

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

THOMAS N. WILEY,)
)
 Plaintiff,)
)
 vs.) No. 75-C-327)
)
 SAFEWAY STORES, INC., a)
 foreign corporation, et al.,)
)
 Defendants.)

No. 75-C-327

FILED
FEB 27 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

This is an action for wrongful eviction and conversion. Plaintiff, Thomas N. Wiley, filed a petition in the District Court for Creek County, State of Oklahoma, wherein he alleged that he and defendant Safeway Stores, Inc., (hereinafter Safeway) had been engaged in a month-to-month landlord-tenant relationship when Safeway wrongfully terminated the plaintiff on May 2, 1975. Plaintiff states as a Second Cause of Action that Safeway converted the property of the plaintiff by refusing to allow the removal of the property until Safeway was paid 40% of the proceeds.

On January 8, 1976, the Court held a pre-trial conference with the plaintiff, by and through his attorney, Robert L. Mason, and the defendant, by and through its attorney, T. H. Eskridge, present. The parties submitted a Pre-trial Memorandum to be considered by the Court as a Pre-trial Order. Each of the parties agreed to submit the case to the Court for rulings on the merits.

The plaintiff is the owner of approximately forty-five coin-operated amusement rides which were placed in various stores owned by the defendant. By an oral agreement of the parties, plaintiff was to license, insure, maintain, and service these rides and to collect the revenue. After deducting the cost of

the license, the proceeds were divided by plaintiff 60% to the plaintiff and 40% to defendant, Safeway.

Plaintiff purchased the majority of the rides from Mr. Ralph Radcliffe in 1971. At that time Mr. Radcliffe operated the business under a written agreement with defendant Safeway. The parties have stipulated that the plaintiff Wiley purchased only assets from Radcliffe and did not formally adopt the contract between Radcliffe and Safeway. The parties have further stipulated that the contract between Radcliffe and Safeway did not govern the relationship between Wiley and Safeway although many of the practices and procedures set forth in that agreement were actually followed and practiced by the parties.

The principal question is whether the relationship between the plaintiff and defendant rises to a tenancy under Oklahoma law. Plaintiff argues that Title 41 Okla. Stat. § 1 (1954) governs to designate the relationship as a tenancy at will. Plaintiff also argues that Title 41 Okla. Stat. § 3 (1954) may govern to designate the relationship as a tenancy from one period to another. Plaintiff asserts that 41 Okla. Stat. § 4 (1954) requires that thirty days notice in writing must be given to him by Safeway under either § 1 or § 3 of Title 41 Okla. Stat.

A tenancy is the holding of possession of realty by consent of the owner. Berry v. Opel, 194 Okl. 670, 154 P.2d 575 (1945). The payment of rent is not required to create a tenancy. Hancock v. Maurer, 103 Okl. 196, 229 P. 611 (1924). A landlord-tenant relationship arises upon a contract which grants the tenant exclusive possession of property for a specified term. Buck v. Dell City Apartments, Inc., 431 P.2d 360 (Okla. 1967). The record does not show that plaintiff was entitled to a specific location within the designated Safeway store for the placing of his amusement ride. The parties agreed that the machines were to be placed in the store and that the revenue would be divided 40% to defendant and 60% to plaintiff.

The parties have stipulated that the contract between them was terminable at will by either party. The record supports the conclusion that the machine was not fixed to a given location but that the machine was easily moveable or removeable.

A "license" is "an authority to do a particular act or series of acts upon another's land without possessing an estate therein." Haas v. Brannon, 99 Okl. 94, 225 P.931, 932 (1924). Without a specific finding that the agreement between the parties constituted a license in favor of the plaintiff, it is clear from the record that plaintiff did not possess an interest in the realty owned by the defendant. The relationship more nearly approximates a license. Plaintiff does not argue that if he voluntarily removed the amusement rides from defendant's stores he would continue to hold an interest in a part of defendant's realty. Plaintiff was allowed to place his machines in the defendant's stores for a percentage of the revenue. This agreement does not give rise to a landlord-tenant relationship which requires notice of termination. It is the finding and conclusion of the Court that plaintiff, by virtue of his agreement with the defendant, did not possess a tenancy at will under Title 41 Okla. Stat. § 1 (1954) and that he did not possess a tenancy from one period to another under Title 41 Okla. Stat. § 3 (1954). Therefore no notice was required under Title 41 Okla. Stat. § 4 (1954).

In regard to plaintiff's allegation that defendant, Safeway, converted the property of the plaintiff in requiring that the plaintiff divide the proceeds of each machine before removing the machine from the store, it is the finding and conclusion of the Court that the actions of defendant did not constitute conversion of plaintiff's amusement rides. The parties have stipulated that plaintiff removed rides from five locations after receiving the notice of termination on May 4, 1975. The parties have further stipulated that plaintiff was advised at

the store at 61st and Lewis in Tulsa, Oklahoma,

"by one of the store employees that the coin boxes should be opened and the money counted and divided in his presence. Mr. Wiley declined to do this and left the store without picking up his rides. He has not been back to the store and has made no further attempt to pick up his rides at that location.

"Mr. Wiley has made no attempt to pick up his rides at any of the other thirty (30)-odd Safeway stores in the Tulsa Division. On several occasions since the incident at 61st and Lewis, Mr. Wiley has been urged by Safeway to pick up his machines."

Under Oklahoma law conversion is an act of dominion wrongfully asserted over the personal property of another which denies his rights or is inconsistent with his rights. Russell v. City State Bank of Wellington, Tex., 264 F.Supp. 572 (W.D.Okla. 1967); Portable Pipe Service Co. v. Graham, 389 P.2d 985 (Okla. 1964). The fact that employees of defendant at one location asked for a division of the proceeds does not constitute conversion especially where the defendant sought only its share of the proceeds and did not act inconsistently with the right of ownership of the machines or of the 60% allocated to the plaintiff. The defendant claimed dominion over the 40% of the proceeds which was not inconsistent with the rights of the plaintiff.

Defendant, Safeway, has Counterclaimed against the plaintiff for the reasonable costs and expenses incurred by defendant in moving, storing and safeguarding the amusement rides due to plaintiff's refusal to remove the machines from defendant's premises.

The deposition of Thomas N. Wiley filed in the record shows that Mr. Wiley consulted with his attorney concerning this dispute and was advised by his attorney that he should not attempt to recover any more of the amusement rides until this matter could be settled. The Court finds that the plaintiff believed in good faith that he was wrongfully terminated by the defendant and that removal of the machines may have jeopardized his claim

of wrongful termination or conversion. It is the conclusion of the Court that the defendant's Counterclaim should be and is hereby denied.

Judgment is entered in favor of the defendant and against the plaintiff on plaintiff's Complaint. Judgment is entered in favor of the plaintiff and against the defendant on defendant's Counterclaim. Each party will bear his attorney's fees. Costs are assessed against the plaintiff.

It is so Ordered this 27th day of February, 1976.


H. DALE COOK
United States District Judge

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

JEM ENGINEERING AND MANUFACTURING,)
INC., an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
TOOMER ELECTRICAL COMPANY, INC.,)
a Louisiana corporation,)
)
Defendant.)

