

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
IN OPEN COURT

APR 30 1975

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

No. 74-C-397

JUDGMENT ALLOWING INTERPLEADER AND
DISCHARGING DEFENDANT AND CROSS-COMPLAINANT
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Upon the stipulation of the parties made in open court, the Court makes findings of fact and conclusions of law in accordance with the following judgment and finds that judgment should be entered as follows:

I

IT IS ORDERED, ADJUDGED, AND DECREED by the Court that interpleader in this cause, requested by counterclaimant, The Prudential Insurance Company of America, is allowed and approved; that said counterclaimant has paid the sum of \$32,965.00 in to the Clerk of this Court to abide the final judgment of this Court and that said amount, plus survivor benefits determined in Paragraph II hereof, is the full amount payable by said counterclaimant to the parties to this action or anyone under Group Policy No. G.T. 15465, issued by the counterclaimant, The Prudential Insurance Company of America; and said counterclaimant, The Prudential Insurance Company of America, is hereby discharged from any and all liability to the plaintiff or to the defendant Geraldine Douglas, their heirs, executors, administrators, and

assigns, except for survivor benefits as determined in Paragraph II herein, under and in connection with its Group Policy No. G.T. 15465 issued to United States Filter Company and Certificate issued insuring the life of Joseph J. Douglas, and any certificate evidencing said insurance upon the life of said Joseph J. Douglas is hereby ordered to be surrendered and is hereby cancelled upon payment of the sums provided herein. Said counterclaimant is further discharged from any and all liability to the plaintiff or to the defendant Geraldine Douglas by reason of the matters and things set out in the pleadings in this cause, except for survivor benefits as determined in Paragraph II herein.

II

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that certain survivor benefits are payable to the survivors of Joseph J. Douglas, deceased, in accordance with Group Policy No. G.T. 15465, to the following persons in the following initial amounts:

A) Qualified Family Member Spouse:

| | | |
|-------------------|---|------------------------------|
| Karen L. Douglas |) | |
| or |) | \$170.00 per month until she |
| Geraldine Douglas |) | attains the age of 65, dies, |
| [to be determined |) | or remarries--whichever is |
| by this Court] |) | first. |

B) Qualified Family Member Children:

The court determines that the following are the qualified family member children entitled to benefits in accordance with said policy:

| | | |
|------------------------------|---|-------------------------|
| James Patrick Douglas (son) |) | |
| [mother: Karen L. Douglas] |) | |
| |) | |
| Geraldine Douglas (daughter) |) | Collectively, \$42.50 |
| [mother: Geraldine Douglas] |) | per month; each, \$8.50 |
| |) | per month, to begin |
| Barbara Douglas (daughter) |) | with. |
| [mother: Geraldine Douglas] |) | |
| |) | |
| Kathleen Douglas (daughter) |) | |
| [mother: Geraldine Douglas] |) | |
| |) | |
| Joseph J. Douglas, III (son) |) | |
| [mother: Geraldine Douglas] |) | |

the above payments to begin as of the date of the death of

Joseph J. Douglas, deceased, and to continue in accordance with the provisions of the policy. Said Group Policy shall dictate the terms of all payments under the survivor benefit provisions of the policy, and all benefits payable to the qualified family member children above set forth shall be made to the mother of such child. Such mother shall report to The Prudential Insurance Company of America any changes or circumstances which would alter the amount of such payments.

III

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that said counterclaimant is further discharged from any and all liability to the plaintiff or to the defendant Geraldine Douglas by reason of the matters and things set out in the pleadings in this cause except for survivor benefits set forth in Paragraph II herein, and, as to those benefits and the amounts payable thereunder, the above Group Policy shall prevail.

IV

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the plaintiff, Karen L. Douglas, and the defendant Geraldine Douglas are ordered to make proof herein of their rights to the proceeds of such policy; and such parties, their heirs and assigns, are hereby permanently restrained and enjoined from instituting or prosecuting any other action against the counterclaimant, The Prudential Insurance Company of America, herein upon said Group Policy except for determination of policy provisions under the Survivor Benefits Clause not herein determined.

V

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the counterclaimant, The Prudential Insurance Company of America, have its costs herein in the amount of \$76.94 and its reasonable attorneys' fees in the amount of \$800.00; and the

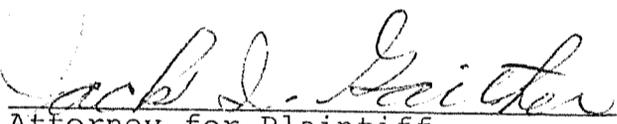
Clerk is ordered to pay said sums to the counterclaimant's attorneys, Gable, Gotwals, Rubin, Fox, Johnson & Baker, out of the proceeds paid in to the Clerk of this Court.

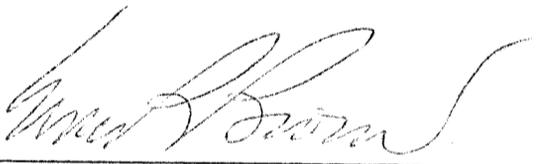
Dated this 30th day of April, 1975.


United States District Judge

Approved:


Attorney for The Prudential
Insurance Company of America


Attorney for Plaintiff,
Karen L. Douglas


Attorney for Defendant
Geraldine Douglas

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

VIRGINIA HAGAR, Executrix of
the Estate of Elbert C.Hagar,
Deceased,

Plaintiff,

vs.

LORETTA J. ROBERTS, LE ROY ALCOX,
M.D.: the CITY OF COFFEYVILLE, STATE
OF KANSAS: THE BOARD OF COMMISSIONERS
OF THE CITY OF COFFEYVILLE, a municipi-
pal corporation of the first class,
within the County of Montgomery; State
of Kansas; and COFFEYVILLE MEMORIAL
HOSPITAL, a branch, part of, and
agency of the City of Coffeyville,
Kansas,

Defendants.

NO. 74-C-437 ✓

FILED
APR 30 1975 K
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

ON this 30 day of April, 1975, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

William E. Bennett
JUDGE, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

ROBERT SHEPHERD
JERRY MELONE,

By: *[Signature]*
Attorneys for the Plaintiff,

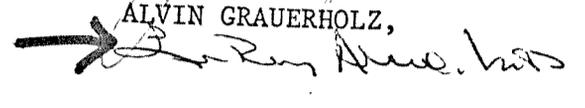
ALFRED E. KNIGHT,
[Signature]
Attorney for Coffeyville Hospital,
City of Coffeyville, and Board
of County Commissioners,

JOSEPH GLASS,



Attorney for Loretta Roberts

ALVIN GRAUERHOLZ,



Attorney for Le Roy Alcox.

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

VIRGINIA HAGAR, Executrix of the
Estate of ELBERT C. HAGAR, Deceased,

Plaintiff,

vs.

LORETTA J. ROBERTS, LE ROY ALCOX, M.D.;
the CITY OF COFFEYVILLE, STATE OF KANSAS;
THE BOARD OF COMMISSIONERS OF THE CITY OF
COFFEYVILLE, a municipal corporation of the
first class, within the County of Montgomery,
State of Kansas; and COFFEYVILLE MEMORIAL
HOSPITAL, a branch, part of, and agency of
the City of Coffeyville, Kansas,

Defendants.

No. 74-C-437 ✓

FILED

APR 30 1975 K

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

ORDER OF DISMISSAL

ON this 30 day of April, 1975, upon the written application of the defendant, Le Roy Alcox, and defendants Coffeyville Memorial Hospital, and City of Coffeyville, Montgomery County, Kansas, and the governing Boards thereof, for a dismissal of the Cross-Complaint of Le Roy Alcox, M. D., and the Court having examined said application, finds that said parties have entered into a settlement covering all claims in the Cross-Complaint and have requested the Court to dismiss said Cross-Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Cross-Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Cross-Complaint of defendant, Le Roy Alcox, filed herein against the City of Coffeyville, Montgomery County, Kansas, and the governing Boards thereof, and Coffeyville Memorial Hospital, be and the same hereby is dismissed with prejudice to any future action.

Allen E. Barrett
JUDGE, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

ALVIN GRAUERHOLZ,
Alvin Grauerholz

Attorney for Le Roy Alcox

ALFRED B. KNIGHT,
Alfred B. Knight

Attorney for City of Coffeyville,
and Coffeyville Memorial Hospital

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

MIKE J. ELLEDGE, A minor,
by and through his Father
and next friend, RALPH ELLEDGE,

Plaintiff,

vs.

CANRON, LTD, a Canadian Corporation,
PACIFIC PRESS & SHEAR COMPANY, a
Foreign Corporation; PACIFIC
INDUSTRIAL MANUFACTURING COMPANY,
a Foreign Corporation; and
MOEHLENPAH ENGINEERING COMPANY,
A foreign corporation,

Defendants.

No: 72-C-163 ✓

FILED

APR 30 1975 K

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

ORDER OF DISMISSAL

ON this 30th day of April, 1975, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

Allen E. Barron

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

APPROVAL:

JOSEPH A. SHARP

Joseph A. Sharp
Attorney for the Plaintiff

DONALD G. HOPKINS

Donald G. Hopkins

ALFRED B. KNIGHT

Alfred B. Knight

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO. 75-C-96

RUTH JEFFERS, a Single Person,
WILLIAM K. MYERS, d/b/a BUTCH
MYERS MOTOR COMPANY, COUNTY
TREASURER, Tulsa County, and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County,

Defendants.

FILED

APR 30 1975

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

S T I P U L A T I O N O F D I S M I S S A L

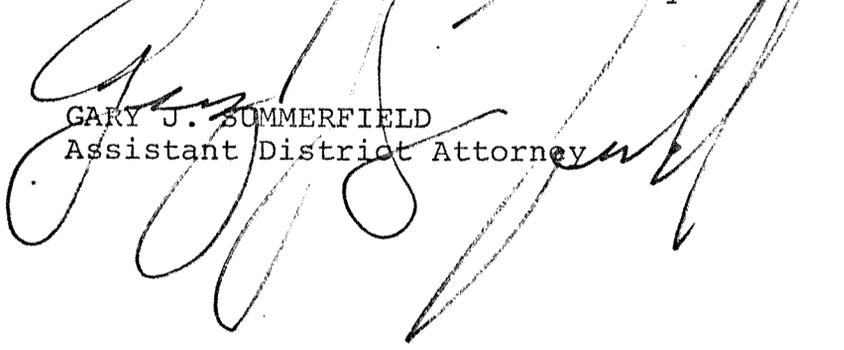
Come now the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Board of County Commissioners of Tulsa County and the Tulsa County Treasurer, John F. Cantrell, by and through their attorney, Gary J. Summerfield, Assistant District Attorney, and hereby stipulate and agree that this action be dismissed.

Dated this 30th day of April, 1975.

UNITED STATES OF AMERICA

NATHAN G. GRAHAM
United States Attorney


ROBERT P. SANTEE
Assistant United States Attorney


GARY J. SUMMERFIELD
Assistant District Attorney

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

Albert E. and Frances G. Marshall, et al)

Plaintiffs)

v.)

Quail Creek Distillers Products, Inc.,
et al)

Defendants)

No. 73-C-72 ✓

FILED

APR 29 1975

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

ORDER SUSTAINING MOTIONS TO DISMISS
OF THE DEFENDANT, H. B. GUTELIUS, JR.

After reviewing the file and record in this Cause, the recommendation of the Magistrate is hereby approved, and

IT IS, THEREFORE, ORDERED, That the Motions of the Defendant, H. Brooks Gutelius, Jr., to dismiss as to him the action and each of the several causes of action set forth in Plaintiffs' Second Amended Complaint be and the same are hereby sustained.

The Clerk of the Court shall forward by mail a copy of this Order to each of the attorneys of record for the Plaintiffs and Defendants.

Dated this 29th day of April, 1975.

