY FOR THE LIBERTY
NATIONAL BANK & TRUST COMPANY
OF OKLAHOMA CITY

Manfred B. ...
ATTORNEY FOR OTHER DEFENDANTS

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC.,)
a corporation,)
Plaintiff,)
vs.)
TRANSPORT WORKERS UNION OF)
AMERICA, et al.,)
Defendants.)

No. 67-223 Civil

FILED

AUG 15 1968

M. W. EWING
Clerk, U. S. District Court

ORDER

Plaintiff American Airlines, Inc., has moved for summary judgment on the basis that there is no genuine issue of fact remaining in the case and that it is entitled to a permanent injunction as a matter of law. Plaintiff has dismissed its claim herein for damages and now seeks only injunctive relief. In the hearing on the preliminary injunction, both the Plaintiff and the Defendants offered evidence on the issue of the Defendants' involvement in an unauthorized walkout.

At that hearing, it was determined that:

1. Nearly all of the members of the Defendant local union walked off their jobs at the Plaintiff's Tulsa Depot,
2. This action of the local union members was in violation of the labor contract between the parties, which contained a clause prohibiting strikes or walkouts.
3. The dispute was a minor dispute within the meaning of the Railway Labor Act, 45 U.S.C. §§151 et seq.,
4. The Defendants did not resort to the non-judicial procedures prescribed for handling this dispute by the Railway Labor

Act, 45 U. S. C., §§151 et seq., and

5. The Court has jurisdiction of the parties and of the cause of action.

Defendants resist Plaintiff's Motion for Summary Judgment on the grounds that:

1. The standard of proof at a preliminary hearing is different from that which obtains at a hearing on the issuance of a final injunction, meaning, apparently, that the Plaintiff has made out only a prima facie case and has not sustained its burden of proof,

2. Not all factual issues were determined at the preliminary hearing (however, Defendants fail to state what factual issues remain to be determined and content themselves with stating merely that they "have additional evidence to present on the question of involvement in the alleged walkout"), and

3. Because of an alleged defect of parties certain of the Defendants have not had any hearing on the issue of their involvement in the walkout, and no case has been made against them in the capacity in which they have been sued.

The Defendants have not questioned the use of summary judgment for granting a permanent injunction and it appears that such procedure may be utilized. Brotherhood of Railroad Carmen v. Chicago & N. W. Ry. Co., 354 F. 2d 786 (Eighth Cir. 1966). The amendment to Rule 65(a), F.R.Civ.P., 28 U.S.C., which was adopted in 1966, was only a proposal at the time the above case was decided, and the Rule as it reads today effectuates the position adopted by the

Eighth Circuit.^{1/} See also *Standard Oil Co. of Texas v. Lopeno, Gas Co.*, 240 F. 2d 504 (Fifth Cir. 1957). The determinations made at the hearing on the preliminary injunction are, in accordance with this Rule, binding on the parties in the same manner as if such determinations had been made at a trial on the merits. Defendants' contention that the standard of proof at a hearing on a preliminary injunction differs from that at a trial on the merits is without validity. The factual bases which support the issuance of the preliminary injunction also support the issuance of the permanent injunction. Brotherhood of Railroad Carmen v. Chicago & N.W. Ry. Co., supra. The parties were afforded an opportunity to present all the evidence they had. The preliminary injunction was granted after a full review of all relevant, admissible evidence. There now remains no genuine issue as to any material fact necessary to support a permanent injunction. The evidence before the Court is undisputed that there was a walkout, it violated the labor contract, a minor dispute is involved; the Court has jurisdiction and there has been no resort to non-judicial procedures. Summary judgment should therefore be entered.

^{1/} Rule 65. Injunctions: "(a) Preliminary Injunction. . . . (2) Consolidation of Hearing with Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial."

Defendants next contend that there is no evidence to support the involvement of the unions and the union officers named in the complaint in the unlawful walkout of the members of the unions. In granting this injunction, the Court is not concerned with their direct involvement in the unlawful walkout. It is only concerned with the unlawful walkout and the means to prevent its continuance. The Court has already determined herein that the unions are responsible when their members unlawfully commit a walkout. See Order filed January 24, 1968, overruling Defendants' Motion to Vacate Preliminary Injunction. Thus, whether these Defendants were directly involved in the unlawful walkout is not an issue, and evidence need not be presented on that point for purposes of granting a permanent injunction.

