

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

FILED

JUL - 3 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

LOTTIE JEAN LOONEY, a minor, by and)
through her father and next friend,)
TOMMY LOONEY,)
Plaintiff,)
vs.)
ST. LOUIS AND SAN FRANCISCO RAILWAY)
COMPANY, a Missouri Corporation,)
Defendant.)

68-C-38

SYBIL COOPER,)
Plaintiff,)
vs.)
ST. LOUIS AND SAN FRANCISCO RAILWAY)
COMPANY, a Missouri Corporation,)
Defendant.)

68-C-39

ORDER

The Court has for consideration the Application of Plaintiffs to dismiss this cause of action without prejudice and demand for jury trial, and, being fully advised in the premises, having carefully perused the entire file, including the briefs of the parties, finds:

That these actions involve a car-railroad train collision. The case was originally filed in the District Court of Creek County, Bristow Division, on February 18, 1969 and was properly removed to this Court on March 19, 1969.

On March 26, 1969, Plaintiffs filed Application for Order of Dismissal and Demand for Jury. Plaintiffs seek to dismiss the action without prejudice on the grounds that they are now advised that the engineer of the train involved, Mr. Jack Bond, is now deceased and has left an estate in Oklahoma, thus entitling plaintiffs to petition for the appointment of an administrator of the estate of Jack Bond.

They seek dismissal, pursuant to Rule 41(a-2) of the Federal Rules of Civil Procedure, upon such terms and conditions as the Court deems just and proper. The defendant opposes this dismissal.

The Court has determined that the cases should be dismissed, without prejudice, relying on the following cases. Harvey Aluminum vs. American Cyanamid (DC New York) 15 F.R.D. 14; Burgess v. Atlantic Coast Line Railroad Company (1966, USDC, D South Carolina, Florence Division), 39 F.R.D. 588, which hold that the Court should follow the traditional principle that dismissal should be allowed unless the defendant will suffer some legal prejudice other than the mere prospect of a second lawsuit.

The Court also took into consideration the fact that the estate of the deceased engineer could not be joined in these actions, because it would defeat jurisdiction, relying on Culverhouse vs. Biehl & Company (1959, USDC, SD. Texas, Houston Division) 24 F.R.D. 198. That Court also stated:

"There do not appear to be any other grounds on which defendants could be prejudiced in their substantial rights, as this case has not proceeded beyond the initial joinder of issues and was less than a month old when plaintiff sought voluntary dismissal."

In the instant cases, they were originally filed February 18, 1969, removed March 19, 1969, and motion to dismiss filed March 26, 1969.

The Court has also taken into consideration the argument made by the defendant of respondeat superior applying in this case.

The Court finds that such doctrine does not apply. See J. C. Penney Co., et al. v. Barrientez (Okla. 1965), 411 P.2d 841.

The Court, therefore finds:

1. Plaintiff cannot join the estate of the deceased engineer in Oklahoma in the instant actions in this Court under Rule 19 because it would defeat federal jurisdiction.
2. The Court cannot see where the defendant will suffer legal prejudice other than the mere prospect of a second lawsuit.
3. There do not appear to be any other grounds on which defendant could be prejudiced in their substantial rights, as these cases have not proceeded beyond the initial joinder of issues, as reflected by the file.

IT IS, THEREFORE, ORDERED that the motion to dismiss the cause of action, without prejudice, in both cases be and the same is hereby sustained.

IT IS FURTHER ORDERED that plaintiffs, in both cases, pay to defendant the sum of \$125.00 attorney fee in each case, plus costs, or a total of \$250.00 attorney fee and the costs in each case.

IT IS FURTHER ORDERED that the demand for jury trial filed
by plaintiff is now moot, the Court having sustained motion to dismiss.
ENTERED this 3rd day of July, 1969.

A handwritten signature in cursive script, appearing to read "Allen E. Barrow". The signature is written in dark ink and is positioned above a horizontal line.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL - 3 1969
M. M. EWING, CLERK
U. S. DISTRICT COURT

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION)
)
Plaintiff,)
)
vs.) CIVIL ACTION)
) NUMBER 69-C-113)
)
FRAM CORPORATION)
)
Defendant.)
_____)

O R D E R

Pursuant to the provisions of Sections 709 and 710 of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e - § 2000e-15 (1964)), the Equal Employment Opportunity Commission, Plaintiff, applied to this Court for an Order to Show Cause why the Fram Corporation, Defendant, should not be directed to provide certain requested evidence to the Commission pursuant to the investigation of an alleged violation of said Act. The Court issued the Order and a hearing was had on June 18, 1969.

It is hereby ordered that the Fram Corporation grant to Mrs. Azie Morton, or other duly authorized representative of the Equal Employment Opportunity Commission, access at the company's Tulsa, Oklahoma plant to the following records and information for the purpose of examination and copying:

Payroll and other records reflecting weekly or monthly salary and other forms of compensation, including but not limited to "lay off," "severance," or "termination" pay for each of the following persons:

Ruth Moore
R. P. Leedy
J. M. Campbell
C. H. May

and such other salaried personnel of the Tulsa, Oklahoma facility as may be found to have left employment with the Fram Corporation involuntarily between January 1, 1968, and May 1, 1969.

The Fram Corporation has indicated in Court that the Company does not maintain any written documents or statements concerning a policy governing compensation for "lay off," "severance," or "termination."

The Court will retain jurisdiction of this case during the Commission's investigation. Should the Commission determine that further relevant records are needed to complete the investigation (e.g., personnel records of certain individuals) and the Fram Corporation refuses to make available those records, the Court will entertain a motion from the Commission requiring the production of such additional records.

ORDERED, ADJUDGED AND DECREED this 3rd day of July 1969.



United States District Judge

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

ELTON M. MOORE,

Plaintiff,

vs.

INDUSTRIAL UNIFORM & TOWEL
SUPPLY, INC.,

Defendant.

Civil Action No. 68-C-153

FILED

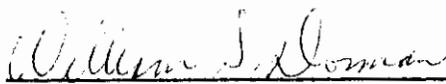
JUL - 7 1969

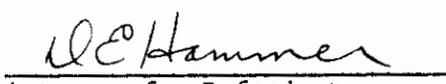
M. M. EWING, CLERK
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL

It is hereby stipulated, by and between the parties hereto, through their respective attorneys, that, plaintiff having granted to defendant a paid-up license under the patent in suit herein and defendant having accepted said license, for a consideration, the complaint herein, the answer and counter-claim of the defendant herein and the present action may and shall be dismissed, each with prejudice, each party to bear its own costs.

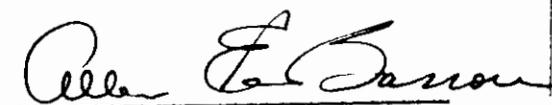
Dated and entered into this 30th day of June, 1969.


Attorney for Plaintiff


Attorney for Defendant

ORDER OF DISMISSAL

On this 3rd day of July, 1969, upon the foregoing stipulation of the parties herein the within action is, by the Court, ordered dismissed, with each party to bear its costs herein.


United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GEORGE P. SHULTZ, Secretary of Labor)
United States Department of Labor)
Plaintiff)
v.)
FEDERAL CONSTRUCTION COMPANY, a)
corporation, HERCULITE STONE)
DISTRIBUTING COMPANY, a corpor-)
ation, and H. HAROLD BECKO, an)
individual)
Defendants)

Civil Action File
No. 67-C-103

FILED

JUL 18 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

JUDGMENT

The above cause came on for trial in due course, plaintiff and defendants having been represented by their respective counsel, and the court having heard and considered the evidence, and having entered findings of fact and conclusions of law, now, in accordance therewith, it is

ORDERED, ADJUDGED and DECREED that defendants, their officers, agents, servants, employees, and all persons acting, or claiming to act, in their behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of sections 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), hereinafter referred to as the Act, in any of the following manners:

(1) The defendants shall not, contrary to section 7(a) of the Act, employ any of their employees who, in any workweek, are engaged in commerce or in the production of goods for commerce for a workweek longer than 40 hours, unless such employee receives compensation for employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed.

