

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BETTY JEAN JOHNSON HALL (formerly
BETTY JEAN JOHNSON),
LAWRENCE HALL,
DR. THOMAS L. BERENSON,
OKLAHOMA OSTEOPATHIC FOUNDERS
ASSOCIATION, INC., d/b/a
OKLAHOMA OSTEOPATHIC HOSPITAL,
DR. B.B. BAKER & DR. CARSON TODD,
d/b/a DRS. BAKER & TODD,
TERMPPLAN OF SOUTH MAIN,
SOUTHWESTERN BELL TELEPHONE CO.,
TED OSBORNE & MARITUS OSBORNE,
OKLAHOMA TAX COMMISSION, AND
FIRSTUL MORTGAGE COMPANY, AN
OKLAHOMA CORPORATION,

Defendants.

Civil Action No. 74-C-327

FILED

FEB 28 1975

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26th day
of February, 1975, the plaintiff appearing by Robert P. Santee,
Assistant United States Attorney, the defendants, Oklahoma
Osteopathic Founders Association, Inc., d/b/a Oklahoma Osteopathic
Hospital and Dr. B.B. Baker & Dr. Carson Todd d/b/a Drs. Baker &
Todd, appearing by their attorney, Wilton W. Works, the defendant
Oklahoma Tax Commission appearing by its attorney Lester D. Hoyt,
the defendant Southwestern Bell Telephone Co. appearing by its
attorney Robert D. Allen, the defendant Termplan of South Main,
appearing by its attorney John A. McLean, and the defendant Firstul
Mortgage Company, an Oklahoma Corporation, appearing by its attorney
James R. Ryan, and the defendants Betty Jean Johnson Hall (formerly
Betty Jean Johnson), Lawrence Hall, Dr. Thomas L. Berenson and
Ted Osborne & Maritus Osborne, appearing not.

The Court being fully advised and having examined the
file herein finds that the defendants, Betty Jean Johnson Hall,

Lawrence Hall, Dr. Thomas H. Berenson were served with Summons and Complaint on August 14, 1974; that the defendants Oklahoma Osteopathic Founders Association d/b/a Oklahoma Osteopathic Hospital, Dr. B.B. Baker & Dr. Carson Todd d/b/a Drs. Baker & Todd, Termplan of South Main, Southwestern Bell Telephone Co. and Oklahoma Tax Commission were served with Summons and Complaint on August 19, 1974; that the defendant Firstul Mortgage Company, an Oklahoma Corporation was served with Summons and Complaint on January 24, 1975; and that the defendants, Ted Osborne & Maritus Osborne, were served by publication as appears from the Proof of Publication filed herein on January 2, 1975.

It appearing that the defendants Oklahoma Osteopathic Founders Association, Inc., d/b/a Oklahoma Osteopathic Hospital and Dr. B.B. Baker & Dr. Carson Todd d/b/a Drs. Baker & Todd have duly filed their Disclaimer herein on September 5, 1974; that the defendant Oklahoma Tax Commission has duly filed its Answer and Cross-Petition of the Oklahoma Tax Commission on August 23, 1974; that the defendant Southwestern Bell Telephone Co. has duly filed its Disclaimer herein on August 22, 1974; that the defendant Termplan of South Main has duly filed its Answer and Disclaimer on August 22, 1974; that the Defendant Firstul Mortgage Company, an Oklahoma Corporation has duly filed its Disclaimer on January 29, 1975; and that the defendants Betty Jean Johnson Hall, Lawrence Hall, Dr. Thomas L. Berenson, Ted Osborne & Maritus Osborne have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Fifteen (15), Block Four (4), RESUBDIVISION
OF AMENDED PLAT OF MEADOW HEIGHTS ADDITION, Tulsa
County, State of Oklahoma, according to the recorded
plat thereof

THAT the defendant, Betty Jean Johnson, did on the 26th day of February 1971, execute and deliver to The Lomas & Nettleton Company, her mortgage and mortgage note in the sum of \$15,500, with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

THAT by Assignment of Mortgage of Real Estate dated September 24, 1973, filed in Tulsa County, Oklahoma, and recorded in Book 4091, Page 976, The Lomas & Nettleton Company assigned said note and mortgage to the Secretary of Housing and Urban Development, Washington, D. C.

The Court further finds that the defendant Betty Jean Johnson Hall made default under the terms of the aforesaid mortgage note by reason of her 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 defendant is now indebted to the plaintiff in the sum of \$15,254.81, as unpaid principal, with interest thereon at the rate of 8 1/2 percent per annum from December 1, 1973, until paid, plus the cost of this action accrued and accruing.

The Court finds that the Oklahoma Tax Commission is entitled to judgment against Betty Jean Johnson in the amount of \$42.90, from August 16, 1971, plus interest according to law, but that such judgment would be subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendant Betty Jean Johnson, in personam, for the sum of \$15,254.81, with interest thereon at the rate of 8 1/2 percent per annum from December 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Oklahoma Tax Commission have and recover judgment against the

defendant Betty Jean Johnson in the amount of \$42.90 from August 16, 1971, plus interest thereafter according to law as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendants Lawrence Hall, Dr. Thomas L. Berenson, and Ted Osborne & Maritus Osborne.

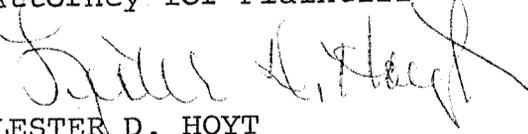
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendant to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property 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 her since the filing of the Complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.


UNITED STATES DISTRICT JUDGE

APPROVED.


ROBERT P. SANTEE
Assistant United States Attorney
Attorney for Plaintiff


LESTER D. HOYT
Attorney for Oklahoma Tax Commission

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

BACHE & CO., INCORPORATED,
a Delaware corporation,

Plaintiff,

VS.

MILDRED L. DOTSON,

Defendant and
Third Party
Plaintiff,

VS.

LEO CROLEY,

Third Party
Defendant.

No. 73-C-408

FILED

FEB 28 1975

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

ORDER OF DISMISSAL

The Plaintiff, Bache & Co., Incorporated, Defendant and Third Party Plaintiff, Mildred L. Dotson, and Third Party Defendant, Leo Croley, having filed their Stipulation For Dismissal with prejudice herein on the 26th day of February, 1975, wherein it was stipulated that the above action be dismissed with prejudice with each of the parties to bear its own costs,

BE IT THEREFORE ORDERED that the actions as alleged in said cause be dismissed with prejudice and that each party bear its own costs.

Dated this _____ day of _____, 1975.



U. S. DISTRICT JUDGE

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

FILED

FEB 28 1975

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

HAROLD G. WHITEIS, a sole proprietor,)
d/b/a Motor Sports of Tulsa,)

Plaintiff,)

vs.)

YAMAHA INTERNATIONAL CORPORATION,)
a corporation,)

Defendant.)

No. 72-C-260

ORDER NUNC PRO TUNC

This matter coming on for consideration of the plaintiff's Motion for an order amending the judgment heretofore entered on November 13, 1974, to provide for 10% per annum interest in accordance with the applicable Oklahoma law, and it appearing that the Motion is well taken and should be granted as the provision of 6% interest was inadvertent and not in conformity with applicable law; Now, Therefore,

IT IS BY THE COURT ORDERED that the judgment heretofore entered November 13, 1974, is amended nunc pro tunc to provide that interest on the judgment shall be at the rate of 10% per annum from the date of judgment, until paid, and the judgment otherwise remains in full force and effect.


UNITED STATES DISTRICT JUDGE

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

FILED
FEB 27 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
HAROLD G. JOHNSTON, ELMA A.)
JOHNSTON, COUNTY TREASURER,)
TULSA COUNTY, BOARD OF COUNTY)
COMMISSIONERS, TULSA COUNTY,)
)
Defendants.)

CIVIL ACTION NO. 74-C-382

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26
day of February, 1975, the Plaintiff appearing by Robert
P. Santee, Assistant United States Attorney, the defendants,
County Treasurer, Tulsa County, and Board of County Commis-
sioners, Tulsa County, appearing by Gary J. Summerfield,
Assistant District Attorney, Tulsa County; and the Defendants,
Harold G. Johnston and Elma A. Johnston, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, County Treasurer, Tulsa
County, and the Board of County Commissioners, Tulsa County,
were served on September 26, 1974, both as appears from the
Marshals Return of Service herein, and that service by publica-
tion was made on Harold G. Johnston and Elma A. Johnston as
appears from the Proof of Publication filed herein.

It appearing that the Defendants, County Treasurer,
Tulsa County, and Board of County Commissioners, Tulsa County,
have duly filed their answers herein on October 4, 1974; that
Defendants Harold G. Johnston and Elma A. Johnston have failed
to answer herein; and that default has been entered by the
Clerk of this Court.

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

Lot Fifteen (15), Block Thirteen (13), Rolling Hills Third Addition, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Harold G. Johnston and Elma A. Johnston, did, on the 10th day of June, 1970, execute and deliver to the Lomas & Nettleton West, Inc., their mortgage and mortgage note in the sum of \$16,400.00 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 July 13, 1970, Lomas & Nettleton West, Inc., assigned said Note and Mortgage to the Federal National Mortgage Association, a corporation; and by Assignment dated September 24, 1971, Federal National Mortgage Association, a corporation, assigned said Note and Mortgage to the Secretary of Housing and Urban Development of Washington, D.C.

The Court further finds that Defendants, Harold G. Johnston and Elma A. Johnston, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 10 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$16,275.80 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from April 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, Harold G. Johnston and Elma A. Johnston, the sum of \$ 66.00

plus interest according to law for personal property taxes for the year(s) 1971 and 1972 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior 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 Defendants, Harold G. Johnston and Elma A. Johnston, the sum of \$ 277.00 plus interest according to law for ad valorem taxes for the year(s) 1974 and that Tulsa County should have judgment, in rem, for said amount, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Harold G. Johnston and Elma A. Johnston, in rem, for the sum of \$16,275.80 with interest thereon at the rate of 8 1/2 percent per annum from April 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Harold G. Johnston and Elma A. Johnston, for the sum of \$ 66.00 as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Harold G. Johnston and Elma A. Johnston, for the sum of \$ 277.00 as of the date of this judgment plus interest thereafter according to law for ad valorem taxes, and that

such judgment is superior to the first mortgage lien of the Plaintiff herein.

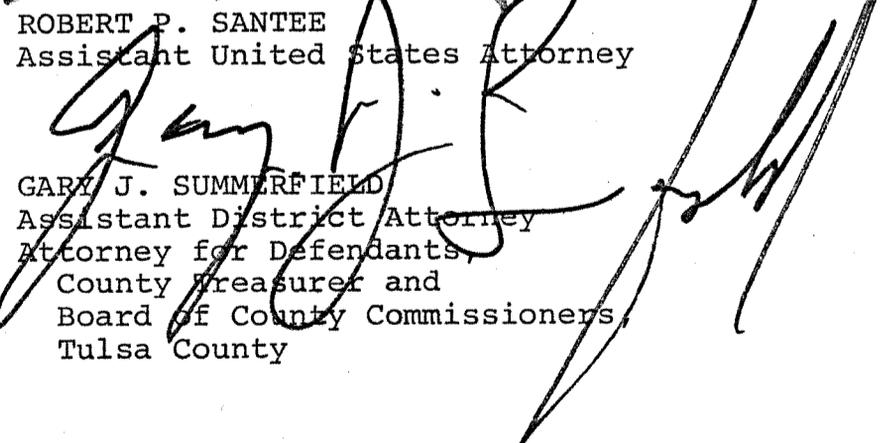
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment which sale shall be subject to the ad valorem tax judgment of Tulsa County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

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


United States District Judge

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney


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

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
vs.)
)
ROY NORVELL, JAUNELL NORVELL,)
SEARS, ROEBUCK AND COMPANY,)
COUNTY TREASURER, TULSA COUNTY,)
BOARD OF COUNTY COMMISSIONERS,)
TULSA COUNTY,)
)
) Defendants.)

CIVIL ACTION NO. 74-C-381

FILED

FEB 27 1975

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 27th
day of February, 1975, the Plaintiff appearing by Robert
P. Santee, Assistant United States Attorney, the Defendants,
County Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, appearing by Gary J. Summerfield, Assistant District
Attorney, Tulsa County; and the Defendants, Roy Norvell, Jaunell
Norvell and Sears, Roebuck and Company, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, County Treasurer, Tulsa
County, and the Board of County Commissioners, Tulsa County, and
Sears, Roebuck and Company were served on September 26, 1974, all
as appears from the Marshals Return of Service herein, and that
service by publication was made on Roy Norvell and Jaunell Norvell
as appears from the Proof of Publication filed herein.

It appearing that the Defendants, County Treasurer,
Tulsa County, and Board of County Commissioners, Tulsa County,
have duly filed their answers herein on October 4, 1974; that
Defendants, Roy Norvell, Jaunell Norvell, and Sears, Roebuck and
Company, have failed to answer herein, and that default has
been entered by the Clerk of this Court.

The Court further finds that this is a suit based
upon a mortgage note and foreclosure on a real property mortgage

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

Lot Six (6); Block Twelve (12), Rolling Hills Third Addition, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Roy Norvell and Jaunell Norvell, did, on the 21st day of April, 1970, execute and deliver to the Lomas & Nettleton West, Inc., their mortgage and mortgage note in the sum of \$15,700.00 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 April 21, 1970, Lomas & Nettleton West, Inc., assigned said Note and Mortgage to the Federal National Mortgage Association, a corporation; and by Assignment dated November 26, 1973, Federal National Mortgage Association, a corporation, assigned said Note and Mortgage to the Secretary of Housing and Urban Development of Washington, D.C.

The Court further finds that Defendants, Roy Norvell and Jaunell Norvell, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 8 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$15,323.31 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from June 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, Roy Norvell and Jaunell Norvell, the sum of \$50.86 plus interest according to law for personal property taxes for the year 1973 and 1974 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior 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 Defendants, Roy Norvell and Jaunell Norvell, the sum of \$ 197.75 plus interest according to law for ad valorem taxes for the year(s) 1974 and that Tulsa County should have judgment, in rem, for said amount, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Roy Norvell and Jaunell Norvell, in rem, for the sum of \$15,323.31 with interest thereon at the rate of 8 1/2 percent per annum from June 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Roy Norvell and Jaunell Norvell, for the sum of \$50.86 as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Roy Norvell and Jaunell Norvell, for the sum of \$197.75 as of the date of this judgment plus interest thereafter according to law for ad valorem taxes, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, Sears, Roebuck and Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's

money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment which sale shall be subject to the ad valorem tax judgment of Tulsa County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

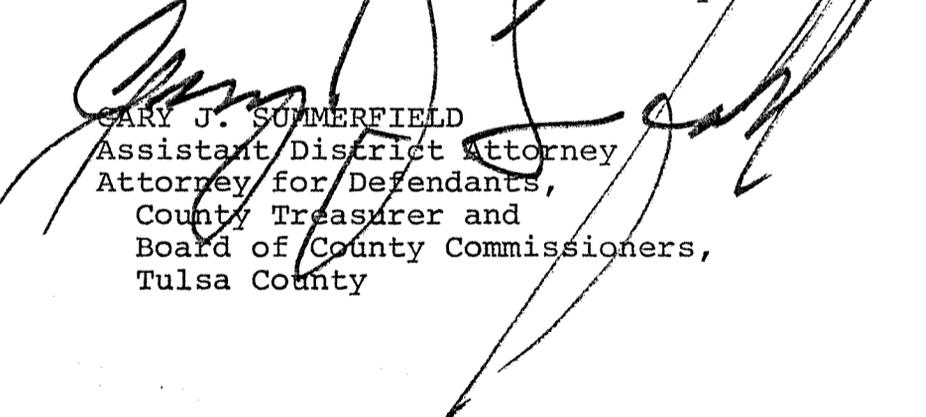
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed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

Fred Daugherty

United States District Judge

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney


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

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

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, AFL-CIO,
LOCAL 557

Plaintiff

v.