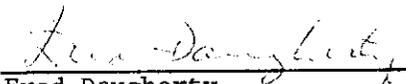
Defendants' last contention relating to defect of parties really goes to the question of who should be bound by the permanent injunction and is related to their second contention. Plaintiff points out that the International Union has been certified by the National Mediation Board as the bargaining representative and that it signed the labor contract on which this suit is based. An injunction which does not include the principals to this contract would be a futile gesture on the part of the Court. No prejudice accrues to the International Union under the injunction, as it is only enjoined from violating the contract, which it has a duty to comply with in any event.^{2/} The Defendants also contend that the

^{2/} Defendants refer the Court to the Railroad Carmen case cited above for the proposition that the international union was not includible in the injunction order because there was no showing of participation on its part in the unlawful strike. This is not true. In its statement of facts of the case, 354 F. 2d at p. 787, the court said parenthetically that the national organization was exonerated of any responsibility in the action by the trial court, and gave no reasons for the exoneration.

officers should not be held individually to the injunction. The Court can see no distinction on this basis for the reason that they are bound to observe the terms of the contract individually, and it is the unlawful violations of the contract which are being enjoined. The injunction imposes on them no greater duty. Indeed, they would be placed in a preferred position if they were not bound by the injunction, in that the classes which they represent are bound individually through their representation. Therefore, all the parties in this action are, either directly or through representation, parties to the labor contract which has been breached. A breach of the contract has occurred. The injunction arises out of this breach. There is no reason for any of the parties to the contract not to be charged with their full duties and responsibilities under it.

Plaintiff's Motion for Summary Judgment is granted. Counsel for Plaintiff is directed to prepare, within fifteen (15) days of the date hereof, an order permanently enjoining the Defendants from a violation of the labor contract between the parties which has formed the basis of this action, and submit same to the Court.

Dated this 15 day of August, 1968.



Fred Daugherty
United States District Judge

PARTICULAR FACTS OF THE CASE

That Petitioner was charged in the District Court of Tulsa County, Oklahoma, of the offense of Second Degree Burglary, after a former conviction, on the 5th day of February, 1965, in Case No. 21091 entitled The State of Oklahoma vs. Robert E. Lee Gresham, Jr. Petitioner was tried by a jury and convicted of said offense on the 4th day of May, 1965. Pursuant to his aforesaid conviction of said offense, the District Court, by judgment and sentence entered May 12, 1965, ordered, adjudged, and decreed that Petitioner, Robert E. Lee Gresham, Jr., be imprisoned in the State Penitentiary for a term of not less than fifteen (15) nor more than forty-five (45) years.

That on the 12th day of May, 1965, the Petitioner, Robert E. Lee Gresham, Jr., in Case No. 21091 above referred to, filed his Motion for New Trial; that said Motion for New Trial was denied, and that timely notice of intention to appeal was made, and the Court fixed 60-10 and 5 days to make, serve, and settle the casemade.

The Petitioner's attorney of record, John D. Harris, filed his written motion to withdraw from said case on the 1st day of June, 1965, and an Order was issued by the Court allowing John D. Harris to withdraw as attorney of record in Case No. 21091.

That on June 11, 1965, Petitioner did prepare a purported Petition for Writ of Mandamus directed to the District Judge of Tulsa County, Oklahoma, to which was attached an unverified oath in Forma Pauperis. That such purported filing was read by the Court on June 30, 1965, and was denied; and that on July 2, 1965, the Application and Oath was filed with the Court Clerk. That on July 17, 1965, Petitioner prepared an instrument in Case No. 21091 and entitled this instrument "Affidavit"; that Petitioner stated in said instrument that he was without funds to secure counsel or the casemade of his trial, and therefore prayed

the Court issue an Order that his casemade be supplied at the expense of the County hereof, and also appoint counsel in order that Petitioner may exercise his constitutional rights of appeal in the Court of Criminal Appeals, and Petitioner further requested an additional thirty (30) days within which to serve his casemade and perfect his appeal. This instrument was not verified, was labeled "No Notary Available", and was filed November 18, 1965.