(2) The defendants shall not fail to make, keep and preserve records of employees, and of the wages, hours and other conditions and practices of employment maintained by them, as prescribed by the Regulations of the Secretary of Labor, issued, and from time to time amended, pursuant to section 11(c) of the Act, and found in Title 29, Chapter V, Code of Federal Regulations, Part 516.

It is ORDERED that the defendants, and they hereby are restrained from withholding the payment of overtime compensation due to the following named persons in the amounts set opposite their names, plus interest at the rate of six percent per annum from the dates the wages became due and owing until the date of payment:

Geneva Blankenship	\$ 31.88
Judy Dunn	869.60
Donna Gough	161.04
Virginia Martin	61.79
Lou Mayfield	216.39
Sandra Vincent	256.98

The provisions of this order pertaining to over-time compensation found due to those persons named herein, shall be deemed satisfied upon delivery to the plaintiff by the defendants, within 30 days of the date hereon, a certified or cashier's check payable to "Wage and Hour Division - Labor", in the net amount due after deductions for social security and income taxes.

It is ORDERED that plaintiff make distribution of the wages paid to him by defendants to those persons named above in the individual amounts stated, less legal deductions. In the event that plaintiff is unable to pay any of the wages due within a period of two years because of inability to locate the person entitled thereto, or because of a refusal to accept payment, such sums shall be covered into the Treasury of the United States as miscellaneous receipts.

It is further ORDERED that the costs of the action be, and they hereby are, taxed against the defendants.

Dated this 7th day of July, 1969.

Luther Bohannon

United States District Judge

C O F F I C I A L

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

PAUL J. BAKER, :
 :
 Plaintiff, :
 :
 vs. :
 :
 GARY RAY THORPE and :
 BOB COOK, :
 :
 Defendants. :

No. 68-C-196

FILED

JUL - 8 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

This cause coming on to be heard this _____ day of July, 1969, a judicial day of the July term of said Court, and the Court has before it for consideration a Stipulation of the parties for a judgment in the sum of \$1,650.00, and the Court being fully advised in the premises finds that said Stipulation has been approved by counsel for the Plaintiff and counsel for the Defendant, and should be approved by the Court and judgment entered in accordance with said Stipulation.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff Paul J. Baker, have judgment against the Defendant Gary Ray Thorpe for the sum of \$1,650.00 and for the costs of this action, for all of which let execution issue

Allen E. Farrow

Judge, United States
District Court

APPROVED:

Thomas G. Marsh

Thomas G. Marsh
Attorney for Plaintiff

APPROVED:

Richard E. Wright III

Richard E. Wright III
Attorney for Defendant
Gary Ray Thorpe

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

GRACE I. BAKER

Plaintiff

vs

GARY RAY THORPE and BOB COOK

Defendants

NO. 68-G-197

FILED

JUL - 8 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

STIPULATION

Comes now the plaintiff, Grace I. Baker, by and through her attorney, Thomas G. Marsh, and the defendant, Gary Ray Thorpe, by and through his attorney, Joseph F. Glass, and shows this Honorable Court that a compromise settlement has been made and entered into by and between the plaintiff and defendant, that all the rights of the parties have been compromised and settled and that there is no longer any controversy between the plaintiff and defendant and therefore apply to this court for an order of dismissal with prejudice.

DYER, POWERS, GOTCHER & MARSH

By: Thomas G. Marsh
Thomas G. Marsh, Attorney for Plaintiff

BEST, SHARP, THOMAS & GLASS

By: Joseph F. Glass
Joseph F. Glass, Attorney for Defendant

ORDER

Now on this 8th day of June, 1969, it appearing to the court upon the stipulation of the parties hereto that the controversy between the plaintiff and defendant has been compromised and settled by and between the parties, there is no longer any controversy now existing between the parties, and the court finds that the stipulation of the parties for an order to dismiss with prejudice should be and the same is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above cause of action be dismissed with prejudice upon the stipulation of the parties hereto that the same has been compromised and settled by and between the parties.

Walter E. Barrow
Judge

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

Floyd H. Fair and Helen G. Fair,)
)
 Plaintiffs,)
)
 v.)
)
 United States of America,)
)
 Defendant.)

No. 68-C-44
Civil Action

FILED

JUL -9 1969

STIPULATION OF DISMISSAL

M. M. EWING, CLERK
U.S. DISTRICT COURT

It is hereby stipulated and agreed that the
above-entitled action be dismissed with prejudice, each
party to bear its own costs.

Dated: July 3, 1969

Bruce H. Johnson
Bruce H. Johnson
Of: CROWE, DUNLEVY, THWEATT, SWINFORD
JOHNSON & BURDICK
Fifth Floor, 100 Park Avenue Bldg.
Oklahoma City, Oklahoma 73102
Attorneys for Plaintiffs.

Robert P. Senter
United States Attorney
For: UNITED STATES OF AMERICA,
Defendant.

APPROVED, 7/7/1969, 1969

Luther Bohanon
LUTHER BOHANON,
United States District Judge

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

United States of America,

Plaintiff,

CIVIL NO. 69-C-15

vs.

George Edward Major and Sharon
Kay Major, husband and wife,
Jarrrell W. McConnell and Diane W.
McConnell, husband and wife,
Ruby Davault and Ray Harper
and John Gault, Defendants.

FILED

JUL - 9 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER CONFIRMING MARSHAL'S SALE

NOW, on this _____ day of July, 1969, there comes on
for consideration the Motion to Confirm Sale made by the United States
Marshal for the Northern District of Oklahoma on July 7, 1969,
under an Order of Sale dated May 20, 1969, of the following-described
property, to-wit:

**Lot Eleven (11), Block Six (6), Suburban Acres
Fourth Addition to the City of Tulsa, Tulsa County,
State of Oklahoma, according to the recorded plat
thereof,**

and the Court having examined the proceedings of the United States Marshal
under the said Order of Sale, there being no exceptions thereto and no one
appearing in opposition thereto, finds that due and legal notice of the
sale was given once a week for four (4) consecutive weeks prior to the
date of said sale in the Tulsa Daily Legal News, a newspaper of general
circulation in Tulsa County, State of Oklahoma, and that on the day
fixed therein the aforesaid property was sold to **the Admin. of Veterans Affairs,**
he being the highest and best bidder therefor.

The Court finds that the sale was in all respects in conformity
with the law and judgment of this Court and was legal in all respects.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the United
States Marshal's Sale made pursuant to the Order of Sale heretofore issued
herein, be, and the same is approved and confirmed.

IT IS FURTHER ORDERED that Doyle W. Foreman, United States
Marshal for the Northern District of Oklahoma, execute and deliver to the
purchaser, **the Admin. of Veterans Affairs**, a good and sufficient deed
for the above-described real property.

APPROVED:

UNITED STATES DISTRICT JUDGE

ROBERT P. SANTEE
Assistant U. S. Attorney

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

STATE FARM MUTUAL AUTOMOBILE INSURANCE)
COMPANY)

Complainant)

vs)

PAUL J. BAKER, GRACE I. BAKER and GARY)
RAY THORPE)

D. fendants)

NO. 69-C-34

FILED

JUL -9 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER

Now on this 9th day of June, 1969, it appearing to the
court upon the stipulation of the parties hereto that the controversy
between the complainant and defendants has been compromised and
settled by and between the parties, there is no longer any controversy
now existing between the parties and the court finds that the stipulation
of the parties for an order to dismiss with prejudice should be and the same
is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the
above cause of action be dismissed with prejudice upon the stipulation
of the parties hereto as the same has been compromised and settled by
and between the parties.

Allan E. Garrison

Judge

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

United States of America,

Plaintiff,

vs.

Orville James Acker and Wanda
Nadine Acker, Travis Neal Bradstreet
and Jerri Nell Bradstreet,

Defendants.)

