

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

United States of America,

Plaintiff,

CIVIL NO. 69-C-81

vs.

Charles Marshall Cashion and Genevieve
Illene Cashion, Finance Corporation,
Roy Hardin, Midwestern Construction and
Supply Company, Decorators Commercial
Carpets Company, and First National
Bank of Turley, Defendants.

FILED

OCT 1969

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

ORDER CONFIRMING MARSHAL'S SALE

NOW, on this 30th day of September, 1969, there comes on
for consideration the motion to Confirm Sale made by the United States
Marshal for the Northern District of Oklahoma on
under an Order of Sale dated June 27, 1969, of the following-described
property, to-wit:

Lot Twenty-Nine (29), Block Seventeen (17),
Valley View Acres 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:

W. M. Ewing
UNITED STATES DISTRICT JUDGE

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

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

HARVEY G. COMBS,)
)
 Plaintiff,)
)
 -vs-)
)
 OSCAR E. CHAMBERS, et al,)
)
 Defendants.)

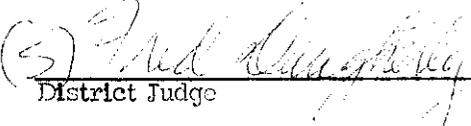
No. 67 - C - 122

FILED

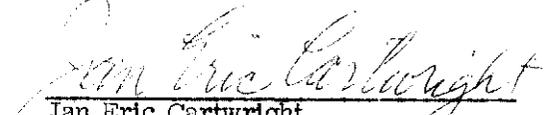
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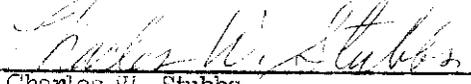
ORDER APPROVING DISMISSAL AND SATISFACTION OF JUDGMENT M. M. EWING, CLERK U. S. DISTRICT COURT

NOW ON THIS 30 day of September, 1969, the application for Dismissal with Prejudice of the parties to this action was presented to this court for approval, and the court pursuant to the application and upon good cause shown, hereby approves the application and dismissal of this cause and hereby enters its order and judgment of the full, complete satisfaction of the judgment of this court of the 15th day of July, 1969, by the defendants, and hereby dismisses the cause for the same subject matter with prejudice to the bringing of future actions by the plaintiff against these defendants.


District Judge

O. K.


Jan Eric Cartwright
ATTORNEY FOR THE PLAINTIFF


Charles W. Stubbs
ATTORNEY FOR THE DEFENDANTS

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

LILLIAN TORR,)
)
 Plaintiff,)
)
 vs.)
)
 HERBERT A. BRADFORD,)
)
 Defendant.)

NO. 69-C-43

ORDER OF DISMISSAL

The above matter coming on to be heard on this 11 day of October, 1969, upon the written application of the parties for a dismissal of said action with prejudice, the Court having examined said application 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 with prejudice to any future action, and the Court being fully advised in the premises, finds that said action 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 defendant be and the same hereby is dismissed with prejudice to any future action.

/s/ Allen E. Burrow
JUDGE, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

LAMPKIN & WOLFE,

By: [Signature]
Attorneys for the Plaintiff,

ALFRED B. KNIGHT,

/s/ Alfred B Knight
Attorney for the Defendant.

C
O
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Y

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

United States of America,

Plaintiff,

CIVIL NO. 69-C-107

vs.

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

Defendants.

FILED

OCT 1 1969

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

ORDER CONFIRMING MARSHAL'S SALE

NOW, on this 1st day of October, 1969, there comes on
for consideration the Motion to Confirm Sale made by the United States
Marshal for the Northern District of Oklahoma on September 30, 1969,
under an Order of Sale dated August 6, 1969, of the following-described
property, to-wit:

**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 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:

Doyle W. Foreman
UNITED STATES DISTRICT JUDGE

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

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.

CARPET, LINOLEUM AND RESILIENT FLOOR
COVERING LOCAL UNION NO. 1533, affiliated
with BROTHERHOOD OF PAINTERS, DECORATORS
AND PAPERHANGERS OF AMERICA, AFL-CIO

and

NORTHEASTERN OKLAHOMA BUILDING AND
CONSTRUCTION TRADES COUNCIL

Respondents

Civil No. 69-C-49

FILED

OCT 3 1969

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

ORDER DISMISSING CASE

This Court having entered an Order on April 24, 1969,
continuing this case on the docket subject to respondents' compli-
ance with the Settlement Agreement entered into by all parties
through their counsel resolving the issues in the matter of North-
eastern Oklahoma Building and Construction Trades Council and Carpet,
Linoleum and Resilient Floor Covering Local Union No. 1533, affiliated
with Brotherhood of Painters, Decorators and Paperhangers of America,
AFL-CIO, being Case No. 16-CC-318, and the Court being advised that
respondents have complied with said Settlement Agreement, and it
appearing that this case should be dismissed;

IT IS ORDERED that the above-entitled case be, and it
hereby is, dismissed.

DATED at Tulsa, Oklahoma this 3rd day of October 1969.

J. Allen S. Brown
United States District Judge

Approved:

Sanford H. Palmer
Sanford H. Palmer
Counsel for Petitioner

Maynard I. Ungerman
Maynard I. Ungerman
Counsel for Respondent
Northeastern Trades Council

Stan Symanski
Counsel for Respondent
Linoleum Workers Local No. 1533

Since the fundamental defect remains, and has not been amended within the statutory limitation, the jurisdiction of the state court has never been divested.

Accordingly, sua sponte, the Court must and does hereby remand this case to the State Court from which removed.

IT IS, THEREFORE, ORDERED that this cause of action be and the same is hereby remanded to the District Court of Ottawa County, Oklahoma.

ENTERED this 6th day of October, 1969.

A handwritten signature in cursive script, reading "C. E. Banon". The signature is written in dark ink and is positioned above a horizontal line.

UNITED STATES DISTRICT JUDGE

judgment of and from the defendant, Jimmie J. Ryan, for the sum
of \$1,150.00.

Frederick
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

[Signature]
ATTORNEY FOR PLAINTIFFS

[Signature]
ATTORNEY FOR DEFENDANT.

[Signature]
JIMMIE J. RYAN, DEFENDANT.

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

EMMETT R. DANIELS,)
)
 Petitioner,)
 vs.)
)
 RAY H. PAGE,)
)
 Respondent.)

No. 69-C-105

O R D E R

This is a Petition for Writ of Habeas Corpus under
28 U.S.C. 2251.

Petitioner is presently incarcerated in the Oklahoma State Penitentiary, McAlester, Oklahoma, under a Judgment and sentence of the District Court of Tulsa County, Oklahoma. It appears that on or about the 8th day of October, 1949, petitioner was convicted in the District Court of Tulsa County for the crime of first degree rape in Case No. 13,839 and sentenced to a term of 99 years in the Oklahoma State Penitentiary.

