

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

LEON S. FARMER, JR., et al.,

Defendants.

FILED

MAY 31 1974 *ds*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Civil Action No. 74-C-51 ✓

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 31 day
of May, 1974, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney, and the defendants,
Leon S. Farmer, Jr., a/k/a Leon Sonny Farmer, Jr., a/k/a Leon
Farmer, Mattie Farmer, James O. Goodwin, Merchants & Professional
Collection Service, appearing not.

The Court being fully advised and having examined the
file herein finds that Leon S. Farmer and Mattie Farmer were
served by publication, as appears from the Proof of Publication
filed herein on May 28, 1974; the defendant, James O. Goodwin,
was served with Summons and Complaint on January 25, 1974; and
the defendant, Merchants Professional Collection Service was
served with Summons and Complaint on January 29, 1974.

It appearing that the said defendants have failed to
answer herein and that default has been entered by the Clerk
of this Court.

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

Lot Twenty-nine (29), Block Nine (9),
SUBURBAN ACRES SECOND, an Addition
to the City of Tulsa, Tulsa County,
Oklahoma, according to the recorded
plat thereof,

THAT the defendants, Leon S. Farmer, Jr., and Mattie Farmer, did, on the 29th day of September, 1972, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the sum of \$10,000.00, with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants, Leon S. Farmer, Jr. and Mattie Farmer, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above named defendants are now indebted to the Plaintiff in the sum of \$9,973.65 as unpaid principal, with interest thereon at the rate of 4 1/2 percent per annum from March 1, 1973, until paid, plus the cost of this action accrued and accruing.

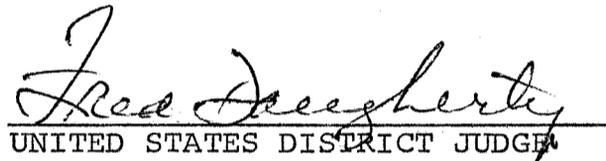
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against defendants, Leon S. Farmer, Jr. and Mattie Farmer, in rem, for the sum of \$9,973.65 with interest thereon at the rate of 4 1/2 percent per annum from March 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendants, James O. Goodwin, and Merchants & Professional Collection Service.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United

States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, shall 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, all of 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.


UNITED STATES DISTRICT JUDGE

APPROVED.



ROBERT P. SANTEE
Attorney for Plaintiff
United States of America

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION NO. 72-C-253
)
 10.00 Acres of Land, More) Tract No. 1270M
 or Less, Situate in Nowata)
 County, State of Oklahoma,)
 and Paul W. Grant, et al.,) (All Interests)
 and Unknown Owners,)
)
 Defendants.)

FILED

MAY 31 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

1.

NOW, on this 30th day of May, 1974, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment fixing just compensation in this matter. After having examined the files in this action and being advised by counsel, the Court finds:

2.

This judgment applies to the entire estate condemned in Tract No. 1270M, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, on July 24, 1972

the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the estate taken in the subject tract a certain sum of money, and none of this deposit has been disbursed, as set out below in paragraph 13.

7.

A pre-trial hearing in this case was set by the Court for April 3, 1973. Due notice of such hearing was given to all of the parties. The Plaintiff, United States of America, appeared at such hearing by Hubert A. Marlow, Assistant United States Attorney for the Northern District of Oklahoma.

The defendants, Joe L. Barthel and Gloria R. Clifton, appeared at said pre-trial by their attorney, Robert W. Booth. No other defendants appeared, either in person or by attorney.

8.

At the said pre-trial hearing the Court was advised that the Nowata County land records show that a certain unrecorded oil and gas lease, which covered the subject tract, had been assigned in 1964 to the defendants, Joe L. Barthel and Gloria R. Clifton, but that no oil or gas had been produced from subject tract since such assignment. The said defendants agreed to advise the Court within a few days, as to whether they claimed a valid and subsisting oil and gas lease upon the subject property. Such advise has never been received by the Court.

On May 15, 1974, counsel for the two said defendants was advised that unless by May 24, 1974, evidence was furnished to the Plaintiff showing that the said defendants did have a valid, oil and gas lease on the subject tract on the date of taking, then the Court would enter judgment holding that the said lease of record had expired by its own terms. No such evidence has been furnished by the said defendants. Therefore, such lease should be held to have expired by its own terms.

9.

The defendants named in paragraph 13 as owners of the estate taken in the subject tract are the only defendants asserting any interest in such property. All other defendants having either disclaimed or defaulted, the named defendants are the owners of such property, as of the date of taking and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

The Court has been advised by counsel for Plaintiff that in the event of a trial, Plaintiff's evidence would show that \$40.00 was the value of the estate taken in this case. This sum is based upon an appraisal made by J. M. Wanenmacher; and, the owners have not offered any evidence to the contrary. Therefore, such sum should be adopted as the award of just compensation in this case.

11.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tract, as such tract is described in the Complaint filed herein, and such property, to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of July 24, 1972, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

12.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case a certain oil and gas lease, the assignment of which is recorded in Book 432 at Page 87, of the Nowata County, Oklahoma, land records, had expired by its own terms and Joe L. Barthel and Gloria R. Clifton, the record owners of such lease, have no interest in the subject property. Owners of the subject property were the defendants whose names appear below in the schedule set forth in paragraph 13, and the right to receive the just compensation awarded by this judgment is vested in such named owners.

13.

It Is Further ORDERED, ADJUDGED and DECREED that the sum of \$40.00 hereby is adopted as the award of just compensation for the estate taken in subject tract, as set out in the schedule which follows, to-wit:

TRACT NO. 1270M

Owners:

Paul W. Grant ----- 1/3

Deloris Grant ----- 1/3
(Successor in interest to
Garland Dean Grant, deceased)

Virginia Lenore Neal ----- 1/3

Award of just compensation pursuant to Court's findings -----	\$40.00	\$40.00
Deposited as estimated compensation -----	<u>\$40.00</u>	
Disbursed to owners -----		<u>None</u>
Balance due to owners -----		\$40.00

14.

It Is Further ORDERED that the Clerk of this Court now shall disburse the deposit for the subject tract as follows:

To - Paul W. Grant -----	\$13.34
Deloris Grant -----	\$13.33
Virginia Lenore Neal -----	\$13.33

/s/ Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney

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

THE WESTERN CASUALTY AND SURETY COMPANY,)

Plaintiff,)

vs.)

BERT E. TUCKER, et al.,)

Defendants.)

73-C-172 ✓

FILED

MAY 29 1974 *cl*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

In conformity with the Findings of Fact and Conclusions
of Law herein above delineated and filed this day, Judgment
is entered as follows:

IT IS ORDERED AND ADJUDGED that The Western Casualty
and Surety Company is not obligated to defend or indemnify any
party to this action as to any claim arising out of the accident
occurring March 13, 1971.

IT IS FURTHER ORDERED that the Mid-Continent Casualty
Company is not obligated to defend or indemnify any party to this
action as to any claim arising out of the accident of March
13, 1971.

ENTERED this 29 day of May, 1974.



CHIEF UNITED STATES DISTRICT JUDGE

FILED

MAY 29 1974 ✓

Jack C. Silver, Clerk
U. S. DISTRICT COURT

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

THE WESTERN CASUALTY AND SURETY COMPANY,)	
)	
Plaintiff,)	
)	73-C-172 ✓
vs.)	
)	
Bert E. Tucker, et al.,)	
)	
Defendants.)	

FINDINGS OF FACT AND CONCLUSIONS OF
LAW

This litigation was filed herein June 5, 1973, and this Court does have proper jurisdiction and venue over all parties herein. The Defendant, Mid-Continent Casualty Company, filed its Motion for Summary Judgment herein and on December 13, 1973, this Court ordered Response by all parties be made within ten (10) days. The Plaintiff, The Western Casualty and Surety Company filed its Motion for Summary Judgment November 13, 1973, and on November 14, 1973, all other parties were ordered to Respond within ten (10) days. The only Response filed by any Defendant was MFA Insurance Company which raised no objection to judgment as sought by the Plaintiff, and by The Western Casualty and Surety Company, which raised no objection to Judgment as sought by Mid-Continent Casualty Company. By telephone on May 29, 1974, the Court was advised by Dale F. McDaniel, attorney for Tradewinds East Texaco and Dale Warner, Attorney for Bert E. and Carolyn Sue Tucker and Bernice and Winfrey Smith that they had no objection to judgment being entered. Such advice is to be confirmed in writing to the Court.

On January 11, 1974, the plaintiff filed Application

For Court to Enter Judgment.

This Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The statement of facts contained in Brief in Support of Motion for Summary Judgment filed by Plaintiff are made a part hereof by reference, and as there has been no other or contrary evidence presented to this Court, nor any objections to said evidence, same stands admitted and is accepted as the findings of this Court. That the Western Casualty Company policies set forth in the Complaint would not be applicable to the accident of March 13, 1971, in any manner regardless of whether the named insured stated in said policies are a partnership or individuals.

2. The 1969 Dodge owned by Richard Romans and involved in the accident in question was not owned, maintained or held in connection with, for or on behalf of Romans filling station business and the only vehicle insured under said Western Casualty policies was a 1961 Falcon vehicle not involved in this incident. That the said 1969 Dodge automobile was not a substitute for or replacement of any other vehicle. Richard Romans, individually had purchased the 1969 Dodge and same was held solely for purposes of his personal resale of same for profit. Richard Romans did not seek, request or contract for insurance on said 1969 Dodge on behalf of anyone, and in fact said vehicle was an uninsured vehicle on the date of accident concerned with herein and driven by Richard Phillips who was an uninsured motorist at the time of the accident material herein. Richard Phillips was not acting for or on behalf of any person or company at the time of said accident.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court makes the following conclusions of Law.

1. That this Court has proper jurisdiction and venue to determine the rights and duties of all parties herein.

2. That Richard Michael Phillips was not a named insured, or in any manner insured under or by virtue of the policies of insurance of The Western Casualty and Surety Company or Mid-Continent Casualty Company at issue in the case at bar, and was an uninsured motorist at all times material to these issues.

3. The 1969 Dodge involved in the accident set forth in plaintiff's complaint was not an insured vehicle under the policy of Mid-Continent Casualty Company or The Western Casualty and Surety Company.

4. The policies of The Western Casualty and Surety Company and Mid-Continent Casualty Company herein provided no coverage direct or indirect which would apply to, cover, or be material to any claim or claims arising from the described accident which occurred March 13, 1971.

5. Based on the Conclusions of Law as delineated by the Court, this Court concludes that Judgment should be rendered in favor of The Western Casualty and Surety Company and the Mid-Continent Casualty Company, declaring that neither is in any manner obligated to indemnify or defendant any other party to this action as to any claim arising out of the accident which occurred March 13, 1971.

ENTERED this 29 day of May, 1974.

Allen E. Sauer

CHIEF UNITED STATES DISTRICT JUDGE

earlier, with the close of the 84th month (7-year period) following the month such period began, and has filed an application for widow's insurance benefits, is entitled to benefits for each month, beginning with the first month after her waiting period, as defined in paragraph (6), i.e., the earliest period of six consecutive calendar months throughout which she has been under a disability, and which begins not earlier than whichever of the following is the later, the first day of the 18th month before the month in which her application is filed, or the first day of the sixth month before the month in which occurred the death of the fully insured individual.

Subsection 223(d)(2)(B) of the Social Security Act, as amended, defines "disability" (except for certain cases of blindness) as the "inability to engage in any gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

Social Security Regulations No. 4, Subpart P., section 404.1501, 404.1504, and 404.1506, provide in pertinent part that a widow shall, for the purposes of section 202(e) of the Act, be determined to be under a disability if, in the absence of evidence that she is engaged in substantial gainful activity, her impairment or impairments are listed in the appendix of Subpart P; are of a level of severity, as described in the appendix, deemed sufficient to preclude an individual from engaging in any gainful activity; and are expected to result in death or to last for a continuous period of not less than 12 months.

The issue before the Court in this case is whether the decisions of the Secretary that the claimant did not establish a "disability" as defined in the Social Security Act, as amended, at any time prior to the issuance of the decision of the Administrative Judge is supported by substantial evidence.

The evidence adduced before the Administrative Judge reflects that Edna J. Kirksey was born March 6, 1918, at Courtney, Oklahoma. The evidence further reflected that she married James B. Kirksey, the wage earner, on September 23, 1933, and that Mr. Kirksey departed this life February 13, 1972.

The examiner considered medical and nonmedical evidence, and all documents on file.

Mrs. Kirksey testified (TR-39) that she worked part-time, when her children was in school in demonstration work, which necessitated standing for 8 hours a day handing out samples. She also testified that she had worked as a saleslady in a department store.

The disabilities claimed by plaintiff are kidney and bladder condition; colon trouble; trouble with her legs, and various pains throughout her body.

The Administrative Judge, in his decision, extensively summarized the medical evidence, and the Court feels no need to delineate it at this juncture.

The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive. 42 U.S.C. 405(g); Richardson v. Perales (1971) 402 U.S. 389, at 401. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, supra.

The burden of proving disability, by acceptable evidence, for social security purposes rests with the claimant. Johnson v. Finch (10th CCA, 1971) 437 F.2d 1321.

The Court must examine the record as a whole if it is to properly make a determination as to whether substantial evidence exists. Gardner v. Bishop (10th CCA, 1966) 362 F.2d 917; Travis v. Richardson (10th CCA, 1970) 434 F.2d 225.

The Courts are not to abdicate their traditional functions in reviews of administrative determinations. The agencies must likewise have given a balanced consideration to all the testimony on each particular issue presented, and if this is not done, the failure will be apparent on application of the substantial evidence test. Universal Camera Corp. v. NLRB (1950) 340 U.S. 474; Travis v. Richardson, supra.

The evaluation of the testimony and the findings of fact are for the administrative agency to make, based upon the entire evidence before it. Although a court might not reach the same result were it to make the decision originally, if the decision is supported by substantial evidence, it must be upheld. This decision by the Secretary is so supported, and the Motion for Summary Judgment filed by defendant should be sustained, and the Motion for Summary Judgment filed by the plaintiff should be overruled.

ENTERED this 29 day of May, 1974.

Alan E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

E I L E D

MAY 28 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION NO. 71-C-53
)
 60.02 Acres of Land, More) Tract No. 1421M
 or Less, Situate in Nowata)
 County, State of Oklahoma,) (All Interests)
 and A. L. White, et al.,)
 and Unknown Owners,)
)
 Defendants.)

J U D G M E N T

1.

NOW, on this 27th day of May, 1974, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on June 18, 1973, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

This judgment applies to the entire estate taken in Tract No. 1421M, as such estate and tract are described in the Complaint filed in this case.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the subject property. Pursuant thereto, on March 8, 1971, the United States of America

filed its Declaration of Taking of a certain estate in such tract of land, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

6.

Simultaneously with filing of the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of the described estate in the subject tract a certain sum of money, and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

The Report of Commissioners filed herein on June 18, 1973, is accepted and adopted as a finding of fact as to subject tract. The amount of just compensation as to the estate taken in subject tract as fixed by the Commission is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estate taken in subject tract and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendants named in paragraph 12 as owners of the estate taken in subject tract are the only defendants asserting any interest in such estate; all other defendants having either disclaimed or defaulted, the named defendants were (as of the date of taking) the owners of the estate condemned herein and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tract, as it is described in the Complaint filed herein, and such property, to the extent of the estate described in such Complaint is condemned, and title thereto is vested in the United States of America, as of March 8, 1971, and

all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the estate taken herein in subject tract were the defendants whose names appear below in paragraph 12, and the right to receive the just compensation for such estate is vested in the parties so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on June 18, 1973, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estate taken in subject tract, as shown by the following schedule:

TRACT NO. 1421M

Owners: A. L. White and
Louise White, his wife

Subject to a mortgage owned by:
The First National Bank of Nowata

Award of just compensation pursuant to Commissioners' Report -----	\$12,000.00	\$12,000.00
Deposited as estimated compensation --	635.00	
Disbursed to owners -----		<u>None</u>
Balance due to owners -----		\$12,000.00 plus interest
Deposit deficiency -----	\$11,365.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for the subject tract as shown in paragraph 12, in the total amount of \$11,365.00, together with interest on such deficiency at the rate of 6% per annum from March 8, 1971, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tract in this civil action.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tract, jointly, to A. L. White, Louise White and The First National Bank of Nowata.

/s/ Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney

The thrust of Plaintiff's Complaint is that in an area preempted by the Federal Government^{1/} the Executive Branch of the Federal Government acting through the Secretary of the Interior has determined, inter alia, the members of the Business Council and its President, the role of the Nasharo Council and that the May 5, 1973 election was invalid, which determinations^{2/} must be accorded full faith and credit and be accepted by the Court as final and not justiciable^{3/} and that certain Defendants acting or purporting to act contrary thereto be enjoined from so conducting themselves in certain respects.^{4/}

1/

The area claimed to have been pre-empted by the Federal Government is the matter of the internal affairs of Indian tribes. Worcester v. Georgia, 31 U.S. 515 (1832); Martinez v. Southern Ute Tribe of Southern Ute Res., 249 F. 2d 915 (Tenth Cir. 1957) which provides:

" The doctrine that Indian affairs are subject to control of the federal, rather than state government, arises from the constitutional powers of Congress to make treaties, to regulate commerce with the Indian tribes, to admit new states, and to administer the property of the United States and legislation enacted in pursuance of these powers. The states of Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah and Washington were admitted to the union under enabling acts expressly disclaiming jurisdiction over Indian affairs and this provision was consequently written into their constitution."

2/

These determinations are claimed to have been accomplished through administrative appellate procedures prescribed by Part 2, Title 25 of the Code of Federal Register. Exhibit "A" to the Complaint is alleged to contain these final determinations of the Secretary of the Interior except the last was made by a letter dated April 20, 1973.

3/

25 U.S.C. §2; Lone Wolf v. Hitchcock, 187 U.S. 553 (1903); State v. Gowdy, 462 P. 2d 461 (Ore. App. 1969).

4/

Plaintiff requests that one Defendant be enjoined from acting as President of the Pawnee Business Council contrary to the determination of the Secretary of the Interior, that two Defendants be enjoined from acting as members of said Council contrary to the determinations of the Secretary of the Interior, and certain other Defendants be enjoined from signing checks on tribal funds and obligating tribal funds for legal fees as they lack authority to so act.

