

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

FILED IN OPEN COURT

9-30-74

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 BRUCE MAKER,)
)
 Defendant.)

Rex B. Hawks, Clerk

By J. Bailey
DEPUTY

Civil No. 74-C-353

J U D G M E N T

This cause having come of trial on its merits consolidated with a hearing on the application for preliminary injunction on the 30th day of September, 1974, on the Complaint for a Preliminary Injunction and Permanent Injunction filed by the United States of America against Bruce Maker, Defendant, due notice thereof having been served upon the Defendant who appeared ~~not although his name was called in open court,~~ ^{without counsel,} the United States appeared by Jack M. Short, Assistant United States Attorney for the Northern District of Oklahoma, and presented its evidence from which the Court finds there is sufficient cause to enter judgment for a Permanent Injunction against the Defendant as set out in the Findings Of Fact And Conclusions Of Law on file herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that the Defendant, Bruce Maker, his officers, agents, principal, servants, employees, attorneys and all persons in active concert or participation with them be, and they are hereby, permanently enjoined from interfering with the ingress and egress by the route selected by the Superintendent of the Osage Agency of Gussman Oil Company, aka Nadel-Gussman Oil Company, its officers, agents, servants, employees, and its drilling contractor on the:

NW/4 of Section 4, Township 22 North, Range 7 East,
Osage County, State of Oklahoma

for the purpose of drilling for and production of oil and gas thereon and this Judgment shall remain in full force and effect until such time as the rights of the lessee, Gussman Oil Company, expire by operation of law.

IT IS FURTHER ORDERED that the Defendant, Bruce Maker, *not* pay the costs of this proceeding to the United States of America, the Plaintiff herein.

DATED this 30th day of September, 1974.

Luther Bohannon

JUDGE,
UNITED STATES DISTRICT COURT

The Complaint was filed under the Interstate Land Sales Act (Act), 15 U.S.C. §§1701 et seq. In pertinent part this Act provides that in real estate subdivision developments of over 50 lots with a common promotional plan and involving transportation or communication in interstate commerce or of the mails, certain "statements of record" and "property reports" must be filed with the Secretary of Housing and Urban Development, and if they contain an untrue statement of a material fact, or omit to state a material fact required to be stated therein, the developer and/or selling agent may be sued in Federal Court under the Act by a purchaser for certain recoveries but not to exceed in any event the sum of the purchase price of the lot, the reasonable cost of improvements thereon and reasonable court costs.

Plaintiffs have urged that the Court determine the class action Motion before proceeding further, stating that all other matters should be deferred until this is done. The Court will so proceed. The four requirements of Rule 23(a), Federal Rules of Civil Procedure have been met. The requirements of numerosity, commonality, typicality and adequate representation have been shown to exist in the opinion of the Court. As to Rule 23(b), Federal Rules of Civil Procedure, the requirements of 23(b)(3) are met as questions of law common to the members of Plaintiffs' purported class predominate over any question affecting only individual members as to the liability of these Defendants in Plaintiffs' alleged action against them and a class action is deemed superior to other available methods for the fair and efficient adjudication of the controversy against the Defendants named herein. The Court determines that the action shall be maintained as a class action under Rule 23, Federal Rules of Civil Procedure.

The Defendants in their Motions For Summary Judgment and Motions To Dismiss assert that they were not developers or selling agents but were only officers and/or members of the Board of Directors of Timberlake, Inc. and/or Heidler Corporation who were the developers. Relevant definitions under the Act are found in 15 U.S.C. §1701 as follows:

"(4) 'developer' means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision;

(5) 'agent' means any person who represents or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include any attorney at law whose representation of another person consists solely of rendering legal services;"

The status of each of the Defendants as not being either a developer or an agent within the meaning of the above statutes appears to be developed herein beyond dispute and presents no genuine issue of material fact. It is clear beyond doubt and reasonable men could only conclude that Timberlake, Inc. and/or Heidler Corporation are the developers involved and that the Defendants were not developers or selling agents either directly or indirectly. The only point then before the Court in this connection is one of law as to whether the Act permits or authorizes suit thereunder against officers and/or directors of developers or is limited to the developer(s) itself or the selling agent(s) himself who is involved in a sale. The Act reads quite clear to the Court from its language and considering its legislative history,^{2/} the only suit authorized by the Act is against the developer(s) and the selling agent(s) involved. There is no language in the Act which permits suit against

2/

The transcript of Hearings on Senate Bill 2672 before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 89th Congress, 2nd Session contains reference to a proposed amendment to the Act in question suggested by Manual Cohen, then Chairman of the Securities and Exchange Commission, which proposed amendment was not adopted. Mr. Cohen stated:

"In the definition of 'developer' in section 2(4) of the bill, we believe an additional clause should be added so that it would be expanded to cover any person directly or indirectly controlling, controlled by or under direct or indirect common control with the foregoing.... A similar requirement has been very important to the administration of the Securities Act of 1933."

against anyone else. Moreover, the Act contains none of the language previously used by the Congress in the familiar Securities and Exchange Acts of 1933 and 1934 which authorizes suit against one deemed to be a "controlling person" of a selling or buying agency.^{3/} It is most clear that Congress did not wish nor intend to go as far in the Interstate Land Sales Act as it did in the Securities and Exchange Acts as to who may be the target of suit.

Plaintiffs have added to their cause of actions under the Act an alleged non-federal cause of action for common law fraud under State law and claim pendent jurisdiction therefor. In this connection, Plaintiffs do not assert diversity of citizenship as the jurisdictional basis for their non-federal claim. It is obvious that diverse citizenship is not present herein. As there is no viable Federal cause of action(s) asserted against the Defendants under the Act, the Court declines to exercise pendent jurisdiction over the alleged non-federal claim against them. The landmark case of United Mine Workers v. Gibbs, 383 U.S. 715, 16 L ed 2d 218, 86 S.Ct. 1130 (1966) teaches that the doctrine of pendent jurisdiction allows the joinder of Federal and non-federal claims arising out "a common nucleus of operative fact," but the Court stated:

"...if the Federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well."

Moreover, United Mine Workers v. Gibbs, supra, and the later case of Moor v. County of Alameda, 411 U.S. 693, 36 L Ed 2d 596, 93 S Ct 1785 (1973) provide that the exercise of pendent jurisdiction in the Federal Courts is discretionary with the Court, is not a matter of right to a litigant and need not be exercised in every case when found to exist. United Mine Workers v. Gibbs, supra, and Moor v. County of Alameda, supra, mention in connection

^{3/}

Id.

with the exercise of this discretion, considerations of judicial economy, convenience, fairness to litigants, and the likelihood of jury confusion by the presentation of divergent legal theories of recovery. All of these factors weigh heavily here against the exercise of pendent jurisdiction over the non-federal claim. Judicial economy, convenience, fairness to litigants and avoidance of jury confusion would be served by the alleged non-federal claim being litigated alone in a State Court of proper jurisdiction.

The Defendants' Motions for Summary Judgment (and Motions To Dismiss treated as Motions for Summary Judgment) should be granted. No genuine issue of material fact exists as to their status under the Act. They are neither developers nor selling agents within the intent and meaning of the Act. Therefore, as a matter of law, they are not authorized and proper Defendants under the Act, the Court has no jurisdiction over them pursuant to the Act, and the action(s) under the Act should be dismissed. And, under the above-quoted authority of United Mine Workers v. Gibbs, supra, and in the discretion of the Court for the reasons aforesaid, pendent jurisdiction should not be exercised herein against the Defendants as to Plaintiffs' alleged non-federal claim of fraud under State law and the same should also be dismissed.

The Plaintiffs have filed an Application For Leave To Amend Complaint and Defendants have filed Objections to same. By such amendment Plaintiffs seek to introduce new causes of action in this litigation for alleged violations by the Defendants of the Federal Securities and Exchange Acts and the Oklahoma Securities law in connection with said purchase

by Defendants of the real estate lots which form the basis of their alleged causes of action as set forth in their original Complaint. It appears the Application was unnecessary under Rule 15(a), Federal Rules of Civil Procedure inasmuch as responsive pleadings to the Complaint have not been filed. However, as Plaintiffs elect to seek the permission of the Court to file the Amendment, the Court has considered the Application and determines that the Application should be denied.

The original Complaint discloses that the Plaintiffs entered into Agreements for Deed to specific parcels of real estate. Mere contracts for the sale and development of lands do not constitute "investment contracts" within the meaning of the Securities Acts. Securities & Exchange Commission v. Bailey, 41 F. Supp. 647 (S.D. Fla. 1941). A "security" is defined in 15 U.S.C. §77b(1) as follows:

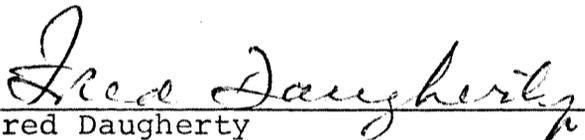
"The term 'security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

A similar definition is found in 15 U.S.C. §78c(a)(10) and in 71 Oklahoma Statutes 1971 §2(1). Plaintiffs' effort to enlarge their original action by bringing in new causes of action wholly lacking in merit should be averted. The case at hand is distinguished from the case of Securities and Exchange Com'n. v. Lake Havasu Estates, 340 F. Supp. 1318 (D. Minn. 1972) where the "investments" involved were the land sales contracts themselves, not the land subject to the contracts. If land

sales contracts such as involved herein were "securities", there would have been no need for Congress to have enacted the Interstate Land Sales Act as same would have been covered under the Securities and Exchange Commission Acts.

Amendments are ordinarily liberally allowed under Rule 15, Federal Rules of Civil Procedure but this belated move on the part of Plaintiffs was made after the Court had expressed serious doubt as to whether Plaintiffs' suit under the Act was brought against proper Defendants and whether pendent jurisdiction should be exercised by the Court as to Plaintiffs' non-federal claim for common law fraud.

It is therefore ordered that Defendants' Motions for Summary Judgment are granted and Plaintiffs' action is dismissed as to all Defendants this 26th day of September, 1974 for the reasons set out above. In these circumstances it is not necessary to treat with Plaintiffs' Motion for Summary Judgment.


Fred Daugherty
United States District Judge

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

FILED

SEP 24 1974

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

ROBERT J. STANTON, Trustee of)
Tulsa Crude Oil Purchasing Company and)
its Consolidated Subsidiaries,)
Plaintiff,)
vs.)
SIKES BURKHOLTER DRILLING COMPANY)
Defendant.)

NO. 74-C-114 ✓

STATEMENT OF FACTS AND
REQUEST FOR DISMISSAL WITHOUT PREJUDICE

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:

Plaintiff has been unable, through numerous attempts, to obtain service on the defendant and is of the opinion that the defendant, including its officers, cannot, through diligent effort, be located.

Plaintiff therefore requests that this Court dismiss this action without prejudice.

ROBERT J. STANTON, Trustee of Tulsa Crude Oil Purchasing Company and its Consolidated Subsidiaries

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 this 24 day of September, 1974, upon the statement of facts and request for dismissal without prejudice, and the Court thereupon dismissed the above entitled cause of action and complaint without prejudice.

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

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

LAWRENCE F. FINK,

Plaintiff,

vs.

JOSEPH C. CALDWELL, JR.,

Defendant.

Civil Action No. 73-C-395

FILED

SEP 18 1974

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

ORDER OF DISMISSAL

Upon the application of the plaintiff, Lawrence F. Fink, this cause is dismissed with prejudice to any further cause of action.

Luther Bohannon

JUDGE

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

ALLSTATES INTERNATIONAL FINANCE CORPORATION,)
)
 Plaintiff,)
)
 -vs-)
)
 MODERN HOME LIFE INSURANCE COMPANY,)
)
 Defendant.)

Case No. 77-C-346 ✓

E I L E D

SEP 18 1974 6

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

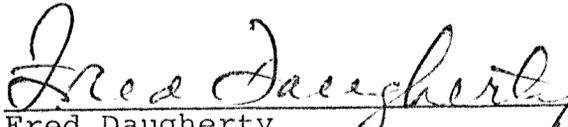
O R D E R

The above case is remanded to the State Court from which it was removed inasmuch as the required jurisdictional amount is not present in this diversity case and all parties so recognize this fact. See pleading of Plaintiff and attached letter.

