

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

FARMERS INSURANCE EXCHANGE,)
)
) Plaintiff,)
)
 vs.)
)
) DIANE LEE DOUGHERTY, and)
) LAURA LOUISE FRENCH,)
)
) Defendants.)

No: 74-C-376 ✓

FILED
OCT 31 1974 B

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

ORDER OF DISMISSAL

ON this 31 day of October, 1974, upon the written applica-
tion of the parties for a Dismissal with Prejudice of the Complaint
and all causes of action, the Court having examined said application,
finds that said parties have entered into a compromise settlement
covering all claims involved in the Complaint and have requested the
Court to dismiss said Complaint with prejudice to any future action,
and the Court being fully advised in the premises, finds that said
Complaint should be dismissed pursuant to said application.

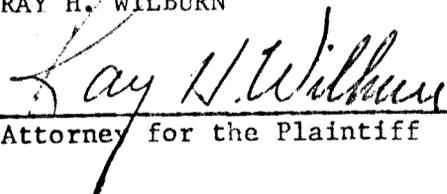
IT IS THEREFORE, ORDERED ADJUDGED AND DECREED by the Court
that the Complaint and all causes of action of the plaintiff filed
herein against the defendants be and the same hereby is dismissed
with prejudice to any future action.



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

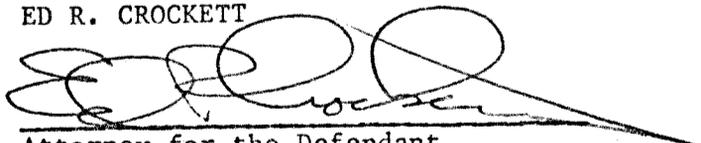
APPROVAL:

RAY H. WILBURN



Attorney for the Plaintiff

ED R. CROCKETT



Attorney for the Defendant,
Diane Lee Dougherty

ED MONTGOMERY



Attorney for the Defendant,
Laura Louise French

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

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

Plaintiff,)

vs.)

No. 74-C-111 ✓

SIGNAL OIL & GAS COMPANY, a)
Delaware corporation,)

Defendant.)

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

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 this Court enter an Order allowing plaintiff to dismiss without prejudice, each party to bear its own costs, for the following reasons:

Plaintiff has been unable, through due diligence, to produce any admissible evidence in support of its claim against the defendant.

WHEREFORE, plaintiff asks this Court to dismiss this action without prejudice, each party to bear its own costs.

ROBERT J. STANTON, Trustee

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

ORDER OF DISMISSAL

BEFORE THE HONORABLE FRED ~~E.~~ DAUGHERTY, Judge of the FD
United States District Court for the Northern District of Oklahoma, this matter was presented to the Court upon the statement of facts and request for dismissal without prejudice, and the Court thereupon dismissed the above entitled cause of action and

complaint without prejudice, each party to bear its own costs.

DATED this 31 day of October, 1974.

Fred. Daugherty

FRED W. DAUGHERTY, 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

SUN OIL COMPANY OF PENNSYLVANIA, :
Plaintiff

v. :

NO. 72-C-290 ✓

VICKERS PETROLEUM CORPORATION, :
Defendant

FILED

OCT 31 1974 *

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

STIPULATION OF DISMISSAL

AND NOW, this 29th day of October, 1974, it is hereby stipulated and agreed by and between plaintiff SUN OIL COMPANY OF PENNSYLVANIA and defendant VICKERS PETROLEUM CORPORATION, by their undersigned counsel, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, that this action be and hereby is dismissed with prejudice, each party to bear its own costs.

JOHN G. HARKINS, JR.
JON A. BAUGHMAN
123 S. Broad Street
Philadelphia, Pa. 19109

JOHN A. LADNER
P. O. Box 2039
Tulsa, Oklahoma 74102

By J. A. B. G.
Attorneys for Sun Oil Company
of Pennsylvania

KIRKLAND & ELLIS
JONES, GIVENS, BRETT, GOTCHER & DOYLE

By J. A. L.
Attorneys for Vickers
Petroleum Corporation

the required wage payments under the law. As to one of the eight employees (Turpin) Defendants claim that said employee cashed his check and kept the money and as to the other seven employees Defendant Bradshaw asserts that they lent the money represented by their checks to him personally which then enabled him to personally lend \$5,000.00 to Sinor who was in financial trouble. He supports this contention by producing signed receipts from the seven employees, each in the amount of \$25.00, by which they acknowledged a loan to Bradshaw and acknowledged receiving payment thereon from him in the amount of \$25.00. Bradshaw signed no notes or other evidence binding him in writing to these alleged loans. He did endorse the seven checks and admits cashing them. Bradshaw claims that Sinor knew nothing of these loans personally made between him and the seven employees. Sinor claims no knowledge of these loans and acknowledges that he owes \$2,000.00 on his note to Bradshaw for the \$5,000.00 loan, \$3,000.00 thereof having been paid by him to Bradshaw.

Plaintiff acknowledges that if these alleged loans to Bradshaw were bonafide and voluntarily made by the employees, the Plaintiff should not prevail on this issue or proposition but that if the employees, or any of them, were deceived by Bradshaw into endorsing the checks and delivering them to him, that Plaintiff should recover judgment herein for such amount against Sinor on the basis that he was their employer and was a party to the wrongful transactions and against Bradshaw as his Superintendent.

The amounts of the checks to the eight employees were as follows with claimed payments thereon shown in the right column:

<u>Employee</u>	<u>Amount of Check</u>	<u>Repayments</u>
James R. Ellsworth	786.56	25.00
Leonard Ewert	885.55	25.00
Onyan Phelan	947.90	100.00
Thomas R. Noe	324.95	25.00
James Allen Wales	497.67	25.00
Gene Kellenberger	371.26	25.00
Fredie Griggs	668.45	375.00
James W. Turpin	122.53	-0-

As to employee Turpin, the Court finds that he received and kept the proceeds of his check. His check and the manner in which it was handled does not conform to the overall pattern as to the other seven employees. Turpin cashed his check at a grocery store. It was not endorsed by Bradshaw nor cashed or deposited by Bradshaw. Turpin says he gave the proceeds to Bradshaw and Bradshaw denies this. The other employees endorsed their checks and delivered them to Bradshaw. This conflicting testimony under the circumstances is resolved against the Plaintiff as to Turpin and recovery of the amount of the Turpin check by Plaintiff should be denied.

As to each of the following employees the Court finds and concludes from their own testimony that they voluntarily lent the proceeds of their checks to Bradshaw personally and were not deceived by him or Sinor in any way in doing so:

<u>Employee</u>	<u>Amount lent</u>	<u>Repaid</u>	<u>Total Owning</u>
Leonard Ewert	885.55	25.00	860.55
Fredie Griggs	668.45	375.00	293.45

Accordingly, as Plaintiff acknowledges in view of this factual finding that Plaintiff should not recover these amounts judgment

should be denied in this regard as to said employees.

However, as to the following employees:

<u>Employee</u>	<u>Amount</u>	<u>Less Credit</u>	<u>Owing</u>
James R. Ellsworth	786.56	25.00	761.56
Onyan Phelan	947.90	100.00	847.90
Thomas R. Noe	324.95	25.00	299.95
James Allen Walls	497.67	25.00	472.67
Gene Kellenberger	371.26	25.00	346.26
Total	<u>\$2,928.34</u>	<u>\$ 200.00</u>	<u>\$2,728.34</u>

the Court finds that they were deceived by Bradshaw in that he wrongfully and falsely told them, in substance, that their checks were needed only to straighten out company records regarding expenses and wrongfully failed to advise them that their checks represented an underpayment of their wages and that the amount represented thereby was entitled to be retained by them. These employees testified to such false representations and though this is denied by Bradshaw the Court resolves this factual dispute in favor of Plaintiff. As to all of the employees listed immediately above, the requirements of the Act will not permit the money due them by their respective checks involved herein to enure to the benefit of their employer, either directly or indirectly, or go to another person for their employer's benefit. In this connection, 29 CFR 531.35 in pertinent part provides:

"Whether in cash or in facilities, 'wages' cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or 'free and clear'. The wage requirements of the Act will not be met where the employee 'kicks-back' directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee."

The above administrative position, though not controlling on this Court, is believed to be a proper interpretation of the Act. As to Kellenberger and his testimony that he did not feel that he was entitled to the money represented by his check, the case of Brooklyn Savings Bank v. O'Neil, 324 U.S. 697 (1945) holds that he may not waive or release this payment if such would contravene the statutory policy. The Court finds and concludes that a waiver or release by him would contravene and serve to nullify the statutory policy of the Act. If Kellenberger refuses to accept the money, upon the same being recovered herein, it may be paid into the Treasury of the United States. Wirtz v. Jones, 340 F. 2d 901 (Fifth Cir. 1965). In this connection, the Court further finds from the evidence and the circumstances in this case that Defendant Sinor was a party to this scheme and the recovery as to these employees by Plaintiff should therefore be against Bradshaw and Sinor. Though some of the employees testified that Sinor was personally involved in their endorsing their checks over to Bradshaw, both Sinor and Bradshaw testified to the contrary. Circumstantial evidence, however, convinces the Court that Sinor was a party to the scheme. This is based on the evidence that the underpayment checks due the employees which he signed were not covered by adequate funds in his bank account to cover all of them. It is deemed unlikely that he would have engaged in this practice except upon the proposition that the checks or some of them would be endorsed over, in effect being covered by their own proceeds. Also, the circumstances of the alleged loan from Bradshaw to Sinor and the lack of clarity in the testimony about the same being paid back leads the Court to the conclusion that Sinor was a party to the scheme. Bradshaw

also being deemed a party to the scheme and being Superintendent over the men for the employer Sinor is included in the definition of an employer under the Act and liable as such. 29 U.S.C. §203 defines an "employer" as follows:

"'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee..."

The Court finds and concludes that Bradshaw was acting directly in the interest of Sinor in relation to the employees last above listed and is therefore an employer under the Act. Thus, Plaintiff should recover an appropriate judgment on behalf of the five employees last listed above in the total amount of \$2,728.34 and such judgment should be against both Sinor and Bradshaw. Walling v. Atlantic Greyhound Corporation, 61 F. Supp. 992 (ED S.C. 1945); Hertz Drivurself Stations v. United States, 150 F. 2d 923 (Eighth Cir. 1945).

As to issue or proposition three, the Court finds and concludes that the claimed underpayments as to employees Ewert, Kellenberger and Phelan have not been established by the Plaintiff. These employees were hauling on a commission basis. In all instances they were paid above the minimum wage for hours worked in such hauling. However, Plaintiff claims that after they put in 40 hours hauling each work week that their further hours of hauling during each work week were paid at the agreed commission of 20% and not increased to time and a half or to 30%. The employees generally claimed that they worked about 85 hours per work week. The company records show that they were paid for both straight time and overtime each week. The Defendants and the bookkeeper involved testified that the hauling tickets of these employees were sent in for payment to the office and that the hauling tickets were separated into those earned within forty hours of work during the first part of each work week and those hauling tickets earned thereafter during the work

week. They further testified that as to the latter tickets they were computed and paid at the rate of 30% or representing time and a half for that work accomplished after 40 hours of each work week. An examination of the pertinent checks reveals that this must be so. Taking the average 85 hours of work per week as claimed by Plaintiff for these employees and relating those hours to straight time and overtime as shown by the checks and supporting papers, it becomes obvious that they were paid approximately one and a half time on the approximate 45 overtime hours as compared with their payment for straight time on the first 40 hours of each work week.