MUNSINGWEAR, INC.,

Defendant

NO. 74-C-388

FILED
FEB 26 1975

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

O R D E R

Plaintiff, International Ladies' Garment Workers' Union, AFL-CIO, Local 557, brings this action against Munsingwear, Inc., seeking an injunction requiring Defendant Munsingwear to proceed to arbitration.

After extensive negotiations the parties executed a Stipulation Agreement in conjunction with their Collective Bargaining Agreement providing that within 30 days of a change in the Federal Minimum Wage rate the parties should meet to "negotiate the effect this may have on the Piecework Rate Schedule. . . ." At the bottom of said stipulation agreement, the parties agreed that "in the event the parties cannot reach agreement in the 6 month Job Guarantee and Expected Earnings levels in Schedule I, the matter may be treated as a grievance under Article XIV." Article XIV of the collective bargaining agreement referred to in the stipulation sets out the grievance procedure to be followed and provides that "If an agreement is not reached through the use of the above outlined procedure, either party may submit any grievance pertaining to the interpretation or application of any of the terms or provisions of this Agreement, with the exception of general wage revision grievances, to arbitration within thirty (30) days and shall notify the other party in writing of this decision, in which case the provisions of Section 6 of this Article shall be followed." (Article 6

concerns the selection of the Arbitration Board.) Although this court was not furnished a copy of Schedule I referred to in the arbitration agreement portion of the Stipulation Agreement, in light of the fact that the arbitration clause was included in the Stipulation of Agreement, it reasonably follows that the wage levels affected by such a Federal Minimum Wage are those included in Schedule I. In addition, in its brief, Defendant "admits that the subject matter herein is expressly covered by . . . the Stipulation of Agreement . . . which specifically refers any grievance on this matter to the arbitration procedure provided in Article XIV of the Collective Bargaining Agreement."

Plaintiff filed a Motion for Summary Judgment stating that when arbitration is demanded by a party the court must determine only that a contract between the parties exists and that the matter in dispute is covered by an arbitration agreement. Defendant filed a Motion to Dismiss based on its contention that Plaintiff cannot rely on the Stipulation Agreement which includes the arbitration provisions because prior to invoking arbitration Plaintiff must first negotiate on the disputed matter, which Plaintiff has not done "in good faith." Defendant also claims Plaintiff failed to perfect Step 2 of the grievance procedure and failed to properly submit the matter to arbitration.

Responsive briefs have been filed by both sides along with supporting information. All parties have been provided with ample opportunity to brief and present arguments to the Court. After carefully considering the arguments presented in the briefs and having perused the entire file and being fully advised in the premises the Court has concluded that the Motion for Summary Judgment by Plaintiff should be sustained and Defendant's Motion to Dismiss is therefore overruled for the reasons set out below.

We begin with the premise that "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." Steelworkers v. Warrior & Gulf Co., 363 U.S. 574 (1960). In view of the arbitration provisions applicable to the Stipulation Agreement concerning the effect of a Federal Minimum Wage change, and that the subject matter in dispute is covered by said Agreement with the grievance and arbitration procedure incorporated therein as Defendant acknowledges, there is no doubt that by agreement of the parties the issue is subject to arbitration.

"Once it is determined, as we have, that the parties are obligated to submit that subject matter of a dispute to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator." John Wiley & Sons v. Livingston, 376 U.S. 543 (1964).

In International U. U.A., A. & A. I. W. v. Folding Carrier Corp., 422 F.2d 47 (10th Cir. 1970) the Court discussed the distinction between substantive and procedural arbitrability. "The former is concerned with whether the dispute relates to a subject matter which the parties have contractually agreed to submit to arbitration. This question is to be decided by the courts. . . ." As stated previously, in the case at bar, this substantive question regarding arbitrability is not disputed and has been settled by this Court.

"Procedural arbitrability encompasses such questions as 'whether grievance procedures or some part of them apply to a particular dispute, whether such procedures have been followed or excused, or whether the unexcused failure to follow them avoids the duty to arbitrate.' John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 557, 84 S.Ct. 909, 918, 11 L.Ed.2d 898. Because these questions are often intertwined with the merits of the dispute and because their presentation to the courts would only increase the opportunities to delay the arbitral process,

the Supreme Court has held that they are to be decided by the arbitrator." International at 49.

Defendant's argument that no grievance exists until after compliance with the agreed procedures fails to recognize the distinction made in Wiley between substantive and procedural arbitrability. Plaintiff's alleged failure to first negotiate in good faith, to perform requisite grievance procedure steps, and to properly instigate arbitration are all procedural questions properly left to the arbitrator.

"Since there is no genuine issue of fact as to whether the arbitration clause is susceptible of an interpretation under which it covers the dispute, summary judgment is proper." Lodge 1327, Int. Ass'n of Mach. & A. W. v. Fraser & Johnston Co., 454 F.2d 88 (9th Cir. 1971). A permanent injunction requiring the Defendant to proceed to arbitration is hereby ordered.

It is so ordered this 26th day of February, 1975.


United States District Judge

E I L E D

FEB 26 1975

Jack C. Silver, Clerk

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE 1972 CADILLAC, FLEETWOOD BROUGHAM,
4-DOOR SDEAN, etc.,

Respondents.

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) 74-C-248
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)
)
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JUDGMENT

Based on the Order Sustaining Plaintiff's Motion for
Summary Judgment as to Don Hendricks, d/b/a D & L Ford, Inc.,

IT IS ORDERED that judgment be entered in favor of the
plaintiff and against Don Hendricks, d/b/a D & L Ford, Inc.

ENTERED this 26th day of February, 1975.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

E I L E D

FEB 26 1975

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

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

UNITED STATES OF AMERICA,)

Plaintiff,)

) 74-C-248

vs.)

ONE 1972 CADILLAC, FLEETWOOD BROUGHAM,)
4-DOOR SEDAN, IDENTIFICATION NO.)
6B69R2Q119377, ITS TOOLS AND APPURTENANCES;)
ONE .32-CALIBER MUFFLER/SILENCER; ONE)
ARMINUS .32-CALIBER REVOLVER; AND SEVEN)
ROUND OF .32-CALIBER S&W SHORT CARTRIDGES,)

Respondents.)

ORDER SUSTAINING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AS TO DON HENDRICKS, d/b/a
D & L FORD, INC.

The Court has for consideration the Plaintiff's Motion for Judgment on the Pleadings and/or Summary Judgment as to Don Hendricks, d/b/a D & L Ford, Inc. (hereinafter called Ford Company), the briefs in support and opposition thereto, and, having carefully perused the entire file, and, being fully advised in the premises, finds:

The plaintiff instituted this action for forfeiture of, among other items, one 1972 Cadillac, Fleetwood Brougham, 4-Door Sedan, Identification No. 6B69R2Q119377, its tools and appurtenances. The petition alleges that on April 18, 1974, in Tulsa County, Oklahoma, Warren Clay Teague, transported a contraband article in said vehicle (certain firearms and ammunition) in violation of the laws of the United States. It was noted in the petition that Ford Company might claim some interest in said vehicle.

After the commencement of this action, Ford Company filed an answer and what was denoted a cross-claim (a misnomer that should be changed to counter-claim). Ford Company contends that it is the real party in interest in said vehicle. Ford Company contends that said 1972 Cadillac was purchased from Joplin Auto Auction Dealers by Ford Company where said car had been placed for sale by Virgil Edgar Used Cars. Said Cadillac was purchased on or about August 15, 1973, and was reassigned by the registered dealer in used cars to Don Hendricks, d/b/a D & L Ford Company, Cleveland, Oklahoma.

Warren Teague, the driver of the vehicle at the time the same was seized, purchased said vehicle from Ford Company on February 21, 1974, for a total price of \$4700.00, as reflected by Receipt #16016. The receipt shows the notation that \$500.00 in cash was paid. The following language is found on the receipt: "Title will be delivered at payment in full" and "Bal. to be paid in 90 days". Ford Company has further tendered in the file a copy of a Security Agreement between Charles Thompson, an employee, and First Bank and Trust Company of Sand Springs, Oklahoma. By letter of December 24, 1974, Ford Company, by its attorney, advised that prior to the sale to Mr. Teague, said Cadillac was floor planned to said bank. At the time of the seizure Mr. Teague was not in default on his obligation to Ford Company.

The Court will first consider the argument submitted by Ford Company. The main thrust is that Ford Company may avail itself of the last provision of Title 49 U.S.C.A. Section 782, when read in connection with Title 21 O.S.A. Section 1834. Ford Company's theory is that when the car or vehicle was transported from one County to another, without the written permission of Ford Company, such constituted a felony under Title 21 O.S.A. Section 1834, so as to bring the Company within the exclusion of 49 U.S.C.A Section 782. The theory, while novel, finds no support in case law, and, Ford Company has cited no case law in support of this proposition. The Court must note, that if this theory be true, then almost all the citizens of the United State, and, indeed the State of Oklahoma, have been guilty of a felony at one time or another when they drove their vehicle, covered by either a chattel mortgage or security interest, from one county to another, for business and/or personal pleasure purposes. The Court cannot believe that this was the intent of the Legislature when Title 21 O.S.A. Section 1834 was enacted.

The basic premise that should be noted at the outset is that the courts are given little, if any discretion in forfeiture cases. Whatever discretion there is in these matters is committed to representatives of the executive branch of government, not to the judiciary. The United States Attorney initially exercises his discretion in determining whether to institute or initiate a forfeiture action. When such proceedings are instituted, if a decision is rendered adverse to a claimant, the claimant may appeal to the Attorney General, who may remit or mitigate

the forfeiture upon such terms and conditions as he deems reasonable and just if he feels that forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law or that other mitigating circumstances exist. 19 U.S.C.A. Section 1618; United States v. One 1971 Porsche Coupe Auto., VII. No. 9111100355 (USDC E.D. Pa., 1973) 364 F.Supp. 745; United States v. One 1970 Buick Riviera, Ser. 494870H910774 (5th CCA, 1972) 463 F.2d 1168.

At the outset the Court will examine the Supreme Court case of United States v. U.S. Coin & Currency (1971) 401 U.S. 715 (although not cited by either party). In this case the United States brought an action for forfeiture of money in the possession of an individual when he was arrested for failing to register as a gambler and to pay the gambling tax required. The District Court ordered forfeiture and the Seventh Court of Appeals affirmed. After such affirmation the case was remanded to the Circuit Court for reconsideration in light of the subsequent decisions in Marchetti v. United States, 390 U.S. 39 and Grosso v. United States, 390 U.S. 62, which held that gamblers had the Fifth Amendment right to remain silent despite the statutory requirement that they submit reports that could incriminate them. Thereafter the Court of Appeals returned the money to the gambler and the United States appealed. At page 717 the Court noted that since the Court of Appeals for the Sixth Circuit subsequently came to the opposite conclusions (see United States v. One 1965 Buick, 392 F.2d 672, rehearing denied, 397 F.2d 782) the Supreme Court granted the Government's petition for certiorari in the Coin and Currency case, supra.

It is interesting to note that this case was decided on another theory. The Supreme Court, in dicta, discoursed at length on forfeiture statutes. The Court said:

"If we were writing on a clean slate, this claim that Sec. 7302 operates to deprive totally innocent people of their property would hardly be compelling. Although it is true that the statute does not specifically state that the property shall be seized only if its owner significantly participated in the criminal enterprise, we would not readily infer that Congress intended a different meaning. Cf. *Morrisette v. United States*, 342 U.S. 246 (1952). However, as our past decisions have recognized, centuries of history support the Government's claim that forfeiture statutes similar to this one have an extraordinarily broad scope. See *Goldsmith-Grant Co. v. United States*, 254 U.S. 505 (1921); *United States v. One Ford Coupe*, 272 U.S. 321 (1926). Traditionally, forfeiture actions have proceeded upon the fiction that inanimate objects themselves can be guilty of wrongdoing. See *Dobbins' Distillery v. United States*, 96 U.S. 395, 399-401 (1878); *The Palmyra*, 12 Wheat. 1, 14 (1827). Simply put, the theory has been that if the object is 'guilty', it should be held forfeit. In the words of a medieval English writer, 'Where a man killeth another with the sword of John at Stile, the sword shall be forfeit as deodand, and yet no default is in the owner.' The modern forfeiture statutes are the direct descendants of this heritage, which is searchingly considered by Mr. Justice Holmes in a brilliant chapter in his book, *The Common Law*. The forfeiture action in the present case was instituted as an *in rem* proceeding in which the money itself is the formal respondent. More remarkable, the Government's complaint charged the money with the commission of a actionable wrong.

"It would appear then that history does support the Government's contention regarding the operation of this forfeiture statute, as do several decisions by the courts of appeals. But before the Government's attempt to distinguish the *Boyd* case could even begin to convince, we would first have to be satisfied that a forfeiture statute, with such a broad sweep, did not raise serious constitutional questions under that portion of the Fifth Amendment which commands that no person shall be 'deprived of *** property, without due process of law; nor shall private property be taken for public use, without

just compensation.' Even Blackstone, who is not known as a biting critic of the English legal tradition, condemned the seizure of the property of the innocent as based upon a 'superstition' inherited from the 'blind days' of 'feudalism. And this Court in the past has recognized the difficulty of reconciling the broad scope of traditional forfeiture doctrine with the requirements of the Fifth Amendment. See, e.g., Goldsmith-Grant Co. v. United States, supra. Cf. United States v. One Ford Coach, 307 U.S. 219, 236-237 (1939).

"We need not pursue that inquiry once again, however, because we think that the Government's argument fails on another score. ***." (Emphasis supplied)

The case of United States v. One 1967 Ford Mustang, 2-Door Hardtop (9th CCA, 1972) 457 F.2d 931, was decided after the Supreme Court decision recited hereinabove. There the Court said:

"49 U.S.C. Sec. 782. The Bank's argument that this provision is penal in nature is undermined by our court's prior holding that a forfeiture proceeding under section 782 'is primarily a proceeding in rem against the automobile.' United States v. Andrade, 181 F.2d 42 (9th Cir., 1950). Moreover, even if we were free to accept the Bank's characterization of the statute, the definitive clarity of the statutory language precludes a judgment that the enactment is unconstitutionally vague. See, e.g., United States v. One 1962 Ford Thunderbird, 232 F.Supp. 1019, 1021 (N.D. Ill. 1964). In addition, it has been consistently held that these 'in rem' proceedings do not constitute a taking of private property for public use under the Fifth Amendment, but rather that they constitute an exercise of the police power. See, e.g., Goldsmith-Grant Co. v. United States, 254 U.S. 505 (1921). But cv. United States v. United States Coin & Currency, 401 U.S. 715. "

Footnote one to this decision states:

"The dicta in United States Coin & Currency may portend the demise of the doctrines upon which we must base our decision, but the Court's failure to override Goldsmith-Grant Co. and its progeny discourages our disregarding the authoritative effect of those cases. (citing the Coin and Currency case)."

See also the case of United States v. One 1969 Plymouth Fury Automobile, Serial No. PM43G9D199088 (5th CCA, 1973) 476 F.2d 960. This case resulted from an appeal from a holder of security interest in an automobile forfeiting the vehicle to the United

States. The Court said:

"Ford Motor Credit Company (FMCC) appeals from a summary judgment forfeiting title and possession of a 1969 Plymouth Fury automobile to the United States. The record owner was charged and convicted of using the automobile for the unlawful transportation of counterfeit federal reserve notes. 49 U.S.C. Sections 781, 782. The owner had paid \$100 down; FMCC's security interest exceeded the value of the car. We affirm.

