

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

J. I. Case Credit Corporation,
a corporation,

Plaintiff,

vs.

Kenneth Zweiacher,

Defendant and Third
Party Plaintiff,

vs.

J. I. Case Company and Newman
Equipment Company, Inc.,

Third Party Defendants.

No. 67-C-140

FILED

FEB 3 1970

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

JUDGMENT

The above cause came regularly on for trial before the court without a jury on the 19th and 20th days of November, 1969, the Plaintiff, J. I. Case Credit Corporation, appearing in person and by its attorney, Terry Shipley; the Defendant and Third Party Plaintiff, Kenneth Zweiacher, appearing in person and by his attorney, Thomas L. Palmer; the Third Party Defendant, J. I. Case Company, appearing in person and by its attorney, Terry Shipley; and the Third Party Defendant, Newman Equipment Company, Inc., appearing in person and by its attorney, George E. Brewer; and testimony having been offered, and evidence introduced, whereby the court rendered its Findings of Fact and Conclusions of Law in open court; now, pursuant to said Findings of Fact and Conclusions of Law and Order for Judgment, it is hereby

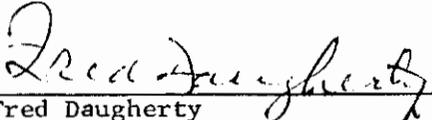
ORDERED AND ADJUDGED that the Plaintiff, J. I. Case Credit Corporation, have judgment against the Defendant and Third Party Plaintiff, Kenneth Zweiacher, for replevin of the proceeds of the tractor subject of this suit, which proceeds are presently being held by the United States Marshal for the Northern District of Oklahoma; and it is further ordered that the United States Marshal deliver to said Plaintiff, J. I. Case

Credit Corporation, said proceeds in the sum of Eight Thousand Seven Hundred Seventy Dollars (\$8,770.00) less any costs of sale.

IT IS FURTHER ORDERED AND ADJUDGED that said Plaintiff have and recover judgment against said Defendant and Third Party Plaintiff for its costs to be hereinafter taxed on notice, and an attorney's fee in the sum of One Thousand Dollars (\$1,000.00).

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant and Third Party Plaintiff, Kenneth Zweiacher, take nothing by his actions on his Third Party Complaint and Counterclaim and judgment is hereby entered in favor of the Third Party Defendants, J. I. Case Company and Newman Equipment Company, Inc., and against said Kenneth Zweiacher on the Third Party Complaint and the action contained therein is dismissed and judgment is hereby entered in favor of the Plaintiff and against the Defendant on Defendant's Counterclaim and the action contained therein is dismissed.

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Dated this ²¹~~30th~~ day of ^{February}~~January~~, 1970.


Fred Daugherty
United States District Judge

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

AZALEA MEATS, INC.,)
)
) Plaintiff,)
)
 vs.)
)
) JIMMIE J. RYAN, ELLIOTT FORBIS,)
) RAYMOND CONARD, H. G. BILL DICKLEY)
) KENNETH PARKER, BENJEL C. GARREN,)
) JAMES G. RODGERS, CALVIN WAGGENEP,)
) HOMER KOON, REX R. RUBY, MIKE O'CONNOR)
) AND WILLIAM PARKHURST,)
) AND)
) COMMUNITY NATIONAL LIFE INSURANCE COMPANY,)
)
) Defendants.)

No. 09-C-55

FILED

FEB 1970

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

ORDER OF DISMISSAL

This cause came on for consideration by the Court upon Motion to Dismiss filed by the defendants herein, and the Court having carefully considered the Complaint, the pleadings, Motions and Affidavits in this cause is of the opinion that the District Court of Tulsa County, Oklahoma, has, and did, under the law of the State of Oklahoma, 36 O.S. 1961 §1802, acquire jurisdiction of the subject matter of this action and of the res; that the present action is a derivative one seeking damages for the benefit of the corporation, Community National Life Insurance Company. The action pending in the State Court wherein the insurance commissioner of the State of Oklahoma was appointed and designated by said Court to take over, liquidate, rehabilitate, and reorganize the defendant corporation, Community National Life Insurance Company, has full and complete jurisdiction to adjudicate all the matters presented in this case, and therefore, out of comity for the State Court's jurisdiction, this Court should decline to assume jurisdiction of this cause and should dismiss the same.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by this Court that this cause be, and the same is hereby dismissed without prejudice to the parties to proceed to assert their claims in the District Court of Tulsa County, Oklahoma, wherein the insurance commissioner of the State of Oklahoma was appointed as conservator to protect the interests of all parties including that of the defendant, Community National Life Insurance Company.

This case is, therefore, dismissed.

Dated this 30th day of January, 1970.

Richard Robinson
United States District Judge

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

ELI WILKONSON, Executor of the Estate)
of Bob R. Neal, Deceased,)
)
) Plaintiff,)
vs.)
)
BRANIFF AIRWAYS, INCORPORATED, a Nevada)
corporation; LOCKHEED AIRCRAFT CORPORATION,)
a California corporation; and GENERAL MOTORS)
CORPORATION, a Delaware corporation,)
)
) Defendants.)

NO. 69-C-201

FILED
FEB 2 1970

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

STIPULATION FOR DISMISSAL WITH PREJUDICE AS TO THE
DEFENDANT, GENERAL MOTORS CORPORATION

It is hereby stipulated and agreed that this cause may be
dismissed with prejudice as to the defendant, General Motors
Corporation.

DATED this 26th day of January, 1970.

John S. [Signature]
Attorney for Plaintiff

[Signature]
Attorney for Defendant, Braniff
Airways, Incorporated

[Signature]
Attorney for Defendant, Lockheed
Aircraft Corporation

[Signature]
Attorney for Defendant, General
Motors Corporation

ORDER OF DISMISSAL WITH PREJUDICE

Upon stipulation of counsel;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that
this cause be and the same is hereby dismissed with prejudice as to
the defendant, General Motors Corporation.

DATED this 26 day of January, 1970.

[Signature]
JUDGE OF THE UNITED STATES
DISTRICT COURT

OK:

John S. [Signature]

Attorney for Plaintiff

[Signature]

Attorney for Defendant, Braniff
Airways, Incorporated

B W Labor

Attorney for Defendant, Lockheed
Aircraft Corporation

[Signature]

Attorney for Defendant, General
Motors Corporation

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

ELI WILKONSON, Executor of the)
Estate of BOB R. NEAL, Deceased,)
)
Plaintiff,)
)
-vs-)
)
BRANIFF AIRWAYS, INCORPORATED, a)
Nevada corporation, and LOCKHEED)
AIRCRAFT CORPORATION, a California)
corporation,)
)
Defendants.)

NO. 69-C-201

FILED

FEB 2 1970

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

JOURNAL ENTRY OF JUDGMENT

NOW on this 26th day of January, 1970, came on for hearing this matter, plaintiff appearing in person and by his attorney, and the defendants appearing by their respective attorneys, evidence being produced, and the Court being fully advised in the premises makes the following findings of fact and judgment:

FINDINGS OF FACT

1. That Bob R. Neal was killed in an accident while a passenger in a Braniff plane on May 3, 1968;
2. That plaintiff Eli Wilkonson is the duly appointed executor of the estate of Bob R. Neal, deceased;
3. That Bob R. Neal was survived by Norma Jean Neal, his widow, and four children, Jeffrey Charles Neal, age 11; Thomas Johnson Neal, age 14; Robert Roy Neal, Jr., age 15, and Marci Neal, age 17;
4. That the evidence showed there was no pain and suffering before death;
5. That based upon the evidence produced, the plaintiff is entitled to a judgment against the defendants in the amount of \$450,000.00;
6. That it is the duty of the executor, through the proper court, to make distribution of the funds from this judgment.

JUDGMENT

Based upon the evidence and the findings of fact, the Court does hereby grant plaintiff, Eli Wilkonson, executor of the Estate of Bob R. Neal, deceased, judgment in the amount of \$450,000.00 in his favor and against the defendants.

/s/ Fred Daugherty
Judge of the United States
District Court

APPROVED AS TO FORM:

By John S. Athens
Attorney for Plaintiff

By Burt Johnson
Attorney for Defendant,
Braniff Airways, Incorporated

By W. C. [unclear]
Attorney for Defendant,
Lockheed Aircraft Corporation

mt

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

AUTOMOBILE UNDERWRITING CORPORATION,)
ATTORNEY-IN-FACT FOR STATE AUTOMO-)
BILE AND CASUALTY UNDERWRITERS,)
INCORPORATED,)
)
Plaintiffs,)
)
vs.)
)
SECURITY BANK AND TRUST COMPANY,)
)
Defendant.)

NO. 69-C-311

FILED

FEB 3 1970

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

ORDER OF DISMISSAL

The above matter coming on to be heard this 3 day of February, 1970, upon the written application of the plaintiff herein for a dismissal of said action with prejudice, the Court having examined said application finds that the 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.

(S) Fred Simpkins

JUDGE, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

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

Plaintiffs,)

-vs-)

G. J. PURDIE, et al)

Defendants.)

FILED

FEB 2 1970

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

No. 69-C-156

ORDER DISMISSING ACTION ON PARTS OF FRANCES E. PATTON AND
NELVIN LEWIS PATTON, INDIVIDUALS AND AS EMPLOYEES OF THE
NEW MAJESTIC THEATRE, INC.

NOW, on this 5 day of February,

1970, the motion of Frances E. Patton and Melvin Lewis Patton,
individuals and as employees of the New Majestic Theatre, Inc.,
to dismiss the above-styled action comes on for hearing before
me, the undersigned Judge of this court, and the Court finds
that said motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED
by this Court that the complaint by Frances E. Patton and
Nelvin Lewis Patton, individuals and as employees of the
New Majestic Theatre, Inc. be and the same is hereby voluntarily
dismissed.

