

APR - 2 1970

CARL W. LOEF,

Petitioner,

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

v.

NO. 70-C-12

UNITED STATES OF AMERICA,

Respondent.

O R D E R

The Court has before it a § 2255 Motion to vacate and set aside sentence in 68-CR-3. The petitioner alleges as grounds for his Motion that his constitutional rights were abridged when he was taken to the United States Medical Center at Springfield, Missouri, instead of to the Federal Penitentiary for service of his sentence. He contends that he should be placed in said hospital only pursuant to T. 18 U.S.C. § 4241, and that neither the sentencing Court nor the Attorney General possessed the power and authority to place the prisoner in the Federal Hospital instead of a Federal Prison.

The petitioner has a previous § 2255 Motion, 68-C-236, pending from this Court on appeal before the Ninth Circuit Court of Appeals, however, the petitioner's contentions in that Motion are that the Court was incompetent at the time of the sentencing in 68-CR-3 that he was not competent to assist his counsel and that he was not competent to enter a guilty plea as required by Rule 11 of the Federal Rules of Criminal Procedure.

The Court has carefully reviewed the allegations and finds that the contentions in this present motion were not raised in the previous motion and on appeal, and that therefore, the Court has jurisdiction and should proceed hereon. Further, the Court finds that the present § 2255 motion should be granted and dismissed because the petitioner, Carl W. Loeff, has been denied his constitutional right to his treatment to date and, in fact, has been granted every possible privilege and legal consideration in 68-CR-3. The petitioner was sentenced on January 1, 1968, with a term of imprisonment of T. 18 U.S.C. § 3221(a)(1) - (3). He was taken to the Federal Hospital at Springfield, Missouri, on January 20, 1968, and petitioned requesting, among other things, a psychiatric examination pursuant to T. 18 U.S.C. § 4241. The Court refused to provide the Court with detailed information as to the reasons for placing him there, and the petitioner was admitted to the hospital

of the Attorney General to be transported to the United States Medical Center at Springfield, Missouri, for said examination. Upon receipt of the report from the Medical Center, the petitioner's sentence, in open Court with petitioner present on May 15, 1968, was reduced to 10 years' imprisonment with parole eligibility as provided by 18 U.S.C. § 4208 (c)(2). The report was that the petitioner was at all times legally sane, but recommended that the prisoner, Carl L. Wolf, be returned to said institution for supervision and treatment. The Court in its May 16 Judgment and Commitment directed the return of the prisoner to the United States Medical Center for Federal Prisoners at Springfield, Missouri; the Attorney General granted this request, and the prisoner was returned to and remains for supervision and treatment at the Medical Center at Springfield until January, 1970, at which time he was transferred to the United States Prison at Joplin, Kansas, where he is now serving the remainder of his sentence.

The Court finds that 18 U.S.C. § 4204 is not the exclusive statutory provision in which a prisoner may be held by the Medical Center at Springfield. See also 18 U.S.C. § 4202 and the Attorney General's, "The power of the Director to determine whether Federal prisoners in custody should be held in the Federal Medical Center, and of the Director with respect to the Federal Medical Center, and of the Director with respect to the Federal Medical Center, and of the Director with respect to the Federal Medical Center, and of the Director with respect to the Federal Medical Center." *Peak v. Casano*, 393 F.Supp. 393, 356 (D.Kans. 1968). Further, the Court finds that the Attorney General's compliance with 18 U.S.C. § 4202(b) entitles a prisoner to any "lawfully available, and appropriate institution or facility," including the United States Medical Center which is a part of the prison system of the United States; and, in the absence of a showing of unfitness or unsoundness, the decision of the Attorney General is conclusive. *Sutton v. Casano*, 393 F.Supp. 374 (D.Kans. 1968); *Jones v. H. Rouse*, 393 F.2d 333 (5th Cir. 1968).

IT IS, THEREFORE, ORDERED that the § 4205 Motion of Carl L. Wolf be and the same is hereby overruled and the same motion is dismissed.

Entered this 27 day of April, 1970, at Joplin, Kansas.


CARL L. WOLF

FILED

APR - 2 1970

CARL W. WOLF,

Petitioner,

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

vs.

NO. 70-C-12

UNITED STATES OF AMERICA,

Respondent.

O R D E R

The Court has before it a § 2255 Motion to vacate and set aside sentence in 68-CR-3. The petitioner alleges as grounds for his Motion that his constitutional rights were abridged when he was taken to the United States Medical Center at Springfield, Missouri, instead of to a Federal Penitentiary for service of his sentence. He contends that he could be placed in said hospital only pursuant to T. 18 U.S.C. § 4241, and that neither the sentencing Court nor the Attorney General possessed the power and authority to place the prisoner in the Federal Hospital instead of a Federal Prison.

The petitioner has a previous § 2255 Motion, 68-C-236, pending from this Court on appeal before the Tenth Circuit Court of Appeals, however, the petitioner's contentions in that § 2255 are that he was incompetent at the time of the crime charged in 68-CR-3, that he was not competent to assist his counsel and aid in his defense, and that he did not have competency to enter a knowing and voluntary plea as required by Rule 11 of the Federal Rules of Criminal Procedure.

The Court has carefully read the pleadings and finds that the contentions in this present motion were not raised in the previous motion now on appeal, and that therefore, the Court has jurisdiction and should proceed herein. Further, the Court finds that the present § 2255 motion should be overruled and dismissed because the petitioner, Carl W. Wolf, has been denied no constitutional rights in his treatment to date and, in fact, has been granted every possible privilege and legal consideration.

In 68-CR-3, the petitioner was charged on January 9, 1968, with bank robbery in violation of T. 18 U.S.C. § 3221(a) and (d). He entered a plea of guilty on January 30, 1968, and petitioner requested, and was granted, a psychiatric examination pursuant to T. 18 U.S.C. § 4208(b) for the purpose of providing the Court more detailed information for determining proper sentence, and the petitioner was committed to the custody

of the Attorney General to be transported to the United States Medical Center at Springfield, Missouri, for said examination. Upon receipt of the report from the Medical Center, the petitioner's sentence, in open Court with petitioner present on May 16, 1968, was reduced to 10 years imprisonment with parole eligibility as provided by T. 18 U.S.C. § 4208 (a)(2). The report was that the petitioner was at all times legally sane, but recommended that the prisoner, Carl W. Wolf, be returned to said institution for supervision and treatment. The Court in its May 16 Judgment and Commitment directed the return of the prisoner to the United States Medical Center for Federal Prisoners at Springfield, Missouri; the Attorney General granted this request; and the prisoner was returned to and remained for supervision and treatment at the Medical Center at Springfield until January, 1970, at which time he was transferred to the United States Prison at Leavenworth, Kansas, where he is now serving the remainder of his sentence.

The Court finds that 18 U.S.C. § 4241 is not the exclusive statutory provision on which a prisoner may be sent to the Medical Center at Springfield. Congress in 18 U.S.C. § 4082 gave the Attorney General, "The power, duty and discretion to determine whether a federal prisoner in custody pursuant to a valid sentence should be confined in the Medical Center, and of determining what sort of medical care and treatment he needs." *Peek v. Ciccone*, 288 F.Supp. 329, 338 (W.D.Mo. 1968). Further, the Court finds that the Attorney General in accordance with 18 U.S.C. § 4082(b) can send a prisoner to any "available, suitable, and appropriate institution or facility," including the United States Medical Center which is a part of the prison system of the United States; and, in the absence of a showing of arbitrariness or capriciousness, the decision of the Attorney General is conclusive. *Sutton v. Ciccone*, 292 F.Supp. 374 (W.D.Mo. 1968) *Jones v. Harris*, 399 F.2d 585 (8th Cir. 1964).

IT IS, THEREFORE, ORDERED that the § 2255 Motion of Carl W. Wolf be and the same is hereby overruled and the cause of action is dismissed.

Entered this 2nd day of April, 1970, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE

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

PEOPLES STATE BANK OF :
 ARTESIA, NEW MEXICO, :
 :
 Plaintiff, :
 :
 vs. : Civil No. 69-C-277
 :
 :
 ARVEL REAGAN, GENEVA C. :
 REAGAN, DALE A. REAGAN, :
 C. W. LAYTON and WANDA :
 LAYTON, :
 :
 Defendants. :

JUDGMENT BY DEFAULT

Pursuant to entry of default made and entered on this date, it is the further order, judgment and decree of this Court that the plaintiff have and recover from the defendants and each of them the sum of \$38,800.00 principal, together with the further sum of \$4,081.17 representing interest due and owing up to November 10, 1969, together with attorney fees in the amount of \$4,288.11 or a judgment in the total amount of \$47,169.28, together with interest provided by law accruing thereafter from November 10, 1969, until paid, and for the plaintiff's costs herein expended.

Dated this 3rd day of April, 1970.

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

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

MALT-A-PLENTY, INC.,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE
COMPANY,

Defendant.

No. 69-C-1

FILED

APR - 6 1970

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

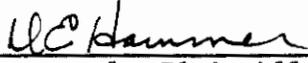
ORDER OF DISMISSAL WITH PREJUDICE

This cause came on for pre-trial conference on March 24, 1970 with plaintiff appearing by its attorney D. E. Hammer and defendant appearing by its attorney G. Ellis Gable. It is then announced that the parties have agreed that the action shall be ordered dismissed with prejudice with each party to bear its own costs herein, and it is therefore,

ORDERED, that the within action be and same is hereby dismissed with prejudice to the bringing of another action upon the same cause or causes of action sued upon herein by the plaintiff with plaintiff and defendant each to bear its own costs herein.


District Judge

APPROVED:


Attorney for Plaintiff


Attorney for Defendant

United States District Court

FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 69-C-57

Fernon D. Marshall

vs.

Ford Motor Company, a foreign corporation,
et al

FILED
JUDGMENT
Apr 7, 1970
~~APR 22 1970~~

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

This action came on for trial before the Court and a jury, Honorable Allen E Barrow
, United States District Judge, presiding, and the issues having been duly tried and
the jury having duly rendered its verdict, for the defendant, Ford Motor Co., a corp.

It is Ordered and Adjudged that the plaintiff Fernon D. Marshall, take
nothing, that the action is dismissed on the merits, and that the
defendant, Ford Motor Company, a foreign corporation, recover of the
plaintiff their costs of action.

Dated at Tulsa, Oklahoma, this 7th day
of April, 19 70

M.M. EWING

Clerk of Court

By: Gerald Hansen, deputy clerk

IED:s1b
3/31/70

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

LUCAS ELECTRICAL SERVICES, INC.,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
S.A.M.C.O., INC.,)
a corporation,)
)
Defendant.)

NO. 70-C-75

FILED

APR - 8 1970

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

J U D G M E N T

NOW, on this 6th day of April, 1970, there having been presented to the undersigned United States District Judge sitting in and for the Northern District of Oklahoma the Stipulation filed herein by counsel for Plaintiff and Defendant, and the Court having considered the same and being well and sufficiently advised in the premises finds that a judgment should be entered thereon and in conformity therewith.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THIS COURT that the Plaintiff, Lucas Electrical Services, Inc., a corporation, do have and recover a judgment of and against the Defendant, S.A.M.C.O., Inc., a corporation, for the principal sum of \$15,169.31 together with interest thereon at the rate of 10% per annum from the 10th day of January, 1970, together with the further sum of \$2,250.00 attorney fees for the use and benefit of Plaintiff's counsel herein and to be taxed as costs herein, together with all other accruing costs in this action.

FRED DAUGHERTY

United States District Judge

APPROVED:

UNGERMAN, GRABEL, UNGERMAN & LEITER

By [Signature]
Attorneys for Plaintiff

[Signature]
DAVID NOSS, Attorney for Defendant

LAW OFFICES
UNGERMAN,
GRABEL,
UNGERMAN
& LEITER

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

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

United States of America,

Plaintiff,

CIVIL NO. 69-C-228

vs.

Jay Donald Howard and Patricia L.
Howard, William Kenneth Wyble and
Colleen H. Wyble, Mirl R. Kellogg
and Shirley Kellogg, et al,
Defendants.

FILED

APR 9 1970

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

h.

ORDER CONFIRMING MARSHAL'S SALE

NOW, on this 9th day of April, 1970, there comes on
for consideration the motion to Confirm Sale made by the United States
Marshal for the Northern District of Oklahoma on April 8, 1970,
under an Order of Sale dated Jan. 23, 1970, of the following-described
property, to-wit:

Lot Eight (8), in Block Six (6), Northridge,
an Addition in Tulsa County, State of Oklahoma,
according to the recorded plat thereof,

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

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

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

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

APPROVED:

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

Colleen E. Brown
UNITED STATES DISTRICT JUDGE

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

United States of America,

Plaintiff,

CIVIL NO. 69-C-247

vs.

James M. Hale and Pearl J.
Hale, Morris Pope, Jr. and Anna
Bell Pope, et al,

Defendants.

FILED

APR 9 1970

ORDER CONFIRMING MARSHAL'S SALE

NOW, on this 9th day of April, 1970, there comes on
for consideration the Motion to Confirm Sale made by the United States
Marshal for the Northern District of Oklahoma on April 8, 1970,
under an Order of Sale dated Jan. 23, 1970, of the following-described

property, to-wit: Lot Seventeen (17), Block Fourteen (14), Valley
View Acres Addition to the City of Tulsa, County
of Tulsa, State of Oklahoma, according to the
recorded plat thereof,

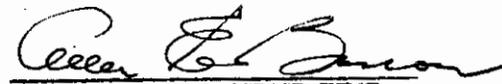
and the Court having examined the proceedings of the United States Marshal
under the said Order of Sale, there being no exceptions thereto and no one
appearing in opposition thereto, finds that due and legal notice of the
sale was given once a week for four (4) consecutive weeks prior to the
date of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

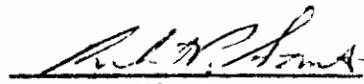
The Court finds that the sale was in all respects in conformity
with the law and judgment of this Court and was legal in all respects.

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

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

APPROVED:


UNITED STATES DISTRICT JUDGE


ROBERT P. Santee
Assistant U. S. Attorney

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

RUBY M. BOWMAN, Administratrix
of the Estate of William Edward Bowman,
deceased,

Plaintiff,

-vs-

VERNON LEE HELBERT,
CHEMICAL LEAMAN TANK LINES, INC.,
A Foreign Corporation, and the
AETNA CASUALTY AND SURETY COMPANY,
A Corporation,

Defendants.

No. C-69-260

FILED

APR 9 1970

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

JOURNAL ENTRY OF JUDGMENT

On the 3rd day of March, 1970, pursuant to regular assignment, the above entitled cause comes on for trial by jury, the parties appearing in person and by their respective attorneys of record and upon the jury being duly impaneled, and after testimony of witnesses duly sworn being received in open Court, the Court finds that the matter was compromised in open Court by parties and their respective counsel and that pursuant to said compromise plaintiff should be awarded the sum of \$5,000.00 and that she should have judgment for said sum and the cost of this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff have and recover judgment against the defendants herein for the sum of \$5,000.00 and the cost of this action.

Luther Robinson

Judge of Federal District Court

APPROVED AS TO FORM:

J. R. Bruchman

Attorneys for Plaintiff

Cory Dean Morrow of Wallace and Owens

Attorneys for Defendants

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

BETTY JO LUCKEY,

Petitioner,

vs.

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

Respondent.

NO. 69-C-293

FILED

APR - 9 1970

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

ORDER

The Court has before it a Petition for Rehearing and Motion for New Trial filed by the Petitioner, Betty Jo Luckey, in 69-C-293, a § 2254 habeas corpus proceeding. In support of her motion, petitioner alleges that she wishes her case re-opened to "put on additional newly discovered evidence," and she requests the Court to entertain her application for rehearing, retain jurisdiction in the cause, and pass said cause for six months to allow petitioner to seek other and further relief.

The Court, after an evidentiary hearing held in open Court March 26, 1970, decided against petitioner all questions properly raised by the petition for writ of habeas corpus and entered its order overruling the motion and dismissing the cause of action.

The Court finds that any "newly discovered evidence" would of necessity be newly discovered as to the proceedings in the state court; and, further, the Court finds that in civil proceedings the State of Oklahoma provides for the granting of a new trial in the Judge's discretion on the basis of newly discovered evidence, T. 12 O.S.A. § 651, Subd. 7. When there is an available, suitable and adequate state procedure for considering the issues, this Court should refuse to hear the matter until the State Courts have had an opportunity to rule thereon. The pleading is premature in the Federal Court, and the Petition for Rehearing and Motion for New Trial should be overruled without prejudice to the right of petitioner to raise the matter, if necessary and legal grounds exist therefor, after she has exhausted her remedies in the State Courts.