"FMCC contends that (1) the forfeiture provisions found in 49 U.S.C. Sections 781, 782 were unconstitutionally applied; (2) the forfeiture statutes found in 49 U.S.C. Sections 781, 782, are unconstitutional on their face because they authorize deprivation of property without due process of law and the taking of property from a totally innocent party without just compensation; and (3) 49 U.S.C. Section 782 is so discriminatory that it violates due process of law.

It should be noted that in the instant case Ford Company raises no contentions as raised in the aforesaid case. The case goes on to say:

"If this were a case of first impression, we would examine closely and weigh carefully the competing values in the opposing arguments. But we are bound by decisions of this Court too numerous to cite upholding such forfeitures. FMCC argues, however, that in *United States v. United States Coin and Currency*, 1971, 401 U.S. 715, the Supreme Court took a new look at forfeitures and interpreted the statute as applicable only when the owner has 'significantly participated in the criminal enterprise'.

The Court said: (citing text).

"In that case an owner, not a lienor, was involved, a difference that arguably is a significant distinction. In *United States v. One 1970 Buick Rivera*, 5 Cir. 1972, 463 F.2d 1168, the contentions were similar to those raised here. The Court rejected the due process and just compensation arguments and, importantly, concluded that *United States v. United States Coin and Currency* was inapplicable."

This Court agrees with other Courts in interpreting the *Coin and Currency* case, *supra*, that although it would appear that the Supreme Court of the United States is predisposed to overturn the forfeiture statutes in certain cases, it has not done so, and this Court is bound by *stare decisis* to follow

the law of the Supreme Court and other Courts as it now is reported.

The Court will also call attention to the dissent and concurring opinion of Judge Gray in *Fell v. Armour* (USDC, M.D. Tenn., Nashville Division, 1972) 355 F.Supp. 1319 at 1340, wherein it is stated that admittedly, the language in *Coin and Currency* is dicta with reference to due process on forfeiture in favor of the ground of self-incrimination.

Turning now to the instant litigation, a party's alleged unawareness of the illegal use of an automobile is not a valid defense to a forfeiture action. *United States v. One 1971 Lincoln Cont. Mark III, 2-Door Hardtop* (9th CCA, 1972) 460 F.2d 272; *United States v. One 1967 Cadillac Coupe Eldorado* (9th CCA, 1969) 415 F.2d 647; *General Finance Corp. of Florida South v. United States* (5th CCA, 1964) 333 F.3d 681; *United States v. One 1961 Cadillac* (6th CCA, 1964) 337 F.2d 732.

In the instant case there is no dispute between plaintiff and Ford Company that the vehicle was used for an illegal purpose. The innocence or good faith of the owner or lienholder of the vehicle does not constitute a defense. *United States vs. One 1961 Cadillac* (6th CCA, 1964) 337 F.2d 730; *United States v. 1967 Cadillac Fleetwood El Dorado Automobile, Serial No. H7111407* (USDC, S.D. Tex., Houston Division, 1969) 296 F.Supp. 891.

Case law is replete with reference to the situation involved in the instant litigation, and the Court feels it need not cite additional cases to determine that the Motion for Summary Judgment filed by the plaintiff should be sustained.

IT IS, THEREFORE, ORDERED that plaintiff's Motion for Summary Judgment as to Don Hendricks, d/b/a D & L Ford Company be and the same is hereby sustained.

ENTERED this 26th day of February, 1975.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) vs.)
)
) BILLY C. THURMAN a/k/a BILLY)
) CLOVIS THURMAN a/k/a BILL)
) THURMAN; IDA J. THURMAN;)
) MINNESOTA MUTUAL LIFE INSURANCE)
) COMPANY; MORRISON PLUMBING)
) COMPANY; KAREN BROWN; C. B.)
) SAVAGE; MITCHELL O'DONNELL;)
) JACK McNULTY, JR.; BOARD OF)
) COUNTY COMMISSIONERS, Tulsa)
) County, Oklahoma, and COUNTY)
) TREASURER, Tulsa County,)
) State of Oklahoma,)
)
) Defendants.)

CIVIL ACTION NO. 74-C-395

FILED

FEB 25 1975

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 25th day
of February, 1975, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney for the Northern District
of Oklahoma; the Board of County Commissioners and the County
Treasurer of Tulsa County, State of Oklahoma, appearing by and
through their attorney, Gary J. Summerfield; Minnesota Mutual
Life Insurance Company, C. B. Savage, Mitchell O'Donnell and
Jack L. McNulty, having filed their Disclaimers herein, and the
defendants, Billy C. Thurman Ida J. Thurman, Karen Brown and
Morrison Plumbing Company, appearing not.

The Court being fully advised and having examined the
file herein finds that the defendants, Minnesota Mutual and
Morrison Plumbing Company, were personally served with Summons
and Complaint on October 8, 1974; that defendants, Karen Brown,
Jack L. McNulty, Board of County Commissioners, and County Treasurer,
were personally served with Summons and Complaint on October 4, 1974;
that defendants, C. B. Savage and Mitchell O'Donnell, were personally
served with Summons and Complaint on October 7, 1974, all as appears
from the Marshal's Returns of Service herein; that Billy C. Thurman

and Ida J. Thurman were served by publication, as appears from the Proof of Publication filed herein, and

It appearing that defendants, Karen Brown, Morrison Plumbing Company, Billy C. Thurman and Ida J. Thurman, have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Four (4), Block One (1), DANA ANN ADDITION
to the City of Tulsa, Tulsa County, State of
Oklahoma, according to the recorded plat thereof.

THAT the defendants, Billy C. Thurman and Ida J. Thurman, did, on the 23rd day of January, 1970, execute and deliver to Mager Mortgage Company their mortgage and mortgage note in the sum of \$11,900.00, 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 January 23, 1970, Mager Mortgage Company assigned said Note and Mortgage to the Federal National Mortgage Association, and

THAT by Assignment dated June 30, 1972, Federal National Mortgage Association assigned said Note and Mortgage to the Secretary of Housing and Urban Development, Washington, D. C., his successors and assigns.

The Court further finds that the defendants, Billy G. Thurman and Ida J. Thurman, 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 these defendants are now indebted to the plaintiff in the sum of \$11,703.34 as unpaid principal, with interest thereon at the rate of 8 1/2 percent per annum from March 1, 1972, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from defendants, Billy G. Thurman and Ida J. Thurman, the sum of \$ 22.53, plus interest according to law, for personal property taxes for the years 1971 and 1972, and that Tulsa County should have judgment for said amount but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from defendants, Billy G. Thurman and Ida J. Thurman, the sum of \$ 676.19, plus interest according to law, for ad valorem taxes for the years 1972, 1973 and 1974, and that Tulsa County should have judgment for said amount and that such judgment is subject to and superior to the first mortgage lien of the plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT the plaintiff have and recover judgment against defendants, Billy G. Thurman and Ida J. Thurman, in rem, for the sum of \$11,703.34 with interest thereon at the rate of 8 1/2 percent per annum from March 1, 1972, 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.

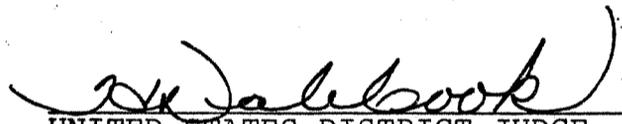
IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the County of Tulsa have and recover judgment against the defendants, in rem, for the sum of \$ 22.53, plus interest according to law, for personal property taxes for the years 1971 and 1972, but that such judgment be and is inferior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the County of Tulsa have and recover judgment against the defendants, Billy G. Thurman and Ida J. Thurman, in rem, for the sum of \$ 676.19, plus interest according to law, for ad valorem taxes for the years 1972, 1973 and 1974, and that such judgment be and is superior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the plaintiff have and recover judgment, in rem, Karen Brown and Morrison Plumbing Company.

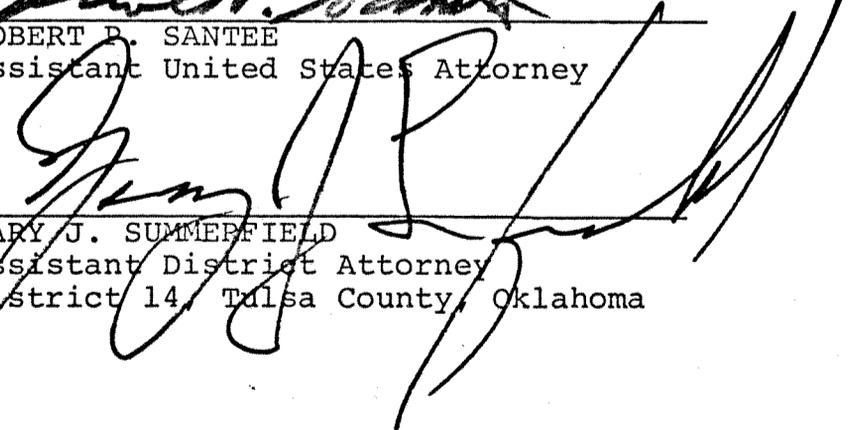
IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT upon the failure of defendants, Billy G. Thurman and Ida J. Thurman, to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell,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

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


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANTEE
Assistant United States Attorney


GARY J. SUMMERFIELD
Assistant District Attorney
District 14, Tulsa County, Oklahoma

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

UNITED STATES FIDELITY AND
GUARANTY COMPANY, a corpora-
tion,

Plaintiff,

-vs-

LOUIS H. MARTIN,

Defendant.

No. 74-C-243

E I L E D

FEB 25 1975

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

J U D G M E N T

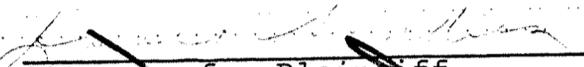
This cause came on for hearing on this 25th day of February, 1975, upon the motion of plaintiff for summary judgment, at which time the plaintiff appeared by its attorney, David H. Sanders, and the defendant, Louis H. Martin, appeared by his attorney, William J. Doyle, III. The defendant announced that he had no response to the motion of the plaintiff for summary judgment and that he did not desire to file any counter-affidavits. The Court, therefore, finds that there is no justiciable controversy between the parties and that the plaintiff is entitled to judgment in the sum of \$102,946.46, with interest thereon at the rate of 6% per annum from September 1, 1973, to date hereof and thereafter at the rate of 10% per annum until paid in full, and for a reasonable attorney's fee of \$10,295.00.

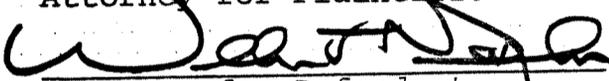
NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, United States Fidelity and Guaranty Company, a corporation, have and recover judgment of and from the defendant, Louis H. Martin, for the sum of \$102,946.46, with interest thereon at the rate of 6% per annum from September 1, 1973, to date hereof and thereafter at the rate of 10% per annum

until paid in full, and for the further sum of \$10,295.00 as an attorney's fee, which are taxed, assessed, levied, and shall be collected as costs in this action, and for court costs of this action in the sum of \$30.00.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


Attorney for Plaintiff.


Attorney for Defendant.

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

FILED

FEB 24 1975

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

STATE FARM FIRE AND CASUALTY CO.,)
a foreign insurance corporation,)
)
Plaintiff,)
-vs-)
)
MARY HELEN DARLAND AND CLIFFORD WIGGINS,)
)
Defendants.)

NO. 75-C-22

ORDER

The above matter comes on for hearing on the application of both the plaintiff and defendants for dismissal. The Court finds that all issues have been compromised and settled between the parties and that ^{*Cause of Action*} said action is hereby dismissed with prejudice to any further or future action.

Allen E. Barnett

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

UNITED STATES OF AMERICA AND)
SPECIAL AGENT E. C. TALLEY,)
INTERNAL REVENUE SERVICE,)
)
Petitioners,)
)
vs.)
)
PAUL GARRISON,)
)
Respondent.)

73-C-208

FILED
FEB 24 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has for consideration the Motion to Vacate Portion of Court Order and to Dismiss filed by the petitioners, the brief in support and opposition thereto, the response of the Respondent, wherein he prays the Court to overrule the motions filed by petitioners; to conduct a Court hearing on the matter and on the merits to issue an Order Dismissing, with prejudice, the petition to enforce Internal Revenue summonses of April 2, 1974 and April 26, 1974; for an Order quashing said summonses and setting aside the Order to Show Cause; granting Respondent his costs, and having carefully perused the entire file, and, being fully advised in the premises:

That the motions contained in the Response of Respondent should be overruled, except as to the summons of April 2, 1974, which should be granted.

That the Motion to Vacate Portion of Court Order and to Dismiss filed by the Petitioners should be sustained.

IT IS, THEREFORE, ORDERED that the motions contained in the Response of Respondent be and the same are hereby overruled, except as to the summons of April 2, 1974, which is granted.

IT IS FURTHER ORDERED that the Motion to Vacate Portion of Court Order and Dismiss filed by the petitioners be and the same is hereby sustained.

IT IS FURTHER ORDERED that costs be taxed against Respondent.
ENTERED this 24th day of February, 1975.



CHIEF UNITED STATES DISTRICT JUDGE

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

ROBERT L. SMITH,)	
)	
Plaintiff,)	
vs.)	No. 73-C-19
)	(Combined)
HARRY A. SATTERLEE, et al.,)	
)	
Defendants.)	
)	
BILLIE JOYCE SMITH,)	
)	
Plaintiff,)	
vs.)	No. 73-C-20
)	
HARRY A. SATTERLEE, et al.,)	
)	
Defendants.)	
)	
ROGER WILLIAMS,)	
)	
Plaintiff,)	
vs.)	No. 73-C-21
)	
HARRY A. SATTERLEE, et al.,)	
)	
Defendants.)	
)	
MILDRED WILLIAMS,)	
)	
Plaintiff,)	
vs.)	No. 73-C-22
)	
HARRY A. SATTERLEE, et al.,)	
)	
Defendants.)	

E I L E D
FEB 21 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

Upon the application of the plaintiffs and for good cause shown, this cause of action and complaint against the defendant, Honeywell, Inc., is dismissed with prejudice.



UNITED STATES DISTRICT JUDGE

E I L E D

FEB 21 1975

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

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
vs.) CIVIL ACTION NO. 74-C-436
)
)
LOYAL E. DALTON, ADRIANNE A.)
DALTON, WILLIAM J. CURTIS,)
JUDY A. CURTIS, DANIEL W.)
LINDGREN, JOHN FERGUSON)
a/k/a JOHN D. FERGUSON, JR.,)
FLORENCE MAE FERGUSON, and)
KAYE S. FERGUSON,)
)
) Defendants.)

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 21st
day of February, 1975, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney, and the Defendants,
Loyal E. Dalton, Adrienne A. Dalton, William J. Curtis, Judy A.
Curtis, Daniel W. Lindgren, John Ferguson a/k/a John D. Ferguson,
Jr., Florence Mae Ferguson, and Kaye S. Ferguson, appearing
not.

The Court being fully advised and having examined
the file herein finds that Defendants, Loyal E. Dalton, Adrienne A.
Dalton, William J. Curtis, Judy A. Curtis, John Ferguson a/k/a
John D. Ferguson, Jr., Florence Mae Ferguson, and Kaye S. Ferguson,
were served by publication, as appears from the Proof of Publica-
tion filed herein, and that Defendant, Daniel W. Lindgren, was
served with Summons and Complaint on December 4, 1974, as appears
from the U.S. Marshals Service herein.