(5) FRED DAUGHERTY

JUDGE

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

FILED

FEB 9 1970

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

VIRGIL N. HARRINGTON, Area)
Director, Bureau of Indian)
Affairs, for ANNA B. HALLAM,)
Restricted Quapaw Indian;)
and ANNA B. HALLAM,)
Restricted Quapaw Indian,)
)
Plaintiffs)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant)

CIVIL ACTION NO. 69-C-70

JUDGMENT

This cause having been submitted to the Court for decision upon the pleadings, stipulations, deposition and briefs filed herein, and the Court having heretofore entered its findings of fact and conclusions of law, it is, therefore

ORDERED, ADJUDGED AND DECREED that the plaintiffs, Virgil N. Harrington, Area Director, Bureau of Indian Affairs, for Anna B. Hallam, Restricted Quapaw Indian, and Anna B. Hallam, Restricted Quapaw Indian, have and recover judgment in the amount of \$114.84 for the year 1950; \$15,868.17 for the year 1951; and \$35,033 for the year 1952; making a total judgment in the amount of

\$51,016.01, together with interest according to law.

It is further ORDERED that the plaintiffs shall be permitted the recovery of their costs.

Entered this 4th day of January, 1970.

H. Luther Bohannon
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

J. EBEN HART
BYRON V. BOONE
JAMES O. ELLISON

By:

J. O. Ellison
JAMES O. ELLISON
914 World Building
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFFS

NATHAN G. GRAHAM
United States Attorney

By: Original Signed By

EUGENE C. SAYRE
EUGENE C. SAYRE
Attorney, Tax Division
Department of Justice
7A06 Federal Building
Fort Worth, Texas 76102

ATTORNEY FOR DEFENDANT

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

FILED

FEB 9 1970

BILL WOODWARD d/b/a)
BILL WOODWARD PICKUP CAMPERS,)
Plaintiff)

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

v.)

CIVIL ACTION NO. 69-C-77

UNITED STATES OF AMERICA,)
Defendant)

JUDGMENT

This action came on for trial before the Court without a jury, and the issues having been duly tried and a decision rendered, now, therefore, in accordance with the findings of fact and conclusions of law entered and filed herein, it is

ORDERED, ADJUDGED AND DECREED that the plaintiff, Bill Woodward, have and recover judgment from the defendant in the amount of \$248.41, together with statutory interest thereon as provided by law and his

costs of action. It is further ORDERED, ADJUDGED AND DECREED that defendant take nothing by its counter-claim, and that such counterclaim be, and the same is hereby, dismissed with prejudice.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

DAVID L. FIST
Kosenstein, Livingston,
Fist & Ringold
300 McFarlin Building
Tulsa, Oklahoma 74103

ROBERT E. JONES
400 Thurston National Building
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFF

NATHAN G. GRAHAM
United States Attorney

By: Original Signed By
EUGENE G. SAYRE

EUGENE G. SAYRE
Attorney, Tax Division
Department of Justice
7A06 Federal Building
Fort Worth, Texas 76102

ATTORNEY FOR DEFENDANT

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

JOE A. CARBRAY,

Petitioner,

vs.

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

Respondent.

NO. 69-C-223

FILED

FEB 9 1970

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

O R D E R

The Court has before it a petition for Writ of Habeas Corpus filed by Joe A. Carbray, a prisoner in the Oklahoma State Penitentiary, wherein petitioner alleges that he was convicted by jury on April 11, 1967, in the Tulsa County District Court, Tulsa, Oklahoma, of "Carrying firearms after former conviction of a felony", Case No. 22216, and that he was sentenced to a term of ten years imprisonment on April 17, 1967. Petitioner alleges that his rights guaranteed by the United States Constitution were abridged in the State proceedings in that he timely appealed, Appeal No. 14450, and that oral argument was presented in said appeal May 22, 1968, but that the Oklahoma Court of Criminal Appeals had failed to render a decision on the appeal at the time his Federal Habeas Corpus petition was filed September 3, 1969, a delay of some 22 months. In a letter dated December 10, 1969, complaining of the delay in handling his petition before this Court, the petitioner admits that a decision affirming the trial Court was rendered in his state appeal on September 23, 1969. Petitioner contends that the State remedies available to petitioner are not adequate or effective and that he has therefore in effect exhausted his state remedies. Petitioner further challenges the constitutionality of the Oklahoma Statute charging a crime after former conviction of a felony, and alleges that he is the victim of a judicial error because his trial was not conducted in two stages as required by Oklahoma Statute, T. 22 O.S.A. § 360.

This Court has carefully considered the pleadings of the parties herein, as well as, the transcript of the trial proceedings. The

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concluded that the delay in rendering a decision in the state appellate in this instance in no way been detrimental to or prejudiced the rights of the petitioner. This Court has meticulously reviewed the full and complete transcript of the trial proceedings and finds conclusively that there is therein no breach of the petitioner's constitutional rights which would give this Court jurisdiction, but finds rather that the trial was conducted in accordance with the Oklahoma Statutes and that petitioner's constitutional rights were fully protected.

The petitioner's allegations that the Oklahoma "after former conviction" statutes are unconstitutional and that he is the victim of a mistrial because his trial was not conducted in two stages as required by the Oklahoma Statutes are wholly without merit. T. 22 O.S.A. § 860 provides for a two-stage trial in all cases in which the defendant is prosecuted for a second or subsequent offense "except in those cases in which former conviction is an element of the offense." Therefore, the petitioner was not entitled to a two-stage trial as he alleges. He was prosecuted pursuant to T. 21 O.S.A. § 1283, which reads in pertinent part:

"It shall be unlawful for any person having previously been convicted of any felony in any court of a state or the United States to carry on his person, ...any pistol, ...or any other dangerous or deadly firearm which could be easily concealed on the person..."

He was sentenced in accordance with T. 21 O.S.A. § 1284:

"Any person who violates any provisions of this Act shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the state penitentiary not less than one year nor more than ten years."

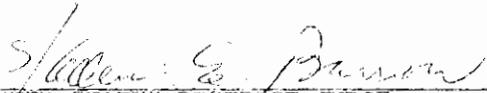
Further, T. 21 O.S.A. § 1283 makes a former conviction part of the substantive evidence required to be shown in order to supply an element of the crime charged. *Anderson v. State*, Okl. Cr. 1963, 381 P.2d 828. Such statutes have been held constitutional, and two-part jury trials have never been compelled as a matter of constitutional law. *Spencer v. Texas*, 305 U. S. 554, 87 S.Ct. 643, 17 L.Ed.2d 606 (1957).

For the reasons hereinabove stated, the Court finds that the

Petition for Writ of Habeas Corpus of Joe A. Carbery should be denied.

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

Dated this ^{17th} 0 day of February, 1970, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE

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

ROBERT L. GOUARD,

Petitioner,

vs.

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

Respondent.

NO. 69-C-254

FILED

FEB 9 1970

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

O R D E R

The Court has before it a petition for Writ of Habeas Corpus filed by Robert L. Gouard, a prisoner in the Oklahoma State Penitentiary, wherein petitioner alleges that he was convicted by jury of Second Degree Burglary after former conviction of a felony, Case No. 17453, in the Tulsa County District Court, Tulsa, Oklahoma, and sentenced to a term of thirty years imprisonment on April 23, 1958. A timely appeal was filed, Case No. A-12659, and the judgment and sentence of the trial court was affirmed February 18, 1959. Thereafter, petitioner filed a Petition for Writ of Habeas Corpus and/or Appeal Out of Time to the Court of Criminal Appeals of the State of Oklahoma, Case No. A-15303, which was denied September 17, 1969. Petitioner alleges that his rights guaranteed by the Constitution of the United States were abridged in the State proceedings in the following particulars, to-wit:

1. The Oklahoma Statutes T. 22 O.S. § 860 and T. 21 O.S. § 51 are unconstitutional.
2. That his trial for second degree burglary after former conviction of a felony was not conducted in two stages as required by statute, but the information alleging the former convictions was read to the jury at the beginning of the trial.
3. That petitioner's parole was revoked without probable cause, or allowing him a hearing before a magistrate. In a supplemental brief filed January 19, 1970, petitioner admits this is no longer an issue, but adds No. 4, immediately below.
4. That an evidentiary hearing was not held in the State Court on his habeas corpus and appeal out of time petition, A-15303

In his pleadings and briefs submitted to this Court, petitioner cited approximately 17 cases and articles which this Court has meticulously read, and the Court finds that the petition for writ of habeas corpus should be denied based on findings as follows, to-wit:

1. The Court finds that the Oklahoma recidivist statute, T. 21 O.S.A. § 51, et seq., is not unconstitutional. The validity of recidivist statutes has been decided and it is held they do not abridge the guarantees of the Constitution of the United States against double jeopardy, self-incrimination, cruel and unusual punishment, and the due process and equal protection clauses of the 5th and 14th Amendments. Further, "The Oklahoma habitual criminal statute does not define a new and additional offense, but merely provides conditions under which one convicted of a crime may be given a heavier penalty." *Cyler v. Boles, Warden*, 368 U.S. 447 (W.Va. 1962); *Washington v. United States*, 401 F.2d 915 (D.C. Cir. 1968); *Sanders v. Waters*, 199 F.2d 317 (10th Cir. 1952); *Williams v. Page*, 289 F.Supp. 661 (E.D. Okla. 1958).