The Clerk will remand the case to the State Court from which the same was removed. 28 U.S.C. §1447(c).

Inasmuch as Plaintiff has done very little, if anything, due to this improper removal, the Court in its discretion, will not allow Plaintiff any legal fees or expenses in connection herewith. 28 U.S.C. §1447(c); Algonquin Gas Transmission Co. v. Gregory, 105 F. Supp. 64 (D. Conn. 1952).

It is so ordered this 18 day of September, 1974.


Fred Daugherty
United States District Judge

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

DR. ROBERT WINTER and)
MRS. ROBERT WINTER,)
)
) Plaintiffs,)
)
 vs.)
)
)
) OKLAHOMA MORTGAGE COMPANY,)
) INC., an Oklahoma Corporation;)
) and GUARANTEE MUTUAL LIFE)
) COMPANY, a Foreign Corporation,)
)
) Defendants.)

No. 74-C-205 ✓

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

ORDER OF DISMISSAL

The defendant, Guarantee Mutual Life Company, has moved pursuant to Rule 12(b) Federal Rules of Civil Procedure that this suit be dismissed for the reason that the plaintiffs have failed to state a claim upon which relief can be granted.

On September 10, 1974, the Court heard argument of counsel for plaintiffs and defendant, Guarantee Mutual Life Company, and having further reviewed the briefs of the parties, pleadings and law applicable to the issues before the Court, concludes that the Motion of the defendant, Guarantee Mutual Life Company, should be sustained.

IT IS, THEREFORE, THE ORDER OF THE COURT that this case should be, and the same is hereby dismissed.

Dated this 13th day of September, 1974.

Arthur Bohannon
UNITED STATES DISTRICT JUDGE

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

ANN MARIE KENBACK,
Plaintiff,
vs.
RICHARD CARL ORTLOFF,
Defendant.

No. 73-C-54

FILED
SEP 12 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL

Comes now the plaintiff, through her attorney,
Russell B. Holloway, and the defendant, through his attorney,
Jack M. Thomas, and stipulate that the above captioned cause
of action be dismissed with prejudice to filing a future
action herein.

John B. Holloway

Attorney for Plaintiff
Jack M. Thomas

Attorney for Defendant

ORDER

And now on this ^{SEPT} 24 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,
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 cause be and the same is hereby dismissed with
prejudice to the right of the plaintiff to bring any further action
arising from said cause of action.

Allen E. Barrow

JUDGE

FILED

SEP 24 1974

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

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

MEYER TRIFFLER,)
)
 Plaintiff,)
)
 vs.)
)
 SECURITY BANK AND TRUST)
 CO., an Oklahoma banking)
 corporation,)
)
 Defendant.)
)
 B. J. COX and SAMMIE L.)
 COX, Husband and Wife,)
 and BILL COX MOTOR COMPANY)
 OF MIAMI, INC., an)
 Oklahoma corporation,)
)
 Interpleaders.)

FILED
SEP 11 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 74-C-291 ✓

ORDER OF DISMISSAL AND DISBURSEMENT

Now on this 11 day of September, 1974, it having been made to appear that the parties to this action have agreed upon a final settlement and determination of the issues herein,

IT IS THEREFORE ORDERED that the causes of action asserted by each and all of the parties hereto be and the same are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that this dismissal shall not effect nor in any way be a bar to any and all other claims that the parties hereto may have against any other person, firm or corporation which is not a party to this action.

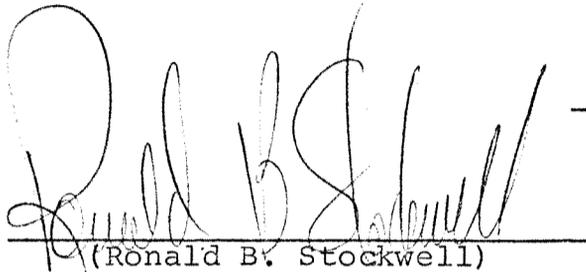
IT IS FURTHER ORDERED that the Clerk of this Court be and he is hereby directed to disburse, in the amounts herein described, the funds now on deposit to the following persons or firms in furtherance of the settlement reached by the parties hereto, to-wit:

WALLACE AND OWENS, INC., Attorneys for
defendant, Security Bank and Trust Co. .. \$ 250.00

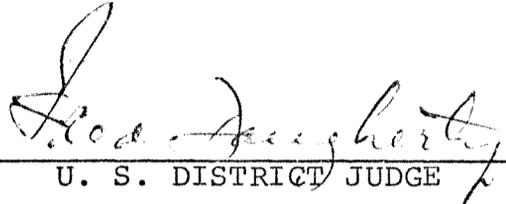
B. J. COX and SAMMIE L. COX,
Interpleaders..... 2,500.00

*Rem
9-11-74*

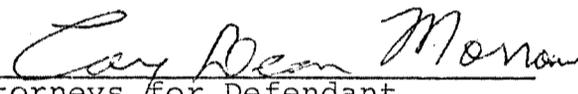
MEYER TRIFFLER, Plaintiff, the balance of
the proceeds after payment of said sums.

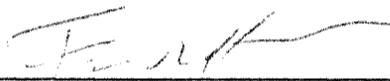


(Ronald B. Stockwell)
Attorney for Plaintiff


U. S. DISTRICT JUDGE

WALLACE AND OWENS, INC.

By 
Attorneys for Defendant


(Frank R. Hickman)
Attorney for Interpleaders.

judgment for said amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against said defendants, in rem, for the sum of \$11,600.40, with interest thereon at the rate of 8 1/2 percent per annum from September 1, 1972, 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 Osage have and recover judgment, in rem, against the defendants Bill Loyd Cooper and Barbara Gaye Cooper, for the sum of \$93.98, plus interest according to law, for ad valorem taxes, from the date of this judgment, and that such judgment is superior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Osage have and recover judgment, in rem, against the defendants Bill Loyd Cooper and Barbara Gaye Cooper for the sum of \$86.66, for personal property taxes, as of the date of this judgment plus interest thereafter according to law, 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 City of Skiatook, Oklahoma.

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-39
)
)
RICHARD E. SANDERS, ROSE M.)
SANDERS, DAVID W. PHILLIPS,)
Attorney at Law, TULSA ADJUSTMENT)
BUREAU, INC., WILKERSON MOTOR)
COMPANY, INC., COUNTY TREASURER,)
Tulsa County, and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
)
) Defendants.)

FILED
SEP 10 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 9th
day of September, 1974, the plaintiff appearing by Robert
P. Santee, Assistant United States Attorney; County Treasurer,
Tulsa County, and Board of County Commissioners, Tulsa County,
appearing by Gary J. Summerfield, Assistant District Attorney;
the defendant, David W. Phillips, Attorney at Law, appearing
pro se; the defendant, Tulsa Adjustment Bureau, Inc., appearing
by its attorney, D. Wm. Jacobus, Jr.; the defendant Wilkerson
Motor Company, Inc., appearing by its attorney, Irvine E. Ungerman;
and the defendants, Richard E. Sanders and Rose M. Sanders,
appearing not.

The Court being fully advised and having examined
the file herein finds that Richard E. Sanders and Rose M. Sanders
were served by publication, as appears from the Proof of Publica-
tion filed herein; that County Treasurer, Tulsa County, and Board
of County Commissioners, Tulsa County, were served with Summons
and Complaint on January 23, 1974; that Wilkerson Motor Company,
Inc., and Tulsa Adjustment Bureau, Inc., were served with Summons
and Complaint on January 24, 1974; and that David W. Phillips,
Attorney at Law, was served with Summons and Complaint on January 28,
1974.

It appearing that County Treasurer, Tulsa County, and
Board of County Commissioners, Tulsa County, duly filed their

Answers herein on February 11, 1974; that Wilkerson Motor Company, Inc., has duly filed its Disclaimer herein on January 30, 1974; that Tulsa Adjustment Bureau, Inc., has duly filed its Disclaimer herein on February 5, 1974; that David W. Phillips, Attorney at Law has duly filed his Disclaimer herein on February 11, 1974; that Richard E. Sanders and Rose M. Sanders 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 Five (5), Block Four (4), in SUBURBAN VILLAGE ADDITION to the City of Sand Springs, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the defendants, Richard E. Sanders and Rose M. Sanders, did, on the 8th day of October, 1971, execute and deliver to the Diversified Mortgage and Investment Company their mortgage and mortgage note in the sum of \$16,600.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated October 13, 1971, the Diversified Mortgage and Investment Company assigned said Note and Mortgage to the Federal National Mortgage Association; and that by Assignment dated March 19, 1973, the Federal National Mortgage Association reassigned said Note and Mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that the defendants, Richard E. Sanders and Rose M. Sanders, 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 \$16,415.17 as unpaid principal, with interest

thereon at the rate of 7 percent interest per annum from April 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 Richard E. Sanders and Rose M. Sanders, the sum of \$269.36 plus interest according to law, for ad valorem taxes for the year 1973 and that Tulsa County should have judgment, in rem, for said amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Richard E. Sanders and Rose M. Sanders, in rem, for the sum of \$16,415.17 with interest thereon at the rate of 7 percent 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 County of Tulsa have and recover judgment, in rem, against the defendants, Richard E. Sanders and Rose M. Sanders, for the sum of \$269.36 as of the date of this judgment plus interest thereafter according to law, and that such judgment is superior to the first mortgage lien of the plaintiff herein.

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, which sale shall be subject to the tax judgment of Tulsa County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

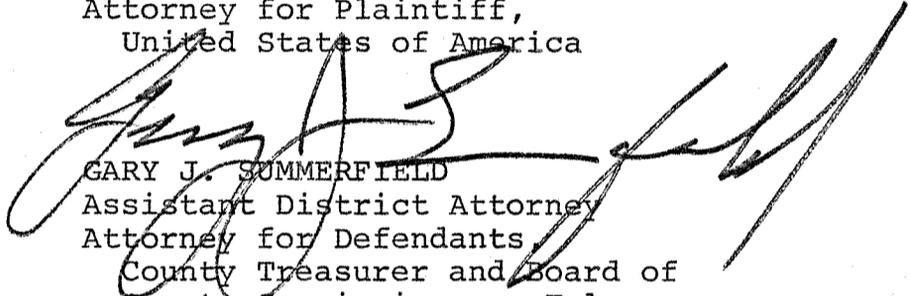
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed

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


GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and Board of
County Commissioners, Tulsa
County

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.) CIVIL ACTION NO. 74-C-187
)
LEONARD G. HABERER, RICHE L.)
HABERER, COUNTY TREASURER,)
Tulsa County, and BOARD OF)
COUNTY COMMISSIONERS, Tulsa)
County,)
)
Defendants.)

FILED
SEP 10 1974
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 9th
day of September 1974, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; the defendants, County
Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, appearing by Gary J. Summerfield, Assistant District
Attorney; and the defendants, Leonard G. Haberer and Riche L.
Haberer, appearing not.

The Court being fully advised and having examined
the file herein finds that Leonard G. Haberer and Riche L.
Haberer were served by publication, as appears from the Proof
of Publication filed herein; and that County Treasurer, Tulsa
County, and Board of County Commissioners, Tulsa County, were
served with April 25, 1974, as appears from the Marshal's Return
of Sale herein.

It appearing that County Treasurer, Tulsa County, and
Board of County Commissioners, Tulsa County, have duly filed their
Answers herein on May 6, 1974; that Leonard G. Haberer and Riche L.
Haberer 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 Thirty-six (36), Block Nine (9), OAK CREST
THIRD ADDITION to the City of Broken Arrow, Tulsa
County, Oklahoma, according to the recorded plat
thereof.