Allen E. Brown

Chief Judge,
United States District Court for the
Northern District of Oklahoma

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

ALBERT E. and FRANCES C.)
MARSHALL; RONALD CAZEL;)
LUCILLE MORRIS; LEE SMITH;)
GORDON COHLMIA; JOSEPH S.)
COHLMIA; CHARLES H. BROWNING;)
GEORGE COHLMIA; and WOODROW)
F. BARKETT,)

Plaintiffs,)

vs.)

QUAIL CREEK DISTILLERS)
PRODUCTS, INC., an Oklahoma)
corporation; JEAN C. McCOY;)
JAMES H. STOWELL; GENE)
HERZFELD; H. B. GUTELIUS,)
JR., STEVEN L. SCHLUNEGER;)
JOHN E. BARBRE; The Estate)
of RICHARD A. MCGEE; SHARP)
& COMPANY, an Oklahoma cor-)
poration; HOLLYWOOD CORPO-)
RATE TRANSFER, INC., an)
Oklahoma corporation; THOMAS)
G. WATSON; FITZGERALD, COWEN)
& ROBERTS, INCORPORATED, an)
Oklahoma corporation,)

Defendants.)

FILED

APR 29 1975 *μ*

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

Case No. 73-C-72 ✓

ORDER

After reviewing the file and record in this cause, the recommendation of the Magistrate is hereby approved, and

IT IS, THEREFORE, ORDERED that the Motion to Dismiss of Defendant Fitzgerald, Cowen & Roberts, Incorporated filed herein be and the same is hereby sustained, and it is ordered that the above-styled cause be dismissed in its entirety, as to Defendant Fitzgerald, Cowen & Roberts, Incorporated.

The Clerk of the Court shall forward by mail a copy of this Order to each of the attorneys for the above named Plaintiffs and Defendants.

Dated this 29th day of April, 1975.

Allen E. Barham

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.)
)
 HOLLIS KERLEY and DELORES) CIVIL ACTION NO. 75-C-64
 KERLEY a/k/a DELORIS KERLEY,)
)
 Defendants.)

NOTICE OF DISMISSAL

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

Dated this 29th day of April, 1975.

UNITED STATES OF AMERICA

NATHAN G. GRAHAM
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

FILED

APR 29 1975

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

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

EDWARD R. McINTOSH,

Plaintiff,

-vs-

R & M MOTOR COMPANY, a
partnership,

Defendant.

No. 75-C-41

FILED
IN OPEN COURT

APR 29 1975

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

ORDER FOR JUDGMENT BY DEFAULT

On this 29th day of April, 1975, the court has for consideration the Application for Judgment by Default of Edward R. McIntosh, the plaintiff in the above styled action, and the court, having considered the plaintiff's application, finds that the defendant, R & M Motor Company, is in default. The court further finds that the defendant was served with summons and a copy of the complaint herein on February 4, 1975, by serving the Managing Agent of the defendant as authorized by Rule 4 of the Federal Rules of Civil Procedure; and in view of the defendant's default the court finds that all allegations set forth in the plaintiff's Complaint are true and that plaintiff is entitled to the judgment prayed for therein.

The court specifically finds that it has jurisdiction of the action pursuant to 15 U.S.C.A. Section 1989 which confers jurisdiction upon this court of the plaintiff's claim without regard to the amount in controversy and the court finds that the defendant has violated the damage and penal provisions of 15 U.S.C.A. Section 1989 and by reason thereof the plaintiff is entitled to judgment.

IT IS, THEREFORE, ORDERED that the plaintiff have and obtain judgment against the defendant, R & M Motor Company, in the sum of \$3,750.00, together with the costs of this action in the sum of \$19.20, and reasonable attorney fees in the sum of \$ 750.⁰⁰.


Allen E. Barrow, Chief, United States
District Judge

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

JAMES E. YEAGER,)
)
) Petitioner,)
)
 -vs-)
)
 UNITED STATES OF AMERICA,)
)
) Respondent.)

FILED

APR 29 1975

No. 73-C-103 Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

This matter came on for hearing this 29th day of April, 1975, before the undersigned Judge of the United States District Court for the Northern District of Oklahoma on Petitioner's 2255 Motion to set aside his plea of guilty and vacate the sentence imposed on the 22nd day of August, 1961, in case number 13722 and the Court being fully advised in the premises finds:

1. That petitioner entered a plea of guilty on August 15, 1961, and was sentenced on August 22, 1961, case number 13722, under the Youth Correction Act by the Honorable Royce H. Savage who was at that time United States District Judge for the Northern District of Oklahoma.

2. That the record which is susceptible to transcription at this time does not affirmatively show that petitioner, James E. Yeager, was advised of the fact that because of his indigency he was entitled to free counsel. That portion of the record which has been transcribed does not affirmatively show that petitioner, James E. Yeager, was advised of the maximum sentence to be imposed under the Youth Correction Act.

3. That petitioner's cause has been pending since January 14, 1975, and that any further delay at this time with respect to the transcription of the untranscribed portion of the original records would be unreasonable.

4. That this Court verily believes that petitioner, James E. Yeager, was advised by the Honorable Royce H. Savage in 1961 that he had a constitutional right to counsel, however, under today's technical requirements, before a plea of guilty may be accepted, and under the law as set forth in Gideon vs. Wainwright, 372 U.S. 335 (1963), petitioner should have been

advised that if he could not afford counsel an attorney would be appointed for him at government expense and no expense to him and that the case law on this subject is fully retroactive.

IT IS, THEREFORE, ORDERED that the conviction of James E. Yeager on his plea of guilty on August 15, 1961, and sentence imposed August 22, 1961, case number 13722, in the United States District Court for the Northern District of Oklahoma, be and it is hereby set aside and held for naught, and no disabilities or burden of any kind shall flow from said conviction, judgment, and sentence.

IT IS, FURTHER, ORDERED that petitioner's 2255 Motion be sustained for the above stated reasons and the cause dismissed.

Done in open Court this 29th day of April, 1975, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE
FOR THE NORTHERN DISTRICT OF
OKLAHOMA

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

FILED

APR 29 1975

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

GEORGIA-PACIFIC CORPORATION)
a Georgia corporation,)

Plaintiff,)

vs.)

No. 74-C-600

CHEROKEE NITROGEN COMPANY,)
an Oklahoma corporation,)

Defendant.)

APPLICATION

Comes now the plaintiff and the defendant and files this joint application asking the Court to enter its order dismissing the cause of action pending herein for the reasons as follows:

1. That the parties hereto have entered into an amicable compromise settlement of the case and accordingly it should be dismissed.

WHEREFORE, plaintiff and defendant herein file this joint application for an order of dismissal.

Richard P. Wagner

Attorney for Plaintiff

John Hamner

Attorney for Defendant

FILED

APR 30 1975

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

ORDER

NOW on this 30th day of April, 1975, upon the joint application of the parties hereto, the Court finds that the case herein has been amicably settled between the parties.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the cause of action pending herein is dismissed with prejudice to refileing same.

W. Dale Book

JUDGE

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

FILED

APR 28 1975

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, CLC, LOCAL 4992, LARRY
DEAN KETCHER and DAVID J. BARAJAS,Plaintiffs

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

Vs.

NEWMAN'S, INC., An Oklahoma Cor-
poration,Defendant.

No. 74-C-300

O R D E R

NOW, on this 23rd day of April, 1975, this matter comes on before the undersigned Judge of the above entitled Court upon the Plaintiffs' Motion to Dismiss filed herein, and pursuant thereto:

IT IS THEREFORE ORDERED by the Court that the above styled and numbered cause be, and it is hereby dismissed with prejudice to the refileing of same.

J. W. Dale Cook
UNITED STATES DISTRICT JUDGE

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

CHARLES W. DOWNER; HARRIETTE D.
DOWNER; ELIZABETH B. DRAPER;
CHARLES W. DOWNER as Trustee for
Alice P. Draper; CHARLES W.
DOWNER, HARRIETTE D. DOWNER,
ELIZABETH B. DRAPER, and
CHARLES W. DOWNER as Trustee
for Alice P. Draper, partners
doing business as Pennsylvania
Realty Associates; and WALTER G.
THOMPSON,

Plaintiffs,

vs.

TECOMA MINES, a Utah corpora-
tion, and EDWARD J. HARDEBECK,

Defendants.

FILED

APR 28 1975

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

No. 74-C-415

ORDER OF JUDGMENT

Now on this *28th* day of April, 1975, there comes before the Court for its consideration the written "Stipulation and Agreement For Entry of Judgment" which was on the 15th day of April, 1975, made and executed on behalf of all parties to the above civil action and was then filed with the Clerk of this Court.

The Court having reviewed said Stipulation and Agreement determines that it has been properly executed by the attorney of record for the plaintiffs, Richard T. Sonberg of Tulsa; also, it has been properly executed by the President of Tecoma Mines and the attorney of record for said defendant, Robert P. Hall of Oklahoma City.

The Court further determines that said Stipulation and Agreement is in the nature of an "Offer of Judgment" under Rule 68 by the defendant Tecoma Mines, which offer has been accepted by the plaintiffs, and that the Court has the power and authority to make and enter an Order of Judg-

ment thereon, and that said Stipulation and Agreement provides for disposition of all matters in controversy between the parties in said civil action.

NOW, THEREFORE, it is the Order, Judgment and Decree of the Court that the plaintiffs shall have and recover a final judgment against the defendant Tecoma Mines, a Utah corporation, in the above-styled civil action, as follows:

1. The plaintiffs are granted a monetary judgment against the defendant Tecoma Mines upon their First Claim for Relief as contained and set forth in the Complaint heretofore filed in the above-styled civil action for the following amounts:

| <u>Plaintiff</u> | <u>Amount of Judgment</u> |
|---|---------------------------|
| Charles W. Downer | \$ 17,300 |
| Harriette D. Downer | 17,300 |
| Elizabeth B. Draper | 17,300 |
| Charles W. Downer, Trustee for Alice P. Draper Trust | 17,300 |
| Pennsylvania Realty Associates | 34,600 |
| Walter G. Thompson | <u>17,300</u> |
| TOTAL | \$121,100 |

and the plaintiffs shall have no further rights in or against the Tecoma Mines 1973 drilling program.

2. The plaintiffs Harriette D. Downer and Walter G. Thompson are each granted a monetary judgment against the defendant Tecoma Mines upon their Fourth Claim for Relief as contained and set forth in the Complaint in the following amounts:

| <u>Plaintiff</u> | <u>Amount of Judgment</u> |
|---------------------|---------------------------|
| Harriette D. Downer | \$ 14,000 |
| Walter G. Thompson | <u>14,000</u> |
| TOTAL | \$ 28,000 |

and said Harriette D. Downer and Walter G. Thompson shall have no further rights in or against the Tecoma Mines 1972 drilling program; also, the plaintiff Charles W. Downer, individually, is granted a judgment against Tecoma Mines

upon the Fourth Claim For Relief, as contained in the Complaint filed in the above-styled civil action, in the nature of an order of mandatory injunction whereby Tecoma Mines is hereby ordered and required to immediately assign, transfer and convey to said plaintiff Charles W. Downer, individually, an undivided One-Eighth (1/8th) working interest in each of the five (5) wells required to be drilled by Tecoma Mines under the Operating Agreement dated November 20, 1972, covering the Tecoma Mines 7200 Drilling Program, being in particular the following five (5) wells situated on lands in Doddridge County, West Virginia, to-wit:

- #1. Webber # 1 Well
- #2. Richards # 1 Well
- #3. Snyder # 1 Well
- #4. Stout # 1 Well
- #5. Stout Heirs # 1 Well

Which assignment of a 1/8th working interest to the plaintiff Charles W. Downer shall be made free and clear of claims, liens, overriding royalties or encumbrances by Tecoma Mines or any other person, but subject to the terms and conditions of the oil and gas leases upon which the wells are situate, and shall be in lieu of any other claim said plaintiff may have in or against said five wells and leases.