This Court has jurisdiction of this action brought by the United States of America. 28 U.S.C. §1345. The United States of America is a proper party to have the aforesaid final determinations of the Secretary of the Interior accorded full faith and credit and be judicially enforced as such and those acting contrary thereto enjoined from so conducting themselves.

The facts of this controversy are not in significant dispute and the parties have been able to present the case to the Court by exhibits and stipulations as to what the testimony of certain witnesses would be. The request by cross-claim of certain of the Defendants for an accounting of tribal funds by certain other Defendants was withdrawn from the case and consideration by the Court by those seeking same.

It appears that in May, 1971 a Business Council was elected. Defendant Chapman became President in 1972. The Business Council subsequently removed him from the Presidency. A new President was elected in the person of Austin Realrider. By the procedure set out in Part 2, Title 25 of the Code of Federal Regulations, as authorized by 25 U.S.C. 2 and 9, regarding "Appeals from Administrative Actions" (actions or decisions by officials of the Bureau of Indian Affairs) Chapman appealed to the Superintendent of the Pawnee Agency who determined the removal action to be invalid. Opposing Defendants then appealed to the Area Director who declined to intervene on the ground that the matter was an internal tribal affair which decision had the effect of negating the earlier determination of the Superintendent. Chapman then appealed directly to the Secretary of the Interior. The Commissioner of Indian Affairs recognized this request and forwarded the appeal to the Secretary of the Interior with the recommendation that he entertain the same without any action by the Commissioner. On August 3, 1972 the Secretary of the

Interior made his determinations which were briefly that Chapman had been validly removed as President in a reorganization of the Business Council, that Austin Realrider was the elected President of the Business Council, the membership of the Business Council was stated and the role of the Nasharo Council was defined as having no voting power in the conduct of regular business nor in the election of officers of the Business Council,^{5/} all such determinations being made under and pursuant to the Constitution and By-Laws of the Pawnee Indians of Oklahoma. Supplemental to these determinations and on April 20, 1973 the Secretary of the Interior determined that an election proposed (and later conducted) by the Chapman faction on May 5, 1973 would be illegal as the same would not be conducted in accordance with rules and regulations established and promulgated by the duly constituted Business Council as determined by the decision of August 3, 1972.

Plaintiff thus seeks to enforce these decisions or determinations of the Secretary of the Interior which determined the membership and President of the Business Council (and its present incumbency inasmuch as the May 5, 1973 election was determined to have been improperly conducted) the role of the Nasharo Council and that the May 5, 1973 election was invalid.

Plaintiff's requested relief herein is opposed by certain Defendants, (the Chapman group) on the grounds that the State District Court in and for Pawnee County, Oklahoma, in a land controversy before it has heretofore determined the Business

5/

By the Constitution and By-Laws of the Pawnee Indians of Oklahoma the Nasharo Council has the right to review matters of tribal membership and rights growing out of treaties.

Council membership and its President and did so in favor of the Chapman group and has enjoined Realrider and certain of his group, both individually and jointly, from committing any acts purportedly on behalf of the Pawnee Indian Tribe except that certain of them were entitled to participate as members of the Business Council at officially called meetings. These Defendants also deny that this Court has jurisdiction to entertain the request of the Plaintiffs; deny that the Secretary of the Interior has jurisdiction over the Defendants; assert that the issues are moot by reason of the May 5, 1973 election and that the administrative decisions or determinations of the Secretary of the Interior were improper for lack of due process, because the same are arbitrary and capricious, because no adversary hearings were held or record kept, because matters occurring after the first appeal were considered by the Secretary, because certain erroneous findings were entered by the Secretary, because of a failure of the Secretary to have before him all the necessary facts, that the determination of the Secretary of the Interior on the May 5, 1973 election was not validly accomplished and because Plaintiff is estopped to question the May 5, 1973 election for failure to take action before the election was conducted.

The Court recognizes the legion cases from this Circuit and elsewhere that the Federal Courts are without jurisdiction to entertain and decide internal Indian tribal affairs, matters or disputes;^{6/} that Congress had exclusive plenary legislative authority over such affairs and has designated and empowered

^{6/} Typical are Martinez v. Southern Ute Tribe of Southern Ute Res., *supra*; Motah v. United States, 402 F. 2d 1 (Tenth Cir. 1968); Prairie Band of Pottawatomie Tribe Of Indians v. Udall, 355 F. 2d 364 (Tenth Cir. 1966) and the recent case of National Indian Youth Coun. Int. Ind. Sch. Chap. v. Bruce, 485 F. 2d 97 (Tenth Cir. 1973).

the Secretary of the Interior in this regard. Worcester v. Georgia, 31 U.S. 515 (1832); Martinez v. Southern Ute Tribe of Southern Ute Res., 249 F. 2d 915 (Tenth Cir. 1957). The Court must further recognize that this prohibition of judicial action must also apply to State Courts as well as Federal Courts. This being so, the Court finds and declares that, as the membership of the Business Council and who is its President are internal tribal affairs, the judicial determinations in these respects and any injunctive order in support thereof by the District Court of Pawnee County, Oklahoma as aforesaid are void for lack of jurisdiction.^{7/} The Court further finds that the administrative appeal prescribed by Part 2 of Title 25, Code of Federal Regulations, and as applied to this controversy, was not lacking in due process and the appellate procedures were substantially followed without prejudice to Chapman and his group. It is noted that Chapman himself initiated the appellate procedure and then took the final appellate step to the Secretary of the Interior. He was afforded an ample opportunity (and did exercise the same) to present a statement of his reasons for the appeals and any arguments he wished to make in support of his reasons and position. Further, the Court finds that the Secretary of the Interior was acting within his jurisdiction and within the scope of review prescribed by Section 2.37 of the Appeals Regulations^{8/} and that his determinations are not arbitrary and capricious. Also the issues are not moot as the Secretary of the Interior has determined the May 5, 1973 election to be invalid and is not recognized. Furthermore, the evidence

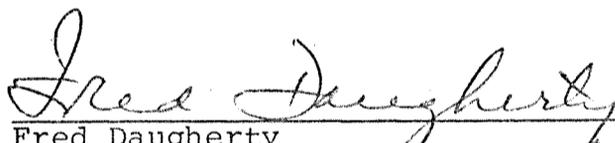
^{7/} 25 U.S.C. §2; State v. Bertand, 378 P. d 427 (Wash. 1963) State v. Gowdy, supra; Lone Wolf v. Hitchcock, supra.

^{8/} "§2.37 Scope of review.
When a matter is before an official of the Bureau of Indian Affairs or higher echelon of the Department of the Interior on appeal, any information available to the reviewing officer may be used whether formally part of the record, if any, or not, but where reliance is placed on information not of record such information shall be identified as to source and nature."

before the Court does not support the claimed estoppel^{9/} against the Plaintiff. The Chapman group was not misled by Plaintiff about the May 5, 1973 election. To the contrary, they were told in advance thereof by Plaintiff that the election was illegally called. No erroneous findings by the Secretary of the Interior of any significance are found to be present. An adversary hearing is not prescribed,^{10/} the Secretary appears to have had all necessary facts before him and he was entitled to consider any information available to him whether a part of the record or not.^{11/}

The Court therefore finds and concludes that the determinations of the Secretary of the Interior involved herein should be enforced by the Court and those acting contrary thereto should be enjoined from such conduct. Counsel for Plaintiff will prepare an appropriate Judgment based on the foregoing and after circulation present the same to the Court for signature and entry herein.

Dated this 28th day of May, 1974.


Fred Daugherty
United States District Judge

^{9/} "Estoppel" is a term of wide implication, and implies that one who by his deed or conduct has induced another to act in a particular manner will not be permitted to adopt an inconsistent position, attitude, or course of conduct and thereby cause loss or injury to such other." 31 CJS, Estoppel, Sec. 1a, page 288.

^{10/} Nor required as the facts were not in dispute and only law questions under the Constitution and By-Laws were involved. See Citizens for Allegan County, Inc. v. Federal Power Com'n., 414 F. 2d 1125 at 1128 (D.C. Cir. 1969).

^{11/} See note 8, supra.

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

THE M.W. KELLOGG COMPANY,
Plaintiff,

vs.

INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS, & HELPERS, its
LOCAL UNION 592, and Their Officers,
Agents, Servants, Representatives or
Employees, Individually and Collectively,
and any Person Acting in Concert With
Them or Otherwise Participating in Their
Aid,

Defendants.

No. 74-C-215 ✓

E I L E D

MAY 28 1974 *h*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NOTICE OF DISMISSAL BY PLAINTIFF

To: Phil Frazier, 1426 Terrace Drive, Tulsa, Oklahoma, 74103
Attorney for Defendants.

Please take notice that the Plaintiff discontinues the
above entitled action and dismisses the Complaint without
prejudice.

DATED this 23rd day of May, 1974.

KOTHE & EAGLETON, INC.

By: *Richard L. Barnes*

Richard L. Barnes
124 East Fourth
Tulsa, Oklahoma 74103

Attorney for Plaintiff,
The M.W. Kellogg Company

widow attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began. Benefits provided under this Section are not payable for any month prior to February, 1968.

As applicable, Section 223 of the Act defines "disability" as a physical or mental impairment or impairments of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity and which can be expected to last for a continuous period of not less than 12 months.

Regulation Number 4, Subpart P, Section 404.1504, provides in pertinent part, that a widow shall be determined to be under a disability only if her impairments meet the duration requirement and are listed in the appendix to the subpart, or, if not so listed, are determined to be medically the equivalent of a listed impairment. Such an individual shall not be found under a disability where she is engaged in substantial gainful activity.

The issue before the Court in this case is whether the decisions of the Secretary that the claimant did not establish a "disability" as defined in the Social Security Act, as amended, at any time prior to the issuance of the decision of the Hearing Examiner is supported by substantial evidence.

The evidence adduced before the Hearing Examiner reflects that Leota E. Ward was born September 7, 1913. She married Guy Ward on June 2, 1934. Guy Ward died on October 1, 1969, and claimant has not remarried.

The Examiner considered medical and nonmedical evidence, and all documents on file.

The record reflects that claimant suffered a heart attack on October 29, 1970, while employed as an attendant in Cottage 14 at the Hisson Memorial Center. As an attendant she took care of little children, giving them baths, and general clean up work in the Cottage. Her testimony reflects that she has not been gainfully employed since the heart attack.

There is no evidence of the educational background of the claimant.

The disabilities claimed by plaintiff are arteriosclerotic heart disease with an old myocardial infraction, cervical spondylosis with cervical osteoarthritis, pectus excavatum, costochondritis and bronchitis.

The Hearing Examiner found that in spite of those diagnoses, there was no single impairment which reached the level as prescribed by the Regulations, nor was there a combination of these impairments at a level which was equal to a given condition as established by the Regulations.

The medical documentation in this matter is conflicting.

The jurisdiction of the court on review is set out in 205(g) of the Social Security Act, 42 USC 405(g), which states: "The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive." *Richardson v. Perales* (1971) 402 U.S. 389.

Even though there is evidence on the other side, the Secretary's findings must be affirmed. *Travis v. Richardson* (10th CCA, 1970) 434 F.2d 225.

The burden of proving disability, by acceptable evidence, for social security purposes rests with the claimant. *Johnson v. Finch* (10th CCA, 1971) 437 F.2d 1321.

The burden of proof remains throughout the case upon

plaintiff to show that she does not have the ability to engage in some other type of substantial gainful work that exists in the national economy due to the severity of her impairments and the burden is not on the Secretary to prove that plaintiff could obtain employment. *Johnson v. Finch* (D.Kan. 1970) 310 F.Supp. 1235, affirmed 437 F.2d 1321.

A factual determination as to whether plaintiff's impairments render her unable to engage in substantial gainful employment, as contemplated under the Act, is to be made by the Secretary alone, and if the decision is supported by substantial evidence, it must be upheld. *Dvorak v. Celebrezze* (10th CCA 1965) 345 F.2d 894.

Resolution of conflicts in the evidence, including conflicting medical opinions, and determinations of the credibility of witnesses are not for the courts; such functions are solely within the province of the Secretary as trier of the facts. *Grant v. Richardson* (5th CCA, 1971) 445 F.2d 656.

The Court must examine the record as a whole if it is to properly make a determination as to whether substantial evidence exists. *Gardner v. Bishop* (10th CCA, 1966) 362 F.2d 917; *Travis v. Richardson* (10th CCA, 1970) 434 F.2d 225.

The Court are not to abdicate their traditional functions in reviews of administrative determinations. The agencies must likewise have given a balanced consideration to all the testimony on each particular issue presented, and if this is not done, the failure will be apparent on application of the substantial evidence test. *Universal Camera Corp. v. NLRB* (1950) 340 U.S. 474; *Travis v. Richardson*, supra.

The evaluation of the testimony and the findings of fact are for the administrative agency to make, based upon the entire evidence before it. Although a court might not reach the same result were it to make the decision originally, if the decision is supported by substantial evidence, it must be upheld. The decision of the Secretary is so supported, and the Motion for Summary Judgment filed by defendant should be sustained and the Motion to Remand and Motion for Summary Judgment filed by plaintiff should be overruled.

IT IS, THEREFORE, ORDERED that the Motion for Summary Judgment of defendant be and the same is hereby sustained.

IT IS FURTHER ORDERED that the Motion to remand and Motion for Summary Judgment filed by plaintiff be and the same are hereby overruled.

ENTERED this 27 day of May, 1974.

Allen E. Barron

CHIEF UNITED STATES DISTRICT JUDGE

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

HENRY F. TEICHMANN, INC.,

Plaintiff,

vs.

INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS, & HELPERS, its
LOCAL UNION 592, and Their Officers,
Agents, Servants, Representatives or
Employees, Individually and Collectively,
and any Person Acting in Concert With
Them or Otherwise Participating in Their
Aid,

Defendants.

No. 74-C-211 ✓

ACTION FOR INJUNCTION
AND DAMAGES

FILED

MAY 28 1974 *hmm*

Jack C. Silver, Clerk
U.S. DISTRICT COURT

NOTICE OF DISMISSAL BY PLAINTIFF

To: Phil Frazier, 1426 Terrace Drive, Tulsa, Oklahoma, 74103
Attorney for Defendants.

Please take notice that the Plaintiff discontinues the
above entitled action and dismisses the Complaint without
prejudice.

DATED this 23rd day of May, 1974.

KOTHE & EAGLETON, INC.

By: Richard L. Barnes

Richard L. Barnes
124 East Fourth
Tulsa, Oklahoma 74103

Attorney for Plaintiff,
Henry F. Teichmann, Inc.

fendant, the Government witnesses, the Court Clerk, the Court reporter, and the Defense counsel are all now deceased or their whereabouts unknown.

5. That the Court is bound by the undisputed allegations of the petitioner and a record which does not clearly refute his allegations that he was denied representation by counsel; and, pursuant to Gideon v. Wainwright, 372 U. S. 335 (1963) and its progeny, the 28 U.S.C. § 2255 motion herein should be sustained and the conviction and sentence of Thomas Leroy Moreland in Case No. 6685, Criminal, should be set aside and held for naught.

IT IS, THEREFORE, ORDERED that the § 2255 motion of Thomas Leroy Moreland be and it is hereby sustained; and, the conviction and sentence of Thomas Leroy Moreland imposed October 6, 1932, in Case No. 6685, Criminal, in the United States District Court for the Northern District of Oklahoma be and it is hereby set aside and held for naught.

IT IS FURTHER ORDERED that the Clerk of this Court enter a copy of this Order in Case No. 6685, Criminal, and further that he correct the record in accordance herewith.

IT IS FURTHER ORDERED that a copy of this Order be furnished to petitioner and respondent.

Dated this 24th day of May, 1974, at Tulsa, Oklahoma.


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

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

ROBERT V. KIRBY,
Plaintiff,

vs.

CASPAR WEINBERGER, Secretary
of Health, Education and Welfare,
Defendant.

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) 72-C-433
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) **E I L E D**

MAY 24 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

This action came on for consideration on the Motion for Summary Judgment filed by the defendant. The original action was for a review of the Administrative Judge's decision, Department of Health, Education and Welfare, entered August 29, 1972, and the action of the Appeals Council examining the Examiner's decision, dated September 27, 1972, all as provided by 42 U.S.C.A Section 405(g), and in conformity with the Order entered this date,

THE JUDGMENT AND DECISION of the Administrative Judge, as the final decision of the Secretary of Health, Education and Welfare, is hereby affirmed.

ENTERED this 24th day of May, 1974.

Cullen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

Section 223(d)(1) of the Social Security Act, as amended, defines "Disability" (except for certain cases of blindness) as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." Section 223(d)(2)(A) further provides that "an individual (except a widow, surviving divorced wife, or widower for the purposes of section 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

Section 223(d)(3) further states, "For purposes of this subsection, a 'physical or mental impairment' is an impairment that results from anatomical or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

The claimant's earnings record shows that the special earnings requirements of the Act for disability purposes were met from a time prior to October 30, 1970, the date of alleged disability onset, and that these requirements continue to be

met thereafter through December 31, 1975.

The issue before the Court in this case is whether the decisions of the Secretary that the claimant did not establish a "disability" as defined in the Social Security Act, as amended, at any time prior to the issuance of the decision of the Administrative Law Judge is supported by substantial evidence.

The evidence adduced before the Administrative Law Judge reflects that Robert V. Kirby was born May 6, 1924, in South Carolina. The evidence further reflected that he has a seventh grade education. He married in 1946 and has four children (two of whom presently are domiciled in the home).

Claimant's work background and experience consisted of the following:

Prior to World War II, he worked in a cotton mill where he ran 12 drawing frames. He was in the Air Corps from November, 1942 to January, 1946 where he performed work as a cook's helper, truck driver, general laborer, and guard. When he returned from the service he worked as operating a paper bailing machine for about three months; working for an ice plant about one year; working for wholesale fruit companies. From July, 1959, to July, 1959, he worked at St. Joseph, Missouri, for a burial vault manufacturer, where his duties included shoveling sand and gravel into a hopper, delivering and installing vaults at gravesites. From October 1959 to 1962, he performed construction work. During 1965 and 1966 he was employed by a

meat packing plant. From October, 1966, to January, 1968, he made, delivered and installed vaults for burial vault companies in Tulsa. From January, 1968, to June, 1968, he worked at a cemetery where he assisted the grave digger. He was employed at Nelson Electric Company from July, 1968, to February, 1969. During July, 1969, he returned to work for a casket and vault company and that employment was terminated October 30, 1970.