THAT the defendants, Leonard G. Haberer and Riche L. Haberer, did, on the 10th day of August, 1972, execute and deliver to the Mercury Mortgage Company, Inc., their mortgage and mortgage note in the sum of \$17,900.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

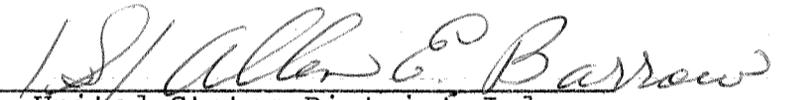
That by Assignment of Mortgage of Real Estate dated August 15, 1972, the Mercury Mortgage Company, Inc., assigned said Note and Mortgage to the Government National Mortgage Association; that by Assignment dated November 29, 1972, the Government National Mortgage Association assigned said Note and Mortgage to the Lomas & Nettleton Company; and that by Assignment dated September 13, 1973, the Lomas & Nettleton Company assigned said Note and Mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that the defendants, Leonard G. Haberer and Riche L. Haberer, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 9 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 \$17,840.31 as unpaid principal, with interest thereon at the rate of 7 percent interest per annum from November 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, Leonard G. Haberer and Riche L. Haberer, in rem, for the sum of \$17,840.31 with interest thereon at the rate of 7 percent per annum from November 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 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.

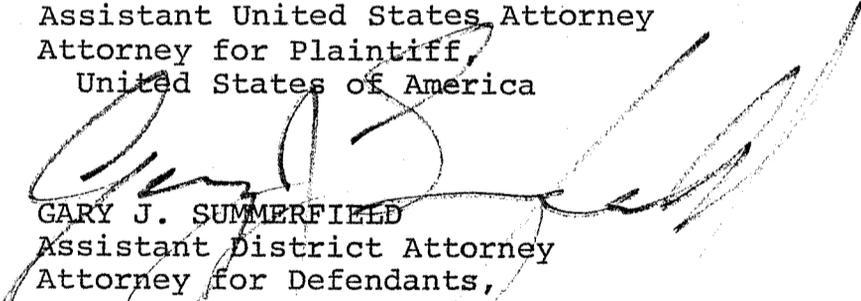
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed 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
Assistant United States Attorney
Attorney for Plaintiff,
United States of America


GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and Board of
County Commissioners, Tulsa
County

FILED
SEP 10 1974
Jack C. Silver, Clerk
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.) CIVIL ACTION NO. 74-C-173
)
)
CHARLES C. ORCUTT, et al.,)
)
Defendants.)

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 9th
day of September 1974, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; the defendants,
County Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, appearing by Gary J. Summerfield, Assistant District
Attorney; and the defendants, Charles C. Orcutt, Frances D.
Orcutt, Milean L. Orcutt a/k/a Milene L. Orcutt, Rollie Marshal
Hunt, and New Rambler Ranch, Inc., appearing not.

The Court being fully advised and having examined
the file herein finds that Charles C. Orcutt, Frances D. Orcutt,
Milean L. Orcutt a/k/a Milene L. Orcutt, and Rollie Marshal Hunt
were served by publication, as appears from the Proof of Publi-
cation filed herein; that New Rambler Ranch, Inc., was served
with Summons and Complaint on April 19, 1974; that County Treasurer,
Tulsa County, and Board of County Commissioners, Tulsa County,
were served with Summons and Complaint on April 18, 1974, all
as appears from the Marshal's Return of Service herein.

It appearing that County Treasurer, Tulsa County, and
Board of County Commissioners, Tulsa County, have duly filed their
Answers herein on May 2, 1974; that Charles C. Orcutt, Frances D.
Orcutt, Milean L. Orcutt a/k/a Milene L. Orcutt, Rollie Marshal
Hunt, and New Rambler Ranch, 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 Fifty-two (52), Block Eight (8), NORTHGATE THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the defendants, Charles C. Orcutt and Frances D. Orcutt, did, on the 4th day of September, 1972, execute and deliver to the Diversified Mortgage and Investment Company their mortgage and mortgage note in the sum of \$15,400.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated September 21, 1972, the Diversified Mortgage and Investment Company assigned said Note and Mortgage to the Government National Mortgage Association; that by Assignment dated December 28, 1972, the Government National Mortgage Association assigned said Note and Mortgage to the Lomas & Nettleton Company, a Connecticut Corporation, New Haven, Connecticut; and that by Assignment dated June 22, 1973, the Lomas and Nettleton Company assigned said Note and Mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that the defendants, Charles C. Orcutt and Frances D. Orcutt, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 9 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 \$15,374.47 as unpaid principal, with interest thereon at the rate of 7 percent interest per annum from November 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 Charles C. Orcutt and Frances D. Orcutt, the sum of \$ 62.28, plus interest according to law, for ad valorem taxes for the year 1972, and the sum of \$ 241.00, plus interest according to law, for ad valorem taxes for the year 1973, and that Tulsa County should have judgment, in rem, for said amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Charles C. Orcutt and Frances D. Orcutt, in rem, for the sum of \$15,374.47 with interest thereon at the rate of 7 percent per annum from November 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, in rem, against the defendants, Charles C. Orcutt and Frances D. Orcutt, for the sum of \$ 303.28 as of the date of this judgment plus interest thereafter according to law, and that such judgment is superior 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 defendants, Milean L. Orcutt a/k/a Milene L. Orcutt, Rollie Marshal Hunt, and New Rambler Ranch, 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 appraisement the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment, which sale shall be subject to the tax judgment of Tulsa County, supra. 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.

Walter E. Barrow
United States District Judge

APPROVED.

Robert P. Santee

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

Gary J. Summerfield

GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and Board of
County Commissioners, Tulsa
County

E I L E D

SEP 10 1974

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

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

ROBERT HAROLD HELMS,)	
)	
)	Petitioner,
vs.)	
)	
)	
STATE OF OKLAHOMA,)	
)	
)	Respondent.

NO. 74-C-207

O R D E R

This is a proceeding brought pursuant to the provisions of 28 U.S.C. § 2254, pro se, in forma pauperis, by a state prisoner confined in the Oklahoma State Penitentiary, McAlester, Oklahoma. Petitioner attacks the validity of the judgment and sentence rendered by the District Court of Tulsa County, Oklahoma, Case No. 22116, wherein, after a plea of guilty, petitioner was convicted for the crime of manslaughter in the first degree and sentenced to an indeterminate term of 35 to 105 years imprisonment, affirmed on appeal, Helms v. State, Okl. Cr., 456 P.2d 907 (1969). In the post-conviction proceeding, following an evidentiary hearing, the Court of Criminal Appeals of the State of Oklahoma entered its Order modifying the judgment and sentence to 35 years imprisonment. The file reflects, and the respondent states, that petitioner has exhausted his available state remedies.

As a part of petitioner's post-conviction proceedings, the Court of Criminal Appeals directed the District Court of Tulsa County, Oklahoma, to conduct an evidentiary hearing on the allegations of petitioner attacking the voluntariness of his plea of guilty and his mental competency at the time of his plea. Pursuant to this Order, an evidentiary hearing was held by the District Court of Tulsa County, Oklahoma, on October 2, 3, 4 and 10, 1973. At the conclusion of the evidentiary hearing, the District Court made findings of fact and conclusions of law, denied petitioner's request for relief, and on appeal, the findings were affirmed by the Court of Criminal Appeals of the State of Oklahoma.

In his petition to this Court, petitioner contends that the judgment and sentence should be vacated for the following reasons:

- 1) Plea of guilty was not voluntary but was a result of coercion and invalid plea bargaining.
- 2) The sentencing Court erred in not allowing a jury trial on the issues of insanity.

Petitioner's first allegation is without merit and should be denied. Pursuant to an Order issued by the Court of Criminal Appeals of the State of Oklahoma, the District Court of Tulsa County conducted an evidentiary hearing to determine the same issues as raised by petitioner herein. In that proceeding the issues were decided adversely to petitioner after an adequate development of all material facts. From a review of those transcripts, this Court finds that although petitioner was informed at his plea that the maximum sentence on his plea of guilty would be "life" imprisonment, the indeterminate sentence was bottomed on a minimum term of 35 years. When the actual sentence was imposed, he was sentenced to an indeterminate sentence for a minimum of 35 years to a maximum of 105 years. This actual sentence was entered pursuant to the Oklahoma law that in an indeterminate sentence set by the Court the minimum term shall not be more than one-third of the maximum sentence imposed. 57 O.S.A. § 353.

Petitioner's basis for the invalid plea allegation is that the discrepancy between the life sentence explained to him at plea and the 105 years imposed at sentencing deprived his plea of its knowing and voluntary character. The Court finds no claim by the petitioner or showing on the record that there was ever at any time any confusion on the petitioner's part, or that of anyone involved in his plea, plea bargaining, and sentencing, that the minimum sentence would be 35 years imprisonment. The Oklahoma Court of Criminal Appeals has reduced the sentence to 35 years, the minimum imposed. The petitioner has no valid right to complain remaining. He was never confused or misled that the minimum period of imprisonment upon his plea of guilty would be other than 35 years, and 35 years is now the maximum term he must serve.

In Hurt vs. Page, 355 F.2d 169 (10th Cir. 1966), the Court stated:

"These issues have been squarely presented to the Oklahoma courts in post-conviction proceedings and both factual issues have been decided adversely to appellant's contention . . . In such cases the Federal District Court may refuse

to relitigate the factual issues and, when the District Judge concludes that the habeas applicant was afforded a full and fair hearing by the state court resulting in reliable findings, he may, and ordinarily should accept the facts as found in the hearing."

Petitioner's second allegation is likewise without merit and should be denied. The file reflects that the evidentiary findings by the trial Court on the issue of the mental competency of petitioner are supported by the record. Twice the trial Court ordered petitioner committed to the Eastern State Hospital for mental observation and on each occasion he was found competent to stand trial. It is not error for the trial Judge to deny a jury hearing as to sanity when the Court has received medical certification from a state hospital doctor that defendant is sane according to the law, in absence of overwhelming evidence to the contrary. The record in this case does not establish the required "overwhelming evidence." Johnson vs. State, 448 P.2d 266 (Okla. Cr. 1969), Cert. den. 397 U. S. 941, 90 S.Ct., 25 L.Ed. 2d 921.

The record reflects that petitioner was committed to the State Mental Hospital for a period of 82 days. During the time of his observation, the medical records of the hospital reflect that the examining physician found no signs of mental retardation (Tr. 36), no signs of mental defects (Tr. 40), and no psychotic condition (Tr. 40). It was further determined that petitioner had an I.Q. of 88 (Tr. 41, 42). On two separate occasions, the medical staff at the state hospital found that petitioner did not display psychotic behavior and that he knew right from wrong. Wolf vs. United States, 430 F.2d 443 (10th Cir. 1970).

The files and records in the state Court proceedings, having been fully reviewed by the Court, conclusively show that petitioner is not entitled to relief. Evidentiary hearing on state prisoner's habeas corpus petition is not necessary where it appears that the fact finding hearing in state post-conviction proceeding was full, fair and adequate. Townsend vs. Sain, 372 U. S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963). A prior State Court adjudication of a Federal constitutional right bars a subsequent Federal action seeking vindication of the same right. Hanley

vs. Four Corners Vacation Properties, Inc., 480 F.2d 536 (10th Cir. 1973).
Brown vs. DeLayo, Case No. 73-1699, 10th Cir., June 12, 1974. Therefore,
there is no necessity for this Court to hold an evidentiary hearing. Ortiz
vs. Baker, 411 F.2d 263 (10th Cir. 1969).

IT IS, THEREFORE, ORDERED that the petition for writ of habeas
corpus of Robert Harold Helms be and it is hereby denied and dismissed.

Dated this 17th day of September, 1974, at Tulsa, Oklahoma.



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

FILED

SEP 10 1974

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

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	CIVIL ACTION NO. 74-C-185
)	
)	
STERLING F. DUNLAP, LINDA)	
DUNLAP, COUNTY TREASURER,)	
Tulsa County, BOARD OF COUNTY)	
COMMISSIONERS, Tulsa County,)	
and ROSS HUTCHINS, Trustee,)	
)	
Defendants.)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 10th day of September, 1974, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by Gary J. Summerfield, Assistant District Attorney; the defendant, Ross Hutchins, Trustee, appearing pro se; and the defendants, Sterling F. Dunlap and Linda Dunlap, appearing not.