No. 75-C-487 ✓

FEB 27

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O R D E R

The Court has before it for consideration a Motion to Dismiss filed by defendant, Toomer Electrical Company, Inc., in which defendant alleges it was served with process in this cause in the State of Louisiana; that it is a Louisiana corporation, not domesticated in the State of Oklahoma and not doing business in the State of Oklahoma; and that the claim for relief set forth in the Complaint is not of the type which would provide a basis for in personam jurisdiction as to this defendant under the Oklahoma "long-arm" statutes, 12 O.S. 1971 Supp. § 187 and 1701.01 et seq.

The affidavits submitted by the parties in support of the Motion to Dismiss and in opposition thereto are uncontradicted as to the following factual background of the case at bar.

Defendant, Toomer Electrical Company, Inc., (hereinafter Toomer) is incorporated under the laws of the State of Louisiana. It is not domesticated in the State of Oklahoma. It does not now and never has had any salesmen, employees, or other agents or representatives operating in the State of Oklahoma, either regularly or intermittently, for the purpose of soliciting business, or otherwise. In June of 1974, Toomer bid upon and was awarded the prime contract on a project advertised by the

Louisiana Department of Highways, for the installation of certain traffic signals and miscellaneous equipment, on a highway located in the City of Baton Rouge, Louisiana. This project included furnishing and installation of certain steel light poles of various lengths, which poles were required to comply with and meet the standards set by the plans and specifications of the Louisiana Department of Highways for this project. Toomer originally negotiated with a Texas company in regard to the acquisition of certain steel poles. During these negotiations, the Texas Company informed Toomer that if the Texas company supplied the steel poles, it would not manufacture them itself, but instead would acquire them from Jem Engineering and Manufacturing, Inc., of Tulsa, Oklahoma, (hereinafter Jem), on a "sub-sub" contract basis. The Texas company and Toomer were, however, unable to reach agreement in regard to price; and negotiations were halted. Thereafter, Jem called Toomer at its offices in Baton Rouge, Louisiana, inquiring whether or not Toomer had successfully made arrangements to purchase the steel poles from any other supplier. The call was initiated by Jem and unsolicited by Toomer. Upon being told that they were free to submit a price quotation, Jem mailed a written quotation to Toomer on August 27, 1974. Jem submitted said quotation without asking for and without having been furnished by Toomer with the plans and specifications of the Louisiana Department of Highways regarding the steel poles. After receipt of the price quotation, Toomer advised Jem that its price quotation was based on an erroneous number of units required for the job and was therefore unacceptable. The affidavit of Maston B. Wolfe, Jr., filed on behalf of plaintiff states that on September 16, 1974, Jem, after considerable discussion with Toomer concerning its requirements for the manufacture of the steel poles, verbally agreed with Toomer upon a price for the sale of the steel poles. Affiant Wolfe

further states that Jem submitted drawings to Toomer concerning said poles on October 18, 1974; that Toomer, after receipt of Jem's drawings, made changes in the quantities and requested that larger anchor bolts be provided. The parties are in agreement that thereafter in the early part of November Mr. White, Sales Manager of Jem, went to Baton Rouge to clarify the new requirements. The Louisiana Department of Highways' plans and specifications were delivered to Mr. White at that time. As a result of his visit, a price was agreed upon and Toomer sent a purchase order to Jem in that amount on November 11, 1974. The affidavit submitted by defendant states, and is uncontradicted, that a condition of Toomer's purchase order of November 11 was that Jem submit drawings of its steel pole assembly to Toomer, to be submitted in turn by Toomer to the Louisiana Department of Highways for approval. Such approval was a requirement of the project under applicable law, and submission and approval of conforming drawings was a condition of the November 11 purchase order. Drawings were submitted by Jem and received by Toomer on or shortly after November 14, 1974. The affidavit submitted by defendant further states that these drawings did not conform to and comply with the plans and specifications of the Louisiana Department of Highways; consequently, on November 19, Toomer cancelled its purchase order of November 11.

A federal district court must look to the law of the State wherein it sits to determine whether it has in personam jurisdiction over the defendant. Doyn Aircraft, Inc. v. Wylie, 443 F.2d 579 (10th Cir. 1971). Plaintiff relies upon the Oklahoma "long-arm" statutes, 12 O.S.1971 § 187 and 1701.01 et seq. and 18 O.S.1971 § 1.204a as a basis for in personam jurisdiction over the defendant.

Title 12 O.S.1971 §§ 187(a) and 1701.03 grant in personam

jurisdiction over resident or non-resident corporations which transact business in the State of Oklahoma. The only limitation placed upon a court in exercising in personam jurisdiction over non-residents transacting any business in Oklahoma is that of due process. Vacu-Maid, Inc. v. Covington, 530 P.2d 137 (Okla. Ct. App. 1974). Similarly, 18 O.S.1971 § 1.204a authorizes service of process on "foreign corporations" that are "doing," "engaging in or transacting business" in Oklahoma. According to the courts of Oklahoma, the range of permissible state action pursuant to this statute is also as wide and the boundary line extends as far as the minimum standards of federal due process permit. B. K. Sweeney Co. v. Colorado Interstate Gas Co., 429 P.2d 759 (Okla. 1967). This limitation is known as the "minimum contacts" rule pronounced by the United States Supreme Court in International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

The Supreme Court extended the minimum contacts rules in McGee v. International Life Ins. Co., 355 U.S. 220, 788 S.Ct. 199, 2 L.Ed.2d 223 (1957). From McGee and International Shoe, we find the rule to be that a non-resident of the forum is subject to in personam jurisdiction in the forum with which he had minimum contacts, providing maintenance of the suit does not offend traditional notions of fair play and substantial justice. Just what amounts to minimum contacts must be decided by the facts of each individual case. Vacu-Maid, supra.

The courts of Oklahoma have made it clear that the Oklahoma long-arm statutes were intended to extend the jurisdiction of Oklahoma courts over non-residents to the outer limits permitted by the due process requirements of the Fourteenth Amendment of the United States Constitution. Vacu-Maid, Inc. v. Covington, supra; Carmack v. Chemical Bank New York Trust Co., 536 P.2d 897 (Okla. 1975); Yankee Metal Products Co. v. District Court of Oklahoma, 528 P.2d 311 (Okla. 1974); Architectural Building

Components Corporation v. Comfort, 528 P.2d 307 (Okla. 1974);
Vemco Plating, Inc., v. Denver Fire Clay Co. 496 P.2d 117
(Okla. 1972); Crescent Corp. v. Martin, 443 P.2d 111 (Okla.
1968); Simms v. Hobbs, 411 P.2d 503 (Okla. 1966); Marathon
Battery Co. v. Kilpatrick, 418 P.2d 900 (Okla. 1965).

There is no question but that in personam jurisdiction will be upheld in Oklahoma where the non-resident defendant is a seller who has shipped goods into Oklahoma, even if such shipment was an isolated or infrequent occurrence. See. Vemco Plating, Inc., v. Denver Fire Clay Co., supra. However, the Oklahoma courts are more reticent to uphold in personam jurisdiction when the defendant is a non-resident buyer. Vacu-Maid, supra. As stated in Vacu-Maid, "The reason most often given for this buyer-seller distinction is that the seller is the aggressor or initiator in the forum and by selling his product in the state he receives the benefit and protection of the forum state's laws, and hopefully profits from its business therein. Further, allowing jurisdiction over 'passive' buyers would tend to extinguish state lines and also to discourage out-of-state purchasers from dealing with resident sellers."