Accordingly, these employees were not paid in violation of the Act but were paid a commission of 20% on the first forty hours of commission hauling each work week and 30% or time and a half on hours worked over 40 hours each work week. The commissions paid were all above the minimum wage as to both straight time and overtime. Plaintiff should not recover as to these employees.

As to employee Turpin who worked in the yard first as a mechanic and later as a loader, the Plaintiff claims that he was on a salary of \$2.50 per hour and worked overtime for which he was not paid. The testimony of Turpin is less than satisfactory. The Plaintiff used 68 hours per work week as a mechanic and 60 hours per work week as a loader as the basis for computing the overtime claimed to be due this employee. But Turpin's testimony does not support the basis so used by the Plaintiff. Turpin said he went to work at 6:00 a.m. and then said 7:00 a.m. His testimony was inconsistent as to when

he quit. He testified that he was usually out of there by 2:00 or 3:00 o'clock in the afternoon on the mechanic deal and then testified that he remained there until 6:30 p.m., 7:00 p.m. and 9:00 p.m. He also testified that he closed up the yard on many evenings. The Superintendent denied this and after observing Turpin the Court must conclude that he would not be the type person that one would allow to close up a business establishment at the end of the day. The Superintendent testified that Turpin only worked 40 hours a week and put in very little overtime for which he was properly paid. Time slips regarding Turpin were put in evidence, some of which he signed. They generally supported the Superintendent to the effect that Turpin generally worked only forty hours or less each week with but little overtime for which he was paid time and a half. The Court therefore finds and concludes that Turpin was paid at a rate above the minimum wage for his straight time worked and at time and a half for such overtime as he put in. Plaintiff should not recover judgment on behalf of Turpin in this issue or proposition.

As to employee Bob Giles the evidence establishes and the Court finds that he was guaranteed and paid a weekly salary of \$150.00. Sinor so testified. He operated a front end loader in the yard. Giles worked three weeks at this weekly salary. This weekly salary was for a forty hour week. Giles testimony as to the number of hours he worked each week is basically unsatisfactory. He first testified that he could not say how many hours he worked each week. He then testified that he worked 8 to 10 hours per day for five days and a half day on Saturday. He then testified that he averaged

45 to 50 hours per week. The evidence shows that he got the same amount of money for each of the three weeks that he worked. Sinor testified that he did guarantee Giles \$150.00 a week but he further testified that he did not know what hours he worked. Bradshaw, the Superintendent of Giles, testified that Giles worked only forty hours per week. He further testified that Giles did not work any on Saturdays. He did testify that Giles came to the yard one Saturday but that he told him to go on home, that he (Bradshaw) would do the unloading. Company records in evidence show a time slip for Giles for each of the three weeks that he worked. Giles signed each of these time slips showing the total hours worked to be 40 hours for each week for which he was paid \$150.00 at the rate of \$3.75 per hour.

It is the Plaintiff's contention that Giles in fact worked overtime and that under the provisions of 29 CFR §778.113^{1/} Giles should be paid for his overtime hours worked each week at time and a half computed on his regular rate of compensation which would be \$150.00 divided by 40 hours or \$3.75 per hour to which is added one half for time and a half. His overtime hours should therefore be compensated at the rate of \$5.63 per hour. The Court agrees with this method of computation on the basis that Giles was paid a weekly salary. But the Court finds from the evidence that Giles did

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This regulation provides as follows:

"(a) *Weekly salary.* If the employee is employed solely on a weekly salary basis, his regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate. If an employee is hired at a salary of \$70 and if it is understood that this salary is compensation for a regular workweek of 35 hours, the employee's regular rate of pay is \$70 divided by 35 hours, or \$2 an hour, and when he works overtime he is entitled to receive \$2 for each of the first 40 hours and \$3 (one and one-half times \$2) for each hour thereafter. If an employee is hired at a salary of \$70 for a 40-hour week, his regular rate is \$1.75 an hour."

not in fact work overtime during any of the three weeks that he worked. The Court finds from the evidence as above set forth and particularly from the testimony of the Superintendent and the time slips signed by Giles that Giles in fact only worked 40 hours each workweek for which he was paid the agreed salary which is above the minimum wage requirement. Thus, Plaintiff is not entitled to recover anything herein on behalf of Giles.

As to employee Daniel Dawson, it is the contention of the Plaintiff that he was paid a weekly salary of \$175.00 for a 40 hour week but that he in fact worked more than 40 hours per week and was not paid anything for his overtime hours. The work slip signed by Dawson for the first week shows that he only worked a total of 35 hours for which he was paid \$87.50 at the hourly rate of \$2.50. The work slip for the second week of employment, also signed by Dawson, shows that he worked forty hours for which he was paid \$100.00 at the rate of \$2.50 per hour and that he worked 20 hours overtime for which he was paid \$75.00 at the rate of \$3.75 per hour, or time and a half, for a total weekly compensation of \$175.00. Dawson's work slip for the third week shows the same as for the second week with \$175.00 being the total amount paid. Dawson did not sign this work slip. No work slips were put in evidence by either side for any of the remaining 21 weeks that Dawson worked. However, there was placed in evidence stubs from his weekly checks which indicated that his total earnings for each week except the first week were \$175.00. Dawson testified that he was paid at the rate of \$2.50 per hour; that he worked ten hours

per day for six days a week; that sometimes he would quit at noon on Saturday; that he averaged 55 hours per week; that he worked about the same each day and that some days maybe he worked an hour overtime. He also testified that he might have worked less than 55 hours per week and also that he might have worked less than 50 hours per week. Finally, he testified that if he took off during any week that he would make up for it. Plaintiff urges that upon the foregoing evidence the Court should conclude that Dawson was paid a weekly salary of \$175.00 per week for a 40 hour week and as he worked more than 40 hours each week he has not been paid anything for his overtime which should be computed at \$175.00 per week divided by 40 hours which comes to \$4.38 per hour and \$6.57 per hour for time and a half overtime. If Dawson did work 60 hours a week and was not paid for overtime he would have worked 22 weeks (excluding the first week) times 20 hours per week overtime for a total of 420 overtime hours for none of which time he has been paid. On this basis he would be entitled to pay in the amount of 420 hours times \$6.57 an hour or \$2,759.40. However, strangely the Government only claims that Dawson was underpaid for his 23 week period of employment in the amount of \$385.00.

In any event, the Court finds and concludes from the evidence that the agreement between Dawson and his employer was that he would be paid at the rate of \$2.50 per hour for 40 hours and then would work an additional 20 hours of overtime per week for which he would be paid time and a half or \$3.75 per hour. This is supported by the testimony of Dawson to the effect that he was employed to work at the rate of \$2.50 per hour for straight time. It is further supported by the only time slips placed in evidence, two of which were signed by

Dawson and from the check stubs it would appear that this arrangement was accomplished throughout the rest of his period of employment. Therefore, finding that the agreement between Dawson and his employer was that he would work 40 hours per week at the rate of \$2.50 per hour and 20 additional hours per week at time and a half, the Court concludes that Dawson has not been underpaid. In fact, if some of his testimony is to be believed Dawson has been overpaid. It is therefore the finding and conclusion of the Court that the work agreement between Dawson and his employer was not that he would work 40 hours per week for a salary of \$175.00. Rather, the work agreement between Dawson and his employer was that he would work 40 hours per week for \$100.00 at \$2.50 per hour straight time and that he would work 20 hours per week overtime at time and a half for \$75.00 at \$3.75 per hour for all of which he has been paid.

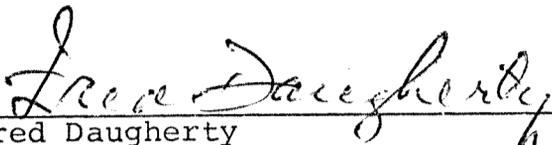
Based on the foregoing Plaintiff is entitled to an appropriate judgment against the Defendants as above indicated restraining the withholding of wages found to be due certain employees under the Act as above set forth together with interest at 6% per annum from date the respective amounts became due. In the circumstances of this case, the Court finds in the exercise of its discretion that it is unnecessary to issue a permanent injunction against the Defendants from violating the provisions of the Act in the future.^{2/} Triple "AAA" Company v. Wirtz, 378 F. 2d 884 (Tenth Cir. 1967); Buckley v. Wirtz, 326 F. 2d 838 (Tenth Cir. 1964).

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In this connection L. C. Sinor is no longer doing business as L. C. Sinor Trucking Company. No violation is shown against L. C. Sinor Sand Company, Inc. None of the employees now involved work for any of the Defendants.

Counsel for Plaintiff will prepare an appropriate judgment based on the foregoing and submit the same to the Court within ten (10) days from the date hereof.

Dated this 29 day of October, 1974.



Fred Daugherty
United States District Judge

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

FILED
OCT 30 1974

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) -v-)
)
) ROBERT L. STALEY, II and)
) GLADYS E. STALEY,)
)
) Defendants.)

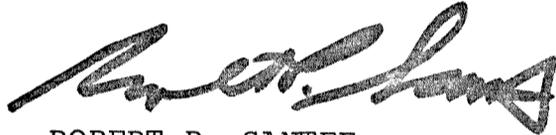
Civil Action No. 74-C-344 ✓

NOTICE OF DISMISSAL

COMES NOW the United States of America, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal of the instant action, without prejudice.

Dated this 30th day of October, 1974.

NATHAN G. GRAHAM
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 30th day of OCT., 1974.


Assistant United States Attorney

attorney's fee is a non-dischargeable debt in bankruptcy. See Collier Bankruptcy Manual, "Debts Not Affected By Discharge", ¶17.04, p. 219; In Re Brennen, 39 F. Supp. 1022 (E.D. NY 1941); Allison v. Allison, 372 P. 2d 946 (Colo. 1962); Turman v. Turman, 438 P. 2d 488 (Okla. 1968).

The reason for this rule of law has been variously stated:

"...The allowance to her (wife in divorce action) for solicitors' fees is based upon the same underlying thought as is an allowance to her to buy food, shelter, and clothing. It is fixed within the discretion of the court. It is enforceable by contempt. It is allowed to the wife and not the counsel..." Merriman v. Hawbaker, 5 F. Supp. 432 (E.D. Ill. 1934).

"Counsel fees granted in a matrimonial matter are not a debt dischargeable in bankruptcy. The New York State Statute, ...permitting counsel fees to a wife in a matrimonial action, intends that she be properly defended; and for that defense, the statute provides that the husband may be made to pay this fee; and for his failure to do so, he is amenable to a motion to punish him for contempt of Court and jailed. To discharge the debt in bankruptcy would deprive the wife of the benefits of the State statute, and nullify the effects of the statute." In Re Brennen, supra, (12 Oklahoma Statutes §1276 permits the court to award a party his or her attorney's fees).