Petitioner prior to trial entered a plea of not guilty, and after a jury trial, which found him guilty of the crime charged, he was sentenced as aforesaid.

The respondents by their response herein admit that petitioner has exhausted his State remedies.

Petitioner alleges that his Constitutional rights have been denied as follows: (1) he was arrested on July 1, 1949, and did not have the assistance of counsel until July 20, 1949; (2) that he was denied his casemade by the State Court; (3) that the evidence upon which he was convicted was insufficient to sustain the verdict; (4) that the charge upon which he was tried was a capitol offense and that jurors were excluded from the jury because of opposition to the death penalty; (5) that he received new counsel on October 5, 1949, and that a request for a continuance to permit counsel to become familiar with the case was denied; and (6) that a change of venue was requested because of the publicity involved and such request was denied.

Attached to respondent's Response is the appearance docket in petitioner's case No. 13,839 in the District Court of Tulsa County, Oklahoma, which shows among other things that on July 20, 1949, he was arraigned in Division One of the District Court with the county attorney present and petitioner's counsel Quin Dickason; on September 14, 1949, the case was set for trial for October 3, 1949; and on October 3, 1949, with the defendant present in open court and with his counsel, Norman Barker, a jury was selected and the case proceeded to trial, and on October 5 the jury returned its verdict of guilty, and fixed petitioner's punishment at a period of 99 years.

Complaint No. 1 above makes no showing or allegation that any critical stages of the proceedings transpired between the time of petitioner's arrest and the time of his first arraignment or first assistance of counsel; the docket sheet of the District Court

of Tulsa County shows that he appeared before that Court on July 29, 1949, with private counsel and entered a plea of not guilty, and thereafter was tried by a jury and found guilty. The first critical stage of his proceedings was the trial itself, which began on October 3, 1949, and delay in arraignment of petitioner, without more, does not raise a Constitutional question. The requirements of Miranda v. Arizona, 384 U.S. 436 does not apply to this case because in Johnson v. New Jersey, 384 U.S. 719 it is held that the Miranda ruling is not retroactive. Petitioner was tried and convicted long before Miranda.

Petitioner next alleges in Complaint No. 2 that he was denied a casemade. The State District Court record shows that petitioner was represented at his arraignment and at trial by private counsel, served Notice of Appeal, but failed to perfect the same. Sometime in 1967 or the early part of 1968, the date is not shown in the record, petitioner filed in the Court of Criminal Appeals of the State of Oklahoma an Application to Appeal Out of Time as authorized by 22 Okl. Stat. §1073, and the Court of Appeals said:

"It appears from a review of the record that notice of appeal was given and that the trial court granted time in which to prepare and settle a casemade. Petitioner offers no reason why an appeal was not taken and alleges nothing more than the fact that an appeal was not perfected. The mere absence of an appeal is not justification to grant an appeal out of time as authorized by 22 O.S. Supp. 1968, §1073."

Petitioner does not allege that after he gave notice of appeal from his conviction that he requested the District Court to furnish him a casemade at public expense and cannot now at this late date allege this ground as denial of a Constitutional right.

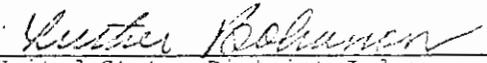
Petitioner then asserts under Complaint No. 3 that the evidence was insufficient to convict. Sufficiency of the evidence does not raise a Constitutional question and is reviewable on direct appeal only and not by way of writ of habeas corpus.

As to Complaint No. 4 that individuals opposed to the death penalty were excluded from the jury is without merit inasmuch as petitioner did not receive the death penalty. Bumper v. North Carolina, 391 U.S. 543.

Complaint No. 5 seems to attempt to raise a Constitutional question of inadequacy of counsel. The minutes attached to the Response show that the trial was begun on October 3, 1949, and that he was represented by private counsel. No Constitutional right was denied petitioner in this regard. See Hester v. U.S., 303 F.2d 47.

And finally petitioner's claim No. 6 that a change of venue was requested because of publicity and denied does not raise a United States Constitutional question, and there is no allegation stating in what manner and how any publicity adversely affected his rights, nor does he state what this publicity consisted of. The Court is required to give full faith and credit to the records of the District Court of Tulsa County, Oklahoma, and as shown by those records, the allegations of the Petition, and the Response none of plaintiff's Constitutional rights have been violated, and an evidentiary hearing is unnecessary. The Writ is denied.

Dated this 7th day of October, 1969.


United States District Judge

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

TULSA MOVING PICTURE MACHINE OPERATORS)
UNION LOCAL #513 OF THE INTERNATIONAL)
ALLIANCE OF THEATRICAL STAGE EMPLOYEES)
AND MOVING PICTURE MACHINE OPERATORS)
OF THE UNITED STATES AND CANADA,)

and)

CARNEY A. BURTON, individually and as a)
member of TULSA MOVING PICTURE MACHINE)
OPERATORS UNION LOCAL #513,)

and)

NEW MAJESTIC THEATRE, INC., an Oklahoma)
corporation,)

and)

FRANCES ELAINE PATTON and MELVIN LEWIS)
PATTON, individuals and as employees of)
the NEW MAJESTIC THEATRE, INC.,)

Plaintiffs,)

vs.)

G. J. PURDIE, Chief of Police, Police)
Department of the City of Tulsa, Oklahoma,)

and)

JERRY FELTS, CHARLES WOODS, MIKE KERPAN,)
VICTOR RICE, RON HALL AND L. P. PHILLIPS,)
Police Officers of the Police Department)
of the City of Tulsa, Oklahoma,)

and)

THE CITY OF TULSA, OKLAHOMA, a municipal)
corporation,)

Defendants.)

FILED

OCT 7 1969

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

No. 69-C-156 ✓

ORDER

Defendants herein have filed a Motion to Dismiss Plaintiffs' action on the grounds that the Court does not have jurisdiction of the Defendant City of Tulsa, and that no cause of action under 42 U.S.C.A. § 1983 has been stated against the other Defendants. Plaintiffs have sued herein for injunctive and other relief. The

basis of their action is that the Defendants have deprived them of their civil rights in contravention of 42 U.S.C.A. § 1983, by seizing certain motion picture films and other property of the Plaintiffs which the Defendants considered obscene, and arresting, imprisoning and prosecuting various of the Plaintiffs for exhibiting obscene motion pictures.