The status of the parties as buyer or seller, however, is not totally determinative of the question of minimum contacts sufficient to provide a jurisdictional basis. In Yankee Metal Products Company v. District Court, supra, the court held that it had jurisdiction over a non-resident buyer defendant who had initiated a transaction by ordering a large number of harnesses to be custom built according to samples to be furnished by defendant. The court determined that the "active-purchaser, passive-purchaser" classification affords ample protection to a resident manufacturer who, at the special solicitation of a non-resident buyer, manufactures custom built materials or products according to specifications or samples furnished by the buyer.

Plaintiff relies heavily on the holding in Yankee Metals to

support its contention of jurisdiction. However, there are several factors which distinguish Yankee Metals from the case at bar. To begin with, in Yankee Metals the defendant buyer initiated the transaction. In the case at bar, it is undisputed that Jem made the initial contact with the defendant and aggressively sought to supply the steel poles. In Yankee Metals the harnesses were custom built according to the samples and specifications of the defendant. In the case at bar, the specifications were those of the Louisiana Department of Highways. The Court notes that plaintiff sought to secure defendant's order and submitted a bid not based upon specifications supplied by defendant. Plaintiff either secured specifications from another source or did not base the bid on any particular specifications. (Defendant did not supply plaintiff with a copy of the specifications of the Louisiana Department of Highways until November 11, 1974.) Furthermore, it appears that any negotiations which defendant participated in were basically in regard to plaintiff's compliance with the specifications of the Louisiana Highway Department and not particular requirements of the defendant.

Plaintiff also cites Simpson Timber Co. v. Great Salt Lake Minerals and Chemical Corporation, 296 F.Supp. 243 (D.Or. 1969). In Simpson, the Court upheld jurisdiction based primarily upon the fact that the defendant purposefully caused the plaintiff to manufacture \$70,000.00 worth of parts in its Oregon plant, causing substantial impact on commerce in Oregon. It is doubtful, however, that the criteria used by the Oregon Court would be a proper standard to be applied in the case at bar inasmuch as the Oklahoma court in Vacu-Maid, in discussing Simpson, stated: "The decision has been severely criticized because of its apparent subjection of all foreign purchasers to long arm jurisdiction." The Oklahoma court then refers to the holding in McQuay, Inc., v. Samuel Schlosberg, Inc., 321 F.Supp. 902 (D.Minn. 1971). In McQuay, defendant, a New York corporation, had no office nor agent

in Minnesota nor had it ever gone into Minnesota to solicit any business. Plaintiff, a Minnesota corporation, through its New York agent, solicited defendant to make a purchase of plaintiff's air conditioning equipment. The purchase contract was negotiated and executed in New York. Delivery of the equipment subsequently was made in New York. The purchase price was payable in Minnesota. The Court, in dismissing the action for lack of jurisdiction, stated:

"The general philosophy of long-arm statutes is to protect citizens of a state where a nonresident comes into the State directly or indirectly to sell something or solicit sales, or where, even though out of state, a nonresident sells a product which is brought into or comes to rest in the State. The nonresident thus receives the benefit and protection of the state's laws and profits or hopes to from its adventure therein. The nonresident is the aggressor or initiator. It is appropriate that such a nonresident seller should respond to service of process in that state. Quite the contrary, however, where in a case such as at bar the plaintiff is the movant, the aggressor so to speak not in Minnesota but by going to New York, soliciting defendant's business, making a contract in New York, selling the defendant merchandise to be manufactured in Minnesota and delivered in New York and the price to be remitted to plaintiff in Minnesota. If merely because the manufacturing process and payment of the price is to occur in Minnesota such confers jurisdiction in Minnesota, then it's hard to conceive of any case where the long-arm statutes do not apply."

Plaintiff cites Simpson for the contention "that business is transacted in a state so as to give state in personam jurisdiction over a party when obligations created by defendant or business operations set in motion by defendant have realistic impact on commerce of that state." While this does not appear to be the criteria applied by the State of Oklahoma, it is doubtful that even applying the holding in Simpson would sustain jurisdiction in the case at bar. In this connection, plaintiff states by way of affidavit that Jem purchased steel at an expedited price to comply with the special requirements for the design and production of the steel poles and that Jem modified its plant

operations to manufacture the specially designed steel poles. Further, that Jem expended monies with the State of Oklahoma and suffered financial hardship. While the Court sympathizes with plaintiff, it is clear that although plaintiff may have had assurances from Toomer that Jem could supply the steel poles in question, the final acceptance was contingent upon acceptance of plaintiff's designs by the Louisiana Department of Highways. The affidavit submitted by defendant states that a condition of Toomer's purchase order of November 11 was that Jem submit drawings of its steel poles assembly to Toomer, to be submitted in turn by Toomer to the Louisiana Department of Highways for approval. "Such approval was a requirement of the project under applicable law, and submission and approval of conforming drawings was a condition of the November 11 purchase order." This statement is supported by an examination of the November 11 purchase order which shows, for example, that after the words "Date Required" the words "After Approval" are written. The following statement is written in: "Furnish 12 copies drawings immediately for approval." Typed at the bottom of the purchase order are the provisions: "All items as per plans and specifications." "This order is subject to cancellation if the above terms and conditions are not met." In light of the fact that the order was contingent upon approval by a third party, plaintiff's expending of funds was based upon an expectancy. It was plaintiff's conduct, therefore, rather than defendant's which might have an impact on the State of Oklahoma.

It is not the conduct of the plaintiff or the possible effect on the plaintiff of its own conduct that determines jurisdiction, but rather whether the conduct of defendant can be said to amount to "minimum contacts" sufficient to comport with fair play. Toomer had a contract with the Louisiana Department of Highways and in order to perform that contract could have accepted bids from anywhere in the United States. In negotiating with a

prospective bidder, aside from cost, defendant's paramount concern was that the product supplied conform to the specifications of the Louisiana Department of Highways. All bidders also knew that any product supplied would have to conform to those specifications. The steel poles were, therefore, a type of "stock item" which defendant could have purchased from any bidder. In this situation, defendant could best be categorized as a "passive purchaser."

Plaintiff initiated the transaction by contacting defendant in the State of Louisiana and submitting a bid. The contract was entered into in the State of Louisiana, the performance of the contract was to be in the State of Louisiana, the specifications were those of the State of Louisiana, final approval of the drawings was by the State of Louisiana, and clearly this matter should be litigated in the State of Louisiana.

It is therefore the determination of the Court that defendant's Motion to Dismiss should be, and hereby is, sustained.

It is so Ordered this 27th day of February, 1976.