2. The Court finds that T. 22 O.S.A. § 860 of the Oklahoma Statutes requiring a two-stage trial in all cases in which the defendant is prosecuted for a second or subsequent offense, except the cases in which the former conviction is an element of the offense, was made effective June 30, 1965, long after petitioner's conviction in 1950. Further, the two-stage trial procedure under Section 860 of the Oklahoma Statutes has been specifically held not to be retroactive. *Pickens v. Page*, Okl. Cr. 1964, 391 P.2d 288. Therefore, petitioner was not entitled at the time of his trial and conviction to a two-stage trial under the then existing Oklahoma law, and two-part jury trials have never been compelled as a matter of constitutional law. *Spencer v. Texas*, 385 U.S. 594, 87 S.Ct. 648, 17 L.Ed.2d 826 (1967).

3. The Court finds that the matter of petitioner's parole revocation should not be considered by this Court because parole is a matter of legislative grace and "a state prisoner has no Federal constitutional right to a hearing on a state parole revocation." *Boyer v. Watkins*, 366 F.2d 91 (6th Cir. 1966); *Williams v. Patterson*, 199 F.2d 377 (10th Cir. 1956); *Hurrey v. Page*, W.D. Okla. 69-336 91 F.Supp. 1166 Nov. 1, 1969, ___ F.Supp. ___.

7. The Court finds that an evidentiary hearing is not required if the full and complete transcript is before the Court and there is no material issue of fact to be resolved. This Court has carefully reviewed the full and complete transcript of petitioner's trial, and such transcript conclusively supports the jury's verdict and proves the trial was conducted so that the accused received the protection of his constitutional rights. Therefore, the Federal Court has no jurisdiction on which to disturb the judgment and sentence imposed in the State Court.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Robert L. Gouard be and the same is hereby denied and dismissed.

Dated this 11th day of February, 1970, at Tulsa, Oklahoma.



UNITED STATES DISTRICT JUDGE

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

EDWARD HERMAN HOLT,)
)
) Petitioner,)
 vs.) No. 70-C-19
)
 UNITED STATES OF AMERICA,)
)
) Respondent.)

FILED

FEB 9 1970

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

ORDER

The petitioner herein, Edward H. Holt, is presently incarcerated in the Federal Reformatory at El Reno, Oklahoma, under a judgment and sentence entered by the District Court for the Northern District of Oklahoma upon a plea of nolo-contendere entered by petitioner to counts 1 and 2 of a 21-count Indictment under Title 18 U.S.C. §1341 and 371.

The petitioner seeks release upon the grounds that the sentencing Judge did not comply with Rule 11 of the Federal Rules of Criminal Procedure. Specifically the petitioner states:

"In the instant case, petitioner's plea of 'nolo-contendere' was tendered under the misapprehension of what constituted the crime of mail fraud and at no time was petitioner ever advised by either the Court or Court appointed attorney of possible defenses to charges and circumstances in mitigation thereof, nor the meaning of a 'nolo-contendere' plea."

At arraignment proceedings held on October 10, 1968, transcript of the reporter's notes, in part, shows the following:

"THE COURT: This is the case of 68-CR-97.

MR. DICKEY: If it please the Court, the defendant is present in court and we have received a copy of the indictment in all of the counts.

It is my understanding this case has been set for trial on the 28th.

At this time we would waive reading of the lengthy indictment, if we may.

THE COURT: It is rather long.

MR. DICKEY: And to each count we will enter a plea of not guilty and request a jury trial."

Then the proceedings at the hearing on petitioner's change of plea held on October 28, 1968, shows:

"THE COURT: The United States versus Holt.

MR. DICKEY: If it please the Court, I want the record to show that the defendant is now present in court and at this time the defendant will, in so far as Counts 1 and 2 of the indictment are concerned would waive his right to a trial by jury, withdraw his former plea of not guilty, and enter a plea of nolo contendere to the two counts.

MR. RITCHIE: May I make inquiry, sir?

THE COURT: Yes.

MR. RITCHIE: Your true and correct name is Edward Herman Holt?

DEFENDANT HOLT: Yes, sir.

MR. RITCHIE: Mr. Holt, you are represented here this morning by Mr. Bill Dickey, H. G. Bill Dickey, who has been appointed by this Court to represent you in these proceedings, have you not?

DEFENDANT HOLT: Yes, sir.

MR. RITCHIE: You have heard Mr. Dickey's statement in regards to your change of plea as to Counts 1 and 2 of the indictment, did you not?

DEFENDANT HOLT: Yes, sir.

MR. RITCHIE: Mr. Holt, I will ask you if you agree with Mr. Dickey's statement that you would desire to change your former plea of not guilty as to Counts 1 and 2 of the indictment to a plea of nolo contendere?

DEFENDANT HOLT: Yes, sir.

MR. RITCHIE: Mr. Holt, has anyone promised you anything in order to induce you to change your plea to nolo contendere as to Counts 1 and 2 of the indictment?

DEFENDANT HOLT: No, sir.

MR. RITCHIE: Are you pleading nolo contendere realizing that the Court may well accept that as a plea of guilty, should the Court accept it?

DEFENDANT HOLT: Yes, sir.

MR. RITCHIE: Are you doing that voluntarily, Mr. Holt?

DEFENDANT HOLT: Yes, sir.

MR. RITCHIE: Have you fully discussed all aspects of this case with your court appointed attorney, Mr. Dickey?

DEFENDANT HOLT: Yes, sir, I have.

MR. RITCHIE: Are you fully and completely satisfied with the advice and services he has given you?

DEFENDANT HOLT: Yes, sir.

MR. RITCHIE: Do you realize, Mr. Holt, that should the Court accept your plea of nolo contendere that you could receive as much as a \$5,000 fine and five years imprisonment on each count; that is ten years in prison and \$10,000 in fine?

DEFENDANT HOLT: Yes, sir.

MR. RITCHIE: If he accepts your plea as to Counts 1 and 2?

DEFENDANT HOLT: Yes, sir.

MR. RITCHIE: I have no further inquiry, if the Court please.

THE COURT: Very well. Let the record show that the Court holds and finds that Mr. Edward Herman Holt has voluntarily, knowingly and understandingly entered a plea of guilt under nolo contendere provisions.

MR. RITCHIE: To which the Government would like the record to reflect our normal objection.

THE COURT: Yes. The objection is overruled. Now will you, Mr. Ritchie, advise the status of the trial?

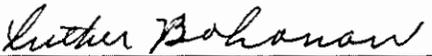
MR. RITCHIE: Based upon the Court's acceptance of the Defendant Holt's plea of nolo contendere as to Counts 1 and 2 of the indictment, comes now the Government and moves the Court to grant us, the Government, leave to dismiss Counts 3 through 21 of the indictment as to the Defendant Holt."

It appears from, and the Court finds, from the reporter's transcript that the petitioner was fully advised of the charges against him and did voluntarily, knowingly and understandingly enter his plea of nolo-contendere to counts 1 and 2 of the Indictment over the objections of the Government thereto. A plea of nolo-contendere is an admission of guilt for the purposes of a case and ordinarily leaves open for review only the sufficiency of the Indictment, and admits all of the well pleaded facts alleged in the Indictment for the purposes of the case. Petitioner here makes no charge that the Indictment is insufficient.

There is no formal ritualistic ceremony required by Rule 11, but if upon the actual facts a person charged of a crime is fully advised of the charges against him and knowingly and understandingly without coercion of any kind enters a plea thereto, the requirements of the Rule have been satisfied.

All of the facts are before the Court and an evidentiary hearing is not required, and based upon the entire file, the transcript of all of the proceedings and the findings of the Court, the Motion of the petitioner should be, and the same is hereby denied.

Dated this 6th day of February, 1970.


United States District Judge

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

ROBERT EARL JOHNSON,

Petitioner,

vs.

WARDEN RAY H. PAGE and
THE STATE OF OKLAHOMA,

Respondents.

No. 69-C-216 Civil

FILED

FEB 10 1970

ORDER DISMISSING PETITION

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

Petitioner above, an Oklahoma State prisoner, has filed a Petition for Writ of Habeas Corpus in this Court pursuant to 28 U.S.C. 2254, claiming that an excessive appeal bond in the amount of \$25,000.00 has been set by the District Court of Tulsa County, Oklahoma, in its case No. 23074, wherein Petitioner was convicted of second degree burglary after former conviction of a felony and sentenced to 25 years imprisonment on December 13, 1968. Petitioner also alleges that as a colored person he was discriminated against by the District Court in that his appeal bond was higher than that fixed for each of his two white co-defendants.

The Court appointed an attorney to represent the Petitioner, had the Petitioner brought from the Oklahoma State Penitentiary for an evidentiary hearing on his Petition and conducted a partial evidentiary hearing on the Petition. At the evidentiary hearing, the Court was advised that the question raised in the Petition herein was moot because the Petitioner did not perfect an appeal from said judgment of conviction and sentence and no appeal was pending in the Oklahoma Court of Criminal Appeals from said judgment of conviction and sentence and the time prescribed by Oklahoma

"STATE OF OKLAHOMA)
) SS
 COUNTY OF OKLAHOMA)

I, Andy Payne, Clerk of the Court of Criminal Appeals of the State of Oklahoma, being under oath, do hereby state and certify that a search has been made of the files of this court from the date of December 13, 1968, to the present date and I find no appeal now pending in this court by or on behalf of one Robert Earl Johnson from a conviction in the District Court of Tulsa County, Oklahoma, in that District Court's case No. 23074 wherein said Robert Earl Johnson was sentenced on the 13th day of December, 1968, to a term of twenty-five years imprisonment for the crime of Burglary After Former Conviction of a Felony.

/s/ Andy Payne

Andy Payne, Clerk
 Court of Criminal Appeals
 of the State of Oklahoma"

SEAL

22 Oklahoma Statutes 1054 provides in part as follows:

"In felony cases the appeal must be taken within six months after the judgment is rendered."