CIVIL NO. ~~69-C-36~~

FILED

JUL -9 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER CONFIRMING MARSHAL'S SALE

NOW, on this _____ day of July, 1969, there comes on
for consideration the Motion to Confirm Sale made by the United States
Marshal for the Northern District of Oklahoma on July 7, 1969,
under an Order of Sale dated May 16, 1969, of the following-described
property, to-wit:

**Lot Four (4), Block One (1), Suburban Acres
Third Addition to the City of Tulsa, Tulsa
County, Oklahoma, according to the recorded plat
thereof,**

and the Court having examined the proceedings of the United States Marshal
under the said Order of Sale, there being no exceptions thereto and no one
appearing in opposition thereto, finds that due and legal notice of the
sale was given once a week for four (4) consecutive weeks prior to the
date of said sale in the Tulsa Daily Legal News, a newspaper of general
circulation in Tulsa County, State of Oklahoma, and that on the day
fixed therein the aforesaid property was sold to **the Admin. of Veterans Affairs**
he being the highest and best bidder therefor.

The Court finds that the sale was in all respects in conformity
with the law and judgment of this Court and was legal in all respects.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the United
States Marshal's Sale made pursuant to the Order of Sale heretofore issued
herein, be, and the same is approved and confirmed.

IT IS FURTHER ORDERED that Doyle W. Foreman, United States
Marshal for the Northern District of Oklahoma, execute and deliver to the
purchaser, **the Admin. of Veterans Affairs**, a good and sufficient deed
for the above-described real property.

APPROVED:

UNITED STATES DISTRICT JUDGE

ROBERT P. SANTEE
Assistant U. S. Attorney

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

United States of America,

Plaintiff,

vs.

Jimmy Riley Allen and Sara June Allen,
husband and wife, and Phil W. Dover
and Janet M. Dover, husband and wife,

Defendants.

CIVIL NO. 69-C-47

FILED

JUL -9 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT.

ORDER CONFIRMING MARSHAL'S SALE

NOW, on this _____ day of July, 1969, there comes on
for consideration the motion to Confirm Sale made by the United States
Marshal for the Northern District of Oklahoma on July 7, 1969,
under an Order of Sale dated May 14, 1969 of the following-described
property, to-wit:

Lot Seven (7), Block Three (3), Carbonale
Third Addition to the City of Tulsa, Tulsa
County, Oklahoma, according to the recorded
plat thereof,

and the Court having examined the proceedings of the United States Marshal
under the said Order of Sale, there being no exceptions thereto and no one
appearing in opposition thereto, finds that due and legal notice of the
sale was given once a week for four (4) consecutive weeks prior to the
date of said sale in the Tulsa Daily Legal News, a newspaper of general
circulation in Tulsa County, State of Oklahoma, and that on the day
fixed therein the aforesaid property was sold to the Admin. of Veterans Affairs,
he being the highest and best bidder therefor.

The Court finds that the sale was in all respects in conformity
with the law and judgment of this Court and was legal in all respects.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the United
States Marshal's Sale made pursuant to the Order of Sale heretofore issued
herein, be, and the same is approved and confirmed.

IT IS FURTHER ORDERED that Doyle W. Foreman, United States
Marshal for the Northern District of Oklahoma, execute and deliver to the
purchaser, the Admin. of Veterans Affairs, a good and sufficient deed
for the above-described real property.

APPROVED:

UNITED STATES DISTRICT JUDGE

ROBERT F. SAWTELLE
Assistant U. S. Attorney

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

GLEN LEVERETT,

Petitioner,

vs.

RAY H. PAGE, Warden, Oklahoma
State Penitentiary, McAlester,
Oklahoma,

Defendant.

NO. 69-C-23

FILED

JUL 10 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

O R D E R

The Court has before it an instrument in the nature of a Writ of Habeas Corpus filed by petitioner, Glen Leverett, and transferred to this Court under authority of Title 28 U.S.C. § 2241(d) from the Eastern District of Oklahoma, and the Response of the Defendant to this Court's Order to Show Cause, and having fully examined and carefully considered said instruments the Court finds:

1. That petitioner is constrained in the Oklahoma State Penitentiary under judgment and sentence of the District Court for Tulsa County, handed down in the year 1963, after he was charged conjointly in three charges with armed robbery, kidnapping, and assault with intent to kill in cases Nos. 134974, 134975, and 134976.

2. That petitioner alleges in his petition herein that his Federal and State Constitutional rights have been abridged in the following particulars: that he was not advised of his right to see a lawyer (presumably when arrested since petitioner admits in his petition that he had Court-appointed counsel); that he was forced to plead guilty to robbery with firearms by his Court-appointed attorney as said attorney told him that if he did not plead guilty to robbery with firearms he would be given the electric chair, and, therefore, he did not plead guilty with a free will but through fear of the death penalty, and such pleading was a statement against interest; that his Court-appointed counsel was not prepared to defend petitioner since said attorney spent only "three minutes" with petitioner before trial time; that petitioner was not convicted at a

public trial but, while in fear of the electric chair, by agreement on several counts with the county attorney; that petitioner was not furnished a list of witnesses nor a copy of the indictment three days prior to trial time; that petitioner was given a life sentence, even though he had never before been in trouble nor convicted of a felony, while his two co-defendants were given 17 years and 30 years. Petitioner prays that the Court order the return of his trial transcript which he submitted with his "appeal" to the Oklahoma Court of Criminal Appeals, and seeks the appointment of an attorney to help him with an appeal.

3. That petitioner filed a Writ of Habeas Corpus with the Oklahoma Court of Criminal Appeals in 1967 and the said Court dismissed the petition "without prejudice to the petitioner filing a subsequent application for post conviction review with sufficient information provided...to entertain the same."

4. That although the doctrine of exhaustion of state remedies is not a prerequisite to Federal Habeas Corpus jurisdiction under *Fay v. Noia*, 372 U.S. 391, 83 S. Ct. 822, 9 L. Ed. 2d 837, that case also holds that where the state provides a suitable procedure for considering the issue presented, the petitioner cannot deliberately choose to by-pass them and seek relief in the Federal Courts. *Boyd v. State of Oklahoma*, 375 F.2d 481 (1967).

5. That the Oklahoma law gives prisoners a post conviction remedy and protection of the rights guaranteed by the Constitution of the United States. Okl. St. Ann. Const. Art. 2; 12 Okl. St. Ann. § 1331 et seq.; 22 O.S. Supp. 1965 § 1073. And, when a suitable State remedy is available, the Federal Courts on the principle of comity should defer ruling on habeas corpus petitions filed by state prisoners until the state courts have had an opportunity to pass upon the claims. *Love v. Page*, 351 F.2d 303 (1965); *Barber v. Page*, 355 F.2d 171 (1966); *Cardinale v. Louisiana*, ___ U.S. ___ (1969).

6. That notwithstanding petitioner's allegations in support of his petition for habeas corpus, the Court finds the petitioner has not exhausted his state remedies and is attempting to deliberately by-pass suitable state procedure for considering the issues; this

finding is evidenced by the Order filed December 13, 1967, by the Court of Criminal Appeals of the State of Oklahoma wherein petitioner's state habeas corpus was "dismissed without prejudice to the petitioner filing a subsequent application for post conviction review."

7. That the Writ of Habeas Corpus should be denied as it is premature in the Federal Court since petitioner has failed to exhaust and is attempting to by-pass the state remedies available to him.

IT IS, THEREFORE, ORDERED that the Petition for Writ of Habeas Corpus be and the same is hereby denied.

Dated this 10th day of July, 1969, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE

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

JOSLYN MFG. AND SUPPLY CO.,
a corporation,

Plaintiff,

vs.

ALPHA CONSTRUCTION COMPANY,
a corporation, and THE FIDELITY
AND CASUALTY COMPANY OF NEW YORK,
a corporation,

Defendants.