H. DALE COOK
United States District Judge

the Department of Institutions, Social and Rehabilitative Services, in the amount of \$47,739.70, which amount totals \$121,414.94 and which judgment is in favor of the following recipients for the following amounts:

James Emory Seasholtz	\$ 78,398.76
Ira John Seasholtz	\$ 20,402.74
Harold W. Brooks	<u>\$ 22,613.44</u>
TOTAL	\$121,414.94

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby entered against the State of Oklahoma, Oklahoma Department of Public Welfare, now known as the Department of Institutions, Social and Rehabilitative Services, in the amount of \$10,827.70, which judgment is in favor of Healthco, Inc., d/b/a Murray Myers Company and Murray Myers X-Ray Company.

IT IS FURTHER ORDERED, ADJUDGED and decreed that Ira John Seasholtz and Harold W. Brooks are hereby made parties to this action to enable them to participate in the entry, payment and satisfaction of this Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment in favor of Ira John Seasholtz in the amount of \$20,402.74 may be satisfied by the United States of America and the State of Oklahoma by the payment of such amount to Ira John Seasholtz by delivering said payment to his attorneys, J. R. Hall, Jr. and Joe Mountford.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment in favor of Harold W. Brooks in the amount of \$22,613.44 may be satisfied by the United States of America and the State of Oklahoma by the payment of said amount, less a sum of \$6,087.96, deducted because of an Internal Revenue Service tax levy, or a net amount of \$16,525.48 by delivering said net amount to the attorneys for Harold W. Brooks, Lawrence A. McSoud and W. L. Steger.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment in favor of Healthco, Inc., d/b/a Murray Myers Company and Murray Myers X-Ray Company in the amount of \$10,827.70 may be satisfied by the State of Oklahoma, Oklahoma Department of Public Welfare, now known as the Department of Institutions, Social and Rehabilitative Services by payment of said amount of Healthco, Inc., d/b/a Murray Myers Company and Murray Myers X-Ray Company by delivering said payment to its attorney, Ross Hutchins.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment in favor of James Emory Seasholtz in the amount of \$78,398.76 may be satisfied by the United States of America and the State of Oklahoma by the payment of such amount of James Emory Seasholtz by delivering said payment to his attorneys, Lawrence A. McSoud, W. L. Steger and Gene Stipe.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all claims and causes of action asserted in these actions, except those reduced to judgment herein, are hereby dismissed with prejudice.



CHIEF UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FEB 27 1976
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

JESSE HOBBS,

Plaintiff,

vs.

76-C-47-B

JOHN E. MILLER, JR. AND THE SOUTHERN
MISSOURI OIL COMPANY, INC.,

Defendants.

NOTICE OF DISMISSAL

Comes now the Plaintiff, Jesse Hobbs, and hereby gives notice that the above entitled cause has been settled and that the Defendants, and each of them, have not answered the Petition of Plaintiff and that this Notice is given pursuant to the rules of this Court and the Plaintiff, Jesse Hobbs, dismisses the above entitled cause with prejudice.

Jesse Hobbs
JESSE HOBBS

APPROVED:

Loy R. Davis
LOY R. DAVIS, Attorney for Plaintiff

AFFIDAVIT OF NOTIFICATION

I hereby certify that on the 26th day of February 1976, I mailed a true and correct copy of the foregoing Notice of Dismissal with postage prepaid thereon to the Defendants herein, John E. Miller, Jr., 501 1/2 North Center, Willow Springs, Missouri 65587, and the Southern Missouri Oil Company, Inc., c/o Clarence M. Stapp, Registered Agent, 529 R Main, Cabool, Missouri 65445.

Loy R. Davis
LOY R. DAVIS

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

JOHN IRVAN MORITZKY CHOATE)
)
Plaintiff,)
)
vs.)
)
UNITED STATES OF AMERICA;)
NATIONAL COLLEGIATE ATHLETIC)
ASSOCIATION; AMERICAN BROADCASTING)
COMPANY; STATE OF OKLAHOMA,)
)
Defendants.)

No. 75-C-513 ✓

FILED

FEB 26 1976 K

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

O R D E R

The Court has before it for consideration Motions to Dismiss filed by the United States of America, the National Collegiate Athletic Association, the State of Oklahoma, and the American Broadcasting Companies, Inc. After a thorough examination of the briefs filed in regard to said motions and the law applicable thereto, the Court makes the following determination.

Plaintiff filed his Complaint in this action seeking a Declaratory Judgment on November 7, 1975. In addition, plaintiff filed an "Application for Restraining Order" that sought to compel the television broadcasting of the Oklahoma-Nebraska football game which was played November 22, 1975. On November 17, 1975, this Court issued its Order denying the "Application." Plaintiff then filed "Application" in the United States Court of Appeals for the Tenth Circuit. The Circuit Court denied the "Application" by its Order dated November 21, 1975. Plaintiff originally filed his Complaint pro se. An attorney, William W. Choate, has since made an appearance of record on behalf of plaintiff, but plaintiff's brief in opposition to the Motions to Dismiss was again, apparently, filed pro se.

The defendants, by way of briefs submitted in support of their respective Motions to Dismiss, state that the "petition" as

filed is not in compliance with Rule 8 of the Federal Rules of Civil Procedure, does not give fair notice of plaintiff's claim nor legal theory, and should, therefore, be dismissed. The Court certainly recognizes the inadequacies of the Complaint.

Rule 8(a), Federal Rules of Civil Procedure, provides in pertinent part:

"Claims for relief. A pleading which sets forth the claim for relief . . . shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief. . . ."

The Court notes, at the outset, that the Complaint is entitled "Petition" contrary to the provisions of Rule 7, Federal Rules of Civil Procedure. Similarly the parties are erroneously referred to as "Petitioner" and "Respondents." The body of the Complaint consists of fourteen pages of facts, legal theories, case citations, citations to newspaper and magazine articles, arguments, and asides, along with twenty-two pages of attachments consisting of personal correspondence and the newspaper and magazine articles referred to in the Complaint.

Rule 10(b), Federal Rules of Civil Procedure provides:

"Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth."

The Complaint at bar consists of twenty-nine consecutively numbered paragraphs. The Court recognizes the difficult burden defendants face in attempting to draft an Answer in which the allegations of the Complaint are either admitted or denied, in light of the failure of plaintiff to limit each paragraph to a statement of a single set of facts.

Further, the Court notes that plaintiff cites 28 U.S.C. 1400(b) in support of venue. This statute in fact deals with patent infringe-

ment. Plaintiff cites 28 U.S.C. § 1346(2) as a basis of jurisdiction of the Federal Communications Commission and the National Collegiate Athletic Association. Title 28 U.S.C. § 1346(2) provides that the district courts shall have original jurisdiction of "any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department." Not only is the National Collegiate Athletic Association (NCAA) not synonymous with the United States within the meaning of the statute, but plaintiff states in paragraph 3 of the Complaint: "The actual amount of monetary damages that have been sustained is in excess of \$10,000" in an attempt to allege 28 U.S.C. § 1332 as an alternative basis for jurisdiction. To be precise, paragraph 2 of the Complaint alleges a jurisdictional basis and paragraphs 3, 4, 5, and 6 each allege some alternative jurisdictional basis.

While in the Complaint the plaintiff "discusses" jurisdiction over the FCC and appears to make allegations in regard to this Commission, the FCC is not named as a party in the caption to the pleadings pursuant to Rule 10(a), Federal Rules of Civil Procedure.