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

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

Northern Judicial District of Oklahoma:

Lot Twenty-six (26), Block Five (5), in NORTHBRIDGE, an addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Loyal E. Dalton and Adrienne A. Dalton, did, on the 2nd day of February, 1966, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,750.00 with 5 3/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, John Ferguson a/k/a John D. Ferguson, Jr., and Florence Mae Ferguson, were the grantees in a deed from Defendants, Loyal E. Dalton and Adrienne A. Dalton, dated March 16, 1974, filed March 18, 1974, in Book 4110, Page 723, records of Tulsa County, wherein Defendants, John Ferguson a/k/a John D. Ferguson, Jr., and Florence Mae Ferguson, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Loyal E. Dalton, Adrienne A. Dalton, John Ferguson a/k/a John D. Ferguson, Jr., and Florence Mae Ferguson, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than eight months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$9,382.08 as unpaid principal with interest thereon at the rate of 5 3/4 percent per annum from June 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, John Ferguson a/k/a John D. Ferguson, Jr., Florence Mae Ferguson, Loyal E. Dalton, and Adrienne A. Dalton, in rem, for the sum of \$9,382.08 with interest thereon at the rate of 5 3/4 percent per annum from June 1, 1974, 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 Defendants, William J. Curtis, Judy A. Curtis, Daniel W. Lindgren, and Kaye S. Ferguson.

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

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


United States District Judge

APPROVED



ROBERT P. SANTEE
Assistant United States Attorney

bcs

FILED

FEB 21 1975

JM

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

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

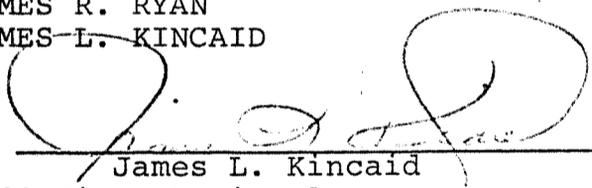
BAKER OIL TOOLS, INC., a)
California corporation,)
)
Plaintiff,)
)
vs.)
)
DONALD D. WALKER,)
WILSON-WRIGHT, INC., a)
corporation, DOE I to)
DOE X, Inclusive,)
)
Defendants.)

NO. 74-C-597 ✓

NOTICE OF DISMISSAL BY PLAINTIFF UNDER
RULE 41(a)(1)(i) OF THE FEDERAL RULES OF CIVIL PROCEDURE

COMES NOW the plaintiff, Baker Oil Tools, Inc., by and through its counsel of record, James R. Ryan and James L. Kincaid, and dismisses this action in accordance with Rule 41(a)(1)(i), no adverse party having served an answer or motion for summary judgment. This dismissal is without prejudice to the rights of plaintiff to refile this action.

JAMES R. RYAN
JAMES L. KINCAID

By 

 James L. Kincaid
 2400 First National Tower
 Tulsa, Oklahoma 74103
 Attorneys for Plaintiff

Of Counsel:

CONNER, WINTERS, BALLAINE,
BARRY & MCGOWEN
2400 First National Tower
Tulsa, Oklahoma 74103

CERTIFICATE OF SERVICE

I, JAMES L. KINCAID, do hereby certify that a true and correct copy of the foregoing Notice of Dismissal was mailed, postage prepaid, this 21st day of February, 1975 to STEPHEN R. CLARK, Hall, Estill, Hardwick, Gable, Collingsworth & Nelson, 805 National Bank of Tulsa Building, Tulsa, Oklahoma 74103.



James L. Kincaid

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

FILED

FEB 21 1975

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
KAROL HAMMONS, COUNTY TREASURER,)
TULSA COUNTY, BOARD OF COUNTY)
COMMISSIONERS, TULSA COUNTY,)
)
Defendants.)

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

CIVIL ACTION NO. 74-C-408

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 21st day of February, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by Gary J. Summerfield, Assistant District Attorney, Tulsa County; and the Defendant, Karol Hammons, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, County Treasurer, Tulsa County, and the Board of County Commissioners, Tulsa County, were served on October 21, 1974, both as appears from the Marshals Return of Service herein, and that service by publication was made on Karol Hammons as appears from the Proof of Publication filed herein.

It appearing that the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their answers herein on November 6, 1974; and that the Defendant, Karol Hammons, 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 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 7, Block 2, ROLLING HILLS THIRD ADDITION, an Addition in Tulsa County, State of Oklahoma, according to the recorded Plat thereof

THAT the Defendant, Karol Hammons, did, on the 13th day of July, 1972, execute and deliver to the Lomas & Nettleton Company, her mortgage and mortgage note in the sum of \$16,650.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated August 3, 1972, Lomas & Nettleton Company, assigned said Note and Mortgage to the Government National Mortgage Association, a corporation; and by Assignment dated October 24, 1972, Government National Mortgage Association, a corporation, assigned said Note and Mortgage to the Mortgage Associates, Inc.; and by Assignment dated November 18, 1972, Mortgage Associates, Inc., assigned said Note and Mortgage to Urban Shelter Mortgages, Inc.; and by Assignment dated November 18, 1972, Urban Shelter Mortgages, Inc., assigned said Note and Mortgage to Federal National Mortgage Association, a corporation; and by Assignment dated October 29, 1973, Federal National Mortgage Association, a corporation, assigned said Note and Mortgage to Secretary of Housing and Urban Development of Washington, D.C.

The Court further finds that Defendant, Karol Hammons, made default under the terms of the aforesaid mortgage note by reason of her 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 Defendant is now indebted to the Plaintiff in the sum of \$16,566.18 as unpaid principal with interest thereon at the rate of 7 percent per annum from December 1, 1973, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendant,

Karol Hammons, the sum of \$529.43 plus interest according and 1974 to law for ad valorem taxes for the years 1973/ and that Tulsa County should have judgment, in rem, for said amount.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendant, Karol Hammons, the sum of \$31.58 plus interest according to law for personal property taxes for the year 1973 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Karol Hammons, in rem, for the sum of \$16,566.18 with interest thereon at the rate of 7 percent per annum from December 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendant, Karol Hammons, for the sum of \$529.43 as of the date of this judgment plus interest thereafter according to law for ad valorem taxes, 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 rem, against Defendant, Karol Hammons, for the sum of \$31.58 as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

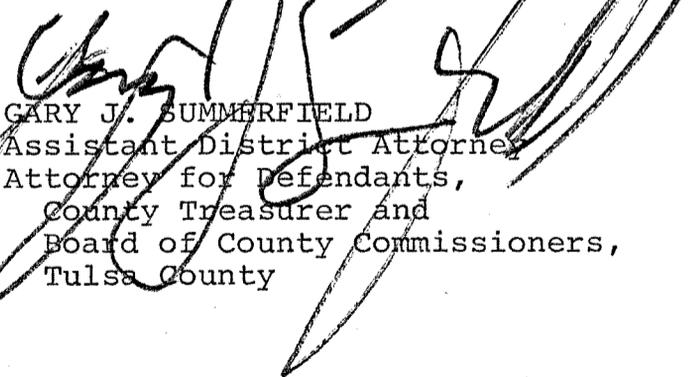
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendant to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment, which sale shall be subject to the ad valorem tax judgment of Tulsa County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

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


United States District Judge

APPROVED


ROBERT P. SANTIÉ
Assistant United States Attorney


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

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

MARY VIRGINIA REED,
Plaintiff,

-vs-

SAFEWAY STORES, INCORPORATED,
and ROBERT L. WATSON,
Defendants.

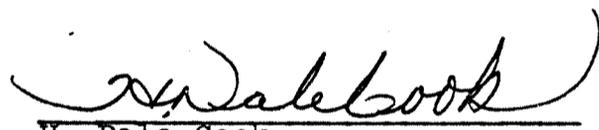
NO. 74-C-446 ✓

FILED
FEB 20 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER SUSTAINING DEFENDANT'S MOTION
TO DISMISS AND OVERRULING PLAINTIFF'S
MOTION TO REMAND

This cause came on for consideration before the Court at Tulsa, Oklahoma on 20th February, 1975. For the reasons set down in the Memorandum Opinion filed this date the Motion to Dismiss Robert L. Watson is sustained and the Motion to Remand is overruled.

It is so ordered this 20th day of February, 1975.


H. Dale Cook
United States District Judge

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

FILED

FEB 20 1975

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
VERN DOUGLAS JACKSON, JANET)
ELIESE JACKSON, SOLOW'S AUTO)
GLASS AND PLATE CO., COUNTY)
TREASURER, TULSA COUNTY, BOARD)
OF COUNTY COMMISSIONERS, TULSA)
COUNTY,)
)
Defendants.)

CIVIL ACTION NO. 74-C-384

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 20th
day of February, 1975, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney, the Defendants,
County Treasurer, Tulsa County, and Board of County Commis-
sioners, Tulsa County, appearing by Gary J. Summerfield,
Assistant District Attorney, Tulsa County, the Defendant,
Solow's Auto Glass and Plate Co., appearing by its attorney
J. G. Follens, and the Defendants, Vern Douglas Jackson and
Janet Eliese Jackson, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, County Treasurer, Tulsa
County, the Board of County Commissioners, Tulsa County, and
Solow's Auto Glass and Plate Co., were served on September 26,
1974, all as appears from the Marshals Return of Service herein,
and that service by publication was made on Vern Douglas Jackson
and Janet Eliese Jackson as appears from the Proof of Publication
filed herein.

It appearing that the Defendants, County Treasurer,
Tulsa County, and Board of County Commissioners, Tulsa County,

have duly filed their answers herein on October 4, 1974; that Defendant, Solow's Auto Glass and Plate Co., has duly filed its disclaimer herein on October 1, 1974; that Defendants, Vern Douglas Jackson and Janet Eliese Jackson, have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Six (6), Block Eleven (11), ROLLING HILLS THIRD ADDITION, an addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Vern Douglas Jackson and Janet Eliese Jackson, did, on the 10th day of February, 1971, execute and deliver to the Lomas & Nettleton Company, their mortgage and mortgage note in the sum of \$20,650.00 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 November 13, 1973, Lomas & Nettleton Company, assigned said Note and Mortgage to the Secretary of Housing and Urban Development of Washington, D.C.

The Court further finds that Defendants, Vern Douglas Jackson and Janet Eliese Jackson, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 8 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$20,323.46 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from June 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, Vern Douglas Jackson and Janet Eliese Jackson, the sum of \$543.07 plus interest according to law for ad valorem taxes for the year(s) 1973 and 1974 and that Tulsa County should have judgment, in rem, for said amount.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, Vern Douglas Jackson and Janet Eliese Jackson, the sum of \$18.28 plus interest according to law for personal property taxes for the year(s) 1974 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Vern Douglas Jackson and Janet Eliese Jackson, in rem, for the sum of \$20,323.46 with interest thereon at the rate of 8 1/2 percent per annum from June 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Vern Douglas Jackson and Janet Eliese Jackson, for the sum of \$543.07 as of the date of this judgment plus interest thereafter according to law for ad valorem taxes, 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 rem, against Defendants, Vern Douglas Jackson and Janet Eliese Jackson, for

the sum of \$18.28 _____ as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

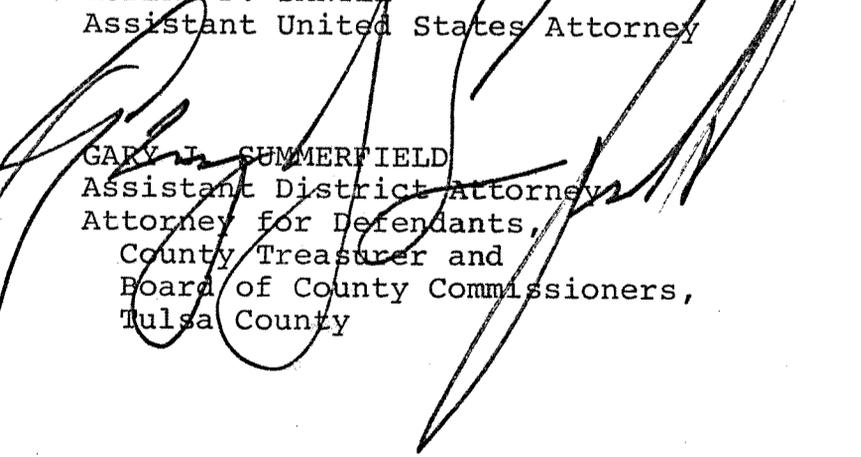
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property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

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


United States District Judge

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney


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

FILED
FEB 19 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.) CIVIL ACTION NO. 74-C-458
)
)
 BILLY R. JOHNSON and)
 O'DELL JOHNSON,)
)
 Defendants.)

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 19
day of February, 1975, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney, and the Defendants,
Billy R. Johnson and O'Dell Johnson, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Billy R. Johnson and
O'Dell Johnson, were served by publication, as appears from
the Proof of Publication filed herein.

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

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

Lot Fifteen (15), Block One (1), VALLEY VIEW
ACRES ADDITION to the City of Tulsa, County
of Tulsa, State of Oklahoma, according to
the recorded plat thereof.

THAT the Defendants, Billy R. Johnson and O'Dell
Johnson, did, on the 14th day of October, 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 Defendants, Billy R. Johnson and O'Dell Johnson, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than ten 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 \$10,268.94 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from April 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, Billy R. Johnson and O'Dell Johnson, in rem, for the sum of \$10,268.94 with interest thereon at the rate of 4 1/2 percent per annum from April 1, 1974, 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.

Walla E. Barrow
United States District Judge

APPROVED

Robert P. Santee

ROBERT P. SANTEE
Assistant United States Attorney

bcs

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB 18 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

R. W. ROSS,)
)
 Plaintiff,)
)
 vs.)
)
 STAUFFER CHEMICAL COMPANY,)
 a corporation,)
)
 Defendant.)

No. 74-C-359

ORDER OF DISMISSAL WITH PREJUDICE

The Plaintiff and the Defendant, having compromised and settled all issues in this action and having stipulated that the Complaint and this action be dismissed with prejudice, it is therefore;

ORDERED, that the Plaintiff's Complaint and this action are, by the Court, dismissed with prejudice to the bringing of another action upon the same cause or causes or action asserted herein.

Entered this 18th day of February, 1975.


UNITED STATES DISTRICT JUDGE

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

FILED

FEB 13 1975 K

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 FRANKLIN R. COOKERLY and)
 RICHARD L. PIERCE, Partners)
 d/b/a COOKERLY & PIERCE,)
 et al.,)
)
 Defendants.)

CIVIL ACTION NO. 73-C-143 ✓

O R D E R

NOW, on this 13th day of February, 1975, there came on for consideration the matter of the default of defendants, Franklin R. Cookerly and Richard L. Pierce, Partners d/b/a Cookerly & Pierce, and Shirley A. Cookerly. The Court finds that default should be entered against these defendants.

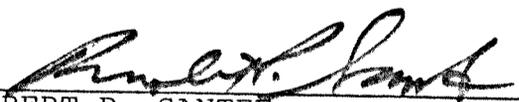
The Court further finds that the question of priority of liens by and between the United States of America and the Intervenor, Harold S. Wood, should be deferred for future determination.

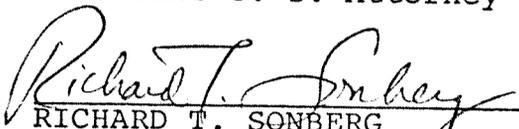
NOW, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT Default Judgment is entered against Franklin R. Cookerly and Richard L. Pierce, Partners d/b/a Cookerly & Pierce, and Shirley A. Cookerly.

IT IS FURTHER ORDERED THAT the question of priority of liens by and between the United States of America and Harold S. Wood, Intervenor, be reserved for future determination.


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANTEE
Assistant U. S. Attorney


RICHARD T. SONBERG
Attorney for Harold S. Wood,
Intervenor.

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

CRAIG COUNTY WATER DISTRICT
NO. 2, INC., a corporation,

Plaintiff,

-vs-

ALL-STATES UTILITIES, INC.
an Oklahoma corporation and
INSURANCE COMPANY OF NORTH AMERICA,
a corporation,

Defendants.