No. 68-C-90

FILED

JUL 14 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

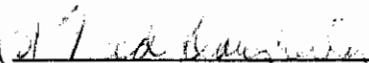
ORDER OVERRULING DEFENDANTS
MOTIONS FOR NEW TRIAL

Each Defendant herein has filed a Motion for a New Trial. Several grounds for a New Trial are set forth in the Motions. However, in the supporting brief required by Rule 13 of this Court, no argument is presented and no cases are cited by the Defendants in support of their Motions. They merely adopt and resubmit briefs previously submitted by them. The Court is unable to find the additional authorities the Defendants promised to submit in their answer brief to Plaintiff's Motion for a New Trial.

Therefore, the Court adopts all orders, rulings, reasons and citations of authorities made or stated by the Court heretofore in denying each of the several contentions raised again and renewed in said Motions of Defendants for New Trial.

The Motions for New Trial filed by the Defendants are without merit as previously determined herein by the Court and as Defendants have presented nothing new the same are, therefore, overruled.

It is so ordered this 14 day of July, 1969.


Fred Daugherty
United States District Judge

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

JOSLYN MFG. AND SUPPLY CO.,
a corporation,

Plaintiff,

vs.

ALPHA CONSTRUCTION COMPANY,
a corporation, and THE FIDELITY
AND CASUALTY COMPANY OF NEW
YORK, a corporation,

Defendants.

No. 68-C-90 Civil

FILED

JUL 14 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER OVERRULING PLAINTIFF'S MOTION FOR NEW TRIAL

Plaintiff has filed a Motion for New Trial. Seven grounds therefor are set forth as follows:

1. The amounts found for defendant by the jury in answer to interrogatories, and incorporated into the resulting judgment, are excessive and appear to have been given under the influence of passion and prejudice.

2. Said amounts are contrary to the weight of the evidence.

3. Said amounts are excessive upon the undisputed facts.

4. There is no sufficient or substantial evidence to support the amounts of the jury's answers.

5. The Court refused to give plaintiff's Instruction No. 2-A or similar instruction relating to exclusion of winter damages to which refusal plaintiff made objection in timely and proper manner.

6. The judgment awarded to plaintiff is inadequate for that the amounts allowed as credit and upon counterclaim are excessive as above set forth.

7. The judgment is contrary to law and to the evidence.

The issues of this case, as presented to the jury on Interrogatories and Verdicts based thereon, were clean cut. Plaintiff was a supplier of cable and related materials. Defendant Alpha was a contractor laying such cable underground for rural electric lines. Plaintiff sued herein for cable and related merchandise sold to the Defendant Alpha and not paid for. The parties stipulated to the value or cost of said merchandise. The Defendant Fidelity and Casualty Company of New York was made a party defendant by virtue of a payment bond. The Defendant Alpha counterclaimed in the case for two items:

- (1) Credit due it for merchandise returned to Plaintiff, and,
- (2) Delay damages for late deliveries of certain of said merchandise by the Plaintiff.

The Plaintiff acknowledged that certain deliveries were not made according to the agreed delivery schedule.

Plaintiff's Motion for New Trial essentially registers complaint that the jury's determination of the amount of credit for returned merchandise and the amount of delay damages are both excessive or contrary to the evidence or reached as a result of prejudice.

As to the returned merchandise credit issue, the evidence was conflicting as to the terms of the verbal agreement of the parties relating to the return of merchandise by the Defendant Alpha to the Plaintiff and the amount of credit to which the Defendant Alpha was entitled. Defendant Alpha claimed and presented evidence that the Plaintiff agreed to receive all returned merchandise and give full credit to the Defendant Alpha based on the original cost thereof. Defendant Alpha presented evidence itemizing all

returned merchandise and the original cost thereof which totaled the amount of \$19,608.34. The Plaintiff, on the other hand, claimed that it only agreed to credit Defendant Alpha for such returned merchandise as Plaintiff could resell to others. The evidence was also in sharp conflict regarding the matter of restocking said returned merchandise to Plaintiff's inventory and the cost therefor incurred by Plaintiff and freight costs with reference to said returned merchandise.

This issue was presented to the jury for its determination on such conflicting positions and evidence under proper instructions. The jury was told that the burden of proof on this issue was upon the Defendant Alpha by a preponderance of the evidence and that from the conflicting positions and evidence of the parties, the jury should determine, first, what the true agreement was between the parties and, second, the credit due Defendant Alpha thereunder, if any. The jury determined this issue and fixed credit due the Defendant Alpha in the amount of \$13,056.00. This determination is supported by substantial evidence, is not contrary to the evidence or the law and is not excessive in the opinion of the Court. Under the evidence of the Defendant Alpha, the jury could have returned a verdict on this issue for \$19,608.34.

On the delay damages issue, the Defendant Alpha presented evidence regarding the delays encountered and established its loss at \$165,100.00. As stated above, the Plaintiff admitted certain delays in delivery of cable in breach of the agreed delivery dates. Involved in this factually complicated issue was the precise loss sustained by Defendant Alpha from idled equipment, the resulting complete cessation of work by Defendant Alpha during several winter

months which cessation of work would not have been experienced by Defendant Alpha if the cable had been delivered by the Plaintiff as agreed and scheduled, the exact number of days lost by Defendant Alpha considering holidays and bad weather, the inability of Defendant Alpha to remove the idled equipment from the project during said winter months, overhead of Defendant Alpha, loss of profits of Defendant Alpha, whether notice to Plaintiff within a reasonable time after accepting late deliveries was given by Defendant Alpha showing its intent to claim delay damages, proximate cause and other less important factors. Defendant Alpha presented evidence regarding its loss from said idled equipment by two expert witnesses who based their expert opinions on AGC (Associated General Contractors) published data regarding rental values on equipment and other relevant factors. The Plaintiff presented no such expert witnesses and relied upon cross-examination and argument in this connection.

By its Motion for New Trial on this issue, the Plaintiff now reargues the evidence to the Court and wants the Court to retry the case and, thus, in effect, deny jury trial. The nature of this issue and its difficult and complicated facets were well known to all parties well in advance of trial. Ample opportunity for the presentation of evidence and arguing the same to the jury was afforded. The issue was presented to the jury under proper instructions. The Court will not, in the circumstances of this case, substitute its judgment for that of the jury which spent a considerable amount of time in deliberating the case after hearing the evidence and the arguments of the attorneys on the various loss factors involved. It is crystal clear that the Plaintiff

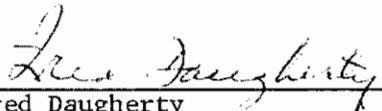
failed to make certain deliveries as agreed upon and that winter set in and prevented completion of the work as scheduled for completion before this well recognized consequence of Iowa weather intervened. There was a conflict in the evidence regarding the required notice of intent to claim damages after accepting delayed delivery by the Defendant Alpha, but the Defendant Alpha presented evidence that such notice was given to the Plaintiff and this issue was for the jury to determine under proper instructions which were adequately given on this point. The agreed schedule for delivery of cable and related materials was also clearly established as was Plaintiff's knowledge of Defendant Alpha's particular need and requirement for prompt delivery of cable to avoid the consequences of a winter shut down on this type of installation requiring underground work in Iowa. The Court gave the jury an Instruction on proximate cause and also on the duty of the Defendant Alpha to use reasonable measures to prevent losses from late delivery. The Defendant Alpha presented evidence on all these issues and the amount of delay damages was a jury question under proper instructions. The determination of the jury on this question is within reasonable limits in the opinion of the Court and is supported by substantial evidence if they chose to believe the evidence of the Defendant Alpha or certain parts thereof and not be impressed with Plaintiff's cross-examination and argument. The Court fails to find and believe that the Verdict of the jury on this issue or the other issue now under consideration was the result of passion or prejudice. As it turned out, the jury allowed the Defendant Alpha only about one-half of its claim on this issue.

The Plaintiff has failed to brief ground 5 set out above.