The Complaint filed herein puts an unjustifiable burden upon the Court and the defendants to determine whether somewhere, "tucked" betwixt plaintiff's arguments, conclusions and general dissertations, facts sufficient to support a cause of action have been stated over which this Court has subject matter jurisdiction and also jurisdiction over the parties. It would certainly not be inappropriate for the Court to dismiss the Complaint as being violative of Rule 8. Shakespeare v. Wilson, 40 F.R.D. 500 (S.C. Cal. 1966); Vance v. American Society of Composers Authors and Publishers, 271 F.2d 204 (8th Cir. 1959) cert. denied 361 U.S. 933 (1960); Agnew v. Moody, 330 F.2d 868 (9th Cir. 1964) cert. denied 379 U.S. 867 (1964). However, extensive time and effort has been

expended by the parties and the Court in regard to the allegations made, and the allegations of the Complaint will therefore be considered in order to put an end to further litigation in this matter.

The Declaratory Judgment Act is not a grant of jurisdiction to the federal courts. It merely makes available an additional remedy in cases of which they have jurisdiction by virtue of diversity and the requisite amount in controversy, or because of a federal question. C. A. Wright, Law of Federal Courts 449 (2d ed. 1970). Plaintiff is a resident and citizen of the State of Oklahoma. One of the defendants is the State of Oklahoma. Therefore, the jurisdictional requirements of 28 U.S.C. § 1332 are not met. Furthermore, although plaintiff makes the general allegation that the actual amount of monetary damages he has sustained exceeds \$10,000.00, no facts are pleaded to support the amount of this allegation, and it appears frivolous. The Court must therefore determine whether petitioner has raised a federal question.

In his brief, plaintiff states:

"This action is in the form of a petition for declaratory judgment, and in procedure arose from a request for an investigation by a United States Commission into the use of access to television to ensure member compliance with the rules of an association. Because this request was denied, the Petitioner is appealing the decision to the Court for review."

On August 5, 1975, prior to the filing of this suit, plaintiff wrote to the Federal Communications Commission requesting that it make an "appropriate ruling in 'the public's behalf'" to preclude defendant NCAA from enforcing its policy of preventing the appearance on television of member schools on probation. By letter dated September 12, 1975, the Commission's Broadcast Bureau informed plaintiff it lacked jurisdiction to act upon the matter. Plaintiff did not seek review by the full Commission of the staff letter pursuant to 47 C.F.R. § 1.115. Rather, the plaintiff wrote a letter dated October 15, 1975, thanking the Commission for its consideration of the matter, and filed this suit on November 7, 1975.

Any judicial proceeding to review an action of the Federal Communications Commission must be conducted pursuant to 47 U.S.C. § 402. See also the Administrative Orders Review Act, 28 U.S.C. §§ 2341-2353. Subsection (a) of 47 U.S.C. § 402 requires that appeals be filed in one of the Circuit Courts of Appeals of the United States unless it involves a licensing procedure. Plaintiff has failed to exhaust his administrative remedies and there is, in actuality, no final decision to review in this case; but even if there were, this Court is not the proper forum. Mary Elizabeth Maquire v. Post Newsweek Stations, 24 R.R.2d 2094 (D.C. Cir. 1974).

Notwithstanding the above, plaintiff alleges that provisions of the NCAA regulations which prohibit a member institution on probation from appearing on network television is censorship, amounting to a prior restraint and is contrary to First Amendment rights. The Court recognizes that the imposition of sanctions by the NCAA pursuant to its regulations and directives may be State action in the constitutional sense and may, therefore, present a federal question. Parish v. National Collegiate Athletic Association, 361 F.Supp. 1214 (W.D. La. 1973). See also Louisiana High School Athletic Association v. St. Augustine High School, 396 F.2d 224 (5th Cir. 1968); Oklahoma High School Athletic Association v. Bray, 321 F.2d 269 (10th Cir. 1963). However, it is doubtful that the NCAA prohibition against the televising of a football game amounts to censorship within the meaning of the First Amendment. In National Association of Theatre Owners v. Federal Communications Commission, 420 F.2d 194 (D.C. Cir. 1969), petitioners contended that the program restrictions which the Commission established in order to prevent subscription television from syphoning programs, talent, and audiences from free broadcasting was repugnant to the First Amendment of the Constitution as a prior restraint of free speech. One of the restrictions provided that sports events which had been regularly broadcast live on free television in the two years preceding their subscription broadcast could not be shown on subscription television. The Court pointed out that in determining whether a regulation is in conflict with the First

Amendment the context and purpose of the regulation should be considered. The Court, in upholding the restrictions, stated that the Commission's purpose was not to affect the ideas which could be presented. The Court went on to state:

"In addition, we note that the restrictions now being challenged deal with categories of speech which are, if anything, farther from the central concern of the first amendment than those at issue when comparable rulings have been upheld by the courts. In Red Lion [Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969)], the Supreme Court upheld against first amendment attack the 'fairness doctrine,' which restricted broadcasting stations' control over political statements--speech which is certainly the core of the first amendment guaranty. Similarly, our opinion in Banzhaf [v. F.C.C., 405 F.2d 1082 (1968)], upheld restrictions which required broadcasters to allocate time for opponents of cigarette advertising, a matter which was characterized as a public health issue. We think that the [subscription television] rules create far less risk of diminishing the debate on vital public issues."

Certainly the same can be said for the broadcasting of a football game.

In addition to the above, the Complaint fails to allege a justiciable controversy that is appropriate for judicial determination. The Declaratory Judgment Act expressly states that the remedy is limited to a "case of actual controversy." 28 U.S.C. § 2201. The requirements for justiciability "are no less strict in a declaratory judgment proceeding than in any other type of suit." Federation of Labor v. McAdory, 325 U.S. 450 (1945).

The required controversy then must be "one that is appropriate for judicial determination The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . . " Aetna Life Ins. Co. of Hartford v. Haworth, 300 U.S. 227 (1937). The basic question in each case, as pointed out in Maryland Casualty Co. v. Pacific Coal & Iron Co., 312 U.S. 270 (1941), is "whether the facts alleged, under all the circumstances, show that there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment."

In the Complaint, plaintiff refers to unlawful contracts between ABC and the NCAA and also a contract between the NCAA and the University of Oklahoma "which is contrary to law and [a] prior restraint." Plaintiff is not a party to these contracts and does not possess an interest sufficient to insure that the dispute sought to be adjudicated will be presented in an adversary context, and in a form historically viewed as capable of judicial resolution. See Flast v. Cohen, 392 U.S. 83 (1968). The Court notes that the member institution most affected by the NCAA regulation, the University of Oklahoma, is not even a party to this litigation. Furthermore, plaintiff states in his brief:

"Petitioner believes that the interests of Respondents Oklahoma, U.S.A. and ABC are coterminous with Petitioner's. Surely the State of Oklahoma would wish to have its events publicized (it has extensive public relations services to attract tourism) and would also desire to receive the revenues for its educational programs (\$500,000) which were denied during the censorship of the football team. ABC would surely wish to show the best games, which generally means the best teams, because that enhances their ratings and ad revenues. The Commission should wish to have the jurisdiction to investigate any aspects of broadcasting which are detrimental to the public interest. It is an anomaly for these Respondents not to look out for their own best interest. How can this be?"