The Court being fully advised and having examined the file herein finds that Sterling F. Dunlap and Linda Dunlap were served with Summons and Complaint on May 7, 1974; and that County Treasurer, Tulsa County, Board of County Commissioners, Tulsa County, and Ross Hutchins were served with Summons and Complaint on April 25, 1974, all as appears from the Marshal's Return of Service herein.

It appearing that County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on May 6, 1974; that Ross Hutchins has duly filed his Disclaimer herein on May 3, 1974; that Sterling F. Dunlap and Linda Dunlap 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 Nineteen (19), Block Eight (8), NORTHGATE THIRD ADDITION, an Addition in the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the defendants, Sterling F. Dunlap and Linda Dunlap, did, on the 15th day of September, 1972, execute and deliver to the Diversified Mortgage and Investment Company their mortgage and mortgage note in the sum of \$17,900.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated September 21, 1972, the Diversified Mortgage and Investment Company assigned said Note and Mortgage to the Government National Mortgage Association; that by Assignment dated December 28, 1972, the Government National Mortgage Association assigned said Note and Mortgage to the Lomas & Nettleton Company; and that by Assignment dated June 26, 1973, the Lomas & Nettleton Company assigned said Note and Mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that the defendants, Sterling F. Dunlap and Linda Dunlap, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 9 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 \$17,855.36 as unpaid principal, with interest thereon at the rate of 7 percent interest per annum from November 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 Sterling F. Dunlap and Linda Dunlap, the sum of \$230.65, plus interest according to law, for ad valorem taxes for the year 1973 and that Tulsa County should have judgment, in rem, for said amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Sterling F. Dunlap and Linda Dunlap, in personam, for the sum of \$17,855.36 with interest thereon at the rate of 7 percent per annum from November 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, in rem, against the defendants, Sterling F. Dunlap and Linda Dunlap, for the sum of \$230.65 as of the date of this judgment plus interest thereafter according to law, and that such judgment is superior to the first mortgage lien of the plaintiff herein.

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, which sale shall be subject to the tax judgment of Tulsa County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

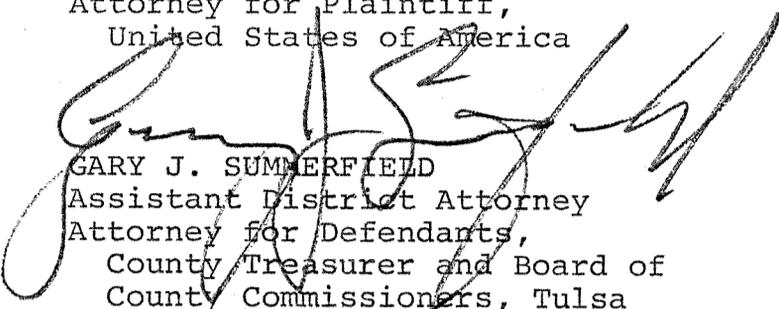
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed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

Luther Bohannon
United States District Judge

APPROVED.



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



GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and Board of
County Commissioners, Tulsa
County

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

FILED

SEP 9 1974

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
 -v-)
)
)
 MINFORD EUGENE FRALEY, ET AL,)
)
) Defendants.)

Civil Action No. 74-C-100

JUDGMENT OF FORECLOSURE

THIS MATTER COMES ON for consideration this 6TH day of September, 1974, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the defendant Admiral State Bank appearing by its attorney, C. E. Hammer; the defendant Master Charge appearing by its attorney, William B. Lee; the defendants County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by their attorney, Gary J. Summerfield; the defendant A. D. Mason, Attorney-at-Law, appearing pro se; and the defendants Minford Eugene Fraley and Shirley Ann Fraley appearing not.

The Court, being fully advised and having examined the file herein, finds that A. D. Mason, Attorney-at-Law; Master Charge; County Treasurer, Tulsa County; and Board of County Commissioners, Tulsa County, were served with Summons and Complaint on February 14, 1974; that Admiral State Bank was served with Summons and Complaint on February 15, 1974; all as appears from the Marshal's Returns of Service filed herein; and Minford Eugene Fraley and Shirley Ann Fraley were served by publication, as appears from the Proof of Publication filed herein.

It appears that the County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers on March 4, 1974; that Admiral State Bank and Master Charge have filed their Disclaimers on February 20, 1974; that A. D. Mason, Attorney-at-Law, has filed his Disclaimer

on February 21, 1974; and that Minford Eugene Fraley and Shirley Ann Fraley 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 covering the following-described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Nine (9), Block Thirteen (13), Rolling Hills Third Addition, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

That the defendants Minford Eugene Fraley and Shirley Ann Fraley did, on the 28th day of August, 1970, execute and deliver to the Lomas & Nettleton Company their mortgage and mortgage note in the sum of \$15,850.00, with 8-1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated September 16, 1970, the Lomas & Nettleton Company assigned said note and mortgage to Lomas & Nettleton Financial Corporation.

That by Assignment of Mortgage of Real Estate dated September 16, 1970, Lomas & Nettleton Financial Corporation assigned said note and mortgage to the Federal National Mortgage Association.

That by Assignment of Mortgage of Real Estate dated August 6, 1973, the Federal National Mortgage Association assigned said note and mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that the defendants Minford Eugene Fraley and Shirley Ann Fraley 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 \$15,529.71, with interest thereon from March 1, 1973, at the rate of 8-1/2 percent per annum, 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 Minford Eugene Fraley and Shirley Ann Fraley, the sum of \$ 408.03, for ad valorem taxes for the years 1972 and 1973, and that Tulsa County should have judgment, in rem, for said amount and that such judgment is superior 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 Minford Eugene Fraley and Shirley Ann Fraley, in rem, for the sum of \$15,529.71, with interest thereon at the rate of 8-1/2 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, or 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, in rem, against the defendants Minford Eugene Fraley and Shirley Ann Fraley for the sum of \$ 408.03 as of the date of this judgment, plus interest thereafter according to law, and that such judgment is superior to the first mortgage lien of the plaintiff herein.

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.

Luther Bohannon
United States District Judge

APPROVED:

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

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

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

FILED

SEP 9 1974

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CLAUDE MILLSAP, JR.,)
)
 Defendant.)

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

Civil No. 74-C-349

J U D G M E N T

This cause having come of trial on its merits consolidated with a hearing on the application for preliminary injunction on the 5th day of September, 1974, on the Complaint for a Preliminary Injunction and Permanent Injunction filed by the United States of America against Claude Millsap, Jr., Defendant, due notice thereof having been served upon the Defendant who appeared not although his name was called in open court; the United States appeared by Nathan G. Graham, United States Attorney for the Northern District of Oklahoma, and Jack M. Short, Assistant United States Attorney for said District, and presented its evidence from which the Court found there is sufficient cause to enter judgment for a Permanent Injunction against the Defendant.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that the Defendant, Claude Millsap, Jr., his officers, agents, principal, servants, employees, attorneys and all persons in active concert or participation with them be, and they are hereby, permanently enjoined from interfering with the ingress and egress of Tesoro Petroleum Corporation, its officers, agents, servants, employees, and its drilling contractor on the:

NW/4 of Section 26, Township 21 North, Range 9 East,
Osage County, State of Oklahoma

for the purpose of drilling and production of oil and gas thereon and this Judgment shall remain in full force and effect until

such time as the rights of the lessee, Tesoro Petroleum Corporation, expire by operation of law.

IT IS FURTHER ORDERED that the Defendant, Claude Millsap, Jr., pay the costs of this proceeding to the United States of America, the Plaintiff herein.

DATED this 9th day of September, 1974.

ALLEN E. BARROW

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

CRF-70-158, District Court, Muskogee County, Oklahoma, wherein Petitioner was convicted for the crime of kidnapping in violation of 21 O.S. 1971 § 745, and sentenced to serve a term of thirty five years in the State Penitentiary. In that unreported opinion, the search complained of in the matter before this Court was held to be inadmissible as the fruit of an illegal search and seizure. The evidence, equally, should have been suppressed as illegally seized in the matter presently under consideration by this Court. However, the transcript of the trial conclusively shows by eye-witness testimony Frank Chase guilty of possession of a firearm after former convictions of felonies as charged; and, that the illegally seized evidence admitted was merely cumulative and harmless beyond a reasonable doubt as reflected at Pages 33-35, 41, 50, 52, and 54, of the trial transcript. Chapman v. California, 386 U. S. 18, 21-24 (1967); Chambers v. Maroney, 399 U. S. 42, 52-53 (1970).

The Statute under which he was tried and convicted, 21 O.S.A. § 1283, prohibiting persons convicted of a felony from carrying firearms has been held not in violation of the State and Federal Constitutions by the Oklahoma Court of Criminal Appeals. That Court has also held that the Statute makes former conviction part of the substantive evidence required to be shown in order to supply an element of the crime. It has been held that statutory classification will not be set aside if a rational basis exists to sustain it and an overriding, compelling interest appears to support the legislative classification. This Court believes the obvious nexus between prior felony convictions and the use of firearms may be prohibited by the States without violation of the Fifth and Fourteenth Amendments to the Constitution. Further, the former conviction element of such Statutes is not double jeopardy.

The Court finds that the appointment of counsel to assist the Petitioner and an evidentiary hearing herein are not required; and, further finds that the petition for writ of habeas corpus should be denied.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Frank Chase be and it is hereby denied and dismissed.

Dated this 9th day of September, 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

FILED

SEP 9 1974

MICHAEL R. SCHNEIDER,

)
Petitioner,)

vs.)

) NO. 74-C-99
)

STATE OF OKLAHOMA,

)
Respondent.)

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

O R D E R

The Court has for consideration a petition pursuant to 28 U.S.C. § 2254, filed pro se, in forma pauperis by Michael R. Schneider. He is a prisoner confined in the Oklahoma State Penitentiary, McAlester, Oklahoma, pursuant to conviction on a plea of guilty to the crime of manslaughter in the first degree and a sentence to 25 years imprisonment, imposed by the District Court of Creek County, in CRF-70-45.

Petitioner contends his 1970 conviction on plea of guilty was entered in violation of his rights to due process of law as guaranteed by the Constitution of the United States. Giving the petition the broad interpretation required, the petitioner asserts the following as violations of his constitutional rights: 1) that he did not intelligently and knowingly enter his plea of guilty, 2) that the trial Court did not make a specific admonition regarding self-incrimination, 3) that he was not advised of his right to confront accusers, 4) that there was no showing that he had a full understanding of the charge against him, 5) that he did not knowingly waive his right against self-incrimination, 6) that he did not knowingly and intelligently waive his right to confront his accusers, 7) that he was not advised of his right to subpoena witnesses, 8) that he was not advised of his right to waive trial by jury and present the issue to the Court, 9) that he was not advised of his right to file a motion for new trial, and 10) that there was no factual finding of guilt by the sentencing Court. The file reflects that Petitioner has exhausted his State remedies.

Having carefully perused the file, petition, response, briefs in support and opposition, transcripts of the State proceedings, and being fully advised in the premises, the Court finds:

Although the contentions are multitudinous, the Petitioner simply alleges that his plea of guilty was not voluntarily and intelligently entered, and such allegation is without merit.

A reading of the transcript of the trial proceedings discloses that petitioner was adequately apprised of the charges against him. The petitioner was originally charged with murder, said information was amended by the District Attorney, in petitioner's presence in open Court, to first degree manslaughter. The trial Judge advised petitioner of the amendment and apprised him of the possible punishment for said reduced offense. Moreover, the petitioner stated to the Court that he had thoroughly discussed the matter with his attorney, that he understood the proceedings, and had been advised by counsel.