The Administrative Judge considered medical and non-medical evidence, and all documents on file, and the testimony of Mr. Haskell G. Clark, a vocational expert.

The disabilities claimed by the plaintiff are osteoarthritis and spur formation affecting multiple joints; residuals of injuries of the knees and surgery to both knees.

The Administrative Judge, in his decision, extensively summarized the medical evidence, and the Court feels no need to delineate it as this juncture.

As stated before, a vocational expert testified as to the types of employment available for claimant and the Administrative Judge properly evaluated the evidence and vocational factors.

The jurisdiction of this Court on review is established by Section 205(g) of the Social Security Act, as amended, 42 USC 405(g), which states, "The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive ***." Richardson v. Perales (1971) 402 U.S. 389.

The burden of proving disability, by acceptable evidence, for social security purposes rests with the claimant. Johnson v. Finch (10th CCA, 1971) 437 F.2d 1321; Keating v. Secretary of Health Education and Welfare (10th CCA, 1972) 468 F.2d 788.

The plaintiff must be disabled for reason of a medically determinable impairment. For subjective complaints to be the

basis for a finding of disability they must be substantiated by clinical and laboratory findings. Walters v. Gardner (6th CCA, 1968) 397 F.2d 89; Gillock v. Richardson (D. Kan. 1970) 322 F.S. 354.

The Court must examine the record as a whole if it is to properly make a determination as to whether substantial evidence exists. Gardner v. Bishop (10th CCA, 1966) 362 F.2d 917; Travis v. Richardson (10th CCA, 1970) 434 F.2d 225.

The Court are not to abdicate their traditional functions in reviews of administrative determinations. The agencies must likewise have given a balanced consideration to all the testimony on each particular issue presented, and if this is not done, the failure will be apparent on application of the substantial evidence test. Universal Camera Corp. v. NLRB (1950) 340 U.S. 474; Travis v. Richardson, supra.

The evaluation of the testimony and the findings of fact are for the administrative agency to make, based upon the entire evidence before it. Although a court might not reach the same result were it to make the decision originally, if the decision is supported by substantial evidence, it must be upheld. The decision by the Secretary is so supported, and the Motion for Summary Judgment filed by defendant should be sustained.

IT IS, THEREFORE, ORDERED that the Motion for Summary Judgment of defendant be and the same is hereby sustained.

ENTERED this 24th day of May, 1974.



CHIEF UNITED STATES DISTRICT JUDGE

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

FRANCIS L. THOMPSON,

Plaintiff,

vs.

ELLIOTT L. RICHARDSON, SECRETARY
OF HEALTH, EDUCATION AND WELFARE,

Defendant.

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70-C-253

FILED

MAY 24 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

This action came on for consideration on the Motion for Summary Judgment filed by the plaintiff and the Motion for Summary Judgment filed by the defendant. The original action was for review of the Hearing Examiner's decision, Department of Health, Education and Welfare after the case had been remanded for further development and consideration, and in conformity with the Order entered this date,

THE JUDGMENT AND DECISION of the Hearing Examiner, as the final decision of the Secretary of Health, Education and Welfare, is hereby affirmed.

ENTERED this 24 day of May, 1974.

Allen E. Bannan

CHIEF UNITED STATES DISTRICT JUDGE

the month in which she attains age 60 or, if earlier, with the close of the eighty-fourth month following the month in which such period began.

Section 223 of the Social Security Act, as amended, defines "disability" as a medically determinable physical or mental impairment, or impairments, of a level of severity which, under the Regulations prescribed by the Secretary, would preclude an individual from engaging in any gainful activity, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

The issue before the Court is whether the decisions of the Secretary that the claimant did not establish "disability" as defined in the Social Security Act, as amended, at any time prior to the issuance of the decision of the Hearing Examiner is supported by substantial evidence.

The evidence adduced before the Hearing Examiner reflects that Frances L. Thompson was born on September 27, 1919. She married her deceased husband, Edward Thompson on July 25, 1958. Mr. Thompson departed this life on October 1, 1965. There was no issue of this union.

In her testimony (TR-53) Mrs. Thompson testified that she lived alone; that she had worked as a nurse's aide at the Broken Arrow Hospital from February 9, 1968, until September 16, 1968; that during her marital union she did little public work; that she had performed some office work, but was not qualified to work in an office; had worked a little bit for an abstract company; had performed some work in the Courthouse. She further testified that she had worked at a nurse's aid prior to her marriage. She further testified that she could

do some typing; could do a little bit of bookwork; and was a highschool graduate.

The Hearing Examiner, in his decision, extensively summarized the disabilities complained of and the medical evidence, and the Court feels no need to delineate it at this juncture.

The jurisdiction of the Court on review is set out in the Social Security Act, 42 U.S.C. 405(g), and relating to judicial review states: "The findings of the Secretary as to any fact, is supported by substantial evidence shall be conclusive ***." *Richardson v. Perales* (1971) 402 U.S. 389, at 401; *Jones v. Finch* (10th CCA, 1969) 416 F.2d 89, 90.

It is plaintiff's burden to offer sufficient medical evidence to establish the required severity of an impairment to merit recovery. It was not incumbent upon the Secretary to provide vocational evidence of any nature with respect to her disability. *Zanovick v. Finch* (W.D. Pa., 1970) 314 F.Supp. 1152.

The Court must examine the record as a whole if it is to properly make a determination as to whether substantial evidence exists. *Gardner v. Bishop* (10th CCA, 1966) 362 F.2d 917; *Travis v. Richardson* (10th CCA, 1970) 434 F.2d 225.

The Courts are not to abdicate their traditional functions in reviews of administrative determinations. The agencies must likewise have given a balanced consideration to all the testimony on each particular issue presented, and if this is not done, the failure will be apparent on application of the substantial evidence test. *Universal Camera Corp. v. NLRB*

(1950) 340 U.S. 474; Travis v. Richardson, supra.

The evaluation of the testimony and the findings of fact are for the administrative agency to make, based upon the entire evidence before it. Although a court might not reach the same result were it to make the decision originally, if the decision is supported by substantial evidence, it must be upheld. The decision by the Secretary is so supported, and the Motion for Summary Judgment filed by the plaintiff should be overruled and the Motion for Summary Judgment filed by the defendant should be sustained.

IT IS, THEREFORE, ORDERED that the Motion for Summary Judgment filed by the plaintiff be and the same is hereby overruled.

IT IS FURTHER ORDERED that the Motion for Summary Judgment filed by the defendant be and the same is hereby sustained.

ENTERED this 24 day of May, 1974.



CHIEF UNITED STATES DISTRICT JUDGE

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

BRENT V. FIELDS,)
)
Petitioner,)
)
vs.)
)
STATE OF OKLAHOMA/COUNTY OF)
TULSA,)
)
Respondents.)

74-C-13

FILED

MAY 23 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

THE COURT, having examined the file and the record in this case including the transcript of proceedings in Case No. CRF-72-119 in the District Court in and for Tulsa County, State of Oklahoma, styled State of Oklahoma vs. Brent V. Fields, together with the Initial Report of the United States Magistrate concerning the same, and being fully advised in the premises, FINDS:

1. That petitioner's allegation that he was denied equal protection of the law as a result of the finding at the second stage of his trial in state court that he had been previously convicted of a felony is without merit. Petitioner based his request for relief on the findings contained in Lamb vs. Brown, 456 F.2d 18 (Tenth Cir. 1972). In this case the Tenth Circuit Court of Appeals held . . . "This ruling shall not apply retroactively."

2. The petitioner's allegation that a prejudicial statement was made to the jury by the prosecuting attorney during his closing argument is without merit. Even assuming objection, I conclude that the statement complained of did not rise to the level of a denial of due process when considered in light of the evidence adduced against petitioner.

3. The allegations contained in petitioner's supplemental petition are without merit for the reason that the record clearly

shows that petitioner has not exhausted the state remedies as required by 28 U.S.C.A. § 2254 (b) (c).

IT IS, THEREFORE, ORDERED that petitioner's application for relief is denied and the case dismissed.

Dated this 23rd day of May, 1974.

Allen E. Barlow

CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA.

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

FILED

MAY 23 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JACK STRIPLIN,

Plaintiff,

-vs-

THE ARMSTRONG RUBBER COMPANY,
a foreign corporation, and SEARS,
ROEBUCK AND CO., a foreign
corporation,

Defendants.

No. 74-C-26

DISMISSAL WITHOUT PREJUDICE

This May 15, 1974 it is the order of this Court that plaintiff's
complaint ^{and cause of action} ~~is~~ hereby dismissed for lack of prosecution without prejudice to
right of plaintiff to refile his cause of action in the future.

Allen E. Barrow

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

APPROVED AS TO FORM:

Allen B. Mitchell

Attorney for Plaintiff

Robert A. Jones

Attorney for Defendants

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

MABEL WHITTAKER,
Plaintiff,
vs.
EMPIRE FIRE & MARINE INSURANCE COMPANY, a foreign insurance corporation; LARRY J. HALE; and JOHNNY JOE WISE,
Defendants.

WILBERT WHITTAKER,
Plaintiff,
vs.
EMPIRE FIRE & MARINE INSURANCE COMPANY, a foreign insurance corporation; LARRY J. HALE; and JOHNNY JOE WISE,
Defendants.

E I L E D .
MAY 23 1974 *W*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 73-C-364
Consolidated

73-C-365

STIPULATION OF DISMISSAL

Come now the plaintiffs, through their attorney, Allen Mitchell, and the defendants, through their attorney, Joseph F. Glass, and stipulate that the above captioned cases be dismissed with prejudice to filing a future action herein.

Wilbert Whittaker
Mabel Whittaker
Allen B. Mitchell

Attorney for Plaintiffs
Joseph F. Glass

Attorney for Defendants

ORDER

And now on this 24 day of May, 1974, there came for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma,

E I L E D .
MAY 24 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

stipulation of the parties hereto of dismissal, parties hereto having advised the Court that all disputes between the parties have been settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above styled causes of action ^{and Complaints} be and the same are hereby dismissed with prejudice to the right of the plaintiffs to bring any future action arising from said causes of action.



JUDGE

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

JOSEPH SEIBERT,)
)
Petitioner,)
)
vs.)
)
SAM JOHNSTON, ACTING WARDEN,)
)
Respondent.)

74-C-36

FILED
MAY 23 1970

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This is a proceeding brought by a person in the custody of the State of Oklahoma at the Oklahoma State Penitentiary, McAlester, Oklahoma, pursuant to Title 28 U.S.C. § 2254. The petitioner attacks the validity of the judgment and sentence imposed in Case No. 22,973, State of Oklahoma vs. Joseph Seibert in the District Court in and for Tulsa County, Oklahoma. The judgment and sentence was entered on the 6th day of February, 1968, after a plea of guilty by petitioner to the charge of robbery with firearms.

Petitioner contends that the judgment and sentence should be vacated for the following reason:

- a) The judgment and sentence was the result of an involuntary and coerced plea of guilty.

The petition for writ of habeas corpus is without merit and should be denied.

The authorities cited by the petitioner in support of his petition are not pertinent to the facts as stated by petitioner. The alleged improper plea of guilty was determined adversely to petitioner on the merits after review of the record by this Court on January 12, 1970, in Case No. 69-C-252.

Accused was not coerced into entering plea non vult in the state court, where he expressed full awareness that the plea exposed him to possibility of life imprisonment and that if he stood upon his plea of not guilty and were found guilty of murder in the first degree, without recommendation, he would expose himself to penalty of death.

Urbano vs. State of New Jersey, D.C. N.J. 1964, 255 F. Supp. 798, Cert. Den. 84 S. Ct. 1638, 377 U.S. 958, 12 L. Ed. 2d 501, affirmed 333 F.2d 845, Cert. Den. 85 S. Ct. 706, 379 U.S. 993, 13 L. Ed. 2d 612.

Fear of death penalty by one charged with capital offense does not constitute such coercion as will invalidate a plea of guilty. Moore vs. Wainwright, C.A. Fla. 1968, 401 F.2d 525.

The files and records in this case which have been examined by the Court, conclusively show that petitioner is not entitled to relief. Therefore, there is no necessity for the Court to hold an evidentiary hearing. Semet vs. United States, 369 F.2d (C.A. 10 1966). Petitioner's motion for evidentiary hearing should be overruled.

IT IS, THEREFORE, ORDERED:

1. That petitioner's motion for evidentiary hearing is denied.
2. That petitioner's motion for summary judgment is denied.
3. That petition for writ of habeas corpus is denied and the case dismissed.

Dated this 23rd day of May, 1974.



CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA.

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

UNITED STATES OF AMERICA,)
)
) Petitioner,)
)
 vs.)
)
)
)
 JACK RICHARD CHAMBERS, JR.,)
)
) Patient.)

FILED
MAY 22 1974 *jm*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

Civil No. 74-C-209

On this date, it appearing from the reports received by this Court (which are filed coincident herewith) that both of the examining physicians at the North Mountain NARA Project, Phoenix, Arizona have determined that the above named patient is not one who is likely to be rehabilitated through treatment, it is hereby ORDERED that these proceedings be dismissed and that said patient be discharged immediately from the care and custody of the Surgeon General.

Entered this 22 day of May, 1974.

Alan E. Bennett
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
 -v-)
)
)
 WILLIAM DEAN DEES, et al,)
)
)
) Defendants.)

E I L E D

MAY 21 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Civil Action No. 73-C-390

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this th 20 day of May, 1974, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney; defendants Fred J. Ennis A/K/A Fred James Ennis, Jr., and Patricia A. Ennis appearing by their attorney, Joseph A. Sharp, and defendants William Dean Dees, Jane Arlene Dees, Limerick Finance Co., Inc., now Credithrift of America, Inc., Interstate Securities Co., and Mary Jane Ennis appearing not.

The Court, being fully advised and having examined the file herein, finds that William Dean Dees, Jane Arlene Dees, Limerick Finance Co., Inc., now Credithrift of America, Inc., Fred J. Ennis A/K/A Fred James Ennis, Jr., and Patricia A. Ennis were served with Summons and Complaint on December 10, 1973; and Interstate Securities Co. was served with Summons and Complaint on December 11, 1973; all as appears from the Marshal's Returns of Service filed herein; and that Mary Jane Ennis was served by publication, as appears from the Proof of Publication filed herein.

It appearing that Fred J. Ennis A/K/A Fred James Ennis, Jr., and Patricia A. Ennis have filed their Disclaimer herein on December 13, 1973; and that William Dean Dees, Jane Arlene Dees, Limerick Finance Co., Inc., now Credithrift of America, Inc., Interstate Securities Co., and Mary Jane Ennis have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Six (6), Block Fifty-three (53), Valley View Acres Third Addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the defendants William Dean Dees and Jane Arlene Dees did, on the 20th day of September, 1962, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,400.00, with 5-1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants William Dean Dees and Jane Arlene Dees made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months past, which default has continued and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the sum of \$8,485.23, with interest thereon from January 1, 1973, at the rate of 5-1/2 percent per annum, until paid, plus the cost of this action, accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants William Dean Dees and Jane Arlene Dees, in personam, for the sum of \$8,485.23, with interest thereon at the rate of 5-1/2 percent per annum, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendants Limerick Finance Co., Inc., now Credithrift of America, Inc., Interstate Securities Co., and Mary Jane Ennis.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, shall 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, all of 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.


United States District Judge

APPROVED.


ROBERT P. SANTEE
Assistant United States Attorney
Attorney for Plaintiff,
United States of America

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
 vs.) CIVIL ACTION NO. 74-C-182
)
)
 MELVA L. MCKINNEY now Overall,)
 et al.,)
)
) Defendants.)

FILED
MAY 21 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 21ST
day of May, 1974, the plaintiff appearing by Robert P. Santee,
Assistant United States Attorney, and the defendants, Melva L.
McKinney now Overall, Lee Roy Overall, Alton Burkhalter, Jr.,
and Deloris Burkhalter, appearing not.

The Court being fully advised and having examined
the file herein finds that Melva L. McKinney now Overall, Lee
Roy Overall, Alton Burkhalter, Jr., and Deloris Burkhalter
were served with Summons and Complaint on April 23, 1974, all
as appears from the Marshal's Return of Service herein.

It appearing that the said defendants have failed
to answer herein and that default has been entered by the Clerk
of this Court.

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

Lot Twenty (20), Block Fifty-four (54) of
Lots 23 thru 28, Block 53 and Lots 20 thru
24, Block 54 and Lots 1 thru 4, Block 55,
VALLEY VIEW ACRES THIRD ADDITION to the City
of Tulsa, Tulsa County, State of Oklahoma,
according to the recorded plat thereof.

THAT the defendant, Melva L. McKinney now Overall, did,
on the 15th day of July, 1970, execute and deliver to the
Administrator of Veterans Affairs, her mortgage and mortgage

note in the sum of \$11,500.00 with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants, Alton Burkhalter, Jr., and Deloris Burkhalter, were the grantees in a deed from Melva L. McKinney now Overall and Lee Roy Overall, dated March 16, 1972, and filed March 17, 1972, in Book 4008, Page 64, records of Tulsa County, wherein Alton Burkhalter, Jr., and Deloris Burkhalter assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that the defendants, Melva L. McKinney now Overall, Alton Burkhalter, Jr., and Deloris Burkhalter, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$11,201.73 as unpaid principal, with interest thereon at the rate of 8 1/2 percent interest per annum from April 15, 1973, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Melva L. McKinney now Overall, Alton Burkhalter, Jr., and Deloris Burkhalter, in personam, for the sum of \$11,201.73 with interest thereon at the rate of 8 1/2 percent per annum from April 15, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendant, Lee Roy Overall.

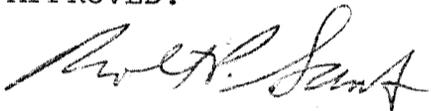
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to

the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the 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, all of the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

s/ Allen E. Barrow
United States District Judge

APPROVED.