Petitioner, Robert E. Lee Gresham, Jr., in Case No. A-13823 in the Court of Criminal Appeals of the State of Oklahoma filed an Application for a Writ of Mandamus requiring the Tulsa County District Court to furnish him a casemade at county expense in Case No. 21091. On the basis of Petitioner's Application, the Court of Criminal Appeals of the State of Oklahoma did, on November 17, 1965, direct the District Court of Tulsa County, Oklahoma, to conduct an evidentiary hearing in the matters alleged in Petitioner's Petition. The matters to be inquired into were:

- (1) Was notice of intention to appeal timely made?
- (2) Was the request for casemade at public expense timely made?
- (3) Was the Defendant at the time of his trial an indigent person?

On December 30, 1965, the Honorable Robert D. Simms, District Judge in and for the District Court of Tulsa County, State of Oklahoma, conducted the evidentiary hearing. Evidence was introduced at the evidentiary hearing by Petitioner, and the Petitioner, on advice of counsel, refused to testify at the evidentiary hearing. At the conclusion of the hearing the District Judge made his finding of facts and conclusions of law, which were provided to the Court of Criminal Appeals of the State of Oklahoma. The District Judge found, in summary, the following:

- (1) Petitioner did give timely notice of intention to appeal, and the Court fixed 60-10 and 5 days to make, serve, and settle the casemade.

- (2) That a proper application for casemade at public expense was not timely filed within the 60 day period.
- (3) That as a matter of law and finding of fact, Petitioner failed to meet the burden of proof at the evidentiary hearing that he was an indigent person at the time of trial.

The Petitioner's Writ of Mandamus was denied by the Court of Criminal Appeals of the State of Oklahoma in Case No. A-13823.

Petitioner, Robert E. Lee Gresham, Jr., filed in the Court of Criminal Appeals of the State of Oklahoma, in Case No. A-14635, a Petition seeking delayed post conviction appeal, or in the alternative for a writ of habeas corpus. The Petitioner's Petition was denied.

That at no time was the Petitioner, Robert E. Lee Gresham, Jr., advised by the State or counsel that the Affidavit in Forma Pauperis which was attached to his Petition for Writ of Mandamus was required to be notarized.

That Petitioner, Robert E. Lee Gresham, Jr., was never advised by the State or by counsel the proper way to file his appeal.

That the Petitioner, Robert E. Lee Gresham, Jr., is required to file an Affidavit in Forma Pauperis subscribed by a Notary Public if the State requires same.

IT IS, THEREFORE, BY THE COURT ORDERED that his case be held in abeyance for a period of not to exceed six (6) months, within which the Oklahoma State Court of Criminal Appeals may grant the Petitioner leave to appeal and provide him with the assistance of counsel and an adequate casemade for the appeal, and in such event this Application for Writ of Habeas Corpus will be denied and the action dismissed. If the appeal is not granted within such time, the Writ will issue, discharging the Petitioner from custody.


ALLEN E. BARROW, Judge of the United States District
Court for the Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JIMMY LEE THOMAS,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)

68-C-133 ✓

FILED

JUL 25 1968

M. M. EWING
Clerk, U. S. District Court

ORDER DENYING MOTION UNDER SECTION 2255

The Court has for consideration a letter dated May 25, 1968, which has been filed under 28 U.S.C.A. §2255, and being fully advised in the premises, finds:

This Court accepted the guilty pleas of the defendant, of which he now complains, and had the opportunity of observing the defendant, listening to his comments and the comments of his counsel. The Court, therefore, finds that said pleas were freely and voluntarily and intelligently made.

IT IS, THEREFORE, ORDERED that the Motion under 28 U.S.C.A. §2255 be and the same is hereby denied.

ENTERED this 25th day of July, 1968.



UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Libelant,

CIVIL NO. 68-C-180

vs.

FILED

AUG 19 1968

M. M. EWING
Clerk, U. S. District Court

27 Bottles, more or less, of an article labeled in part: "*** Dr. Bronner's 'Calcium Food' Vegetable-Calcium-Minerals *** 2 teaspoonsful a day supply Calcium 900 mgs. Phosphorus & 1/4 Magnesium 900 mgs. *** Iodine, Organic-Cellbound .15 mgs. *** Iron Organic-Citrate 35 mgs. *** Vitamin C. Rosehips, Imported *** 300 mgs. *** Vitamin D Yeast Units 500 USP *** Escondido, Cal. *** Dr. H. Bronner & Assoc. *** 1-1/4 Lbs.Qt.***"