The main argument of petitioner seems to be that the record in the State proceeding is so void of advice to him of his constitutional rights that his guilty plea is thereby invalid as not being voluntarily and intelligently made. This was the main thrust of petitioner's argument in the State Court post-conviction relief proceedings. He contends that no plea can be voluntarily and intelligently given unless the defendant is apprised of each constitutional right he is simultaneously waiving by entering such a plea. This Court is quite aware that a waiver of constitutional rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U. S. 238 (1968). Herein, however, the record is not silent. Petitioner was advised that he had the right to plead not guilty, that he had the right to a jury trial, to have the jury determine his guilt or innocence. Although petitioner was not advised of each and every right he was waiving, it is the opinion of this Court that such is not required under the concept of due process. Boykin does not require the enumeration of rights and multiple waivers of said rights for an effective and valid guilty plea. Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973); United States v. Frontero, 452 F.2d 406 (10th Cir. 1971). Boykin imposed the requirement of an affirmative record showing that the plea was made understandingly and voluntarily. Brady v. U. S., 397 U. S. 742 (1969). In

Moore v. Anderson, 474 F.2d 1118 (10th Cir. 1973) the Court stated at

Page 1119:

"Undoubtedly the accused is entitled to have the judge address him personally on the occasion of his arraignment and he is entitled to know of his right to a jury trial, and if he attempts to enter a plea of guilty, he is entitled to know the consequences of his plea, and the judge must satisfy himself that the plea is given voluntarily and with knowledge of its consequences."

In the matter before this Court, these minimum requirements are met, and further, in the post-conviction proceedings, the trial Judge stated that there was no doubt that this petitioner knew exactly what he was doing when he entered his plea. The record affirmatively shows that petitioner's plea was made voluntarily and understandingly.

Petitioner's remaining contention is that the trial Court did not, on the record, find a factual basis for his plea of guilty. This argument is viewed as an attempt to impose the requirements of Rule 11 of the Federal Rules of Criminal Procedure on the State Court. This is a groundless argument. The standard which guides the State Courts is one of satisfying the requirements of due process and any procedure implemented which is in accord with the Fourteenth Amendment should be upheld. Beavers v. Anderson, 474 F.2d 1114 (10th Cir. 1973); McChesney v. Henderson, 482 F.2d 1101 (5th Cir. 1973). Moreover, since this Court has found that the guilty plea was voluntarily and intelligently made, a valid guilty plea waives all prior non-jurisdictional defects. Moore v. Rodriguez, 376 F.2d 817 (10th Cir. 1967); Corn v. State of Oklahoma, 394 F.2d 478 (10th Cir. 1968).

Pursuant to the foregoing, the Court finds that an evidentiary hearing is not required and that the petition for writ of habeas corpus should be denied.

IT IS, THEREFORE, ORDERED that the Petition for Writ of Habeas Corpus of Michael R. Schneider be and it is hereby denied and dismissed.

Dated this 9th day of September, 1974, at Tulsa, Oklahoma.


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

real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Forty-two (42), Block Eight (8),
NORTHGATE THIRD ADDITION, to the City
of Tulsa, Tulsa County, Oklahoma,
according to the recorded plat thereof.

THAT, the defendants, Monroe D. Fender and Gloria Fender, did, on the 9th day of February, 1973, execute and deliver to the Diversified Mortgage & Investment Company, their mortgage and mortgage note in the sum of \$14,200.00, with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated February 12, 1973, filed in Tulsa County, Oklahoma, and recorded in Book 4055, Page 1135, Diversified Mortgage & Investment Company assigned said note and mortgage to Government National Mortgage Association; that by Assignment of Mortgage of Real Estate dated July 3, 1973, filed in Tulsa County, Oklahoma, and recorded in Book 4078, Pages 384-5, Government National Mortgage Association assigned said note and mortgage to the Secretary of Housing and Urban Development, Washington, D. C.

The Court further finds that the defendants, Monroe D. Fender and Gloria Fender, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 11 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 \$14,188.26, as unpaid principal, with interest thereon at the rate of 7 percent per annum from September 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, Monroe D. Fender and Gloria Fender, in rem, for the sum of

\$14,188.26, with interest thereon at the rate of 7 percent interest per annum from September 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.

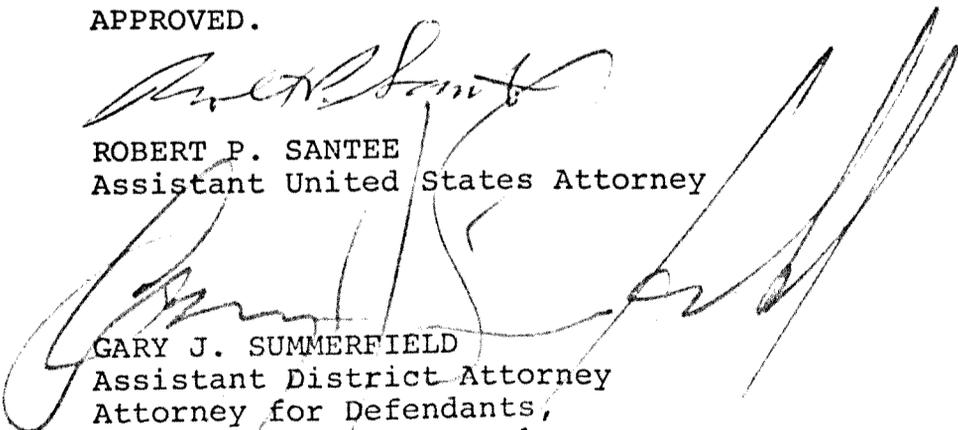
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property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


GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer, Tulsa County
Board of County Commissioners,
Tulsa County

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
vs.) CIVIL ACTION NO. 74-C-186
)
)
JOHN D. FIELDS, VICKI LYNN)
FIELDS, COUNTY TREASURER,)
Tulsa County, BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
and Kenneth F. Seipel,)
)
) Defendants.)

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 9
day of Sept, 1974, the plaintiff appearing by Robert
P. Santee, Assistant United States Attorney; the defendants,
County Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, appearing by Gary J. Summerfield, Assistant District
Attorney; and the defendants, John D. Fields, Vicki Lynn Fields,
and Kenneth F. Seipel, appearing not.

The Court being fully advised and having examined
the file herein finds that John D. Fields and Vicki Lynn Fields
were served with Summons, Complaint, and Amendment to Complaint
on May 3, 1974, and August 8, 1974, respectively; that County
Treasurer, Tulsa County, and Board of County Commissioners, Tulsa
County, were served with Summons, Complaint, and Amendment to
Complaint on April 25, 1974, and July 26, 1974, respectively; and
that Kenneth F. Seipel was served with Summons, Complaint, and
Amendment to Complaint on August 7, 1974, and July 26, 1974,
respectively, all as appears from the Marshal's Return of Service
herein.

It appearing that County Treasurer, Tulsa County, and
Board of County Commissioners, Tulsa County, have duly filed their
Answers herein on May 6, 1974; that John D. Fields, Vicki Lynn
Fields, and Kenneth F. Seipel 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 Fifteen (15), Block Five (5), ROLLING HILLS
THIRD ADDITION, an Addition in Tulsa County,
State of Oklahoma, according to the recorded
Plat thereof.

THAT the defendants, John D. Fields and Vicki Lynn Fields, did, on the 4th day of April, 1972, execute and deliver to the Lomas & Nettleton Company, their mortgage and mortgage note in the sum of \$16,300.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated October 9, 1973, the Lomas & Nettleton Company assigned said Note and Mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that the defendants, John D. Fields and Vicki Lynn Fields, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 8 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 \$16,161.64 as unpaid principal, with interest thereon at the rate of 7 percent interest per annum from December 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 John D. Fields and Vicki Lynn Fields, the sum of \$259.40, plus interest according to law, for ad valorem taxes for the year 1973 and that Tulsa County should have judgment, in rem, for said amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, John D. Fields and Vicki Lynn Fields, in personam, for the sum of \$16,161.64

with interest thereon at the rate of 7 percent per annum from December 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, in rem, against the defendants, John D. Fields and Vicki Lynn Fields, for the sum of \$259.40 as of the date of this judgment plus interest thereafter according to law, and that such judgment is superior 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, Kenneth F. Seipel.

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, which sale shall be subject to the tax judgment of Tulsa County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

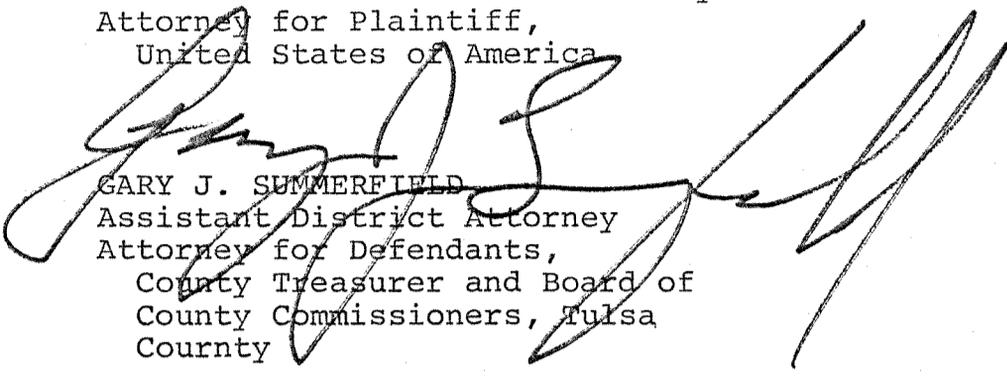
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed 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



GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and Board of
County Commissioners, Tulsa
County

Original

FILED

SEP 9 1974 K

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

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	CIVIL ACTION NO. 74-C-183 ✓
)	
)	
RICHARD D. McCONDICHIE,)	
CAROLYN A. McCONDICHIE,)	
ROGEIS C. HAYDEN a/k/a)	
ROGEIS HAYDEN a/k/a ROGER C.)	
HAYDEN a/k/a ROGER HAYDEN,)	
SYLVIA C. HAYDEN a/k/a)	
SYLVIA C. HAYDEN a/k/a)	
SYLVIA HAYDEN, CREDIT PLAN,)	
INC., PATTON LOANS OF)	
TULSA, INC., and FIELD)	
ENTERPRISES EDUCATIONAL)	
CORPORATION,)	
)	
Defendants.)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 3rd day of Sept., 1974, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney, the defendants, Richard D. McCondichie and Carolyn A. McCondichie, appearing by their attorney, Alfred A. Savage, and the defendants, Rogeis C. Hayden a/k/a Rogeis Hayden a/k/a Roger C. Hayden a/k/a Roger Hayden, Sylvia C. Hayden a/k/a Syliva C. Hayden a/k/a Sylvia Hayden, Credit Plan, Inc., Patton Loans of Tulsa, Inc., and Field Enterprises Educational Corporation, appearing not.

The Court being fully advised and having examined the file herein finds that Rogeis C. Hayden and Sylvia C. Hayden, were served by publication, as appears from the Proof of Publication filed herein; that Patton Loans of Tulsa, Inc., was served with Summons and Complaint on April 23, 1974; that Field Enterprises Educational Corporation was served with Summons and Complaint on April 24, 1974; and that Richard D. McCondichie, Carolyn A. McCondichie, and Credit Plan, Inc., were served with Summons and Complaint on April 29, 1974, all as appears from the Marshal's Return of Service herein.

It appearing that Richard D. McCondichie and Carolyn A. McCondichie have duly filed their Answer herein on May 21, 1974; that Rogeis C. Hayden, Sylvia C. Hayden, Credit Plan, Inc., Patton Loans of Tulsa, Inc., and Field Enterprises Educational Corporation 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 One (1), in Block Five (5), HARTFORD HILLS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the defendants, Richard D. McCondichie and Carolyn A. McCondichie, did, on the 11th day of December, 1962, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$8,900.00 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, Rogeis C. Hayden and Sylvia C. Hayden, were the grantees in a deed from Richard D. McCondichie and Carolyn A. McCondichie, dated May 26, 1967, and filed May 29, 1967, in Book 3808, Page 364, records of Tulsa County, wherein Rogeis C. Hayden and Sylvia C. Hayden assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that the defendants, Richard D. McCondichie, Carolyn A. McCondichie, Rogeis C. Hayden, and Sylvia C. Hayden, 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 \$7,395.55 as unpaid principal, with interest thereon at the rate of 5 1/2 percent interest per annum from August 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, Richard D. McCondichie, Carolyn A. McCondichie, in personam, Rogeis C. Hayden, and Sylvia C. Hayden, in rem, for the sum of \$7,395.55 with interest thereon at the rate of 5 1/2 percent per annum from August 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, Credit Plan, Inc., Patton Loans of Tulsa, Inc., and Enterprises Educational Corporation.