ROBERT P. SANTEE
Assistant United States Attorney

FILED

MAY 20 1974

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

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	CIVIL ACTION NO. 74-C-159
)	
JAMES NICHOLSON, et al.,)	
)	
Defendants.)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17th day of May, 1974, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the defendants, James Nicholson, Prescilla Nicholson, and Morris Finance, appearing not.

The Court being fully advised and having examined the file herein finds that James Nicholson and Prescilla Nicholson were served with Summons and Complaint on April 22, 1974, and Morris Finance was served with Summons and Complaint on April 15, 1974, all as appears from the Marshal's Return of Service herein.

It appearing that the said defendants have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Two (2), Block One (1), POWDER-POMEROY THIRD ADDITION, to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the defendants, James Nicholson and Prescilla Nicholson, did, on the 15th day of June, 1972, execute and deliver to the Administrator of Veterans Affairs, their mortgage

and mortgage note in the sum of \$8,550.00 with 7 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants, James Nicholson and Prescilla Nicholson, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$8,533.67 as unpaid principal, with interest thereon at the rate of 7 1/2 percent interest per annum from May 1, 1973, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, James Nicholson and Prescilla Nicholson, in personam, for the sum of \$8,533.67 with interest thereon at the rate of 7 1/2 percent per annum from May 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendant, Morris Finance.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the 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, all of 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.

15/ Allen E. Barrow
United States District Judge

APPROVED.



ROBERT P. SANTEE
Assistant United States Attorney

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

WILLIAM G. VANDEVER,
GARALENE VARDEVER HAWORTH,
and V. VINCENT VANDEVER,
for themselves and all others
similarly situated,

Plaintiffs,

vs.

THOMAS R. BRETT,
WILLIAM B. JONES,
JACK R. GIVENS,
DERRYL LEE GOTCHER,
and WILLIAM J. DOYLE, III,
each individually, and as
co-partners, d/b/a JONES,
GIVENS, BRETT, GOTCHER & DOYLE,

Defendants.

FILED

MAY 17 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

72-C-413 ✓

ORDER DISMISSING COMPLAINT AND
CAUSE OF ACTION

The Court has for consideration the Motion for Summary Judgment filed by the defendants, the briefs in support and opposition thereto, the affidavits, exhibits, transcripts of various hearings, and having carefully perused the entire file, and, being fully advised in the premises, finds:

This is a declaratory judgment action brought pursuant to the provisions of Title 28 U.S.C.A. Section 2201, requesting this Court to determine that it did not have jurisdiction to determine, nor did it attempt to determine at any time, directly or indirectly by any order, judgment, or decree of any nature or effect that the defendants herein, were entitled to breach

their alleged attorney fee contract with the plaintiff.

The plaintiffs further allege that a determination by this Court in the instant litigation will facilitate and expedite the trial of a State Court action, Number C-71-2886, previously filed in the District Court of Tulsa County, Oklahoma, wherein they premise the state litigation on the theory of conversion.

The plaintiffs additionally seek a class action determination. Since this is a declaratory judgment action, no monetary judgment is sought.

The case law is replete with the statement and admonition that a Federal Court is under a duty at any and all times to inquire into its jurisdiction, and when it becomes apparent to the Court that the requisite jurisdiction is lacking, sua sponte dismiss the action, especially when it appears that no amendment could cure the defect.

In this connection the Court takes judicial notice that an appeal was lodged with the Tenth Circuit Court of Appeals, styled "William G. Vandever v. North American Financial Corporation", number 72-1716. This was an appeal concerning a judgment and order of this Court denying a motion to vacate judgment, in the case out of which the present controversy grew. In that case this Court held the motion was not timely filed. Vandever contended that the one year limitation did not apply because the judgment was a void judgment. The Appellate Court concerned itself in the appeal with the rather narrow issue of whether the judgment and order of dismissal, as entered, was void. They concluded that it was not and, therefore, the one year limitation in 60(b) was applicable. In effect, the Appellate Court held that this Court did have jurisdiction to

The present litigation was instituted on November 9, 1972, apparently after the conversion action was commenced in the State Court.

The Court notes that the following are some of the prohibitions in the use of a declaratory judgment action.

1. A declaratory action is not proper to seek a re-examination of issues which have been previously adjudicated by the Court.

2. The declaratory judgment should not be granted unless it will effectively terminate a controversy, and the Act should not be utilized as preparation for further litigation.

3. The Act should not be used as a means whereby judgment of the Court may be re-examined as a substitute for appeal.

This Court finds that the subject matter of the instant litigation was not a part of and was, in fact, outside the bounds of the Chapter X reorganization proceeding. The Court finds, in this connection, that North American Financial Corporation and Vandever Company, Inc., had made special arrangements for the liquidation of their respective claims on a settlement basis in the separate and independent action in cause number 70-C-87. The Court, therefore, finds that such action does not confer jurisdiction upon this Court by virtue of Title 28 U.S.C.A. Section 1334.

The Court further finds that it lacks jurisdiction to

entertain the instant action brought under the Declaratory Judgment Act because the jurisdictional requisites have not been met. In this connection, there is no diversity of citizenship among the parties, nor does the amount in controversy exceed the sum of \$10,000.00, excluding interest and costs, for each member of the alleged class. The Court finds that the claims of the alleged class cannot be aggregated to exceed or meet the jurisdictional amount requirement. The Court further finds that the instant litigation does not involve a Federal question.

IT IS, THEREFORE, ORDERED that the cause of action and complaint in the instant litigation be dismissed for lack of jurisdiction.

ENTERED this 17th day of May, 1974.



CHIEF UNITED STATES DISTRICT JUDGE

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

JERRY WILLIAM MISEK,)
)
Petitioner,)
vs.) No. 74-C-79
)
UNITED STATES OF AMERICA,)
)
Respondent.)

E I L E D

MAY 17 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The petitioner herein seeks a writ of habeas corpus discharging him from custody because of alleged deprivation of a constitutional right that antedated his plea; more specifically that he was subjected to a lineup without presence of counsel. After a criminal defendant pleads guilty, the focus of federal habeas corpus inquiry is the nature of the advice and the voluntariness of the plea, not the existence as such of an antecedent constitutional infirmity. Tollett v. Henderson, 411 U.S. 258 (1973). The record here before the court shows that counsel's advice was within the standards of McMann v. Richardson, 397 U.S. 759 (1969).

The petitioner also alleges that consideration by the Court of other offenses resulted in the imposition of a harsh sentence. The record reveals that the Court was not influenced by other offenses committed nor by past criminal record. Just prior to sentencing, the Court commented (p. 14):

"Of course none of these other matters are before me and I cannot do anything about them and don't."

A sentencing judge is allowed wide discretion in imposing sentence. U. S. v. Tucker, 404 U.S. 443 (1972). A judge's inquiry is largely unlimited, as to the kind of information he may consider or the source from whence it came. This claim of the petitioner is but a bold conclusion unsupported by the facts, and such conclusions are not sufficient to support legal principles.

IT IS, THEREFORE, THE ORDER OF THE COURT that this cause filed pursuant to 28 U.S.C. 2255 should be, and the same is hereby dismissed.

IT IS THE FURTHER ORDER OF THE COURT that a copy of this Order be mailed by the Clerk of the Court to the petitioner.

Dated this 16th day of May, 1974.

Yuther Belman
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 17 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

KENNETH E. GARRETT,

Plaintiff,

-vs-

No. 73-C-192

REPUBLIC HOUSING CORPORATION,
formerly Republic Gypsum
Company, et al,

Defendants.

STONE TRUCKING COMPANY, a
corporation,

Plaintiff,

-vs-

No. 73-C-228

REPUBLIC HOUSING CORPORATION,
formerly Republic Gypsum
Company, et al,

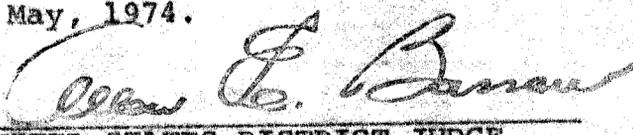
Defendants.

JUDGMENT OF DISMISSAL WITH PREJUDICE

WHEREAS, the parties have stipulated that all questions and issues existing between the parties have been fully and completely disposed of by settlement, and have requested the entrance of a judgment of dismissal with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the cause should be and the same is hereby dismissed with prejudice and the matter fully, finally and completely disposed of hereby.

DATED this 17th day of May, 1974.


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT E. MARTIN,
Attorney for Plaintiffs.


RICHARD CARPENTER,
Attorney for Defendants.

securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-four (34), Block Forty-One (41), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

THAT the defendants, Ronnie Lollis and Harriet Lollis, did, on the 16th day of February, 1973, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the sum of \$10,500.00, with 7 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants, Ronnie Lollis and Harriet Lollis, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$10,536.21, as unpaid principal, with interest thereon at the rate of 7 1/2 percent interest per annum from April 1, 1973, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against defendant Ronnie Lollis, in personam, and Harriet Lollis, in rem, for the sum of \$10,536.21, with interest thereon at the rate of 7 1/2 percent interest per annum from April 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendant,

Morris Finance Service.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, shall 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, all of 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.


UNITED STATES DISTRICT JUDGE

APPROVED.


ROBERT P. SANTEE
Assistant United States Attorney
Northern District of Oklahoma

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

RICHARD W. RECORD,)
)
 Plaintiff,)
)
 vs.)
)
 TYLER PIPE AND FOUNDRY COMPANY,)
 INCORPORATION, a Foreign Corporation,)
 PAUL G. SIMMONS and COMMERCIAL)
 STANDARD INSURANCE COMPANY, a)
 Foreign Insurance Company,)
)
 Defendants.)

~~FILED~~
~~MAY 16 1974~~
~~Jack C. Silver, Clerk~~
~~U. S. DISTRICT COURT~~
NO. 73-C-318

FILED
MAY 16 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

NOW on this 15th day of May, 1974, there came on for hearing pursuant to regular assignment and notice the above entitled cause for disposition. The defendants, Paul G. Simmons and Tyler Pipe and Foundry Company, Incorporation, appeared by and through their attorney Alfred B. Knight. Plaintiff did not appear.

The Court finds that legal notice had been transmitted by United States mails to R. W. Byars and then further instructed the Clerk of The United States District Court to telephone and locate Mr. Byars. The matter was continued until the Clerk attempted to locate Mr. Byars. When it was reported that Mr. Byars could not be located and his whereabouts was unknown, then the Court reviewed the file and again determined that proper notice had been transmitted to him of the disposition. The Court further finds that a Pre-Trial Order in accordance with the Order of the Court had not been filed. The Court further finds that ample notice had been given to plaintiff to prepare and file a Pre-Trial Order and the burden was on the plaintiff to file a Pre-Trial Order which Pre-Trial Order has not been filed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled cause be dismissed for want of prosecution and the failure to file the Pre-Trial Order and the failure to appear at the disposition docket and the costs are assessed against the plaintiff.


ALLEN E. BARROW,
UNITED STATES DISTRICT JUDGE

C
O
P
Y

I hereby certify that a true and correct copy of the above and fore-
going Order was mailed to the attorney for the plaintiff, R. W. Byars,
630 West 7th Street, Tulsa, Oklahoma 74127, with sufficient postage
thereon, on this 15th day of May, 1974.

Alfred B. Knight

C
O
P
Y

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 20.00 Acres of Land, More)
 or Less, Situate in Rogers)
 County, State of Oklahoma,)
 and Roy C. Garis, et al.,)
 and Unknown Owners,)
)
 Defendants.)

CIVIL ACTION NO. 69-C-126

Tract No. 447M

(All Interests)

FILED

MAY 16 1974

J U D G M E N T

Jack C. Silver, Clerk
U. S. DISTRICT COURT

1.

NOW, on this 16 day of May, 1974, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on March 29, 1974, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

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

3.

This judgment applies to the entire estate condemned in Tract No. 447M, as such tract and estate are described in the Complaint filed in this action.

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the subject property. Pursuant thereto, on June 18, 1969, the United States of America

filed its Declaration of Taking of a certain estate in such tract of land, and title to such property should be vested in the United States of America, as of the date of filing such Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of the described estate in the subject tract, a certain sum of money and part of this deposit has been disbursed, as set out below in paragraph 12.

7.

The Report of Commissioners filed herein on March 29, 1974, shows that the Commissioners stated that they based their award, for the lessor interest in the estate taken herein, upon the testimony of the witness Jay Robertson but were influenced by other evidence in the case to reduce the award to an amount lower than Mr. Robertson's exact testimony. After reviewing the Commissioners' action in this regard and having considered the testimony of the other witnesses the Court cannot in good conscience approve an award for the lessor interest in an amount less than \$425.00. Therefore, the Report should be modified to that extent. Subject to this modification, the said Report is approved and adopted as findings of fact as to the subject property. The amounts of just compensation, as to the various interests in subject property, as fixed by the Commissioners and modified by the Court, are set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated compensation for the leasehold interest in the estate taken in the subject tract, and the award of just compensation for such interest, as set forth below in paragraph 12. Such deficiency should draw interest as prescribed by the Declaration of Taking Act, and a sum sufficient to pay such deficiency and interest should be deposited by the Plaintiff.

9.

The defendants named in paragraph 12 as owners of subject property are the only defendants asserting any interest in the estate condemned herein. All other defendants having either disclaimed or defaulted, the named defendants, as of the date of taking, were the owners of the respective interests in the estate condemned herein, as shown in such paragraph 12, and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the subject tract, as such tract is described in the Complaint filed herein, and such property, to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of June 18, 1969, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking, the owners of the estate taken in the subject tract were the defendants whose names appear below in paragraph 12, and the interest owned by each is as therein shown. The right to receive the just compensation awarded by this judgment is vested in the parties so named in paragraph 12.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on March 29, 1974, as modified by paragraph 7 above, hereby is confirmed, and the sums thereby fixed are adopted as just compensation for the various interests in the estate taken in subject tract, as shown by the following schedule:

TRACT NO. 447M

1. Lessor interest

Owner: T. J. Dye

Deposited as estimated compensation -- \$425.00

Award of just compensation pursuant
to Commissioners' Report as
modified by the Court ----- \$425.00 \$425.00

Disbursed to owner ----- 425.00

Balance due to owner ----- None

2. Leasehold interest (Called "working interest"
in the Report)

Owner: Roy C. Garis

Award of just compensation pur-
suant to Commissioners' Report -- \$4,055.00 \$4,055.00

Deposited as estimated compensation - 1,113.00

Disbursed to owner ----- 1,113.00

Balance due to owner ----- \$2,942.00
plus
interest

Deposit deficiency ----- \$2,942.00

13.

It Is Further ORDERED, ADJUDGED and DECREED that the Plaintiff, United States of America, shall deposit in the Registry of this Court to the credit of the subject tract, the deposit deficiency as to the leasehold interest, in the amount of \$2,942.00, together with interest on such sum computed at the rate of 6% per annum from June 18, 1969 until the date of such payment.

The Clerk of this Court then shall disburse the entire sum on deposit for the subject tract to Roy C. Garis.

/s/ Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION NO. 69-C-127
)
 20.00 Acres of Land, More) Tract No. 459M
 or Less, Situate in Rogers)
 County, State of Oklahoma,) (Leasehold Interest Only)
 and May McSpadden Poole, et)
 al., and Unknown Owners,)
)
 Defendants.)

FILED

MAY 16 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

1.

Now, on this 16 day of May, 1974, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on March 29, 1974, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

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

3.

This judgment applies only to the leasehold interest in the estate taken in Tract No. 459M, as such estate and tract are described in the Complaint filed herein.

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the subject tract of land. Pursuant thereto, on June 18, 1969, the United States of

America filed its Declaration of Taking of a certain estate in such tract of land, and title to such property should be vested in the United States of America as of the date of filing such Declaration of Taking.

6.

Simultaneously with filing of the Declaration of Taking there was deposited in the Registry of this Court, as estimated compensation for the taking of the leasehold interest in the described estate in subject tract, a certain sum of money, and all of this deposit has been disbursed as set out below in paragraph 12.

7.

The Report of Commissioners filed herein on March 29, 1974, hereby is accepted and adopted as a finding of fact as to the leasehold interest in the subject tract. The amount of just compensation as to the leasehold interest in the estate taken in subject tract, as fixed by the Commission, is set out below in paragraph 12.

8.

This judgment will create a certain deficiency between the amount deposited as estimated just compensation for subject interest and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency together with interest thereon, should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendant named in paragraph 12 as owner of subject interest is the only defendant asserting any interest in the leasehold interest in the estate condemned herein; all other defendants having either disclaimed or defaulted, the named defendant was (as of the date of taking) the owner of the leasehold interest in the estate taken in the subject tract, and, as such, is entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tract, as it is described in the

Complaint filed herein, and such property, to the extent of the leasehold interest in the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of June 18, 1969, and all defendants herein and all other persons are forever barred from asserting any claim to such interest.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking, the owner of the leasehold interest in the estate taken herein in subject tract was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for such interest is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on March 29, 1974, hereby is confirmed and the sum therein fixed is adopted as just compensation for the leasehold interest in the estate taken in the subject tract, as shown by the following schedule:

TRACT NO. 459M

Owner: Roy C. Garis

Award of just compensation pursuant to Commissioners' Report ----	\$3,500.00	\$3,500.00
Deposited as estimated compensation ---	1,527.00	
Disbursed to owner -----		<u>1,527.00</u>
Balance due to owner -----		\$1,973.00 plus interest
Deposit deficiency -----	\$1,973.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owner the deposit deficiency for the subject tract in the amount of \$1,973.00 together with interest on such deficiency at the rate of 6% per annum from June 18, 1969, until the date of deposit of such deficiency sum; and such sum

shall be placed in the deposit for subject tract in this civil action. Upon receipt of such sum, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tract to Roy C. Garis.

/s/ Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) -v-)
)
) ALVIN LEE DAVIS, ET AL,)
)
) Defendants.)

E I L E D

MAY 16 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Civil Action No. 73-C-398 ✓

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 16 day of May, 1974, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney, the defendants, County Treasurer of Tulsa County, and Board of County Commissioners of Tulsa County appearing by Gary J. Summerfield, Assistant District Attorney, and the defendants Alvin Lee Davis, Ima Ruth Davis, and Stewart's, Inc. appearing not.