CIVIL ACTION

No. 74-C-398

FILED

FEB 13 1975

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

O R D E R

Plaintiff, Craig-County Water District No. 2, Inc., brought this action in the Oklahoma District Court of Craig County against All-States Utilities, Inc. for breach of contract and against Insurance Company of North America as surety on the breached contract. Plaintiff and Defendant All-States Utilities, Inc. are corporations organized and existing under and by virtue of the laws of the State of Oklahoma. Defendant Insurance Company of North America (herein referred to as INA) is a Pennsylvania corporation.

INA, thereafter, filed a petition for removal to this Court, alleging that the cause of action on the performance bond contract it had entered into as surety was a wholly separable and independent controversy between it and the Plaintiff and as to them diversity existed. Thereafter, Plaintiff filed a motion to remand alleging that diversity did not exist in that Plaintiff's petition on its face showed that its claim against Defendant, INA, was not "a separate and independent claim of action" from the claim against Defendant All-States Utilities. Any question as to the correctness of Plaintiff's position is dispelled in Defendants' brief in opposition to the Motion to Remand wherein Defendants concede that "Since the filing of the

Petition for Removal, Defendants have examined the terms of the bonds which are the subject of the action herein between Plaintiff and INA, and have determined that the obligation to Plaintiff on the bonds was a joint obligation of the Defendants, so that no 'separable controversy' exists within the meaning of 28 U.S.C.A. § 1441 of the Federal Rules of Civil Procedure."

Defendants, however, now rely on the fact that another party, Robintech, Inc., subsequent to the filing of Plaintiff's Motion to Remand, has filed a Motion to Substitute itself for All-States Utilities, Inc., claiming to be responsible for all damages alleged and the real party in interest since All-States Utilities is their wholly owned subsidiary. Robintech, Inc. is a Texas corporation. The question of possible substitution and its affect on diversity, however, are not determinative of the question of remand herein, since they had not been raised at the time the motion to remand was made.

In *Doggett v. Hunt*, 93 F.Supp. 426 (D.C.D.D.Ala. 1950), app. dismiss., 199 F.2d 152 (5th Cir. 1952), the Court said:

"Upon examination of the sections on removal of causes in such standard texts as *Cyclopedia of Federal Procedure* (2nd Ed.), *Hughes' Federal Practice*, and *Corpus Juris*, together with the authorities cited therein and the numerous decisions referred to by plaintiffs and defendant, one principle stands out clearly: the right of removal is determined, basically, from the allegations on the face of the record as a whole at the time the petition for removal is filed, for it is the state of facts appearing of record at that time which determines whether or not, under the applicable statutes, 28 U.S.C.A. §§ 1332, 1441(a), 1446, 1447, the federal court can take jurisdiction from the state court."

In *Parks v. Physicians & Surgeons Bldg. Corp.*, 324 F.Supp. 883 (W.D.Okla. 1971), Judge Daugherty reiterated that "the Court must take the removed case in the precise form in which it arrives in this Court, and if it is not

removable in that form, remand it. If it should later become removable because of some action of the State Court, then another removal attempt would be in order."

An examination of the record in the present case in the precise form in which it arrived in this Court clearly indicates that the Motion to Remand of Plaintiff should be granted and the case is hereby remanded to the Oklahoma County District Court from which it was improvidently removed.

It is so ordered this 13th day of February, 1975.


H. Dale Cook
United States District Judge

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

THE ADMINISTRATOR OF THE
ESTATE OF HAROLD S. BORN,
DECEASED,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL NO. 72-C-234

FILED

FEB 13 1975

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

JUDGMENT

Defendant, United States of America, having filed a motion for summary judgment on the grounds that there was no issue of material facts herein and that defendant was entitled to judgment as a matter of law, and such motion not having been opposed by plaintiff, plaintiff having advised the Court that he does not intend to oppose such motion, and this Court finding that this judgment should be entered, it is

ORDERED, ADJUDGED, and DECREED, that defendant's motion for summary judgment be, and the same is hereby granted, and it is further

ORDERED and ADJUDGED that judgment is hereby entered in favor of the defendant with respect to its motion for summary judgment and that the plaintiff's complaint be, and it is hereby dismissed with prejudice.

ENTERED this 13th day of February 1975.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

Gerald R. Preston Jr.
GERALD R. PRESTON, JR.

Room 215 Union National Bank Bldg.
Bartlesville, Oklahoma 74003

ATTORNEY FOR PLAINTIFF

William W. Guild

WILLIAM W. GUILD
Attorney, Tax Division
Department of Justice
Room 8B37, 1100 Commerce Street
Dallas, Texas 75202

ATTORNEY FOR DEFENDANT

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

FILED

FEB 13 1975

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

RUTH BANKS,

Plaintiff,

-vs-

SAFEWAY STORES, INCORPORATED,

Defendant.

No. 73-C-378

ORDER
JUDGMENT OF DISMISSAL WITH PREJUDICE

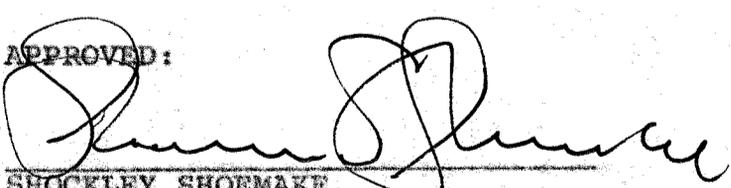
WHEREAS, the parties have stipulated that all questions and issues existing between the parties have been fully and completely disposed of by settlement, and have requested the entrance of a judgment of dismissal with prejudice,

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

Dated this 13th day of February, 1975.


UNITED STATES DISTRICT JUDGE

APPROVED:


SHOCKLEY SHOEMAKE,
Attorney for Plaintiff.

RICHARD CARPENTER,
Attorney for Defendant.

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

FILED

FEB 12 1975

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

TROY WALTER BECK,)
)
Petitioner,)
vs.) NO. 74-C-362
)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

O R D E R

Now, on this 14th day of January, 1975, this cause comes on for hearing pursuant to regular setting on the Motion of the Petitioner under 28 U.S.C. § 2255. Petitioner is present in person and by counsel, Kenneth L. Stainer, and Respondent, United States of America, is present by Hubert H. Bryant, Assistant United States Attorney.

The Court finds that in criminal case No. 70-CR-39, the technical requirements of Rule 11, Federal Rules of Criminal Procedure, were not met, and this date the Court vacated the defendant's guilty plea in the criminal cause. He was re-arraigned and the cause set for jury trial on the docket commencing January 27, 1975.

WHEREFORE, Petitioner's prayer contained in his motion herein having become moot, the Court finds and Orders this cause dismissed.



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

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

FILED

FEB 12 1975

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

ANTHONY L. WHITEWATER,)
vs.) Petitioner,)
UNITED STATES OF AMERICA,) NO. 75-C-5
Respondent.)

ORDER

Now, on this 14th day of January, 1975, this cause comes on for hearing pursuant to regular setting on the Motion of the Petitioner under 28 U.S.C. § 2255. Petitioner is present in person and by counsel, Mr. Lloyd Payton, and Respondent, United States of America, is present by Ben F. Baker, Assistant United States Attorney.

The Court finds that in criminal case No. 74-CR-79, when the defendant was sentenced on July 2, 1974, to ten years in custody of the Attorney General, the Court failed to impose the Special Parole term required by 21 U.S.C. § 841. This date, the Court vacated the Defendant's plea of guilty in the criminal case. He was re-arraigned, waived trial by jury, and entered a plea of guilty to Count I of the Indictment, and was re-sentenced by the Court. Counts II and III of the Indictment were dismissed on Motion of the Government.

WHEREFORE, Petitioner's prayer contained in his Motion in this cause having become moot, the Court finds and Orders that this cause be dismissed.


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

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
 vs.)
)
)
)
 JAMES ARTHUR GOODWIN,)
 BONITA R. GOODWIN a/k/a BONITA)
 RUTH GOODWIN,)
 COUNTY TREASURER, TULSA COUNTY,)
 BOARD OF COUNTY COMMISSIONERS,)
 TULSA COUNTY,)
)
) Defendants.)

FILED

FEB 12 1975

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

Civil Action No. 74-C-328

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 11th day
of February, 1975, the plaintiff appearing by Robert P.
Santee, Assistant United States Attorney, the defendants, County
Treasurer and Board of County Commissioners, Tulsa County, appear-
ing by their attorney, Gary J. Summerfield, and the defendants,
James Arthur Goodwin and Bonita R. Goodwin a/k/a Bonita Ruth
Goodwin, appearing not.

The Court being fully advised and having examined the
file herein finds that the defendants, James Arthur Goodwin and
Bonita R. Goodwin a/k/a Bonita Ruth Goodwin, were served by
publication as appears from the Proof of Publication filed herein
on January 2, 1975; and that the defendants County Treasurer,
Tulsa County and the Board of County Commissioners, Tulsa County,
were served with Summons and Complaint on August 19, 1974.

It appearing that the defendants County Treasurer, Tulsa
County, and the Board of County Commissioners, Tulsa County, have
duly filed their answers herein on August 28, 1974; that the
defendants James Arthur Goodwin and Bonita R. Goodwin a/k/a Bonita
Ruth Goodwin have failed to answer herein and that default has
been entered by the Clerk of this Court.

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

Lot Thirty (30), Block Eight (8), NORTHGATE THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof

THAT the defendants, James Arthur Goodwin and Bonita R. Goodwin, did, on the 5th day of May 1972, execute and deliver to the Diversified Mortgage and Investment Company their mortgage and mortgage note in the sum of \$15,400.00, with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

THAT by Assignment of Mortgage of Real Estate dated June 15, 1972, filed in Tulsa County, Oklahoma, and recorded in Book 4020, Page 1630, Diversified Mortgage and Investment Company assigned said note and mortgage to the Government National Mortgage Association; that by Assignment of Mortgage of Real Estate dated October 24, 1972, filed in Tulsa County, Oklahoma, and recorded in Book 4042, Page 1330, Government National Mortgage Association assigned said note and mortgage to Mortgage Associates, Inc.; by Assignment of Mortgage of Real Estate dated November 6, 1972, filed in Tulsa County, Oklahoma, and recorded in Book 4044, Page 948, Mortgage Associates, Inc. assigned said note and mortgage to Urban Shelter Mortgages, Inc.; that by Assignment of Mortgage of Real Estate dated November 6, 1972, filed in Tulsa County, Oklahoma, and recorded in Book 4044, Page 949, Urban Shelter Mortgages, Inc. assigned said note and mortgage to Federal National Mortgage Association; that by Assignment of Mortgage of Real Estate dated December 14, 1972, filed in Tulsa County, Oklahoma, and recorded in Book 4102, Page 1169, 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, James Arthur Goodwin and Bonita R. Goodwin, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 10 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$15,214.89, as unpaid principal, with interest thereon at the rate of 7 percent per annum from March 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from James Arthur Goodwin and Bonita R. Goodwin, the sum of \$ None for personal property taxes for the year 1973, and the sum of \$ 22.62 for personal property taxes for the year 1974, plus interest according to law, and that Tulsa County should have judgment in rem for said amount, but that such judgment is subject to and inferior 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 James Arthur Goodwin and Bonita R. Goodwin, the sum of \$ 174.28, plus interest according to law, for ad valorem taxes for the year 1974, and that Tulsa County should have judgment in rem for said amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against the defendants James Arthur Goodwin and Bonita R. Goodwin, in rem, for the sum of \$15,214.89 with interest thereon at the rate of 7 percent per annum from March 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the County of Tulsa have and recover judgment in rem for personal property taxes against the defendants, James Arthur Goodwin and Bonita R. Goodwin,

for the sum of \$ 22.62 as of the date of this judgment plus interest thereafter according to law, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment in rem for ad valorem taxes against the defendants James Arthur Goodwin and Bonita R. Goodwin, for the sum of \$ 174.28 as of the date of this judgment plus interest thereafter according to law, and that such judgment is superior to the first mortgage lien of the plaintiff herein.

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

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


UNITED STATES DISTRICT JUDGE

APPROVED.


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


~~GARY J. SUMMERFIELD~~ ANDREW B. ALLEN
Assistant District Attorney
Attorney for defendants
County Treasurer and Board
of County Commissioners, Tulsa County

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

THELMA K. BICKENHEUSER,)
Plaintiff,))
vs.) NO. 75-C-20 ✓
CHRISTINE HILL WATSON KANNON,) Civ. Action
Defendant.)

ORDER

FILED
FEB 12 1975 *hw*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

This matter comes on for hearing on motion of the plaintiff herein, to dismiss her cause of action, and for good cause shown, the Court finds, that said motion should be allowed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court, that the above entitled cause of action, is dismissed without prejudice as to the plaintiff's right to her cause of action.

W. Dale Book
Judge of the U. S. District Court

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

FILED

FEB 12 1975

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

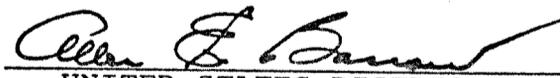
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
EUNICE L. HUGHS, formerly)
EUNICE L. CURTIS,)
)
Defendant.)

CIVIL ACTION NO. 74-C-264

J U D G M E N T

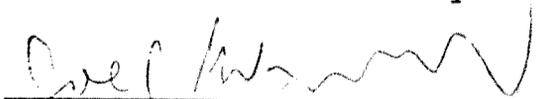
NOW, on this 12th day of February, 1975, there came on for consideration this matter. The Court finds that the United States of America, plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and Eunice L. Hughs, formerly Eunice L. Curtis, by and through her attorney, Joel L. Wohlgemuth, have agreed to the entry of judgment herein in the amount of \$960.00 payable \$40.00 a month beginning March 1, 1975.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT the United States of America be and it is hereby granted judgment against Eunice L. Hughs, formerly Eunice L. Curtis, in the amount of \$960.00, said judgment shall be paid at a rate of \$40.00 a month beginning March 1, 1975, and each month thereafter until paid.


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANTEE
Assistant U. S. Attorney


JOEL L. WOHLGEMUTH,
Attorney for Eunice L. Hughs,
formerly Eunice L. Curtis

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

DANNY F. TALBOTT and
RITA L. TALBOTT,

Plaintiffs,

vs.

L. M. CHRISTIAN and ALL-STATES
UTILITIES, INC., an Oklahoma
Corporation,

Defendants.

No. 74-C-305 ✓

FILED

FEB 7 - 1975 *hm*

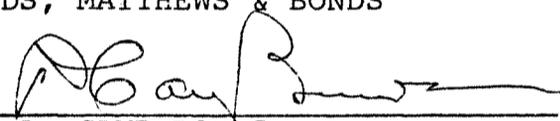
Jack C. Silver, Clerk

DISMISSAL WITH PREJUDICE U. S. DISTRICT COURT

COME now the plaintiffs, and each of them, and dismiss
the within cause against L. M. CHRISTIAN and ALL-STATES
UTILITIES, INC., an Oklahoma Corporation, with prejudice to
plaintiffs' right to bring a new action.

HASKELL and CRANDELL

BONDS, MATTHEWS & BONDS

By 

A. CAMP BONDS

Attorneys for Plaintiffs

ORDER

IT IS ORDERED that on motion of plaintiffs, said
cause is dismissed with prejudice.

Dated this 7th day of February, 1975.



U. S. DISTRICT JUDGE

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

MALTER INTERNATIONAL CORPORATION, A Louisiana Corporation, and
MALTER INTERNATIONAL CORPORATION, A Texas Corporation,

Plaintiffs,

vs.

UNITED STATES CHEMICAL CORPORATION, and LOUIS O. LASITER,

Defendants.