At any rate, the Court feels that the Instructions given properly covered the issues involved.

Accordingly, the Motion for New Trial of the Plaintiff is overruled.

It is so ordered this 14 day of July, 1969.



Fred Daugherty
United States District Judge

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

VERNER B. JONES,

Petitioner,

vs.

RAY H. PAGE, STATE OF OKLAHOMA
and/or THE STATE OF TEXAS,

Respondents.

No. 69-C-96

FILED

JUL 14 1969

ORDER OF DISMISSAL

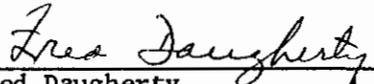
M. M. EWING, CLERK
U. S. DISTRICT COURT

Petitioner, as an Oklahoma State prisoner, has pending before this Court his Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. 2254. Petitioner did not show by his said Petition that he has exhausted his available State remedies regarding his complaints as required by 28 U.S.C. 2254. The Court, by order dated May 28, 1969, directed Petitioner to file a statement in this case showing that he has exhausted his available State remedies on the complaints raised herein. On June 26, 1969, the Petitioner filed a pleading herein in which he stated that he had filed a Petition for Writ of Habeas Corpus in the District Court of Pittsburg County, Oklahoma, which Petition had been denied by that court. Petitioner did not state that this order of denial by the District Court had been appealed by him to the Oklahoma Court of Criminal Appeals and ruled on by that tribunal which action would be necessary to exhaust available remedies afforded by the State of Oklahoma. This Court, therefore, assumes that an appeal was not taken by the Petitioner to nor has a ruling been made by the Oklahoma Court of Criminal Appeals on Petitioner's complaints raised herein.

In these circumstances, the Petitioner's Petition for Writ

of Habeas Corpus pending in this Court is dismissed for failure of Petitioner to exhaust his available State remedies on his complaints as required by 28 U.S.C. 2254.

It is so ordered this 14 day of July, 1969.



Fred Daugherty
United States District Judge

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

HARVEY G. COMBS, Insurance Commissioner)
of the State of Arkansas, as Receiver)
for Royal Standard Insurance Company,)
Plaintiff,)

vs.)

OSCAR E. CHAMBERS, JO CHAMBERS and)
SOUTHWIDE BAPTIST FOUNDATION,)
Defendants.)

No. 67-C-122

FILED

JUL 15 1969

J U D G M E N T

M. M. EWING, CLERK
U. S. DISTRICT COURT

This action was tried before the Court; the Plaintiff, Harvey G. Combs, Insurance Commissioner of the State of Arkansas, as Receiver for Royal Standard Insurance Company, appearing by his attorney, Jan Eric Cartwright, of Muskogee, Oklahoma; and the Defendants, Oscar E. Chambers, Jo Chambers and Southwide Baptist Foundation, appearing by their attorney, Charles W. Stubbs, of Oklahoma City, Oklahoma, a jury having been waived by all parties and the two separated issues having been tried, with findings of fact, conclusions of law and decisions having been rendered on each issue by the Court

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that the oil and gas leasehold interests and estates in the following described properties, to-wit:

PAWNEE COUNTY, OKLAHOMA

(1.) Lots one, two, and three of the Southwest quarter; and the Northeast quarter; and the South half of the Northwest quarter; and Lots four and five all in Section 36, Township 20 North, Range 6 East, Pawnee County; and

CREEK COUNTY, OKLAHOMA

(1.) The Northwest quarter of the Northwest quarter; and

the Northeast quarter of the Northwest quarter, all in Section 19, Township 19 North, Range 9 East, Creek County, Oklahoma;

(2.) The Southeast quarter of the Northwest quarter; and Lot 2 (Southwest quarter of Northwest quarter); and the Northwest quarter of the Northeast quarter of the Southwest quarter; and Lot Number 3 (Northwest quarter of Southwest quarter), all in Section 19, Township 19 North, Range 9 East, Creek County, Oklahoma; the Northwest quarter of Northeast quarter of Southeast quarter; and Northeast quarter of Northwest quarter of Southeast quarter; and East half of Northeast quarter of Southeast quarter, all in Section 24, Township 19 North, Range 8 East of Creek County, Oklahoma.

(3.) East half of the Northeast quarter of the Northeast quarter; and Southeast quarter of the Northeast quarter; and the East half of the Southwest quarter of the Northeast quarter, all in Section 24, Township 19 North, Range 8 East, Creek County, Oklahoma;

(4.) South half of the Southeast quarter of Section 11, Township 18 North, Range 7 East, Creek County, Oklahoma;

(5.) North half of the Northwest quarter; and the East half of the Southwest quarter; and the North half of the Southeast quarter, all in Section 11, Township 18 North, Range 7 East, Creek County, Oklahoma.

(6.) Northeast quarter of the Northeast quarter of Section 14, Township 18 North, Range 7 East; and West half of the Northwest quarter of Section 13, Township 18 North, Range 7 East, all in Creek County, Oklahoma; and South half of the Southwest quarter of Section 12, Township 18 North, Range 7 East, all in Creek County.

(7.) East half of the Southeast quarter; and Northwest quarter of the Southeast quarter, all in Section 29, Township 19

North, Range 9 East, Creek County, Oklahoma;

(8.) East half of the Northeast quarter of the Southeast quarter; and Lot 6; and Northwest quarter of the Northeast quarter of the Southeast quarter; and Lot 7, less 3.7 acres; and Southwest quarter of the Northwest quarter of the Southeast quarter; and East half of the Northwest quarter of the Northeast quarter, of the Southeast quarter, all in Section 1, Township 19 North, Range 9 East, Creek County, Oklahoma.

(9.) Lot 5 of Section 36, Township 20 North, Range 6 East, in Creek County, Oklahoma;

(10.) Ten acres (10.0 a.) in the Northwest quarter of Lot 5, (also described as the Northwest quarter of the Southwest quarter of the Northwest quarter); and Lots three, four, and five; and Southeast quarter of the Northwest quarter - less Northwest quarter of Southwest quarter of Northwest quarter (10 acres); and Northwest quarter of the Northwest quarter of the Northwest quarter, all in Section 6, Township 19 North, Range 7 East, Creek County, Oklahoma;

(11.) Lots 9 and 10 of Section 31, Township 20 North, Range 7 East, Creek County, Oklahoma.

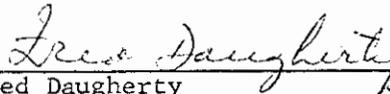
(12.) Lots five, six, and 7 of Section 1, Township 19 North, Range 6 East, Creek County, Oklahoma; are owned by the Defendant Oscar E. Chambers, and,

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the conveyances of the above described oil and gas leasehold interests and estates by the Defendant Oscar E. Chambers or his alter egos to Southwide Baptist Foundation were made by him with the actual intent to hinder, delay, and defraud his creditors, including the Plaintiff herein, and said conveyances are, therefore,

hereby set aside, rescinded, and held for naught.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the final Arkansas judgment dated March 9, 1966, and heretofore entered against the Defendant Oscar E. Chambers in the 10th Chancery Circuit of the State of Arkansas, in Case No. 3770 and styled Harvey G. Combs, Insurance Commissioner of the State of Arkansas, as Receiver for Royal Standard Insurance Company vs. Oscar E. Chambers, et al., in the amount of \$388,054.14 with interest be and the same is hereby entered herein in the State of Oklahoma as a judgment in rem against the above described oil and gas leasehold interests and estates owned by the Defendant Oscar E. Chambers.

Dated this 15 day of July, 1969.



Fred Daugherty
United States District Judge

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

MID-CENTURY INSURANCE COMPANY,)
a California Corporation,)
)
Plaintiff,)
)
vs.)
)
STEPHEN R. VOLK and HERBERT W.)
ROLLER, Deceased, by and)
through his Executrix,)
SUSAN FISHER,)
)
Defendants.)