3. It is the further Order and Judgment of the Court that the plaintiffs' Second Claim For Relief as stated in their Complaint filed herein is dismissed with prejudice, and the promissory notes dated February 7, 1974, made and executed by Tecoma Mines and delivered to the plaintiffs, as described and identified in said Second Claim For Relief, shall be cancelled and surrendered back to the defendant Tecoma Mines by the plaintiffs, forthwith.

4. It is the further Order and Judgment of the Court that the plaintiffs shall have an equitable lien

against all of the assets of both the defendant Tecoma Mines and Mid-States Gas Transportation Company, a West Virginia corporation which is a wholly-owned subsidiary of Tecoma Mines, which equitable lien shall secure the payment to the plaintiffs of the monetary amounts payable under the provisions of said judgment.

5. It is the further Order and Judgment of the Court that the aforesaid "Agreement and Stipulation for Entry of Judgment," as filed with the Court Clerk in this case, is hereby incorporated into and made a part of this Order of Judgment, such that the terms and conditions thereof are binding and enforceable against all parties to this civil action.

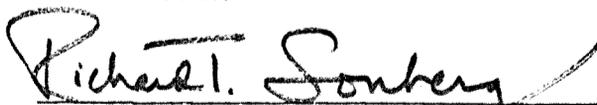
6. It is the further Order and Judgment of the Court that all matters in controversy between the parties herein, as contained and set forth in the pleadings filed in this civil action, are merged into this Judgment.

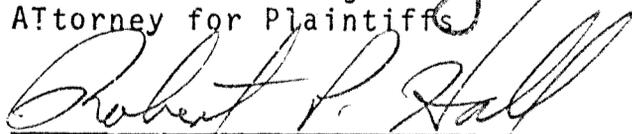
7. It is the further Order and Judgment of the Court that the plaintiffs shall recover their court costs herein expended.

ORDERED this 28TH day of April, 1975.


United States District Judge

APPROVED AS TO FORM
AND CONTENT:


Richard T. Sonberg
Attorney for Plaintiffs


Robert P. Hall, Attorney for
Defendant Tecoma Mines

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

MARIANNE BALLARD,)
)
 Plaintiff,)
 vs.)
)
 THE PETROLEUM PUBLISHING)
 COMPANY, a Domestic)
 Corporation,)
)
 Defendant.)

No. 74-C-30

FILED

APR 28 1975

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an action whereby the plaintiff seeks relief under the protective umbrella of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§2000(e) et seq., which prohibits discrimination in employment as is at issue here, the issue being the existence of sex discrimination. Under Rule 23 of the Federal Rules of Civil Procedure, the plaintiff alleges discrimination as to a specified class of female employees of the defendant corporation; seeks monetary, injunctive and declaratory relief on behalf of said class; and seeks monetary relief as an individual under the authority of the Equal Pay Act, 29 U.S.C. §206(d). With such issues and requested relief proposed, the threshold question in applying the law to the facts is as to the intent of Congress in establishing the broad framework of the relevant statutes.

This scheme of legislation evinces Congressional intent to mandate uniformity and equality over the full range of employment opportunities, whether the persons involved are seeking to be hired or whether they are moving within the employer's internal operations where the issue is more often pay and promotion. This is the plaintiff's right to be free of discrimination. This does not evince any intent that an individual thereby becomes entitled to specific pay or a specific job merely because he or she has characteristics protected by such legislation. The employer does not violate the

law if its actions are based solely on the requirements of the job as matched with the particular abilities of the individual. This draws with it the right of the employer to scrutinize the on-the-job performance of each employee and to base its pay or promotion actions on what such scrutiny reveals. As has been said, "Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins." The criteria imposed by the employer must be only those bearing a reasonable relation to the demands of the job and may not be those which promote traditional stereotyping or artificial barriers.

To determine whether plaintiff's right to be free of discrimination has been deliberately violated by an improper use of the defendant employer's right requires different showings depending on the different facts of each case: What is the employer's overall policy; or what is its practice as to this plaintiff; or what practice as to the class alleged. A plaintiff must show, within such a context, a violation of the statute embodying plaintiff's right.

Because of the disparity in position and access to necessary information, plaintiff's burden necessitates discovery to equalize the position of the proponent, and thereby plaintiff must still satisfy the initial burden of proof. Based on all the above, the Court makes the following findings of fact and conclusions of law.

Findings of Fact

1. Plaintiff, Marianne Ballard, resides in Tulsa, Oklahoma, within the Northern District of Oklahoma. Defendant, The Petroleum Publishing Company, is a corporation incorporated under the laws of the State of Oklahoma, with offices located at 211 South Cheyenne, Tulsa, Oklahoma, within the Northern District of Oklahoma.

2. Defendant is engaged in the business of publishing magazines, newsletters and books containing articles, news and

information about the oil industry for domestic and foreign circulation. Specifically, defendant publishes a weekly magazine, the Oil & Gas Journal, as well as a number of monthly magazines, including Petroleo Internacional, which is the magazine on which plaintiff worked.

3. On or about the 8th day of September, 1969, plaintiff was hired, after responding to a newspaper advertisement, at a wage of \$400 a month as secretary and editorial assistant to Alvaro Franco, who at that time was publisher and editor of Petroleo InterAmericano (referred to hereinafter as Petroleo Internacional, the magazine's current title).

4. On or about November 1, 1970, plaintiff assumed the duties of presentation editor of Petroleo Internacional.

5. On September 7, 1973, plaintiff voluntarily terminated her employment with the defendant.

6. On or about the 18th day of December, 1973, plaintiff filed a Complaint with the Oklahoma Human Rights Commission alleging that male employees doing the same job, or who had done the same job, were paid a higher rate than plaintiff, and that males were promoted and granted other benefits not granted to female employees, in violation of 25 O.S. §§1101 et seq.

7. On or about the 18th day of December, 1973, plaintiff filed a similar Complaint with the Equal Employment Opportunity Commission.

8. On or about the 3rd day of January, 1974, the Oklahoma Human Rights Commission waived its jurisdiction in favor of the Federal Equal Employment Opportunity Commission.

9. On or about the 3rd day of July, 1974, the 180 day administrative deferral period required by 42 U.S.C. §2001(e)-5 expired.

10. On the 18th day of January, 1974, plaintiff filed an action in this Court seeking relief for herself under the Equal Pay Act, 29 U.S.C. §206(d). On the 5th day of July, 1974, plaintiff

filed an Amended Complaint herein broadening her individual action to include alleged violations of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§2000(e) et seq., and expanding the action to include a proposed class of female employees of defendant, alleging that defendant has pursued policies and practices that discriminate against women and that constitute a pattern and practice of resistance to equal employment conditions comparable to those enjoyed by male employees.

11. Subsequently at a hearing before the Court on the 17th day of December, 1974, the parties agreed that the proposed class of female employees would exclude management and supervisory personnel, union members, non-office personnel, and employees of defendant outside of its Tulsa, Oklahoma, office.

12. On the 30th day of December, 1974, plaintiff filed a Motion to Establish Class Action alleging that the requirements of Rule 23 of the Federal Rules of Civil Procedure were met. Defendant opposed the Motion.

13. The Court ordered that an evidentiary hearing be held for the purpose of determining whether the requirements of Rule 23 of the Federal Rules of Civil Procedure were, in fact, met herein.

14. When plaintiff was hired by defendant on September 8, 1969, as secretary and editorial assistant to the publisher and editor of *Petroleo Internacional*, the presentation editing duties on that magazine were performed on a part-time basis by Cliff Conn.

15. Presentation editing involves the handling of copy from the time it is typewritten to the time it is finally handed to the printer and includes the marking of copy, layout of articles and illustrations, pasting up of copy, scheduling of pages, and proof-reading.

16. From September 8, 1969, to November 1, 1970, plaintiff primarily performed secretarial work and, in addition, did some minor layout work which averaged approximately nine pages of

Petroleo Internacional, which magazine averaged approximately 88 pages during this period.

17. On November 1, 1970, Cliff Conn voluntarily terminated his employment and plaintiff assumed the duties of presentation editor of Petroleo Internacional.

18. At the time Cliff Conn left the employment of defendant, he was earning \$750 per month. He performed work on four of defendant's magazines, and his salary was allocated as follows: Petroleo Internacional, \$225; Oil & Gas Journal, \$225; Offshore, \$225; and Oil & Gas Petrochem Equipment, \$75.

19. Effective November 1, 1970, plaintiff's salary was \$510 per month, having been increased to \$425 on January 1, 1970, to \$460 on September 16, 1970, and to \$510 on November 1, 1970.

20. The following distinguishing factors exist between the background, experience and work performed by Cliff Conn and that of plaintiff subsequent to November 1, 1970, when she assumed the presentation editor duties on Petroleo Internacional:

a) When Cliff Conn was hired by defendant on December 16, 1968, he held a B.A. in Journalism from the University of Oklahoma. Plaintiff, on the other hand, had only one year of college, specializing in French, and a certificate from a business college, specializing in typing and shorthand.

b) When Cliff Conn was hired by defendant, his past employment experience included positions as managing editor of two separate newspapers. Plaintiff's prior experience had been solely as a secretary with no experience whatsoever in the field of journalism.

c) While Conn was employed by defendant, he performed work requiring his journalism skills 100 percent of the time and primarily involving writing ability. Plaintiff admitted in open court, and the Court so finds, that no more than 50 percent of her time was spent on

presentation editing after she assumed those duties, and at least 50 percent of her time was spent performing secretarial work, which required less skill, effort and responsibility than the work performed by Conn, and which required no expertise or background in journalism.

d) Petroleo Internacional was changed from a bilingual (Spanish and English) magazine to a single language magazine (all Spanish) at the time plaintiff assumed the duties of presentation editor. It required different capabilities and expertise on the part of the plaintiff's predecessor to do the presentation editing work on the bilingual magazine because the English translation of the Spanish articles took approximately 10 percent less space than the Spanish, requiring the exercise of different matters of judgment as to the manner in which the extra space on the English side of each article had to be filled.

e) In addition to presentation editing duties on Petroleo Internacional, Conn and his predecessors were responsible for editing and rewriting the English portion of the magazine (necessitated by the fact that Alvaro Franco who wrote the articles in Spanish and then translated them into English, is not a native born American), writing headlines for all articles, and writing boxes and decks to fill the space left by the shorter English version of the articles. Plaintiff performed none of these additional duties on the single language editions of the magazine. Although plaintiff was responsible for proofreading the Spanish articles and advertisements, she was not responsible for editing the Spanish.

f) As a result of the bilingual nature of the magazine, Conn's duties on Petroleo Internacional, and those of his predecessors, were more technical, were different in nature and different levels of journalistic skill,

background and expertise from that possessed by the plaintiff were demanded.

g) Because of his education, training and experience, the quality of the presentation editing work performed by Conn was visually and technically superior to that performed by plaintiff.

h) As a result of the omission of the English translations of articles from *Petroleo Internacional* when plaintiff assumed the duties of presentation editor, the magazine contained a fewer number of pages, thereby requiring less presentation editing work of plaintiff than was performed by Conn or his predecessors.

21. Plaintiff's position as secretary/presentation editor for *Petroleo Internacional* was not comparable in either skill, effort, or responsibility to the position held by Cliff Conn or his predecessors, due to the changed nature of the publication during the times at issue.

22. By the time plaintiff assumed the duties of presentation editor on November 1, 1970, some of her previous secretarial duties had been taken over by the secretary to Ernie Klappenbach, the man who was subsequently to assume the duties of publisher of *Petroleo Internacional*.