~~FILED~~

~~FEB 4 1975~~

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

Case No. 72-C-60

FILED

FEB 6 1975

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

FIRST SUPPLEMENTAL JUDGMENT

THIS CAUSE came on for consideration on the 6th day of February, ~~January~~

1975, pursuant to the Stipulations and Consent of all parties. Plaintiffs were represented by Charles Baker, of the Firm of Gable, Gotwals, Rubin, Fox, Johnson & Baker, and the Defendants were represented by Mr. Lloyd K. Holtz, of the Firm of Whitebook, Knox, Holtz and Harlin. Thereupon the Court having examined the file herein, and finds:

1. On the 5th day of February, 1974, this Court entered a Consent Decree in the above styled matter, ordering, in part, that the Defendants, United States Chemical Corporation and Louis O. Lasiter, file with this Court and serve on Counsel for the Plaintiffs a report, in writing, under oath, setting forth in detail the manner and form in which the Defendants, United States Chemical Corporation and Louis O. Lasiter have complied with this Consent Decree.

2. By the terms and provisions of said Consent Decree, the Defendants, United States Chemical Corporation and Louis O. Lasiter, their agents, servants, representatives, officers and employees were thereby enjoined and restrained for a period of six (6) months from the date of entry of this Consent Decree from selling, soliciting or attempting to sell, solicit, or offer for sale for itself, or on behalf of any other entity, any specialty chemical products to any person, firm or corporation whose name is listed on Exhibit "A" through "D" thereto attached and made a part thereof.

3. The First Report of Defendants Compliance with Consent Decree filed herein by the Defendants reflect that the Defendants, United States Chemical Corporation and Louis O. Lasiter, have complied with the terms and provisions of said Paragraph VII and Paragraph XI of said Consent Decree insofar as the respective periods of time set forth in said Paragraphs.

4. A Supplemental Judgment should be entered in this Cause by the terms and provisions of which the Defendants, United States Chemical Corporation and Louis O. Lasiter, are released and discharged from any further restraint provisions as provided for in Paragraph VII of said Consent Decree.

IT IS ORDERED, ADJUDGED AND DECREED that the Defendants, United States Chemical Corporation and Louis O. Lasiter, have complied with Paragraph VII of the Consent Decree entered herein on the 5th day of February, 1974, and that the Defendants, United States Chemical Corporation and Louis O. Lasiter, are hereby released and discharged from the restraint provisions of Paragraph VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other terms and provisions of the Consent Decree entered in this cause on February 5, 1974, shall remain in full force and effect in accordance with the terms and provisions thereof, unaffected by this FIRST SUPPLEMENTAL JUDGMENT.

ENTERED at Tulsa, Oklahoma, on this 6th day of February, 1975.

Allen E. Bennett
UNITED STATES DISTRICT JUDGE

Agreed to as to form, content and for entry:

GABLE, GOTWALS, RUBIN, FOX, JOHNSON & BAKER

By Charles E. Baker

Charles Baker

Attorneys for the Plaintiffs, Malter International Corporation, A Louisiana Corporation, and Malter International Corporation, A Texas Corporation.

WHITEBOOK, KNOX, HOLTZ & HARLIN

By Lloyd K. Holtz

Lloyd K. Holtz

Attorneys for Defendants, United States Chemical Corporation and Louis O. Lasiter.

that the Complaint shows Plaintiff failed to file timely notice of an intent to sue with the Secretary of Labor as required by 29 U.S.C. §626(d). This defect, apparent on the face of the Complaint, is an affirmative defense. Affirmative defenses which appear on the face of a Complaint may be asserted by a Motion to Dismiss for failure to state a claim upon which relief can be granted. 5 Federal Practice and Procedure, Civil, Wright and Miller, §1357.

Defendant has raised a substantial jurisdictional question through its Motion to Dismiss. The Court has, pursuant to the direction of Schramm v. Oakes, 352 F. 2d 143 (Tenth Cir. 1965), held evidentiary hearings to more fully develop the facts necessary to determine the jurisdictional challenge. The pertinent facts of this case as derived from the well pleaded allegations of the Complaint and two evidentiary hearings are found to be as follows:

Plaintiff was employed by Defendant from January 3, 1966 until July 31, 1973. She was terminated at the latter date. At the date of termination Plaintiff was fifty-one years of age. During the period of Plaintiff's employment, since and after 1967, Defendant maintained posted notices informing employees of the ADEA in conspicuous places throughout the places where Defendant was employed.^{1/} Though Defendant testified she did not see these notices, a reasonably alert employee in the same or similar circumstances as Plaintiff would have seen them. On September 9, 1974, shortly after her termination, Plaintiff contacted Mr. J. D. Speer, an Assistant Area Director of the Department of Labor in the Tulsa, Oklahoma area. At this time she complained that she had been fired because

^{1/}

These notices are required by 29 U.S.C. §627.

of her age. Mr. Speer did not inform Plaintiff that she had a right to maintain a civil action on her own behalf under the ADEA. He stated that he would investigate the complaint. Subsequently, Plaintiff attempted to contact Mr. Speer several times by telephone. In each instance she was informed she would be notified as soon as any action was taken on her complaint. On March 5, 1974 Speer wrote Plaintiff a letter in which he stated there would be a delay in investigating her complaint. In this letter he also informed Plaintiff she had the right to bring a civil action on the basis of her complaint. He enclosed a Department of Labor Pamphlet containing basic information concerning the ADEA. This was the first date on which Plaintiff claims she had actual knowledge of her right to maintain civil action under the ADEA. Thereafter Plaintiff contacted an attorney who, on March 14, 1974, mailed a letter to the Department of Labor addressed to the local office at Tulsa, Oklahoma, for the attention of Mr. Speer, informing the Department that the Plaintiff intended to commence a civil action against the Defendant based on alleged ADEA violations.

29 U.S.C. §626(d) reads in part as follows:

"No civil action may be commenced by any individual under this section until the individual has given the Secretary not less than sixty days' notice of an intent to file such action. Such notice shall be filed--

(1) within one hundred and eighty days after the alleged unlawful practice occurred,..."

It is Defendant's position that the face of the Complaint reveals Plaintiff did not file notice of intent to file a civil action within one hundred and eighty days of the alleged discriminatory act and that when notice was filed it was not with the Secretary as is required by the Section, but was with a local

Assistant Area Director. It is Plaintiff's position that the 180 day filing period is directory and not jurisdictional. She further contends she gave adequate notice by informing the Department of the alleged discriminatory act on her initial visit with Mr. Speer. She further contends the filing period should be tolled in this case because the Department failed to inform her of her right to bring a civil action under the ADEA. (To this same end she contends Defendant failed to perform its statutory duty of posting notice informing employees of the ADEA as is required by 29 U.S.C. §627 but the Court resolves this factual issue against Plaintiff as heretofore set out.)

With regard to Plaintiff's contention that the filing of a notice of an intent to sue with the Secretary within 180 days of an alleged discriminatory act is not a jurisdictional prerequisite to the right to maintain a civil action under the ADEA, the Court concludes Plaintiff's position is neither supported by authority nor reason.^{2/} Literally every reported case which has

^{2/} Plaintiff relies on Goger v. H. K. Porter Company, Inc., 492 F. 2d 13 (Third Cir. 1974) to support her contention that filing notice of intent within the statutory period is not a jurisdictional prerequisite to the right to maintain a civil action. Goger deals with 29 U.S.C. §626(d)(2). This section sets the time limits within which notice of intent to sue must be filed in cases falling under Section 14(b) of the ADEA, 29 U.S.C. §633(b). Section 14(b) basically provides that if a state has an agency with authority to deal with age discrimination in employment the state remedy must be attempted before a civil action under 29 U.S.C. §626(d) may be commenced. In Goger the plaintiff failed to avail himself of available state remedy. Instead he proceeded directly through the Department of Labor. The time limits within which the plaintiff could have commenced an action under the state law expired. The district court dismissed the action holding that the ADEA required the plaintiff to exhaust available state remedies prior to commencing a civil action. On appeal the Third Circuit held:

2/

continued.....

"While we do not consider the failure to file a timely complaint with the appropriate state agency a mere 'technical' omission, we nonetheless consider equitable relief to be appropriate in view of the total absence, to our knowledge, of any judicial decision construing section 633(b) during the period involved here and in view of the remedial purposes of the 1967 Act. In the future, however, we think the Congressional intent that state agencies be given the initial opportunity to act should be strictly followed and enforced..."

Plaintiff's reading of the case is incorrect. In Goger the court granted equitable relief under the circumstances of the case since there were no cases construing the point raised by that plaintiff on appeal. The court did hold that resort to available state remedies was a jurisdictional prerequisite to the maintenance of a civil action based on the ADEA. And the court clearly stated that in the future, now that there was a decision on point, the Congressional intent should be strictly enforced and followed. This case does not by analogy support Plaintiff's position. Indeed, it undermines her position. There are many cases holding that, in situations to which §626(d)(1) applies, filing notice of an intent to sue within 180 days of the alleged discriminatory act is a jurisdictional prerequisite to the maintenance of a civil action. Thus, Plaintiff cannot avail herself of the special circumstances of Goger. In fact Goger must, in this case, be read to support the proposition that the clear intent of Congress should be applied and enforced.

dealt with the question has held the filing period to be jurisdictional. Powell v. Southwestern Bell Telephone Company, 494 F. 2d 485 (Fifth Cir. 1974); Oshiro v. Pan American World Airways, Inc., 378 F. Supp. 80 (D. Hawaii 1974); Cochran v. Ortho Pharmaceutical Company, 376 F. Supp. 302 (E.D. La. 1971); Burgett v. Cudahy Company, 361 F. Supp. 617 (D. Kan. 1973); Bunch v. Barnett, 62 FRD 615 (D. S.Dak. 1974); Gebhard v. GAF Corporation, 59 FRD 504 (D.C. D.C. 1973). Also, the intent of Congress is clearly expressed in the statute. Notice of an intent to sue shall be filed within one hundred and eighty days of an alleged discriminatory act. Where the language of a statute is plain and unambiguous it must be given effect according to its plain and obvious meaning.

82 CJS Statutes §322(2). Thus it is the decision of this Court that filing notice of an intent to sue with the Secretary within 180 days of an act of age discrimination is a jurisdictional prerequisite to the right to maintain a civil action under 29 U.S.C. §626(d)(1).

Plaintiff's second contention is that her act of informing the Department of Labor that she had been fired because of her age constitutes sufficient notice of an intention to sue to either satisfy 29 U.S.C. §626(d)'s notice requirement or to toll the running of the 180 day notice period. This argument is supported by some authority but not by reason. Plaintiff relies on Woodford v. Kinney Shoe Corporation, 369 F. Supp. 911 (N.D. Ga. 1973). The facts of Woodford are very similar to the facts herein. In Woodford the plaintiff contacted the Department one hundred and sixty days after she was fired and stated that she had been discriminated against. Apparently she did not state she intended to sue, however, the facts on this point are not specific. The court held:

"...where an employee, within one hundred and eighty days of his discharge, reports to the Labor Department that he has been discharged from his job because his employer discriminates against older workers, the employee's right to file suit later under the Age Discrimination Act is preserved, even if the employee does not in so many words declare to the Department his intent to file such an action."

This decision disregards the clear mandate of 29 U.S.C. §626(d) that:

"No civil action may be commenced by any individual under this section until the individual has given the Secretary not less than sixty days' notice of an intent to file such action..." (Emphasis added.)

It is difficult to equate a complaint of age discrimination made to a local wage and hour office with a notice of intent to bring a civil action filed with the Secretary of Labor. The language of Section 626 could not be clearer as to what is required. To hold that a complaint of age discrimination is a notice of intent to sue is in effect to rewrite a portion of a Federal statute. This is beyond the power of the Court.

The ADEA is enforced according to the powers, remedies and procedures provided by 29 U.S.C. §211(b), 216(b)-(d) and 217. Under 29 U.S.C. §216(c) the Secretary of Labor is authorized to sue on behalf of employees where there is a violation of the Act. Under 29 U.S.C. §216(b) the right of an employee to bring a civil action, in certain circumstances is terminated, when the Secretary commences an action. Thus, when the Secretary of Labor commences an investigation upon the basis of a complaint filed by an employee that he has been discriminated against, the employer does not necessarily have notice that the aggrieved employee intends to sue. In Powell v. Southwestern Bell Telephone Company, supra, the court stated:

"...It is logical that the 180 day notice was intended to insure that potential defendants would become aware of their status and the possibility of litigation reasonably soon after the alleged discrimination since the notice goes from the Secretary of Labor on to the employer involved."

The Secretary has the power to make investigations under the ADEA, 29 U.S.C. §626(a). In the case at hand Plaintiff filed her complaint with the local wage and hour division. It in turn promised to commence an investigation and did in fact do so. The investigatory powers of the ADEA are in accordance with the powers and procedures provided by 29 U.S.C. §§209 and 211. It does not appear that under the provisions of these statutes

the commencement of an investigation by the Department of Labor would effectively notify an employer that an employee intended to bring a civil action under the ADEA. Thus to hold that the mere filing of a complaint with the Department satisfies the notice requirement of 29 U. S. C. §626(d) thwarts one of the basic purposes of that section that a potential defendant become aware of its status and the possibility of litigation reasonably soon after the alleged discrimination. In fact, as is evidenced by the facts of this case, there is no guarantee that the Labor Department investigation commenced pursuant to a discrimination complaint would even begin within a reasonably short time after the filing of the complaint. The employer would therefore not even have reason to suspect that there was some complaint against it until well after the alleged act of discrimination. This is clearly contrary to the intent of Congress.

It is apparent from the history of the ADEA that Congress was concerned with notice to an employer within a reasonable time after an alleged act of discrimination. In Powell v. Southwestern Bell Telephone Company, supra, the court noted:

"Perhaps the most interesting feature of the origin of the 180 day notice limitation is that it appeared in the original bill as introduced in the Senate, was deleted from the House passed bill, and was restored by the amendment in the Senate when the House bill was returned for consideration by the upper chamber. The House concurred in the amendment. Its restoration, together with that of several other portions of the original Senate bill, was 'intended to answer some of the disquiet in American business. . . keeping also in mind the practical problems of administration...' 113 Cong.Rec. 35056 (Remarks of Senator Javits)."

It is obvious from this history that Congress attached significant importance to the 180 day notice requirement. It cannot be said

that the mere filing of a complaint of discrimination with the Department of Labor fulfills the same function as the required notice of an intent to sue.

The final clause of 29 U.S.C. §626(d) reads as follows:

"Upon receiving notice of an intent to sue, the Secretary shall promptly notify all persons named therein as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference and persuasion."

The filing of notice of intent to sue performs two functions. The prospective defendant is promptly notified of the possibility of litigation. And the Secretary is induced to promptly begin informal methods of conciliation, knowing that a civil action will proceed if he does not obtain results. It cannot be said that these functions are performed by the mere filing of a complaint of age discrimination with a local office of the Department of Labor. It does not appear that in the enforcement provisions of the ADEA applicable to the Secretary that there is any requirement of promptly notifying an employer that a complaint has been filed against it. Nor does it appear that there is any requirement that the Secretary promptly act on a complaint. Therefore, the mere registration of a complaint of age discrimination with the local wage and hour division of the Department of Labor cannot be held by this Court to satisfy the notice requirement of 29 U.S.C. §626(d).

Plaintiff's final argument is that the 180 day notice period was tolled when she filed her complaint with the Department and it failed to notify her of her right to sue until after the 180 day notice period had expired. Defendant argues that Plaintiff's

mere ignorance of her legal rights does not toll the running of the notice period. It is axiomatic that a person's ignorance of his legal rights will not toll the running of a statute of limitations. 54 CJS, Limitations of Actions, §205. Although a traditional statute of limitations is not involved herein, the same principle should apply. All persons are charged with knowledge of the provisions of statutes. 58 AmJur 2d, Notice, §21. Therefore, Plaintiff must be charged with notice of the provisions of 29 U.S.C. §626(d). Also, as has been previously found herein, Defendant maintained, throughout the period of Plaintiff's employment, posted notices regarding the ADEA. These notices were conspicuously posted as is required by 29 U.S.C. §627. Although Plaintiff testified that she never saw the notices, her testimony is unbelievable. It must be concluded that a reasonably aware person in the same or similar circumstances would have seen the notices. Thus, Plaintiff had not only presumptive notice of the content of the ADEA but she also must be charged with constructive knowledge from the posted notices which would lead a reasonable person to know or to inquire into his legal rights under the ADEA.