As to the Defendant City, it argues that it is not a "person" within the meaning of 42 U.S.C.A. § 1983 and that as no cause of action predicated on that statute may be asserted against it, the Court does not have jurisdiction of it. This is settled law, Monroe v. Pape, 365 U.S. 167, 5 L.Ed.2d 492, 81 S.Ct. 473 (1961); Egan v. City of Aurora, 365 U.S. 514, 5 L.Ed.2d 741, 81 S.Ct. 684 (1961). Plaintiffs contend, however, that the Court has jurisdiction of the Defendant City under a theory of pendent jurisdiction, as Plaintiffs plead tort causes of action under state law which may be tried by this Court although the federal cause of action under 42 U.S.C.A. § 1983 may fail. Plaintiffs rely on United Mine Workers v. Gibbs, 383 U.S. 715, 16 L.Ed.2d 218, 86 S.Ct. 1130 (1966), as authority for their position. However, to support the Court's exercise of pendent jurisdiction, the federal claim asserted must be substantial. United Mine Workers v. Gibbs, supra, 383 U.S. at p. 275, 16 L.Ed.2d at p. 227; Levering & Garrigues Co. v. Morrin, 289 U.S. 103, 77 L.Ed. 1062, 53 S.Ct. 549 (1933). A claim is hardly substantial if it is not within the jurisdiction of the Court. As it appears on the face of the complaint that the Defendant City is not a "person" but a municipal corporation, against which a claim under 42 U.S.C.A. § 1983 may not be asserted, this Court has no jurisdiction of it. As the sole federal claim of Plaintiffs is, thus, insubstantial, it follows that pendent jurisdiction of the non-federal claims likewise does not exist. United

Mine Workers v. Gibbs, supra, 383 U.S. at pp. 726-727, 16 L.Ed.2d at p. 228; Vechiola v. City of Chicago, 244 F.Supp. 45 (Ill. 1965).

Defendant Purdie is sued herein in his official capacity as Chief of the Tulsa Police Department. He is not sued personally. Plaintiffs state, in essence, that the relief they seek should apply to the Tulsa Police Department, whoever may be the persons that make it up, through the Chief of Police. It has been held that a police department, like a city, is not a "person" within the meaning of 42 U.S.C.A. § 1983. United States ex rel Lee v. State of Ill., 343 F.2d 120 (Seventh Cir. 1967); Burmeister v. New York City Police Department, 275 F.Supp. 690 (N.Y. 1967).

Nevertheless, it is alleged in the Complaint that:

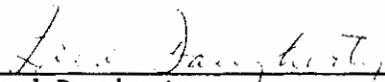
" . . . the Defendants and each of them . . . acted under color . . . of law [and] engaged in the illegal conduct herein mentioned . . . and deprived Plaintiffs of their rights, privileges and immunities secured to Plaintiffs by the Constitution of the United States . . ."

A fair interpretation of this allegation (to the exclusion of allegations that Defendant Purdie is sued in his official capacity only) is that Defendant Purdie did the acts with which the individual Defendants are charged in specific paragraphs of the Complaint. If this is the intendment of the Plaintiffs' Complaint, the Defendant Purdie is also sued as a person and is within the jurisdiction of the Court under 42 U.S.C.A. § 1983. As this is a Motion to Dismiss, it is the duty of the Court to consider Plaintiffs' Complaint in the most favorable light and deny the Motion where by the allegations of the Complaint, some claim for relief may conceivably be granted. If it later appears that Defendant Purdie is sued only as the representative or alter ego of the Tulsa Police Department, he may at that time renew his Motion.

The Complaint pleads facts which, if true, state a claim actionable under 42 U.S.C.A. § 1983 against Defendant Purdie and the other individual Defendants. It appears that they may escape liability for their acts of which the Plaintiffs complain if they acted in good faith in the performance of their official duties. However, this is a matter of affirmative defense and presents fact issues which may not be decided on a Motion to Dismiss. Defendant Purdie may also present the defense that he did not direct the acts charged by Plaintiffs to be done or that he did not personally cooperate in them. In this connection, see Runnels v. Parker, 263 F.Supp. 271 (Cal. 1967); Salazer v. Dowd, 256 F.Supp. 220 (Colo. 1966); Jordan v. Kelly, 223 F.Supp. 731 (Mo. 1963). Again, this is a matter involving factual issues which may not be decided on this Motion.

Defendants Motion to Dismiss is granted as to the Defendant City of Tulsa and said Defendant is dismissed from the action. As to the other Defendants, the Motion to Dismiss is denied without prejudice to later reasserting it should the circumstances of the case so warrant.

It is so ordered this 7 day of October, 1969.



Fred Daugherty
United States District Judge

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

THELMA HARRIS,)
)
 Plaintiff,)
)
 vs.)
)
 MARY BASS,)
)
 Defendant.)

NO. 69-C-106 FILED

OCT 10 1969

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

ORDER OF DISMISSAL

The above matter coming on to be heard this 10 day of October, 1969, upon the written application of the parties for a dismissal of said action with prejudice, the Court having examined said application 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 with prejudice to any future action, and the Court being fully advised in the premises, finds that said action 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 defendant be and the same is hereby dismissed with prejudice to any future action.

Lee Danforth

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

APPROVAL:

S. J. SAKELARIS,
C. LAWRENCE ELDER,

C. Lawrence Elder

Attorneys for the Plaintiff,

ALFRED B. KNIGHT,

Alfred B. Knight

Attorney for the Defendant.

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

GEORGE GROUNDHOG, MOSE BLAIR,
CHARLEY S. GUESS, J. B. TANNER,
LUCILLE PROCTOR,

Plaintiffs,

vs.

W. W. KEELER; WALTER J. HICKEL, U. S.
Secretary of Interior; VIRGIL HARRINGTON,
Area Director, Bureau of Indian Affairs;
UNITED KEEETOOWAH BAND OF CHEROKEE INDIANS
IN OKLAHOMA, a corporation; THE MEMBERS
OF THE CHEROKEE EXECUTIVE COMMITTEE;
MRS. WYNONA DAY; DR. ORANGE STARR;
TOM R. MORTON; EARL CRAWFORD; JOHN
MASTERS; RICHARD CHUCULADE; N. B. JOHNSON;
JESSE L. BALLARD; WASHY MAYEE,

Defendants.

CIVIL ACTION NO. 69-C-120

FILED

OCT 13 1969

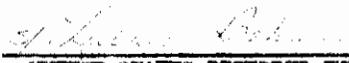
M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER

NOW on the 13th day of October, 1969, there came on for hearing the motion of Defendants, Walter J. Hickel, Secretary of Interior, and Virgil Harrington, Area Director, Bureau of Indian Affairs, to dismiss this action. The Plaintiffs appeared by and through their attorney, Stuart Trapp. The Defendants, Walter J. Hickel and Virgil Harrington, appeared by and through their attorney, Hubert A. Marlow, Assistant United States Attorney for the Northern District of Oklahoma.

The Court finds that it lacks jurisdiction of the subject matter. The Court further finds that this action is an internal tribal dispute and that federal court jurisdiction has traditionally been denied in such cases. The Court further finds that for the reasons given this action as to Defendants, Walter J. Hickel and Virgil Harrington, should be dismissed.