78 cans, more or less, of an article labeled in part: "*** Dr. Bronner's 'Calcium-Lemonettes' *** To replace sugar & help prevent Calcium-phos.-iron-iodine-min.-deficiencies. Enjoy daily 4 to 8 of these Calcium-Lemonettes supply *** Calcium 900 mgs. *** Phosphorus 755 mgs. *** Iodine .25 mgs. *** Iron 18 mgs. *** Vitamin C Rosehips 40 mgs. *** Sunshine Vitamin D 450 USP *** Dr. Bronner & Assoc. *** Escondido, Cal. 52 x 28 grain Eat alone or with meals from 4 to 8 Calcium Lemonettes a day ***"

76 bottles, more or less, of an article labeled in part: "*** Dr. Bronner's Organic-Mineral-Salt Balanced seasoning from raw Sea-&-Land Plants *** Unsprayed uncooked unrefined Ocean & Land Plants, Herbs, Seeds, Alfalfa, Okra, Parsley *** Concentrated *** Dr. Bronner & Assoc. *** Escondido, Cal. *** 12 oz. *** 1 oz. or 3 tblspfl. Organic-Mineral-Salt supply our adult Minimum daily requirements of Calcium *** 770 mgs. *** Phosphorus *** 750 mgs. *** Magnesium *** 6 mgs. *** Iron *** 30 mgs. *** Iodine *** 3 mgs. *** Copper *** 1 mgs. *** Vitamin A *** Units 5000 USP *** Vitamin B 12 *** 100 mcg. *** Vitamin C *** 100 mgs. Vitamin D *** Units 500 USP ***"

33 bottles, more or less, of an article labeled in part: "Dr. Bronner's Dulse Sea Lettuce *** Contains over .33% or 3 times more organic protein-bound iodine than ordinary Dulse *** 2 teaspoonsful daily *** Supply over 20 mgs. Organic Iodine. *** Dr. Bronner Assoc. *** Escondido, Cal. *** 2-1/4 oz. net wt. ***"

5 cases, more or less, each containing 12 bottles, of an article labeled in part: "Dr. Bronner's Survival-Food-Base Organic-Mineral-Bouillon *** 60% Protein *** Dr. Bronner & Assoc. *** Escondido, Cal. *** 7 oz. net wt. *** Energy Drink for Everyone OK for Fasting and Cleansing Diets: 1-1/2 oz. a day or 3 flat tablespoonsful help supply the Protein and trace Minerals required to produce our own natural Hormones and Enzymes, when and as needed for physical activity causing deep breathing,"

Respondent.

DECREE OF CONDEMNATION

This matter comes on for consideration on Motion of the Libelant, United States of America, for Default Judgment, and the Court, having examined the facts herein, finds that Libel of Information was filed herein on July 23, 1968; that a Motion was duly issued and served by the United States Marshal for the Northern District of Oklahoma on July 25, 1968; that neither Akin Distributors, Inc., nor any other claimant has appeared or otherwise moved herein.

The Court finds that the allegations of the Libel of Information are true and correct; that the articles of food described therein and seized by the United States Marshal are being held for sale after having been shipped in interstate commerce; that articles were misbranded when introduced into and while in interstate commerce; further, that articles were adulterated while held for sale after shipment in interstate commerce, in that they contain a food additive, namely, iodine, which is unsafe in that it and its use and intended use are not in conformity with a regulation or exemption in effect pursuant to 21 U.S.C. 348, since the recommended daily amount provides in excess of the daily level of 0.15 milligrams of iodine permitted by the food additive regulation 21 CFR 121.1149; and that such articles are being held illegally within the jurisdiction of this Court and are liable for seizure and condemnation pursuant to the provisions of 21 U.S.C. 334.

The Court further finds that the articles mentioned herein were shipped in interstate commerce; were misbranded when introduced into and while in interstate commerce; were adulterated when introduced into and while in interstate commerce; are unfit for human consumption, and that said articles cannot be salvaged for any useful purpose.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED BY THE COURT that all of the adulterated articles seized and held by the United States Marshal for the Northern District of Oklahoma under and pursuant to the Motion heretofore issued and served herein be and they are hereby ORDERED forfeited to the United States of America and the United States Marshal for the Northern District of Oklahoma is ORDERED and DIRECTED to destroy said articles because they cannot be salvaged for any useful purpose.

FRED LAUGHER

APPROVED:

UNITED STATES DISTRICT JUDGE

s/ Hubert H. Bryant

HUBERT H. BRYANT
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MIDWESTERN INSTRUMENTS, INC.,)
Plaintiff,)
-vs-)
CENTURY GEOPHYSICAL CORPORATION,)
Defendant.)