In support of his contention that the case presents an actual controversy, plaintiff points out that the NCAA by-laws have created a substantial controversy within the NCAA membership, within the Courts, within Congress, and "within the sports writers," citing the Sports Illustrated story "The Oklahoma Controversy." The only lack of controversy, apparently, is between plaintiff and the defendants herein. While plaintiff would, no doubt, appreciate an advisory opinion in regard to the issues presented, the case at bar does not present a justiciable controversy proper for determination by this Court within the meaning of 28 U.S.C. § 2201.

It is therefore the determination of the Court that the Motions to Dismiss filed by the defendants should be, and hereby are, sustained.

It is so Ordered this 26th day of February, 1976.


H. DALE COOK
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAULINE W. RUFFIN,)
)
 Plaintiff,)
)
 -vs-)
)
 DILLARD'S DEPARTMENT STORES, INC.)
)
 Defendant.)

No. 75-C-547 ✓

FILED

FEB 25 1976

Jack C. Silver, Clerk
S. DISTRICT COURT

NOTICE OF DISMISSAL

IT IS HEREBY stipulated by Byron S. Matthews and
Don E. Glover, attorneys of record for the Plaintiff, and James
E. Darr, Jr., attorney of record for Defendant, that the above
entitled action commenced on December 3, 1975, be dismissed
without prejudice.

Attorneys for the Plaintiff
Tulsa County Legal Aid Society, Inc.
630 West Seventh, Suite 515
Tulsa, Oklahoma 74127

By:

Byron S. Matthews
Byron S. Matthews

and

By:

Don E. Glover
Don E. Glover

Attorney for the Defendant
Eichenbaum, Scott, Miller, Crockett
and Darr

By:

James E. Darr, Jr.
James E. Darr, Jr.

E I L E D

FEB 25 1976

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

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CLAUDE S. SMITH, et. al.,
Defendants.

CIVIL ACTION NO. 74-C-197

O R D E R

NOW on this 25th day of February, 1976, there came on for consideration the Motion of the United States to set aside this Court's Order Confirming Marshal's Sale, which Order was entered on October 8, 1975, on the ground and for the reason that the Defendants, Raymond L. Saulters and Ida Louise Saulters, have paid, and the United States has accepted the sum of \$6,530.85, which amount is in full payment of the Judgment entered herein on January 14, 1975. The Court finds that said Motion is well taken.

NOW IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Order Confirming Marshal's Sale, entered October 8, 1975, be and the same is hereby set aside.

IT IS FURTHER ORDERED that all proceedings, including the Marshal's Sale, from and after the entry of said Judgment of January 14, 1975, be and the same are hereby stricken and set aside.

IT IS FURTHER ORDERED that the minute order entered herein on February 2, 1976, referring to the United States Magistrate, Plaintiff's Motion for Special Setting is hereby rescinded.

Allen E. Benson
UNITED STATES DISTRICT JUDGE

APPROVED:

Robert P. Santee
ROBERT P. SANTEE
Assistant United States Attorney

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
 vs.)
)
 DAVID CANNADY, JR., GWENETTE L.)
 CANNADY, HOUSING AUTHORITY OF THE)
 CITY OF TULSA, COUNTY TREASURER,)
 Tulsa County, Oklahoma, and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

CIVIL ACTION NO. 75-C-418-B

FILED

FEB 23 1976

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 23rd
day of February, 1976, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; and the Defendants,
Board of County Commissioners, Tulsa County, Oklahoma, and
County Treasurer, Tulsa County, Oklahoma, appearing by their
attorney, Gary J. Summerfield, Assistant District Attorney;
the Defendant, Housing Authority of the City of Tulsa, appearing
by its attorney, Robert S. Rizley, Rizley, Prichard, Ford,
Norman and Reed; and, the Defendants, David Cannady, Jr. and
Gwenette L. Cannady, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, David Cannady, Jr., was
served by publication as shown on the Proof of Publication
filed herein; that Defendants, Board of County Commissioners,
Tulsa County, Oklahoma, and County Treasurer, Tulsa County,
Oklahoma, were served with Summons and Complaint on September 11,
1975; that Defendant, Housing Authority of the City of Tulsa,
was served with Summons and Complaint on September 17, 1975;
that Defendant, Gwenette L. Cannady, was served with Summons
and Complaint on November 7, 1975; all as appears from the
United States Marshal's Service herein.

It appearing that the Defendants, Board of County Commissioners, Tulsa County, Oklahoma, and County Treasurer, Tulsa County, Oklahoma, have duly filed their answers on September 23, 1975; that Defendant, Housing Authority of the City of Tulsa, has duly filed its disclaimer herein on September 25, 1975; and, that Defendants, David Cannady, Jr. and Gwenette L. Cannady, 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 upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Six (6), Block Sixty (60), VALLEY VIEW ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, David Cannady, Jr. and Gwenette L. Cannady, did, on the 20th day of June, 1972, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the sum of \$11,000.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court finds that Defendants, David Cannady, Jr. and Gwenette L. Cannady, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$10,786.49 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from July 20, 1974, until paid, plus the cost of this action accrued and accruing.

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

David Cannady, Jr. and Gwenette L. Cannady, the sum of \$2.58 plus interest according to law for personal property taxes for the year 1975 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

The Court further finds that as of the entry of this judgment, there are no real estate taxes owed Tulsa County by David Cannady, Jr. and Gwenette L. Cannady, 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 Defendants, David Cannady, Jr., in rem, and Gwenette L. Cannady, in personam, for the sum of \$10,786.49 with interest thereon at the rate of 4 1/2 percent per annum from July 20, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, David Cannady, Jr. and Gwenette L. Cannady, for the sum of \$2.58 as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

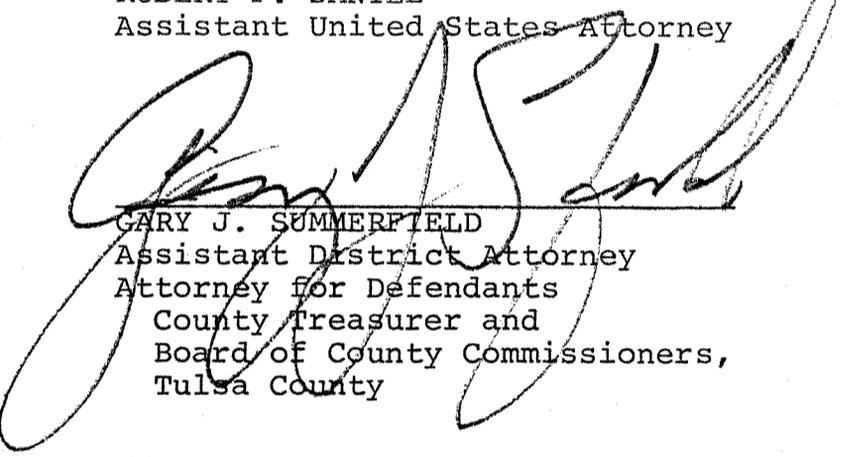
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property 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, specifically, including any lien for personal property taxes which may have been filed during the pendency of this action.

s/ Allen L. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANLEE
Assistant United States Attorney


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

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

THE EQUITABLE LIFE ASSURANCE)
SOCIETY OF THE UNITED STATES,)
a foreign insurance corporation,)

Plaintiff)

vs.)