ET 13, THEREFORE, ORDERED that the petition for rehearing and motion for new trial be and the same are hereby overruled.

Entered this 9th day of April, 1970, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE

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

GRAND RIVER DAM AUTHORITY,)
a public corporation,)

Plaintiff,)

vs.)

Civil No. 70-C-1)

A strip of land 100 feet in width,)
in Ottawa County, Oklahoma, the)
United States of America, Trustee)
for the Quapaw Tribe of Oklahoma,)
et al.,)

Defendants.)

FILED

APR - 9 1970

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

DISMISSAL AS TO
TRACT NO. 1 (328-6.2 Revised).

Petitioner, Grand River Dam Authority, a public corporation,
moves the dismissal of this action as it pertains to Tract No. 1
(328-6.2 Rev.), set out on page 6 of the original petition for con-
demnation.

This dismissal does not affect Tract Nos. 2 and 3, set out
on pages 7 and 8 of the original petition.

DATED this 9th day of April, 1970.

GRAND RIVER DAM AUTHORITY

By s/ James R. Tourtellotte

James R. Tourtellotte, General Counsel
P. O. Drawer C, Vinita, Oklahoma 74301

Certificate of Service

James R. Tourtellotte, General Counsel for the aforesaid petitioner,
hereby certifies that he did on the 9th day of April, 1970, mail a copy of the
foregoing Dismissal to Nathan G. Graham, United States Attorney, Tulsa,
Oklahoma, to the Attorney General of the United States, Department of the
Justice, Washington, D. C., and to Jean Ann Quapaw Blue, 1000 Lincoln Blvd.
Miami, Oklahoma.

s/ James R. Tourtellotte

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY H. HINMAN and BERNICE L. HINMAN,
et al.,

Defendants.)

CIVIL ACTION NO. 69-C-10

FILED

APR 10 1970

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

ORDER

NOW on this 10th day of April, 1970, there came on for consideration the Motion to Confirm Sale, which sale was made by the United States Marshal for the Northern District of Oklahoma on the 20th day of February, 1970, under an Order of Sale dated November 20, 1969, in the above-captioned matter, the plaintiff being represented by its attorney, Nathan G. Graham, United States Attorney for the Northern District of Oklahoma, and the defendant, Bernice L. Hinman, being represented by her attorneys, Leroy Mushrush and Robert S. Rizley. The defendant, Bernice L. Hinman, moved the Court to order the redemption of the real property which was the subject of the aforesaid sale upon the payment by her to the Court Clerk of the principal, interest, and costs due and owing under the judgment previously entered in this case.

The Court finds that redemption of the real property should be granted and further that the defendant, Bernice L. Hinman, be assigned the judgment previously entered in this case on November 17, 1969, upon the payment into the registry of this Court of the principal, interest, and costs due and owing the plaintiff hereunder and, further, that upon the payment of subject principal, interest, and costs, the plaintiff, United States of America, issue a Release and Satisfaction of Judgment to the defendant, Bernice L. Hinman. The Court further finds that the purchaser in the sale held on the 20th day of February, 1970, Ronald Watkins, should have returned to him by the United States Marshal for the Northern District of Oklahoma his deposit in the amount of \$51,000.00.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion to Confirm the Marshal's Sale held herein on February 20, 1970, is denied; that the defendant, Bernice L. Hinman, shall have assigned to her the judgment taken in this matter on November 17, 1969, upon payment by her to the Court Clerk of all principal, interest, and costs owing to this plaintiff and all Court costs and Marshal's fee incident thereto, except that the Marshal's commission shall not be included in such Marshal's fee, and further that, upon payment of said sums, the United States of America shall issue its Release and Satisfaction of Judgment to defendant, Bernice L. Hinman.

It is further ORDERED that the United States Marshal for the Northern District of Oklahoma return to the sale purchaser, Ronald Watkins, his deposit in the amount of \$51,000.00 upon the entry of this Order.

LUTHER: BOHANON

UNITED STATES DISTRICT JUDGE

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

L. W. BIDDICK, SR., JAMES R. BIDDICK,
L. W. BIDDICK, JR., and GEORGE E. REVAR,)
Members of and doing business as)
BIDDICK & REVAR, A Co-Partnership,)

Plaintiffs,)

-vs-

No. 69-C-236

ALLEN E. HUMPHREY, HUMPHREY OIL)
CORPORATION, A Corporation, and BIG)
CHIEF DRILLING COMPANY, A Corporation,)

Defendants.)

FILED

APR 10 1970

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

JOURNAL ENTRY OF JUDGMENT

Now on this 10 day of April 1970, the above entitled matter comes on for entry of Judgment pursuant to Stipulation For Entry of Judgment filed herein. And the Court having pretried this matter on January 28, 1970 and being fully familiar with the issues, and further having considered the file in general and said Stipulation For Entry of Judgment in particular, finds that the Court has jurisdiction of the subject matter, and of the parties to this action, and further finds that Judgment should be entered in accordance with the provisions of said Stipulation For Entry of Judgment.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the entire overriding royalty interest here in suit, currently held by the Defendant, Big Chief Drilling Company as stakeholder, is a $\frac{1}{32}$ of $\frac{7}{8}$ overriding royalty in the oil, gas, casinghead gas, condensate, and other hydrocarbons produced, saved and sold pursuant to those certain Oil and Gas Leases set out and described in Exhibit "A", attached hereto, and by this reference made a part

hereof, insofar as said Oil and Gas Leases pertain to the lands specifically described in Exhibit "A", and all rights pertaining thereto from the surface to the base of the Cunningham Sand.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs, L. W. Biddick, Sr., James R. Biddick, L. W. Biddick, Jr., and George E. Revard, Members of and doing business as Biddick & Revard, A Co-Partnership, are the owners of and are entitled to a conveyance of 19/20 of said 1/32 of 7/8 overriding royalty interest, and the Defendant, Humphrey Oil Corporation, is the owner of and entitled to a conveyance of 1/20 of said 1/32 of 7/8 overriding royalty interest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Big Chief Drilling Company, convey by good and sufficient instruments of assignment 19/20 of said 1/32 of 7/8 overriding royalty interest to the Plaintiffs, L. W. Biddick, Sr., James R. Biddick, L. W. Biddick, Jr., and George E. Revard, Members of and doing business as Biddick & Revard, A Co-Partnership, and 1/20 of said 1/32 of 7/8 overriding royalty interest to the Defendant, Humphrey Oil Corporation.

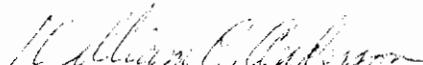
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon making such aforementioned conveyances, the Defendant, Big Chief Drilling Company, shall be fully released and discharged from any further liability or obligation to all parties to this action by reason of the subject matter hereof.

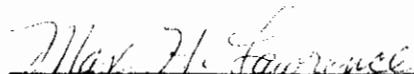
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs are not entitled to an accounting from the Defendants, Humphrey Oil Corporation and Allen E. Humphrey, and further that said Defendants are not obligated or indebted to the Plaintiffs for any sums of money.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants, Allen E. Humphrey and Humphrey Oil Corporation, shall pay the costs of this action, and shall further pay to the Defendant, Big Chief Drilling Company, reasonably attorneys' fees as prayed for in its Answer in the amount of \$ 250.00.


UNITED STATES DISTRICT JUDGE

APPROVED:


WILLIAM C. ANDERSON of
DOERNER, STUART, SAUNDERS, DANIEL & LANGENKAMP
Attorneys for Plaintiffs


MAX LAWRENCE of
WALKER & WATSON,
Attorneys for Defendants,
Allen E. Humphrey and
Humphrey Oil Corporation


GEORGE MOTHERSHEAD,
Attorney for Defendant,
Big Chief Drilling Company

EXHIBIT "A"

(Page One)

DATE: SEPTEMBER 9, 1966
LESSOR: JESS L. RAYBURN, ET UX
LESSEE: GULF OIL CORPORATION
RECORDED: BOOK 821 PAGE 73
DESCRIPTION: ALL OF LOTS 7 AND 8 IN SEC. 12-7N-8W
GRADY COUNTY, OKLAHOMA

DATE: SEPTEMBER 9, 1966
LESSOR: JERRY D. WILLIAMS, ET UX
LESSEE: GULF OIL CORPORATION
RECORDED: BOOK 822 PAGE 553
DESCRIPTION: ALL OF LOTS 3, 5 AND 6 IN SEC. 11 AND ALL OF LOTS 7 AND 8
IN SEC. 12 ALL IN 7N-8W GRADY COUNTY, OKLAHOMA

DATE: APRIL 5, 1968
LESSOR: AMBROSE SCHLECHT, ET UX
LESSEE: GULF OIL CORPORATION
RECORDED: BOOK 844 PAGE 862
DESCRIPTION: LOTS 3, 5 AND 6 IN SEC. 11 AND LOTS 7 AND 8 IN SEC. 12-7N-8W
TOGETHER WITH ALL ACCRETIONS THAT HAVE OCCURRED OR MAY
HEREAFTER OCCUR, AND WITH ALL RIPARIAN RIGHTS.
GRADY COUNTY, OKLAHOMA

DATE: FEBRUARY 9, 1961
LESSOR: MARTIN O. GRAY
LESSEE: HARRY F. GOSS
RECORDED: BOOK 708 PAGE 120
DESCRIPTION: SE 10 AC. OF LOT 3 AND SOUTH 3.29 AC. OF WEST 6.58 AC. OF
LOT 3 AND ALL OF LOT 4 AND S/2 N/2 SE/4 AND S/2 SE/4 OF
SEC. 12-7N-8W, GRADY COUNTY, OKLAHOMA

DATE: JULY 16, 1964
LESSOR: CALVIN D. WATKINS
LESSEE: HARRY F. GOSS
RECORDED: BOOK 778 PAGE 382
DESCRIPTION: SE 10 AC. OF LOT 4 AND S/2 S/2 SE/4 OF SEC. 12-7N-8W
GRADY COUNTY, OKLAHOMA

DATE: JULY 16, 1964
LESSOR: ROSALEE WATKINS TROOP
LESSEE: HARRY F. GOSS
RECORDED: BOOK 779 PAGE 151
DESCRIPTION: SE 10 AC. OF LOT 4 AND S/2 S/2 SE/4 OF SEC. 12-7N-8W
GRADY COUNTY, OKLAHOMA

DATE: JULY 15, 1964
LESSOR: ALBERT E. WATKINS
LESSEE: HARRY F. GOSS
RECORDED: BOOK 778 PAGE 514
DESCRIPTION: SE 10 AC. OF LOT 4 AND S/2 S/2 SE/4 OF SEC. 12-7N-8W
GRADY COUNTY, OKLAHOMA

DATE: MAY 27, 1964
LESSOR: LESLIE HESTAND, ET UX
LESSEE: HARRY F. GOSS
RECORDED: BOOK 774 PAGE 64
DESCRIPTION: S/2 S/2 NE/4 AND SE 10 AC. OF LOT 2 AND SOUTH 3.27 AC.
OF THE WEST 6.54 AC. OF LOT 2 AND NE 10 AC. OF LOT 3 AND
NORTH 3.29 AC. OF WEST 6.58 AC. OF LOT 3 AND N/2 N/2
SE/4 OF SEC. 12-7N-8W
GRADY COUNTY, OKLAHOMA

DATE: OCTOBER 1, 1968
LESSOR: ROSE PATTEN HANSON, ET AL
LESSEE: GULF OIL CORPORATION
RECORDED: BOOK 852 PAGE 397
DESCRIPTION: SOUTH 80 AC. OF LOTS 5 AND 6 AND W/2 NW/4 SEC. 24-7N-8W
GRADY COUNTY, OKLAHOMA

EXHIBIT "A"
(PAGE TWO)

DATE: APRIL 5, 1962
LESSOR: JOSEPH D. BURTSCHI, ET AL
LESSEE: HARRY F. GOSS
RECORDED: BOOK 733 PAGE 546
DESCRIPTION: THE EAST 20 AC. OF LOT 3 AND EAST 20 AC. OF LOT 4 AND
W/2 SE/4 AND SE/4 SE/4 AND S/2 NE/4 SE/4 OF SEC. 24-7N-8W
GRADY COUNTY, OKLAHOMA

DATE: OCTOBER 11, 1965
LESSOR: LOUISE HEATH ABDALLAH, ET AL
LESSEE: HARRY F. GOSS
RECORDED: BOOK 805 PAGE 98
DESCRIPTION: NE/4 NW/4 SEC. 7-7N-7W
GRADY COUNTY, OKLAHOMA

DATE: FEBRUARY 13, 1961
LESSOR: ALBERT S. McVEY, ET UX
LESSEE: HARRY F. GOSS
RECORDED: BOOK 707 PAGE 219
DESCRIPTION: W/2 SE/4 AND W/2 E/2 SE/4 SEC. 19-7N-7W
GRADY COUNTY, OKLAHOMA

DATE: JUNE 10, 1968
LESSOR: BOARD OF COUNTY COMMISSIONERS, COUNTY OF GRADY
LESSEE: GULF OIL CORPORATION
RECORDED: BOOK 846 PAGE 504
DESCRIPTION: W/2 SE/4 AND W/2 E/2 SE/4 SEC. 19-7N-7W
GRADY COUNTY, OKLAHOMA

DATE: FEBRUARY 24, 1966
LESSOR: EDNA RUTH McMAHAN
LESSEE: GULF OIL CORPORATION
RECORDED: BOOK 812 PAGE 49
DESCRIPTION: ALL THAT PART OF THE NW/4 LYING AND BEING SOUTH OF THE
CRI&P RAILROAD IN SEC. 19-7N-7W
GRADY COUNTY, OKLAHOMA

DATE: MARCH 23, 1968
LESSOR: THAD D. SMITH, ET UX
LESSEE: GULF OIL CORPORATION
RECORDED: BOOK 843 PAGE 651
DESCRIPTION: S/2 SE/4 SEC. 7 AND N/2 N/2 NE/4 AND S/2 NW/4 NE/4
AND N/2 SW/4 NE/4 SEC. 18-7N-7W
GRADY COUNTY, OKLAHOMA

DATE: MARCH 25, 1968
LESSOR: A. NOBLE LADD, ET UX
LESSEE: GULF OIL CORPORATION
RECORDED: BOOK 843 PAGE 653
DESCRIPTION: S/2 SE/4 SEC. 7 AND N/2 N/2 NE/4 AND S/2 NW/4 NE/4
AND N/2 SW/4 NE/4 SEC. 18-7N-7W, GRADY COUNTY, OKLAHOMA

DATE: MARCH 25, 1968
LESSOR: N. N. ROGERS, ET UX
LESSEE: GULF OIL CORPORATION
RECORDED: BOOK 844 PAGE 153
DESCRIPTION: S/2 SE/4 SEC. 7 AND N/2 N/2 NE/4 AND S/2 NW/4 NE/4
AND N/2 SW/4 NE/4 SEC. 18-7N-7W
GRADY COUNTY, OKLAHOMA

DATE: MARCH 25, 1968
LESSOR: H. L. SLATER, JR.
LESSEE: GULF OIL CORPORATION
RECORDED: BOOK 844 PAGE 155
DESCRIPTION: S/2 SE/4 SEC. 7 AND N/2 N/2 NE/4 AND S/2 NW/4 NE/4
AND N/2 SW/4 NE/4 SECTION 18-7N-7W
GRADY COUNTY, OKLAHOMA

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 69-C-257

John Henry Long

vs.

Amax Aluminum Mill Products, Inc.
a corporation

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Allen E. Barrow

, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, for the plaintiff.

It is Ordered and Adjudged that the plaintiff, John Henry Long, recover of the defendant, Amax Aluminum Mill Products, Inc., a corporation, the sum of Seven Thousand (\$7,000) Dollars, with interest thereon at the rate of 10% per annum from the date hereof until paid, and his cost of action.

Dated at Tulsa, Oklahoma, this 10th day of March, 19 70.

M.M. Ewing

Clerk of Court

By [Signature]
Clerk

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

United States of America,

Plaintiff,

vs.

Civil No. 69-C-264

LaVern A. Bergstrasser and
Geraldine S. Bergstrasser,
John H. West, Jr., a/k/a John
West and Ruby I. West, a/k/a
Ruby West, First Federal Savings
& Loan Association of Coffeyville,
a corporation, Jack L. Gilbert,
Dr. Palmer Mason, Joseph Maynard
Grubbs and Rosie I. Grubbs,

Defendants.