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.

Allen E. Barrow
United States District Judge

APPROVED.



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



ALFRED A. SAVAGE
Attorney for Defendants,
Richard D. McCondichie and
Carolyn A. McCondichie

original

Barrows

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
vs.)
)
)
SHERRY A. RAMSEY, JOAN BEACH,)
GUARDIAN SERVICE COMPANY OF)
OKLAHOMA, COUNTY TREASURER,)
Tulsa County, and BOARD OF)
COUNTY COMMISSIONERS, Tulsa)
County,)
)
) Defendants.)

CIVIL ACTION NO. 74-C-174

E I L E D
SEP 9 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 3rd
day of September, 1974, the plaintiff appearing by Robert
P. Santee, Assistant United States Attorney; the defendants,
County Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, appearing by Gary J. Summerfield, Assistant District
Attorney; and the defendants, Sherry A. Ramsey, Joan Beach, and
Guardian Service Company of Oklahoma, appearing not.

The Court being fully advised and having examined
the file herein finds that Sherry A. Ramsey and Joan Beach were
served by publication, as appears from the Proof of Publication
filed herein, and that Guardian Service Company of Oklahoma,
County Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, were served with Summons and Complaint on April 19,
1974, as appears from the Marshal's Return of Service herein.

It appearing that County Treasurer, Tulsa County, and
Board of County Commissioners, Tulsa County, have duly filed their
Answers herein on May 6, 1974; that Sherry A. Ramsey, Joan Beach,
and Guardian Service Company of Oklahoma 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:

The West Fifteen (15) feet of Lot Five (5) and all of Lot Six (6), and the East Ten (10) feet of Lot Seven (7), Block Fifty (50), AMENDED PLAT OF WEST TULSA, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the defendants, Sherry A. Ramsey and Joan Beach, did, on the 26th day of November, 1971, execute and deliver to the Finance Corporation, a Corporation, their mortgage and mortgage note in the sum of \$14,750.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated January 31, 1972, the Finance Corporation assigned said Note and Mortgage to the Federal National Mortgage Association, Dallas, Texas; and that by Assignment dated August 22, 1973, the Federal National Mortgage Association assigned said Note and Mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that the defendants, Sherry A. Ramsey and Joan Beach, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 10 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 \$14,532.66 as unpaid principal, with interest thereon at the rate of 7 percent interest per annum from October 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 Sherry A. Ramsey and Joan Beach, the sum of \$ 210⁵⁵, plus interest according to law, for ad valorem taxes for the year 1973, and the sum of \$ 10.58, plus interest according to law, for maintenance tax for drainage, District No. 12, for the year 1973, and that Tulsa County should have judgment, in rem, for said amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants,

Sherry A. Ramsey and Joan Beach, in rem, for the sum of \$14,532.66 with interest thereon at the rate of 7 percent per annum from October 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, in rem, against the defendants, Sherry A. Ramsey and Joan Beach, for the sum of \$ 220⁹³ as of the date of this judgment plus interest thereafter according to law, and that such judgment is superior 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, Guardian Service Company of Oklahoma.

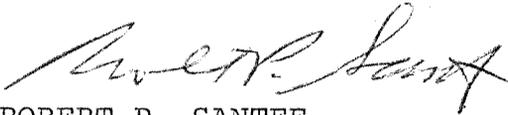
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property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

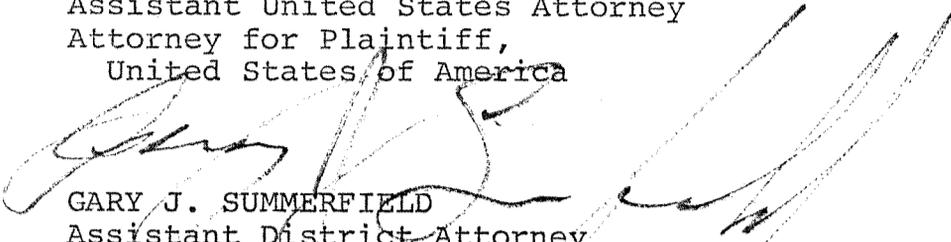


United States District Judge

APPROVED.



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



GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and Board of
County Commissioners, Tulsa
County

~~FILED~~

~~SEP 10 1974~~

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

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
vs.)
)
)
ALLEN R. CARTER, et al.,)
)
)
Defendants.)

CIVIL ACTION NO. 74-C-161

~~FILED~~

~~SEP 9 1974~~

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 3rd
day of Sept., 1974, the plaintiff appearing by Robert
P. Santee, Assistant United States Attorney; the defendants,
County Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, appearing by Gary J. Summerfield, Assistant District
Attorney; and the defendants, Allen R. Carter and Debbie A. Carter,
appearing not.

The Court being fully advised and having examined
the file herein finds that Allen R. Carter and Debbie A. Carter
were served by publication, as appears from the Proof of Publi-
cation filed herein and that County Treasurer, Tulsa County, and
Board of County Commissioners, Tulsa County, were served with
Summons and Complaint on April 15, 1974, as appears from the Marshal's
Return of Service herein.

It appearing that County Treasurer, Tulsa County, and
Board of County Commissioners, Tulsa County, duly filed their
Answers herein on May 2, 1974; that Allen R. Carter and Debbie A.
Carter 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 Eighteen (18), Block Seven (7), NORTHGATE
THIRD ADDITION, to the City of Tulsa, Tulsa
County, Oklahoma, according to the recorded
plat thereof.

THAT the defendants, Allen R. Carter and Debbie A. Carter, did, on the 15th day of July, 1972, execute and deliver to the Diversified Mortgage and Investment Company, their mortgage and mortgage note in the sum of \$15,400.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated July 26, 1972, the Diversified Mortgage and Investment Company assigned said Note and Mortgage to the Government National Mortgage Association; that by Assignment dated November 29, 1972, the Government National Mortgage Association assigned said Note and Mortgage to the Lomas & Nettleton Company, a Connecticut Corporation, New Haven, Connecticut; and that by Assignment dated June 6, 1973, the Lomas & Nettleton Company assigned said Note and Mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that the defendants, Allen R. Carter and Debbie A. Carter, 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 \$15,374.47 as unpaid principal, with interest thereon at the rate of 7 percent interest per annum from September 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 Allen R. Carter and Debbie A. Carter, the sum of \$ 241.00, plus interest according to law, for ad valorem taxes for the year 1973 and that Tulsa County should have judgment, in rem, for said amount.

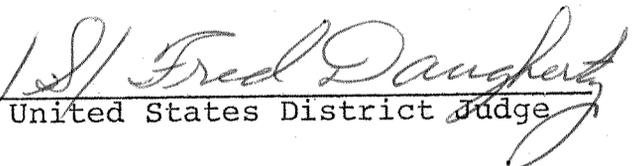
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants,

Allen R. Carter and Debbie A. Carter, in rem, for the sum of \$15,374.47 with interest thereon at the rate of 7 percent per annum from September 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, in rem, against the defendants, Allen R. Carter and Debbie A. Carter, for the sum of \$ 241⁰⁰ as of the date of this judgment plus interest thereafter according to law, and that such judgment is superior to the first mortgage lien of the plaintiff herein.

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, which sale shall be subject to the tax judgment of Tulsa County, supra. The residue, if any, to be deposited with the Clerk of the Court to await further order of the Court.

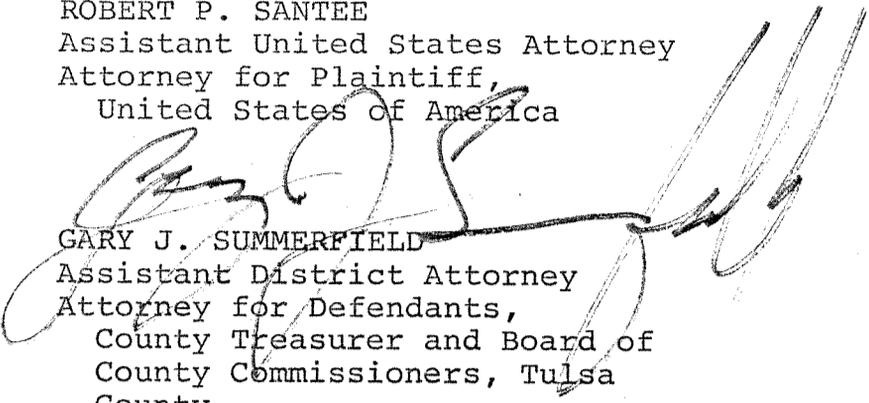
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed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


United States District Judge

APPROVED.



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



GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and Board of
County Commissioners, Tulsa
County

bcs

FILED

SEP 9 1974

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

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

PAUL F. HUDSON and POLLY)
S. HUDSON,)
)
Plaintiffs,)
)
-vs-)
)
EUGENE D. GATES and ELLA)
ROSEMARY GATES,)
)
Defendants.)

No. 74 - C - 251

ORDER

This matter coming on for hearing before the undersigned Judge on this 6th day of September, 1974 for a dismissal without prejudice and the Court being satisfied in the premises:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled case be and is hereby dismissed without prejudice.

S/ Fred Daugherty
JUDGE

CERTIFICATE OF SERVICE

I, James O. Goodwin, do hereby certify that I mailed a true and correct copy of the above Order to Mr. John C. Harrington of Harrington and Mann, 1108 Thompson Building, Tulsa, Oklahoma 74103 on this 6th day of September, 1974 with sufficient postage thereon prepaid.

S/ James O. Goodwin
James O. Goodwin

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

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
 -v-)
)
)
 MELVIRA PARKS, ET AL,)
)
)
 Defendants.)

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

Civil Action No. 74-C-115

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 6th
day of September, 1974, the plaintiff appearing by Robert
P. Santee, Assistant United States Attorney; the defendant
Sears, Roebuck and Company appearing by its attorney, David R.
Milsten; the defendants County Treasurer, Tulsa County, and
Board of County Commissioners, Tulsa County, appearing by their
attorney, Gary J. Summerfield; the State of Oklahoma, Department
of Public Welfare, appearing by its attorney, Owen J. Watts;
the defendant State of Oklahoma, Oklahoma Employment Security
Commission, appearing by its attorney, Milton R. Elliott; and
the defendants Melvira Parks, Jesse Harris, Waldo Jones, Jr.,
and Hackathorn Music Company appearing not.

The Court, being fully advised and having examined the
file herein, finds that State of Oklahoma, Department of Public
Welfare; State of Oklahoma, Oklahoma Employment Security Commis-
sion; County Treasurer, Tulsa County; and Board of County Commis-
sioners, Tulsa County, were served with Summons and Complaint on
February 21, 1974; that Jesse Harris; Sears, Roebuck and Company;
and Hackathorn Music Company were served with Summons and Complaint
on February 25, 1974; that Waldo Jones, Jr. was served with Summons
and Complaint on February 26, 1974; all as appears from the Mar-
shal's Returns of Service filed herein; and that Melvira Parks
was served by publication, as appears from Proof of Publication
filed herein.

It appears that County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers on March 12, 1974; that the State of Oklahoma, Department of Public Welfare has filed its Answer and Cross-Petition on March 7, 1974; that the State of Oklahoma, Oklahoma Employment Security Commission has filed its Disclaimer on February 26, 1974; that Sears, Roebuck and Company has filed its Disclaimer on April 3, 1974; and that Melvira Parks, Jesse Harris, Waldo Jones, Jr., and Hackathorn Music Company 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 covering the following-described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Ten (10), Block Six (6), Suburban Acres Second Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

That the defendant Melvira Parks did, on the 29th day of January, 1970, execute and deliver to the Finance Corporation her mortgage and mortgage note in the sum of \$10,100.00, with 8-1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated March 31, 1970, the Finance Corporation assigned said note and mortgage to the Federal National Mortgage Association.