The Court, being fully advised and having examined the file herein, finds the County Treasurer of Tulsa County, and the Board of County Commissioners of Tulsa County were served with Summons and Complaint on December 12, 1973; Stewart's, Inc. was served with Summons and Complaint on January 4, 1974; all as appears from Marshal's Returns of Service filed herein; and Alvin Lee Davis and Ima Ruth Davis were served by publication, as appears from the Proof of Publication filed herein.

It appearing that the County Treasurer of Tulsa County and the Board of County Commissioners of Tulsa County have duly filed their Answers herein on December 28, 1973, and that Alvin Lee Davis, Ima Ruth Davis, and Stewart's, Inc. have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Twenty-five (25), Block Four (4) Suburban Acres Second Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the defendants Alvin Lee Davis and Ima Ruth Davis did on the 24th day of November, 1971, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the sum of \$10,500.00, with 7-1/2% interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants Alvin Lee Davis and Ima Ruth Davis made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the sum of \$10,454.80, with interest at the rate of 7-1/2 percent per annum from January 1, 1973, until paid, plus the cost of this action, accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Alvin Lee Davis and Ima Ruth Davis, the sum of \$1.62 plus interest and costs, for personal property taxes for the year 1973 and that Tulsa County should have judgment for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants Alvin Lee Davis and Ima Ruth Davis, in rem, for the sum of \$10,454.80, with

interest at the rate of 7-1/2 percent per annum from January 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment against the defendants Alvin Lee Davis and Ima Ruth Davis for the sum of \$1.62 plus interest and costs, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

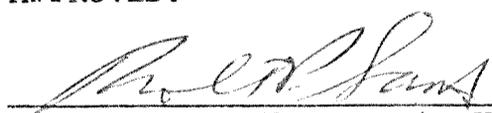
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendant Stewart's, Inc.

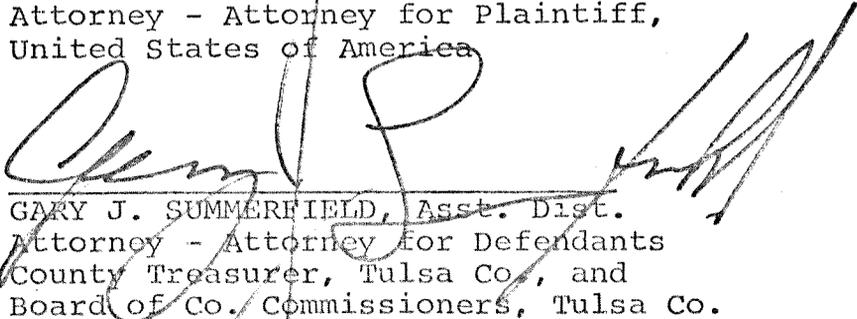
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, shall 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, all of 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.


United States District Judge

APPROVED.


ROBERT P. SANTEE, Asst. U. S.
Attorney - Attorney for Plaintiff,
United States of America


GARY J. SUMMERFIELD, Asst. Dist.
Attorney - Attorney for Defendants
County Treasurer, Tulsa Co., and
Board of Co. Commissioners, Tulsa Co.

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

UNITED STATES OF AMERICA and)
ANNETTE BOWIE, an officer)
of the Internal Revenue Service,)
)
Petitioners,)

vs.)

CHARLES HENRY GRAY,)
)
Respondent.)

Civil No. 73-C-386

FILED

MAY 16 1974

ORDER DISCHARGING RESPONDENT
AND DISMISSAL

Jack C. Silver, Clerk
U. S. DISTRICT COURT

On this 16th day of May, 1974, Petitioners' Motion To Discharge Respondent And For Dismissal came for hearing and the Court finds that Respondent has now complied with the Internal Revenue Service Summons served upon him August 30, 1973, that further proceedings herein are unnecessary and that the Respondent, Charles Henry Gray, should be discharged and this action dismissed upon payment of \$42.68 costs by Respondent.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that the Respondent, Charles Henry Gray, be and he is hereby discharged from any further proceedings herein and this action is hereby dismissed upon payment of \$42.68 costs by said Respondent.

Lee J. Jambert
UNITED STATES DISTRICT JUDGE

APPROVED:

Jack M. Short
JACK M. SHORT
Assistant United States Attorney

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

BOARD OF TRUSTEES, PIPELINE)
INDUSTRY BENEFIT FUND,)

Plaintiff,)

vs.)

MIDWEST PIPELINE & CABLE, INC.,)

Defendant.)

No. 74 C 123

FILED
IN OPEN COURT

MAY 15 1974

JACK C. SILVER, CLERK
U. S. DISTRICT COURT

JUDGMENT BY DEFAULT

NOW on this 15th day of May, 19 74, this matter coming

on to be heard before me the undersigned Judge of the United States District Court for the Northern District of Oklahoma; Plaintiff appearing by and through its attorney, David L. Sobel, of Dyer, Powers and Marsh; and it appearing to the Court that the Defendant appears not, having been duly served with Summons and copy of the Amended Complaint herein; and upon the filing of Plaintiff's Motion For Default Judgment and an Affidavit of the amount due; it is

ORDERED, ADJUDGED AND DECREED By this Court that the Defendant is in default herein, and that the allegations in Plaintiff's Complaint are to be taken as true and confessed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By this Court that judgment be entered herein in favor of the Plaintiff above named, and against the Defendant above named, in the amount of \$12,019.60, with interest thereon at the legal rate from this date of judgment until fully

C
O
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Y

paid, an attorney's fee in the amount of \$710.00, together with costs expended herein in the amount of \$21.00.

DATED at Tulsa, Oklahoma, this 15th day of ~~April~~ May,
19 74.

BY THE COURT:

L. Allen E. Barrow
United States District Judge

C
O
P
Y

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

A. V. HEARON

Plaintiff

VS

JAMES MICHAEL DUFFELL

Defendant

NO. 73-C-376 CIVIL

FILED

MAY 15 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NOTICE OF DISMISSAL WITHOUT PREJUDICE OF
CROSS-PETITION

Comes now the defendant, James Michael Duffell, through his attorney, Jack M. Thomas, and dismisses his cross-petition without prejudice to filing a future action herein.

Jack M. Thomas
Jack M. Thomas, Attorney for Defendant and
Cross-Petitioner

ORDER

And now on this 15 day of May, 1974, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, defendant's dismissal without prejudice of his cross-petition in the above captioned matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above styled cause be and the same is hereby dismissed without prejudice to the rights of the defendant to bring any future action arising from said cause of action.

15/ Fred Daugherty
Judge

TEU:slb
5/9/74

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

ROLAND H. DANIEL,)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAM C. BELL and)
 T.I.M.E.-DC, INC.,)
)
 Defendants.)

NO. 73-C-188

FILED

MAY 15 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE

NOW, on this 10th day of May, 1974, there having been presented to the undersigned Chief Judge of the United States District Court for the Northern District of Oklahoma the Joint Application filed herein by counsel for Plaintiff and counsel for Defendants seeking permission to dismiss the Plaintiff's Complaint with Prejudice and at the cost of the Plaintiff, and the Court having considered the same and being well and sufficiently advised in the premises finds that said relief should be granted.

IT IS THEREFORE ORDERED BY THIS COURT that the Plaintiff's Complaint and cause of action as against the Defendants herein, and each of them, be, and the same is hereby dismissed with prejudice and at the cost of the Plaintiff.

Allen E. Barrow

Chief United States District Judge

APPROVED:

UNGERMAN, GRABEL & UNGERMAN

By *[Signature]*
Attorneys for Plaintiff

RUCKER, TABOR, McBRIDE & HOPKINS, INC.

By *[Signature]*
Attorneys for Defendants

LAW OFFICES

UNGERMAN,
GRABEL &
UNGERMAN

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

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

VIOLA HAMILTON,)
)
Plaintiff,)
)
vs.)
)
REBECCA LYNN HAYS,)
)
Defendant.)

Case No. 73-C-142

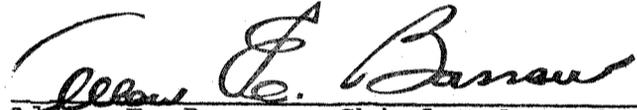
FILED

MAY 15 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Upon the application of all interested parties, and in consideration of full, final and complete compromise and settlement of all issues of law and fact, the above entitled case, cause of action and complaint is dismissed with prejudice to the bringing of any future action.


Allen E. Barrow, Chief Judge of the
United States District Court for the
Northern District of Oklahoma

E I L E D

MAY 14 1974

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

Jack C. Silver, Clerk
U. S. DISTRICT COURT

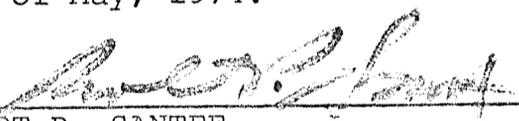
UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
 vs.)
)
)
 PAUL P. WEY, JR., and MARGARET)
 A. WEY, his wife, KAMPGROUNDS)
 OF AMERICA, INC., a Montana)
 Corporation,)
)
 Defendants.)

CIVIL ACTION NO. 73-C-138

STIPULATION OF DISMISSAL

Come now the United States of America, plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and Paul P. Wey, Jr., and Margaret A. Wey, defendants herein, by and through their attorney, James L. Edgar and Kampgrounds of America, Inc., a Montana Corporation, defendant herein, by and through its attorney, Franklin D. Hettinger, and stipulate and agree that the above-captioned action be dismissed without prejudice, each party to bear their own costs.

Dated this 14th day of May, 1974.



ROBERT P. SANTEE
Assistant United States Attorney
Attorney for Plaintiff,
United States of America



JAMES L. EDGAR
Attorney for Defendants,
Paul P. Wey, Jr., and Margaret A. Wey



FRANKLIN D. HETTINGER
Attorney for Defendant,
Kampgrounds of America, Inc.

IEU:slb
1/29/74

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

THE SINGER COMPANY, MOTOR PRODUCTS
DIVISION, a corporation,

Plaintiff,

vs.

THE FIELDS COMPANY, INC.,
a corporation,

Defendant.

NO. 73-C-186

FILE

MAY 14 1974

Jack C. Silver, Clk
U. S. DISTRICT CC

ORDER DISMISSING COMPLAINT WITH PREJUDICE AND
DISMISSING CROSS-PETITION WITH PREJUDICE

NOW, on this 14 day of ~~February~~ ^{May}, 1974, there having been

presented to the undersigned United States District Judge for the Northern District of Oklahoma the joint application filed herein by the Plaintiff and Defendant seeking an Order to be entered herein dismissing with prejudice the Complaint filed herein by the Plaintiff and the Cross-Petition filed herein by the Defendant, 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 Complaint filed herein by the Plaintiff as against the Defendant herein, be, and the same is hereby dismissed with prejudice.

IT IS FURTHER ORDERED BY THIS COURT that the Cross-Petition filed herein by the Defendant as against the Plaintiff herein, be, and the same is hereby dismissed with prejudice.

15 Fred Daugherty
United States District Judge

LAW OFFICES
UNGERMAN,
GRABEL &
UNGERMAN

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

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

LESTER L. REDMAN,)
)
) Plaintiff,)
 vs.)
)
 CASPER WINEBERGER, Secretary)
 of Health, Education and)
 Welfare,)
)
) Defendant.)

No. 74-C-15 ✓

FILED

MAY 13 1974 J.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

The plaintiff brings this action before the Court for judicial review pursuant to 42 U.S.C. 405(g) of the Social Security Act.

The plaintiff filed a claim for a period of disability and disability insurance benefits pursuant to 42 U.S.C. 216(i) and §223 of the Social Security Act. It was the decision of the Administrative Law Judge that the claimant was not entitled to a period of disability or disability insurance benefits under 42 U.S.C. 216(i) and §223; said decision was affirmed by the Appeals Council of the Social Security Administration. In accordance with 42 U.S.C. 405(g), defendant has filed a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based.

The Court, having closely and diligently examined said transcript and evidence, finds that there is substantial evidence as a reasonable mind might accept as adequate to support the findings and conclusions previously entered.

IT IS, THEREFORE, THE JUDGMENT OF THE COURT that this case be affirmed, with costs assessed to the plaintiff.

Dated this 13th day of May, 1974.

Lester Bohannon
UNITED STATES DISTRICT JUDGE

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

NANCY G. FELDMAN,
BRUCE K. GOODMAN and
JOAN ROSENBERG, d/b/a THE
LIBRARY PLAZA COMPANY, a
general partnership,

Plaintiffs,

vs.

NELLIE DON FABRICS, INC.
(Nelly Don Fabrics, Inc.), a
Missouri corporation, and
NELLIE DON, INC. (Nelly Don,
Inc.), a Missouri corporation,

Defendants.

FILED

MAY 13 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NO. 73-C-251 ✓

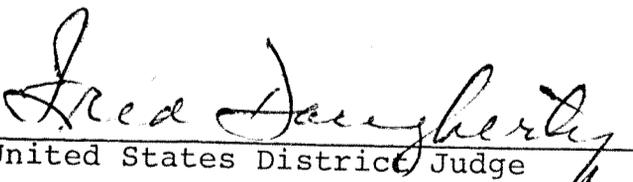
ORDER OF DISMISSAL WITH PREJUDICE

On this 13 day of May, 1974, this matter coming on to be heard upon the joint stipulation for dismissal with prejudice filed in this cause and the parties having stipulated to the entry of an order dismissing with prejudice the plaintiffs' complaint and defendants' counterclaim and the court being otherwise fully advised in the premises, finds and it is ordered as follows:

1. That plaintiffs' complaint is hereby dismissed with prejudice to the filing or prosecution of a future action at the costs of the plaintiff.

2. That defendants' counterclaim is hereby dismissed with prejudice to the filing or prosecution of a further action.

Done in open court on the day and year first above written.

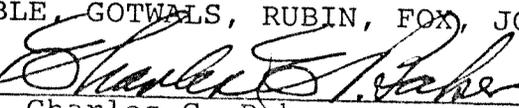

United States District Judge

APPROVED:

GREEN, FELDMAN & HALL

By 
John R. Woodard, III
Attorneys for Plaintiffs

GABLE, GOTWALS, RUBIN, FOX, JOHNSON & BAKER

By 
Charles C. Baker
Attorneys for Defendants and Counterclaimants

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

CHARLOTTE BOWMAN,

Plaintiff,

vs.

NANCY ANN SHERTZER,

Defendant.

No. 74-C-54

E I L E D

MAY 9 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

ON this 9 day of May 1974, upon the 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 Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

151 Allen E. Barrow
JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

DON L. DEES

By: Don L. Dees

Attorney for the Plaintiff

ALFRED B. KNIGHT

Alfred B. Knight
Attorney for the Defendant

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

LEON LAMBERT, d/b/a
DOW OIL COMPANY,

Plaintiff,

vs.

AMERICAN OIL COMPANY, Generally
referred to as STANDARD OIL
COMPANY, a Maryland Corporation,

Defendant.

Civil Action

No. 71-C-380

E I L E D

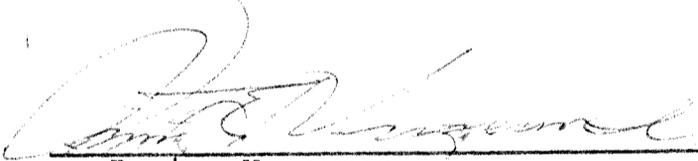
MAY 9 1974

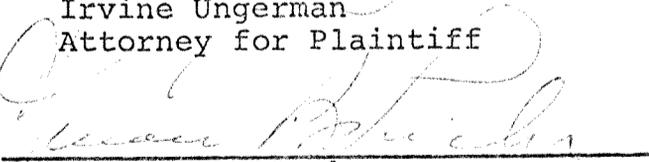
Jack C. Silver, Clerk
U. S. DISTRICT COURT

APPLICATION OF PARTIES
FOR AN ORDER DISMISSING ACTION WITH PREJUDICE

COMES NOW the plaintiff, Leon Lambert, doing business as Dow Oil Company, plaintiff, and American Oil Company, generally referred to as Standard Oil Company, a Maryland Corporation, defendant, to apply to the Court for an order dismissing said causes of action alleged by plaintiff against defendant and the counter-claim by defendant against plaintiff, with prejudice to the rights of the parties to refile said cause.

The parties would show to the Court in support of this Application that they have entered into a settlement agreement settling all claims and causes of action each against the other and therefore apply to the Court for an Order dismissing plaintiff's causes of action and defendants counter-claim with prejudice to the rights of the parties to refile said cause.


Irvine Ungerman
Attorney for Plaintiff


Truman B. Rucker
Attorney for Defendant

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

LEON LAMBERT, d/b/a
DOW OIL COMPANY,

Plaintiff,

vs.

AMERICAN OIL COMPANY, Generally
referred to as STANDARD OIL
COMPANY, a Maryland Corporation,

Defendant.

Civil Action

No. 71-C-380 ✓

FILED
MAY 9 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

NOW on this 9th day of May, 1974, pursuant to the
Application filed by the parties hereto this Court finds that
the parties have entered into a settlement and disposition, and

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that
plaintiff's causes of action ^{and complaint} be dismissed with prejudice against
the defendant herein and that defendant's counter-claim ^{and cause of action} against
plaintiff be dismissed with prejudice to the defendant's rights
to refile said cause.

Allen E. Barrow

Honorable Allen E. Barrow
District Judge
United States District Court
Northern District of Oklahoma

ba

John W. [unclear]
[unclear] [unclear]
[unclear] [unclear]
[unclear] [unclear]

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

UNITED STATES OF AMERICA,)
)
 Petitioner,)
)
 vs.)
)
)
)
 JACK RICHARD CHAMBERS, JR.,)
)
 Patient.)

Civil No.