FILED

APR 1 6 1970

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 9 day of April,
1970, the defendants, LaVern A. Bergstrasser and Geraldine S. Bergstrasser,
John H. West, Jr., a/k/a John West and Ruby I. West, a/k/a Ruby West, First
Federal Savings & Loan Association of Coffeyville, a corporation, Jack L.
Gilbert, Dr. Palmer Mason, Joseph Maynard Grubbs and Rosie I. Grubbs, appearing
not; and

The Court being fully advised and having examined the file herein
finds that due and legal personal service of summons has been made on the
defendants, John H. West, Jr. and Ruby I. West, First Federal Savings & Loan
Association of Coffeyville, Jack L. Gilbert, Dr. Palmer Mason, Joseph Maynard
Grubbs and Rosie I. Grubbs, requiring each of them to answer the Complaint filed
herein not more than twenty (20) days after service of summons; and it further
appearing that legal service by publication was made upon the defendants,
LaVerne A. Bergstrasser and Geraldine S. Bergstrasser, requiring each of them
to answer the Complaint filed herein no later than April 1, 1970, and it appear-
ing that the defendants, LaVern A. Bergstrasser and Geraldine S. Bergstrasser,
John H. West, Jr., a/k/a John West and Ruby I. West, a/k/a Ruby West, First
Federal Savings & Loan Association of Coffeyville, a corporation, Jack L.
Gilbert, Dr. Palmer Mason, Joseph Maynard Grubbs and Rosie I. Grubbs, have
failed to file an answer herein and default has been entered by the Clerk of
this Court; and

The Court further finds that the material allegations of the plaintiff's
Complaint are true and correct; that the defendants, LaVern A. Bergstrasser

and Geraldine S. Bergstrasser, did, on August 1, 1963, execute and deliver to J. S. Gleason, Jr., as Administrator of Veterans Affairs, their mortgage and mortgage note for the sum of \$9,300.00, with interest thereon at the rate of $5\frac{1}{2}\%$ per annum, and further providing for the payment of monthly installments of principal and interest; and

It further appears that the defendant, John H. West, Jr., a/k/a John West and Ruby I. West, a/k/a Ruby West, have or claim some right, title, or interest in and to the premises herein being foreclosed by reason of a General Warranty Deed, dated June 4, 1965, and filed of record in the Office of the County Clerk, Tulsa County, Oklahoma, on June 8, 1965, in Book 3584, Page 445, but in this regard, plaintiff states that whatever right, title, or interest the defendants, John H. West, Jr., a/k/a John West and Ruby I. West, a/k/a Ruby West, have in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendant, First Federal Savings & Loan Association of Coffeyville, a corporation, has or claims some right, title, or interest in and to the premises herein being foreclosed by reason of a Judgment entered April 25, 1966, in the Common Pleas Court Within and For Tulsa County, Oklahoma, being No. 71363, in the amount of \$1,415.82, plus interest, attorneys fees and costs, but in this regard, plaintiff states that whatever right, title, or interest the defendants, First Federal Savings & Loan Association of Coffeyville, a corporation, has in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendant, Jack L. Gilbert, has or claims some right, title, or interest in and to the premises herein being foreclosed by reason of a Judgment entered January 6, 1967, in the District Court Within and For Tulsa County, Oklahoma, in the amount of \$1,991.24, being No. 113203, plus interest, attorneys fee and costs, but in this regard, plaintiff states that whatever right, title, or interest the defendant, Jack L. Gilbert, has in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendant, Dr. Palmer Mason, has or claims some right, title, or interest in and to the premises herein being foreclosed by reason of a Judgment entered August 13, 1969, in the District Court Within

and For Tulsa County, Oklahoma, being No. SC-69-1547, in the amount of \$149.50, plus costs, but in this regard, plaintiff states that whatever right, title, or interest the defendant, Dr. Palmer Mason, has in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendants, Joseph Maynard Grubbs and Rosie I. Grubbs, have or claim some right, title, or interest in and to the premises herein being foreclosed as "equitable owners without a recorded deed", but in this regard, plaintiff states that whatever right, title, or interest the defendants, Joseph Maynard Grubbs and Rosie I. Grubbs, have in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendants, LaVern A. Bergstrasser and Geraldine S. Bergstrasser, John H. West, Jr., a/k/a John West and Ruby I. West, a/k/a Ruby West, and Joseph Maynard Grubbs and Rosie I. Grubbs, made default under the terms of the aforesaid mortgage note and mortgage by reason of their failure to make monthly installments due thereon on January 1, 1969, which default has continued and that by reason thereof the defendants are now indebted to the Plaintiff in the sum of \$8,542.43, as unpaid principal, with interest thereon at the rate of 5 $\frac{1}{2}$ % per annum from January 1, 1969, until paid.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Plaintiff, United States of America, have and recover judgment against the defendants, LaVern A. Bergstrasser and Geraldine S. Bergstrasser, John H. West, Jr., a/k/a John West and Ruby I. West, a/k/a Ruby West, and Joseph Maynard Grubbs and Rosie I. Grubbs, for the sum of \$8,542.43, with interest thereon at the rate of 5 $\frac{1}{2}$ % per annum from January 1, 1969, until paid, plus the cost of this action accrued and accruing, and the sum of \$37.50 expended for the preservation of property, and the sum of \$22.00 expended for abstracting fees.

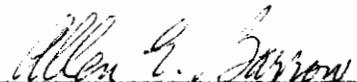
IT IS FURTHER ORDERED, ADJUDGED and DECREED that upon failure of the defendants, LaVern A. Bergstrasser and Geraldine S. Bergstrasser, John H. West, Jr., a/k/a John West and Ruby I. West, a/k/a Ruby West, and Joseph Maynard Grubbs and Rosie I. Grubbs, to satisfy the judgment of the Plaintiff herein, an Order of Sale shall issue to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisalment, the following described real property:

Lot Eighteen (18), Block Six (6), Suburban
Acres Second Addition to the City of Tulsa,
Tulsa County, Oklahoma, according to the re-
corded plat thereof,

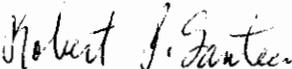
and apply the proceeds thereof in satisfaction of Plaintiff's judgment.

The residue, if any, to be deposited with the Clerk of the Court to await
further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that from and after
the sale of said property under and by virtue of this judgment, the defendants,
LaVern A. Bergstrasser and Geraldine S. Bergstrasser, John H. West, Jr., a/k/a
John West and Ruby I. West, a/k/a Ruby West, and Joseph Maynard Grubbs and
Rosie I. Grubbs, and each of them, and all persons claiming by, through or
under said defendants, since the filing of the Complaint herein, be and they
are forever barred and foreclosed from every right, title or interest in or to
the heretofore described real property.


ALLEN G. MORROW
UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. BANTEE
Assistant U. S. Attorney

insurance upon the life of the said Lorenzy Paul Chambers, Jr., is hereby ordered to be surrendered and is hereby cancelled. Said counterclaimant is further discharged from any and all liability to the plaintiff or to the defendant Lorenzy Chambers, Sr., by reason of the matters and things set out in the pleadings in this cause.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the court that the plaintiff and the defendant Lorenzy Chambers, Sr., are ordered to make proof herein of their rights to the proceeds of such policy, and such parties, their heirs and assigns, are hereby permanently restrained and enjoined from instituting or prosecuting any action against the counterclaimant, The Prudential Insurance Company of America, herein upon said Group Policy.

Dated this 9th day of April, 1970.

Letitia Bohannon
United States District Judge

Approved:

Robert Apple
Attorney for The Prudential Insurance
Company of America

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

FILED
integrated
APR 13 1970

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

LINDA SUE WOODALL,)
Plaintiff,)
vs.)
MOTORS INSURANCE CORPORATION,)
Defendant.)

NO. 69-C-289

ORDER OF DISMISSAL WITHOUT PREJUDICE

This matter came on this ~~13th~~ ^{17th} day of ~~March~~ ^{April}, 1970, before me, the undersigned Judge of the United States District Court in and for the Northern District of Oklahoma; and the Court, being fully apprised in the issues, having heard statements of counsel, finds that the said cause now pending under the above styled and numbered cause should be dismissed without prejudice to further suits by the plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the said action is hereby dismissed without prejudice to further suits by plaintiff; and that the bond herein posted be, and the same is, hereby exonerated.

Allen J. Brown
JUDGE

LAW OFFICES
RICHARD K. MCGEE
340 COURT ARCADE
BUILDING
TULSA, OKLAHOMA

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

JACK LEBOVITZ,)
)
 Plaintiff,)
)
 vs.)
)
 BORG COMPRESSED STEEL CORPORATION,)
 and/or BORG INDUSTRIAL GROUP, INC.,)
)
 Defendants.)

NO. 68-C-66 ✓

FILED

APR 14 1970

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

ORDER OF DISMISSAL

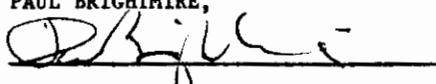
ON this 14 day of April, 1970, upon written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the cause of action of the plaintiff filed herein against the defendants be and the same hereby is dismissed with prejudice to any future action.

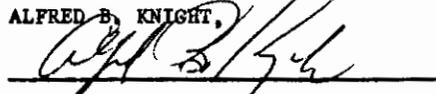


JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

PAUL BRIGHTMIRE,


Attorney for the Plaintiff,

ALFRED B. KNIGHT,


Attorney for the Defendants.

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

United States of America,

Plaintiff,

vs.

Civil No. 69-C-264

LaVern A. Bergstrasser and
Geraldine S. Bergstrasser,
John H. West, Jr., a/k/a John
West and Ruby I. West, a/k/a
Ruby West, First Federal Savings
& Loan Association of Coffeyville,
a corporation, Jack L. Gilbert,
Dr. Palmer Mason, Joseph Maynard
Grubbs and Rosie I. Grubbs,

Defendants.

FILED

APR 14 1970

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

AMENDMENT TO JUDGMENT

NOW on this 14 day of April, 1970, there came on for consideration
the above-captioned matter; and

The Court being fully advised in the premises finds that the Judgment
previously entered herein on April 10, 1970, should be amended by adding the
following as a continuation of the next to last paragraph of Page 3 of said
Judgment:

"Plus the sum of \$290.37 expended by the Plaintiff
for 1969 Ad Valorem Taxes, Insurance Premiums, and
advances to the escrow funds established for said
taxes and insurance".

Allen T. Brown
UNITED STATES DISTRICT JUDGE

APPROVED:

Robert P. Santee

ROBERT P. SANTEE

Assistant U. S. Attorney

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

United States of America,

Plaintiff,

vs.

Millard B. Barnes, a/k/a Millard
Busl Barnes, if living; or if dead,
the Unknown Heirs, etc.; Frances H.
Barnes and Lucy Albertson Barnes,

Defendants.

Civil No. 69-C-265

FILED

APR 14 1970

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

ORDER CONFIRMING MARSHAL'S SALE

NOW on this 3rd day of April 1970, ~~1966~~, there coming on for hearing Motion of the Plaintiff, United States of America, to confirm the sale of real property made by the United States Marshal for the Northern District of Oklahoma, on April 8, 1970, under an Order of Sale dated January 29, 1970, and issued in this cause out of the Office of the Court Clerk for the United States District Court for the Northern District of Oklahoma, of the following described property, to-wit:

**Lot Three (3), Block Two (2), Lakeview Heights
Second Addition to the City of Tulsa, Tulsa
County, State of Oklahoma, according to the
recorded Plat thereof,**

and the Court having examined the proceedings of the United States Marshal under the aforesaid Order of Sale and no one appearing in opposition thereto and no exceptions having been filed, finds that due and legal notice of the sale was given by publication once a week for at least four (4) weeks prior to the date of sale in the Tulsa Daily Legal News, a newspaper published and of general circulation in the County of _____, State of Oklahoma, and that on the day fixed therein the above-described property was sold to the the Administrator of Veterans Affairs, it being the highest and best bidder therefore.

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

IT IS WHEREFORE ORDERED, ADJUDGED and DECREED that the United States Marshal's Sale and all proceedings under the Order of Sale issued herein, be and the same are hereby approved and confirmed.

IT IS FURTHER ORDERED THAT ~~Deputy Clerk~~ Harry Connolly, United States Marshal for the Northern District of Oklahoma, make and execute to the purchaser, the Administrator of Veterans Affairs, a good and sufficient Deed for such premises.

L. Luther Bohannon
UNITED STATES DISTRICT JUDGE

APPROVED:

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Georgia M. Chambers,

Plaintiff,

vs.

Lorenzy Chambers, Sr.,
United States of America, and
Prudential Insurance Company
of America,

Defendant.

CIVIL ACTION NO. 67-C-289

FILED

APR 14 1970

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

O R D E R

Now on this 13th day of April, 1970, there came on for hearing the Motion of the defendant United States of America to dismiss this action as to the United States for the reason that it is not subject to suit in this matter. The Court, after a careful review of the file and the Supporting Brief of the United States and after hearing the arguments of counsel, finds that the Motion of the United States to dismiss is well taken.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that this action be dismissed as to the United States for the reasons aforesaid.

H. Luther Bohannon
UNITED STATES DISTRICT JUDGE

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

THOMAS H. FLEEGER,

Plaintiff,

vs.

GENERAL INSURANCE COMPANY
OF AMERICA, a corporation,

Defendant.

)
)
) 68-C-72
)
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EILED

APR 15 1970

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

ORDER SUSTAINING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

The Court has for consideration the defendant's motion for summary judgment and the briefs of the parties, having carefully perused the entire file, being fully advised in the premises, finds:

In the state court action wherein the alleged unlawful garnishment was issued, being cause number 110040, styled "General Insurance Company of America vs. Thomas H. Fleeger" the issues between the parties in the instant action as to the lawfulness or unlawfulness of the garnishment with reference to the spendthrift trust were fully litigated and adjudicated by that Court on September 22, 1967. On that date the District Court entered its order overruling the Motion to Dismiss Garnishment. Thereafter, Thomas H. Fleeger filed his motion for new trial and later withdrew said motion on January 5, 1968. On March 14, 1968, plaintiff instituted the present litigation while the garnishment proceedings were still pending in the State Court. On April 4, 1968, General Insurance Company of America caused an order dismissing the garnishment proceeding in the state court to be filed.

Thomas H. Fleeger did not appeal any of the proceedings in the state court garnishment.

The Court finds that plaintiff has now raised the same issues in the instant litigation that were adjudicated in the state court. This action is in effect a collateral attack on the state court litigation, as in this case his litigation must stand or fall on the question of the garnishment.

The Court, therefore, finds that this litigation is ripe for summary judgment, the action being barred by estoppel by judgment.

IT IS, THEREFORE, ORDERED that the defendant's motion for summary judgment be and the same is hereby sustained and plaintiff's cause of action and complaint are hereby dismissed.

ENTERED this 15 day of April, 1970.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GEORGE P. SHULTZ, Secretary of Labor)
United States Department of Labor)
)
Plaintiff)
)
v.)
)
ADLER RESTAURANT EQUIPMENT COMPANY,)
a Corporation, and AARON ADLER,)
President, Individually)
)
Defendants)

Civil Action File

No. 69-C-133

FILED

APR 15 1970

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

J U D G M E N T

Defendants have now appeared by counsel, and without admitting any of the material allegations of plaintiff's complaint, defendants have agreed to the entry of this judgment without contest. The execution of this agreement does not constitute an admission of any violation of the Fair Labor Standards Act of 1938, as amended, and is without prejudice to the rights of any parties or issues in Case No. 82598, in the District Court of Tulsa County, Oklahoma, Norma Swyden, Plaintiff, v. Adler Restaurant Equipment Company, Defendant. It is, therefore, on motion of the plaintiff, and for cause shown;

ORDERED, ADJUDGED, and DECREED that the defendants, their officers, agents, servants, employees, and all persons acting or claiming to act in their behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of sections 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of

1938 (Act of June 25, 1938, Title 29, U.S.C. 201 et seq.), hereinafter referred to as the Act, in any of the following manners:

I

Defendants shall not, contrary to section 6 of the Act, pay any of their employees who are engaged in commerce or in the production of goods for commerce or who are employed by an enterprise engaged in commerce or in the production of goods for commerce, as defined by the Act, from the date of this judgment, wages at rates less than \$1.60 per hour or such other rates as may be hereafter provided by law. The provisions of this paragraph shall not prevent defendants from paying to any of their employees wages authorized as to such employees by a special certificate issued and in effect under section 14 of the Act.