It is, therefore, ORDERED, ADJUDGED and DECREED that this action is dismissed as to Defendants, Walter J. Hickel, Secretary of Interior, and Virgil Harrington, Area Director, Bureau of Indian Affairs.


UNITED STATES DISTRICT JUDGE

APPROVED:

Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Hossein Mirahmadzadeh,)
Plaintiff,)
vs.)
Dillard Department Stores, Inc.,)
(aka--Brown Dunkin Company),)
A Corporation,)
Defendant.)

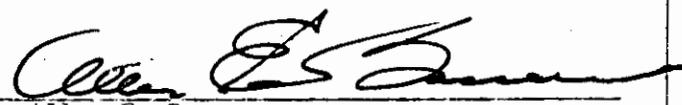
No. 69-C-73

FILED AND
REFERRED
OCT 14 1969

ORDER TO DISMISS

at _____
M. M. EWING
CLERK, U. S. DISTRICT

On this ~~14th~~ day of October, 1969, the Court having heard the application of Plaintiff for an order to dismiss on the ground's that Plaintiff is at this time unsure whether the nature and extent of his injuries are temporary or permanent and the Court having further examined the attached affidavit of Plaintiff's physician, Milton R. Workman, M.D., Orthopedic Surgeon, to the effect that said physician is medically uncertain of the nature and extent of plaintiff's injuries, it is therefore ordered by the Court that this cause be and the same is hereby dismissed, without prejudice to plaintiff's right to bring a new action in this behalf.


Allen E. Barrow,
Judge
United States District Court

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

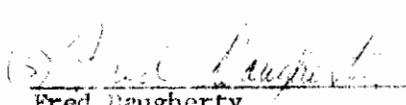
RONNIE COWAN HERRIN,)
)
) Petitioner,)
)
 vs.) No. 69-C-221
)
 UNITED STATES OF AMERICA,)
)
) Respondent.)

O R D E R

Ronnie Cowan Herrin, by Motion, seeks the records and documents or his trial transcript in a criminal proceeding against him in this Court in 1964 at government expense, saying that upon receipt of the same he will file a writ of habeas corpus.

The request and Motion of Ronnie Cowan Herrin is denied, for his time for appeal has passed and no application for post-conviction relief is pending on his behalf. Lingo v. United States, 320 F.2d 260 (Tenth Cir. 1963); Pearson v. United States, 313 F.2d 868 (Tenth Cir. 1963); Prince v. United States, 312 F.2d 252 (Tenth Cir. 1962).

It is so ordered this 11 day of October, 1969.


Fred Daugherty
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

vs.

Alvin Wayne Campbell,

Defendant .

CIVIL NO. 69-C-220

FILED

OCT 15 1969

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 Sept. 17, 1969, 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 \$ 1,708.21 with interest on the sum of \$ 1,708.21 at the rate of 4 % per annum from February 1, 19 68, until paid, plus \$125.83, accrued interest, and the costs of this action.

Dated this _____ day of October, 19 69.

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

By _____
Deputy

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

BERTHA TROUPE,)
)
Plaintiff,)
)
-vs-)
)
MCCRORY CORPORATION,)
a Corporation,)
)
Defendant.)

No. 67-C-15

FILED

OCT 16 1969

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

ORDER OF DISMISSAL

NOW on this 16th day of October, 1969, there came on
for hearing at its regular setting on the docket the motion of
the plaintiff and defendant in the above matter to dismiss it
by stipulation under the provisions of Rule 41 (a).

The Court finds that the parties hereto have entered into
a settlement of this matter for the sum of \$5,700.00 along guide
lines suggested by the Court and that there are no issues remain-
ing to be tried or determined by the Court.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED by the Court
that the above-entitled case is dismissed with prejudice at the
motion and on the stipulation of both parties.

Arthur Bohannon
District Judge

APPROVED:

[Signature]
Attorney for Plaintiff

[Signature]
Attorney for Defendant

COPY

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

OCT 16 1969

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

ORDER OVERRULING THE DEFENDANTS'
MOTION FOR NEW TRIAL

On the 13th day of October, 1969, the defendants' motion for new trial came on for hearing before the court, and the court, after hearing the argument of counsel for the respective parties and being fully advised in the premises, hereby orders that the defendants' motion for new trial be OVERRULED.

If the defendants desire to stay the execution of the judgment entered on July 7, 1969, they shall post a supersedeas bond in an amount not less than \$2500.00.

Entered this 15th day of October, 1969.

Luther Bohannon
United States District Judge

IN THE UNITED STATES DISTRICT FOR THE NORTHERN DISTRICT
OF OKLAHOMA

Van Dusen Aircraft Supplies,)
Southwest Division, Inc.)
)
Plaintiff,)
vs.)
)
Executive Flight, Inc. and)
H. L. Caron,)
)
Defendants.)

No. 6596

ps
FILED

OCT 17 1969

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

ORDER CONFIRMING MARSHAL'S SALE

On this 16th day of October 1969, there came on for ~~hearing~~ ^{CONSIDERATION}
~~by~~ the Motion of the Plaintiff herein to confirm the sale of
certain personal property made by the United States Marshal for the
Northern District of Oklahoma on the 29th day of September, 1969,
under the Writ of Execution issued by the Clerk of the United
States District Court for the Northern District of Oklahoma; and
the Court, having carefully examined the proceedings of the said
Marshal under said Writ of Execution finds that said Writ was duly
levied upon the following described personal property belonging to
the Defendant, H. L. Caron,

All the right, title and interest of H. L. Caron
in and to: A certain share certificate, dated
August 28, 1969, representing 100 shares of the
Common Stock of Executive Avionics, Inc., standing
in the name of H. L. Caron;

the same not being exempt from levy and sale under execution; that
said Marshal caused due and legal notice of said sale to be published
for at least ten days prior thereto in a newspaper printed in and
of general circulation in Tulsa County, State of Oklahoma; as appears
on the printer's affidavit of publication attached to said return;
and that on the day therein fixed, to-wit: the 29th day of September,
1969, said personal property was sold to Van Dusen Aircraft Supplies,
Southwest Division, Inc., it being the highest bidder therefor, for
the sum of \$900. The Court satisfied that said sale was in all
respects made in conformity with the statutes of the State of

Oklahoma in such cases made and provided and the statutes of the United States of America, the Court Clerk is accordingly directed to make an entry on the journal of this Court that the Court is satisfied with the legality of said sale:

IT IS HEREBY ORDERED AND ADJUDGED BY THE COURT that said Marshal's sale and all proceedings under the Writ of Execution issued therein be and the same are hereby approved and confirmed.