FILED
MAY 9 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

74-C-209

This day came on for consideration the petition of the United States in this cause; and it appearing to the Court that the patient, after having been fully advised of his rights as set forth in Title 42, U.S.C., Section 3411, et seq. (Title III, Section 301, et seq. Public Law 89-793), has in open Court waived all such rights and has again expressed his desire to obtain treatment for his addiction; and the Court having determined that there is reasonable cause to believe that the patient is a narcotic addict, and that there are not any appropriate State or other facilities available for his treatment pursuant to said law, it is hereby

RECOMMENDED that the patient be committed to the custody of the Surgeon General for examination under Title 42, U.S.C., Section 3413 (Title III, Section 303, Public Law 89-793), to determine whether or not he is a narcotic addict who is likely to be rehabilitated. The written report required of each examining physician shall be filed with the Court and copies thereof furnished to the patient, not later than twenty (20) days after the patient is received at the facility hereinafter designated, and the patient shall be detained for an additional period of ten (10) days at the institution, pending further order of the Court. Provided, however, in the event both examining physicians conclude in their respective written reports that the patient is a narcotic addict who is likely to be rehabilitated through treatment, and, if the patient by written instrument filed with the Court along with, and at the same time as, the reports of the examining physicians, waives any right he may have to notice and hearing on the issue as to whether or not he is a narcotic addict who is likely to be rehabilitated through treatment, and requests that he be forthwith committed to the care and custody of the Surgeon General for treatment in a hospital of the Service, rather than be returned to this Court for further proceedings, he shall be detained at said institution for a reasonable time after the expiration of thirty (30) days from the date he is received at said facility, pending further order of the Court.

IT IS FURTHER RECOMMENDED that the patient be remanded to the custody of the United States Marshal for the Northern District of Oklahoma, at Tulsa, Okla., 8:30 A.M., May 10, 1974, for transportation to the institution at Phoenix, Arizona.

The U. S. Marshal is ordered to furnish funds for the patient's transportation costs to the institution.

Signed the 9 day of May, 1974.

M. P. B. 1974
UNITED STATES MAGISTRATE

APPROVED:

Ben F. Baker
Assistant U.S. Attorney

Recommendations of U.S. Magistrate reviewed and approved
this 9th day of May, 1974.

Allen E. Banow
UNITED STATES DISTRICT JUDGE

Since June 1, 1970 Defendants have been engaged in the business of selling boats, servicing boats, operating a marina, restaurant, and rental of cabins. It operates the year around. Defendant Richard E. Mercer, has been the President of Monkey Island Resort, Inc., and has acted directly or indirectly in the interest thereof in relation to its employees; Defendant Gene Gregg has been the Vice President of Monkey Island Resort, Inc., and has acted directly or indirectly in the interest thereof in relation to its employees. During this period Defendants have been an enterprise in that they have been engaged in related activities performed through unified operations or common control for a common business purpose, it has been an enterprise engaged in commerce, in the production of goods for commerce and they have had employees engaged in commerce or in the production of goods for commerce including employees handling, selling or otherwise working on goods that have moved in or been produced for commerce by persons, and they have had an annual gross volume of sales made or business done of not less than \$250,000.00.

The Defendants contend that their establishment is exempt under 29 U.S.C.A. §213(a)(3) as an amusement and recreational establishment, which exempts the employer from the monetary provisions of the Act. 29 U.S C.A. §213 provides:

"(a) the provisions of §206 * * * and §207 of this title shall not apply with respect to - - * * * (3) any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year its average receipts for any six months of such year were more than 33 1/3% per centum of its receipts for the other six months of such year;"

The employer has the burden of proving that his employees are exempt in the wage and hour provisions of the Fair Labor Standards Act. Idaho Sheet Metal Works, Inc. v. Wurtz, 383 U.S. 190, 206, 15 L.Ed. 2d 694, 86 S.Ct. 737. Exemptions under this Act are narrowly construed and the Courts have imposed rather heavy burdens upon an employer seeking refuge in an exemption.

Defendants maintain and rent approximately 117 boatslips, covered and uncovered. Rentals therefrom amounted to \$48,285.00 for the fiscal year ending March 31, 1971. There are certain facilities on the premises maintained for the enjoyment and convenience of patrons which derive no revenue in which costs, including amortization, for the fiscal year ending March 31, 1971, were as follows:

Swimming Pool	\$1,000.00
Shuffle Board	75.00
Ping Pong	50.00
Dance floor	200.00
Badmitton Court	40.00
Volleyball Court	40.00
Play yard	300.00
Tennis and Basketball Courts	1,000.00

It costs approximately \$2,200.00 per year to maintain the airport, \$1,200.00 allocable to the lease and \$1,000.00 miscellaneous expenses. Of the total sales of gasoline in the amount of \$18,353.00 for the fiscal year ending March 31, 1971, approximately \$1,200.00 was sales in gasoline for airplanes. Defendants rent various boats which produced \$746.00 of revenue during the fiscal year ending March 31, 1971. The woodworking shop, two marine railways and mechanical maintenance facilities are used primarily and also exclusively for performing maintenance, heavy repairs, installation of new equipment, and accessories on boats and marine equipment belonging to members of the public for which appropriate charges are made. For the fiscal year ending March 31, 1971, these charges to customers amounted to:

Parts and accessories	\$ 54,215.00
Labor associated with such repair and maintenance	<u>41,513.00</u>
	\$ 95,728.00

For the fiscal year ending March 31, 1971, Defendants derived \$27,201.00 revenue from the rental of cabins located on the premises.

The operations summary for Defendants for fiscal year ending March 31, 1971, is as follows:

Sales

Boats	\$ 165,044.00
Sundry	23,013.00
Parts and accessories	54,215.00
Gasoline	18,753.00
Labor (boat repairs and maintenance)	41,513.00
Dockage	48,285.00
Cabins	27,201.00
Lease of cafe	1,072.00

At various times either two or three men were maintained as year-round employees. Their duties included repair and maintenance of customers' boats and Defendants' boats, maintenance on the docks, the cabins, the restaurant and the equipment. In general, they did the repair and maintenance, both revenue producing and non-revenue producing that is associated with the business. They also engaged in all types of construction on the premises. They built boat docks, cabins, teeter-totters, a trailer or cradle for use in hauling boats out of the water. They helped build the Defendants' tennis courts and participated in all construction, repairs and maintenance of the premise. Such employees include Elmer Elaine, Doris Carey, Kerry Claxton, George Durbin, Elwood Johnson and Roger Whitney.

Another group of employees worked exclusively or almost exclusively in a small restaurant or snackbar on the premises. These include Charlie Durbin, Cicely Malocsay, Medelene Masters, Gladys Whipkey and Connie Whitney.

Four employees were engaged as maids. They cleaned the rental cabins, the office, and on rare occasions they cleaned customers' boats. These employees include Juanita Carey, Betty Sly and Mildred Williams.

One employee listed on the Plaintiff's Summary of Back Wages was an office worker. This employee, Dora Schultz, attended to customers who came into the establishment, handed out cabin keys, sold items from the stock of groceries, fishing, boating and other recreational items kept on hand.

During the fiscal year ending March 31, 1971, the principal and dominant activity of the Defendants was the sale of boats in the amount of \$165,044.00 or 43.2% of its gross income. Substantial sales occurred each month of the year. If income from the sale of parts, accessories and gasoline and income from boat repairs are added to this the percentage is even higher -- approximately 75% of the gross income. Their other activities are ancillary and subordinate to their sale and maintenance of boats. Only a very nominal sum is spent yearly for the maintenance of the swimming pool etc (See page 3, supra). The Court therefore finds and concludes from the evidence that Defendants' operation is not an amusement or recreation establishment within the meaning of 29 U.S.C.A. §213(a)(3) but predominantly is the sale and maintenance of boats on a year round basis bearing little or no resemblance to the amusement and recreational parks dealt with in the legislative history of the 1966 Amendment.

The case of Hodgson v. Texas City Dike and Marina, Inc., 71 CCH Lab. cases para. 32.882 (Texas 1973) is distinguished because in that case there was not the dominant sale of boats as in this case.

Moreover, Defendants are not an amusement or recreational establishment within the meaning of 29 U.S.C.A. §213(a)(3) because they operate year round and only met the monetary requirement in one out of three years.^{1/}

29 U.S.C.A. §255 provides as follows:

"Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act --

(a) if the cause of action accrues on or after May 14, 1947 -- may be commenced within two years after such action shall be forever barred unless commenced within two years after the cause of action accrued;"

This cause of action for minimum wages and overtime compensation accrues at each regular payday immediately following the work period during which services were rendered and for which the minimum wages and overtime pay became due. Mitchell v. Lancaster Mills Company, 185 F. Supp. 66 (Pa. 1960). The Complaint of the Plaintiff was filed June 5, 1972. Since June 5, 1970 was a pay period, following the work period the services were performed and for which the minimum wages and overtime compensation are claimed, the Statute of Limitations started at that time.

1/

During the calendar year 1970 the total receipts were 30.16% of the average of the other six high months.

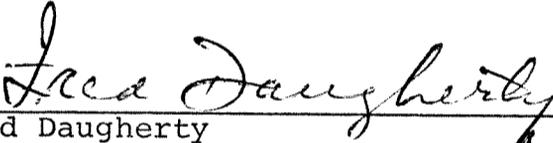
For the calendar year 1969 the average receipts for the six low months, not consecutive, but selected at random were greater than 33 1/3% of the average receipts of the other six high months.

Calendar year average of receipts for the year 1971 were approximately those for 1969. (Thus, the only year meeting the monetary test selected on a random basis was 1970).

Plaintiff is entitled to an injunction against the withholding of minimum wages and overtime provisions of 29 U.S.C.A. §§206 and 207 respectively. Plaintiff is also entitled to interest at six per cent per annum on the amount of back wages. Hodgson v. American Can Company, 440 F. 2d 916 (Eighth Cir. 1971).

Counsel for Plaintiff will prepare a Judgment in accordance with this Memorandum Opinion to include setting out the amounts owed each employee by the Defendants. The same will be submitted to counsel for Defendants and then to the Court within fifteen (15) days from the date hereof.

Dated this 9th day of May, 1974.



Fred Daugherty
United States District Judge

FILED

MAY 8 1974 *a*

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

Jack C. Silver, Clerk
U. S. DISTRICT COURT

HERBERT WILLIAM MONGER,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES OF AMERICA, EX REL)
 FEDERAL BUREAU OF INVESTIGATION,)
 U. S. DEPARTMENT OF JUSTICE,)
 GEORGE HAMILTON and JAMES OWENS,)
)
 Defendants.)

CIVIL ACTION NO. 73-C-414 ✓

STIPULATION OF DISMISSAL

COME NOW the United States of America, George Hamilton and James Owens, Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice, by and through their attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and Herbert William Monger and Thomas G. Hanlon, his attorney, and hereby stipulate and agree as follows:

I.

Items 1, 3, 4, 5, 6, 7, 8, 9 and 10 listed on page 2 of plaintiff's Complaint will be returned by the defendants herein to the plaintiff and his attorney, receipt of which items is herewith acknowledged by said plaintiff and his attorney.

II.

The return of such items aforesaid in no way shall be construed as an acknowledgment of wrongful seizure thereof and the plaintiff and his attorney expressly so agree.

III.

These defendants and the plaintiff and his attorney further stipulate and agree that this action be dismissed forthwith, each party to bear his own costs.

Dated this 8th day of May, 1974.

Robert P. Santee
ROBERT P. SANTEE
Assistant United States Attorney
Attorney for George Hamilton,
James Owens, and United States of America

Herbert William Monger
HERBERT WILLIAM MONGER

Thomas G. Hanlon
THOMAS G. HANLON

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 8 - 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)
)
) Plaintiff,)
)
vs.)
)
37.99 Acres of Land, More)
or Less, Situate in Osage)
County, State of Oklahoma,)
and Fred A. Drummond, et)
al., and Unknown Owners,)
)
) Defendants.)

CIVIL ACTION NO. 74-C-147

Tracts Nos. 102, 102E-1
and 102E-2

J U D G M E N T

1.

NOW, on this 7th day of May, 1974, this matter comes on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estates condemned in Tracts 102, 102E-1 and 102E-2, as such estates and tracts are described in the Complaint filed in this civil action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint herein give the United States of America the right, power and authority to condemn for public use the estates described in paragraph 2 herein. Pursuant thereto, on March 29, 1974, the

United States of America filed its Declaration of Taking of such described property and title to the described estates in such property should be vested in the United States of America as of the date of filing the Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of certain estates in subject tracts a certain sum of money and none of this deposit has been disbursed, as set out in paragraph 12 below.

7.

The defendant named in paragraph 12 as owner of the estates taken in subject tracts is the only defendant asserting any claim to such estate. All other defendants having either disclaimed or defaulted, the named defendant, as of the date of taking was the owner of the estates condemned herein and, as such, is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the estates taken in subject tracts and the United States of America have executed and filed herein a Stipulation As To Just Compensation, wherein they have agreed that just compensation for the estates condemned in subject tracts is in the amount shown as compensation in paragraph 12, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for the estates taken in subject tracts and the amount fixed by the Stipulation As To Just Compensation, and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out in paragraph 12 below.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the tracts named in paragraph 2 herein, as such

tracts are particularly described in the Complaint filed herein; and such tracts, to the extent of the estates described in such Complaint are condemned, and title thereto is vested in the United States of America as of March 29, 1974, and all defendants herein and all other persons interested in such estates are forever barred from asserting any claim to such estates.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking, the owner of the estates condemned herein in subject tracts was the party whose name appears below in paragraph 12, and the right to receive the just compensation awarded by this judgment is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, mentioned in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the estates condemned herein in subject tracts, as follows:

TRACTS NOS. 102, 102E-1 and 102E-2

Owner: Fred A. Drummond

Award of just compensation		
pursuant to Stipulation -----	\$14,850.00	\$14,850.00
Deposited as estimated compensation -	11,750.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$14,850.00
Deposit deficiency -----	\$3,100.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court in this civil action, to the credit of subject tracts, the deposit deficiency in the sum of \$3,100.00, and the Clerk of this Court then shall disburse the deposit for such tracts as follows:

To - Fred A. Drummond ----- \$14,850.00.

/s/ Allen E. Barrow

APPROVED:

UNITED STATES DISTRICT JUDGE

/s/ Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney

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

RONALD KEITH SCOTT,

Plaintiff,

-vs-

JOSEPH J. ARRINGTON,

Defendant.

No. 73-C-265

FILED

MAY 7 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

On April 24, 1974, the defendant herein filed a Motion To Dismiss and set forth therein the reasons and grounds on which defendant moved for such dismissal. The Court finds that on the 10th day of December, 1973, this matter was on a pre-trial docket for pre-trial conference. The matter was passed from that docket on statements informing the court that depositions had been set up for October 26, 1973, but that the depositions were not concluded in that the plaintiff did not appear for the depositions and neither did he appear for an examination by a doctor at the defendant's request at the time and place set on that date; that thereafter this matter was again set for pre-trial docket on February 8, 1974, and the court finds that the deposition of the plaintiff and medical examination was again set for March 25, 1974, and the plaintiff again did not appear for either the deposition or the medical examination. The court further finds that the defendant again requested a medical examination and deposition on the plaintiff which was set and agreed to between the parties hereto for April 17, 1974, and the plaintiff did not appear for either the deposition or the medical examination; that the court was informed at pre-trial that both of these would be completed immediately following the pre-trial conference of February 8, 1974.

The matter had been set for trial on ~~March~~^{May} 13, 1974, and under the above findings the defendant cannot be prepared for trial. The plaintiff has failed to make himself available for the necessary procedures and the court does find that said action on the part of the plaintiff is inexcusable and that said action should be dismissed with prejudice for the failure of the plaintiff to prosecute his action by conforming to the rules and the requirements of proper procedure.

Said cause is therefore dismissed with prejudice because of the findings and the failure of the plaintiff as set forth above under rule 41 of Federal Rules of Civil Procedure.

IT IS SO ORDERED this 6th day of May, 1974.

L. Luther Bohanon
UNITED STATES DISTRICT JUDGE.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PETER J. BRENNAN, Secretary of Labor,)
United States Department of Labor,)
Plaintiff)
v.)
J. CARROLL BUTTRAM, an individual,)
doing business as SPERRY LAUNDERETTE)
AND NORTH HARVARD COIN-O-MATIC)
Defendant)

Civil Action

No. 74-C-116

FILED
MAY 6 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

Plaintiff has filed his complaint against J. Carroll Buttram, doing business as Sperry Launderette and North Harvard Coin-O-Matic. Defendant has appeared by counsel, waived any defenses thereto and agree to the entry of this judgment without contest.

It is, therefore, on motion of the plaintiff and for cause shown,

ORDERED, ADJUDGED and DECREED that defendant, his 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, U.S.C. Title 29, section 201, et seq.), hereinafter referred to as the Act in any of the following manners:

I

Defendant shall not, contrary to sections 6 and 15(a)(2) of the Act, pay any of his employees who are engaged in interstate commerce or in the production of goods for interstate commerce; or employees of an enterprise engaged in commerce or in the production of goods for commerce, as defined by the Act, wages at rates less than \$1.60 per hour, or such other rates as may be hereinafter set by law.

II

Defendant shall not, contrary to sections 7 and 15(a)(2) of the Act, employ any of his employees engaged in interstate commerce or in the production of goods for interstate commerce, or employees of 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 at a rate not less than one and one-half times the regular rate at which they are employed.

III

Defendant shall not fail to make, keep and preserve records of his employees and of the wages, hours or other conditions and practices of employment maintained by him, 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.

IV

Defendant is further enjoined and restrained from withholding from the employees listed below the unpaid minimum wages and overtime compensation as reflected opposite their respective names, to which they are entitled under the Act.