II

Defendants shall not, contrary to section 7 of the Act, employ any of their employees engaged in commerce or in the production of goods for commerce, or employed by an enterprise engaged in commerce or in the production of goods for commerce, as defined by the Act, for workweeks longer than 40 hours unless such employees receive compensation for their employment in excess of 40 hours at rates not less than one and one-half times the regular rates at which such employees are employed.

III

Defendants shall not fail to make, keep, and preserve records of their employees, and the wages,

hours, and other conditions and practices of employment maintained by them, as prescribed by the regulations of the Administrator issued, and from time to time amended, pursuant to sections 11(c) and 15(a)(5) of the Act and found in Title 29, Chapter V, Code of Federal Regulations Part 516.

IV

Defendants agree to pay to plaintiff, by certified or cashier's check, payable to "U. S. Department of Labor - Wage-Hour", \$750 for the use and benefit of certain of defendants' employees.

V

Defendants shall not request, solicit, suggest, or coerce, directly or indirectly, any employee to return or to offer to return to the defendants or to someone else for the defendants, any money in the form of cash, check, or any other form, for wages previously due or to become due in the future to said employee under the provisions of this judgment or the Act; nor shall defendants accept, or receive from any employee, either directly or indirectly, any money in the form of cash, check, or any other form, for wages heretofore or hereafter paid to said employee under the provisions of this judgment or the Act; nor shall defendants discharge or in any other manner discriminate, nor solicit or encourage anyone else to discriminate, against any such employee because such employee has received or retained money due to him

from the defendants under the provisions of this judgment
or the Act.

VI

It is further ORDERED that costs of the above
styled and numbered action shall be taxed to defendants.

Dated this 15th day of April 1970.

William E. Barron
UNITED STATES DISTRICT JUDGE

Entry of this judgment is hereby consented to:

ADLER RESTAURANT EQUIPMENT COMPANY, INC.

By s/ Aaron Adler President
Aaron Adler, President

s/ Aaron Adler
Aaron Adler

APPROVED:

Charles Whitebook
Charles Whitebook
WHITEBOOK AND RASKIN
Attorneys for Defendants

James E. White
James E. White
Attorney for Plaintiff

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

HERBERT LEE HUTCHISON,)

Plaintiff,)

vs.)

NORTH AMERICAN ROCKWELL CORPORATION,)
TULSA DIVISION, formerly NORTH)
AMERICAN AVIATION, INC., and THE)
INTERNATIONAL UNION, UNITED AUTOMOBILE,)
AEROSPACE AND AGRICULTURAL)
IMPLEMENT WORKERS OF AMERICA, UAW,)

Defendants.)

69-C-209 ✓

FILED

APR 15 1970 *jm*

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

ORDER SUSTAINING THE MOTION FOR SUMMARY JUDGMENT
OF THE INTERNATIONAL UNION, UNITED AUTO-
MOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA, UAW

The Court has for consideration the motion for summary judgment filed by the defendant, The International Union, United Automobile, Aerospace and Agricultural implement Workers of America, UAW, the briefs in support and opposition thereto, and, having carefully perused the entire file, finds:

That the plaintiff brings this action, in part, against the defendant union for an alleged breach of duty in the processing of a grievance protesting his discharge by defendant company to arbitration.

The Court finds that under all the pleadings, exhibits, depositions and other instruments contained in said file that the case is ripe for summary judgment with reference to the claim against the defendant union.

The Court finds that the plaintiff initially was employed by defendant company in June of 1966 and was discharged on December 13, 1967, based on his alleged physical condition.

The Court further finds that the reason the grievance was not processed to arbitration was because the grievance was settled by an agreement to reinstate the plaintiff with the understanding that his seniority would be restored if he satisfied his probationary period and furnished satisfactory medical proof of his physical condition. The Court finds as a result of said agreement plaintiff was reinstated with the defendant company.

The Court further finds that although plaintiff was aware of the constitution of the union, he did not avail himself of the administrative remedies spelled out in the constitution for the purpose of challenging the manner in which the defendant union handled his grievance.

The Court finds that the conduct of the union in the negotiation of the grievance was not arbitrary, discriminatory, or in bad faith.

The Court further finds that a union member must exhaust all extra-judicial procedures before there exists recourse to the courts, absent a showing of futility, sham or unreasonableness.

The Court, therefore, finds, as a matter of law that the motion for summary judgment of the defendant union should be sustained and the cause of action and complaint against said union dismissed.

IT IS, THEREFORE, ORDERED that the motion for summary judgment of The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, be and the same is hereby sustained and the cause of action and complaint be dismissed as to the said defendant union.

ENTERED this 15 day of April, 1970.


UNITED STATES DISTRICT JUDGE

IEU:sib
4/17/70

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

McCRAW-EDISON COMPANY, ALBION DIVISION,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
WEATHERWISE, INC., a corporation, and)
WEATHERWISE COMPANY, a Co-partnership)
composed of JACK ROTHROCK and SAMPSON)
S. LEDBETTER,)
)
Defendants.)

Civil Action

No. 70-C-80

FILED

APR 17 1970

JUDGMENT BY DEFAULT
UPON APPLICATION TO CLERK

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

IN this action, the Defendants, Weatherwise, Inc., a corporation, and Weatherwise Company, a Co-partnership composed of Jack Rothrock and Sampson S. Ledbetter, having been regularly served with the summons and Complaint, and having failed to plead or otherwise defend, the legal time for pleading or otherwise defending having expired and the default of the said Defendants, Weatherwise, Inc., a corporation, and Weatherwise Company, a Co-partnership composed of Jack Rothrock and Sampson S. Ledbetter, in the premises having been duly entered according to law; upon the application of the Plaintiff, judgment is hereby entered against the said Defendants and each of them in pursuance of the prayer of said Complaint.

WHEREFORE, by virtue of the law and by reason of the premises aforesaid:

IT IS ORDERED, ADJUDGED AND DECREED that the said Plaintiff, McGraw-Edison Company, Albion Division, a corporation, do have and recover from the said Defendants, Weatherwise, Inc., a corporation, and Weatherwise Company, a Co-partnership composed of Jack Rothrock and Sampson S. Ledbetter, the sum of \$15,704.60 together with interest thereon at the rate of 10% per annum from the 1st day of August, 1969, together with an attorney fee in the sum of \$3,000.00 to be taxed as costs, together with all other accruing costs in the matter and that Plaintiff have execution therefor.

JUDGMENT rendered this ____ day of April, 1970.

M. M. Ewing, Court Clerk

LAW OFFICES
UNGERMAN,
GRABEL,
UNGERMAN
& LEITER

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

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

RUBY BRVILLE,)
)
 Plaintiff,)
 vs.)
)
 SAGEWAY STORES, INC.,)
 a foreign corporation, and)
 JAMES SHIPMAN,)
 Defendants.)

No. 70-C-84

FILED

APR 17 1970

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

ORDER OF REMAND

This cause comes on for consideration by the Court upon plaintiff's Motion to Remand this cause to the District Court of Creek County, Drumright Division, Oklahoma, from whence it was removed to this Court by defendants, and the Court having carefully considered the said Motion for Removal, Motion to Remand and Briefs in support of and in opposition to said Motion to Remand, is of the opinion that the plaintiff has stated a cause of action against the non-diverse defendant James Shipman, and therefore, necessary diversity of citizenship does not exist between the plaintiff and all of the defendants.

IT IS, THEREFORE, ORDERED AND ADJUDGED by the Court that this cause be remanded to the District Court of Creek County, Drumright Division, Oklahoma, from whence it was removed.

Dated this 16th day of April, 1970.

Felker Bohannon

United States District Judge

That the parties have agreed there is no dispute as to the facts in this litigation.

The Court, finds, as a question of law that suit may be maintained in the State of Oklahoma against a non-resident on the non-resident's promissory note pursuant to Section 187 of Title 12, Oklahoma Statutes, as amended. The Court further finds that the amended return of Thomas E. Loughman, upon his oath, satisfies the return requirement of Section 158 of Title 12, Oklahoma Statutes which requires service made out of the state to be verified by oath or affirmation of the person making the service.

The Court further finds, that this action is on a promissory note and the fact that the note was given to secure an indebtedness for various and sundry oil field equipment has no effect with reference to venue.

The Court further finds that the defendants have admitted that they owe said debt, but have been financially unable to pay the indebtedness.

IT IS, THEREFORE, ORDERED that plaintiffs have and recover judgment against the defendants in the sum of \$16,232.38, plus interest at the rate of 10% from December 1, 1964, to date, plus interest from this date until paid at the rate of 6% per annum.

IT IS FURTHER ORDERED that plaintiffs have and recover judgment against the defendants for their attorney fee in the amount of 10% of the unpaid principal and interest.

ENTERED this 20th day of April, 1970.


UNITED STATES DISTRICT JUDGE

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

FOTOMAT CORPORATION, a)
California corporation,)
)
Plaintiff,)
)
vs.)
)
FILM PORT, INC., an Oklahoma)
corporation, MELVIN L. JOHNSON)
and DONALD E. HARRIS, JR.,)
)
Defendants.)

CIVIL ACTION NO. 69-C-46

FILED

APR 20 1970

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

FINAL JUDGMENT AND CONSENT DECREE

The Plaintiff, Fotomat Corporation, and the Defendants, Film Port, Inc., Melvin L. Johnson and Donald E. Harris, Jr., having represented to this Court that they have settled the matters and issues between them and in accordance therewith, it is hereby ORDERED, ADJUDGED AND DECREED:

I

That this Court has jurisdiction over the Plaintiff, Fotomat Corporation, and over the Defendants, Film Port, Inc., Melvin L. Johnson and Donald E. Harris, Jr., and over the matters in issue.

II

That Plaintiff has conducted a retail business for the sale of photographic goods and services from automobile drive-thru buildings in the form as disclosed in the photograph marked Exhibit A, attached hereto and made a part hereof.

III

That the Defendants have conducted a retail business for the sale of photographic goods and services from automobile drive-thru buildings as disclosed in the photographs marked Exhibits B, C and D attached hereto and made a part hereof.

IV

That the Plaintiff's distinctive style of drive-thru building, as reflected in Exhibit A has acquired secondary meaning in the business in which it is being used.

V

That in connection with the use or operation of any existing building or structure utilized by defendants on the date of this Judgment in any business consisting in whole or in part of the sale of film, film processing, cameras or camera supplies, the Defendants or any directors, officers, employees, servants, agents, successors or assigns of Defendants and those persons in active concert or participation with them are premanently enjoined from appropriating to their use any of the following features distinctive to Plaintiff:

a) A tiered, peaked, pyramidic or semi-hip type roof (except a semi-hip roof modified by a vertical fascia extending from the uppermost edge of a single tier as depicted in Exhibit D attached hereto and made a part hereof, provided the vertical fascia is at least eighteen inches in height);

b) The color yellow on the surface areas of the roof, except as that color may be used for signs;

c) The color blue on the surfaces or facades below the roof line;

d) Rectangular signs describing the merchandise and services offered as shown in Exhibit E, attached hereto and made a part hereof, or signs of any shape, configuration, style or design similar thereto;

e) Canvas or flexible awnings suspended from roof eaves or any suspended sign having a background color of either red or blue or extending more than one-half the distance from the walls of said building or structure to the outer edge of the roof eaves;

f) Planters extending from the ends of said building or any abutment having a hollow or open area within, but not including planter boxes suspended from the walls of the building;

g) Plants or foliage adjacent to and surrounding said building except as they may be contained in planter boxes suspended from the walls of the building.

The features which are distinctive and characteristic of Plaintiff's building design are not necessarily limited to features enumerated in (a) through (g) above.

VI

That the Defendants or any of its directors, officers, employees, servants, agents, successors or assigns of Defendants and those persons in active concert or participation with them shall clearly and at all times differentiate the business operation of Defendant from that of Plaintiff so as to avoid public confusion and shall be permanently enjoined and restrained from conducting or advertising a retail business for the sale of photographic goods or services from a drive-thru building as shown in Exhibits B, C and D (except those buildings presently in use on the date of this Judgment and provided said buildings are modified in accordance with Exhibit D, attached hereto) or any drive-thru building likely to cause confusion, or to cause mistake, or to deceive with respect to the drive-thru building as depicted in Exhibit A attached hereto.

VII

That all signs, symbols, circulars, price lists and advertising copy maintained, circulated or displayed by the Defendants, their attorneys, directors, officers, agents, employees and other representatives which illustrate the Defendants' drive-thru building as shown in Exhibits B or C attached hereto shall be immediately withdrawn from use; that at such time as the Defendants erect a future building or structure in conformity

with this Judgment all signs, symbols, circulars, price lists and advertising copy maintained, circulated or displayed by the Defendants, their attorneys, directors, officers, agents, employees and other representatives which illustrate the Defendants' drive-thru building as depicted in Exhibit D shall be immediately withdrawn from use.

VIII

That the Defendants shall, within sixty (60) days of the entry of this Judgment, change the appearance and design of the drive-thru buildings located at 5523 East 41st Street, Tulsa, Oklahoma, and 9214 East Admiral, Tulsa, Oklahoma, employing a design in conformity with Exhibit D to this Judgment; that as to all future buildings or structures utilized in connection with any business consisting in whole or in part of the sale of film, film processing, cameras or camera supplies, the Defendants or any directors, officers, employees, servants, agents, successors or assigns and those persons in active concert or participation with them are permanently enjoined from employing a building design, configuration, size or style as depicted in Exhibits B, C and D attached hereto or which is likely to cause confusion, or to cause mistake, or to deceive.

IX

That the building design disclosed in the photograph marked Exhibit F, attached hereto and made a part hereof, is not deceptively or confusingly similar to that of Plaintiff's building as disclosed in the photographs marked Exhibit A, attached hereto and made a part hereof.

X

That all parties hereto shall bear their own costs and that no costs or attorney's fees are awarded to any party.

ENTERED this 20 day of April, 1970,
at Tulsa, Oklahoma.


United States District Judge

CONSENTED TO AND APPROVED
ON BEHALF OF PLAINTIFF:

CONNER, WINTERS, RANDOLPH & BALLAINE

BY L. J. Fulton
L. J. Fulton
Attorney for Plaintiff

CONSENTED TO AND APPROVED
ON BEHALF OF DEFENDANTS:

HALL & SUBLETT

BY Eugene A. Hoefling
Eugene A. Hoefling
Attorney for Defendants

FILM PORT, INC.

BY Melvin L. Johnson
Melvin L. Johnson
Acting President

Melvin L. Johnson
Melvin L. Johnson

Donald E. Harris, Jr.
Donald E. Harris, Jr.