23. Plaintiff has also compared herself with four male employees of defendant who spend all or a portion of their time doing presentation editing on other publications of defendant. The following distinguishing factors indicate that the four male employees, Max Batchelder, Robert Lair, Jim Stilwell, and J. B. Avants, Jr., perform work requiring different skill, effort and responsibility than that performed by plaintiff:

a) Each of the above named male employees holds a B.A. in Journalism from a university.

b) Each of the above named male employees had experience in the field of journalism prior to his employment with defendant.

c) Each of the above named male employees perform work requiring creative writing and other journalism skills 100 percent of the time.

d) Max Batchelder has been performing presentation editing functions for defendants since 1957, and Robert Lair has been performing presentation editing functions full time for defendant since 1967, and on a part time basis since 1964.

e) Each of the above named males does some original writing and editing other than presentation editing in the performance of their respective jobs with defendant. These additional duties require skills not possessed by plaintiff.

f) Batchelder, Stilwell and Lair work primarily on the Oil & Gas Journal, which is a weekly publication with considerably more pages and more deadlines than the monthly magazine worked on by plaintiff.

24. Each of the aforementioned males works for magazines which are highly profitable publications, while plaintiff worked for a magazine which has been unprofitable during the entire period of plaintiff's employment with defendant and, in fact, since 1964.

25. Plaintiff held a position on Petroleo Internacional that was unique among all employees of defendant, combining the functions of secretary with those of presentation editor. Plaintiff's position was not comparable in either skill, effort or responsibility to any position held by either Batchelder, Lair, Stilwell or Avants, the male employees of defendant with whom plaintiff compared herself.

26. Plaintiff applied for a job as secretary with knowledge of Spanish, and she was hired for that position. Plaintiff has admitted that there was no discrimination on the basis of sex committed by defendant in her hiring, and the Court so finds.

27. Plaintiff has admitted that she never applied for any other position with defendant. The Court finds that plaintiff

was not discriminated against on the basis of sex in promotional opportunities.

28. Petroleo Internacional, the publication for which plaintiff worked, has lost money each year since 1964. During the time plaintiff was employed by that magazine, her salary was increased from \$400 per month to \$570 per month, amounting to an increase of 42.5 percent. During the same period of time, the salary of Alvaro Franco, the editor of Petroleo Internacional, increased \$225 or 22.5 percent and the salary of Leo Castano, managing editor of Petroleo Internacional, increased only 17.24 percent. The Court finds that relative to the pay increases of others, the plaintiff was not discriminated against in the payment of wages because of her sex. The fact that defendant lost money on the publication did not preclude plaintiff from drawing her full salary.

29. The fact that plaintiff worked on the International Petroleum Encyclopedia in 1971 without extra pay does not indicate that defendant discriminated against her on the basis of sex, because the majority of males who worked on the Encyclopedia in that year were not paid extra for their work either. Specifically, Alvaro Franco, plaintiff's immediate superior, contributed nine pages of the Encyclopedia, to plaintiff's one page, in 1971, and he was not paid any additional compensation for his work.

30. Although plaintiff was refused admittance on one occasion to the men's floor of the Petroleum Club in Tulsa, Oklahoma, defendant is not responsible for the policy of the Petroleum Club which precludes women from that particular floor. Subsequent to the time of that occurrence, plaintiff attended other functions with employees of defendant on other floors of the Petroleum Club, including a going away luncheon hosted by Mr. Franco when plaintiff terminated her employment. The defendant corporation had no policy or practice relative to the policy of the Petroleum Club.

31. Although plaintiff was not invited to play in the first golf tournament promoted by some of the male employees of defendant, that tournament was not sponsored in any way by defendant

company. Subsequently, defendant began sponsoring the golf tournament in the fall of 1973, and women were specifically invited to participate.

32. Defendant does not have a policy of allowing male employees to use the WATS line while forbidding its use to female employees. On the contrary, the company has a policy prohibiting any employee from using the WATS line other than for business purposes. The fact that an exception was made in one instance where a male employee was fired and allowed to use the WATS line to look for a job does not indicate that defendant discriminates against female employees in terms, conditions or privileges of employment. Although plaintiff was required to pay for personal long distance telephone calls made by her on defendant's telephone, male employees were also required to pay for such personal long distance telephone calls.

33. Plaintiff was not given an expense account because plaintiff had no business need for an expense account. The one time she had an item of expense on behalf of the company, she was reimbursed for it. Defendant does not have a policy of providing expense accounts for male employees only, while not providing them for female employees. On the contrary, all employees who have incurred legitimate expenses on behalf of defendant are reimbursed by defendant for those expenses.

34. Plaintiff was given time off for personal business during the course of her employment with defendant, and her vacation time and/or salary was never docked for the personal time off which she took.

35. Plaintiff's name was not placed on the company directory when she became presentation editor of *Petroleo Internacional*, but no evidence was offered to show that any of the other presentation editors of *Petroleo Internacional*, all of whom were male, were ever listed under that publication on the directory. Proof was to the effect that they were not so listed.

36. Plaintiff was not denied a change in title when she assumed the duties of presentation editor of *Petroleo Internacional*. On the contrary, she was given the Spanish title of Director of Layout. Subsequently her title was changed to Coordinator of the Editorial on the masthead of the magazine, which title connotes far more recognition and prestige than the title "presentation editor." Further, the evidence established that titles were not true indications of positions within the defendant corporation.

37. Plaintiff has wholly failed to present any evidence to substantiate her claim of sex discrimination by defendant in hiring, promotion or employment conditions or practices. Plaintiff's lawsuit is completely frivolous and totally without merit.

38. With respect to the maintainability of a class action, plaintiff failed to prove that the requirements of Rule 23 of the Federal Rules of Civil Procedure were met in this action.

39. Plaintiff failed to make a positive showing that the members of the proposed class are so numerous that their joinder is impracticable. On the contrary, all of the female employees of defendant who were specifically named by plaintiff in her answers to interrogatories as being the subject of discrimination, or who were named by plaintiff as a possible witness at the evidentiary hearing, have indicated in writing that they do not wish to participate in plaintiff's proposed class action. In addition, all of the former female employees or female applicants for employment who testified on behalf of plaintiff each stated orally under oath that she did not wish to participate in plaintiff's proposed class action.

40. Plaintiff failed to show that there are questions of law or fact common to the proposed class. Defendant company is divided into separate divisions, each having responsibility for the publication of a separate magazine, and each having a separate editorial budget according to the profit or loss made by the particular publication. In addition, defendant has separate departments such as keypunch operations, subscriber service, circulation, production,

etc., which departments contribute services to all of the magazines. Each of these divisions and departments involve different kinds and types of work, and plaintiff failed to show any common factual situation or denominator by which the parameters of a class might be determined.

41. Plaintiff failed to demonstrate that there are other members of the proposed class who have the same or similar grievances as plaintiff. Therefore, the claims or defenses of plaintiff, as representative party, are not typical of the claims or defenses of the proposed class.

42. Plaintiff failed to establish a class as to all female employees of the defendant.

43. Plaintiff has failed to present in the evidentiary hearing any evidence whatsoever that defendant discriminates on the basis of sex against female employees of defendant as a class.

Conclusions of Law

1. The Court has jurisdiction of this action under 42 U.S.C. §2000(e)-5(f) and 28 U.S.C. §1343; and under 29 U.S.C. §216(b) and 28 U.S.C. §1337.

2. Plaintiff had the burden of proving that the performance of her job required skill, effort, and responsibility substantially the same as those required in the jobs of those men with whom she compares herself. Plaintiff failed to meet this burden of proof.

3. The performance of plaintiff's job required less skill, effort, and responsibility as compared to the jobs held by Max Batchelder, Robert Lair, Jim Stilwell, J. B. Avants, or Cliff Conn. Plaintiff, therefore, did not have a job requiring equal skill, effort and responsibility within the meaning of the Equal Pay Act, 29 U.S.C. §206(d).

4. Plaintiff had the burden of proving that defendant discriminated against her on the basis of sex in hiring, promotion,

wages or other terms, conditions or privileges of employment. Plaintiff failed to meet that burden of proof. Further, the evidence tended to reflect that only plaintiff's job, dissimilar to that of her predecessors, and its level of performance were the subject of defendant's conduct.

5. Plaintiff wholly failed to establish that defendant discriminated against her on the basis of her sex in hiring, promotions, wages or other terms, conditions or privileges of employment within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§200(e) et seq.

6. Plaintiff is not entitled to monetary relief for herself.

7. Plaintiff had the burden of establishing that the requirements of Rule 23 of the Federal Rules of Civil Procedure were met before it could be determined that this case should proceed as a class action. Plaintiff has failed to meet that burden.

8. Plaintiff failed to prove that the proposed class is so numerous that joinder of all members is impracticable.

9. Plaintiff failed to prove that there are questions of law or fact common to the proposed class.

10. Plaintiff failed to prove that her claims and defenses are typical of the claims and defenses of the proposed class.

11. Plaintiff failed to present any evidence that there is or was discrimination against any past or present female employee of defendant on the basis of their sex.

12. Plaintiff has failed to meet the burden of establishing that this action should proceed as a class action.

13. An Order will be entered denying plaintiff's Motion to Establish Class Action.

14. Judgment will be entered for the defendant and against the plaintiff on all causes of action in plaintiff's Amended Complaint.

Dated this 25th day of April, 1975.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOHN T. DUNLOP, (Successor to Peter)
J. Brennan), Secretary of Labor,)
United States Department of Labor,)
Plaintiff)
v.) Civil Action
TULSA EAST 76 TRUCK PLAZA INC., a) No. 74-C-457
corporation, TULSA 76 RESTAURANT)
INC., a corporation, and JACK)
SHONG, an individual,)
Defendants)

FILED
APR 28 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

This cause came on for consideration upon the stipulation of the parties, and it appearing that the defendants have promised plaintiff and this Court that they will comply with the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 USC 201 et seq.), hereinafter referred to as the Act, that the defendants have paid to the plaintiff the wages in the amounts stipulated, which the Court finds to be the total due to defendants' employees under the Act to date of this order, and the Court being otherwise fully advised in the premises, it is,

ORDERED, ADJUDGED and DECREED that this action be, and the same hereby is, dismissed at defendants' costs and it is further

ORDERED that upon receipt by plaintiff of unpaid wages as provided in this order, he shall promptly proceed to make distribution to the persons named in said stipulation of the parties or to the legal representative of the persons so named if any person should become deceased. If, after

making reasonable and diligent efforts to disburse said unpaid wages to the persons entitled thereto, plaintiff is unable to do so because of inability to locate the proper person, or because of a refusal to accept payment of any such person, he shall, as provided in 28 USC 2041, deposit such unpaid funds with the Clerk of this Court. Any of such funds may be withdrawn for payment to a person entitled thereto upon order of this Court.

UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CIVIL ACTION NO. 75-C-95

PAUL DAVID PRIVITT and)
DONNA J. PRIVITT,)

Defendants.)

FILED

APR 28 1975

Jack C. Silver, Clerk

JUDGMENT OF FORECLOSURE U. S. DISTRICT COURT

THIS MATTER COMES on for consideration this 28th
day of April, 1975, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney, and the Defendants, Paul David
Privitt and Donna J. Privitt, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Paul David Privitt and
Donna J. Privitt, were served with Summons and Complaint on
April 1, 1975, both 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 Eleven (11), Block Eleven (11), SUBURBAN
HILLS ADDITION to the City of Tulsa, Tulsa
County, State of Oklahoma, according to the
recorded plat thereof.

THAT the Defendants, Paul David Privitt and Donna J.
Privitt, did, on the 18th day of January, 1973, execute and
deliver to the Administrator of Veterans Affairs, their mortgage
and mortgage note in the sum of \$11,500.00 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, Paul David Privitt and Donna J. Privitt, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than six months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$11,248.53 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from October 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, Paul David Privitt and Donna J. Privitt, in personam, for the sum of \$11,248.53 with interest thereon at the rate of 4 1/2 percent per annum from October 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.