NAME	PERIOD COVERED	AMOUNT
Anspaw, C. W.	10-1-73 to 3-10-74	\$ 22.85
Anspaw, Jean	3-16-73 to 3-17-74	421.30
Cragg, Hubert	3-31-72 to 5-01-72	300.15
Fortner, James	4-01-73 to 5-31-73	135.17
Garrison, Viola	5-15-72 to 11-29-72	364.21
Hausner, Jean	12-1-72 to 3-16-74	278.06
Hayes, Betty	5-01-72 to 10-16-72	216.85
Kieffer, Janet	6-01-73 to 7-01-73	28.60
King, Kathy	6-01-73 to 7-01-73	28.60
King, Mary Lou	4-01-72 to 7-01-73	2,498.16
Kirkendall, Betty	2-16-73 to 3-16-73	62.85
Roach, Joe	6-01-73 to 9-30-73	143.20

V

The monetary provisions of this order shall be deemed satisfied when defendant has delivered to the plaintiff the total amount of \$4,500.00, in accordance with the following schedule:

June 10, 1974	\$125.00
July 10, 1974	125.00
August 10, 1974	125.00
September 10, 1974	125.00
October 10, 1974	125.00
November 10, 1974	125.00
December 10, 1974	125.00

January 10, 1975	\$125.00
February 10, 1975	125.00
March 10, 1975	125.00
April 10, 1975	125.00
May 10, 1975	125.00
June 10, 1975	125.00
July 10, 1975	125.00
August 10, 1975	125.00
September 10, 1975	125.00
October 10, 1975	125.00
November 10, 1975	125.00
December 10, 1975	125.00
January 10, 1976	125.00
February 10, 1976	125.00
March 10, 1976	125.00
April 10, 1976	125.00
May 10, 1976	125.00
June 10, 1976	125.00
July 10, 1976	125.00
August 10, 1976	125.00
September 10, 1976	125.00
October 10, 1976	125.00
November 10, 1976	125.00
December 10, 1976	125.00
January 10, 1977	125.00
February 10, 1977	125.00
March 10, 1977	125.00
April 10, 1977	125.00
May 10, 1977	125.00

The plaintiff will make the appropriate tax withholding and the employee's share for social security and distribute the net entitlement to each of the persons named above, or to their respective estates if that should be necessary. If, after making reasonable and diligent efforts to disburse said unpaid wages to the persons entitled thereto, plaintiff is unable to do so because of inability to locate a proper person, or because of a refusal to accept payment by any such person, he shall, within a reasonable period of time, as provided in Title 28, U.S.C. §§ 2041 and 2042, deposit such unpaid funds with the Clerk of this Court.

VI

Defendant shall not request, solicit, suggest, or coerce, directly or indirectly, any present or former employee enumerated herein to return or to offer to return to the defendant or to someone else for the defendant, 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 accept or receive from any such present or former 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 discharge or in any other manner discriminate against any such present or former employee because such employee has received or retained money due to him from the defendant under the provisions of this judgment or the Act.

VII

As to the claim for monetary relief asserted by the plaintiff, the jurisdiction of this court in this case extends only to the claims for back wages of the employees named herein and all other such claims are specifically excluded. Defendant agrees that in the event any employee not named above who has been employed by said defendant should bring an action under the provisions of section 16(b) of the Act [29 U.S.C. § 216(b)], the said defendant will not claim nor plead this action under section 17 in bar of any

such action. The defendant further agrees that in the event of such a suit limitations under section 6 of the Portal-to-Portal Act of 1947 (29 U.S.C. § 255) shall be tolled for a period of time equal to the period from February 21, 1974, the date this suit was commenced, until the date of this judgment.

The costs of this action are to be taxed against defendant.

Signed and entered on this the 3 day of May, 1974.

FRED DAUGHERTY
UNITED STATES DISTRICT JUDGE

Entry of the above order is hereby consented to:

J. Carroll Buttram
J. Carroll Buttram

James Feamster
James Feamster
Attorney for defendant

Plaintiff moves for entry of the foregoing order.

William J. Kilberg
William J. Kilberg
Solicitor of Labor

George T. Avery
George T. Avery
Regional Solicitor

Harvey M. Shapan
Harvey M. Shapan
Attorney

Attorneys for PETER J. BRENNAN,
Secretary of Labor, United
States Department of Labor,

Plaintiff

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

GERALD LAWRENCE WILLIAM HILDAHL
and TRUMAN CARL STOCKTON,

Petitioners,

-vs-

STATE OF OKLAHOMA,

Respondent.

No. ~~e-72-424~~
~~e-72-425~~

72-C-424
72-C-425
FILED

MAY 3 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes on for hearing this 4th day of April, 1974, upon the order of the Court fixing this date for hearing upon an evidentiary hearing to determine the merits of the Writ of Habeas Corpus filed by the petitioners herein; petitioners appearing in person and by their counsel of record, Don E. Gasaway, and the State of Oklahoma appearing by their counsel of record, Paul Crow and Ken Delashaw of the Attorney General's Office and Mr. Andrew Allen of the Tulsa District Attorney's Office; the Court after hearing both sides announced ready, without taking evidence and after asking counsel if they desire to present evidence made the following findings:

ONE: That the Writ of Habeas Corpus presently before the Court was premature by virtue of the fact that the petitioners have not exhausted their state remedies.

TWO: That the petitioners had not filed a post-conviction application, in the State Court alleging the ineffective counsel of the petitioners original attorney nor asked the Trial Court for a delayed appeal.

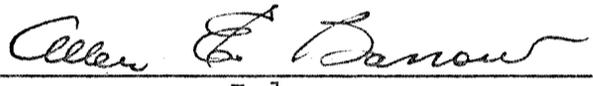
THREE: That no allegations had ever been made in the State Court by the petitioners that they were denied an appeal through negligence or ineffectiveness of counsel through no fault of their own.

FOUR: That the Writ of Habeas Corpus filed by the petitioners herein was dismissed without prejudice and remanded back to the State Court.

FIVE: That the petitioners remain on the same Federal Bond for a period of ten (10) days from the date of this hearing or until a hearing on bond is held by the State Court.

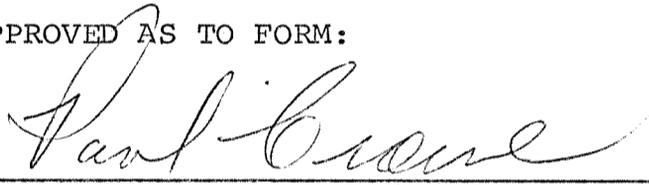
SIX: That the petitioners will have ten (10) days to file a post-conviction relief application setting forth the above points of ineffective counsel and denial of an appeal through no fault of their own.

WHEREFORE, the undersigned Judge of the United States Federal District Court of the Northern District does hereby dismiss the petitioner's Writ of Habeas Corpus filed herein without prejudice to their rights of refiling same after exhausting their State remedies all in accordance with the above set forth orders.



Judge

APPROVED AS TO FORM:



Attorney General's Office



Tulsa District Attorney's Office
By: Andrew B. Allen



Woodson and Gasaway
By: Don E. Gasaway

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

NELLIE ATKINS ARMSTRONG,

Plaintiff,

vs.

MAPLE LEAF APARTMENTS, LTD.,
A Limited Partnership; BROKEN ARROW
MALL, INC., A Corporation; OWEN D.
YOUNG and ROBERT L. LATCH, d/b/a
YOUNG & LATCH INVESTMENTS, A
General Partnership; FIRSTTUL MORT-
GAGE COMPANY, A Corporation; SACK-
MAN-GILLIAND CORPORATION, A
Corporation; FIRST NATIONAL BANK &
TRUST COMPANY OF TULSA, OKLA-
HOMA, A National Banking Association;
and HAMILTON INVESTMENT TRUST,
A Massachusetts Business Trust,

Defendants.

No. 74-C-119

FILED

MAY 3 1974

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for hearing and the Court, having heard the evi-
dence and considered the stipulation of the parties, finds the facts and states
the conclusions of law as follows:

FINDINGS OF FACT

1. This is an action in the nature of ejectment and quiet title by
plaintiff, who, in 1965, owned and occupied a certain tract of land located in
Tulsa County, Oklahoma. The Court accepts and therefore finds as true all
stipulations made in open court by counsel for the various parties on all hear-
ings heretofore had. On December 3, 1965 plaintiff, a Creek Indian of half-
blood, conveyed the real estate involved in this action to the defendant Becko
and since that conveyance other defendants have obtained interests in such real
estate. The plaintiff asserts that under the Act of Congress of April 4, 1947
(61 Stat. 732, hereinafter referred to as the "1947 Act") her 1965 deed to Becko

was a nullity and title never passed from her and that she is entitled to possession of the property. Following the filing of this suit, the defendant Becko filed a Petition in the District Court of Tulsa County, Probate Division, for approval of the 1965 deed under the 1947 Act. Thereafter, plaintiff herein sought to enjoin petitioner in the State Court from proceeding in that court for approval of the 1965 deed.

2. The 1965 deed has not been approved by the County Court (now Probate Division of the State District Court) of the county in which the land is situated.

3. The Court has considered each of the criteria for determining whether a preliminary injunction should be granted and finds that plaintiff has not sustained the burden of showing circumstances which would warrant the granting of a preliminary injunction.

4. The pendency of this action caused all construction on the land involved to be temporarily halted and is causing substantial damage to certain of the defendants herein.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and subject matter by reason of 28 U.S.C. §331.

2. The Act of Congress of August 4, 1947 (61 Stat. 732) applies to the land involved herein.

3. Under the Act of Congress of August 4, 1947 (61 Stat. 732), and part of §16 of the Code of Federal Regulations, the Oklahoma State District Court, Probate Division, is designated by Congress as the sole tribunal to approve or disapprove a deed to land restricted by the 1947 Act.

4. Approval or disapproval of deeds under the 1947 Act is a ministerial or administrative function of the State District Court, acting as a federal instrumentality. Springer vs. Townsend, 336 F. 2d 397 (10th Cir., 1964).

5. Upon a proper showing, the United States District Court can enjoin the State District Court while acting in such ministerial or administrative capacity. Roudebush vs. Hartke, 405 U.S. 15.

6. The criteria to look to in determining if a preliminary injunction should be granted are as follows:

A. The significance of threat of irreparable harm to the plaintiff if the injunction is not granted.

B. The state of the balance between this harm and the injury that granting the injunction could inflict on the defendants.

C. The probability that the plaintiff will succeed on the merits.

D. The relative hardship if the injunction is granted.

E. The public interest; that is, will it be affected.

A preliminary injunction is an extraordinary remedy, and whether an application for preliminary injunction is to be granted or denied is addressed to the discretion of the Court.

7. No law or case is found requiring the grantor to be the person seeking approval by the State Probate Court.

8. Approval of a deed to restricted Indian land is a condition subsequent. Pickering vs. Lomax, et al., 145 U.S. 310, 12 S. Ct. 860 (1892).

9. Adequate remedies are available to plaintiff in the State Court action pending, including the right to appeal. The Court must assume that the District Court, as the designated instrumentality of the Congress, will act in accordance with the guide lines prescribed in the 1947 Act to protect the Indian and will have a full evidentiary hearing, including a full and adequate investigation of this matter, taking into consideration, among other things, the value of the property at the time it was conveyed.

10. It would be premature for this Court to enjoin the State District Court before it has had an opportunity to perform its function as designated by the Congress in the action there pending.

11. The question of whether plaintiff must first exhaust her administrative remedies in the State Probate Court has been considered. However, a

decision of that legal issue is not required by the Court at this time because preliminary injunction is denied on the other grounds stated above.

IT IS SO ORDERED, and counsel for plaintiff will submit appropriate judgment in accordance herewith.

DATED: May 3, 1974.

Allen E. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Jay C. Baker
Jay C. Baker, Attorney for Plaintiff

Royce H. Savage
Royce H. Savage

Chris Rhodes
Chris Rhodes
Attorneys for Defendants

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

NELLIE ATKINS ARMSTRONG,)
)
 Plaintiff,)
)
 vs.) No. 74-C-119
)
 MAPLE LEAF APARTMENTS, LTD., a)
 Limited Partnership; et al.,)
)
 Defendants.)

FILED

MAY 3 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER DENYING PRELIMINARY INJUNCTION

This cause came on to be heard on plaintiff's motion for a preliminary injunction, and the Court having considered affidavits in support of said motion and in opposition thereto, and having heard oral evidence in open Court, and the Court having made and filed its findings of fact and conclusions of law, it is

ORDERED that said motion be and the same hereby is denied.

DATED: May 3, 1974.

Cecilia E. Barrow

UNITED STATES DISTRICT JUDGE

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

ROBERT J. STANTON, Trustee of)
Tulsa Crude Oil Purchasing Company and)
its Consolidated Subsidiaries,)
Plaintiff,)
vs. : NO. 74-C-108 ✓
UNION TEXAS PETROLEUM CORPORATION,)
a Texas corporation,)
Defendant.)

STATEMENT OF FACTS AND REQUEST FOR
DISMISSAL WITHOUT PREJUDICE

FILED
MAY 3 - 1974
Jack C. Silver, Clerk
U.S. DISTRICT COURT

COMES NOW, Robert J. Stanton, Trustee of Tulsa Crude Oil Purchasing Company and its Consolidated Subsidiaries, and requests that this Court enter an Order allowing plaintiff to dismiss without prejudice for the following reasons:

Defendant has represented to Plaintiff that it has paid the claim sued upon and has furnished Plaintiff a copy of a cancelled check as proof of its defense. Although the records of Plaintiff do not reflect this payment specifically it was apparently included in a total Final Report and Accounting of collection of accounts receivable made by the prior operating Receiver of Admiral Crude Oil Company.

Plaintiff is satisfied that Defendant's representations are correct and for these reasons Plaintiff asks this Court to approve its request to dismiss this action without prejudice.

ROBERT J. STANTON, Trustee

By *James O. Ellison*
James O. Ellison, His Attorney

ORDER OF DISMISSAL

Before The Honorable Allen E. Barrow, Chief Judge of the United States District Court for the Northern District of Oklahoma, this matter was presented to the Court upon the Statement of Facts and Request for Dismissal Without Prejudice, and the Court thereupon dismissed the above entitled action without prejudice, each party to bear its own costs.

DATED this 3rd day of May, 1974.

Allen E. Barrow
ALLEN E. BARROW Chief Judge
United States District Court
Northern District of Oklahoma

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

ROBERT J. STANTON, TRUSTEE OF)
TULSA CRUDE OIL PURCHASING COMPANY,)
and its CONSOLIDATED SUBSIDIARIES,)
Plaintiff,)

vs. :

NO. 74-C-103

CONTINENTAL PIPE LINE COMPANY, a)
Delaware corporation,)
Defendant.)

STIPULATION

FILED
MAY 3 - 1974
Jack G. Silver, Clerk
U. S. DISTRICT COURT

Attorneys for plaintiff and defendant do hereby stipulate as follows:

It is hereby stipulated and agreed that the above entitled action be dismissed with prejudice, each party to bear its own costs, for the reason that a settlement has been reached between the parties which is described in the copy of a letter which is attached hereto and by reference made a part hereof and marked Exhibit "A".



ROGER R. SCOTT
Attorney for Defendant
Continental Pipe Line Company



JAMES O. ELLISON, Attorney for
Robert J. Stanton, Trustee, Plaintiff

ORDER OF DISMISSAL

Before The Honorable Allen E. Barrow, Chief Judge of the United States District Court for the Northern District of Oklahoma, this matter was presented to the Court upon the Stipulation of the parties, and the Court thereupon dismissed the above entitled action with prejudice, each party to bear its own costs.



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

PRAY, SCOTT & LIVINGSTON

A PROFESSIONAL CORPORATION

LAWYERS

FOURTH NATIONAL BANK BUILDING

TULSA, OKLAHOMA 74119

TELEPHONE 918 583-1365

April 24, 1974

CARL H. LIVINGSTON
DONALD E. PRAY
ROGER R. SCOTT
JOHN J. LIVINGSTON
W. BLAND WILLIAMSON
DONALD F. MARLAR

RECEIVED
APR 25 1974
GEORGE H. BOWEN
OF COUNSEL

BOONE ELLISON & SMITH

Reuben Davis, Esq.
Boone, Ellison & Smith
Attorneys at Law
World Building
Tulsa, Oklahoma 74103

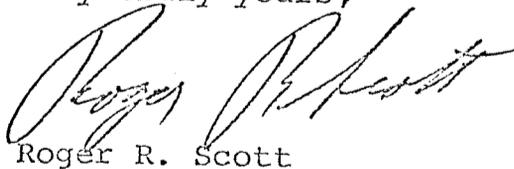
Re: Tulsa Crude Oil Purchasing Company,
et al., v. Continental Pipe Line
Company
United States District Court,
Northern District of Oklahoma
No. 74-C-103

Dear Reuben:

This letter will verify the fact that Robert J. Stanton, Trustee of Tulsa Crude Oil Purchasing Company and its Consolidated Subsidiaries, has tendered to Continental Oil Company for the use and benefit of Continental Pipe Line Company the amount of \$456.83, representing tariff for the delivery of 3,045.52 barrels of crude oil which is being held at their Ogg Station in Kay County, Oklahoma. This will further acknowledge the fact that this oil has been released to Apco for the use and benefit of Tulsa Crude Oil Purchasing Company.

Since the matters involved in this case have now been resolved I request that you prepare and file a Dismissal with Prejudice and furnish me a copy of the same bearing the Clerk's filing stamp. Thank you for your cooperation in this matter.

Very truly yours,



Roger R. Scott

RRS:pc

cc: Mr. Robert Innis
Mr. Richard Millan

Exhibit "A"

MAY 3 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

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

ELLA CRISWELL,

Plaintiff,

-vs-

OKC CORP., A Corporation,

Defendant.

No. 73-C-320 ✓

DISMISSAL WITH PREJUDICE AS TO FURTHER
PROCEEDINGS IN REVERSE CONDEMNATION

Now on this 2 day of May, 1974, it appearing to the Court that the parties hereto have filed herein a joint suggestion wherein they have advised the Court that subsequent to the trial of this cause they made and entered into a settlement agreement for a "Contract and Easement," for a good and valuable consideration which has been paid, a copy of which has been furnished to the Court, and that there is no further need or necessity for any further proceedings in this cause in the nature of reverse condemnation, the Court finds and adjudges that this cause, with respect to any further proceedings in the nature of reverse condemnation should be dismissed with prejudice.

IT IS SO ORDERED.

Luther Bohanon
HON. LUTHER BOHANON, United States
District Judge

READ AND APPROVED AS TO FORM:

David R. Poplin
DAVID R. POPLIN, of POPLIN &
BLEVINS, Attorneys for Plaintiff

Tony Jack Lyons
TONY JACK LYONS, of LYONS, DEAN
& STUART, Attorneys for Defendant

MAY 3 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

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

ELLA CRISWELL,

Plaintiff,

-vs-

OKC CORP., A Corporation,

Defendant.