No. 75 - C - 42

SHARON KAY COOK,)
JERRY GLENN COOK, Administrator of the)
Estate of Harvey Glenn Cook, dec.,)
JAMES HARVEY COOK;)
PATSY ANN COOK GRAHAM;)
JERRY GLENN COOK;)
TOMMY LEE COOK;)
SAMMY EUGENE COOK, age 16;)
GLENDA FAYE COOK, age 14;)
KEVIN EARL COOK, age 7;)
SHARON KAY COOK, mother and legal)
guardian of Kevin Earl Cook, age 7;)
DARRELL DEAN COOK, age 6; and)
SHARON KAY COOK, mother and legal)
guardian of Darrell Dean Cook, age 6,)
Defendants)

FILED

FEB 23 1976

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOURNAL ENTRY OF JUDGMENT

Now on this 23rd day of February, 1976 this cause comes on for non-jury trial, pursuant to regular setting. Plaintiff appeared by its attorneys, Green, Feldman & Hall by Wm. S. Hall; the defendant Sharon Kay Cook appeared by her attorneys, Garrison & Brown by Thomas W. Brown; and J. Douglas Lane appeared as attorney and guardian ad litem for the defendants Sammy Eugene Cook, Glenda Faye Cook, Kevin Earl Cook and Darrell Dean Cook. The Court notes that on October 1, 1975 it entered its default judgment against defendants Jerry Glenn Cook, Administrator of the estate of Harvey Glenn Cook, deceased; James Harvey Cook, Patsy Ann Cook Graham, Jerry Glenn Cook, and Tommy Lee Cook, ordering that such named defendants have no right, claim, title or interest in and to the life insurance proceeds or the accidental death proceeds involved herein.

All parties announced ready for trial and further announced to the Court that a settlement agreement had been effected between all parties appearing herein. The parties introduced their respective evidence and the Court, at the conclusion of same and considering the settlement agreement of the parties, approves of same and renders judgment as follows:

BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that under plaintiff's first cause of action in interpleader the defendant Sharon Kay Cook be, and she is, hereby awarded and has judgment for the Eleven Thousand Dollar (\$11,000.00) life insurance proceeds previously paid unto the Clerk of this Court, free and clear of any right, title, claim or interest of the remaining defendants herein.

The Clerk of the Court is therefore ORDERED to pay to defendant Sharon Kay Cook the sum of Eleven Thousand Dollars (\$11,000.00) previously paid into court by the plaintiff, and IT IS FURTHER ORDERED that plaintiff is discharged from any further liability thereto.

BE IT FURTHER ORDERED by the Court that there is no interest assessed against said life insurance proceeds above referred to and that all of the parties herein bear their respective costs, including their respective attorneys' fees.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED that all defendants herein are restrained from instituting any proceedings in any state or United States court affecting the \$11,000 life insurance contract and proceeds involved herein.

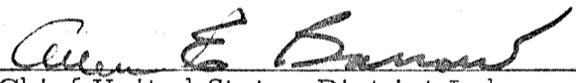
BE IT FURTHER ORDERED, ADJUDGED AND DECREED by the Court that with reference to plaintiff's cause of action for declaratory judgment involving the accidental death benefits, that judgment be entered against the plaintiff and in favor of the minor defendants Sammy Eugene Cook, Glenda Faye Cook, Kevin Earl Cook and Darrell Dean Cook, by and through their attorney and guardian ad litem, J. Douglas Lane, in the sum of

Seven Hundred Fifty Dollars (\$750.00) each, or a total sum of Three Thousand Dollars (\$3,000.00).

BE IT FURTHER ORDERED, ADJUDGED AND DECREED that J. Douglas Lane, attorney and guardian ad litem of said minors, be and he is hereby appointed as trustee for said minors above referred to, to receive and receipt for this judgment when it is paid and to have charge of the money. The Court further authorizes and empowers said trustee to release the judgment when it is paid that is rendered in favor of said minors, and to do all things that he would be authorized to do, the same as if he were the legally appointed guardian of said minors.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED that all remaining defendants herein have no right, claim, title or interest in and to the accidental death contract and proceeds under the insurance contract involved herein.

DONE AND DATED this 23rd day of February, 1976.


Chief United States District Judge

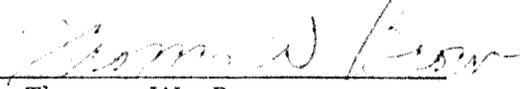
Approved as to form and substance:

GREEN, FELDMAN & HALL

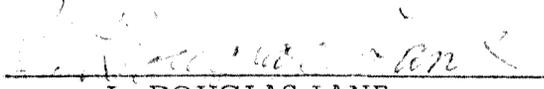
By 
Wm. S. Hall

Attorneys for Plaintiff, The Equitable Life Assurance Society of the United States

GARRISON & BROWN

By 
Thomas W. Brown

Attorneys for Defendant Sharon Kay Cook


J. DOUGLAS LANE

Attorney, Guardian Ad Litem for Defendants Sammy Eugene Cook, Glenda Faye Cook, Kevin Earl Cook and Darrell Dean Cook

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

ALFRED J. ROOKS, DONNIE DON
CARTER, JERRY ROOKS, JOHNNIE
JAMES AND RICKEY ROOKS,

Plaintiffs,

vs.

ROBERT L. HUNT,
Defendant.

)
)
) 75-C-260
)
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FILED

FEB 23 1976

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

ORDER

The Court has for consideration the Application by Plaintiffs to Dismiss Cause of Action and Complaint with Prejudice and the Application by Defendant to Dismiss Cause of Action and Counterclaim Without Prejudice, and, being fully advised in the premises, finds:

For good cause shown, said applications should be granted.

IT IS THEREFORE, ORDERED that the Application by Plaintiffs to Dismiss Cause of Action and Complaint With Prejudice and the Application by Defendant to Dismiss Cause of Action and Counterclaim Without Prejudice be and the same are hereby granted.

IT IS FURTHER ORDERED that the Plaintiffs' Cause of Action and Complaint are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that the defendant's cause of action and counterclaim are hereby dismissed without prejudice.

ENTERED this 23rd day of February, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

FEB 20 1976

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

United States of America,)
)
Plaintiff,)
)
vs.)
)
50.00 Acres of Land, More or)
Less, Situate in Washington)
County, State of Oklahoma,)
and Elizabeth Comstock)
Ostrander, et al., and)
Unknown Owners,)
)
Defendants.)

CIVIL ACTION NO. 75-C-147✓

Tract No. 234

(Included in D. T. filed in
Master File #400-7)

J U D G M E N T

NOW, on this 20th day of February, 1976, this matter came on for non-jury trial, before the Honorable H. Dale Cook, Judge of the United States District Court for the Northern District of Oklahoma. Plaintiff, United States of America, appeared by Hubert A. Marlow, Assistant United States Attorney, for the Northern District of Oklahoma. None of the defendants appeared either in person or by counsel. After hearing the evidence presented at the trial and being fully advised in the premises, the Court finds and concludes that:

1.