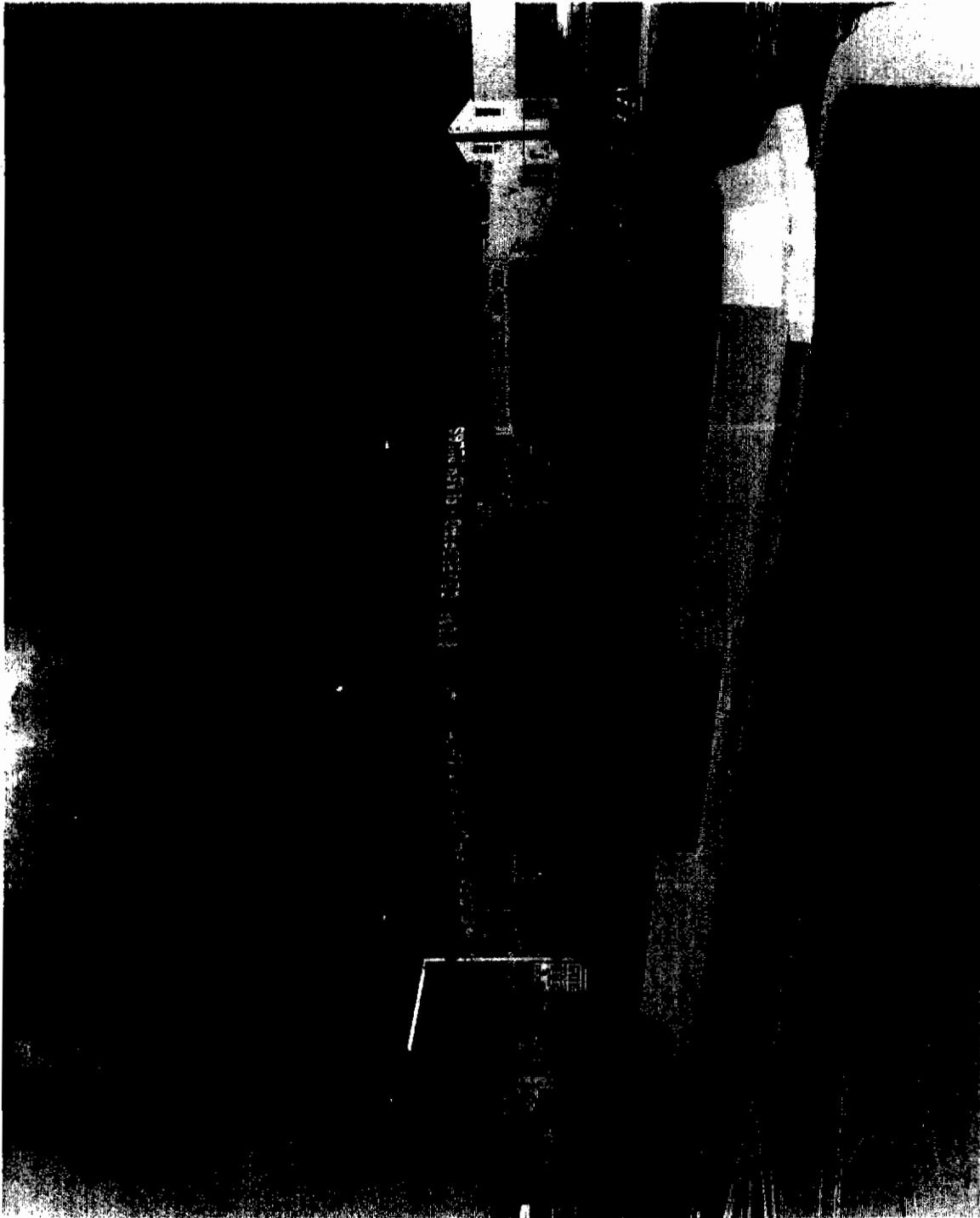


EXHIBIT A



EXHIBIT B

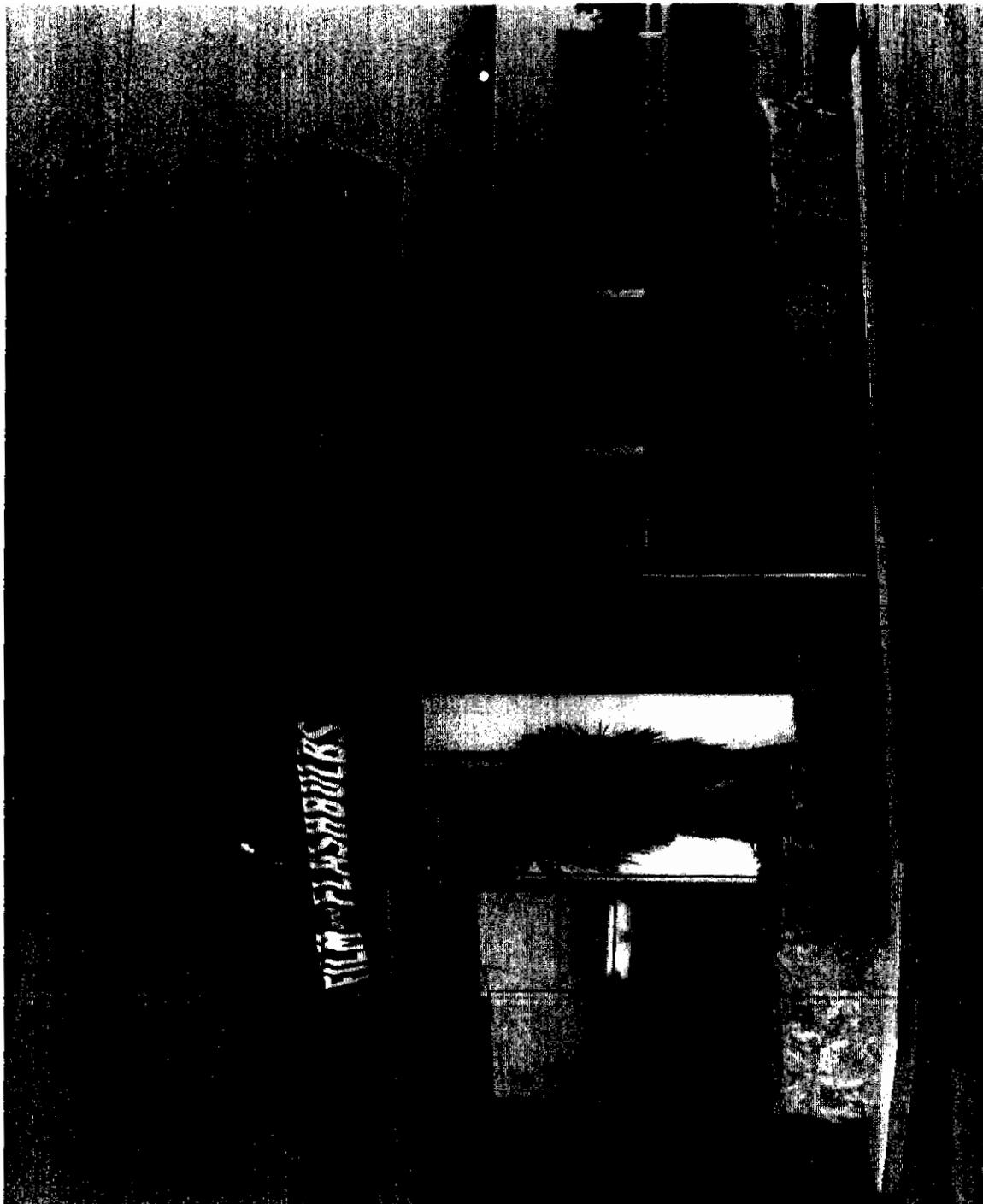


EXHIBIT C

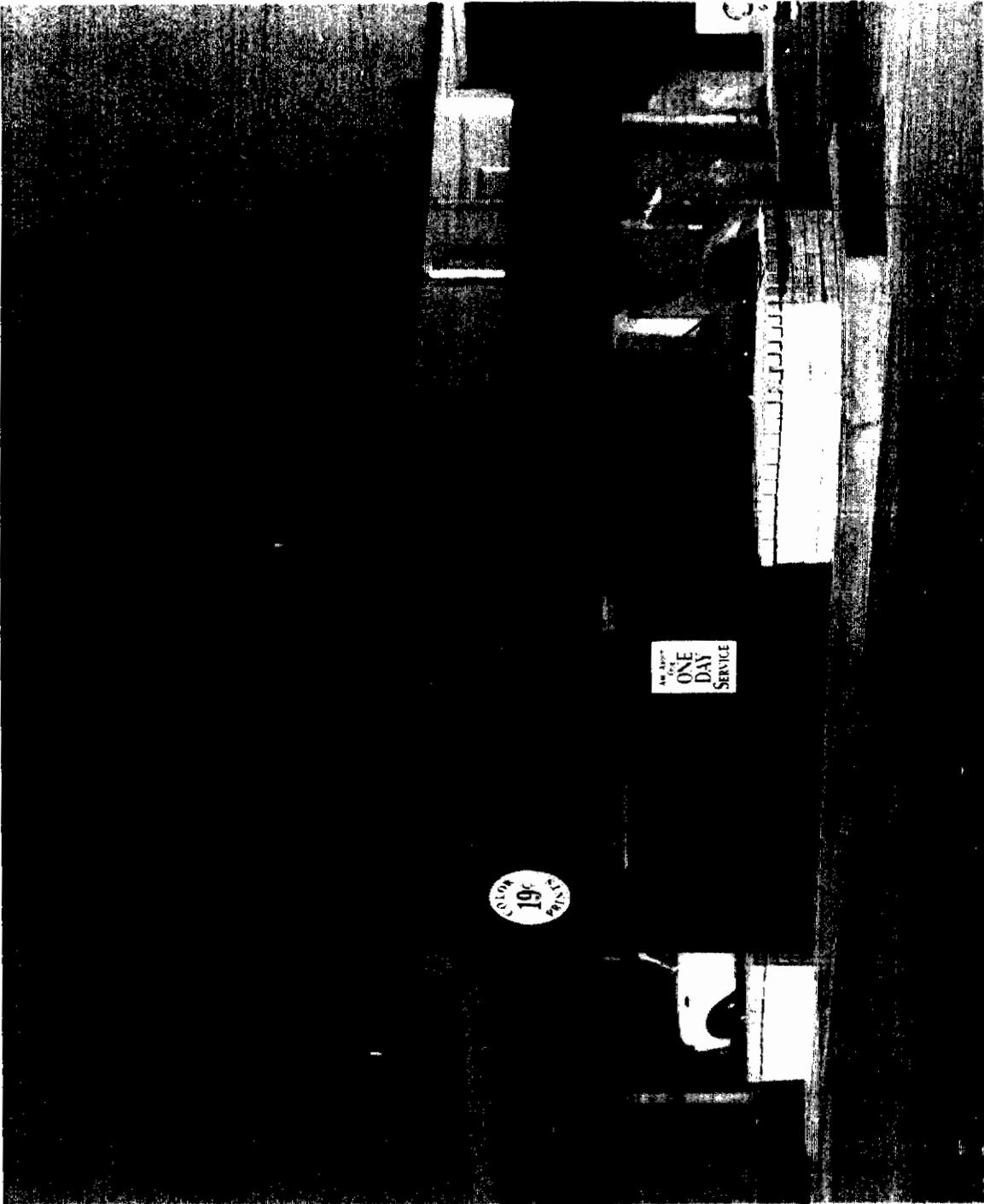


EXHIBIT D

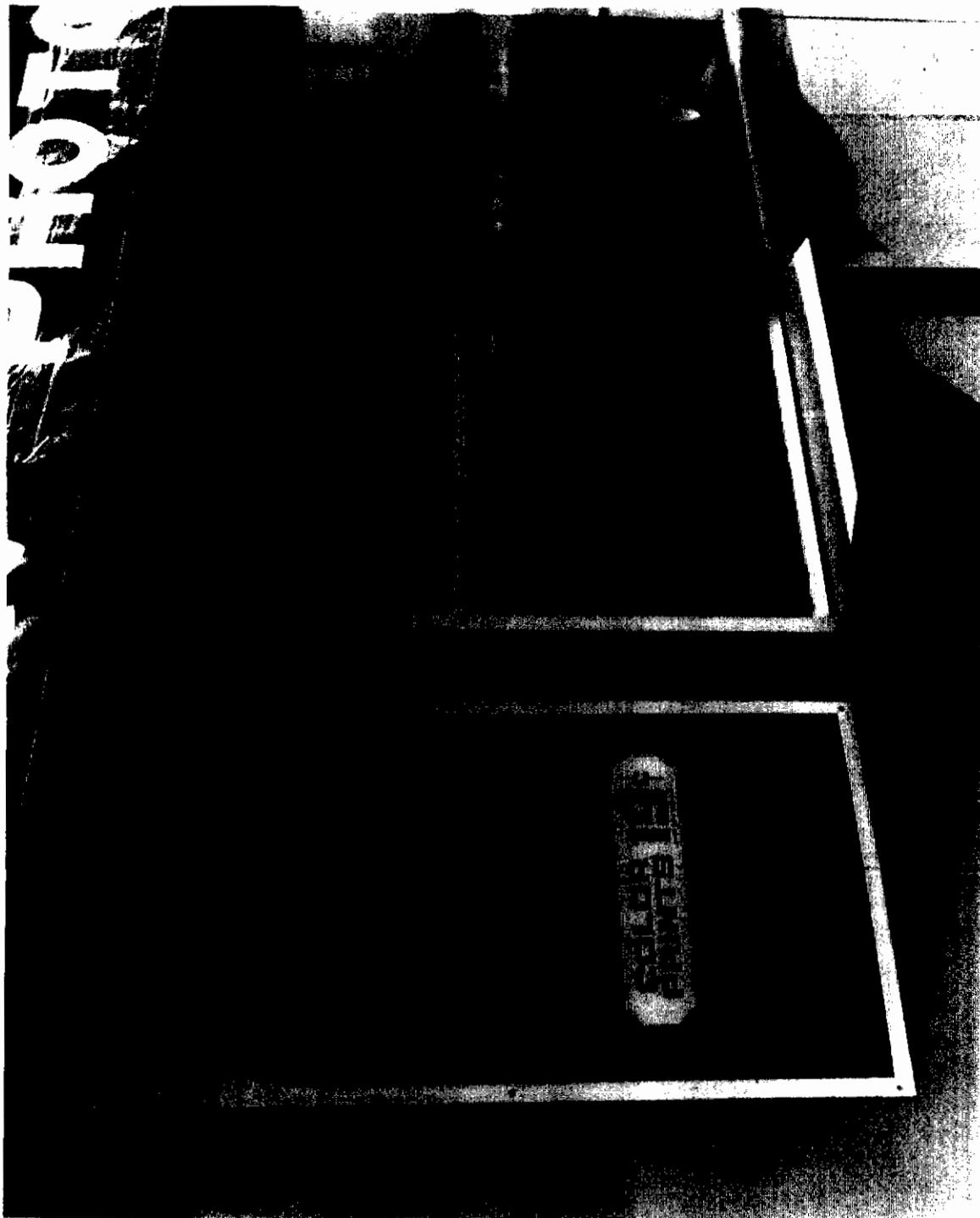
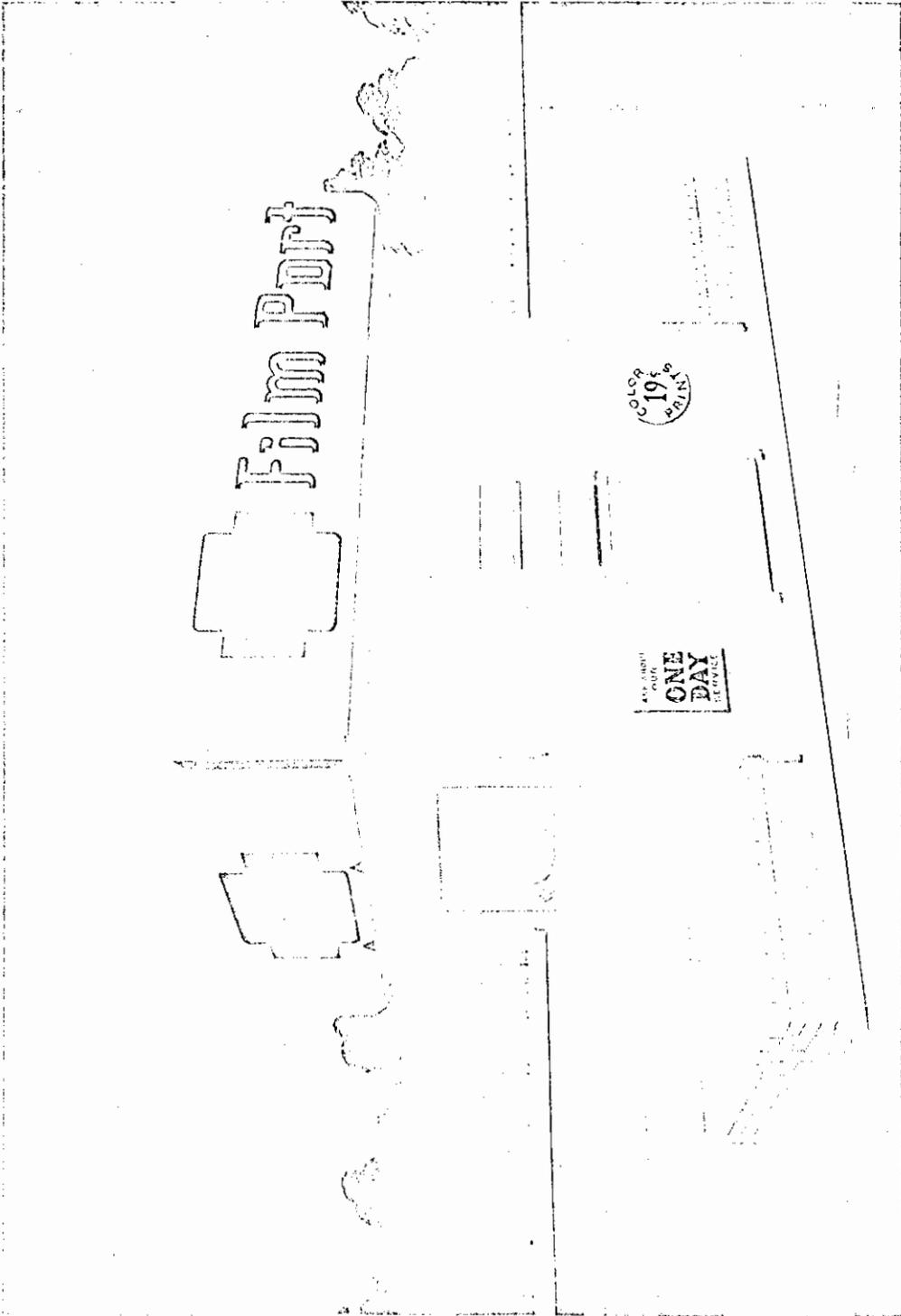


EXHIBIT E



Film Port

1956
NEW

ONE
DAY
SERVICE

EXHIBIT F

IT IS, THEREFORE, ORDERED that the complaint and cause of action be and the same is hereby dismissed and defendant's motion to dismiss is sustained.