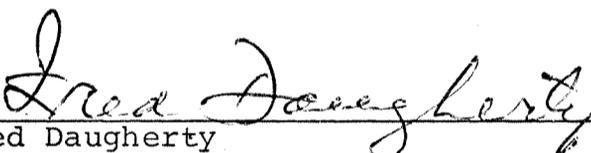
"...the obligation to pay the attorney fee assessed against the bankrupt for such services is an 'accessory' to the alimony, and 'follow(s) the nature of the liability' therefor, just as truly as do the costs of the action...A court-decreed obligation to pay such a fee also has some of the same characteristics distinguishing it from ordinary privately-contracted 'debts', that court-decreed alimony possesses..." Turman v. Turman, supra.

The rule is then, for any of the above stated reasons, that a court ordered obligation for a party to a divorce action to pay the other party's attorney's fee when the same is accessory to an alimony payment from said party is non-dischargeable in bankruptcy. But, this is not the situation in the case at hand. Defendant's debt to Plaintiff is her personal obligation.

It is not an accessory to the award of child support payments made against her former husband. There would be no frustration of a State's legislative purpose to insure that a wife has adequate representation in a divorce action by discharging this debt in bankruptcy. Defendant retained Plaintiff to represent her in her divorce action. Each party in a divorce action was ordered to pay his or her own attorney fee in the divorce decree. The essential element of the cited case, namely, a court order directing one party in a divorce action to pay the other's attorney's fee accessory to alimony or child support payments is lacking in this matter.

The decision of the Bankruptcy Judge that Defendant's debt to Plaintiff is a debt which is dischargeable in bankruptcy should be affirmed and Plaintiff's appeal denied. Judgment in accordance with this Memorandum Opinion will be entered herein by the Court.

Dated this 29 day of October, 1974.



Fred Daugherty
United States District Judge

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
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)
 DARLENE J. WRY, AND)
 H.J. LONGBINE,)
)
 Defendants.)

FILED
OCT 29 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

Civil Action No. 74-C-190

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 25th day
of October, 1974, the plaintiff appearing by
Robert P. Santee, Assistant United States Attorney, and the
defendants, Darlene J. Wry and H.J. Longbine, appearing not.

The Court being fully advised and having examined the
file herein finds that the defendants, Darlene J. Wry and H. J.
Longbine, were served by publication, as appears from the Proof of
Publication filed herein on August 19, 1974.

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

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

Lot Thirteen (13), Block One (1),
Yahola Heights Addition to the City
of Tulsa, Tulsa County, State of Oklahoma,
according to the recorded plat thereof.

THAT the defendants, Darlene J. Wry and H.J. Longbine,
did, on the 27th day of February, 1973, execute and deliver to the

Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,500.00, with 7 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants, Darlene J. Wry and H. J. Longbine, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the Plaintiff in the sum of \$10,544.67, as unpaid principal, with interest thereon at the rate of 7 1/2 percent interest per annum from July 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, in rem, for the sum of \$10,544.67, with interest thereon at the rate of 7 1/2 percent per annum from July 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.

Yutten Bohannon

UNITED STATES DISTRICT JUDGE

APPROVED.

Robert P. Santee

ROBERT P. SANTEE
Assistant United States Attorney
(tsi)

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
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)
)
 JOYCE L. ANDERSON,)
)
 Defendant.)

E I L E D
OCT 20 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

Civil Action No. 74-C-331

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 24 day
of October, 1974, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney, and the defendant,
Joyce L. Anderson, appearing not.

The Court being fully advised and having exaimed the
file herein finds that Joyce L. Anderson was served with Summons
and Complaint on August 20, 1974, as appears from Marshals Return
of Service herein.

It appearing that the said defendant has 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 se-
curing said mortgage note and that the following described real
property is located in Tulsa County, Oklahoma, within the Northern
Judicial District of Oklahoma:

Lot Twenty-three (23), Block Five
(5), NORTHBRIDGE, an Addition in
Tulsa County, State of Oklahoma,
according to the recorded Plat
thereof.

THAT the defendant, Joyce L. Anderson, did on the 21st
day of August, 1973, execute and deliver to the Administrator of
Veterans Affairs, her mortgage and mortgage note in the sum of
\$12,250.00, with 4 1/2 percent interest per annum, and further
providing for the payment of monthly installments of principal and
interest.

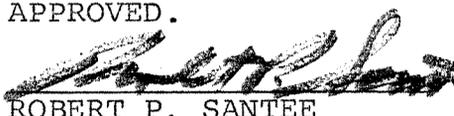
The Court further finds that the defendant, Joyce L. Anderson, made default under the terms of the aforesaid mortgage note by reason of her failure to make monthly installments due thereon for more than 11 months last past, which default has continued and that by reason thereof the above-named defendant is now indebted to the plaintiff in the sum of \$12,273.85, as unpaid principal, with interest thereon at the rate of 4 1/2 percent interest per annum from November 1, 1973, until paid, plus the cost of this action accrued and accruing.

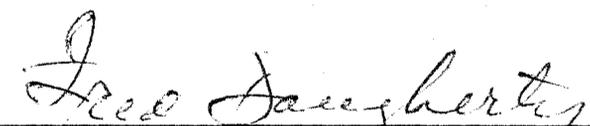
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendant, in personam, for the sum of \$12,273.85 with interest thereon at the rate of 4 1/2 percent per annum from November 1, 1973, plus the cost of this action accrued and accruing, plus any additional 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 defendant 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, the defendant and all persons claiming under them since the filing of the complaint herein be and is forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

APPROVED.


ROBERT P. SANTEE
Assistant U.S. Attorney
(tsi)


UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,

Plaintiff,

-v-

LARRY E. CARNEY and
SUSAN J. CARNEY,

Defendants.

E I L E D

OCT 21 1974

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

Civil Action No. 74-C-343

NOTICE OF DISMISSAL

COMES NOW the United States of America, plaintiff
herein, by and through its attorney, Robert P. Santee, Assistant
United States Attorney for the Northern District of Oklahoma,
and hereby gives notice of its dismissal of the instant action.

Dated this 21st day of October, 1974,

NATHAN G. GRAHAM
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

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

ROYCE G. MORRIS and WANDA JEWELL MORRIS,)
husband and wife,)

Plaintiffs,)

vs)

PEABODY COAL COMPANY,
A Delaware Corporation,)

Defendant.)

NUMBER 74-C-273 ✓

FILED

OCT 21 1974 *Just*

ORDER OF DISMISSAL

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

ON THIS 21st day of October, 1974, upon the written Application of the Plaintiffs and the Defendant, and their Counsel, for a Dismissal with Prejudice of the above entitled cause of action and complaint, the Court having examined said Application, finds that the parties hereto have entered into a compromise settlement, covering all claims involved in the complaint, and have requested that the Court 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 THE ORDER, JUDGMENT AND DECREE OF THE COURT, that the Complaint, and all causes of action of the Plaintiffs, filed in this cause of action against the Defendant, be, and the same is hereby dismissed with prejudice to any future action.

Irma Sawyer

JUDGE, of the District Court of the
United States, for the Northern
District of Oklahoma

APPROVED:

RICHARD W. KIDDLE
Attorney for Plaintiffs

JAMES D. GOODPASTER
Attorney for Plaintiffs

BY *James D. Goodpaster*

BASSMANN, GORDON, MAYBERRY & SCARTH

BY: *Jack E. Gordon*

JACK E. GORDON, Attorney for Defendant

Plaintiff's Motion should therefore be granted if Plaintiff has shown good cause, and should be denied if he has failed to show good cause.

From the pleadings and pre-trial conference it appears that the evidence Plaintiff wants to introduce consists of a single letter written by E. A. Felmler, D.O., which states that Plaintiff has been under his care since June 1974 suffering from lumbar instability, and that on June 12, 1974 spinal fusion surgery was performed on Plaintiff. It is Defendant's position that the Motion should be overruled since the Administrative Law Judge has already considered Plaintiff's lower back condition and that this is not new evidence having a bearing on the factual issues already resolved by the Secretary.

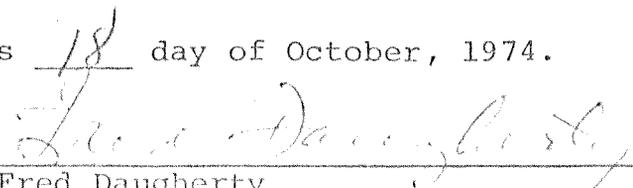
The issue which is before the Court is whether Plaintiff has sustained his burden of showing good cause. If a 42 U.S.C. §405(g) Motion to Remand is to be granted, the movant has the burden of showing good cause, Long v. Richardson, 334 F. Supp. 305 (W.D. Va. 1971). Movant should show the general nature of the evidence, or the evidence itself, and that the evidence is necessary to the determination of the case, Long v. Richardson, supra, Hallard v. Fleming, 167 F. Supp. 205 (W.D. Ark. 1958). However, as has been frequently stated, "The Social Security Act is to be liberally construed as an aid to the achievement of its Congressional purposes and objectives. Narrow technicalities which proscribe or thwart its policies and purposes are not to be adopted." Schroeder v. Hobby, 222 F. 2d 713 (Tenth Cir. 1955), Martin v. Richardson, 325 F. Supp. 686 (W.D. Va. 1971). The showing of good cause which is required for the granting of a 42 U.S.C. 405(g) Motion to Remand is not such a technical and

cogent showing of good cause as is required to justify the vacation of a judgment or the granting of a new trial, Martin v. Richardson, supra, Hallard v. Fleming, supra, Sage v. Celebrezze, 246 F. Supp. 285 (W.D. Va. 1965).

The cause for remand shown by Plaintiff in this case is that he has been under the care of a physician for lumbar instability and has undergone spinal fusion surgery since his case was last considered by the Secretary. Insofar as the evidence relates only to Plaintiff having been under the care of a physician since the last consideration of his case by the Secretary, Defendant's contention that this is not new evidence, but is merely cumulative and should not be cause for remand is correct, Morris v. Finch, 319 F. Supp. 818 (S.D. W. Va. 1969), Schall v. Gardner, 308 F. Supp. 1125 (D. S.D. 1970). Mere cumulative evidence is not a sufficient basis to justify remand. However, in the present case there is new evidence and not just cumulative evidence. The record shows that Plaintiff had undergone various treatments for his back ailments, but does not show that he had ever undergone fusion surgery. This is a new development which relates to the basis of Plaintiff's cause of action. Such new and relevant evidence is good cause for remand, Epperly v. Richardson, 349 F. Supp. 56 (W.D. Va. 1972), Story v. Richardson, 356 F. Supp. 1182 (E.D. Tenn. 1972).

The evidence which Plaintiff has shown the Court constitutes good cause for remand within the terms of 42 U.S.C. §405(g). The case should be remanded to the Secretary for the introduction and consideration of the evidence. The Secretary shall hear the evidence and either modify or affirm his findings of fact and conclusions of law.

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


Fred Daugherty
United States District Judge

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

UNITED STATES OF AMERICA,

Plaintiff,

-v-

JOHNNY LEE WOODS, ET AL,

Defendants.