NO. 68-C-248

FILED

JUL 15 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER OF DISMISSAL

The above matter coming on to be heard this ____ day of June, 1969,
upon written application of the parties for a dismissal of said action
and cross-complaints with prejudice, the Court having examined said appli-
cation finds that said parties have entered into a compromise settlement
covering all claims involved in the action and have requested the Court
to dismiss said action and cross-complaints with prejudice to any future
actions, and the Court being fully advised in the premises, finds that
said action and cross-complaints should be dismissed pursuant to said
application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE Court that the
Action of Plaintiff filed herein against the defendants and the Cross-
Complaints of defendants filed herein be and the same hereby are dismissed
with prejudice to any future action.

S/ Allen C. Danow

JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

S/ Alfred B. Knight

ALFRED B. KNIGHT, Attorney for plaintiff

S/ David H. Sanders

DAVID H. SANDERS, Attorney for Stephen R. Volk

S/ Richard G. Harris

RICHARD G. HARRIS, Attorney for Herbert W.
Roller, deceased, by and through his
executrix, Susan Fisher



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

LESLIE L. ELLIOTT,)
)
)
Plaintiff,)
)
)
-vs-)
)
)
SAFECO INSURANCE COMPANY)
OF AMERICA, a Washington)
Corporation,)
)
)
Garnishee .)

No. 69-C-65

FILED

JUL 22 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

J U D G M E N T

The Court having made FINDINGS OF FACT AND CONCLUSIONS OF LAW, does enter a judgment in favor of the defendant garnishee, Safeco Insurance Company of America, a Washington corporation, and against the plaintiff, Leslie L. Elliott, upon the issues herein.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that there is no liability upon the part of the garnishee, Safeco Insurance Company of America, a Washington Corporation, to Leslie L. Elliott arising out of and occasioned by the issuance and service of a garnishee summons on April 2, 1969, in Cause No. 12189 in the District Court of Mayes County, Oklahoma, and that the garnishee be discharged and released of and from all liability by reason of said garnishment proceedings.

Judgment is entered this 27 day of June, 1969.

Luther Bohanon
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:
James E. Lee
Attorney for Plaintiff.
Frank H. ...
Attorney for Defendant.

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

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

PRESTON L. RAY and SHIRLEY M. RAY,
THOMAS ROBERT SMITH and CAROLYN KAY
SMITH, JACK SHEPHARD and SHIRLEY L.
SHEPHARD and OKLAHOMA NATURAL GAS
COMPANY, a corporation,

Defendants.

Civil No. 69-C-102

FILED

JUL 22 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 16th day
of July, 1969, the Defendant, Oklahoma Natural Gas Company, a
corporation, appearing by its attorney, Loftin E. White, III,
and the Defendants, Preston L. Ray and Shirley M. Ray, Thomas
Robert Smith and Carolyn Kay Smith, Jack Shephard and Shirley L.
Shephard, appearing not; and

The Court being fully advised and having examined the file
herein finds that the Defendant, Oklahoma Natural Gas Company,
a corporation, has heretofore filed its Answer alleging and
stating that on or about February 26, 1968, the Defendant, Okla-
homa Natural Gas Company, a corporation, obtained a right-of-way
agreement from the Defendants, Jack Shephard and Shirley L.
Shephard, husband and wife, over and through the S/2 of the N/2
of Section 12, Township 20 North, Range 12 East, more particularly
described as follows:

The East 20 feet of the West 40 feet of
Lot 3, Block 41, Valley View Acres 2nd
Addition to the City of Tulsa, Oklahoma,

and that said right-of-way is valid and was duly executed and
recorded in the Office of the County Clerk of Tulsa County,
Oklahoma, in Book 3841, at Page 342; and

It further appearing and the Court finds that due and legal
personal service of summons was made on the Defendants, Preston
L. Ray and Shirley M. Ray, on June 4, 1969, on the Defendants,

Thomas Robert Smith and Carolyn Kay Smith on June 17, 1969, on the Defendants, Jack Shephard and Shirley L. Shephard, on June 6, 1969, requiring each of them to Answer the Complaint filed herein not more than twenty (20) days after service of summons, and it appearing that said Defendants have failed to file an Answer herein and their default has been entered by the Clerk of this Court; and

The Court further finds that the material allegations of the Plaintiff's Complaint are true and correct; that the Defendants, Preston L. Ray and Shirley M. Ray, did, on February 27, 1961, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note for the sum of \$9,690.00, with interest thereon at the rate of 5 1/2% per annum, and further providing for the payment of monthly installments of principal and interest; and that said Defendants on June 8, 1962, did convey the real property described in the aforesaid mortgage, to the Defendants, Thomas Robert Smith and Carolyn Kay Smith, who agreed to assume and pay the aforesaid mortgage and note; and

The Court further finds that the Defendants, Thomas Robert Smith and Carolyn Kay Smith, on September 30, 1966, did convey the real property described in the aforesaid mortgage, to the Defendants, Jack Shephard and Shirley L. Shephard, who agreed to assume and pay the aforesaid mortgage and note; and

The Court further finds that the Defendant, Oklahoma Natural Gas Company, a corporation, is a public utility within the meaning of the Statutes of the State of Oklahoma and that subject Defendant, has a right-of-way over and across the property which is the subject of this suit, and that pursuant to such right-of-way, this Defendant did construct and install a natural gas distribution line over and across the property which is the subject of this suit. The Court further finds that the Plaintiff should be and is required to cause the property to be sold at Marshal's Sale subject to the right-of-way of the Defendant, Oklahoma Natural Gas Company.

The Court further finds that default has been made between Defendants, Preston L. Ray and Shirley M. Ray, Thomas Robert Smith and Carolyn Kay Smith, and Jack Shephard and Shirley L. Shephard, under the terms of the aforesaid mortgage and mortgage note by virtue of said Defendants' failure to make the monthly installment of principal and interest due on said mortgage note on September 1, 1968, which default has continued; that said Defendants by virtue of such default are now indebted to the Plaintiff for the sum of \$8,484.71, with interest thereon at the rate of 5 1/2% per annum from September 1, 1968, until paid, together with the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, United States of America, have and recover from the Defendants, Preston L. Ray and Shirley M. Ray, Thomas Robert Smith and Carolyn Kay Smith, Jack Shephard and Shirley L. Shephard, judgment in the sum of \$8,484.71, with interest thereon at the rate of 5 1/2% per annum from September 1, 1968, until paid, together with the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff, United States of America, has a first and prior lien upon the following described real property:

Lot Three (3), Block Forty-one (41), Valley View Acres Second Addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof,

by virtue of the aforesaid mortgage as security for the payment of this Judgment, and the Plaintiff, United States of America, electing under the terms of said mortgage to have the real property described above, sold, with appraisal, subject to the right-of-way in favor of Oklahoma Natural Gas Company, a corporation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of the Defendants, Preston L. Ray and Shirley M. Ray, Thomas Robert Smith and Carolyn Kay Smith, and Jack Shephard and Shirley L. Shephard, to satisfy the money judgment of Plaintiff,

an Order of Sale shall issue to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisalment, the above-described real property and to apply the proceeds thereof in payment of the costs of said sale and in satisfaction of Plaintiff's judgment therein. The residue, if any, to be paid to the Clerk of this Court to await further order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that from and after the sale of the real property subject to the said right-of-way and by virtue of this judgment, the Defendants, with the exception of Oklahoma Natural Gas Company, and each of them, and all persons claiming under them since the filing of the Complaint herein, be, and they are hereby forever barred and foreclosed from every lien, right, title, interest or claim in and to such real property.

s/ Allen E. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED:

s/ Robert P. Santee
ROBERT P. SANTEE
Assistant U. S. Attorney

Loftin E. White, III
LOFTIN E. WHITE, III
Attorney for Defendant
Oklahoma Natural Gas Company

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

DONALD RICHARD PLASKETT,

Petitioner,

vs.

RAY H. PAGE, Warden, Oklahoma
State Penitentiary, McAlester,
Oklahoma,

Respondent.