ENTERED this 20 day of April, 1970.


UNITED STATES DISTRICT JUDGE

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

The United States of America,

Plaintiff,

vs.

Junior Paul Moore and Shirley Ann
Moore, husband and wife, and Mutual
Plan of Tulsa, Inc.,

Defendants.

Civil No. 70-C-45

FILED

APR 20 1970

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 20th day of April, 1970, the defendants, Junior Paul Moore and Shirley Ann Moore, husband and wife, and Mutual Plan of Tulsa, Inc., appearing not; and

The Court being fully advised and having examined the file herein finds that due and legal personal service of summons has been made on the defendant, Mutual Plan of Tulsa, Inc., on February 12, 1970, and the defendants, Junior Paul Moore and Shirley Ann Moore, husband and wife, on March 13, 1970; and

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

Lot Forty-Seven (47), Block Ten (10), a resub-
division of Blocks 2 & 3 and Lots 46 & 47, Block
10, Lake-View Heights Amended Addition to the
City of Tulsa, County of Tulsa, State of Oklahoma,
according to the recorded Plat thereof.

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

That the defendants, Junior Paul Moore and Shirley Ann Moore, did, on March 18, 1965, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note for the sum of \$8,350.00, with interest thereon at the rate of 5 $\frac{1}{2}$ % per annum and further providing for the payment of monthly installments of principal and interest; and

The Court further finds that the defendant, Mutual Plan of Tulsa, Inc., has or claims some right, title, or interest in and to the premises herein being foreclosed by reason of a Second Real Estate Mortgage, dated

February 11, 1969, and filed of record in the Office of the County Clerk, Tulsa County, Oklahoma, on February 13, 1969, in Book 3879, Page 654, but in this regard, plaintiff states that whatever right, title, or interest the defendant, Mutual Plan of Tulsa, Inc., has in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendants, Junior Paul Moore and Shirley Ann Moore, husband and wife, made default under the terms of the aforesaid mortgage note and mortgage by reason of their failure to make monthly installments due thereon on January 1, 1969, which default has continued and that by reason thereof the defendants are now indebted to the Plaintiff in the sum of \$8,258.69, as unpaid principal, with interest thereon at the rate of $5\frac{1}{2}\%$ per annum from January 1, 1969, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the plaintiff, United States of America, have and recover judgment against the defendants, Junior Paul Moore and Shirley Ann Moore, husband and wife, for the sum of \$8,258.69 with interest thereon at the rate of $5\frac{1}{2}\%$ per annum from January 1, 1969, until paid, plus the cost of this action accrued and accruing, and the sum of \$22.00 expended for abstracting fees.

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

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

APPROVED:

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

Fred Daugherty
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

GEORGE P. SHULTZ, Secretary of)
Labor, United States Department of)
Labor,)
)
Plaintiff,)
)
vs.)
)
BEARDEN COMPANY, a corporation,)
and BROOKS BEARDEN, individually)
and President of Bearden Company,)
jointly and severally,)
)
Defendants.)

Civil Action
No. 68-C-177

FILED

APR 21 1970

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

J U D G M E N T

Now on this 23rd day of January, 1970, came on for hearing the continuance of the above captioned and numbered matter, which had been commenced on the 21st day of January, 1970. Plaintiff appeared by its counsel of record and defendant Brooks Bearden appeared individually and as President of defendant Bearden Company, an Oklahoma corporation, and by their counsel of record. That on the said 23rd day of January, 1970, a settlement of the issues was then reached and defendants thereupon agreed to the entry of the within judgment without further contest.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

1. That this action is dismissed as to defendant Brooks Bearden individually.
2. That defendant Bearden Company, its officers, agents, servants, employees and all persons acting or claiming to act in its behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of sections 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938 (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:

(A) That said defendant shall not, contrary to sections 6 and 15(a)(2) of the Act, pay any of its employees for their employment in an enterprise engaged in commerce, or in the production of goods for commerce, as defined by the Act, from the date of this judgment to February 1, 1971, wages at rates less than \$1.45 per hour and subsequent to February 1, 1971, wages at rates less than \$1.60 per hour, or such other rate as may be hereinafter set by law. The provisions of this paragraph shall not prevent defendant from paying to any of its employees wages authorized as to such employees by a special certificate issued and in effect under section 17 of the Act.

(B) That said defendant shall not, contrary to sections 7 and 15(a)(2) of the Act, employ any of its employees who are employed in an enterprise engaged in commerce or in the production of goods for commerce, as those terms are defined by the Act, for a workweek longer than 40 hours, unless such employees

receive compensation for their employment in excess of 40 hours in such workweek at a rate not less than one and one-half times the regular rate at which they are employed.

(C) That said defendant shall not fail to make, keep and preserve records of its employees and of the wages, hours or other conditions and practices of employment maintained by it, 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.

(D) That, based upon a stipulation of the parties, defendant Bearden Company has tendered the sum of \$6,900.00 in full satisfaction of the disputed contingent of underpayment to its employees; and plaintiff and defendant Bearden Company stipulate that such sum shall be paid to the employees listed on Exhibit A as additional compensation for the period from February 1, 1967 through December 31, 1969, which said Exhibit A is attached hereto and incorporated herewith by reference, such payments to be made in the amounts set opposite the names of each of such employees on such Exhibit, and which calculations have been made by the plaintiff herein.

(E) That defendant, Bearden Company, is further enjoined and restrained from withholding from said employees the said compensation in the said total amount of \$6,900.00, to which such employees shall be deemed to be entitled under the Act. The provisions of this paragraph of this judgment shall be deemed to be fully satisfied when such defendant shall have delivered to plaintiff a certain check in the sum of \$6,900.00 (less appropriate tax deductions). The plaintiff shall distribute the proceeds of the check to the persons named on Exhibit A, attached hereto, or to their estates, if that be 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, shall be covered into the Treasury of the United States as miscellaneous receipts. That Bearden Company shall be deemed to have paid all sums due to its employees due or claimed due under the Act for the period of time to and through December 31, 1969, upon the payment of said sum of \$6,900.00 in compliance herewith.

(F) That plaintiff have and recover an undivided one-half of the court costs herein, including attorney's docket fees as provided for by 28 U. S. C. 1923.

Dated this 21st day of April, 1970.


UNITED STATES DISTRICT JUDGE

Entry of this Judgment is hereby consented to:

BEARDEN COMPANY, an Oklahoma corporation

By: 
President


Attorney for Defendant


Attorney for Plaintiff

Fbultz v. Boarden Company et al. USDC ND Okla CA 68-C-117

<u>Employee's Name</u>	<u>Amount</u>	<u>Employee's Name</u>	<u>Amount</u>
Grover Adams	\$ 30.05	John Lewis	\$ 25.75
Matthew Allen	142.40	Pat Morgan	7.00
J. E. Bennett	1,309.94	Rufus Morgan	102.23
Junior Biggs	55.25	Earl Mumlow	75.46
Ruth Daniels	124.79	Ralph C. Oliver	24.50
Harold Duck	106.75	Don Edwards	87.19
Tommie J. Edwards	7.25	Wayne L. Patterson	24.75
Walter Edwards	205.55	James R. Pigg	1,355.85
Willie Freeman	777.66	David Reed	190.70
Robert Garber	532.70	Joe C. Sharp	6.28
Clay Gering	364.30	Marvin Smith	58.87
Henry Gering	147.40	Charles W. Spencer	22.68
David Hair	131.10	Robert S. Steward	254.66
Roger Lee Hurd	28.00	Henry Van Horn	11.53
Bonnie Kepfer	24.00	William Weatherl	53.00
Charles Lair	102.90	Don Wilson	35.06
Jimmy Lamproe	205.70	Edwin E. Wilson	105.75
David Bowden	11.00	John E. O'Rourke	105.15
Jackie Coats	46.80		
		TOTAL	\$6,900.00

EXHIBIT A

W:chh

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

MONSANTO COMPANY, a corporation,)	Civil Action
)	
)	No. 69-C-167
)	
Plaintiff,)	
)	
vs.)	
)	
ACOUSTICAL ENGINEERING COMPANY,)	
a corporation, LEONARD GAINES and)	
JAMES O. CAMERON,)	
)	
Defendants.)	

FILED
IN OPEN COURT
APR 21 1970
M. M. EWING
CLERK, U. S. DISTRICT COURT

J U D G M E N T

NOW, on this 21ST day of April, 1970, the Court having this date sustained the Motion of plaintiff for entry of default judgment against the defendants Acoustical Engineering Company, a corporation, and James O. Cameron, having settled Pre-Trial Order, and adjudged said defendants in default, and having ordered that Judgment to be entered against defendants Acoustical Engineering Company, a corporation and James O. Cameron;

Pursuant thereto, IT IS BY THE COURT ORDERED, ADJUDGED AND DECREED that plaintiff, Monsanto Company, a corporation, have, and it is hereby granted, Judgment against the defendants Acoustical Engineering Company, a corporation, and James O. Cameron for the total sum of \$42,931.82, with interest on the sum of \$25,008.32 at the rate of 6% per annum from March 6, 1968, and interest on the sum of \$17,923.50 at the rate of 10% per annum from September 18, 1968, for attorney's fees of \$ 8500⁰⁰, and for all costs of the action.

Dated this 21ST day of April, 1970.

Allen E. Barrow
Allen E. Barrow

APPROVED: United States District Judge

Ungerman, Grabel, Ungerman & Leiter

LAW OFFICES
UNGERMAN,
GRABEL,
UNGERMAN
& LEITER

By William Leiter
Attorneys for Plaintiff

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

Whitebook & Easkin

By C. A. Whitebook
Attorneys for Defendant Leonard Gaines

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

United States of America,

Plaintiff,

vs.

Civil No. 69-C-243

Vernon H. Hammer a/k/a Vern H.
Hammer and Betty Ann Hammer
a/k/a Betty Hammer, and Jack B.
Carpenter,

Defendants.

FILED

APR 22 1970

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 21st day of April,
1970. The defendants, Vernon H. Hammer a/k/a Vern H. Hammer and Betty
Ann Hammer a/k/a Betty Hammer, and Jack B. Carpenter, appearing not; and

The Court being fully advised and having examined the file herein
finds that due and legal personal service of summons has been made on the
defendant, Jack B. Carpenter, on February 12, 1970; and

It further appearing and the Court finds that legal service by
publication was made upon the defendants, Vernon H. Hammer a/k/a Vern H.
Hammer and Betty Ann Hammer a/k/a Betty Hammer, as appears by Proof of
Publication filed herein on February 24, 1970, requiring each of them to
answer the complaint filed herein not later than April 8, 1970, and it
appearing that said defendants have failed to file an answer herein and
their default has been entered by the Clerk of this Court; and

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

Lot Fourteen (14), Block Eleven (11), Suburban
Hills Addition to the City of Tulsa, Tulsa County,
State of Oklahoma, according to the recorded plat
thereof.

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

That the Defendants, Vernon H. Hammer and Betty Ann Hammer, did,
on April 27, 1968, execute and deliver to the Administrator of Veterans
Affairs, their mortgage and mortgage note for the sum of \$9,600.00, with
interest thereon at the rate of 6% per annum and further providing for the
payment of monthly installments of principal and interest; and

The Court further finds that the defendant, Jack E. Carpenter, has or claims some right, title, or interest in and to the premises herein being foreclosed by reason of a divorce decree entered December 13, 1968, #D-100786, filed of record in the District Court in and for Tulsa County, Oklahoma, at Book 648, Page 473, between Betty Hammer and Vern Hammer, but in this regard, plaintiff states that whatever right, title, or interest the defendant, Jack E. Carpenter, has in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendants, Vernon H. Hammer a/k/a Vern H. Hammer and Betty Ann Hammer a/k/a Betty Hammer, made default under the terms of the aforesaid mortgage note and mortgage by reason of their failure to make monthly instalments due thereon on December 1, 1968, which default has continued and that by reason thereof the defendants, Vernon H. Hammer a/k/a Vern H. Hammer and Betty Ann Hammer a/k/a Betty Hammer, are now indebted to the Plaintiff in the sum of \$9,532.07, as unpaid principal, with interest thereon at the rate of 6% per annum from December 1, 1968, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Plaintiff, United States of America, have and recover judgment against the defendants, Vernon H. Hammer a/k/a Vern H. Hammer and Betty Ann Hammer a/k/a Betty Hammer, for the sum of \$9,532.07, with interest thereon at the rate of 6% per annum from December 1, 1968, until paid, plus the cost of this action accrued and accruing, and the sum of \$60.00 expended for the preservation of this property, and the sum of \$22.00 expended for abstracting fees.

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

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


ALLEN E. BARNES
UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. [unclear]
Assistant U. S. Attorney

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

FLETCHER FOSTER,

Petitioner,

vs.

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

Respondent.

NO. 70-C-117

FILED

APR 22 1970

O R D E R

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

The Court has before it the pro se petition for writ of habeas corpus filed by Fletcher Foster and transferred to this District pursuant to T. 28 U.S.C.A. § 2241.

This Court has previously determined the legality of the detention of Fletcher Foster and denied by order, dated December 31, 1969, petitioner's earlier petition for writ of habeas corpus. This previous denial was based on a thorough review of the full and complete records of the petitioner's evidentiary hearing in his State habeas corpus proceeding required by the Oklahoma Court of Criminal Appeals. *Maxwell v. Turner*, 411 F.2d 805, 10th Cir. 1969.

The Court finds that in this present, second petition there are no new grounds presented for consideration, and that all the grounds alleged have been heretofore presented to and determined against the petitioner by both the Oklahoma Court of Criminal Appeals and by this United States District Court for the Northern District of Oklahoma. Further, the Court is satisfied that the ends of justice will not be served by entertaining this second petition which merely reiterates the same issues previously presented and determined, *Walker v. Taylor*, 328 F.2d 945, 10th Cir. 1964; *Dixon v. Rhay*, 396 F.2d 760, 9th Cir. 1968, and the Court finds that the petition for writ of habeas corpus should be denied.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Fletcher Foster be and the same is hereby denied.

Dated this 21st day of April, 1970, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE

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

MARY ELLEN BAYS, Plaintiff,)
)
vs.)
)
SAFEWAY STORES, INC.,)
a Corporation, Defendant.)

No. 69-C-179

File Paper 23/70
By Mr. Ewing
C. J. Dist. Ct.

JUDGMENT

This cause comes on for trial upon its merits this the 14th day of April, 1970. The parties appeared by their respective counsel of record and having announced ready for trial to the Court, the Court proceeded to try the issues of the case. After the evidence was heard and both sides rested, the Court heard argument of counsel and considered the applicable legal authorities and concluded the plaintiff should take nothing as against the defendant and the defendant should have judgment herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff take nothing and the defendant have judgment herein and for its costs expended.

Allen E. Dawson

UNITED STATES DISTRICT JUDGE

Plaintiffs bring this action alleging that the defendants have violated their rights under a national railroad agreement to which defendants were parties, described in the complaint as the "Washington Job Protection Agreement of May, 1936" and a national railroad agreement to which the defendants were parties, dated February 7, 1965, described in the complaint as the "National Employment Security Agreement".

Plaintiffs contend that under the agreements above referenced, they were entitled to receive 60% of their average monthly compensation for the last 12 months of employment, or, in the alternative, a lump sum amount of 12 months' pay for each plaintiff.