United States District Judge

APPROVED



ROBERT P. SANTEE
Assistant United States Attorney

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

BOARD OF TRUSTEES, PIPELINE)
INDUSTRY BENEFIT FUND,)
)
Plaintiff,)
)
vs.)
)
SLUDER & HOLDER,)
)
Defendant.) No. 75-C-65

FILED
APR 25 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT BY DEFAULT

NOW on this 25th day of April, 19 75, this matter coming on to be heard before me the undersigned Judge of the United States District Court for the Northern District of Oklahoma; Plaintiff appearing by and through its attorney, Nik Jones, of Dyer, Powers, Marsh, Turner & Powers; and it appearing to the Court that the Defendant appears not, having been duly served with Summons and copy of the Complaint herein; and upon the filing of Plaintiff's Motion For Default Judgment and an Affidavit of the amount due, it is

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By this Court that judgment be entered herein in favor of the Plaintiff above named, and against the Defendant above named, in the amount of \$2,744.13, with interest thereon at the legal rate from this date of judgment until fully paid, an attorney's fee in the amount of \$500.00, together with costs expended herein in the amount of \$21.67.

DATED at Tulsa, Oklahoma, this 25th day of April, 1975.

BY THE COURT:

H. H. Dale Cook
United States District Judge

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

JAMES CALVIN WARD,

Petitioner,

vs.

PEOPLE OF THE UNITED STATES,
MORRIS STERIPHONICS, DALLAS, TEX.,
BRYANT REFRIDGID AIR, DALLAS, TEX.

Respondents.

No. 73 Cr 45

75-C-163
FILED

APR 24 1975

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

O R D E R

This cause comes before the Court upon petition for Writ of Habeas Corpus. Petitioner was sentenced by this Court on January 21, 1974, to three years imprisonment.

After study of this Petition and the criminal case (73-CR-45) and being advised that said criminal case is on appeal to the Supreme Court of the United States, the appeal record having been forwarded March 27, 1975 by the United States Court of Appeals for the Tenth Circuit, the Court is of the opinion that the Petition should be denied.

IT IS SO ORDERED.

Dated this 23rd day of April, 1975.

Walter Bohannon
UNITED STATES DISTRICT JUDGE

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

LLOYD LEE ELLIOTT, Guardian)
of DOUGLAS LEE ELLIOTT,)
)
Plaintiff,)
)
vs.)
)
MISSOURI-KANSAS-TEXAS RAILROAD)
COMPANY, WILLIAM LAHEY, AL GILBERT)
and ED BURK,)
)
Defendants.)

No. 75-C-104 ✓

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

O R D E R

NOW, on this 24th day of April, 1975, there comes before the Court in chambers Plaintiff's Motion to Remand and the Motion to Dismiss filed herein by Defendant Ed Burk; and the Court being advised that the parties herein consent to the entry of an Order overruling the Motion to Dismiss of the Defendant Burk and remanding this case to the District Court of Tulsa County, Oklahoma; and the Court being satisfied that a cause of action is presently stated in Plaintiff's Petition (Complaint) as to the Defendant Burk who is a resident of the State of Oklahoma, and the Court being further satisfied that there is not presently diversity of citizenship requisite for jurisdiction in the United States District Court for the Northern District of Oklahoma;

IT IS THEREFORE ORDERED that the Motion to Dismiss of the Defendant Burk is overruled, the Plaintiff's Motion to Remand is granted, and this case is remanded to the District Court of Tulsa County, Oklahoma.



H. DALE COOK
United States District Judge

APPROVED AS TO FORM AND CONTENT:



J. WARREN JACKMAN
Attorney for Plaintiff



R. DOBIE LANGENKAMP
G. MICHAEL LEWIS of
DOERNER, STUART, SAUNDERS,
DANIEL & LANGENKAMP
Attorneys for Defendants

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

LLOYD LEE ELLIOTT, Guardian)
of JAMES DOUGLAS ELLIOTT,)
)
Plaintiff,)
)
vs.)
)
MISSOURI-KANSAS-TEXAS RAILROAD)
COMPANY, WILLIAM LAHEY, AL GILBERT)
and ED BURK,)
)
Defendants.)

No. 75-C-105 ✓

FILED

APR 24 1975 J.

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

ORDER

NOW, on this 24TH day of April, 1975, there comes before the Court in chambers Plaintiff's Motion to Remand and the Motion to Dismiss filed herein by Defendant Ed Burk; and the Court being advised that the parties herein consent to the entry of an Order overruling the Motion to Dismiss of the Defendant Burk and remanding this case to the District Court of Tulsa County, Oklahoma; and the Court being satisfied that a cause of action is presently stated in Plaintiff's Petition (Complaint) as to the Defendant Burk who is a resident of the State of Oklahoma, and the Court being further satisfied that there is not presently diversity of citizenship requisite for jurisdiction in the United States District Court for the Northern District of Oklahoma;

IT IS THEREFORE ORDERED that the Motion to Dismiss of the Defendant Burk is overruled, the Plaintiff's Motion to Remand is granted, and this case is remanded to the District Court of Tulsa County, Oklahoma.



H. DALE COOK

United States District Judge

APPROVED AS TO FORM AND CONTENT:



J. WARREN JACKMAN
Attorney for Plaintiff



R. DOBIE LANGENKAMP
G. MICHAEL LEWIS of
DOERNER, STUART, SAUNDERS,
DANIEL & LANGENKAMP
Attorneys for Defendants

FILED

APR 23 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. 75-C-11

Ruth Alred,
et al.,)

Defendants.)

O R D E R

Now on this 11th day of February, 1975 there came on for hearing the petition of the plaintiff herein for temporary injunction and permanent injunction to be directed against the defendants, restraining them from interfering with the operations of the King Resources Company under departmental oil mining leases covering property described in the complaint herein.

Thereupon the defendants and a representative of the King Resources Company announced to the court that the differences between the defendants and the King Resources Company had been settled upon the following terms and conditions:

A. That the King Resources Company would forthwith pay and the defendants would accept the sum of \$8,000.00 in full settlement for all past damages resulting from the oil operations of the King Resources Company.

B. That the defendants would not interfere in the future with the activities of the King Resources Company and that upon the drilling of any additional wells upon the property of the defendants the King Resources Company would pay to the defendants prior to the commencing of the said wells the sum of \$800.00 for each well to be drilled, the said payment to cover the commencement fee, the installation of necessary road and the right of ingress and egress. Payment for water for the drilling of the wells not being covered by the \$800.00 fee but the ownership of the water and the payment therefor for drilling purposes to be determined in each case.

The court being advised of the settlement, approved the same.

WHEREUPON, the plaintiff announced that there was no further need for the continuation of this litigation and that they would dismiss this action without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the settlement agreement as above outlined be and the same is hereby approved by the court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that this action be dismissed without prejudice.

*Consent of
and
complaint*

Allen E. Barrow

(Allen E. Barrow)
Chief United States District Judge
Northern District of Oklahoma

FILED
 APR 23 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. 75-C-78 |
| |) | |
| |) | |
| VERDELL L. CURTIS a/k/a VERDEL |) | |
| CURTIS a/k/a VERDEL CURTIS |) | |
| HENDERSON a/k/a VERDELL HENDERSON, |) | |
| ZALES JEWELRY, INC., HOWARD |) | |
| FIELDS, NORTHSIDE LOAN, INC., |) | |
| E. H. CHURCHWELL d/b/a ERNIE'S, |) | |
| COUNTY TREASURER, Tulsa County, |) | |
| and BOARD OF COUNTY COMMISSIONERS, |) | |
| Tulsa County, |) | |
| |) | |
| Defendants. |) | |

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 23rd day of April, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendant, Zales Jewelry, Incorporated, appearing by its attorney, Herbert M. Graves; the Defendant, Northside Loan Company, Incorporated, appearing by its attorney, W. Keith Rapp; the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by Gary J. Summerfield, Assistant District Attorney; and the Defendants, Verdell L. Curtis a/k/a Verdel Curtis a/k/a Verdel Curtis Henderson a/k/a Verdell Henderson, Howard Fields, and E. H. Churchwell d/b/a Ernie's, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Verdell L. Curtis, Howard Fields, Northside Loan Company, Incorporated, and E. H. Churchwell d/b/a Ernie's, were served with Summons and Complaint on February 27, 1975; that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, were served with Summons and Complaint on February 26, 1975; and that Defendant, Zales Jewelry, Incorporated, was served with Summons and Complaint on March 6, 1975, all as appears from the U.S. Marshals Return of Service herein.

It appearing that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on March 17, 1975; that Defendant, Zales Jewelry, Incorporated, has duly filed its Disclaimer herein on March 25, 1975; that Defendant, Northside Loan Company, Incorporated, has duly filed its Answer herein on March 12, 1975; Defendants, Verdell L. Curtis, Howard Fields, and E. H. Churchwell d/b/a Ernie's, 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 Fourteen (14), Block Sixty (60), VALLEY VIEW ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendant, Verdell L. Curtis, did, on the 8th day of August, 1973, execute and deliver to the Administrator of Veterans Affairs, his mortgage and mortgage note in the sum of \$9,750.00 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 Defendant, Verdell L. Curtis, made default under the terms of the aforesaid mortgage note by reason of his 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 Defendant is now indebted to the Plaintiff in the sum of \$9,644.90 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from August 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that as of the entry of this Judgment there are no ad valorem taxes owed Tulsa County by

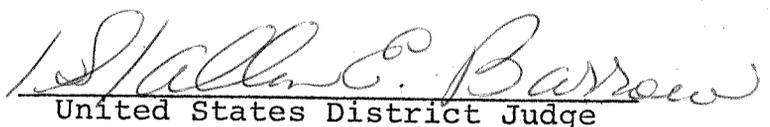
Defendant, Verdell L. Curtis, which are a lien against the property being foreclosed herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Verdell L. Curtis, in personam, for the sum of \$9,644.90 with interest thereon at the rate of 4 1/2 percent per annum from August 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, Howard Fields, E. H. Churchwell d/b/a Ernie's, and Northside Loan Company, Incorporated.

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

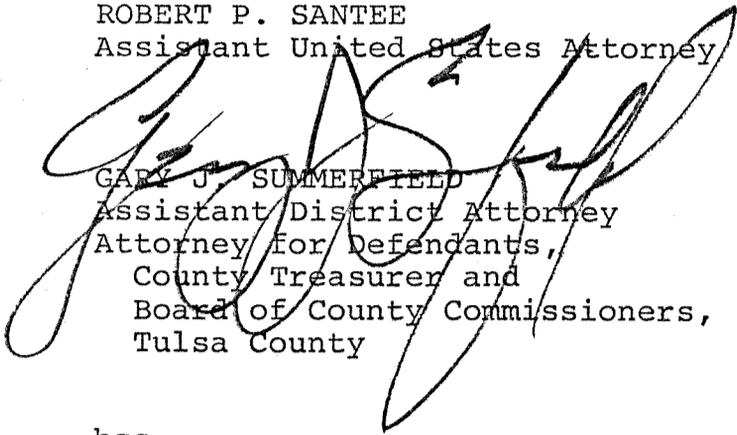
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed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

bcs

E I L E D

APR 22 1975

lm

Jack C. Silver, Clerk

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

LISA RENEE SWARTZLANDER, a minor)
by and through her father and next)
friend, JAMES W. SWARTZLANDER, JR.)
and JAMES W. SWARTZLANDER, JR.,)
individually,)

Plaintiffs,)

-vs-

No. 75-C-89 ✓

J. C. PENNEY COMPANY, INC.,)
a corporation, and)
WILLIAM H. COLEMAN,)

Defendants.)