That by Assignment of Mortgage of Real Estate dated September 7, 1972, the Federal National Mortgage Association assigned said note and mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that the defendant Jesse Harris was the grantee in a deed from Melvira Parks, dated January 29, 1970, and filed in Book 3919, Page 408, records of Tulsa County, Oklahoma, wherein Jesse Harris assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that the defendants Melvira Parks and Jesse Harris 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 \$9,903.46, with interest thereon from July 1, 1972, at the rate of 8-1/2 percent per annum, 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 Melvira Parks and Jesse Harris, the sum of \$399¹⁸, for ad valorem taxes for the years 1972 and 1973, and that Tulsa County should have judgment, in rem, for said amount and that such judgment is superior to the first mortgage lien of the plaintiff herein.

The Court further finds that the State of Oklahoma, Department of Public Welfare, is entitled to judgment, in rem, against Melvira Parks in the amount of \$410.00, plus interest at the rate of six percent per annum from July 20, 1970, but that such judgment would be 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 Melvira Parks, in rem, and Jesse Harris, in personam, for the sum of \$9,903.46, with interest thereon at the rate of 8-1/2 percent per annum from July 1, 1972, 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 or 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, in rem, against the defendants Melvira Parks and Jesse Harris for the sum of \$ 399¹⁸ as of the date of this judgment, plus interest thereafter according to law, and that such judgment is superior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the State of Oklahoma, Department of Public Welfare, have and recover judgment, in rem, against the defendant Melvira Parks in the amount of \$410.00, plus interest at the rate of six percent per annum from July 20, 1970, 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 defendants Waldo Jones, Jr. and Hackathorn Music Company.

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.

18/ Luther Bohannon
United States District Judge

APPROVED:

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

18/ Gary J. Summerfield
GARY J. SUMMERFIELD, Asst. Dist. Attorney
Attorney for Defendants, Tulsa County
Treasurer, and Board of County
Commissioners, Tulsa County

18/ Owen J. Watts
OWEN J. WATTS
Attorney for Defendant, State of Oklahoma,
Department of Public Welfare

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.) Civil Action No. 74-C-149
)
 9.25 Acres of Land, More or) Tract No. 117
 Less, Situate in Osage County,)
 State of Oklahoma, and W. E.)
 Waterman, et al., and Unknown)
 Owners,)
)
 Defendants.)

FILED
SEP 6 1974
Jack C. Silver, Clerk
U.S. DISTRICT COURT

J U D G M E N T

1.

NOW, on this 6TH day of September, 1974, this matter comes on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation of the parties 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 estate condemned in Tract No. 117, as such estate and tract 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 estate described in paragraph 2 herein. Pursuant thereto, on March 29, 1974, the

Court in this civil action, to the credit of subject tract, the deposit deficiency in the sum of \$475.00, and the Clerk of this Court then shall disburse the deposit for such tract as follows:

To - W. E. Waterman and Irene
Waterman, jointly ----- \$475.00.

/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. 74-C-148
)
 434.00 Acres of Land, More or) Tract No. 114
 Less, Situate in Osage County,)
 State of Oklahoma, and W. E.)
 Waterman, et al., and Unknown)
 Owners,)
)
 Defendants.)

E I L E D

SEP 6 1974

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

J U D G M E N T

1.

NOW, on this 6th day of September, 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 estate condemned in Tract No. 114, as such estate and tract 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 tract.

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 estate described in such Complaint. 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 estate 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 a certain estate in subject tract a certain sum of money and part of this deposit has been disbursed, as set out in paragraph 14 below.

7.

The defendants named in paragraph 14 as owners of the estate taken in subject tract are the only defendants asserting any claim to such estate. All other defendants having either disclaimed or defaulted, the named defendants, as of the date of taking were the owners of the estate condemned herein, and, as such, are entitled to receive the just compensation awarded by this judgment.

8.

On August 15, 1974, a stipulation, executed by the owners of subject property and the United States of America, was filed herein, whereby approximately 4.48 acres of the subject tract, together with all improvements and structures situated on the subject tract, were excluded from the taking in this case, and title thereto was revested in the former owners and the former owners were granted possession of the property taken by the Government until December 31, 1974. Such stipulation should be approved by the Court.

9.

The stipulation described in paragraph 8 above also contained an agreement by the parties that just compensation for the estate taken in the subject tract, as modified by the said stipulation, is in the amount shown as compensation in paragraph 14, and such agreement should be approved by the Court.

10.

This judgment will create a deficiency between the amount deposited as estimated compensation for the estate taken in subject tract 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 below in paragraph 14.

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 tract designated as Tract No. 114, as such tract is particularly described in the Complaint filed herein; and such tract, to the extent of the estate described in such Complaint was condemned, and title thereto vested in the United States of America as of March 29, 1974, and, subject to the exclusion provided below in paragraph 13, all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

12.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking, the owners of the estate condemned herein in subject tract were the parties whose names appear below in paragraph 14, and the right to receive the just compensation awarded by this judgment is vested in the parties so named.

13.

It Is Further ORDERED, ADJUDGED and DECREED that the stipulation of the parties, filed herein on August 15, 1974, regarding the exclusion of certain property from the taking and possession of the subject property, is hereby confirmed by the Court. As a result thereof approximately 4.48 acres of the subject tract, which part is particularly described as follows:

Indian Meridian, T. 22 N., R. 11 E., Section 27,
Beginning at a point on the north line of the
NW $\frac{1}{2}$ NW $\frac{1}{2}$, 250.00 feet East of the northwest corner
thereof; thence East, 575.00 feet, more or less,
to the northeast corner of the W $\frac{1}{2}$ NW $\frac{1}{2}$ NE $\frac{1}{2}$ NW $\frac{1}{2}$ NW $\frac{1}{2}$;
Thence South, parallel with the west line of said
NW $\frac{1}{2}$ NW $\frac{1}{2}$, 400.00 feet; thence West, parallel with

the north line thereof, 400.00 feet; thence
Northwesterly on a straight line, 436.00 feet,
more or less, to the point of beginning,

together with all improvements and structures situated on the
subject Tract No. 114, are excluded from the taking in this case
and title thereto is revested in the owners named below in para-
graph 14.

14.

It Is Further ORDERED, ADJUDGED and DECREED that the
agreement as to just compensation, included in the stipulation
mentioned in paragraph 8 above, hereby is confirmed; and the sum
therein fixed is adopted as the award of just compensation for the
estate condemned herein in subject tract, as follows:

TRACT NO. 114

Owners:

W. E. Waterman and
Irene Waterman

Award of just compensation pursuant to Stipulation -----	\$281,000.00	\$281,000.00
Deposited as estimated compensation --	250,000.00	
Disbursed to owners -----		<u>246,434.00</u>
Balance due to owners -----		<u>\$ 34,566.00</u>
Deposit deficiency -----	\$ 31,000.00	

15.

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 tract, the
deposit deficiency in the sum of \$31,000.00, and the Clerk of this
Court then shall disburse the deposit for such tract as follows:

To - W. E. Waterman and Irene
Waterman, jointly, ----- \$34,566.00.

APPROVED:

UNITED STATES DISTRICT JUDGE

HUBERT A. MARLOW
Assistant United States Attorney

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

FILED

SEP 5 1974 *K*

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

W. THOMAS KUHN and DEWEY
D. COLLIER,

Plaintiffs,

vs.

HOLDER'S INC., an Oklahoma
Corporation,

Defendant.

No. 73-C-301 ✓

ORDER OF DISMISSAL

This cause came on to be heard on Plaintiff's
Application to Dismiss this action, and the Court being fully
advised, it is ordered that the aforestyled matter be
dismissed with prejudice done in Chambers, Folsom,
Oklahoma, this 5 day of ^{Sept}~~August~~, 1974.

Ired Daugherty
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 5 1974

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

ECONO-THERM CORPORATION,)
Debtor,)
)
Plaintiff,)
)
vs.)
)
AIR CARGO EQUIPMENT)
CORPORATION,)
)
Defendant.)

No. 72-C-339/

STIPULATION FOR DISMISSAL

The parties hereto by and through their undersigned attorneys hereby stipulate and agree that the above styled action be dismissed with prejudice on the grounds that the issues therein have been settled.

PRAY, SCOTT & LIVINGSTON

By Bland Williamson
Bland Williamson
Attorneys for Plaintiff

BLACKSTOCK, JOYCE, POLLARD & McINERNEY

By Craig Blackstock
Craig Blackstock
Attorneys for Defendant

APPROVED:

TRUSTEES UNDER THE ECONO-THERM CORPORATION TRUST FOR THE BENEFIT OF TRADE CREDITORS OF ECONO-THERM.

Patrick O. Waddel
Patrick O. Waddel, Co-Trustee

Henry G. Will
Henry G. Will, Co-Trustee

Tranter, inc.

By Jerry E. Ryan
its Vice President

Jerry E. Ryan
Jerry E. Ryan

Kenneth W. Anderson
Kenneth W. Anderson

ORDER

Permission is hereby granted to file the above Stipulation
for Dismissal and it is ordered that the above-styled ^{complaint of a series of} action be
dismissed with prejudice.

Entered and filed day of September 1974

Allen E. Barrow
Allen E. Barrow
U. S. District Judge

E I L E D
SEP 6 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

hm

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

BILL BELL, INC.)
)
 Plaintiff)
)
 VS.)
)
 OUTDOORS PRODUCTS, INC.,)
)
 Defendant)

NO. 73-C-191N

FILED
SEP 4 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CONSENT JUDGMENT

The Plaintiff, BILL BELL, INC., and the Defendant, OUTDOORS PRODUCTS, INC., having agreed to a Consent Judgment in favor of Plaintiff and against Defendant, according to the terms and findings below, the Court finds as follows:

1. Plaintiff is entitled to recover judgment against Defendant in the total sum of \$44,944.80 less payment of \$7,300.00, for court costs herein taxed in the amount of \$_____, together with interest on the total amount, at 10% from the date of judgment.

2. Defendant should be hereby denied relief under the allegations of its Answer and under its so-called Cross Claim.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff have and recover judgment against Defendant in the amount of \$37,644.80, together with court costs in the amount of \$_____ and to recover interest at 10% on the total amount from the date hereof, for all of which let execution issue.

DATED this 7 day of ^{Sept}~~August~~, 1974.

Lucy Dougherty
U.S. DISTRICT JUDGE

APPROVED:

Hal D. Leaming
HAL D. LEAMING of
SMITH, LEAMING AND SWAN
Suite 1020, 100 Park Avenue Building
Oklahoma City, Oklahoma 73102
Attorney for Plaintiff

H. Richard Raskin
H. RICHARD RASKIN
1600 Fourth National Bank Building
Tulsa, Oklahoma 74119
Attorney for Defendant

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

FLEMING BUILDING COMPANY, INC.,)
)
 Plaintiff,)
 vs.)
)
 NORTHEASTERN OKLAHOMA)
 BUILDING AND CONSTRUCTION)
 TRADES COUNCIL,)
)
 Defendant.)

No. 73-C-90 ✓

FILED
SEP 24 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT
hm

ORDER AND JUDGMENT

The Court, having filed herein this day its Findings of Fact and Conclusions of Law and based thereon finds that the Complaint of the plaintiff has not been sustained by the proper proof and that the Court should enter judgment for the defendant.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant, Northeastern Oklahoma Building and Construction Trades Council, have judgment against the plaintiff, Fleming Building Company, Inc., on plaintiff's Complaint filed herein and that the costs hereof be assessed to the plaintiff.

Dated this 3rd day of September, 1974.

Luther Bohannon
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
 vs.) CIVIL ACTION NO. 74-C-175
)
)
 CHARLES C. WELLS, JUDY E.)
 WELLS, CHARLES E. GREGORY,)
 COUNTY TREASURER, Tulsa County,)
 and BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County,)
)
) Defendants.)