Based on the foregoing, the Court finds and concludes that it should not proceed further herein as it conclusively appears that the Petitioner's complaint about the amount of his appeal bond is moot as he has not perfected an appeal from his judgment of conviction and sentence in Tulsa County District Court in Case No. 23074 and the time prescribed by Oklahoma law within which to lodge such an appeal has expired. Thus, the Petition should be dismissed. The United States Marshal for this District should return the Petitioner to the custody of the Respondents at his earliest opportunity.

It is so ordered this 10 day of February, 1970.


 Fred Daugherty
 United States District Judge

APPROVED AS TO FORM:

Attorney for Plaintiff

Richard M. [Signature]

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT OF 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,)

CIVIL ACTION
No. 69-C-156

FILED
FEB 13 1970

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

ORDER DISMISSING WITHOUT PREJUDICE

Now on this 13 day of February, 1970, on the application of Carney A. Burton, for himself and by and through his attorney, Alvin L. Floyd, this matter comes on for hearing requesting an order of this Court dismissing the cause of action of Carney A. Burton against the Defendants and each of them without prejudice and the Court finds that same should be allowed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this cause of action by the Plaintiff, Carney A. Burton is dismissed without prejudice as to each and every defendant.

Jack Dougherty
United States District Court Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 428.50 Acres of Land, More or Less,)
 Situate in Tulsa County, Oklahoma,)
 and Finis L. White, et al, and)
 Unknown Owners,)
)
 Defendants.)

CIVIL ACTION NO. 6377
Tract No. 5027E

FILED

FEB 17 1970

J U D G M E N T

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

1.

Now, on this 14 day of Feb, 1970, 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 26, 1968, and the Supplemental Report of Commissioners filed herein on May 23, 1969, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

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

3.

This judgment applies only to the estate taken in this case in Tract No. 5027E. The description of Tract 5027E is as set forth in the Complaint filed herein. The estate taken in such tract is as set forth in the Complaint and as interpreted by the Court in the document filed herein on January 22, 1968 entitled "Requested Instruction #1".

4.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause who are interested in subject tract.

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 property. Pursuant thereto, on February 23, 1966, the United States of America filed its Declaration of Taking of a certain

estate in such tract of land, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

6.

On the filing of the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of the subject tract a certain sum of money, and none of this deposit has been disbursed, as set out in paragraph 11 below.

7.

The Report of Commissioners filed herein on March 26, 1968, as supplemented by the Supplemental Report of Commissioners filed herein on May 23, 1969, hereby is accepted and adopted as a finding of fact as to subject tract. The amount of just compensation as to the subject tract as fixed by the Commission is set out in paragraph 11 below.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for subject tract 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 in paragraph 11 below.

9.

The defendants named in paragraph 11 as owners of subject tract are the only defendants asserting any interest in the estate condemned herein, all other defendants having either disclaimed or defaulted. As of the date of taking the named defendants were the owners of the estate condemned herein and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use Tract No. 5027E, as it is described in the Complaint filed herein. Such Tract No. 5027E to the extent of the estate described in the Complaint filed herein as interpreted by the Court in the document filed herein on January 22, 1968, entitled "Requested Instruction #1", is condemned, and title to such estate 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 forever barred from asserting any claim to such estate.

It Is Further ORDERED, ADJUDGED and DECREED that the right to receive the just compensation for the estate taken herein in subject tract is vested in the defendants whose names appear below in this paragraph; the Report of Commissioners of March 26, 1968, as supplemented by the Supplemental Report of Commissioners filed herein on May 23, 1969, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estate taken in subject tract, as shown by the following schedule:

TRACT NO. 5027E

Owners:

Interest No. 1:

Surface and all subsurface except 1/2 of oil, gas and other minerals:

- Pete Giacomo
- Veto Barzellone
- Angello Carano
- K. R. Deatherage
- Mary Barzellone
- Maggie Carano
- Carrie Dominic
- Jennie Deatherage

Interest No. 2:

1/2 of Oil, gas and other minerals:

- William S. Warner and
- Gertrude E. Warner

Award of just compensation, for entire estate taken in entire tract, pursuant to Commissioners' Report - - - - -	\$5,460.00	\$5,460.00
--	------------	------------

Allocation of Award:

1. For surface and all of subsurface except 1/2 of oil, gas, and other minerals - - - \$4,968.50
Plus .909982 of all accrued interest on the deposit deficiency

2. For 1/2 of oil, gas, and other minerals - - - - - 491.50
Plus .090018 of all accrued interest on the deposit deficiency

Deposited as estimated compensation - - - - -	\$ 680.00	
Disbursed to owners - - - - -		<u>None</u>
Balance due to owners - - - - -		\$5,460.00 plus interest
Deposit deficiency - - - - -	\$4,780.00	

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 land-owners the deposit deficiency for the subject tract as shown in paragraph 11 in the amount of \$4,780.00, together with interest on such deficiency at the rate of 6% per annum from February 23, 1966, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tract in this civil action.

Upon receipt of such sum, the Clerk of this Court shall disburse from the amount then on deposit in this case for Tract No. 5027E as follows:

1. To the owners of Interest No. 1, as shown in paragraph 11 above, jointly, the sum of \$4,968.50 plus .909982 of all accrued interest on the aforesaid deposit deficiency.

2. The owners of Interest No. 2, as shown in paragraph 11 above, have not been found. In the event that they be found, the Clerk may, without further order, disburse to them jointly the sum of \$491.50, plus .090018 of the accrued interest on the aforesaid deposit deficiency, being the balance on deposit for subject tract.

In the event that the balance due to the owners of Interest No. 2, as shown in paragraph 11 above, remains on deposit for a period of five years from the date of filing this judgment, then, after that period, the Clerk of this Court, without further order, shall disburse the balance on deposit for Tract No. 5027E in subject civil action to the Treasurer of the United States of America, pursuant to the provisions of Title 28, Section 2042, U.S.C.

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW
Assistant United States Attorney

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

GRAIN DEALERS MUTUAL)
INSURANCE COMPANY,)
)
Plaintiff,)
)
vs.)
)
DORIS L. DeVANE a/k/a DORIS)
L. REYNOLDS and FIREMAN'S)
FUND INSURANCE COMPANY,)
)
Defendants.)

NO. 69-C-132

FILED

FEB 17 1970

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

ORDER OF DISMISSAL

On this 17th day of February, 1970, upon the written application of the parties for a dismissal of the Complaint, Cross-Complaint, and causes of 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 Complaint and Cross-Complaint and have requested the Court to dismiss said action, Complaint and Cross-Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint, Cross-Complaint and all causes of action should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the Complaint, Cross-Complaint and all causes of action filed herein be and the same hereby are dismissed with prejudice to any future action.

J. Allen E. Barron
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:
Alfred M. Knight
ALFRED M. KNIGHT, Attorney for Grain Dealers Mutual Insurance Company
Jack B. Sellers
JACK SELLERS, Attorney for Doris L. DeVane
Clarence P. Green
CLARENCE P. GREEN, Attorney for Fireman's Fund Insurance Company

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

W. C. JAMES, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 G. A. COTTEN COMPANY, a partner-)
 ship of GRADY A. COTTEN and FRANK)
 F. COTTEN, Partners; GRADY A.)
 COTTEN, individual; FRANK F.)
 COTTEN, individual,)
)
 Defendants.)

NO. 69-C-207

FILED

FEB 17 1970

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

ORDER OF DISMISSAL

The above matter coming on to be heard this 17th day of February, 1970, 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 defendants be and the same is hereby dismissed with prejudice to any future action.

William E. Barron
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

ANDREWS, MOSBURG, DAVIS, ELAM, LEGG & KORNFIELD
DOERNER, STUART, MORELAND, SAUNDERS & DANIEL

By: *William C. Andrews*

Attorneys for the Plaintiff,

ALFRED B. KNIGHT,

Alfred B. Knight

Attorneys for the Defendant.

C
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Y

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

E. R. REID, et al.,

Plaintiffs:

vs.

No. 67-C-224 ✓

McDONNELL DOUGLAS CORP., and
INTERNATIONAL UNION UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, DISTRICT LODGE 1093,

Defendants:

FILED

FEB 24 1970

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

O R D E R

The Motions To Dismiss of both defendants duly served and filed herein having come on to be heard on the 26th day of January, 1970, the plaintiff appearing by their counsel, Mr. E. J. Eagleton and Mr. Jonathan C. Gibson and the defendant McDonnell Douglas Corporation appearing by its attorney, Mr. Jack N. Hays and the defendant International Union United Automobile Aerospace and Agricultural Implement Workers of America, District Lodge 1093 appearing by Mr. Stephen I. Schlossberg and Mr. Maynard I. Ungerman, their respective attorneys, and the Court being advised in the premises makes the following findings and conclusions:

I

The Court finds that jurisdiction is not conferred on this Court by virtue of Title 29 U.S.C.A. 185 and that the Court cannot treat this action as a suit for violation of contract.

II

The Court further concludes that the only allegation with reference to the defendant union is an alleged breach of fiduciary duty which is an allegation of an unfair labor practice.

III

The Court concludes that the pre-exemption doctrine creates exclusive jurisdiction with the National Labor Relations Board.

LAW OFFICES
UNGERMAN,
GRABEL,
UNGERMAN
& LEITER

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

The Court finds that the defendant McDonnell Douglas Corporation is only implicated to the extent that it is authorized by the contract to enforce the conditions and provisions contained therein and in the Union Security Clause; and that said company is required to terminate any employee who does not pay the agency fee required by the contract. That the plaintiff attempts to state a cause of action against said defendant company by the showing of collusion, but there is nothing in the complaint to show that the company bargained with the Union in any manner, as to said contract, other than in the normal accepted practice. There is no showing that the defendant company entered into any agreements with the Union as to how fees collected were to be disbursed by the Union.