ORDER SUSTAINING PLAINTIFFS' MOTION TO REMAND

This is an action in negligence. Plaintiffs allege that the Defendants failed to warn the Plaintiffs of the flammable materials which were used to manufacture a pair of boots that were sold in Defendants' store. The Petition was filed in the District Court of Creek County, Bristow Division, State of Oklahoma and alleges that the boots were purchased at J. C. Penney Store in Tulsa, Oklahoma. While wearing said boots, the Plaintiff, Lisa Renee Swartzlander, aged four years, came in contact with hot particles of burning trash which ignited the boots causing injury. James W. Swartzlander, father and next friend, joined as Plaintiff to recover expenses incurred because of said injuries.

This suit was removed to the United States District Court for the Northern District of Oklahoma on the grounds that this Court has original jurisdiction due to diversity of citizenship. Plaintiffs are citizens and residents of Kiefer, Creek County, Oklahoma. Defendant, J. C. Penney Company, Inc., is incorporated in the State of Delaware with its principal place of business in New York, New York. Defendant, William H. Coleman is a citizen and resident of Tulsa County,

Oklahoma. Defendants claim that William H. Coleman was fraudulently joined to destroy diversity and that he had no duty to warn the Plaintiffs of any danger.

Plaintiffs argue that William H. Coleman had a duty as manager of the J. C. Penney Store to warn the Plaintiffs and that he is thereby properly joined.

The Court has carefully considered the arguments of counsel and has perused the entire file and is fully advised of the premises therein. The Plaintiffs have alleged in their Petition that William H. Coleman is the agent, servant and employee of J. C. Penney and had a duty to warn them of the unsafe condition of the boots. William H. Coleman has filed an affidavit in the record which states that his job description does not include the responsibility for testing the merchandise purchased and supplied by national buyers, and that he has no duty to oversee the sale of merchandise to individual customers. Attached to William H. Coleman's affidavit is a statement of the Position Title of Store Manager. The following language appears under section 2(b) of "Principal Responsibilities and Duties" of said job description: "Assuring clean-up of danger merchandise in season." The scope of this language is unclear. It is broad and conceivably extends the authority of the manager to supervising the withholding of unsafe merchandise. Under such an interpretation the Defendant, William H. Coleman, would have a duty to protect the Plaintiffs from an unsafe product.

Under these circumstances, the Court cannot find that William H. Coleman has been fraudulently joined merely to defeat diversity. It is therefore the finding of the Court that William H. Coleman has been properly joined as a party Defendant. Diversity as required by 28 U.S.C. §1332 is not present and

this Court is without proper jurisdiction to hear this matter. Treinius v. Sunshine Mining Co., 308 U.S. 66, 60 S. Ct. 44, 84 L.Ed. 85, rehearing denied, 309 U.S. 693, 60 S. Ct. 464, 84 L.Ed. 1034 (1939); Warner Bros, Record, Inc. v. R.A. Ridges Distributing Co., Inc., 475 F.2d 262 (10th Cir. 1973); Mas v. Perry, 489 F.2d 1396 (5th Cir. 1974).

For the reasons stated herein the Motion to Remand of the Plaintiffs is sustained and this case is remanded to the District Court of Creek County, Bristow Division, State of Oklahoma from which it was improvidently removed.

It is so Ordered this 22ND day of April, 1975.


H. Dale Cook
United States District Judge

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

ALFRED ALLEN LOWE, and THE
COMMITTEE ON EQUAL EMPLOYMENT
PRACTICES,

Plaintiffs,

vs.

LEE WAY MOTOR FREIGHT, INC.,
THE INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, CHAUFFEURS,
and WAREHOUSEMEN, and THE
TEAMSTERS UNION, LOCAL
NUMBER 523,

Defendants.

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APR 21 1975

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

No. 75-C-45 ✓

ORDER DISMISSING THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

Defendant, International Brotherhood of Teamsters,
Chauffeurs, Warehousemen, and Helpers of America has filed
a Motion to Dismiss to which Plaintiffs, according to their
Response, have no objection in dismissing this Defendant only.

It is therefore the Order of the Court that Defendant,
International Brotherhood of Teamsters, Chauffeurs, Warehousemen,
and Helpers of America be dismissed from this action.

It is so Ordered this 21st day of April, 1975.


H. Dale Cook
United States District Judge

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

GEORGE R. PIETCH,)
)
 Plaintiff,)
)
 -vs-) No. 75-C-44 ✓
)
 HARLEQUIN MANAGEMENT CORP.,)
 a New York corporation; and)
 JOHN HURWITZ,)
)
 Defendants,)
)
 ALAN N. ALPERN,)
)
 Cross-Petitioner,)
)
 ABERDEEN POWER, INC., a Delaware)
 corporation; and COMPUTER POWER)
 INTERNATIONAL CORPORATION, a)
 Delaware corporation,)
)
 Additional Cross-Defendants.)

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APR 21 1975 *lun*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER SUSTAINING
CROSS-PETITIONER'S MOTION TO REMAND

An action for breach of contract was brought by Plaintiff, George R. Pietch, in the District Court for Tulsa County, State of Oklahoma, to collect salary due on a contractual agreement which had been assigned to the Defendant, Harlequin Management Corporation. The performance of this contract was alleged to have been guaranteed by Defendant, John Hurwitz. The District Court for Tulsa County issued an Attachment Order on the equitable interest of a stock certificate for 200,000 shares of Class "B" stock of Aberdeen Petroleum Corporation held by Utica National Bank and Trust Company of Tulsa, Oklahoma, as security for loans made to the Defendant, Harlequin Management Corporation. The Certificate and the shares represented thereby were held by Order of the court in custodia legis by said bank.

The loans in favor of Defendant Harlequin were paid and the Stock Certificate delivered to the Clerk of the Tulsa County

Court on December 17, 1974. In an effort to effectuate the transfer of said Class "B" Stock to Adobe Oil and Gas Corporation of Midland, Texas, Certificates of Deposit in the amount of \$400,000.00 were substituted and placed in the custody of the District Court Clerk of Tulsa County by Order of the Tulsa County Court dated December 18, 1974.

Prior to these events in regard to the transfer of stock the Cross-Petitioner, Alan N. Alpern, filed his Petition for Interpleader with the Tulsa County Court on September 18, 1974. Cross-Petitioner alleged that while acting individually and as agent for certain designated persons he had entered into an Equity Purchase and Option Agreement with Defendant, Harlequin Management Corporation, on August 25, 1972. Cross-Petitioner alleged in his Petition that this agreement controlled part of the shares held under the Attachment in custodia legis, and requested the court to enter an order declaring Cross-Petitioner's rights in the Class "B" Stock. With the approval of the Cross-Petitioner the Stock was substituted as stated herein. The transfer of the Stock involved Aberdeen Power, Inc., and Computer Power International Corporation, which corporations along with Harlequin Management Corporation made a general appearance on December 20, 1974, in the District Court of Tulsa County and stipulated that Cross-Petitioner had a lien on the Certificates of Deposit held by said court.

One month following the general appearance of the above named corporations the Cross-Petitioner filed a Petition and claim against Harlequin Management Corporation and against the Additional Cross-Defendants, Aberdeen Power, Inc., and Computer Power International Corporation. The Cross-Petitioner realleged all the matters stated in the Cross-Petition for Interpleader regarding the Equity Purchase and Option Agreement and further claimed that these named corporations had transferred the Class "B" Stock to Adobe Petroleum Corporation without honoring

the Equity Purchase and Option Agreement as required by the terms to which these corporations had agreed. Cross-Petitioner claims that each of these designated corporations had a duty to deliver part of the proceeds from the sale of the stock as required by the Option Agreement to him and that the failure to deliver renders each corporation jointly and severally liable to him for the proceeds.

The Defendants and Cross-Defendants filed a Petition for Removal in this Court on February 3, 1975. They assert that the original Plaintiff, George R. Pietch, has been satisfied and no longer claims an interest in this litigation, and that the Harlequin Management Corporation and John Hurwitz by virtue of their disclaimers filed in the record on February 3, 1975, have divested themselves of any rights or claims in the Certificate of Deposit held by the District Court of Tulsa County. Because these three last mentioned parties are no longer interested in the res the Defendants and Additional Cross-Defendants argue that diversity now exists and that the cause is properly removed to this Court. They have answered the Cross-Petition of Alan N. Alpern and Counterclaimed against him on the ground that he made profit from inside information in violation of 15 U.S.C. 78 (p) (b) (1964).

On February 21, 1975, the Cross-Petitioner, Alan N. Alpern, filed a Motion to Remand. It is the question of whether this case is properly brought to the federal court that is now to be decided. The movant's basic argument for remand is that he has brought his claim against Harlequin Management Corporation which is incorporated in New York with its principal place of business in Austin, Texas. The Cross-Petitioner claims that he is a resident and citizen of New York which results in a situation where two adverse parties are citizens of the same state. The Defendants and Cross-Defendants respond to the arguments of the Cross-Petitioner by stating that this action is an action in

rem or quasi in rem to litigate the various interests in the res deposited with the Tulsa County Court. With this assertion they then claim that Harlequin Management Corporation is no longer an indispensable party since it has disclaimed an interest in this res and, therefore, the requisite diversity has been accomplished.

The record establishes the general appearance of Harlequin Management Corporation, Aberdeen Power, Inc., and Computer Power International Corporation in the District Court for Tulsa County, Oklahoma. By their general appearance these corporations have submitted themselves to in personam jurisdiction of the County Court. 12 Okla. Stat. §162(1960), Russell v. McGinn, 514 P.2d 658 (Okla. 1973); Hecker v. Sadler, 176 Okla. 34, 54 P.2d 832 (1936); Hobbs v. German-Am. Doctors, 14 Okla. 236, 78 P.356(1904).

The Cross-Petitioner, Alan N. Alpern has, subsequent to the general appearance of said corporations brought on action based upon breach of contract alleging personal liability against each of these named corporations. The Cross-Petitioner is a New York resident. Defendant Harlequin Management Corporation is incorporated under the laws of New York. It is obvious that under these conditions the proper diversity of citizenship as required by 28 U.S.C. §§1332, 1441 (1964) is not present and that this Court is without proper jurisdiction to hear this matter. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100 (1941); Warner Bros. Records, Inc., v. R. A. Ridges Distributing Co., Inc., 475 F.2d 262 (10th Cir. 1973); Mas v. Perry, 489 F.2d 1396 (5th Cir. 1974).

While Harlequin Management Corporation may have disclaimed any interest in the fund deposited in the Tulsa County Court, the Cross-Petition alleges an action founded on a breach of contract against Harlequin. This Defendant has not been dismissed from the case and is properly joined in the Cross-Petitioner's claim.

It is noted by the Court that as a general rule neither a third-party defendant nor a cross-defendant may remove. "The reason usually given is that the claim is not one that has been 'joined' by the original Plaintiff, such being the requirement of 28 U.S.C.A. 1441(c) which is to be strictly construed." Mid-State Homes, Inc., v. Swain, 331 F.Supp. 337, 339 (W.D. Okla. 1971). See Parks v. Physicians and Surgeons Building Corp., 324 F.Supp. 883 (W.D.Okla. 1971); Brumfield v. Stuck, 298 F.Supp. 380 (W.D.Okla. 1969); Shaver v. Arkansas-Best Freight System, Inc., 171 F.Supp. 754 (W.D.Ark. 1959). Aberdeen Power, Inc., and Computer Power International Corporation appear as Cross-Defendants in this the action against them.

For the reasons stated herein the Motion to Remand of the Cross-Petitioner, Alan N. Alpern, is sustained and this case is remanded to the District Court of Tulsa County, Oklahoma, from which it was improvidently removed.

It is so Ordered this 21st day of April, 1975.


H. DALE COOK
United States District Judge

stamping process by employing various machine tool dye methods.