Defendant also argues, convincingly, that the mere filing of a complaint with the Department of Labor by Plaintiff did not toll the notice period since such action is permissive and not mandatory. The use of a permissive administrative remedy does not toll running of a statute of limitations. Steel Improvement & Forge Company v. United States, 355 F. 2d 627 (Ct. Cl. 1966); O'Callahan v. United States, 451 F. 2d 1390 (Ct. Cl. 1971). Recourse to the Department of Labor is not mandatory under the ADEA except to give the required notice of intent to sue. An aggrieved

employee does not have to file a complaint with the Department. An employee who wants to file his own civil action only has to notify the Department that he intends to bring such an action. There is a mandatory sixty day waiting period in which the Secretary is supposed to mediate, but this alone does not appear to make the administrative remedy mandatory. Further, the aggrieved party is not bound by the result of any settlement achieved by the Secretary in such mediation. If not satisfied the employee may sue if the required notice of intent to sue is accomplished.

It is a well settled general rule that in a given situation a statute of limitations will be tolled if the Congressional purpose which motivated the involved legislation will thereby be effectuated. Midstate Horticultural Co. v. Pennsylvania R. Co., 320 U.S. 356, 88 L. Ed. 96, 64 S Ct 128 (1943); Burnett v. New York Cent. R. Co., 380 U.S. 424, 13 L Ed 2d 941, 85 S Ct 1050 (1965); American Pipe and Construction Co. v. Utah, 414 U.S. 538, 38 L Ed 2d 713, 94 S Ct 756 (1974). In Burnett the Court stated:

"...the basic inquiry is whether congressional purpose is effectuated by tolling the statute of limitations in given circumstances.

In order to determine congressional intent, we must examine the purposes and policies underlying the limitation provision, the Act itself, and the remedial scheme developed for the enforcement of the rights given by the Act."

The Congressional purposes underlying the limitations period provided by 29 U.S.C. §626(d) have been previously considered. That policy as discussed in Powell v. Southwestern Bell Telephone Company, supra, was to make potential defendants aware of their status and the possibility of litigation reasonably soon after the alleged discrimination. This would promote the good faith negotiation of employers during the 60 day conciliation period provided

by 29 U.S.C. §626(d). It also provides the opportunity for preservation of evidence and records for use at a trial necessitated by a failure of negotiation. It has been seen from the history of the ADEA that Congress considered the notice provisions to be important. The policies underlying the ADEA are set out in the first section of the Act, 29 U.S.C. §621. That section reads in part, as follows:

"It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment."

The remedial scheme of the Act is basically two fold. An individual employee may enforce the rights created by the Act through an individual action or the Secretary may bring an action on behalf of employees. The Act encourages settlement of differences through the use of state remedies or conciliation through the offices of the Secretary.

In considering the factors delineated in Burnett, it is the conclusion of this Court that the purposes of the Act will not be best effectuated through tolling the limitations period herein. Plaintiff relies heavily on Burnett. In that case the plaintiff commenced an action under the Federal Employer's Liability Act (FELA) in a state court of competent jurisdiction. The action was dismissed due to venue provisions of the Ohio law. Plaintiff promptly refiled in a Federal District Court of competent jurisdiction. However, between the time of commencing the state action and the Federal action, the statute of limitations provided by the Act had expired. The District Court dismissed the action on

the grounds that the statute of limitations had run. The Circuit Court of Appeals affirmed. The Supreme Court reversed.

The Supreme Court held that statutes of limitations are designed to promote fairness to defendants. Such statutes promote justice by preventing surprises through the assertion of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The Court noted that in the case before it the petitioner did not sleep on his rights but filed a timely action in a court of competent jurisdiction. Service of process was had on the defendant notifying it that the petitioner was asserting his rights by suit. Venue was improper under Ohio law but the defendant could have waived venue. The court held that the defendant could not rely on the policy of repose since it was aware that the plaintiff was asserting its rights by suit. Thus, the Court held that the statute of limitations was tolled by the filing of the state court action.

Congress has written into the ADEA an 180 day notice requirement designed to give potential defendants prompt awareness of their status. The traditional policy reason behind a statute of limitations mentioned in Burnett, the promotion of justice by preventing surprise through the assertion of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared, may not have full effect in such a short period of time. Congress nevertheless deemed quick notice to potential defendants to be essential to its new statutory scheme to alleviate the problems

of age discrimination in employment. If in creating a new right Congress deems speedy notice essential, as it obviously did in the case of the ADEA, the courts ought not to avoid the notice requirement for any less compelling reason than would justify the tolling of a statute of limitations. The fact that the plaintiff commenced action in a court of competent jurisdiction and served defendant with timely notice was central to the Burnett decision. There was no such comparable action herein by which Defendant was notified of an action against it. The rationale of Burnett is therefore inapplicable to this case.

Plaintiff suggests that the policy of the ADEA is humanitarian and remedial, hence timely notice should be waived in this case. It is also the policy of the Act to give potential employers prompt notice of their status as potential defendants. In this context where Plaintiff did not take any action which would justify the tolling of a statute of limitations in a parallel situation, the above policies of the Act are evenly balanced and one does not outweigh the other. In such situation the intent of Congress should be fully applied. Plaintiff was not prevented from asserting her rights by the failure of an employee of the Department of Labor to inform her of them. There is no such duty imposed by the ADEA, nor is one mentioned in the relevant CFR. Plaintiff is assumed to know the law and was possessed of more than enough information to put a reasonable person on inquiry. In this case there are no facts which justify the tolling of the 180 day limitations period. This is not to say that Plaintiff's rights are completely lost. There appears to be yet a possibility that the Department of Labor will undertake and obtain successful action on her part. Her dependence

on these Departmental efforts appears to be just in this case as she elected to put her case in its hands and rely on it and not inquire into and pursue her own rights.

Plaintiff contends that she should be allowed to maintain this action as a class action under the "private attorney general" doctrine even if she is found not to have standing to sue on her own behalf. It is her position that she can maintain this action on behalf of similarly situated employees of Defendant even if she is precluded from recovery. Plaintiff relies on Jenkins v. United Gas Corporation, 400 F. 2d 28 (Fifth Cir. 1968); Bowe v. Colgate-Palmolive Company, 416 F. 2d 711 (Seventh Cir. 1969); Parham v. Southwestern Bell Telephone Co., 433 F. 2d 421 (Eighth Cir. 1970) and Hutchings v. United States Industries, Inc., 428 F. 2d 303 (Fifth Cir. 1970) in support of this proposition. Each of these cases appears to be distinguishable from the case at hand in that the involved plaintiffs had, at least initially, standing to sue. Herein Plaintiff does not even have initial standing to sue.

Moreover, in O'Shea v. Littleton, 414 U.S. 488, 38 L. Ed. 2d 674, 94 S Ct 669 (1974) the Court stated:

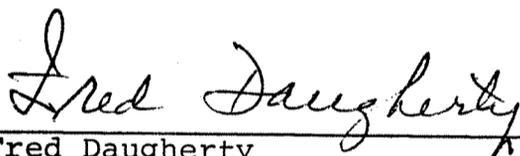
"...if none of the named Plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class..."

Article 3 §2 of the Constitution requires that the judicial power of the United States may not be exercised unless there is an actual case or controversy before it. In order for there to be a case or controversy a plaintiff must have a personal stake in the outcome.

of a controversy. Baker v. Carr, 369 U.S. 186, 7 L. Ed. 2d 663, 82 S Ct 691 (1962); O'Shea v. Littleton, supra. It has been previously determined that Plaintiff herein has no standing to sue. She could not gain any recovery through the prosecution of a class action against Defendant. She has failed to satisfy a jurisdictional prerequisite to recovery on her own behalf. Therefore, she does not have a personal stake in the outcome of a class action based on alleged policies of age discrimination perpetrated by Defendant. Thus, Plaintiff does not have a case or controversy with Defendant and cannot bring a class action on behalf of others.

Accordingly, Defendant's Motion to Dismiss should be sustained and Plaintiff's action dismissed for lack of subject matter jurisdiction in this Court.

It is so ordered this 6TH day of February, 1975.



Fred Daugherty
United States District Judge

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

THE PRUDENTIAL INSURANCE)
COMPANY OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
FAY A. WHITE; MARTHA S. ELLISON,)
a/k/a Martha Sue Ellison Baker,)
a/k/a Sue M. Baker, Individually,)
and as Guardian of the Person of)
Jerry Lee White, Jr.; JERRY L.)
WHITE, JR., a/k/a Jerry Lee White,)
Jr.; BOB J. VASSAR, Administrator)
of the Estates of Jerry Lee)
White, Deceased, and Mary F. White,)
Deceased, and Guardian of the)
Estate of Jerry Lee White, Jr.,)
a minor,)
)
Defendants.)

FILED

FEB 5 1975

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

No. 74-C-489

JOURNAL ENTRY OF JUDGMENT

Now on this 5th day of February, 1975, this matter comes on for hearing upon the Complaint and the Answers filed by all of the defendants. Plaintiff is represented by its attorney of record, Richard W. Gable of Gable, Gotwals, Rubin, Fox, Johnson & Baker. The defendants, Fay A. White; Jerry L. White, Jr., a/k/a Jerry Lee White, Jr.; Bob J. Vassar, Administrator of the Estates of Jerry Lee White, Deceased, and Mary F. White, Deceased, and Bob J. Vassar, Guardian of the Estate of Jerry Lee White, Jr., a minor, are represented by their attorney of record, Ray H. Wilburn of Knight, Wilburn & Wagner. The defendant, Martha S. Ellison, a/k/a Sue M. Baker is represented by her attorney, Stephanie K. Seymour of Doerner, Stuart, Saunders, Daniel & Langenkamp.

The Court having reviewed the pleadings filed herein and having heard statement of counsel with respect to the claims of the various defendants and the evidence available to support such claims finds that the allegations of the Complaint are true and correct and,

in addition thereto, finds that on or about July 7, 1974, Jerry Lee White and Mary F. White died as a result of an automobile accident and that there is not sufficient evidence to establish that they have died other than simultaneously. The Court further finds that said Jerry Lee White and Mary F. White died simultaneously and that the proceeds of the various insurance policies and contracts involved herein should be distributed as if the insured had survived the beneficiary as provided in 58 O.S. §1005 and 36 O.S. §3628. The Court further finds that the plaintiff should be granted its attorney fees and expenses (\$ 300.00 total) out of the proceeds of the insurance policies. The Court further finds that Jerry Lee White and Mary F. White had only one child, Jerry Lee White, Jr., and that Jerry Lee White Jr. was an adopted child.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and is hereby granted judgment against the defendants and each of them as follows:

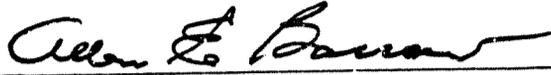
(1) Fay A. White and Martha S. Ellison, a/k/a Martha Sue Ellison, a/k/a Martha Sue Ellison Baker, a/k/a Sue M. Baker, are each entitled to one-half of the proceeds of Policy No. 31 465 074, Policy No. 31 325 475 and Policy No. 31 960 662.

(2) Bob J. Vassar as Guardian of the Estate of Jerry Lee White, Jr., a minor, is entitled to the proceeds of Policy No. 31 789 100 and Policy No. 38 052 525.

(3) Bob J. Vassar as Guardian of the Estate of Jerry Lee White, Jr., a minor, is entitled to the proceeds from Policy No. D48 383 390 which insured the life of Mary F. White.

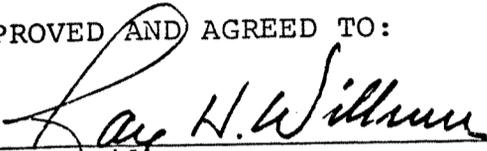
(4) The defendants shall pay a total of \$ 300.00 (attorney fees and the costs expended by plaintiff) allocated one-half thereof to Martha S. Ellison, a/k/a Sue M. Baker, and the other one-half to the other defendants upon payment of the attorney fees and costs as above set forth, the plaintiff shall pay the policy proceeds and

be discharged free from all liabilities with respect to the policies described above.

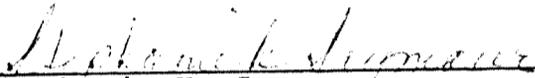


The Honorable Allen E. Barrow
United States District Judge

APPROVED AND AGREED TO:



Ray H. Wilburn,
Attorney for Fay A. White, Jerry
L. White, Jr., a/k/a Jerry Lee
White, Jr. and Bob J. Vassar,
Administrator of the Estates of
Jerry Lee White, Deceased, and Mary
F. White, Deceased, and Guardian of
the Estate of Jerry Lee White, Jr.,
a minor



Stephanie K. Seymour,
Attorney for Martha S. Ellison,
a/k/a Sue M. Baker



Richard W. Gable
Attorney for Plaintiff,
The Prudential Insurance Company
of America

FILED

FEB 4 1975

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

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

MR. R. C. OWENS,)
)
 Plaintiff,)
) 74-C-303
 vs.)
)
 CASPAR WEINBARGER,)
 Secretary of Health, Education,)
 and Welfare of the United)
 States of America,)
)
 Defendant.)

ORDER OVERRULING MOTION TO VACATE AND HOLD FOR NAUGHT
ORDER OF NOVEMBER 18, 1974, FILED
BY PLAINTIFF

The Court has for consideration the Motion to Vacate, Set Aside and Hold for naught the Order of November 18, 1974, filed by the plaintiff, the brief in support thereof, the exhibit attached thereto, and, being fully advised in the premises, finds:

The instant litigation was commenced on July 23, 1974. On September 18, 1974, the defendant filed its motion to dismiss, premised on the fact that the litigation was commenced one day after the expiration of the sixty day period proscribed by 42 U.S.C. 405(g). Attached to the brief in support of the Motion to Dismiss is an affidavit of the Chairman of the Appeals Council and Director of the Bureau of Hearings and Appeals, Social Security. In that affidavit he states:

"(d) No extension of the sixty (60) days' time specified in said notice, and in section 205(g) of the

Social Security Act, as amended, 42 U.S.C.A. Section 405(g), for the commencement of a civil action was ever granted to the plaintiff, nor did he ever file request for an extension of time for the commencement of such action." (Emphasis supplied)

After various extension of time, the plaintiff, on October 29, 1974, filed his Memorandum Brief in Opposition to Defendant's Motion to Dismiss. Attached to said Brief was a copy of a letter dated October 28, 1974, wherein plaintiff's attorney wrote to the Bureau of Hearings and Appeals requesting an extension of one day. In his brief plaintiff requested the Court await a decision of the Bureau.

On November 18, 1974, the Court sustained the Defendant's Motion to Dismiss and dismissed the complaint and cause of action.

On the afternoon of December 4, 1974, Mr. Stephen Wolfe, attorney for the plaintiff, presented the Court Clerk with a copy of a letter from the Chairman of the Appeals Council, which stated:

"The Appeals Council has extended the time for Mr. Owens to file a civil action to July 23, 1974, the day you actually filed the civil action. Mr. Owen's case is thus properly before the court."

The letter of the Chairman was dated November 29, 1974, eleven days after the case had been dismissed.

Title 42 U.S.C. Section 405(g) provides:

"Any individual, after any final decision of the Secretary made after a hearing to which he was a party irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing of such decision or within such further time as the Secretary may allow.***."

20 C.F.R. Section 404.954 provides:

"Extension of time to request hearing or review or begin civil action.