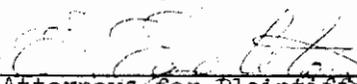
ORDERED that the Motion be granted and judgment entered dismissing this cause of action of plaintiffs as against both these defendants.

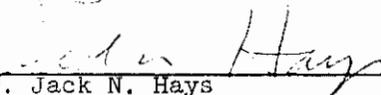
DATED this 24th day of February, 1970.


JUDGE

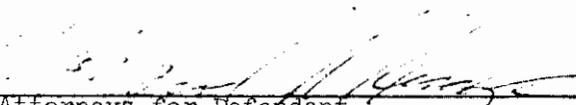
APPROVED AS TO FORM:

Mr. E. J. Eagleton and Mr. Jonathan C. Gibson

By 
Attorneys for Plaintiff


Mr. Jack N. Hays
Attorney for Defendant
McDonnell Douglas Corporation

Mr. Stephen I. Schlossberg and Mr. Maynard I. Ungerman

By 
Attorneys for Defendant
International Union United Automobile
Aerospace and Agricultural Implement
Workers of America, District Lodge 1093

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

ELMER W. ANDERSON and
MARGARET P. ANDERSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

)
)
)
) 68-C-213
)
)
)

FILED

FEB 24 1970

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

ORDER

This matter coming on for consideration by the Court upon the stipulation of facts contained in pre-trial order filed January 29, 1970, and simultaneous briefs filed by the parties hereto, and, the Court being fully advised in the premises, finds:

The crux of the issue between the parties in the instant litigation is whether stock owned by Elmer W. Anderson and Margaret P. Anderson, husband and wife, in "El'Mar Men's, Inc." qualified as stock pursuant to Section 1244 of the Internal Revenue Code of 1954, so as to entitle plaintiffs to special tax benefits .

The facts now before the Court indicate that Articles of Incorporation for said corporation were prepared and filed with the Secretary of State of the State of Oklahoma on December 29, 1960. The Articles authorized the issuance of 1500 shares, par value of \$100.00 per share, with a minimum paid in capital prior to beginning business of \$125,000.00. Affidavit as to Paid in Capital was attached and submitted with the Articles to the Secretary of State. The paid in capital referred to above comprised the assets of the sole proprietorship of Elmer W. Anderson in "El'Mar Sports Shop".

The exhibits attached to the pre-trial order reflect that the life of the corporation was fifty (50) years.

On January 10, 1961, the Secretary of State of the State of Oklahoma, issued a certificate of incorporation. Thereafter, and on January 11, 1961, stock certificate number 1, representing 1250 shares of stock in said corporation, was issued to Elmer W. Anderson. On February 7, 1961, at a special meeting of the Board of Directors of said corporation, a resolution was adopted, authorizing the issuance of 50 shares of stock in said corporation to Elmer W. Anderson, being represented by stock certificate number 2, dated February 7, 1961, in the amount of 50 shares.

Prior to the issuance of the certificate of incorporation by the Secretary of State on January 10, 1961, Elmer W. Anderson entered into a contract of employment with one Charles E. Welch, dated January 5, 1961. Said contract provided for the employment of Mr. Welch as the manager of said clothing store for a period of not less than 36 months, and so long thereafter until terminated by either the Company or Mr. Welch. Said contract provided, in part:

"6. (STOCK PURCHASE AGREEMENT) It is further agreed by and between ELMER W. ANDERSON, an individual, and CHARLES E. WELCH, an individual, that the said ELMER W. ANDERSON shall afford by this agreement an option to CHARLES E. WELCH of purchasing up to but not in excess of forty per cent of the entire stock issue of the Company, or any fraction of said forty per cent at such time as said CHARLES E. WELCH shall request such right of purchase; said right to purchase shall not be limited as to the time or number of purchases that may be made by the said CHARLES E. WELCH during the term of his employment as Manager; said option to purchase up to, but not in excess of forty per cent of the total stock of the Company from the said ELMER W. ANDERSON shall continue during the employment of Manager; ***."

The subject corporation was in existence until 1964, at which time Mr. Anderson sold all of his stock in the corporation for the sum of \$37,195.30.

Plaintiffs filed a joint return for the year 1964, which return reflected a net loss of \$14,064.57. Part of this net loss resulted from a claim of an ordinary loss of \$50,000.00 from the sale of the stock aforesaid. Plaintiffs claimed the loss as a §1244 stock loss.

The 1964 return was audited by the Internal Revenue Service, and a determination was made that the stock in El' Mar Men's, Inc. did not qualify as §1244 stock.

Plaintiffs paid the tax and interest attributable to the disallowance of the claimed \$50,000.00 deduction, and, thereafter filed a claim for refund as follows:

(a) Claim that the loss from the sale of the corporation stock should have been allowed to the extent of \$50,000.00, pursuant to §1244;

(b) Claim for refund for the year 1961 based on a claimed net operating loss carryback from the year 1964.

The parties have stipulated and agreed that all elements of §1244 have been met by plaintiffs, with the exception of §1244(c)(1)(A), which provides:

"such corporation adopted a plan after June 30, 1958, to offer such stock for a period (ending not later than two years after the date such plan was adopted) specified in the plan,"

The Internal Revenue Service adopted Treasury Regulations on Income Tax, Section 1.1244(c)-1(c), to implement the provisions of §1244, as follows:

"stock must be issued pursuant to a written plan adopted by the corporation after June 30, 1958, to offer only such stock during a period specified in the plan ending not later than two years after the date the plan is adopted."

In this posture the case is before this case, submitted on briefs by the parties, for determination.

The alleged plan in the instant case is not in writing by virtue of a separate instrument. There is nothing in the minutes of the corporation from which an inference can be raised that such a plan was intended. There is no proof before this Court that a parole plan was entered with reference to the issue of stock.

Plaintiffs argue that the Articles of Incorporation and Affidavit as to Paid in Capital meet the requirements of §1244(c)(1)(A) in that "The plan was an immediate offering, and it terminated immediately for the full amount contained in the offering '1,250 shares for \$125,000.00' was fully paid in."

The Court has carefully examined all of the documents submitted, and considered the arguments and statements of law submitted by the parties, and finds:

There is no proof submitted that reflects that the stockholders and/or directors intended, proposed or were even aware of the provisions of §1244 or its requirements. The Court finds that the documents relied on by plaintiffs are not sufficient to meet the requirements of §1244, and, for this Court to approve such documents as constituting a plan pursuant to §1244 would in effect defeat the primary purpose of the enactment of such legislation.

The Courts, in construing §1244, have been uniform in requiring:

- (1) That the plan be in writing; and
- (2) specify the period (no longer than 2 years) in which §1244 stock can be issued.

This Court feels no desire or inclination to digress from the precepts heretofore delineated in the construction of this legislation.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the complaint and cause of action be and the same are hereby dismissed with prejudice, with costs to be borne by plaintiffs.

ENTERED this 24th day of February, 1970.


UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLYDE E. BROWN and JEAN C. BROWN,
d/b/a Magic Lantern Theaters,

Defendants.

CIVIL ACTION NO. 69-C-158

FILED

FEB 24 1970

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

DEFAULT JUDGMENT

NOW, on this 24th day of February, 1970, this matter coming on for consideration, the plaintiff, United States of America, appearing by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the defendants appearing not, and it appearing that this is a suit based on a note and for foreclosure of certain financing statements, security agreements and real estate mortgages, all securing said note; and

There further appearing that the real estate interest and chattels described in said mortgages, financing statements, and security agreements are located in Kay County, Oklahoma, and Creek County, Oklahoma; and

It further appearing that due and legal personal service of summons has been made on the defendants, Clyde E. Brown and Jean C. Brown, on October 17, 1969, requiring each of them to answer the complaint and amended complaint herein not more than 20 days after date of service of summons, and it appearing that said defendants have failed to file an answer or otherwise plead herein, they and each of them are hereby in default.

The Court being full advised finds that the allegations and averments in the complaint and the amended complaint of the plaintiff filed herein are true and correct and that there is due and owing to the plaintiff, United States of America, from the defendants, Clyde E. Brown and Jean C. Brown, d/b/a Magic Lantern Theaters, the sum of \$15,832.81, with interest thereon at 3% per annum from April 17, 1969, and for the further sum of \$292.42 for ad valorem taxes paid by this plaintiff on behalf of these defendants in Kay and Creek Counties,

State of Oklahoma, and for interest accrued and accruing.

The Court further finds that the plaintiff has a first and prior lien upon certain real property described in the complaint by virtue of a real estate mortgage given as security for the payment of the indebtedness, interest and costs, which real property is described as follows:

Lot Twenty-Three (23), Block Twenty-Three (23), original Town of Oilton, Creek County, Oklahoma.

The Court further finds that the plaintiff has a first and prior lien upon the personal property described in the complaint and listed in Exhibit "C" and that property listed in Exhibit "F" which pertains to the theater at Oilton, Oklahoma, by virtue of financing statements and security agreements given covering such personal property.