Defendant, Oral Health Products, Inc., is an Oklahoma corporation with its principal place of business in Tulsa, Oklahoma. Dr. Robert G. Jones founded the Company in the early 1960's. In 1970 it was incorporated with Dr. Jones as President. It manufactures various products related to oral health and hygiene. In approximately 1963, Dr. Robert G. Jones, while acting as President of the Defendant, engaged the Plaintiff to produce dental floss container caps for the Defendant. The caps were produced by Plaintiff through a machine stamping process. The caps were thereafter transmitted by Plaintiff to Evansville Plating Works, Inc., where they were plated with nickel and transmitted to the Defendant, Oral Health Products, which used the caps in assembling the dental floss container.

Skyline and Defendant (or Defendant's predecessor, Dr. Jones) entered into an original agreement as reflected by Defendant's Exhibit No. 1, which is a letter to the Plaintiff dated February 14, 1963. Said letter established a practice where Defendant paid the account of Plaintiff based upon invoices billed. This practice was followed in a continuous course of business until the parties severed their relationship in May, 1973.

The President of the Defendant testifies that during the period of time in which the parties were engaged in business the Plaintiff periodically delivered defectively stamped or improperly plated caps to the Defendant. There is little testimony in regard to problems of any substantial nature arising prior to the first quarter of 1973. In early 1973 conversations between Dr. Jones and officers of the Plaintiff revealed that the Defendant did not have adequate caps to complete its desired dental floss container. The parties discussed the possibility of changing the design of the cap. In March of 1973, Dr. Jones informed Plaintiff that Defendant did not have a sufficient number

of caps and was advised that caps would be forthcoming from Evansville Plating Works. In April of 1973, representatives of Plaintiff visited Defendant's business location where they were informed that foreign matter had been found in the barrels of caps delivered by Evansville Plating Works to Defendant. Plaintiff contacted Evansville concerning foreign matter in the barrels and was assured that the problem had been corrected.

This lawsuit centers on the Plaintiff's claim of amount due on four invoices representing goods sold to and received by Defendant, said invoices being:

| | | |
|------------|------------------|-------------|
| No. 12,702 | February 1, 1973 | \$ 3,231.63 |
| No. 12,779 | March 1, 1973 | 3,985.20 |
| No. 12,882 | April 1, 1973 | 3,985.20 |
| No. 12,941 | May 1, 1973 | 3,985.20 |

Plaintiff introduced into evidence the purchase order from Defendant to the Plaintiff, the Plaintiff's purchase order to Evansville Plating Works for the nickel plating, the bill of lading showing shipment of the caps in drums from Plaintiff to Evansville Plating Works, and the invoice to Plaintiff for the plating, and the shipping carrier's memorandum and receipt showing delivery to the Defendant. Through the deposition testimony of Daryl Spindler, President of Evansville Plating Works, Plaintiff introduced into evidence the invoices, purchase orders, bills of lading, freight bills and job tickets maintained at Evansville Plating with respect to shipments to Defendant of caps represented by the unpaid invoices. (Plaintiff's Exhibits 47-83; P52S-P55S)

Defendant refuses to pay said invoice amounts on the grounds that the invoice billing was far in advance of the actual number of caps received, that these shipments represented parts for which the Defendant had already paid, that during the period of years while the parties did business the defective and improperly plated caps accounted for the amounts represented by said invoices and that an accord and satisfaction had been reached when the Plaintiff accepted a check dated April 27, 1973,

in the amount of \$4,738.77. Defendant introduced evidence presented by its Certified Public Accountant regarding a sampling of eleven barrels of caps concerning the condition of the caps in said barrels. The sampling demonstrated that as to those barrels there was a substantial number of caps which had been improperly plated. The testimony indicates that this was the fault of Evansville Plating Works, which Company, upon return of improperly plated caps, would replating the caps and return them to the Defendant. Defendant attempted to extrapolate the percentage of defective caps found in the thirteen barrels sampled and to apply this percentage over the ten years during which the parties had engaged in business and thus alleged the failure of the Plaintiff to deliver the caps billed on said invoices. For this failure the Defendant contends it is entitled to judgment by reason of its counterclaim in the amount of \$15,187.23.

The Uniform Commercial Code is the appropriate body of law to govern these transactions. Specifically 12A Okla. Stat. §2-601(c), (1961) requires the buyer to reject any non-conforming commercial unit, §2-602 requires that the seller be notified within a reasonable time of the delivery, §2-605 requires that the seller be notified of the particular defect. The reason for these requirements placed on the buyer is to give the seller an opportunity to cure the defect if such defect is curable. 12A Okla. Stat. 2-605(1)(a). Where the buyer fails to reject the goods in its commercial unit, they are accepted as a unit and the buyer must pay the contract price for the accepted goods. 12A Okla. Stat. §§2-606(1)(b), 2-606(2), 2-607(1). Where a breach of the contract has occurred the buyer must notify the seller within a reasonable time after discovery or be barred from his remedy. 12A Okla. Stat. §2-607(3)(a).

The evidence supports the conclusion that the caps repre-

sented by the invoices were delivered to the Defendant and that the Defendant has at no time refused to accept the caps or rejected them after discovery of a defect. The evidence supports the conclusion that the practice during the course of the parties' business transactions was to return the improperly plated caps to Evansville Plating Works for replating. (Defendant's Exhibit 13). While the audit of the thirteen barrels indicates that a high percentage of the caps in the sampling was improperly plated (Defendant's Exhibit 34) there is no substantial evidence to show that any of these caps were rejected within a reasonable period of time. The customary practice, absent rejection, was to return these caps to Evansville Plating Works for replating. The audit shows that only 1.4 percent of the sampling was defectively stamped, and that 37.9 percent was improperly plated. Without rejecting these defectively stamped and improperly plated caps the Plaintiff has no reason to assume that the Defendant would not follow the customary practice of returning the caps to Evansville Plating Works for replating.

The auditor arrived at a figure of 92.1 caps per pound by weighing and counting a twenty-pound sample. While the audit of thirteen barrels at an average weight of 92.1 caps per pound may indicate that the Defendants did not receive all of the caps claimed by the Plaintiff the evidence supports the conclusion that neither the weight of the barrels nor the weight of the caps was constant. The thickness of the cap and the nickel coating would vary the number of caps per pound. The audit of thirteen barrels is not conclusive as to the weight of the eighty-two barrels which contained the caps transmitted and billed to the Defendant on the four designated invoices.

Due to the various weights of barrels and caps, Defendant's attempt to extrapolate the results of an audit of thirteen barrels over the past ten years to show that the Plaintiff has not delivered as many caps as it claims is ineffective to support

a conclusion that the caps were not delivered. Yet if such evidence could support Defendant's contention it cannot now be heard to reject parts which were not timely rejected and used by Defendant to form its dental floss container.

Defendant has submitted evidence of the production capacity of Plaintiff's stamping press (Defendant's Exhibit 40) and a record of the time Plaintiff devoted to producing caps for the Defendant (Defendant's Exhibit 41). After tabulating the capacity with the time spent, the Defendant claims that the Plaintiff could not have produced the total number of caps which it claims to have produced over the ten-year period of the business relationship. These records, however, are incomplete as the time records used in the tabulation begin in the last quarter of 1966 and do not account for the production of caps since the relationship began in 1963. Again, if such evidence could support Defendant's contention that Plaintiff did not produce the caps it claims to have produced, nevertheless, the Defendant cannot now support its defense by showing evidence of shortages it should have claimed at the time of their occurrence and of defects it should have rejected as required by law. To conclude otherwise would contravene the very purpose of the Uniform Commercial Code when it provides for the appropriate method of rejecting goods. 12A Okla. Stat. §2-602 (1961). See Uniform Commercial Code Comment 12A Okla. Stat. §2-602, pp 293-294 (1963). There is no specific evidence in the record to support the conclusion that these parts were rejected. As late as June 1, 1973, the audit was being conducted on the final shipment of caps billed by the designated invoices. The Defendant, by the statement of its attorney, admits that an audit could be conducted on only thirteen barrels because "13 barrels were all that were left on May 30, 1973." (Defendant's Response to Final Argument of Plaintiff, p. 5). The only clear rejection of parts or claim for shortages appears in the counterclaim of

the Defendant filed November 26, 1973, five months after the audit and seven months after the last shipment in April of 1973. Rejection at this late date is untimely and contrary to the provisions of 12A Okla. Stat. §2-601 for goods not in conformity with the contract. Southern Union Gas Co. v. Taylor, 486 P.2d 606 (N.M. 1971); Woods v. Van Wallis Trailer Sales Co., 419 P.2d 964 (N.M. 1966). Failure to make an effective rejection renders the goods as accepted. 12A Okla. Stat. §2-606(b), (1961). The buyer must pay the contract price for goods accepted. 12A Okla. Stat. §2-607(1), (1961).

The Defendant next alleges that the parties entered into an accord and satisfaction when the Plaintiff accepted a check dated April 27, 1973, in the amount of \$4,738.77. Defendant claims that telephone conversations were held with officers of Plaintiff in which the agreement to accept the check as payment in full was formulated and that Plaintiff's conduct of cashing the check is the confirmation of the agreement. The subject check contains the words:

"This check in full settlement of account as shown hereon acceptance by endorsement constitutes receipt in full - - - 256,844 caps at \$18.45/M." (Plaintiff's Exhibit #46).

Defendant interprets this language to mean that this check was endorsed and accepted as complete payment for all of the caps shipped to the Defendant and that Plaintiff's claim is contrary to the accord and satisfaction.

The Plaintiff counteracts the defense of accord and satisfaction by alleging that it is improperly pleaded. Defendant's answer contains the words:

"[A]fter said accounting . . . on April 27, 1973 Defendant paid to Plaintiff the sum of \$4,738.77 so found due upon the accounting. Plaintiff received and accepted the payment in full satisfaction of its claim and is thereby barred from asserting the action."

These words are adequate to state the defense of accord and satisfaction. L. C. Jones Trucking Co., Inc. v. Jenkins,

313 P.2d 530 (Okla. 1957); Frame v. Commissioners of Land Office, 196 Okla. 292, 164 P.2d 865 (1946). It is the finding of the Court that said defense has been properly pleaded.

The Plaintiff next defends against the argument of accord and satisfaction when it asserts that no agreement was reached by the telephone conversations to cause the Plaintiff to accept said check as payment for all of the parts mailed to date by the Plaintiff. The testimony is contradictory as to this agreement. Thus the words of the check must be read to find the intent of the parties. Except for the terms "256,844 caps at \$18.45/M" the language is part of the check format.

It appears on the face of the instrument that the check amount is to be accepted as payment in full for 256,844 caps at \$18.45/M. There is no indication that this check was accepted as payment for all of the caps received by the Defendant. The Defendant does not clearly establish that there was a meeting of the minds between the Plaintiff and the Defendant.

"In order to support a plea of accord and satisfaction, it must clearly appear from the evidence that there was in fact and in reality a meeting of the minds in accord and satisfaction. The conclusion of accord and satisfaction should not be supported by mythical or theoretical reasoning."
Fast Motor Co. v. Morgan, 175 Okla. 269, 52 P.2d 25 (1935).

The accord and satisfaction must be clear to establish this defense. Youngstown Sheet & Tube Co. v. Westcott, 147 F.Supp. 829 (W.D.Okla. 1957).