E I L E D

OCT 17 1974

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

Civil Action No. 74-C-336

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17th
day of October, 1974, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; and the defendants,
Johnny Lee Woods, Shari Allene Woods, County Treasurer, Rogers
County, and Board of County Commissioners, Rogers County,
appearing not.

The Court, being fully advised and having examined
the file herein, finds that Johnny Lee Woods was served with
Summons and Complaint on August 26, 1974; that County Treasurer,
Rogers County, and Board of County Commissioners, Rogers County,
were served with Summons and Complaint on August 20, 1974; and
that Shari Buckland, formerly Shari Allene Woods, was served
with Summons and Complaint on September 10, 1974; all as appears
from the Marshal's Returns of Service filed herein.

It appears that Johnny Lee Woods; Shari Buckland,
formerly Shari Allene Woods; County Treasurer, Rogers County;
and Board of County Commissioners, Rogers County, 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 mort-
gage securing said mortgage note covering the following-described
real property located in Rogers County, Oklahoma, within the
Northern Judicial District of Oklahoma:

Lot Thirty-Nine (39), Block Two (2), Meadow View Addition to the City of Claremore, County of Rogers, State of Oklahoma, according to the recorded plat thereof.

That the defendants Johnny Lee Woods and Shari Allene Woods did, on the 22nd day of September, 1970, execute and deliver to Mercury Mortgage Co., Inc. their mortgage and mortgage note in the sum of \$18,000.00, 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 October 7, 1970, Mercury Mortgage Co., Inc. assigned said note and mortgage to Federal National Mortgage Association; and that by Assignment of Mortgage of Real Estate dated December 10, 1973, 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 Johnny Lee Woods and Shari Allene Woods 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 \$17,581.86, with interest thereon from August 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 Rogers, State of Oklahoma, from Johnny Lee Woods and Shari Allene Woods, the sum of \$40.93 for personal property taxes for the years 1971, 1972 and 1973, and that the County of Rogers should have judgment, in rem, for said amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants Johnny Lee Woods and Shari Allene Woods, in personam, for the

sum of \$17,581.86, with interest thereon at the rate of 8-1/2 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 or abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Rogers have and recover judgment against Johnny Lee Woods and Shari Allene Woods, in rem, for the sum of \$40.93, plus interest and penalties, but that such judgment is subject to and inferior to the judgment of the plaintiff herein.

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

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

18/ Fred Daugherty
United States District Judge

APPROVED:

Robert P. Santee
ROBERT P. SANTEE
Assistant U. S. 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,)
)
) -v-)
)
) CLETUS McINTOSH, ET AL,)
)
) Defendants.)

E I L E D

OCT 17 1974

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

Civil Action No. 74-C-201

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17th
day of October, 1974, the plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and the defendants, Cletus
McIntosh, Hattie McIntosh, and Sarah McClen, appearing not.

The Court being fully advised and having examined the
file herein, finds that Cletus McIntosh and Hattie McIntosh were
served with Summons and Complaint on May 31, 1974, and that Sarah
McClen was served with Summons and Complaint on May 1, 1974, as
appears from the Marshal's Returns of Service filed herein. It
appears that Cletus McIntosh, Hattie McIntosh, and Sarah McClen
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 Thirty-six (36), Block Two (2), Suburban
Acres Fourth Addition to the City of Tulsa,
State of Oklahoma, according to the recorded
plat thereof;

that the defendants Cletus McIntosh and Hattie McIntosh did,
on the 15th day of October, 1971, execute and deliver to the
Administrator of Veterans Affairs, their mortgage and mortgage
note in the sum of \$10,750.00, with 7-1/2 percent interest per

annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants Cletus McIntosh and Hattie McIntosh made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than nine months last past, which default has continued, and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the sum of \$10,637.79 as unpaid principal, with interest thereon at the rate of 7-1/2 percent per annum from January 1, 1974, 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 Cletus McIntosh and Hattie McIntosh, in personam, for the sum of \$10,637.79, with interest thereon at the rate of 7-1/2 percent per annum from January 1, 1974, plus the cost of this action, accrued and accruing, plus any additional sums advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

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.

15/ Fred Daugherty
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

RAYMOND D. COWAN and
JANE COWAN,

Plaintiffs,

-vs-

OKC CORP., a corporation,

Defendant,

and

ORIN D. CALLISON and
ALICE CALLISON,

Additional Parties Plaintiff,

No. 73-C-56
FILED
OCT 16 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

DISMISSAL WITH PREJUDICE

Come now the plaintiffs, RAYMOND D. COWAN and JANE COWAN, Husband and Wife, and the additional parties plaintiff joined by the earlier order of this Court, ORIN D. CALLISON and ALICE CALLISON, Husband and Wife, and they do hereby voluntarily dismiss the above entitled and numbered cause, with prejudice to any other, further or additional cause or causes of action predicated or founded upon any of the allegations set forth in their complaint filed herein and adopted, respectively, or any matters arising therefrom or connected therewith, at their cost.

Dated this 11th day of October, 1974.

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

Raymond D. Cowan
RAYMOND D. COWAN

Jane Cowan
JANE COWAN

Orin D. Callison
ORIN D. CALLISON

Alice Callison
ALICE CALLISON

READ AND APPROVED AS TO FORM,
AND ANY CLAIMED ATTORNEY'S LIEN
IS HEREBY RELEASED:

Wm. "Bill" Thomas
WM. "BILL" THOMAS, Attorney for
Plaintiffs and Additional
Parties Plaintiff

10-21-74
It is so Ordered.
Fred Daugherty
U.S. District Judge

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) -v-)
)
) XENEPHONE WORKS,)
) EDNA E. WORKS,)
) BOB HORTON, D/B/A)
) BOB HORTON PLUMBING COMPANY,)
) ABS SCREEN COMPANY,)
) AMERICAN BUILDERS SUPPLY COMPANY,)
) TULSA COUNTY TREASURER,)
) BOARD OF COUNTY COMMISSIONERS,)
) TULSA COUNTY, and)
) OKLAHOMA EMPLOYMENT SECURITY COMMISSION,)

Defendants.

JUDGMENT OF FORECLOSURE

NOW on this 15 day of ~~September~~ ^{October}, 1974, this matter coming on for consideration, the plaintiff, United States of America, appearing by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma; the defendant Bob Horton D/B/A Bob Horton Plumbing Company appearing by his attorney, Dewey Stark; the defendant ABS Screen Company appearing by its attorney, Edmund C. Werre; the defendants Tulsa County Treasurer and Board of County Commissioners appearing by their attorney, Gary J. Summerfield; the defendant American Builders Supply Company appearing by its attorney, Harvey C. Carpenter; the defendant Oklahoma Employment Security Commission appearing by its attorney, Milton R. Elliott; and the defendants Xenephone Works and Edna E. Works appearing not; and it appearing that this is a suit based upon a Promissory Note and for foreclosure of a certain Real Estate Mortgage, Financing Statements, and Security Agreements securing said Note;

And it further appearing that the chattels described in said Financing Statements and Security Agreement are located in Tulsa County, and that the following described real property

FILED
OCT 15 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

Civil Action
No. 74-C-92

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

Lot Six (6), Block One (1), Meadowbrook Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof;

And it further appearing that due and legal personal service of summons was made upon the defendants Xenephone Works and Edna E. Works on February 13, 1974, by service of Summons and Complaint, and on May 13, 1974, by Service of Summons and Amended Complaint; upon Bob Horton D/B/A Bob Horton Plumbing Company, ABS Screen Company, and American Builders Supply Company on May 17, 1974, by service of Summons, Complaint, and Amended Complaint; upon Oklahoma Employment Security Commission on May 16, 1974, by service of Summons, Complaint, and Amended Complaint; and upon Tulsa County Treasurer and Board of Commissioners, Tulsa County, on May 9, 1974, by service of Summons, Complaint, and Amended Complaint; all as appears from the Marshal's Returns of Service filed herein; and it appearing that defendants Xenephone Works and Edna E. Works have failed to file an answer or otherwise plead herein and that they, and each of them, are hereby in default; and it further appearing that Bob Horton D/B/A Bob Horton Plumbing Company has filed his Answer on June 6, 1974; that ABS Screen Company has filed its Disclaimer on May 31, 1974; that Tulsa County Treasurer and Board of County Commissioners, Tulsa County, have filed their Answers on May 28, 1974; that American Builders Supply Company has filed its Answer on May 31, 1974; and that Oklahoma Employment Security Commission has filed its Answer and Cross Petition on May 17, 1974.

The Court, being fully advised, finds that the allegations and averments in the Complaint are true and correct and that there is due and owing to the plaintiff, United States of America, from Xenephone Works and Edna E. Works, the sum of \$17,480.31, interest accrued thereon in the sum of \$523.92 through November 7, 1973, and interest accruing thereafter at the rate of \$3.1561 per day.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Xenephone Works and Edna E. Works, the sum of \$923.66 for ad valorem taxes for the years 1971, 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 there is due and owing to the County of Tulsa, State of Oklahoma, from Xenephone Works and Edna E. Works, the sum of \$39.95 for personal property taxes for the years 1971, 1972 and 1973, and that Tulsa County should have judgment, in personam, for said amount, but that such judgment is inferior to the first mortgage lien of the plaintiff herein.

The Court further finds that there is due and owing from Xenephone Works and Edna E. Works to American Builders Supply Company the sum of \$79.66, and that American Builders Supply Company should have judgment for said amount, but that such judgment is inferior to the first mortgage lien of the plaintiff herein.

The Court further finds that there is due and owing from Xenephone Works and Edna E. Works, to Bob Horton D/B/A Bob Horton Plumbing Company, the sum of \$409.00, and that Bob Horton D/B/A Bob Horton Plumbing Company should have judgment for said amount, but that such judgment is inferior to the first mortgage lien of the plaintiff herein.

The Court further finds that there is due and owing from Xenephone Works and Edna E. Works, to the State of Oklahoma ex rel Oklahoma Employment Security Commission, for unemployment taxes, the sum of \$2,058.75, together with interest on \$1,598.86 from May 8, 1974, and thereafter at the rate of one percent per month until paid, and that the State of Oklahoma ex rel Oklahoma Employment Security Commission should have judgment for said

amount, but that said judgment is inferior to the first mortgage lien of the plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff, United State of America, have and recover from the defendants Xenephone Works and Edna E. Works, a judgment, in personam, in the sum of \$17,480.31, interest accrued thereon in the sum of \$523.92 through November 7, 1973, and interest accruing thereafter at the rate of \$3.1561 per day.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against the defendants Xenephone Works and Edna E. Works for the sum of \$ 923.66 for ad valorem taxes for the years 1971, 1972 and 1973, 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 County of Tulsa have and recover judgment, in personam, against defendants Xenephone Works and Edna E. Works for the sum of \$ 39.95 for personal property taxes for the years 1971, 1972 and 1973, as of the date of this judgment, plus interest thereafter according to law, but that such judgment is inferior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that American Builders Supply Company have and recover judgment, in personam, against Xenephone Works and Edna E. Works, for the sum of \$79.66, but that such judgment is inferior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Bob Horton d/b/a Bob Horton Plumbing Company have and recover judgment, in personam, against Xenephone Works and Edna E. Works, for the sum of \$409.00, but that such judgment is inferior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the State of Oklahoma ex rel Oklahoma Employment Security Commission have and recover judgment, in personam, against Xenephone Works and Edna E. Works, for the sum of \$2,058.75, together with interest on \$1,598.86 from May 8, 1974, and thereafter at the rate of one percent per month, but that such judgment is inferior to the first mortgage lien of the plaintiff herein.