The Court further finds that by assignment the plaintiff, United States of America, became the owner and holder of a promissory note (Exhibit "A" attached to the Complaint), financing statement (Exhibit "C" attached to the Complaint), security agreement (Exhibit "F" attached to the Complaint), and real estate mortgage (Exhibit "I" attached to the Complaint), all of which were originally executed in favor of the First National Bank in Tonkawa, Tonkawa, Oklahoma.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the plaintiff, United States of America, do have and recover from the defendants, Clyde E. Brown and Jean C. Brown, d/b/a Magic Lantern Theaters, a judgment in the amount of \$15,832.81, with interest thereon at 8% per annum from April 17, 1969, and for the further sum of \$292.42 for ad valorem taxes paid by this plaintiff on behalf of these defendants in Kay and Creek Counties, State of Oklahoma, for interest accrued and accruing and for the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon failure of the defendants, Clyde E. Brown and Jean C. Brown, d/b/a Magic Lantern Theaters, to satisfy the judgment of plaintiff, an Order of Sale shall issue to the United States Marshal for the Northern District of Oklahoma, commanding him to levy upon, advertise and sell, according to law, with appraisement, the real property interests hereinabove described as being in Creek County, State of Oklahoma, and to advertise and sell according to law, with appraisement, the personal property hereinabove referred to as being listed in Exhibit "C" attached to the complaint

and that personal property listed in Exhibit "F" attached to the complaint which relates to the theater at Clinton, Oklahoma, and to apply the proceeds of such sales of real and personal property as follows:

1. In payment of the costs of the sale and of the cost of this action.
2. In payment to plaintiff of the sum of \$15,832.81 with interest thereon at 8% per annum from April 17, 1969, and for the further sum of \$292.42.
3. The residue, if any, to be paid to the Clerk of this Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the hereinabove described real and personal property be sold, with appraisement, and after such sales 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 and from any and every lien upon, right, title, interest, estate or equity of, in or to the real and personal property described herein.

Dated this 21 day of February, 1970.

William E. Brown
UNITED STATES DISTRICT JUDGE

APPROVED:

s/ Robert P. Santee

ROBERT P. SANTEE
Assistant U. S. Attorney

contracts. The REA contracts involved herein are as follows:

1. McCook County Telephone Cooperative at Salem, South Dakota;
2. Crystal Independent Telephone Company, Mankato, Minnesota;
3. Benton County Telephone Cooperative, Rice, Minnesota.

The materials in question were to be shipped from defendant's plant in the State of New Jersey direct to the job site in the States hereinabove delineated.

To establish jurisdiction, plaintiff contends the defendant had a salaried employee in Tulsa from March 6, 1969 (after the alleged oral contract was consummated) until August 4, 1969 (when he was involuntarily terminated) by the name of Clary; that Clary was on a "straight" salary with no commission; that defendant rented an office in the L & M Professional Building in Tulsa, Oklahoma, for the use of the employee, Clary; that defendant furnished the employee, Clary, with stenographic service, and in addition, supplied him with an automobile for his use; that defendant's Vice President, Ernie Macleod, and another employee, Joe Garvey, were in Tulsa for one or two days the early part of May, 1969, transacting business with plaintiff; that the defendant has accounts receivable in the State of Oklahoma and is transacting or doing business in the State of Oklahoma, although not domesticated or licensed therein.

To the contra, the defendant contends there was no contract; that accounts receivable in the State of Oklahoma, other than the account alleged to be due from plaintiff, are the result of sales by Brenner Electrical Sales, Inc., an independent contractor of Houston, Texas, whose employees take orders and transmit them to defendant at its office in New York for acceptance; that the defendant does not maintain an office, plant or warehouse within the State of Oklahoma; that the defendant has not transacted business within the State of Oklahoma.

The Court feels that the above facts and contentions are pertinent to the issue and determination to be made herein.

The service statute involved is 12 O.S.A. §187, which provides in part:

"(a) Any person, firm or corporation *** licensed to do business in the State of Oklahoma whether or not such party is a citizen or resident of this State and who does, or who has done, any of the acts hereinafter enumerated, whether in person or through another, submits himself, or shall have submitted himself, and if an individual his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising, or which shall have arisen from the doings of any of said acts:

- (1) the transaction of any business within this State;
- (2) the commission of any act within this State.***."

Amenability of a foreign corporation to suit in federal court in a diversity action is determined in accordance with the law of the state where the Court sits. Thus, Oklahoma law applies. In *Crescent Corporation v. Martin* (Okla. 1968) 443 P.2d 111, the Oklahoma Supreme Court set forth the Oklahoma law with respect to the question here involved. The Court said:

"The statute with which we are concerned authorizes jurisdiction of the Courts of this state over foreign corporations and nonresident defendants where the acts alleged to constitute the transaction of business or the commission of any acts provide the basis out of which the plaintiff's cause of action is alleged to have arisen***."

International Shoe Co. v. Washington, 326 U.S. 310, held that "due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." And, the Court also held in *McGee v. International Life Ins. Co.*, 355 U.S. 220:

"By now it is certainly beyond question that an otherwise insignificant contact with a state may prove constitutionally sufficient if it gave rise to the cause of action involved in the particular suit."

The Court, therefore, finds that the statute above referenced requires that the cause of action arise from the in-state acts of the non-resident corporation, and, in fact, such a finding is constitutionally required. The statute, therefore cannot serve as a basis for jurisdiction in the instant litigation.

The Court finds that the plaintiff's cause of action (breach of contract) is based upon an alleged oral agreement between the parties, alleged to have been entered into in the State of Missouri. The Court further finds that there is no showing that said contract required performance of any act by plaintiff within the State of Oklahoma for or on behalf of defendant, Continental Copper & Steel Industries, Inc. The Court further finds that said contract, if it existed, was concerned with furnishing materials to job sites in States other than the State of Oklahoma. Said materials were shipped to States without the State of Oklahoma from defendant's plant in New Jersey. Acceptance of orders were to be made in the home office at New York, or the plant in New Jersey. There is nothing before the Court to indicate a voluntary entrance into Oklahoma by defendant for the purpose of transacting any business or the commission of any act out of which the present controversy arose.

The burden rests upon the plaintiff to make a showing of facts upon which jurisdiction must rest. Plaintiff has not sustained this burden.

The Court, therefore, finds that the cause of action and complaint in the instant litigation should be dismissed for lack of jurisdiction.

IT IS, THEREFORE, ORDERED that this cause of action and complaint be and the same is hereby dismissed for lack of jurisdiction.

As this effectively determines the action, the question of effective service is not reached.

ENTERED this 24 day of February, 1970.


UNITED STATES DISTRICT JUDGE

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.

GLAZIERS, GLASS WORKERS AND BEVELERS LOCAL
UNION NO. 1433, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Respondent.

Civil No. 69-C-269

FILED

FEB 24 1970

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

DISMISSAL

The Court having entered an Order on the 23rd day of January 1970, continuing the above-entitled cause until a final determination was made by the National Labor Relations Board, and it now appearing that a contract has been entered into between respondent and the charging party; further, that the charges filed before the National Labor Relations Board giving rise to the above-entitled cause have been withdrawn and that such withdrawals have been approved by the Regional Director of the Sixteenth Region of the National Labor Relations Board thereby disposing of said charges; accordingly,

IT IS THEREFORE ORDERED that the above-styled case be, and it is hereby dismissed without prejudice.

Done at Tulsa, Oklahoma, this 24th day of February, 1970.

S. Allen Brown
United States District Judge

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

IN THE MATTER OF)
)
SPORTS DIVERSIFIED, INC.,) In Proceedings for the
) Reorganization of a Corporation
FILED) No. 69-B-649 **FILED**
Debtor)

FEB 24 1970

FEB 24 1970

M. M. EWING, CLERK U. S. DISTRICT COURT ORDER NUNC PRO TUNC FIXING TRUSTEE'S COSTS AND ATTORNEY'S FEE AND DISMISSING PROCEEDINGS M. M. EWING, CLERK U. S. DISTRICT COURT

NOW, on this 24th day of February, 1970, upon application by the secured creditor, National Bank of Commerce of Tulsa, and it appearing to the Court that its Order Fixing Trustee's Costs and Attorney's Fees and Dismissing Proceedings entered herein on the 9th day of December, 1969, erroneously failed to recite the findings and order of this Court at that time that the expenses of the Trustee therein and the fees found to be due and owing to the Trustee's attorneys therein should be imposed as a debt of the Debtor Corporation as a first and prior lien on the property of the Debtor Corporation located in Creek County, Oklahoma, the subject of foreclosure in Cause No. 35423 in the District Court of Creek County styled National Bank of Commerce of Tulsa v. Sports Diversified, Inc., et al, superior and prior to the claims of all other secured and unsecured creditors of the Debtor Corporation, Sports Diversified, Inc.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Order Fixing Trustee's Costs and Attorney's Fees and Dismissing Proceedings entered in this cause on December 9, 1969, be and the same is hereby corrected to provide that the Trustee's Attorneys' fees (exclusive of the fee for the attorney for the Corporate Debtor, Glenn A. Young), be and the same are hereby imposed as a debt of the Corporate Debtor and a first and prior lien on the real property and improvements thereon owned by the Corporate Debtor in Creek County as described in Cause No. 35423 in the District Court of Creek County styled National Bank of Commerce of Tulsa v. Sports Diversified, Inc., et al, superior and prior to the claims of all secured and unsecured creditors of the Debtor Corporation.

(s) Allen E. Barrow
ALLEN E. BARROW, JUDGE

APPROVED AS TO FORM:

s/ James O. Ellison

JAMES O. ELLISON, Attorney
For Trustee

HOLLIMAN, LANGHOLZ, RUNNELS & DORWART

s/ David Holden

BY David W. Holden

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 V.) CIVIL ACTION NO. 67-C-234
)
 156.12 ACRES OF LAND, MORE OR)
 LESS, SITUATE IN ROGERS COUNTY,) TRACTS NOS. 412 and 412-2
 STATE OF OKLAHOMA, AND KERR)
 ENTERPRISES, ET AL. AND UNKNOWN)
 OWNERS,)
)
 Defendants.)

FILED

FEB 25 1970

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

JOURNAL ENTRY OF JUDGMENT

(As to Certain Non-Appearing Mineral Owners)

On January 7, 1970, pursuant to proper notice, this Court caused a hearing to be held for the purpose of determining the amount of just compensation that the plaintiff should be required to pay for the taking of certain mineral interests in the land designated herein as Tracts Nos. 412 and 412-2. The plaintiff waived a jury trial and none of the defendants appearing, the case was tried to the Court without a jury.