No. 73-C-320 ✓

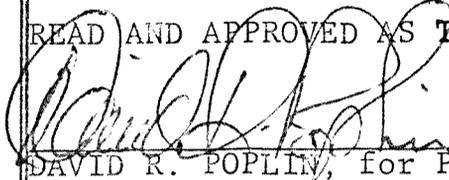
J U D G M E N T

Now on this 2nd day of April, 1974, comes on for hearing and trial before the Court the above entitled and numbered cause, the plaintiff appearing in person and by and through her Attorneys, DAVID R. POPLIN and PAUL BLEVINS, and the defendant appearing by and through its agents and its Attorneys, TONY JACK LYONS, GARY J. DEAN and LARRY D. STUART. All parties announced ready. Witnesses were sworn and examined in open Court, and other evidence was offered, introduced and admitted both in support of and in opposition to the respective claims of the parties, after which both parties announced rest. The Court then heard the statements of counsel. From all the evidence adduced, and being duly advised in the premises, and after due consideration thereof, the Court finds and adjudges as follows:

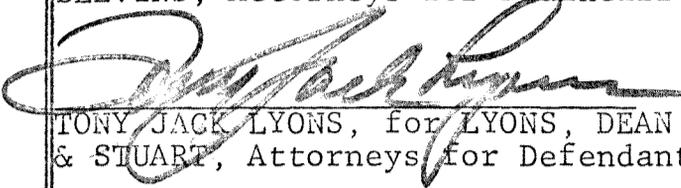
1. That the plaintiff's claim should be denied, and the Court finds generally in favor of the defendant, all pursuant to the Findings of Fact and Conclusions of law filed herein, which are incorporated herein by reference.
2. That the Court will retain jurisdiction of the cause, at this time, should the plaintiff wish to pursue the matter further in an action in reverse condemnation, and upon her application being made therefor, a jury to be convened to determine what damage she has sustained, over and above what she has previously received from the railroad in condemnation proceedings, and what she has received from the defendant in the way of free water.

Luther Bohanon
HON. LUTHER BOHANON, United States
District Judge

READ AND APPROVED AS TO FORM:



DAVID R. POPLIN, for POPLIN and
BLEVINS, Attorneys for Plaintiff



TONY JACK LYONS, for LYONS, DEAN
& STUART, Attorneys for Defendant

MAY 3 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

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

ELLA CRISWELL,

Plaintiff,

-vs-

No. 73-C-320 ✓

OKC CORP., A Corporation,

Defendant.

PARTIES' JOINT SUGGESTION AS TO SETTLEMENT AND
PLAINTIFF'S MOTION TO DISMISS WITH PREJUDICE
ANY FURTHER PROCEEDINGS

Come now the parties hereto and they jointly suggest to and advise the Court that subsequent to the trial of this cause on the 2nd day of April, 1974, the parties entered into certain negotiations and did settle their differences amicably for a good and valuable consideration, which has been paid, all of which resulted in the making, execution and delivery of a certain "Contract and Easement," a true and correct copy of which is attached hereto, and made a part hereof by reference.

No further need or reason exists for the Court retaining jurisdiction of this cause for further proceedings in reverse condemnation, and plaintiff, therefore, requests that such other and further proceedings with reference hereto be dismissed with prejudice.

Dated this 29th day of April, 1974.

ELLA CRISWELL, Plaintiff
By *Robert D. Poppin*
for POPPIN & BLEVINS, Her Attorneys

OKC CORP., A Corporation, Defendant
By *Frank Jack Pryor*
for LYONS, DEAN & STUART, Its Attorneys

(All counsel of Pryor, Oklahoma)

CONTRACT AND EASEMENT

WHEREAS, one of the parties hereto, viz., ELLA CRISWELL, who is one and the same person as, and formerly known as ELLA CALLISON, commenced an action in quiet title to a pipeline owned by one of the parties hereto, viz., OKC CORP., a Delaware Corporation, in the United States District Court for the Northern District of Oklahoma, and the same was docketed as Number 73-C-320 in said Court; and,

WHEREAS, at a trial had and held before said Court on the 2nd day of April, 1974, the finding and judgment of the Court was generally in favor of the defendant, viz., OKC CORP., but the Court retained jurisdiction of said cause to give the plaintiff therein, viz., ELLA CRISWELL an opportunity to decide if she wished to pursue the remedy of reverse or inverse condemnation; and,

WHEREAS, the parties hereto and to said litigation wish to settle, resolve and compromise their respective correlative and mutual rights, privileges, duties, obligations and responsibilities, upon the terms and conditions herein set forth;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That ELLA CRISWELL and I. B. CRISWELL, wife and husband, of Pryor, Mayes County, Oklahoma, Parties of the First Part, for and in part consideration of these presents, of the payment to them of the sum of Four Hundred^{no}/₁₀₀ DOLLARS (\$400.00), by the said OKC CORP., a Delaware Corporation, Party of the Second Part, the receipt whereof is hereby acknowledged, have for themselves, and their heirs, executors, administrators and assigns, GRANTED, BARGAINED, SOLD, TRANSFERRED, ASSIGNED AND CONVEYED, and by these presents they do hereby GRANT, BARGAIN, SELL, TRANSFER, ASSIGN AND CONVEY unto the said OKC CORP., a Delaware Corporation, Party of the Second Part, its successors and assigns, a permanent and perpetual easement and right-of-way, in, to, on, upon, over, under and across the following described real estate and premises, situate in MAYES COUNTY, STATE OF OKLAHOMA, to-wit:

The North Seventy-Five (75) Feet of the North Half (N/2) of the Southwest Quarter (SW/4) of Section Twenty-five (25), Township Twenty-one (21) North, and Range Nineteen (19) East, of the Indian Base and Meridian,

with the right of ingress and egress to and from the same, for the purpose of laying, erecting, building, constructing, maintaining and operating in, to, on, upon, over, under and across, and through and upon the same water transportation pipelines, with the further understanding and agreement that this grant shall include the right to change the size of said pipeline at its discretion.

And in further and the balance of said consideration for which, the parties hereto do mutually agree, promise to and understand, one with the other as follows:

That while any and all water transportation pipeline or lines are in use pursuant to said grant of easement and right-of-way, by the Second Party, its successors and assigns, the said Second Party, its successors and assigns, shall furnish to the First Parties and to their heirs, executors, administrators and assigns, a free tap on said water transportation pipeline, in or about the approximate location in which it is now located, being in the northwest corner of the above described property, and free potable water, without any charge whatsoever, for domestic use to the First Parties' residence.

That if and in the event there should ever be any break in said free water service, at a location on said line either east or west of the above described premises, the Second Party will promptly repair the same, but no liability shall attach to the Second Party for any interruption of said free water service.

That the Second Party shall not be liable for, nor be obligated to keep, maintain, operate or repair the First Parties' water pipeline from said tap to the First Parties' residence.

That if and in the event the Second Party, its successors or assigns, should deem it necessary to abandon or discontinue the use of said water transportation pipeline, its

liability, responsibility and obligation to furnish free water to the First Parties, as herein set forth, shall cease, and the Second Party, its successors and assigns, would have the right to enter upon said easement or right-of-way, and to remove said water transportation pipeline, and the same is not to be considered as a permanent fixture or attachment to said lands.

"Domestic use" shall be considered, interpreted and intended to mean the normal use of such potable water for one family residence, and not for multiple families or multiple residences.

Second Party covenants and agrees that the presence of said water transportation pipeline shall not interfere with First Parties' use of the surface of said premises above described, and that in the event the time should come when it might want to remove said pipeline therefrom, it would pay First Parties actual damages to the surface for such removal, or to place the surface in as good a condition as it now is, or will be, immediately prior to any such removal. Likewise, should Second Party ever decide to replace said line with a larger or different line, it agrees to pay First Parties, actual damages to the surface, if any, or to put the surface back in the same condition as it was, or will be, immediately prior to replacement of the present line, or the laying of a different one.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their respective signatures, on the dates indicated below in their respective acknowledgments.



ATTEST:

Charles E. Reewine
Assistant Secretary

(CORPORATE SEAL)

Ella Criswell
ELLA CRISWELL, and

I. B. Criswell
I. B. CRISWELL, Wife and Husband, Parties of the First Part.

OKC CORP., a Delaware Corporation

By: N. W. Smith
N. W. SMITH,
Assistant Secretary
Vice President

STATE OF OKLAHOMA)
COUNTY OF MAYES)

ss.

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 9th day of April, 1974, by ELLA CRISWELL and I. B. CRISWELL, wife and husband.

Deana Breshaw
Notary Public

My Commission Expires:

Feb 29 1977

STATE OF TEXAS)
COUNTY OF Texas)

ss.

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 15th day of April, 1974, by N. W. SMITH, Vice President ~~Assistant Secretary~~ of OKC CORP., a Delaware Corporation, on behalf of the corporation.

Sharon Dickerson
Notary Public

My Commission Expires:

June 1, 1975

STATE OF OKLAHOMA } ss.
COUNTY OF MAYES }
This instrument was Filed for Record
at 10:40 o'clock A.M.
APR 8 3 1974
and duly Recorded in Book.....Page.....
Jack B. Porter County Clerk
J. Dickerson Deputy

MAY 3 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURTIN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

ELLA CRISWELL,

Plaintiff,

-vs-

OKC CORP., A Corporation,

Defendant.

No. 73-C-320 ✓

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 2nd day of April, 1974, upon the trial of the above entitled and numbered cause, all parties being present in person and by and through counsel of record, and at the conclusion of the presentation of all the evidence, and after both sides announced "rest," The Court makes the following findings of fact and conclusions of law, to-wit:

FINDINGS OF FACT

1. That two (2) water pipe lines were installed or constructed in or upon the real estate involved herein, the dates of installation being in conflict, but the first line, which was laid upon the real estate involved, above ground, and which leaked badly, was laid or installed in either 1958 or 1959.

2. The real estate involved is a railroad right-of-way which was condemned by the MKT Railroad in the District Court of Mayes County, Oklahoma, in Cause No. 10,133, in the year 1959, and plaintiff was paid a handsome award - \$7,500.00 - for less than 5 acres.

3. Defendant obtained a "Pipe Line License" from the railroad in August, 1959, and has paid an annual rental therefor ever since.

4. When the second line was being installed or buried upon the railroad right-of-way, plaintiff's now deceased husband protested the work, and it was halted. Plaintiff's now deceased husband and the witness A.J. ANDERSON, who was defendant's construction superintendent at the time, entered into an oral agreement or understanding by which defendant could proceed with the construction of the line and the use of the right-of-way in consideration

of defendant furnishing to plaintiff and her then husband free water for domestic use, which agreement has been carried out and performed to this day, viz., defendant furnishing the water, and plaintiff taking and receiving the same.

5. Defendant was in good faith when it laid its lines.

6. There would be no permanent injury or damage to plaintiff's land if the pipe line was dug up and removed.

CONCLUSIONS OF LAW

1. That the defendant was not a trespasser upon the plaintiff's land when it laid the water pipe line in question.

2. That the oral agreement between plaintiff's deceased husband and defendant has been fully performed over the years; that it was for a good and valuable consideration, giving rise to either a right or a privilege on the part of both parties, i.e., the plaintiff to receive free water for domestic use, and the defendant to use the railroad right-of-way for its pipe line.

3. The plaintiff does not have or own title to the pipe line in question, nor did the actions of the parties rise to the dignity of transferring title to defendant to an easement or right in plaintiff's land, but because of defendant's good faith and the actions of the parties, and the consideration flowing between them, a right or privilege arises in equity.

4. Defendant owns title to the pipe line and there would be no permanent injury to the plaintiff's realty if it was removed.

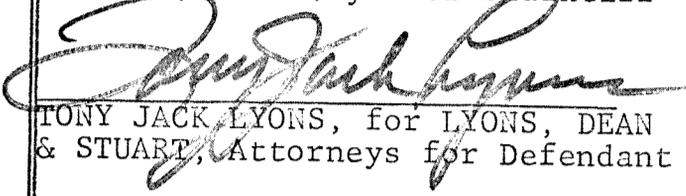
5. That the Court should make a finding generally in favor of the defendant, and plaintiff's claim, at this stage, should be denied. However, since the factual situation sounds in reverse condemnation, the Court shall consider this action, and the proceedings to date, as the beginning or commencement of an action in reverse condemnation, and jurisdiction shall be retained for the purpose of having a jury determine what the value of plaintiff's damage is, over and above what she has already received in the past as a result of railroad right-of-way condemnation proceedings, and what she has received from the defendant in the way of free water.


HON. LUTHER BOHANON, United States
District Judge

READ AND APPROVED AS TO FORM:



DAVID R. POPLIN, for POPLIN &
BLEVINS, Attorneys for Plaintiff



TONY JACK LYONS, for LYONS, DEAN
& STUART, Attorneys for Defendant

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

GERALD LAWRENCE WILLIAM HILDAHL
and TRUMAN CARL STOCKTON,

Petitioners,

-vs-

STATE OF OKLAHOMA,

Respondent.

No. ~~C-72-424~~
~~C-72-425~~

72-C-424

72-C-425

FILED

MAY 3 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes on for hearing this 4th day of April, 1974, upon the order of the Court fixing this date for hearing upon an evidentiary hearing to determine the merits of the Writ of Habeas Corpus filed by the petitioners herein; petitioners appearing in person and by their counsel of record, Don E. Gasaway, and the State of Oklahoma appearing by their counsel of record, Paul Crow and Ken Delashaw of the Attorney General's Office and Mr. Andrew Allen of the Tulsa District Attorney's Office; the Court after hearing both sides announced ready, without taking evidence and after asking counsel if they desire to present evidence made the following findings:

ONE: That the Writ of Habeas Corpus presently before the Court was premature by virtue of the fact that the petitioners have not exhausted their state remedies.

TWO: That the petitioners had not filed a post-conviction application, in the State Court alleging the ineffective counsel of the petitioners original attorney nor asked the Trial Court for a delayed appeal.

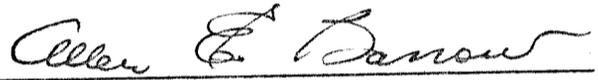
THREE: That no allegations had ever been made in the State Court by the petitioners that they were denied an appeal through negligence or ineffectiveness of counsel through no fault of their own.

FOUR: That the Writ of Habeas Corpus filed by the petitioners herein was dismissed without prejudice and remanded back to the State Court.

FIVE: That the petitioners remain on the same Federal Bond for a period of ten (10) days from the date of this hearing or until a hearing on bond is held by the State Court.

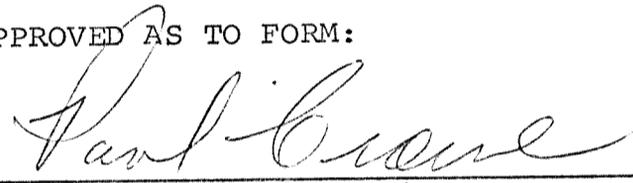
SIX: That the petitioners will have ten (10) days to file a post-conviction relief application setting forth the above points of ineffective counsel and denial of an appeal through no fault of their own.

WHEREFORE, the undersigned Judge of the United States Federal District Court of the Northern District does hereby dismiss the petitioner's Writ of Habeas Corpus filed herein without prejudice to their rights of refiling same after exhausting their State remedies all in accordance with the above set forth orders.



Judge

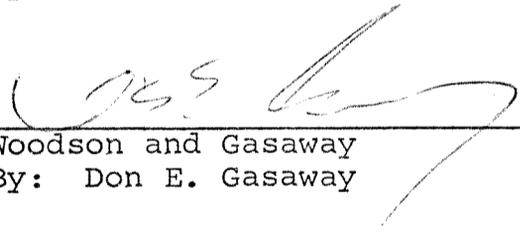
APPROVED AS TO FORM:



Attorney General's Office



Tulsa District Attorney's Office
By: Andrew B. Allen



Woodson and Gasaway
By: Don E. Gasaway

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

JAMES J. DuBOIS,

Plaintiff,

vs.

CASE NO. 73-C-201

CASPER WEINBERGER,
SECRETARY OF HEALTH,
EDUCATION AND WELFARE.

Defendant.

FILED

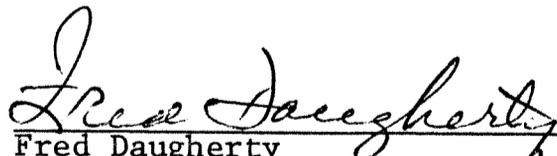
JAN 14 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Upon consideration of the above Defendant's Motion to Dismiss filed herein, and Plaintiff's confession of the Motion as evidenced by the attached letter, the Court finds that said Motion should be granted and Plaintiff's Action dismissed with prejudice.

It is so Ordered this 14th day of January, 1974.


Fred Daugherty
United States District Judge

JOSEPH G. BREAUENE
ATTORNEY AT LAW
16 A STREET N. E.
P. O. BOX 150
MIAMI, OKLAHOMA 74354

OFFICE PHONE
542-5755
AREA CODE 918

RESIDENCE PHONE
542-8883
AREA CODE 918

January 4, 1974

FILED

JAN 14 1974

Jack C. Silver, Clerk
U. S. DISTRICT COURT,

Hon. Fred Daugherty
District Judge
U.S. District Court
Federal Building
Oklahoma City, Oklahoma 73102

Re: USDC ND of Oklahoma,
Case No. 73-C-201
James J. DuBois v.
Casper Weinberger,
Secy. of HEW

Dear Sir:

This is to advise that I have researched the jurisdictional question raised by the defendant in the above case, and am compelled to reluctantly admit that the memorandum of law filed by the defendant in support of his motion to dismiss is an accurate statement of the present authorities on this question.

This same question was before Your Honor in the case of Davidson v. Secy. of HEW, 53 FRD 271, No. 71-C-222 Civ., USDC ND Okla., wherein the court ruled that a complaint filed 4 days after the expiration of the 60 day statutory time limit without an extension of time being granted by the Secy. of HEW was an effective bar to the filing of such a complaint.

It therefore appears that we have no alternative but to confess defendant's motion to dismiss.

Very truly yours,



Joseph G. Breauene

cc: Mr. Robert P. Santee
Assistant U.S. Attorney
460 U.S. Courthouse
Tulsa, Oklahoma 74103