The Court further finds that the plaintiff has a first and prior lien upon the chattels described in the Security Agreement and Financing Statements hereinabove referred to, and described as follows:

All machinery and equipment, including automotive equipment, furniture and fixtures, and inventory owned or acquired for use in Debtor's business and proceeds therefrom; all accounts receivable due or thereafter accrued in favor of Debtor, and contract rights;

and that the plaintiff has a first and prior lien upon the real property described in the real estate mortgage hereinabove referred to, and described as follows:

Lot Six (6), Block One (1), Meadowbrook Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of the defendants Xenephone Works and Edna E. Works to satisfy the judgment of the plaintiff, an Order of Sale shall issue to the United States Marshal for the Northern District of Oklahoma, commanding him to levy upon, advertise and sell according to law, with appraisement, the real property hereinabove described and the chattels listed in the Security Agreement and Financing Statements hereinabove described and to apply the proceeds of such sale as follows:

1. In payment of the costs of the sale and of the cost of this action.

2. In payment to plaintiff of the sum of \$17,480.31, interest accrued thereon in the sum of \$523.92 through November 7, 1973, and interest accruing thereafter at the rate of \$3.1561 per day.

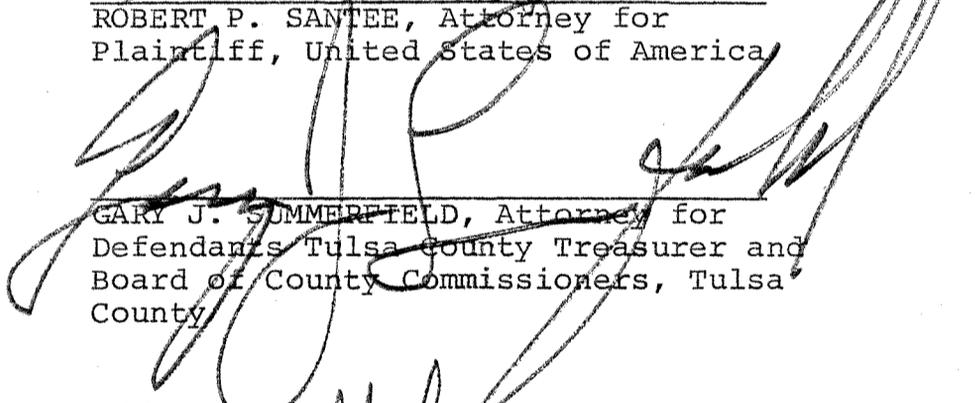
3. The residue, if any, to be paid to the Clerk of this Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the hereinabove-described real estate and chattels be sold, with appraisement, and after such sale by virtue of this judgment and decree, the defendants, and each of them, and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed of and from any and every lien upon, right, title, interest, estate or equity of, in or to the property hereinabove referred to.

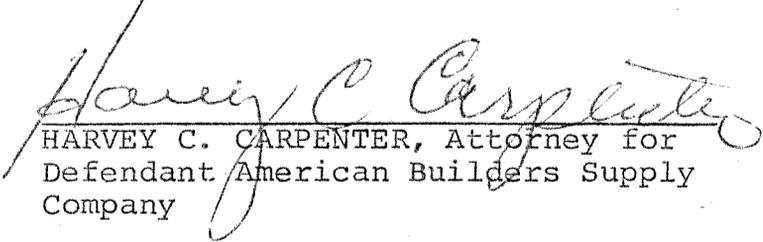

United States District Judge

APPROVED:


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


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


DEWEY STARK, Attorney for Defendant
Bob Horton d/b/a Bob Horton Plumbing
Company


HARVEY C. CARPENTER, Attorney for
Defendant American Builders Supply
Company


MILTON R. ELLIOTT, Attorney for
Defendant State of Oklahoma ex rel
Oklahoma Employment Security Commission

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

E I L E D

OCT 15 1974 *mm*

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

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

Plaintiff,)

vs.)

No. 74-C-110 ✓

PERMIAN CORPORATION, a Delaware)
corporation,)

Defendant.)

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 this Court enter an Order allowing plaintiff to dismiss without prejudice, each party to bear its own costs, for the following reasons:

Plaintiff has been unable, through due diligence, to produce any admissible evidence in support of its claim against the defendant.

WHEREFORE, plaintiff asks this Court to dismiss this action without prejudice, each party to bear its own costs.

ROBERT J. STANTON, Trustee

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

ORDER OF DISMISSAL

BEFORE THE HONORABLE ALLEN E. BARROW, Chief Judge of the United States District Court for the Northern District of Oklahoma, this matter was presented to the Court upon the statement of facts and request for dismissal without prejudice, and

Cause of and Complaint
the Court thereupon dismissed the above entitled action without
prejudice, each party to bear its own costs.

DATED this 15 day of October, 1974.

Luther Bohanon

LUTHER BOHANON
Judge, United States District
Court, Northern District of Oklahoma

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

ROSALIE FABEL, NORMA GARUFT,)
LYNN MORGAN, LINDA COOK MASSEY,)
CLARETHA SADDLER, VIRGINIA)
PHARISS, et al,)

Plaintiff,)

vs.)

No. 72-C-298)

OKLAHOMA HOME JUICE COMPANY, INC.)
d/b/a HOME JUICE COMPANY,)
LEONARD M. HADDAD, DELORES GRANITE,)
MARIE HADDAD, JACK LISTER, ALBERT A.)
ALLEN, GERALD M. WOLBERG,)

Defendants.)

FILED

OCT 15 1974

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

ORDER

NOW on this 15 day of October, 1974 there comes on
Consideration
for ~~hearing~~ the plaintiffs' Dismissal with Prejudice for the
reason that a compromise settlement has been reached between
the parties hereto in the above styled cause.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court
and Complaint
that the above cause of action be dismissed with prejudice.

Cecilia E. Barrow

JUDGE OF THE DISTRICT COURT

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

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,)

PLAINTIFF,)

VS.) NO. 72-C-176 ✓

TARON P. MCKOWEN,)

DEFENDANT.)

ORDER

E I L E D

OCT 11 1974 *hm*

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

ON THIS 10TH DAY OF SEPTEMBER, 1974, IT APPEARING TO THE
COURT THAT ARBITRATION HAS BEEN COMPLETED AND THAT NOTHING REMAINS
TO BE DONE IN THIS MATTER, THE CASE IS HEREBY DISMISSED.

Luther Bohannon
UNITED STATES DISTRICT JUDGE

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

STANTON GAY EDWARDS,)
)
 Plaintiff,)
) 73-C-299
 vs.)
)
 DAVE FAULKNER, Sheriff of)
 Tulsa County,)
)
 Defendant.)

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

ORDER SUSTAINING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AND DISMISSING COMPLAINT AND
CAUSE OF ACTION

The Court has for consideration the Motion to Dismiss of the defendant, Dave Faulkner, which has been converted, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, to a Motion for Summary Judgment; the brief of the defendant in support thereof, the affidavit of Dr. C. R. McKewon, and, being fully advised in the premises, finds:

This action is brought pursuant to 42 U.S.C. §1983, to redress alleged violations of plaintiff's civil rights, by way of declaratory relief, preliminary and permanent injunction, compensatory and punitive damages. Jurisdiction is vested in this Court by virtue of Title 28 U.S.C. §1343.

In view of the fact that plaintiff is no longer in custody, (he was released September 22, 1973) the Court will not examine the issue of preliminary and permanent injunction.

Plaintiff alleges that on or about August 3, 1973, he was hospitalized at Hillcrest Hospital as a result of a gun shot wound to his leg. He further alleges that thereafter he was transferred to the Tulsa County Jail where he was incarcerated.

Plaintiff avers that while hospitalized at Hillcrest Hospital he was treated with a special therapy designed to teach a patient how to walk in a cast, with the aid of a crutch, without putting weight on the injured leg. While hospitalized plaintiff was under the care of Dr. Workman, who prescribed specific medication for the plaintiff.

Plaintiff further avers that upon his return to the Tulsa County Jail, he was denied the right to have his medication prescription filled and was denied the use of his crutches.

Plaintiff alleges that as a result of the denial of use of his crutches he was unable to maintain his balance and fell several times, requiring the resetting of his cast on two separate occasions. Plaintiff avers that at the time the cast was reset, Dr. Workman advised him, in the presence of two deputies, that no weight should be placed on the leg.

In view of the cases relied on by the plaintiff, the Court deems that the Constitutional deprivations complained of by the plaintiff are those based on the 14th and 8th Amendments to the Constitution, i.e., deprivation of life and liberty without due process of law and infliction of cruel and unusual punishment.

In light of these cases, the plaintiff's contention would appear to be the inadequacy of medical treatment provided prison inmates in the Tulsa County Jail is a condition subject to 8th Amendment scrutiny; and further, when practices within a prison system result in the deprivation of basic elements of adequate medical treatment, then such practices violate constitutional guarantees and federal courts must act to provide relief. It should be noted at this juncture, that the cases relied on by plaintiff are concerned with denial of or grossly inadequate medical treatment, which is distinguishable from the present controversy.

The defendant does not contest any of the allegations contained in plaintiff's complaint, but defendant does expand thereon.

Defendant has submitted the affidavit of Dr. C. R. McKewon, Physician for the Tulsa County Board of County Commissioners. Dr. McKewon admits in the affidavit that the initial prescription of Dr. Workman was not filled, but states, under oath, as follows:

"7. That affiant requested cancellation of Tylenol #4 by Dr. Workman due to problems incurred in dispensing a narcotic inside the said jail.

"8. That Dr. Workman approved the request to cancel the order and prescription of Tylenol #4 and approved the order and prescription of Darvon N 100 mg. and Valium 10 mg. issued concurrently four (4) times a day.

"9. That since the case was a non-weight bearing cast, the complainant was placed in an individual cell in said jail in a hospital bed."

The affidavit of Dr. McKewon continues to relate that upon the demand of the plaintiff to return to the Doctor, due to the cast being broken, an appointment was made the same day.

Moreover, nowhere in plaintiff's complaint is it alleged

that he was denied access to the doctor at any time.

In *Coppinger v. Townsend* (10th CCA, 1968) 398 F.2d 392, the Court noted the split in the Circuits as to whether denial of medical care constituted an actionable claim. Therein, it was stated, at 394:

"A claim of total denial of medical care differs from a claim of inadequacy of medical care. We need not decide whether denial of medical care to prisoners in reasonable need thereof is sufficient to sustain a claim under 1983 because in the instant case the allegations of the complaint, show that the medical care has been furnished."

See also *Bethea v. Crouse* (10th CCA, 1969) 417 F.2d 504.

In the instant litigation there is no questions that there was not a denial of medical care---but at the utmost, inadequate care.