After hearing evidence offered by plaintiff, and after being fully advised, the Court makes the following findings:

1. That this court has jurisdiction over the parties in the subject matter of this action.
2. That under the authority set forth in the declaration of taking and complaint in condemnation filed herein on December 1, 1967, the United States of America has acquired the ownership of the land designated therein as Tracts Nos. 412 and 412-2 to the extent set forth in the declaration of taking.
3. That on the date of the filing of the declaration of taking, 88.0 net acres of the mineral estate in said land was owned

by the unknown heirs, devisees or assigns of one Switch Foreman, Cherokee No. 16065, who apparently died in the month of June 1923, and that the Court is unable to determine at this time the names and addresses of those who may now own a share in the mineral interest in said land, or the extent of their respective interests therein.

4-a. That on the date of the filing of the declaration of taking said defendants owned 92.54 net acres of the mineral estate in said land, to wit: The S¹/₄NE¹/₄SE¹/₄, and Lot 10 in Section 27, and Lot 3 in Section 27, all in T.20N, R.15E in Rogers County, Oklahoma, and that said 92.54 acres includes that portion of said land, if any, which extends to the center of the Verdigris River.

4-b. That on the date of taking the Government has acquired 88.0 net acres of the mineral estate in said land to the extent set forth in the complaint and declaration of taking filed herein, which leaves 4.54 acres of said land not acquired by the plaintiff in this proceeding.

5. That on the date of the filing of the declaration of taking the sum of \$595.00 of the total sum deposited into the registry of this Court for the benefit of the persons entitled thereto was allocated by the acquiring agency (Corps of Engineers) for the mineral interest in said land owned by those unknown defendants for whom just compensation is being determined in this proceeding, and that none of said funds so allocated (\$595.00) has yet been disbursed.

6. That at this hearing on January 7, 1970, the Government presented opinion testimony by its mineral evaluation expert that the fair market value of said mineral estate was as follows:

88.0 acres (subordinated) at \$10.80 per acre = \$950.00 (rounded).

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

A. That on December 1, 1967, the United States of America became vested with the ownership of these tracts of land to the extent set forth in the complaint and declaration of taking.

B. That certain unknown defendants, as hereinabove set forth, were, on the date of the filing of the declaration of taking, the owners of a fee simple interest in 88.00 acres of the mineral estate in the land designated herein as Tracts Nos. 412 and 412-2.

C. That the total amount of just compensation payable by the United States of America for the taking of the mineral estate in said land, insofar as said unknown defendants are concerned, is the sum of \$950.00, which is the amount testified to by the Government's witness at this hearing and which is hereby approved and adopted in all respects.

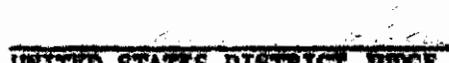
D. That the difference between the total amount deposited for said unknown defendants (\$595.00) and the total amount of just compensation (\$950.00) is the sum of \$355.00, for which sum said defendants are hereby granted a deficiency judgment against the United States of America, together with interest thereon at the rate of 6% per annum from December 1, 1967 until said deficiency shall be deposited into the registry of this Court.

E. That upon payment of the amount of the deficiency provided for herein into the registry of this Court, the United States of America will have discharged all of its obligations to all of said unknown defendants.

F. That this Court cannot determine, at this time, how the funds now available for distribution, plus the amount of the deficiency judgment, should be divided among any of the defendants entitled thereto, and it is, therefore, FURTHER ORDERED that the Clerk of this Court shall, after a lapse of five years after the date of the entry of this judgment, pay the distributive share of said defendants to the Treasurer of the United States in accordance with Title 28, U.S.C. Section 2042.

APPROVED:


Max E. Findley, Attorney


UNITED STATES DISTRICT JUDGE

United States District Court

FOR THE
Northern District of Oklahoma

CIVIL ACTION FILE NO. 69-C-12

Gloria Yvette Smith, et al., each
individually, and on Behalf of all
Others Similarly Situated,

vs.

North American Rockwell Corporation-
Tulsa Division, formerly North
American Aviation, Inc.,

JUDGMENT

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
TULSA, OKLAHOMA
FEB 25 1970

This action came on for ~~trial~~ (hearing) before the Court, Honorable **Allen E. Barrow**,
United States District Judge, presiding, and the issues having been duly ~~tried~~
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that judgment be entered striking from the
Complaint any reference to 42 USC 1981 insofar as plaintiffs have
sought to base a cause of action on that statute, severing into four
separate causes of action the claims stated by each plaintiff herein,
and leaving open to each plaintiff the right to allege a cause of
action on behalf of any class of persons which each such plaintiff
may separately represent under Rule 23 of the Federal Rules of Civil
Procedure. Each plaintiff shall have 30 days from the date of this
order within which to file a separate Complaint stating a cause of
action based upon transactions and occurrences which have been the
object of the Complaint herein.

Dated at **Tulsa, Oklahoma** this **25th** day
of **February**, 19 **70**.

M. M. Ewing
Clerk of Court

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

GEORGE P. SCHULTZ, Secretary of)
Labor, United States Department)
of Labor,)

Plaintiff,)

vs.)

Oleta Shrum, doing business as)
Claremore Bus Station,)

Defendant.)

No. 69-C-74
FILED

FEB 25 1970

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

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Now, on this 13th day of January, 1970, the above entitled and numbered cause came on to be tried to the Court without a jury and witnesses were sworn, testimony taken and exhibits introduced into evidence and said cause not being concluded, it was continued to the 14th day of January, 1970.

Now, on this 14th day of January, 1970, said case continuing in trial, and after both sides having rested, the Court took the cause under advisement.

Now, on this 25th day of February, 1970, upon consideration of the entire case and being fully advised in the premises, the Court finds:

1. That jurisdiction of this action is conferred upon the Court by Section 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 217).

2. That the plaintiff, George P. Schultz, Secretary of Labor, United States Department of Labor, brings this action in his representative capacity.

3. That the defendant, Oleta Shrum, resides in Claremore, Oklahoma, within the jurisdiction of this Court, and during the period from April 30, 1967, until September 11, 1969, Oleta Shrum was engaged in operating a business located at 600 West Will Rogers, Claremore, Oklahoma. Said business is presently located at 617 West 2nd Street, Claremore, Oklahoma.

4. That at times herein mentioned the defendant, Oleta Shrum, d/b/a Claremore Bus Station employed persons and said employees' duties included selling bus tickets to persons in commerce, and receiving, handling, and shipping goods in commerce.

5. That the defendant, Oleta Shrum, employed employees in the activities mentioned in paragraph numbered four (4) above, and that the plaintiff alleged that certain employees worked more than 40 hours per work week. The Court finds that the evidence did not sustain the allegations as set out in the plaintiff's complaint.

6. That on October 21, 1938, the Administrator of the Wage and Hour Division, United States Department of Labor, pursuant to the authority conferred upon him by Section 11 (c) of the Act, duly issued and promulgated regulations prescribing the records of persons employed and of wages, hours, and other conditions and practices of employment to be made, kept and preserved by every employer subject to any provision of the Act. That said regulations, and amendments thereto, were published in the Federal Register and are known as Title 29, Chapter V, Code of Federal Regulations, Part 516.

7. That the defendant, Oleta Shrum failed to keep accurate records of her employees as required by paragraph numbered six (6) above.

8. That the Secretary, in his investigation, failed to give credit to the defendant, Oleta Shrum, for certain benefits conferred upon the employees, such as meals, refreshments, time off, etc., in computing the hourly rate of pay with reference to the employees.

9. That a necessity exists for the entry of an injunction in this case as prayed for in plaintiff's complaint.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant, Oleta Shrum, her agents, servants, employees and all persons acting or claiming to act in her behalf and interest be, and they are hereby 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 (Act of June 25, 1938, 52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), hereinafter referred to as the Act, in the following manners:

1. Defendant, Oleta Shrum, shall not, contrary to Sections 7 and 15 (a) (2) of the Act, employ any employees engaged in interstate commerce, or in the production of goods for interstate commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, as those terms are defined by the Act, for a work week longer than 40 hours, unless such employees receive compensation for their employment in excess of 40 hours in such work weeks at a rate not less than one and one-half times the regular rate at which they are employed.

2. Defendant, Oleta Shrum, shall make, keep and preserve records of her employees and of wages, hours and other conditions and practices of employment maintained by her, as prescribed by the Regulations of the Administrator 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.

3. That for the periods involved in this litigation, defendant, Oleta Shrum, underpaid the following named employees, contrary to Sections 7 and 15 (a) (2) of the Act, in the amounts set opposite their names:

Keith Muse	\$62.40
Mary A. Minnerup	\$109.60

Defendant, Oleta Shrum, is further enjoined and restrained from withholding from said employees the said unpaid compensation in the total amount of \$172.00, to which they are entitled under the Act. The provisions of this paragraph of this judgment shall be deemed satisfied when defendant delivers to the plaintiff a certified check for \$172.00 (less appropriate tax deductions). The plaintiff shall distribute the proceeds of the check to the persons above named, or to their estates, if that is necessary, and any money not so paid within a reasonable time, because of inability to locate the proper persons, or because of their refusal to accept it, shall be deposited into the Treasury of the United States as miscellaneous receipts; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff have and recover his costs herein, including the attorney's docket fee provided for by 28 U.S.C. 1923.

Entered this 25 day of February, 1970.


UNITED STATES DISTRICT JUDGE

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

MONTIE LORTON AND EVELYN BLESON,)	
)	
Plaintiffs,)	
)	
vs.)	No. 69-C-157
)	
CHARLES T. REDFERN,)	
)	
Defendant.)	