"In general. Any party to a reconsidered determination, a decision of an Administrative Law Judge, or a decision of the Appeals Council (resulting from an initial determination ***), may petition for an extension of time for filing a request for hearing or for commencing a civil action in a district court, although the time for filing such request or commencing such action (***) has passed. ***." (Emphasis supplied)

It is apparent that there is no provision in the statute or the regulation that empowers an extension of time to be granted after the commencement of litigation.

By analogy, see the case of *Macy v. United States Secretary of Health, Ed. & Welf.* (USDC, M.D. N. Carolina, Winston-Salem Division, 1972) 353 F.Supp. 849, wherein the Court stated:

"The plaintiff argues that since the statute gives the Secretary discretion to allow further time in which to file the action, the Court surely has such discretionary power as well. This argument overlooks the elementary principle of law that statutes in derogation of the common law are to be strictly construed.***." (Emphasis supplied)

In the instant litigation the action was commenced; a motion to dismiss was filed raising the timely filing of the action; the plaintiff admitted that the action was commenced one day out of time; and the Court, thereafter, after exhaustive research, dismissed the action.

In all the reported case law available to this Court, it is apparent that the statute dealing with the commencement of litigation is strictly construed.

IT IS, THEREFORE, ORDERED that the Motion to Vacate, Set Aside and Hold for Naught Order of November 18, 1974, filed by the plaintiff, be and the same is hereby overruled.

ENTERED this 17th day of January, 1975.

Cecil E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

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

KAREN L. DOUGLAS,

Plaintiff,

vs.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA, A CORPORATION,

Defendant and
Cross-complainant,

vs.

GERALDINE DOUGLAS,

Defendant.

FILED

FEB 4 1975

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

No. 74-C-397

ORDER DENYING MOTION FOR SUMMARY JUDGEMENT

This cause came on for consideration before the Court at Tulsa, Oklahoma, on February 4, 1975, upon Motion of plaintiff, Karen L. Douglas, to enter summary judgement for it as provided by Rule 56 Federal Rules of Civil Procedure and

The Court, having carefully considered plaintiff's Motion for Summary Judgement, is of the opinion that the said Motion should be, and the same is hereby denied without prejudice to later presenting said Motion to the Court for further consideration.

Dated the 4TH day of February, 1975.


UNITED STATES DISTRICT JUDGE

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

INTERSTATE COMMERCE COMMISSION,)
Plaintiff,)
vs.)
IMPERIAL COOPERATIVE CARRIERS,)
ROBERT ALBAUGH, and)
EUGENE BELL,)
Defendants)

CIVIL ACTION NO. 74-C-471 ✓

FILED

FEB 4 1975 *lum*

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

MOTION TO DISMISS AS
TO ONE DEFENDANT

Comes now the Interstate Commerce Commission, plaintiff herein, and in view of the entry of permanent injunction against defendants Imperial Cooperative Carriers and Eugene Bell, respectfully moves this Court to dismiss the above action as to the remaining defendant, Robert Albaugh, on the grounds that said defendant Robert Albaugh has not been served the Summons and copy of Complaint and his whereabouts are unknown.

INTERSTATE COMMERCE COMMISSION

By *Simon W. Oderberg*
Simon W. Oderberg
One of Its Attorneys

ORDER OF DISMISSAL

This matter having come on for consideration by the Court, and in view of the entry of permanent injunction against defendants Imperial Cooperative Carriers and Eugene Bell and the motion of plaintiff to dismiss this action as to defendant Robert Albaugh, the Court being fully advised in the premises:

It is ORDERED that this action be, and the same is hereby, dismissed as to defendant Robert Albaugh, without prejudice.

Dated at Tulsa, Oklahoma, this day of February, 1975.

H. Dale Cook
H. Dale Cook
United States District Judge

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

INTERSTATE COMMERCE COMMISSION,)
Plaintiff,)
vs.)
IMPERIAL COOPERATIVE CARRIERS,)
ROBERT ALBAUGH, and)
EUGENE BELL,)
Defendants)

CIVIL ACTION NO. 74-C-471 ✓

FILED
FEB 4 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND PERMANENT INJUNCTION

This cause having come on for consideration by the Court upon the sworn Complaint of the plaintiff, the Interstate Commerce Commission, and the defendants Imperial Cooperative Carriers and Eugene Bell having failed to answer the sworn Complaint or otherwise plead, and such default having been noted upon the docket hereof by the Clerk of the Court, the Court, upon consideration of said Complaint, docket, file, and default, now makes and enters the following:

FINDINGS OF FACT

1. That this suit is brought and the jurisdiction of this Court is invoked under the provisions of Part II of the Interstate Commerce Act (49 U. S. Code, Section 301 et seq.), and particularly 49 U.S.C. 320(d), 320(g), and 322(b)(1), and under the general laws and rules relating to suits in equity arising under the Constitution and the laws of the United States.
2. That defendant Imperial Cooperative Carriers, hereinafter referred to as Imperial, holds itself out as a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business at 920 Engracia Street, Torrance, California 90507.
3. That defendant Eugene Bell is an individual with his place of business at 920 Engracia, Torrance, California 90507 and is designated as executive director of defendant Imperial and is active in the day-to-day operations of defendant Imperial.

4. That at all times herein mentioned, defendant Imperial was and is engaged in the transportation of property as a motor carrier in interstate or foreign vommerce by motor vehicle for compensation on public highways between points and places throughout the United States, including points in the Northern District of Oklahoma, and subject to the provisions of Part II of the Interstate Commerce Act (49 U. S. Code, Section 301 et seq.).

5. That at all times herein mentioned, there was not in force and there is not now in force with respect to defendant Imperial a certificate of public convenience and necessity, or a permit or any other authority issued by the Interstate Commerce Commission authorizing the transportation and operations herein described .

6. That on or about the 23rd day of April, 1973, defendant Imperial filed a notice with the Interstate Commerce Commission, on form BOp 102, of its intent to perform interstate transportation by motor vehicle, for compensation, as a cooperative association, or as a federation of cooperatives, as defined in the Agricultural Marketing Act (12 U.S.C. 1141j), for nonmembers who are neither farmers, cooperative associations or federations thereof, and as such is subject to the provisions of Part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.).

7. That on or about the 29th day of January, 1973, defendant Imperial was incorporated in the State of Oregon, purportedly by various individuals, namely R. L. Johnson, Del Heyman, and Ron Duncan, none of whom had any interest in defendant Imperial from the standpoints of either agricultural production or the transportation by defendant Imperial of any agricultural products; that defendant Imperial was not organized as an association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, or in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services; that defendant Imperial has not been operated for the mutual benefit of such organizers as agricultural producers as required by Section 15(a) of the Agricultural Marketing Act of 1929 (12 U.S.C. 1141j);

and that defendant Imperial is not a bona fide agricultural cooperative association as defined in said Agricultural Marketing Act, and hence all transportation of nonexempt commodities in interstate commerce, as heretofore described, does not fall within the exemption provided for in Section 203(b)(5) of the Interstate Commerce Act (49 U.S.C. 303(b)(5)).

8. Unless restrained by this Court, defendant Imperial Cooperative Carriers, acting under the direction and control of, or aided and abetted and participated in by defendant Eugene Bell, intends to and will continue to transport property as a motor carrier in interstate or foreign commerce by motor vehicle on public highways between points in the United States for various shippers, for compensation, without first having obtained from the plaintiff a certificate of public convenience and necessity or a permit or any other form of authority authorizing it to engage in such transportation as aforesaid.

9. The Court finds the defendants Imperial Cooperative Carriers and Eugene Bell to be in default herein, having failed to answer or otherwise plead, having been served with Summons and a copy of Complaint on December 21, 1974.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and subject matter of this action by virtue of the provisions of Title 49, Section 322(b)(1), U. S. Code, and under the general laws and rules relating to suits in equity arising under the Constitution and the laws of the United States.

2. That the transportation heretofore and now being performed by defendant Imperial of nonexempt property by motor vehicle over public highways in interstate or foreign commerce constitutes violations of Title 49, Sections 303(c) and 306(a) or 309(a), U. S. Code, and that defendant Eugene Bell has aided and abetted, acted in concert or participated with said defendant in the commission of such violations.

3. That such violations and aiding and abetting, acting in concert or participation therein by said defendant Eugene Bell is subject to be enjoined by this Court on the application and suit of plaintiff under the express provisions of Title 49, Section 322(b)(1), U. S. Code.

4. The relief prayed for by plaintiff should be granted.

PERMANENT INJUNCTION

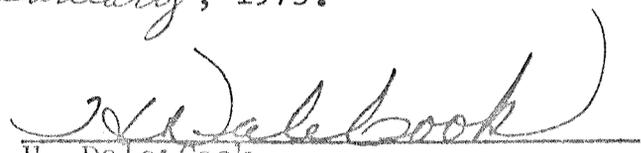
It is hereby ORDERED, ADJUDGED and DECREED:

(a) That the defendant Imperial Cooperative Carriers, its agents, employees and representatives, and all persons, firms, companies, and corporations, and their respective officers, agents, servants, employees, and representatives, in active concert or participation with it, be perpetually enjoined and restrained from, in any manner or by any device, directly or indirectly, transporting or holding themselves out to transport property, other than exempt and nonregulated commodities, in interstate or foreign commerce by motor vehicle, for compensation, on public highways as a for-hire, common, or contract carrier by motor vehicle, unless and until such time, if at all, as there is in force with respect to said defendant a certificate of public convenience and necessity or a permit issued by the Interstate Commerce Commission authorizing such transportation.

(b) That the defendant Eugene Bell be perpetually enjoined and restrained from acting in concert, aiding and abetting or participating with said Imperial Cooperative Carriers or other such motor carriers unless and until such time, if at all, as there is in force with respect to said Imperial Cooperative Carriers or other such motor carriers a certificate of public convenience and necessity or a permit issued by the Interstate Commerce Commission authorizing such transportation.

(c) That the plaintiff shall have judgment for costs of this action.

Dated this 4th day of February, 1975.


H. Dale Cook
United States District Judge

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

LOUISE E. LARRABEE,)
)
Plaintiff)
vs.)
)
)
KENNETH J. BAYS,)
)
Defendant)

No. 73-C-335

FILED

FEB 4 1975

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

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 31st day of January, 1975, this cause comes on to be heard on motion to dismiss plaintiff's cause for failure to prosecute. Defendant appeared by his attorneys Green, Feldman & Hall and Rosenstein, Fist & Ringold, by Wm. S. Hall, and the plaintiff appeared not although called three times in open court.

The Court finds that on June 5, 1974 plaintiff's attorney of record was allowed to withdraw as plaintiff's counsel and it was ordered that plaintiff have forty-five (45) days from said date to retain other counsel but that plaintiff has wholly failed to do so.

BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED that plaintiff's cause is ordered dismissed with prejudice and at the cost of plaintiff.

Luther Bohannon

United States District Judge

FILED

FEB 4 - 1975

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

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

DARLENE SULLIVAN, as Mother and)
Next of Kin of RANDY JAMES WILSON,)
RONALD DEAN WILSON, and TAMMY)
LEE WILSON, Minor Children,)

Plaintiffs,)

vs.)

THE ST. LOUIS, SAN FRANCISCO)
RAILWAY COMPANY, INC., and)
ED CONLEY,)

Defendants.)

74-C-409

ORDER SUSTAINING DEFENDANT'S
MOTION TO TRANSFER

The Court has for consideration the Motion to Transfer filed by the defendants, the brief in support thereof, and, being fully advised in the premises finds:

That on November 8, 1974, defendant, San Francisco Railway Company, filed its Motion to Transfer. Thereafter, and on December 8, 1974, the defendant Ed Conley, entered his appearance and adopted the defendant railroad's answer and motion to transfer.

That on November 8, 1974, a minute order was entered by the Court ordering the plaintiffs to respond to said Motion to Transfer within 10 days. No response has been filed and no request for extension of time to respond has been requested.

Donald James Wilson was involved in a fatal automobile-train collision on the 18th day of October, 1972, which occurred in Newton County, Missouri. The action is one to recover for the alleged wrongful death of Donald James Wilson.

The Motion to Transfer is predicated on the following allegations by the defendants.

1. The accident complained of occurred at a railroad crossing west of the City of Neosho, Missouri. The site of the accident is less than 20 miles from Joplin, Missouri. The United States District Court for the Southwestern Division of the Western District of Missouri sits at Joplin, Missouri. This is a district where the action could have been brought.

2. The defendant railroad is a citizen and has its principal place of business in the State of Missouri.

3. The defendant, Ed Conely is a citizen of the State of Missouri, residing in Purdy, Missouri.

4. Although plaintiff is a citizen of Tulsa, Oklahoma, in excess of one hundred (100) miles from the place where the accident occurred, neither she nor her minor children, were witnesses to the accident.

5. The widow is the only one of the plaintiffs who can testify as to pecuniary loss occasioned by the death of Donald James Wilson; that to defendants' knowledge plaintiff does not have any witnesses to the accident who are citizens of the State of Oklahoma.

6. Donald James Wilson, now deceased, and his wife, one of the plaintiffs, were at the time of the accident citizens of Neosho, Missouri.

7. Both the conductor and the engineer (the only alleged personnel on board the train involved in the accident) are citizens of the Judicial District in Missouri to which the action is sought transferred.

8. The Highway Patrol Trooper, who investigated the accident, resides in the same Judicial District in Missouri.

9. All other non-employee witnesses for either plaintiffs or defendants, who can testify about the speed of the vehicles, the sounding of warning signals or nature of the crossing, reside either in or near Neosho, Missouri. Defendants anticipates using at least five (5) of these witnesses at trial.

10. The railroad's claim agent, who made the complete investigation of the occurrence resides in the Western District of Missouri.

11. The photographers, not in the employ of the defendants, who made photographs of the scene of the accident resides in the Western District of Missouri.

12. The employer of Donald James Wilson, now deceased, who can testify regarding the income of the decedent and his employment records, resides in Neosho, Missouri.

13. The parents of Barbara Jo Wilson, the passenger in the vehicle involved in the accident, who was also killed, who can further testify regarding the earnings and employment status of plaintiffs' deceased, live in Neosho, Missouri.

14. A surveyor, employed to make a plat of the involved crossing and surrounding conditions, resides in Neosho, Missouri.

15. Defendants also have witnesses who can testify concerning the stopping distance of the train involved; the maintenance of the crossing and the protection signs at the crossing; the view which an operator of a train, such as the one involved, would have of approaching traffic, etc. These witnesses reside in the Western District of Missouri.

Defendants further maintain that in the interest of justice the action should be transferred for the following reasons:

1. Convenience of witnesses of both plaintiff and defendants.

2. The ease of access to sources of proof of the material facts.

3. The availability of compulsory process to compel the attendance of unwilling witnesses.

4. The smaller amount of expense required for the attendance of willing witnesses.

5. The availability of a view of the premises by the jury.

6. Fact that laws of the State of Missouri as to the capacity of plaintiffs to bring this wrongful death action; the question of whether the action is barred by limitations; and whether plaintiffs state a legal cause of action against the defendants, must be applied in this case.

7. The fact that no controverted issue of fact depends upon any event that occurred in the Northern District of Oklahoma.

8. The burden of a jury trial should not be imposed upon this Court and the residents of this District, who might be called for jury duty, in an action which is not related to this area.

Title 28 U.S.C.A Section 1414(a) provides:

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The Court has carefully considered and reviewed the cases cited by defendants in their brief and finds that they are applicable to the present controversy.

IT IS, THEREFORE, ORDERED that the defendants' Motion to Transfer be and the same is hereby sustained.

IT IS FURTHER ORDERED that for the convenience of parties and witnesses, in the interest of justice, this litigation is hereby transferred to the United States District Court for the Southwestern Division of the Western District of Missouri at Joplin, Missouri.

ENTERED this 4th day of February, 1975.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