IT IS FURTHER ORDERED AND ADJUDGED that said share certificate, dated August 28, 1969, representing 100 shares of the common stock of Executive Avionics, Inc., standing in the name of H. L. Caron, be transferred on the books of said company from the name of the said H. L. Caron, the Defendant herein, to Van Dusen Aircraft Supplies, Southwest Division, Inc., and that a new share certificate of Executive Avionics, Inc., representing 100 shares of the common stock of said company, be issued to Van Dusen Aircraft Supplies, Southwest Division, Inc.

IT IS FURTHER ORDERED AND ADJUDGED that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser at said sale, Van Dusen Aircraft Supplies, Southwest Division, Inc., a good and sufficient bill of sale to said above described personal property.


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

THE ATCHISON, TOPEKA AND SLEEVES
RAILWAY COMPANY, a corporation,

Plaintiff

vs.

NELCE STEEL CORPORATION, a
corporation,

Defendant

NO. 66-C-139
Civil Action

FILED

OCT 17 1969

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

ORDER OF DISMISSAL

Now, on this 16th day of October, 1969, comes on for hearing the Stipulation of Dismissal of plaintiff and defendant hereto in the above entitled cause. The Court finds that said cause has been settled and that the defendant has this date paid to plaintiff the sum of Two Thousand Five Hundred Fifty-Four and 06/100 Dollars (\$2,554.66) in full settlement, release and satisfaction of plaintiff's cause of action set forth in the Complaint herein, and that plaintiff has accepted said sum in full satisfaction, release and discharge of its cause of action and claim against the defendant, and the Court, after due consideration, finds that said Dismissal should be approved.

IT IS, THEREFORE, ORDERED that this cause be, and the same is hereby dismissed with prejudice, at the cost of the plaintiff.

Luther R. ...
District Judge

APPROVED AS TO FORM:

Attorney for Plaintiff

NELCE STEEL CORPORATION:

By _____

Its _____

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

St. Louis-San Francisco Railway)
Company, a Corporation,)
)
Plaintiff)
)
vs.)
)
General Steel Fabrication, Inc.,)
a corporation,)
)
Defendant)

Civil Action No. 68-C-159 ✓

FILED

OCT 21 1969 ^W

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

ORDER OF DISMISSAL

On this 16th day of October, 1969, it appeared to the Court from Application for Dismissal with Prejudice by the plaintiff that the above entitled case has been fully settled and compromised by the parties thereto;

IT IS THEREFORE ORDERED that said cause be, and it is hereby dismissed with prejudice.

Luther Bohanon
United States District Judge

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

BILLIE MARIE POTTS,

Plaintiff,

-vs-

HOWARD DAY and BONNIE DAY,
d/b/a Jeannie's Dress Shop, and
A. PAGE SLOSS, JR. and
JAMES SLOSS d/b/a Oklahoma Properties,

Defendants.

No. 69-C-48

FILED

OCT 22 1969

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

ORDER

Now on this 22nd day of October,

1969, upon application of the parties for dismissal with prejudice of the above action for reason that the controversy has been compromised and settled, and no issues of fact or law remain, and for good cause shown, the Court does hereby order and decree that the cause above named is dismissed with prejudice to the filing of a of a future action.


JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
) Plaintiff,)
)
 vs.)
)
 977.59 Acres of Land, More or Less,)
 Situate in Creek & Pawnee Counties,)
 Oklahoma, and J. R. Wright, et al,)
 and Unknown Owners,)
)
) Defendants.)

CIVIL ACTION NO. 4915
Tracts Nos. 2332, 2332E-1,
2332E-2, 2332E-3, and 2332E-4

FILED
OCT 27 1969

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

J U D G M E N T

1.

Now, on this 27th day of October, 1969, this matter comes on for disposition on application of the plaintiff, United States of America, for entry of judgment on the Report of Commissioners, filed herein on March 24, 1969, and the Court, after having examined the files in this action and being advised by counsel for the parties, finds that:

2.

The Court has jurisdiction of the parties and the subject matter of this action.

3.

This judgment applies only to the estates taken in the tracts enumerated in the caption above, as such estates and tracts are described in the Complaint and Declaration of Taking as amended, filed in this action.

4.

Service of process has been perfected either personally or by publication notice as provided by Rule 71A of Federal Rules of Civil Procedure on all persons who are interested in subject tracts.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the subject tracts of land. Pursuant thereto, on April 20, 1960, the United States of America filed its Declaration of Taking of such tracts of land, and on September 27, 1967,

filed an amendment thereto, and title to the estates taken in such tracts should be vested in the United States of America, as of the date of filing such Declaration of Taking.

6.

Simultaneously with the filing of the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of the described estates in subject tracts, a certain sum of money, all of which has been disbursed, as set out below in paragraph 13.

7.

The Report of Commissioners, filed herein on March 24, 1969, is hereby accepted and adopted as a finding of fact as to all tracts covered by such report. The amount of just compensation as to subject tracts, as fixed by the Commission, is set out below in paragraph 13.

8.

This judgment will create a deficiency between the amount deposited as estimated compensation for the estates taken in subject tracts and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 13.

9.

The defendants named in paragraph 13 as owners of subject tracts are the only defendants asserting any interest in the estates condemned herein, all other defendants having either disclaimed or defaulted. The named defendants were the owners of the estates condemned herein in subject tracts, and as such, are entitled to receive the award of just compensation.

10.

A Stipulation for Exclusion of Property, executed by the landowners and by the United States of America, was filed herein on December 3, 1962, whereby certain improvements described therein, and situated on Tract No. 2332 were excluded from the taking in this case and it was agreed that the award of just compensation would be reduced by the salvage value of such improvements, and such stipulation should be approved.

11.

It Is, Therefore, ORDERED, ADJUDGED, AND DECREED that the United States of America has the right, power, and authority to condemn for public use the subject tracts described in paragraph 3 herein, and such property (with the exception of the property described in paragraph 12), to the extent of the estates described, and for the uses and purposes indicated, in the Declaration of Taking as amended, filed herein, is condemned, and title thereto is vested in the United States of America as of the date of filing the Declaration of Taking, and all defendants herein and all other persons are barred forever from asserting any claim to such estates.

12.

It Is Further ORDERED, ADJUDGED AND DECREED that the Stipulation for Exclusion of Property, described in paragraph 10 above, is hereby confirmed and title to the improvements therein described remains vested in the landowners, and the salvage value of such improvements is deducted from the final award as shown below in paragraph 13.

13.

It Is Further ORDERED, ADJUDGED AND DECREED that the right to receive the just compensation for the estates taken herein in subject tracts is vested in the defendants whose names appear below in this paragraph. The Report of Commissioners of March 24, 1969, is hereby confirmed and the sum therein fixed is adopted as the award of just compensation for the estates taken in subject tracts as shown by the following schedule:

TRACTS NOS. 2332, 2332E-1,
2332E-2, 2332E-3, 2332E-4

Owners:

C. M. Zickefoose and
Madie Zickefoose
(Subject to a mortgage to the Connecticut Mutual Life
Insurance Company, which mortgage was later paid in
full and released.)