The file further reflects that on June 8, 1967, the defendant union and the Tulsa Union Depot entered into an agreement providing for severance pay for each of the terminated employees, and the amount agreed to be paid to each employee was substantially less than that to which plaintiffs allege they were entitled.

The plaintiffs argue that the agreement of June 8, 1967, violates their rights under the two national agreements above referenced, and further argue that the defendant union violated its duty of fair representation to the plaintiffs by executing the agreement, and continue to violate their duty by maintaining said agreement. Plaintiffs further allege that the agreement of June 8, 1967, was illegally signed without the membership of the local unit of the union being permitted to vote on said agreement.

With reference to exhaustion of administrative remedies, plaintiffs allege that it would be entirely futile for them to proceed further because the union will not aid in the presentation of their case to defendant railroad and an appeal to the NLRB would avail them of no relief. The Court finds that under the circumstances in this case, it does have jurisdiction. *Republic Steel v. Maddox* (1965) 379 U.S. 650; *Vaca v. Sipes* (1967) 386 U.S. 171.

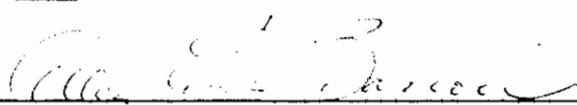
The Court finds that for the Washington Agreement to apply in the instant case, there must have been an action unifying, consolidating, merging or pooling separate railroad facilities or operations. The Court finds that there has been no action unifying, consolidating, merging or pooling in the instant case, but to the contrary there has been a complete and total abandonment of a facility, to-wit: Tulsa Union Depot.

Plaintiffs further contend that the Washington Agreement provisions accrue to them by virtue of the fact that Article V of the national agreement of February 7, 1965, incorporated certain provisions of the Washington Agreement by reference and that the plaintiffs therefore have the benefit of such provisions. The Court, having carefully perused the national agreement of February 7, 1965, finds that Article V of the agreement deals with the rights of employees in the case of transfers or rearrangement of work forces. The basic purpose of the national agreement of February 7, 1965, was to protect employees in case of declines in railroad business whereby the railroad company seeks to reduce the work force. The Court finds that such national agreement does not apply in a case like this where there is not a decline but a complete abandonment.

Turning to the agreement negotiated by the defendant union June 8, 1967, the Court finds that the defendant union had the authority to enter into such agreement and was not under any obligation to obtain the approval or disapproval of the agreement by the union members. The Court finds that since plaintiffs could not avail themselves of the benefits contained in the Washington Agreement and the national agreement of February 7, 1965, and the defendant Depot was under no obligation or duty to pay anything to the plaintiffs, that the agreement negotiated by the defendant union was not discriminatory and is a legal and binding agreement. *Flaherty v. Kansas, Oklahoma & Gulf Railroad Co.* (USDC, ED Okla., 1966) 252 F.Supp. 736.

IT IS, THEREFORE, ORDERED that the Motions for Summary Judgment filed by the defendants herein be and the same are hereby sustained and judgment is hereby entered in favor of defendants and against plaintiffs.

ENTERED this 23 day of April, 1970.


UNITED STATES DISTRICT JUDGE

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

JOE RAY COLPITT,

Plaintiff,

vs.

DEWEY BARTLETT, Governor,
State of Oklahoma, and

G. T. BLANKENSHIP, Attorney
General, State of Oklahoma,

Defendants.

No. 70-C-10 Civil

FILED

APR 25 1970

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

ORDER DISMISSING ACTION

Plaintiff applies to this Court under 28 U.S.C.A. § 2281 et seq. for the creation of a three judge court to hear his claim that 63 Okl.St.Ann. §§ 451-453 are unconstitutional in their application to him and to grant injunctive relief in connection therewith against the Defendants. As neither a three judge court nor an injunction against the Defendants is warranted, the Court will now consider Defendants' Motion to Dismiss Plaintiff's action.^{1/}

The essence of Plaintiff's claim is that the above mentioned state statutes are unconstitutional in their enforcement as regards ". . . the acts of an individual importing marihuana in its original container in interstate commerce . . ." Article I, Section 8, Clause 3 of the Constitution granting to Congress the power to regulate interstate commerce is claimed to have been violated by the enforcement of the above-cited statutes.

^{1/} The Court has previously ruled that Plaintiff's Complaint does not present a substantial constitutional question and thus that a three judge court is not warranted. Where a three judge court has been denied, the district judge to whom the case fell may proceed to adjudicate it on its merits, provided jurisdiction is present. See, generally, Swift & Co. v. Wickham, 382 U.S. 111, 15 L.Ed.2d 194, 86 S.Ct. 258 (1965).

To support this claim, Plaintiff makes the following argumentative allegations:

1. Marihuana is a legitimate article of commerce because Congress has taxed its transfer.
2. Oklahoma may not restrict its free flow in interstate commerce because Congress has not passed any law explicitly giving it power to do so.
3. Because the Oklahoma statutes, as presently enforced, forbid the receipt of marihuana or its sale before it has ceased to be an article of interstate commerce, the enforced statute is an unconstitutional regulation of interstate commerce.^{2/}
4. While the marihuana is in its original package, it is still in interstate commerce and remains so until after it is sold within the state.
5. The police power of Oklahoma does not authorize it to interfere with the free flow of interstate commerce in marihuana.

As grounds for relief, Plaintiff claims the following:

1. 63 Okl.St. Ann. §§ 451-453 are unlawful regulations of interstate commerce in their enforcement.
2. The Defendants are entrusted with the enforcement of

^{2/} Plaintiff restates his argument in another form, which additional arguments are not set out as separate grounds because they duplicate the above: (1) Plaintiff has a right to import marihuana into Oklahoma and sell it in its original package and, (2) Oklahoma has no power to seize the imported marihuana or prevent its importation and sale by a "nonresident" or "foreign importer". Plaintiff does not explain the significance of his self-characterization as a nonresident or foreign importer.

these statutes (" . . . with the enforcement of the police powers of Oklahoma . . .") and are thus indispensable and proper parties to the action.

3. Plaintiff is being subjected to prosecution under these statutes in the Pottawatomie County District Court, which constitutes an enforcement of the statutes which should be restrained.^{3/}

Plaintiff asks the Court to declare the statutes unconstitutional insofar as they are enforced " . . . to act upon, prevent, seize, prosecute for the importation of or possession of the article marihuana . . ." when it has been imported into the state in its original container and before co-mingling it with the general property of the state by sale by the importer.

The issues suggested by Plaintiff's Complaint appear to include the following matters:

1. Basis of jurisdiction of Plaintiff's action.
2. Proper parties defendant.
3. Extent of protection of the commerce clause.
 - a. Police power exception.
 - b. Where interstate commerce ends.
 - c. Marihuana as a legitimate article of commerce
 - d. Pre-emption of the field by Congress.
4. Whether this Court should apply the doctrine of abstention

^{3/} Plaintiff states that he does not seek an injunction against the criminal proceedings, " . . . but prays these statutes be declared unconstitutional and void in their application to the receipt, importation, and possession in its original container, from interstate commerce, the plant and article known as marihuana.

1. Basis of Jurisdiction.

28 U.S.C.A. §§ 2281 et seq. are not self-supporting in the federal jurisdictional sense. It is necessary that jurisdiction exist independently, as the statutes are procedural only. Van Buskirk v. Wilkinson, 216 F.2d 735 (Ninth Cir. 1954).

Plaintiff has failed to plead facts showing jurisdiction under 28 U.S.C.A. § 1331, in that he has failed to plead that more than \$10,000 is in controversy. With respect to 28 U.S.C.A. § 1332 diversity is negated by Plaintiff's allegation that all parties are citizens of Oklahoma, and in addition, he has failed to plead that more than \$10,000 is in controversy. Even if Plaintiff's Complaint could be construed as a proceeding under the Civil Rights Act, 42 U.S.C.A. § 1981 et seq., he has failed to plead that he has been denied equal protection of the laws, which pleading is required by 28 U.S.C.A. § 1343(3). No other basis for jurisdiction appears in the Complaint or is suggested by its allegations, and the Court concludes that jurisdiction is not present. However, the Court has also considered the other issues set out above and it appears that even were jurisdiction present, Plaintiff still would not be permitted to maintain this action.

2. Proper Parties.

Plaintiff has proceeded against the Governor and the Attorney General of Oklahoma, alleging that they are responsible for the unlawful enforcement of the Oklahoma statutes, 63 Okl.St. Ann. §§ 451-453.

The Governor exercises the supreme executive power of the State. Okl.Cons. Art. 6, Sec. 2. He is required to cause the laws to be faithfully executed and he is empowered to institute a suit for and in the name of the State. Okl.Cons. Art. 6, Sec. 8.

However, it appears that the County (District) Attorney, and not the Governor nor the Attorney General, is the state official empowered to institute criminal proceedings. State ex rel. Haskell v. Huston, 97 Pac. 982 (Okla. 1908) at p. 995. He is not subject to the control of either the Governor or the Attorney General. State ex rel. Haskell v. Huston, supra. The Attorney General is authorized to represent the State only in the Oklahoma Supreme Court (including the Court of Criminal Appeals) and in the federal courts. 74 Okl.St. Ann. § 18b(a) and (b). To appear in any other court, he must first be requested to do so by the Governor. 74 Okl.St. Ann. § 18b(c). Thus, unless requested by the Governor, he has no authority to institute a criminal proceeding in any Oklahoma district court. State ex rel. Haskell v. Huston, supra. Nevertheless, there exists a rebuttable presumption that such request has been made where the Attorney General appears in a suit. Merchants Mut. Bonding Co. v. State ex rel. Nesbitt, 438 P.2d 931 (Okla. 1967). Of course, there is no allegation here that the Attorney General has appeared in the criminal proceedings in Pottawatomie County. The duty to prosecute criminal actions, which must be initiated in the district court, Okl. Cons. Art. 7, Sec. 7, where they are, as here, felonies, is that of the county (district) attorney. 19 Okl. St. Ann. § 183. Therefore, in the absence of an allegation that the Governor has authorized the Attorney General to appear in the case in which Plaintiff is being prosecuted, it would appear that the parties defendant herein are not proper parties. A fortiori, they are neither necessary nor indispensable. They are not the parties responsible in the first instance for enforcement of the

Oklahoma Marihuana Act. The duty to enforce that Act devolves directly and originally on the county (district) attorney.

Defendants, in urging dismissal of Plaintiff's case also claim that his suit against them is in effect a suit against the State of Oklahoma, and as Oklahoma has not consented to this suit, it is immune thereto. Great Northern Life Insurance Co. v. Read, 322 U.S. 47, 88 L.Ed. 1121, 64 S.Ct. 873 (1944) (Suit against Oklahoma insurance commissioner). If this action be construed as one against the State, then Defendants' claim has merit. However, if it be construed as one against the State by reason of its officers exceeding constitutionally protected action, then the immunity of the State, which in the former case protected the officers, is withdrawn from them. See Jackson v. State of Colorado, 294 F.Supp. 1065 (Colo. 1968), discussion at pp. 1071-1072. It would appear that these Defendants may invoke the protection of the State's immunity from suit for the reason that under State law they have no authority to do any act amounting to a participation in a criminal prosecution of the Plaintiff except in one limited instance,^{4/} and Plaintiff has not plead that instance nor does it appear that it exists. Plaintiff's contention that Defendants are proper and indispensable parties is premised on the theory that they are somehow responsible for enforcing the Oklahoma Marihuana laws. As has been indicated, Plaintiff's premise is wholly lacking in foundation.

^{4/} That is, where the Governor requests the Attorney General to participate in a criminal action.

3. Extent of Protection of Commerce Clause.

Plaintiff invokes the original package doctrine in support of his claim. This doctrine originated in the early prohibition cases, but it has been greatly eroded in subsequent cases not involving liquor.^{5/} This doctrine holds that an article in interstate commerce, as long as it remains in its original package,^{6/} retains its interstate character and the protection of the commerce clause until the package is broken.^{7/}

^{5/} See discussion, Constitution Annotated (1963 Ed.), pp. 275-277.

^{6/} Whether the package is an original package seems to be a question of fact in which the bonafides of the packager or manufacturer are taken into account. *Austin v. Tennessee*, 179 U.S. 359, 45 L.Ed. 224, 21 S.Ct. 132 (1900).

^{7/} The most recent application of the doctrine involved the importing of drilling mud from Oklahoma to Utah. *Mud Control Laboratories v. Covey*, 269 P.2d 854 (Utah 1954). The supplier had not qualified to do business in Utah and a state statute prevented recovery by any foreign corporation which had not qualified to do business within its borders. The supplier alleged that this statute was an invalid regulation of interstate commerce. The mud had been shipped to a third person, who stored it pending sales of it to customers. The court held that while the mud was in interstate commerce from the time it left the supplier until it came to rest in the warehouse's hands, any sale thereafter was in intrastate commerce and subject to state regulation. The court used the original package doctrine as only one test to determine whether the mud shipped into Utah was protected, but the holding and opinion indicate that the court relied on the more accurate and applicable test laid down in *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 63 S.Ct. 332, 87 L.Ed. 460 (1943) rather than the original package doctrine in reaching its conclusions.

The validity of the original package doctrine is very much in doubt. The last time the Supreme Court referred to it as a doctrine was in Whitfield v. Ohio, 297 U.S. 431, 80 L.Ed. 778, 56 S.Ct. 532 (1936), where it characterized the doctrine as more artificial than sound.

Inasmuch as the original package doctrine arose out of cases involving the exercise by a state of its police powers, it is discussed under that heading, below.

a. Police Power Exception.

The Court has, in connection with its order denying a three judge court, held that regulation of traffic in and use of marijuana is a matter within the police power of the state. The original package doctrine was first stated in Brown v. Maryland, 25 U.S. (12 Wheat) 419, 6 L.Ed. 678 (1827). In holding a state statute providing for the licensing of importers of goods unconstitutional, the court said:

" . . . when the . . . thing imported . . . has become incorporated . . . with the mass of property in the country, it has . . . become subject to the taxing power of the state, but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition of the constitution." 25 U.S. (12 Wheat) at pp. 441-442, 6 L.Ed. at p. 439.

The state statute was held repugnant to both Article I, Section 8, Clause 3 and Article I, Section 10, Clause 2 of the Constitution.

However, in the decision, the court also said:

"The removal or destruction of infectious or unsound articles is, undoubtedly, an exercise of that [police] power, and forms an express exception to the prohibition we are considering." 25 U.S. (12 Wheat) at p. 444, 6 L.Ed. at p. 687.

In Leisy v. Hardin, 135 U.S. 100, 34 L.Ed. 128, 10 S.Ct. 681 (1890) an Iowa statute prohibited importation of intoxicating liquor into the state. The court held that, as intoxicating liquors were recognized as legitimate articles of commerce, no state could regulate interstate commerce in them and that the liquor imported into a state was protected by the commerce clause until after the first sale thereof in the original package. The court said:

"Whatever our individual views may be as to the deleterious or dangerous qualities of particular articles, we cannot hold that any articles which Congress recognizes as subjects of interstate commerce are not such, or that whatever are thus recognized can be controlled by state laws amounting to regulations, while they retain that character; although, at the same time, if directly dangerous in themselves, the state may take appropriate measures to guard against injury before it obtains complete jurisdiction over them." 135 U.S. at p. 125, 34 L.Ed. at p. 138.

Of course, the adoption of the 21st Amendment effectively gave to the states the right to regulate interstate commerce in liquor. But this is not to say that the Amendment is now considered necessary in liquor cases. In cases arising under the Amendment, the court has based its rulings on the legitimate exercise by a state of its police power. Ziffrin, Inc. v. Reeves, 308 U.S. 132, 84 L.Ed. 128, 60 S.Ct. 163 (1939). The interesting point about that case is that it glossed over many of the distinctions drawn in Leisy v. Hardin, supra, and held that property declared to be contraband by a state law cannot be considered a proper article of commerce.

The original package doctrine was merely an attempt by the court to draw a definitive line between the point where interstate commerce and the protection of the commerce clause ended. It is

doubtful that it has any present-day validity, having been replaced in the interstate commerce scheme, by the test in Walling v. Jacksonville Paper Co., supra, note 7.

Oklahoma does not declare marihuana to be contraband in so many words. However, marihuana is liable to forfeiture under federal law. 26 U.S.C.A. § 4745. Thus, it may be concluded that Congress itself has recognized that marihuana is not a lawful object of interstate commerce. See subheading C., infra.

b. Where interstate commerce ends.