The conduct of the parties does not support an accord and satisfaction. Defendant introduced into evidence a letter dated May 21, 1973, from Tom Wirth, Plaintiff's Vice-President, to Dr. Jones which states that Plaintiff had not received payment for 823,156 caps at a total cost to the Defendant of \$15,187.23 and requests payment by June 1, 1973, (Defendant's Exhibit 32). The Defendant conducted its audit well after the alleged accord and satisfaction. This conduct strongly suggests that the parties

had not reached the accord and satisfaction as alleged by the Defendant. The Plaintiff's records show that the check dated April 27, 1973, was used to pay in full Plaintiff's invoice No. 12,701 (\$3,985.20) and the balance was used to make a partial payment of \$753.57 on Plaintiff's invoice No. 12,702. (Plaintiff's Exhibits 44 G & H). These records support the claim that \$15,187.23 is due and owing to the Plaintiff. It is, therefore, the finding of the Court that Plaintiff's claim for \$15,187.23 for caps delivered to the Defendant is supported by the evidence and that the parties did not reach an accord and satisfaction when the Plaintiff accepted the check tendered by the Defendant in the amount of \$4,738.77 and applied by Plaintiff to invoices 12,701 and 12,702. Market Service, Inc. v. National Farm Lines, 426 F.2d 1123 (10th Cir. 1970); French v. Sotheby & Co. 470 P.2d 318 (Okla. 1970); Walker v. Ellinghausen 309 P.2d 1058 (Okla. 1957).

The Defendant has counterclaimed against the Plaintiff in the amount of \$15,187.23 alleging that this is the value of the shortages and defective caps which the Defendant either did not receive or rejected. The finding of the Court that the Defendant did not timely reject the defects is tantamount to a finding that the Defendant cannot now claim relief for parts which it has accepted. In regard to the shortages the Defendant's President, Dr. Jones, testified that the shortages for which the Defendant seeks judgment accumulated over a period of ten years. Dr. Jones could not specifically identify the time of the shortage and specifically states that he could not pinpoint the time. (Transcript of Dr. Jones' testimony, pages 69-70). A finding by the Court that the audit of June 1, 1973, is not sufficient to establish shortages over a ten-year period is tantamount to a finding that the Defendant has not established sufficient proof to support its counterclaim for shortages. Failure to reject the units on the basis of shortages is an acceptance of

the unit under 12A Okla. Stat. §2-601.

It is, therefore, the finding of the Court that the Defendant's counterclaim must be denied.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that judgment be entered in favor of the Plaintiff and against the Defendant in the amount of \$15,187.23.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that judgment be entered in favor of the Plaintiff and against the Defendant on the Defendant's Counterclaim in the amount of \$15,187.23.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Plaintiff be awarded interest at the rate of six percent (6%) per annum on each unpaid invoice until date of judgment, said interest to be paid from the dates and on the amounts as follows: Invoice No. 12,702 for \$3,231.63 from March 1, 1973; Invoice No. 12,779 for \$3,985.20 from April 1, 1973; Invoice No. 12,882 for \$3,985.20 from May 11, 1973; and Invoice No. 12,941 for \$3,985.20 from June 3, 1973.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Plaintiff be awarded interest at the rate of ten percent (10%) per annum from the date of judgment on the amount of the judgment until paid.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the parties appear on a date to be set by the Court to determine a reasonable attorney's fee and costs of this action.

It is so Ordered this 18th day of April, 1975.


H. DALE COOK
United States District Judge

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

SUMMIT INSURANCE COMPANY OF)
NEW YORK,)
)
Plaintiff,)
)
vs.)
)
O'NEAL CONSTRUCTION, INC.;)
LELAND EQUIPMENT COMPANY;)
ALAMO EXPLOSIVES COMPANY, INC.;)
and WILBUR A. DICUS, an individual)
doing business as WADCO)
INTERNATIONAL,)
)
Defendants.)

No. 74-C-315 ✓

FILED
APR 17 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

On March 25, 1975, this cause was before the Court for disposition, plaintiff and defendant, O'Neal Construction, Inc., appearing by their respective counsel of record. The Court thereupon reconsidered the motion for summary judgment of O'Neal Construction, Inc. and, after reviewing the pleadings, affidavits, stipulation and briefs, is of the opinion that there are no controversies as to any material facts and that the motion should be sustained as a matter of law. Plaintiff objected to the entry of judgment, claiming that a New York State Court had entered an order enjoining all actions against plaintiff. The Court finds and holds that neither this Court nor O'Neal Construction, Inc. is a party to the New York action and that the orders of that Court are not binding upon this Court or O'Neal Construction, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that O'Neal Construction, Inc. be and it is hereby granted judgment against plaintiff, Summit Insurance Company of New York, in the principal sum of \$8,979.49, with interest thereon at the rate of 6% per annum from and after October 3, 1974, to the date hereof, and interest thereafter at the rate of 10% per annum until such principal and

interest is paid in full.

Entered: 15th April, 1975.

Luther Bohanon
LUTHER BOHANON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO
FORM ONLY:

Richard M. Gibbon
RICHARD GIBBON
Attorney for Plaintiff

APPROVED AS TO FORM
AND CONTENT:

John B. Hayes
JOHN B. HAYES
Attorney for Defendant, O'Neal
Construction, Inc.

IEU:s1b
4/14/75

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

F. H. LAWSON COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
AMERICAN BUILDERS SUPPLY, INC.,)
a corporation,)
)
Defendant.)

Civil Action FILED
No. 75-C-16 APR 16 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

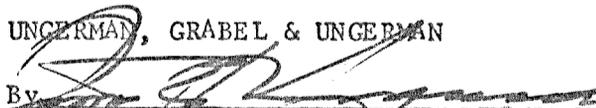
NOW, on this 14th day of April, 1975, there having been filed in the above styled and numbered matter a Stipulation for the Entry of Judgment, and the Court having considered the said Stipulation and being well and sufficiently advised in the premises finds that such Stipulation should be approved and that a judgment should be entered accordingly.

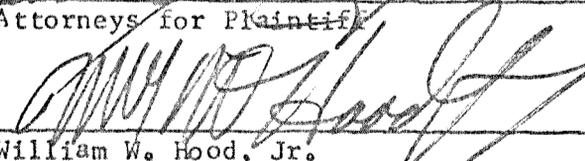
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THIS COURT that the Plaintiff, F. H. Lawson Company, a corporation, do have and recover a judgment of and against the Defendant, American Builders Supply, Inc., a corporation, for the principal sum of \$11,932.10 with interest thereon at the rate of 12% per annum from the 1st day of June, 1974, until paid, together with an attorney fee in the sum of \$2500.00 for the use and benefit of Plaintiff's counsel herein, the same to be taxed as cost herein, together with all other accruing costs in this matter.


Chief U. S. District Judge for the Northern District of Oklahoma

APPROVED:

UNGERMAN, GRABEL & UNGERMAN

By 
Attorneys for Plaintiff


William W. Hood, Jr.
Attorney for Defendant

LAW OFFICES
UNGERMAN,
GRABEL &
UNGERMAN

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

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

OKLAHOMA GAS AND ELECTRIC COMPANY,
an Oklahoma corporation

Plaintiff

vs.

The United States of America, Trustee and
Owners of the legal title to certain land
for the use and benefit of certain
Restricted Indians

THE HEIRS, EXECUTORS, ADMINISTRATORS,
DEVISEES, TRUSTEES AND ASSIGNS OF
METHA COLLINS (PONCA ALLOTTEE NO. 773)
DECEASED

Defendants

No. 74-C-260

FILED
APR 16 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

This matter coming on to be heard on this 16th day of April, 1975, upon the joint motion of Plaintiff and Defendant, United States of America, Trustee and Owner of the legal title to certain land for the use and benefit of certain Restricted Indians, for a judgment confirming the Report of Commissioners heretofore filed herein, as amended, at which time the Plaintiff appeared by its attorney, Steve Moore, and the Defendant, United States of America, Trustee, appeared by Herbert Marlow, United States Attorney for the Northern District of Oklahoma, and said parties in open court having agreed that this matter might be heard without further notice, and the Court being fully advised in the premises finds:

1.

Plaintiff is a corporation organized and existing under the laws of the State of Oklahoma and vested with the power of eminent domain for the acquisition of property needed in its business of generating, transmitting, distribution and furnishing electricity to the public for light, heat and power purposes.

2.

It is necessary for the Plaintiff to appropriate and take, under the powers vested in it by the statutes of the State of Oklahoma and the statutes of the United States of America, the property more particularly described in the Plaintiff's Complaint and Order Appointing Commissioners on file herein, as amended by the Order Amending Pleadings filed herein on April 15, 1975, for the development, construction, operation and maintenance of an electric power generating plant, including a dam and reservoir for the retention and storage of water used in connection therewith; that the United States of America, Trustee and Owner of the legal title to certain land for the use and benefit of certain Restricted Indians, has filed herein an entry of appearance on behalf of said Restricted Indian Defendants.

3.

That no Demand for Jury Trial has heretofore been filed by either Plaintiff or Defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, Oklahoma Gas and Electric Company, have and recover judgment against the Defendant, United States of America, Trustee and Owner of the legal title to certain land for the use and benefit of certain Restricted Indians, The heirs, executors, administrators, devisees, trustees and assigns of Metha Collins, Deceased, condemning and vesting in Plaintiff fee simple title to the following described property situated in Pawnee County, Oklahoma, towit:

An undivided 1,474,200/55,112,400ths interest in and to the Northeast Quarter (NE $\frac{1}{4}$) of Section 19, Township 23 North, Range 3 East, Pawnee County, Oklahoma,

for the development, construction, operation and maintenance of an electrical power generating plant, including a dam and reservoir for the retention and storage of water used in connection therewith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Report of Commissioners made and filed herein on the 9th day of August, 1974, as amended by Order Amending Pleadings filed herein on April 15, 1975, be and the same is hereby approved and confirmed and that the above defendants, as the owners of the above described tract of land, have and recover judgment against the Plaintiff as compensation and damages for the taking and appropriation of said property in the amount of \$2,032.92.

IT IS FURTHER ORDERED that the Clerk of this Court be and hereby is directed to disburse from the Commissioners Award heretofore deposited with the Clerk by the Plaintiff, the amount of \$2,032.92 which is the amount of the Commissioners' Award as amended, to the Bureau of Indian Affairs for the benefit of the Heirs, Executors, Administrators, Devisees, Trustees and Assigns of Metha Collins, Ponca Allottee No. 773, deceased, and to disburse to the Plaintiff herein the amount of \$312.76 which is the difference between the amount deposited with this Clerk by Plaintiff and the amount of the amended award of commissioners.

gcs/kw

J. H. Dale Cook
U.S. District Judge

APPROVED:

J. H. Steve Moore
Attorney for Plaintiff

HUBERT A. MARLOW

Attorney for Defendants



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
REGIONAL OFFICE
UNITED STATES COURTHOUSE
FORT WORTH, TEXAS 76102

IN REPLYING PLEASE QUOTE

WMW:gm

April 11, 1975

Honorable Allen E. Barrow
United States District Judge
472 Federal Building
Tulsa, Oklahoma 74103

Re: Securities and Exchange Commission
v. Robert V. Ehrman et al.
Civil Action No. 75-C-117

Dear Judge Barrow:

Enclosed please find an original and three copies of the proposed Order of Permanent Injunction by Consent and Disgorgement in the above captioned matter for your signature. Also enclosed are two marshal service forms for service on the defendants.

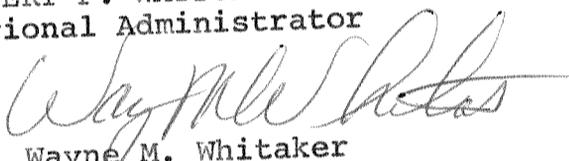
After the Order has been entered, would you have the clerk return one conformed copy to our office for our records.

Thank you for your attention in this matter.

Respectfully yours,

ROBERT F. WATSON
Regional Administrator

By


Wayne M. Whitaker
Attorney

Enclosures:
Order - 1 + 3
Marshal Service - 2

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: Mr. Landis W. Shook, Attorney
214 West 8th Avenue
Stillwater, Oklahoma 74074

RECEIVED

APR 15 1975

ALLEN E. BARROW
U. S. DISTRICT JUDGE