STIPULATION FOR DISMISSAL

Comes now the parties to this action and show the Court that the issues herein have been fully compromised and settled between the parties hereto and are therefore moot. The parties therefore move the Court for an order dismissing said cause with prejudice to plaintiffs' right to bring a further action.

FILED

FEB 25 1970

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

Paul W. Brightmire

PAUL W. BRIGHTMIRE
Attorney for Plaintiffs

BEST, SHARP, THOMAS & GLASS

By *Joseph F. Glass*

JOSEPH F. GLASS
Attorney for Defendant

ORDER

Now on this 25th day of February, 1970, It appearing to the Court that the parties have compromised and settled the issues in said cause, that the same being moot the cause should be dismissed with prejudice to plaintiffs' right to bring a further action.

IT IS THEREFORE ORDERED that said cause be and the same is hereby dismissed with prejudice to plaintiffs' right to bring a further action.

W. Allen Cannon
JUDGE

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

LARRY CHARLES CLONCE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

NO. 69-C-287

FILED

FEB 25 1970

ORDER

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

The Court has before it a petition pursuant to T. 28 U.S.C. 955 filed by the petitioner, Larry Charles Clonce, wherein petitioner alleges that his rights to due process and equal protection of the law have been bridged. Petitioner's position is that he was found guilty in Cause of Action No. 13685 in 1961. His appeal was not perfected through no fault of his own in 1961, and he was not granted an appeal until 1965. The petitioner contends that his right to elect not to commence service of his sentence pending appeal pursuant to Rule 38(a)(2) was bridged by "judicial discontinuance", and that the later appeal did not cure such denial; and, that thereby the sentence in Cause of Action No. 13685 was unconstitutional and void. Further, he contends that the sentence he is now serving, of ten years consecutive to the sentence in No. 13685, is impossible of being served consecutive to a void sentence and has therefore actually been completed.

The Court finds the actual facts are that the petitioner was sentenced in the Western District of Oklahoma to three years imprisonment on March 13, 1961. Within three months of the commencement of that three-year sentence, he was brought by writ from El Reno, Oklahoma, to the Northern District of Oklahoma to stand trial on a charge of bank robbery. In the Northern District of Oklahoma Cause of Action No. 13685, he was tried by jury, found guilty, and, on June 7, 1961, he was sentenced to ten years imprisonment concurrent with the sentence imposed in the Western District of Oklahoma. His appeal in Cause of Action No. 13685 was not perfected in 1961; but, in 1965, he was granted leave to prosecute an appeal in forma pauperis, and the judgment of the trial Court was affirmed. Clonce v. United States, 356 F.2d 912 (10th Cir. 1966).
About the latter part of June, 1961, the petitioner was transported to the Englewood prison and in Terre Haute, Indiana, in Cause of

action No. 77-OR-3, the petitioner was found guilty of voluntary manslaughter of an inmate, and received June 23, 1962, a sentence of ten years imprisonment to be served consecutive to the concurrent sentenced petitioner was then serving from the Western and Northern Districts of Oklahoma.

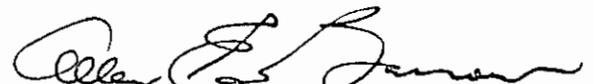
The Court finds that the petitioner's allegations are completely frivolous and wholly without merit and that the Section 2255 petition should be denied. The petitioner was at no time eligible, even on bond, to be released from prison pending an appeal. Had he elected not to commence service of his sentence pending his appeal in either 1961 or 1962, such an election would have meant that he would have been held in jail with no credit for such days of incarceration toward his sentence imposed in No. 13685. In 1966, Rule 38(e)(2) was amended to eliminate the "dead" time prisoners were electing to serve to their detriment under said rule. Further, an election not to commence service of sentence did not prevent the prisoner's transfer from a jail to a more suitable and equally convenient institution pending appeal upon the proper order of the Director of the United States Prisons. See *Lowe v. Hitt*, M.D.P. 1948, 77 F.Supp 303; and *Black v. United States*, C.D. 10th Cir. 1962, 301 F.2d 418.

Petitioner has also filed herein a Motion for Appointment of Counsel to assist him with his Section 2255 petition. The Court finds that the appointment of counsel and an evidentiary hearing are not required when there is sufficient evidence before the Court to determine the merits of a petition. Since the Court finds that the Section 2255 petition should be denied, the motion for appointment of counsel is moot and should be overruled.

IT IS, THEREFORE, ORDERED that the Motion for Appointment of Counsel to assist in petitioner's section 2255 petition be and it is hereby overruled.

IT IS FURTHER ORDERED that the Section 2255 petition of Larry Edward Glone be and it is hereby denied, set aside, and dismissed the judgment, sentence and commitment in Criminal Cause of Action No. 13685 be and it is hereby denied and dismissed.

Dated this 25th day of February, 1970, at Tulsa, Oklahoma.


WALTER E. BARAN
UNITED STATES DISTRICT COURT

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

DOMINION CONSTRUCTION COMPANY,)
a corporation,)
)
Plaintiff)
)
vs.)
)
HELMERICH & PAYNE, INC.,)
a corporation,)
)
Defendant)

No. 69-C-309

FILED

FEB 25 1970

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

ORDER DISMISSING

The Court has for consideration the stipulation of dismissal entered into between the parties, and, being fully advised in the premises, finds:

That said cause of action in 69-C-309 should be dismissed.

IT IS, THEREFORE, ORDERED that the cause of action and complaint in 69-C-309 be and the same are hereby dismissed.

ENTERED this 25th day of February, 1970.

S/Allen M. ...
UNITED STATES DISTRICT JUDGE

Franden

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

WAYNE A. PUGH,)	No. 69-C-148
)	
Plaintiff,)	
vs.)	
)	
BUSINESS MEN'S ASSURANCE)	
COMPANY OF AMERICA, an)	
Insurance Corporation,)	
)	
Defendant.)	

FILED

FEB 27 1970

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

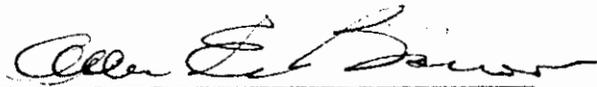
ORDER AND JUDGMENT

This matter comes on for hearing this 26th day of January, 1970, pursuant to setting upon the Motion to Dismiss filed by the defendant herein and the Motion to Intervene filed by Robert A. Franden, Trustee of the Estate of Wayne Arnold Pugh, Bankrupt. The defendant appears by its counsel of record, Richard W. Gable of Gable, Gotwals, Hays, Rubin & Fox, and the Intervenor, Robert A. Franden, Trustee of the Estate of Wayne A. Pugh, Bankrupt, appears by his counsel of record, Rick Loewenherz. The plaintiff, Wayne A. Pugh, appears not. After having considered the extensive briefs filed herein by the plaintiff and defendant, the Court finds that the Trustee is the real party in interest and that the claim asserted in this action is an asset of the bankrupt's estate. The court further finds that the settlement recited in the petition in intervention is fair, just and reasonable and the same should be confirmed and approved.

IT IS THEREFORE ORDERED that the plaintiff is not the real party in interest and that the Trustee, Robert A. Franden is. It is further ordered that Robert A. Franden be and he is hereby permitted to intervene as party plaintiff.

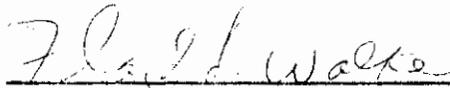
IT IS FURTHER ORDERED that the settlement between the Trustee and the defendant be and it is hereby confirmed, to-wit: The defendant shall pay to the Trustee \$500.00, plus the court costs and the Trustee shall pay to Floyd A. Walker, attorney for Wayne A. Pugh, \$250.00 as attorney fees for services rendered in prosecution of this claim.

IT IS FURTHER ORDERED that this Order and Judgment is a final order and judgment and binding upon all parties to this action.



**The Honorable Allen E. Barrow,
Judge of the United States District Court
for the Northern District of Oklahoma**

Approved as to Form:



**FLOYD A. WALKER
Attorney for Wayne A. Pugh**



**RICHARD W. GABLE
Attorney for Defendant**



**RICK LOEWENHERZ
Attorney for Robert A. Franden, Trustee**

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

MABEL KIRK,)
)
 Plaintiff,)
)
 -vs-)
)
 AMERICAN MOTORS CORPORATION,)
)
 Defendant.)

FILED

FEB 27 1970

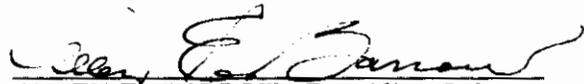
M. M. EWING, CLERK
U. S. DISTRICT COURT

No. 68-C-212

ORDER DISMISSING ACTION WITH PREJUDICE

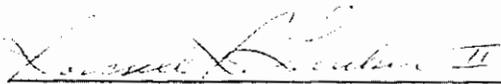
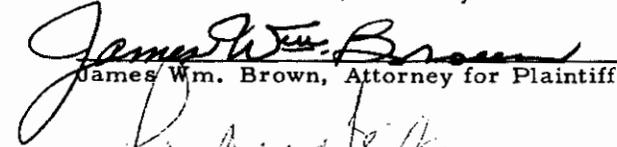
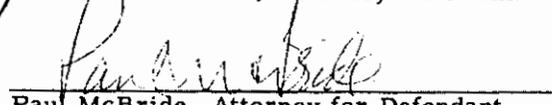
This cause came on to be heard on the Stipulation and Motion to
Dismiss of the plaintiff and defendant. After hearing and being fully advised,
it is

ORDERED that said cause of action be dismissed as the parties
have voluntarily settled these things, said dismissal to be with prejudice.



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

Approved as to Form:


Russell R. Linker II, Attorney for Plaintiff
James Wm. Brown, Attorney for Plaintiff
Paul McBride, Attorney for Defendant