In Mud Control Laboratories v. Covey, discussed above, the Utah Supreme Court applied the unbroken package doctrine along with other tests to hold that interstate commerce ended when the merchandise was delivered to one within the state for sale to the general public. This Court has held essentially the same thing in Wirtz v. National Electric Co., 285 F.Supp. 30 (Okla. 1969), aff'd 414 F.2d 1225. In that case, the Secretary of Labor sought to apply the Fair Labor Standards Act to National Electric on the basis that it had engaged in interstate commerce by receiving goods shipped in interstate commerce. The crucial point was whether goods unloaded by a carrier on the National Electric docks had ceased their interstate movement or whether the goods retained their interstate character until they were deposited on the shelves of National Electric's warehouse. This Court held that the interstate movement of the goods ceased when they were unloaded by the carrier onto the National Electric dock and that any movement thereafter was purely intrastate construing Walling v. Jacksonville Paper Co., supra, note 7.

In the present case, Plaintiff contends he has a right to

receive marihuana in its original unbroken package because it is in interstate commerce when he receives it. According to this Court's interpretation of Walling v. Jacksonville Paper Co., supra, this conclusion may be in error. If Plaintiff is receiving the marihuana on the special order of another party, then the marihuana remains in interstate commerce until it is delivered to such other person. However, if the Plaintiff receives the marihuana as in the case of a wholesaler, for sale to the general public, then its interstate movement ceases when he receives it. Thus, his possession of the marihuana in that case is possession of goods which have lost their interstate character, as they had in Wirtz v. National Electric Co., supra, when the goods were moved from the warehouse docks to the warehouse shelves. The same conclusion obtains if Plaintiff receives the marihuana for his own personal use. The distinguishing point is the intended end use of the goods shipped in interstate commerce. If the receiver of the goods is merely a conduit through which the goods pass to be consumed or transferred wholly in intrastate activities by another, then the goods retain their interstate character while in the hands of such a middleman. However, if the recipient of the goods intends for them an intrastate use, then their interstate journey has ended and the goods have lost their interstate character in the hands of the person receiving them.

c. Marihuana as a legitimate article of commerce.

Plaintiff contends that because Congress has levied taxes on the transfer of marihuana, it has recognized marihuana as a legitimate article of interstate commerce. Plaintiff evidently refers to 26 U.S.C.A. §§ 4741 to 4776. Such recognition is qualified.

26 U.S.C.A. § 4741 imposes on all transfers of marihuana a tax. However, where a person has failed to satisfy the provisions of 26 U.S.C.A. § 4742 relating to order forms, a transfer of marihuana is unlawful. Therefore, it may be said that where the marihuana in question has been transferred in a manner not provided for in the taxing statute, it is unlawfully transferred and the article so transferred is not a legitimate article of commerce. As further evidence that non-tax-paid marihuana is not a legitimate article of interstate commerce, 26 U.S.C.A. § 4745 declares that such marihuana is subject to forfeiture. Forfeiture is a procedure ordinarily applied only to contraband or articles used in the effectuation of an illegal transaction. Dealing and trafficking in non-tax-paid marihuana is not a legitimate interstate commerce activity because it is declared unlawful by 26 U.S.C.A. § 4755, which also proscribes its shipment among the several states, territories and possessions of the United States. Therefore, it would seem that unless the Plaintiff has satisfied the provisions of 26 U.S.C.A. § 4741 and § 4742 respecting the payment of taxes there assessed, the transfer, sale or other commerce in marihuana by that person is unlawful. Thus, Plaintiff's receipt of non-tax-paid marihuana in interstate commerce is the receipt of an article which is not a legitimate article of such commerce.

d. Preemption of the field by Congress.

The doctrine of preemption arises under Article 6, Clause 2 of the Constitution. With respect to those powers not prohibited to the states or reserved exclusively to the federal government, and the subject matter is one upon which Congress may exercise its power, there exists a field of concurrent power, to be exercised by both the states and Congress. 16 Am.Jur.2d, Constitutional Law, § 205, pp. 442-443. Concurrent power to legislate concerning a

particular subject matter may be expressly conferred on the states by Congress or the Constitution. A familiar example is the power of the states to regulate liquor traffic under the Eighteenth Amendment. Likewise, concurrent power to legislate concerning a particular subject matter may exist where it is not one which by its nature admits only of a uniform system or plan, but by reason of its diversity and complexity is best left to the individual efforts of the states. 16 Am.Jur.2d, Constitutional Law, § 209, pp. 447-448.

Where interstate commerce is concerned, the Supreme Court will not presume preemption, but rather it will look at the state and federal legislation to determine whether there is an actual conflict. In Florida Lime & Avacado Growers, Inc. v. Paul, 373 U.S. 132, 10 L.Ed.2d 248, 83 S.Ct. 1210 (1963), the court stated that exclusive domination of a particular phase of interstate commerce would not be found in the absence of two persuasive reasons: that the nature of the subject matter admits of no other conclusion or that Congress has unmistakably so ordained. The Court is of the opinion that neither of these criteria are met in the case of the Oklahoma marihuana laws. It is a notorious and sad fact that the combined efforts of both state and federal authorities have been unable to stem the enormous growth of traffic in drugs and drug abuse, of which the use of marihuana is a major element. In order that there be interstate traffic in marihuana, it must originate or come to rest within a state. Without the existence of state laws regulating the possession and sale of marihuana, federal enforcement of the federal laws relating to marihuana might well become impossible, if such is not already the case as a practical matter of fact. The Court concludes that regulation of traffic

in and possession and sale of marihuana is not a matter the nature of which admits of only federal regulation and, in view of the provisions of 26 U.S.C.A. § 4773,^{8/} it is quite clear that Congress did not ordain that commerce in marihuana be exclusively controlled by federal law. Congress has not preempted the field of commerce in marihuana.

4. Whether this Court should apply the doctrine of abstention

It appears that if, under state law, Plaintiff has an adequate remedy to test the claims made herein, he should exhaust such remedies before applying to this Court. Burmeister v. New York City Police Department, 275 F.Supp. 690 (N.Y. 1967). At any event, this Court would be constrained by the explicit procedure spelled out in England v. Louisiana Board of Medical Examiners, 375 U.S. 411, 11 L.Ed.2d 440, 84 S.Ct. 461 (1964), to invoke the doctrine of abstention even were jurisdiction present to hear Plaintiff's case. That case requires a federal court to abstain from initially deciding federal constitutional questions until the state courts

8/ This statute provides:

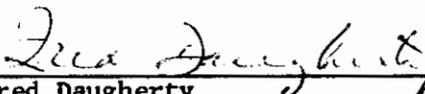
". . . the order forms and copies thereof and the prescriptions and records required to be preserved under the provisions of section 4742 . . . shall be open to inspection by . . . such officials of any State or Territory, or any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the production of marihuana or regulating the sale, prescribing, dispensing, dealing in, or distribution of . . . marihuana." The statute further provides that copies of these documents may be made available to such officials at a nominal charge. Obviously, Congress intended full cooperation of federal and state officials in the enforcement of their respective laws.

have had an opportunity to do so. See 375 U.S., at pp. 418-419, 11 L.Ed.2d, at pp. 446-447.

In summary, the Court concludes that Plaintiff may not maintain this action herein for the following reasons: (1) Plaintiff has failed to plead facts showing jurisdiction of his case in this Court. (2) Plaintiff has not proceeded against the proper parties defendant herein. (3) Under the circumstances pleaded by Plaintiff the receipt of marihuana by Plaintiff in interstate commerce is not protected from the operation of 63 Okl.St. Ann. §§ 451-453 by the United States Constitution. (4) Even if jurisdiction were present, this Court should abstain.

Defendants' Motion to Dismiss Plaintiff's action is granted and Plaintiff's action is hereby dismissed.

It is so ordered this 13 day of April, 1970.



Fred Daugherty
United States District Judge

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

DEMPSEY-TEGELER & CO., INC.,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
COMMUNITY NATIONAL LIFE)
INSURANCE COMPANY, an Oklahoma)
corporation; JOE B. HUNT,)
Receiver of Community National)
Life Insurance Company; and)
PAUL W. POLIN and MARSHA POLIN,)
individuals,)
)
Defendants.)
_____)

NO. 68-C-33

FILED

APR 24 1970

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

J U D G M E N T

This cause was tried to the Court on April 13, 1970, pursuant to regular assignment. The Court finds that judgment should be entered in accordance with its Findings of Fact and Conclusions of Law filed herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have judgment against the defendants, Community National Life Insurance Company and Joe B. Hunt, Receiver for Community National Life Insurance Company, in the amount of \$20,149.25 plus an amount equal to interest thereon at the rate of 6% per annum from October 1, 1966, to the date hereof, together with interest on the aggregate of such amounts from the date hereof at the rate of 10% per annum, and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff should have no relief against the defendants Paul W. Polin and

Marsha Polin and the Complaint of the plaintiff against these defendants is dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant Community National Life Insurance Company take nothing by its cross-claim against the defendants Paul W. and Marsha Polin, and said cross-claim is dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants Paul W. and Marsha Polin take nothing by their cross-claim against the defendant Community National Life Insurance Company and said cross-claim is dismissed.

DATED at Tulsa, Oklahoma, this 24th day of April, 1970.


UNITED STATES DISTRICT JUDGE

IEU:s1b

4/15/70

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

DE GEORGE CUSTOM TAILORS, INC.,)
 a corporation,)
)
 Plaintiff,)
)
 vs.)
)
 HANOVER INSURANCE COMPANY,)
 a corporation,)
)
 Defendant.)

NO. 70-C-14

FILED

APR 24 1970

ORDER DISMISSING ACTION WITH PREJUDICE M. M. EWING, CLERK
 U. S. DISTRICT COURT

NOW, on this 21 day of April, 1970, there having been pre-

sented to the undersigned United States District Judge sitting in and for the Northern District of Oklahoma the stipulation for a dismissal of the action as captioned above, and the Court having considered the same and being well and sufficiently advised in the premises finds that said order should issue herein.

IT IS THEREFORE ORDERED BY THIS COURT that the above styled and numbered action be, and the same is hereby ordered dismissed with prejudice.

4/20/1970

Arthur Robinson
 United States District Judge

APPROVED:

UNGERMAN, GRABEL, UNGERMAN & LEITER

~~By: *[Signature]*
 Attorneys for De George Custom Tailors, Inc.
 a corporation, Plaintiff~~

KNIGHT, WILBURN & WAGONER

By: *[Signature]*
 Attorneys for Hanover Insurance Company,
 a corporation, Defendant

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

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

JACK W. KELLEY, ET AL.,)
)
 Plaintiffs,)
)
 vs.)
)
 BANK BUILDING AND EQUIPMENT)
 CORPORATION OF AMERICA,)
)
 Defendant and)
 Third Party Plaintiff,)
 and)
)
 COMMERCIAL UNION INSURANCE COMPANY,)
)
 Defendant,)
 vs.)
)
 ADVANCE GLASS COMPANY,)
 a corporation,)
)
 Third Party Defendant.)

EILED
APR 27 1970
M. M. EWING, CLERK
U. S. DISTRICT COURT

No. 68-C-189 ✓

AMENDED JUDGMENT

Based upon, and in accordance with the Amended Findings of Fact and Conclusions of Law as between the plaintiffs, Jack W. Kelley, Alfred R. Tandy and William H. Morris, doing business as a joint venture under the name Bank Building Joint Venture, and the defendant, Bank Building and Equipment Corporation of America, and the defendant and third party plaintiff and third party defendant, Advance Glass Company, a corporation it is,

The Judgment of this Court that third party defendant, Advance Glass Company, a corporation, have judgment against the defendant, Bank Building and Equipment Corporation of America, and the plaintiffs, Jack W. Kelley, Alfred R. Tandy, and William H. Morris, doing business as a joint venture under the name Bank Building Joint Venture, in the sum of \$13,846.87.

It is the further Judgment of this Court that the defendant, Bank Building and Equipment Corporation of America, have judgment against the plaintiffs, Jack W. Kelley, Alfred R. Tandy, and William H. Morris, doing business as a joint venture under the name Bank Building Joint Venture, in the sum of \$13,846.87.

It is the further Judgment of this Court that third party defendant, Advance Glass Company, a corporation, have a lien upon the sum of \$13,846.87 on deposit in the registry of the Clerk of the District Court of Tulsa County, State of Oklahoma, in cause No. 11,673 styled Advance Glass Company, a corporation, plaintiff v. Bank Building and Equipment Corporation

of America, Inc., et al., defendants, pending in said Court, said sum having been deposited by the defendant, Bank Building and Equipment Corporation.

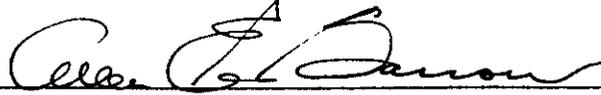
It is the further Judgment of this Court that upon this Judgment becoming final, the Clerk of said District Court in the above styled cause pending in the District Court of Tulsa County, Oklahoma, pay to said third party defendant, Advance Glass Company, a corporation, from the fund on deposit in the registry of the Clerk of the District Court in and for Tulsa County, Oklahoma, the sum of \$13,846.87.

It is the further Judgment of this Court that the Judgment shall earn interest at the rate of ten percent (10%) per annum from this date forward, the same to be paid out of and from the deposit made with the Clerk of the District Court of Tulsa County, Oklahoma, until paid.

DATED this 27th day of April, 1970.

Leithen Bohannon
UNITED STATES DISTRICT JUDGE

ENTERED this 27 day of April, 1970.

A handwritten signature in cursive script, appearing to read "Clara F. Brown". The signature is written in black ink and is positioned above a horizontal line.

UNITED STATES DISTRICT JUDGE

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

KENNETH EUGENE SUTTON,)
)
) Petitioner,)
 vs.)
) No. 70-C-124
 RAY H. PAGE, Warden of the)
 Oklahoma State Penitentiary,)
)
 Respondent.)

FILED

APR 27 1970

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

ORDER OF DISMISSAL

Kenneth Eugene Sutton has filed in this Court Petition for Writ of Habeas Corpus seeking his release from the Oklahoma State Penitentiary where he is confined under a judgment and sentence entered by the District Court of Tulsa County, Oklahoma, on the 16th day of May, 1969, sentencing the petitioner to a term of 12 years for the crime of second degree burglary after a former conviction of a felony.

The Court is first presented with the question of petitioner's exhaustion of his available state remedies. The petitioner alleges he has exhausted these remedies by petitioning the Oklahoma Court of Criminal Appeals for a Writ of Habeas Corpus, or, in the alternative, for a post conviction appeal, which was denied. This allegation is refuted by an Order of the Court of Criminal Appeals of the State of Oklahoma filed October 15, 1969, in Case No. A-15,509 entitled Kenneth Eugene Sutton, Petitioner, vs. Ray H. Page, Warden, Oklahoma State Penitentiary, Respondent, and in this Order the Court of Criminal Appeals stated:

"* * * Thus, the Court does not find that petitioner has been denied any right relating to an appeal when the actions of his own retained counsel result in the failure to perfect an appeal within the time allowed by law. Therefore, petitioner is not entitled to an appeal out of time as authorized by 22 O.S. Supp. 1969, §1073.

Petitioner's application urges no other ground on which to grant a Writ of Habeas Corpus and where the accused has not been denied any right relating to his right to appeal his conviction, we find there would be no basis for granting a Writ of Habeas Corpus."

Thus it appears from the Order of the Court of Criminal Appeals of the State of Oklahoma that the only question presented to that Court for its consideration was the petitioner's right to appeal out of time as authorized by the Oklahoma Statute, and none of the questions presented in petitioner's present Petition for Writ of Habeas Corpus were presented to the Court of Criminal Appeals, or if presented, were not decided.

Petitioner in his Brief states that since the petitioner was not entitled to relief on post conviction appeal or state habeas corpus, on the grounds that petitioner's attorney did not file a petition in error in the case, it would be frivolous for the petitioner to continue to ask for relief from the state Courts. This Court does not agree. The Court of Criminal Appeals is open at all times to this petitioner to seek relief in that Court for a violation of his Federal Constitutional rights, and that Court is eminently qualified and situated to pass upon and protect petitioner's Constitutional rights when called upon to do so.

A habeas corpus petitioner cannot bypass remedies available to him in the State Courts, and seek relief in the Federal Courts.

Accordingly, under the facts, this Court is without jurisdiction, and the Petition is dismissed.

Dated this 24th day of April, 1970.

William Bohannon
United States District Judge