NO. 69-C-112

FILED

JUL 22 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

O R D E R

The Court has for consideration the petition for Writ of Habeas Corpus filed by petitioner Donald Plaskett, and being fully advised in the premises finds:

1. That petitioner herein sues jointly Ray H. Page, Warden of the Oklahoma State Penitentiary and the State of Oklahoma. That the State of Oklahoma is not a proper party herein and, therefore, the cause of action should be dismissed as to the State of Oklahoma.

2. That petitioner alleges in his petition that he is a prisoner at the Oklahoma State Penitentiary serving a five-year sentence imposed by the District Court of Tulsa County on July 22, 1966, for attempted 2nd Degree Burglary after former conviction of a felony.

3. That petitioner further alleges that the attorneys of his own choosing who represented him during his trial gave timely notice of appeal, but without petitioner's knowledge failed to perfect such appeal. That upon learning of said failure to perfect, petitioner in forma pauperis filed out-of-time a post-conviction appeal which the Oklahoma Court of Criminal Appeals denied on the ground that the failure of petitioner's retained counsel to perfect an appeal does not constitute the denial by the State of any rights belonging to the petitioner regarding his right to appeal his conviction.

4. That the petitioner did not thereafter and has not filed an action in Habeas Corpus in the State Courts; and, therefore, the Court finds that the petitioner has not exhausted his state remedies and is attempting to deliberately by-pass suitable state procedure for considering the issues.

5. That although the doctrine of exhaustion of state remedies is not a prerequisite to Federal Habeas Corpus jurisdiction under *Fay v. Noia*, 372 U. S. 391, 83 S. Ct. 822, 9 L. Ed. 2d 837, that case also holds that where the state provides a suitable procedure for considering the issues presented, the petitioner cannot deliberately choose to by-pass them and seek relief in the Federal Courts. *Boyd v. State of Oklahoma*, 375 F.2d 481 (1967).

6. That the Oklahoma law gives prisoners post-conviction remedies and protection of the rights guaranteed by the Constitution of the United States. Okl. St. Ann. Const. Art. 2, 12 Okl. St. Ann. § 1331 et seq. And, when a suitable state remedy is available, the Federal Courts should defer ruling on habeas corpus petitions filed by state prisoners until the state courts have had an opportunity to pass upon the claims. *Love v. Page*, 351 F.2d 303 (1965); *Barber v. Page*, 355 F.2d 171 (1966); *Cardinale v. Louisiana*, ___ U.S. ___ (1969).

7. That the Writ of Habeas Corpus should be denied as it is premature in the Federal Court since petitioner has failed to exhaust and is attempting to by-pass his state remedies.

IT IS, THEREFORE, ORDERED that Ray H. Page, Warden of the Oklahoma State Penitentiary, McAlester, Oklahoma, is the party respondent; and the cause of action against the alleged respondent, State of Oklahoma, is dismissed.

IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus be and the same is hereby denied.

Dated this 22 day of July, 1969, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE

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

WILLIAM BURDEN,

Plaintiff,

vs.

VICKERS, INCORPORATED, a Delaware
corporation,

Defendant.

✓
Civil No. 68-C-206

FILED

JUL 23 1969

ORDER OF DISMISSAL

M. M. EWING, CLERK
U. S. DISTRICT COURT

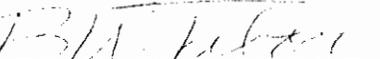
Upon motion of the plaintiff, and for good cause shown,
this action shall be and is hereby dismissed without prejudice
to any of the rights of the parties and without prejudice to
any other action pending between the parties.

It is so ordered this 23 day of July, 1969.


United States District Judge

APPROVED:


Attorney for Plaintiff


Attorney for Defendant

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

INTERSTATE FIRE & CASUALTY)
COMPANY, a corporation,)
)
Plaintiff,)
)
vs.) No. 68 C 73 ✓
)
REMWOOD CHEMICALS, INC.,)
a corporation, et al.,)
)
Defendants.)

FILED

JUL 23 1969

STIPULATION OF DISMISSAL

J. C. EWING, CLERK
U.S. DISTRICT COURT

All of the parties to this action, through their counsel of record,
hereby stipulate and agree pursuant to Federal Rule 41 of the Federal Rules
of Civil Procedure as follows:

1. All of the claims and issues of law in fact asserted by both
parties against the other in this action have been fully settled and compro-
mised.
2. Plaintiff hereby dismisses its Complaint against the Defendants,
and all amendments thereto.
3. The Defendants hereby dismiss any and all counterclaims
asserted herein against the Plaintiff.
4. The above dismissals are with prejudice.

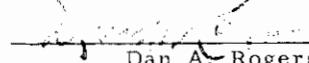
DATED this 23 day of July, 1969.



Richard W. Gable

Of Counsel:

Gable, Gotwals, Hays, Rubin & Fox
2010 Fourth National Bank Building
Tulsa, Oklahoma 74119,
Attorneys for Plaintiff.


Dan A. Rogers

Of Counsel:

Rogers, Donovan & Rogers
Petroleum Club Building - Suite 1311
Tulsa, Oklahoma, 74119
Attorneys for Defendants.

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY,
STATE OF OKLAHOMA

CHARLOTTE E. BAYAS)
)
) Plaintiff)
)
 vs.) No. 68-C-237)
)
 HORACE C. HINKLEY, et al)
)
) Defendant.)

ORDER

The motion of the Defendant, First Loan and Investment Corporation to dismiss and the motion of the Plaintiff to remand this suit to the District Court of Tulsa County, Oklahoma, coming on for hearing this 24th day of July, 1969, pursuant to regular setting and the court having heard the argument of counsel, reading the briefs of counsel and being fully advised, upon consideration finds that the motion of the Defendant be overruled and that the motion of the Plaintiff to remand should be sustained.

It is therefore ordered that the motion of the Defendant, First Loan and Investment Corporation to dismiss be overruled and 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. Exception allowed Defendant.

/ Allen E. Barrow
Judge of the United States District Court

APPROVED AS TO FORM:

/ R.J. Childers
Attorney for Plaintiff

/ Richard D. Wagner.
Attorney for Defendant

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

United States of America,

Plaintiff,

vs.

Civil No. 69-C-78

David W. Little and
Doris Little, husband and
wife, and Henry Blocker,
a single person,

Defendants.

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 24th day of July
1969. The defendants, David W. Little and Doris Little, husband and wife,
and Henry Blocker, a single person, appearing not.

The Court being fully advised and having examined the file herein
finds that legal service by publication was made upon the defendants,
David W. Little and Doris Little, husband and wife, and Henry Blocker,
a single person, as appears by Proof of Publication filed herein on
May 22, 1969.

It appearing that the defendants, David W. Little and Doris
Little, husband and wife, and Henry Blocker, a single person, have failed
to file an Answer herein and that default has been entered by the Clerk
of this Court.

The Court further finds that this is a suit based upon a mortgage
note and foreclosure on a real property mortgage securing said mortgage note
on the following described real property located in Tulsa, Tulsa County,
Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eight (8), Block Five (5), Suburban Acres
Second Addition to the City of Tulsa, County of
Tulsa, State of Oklahoma, according to the recorded
Plat thereof.

The Court further finds that the material allegations of Plaintiff's
Complaint are true and correct;

That the defendants, David W. Little and Doris Little, husband and
wife, did on March 12, 1964, execute and deliver to the Administrator of
Veterans Affairs, their mortgage and mortgage note for the sum of \$9,350.00,
with interest thereon at the rate of $5\frac{1}{2}\%$ per annum and further providing for
the payment of monthly installments of principal and interest; and

It further appears that the defendant, Henry Blocker, a single person, has or claims some right, title, or interest in and to the premises herein being foreclosed by reason of a General Warranty Deed, dated September 22, 1967, and filed of record on March 14, 1969, in the Office of the County Clerk, Tulsa County, Oklahoma, in Book 3882, Page 1165, but in this regard, plaintiff states that whatever right, title, or interest the defendant, Henry Blocker, a single person, has in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendants, David W. Little and Doris Little, husband and wife, and Henry Blocker, a single person, made default under the terms of the aforesaid mortgage note and mortgage by reason of their failure to make monthly installments due thereon on November 1, 1968, which default has continued and that by reason thereof the defendants are now indebted to the Plaintiff in the sum of \$8,820.33, as unpaid principal, with interest thereon at the rate of $5\frac{1}{2}\%$ per annum from November 1, 1968, until paid.