Award of just compensation		
pursuant to Commissioner's report - - - - -	\$55,100.00	
Less salvage value of reserved improvements -	<u>150.00</u>	
Net award - - - - -	\$54,950.00	\$54,950.00
Deposited as estimated compensation - - - - -	44,000.00	
Disbursed to owners - - - - -		<u>44,000.00</u>
Balance due to owners - - - - -		\$10,950.00
Deposit deficiency - - - - -	<u>\$10,950.00</u>	

It Is Further ORDERED, ADJUDGED, AND DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the landowners the deposit deficiency for subject tracts, as shown in paragraph 13, together with interest on such deficiency at the rate of six per cent (6%) per annum from April 20, 1960, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tracts in this civil action. The Clerk of this Court then shall disburse from the deposit for the subject tracts to C. M. Zickefoose and Madie Zickefoose, jointly, the sum of \$10,950.00 plus all accrued interest on the deposit deficiency.

ALLEN E. BARROW

UNITED STATES DISTRICT JUDGE

APPROVED:

Hubert A. Marlow

HUBERT A. MARLOW
Assistant U. S. Attorney

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

KENNETH A. BURKE, dba RANCH ACRES)
LIQUORS, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CLARENCE FORD and FRANK J. KUNC,)
 dba ALL BRANDS SALES COMPANY, et al.,)
)
 Defendants.)

Civil Action No. 5933

FILED

OCT 27 1969

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

ORDER DISMISSING ACTION OF PLAINTIFFS
WITH PREJUDICE AS TO ALL DEFENDANTS

There having been presented to this Court a Stipulation for dismissal of the action of the plaintiffs, with prejudice as to all defendants, the Court, having duly considered said Stipulation, and being fully advised in the premises, approves the same.

IT IS THEREFORE ORDERED BY THE COURT that the action of the plaintiffs Kenneth A. Burke, dba Ranch Acres Liquors, J. A. Chandler, Jr., dba Chandler's Retail Liquors, William E. Manley, dba Twenty-First & Harvard Liquor Store, Jesse B. Renick, dba Pennington Hills Liquor Store, Daniel C. Simpson, dba Warehouse Liquor Store, Sarah Simpson Keel, dba Warehouse Liquor Store, and C. J. Wright, Jr., dba Wright's Beverage Store, be and the same is hereby dismissed with prejudice as to all defendants at the cost of the plaintiffs, and the said plaintiffs are hereby enjoined and barred from hereafter asserting any action, cause of action, claim for relief, claim or demand for damages, or otherwise, as against the defendants, or any of them, by virtue of the alleged agreement and conspiracy charged and set forth in the Complaint filed in this cause on April 10, 1964.

Dated this 27th day of October, 1969.

APPROVED:

Luther Bohanon
Luther Bohanon,
United States District Judge

LAW OFFICES
UNGERMAN,
GRABEL,
UNGERMAN
& LEITER
SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

Robert S. Rizley
Robert S. Rizley, Attorney for plaintiffs

Irvine E. Ungerman
William Leiter
and
James L. Kincaid

By *William Leiter*
Attorneys for defendants

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

George Groundhog et al.

Plaintiffs,)

-vs-

W. W. Keeler et al.

Defendants,)

No. 69-C-120--Civil

FILED

OCT 27 1969

ORDER

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

On the 13th day of October, 1969, there came on for hearing in its regular order Motion of Defendants, W. W. Keeler, Mrs. Wynona Day, C. C. Victory, Dr. Orange Starr, Tom R. Morton, Earl Crawford, John Masters, Richard Chuculate, N. B. Johnson, Jesse L. Ballard, and Washie Mayes, and United Keetoowah Band of Cherokee Indians in Oklahoma, a Corporation, to dismiss the Complaint filed herein, said Movant Defendants appearing by and through their Attorneys, Jesse L. Ballard of Tulsa, Oklahoma, and Earl Boyd Pierce of Muskogee, Oklahoma, and Plaintiffs appearing by and through their Attorney, Stuart Trapp of Tahlequah, Oklahoma, and the Court having examined and read the pleadings on file and all briefs prepared and submitted by said Attorneys, and having fully heard argument of counsel for both sides, and being fully advised in the premises finds that the Motion of the Defendants named above should be granted and the action dismissed.

The Court specifically finds that it lacks jurisdiction of the subject matter of the action, and further, that the Complaint fails to state a claim as to the above Defendants, upon which relief can be granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the above entitled and numbered cause of action be, and the same is, hereby dismissed as to the Defendants named herein above.

Dated this 24th day of October, 1969.

Leith Bohannon
UNITED STATES DISTRICT JUDGE

Approved:

Jesse L. Ballard
JESSE L. BALLARD

Earl Boyd Pierce
EARL BOYD PIERCE

ATTORNEYS FOR MOVANT DEFENDANTS

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

HERBERT F. BICKEL,)
)
) Plaintiff,)
)
 vs.)
)
 RICHARD LOUIS DIXSON, and)
 BURT GRABHORN, d/b/a GRABHORN)
 TRUCKING COMPANY,)
)
) Defendants.)

No. C-267

FILED

OCT 27 1969

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

ORDER OF DISMISSAL WITH PREJUDICE

This cause coming on before me, the undersigned Judge, this 27th day of October, 1969, on the application of the Plaintiff for an order dismissing his cause of action against the Defendants and the Court being satisfied for good cause shown that the matters of controversy herein have been settled and compromised in full and that said action should be so dismissed;

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED that the Plaintiffs above styled action against the Defendants, and each of them, be and the same is hereby dismissed with prejudice to the bringing of another action for the same.


United States District Judge

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

BRUNSWICK CORPORATION,)

Plaintiff,)

vs.)

MARSHALL C. FERRINO, et al.,)

Defendants.)

Civil No. 6434 ✓

FILED

OCT 28 1969

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

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT
REFERENCE THE CONVEYANCE OF IMPERIAL APART-
MENTS

The Court has for consideration the alleged fraudulent conveyance of the Imperial Apartments from Marshall C. Ferrino and Ann Ferrino to Gus Messina by warranty deed dated April 11, 1963, recorded in Book 3413 at page 231, said deed having been recorded on January 8, 1964, having heard oral argument, received evidence, and now, upon careful perusal of the entire file, the evidence, the briefs filed with reference to this matter, and having carefully considered the oral argument and statements of counsel on hearing, and being fully advised in the premises, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Court finds that on the 5th day of July, 1962, Marshall Ferrino procured an option to purchase the following described real property, to-wit:

"Part of tract Five (5) in Block One (1), OZARK GARDEN FARMS, an addition to Tulsa, Tulsa County, State of Oklahoma, described as:

Beginning at the Northeast corner of said Tract Five (5), thence West 95.4 feet for a point of beginning; thence West 74.6 feet, thence South 164.5 feet; thence East 74.6 feet; thence North 164.5 feet to the point of beginning."