Most recently, in *Dewell v. Lawson* (10th CCA, 1974) 489 F.2d 877, a case dealing with omission to provide medical care, rather than a denial, the Court, in citing other cases, states at page 882:

"The standard of liability in a case alleging cruel and unusual punishment relating to a claimed omission of medical care is whether plaintiff proves exceptional circumstances and conduct so grossly incompetent, inadequate or excessive as to shock the conscience as to be intolerable to basic fairness.....Failure to procure urgently needed medical attention may amount to cruel and unusual punishment."

The Court finds, in the instant case, that the actions of the defendant were far from shocking the conscience of this Court. They were not intolerable nor inadequate. Medical attention, as shown on the face of the complaint, was never denied plaintiff, and defendant's Motion for Summary Judgment should be sustained for failure to state a claim upon which relief can be granted.

The Court further finds that the plaintiff's Motion for Appointment of Counsel should be overruled. The Court finds that the appointment of counsel is not necessary, that an answer or hearing is not required and the ruling on the motion for summary judgment is dispositive of the matter.

IT IS, THEREFORE, ORDERED that plaintiff's Motion for Appointment of Counsel be and the same is hereby overruled.

IT IS FURTHER ORDERED that the defendant's Motion for Summary Judgment 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 10TH day of October, 1974.



CHIEF UNITED STATES DISTRICT JUDGE

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

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

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

Plaintiff,

v.

PHILLIPS PETROLEUM COMPANY
a Delaware corporation,

Defendant.

NO. 74-C-107

JOURNAL ENTRY OF JUDGMENT

Now on this 10th day of October, 1974, this matter comes on for hearing on the Motion for Summary Judgment filed herein by the defendant, pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure. Plaintiff appears by its attorneys James O. Ellison and Reuben Davis, and defendant appears by one of its attorneys, Stephen R. Johnson. Upon examination of the pleadings, affidavit, answers to interrogatories, and pre-trial order, all of which are filed herein, the Court finds as follows:

1. Plaintiff is the duly appointed, qualified and acting trustee of Tulsa Crude Oil Purchasing Company and its consolidated subsidiaries under the provisions of Chapter X of the Bankruptcy Act, which proceeding is presently pending in the U.S. District Court for the Northern District of Oklahoma under Case No. 72-B-108. Defendant is a Delaware corporation authorized to transact business in the State of Oklahoma. This Court has jurisdiction of the subject matter and the parties to this action pursuant to the provisions of Section 2 of the Bankruptcy Act, Title 11 U.S.C., Section 11.

2. The defendant is indebted to the plaintiff in the amount of \$10,541.73 for crude oil purchased from Tulsa Crude Oil Purchasing Company during the month of January, 1972, for which no payment has been made.

3. Admiral Crude Oil Corporation, a consolidated subsidiary of Tulsa Crude Oil Purchasing Company, purchased gasoline, oil and other products and services on credit card No. 679 402 055 9 from July, 1971, through July, 1972, of the value of \$133.85 for which no payment has been made. As shown by the affidavit of R. G. Montgomery on file herein, said indebtedness is owed to the defendant and is an allowable claim against the plaintiff pursuant to the provisions of Section 68 of the Bankruptcy Act, Title 11 U.S.C. Section 108.

4. Tulsa Crude Oil Purchasing Company purchased gasoline, oil and other products and services on credit card No. 679 495 700 8 from August, 1971, through April, 1972, of the value of \$4,793.07, for which no payment has been made. As shown by the affidavit of R. G. Montgomery on file herein, said indebtedness is owed to the defendant and is an allowable claim against the plaintiff pursuant to the provisions of Section 68 of the Bankruptcy Act, Title 11 U.S.C. Section 108.

5. Tulsa Crude Oil Purchasing Company purchased crude oil from plaintiff Phillips Petroleum Company during the months of November and December, 1971 and January and February, 1972 of the value of \$5,746.70, for which no payment has been made.

6. As shown by the answers to interrogatories filed herein, there is no evidence that the defendant is indebted to the plaintiff in the amount of \$3,415.80 for crude oil purchased from Admiral Crude Oil Corporation during the month of February, 1972 as contended by plaintiff.

7. The total indebtedness owed by the defendant is in the amount of \$10,541.73 on account of crude oil purchased by defendant from Admiral Crude Oil Corporation during the month of January, 1972.

8. The total indebtedness owed by the plaintiff to the defendant is in the amount of \$10,683.12 as a result of the purchase of gasoline, oil and other products and services by Admiral Crude Oil Corporation and Tulsa Crude Oil Purchasing Company, and crude oil purchases by Tulsa Crude Oil Purchasing Company.

9. There are no genuine issues as to any material fact recited above, the claims of the plaintiff and the defendant should be set off one against the other, and the defendant is entitled to judgment as a matter of law on its set off and counter-claim in the amount of \$141.39, together with interest thereon at 10% per annum from and after April 1, 1972.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant, Phillips Petroleum Company, have and recover against the plaintiff, Robert J. Stanton, Trustee of Tulsa Crude Oil Purchasing Company and its consolidated subsidiaries, judgment in the amount of \$141.39, together with interest thereon at 10% per annum from and after April 1, 1972; that defendant be, and it is hereby, authorized and directed to file an amended claim for said amount in the proceeding presently pending in the U.S. District Court for the Northern District of Oklahoma, docketed as case No. 72-B-108; and that said claim be paid pursuant to the further order

of said court.

Allen E. Barrow

United States District Judge

Approved as to form:

Attorney for Phillips

Attorney for Robert J. Stanton

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

CEMENT ASBESTOS PRODUCTS COMPANY,
a corporation,

Plaintiff,

-vs-

H & G CONSTRUCTION, INC., a
corporation, RICHARD E. HULLETT,
AND MID-CONTINENT CASUALTY COMPANY,
a corporation,

Defendants.

No. 72-C-15

FILED

OCT 9 1974

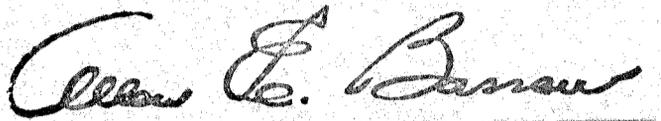
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

On this 9th day of October, 1974 the above styled cause coming on for hearing before the court by agreement and stipulation of the parties, all parties being represented as follows: For the plaintiff, Mr. Sam P. Daniel, Jr.; for the defendants, H & G Construction, Inc., and Richard E. Hullett, Mr. James L. Edgar and for defendant Mid-Continent Casualty Company, Mr. James E. Poe. Thereupon, the court having been advised, by statements of counsel and stipulations made, that a form of compromise has been entered into between the parties, finds that the same should be now approved and entered as the Judgment of the court. In accordance therewith, plaintiff is entitled to Judgment against defendants in a total sum of \$30,000.00 and defendant, Mid-Continent Casualty Company, is entitled to a Judgment for indemnification over and against the remaining defendants.

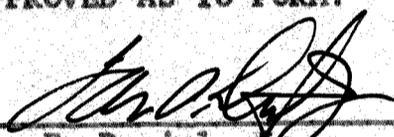
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the plaintiff have and recover Judgment of and from all defendants in a total sum of \$30,000.00

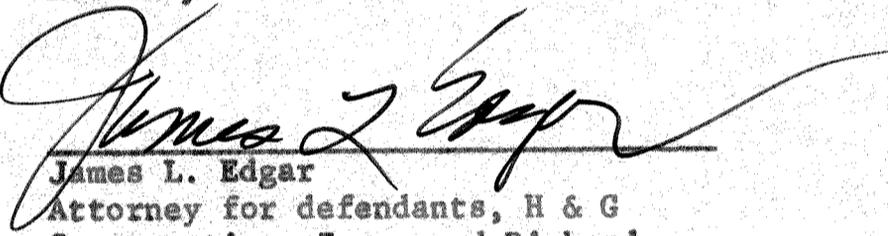
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Mid-Continent Casualty Company, as surety for the defendants, H & G Construction, Inc., and Richard E. Hullett, have Judgement over and against the said H & G Construction Inc., and Richard E. Hullett, for indemnification in the sum of \$30,000.00.

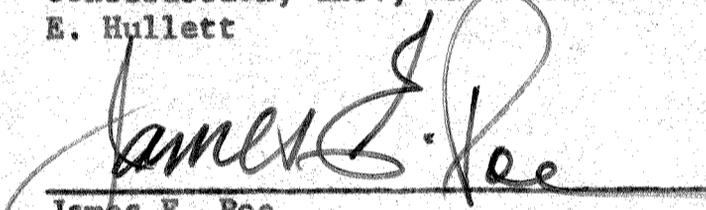


JUDGE

APPROVED AS TO FORM:



Sam P. Daniel, Jr.
Attorney for Plaintiff

James L. Edgar
Attorney for defendants, H & G
Construction, Inc., and Richard
E. Hullett

James E. Poe
Attorney for Defendant, Mid-
Continent Casualty Company

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

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

The Administrative Law Judge found that the earnings certification established that she was insured for disability benefit purposes through December 31, 1971.

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

The evidence adduced before the Administrative Law Judge reflects that Elizabeth L. Tegge was born December 3, 1918 (TR. 23). The evidence further reflects that she has approximately a tenth grade education (TR. 24).

The evidence additionally reflects that claimant is married (TR. 23).

Upon inquiry by the Administrative Law Judge, claimant testified (TR 31 et seq.) that she had worked as a waitress, had worked in a factory; worked in apartment managing; and had worked part-time for her husband in a bar he formerly owned. (TR. 32)

Based on the evidence, the Administrative Judge found that the claimant had the following medical impairments:

- (a) Perforated esophoges
- (b) Arthritis
- (c) Diabetes

Additionally, claimant testified that she had osteopetrosis of the bone and suffered from dizzy spells. (TR. 38)

The Court has carefully considered the summary of medical evidence (TR. 9-11) and the Exhibits introduced (TR. 55-123).

The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive. 42 U.S.C. §405(g) Richardson v. Perales (1971) 402 U.S. 389, at 401. Substantial

evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, supra.

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

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

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

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

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

ENTERED this 9th day of October, 1974.



CHIEF UNITED STATES DISTRICT JUDGE

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

LEONA P. REEVES,)
)
 Plaintiff,)
)
 vs.) 73-C-397
)
)
 CASPER WINEBERGER, Secretary)
 of Health, Education, and Welfare,)
)
 Defendant.)

FILED

OCT 9 1974

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

JUDGMENT

This action came on for consideration on the Motion for Summary Judgment filed by the defendant. The original action was for a review of the Administrative Law Judge's decision, Department of Health, Education and Welfare, entered August 10, 1973, and the action of the Appeals Council examining the Administrative Law Judge's decision dated November 6, 1973, all as provided by 42 U.S.C.A. Section 405(g), and in conformity with the Order entered this date,

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

ENTERED this 9th day of October, 1974.



CHIEF UNITED STATES DISTRICT JUDGE

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

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

The Administrative Law Judge found that claimant met the special earnings requirements in February, 1972, the alleged date

of onset of disability, and will continue to meet those requirements at least through September 30, 1973.