Civil Action
No. 6538

FILED

AUG 21 1968

M. M. EWING
Clerk, U. S. District Court

STIPULATION AND
DISMISSAL WITH PREJUDICE

COME NOW the plaintiff, Midwestern Instruments, Inc., and the defendant, Century Geophysical Corporation, by and through their respective attorneys of record, Paul H. Johnson, and Roger R. Scott, and hereby stipulate that the captioned case may be dismissed with prejudice.

NOW, THEREFORE, the plaintiff, Midwestern Instruments, Inc. hereby dismisses its Complaint filed herein with prejudice to its rights to refile the same. The defendant, Century Geophysical Corporation, hereby dismisses its First Counter-Claim and its First Amended Counter-Claim filed herein with prejudice to its rights to refile the same.

MIDWESTERN INSTRUMENTS, INC.

By 
Paul H. Johnson, Its Attorney

CENTURY GEOPHYSICAL CORPORATION

By 
Roger R. Scott, Its Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAN AMERICAN PETROLEUM)
CORPORATION,)
)
Plaintiff,)
)
vs.)
)
JAMES W. PIELSTICKER, JOHN R.)
PIELSTICKER, and ELIZABETH)
PIELSTICKER, also known as JAYNE)
H. PIELSTICKER,)
)
Defendants.)

Civil No. 67-C-119 ✓

FILED

AUG 26 1968

M. M. EYING
Clerk U. S. District Court

ORDER

On this 26th day of August, 1968, there came on for the consideration of the Court the joint motion of the defendants for an order directing the Clerk of the Court to pay to defendants James W. Pielsticker and John R. Pielsticker all funds, including accrued interest, now on deposit herein, pursuant to the terms of an agreement of settlement between the parties. The Court, having heard the statements of counsel and being fully advised in the matter, finds that such an order should be entered herein.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that all funds on deposit in this action, including interest accrued thereon, with the Clerk of the Court shall be paid to James W. Pielsticker and John R. Pielsticker pursuant to the terms of a settlement agreement between the parties and that this action shall be thereupon terminated.

Approved:
[Signature]
[Signature]

Allen E. Barrow
Allen E. Barrow
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IRISH KEVIN KELLY,
Plaintiff,
vs
HALLIE RUTH KELLY, et al.,
Defendants.)

No. 68-C-54

FILED

AUG 26 1968

M. W. EWING
Clerk, U. S. District Court

ORDER

This case comes on for hearing this 26th day of August, 1968, notice having been given to all of the parties. The file of this case contains a Power of Attorney, Agents and Assignees of the plaintiff Irish Kevin Kelly, wherein he has directed that the personal property in the possession of the court be forwarded to Florence G. Murray, 351 Union Street, Springfield, Massachusetts, by Railway Express Company, C.O.D. By letter of August 21, 1968, addressed to this court, Florence G. Murray has agreed to accept such property. The court finds that the personal property herein should be forwarded to Florence G. Murray as requested, and that the petition for civil action suit for legal papers and property, and for reimbursement, filed by the plaintiff should be dismissed.

It is therefore ordered, adjudged and decreed that the petition for civil action suit for legal papers and property and for reimbursement be, and it is dismissed and the case closed.

It is further ordered that the Clerk forward by Railway Express C.O.D., the personal property herein of the plaintiff to Florence G. Murray at 351 Union Street, Springfield, Massachusetts.

Lucius Bohannon
United States District Judge

United States District Court

FOR THE

Northern District of Oklahoma

CIVIL ACTION FILE NO. 83-G-70

James Vandoff

vs.

Missouri, Kansas and Oklahoma Transfer
Company, Inc., a Nevada Corporation

**JUDGMENT
FILED**

AUG 27 1968

**M. M. EWING
Clerk, U. S. District Court**

Fred Deagerty

This action came on for ~~trial~~ (hearing) before the Court, Honorable

~~United States District Judge, presiding, and the issues having been duly tried and having determined the Court does not have jurisdiction, the plaintiff (heard) and a decision having been duly rendered;~~

~~being a resident of Oklahoma and the defendant's principal place of business is in Oklahoma.~~
It is Ordered and Adjudged:

It is ordered and Adjudged that the case be and it is dismissed without prejudice to the cost of plaintiff.

Dated at Tulsa, Oklahoma, this 28th day
of August, 1968.