That said option was thereafter exercised and the option price of \$3,000.00 paid as provided.

2. On July 3, 1962, Marshall Ferrino entered into a written agreement with Martin Straub and Lucille Straub, which provided, among other things, that Marshall Ferrino would construct a 14-unit apartment building on said property, for a consideration of \$105,000.00. Said agreement was duly recorded in the records of Tulsa County, State of Oklahoma.

3. Thereafter, and on March 28, 1963, Marshall Ferrino paid the Straubs the sum of \$5,000.00, in exchange for a release of such agreement, said release being dated March 28, 1963. Said release discharged Ferrino from liability under said agreement and also relieved Ferrino from performance. Ferrino was also obligated, by the terms of such agreement, to release Straubs' liability on the first real estate mortgage hereinafter described.

4. The Straubs then executed a quit claim deed to Marshall Ferrino, covering said property, which deed was duly recorded on January 8, 1964, in the records of Tulsa County, State of Oklahoma.

5. While said agreement between Marshall Ferrino and the Straubs was in existence, a first mortgage loan upon said property was secured from First Federal Savings and Loan Association of Coffeyville, Kansas, in the amount of \$61,200.00.

6. It appears that the proceeds of such loan were used, or to be used, in the construction of the 14-unit apartment building.

7. Prior to the time of the transactions hereinabove delineated, Marshall Ferrino executed and delivered to Brunswick Corporation two conditional sale contract notes and conditional sale contracts, covering certain bowling equipment purchased by Marshall Ferrino from Brunswick Corporation. Marshall Ferrino defaulted on said notes, and Brunswick Corporation filed a replevin action in this Court, being cause number 6115-Civil. The litigation was reduced to judgment on March 31, 1965, covering a deficiency in the approximate amount of \$35,000.00, plus interest and attorney fees and costs.

8. Proceedings in aid of execution were instituted in cause number 6115-Civil, and Marshall Ferrino was examined under oath, such testimony being transcribed and introduced into evidence in this Court. As an outgrowth of such examination, other evidence procured therein, was introduced as evidence in the

present litigation.

9. On April 11, 1963, a general warranty deed was executed by Marshall Ferrino and Ann Ferrino to Gus Messina, the brother of Mr. Ferrino's mother, covering said property, reflecting a consideration of \$10.00. Mr. Ferrino also testified at the hearing in aid of execution that the consideration received was \$10.00. Said deed was filed on January 8, 1964, in the records of Tulsa County, Oklahoma. The warranty deed, as filed, did not contain any revenue stamps.

10. The evidence introduced by the plaintiff raises the inference that said deed was never delivered to Gus Messina; the warranty deed in question being found in the possession of Marshall Ferrino.

11. The evidence introduced further reflects that during the period of 1963 and 1964, Marshall Ferrino had maintained personal accounts with three banks in Tulsa, to-wit: Southern Hills National Bank (Now Mercantile National Bank); City National Bank; and Farmers and Merchants State Bank. Checks from these accounts, introduced into evidence, reflect that Mr. Ferrino continued to collect rents from the Imperial Apartments, and to pay expenses (including mortgage payments, appliance payments and utility payments) after the conveyance to Gus Messina. The evidence adduced reflected that the down payment for furniture purchased from Finger Furniture Company, placed in Imperial Apartments, came from these accounts. It is further shown that personal expenses of the Ferrinos were paid out of these same accounts.

12. Mr. Ferrino, testified, as reflected in the transcript introduced, that Gus Messina had never received any income from Imperial Apartments.

13. The evidence further showed that in January, 1963, Marshall Ferrino tendered to First Federal Savings and Loan Association, a financial statement, which reflected Mr. Ferrino's interest in the Imperial Apartments as being valued at \$43,000.00.

14. Mr. Ferrino, also testified in the exhibit introduced, that the consideration running from Gus Messina to the Ferrinos

for the conveyance was \$10.00.

15. The evidence also showed the income and expenses of Imperial Apartments for 1963 were commingled and set forth as a part of Colonial Arms Apartments Nos. 1 and 2, also the subject of the present litigation.

16. The evidence reflects that plaintiff, Brunswick Corporation, holds a mortgage on said property dated 9/1/65; that said mortgage was given in consideration of the judgment rendered on March 31, 1965, in cause number 6115-Civil, in favor of Brunswick Corporation, and against Marshall C. Ferrino and Bowl-A-Rama of Muskogee, Inc., which resulted from a debt incurred by Marshall C. Ferrino on June 15, 1959; that First Federal Savings and Loan Association holds a mortgage dated 9/25/62 on the property; that L. E. Dunn holds a lien by virtue of a deficiency judgment entered in cause number 107523, District Court, Tulsa County, Oklahoma, dated November 20, 1964, said action having been commenced on March 16, 1964, on a debt incurred by the Ferrinos to other persons prior to the conveyance here in controversy.

CONCLUSIONS OF LAW

1. The Court concludes that Oklahoma law applies to a determination of the validity of the deed in question.

2. The Court finds that Title 24 O.S.A. §10, provides:

"Every conveyance of real estate or any interest therein, ***made without a fair and valuable consideration *** shall be void as against all persons to whom the maker is at the time indebted or under any legal liability."

3. The Court further finds that at the time of the alleged conveyance from Marshall C. Ferrino and Ann Ferrino to Gus Messina, Marshall C. Ferrino was indebted and legally liable to Brunswick Corporation; First Federal Savings and Loan Association of Coffeyville, Kansas; and Blanche Neece, who later assigned her claim and judgment to L. E. Dunn, in cause number 107523, District Court of Tulsa County, Oklahoma.

4. The Court finds that under Oklahoma law, "fair and valuable consideration" has been construed to mean that there shall be substantially a compensation for the property conveyed or that it shall be reasonable in view of the surrounding circumstances in contradistinction to an adequate consideration. First National Bank v. Little (Okl. 1926) 250 Pac. 799.

5. The Court concludes that under the portions of the statute above recited, that any conveyance of real estate, made without fair and valuable consideration, is void as against all parties to whom the maker of the conveyance is indebted or under any legal liability. This is true regardless of whether or not the creditor has reduced his claim to judgment and irrespective of fraudulent intent or insolvency of the maker at the time of conveyance. Harry v. Hertzler (Okla. 1939) 90 P.2d 159.

6. A voluntary conveyance is good as against a creditor to whom the grantor became indebted after the conveyance was made, where the creditor did not extend credit on faith of grantor's ownership of particular property conveyed. Holt v. Jones (Okla. 1952) 252 P.2d 460.