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

Claimant was born December 7, 1916. (TR-28) She finished the eleventh grade in highschool. (TR-29) She is married to Wesley J. Reeves. (TR-102, Exhibit 16)

Her work record is as follows: She operated a sewing machine (TR-35) with Redocks Manufacturing Company (TR-36); worked as a nurses aide at the Nowata General Hospital and Coffeyville Memorial Hospital (TR-35, 36); worked as a waitress ("I've been a waitress, but I don't like it.") (TR-36); worked as a cook (TR-36); and her last employment was cooking and washing dishes at the Town and Country Cafe (TR-37).

The disabilities testified to by claimant in the record are back and stomach trouble (TR-34); aching legs (TR-34); visual problems (TR-43); a problem in speaking (TR-44); Thyroids (TR-44).

Claimant testified that sometime around December 14, 1970, she slipped and fell and was hospitalized for approximately a week or ten days and was placed in traction (TR-38). She testified that she received \$1,000 at Marcus but didn't think it was workmen's compensation but insurance. (TR-44) There appears to be some difficulty in the record in ascertaining whether the sum received by the claimant was workmen's compensation or not (also as reflected by some of the exhibits).

Claimant additionally testified to an incident that occurred on February 28, 1972 (TR-41), which resulted in hospitalization and surgery to the right part of her abdomen. (TR-42)

Exhibit 16 (TR-102) indicates that claimant was operated for a Nodular lymphoid hyperplasia of the cecum by W. M. Aldredge, M.D. The prognosis was good. (TR-113, Exhibit 17)

There are five doctor's reports submitted in the transcript. One is a letter dated July 13, 1972 (TR-114) from William M. Aldredge, M.D. to Roy Kirby, Attorney at Law, wherein Dr. Aldredge advised that there could be no connection between the automobile accident and the lesion of claimant's cecum. Exhibit 18 (TR-115-117) is a three page report by Dr. E. W. Allensworth to the Department Institutions, Social and Rehabilitative Services, dated January 24, 1973. The Court notes that claimant objected to this report on the basis that she did not feel that the doctor had spent sufficient time with her to write the rather lengthy and comprehensive report. He found no disability. Exhibit 21 (TR-120) is a report from William H. Campbell, M.D., Ophthalmologist, to Mr. Joe Bonner, dated June 18, 1973 in which he states the impression of decreased visual acuity, etiology unknown. Exhibit 22 (TR-21) is a report of Dr. O. L. Grigsby which states "I see very little disability at this time unless the patient develops some other illness. Prognosis is good." Exhibit AC-1 is a report of O. L. Grigsby, dated October 2, 1973, wherein he states that for the time he has had claimant as a patient he considered her unemployable for the type and kind of physical employment for which she was qualified to do. Exhibit 22, supra, was dated May 30, 1973.

The Administrative Law Judge found that the claimant was not under a disability, as defined in the Social Security Act, as amended, at any time prior to the date of his decision (TR-14)

The Administrative Law Judge's decision was upheld by the Appeals Council on November 6, 1973.

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

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

The Secretary of Health, Education and Welfare must resolve conflicts in evidence in a disability proceeding. Hemphill v. Weinberger (5th CCA, 1973) 483 F.2d 1137; Baker v. Gardner (3rd CCA, 1966) 362 F.2d 864.

Findings of private insurance programs and Workmen's Compensation agencies should be considered by the Secretary, but they are not conclusive as to whether an individual is disabled. Hicks v. Gardner (4th CCA, 1968) 393 F.2d 299

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

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

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

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

ENTERED this 9th day of October, 1974.



CHIEF UNITED STATES DISTRICT JUDGE

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

PATTY PRECISION PRODUCTS CO.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
PHOTOPHYSICS, INC.,)
a California corporation,)
)
Defendant.)

No. 73-C-101

E I L E D
OCT. 11 1974 J.
Jack C. Silver, Clerk
U. S. DISTRICT COURT

THE AMERICAN NATIONAL BANK,)
BRISTOW, OKLAHOMA, a National,)
Banking corporation,)
)
Plaintiff,)
)
vs.)
)
PHOTOPHYSICS, INC., a California)
corporation, and PATTY)
PRECISION PRODUCTS CO., an)
Oklahoma corporation,)
)
Defendants.)

Consolidated
No. C-73-74 ✓

O R D E R

NOW ON this 7th day of October, 1974, comes on for hearing the Application For Dismissal With Prejudice of plaintiff's, Patty Precision Products Co., an Oklahoma corporation, claim against Photophysics, Inc., a California corporation and further for hearing the Application For Dismissal With Prejudice of the cross-complaint of defendant, Photophysics, Inc., against Patty Precision Products Company, an Oklahoma corporation.

The Court, being fully advised in the premises, finds that the plaintiff's complaint should be and the same is hereby dismissed with prejudice to plaintiff's right to re-file and it is further ordered, adjudged and decreed that the cross-complaint filed by Photophysics, Inc., a California corporation should be and the same is hereby dismissed with prejudice to the right of Photophysics, Inc., to re-file.

Joseph W. Merri
United States District Judge
Allen Barrow

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

PATTY PRECISION PRODUCTS CO.,
an Oklahoma Corporation,

Plaintiff,

vs.

PHOTOPHYSICS, INC.,
a California Corporation,

Defendant.

No. 73-C-101

FILED
OCT. 7 1974 J.

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

THE AMERICAN NATIONAL BANK,
BRISTOW, OKLAHOMA, a National
Banking Corporation,

Plaintiff,

vs.

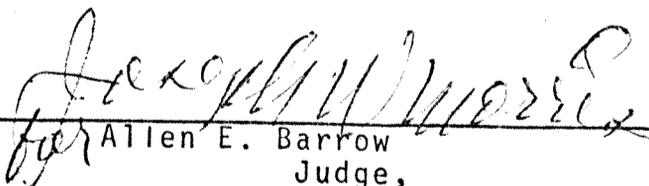
PHOTOPHYSICS, INC., a California
Corporation, and PATTY
PRECISION PRODUCTS CO., an
Oklahoma Corporation,

Defendants.

No. C-73-74 ✓

O R D E R

This October 17th, 1974, this cause comes on for hearing on application of the American National Bank, Bristow, Oklahoma, a National Banking Corporation to dismiss its complaint with prejudice to any future action, and the Court being fully advised in the premises finds that plaintiff's complaint should be and the same is hereby dismissed with prejudice to plaintiff's right to re-file this action.


for Allen E. Barrow
Judge,
U.S. District Court
Northern District of Oklahoma

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

RICHARD W. RECORD,

Plaintiff,

vs.

TYLER PIPE & FOUNDRY CO.,
INC., a Foreign Corporation,
and PAUL G. SIMMONS,

Defendants.

NO. 74-C-256

E I L E D

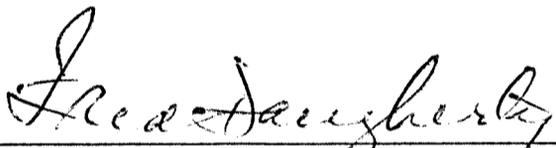
OCT 4 1974

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

ORDER OF DISMISSAL

ON this 4 day of October, 1974, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

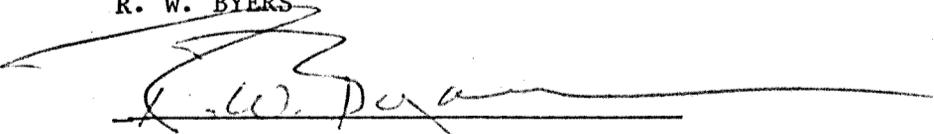
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendants be and the same hereby is dismissed with prejudice to any future action.



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

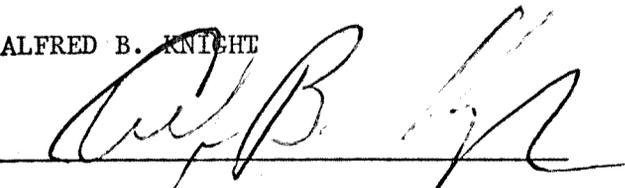
APPROVAL:

R. W. BYERS



Attorney for the Plaintiff

ALFRED B. KNIGHT



Attorney for the Defendants

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

FILED

OCT 3 1974

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

UNITED STATES OF AMERICA and)
ANNETTE BOWIE, an officer)
of the Internal Revenue Service,)
)
Petitioners,)
)
vs.)
)
GARY DEAN ODELL,)
)
Respondent.)

Civil No. 74-C-361

ORDER DISCHARGING RESPONDENT
AND DISMISSAL

On this 3rd day of October, 1974, Petitioners' Motion To Discharge Respondent And For Dismissal came for hearing and the Court finds that Respondent has now complied with the Internal Revenue Service Summons served upon him May 16, 1974, that further proceedings herein are unnecessary and that the Respondent, Gary Dean Odell, should be discharged and this action dismissed upon payment of \$43.16 costs by Respondent.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that the Respondent, Gary Dean Odell, be and he is hereby discharged from any further proceedings herein and this action is hereby dismissed upon payment of \$43.16 costs by said Respondent.

Fred Daugherty

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Jack M. Short

JACK M. SHORT
Assistant United States Attorney

settlement. Defendant alleged in his Amended Answer that he had satisfied the underlying obligation to the Payee, Bill Poulos, and that this would offset his obligation to Plaintiff.

The first aspect of the case to be determined is whether Defendant is personally liable on the check in question. The instrument discloses that it was signed by an individual. The Defendant admits that it is his signature and that only his personal signature appears in what is commonly known as the signature block of the check. (A notation on said check "Refer to Maker" was apparently placed thereon while same was in the banking channels.) The check does have the name "Cessna Ranch" along with an address and telephone number printed in the lower left hand corner. The Defendant has introduced a copy of the Articles of Incorporation certified by the California Secretary of State showing that the name of his corporation is "Cessna Ranch". Defendant asserts that this evidence shows that he signed in a representative capacity as President or General Manager of Cessna Ranch.

The provisions of the Uniform Commercial Code (UCC) are applicable relating to the obligations and rights of the parties as to the check in question. No conflicts of laws problem exists as the UCC is the law of Oklahoma, where this action is brought, and California, the place of Defendant's residence and where the payee bank is located. For convenience, the references to the UCC will be as codified under Oklahoma Statutes.

12A Oklahoma Statutes 1971 §3-403 relates to signatures in a representative capacity. The statute provides:

"UCC §3-403. Signature by Authorized Representative.

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity."

Parol evidence as to such capacity is only proper in disputes between the immediate parties as per sub-section (2)(b).

Anderson, Uniform Commercial Code, 2d Ed. §3-403:5 states:

"Where a transferee is the holder of an instrument, proof is not admissible as to any agreement between the payee and a signer as to the capacity in which the signer was acting."

This is the situation present in the case at bar and thus any knowledge by Poulos that Defendant operated his ranch as a corporation is not admissible in this action by the holder of the instrument in question.

The provision in the above statute relevant to corporate officers is found in subsection (3). This subsection which is self-explanatory is further explained in Anderson, Uniform Commercial Code, 2d Ed. §3-403:6 as follows:

"The Code makes the exception of organization officers from personal liability more readily obtained than in the case of an ordinary agent. As to such officers, there is no personal liability if the instrument names the organization and the signature of the officer shows the title of his office."

In the instant case, the signature of Defendant does not show the title of his office and thus Defendant is personally obligated on the instrument in question.