M. M. Ewing,

Clerk of Court

Fred Deagerty Deputy

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MAGIC EMPIRE QUARTER HORSE)
BREEDER S ASSOCIATION,)
a corporation,)
)
Plaintiff,)
)
-vs-)
)
THE AMERICAN QUARTER HORSE)
ASSOCIATION, a corporation,)
)
Defendant.)

CA 68-C-139

FILED

AUG 27 1968

M. W. EWING
Clerk, U. S. District Court

ORDER
REMANDING SUIT TO STATE COURT

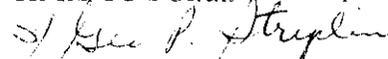
The motion of plaintiff to remand this suit to the District Court of Tulsa County, Oklahoma, coming on for hearing this 26th day of August, 1968, pursuant to regular setting, and the court having heard the argument of counsel, and being fully advised, upon consideration finds that the said motion should be sustained.

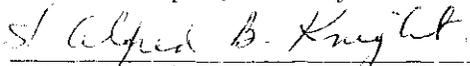
IT IS THEREFORE ORDERED that the motion of the plaintiff to remand this case to the District Court of Tulsa County, Oklahoma, be and the same is hereby granted and this cause be and the same is hereby remanded to the District Court of Tulsa County, Oklahoma, for further proceedings.



Honorable Luther Bohanon, Judge of
the U. S. District Court

OK AS TO FORM:


Geo. P. Steiplin, Attorney for Plaintiff


Knight & Wilburn, Underwood, Wilson,
Sutton, Hare, and Berry, Attorneys
for Defendant.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

United States of America,

Plaintiff,

vs.

Civil No. 19-6-102

Ralph A. Willcox and
Opal Mae Willcox, his wife,

Defendants.

FILED

AUG 28 1968

M. M. LINDSAY
Clerk, U. S. District Court

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28th day of August 1968, upon Plaintiff's Complaint praying the Court for a money judgment and foreclosure of real estate mortgage against the defendants, Ralph A. Willcox and Opal Mae Willcox, his wife, Plaintiff appearing by its attorney of record and the defendants appearing neither in person nor by counsel but wholly making default, the Court inspects the files and processes issued and served in this action and finds that the defendants were served with personal summons more than 30 days prior to this date and have failed to answer or defend this action;

The Court further finds that said defendants are neither minors nor incompetent persons and are not in the military service of the United States as defined or contemplated by the Soldiers and Sailors Civil Relief Act and the amendments thereto, and that the Clerk has heretofore entered its Order that judgment by default be entered against the defendants, Ralph A. Willcox and Opal Mae Willcox.

The Court further finds that the material allegations of the Plaintiff's complaint are true and correct; and finds and adjudges that on the 9th day of July 1962, Ralph A. Willcox did execute and deliver a certain promissory note to Plaintiff for the sum of \$12,000.00; that on March 9, 1963, the defendants, and each of them, did execute and deliver a promissory note to Plaintiff for the sum of \$1,080.00, payable as outlined in Plaintiff's complaint.

The court further finds that on or about 11, 12 and December 13, 1961, the defendants did execute certain security agreements whereby they mortgaged certain livestock to Plaintiff as described in Plaintiff's petition and further, that on September 30, 1961, a financing statement was executed by the defendants and Plaintiff pursuant to the Uniform Commercial Code covering certain personal property including livestock as set out in Plaintiff's complaint.

The court further finds that said defendants have breached the terms and provisions of such security agreements by selling and otherwise disposing of the livestock without the knowledge or consent of Plaintiff or its agents.

The court further finds that said defendants, in order to secure the said promissory notes and security agreements did on April 5, 1965, execute and deliver to Plaintiff their real estate mortgage covering the following described real property situated in Osage County, State of Oklahoma, to-wit:

the $\frac{1}{2}$ of the SE $\frac{1}{4}$ and $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 6, Township 22 North, Range 6 East, of the Indian Base and Meridian in Osage County, Oklahoma, contains 160.0 acres more or less, which

which mortgage is recorded in Book 191, on Pages 123-124 of the mortgage records of Osage County, Oklahoma. That said mortgage is subject to a first mortgage held by the Federal Land Bank of Wichita, Kansas, dated July 1, 1961.