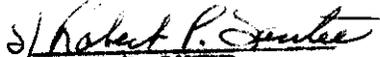
IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Plaintiff, United States of America, have and recover judgment against the defendants, David W. Little and Doris Little, husband and wife, and Henry Blocker, a single person, for the sum of \$8,820.33, with interest thereon at the rate of $5\frac{1}{2}\%$ per annum from November 1, 1968, until paid, plus the cost of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that upon failure of the defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall issue to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisal, the above-described real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, to be deposited with the Clerk of the Court to await further order of the Court.

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

S/Allen E. Hanson
UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANTEE
Assistant U. S. Attorney

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

SUMNER WILLIAMS, INC., a Massachusetts
corporation,

Plaintiff,

vs.

LEW WENZEL & COMPANY OF OKLAHOMA,
et al,

Defendants.

No. 68-C-136

FILED

JUL 29 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

Come now Sumner Williams, Inc., plaintiff, and Lew Wenzel & Company of Oklahoma, Lew Wenzel & Company of North Texas, Lew Wenzel & Company of South Texas, Lew Wenzel & Company of Southern California, Lew Wenzel & Company of Northern California and Lew Wenzel & Company of Colorado and stipulate that the within action may and shall be dismissed with prejudice as to all claims, set-offs and counterclaims asserted herein with each party to bear its own costs.



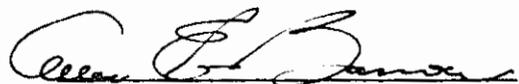
Attorney for Plaintiff



Attorney for Defendants

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 29th day of July, 1969, upon the Stipulation of the parties herein, the within action is ordered dismissed with prejudice as to all claims, set-offs and counterclaims asserted herein with each party to bear its own cost.



United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OKLAHOMA

The United States of America,

Plaintiff,

vs.

Don W. McGinnis and Maxine McGinnis,
Barbara Lovine McGinnis, Raymond A.
Conn and Doris Ann Conn and Billie
Eva Cook,

Defendants.

Civil No. 69-C-107

FILED

JUL 31 1969

M. M. EWING, CLERK
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this ____ day of July, 1969, the defendants, Don W. McGinnis and Maxine McGinnis, Barbara Lovine McGinnis, Raymond A. Conn and Doris Ann Conn, appearing not.

The Court being fully advised and having examined the file herein finds that the defendant, Billie Eva Cook, appearing by her Attorney, M. C. Spradling, has heretofore filed her Answer and Cross Complaint against the defendants, Raymond A. Conn and Doris Ann Conn; and

It further appearing and the Court finds that due and legal personal service of summons has been made on the defendants, Don W. McGinnis and Maxine McGinnis, on June 10, 1969, on the defendants, Raymond A. Conn and Doris Ann Conn on June 7, 1969, and on the defendant, Barbara Lovine McGinnis on June 27, 1969, requiring each of them to answer the complaint filed herein not more than twenty (20) days after service of summons, and it appearing that said defendants have failed to file an Answer herein and default has been entered by the Clerk of this Court; and

The Court further finds that the material allegations of the Plaintiff's Complaint are true and correct; that the defendants, Don W. McGinnis and Maxine McGinnis, husband and wife, did on July 23, 1964, execute and deliver to the Administrator of Veterans Affairs his mortgage and mortgage note for the sum of \$8,000.00, with interest thereon at the rate of 5 1/2% per annum, and further providing for the payment of monthly installments of principal and interest; and

The Court further finds that the defendants, Raymond A. Conn and Doris Ann Conn, husband and wife, have or claim some right, title or interest in and to the premises herein being foreclosed by reason of a General Warranty Deed, filed of record, May 31, 1966, in Book 7717, at Page 193, in the Office of the County Clerk, Tulsa County, Oklahoma, but in this regard, plaintiff states that whatever right, title or interest the defendants, Raymond A. Conn

and Doris Ann Conn, husband and wife, have in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

The Court further finds that the defendant, Barbara Lovine McGinnis, has or claims some right, title, or interest in and to the premises herein being foreclosed by reason of a Judgment entered in the records of the District Court for Tulsa County, Oklahoma, on October 25, 1961, in Case No. D-77760, in the amount of the costs of the suit, but in this regard, plaintiff states that whatever right, title or interest the defendant, Barbara Lovine McGinnis, has in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

The Court further finds that the defendant, Billie Eva Cook, has or claims some right, title or interest in and to the premises herein being foreclosed by reason of a Real Estate Mortgage, filed June 12, 1968, in the records of the Office of the County Clerk, Tulsa County, Oklahoma, in Book 3651, at Page 154, but in this regard plaintiff states that whatever right, title, or interest the defendant, Billie Eva Cook, has in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this Plaintiff; and

The Court further finds that the defendants, Raymond A. Conn and Doris Ann Conn, are indebted to defendant, Billie Eva Cook, in the amount of \$1,700.00, with interest thereon at 6% per annum from June 15, 1968, until paid, and \$250.00 Attorney's fee for her Attorney of record, H. C. Spradling, and that said indebtedness is secured by a second mortgage, both of which note and mortgage are inferior to the note and mortgage of Plaintiff; and

The Court further finds that default has been made by the defendants, Don W. McGinnis and Maxine McGinnis, Raymond A. Conn and Doris Ann Conn, under the terms of the aforesaid mortgage and mortgage note by virtue of said defendants' failure to make monthly installment of principal and interest due on said mortgage note on August 1, 1968, which default has continued; that said defendants, by virtue of such default are now indebted to the Plaintiff for the sum of \$8,372.39, with interest thereon at the rate of 5 $\frac{1}{2}$ % per annum from August 1, 1968, until paid, together with the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Plaintiff have judgment against the defendants, Don W. McGinnis and Maxine McGinnis, Raymond A. Conn and Doris Ann Conn, for the sum of \$8,372.89, with interest thereon at the rate of 5 $\frac{1}{2}$ % per annum from August 1, 1968, until paid, together with the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the defendant, Billie Eva Cook, have judgment on her Cross Complaint over and against the defendants, Raymond A. Conn and Doris Ann Conn, in the amount of \$1,700.00, with interest thereon at 6% per annum from June 15, 1968, until paid, and \$250.00 Attorney's fee for her Attorney of record, M. C. Spradling, and that said judgment is inferior to the judgment entered herein in favor of the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that any claim or lien which may exist in favor of the defendant, Barbara Lovine McGinnis, against the subject property is junior and inferior to the foreclosure lien in favor of the United States of America.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that upon failure of the defendants, Don W. McGinnis and Maxine McGinnis, Raymond A. Conn and Doris Ann Conn, to satisfy the judgment of the Plaintiff herein, an Order of Sale shall issue to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisement, the following described real property:

Lot Nine (9), Block Twenty-seven (27), Valley View Acres Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof,

and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, to be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that from and after the sale of said property under and by virtue of this judgment and decree, the defendants, Don W. McGinnis and Maxine McGinnis, Barbara Lovine McGinnis, Raymond A. Conn and Doris Ann Conn and Billie Eva Cook, and each of them, and all persons claiming by, through or under said defendants, since the filing of the Complaint herein, be and they are forever barred and foreclosed from every right, title or interest in or to the heretofore described real property or any part thereof.

UNITED STATES DISTRICT JUDGE

APPROVED:

ROBERT P. GAVEN
Assistant U. S. Attorney

H. C. SPRADLING
Attorney For Billie Eva Cook