The Plaintiff is a holder of the instrument. The rights of a holder are set out in 12A Oklahoma Statutes 1971 §3-307 which provides:

"When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense."

In the case now before the Court, the Defendant's signature has been established by Plaintiff and it is now necessary to determine if the Defendant has established a defense. In Oklahoma Nat. Bank v. Equitable Credit Finance Co., 489 P. 2d 1331 (Okla. 1971) the Court stated:

"....And the holder of an instrument is entitled to recover on it unless the defendant establishes a defense. 12A O.S. 1961, § 3-307(2). To establish a defense, the defendant has the burden of proving the defense alleged in his answer by a preponderance of the evidence." Persson v. McCormick, Okl., 412 P.2d 619, 621 (1966)."

In the instant case, the only matter contained in Defendant's Amended Answer which resembles a defense, is an allegation that the indebtedness for which the check was written has been satisfied by payment to Bill Poulos and that this offset should defeat Plaintiff's action. This allegation can be considered as setting up the defense of failure of consideration.

The contention raised by Defendant that he has made a settlement with the Payee, Bill Poulos is not supported by the evidence. The Defendant testified that "the whole thing is a mess, it can't be determined who owes who." He also testified that an accounting between himself and Poulos has not been completed.

It appears to the Court that Defendant has failed to meet his burden of showing that the consideration for the instrument in question has failed. His contention that he may have paid

Poulos too much money does not constitute proof that he has a defense to the instrument. It thus appears that Plaintiff would be entitled to recover as a holder on the instrument herein even if it cannot be determined it is a holder in due course.

If Defendant herein had established that he had a good defense to the instrument, the burden would then shift to the Plaintiff to establish that it is a holder in due course.

12A Oklahoma Statutes 1971 §3-307(3) provides:

"After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some other person under whom he claims is in all respects a holder in due course."

Although the Court finds that Defendant herein has failed to establish a defense to the instrument sued on by a preponderance of the evidence, it will make a determination of the Plaintiff's status as it claims to be a holder in due course. Such a determination is helpful in determining the amount due Plaintiff in this action. A holder in due course is generally defined in 12A Oklahoma Statutes 1971 §3-302 which provides:

"(1) A holder in due course is a holder who takes the instrument
(a) for value; and
(b) in good faith; and
(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

The rights of Plaintiff bank are further set out in 12A Oklahoma Statutes 1971 §4-209 which provides:

"For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course."

The security interest referred to in the above section is defined in 12A Oklahoma Statutes 1971 §4-208 which provides:

"UCC §4-208. Security Interest of Collecting Bank In Items, Accompanying Documents and Proceeds.

(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Article 9 except that

(a) no security agreement is necessary to make the security interest enforceable (subsection (1)(b) of Section 9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds."

In the case at bar, credit was given by Plaintiff in its depositor's account in the amount of \$24,219.00 and Plaintiff made an advance to its customer totalling \$1,781.00. Ultimately, after Defendant's check was dishonored by his stopping payment on same, Plaintiff was able to charge-back \$13,679.39 remaining in the depositor's account with a resulting loss of \$12,320.61. This sum represents the amount of value given by Plaintiff for which it can claim to be a holder in due course.

The evidence concerning whether Plaintiff bank acted in good faith when it took the instrument in question shows that in January, 1973, Plaintiff's Vice President, William S. Flanagan, Jr., had conferred with Defendant's banker, Robert Lenhard with the payee bank and had been advised that Defendant's credit rating was good. The evidence further discloses that previous checks from Defendant to Bill Poulos had been deposited in Plaintiff bank and had cleared with no problem. Any knowledge on the part of Plaintiff's officer relating to problems concerning drafts given by Poulos to sellers of horses drawn on Defendant would constitute mere suspicion which is not enough to show the Plaintiff acted in bad faith in accepting the check. Central Bank And Trust Co. v. First Northwest Bank, 332 F. Supp. 1166 (E.D. Mo. 1971). 12A Oklahoma Statutes 1971 §1-201 (19) provides:

"'Good faith' means honest in fact in the conduct of the transaction concerned."

The transaction involved herein is the deposit on March 21, 1973 by Poulos in Plaintiff's bank of the check in question. The Court concludes that Plaintiff acted in good faith in taking the instrument for deposit.

The last point to be determined in considering whether Plaintiff is a holder in due course is whether it had notice of any defense against the instrument by the Defendant. The defense ultimately setup in this action by Defendant was failure of consideration. This was based on broad assertion that Defendant "overpaid" Poulos in a joint venture in which they were engaged in purchasing a large volume of horses for export sale.

The Defendant asserts that Plaintiff's Vice President, William S. Flanagan, Jr. knew of the joint venture, and as a matter of fact had given both Defendant and Poulos legal advice on how to handle a portion of the export sale. The evidence is that Flanagan and Poulos made a trip to California and conferred with Defendant, and his banker, Lenhard on March 23, 1973. Defendant himself stated that the conferences with Poulos and Flanagan during this California trip involved unpaid drafts Poulos had written for acceptance by Defendant. Defendant gave Poulos another check for \$15,000.00 while Poulos was in California which was to reimburse Poulos for drafts he had covered which had not been paid. Defendant stated that it was after the California trip by Poulos and Flanagan that he decided to stop payment on the check in question because he felt possibly he had paid Poulos more money than he owed him. He stated that he did not advise Poulos or Flanagan while they were in California that he was going to stop payment on the \$26,000.00 check because he had not decided yet to do so. It is clear that Flanagan, Plaintiff's officer had no notice of Defendant's intent to dishonor the check in question until after March 26, 1973 when they returned from the California trip.

The testimony of Flanagan presented by deposition indicates that he suspected a problem may exist in regard to the check in question prior to his leaving for California with Poulos. The witness testified as follows:

"Some way Bill (Poulos) came in in a great big hurry to go to California to get something straightened out; that the checks that was deposited weren't going to make it; and this was--something was happening bad and he wanted me to go help him. And I was quite willing, since we were the bank."

Mr. Flanagan's testimony does not reveal when this event occurred, however, Mr. Poulos testified that on March 21, 1973, after the bank closed, that he asked Mr. Flanagan to go to California. Thus, the earliest time it can be established that the Plaintiff's officer knew of any dispute between Poulos and Defendant which might constitute a defense to the check in question would be after the bank closed on March 21, 1973.

It thus appears that Plaintiff would qualify as a holder in due course for the amount of the advance made in the amount of \$1,781.00 against the check and the withdrawals from Poulos' account made prior to the close of business on March 21, 1973. The amount of these withdrawals less the balance in Poulos' account prior to the check in question being deposited is \$12,413.01, making the total value given by the Plaintiff from the check in question \$14,194.01. This amount exceeds the Plaintiff's ultimate loss after recouping part of their money advanced from its customer, Bill Poulos. Plaintiff possibly is not a holder in due course for sums advanced after the close of business on March 21, 1973.

The defense that Plaintiff violated its own rules by granting credit on the check in question it cleared is not supported by the evidence. Plaintiff's President, Paul Anderson, testified that it depends upon the customer and past dealings. The evidence shows that Mr. Poulos delivered the check in question to Mr. Flanagan in order that he could obtain immediate credit on same and that such credit was allowed by Mr. Flanagan. Mr. Anderson testified that Mr. Flanagan had the authority to act in this manner. The contention raised in Defendant's pleadings that the Uniform Commercial Code does not allow the granting of credit

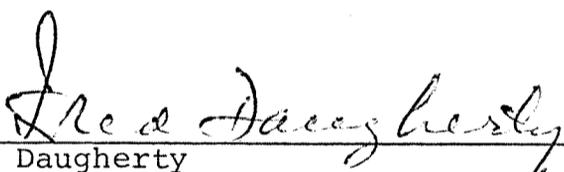
on an instrument prior to final settlement has not been supported by Defendant by specific citation, and in fact is not correct in accordance with 12A Oklahoma Statutes 1971 §§4-209 and 4-208 cited previously.

The Court concludes that the Plaintiff is entitled to recover judgment against Defendant in the amount of \$12,320.61 which represents its loss herein resulting from Defendant stopping payment on the check in question.

The Plaintiff is entitled to attorney fees in the amount of \$3,510.00 pursuant to 12 Oklahoma Statutes 1971 §936.

The Plaintiff is to prepare a judgment and present same to the Court within ten (10) days from this date.

It is so ordered this 2^d day of October, 1974.


Fred Daugherty
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-341
)
)
) ROY D. CAMPBELL a/k/a ROY)
) DENNIS CAMPBELL, SARAH M.)
) CAMPBELL, GENEVA FARRIS, and)
) CARL A. CLARK d/b/a CLARK)
) INVESTMENT COMPANY,)
)
) Defendants.)

FILED
OCT 1 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26th
day of September, 1974, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; the defendant, Carl A.
Clark d/b/a Clark Investment Company, appearing by his attorney,
J. G. Follens; and the defendants, Roy D. Campbell a/k/a Roy
Dennis Campbell, Sarah M. Campbell, and Geneva Farris, appearing
not.

The Court being fully advised and having examined
the file herein finds that Roy D. Campbell a/k/a Roy Dennis
Campbell, Sarah M. Campbell, and Geneva Farris were served with
Summons and Complaint on August 26, 1974, and that Carl A. Clark
d/b/a Clark Investment Company was served with Summons and
Complaint on August 22, 1974, all as appears from the Marshal's
Return of Service herein.

It appearing that Carl A. Clark d/b/a Clark Investment
Company has duly filed his Disclaimer herein on August 27, 1974;
that Roy D. Campbell a/k/a Roy Dennis Campbell, Sarah M. Campbell,
and Geneva Farris have failed to answer herein; and that default
has been entered by the Clerk of this Court.

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

Lot Twenty-four (24), in Block Four (4),
HARTFORD HILLS ADDITION to the City of
Tulsa, Tulsa County, State of Oklahoma,
according to the recorded plat thereof.

THAT the defendants, Roy D. Campbell and Sarah M. Campbell, did, on the 9th day of August, 1972, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,500.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants, Roy D. Campbell and Sarah M. Campbell, 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 \$10,491.47 as unpaid principal, with interest thereon at the rate of 4 1/2 percent interest per annum from December 9, 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, Roy D. Campbell and Sarah M. Campbell, in personam, for the sum of \$10,491.47 with interest thereon at the rate of 4 1/2 percent per annum from December 9, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

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.

15/ Fred Daugherty
United States District Judge

APPROVED.



ROBERT P. SANTEE
Assistant United States Attorney

bcs

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

E I L E D

OCT 1 1974

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

BIRUTA DZENITS,)
)
) Plaintiff,)
)
)
 vs.)
)
) MERRILL LYNCH, PIERCE, FENNER &)
) SMITH, INC., and JAMES A. BILLINGTON,)
)
) Defendants.)

NO. 71-C-381

ORDER DISMISSING WITH PREJUDICE

NOW on this 30th day of September, 1974, the parties hereto, by and through their counsel of record, having stipulated to a dismissal with prejudice,

IT IS ORDERED that this cause be and the same is hereby dismissed with prejudice, each party to bear its own costs.

Luther Bohannon

United States District Judge