FILED
1974
L. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 30th
day of August, 1974, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; the de endants, County
Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, appearing by Gary J. Summerfield, Assistant District
Attorney; and the defendants, Charles C. Wells, Judy E. Wells,
and Charles E. Gregory, appearing not.

The Court being fully advised and having examined
the file herein finds that Charles C. Wells, Judy E. Wells, and
Charles E. Gregory were served by publication, as appears from
the Proof of Publication filed herein, and that County Treasurer,
Tulsa County, and Board of County Commissioners, Tulsa County,
were served with Summons and Complaint on April 19, 1974, as
appears from the Marshal's Return of Service herein.

It appearing that County Treasurer, Tulsa County, and
Board of County Commissioners, Tulsa County, have duly filed
their Answers herein on May 6, 1974; that Charles C. Wells,
Judy E. Wells, and Charles E. Gregory 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 Four (4), Block Four (4), RESUBDIVISION OF AMENDED PLAT OF MEADOW HEIGHTS ADDITION to the City of Broken Arrow, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the defendants, Charles C. Wells and Judy E. Wells, did, on the 21st day of July, 1972, execute and deliver to the Mercury Mortgage Company, Inc., their mortgage and mortgage note in the sum of \$18,000.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated July 26, 1972, the Mercury Mortgage Company, Inc., assigned said Note and Mortgage to the Government National Mortgage Association; that by Assignment dated November 29, 1972, the Government National Mortgage Association assigned said Note and Mortgage to the Lomas & Nettleton Company, a Connecticut Corporation; and that by Assignment dated August 31, 1973, the Lomas & Nettleton Company assigned said Note and Mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that the defendants, Charles C. Wells and Judy E. Wells, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 9 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 \$17,939.96 as unpaid principal, with interest thereon at the rate of 7 percent interest per annum from November 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 Charles C. Wells and Judy E. Wells, the sum of \$ 361.81, plus interest according to law, for ad valorem taxes for the year 1973 and that Tulsa County should have judgment, in rem, for said amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Charles C. Wells and Judy E. Wells, in rem, for the sum of \$17,939.96 with interest thereon at the rate of 7 percent per annum from November 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, in rem, against the defendants, Charles C. Wells and Judy E. Wells, for the sum of \$ 361⁸¹ as of the date of this judgment plus interest thereafter according to law, and that such judgment is superior 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, Charles E. Gregory.

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, which sale shall be subject to the tax judgment of Tulsa County, supra. The residue, if any, to be deposited with the Clerk of the Court to await further order of the Court.

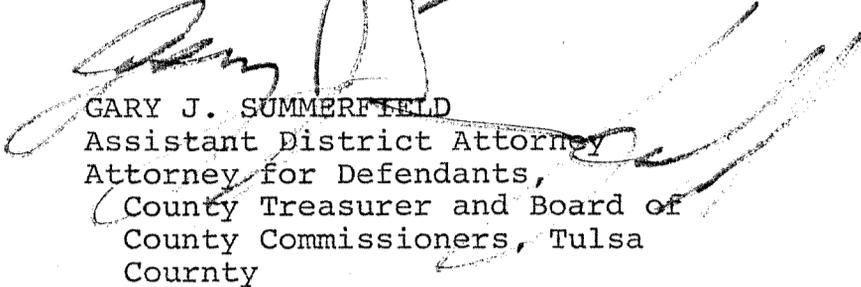
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed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

Luther Bohannon
United States District Judge

APPROVED.



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



GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and Board of
County Commissioners, Tulsa
County

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

ARIENE A. RICHARDSON
and ROBERT RICHARDSON,

Plaintiffs,

vs.

MASS MERCHANDISERS, INC.,
a foreign Corporation,

Defendant.

NO. 74-C-284

E I L E D

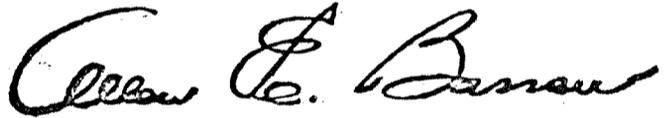
SEP 6 1974

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

ORDER OF DISMISSAL

ON this 6 day of Sept., 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 plaintiffs filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.



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

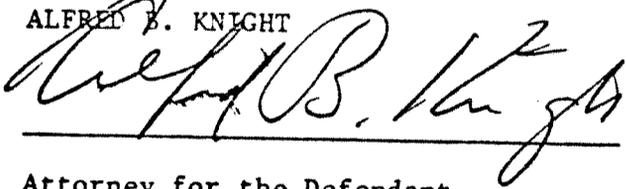
APPROVAL:

ED MORRISON
LAWRENCE D. TAYLOR
SHEPHERD, MANER & BRUNTON

By: 

Attorneys for the Plaintiffs

ALFRED B. KNIGHT



Attorney for the Defendant

The alleged defective warrant was for marijuana. It is alleged that said warrant was executed by certain police officers of the City of Tulsa (unnamed in the petition and not parties to this litigation). It is further alleged that plaintiff was taken into custody and after posting a proper bond returned to his home and discovered that his home had been ransacked and that certain items of personal property consisting of jewelry, old coins, novelties and certain series of children's books authored by plaintiff had been taken from the premises and have not been returned nor has plaintiff been compensated as required by Article II, §24 of the Oklahoma Constitution. Plaintiff seeks damages in the sum of \$83,000.00. Plaintiff alleges that the defendant was motivated with the intent to harm and harass the plaintiff for having exercised his right of free speech, as guaranteed by the 1st Amendment, and for exercising his right to have people peaceably assemble as guaranteed by the 1st Amendment, and, therefore, he seeks punitive damages in the amount of \$1,000,000.00.

The Second Count of Action is for invasion of privacy and plaintiff seeks damages in the sum of \$1,000,000.00.

By Amended Complaint filed May 28, 1974, plaintiff alleges jurisdiction by virtue of 42 U.S.C.A. §1943.

On July 17, 1974, the defendant filed its Motion to Dismiss, with brief in support thereof.

At the outset, this Court will note that it is not dealing with a pro se complaint, but one filed by a member of the Bar of this State.

The Court notes that there is no 42 U.S.C.A. §1943. Plaintiff admits this fact in his brief and states that §1943 was a typographical mistake and that he should be allowed to amend to allege jurisdiction pursuant to 42 U.S.C.A. §1983.

Defendant admits in his brief that it is established that municipal corporations are not persons as have been legislatively defined for the purposes of civil rights actions. *Moor v. County of Alameda, et al.* (1973); 411 U.S. 693; *Monroe v. Pape* (1961) 365 U.S. 167.

Defendant concedes that the *Moor v. County of Alameda* cases, *supra*, does effectively preclude this plaintiff from any cause of action against the City of Tulsa under the provisions of 42 U.S.C.A. 1983, but requests the Court to entertain the matter pursuant to pendent jurisdiction and decide the defendant was in violation of Article II, Section 24 of the Oklahoma Constitution. The Court notes that the Article relied on by plaintiff is the Article and Section conferring and delineating the statutory procedure for acquisition of property by eminent domain.

Plaintiff, in his brief asserts a right to amend his complaint to include the provisions of 42 U.S.C.A. §1988. Plaintiff, in his brief, asserts constitutional questions are involved in the present litigation.

The Court has carefully considered the entire file in this matter, and having perused and considered the pleadings in a light most favorable to the plaintiff finds that no cause of action has been stated by the plaintiff against the defendant and that the City of Tulsa, a municipal corporation, is not a person as has been legislatively defined for the purposes of the civil rights actions.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss filed by the defendant be and the same is hereby sustained.

IT IS FURTHER ORDERED that the complaint and cause of action be and the same are hereby dismissed.

ENTERED this 3rd day of September, 1974.

Allen E. Bennett

CHIEF UNITED STATES DISTRICT JUDGE

FILED

SEP 3 1974

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

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

RUSH O. NICHOLS,

Plaintiff,

vs.

DON GASAWAY,

Defendant.

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74-C-87 ✓

ORDER SUSTAINING DEFENDANT'S MOTION TO DISMISS
AND DISMISSING COMPLAINT AND CAUSE OF
ACTION

The Court has for consideration the Motion to Dismiss filed by the Defendant, the brief in support and opposition thereto, and, being fully advised in the premises, finds:

This action was instituted on February 25, 1974, by Plaintiff, Rush O. Nichols, requesting relief pursuant to jurisdiction conferred by 28 U.S.C.A. §1343, seeking declaratory relief, pursuant to 28 U.S.C.A. §2201 and §2202, and redress for the deprivation of his civil rights, pursuant to 42 U.S.C.A. §1983.

Plaintiff asks for declaratory relief pursuant to 28 U.S.C.A. §§2201 and 2202, but states no grounds on which relief could be granted.

Therefore, this Court will treat this action as solely arising under 28 U.S.C.A. §1983.

As grounds therefor, the Plaintiff alleges that on the 12th day of November, 1965, he was sentenced in the District Court of Tulsa County, Tulsa, Oklahoma, in a case styled "State of Oklahoma v. Rush O. Nichols", Number 21450, to imprisonment in the Oklahoma State Penitentiary on the basis of a guilty plea in the aforementioned case. That an appeal was to be taken and perfected from said guilty plea by the defendant, Don E. Gasaway, then a member of the Tulsa County Public Defender's Office. Plaintiff further avers that although a Petition in Error was filed in "Rush O. Nichols v. State of Oklahoma", Number A-14,659, no brief was filed by the defendant, and, thereby, plaintiff was denied effective assistance of counsel and the right to a direct appeal as guaranteed by the Constitution of the United States of America.

Although there is a dispute in facts as to whether the defendant, Gasaway, was still a member of the Public Defender's Office at the time the brief was to have been prepared and filed, or whether he had gone into private practice and the case reassigned to another public defender, this Court need not consider this question, in that this case can be disposed of on other grounds.

It is well settled that in order for a defendant to be liable under the Federal Civil Rights Act, he must have acted under color of state law in causing the denial of a federally protected right. See *Jones v. Hopper* (10th CCA, 1969) 410 F.2d 1323, cert. denied, 397 U.S. 991 (1970).

Moreover, it has been held that the state provides a forum for the litigants, and even though lawyers are considered "officers of the Court", they are not officers of the state within the meaning of the Civil Rights Act. A Public Defender's professional duties and responsibilities toward his clients are the same in all aspects as any other attorney. *Espinoza v. Rogers, et al.*, (10th Cir., 1972) 470 F.2d 1174, and cases cited therein.

Although this Court feels that the aforementioned reasons are dispositive of the action, another allegation of the Plaintiff's complaint should be recognized and dealt with. The Court finds that the acts, herein complained of, took place some 8 years ago. The present action was instituted on the 25th day of February, 1974. From the face of the complaint, it is clear that the last act complained of by the plaintiff took place when the time for filing the brief had expired. This act necessarily would have been prior to the date of the affirmance of the judgment and sentence by the Oklahoma Court of Criminal Appeals on June 1, 1966. Although the Federal Statutes relating to Civil Rights actions contain no provision limiting the time within which actions thereunder may be brought, in such instances the law of the state where the cause of action arose determines the time within which such cause may be filed. *Crosswhite v. Brown* (10th CCA, 1970) 424 F.2d 495; and cases cited therein.

The applicable Oklahoma statute, 12 O.S.A. §95 provides, in pertinent part, as follows:

"Civil actions other than for the recovery of real property, can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards. *** Third: Within 2 years *** An action for injury to the rights of another, not arising on contract, and not hereinafter enumerated ***."

Thereby, regardless of the type of cause of action plaintiff maintains he had due to the alleged denial of his Constitutional rights, it is barred by the applicable statute of limitations.

The Court finds that the appointment of counsel is not necessary, that a hearing is not required, and that the cause of action should be denied and dismissed.

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Dismiss be and the same is hereby sustained on the aforementioned grounds.

IT IS FURTHER ORDERED that the complaint and cause of action be and the same are hereby dismissed.

ENTERED this 3rd day of ^{September}~~August~~, 1974.



CHIEF UNITED STATES DISTRICT JUDGE