7. The Court finds from the evidence by reason of the grantor's retention of the deed and grantor's continued acts of ownership and dominion over the property that there was no delivery of the deed operative and effectual to pass title. Dowell v. McNeill (Okla. 1957) 315 P.2d 771.

8. The Court, therefore, concludes, as a matter of law, that the conveyance from Marshall C. Ferrino and Ann Ferrino to Gus Messina, dated April 11, 1963, is void.

JUDGMENT

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that judgment be and the same is hereby entered cancelling the deed dated April 11, 1963, from Marshall C. Ferrino and Ann Ferrino to Gus Messina, recorded in Book 3413 at page 231 in the records of Tulsa County, State of Oklahoma, covering the hereinabove described real property.

ENTERED this 28~~th~~ day of October, 1969.



UNITED STATES DISTRICT JUDGE

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

COMMUNITY NATIONAL LIFE INSURANCE)
COMPANY, an Oklahoma Insurance Cor-)
poration,)
)
Plaintiff,) 69-C-177
)
vs.)
)
JOHN A. MASIELLO, JR., et al.,)
)
Defendant.)

FILED

OCT 28 1969

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

ORDER REMANDING CAUSE OF ACTION

The Court has for consideration the motion to remand filed by the plaintiff, Community National Life Insurance Company, and the briefs in support and opposition thereto, and having carefully perused the entire file, being fully advised in the premises, finds:

That this action was originally commenced in the District Court of Tulsa County, Oklahoma, on June 23, 1969, and was thereafter, on the 23rd day of July, 1969, removed to this Court by the defendants, Maurice Minuto and Orlando P. Minuto. The removal petition alleges diversity of citizenship, the requisite jurisdictional amount, and further that removal is based on the fact that there is a "separable controversy".

The file reflects that in addition to the service obtained on Maurice Minuto and Orlando P. Minuto, service was made, and returns filed in the District Court of Tulsa County, Oklahoma, prior to the removal petition filed by the Minutos, on the following named defendants: John A. Massillo, Jr.; John A. Massillo, Sr.; Robert J. Lemon; Bob's Tire Service.

Under subsection (a) and (b) of Title 28 U.S.C.A. §1441, all defendants who have been joined and served must join in the removal petition. The general rule that all defendants must join in a petition of removal, though applicable to both joint and interrelated causes of action, does not apply to a cause of action which may be removed under the separate and independent claim or cause of action provision of §1441(c). Thus when a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action, the defendant or defendants to the claim that is removable may file a petition to remove the entire case without the joinder of the defendant or defendants to the otherwise nonremovable cause of action. But if there are two separate and independent claims and both such claims are removable, then all the defendants to both claims must seek removal. Moore's Federal Practice, ¶0.168[3.-2]; Universal Surety Co. v. Manhattan Fire & Marine Ins. Co., 157 F.Supp. 606; Nowell v. Nowell, 272 F.Supp. 298. Section 1441(c) has no applicability to an action that involves only one claim and literally, it is inapplicable to a multiple-claims action if all the claims are removable. Moore's Federal Practice, ¶0.163[4.-7]

In the instant action, it admitted and alleged that there is complete diversity of citizenship of the parties, and if any one of the defendants were sued alone, such defendant could have removed the case to federal court. Congress, in qualifying the removal statute, did not say in §1441(c) "whether removable or not", or any words of similar effect. In view of the general circumscription to limit removal, the statute (i.e. §1441) in its revised form (1948 revision) does not contemplate removal in a case such as this when defendants have been served, have the right to remove, and have not joined in the removal petition.

The right of removal is purely statutory; and must be strictly construed. All doubts raised by the question of removability should be resolved in favor of state court jurisdiction.

IT IS, THEREFORE, ORDERED that the motion to remand be and the same is hereby sustained and this cause of action is hereby remanded to the District Court of Tulsa County, Oklahoma.

ENTERED this 27th day of October, 1969.

A handwritten signature in cursive script, appearing to read "Allen F. Brennan", written over a horizontal line.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HARRIS, UPHAM & CO., INC.)
A Corporation,)
)
Plaintiff,)
)
vs.)
)
A. G. BARTLETT,)
)
Defendant.)

NO. C 69-140

FILED

OCT 29 1969

J U D G M E N T

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

This action came on for trial before the Court and a jury, Honorable Luther Bohanon, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

IT IS ORDERED AND ADJUDGED that the plaintiff, Harris, Upham & Co., Inc., a corporation, recover of the defendant A. G. Bartlett the sum of \$23,795.50 with interest thereon at the rate of six per cent (6%) from May 29, 1969, to date of judgment, October 27, 1969, and at the rate of ten per cent (10%) from date of judgment until paid as provided by law, and its cost of action.

DATED at Tulsa, Oklahoma this 28th day of October, 1969.

Luther Bohanon
United States District Judge

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

MARVIN LEROY "ROY" LONG,

Plaintiff,

-vs-

JUNE DEAN HANK,

Defendant.

No. 67-C-248

*Filed
Oct 30/69
M. W. Ewing
US Dist Ct.*

J U D G M E N T

This action came on for trial before the Court and a jury, Honorable Luther Bohannon, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict as follows:

"We, the jury, find for the defendant."

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be dismissed on its merits, and that the defendant, June Dean Hank, recover of and from the plaintiff, Marvin Leroy "Roy" Long, her costs of action.

Dated at Tulsa, Oklahoma, this 30th day of October, 1969.

Luther Bohannon

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

HEWITT J. WEST,)
)
 Plaintiff,)
)
 -vs-)
)
 PHILLIPS INDUSTRIES OF KANSAS, INC.,)
 a corporation,)
)
 Defendant.)

No. 69-C-58

FILED

OCT 30 1969

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

J U D G M E N T

This matter came for trial before the Court on the 27th day of October, 1969, and after a jury of twelve people was selected, the case proceeded to trial and witnesses were heard for the plaintiff, and after the parties had arrived at a proposition of settlement subject to the approval of the Court, and after each of the parties, plaintiff and defendant, had waived jury for the balance of the proceedings, and after the Court had examined the plaintiff, Hewitt J. West, and had heard the statements of counsel, and being advised in the premises, the Court finds as follows:

1. Upon request of the plaintiff and consent of the defendant, the Court finds that judgment for plaintiff and against defendant should be entered in the sum of \$37,500.00.

2. The Court further finds that according to stipulation on file herein certain monies are owed from any amount awarded to plaintiff to the State Insurance Fund of the State of Oklahoma for Workmen's Compensation benefits heretofore paid to plaintiff and that payment by defendant of such monies to the State Insurance Fund shall constitute a credit to defendant on the judgment herein entered for the plaintiff.

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff, Hewitt J. West, have and recover judgment of and from the defendant herein for and in the sum of \$37,500.00.

s/ Allen E. Barrow