The court further finds that the defendants, Ralph E. Wilcox and Opal Mae Wilcox made default under the terms of the aforesaid security agreements, financing statement and mortgage and that there is now due and owing to said Plaintiff the sum of \$10,841.05, together with accrued interest of \$1,674.00 as of February 1, 1966, with interest after that date at the rate of 6% per annum or at the call rate of 11.50%.

It is therefore SOLELY ORDERED, ADJUDGED and DECREED that the Plaintiff here and in this complaint against the defendants, Ralph E. Wilcox and Opal Mae Wilcox, is due the sum of \$10,841.05, together with accrued interest of \$1,674.00 as of February 1, 1966, with interest after that date at the rate of 6% per annum, plus the costs of this action accrued and accruing.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that upon failure of the defendants to satisfy Plaintiff's judgment herein, the order of sale shall be made in the United States Marshal for the Eastern District of Oklahoma, causing him to advertise and sell, with appraisement, the real property herein described and to apply the proceeds thereof:

1. In payment of the cost of said sale and then to pay;

2. The First Mortgage held by the Federal Land Bank of Wichita, Wichita, Kansas;

3. In satisfaction of Plaintiff's judgment herein;

the residual of said sale proceeds, if any, to be paid to the Court to await further order of the Court.

If the amount derived from the sale of said real property is insufficient to satisfy the judgment, interest, and cost to Plaintiff, then Plaintiff shall sue a judgment against the defendants for any deficiency and execution shall issue against said defendants for the remainder due and unpaid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of the abovesaid real property, and by virtue of this judgment and decree to defendants, and each of them, and all persons claiming under them since the filing of the complaint herein, be, and they are hereby forever and forever closed of any right, title, interest or claim in or to the real property or any part thereof.

5/ *Fred R. [Signature]*
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

vs.

Calvin J. Orcutt,

Defendant.

CIVIL NO. 63-3-155

FILED

AUG 28 1968

M. M. EWING
Clerk, U. S. District Court

DEFAULT JUDGMENT BY THE CLERK

This cause came on to be heard on motion of the plaintiff for default judgment for the relief demanded in the complaint, and it appearing the complaint and summons in this action were served on the defendant on August 6, 1968, as appears from the Marshal's return of service of said summons; that the time within which the defendant may answer or otherwise move as to the complaint has expired; that the defendant has not answered or otherwise moved and that the time for defendant to answer or otherwise move has not been extended.

It further appearing, as evidenced by the affidavit of the plaintiff, that the defendant is neither an infant nor incompetent person, and that the defendant is not in the military service of the United States.

It further appearing plaintiff's claim against the defendant is for a sum certain which can by computation be made certain.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff recover of the defendant the amount prayed for in the sum of \$ 814.04 with interest on the sum of \$ 814.04 at the rate of 5 % per annum from June 10 19 68, until paid, and the costs of this action plus the sum of \$ 767.79 accrued interest.

Dated this 28th day of August, 19 68.

M. M. EWING
~~XXXXXXXXXX~~
Clerk, United States District
Court for the Northern District of
Oklahoma

By _____
Deputy

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

CIVIL NO. 68-C-154 ✓

vs.

Robert Deacon and Irene Deacon,
husband and wife,

Defendants.)

FILED *js*

AUG 30 1968

M. M. EWING
Clerk, U. S. District Court

DEFAULT JUDGMENT BY THE CLERK

This cause came on to be heard on motion of the plaintiff for default judgment for the relief demanded in the complaint, and it appearing the complaint and summons in this action were served on the defendants on July 8, 1968, as appears from the Marshal's return of service of said summons; that the time within which the defendant may answer or otherwise move as to the complaint has expired; that the defendant has not answered or otherwise moved and that the time for defendant to answer or otherwise move has not been extended.

It further appearing, as evidenced by the affidavit of the plaintiff, that the defendant is neither an infant nor incompetent person, and that the defendant is not in the military service of the United States.

It further appearing plaintiff's claim against the defendant is for a sum certain which can by computation be made certain.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff recover of the defendant the amount prayed for in the sum of \$ 322.88 with interest on the sum of \$ 322.88 at the rate of 5 % per annum together with accrued interest from April 30 1968, until paid, ~~and the costs of this action~~ in the sum of \$429.09 as of April 30, 1968, and the costs of this action.

Dated this 30th day of August, 19 68.

M. M. EWING
~~XXXXXXXXXXXX~~
Clerk, United States District
Court for the Northern District of
Oklahoma

By *[Signature]*
Deputy