This judgment applies to the entire estate condemned in the tract listed in the caption hereof, as such estate and tract are described in the Complaint filed in this action.

2.

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

3.

Service of Process has been perfected by personal service upon each of the owners of subject property whose addresses are known. As to owners whose addresses are unknown and unknown owners, service of process has been perfected by publication in the Examiner-Enterprise, a newspaper published in Bartlesville, Oklahoma, all as provided by Rule 71A of the Federal Rules of Civil Procedure.

4.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described above in paragraph 1. Pursuant thereto, on April 16, 1975, the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

5.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of subject property a certain sum of money, and none of this deposit has been disbursed, as set out below in paragraph 10.

6.

On the date of taking of the subject property the owners thereof, as shown by the land records of Tulsa County, State of Oklahoma, were the persons whose names are shown below in paragraph 10. No other defendants appeared at the trial to make any claim for compensation for the subject taking. Therefore, the persons named below in paragraph 10 are entitled to receive the just compensation awarded by this judgment.

7.

At the trial of this case Mr. Carlton Jackson and Mr. Harold Smith testified as witnesses for the Plaintiff. Mr. Jackson is an appraiser who is qualified by training and experience to testify as an expert witness regarding the value of the surface interest in the subject tract of land. Mr. Smith is a petroleum engineer who is qualified by training and experience to testify as an expert witness regarding the value of oil, gas, and other minerals under the subject tract.

Mr. Jackson testified that on the date of taking the fair market value of the surface interest in the subject tract was \$17,250.00. Mr. Smith testified that immediately before the taking in this case the fair market value of the oil and gas rights under

the subject 50 acres was \$500.00, and that immediately after the subordination taken in this case the fair market value of the oil and gas rights under the subject 50 acres was \$100.00, thus compensation for the subordination was \$400.00. No other evidence was offered by any other person. Therefore, the award of just compensation should be based upon the testimony of Mr. Jackson and Mr. Smith, and should be fixed in the total amount of \$17,650.00.

8.

It is, therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tract No. 234, as such tract is described in the Complaint filed herein, and such tract, to the extent of the estate described in such Complaint is condemned and title thereto is vested in the United States of America, as of April 16, 1975, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

9.

It is further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the estate taken herein in subject tract were the defendants whose names appear below in paragraph 10, and the right to receive the just compensation for the taking of such estate is vested in the owners so named.

10.

It is further ORDERED, ADJUDGED and DECREED that the award of just compensation for the estate taken in subject tract is as shown in the following schedule:

<u>TRACT NO. 234</u>		
Owners:	Elizabeth Comstock Ostrander -----	2/9
	Alice Harrison -----	1/3
	Edwin F. Comstock, Sr. -----	2/9
	Francis Comstock Richmond -----	2/9
Award of just compensation		
	pursuant to Court's findings -----	\$17,650.00 \$17,650.00
Deposited as estimated compensation ---	<u>\$17,650.00</u>	
Disbursed to owners -----		<u>None</u>
Balance due to owners -----		\$17,650.00

11.

It is further ORDERED that the Clerk of this Court shall now disburse from the deposit for the subject tract, to certain owners certain sums as follows:

To: Elizabeth Comstock Ostrander -----	\$3,922.23
Edwin F. Comstock, Sr. -----	\$3,922.22
Francis Comstock Richmond -----	\$3,922.22

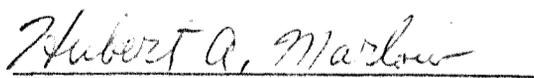
12.

It is further ORDERED that the Clerk of this Court shall not now disburse from the deposit for the subject tract the share of the award which is due to Alice Harrison, because the address of said owner is wholly unknown. In the event that such owner is located, the Court will enter an appropriate order of disbursal.

In the event that the balance due to such defendant (in the amount of \$5,883.33) remains on deposit for a period of five years from the date of filing this judgment, then, after that period, the Clerk of this Court, without further order, shall disburse the balance on deposit for subject tract to the Treasurer of the United States of America, pursuant to the provisions of Title 28, Section 2042, U.S.C.


UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

FEB 20 1976

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

United States of America,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NO. 75-C-146 ✓
)
30.00 Acres of Land, More or) Tract No. 206
Less, Situate in Washington)
County, State of Oklahoma,)
and Fanny Banty Phillips,)
et al., and Unknown Owners,)
) (Included in D. T. filed in
Defendants.) Master File #400-7)

J U D G M E N T

NOW, on this 20th day of February, 1976, this matter came on for non-jury trial, before the Honorable H. Dale Cook, Judge of the United States District Court for the Northern District of Oklahoma. Plaintiff, United States of America, appeared by Hubert A. Marlow, Assistant United States Attorney, for the Northern District of Oklahoma. None of the defendants appeared either in person or by counsel. After hearing the evidence presented at the trial and being fully advised in the premises, the Court finds and concludes that:

1.

This judgment applies to the entire estate condemned in the tract listed in the caption hereof, as such estate and tract are described in the Complaint filed in this action.

2.

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

3.

Service of Process has been perfected by personal service upon each of the defendants in this case except Fanny Banty Phillips, and has been perfected as to her by publication, as provided by Rule 71A of the Federal Rules of Civil Procedure.

4.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the

right, power and authority to condemn for public use the property described above in paragraph 1. Pursuant thereto, on April 16, 1975, the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

5.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of subject property a certain sum of money, and none of this deposit has been disbursed, as set out below in paragraph 10.

6.

On the date of taking of the subject property the owner thereof, as shown by the land records of Washington County, State of Oklahoma, was the person whose name is shown below in paragraph 10. No other defendants appeared at the trial to make any claim for compensation for the subject taking. Therefore, the person named below in paragraph 10 is entitled to receive the just compensation awarded by this judgment.

7.

At the trial of this case Mr. Harold Smith testified as a witness for the Plaintiff. Mr. Smith is a petroleum engineer and is qualified by training and experience to testify as an expert witness regarding the value of oil, gas and other minerals under the subject tract. Mr. Smith testified that immediately before the taking in this case the fair market value of an undivided 1/2 interest in the oil, gas and other minerals under the subject tract was \$150.00. Since the entire ownership was taken, this amount should be adopted as the just compensation for the subject taking.

8.

It, is, therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tract No. 206, as such tract is described in the Complaint filed herein, and such tract, to the extent of the

estate described in such Complaint is condemned and title thereto is vested in the United States of America, as of April 16, 1975, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

9.

It is further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owner of the estate taken herein in subject tract was the defendant whose name appears below in paragraph 10, and the right to receive the just compensation for the taking of such estate is vested in the owner so named.

10.

It is further ORDERED, ADJUDGED and DECREED that the award of just compensation for the estate taken in subject tract is as shown in the following schedule:

TRACT NO. 206

(1/2 of all oil, gas & other minerals)

OWNER: Fanny Banty Phillips

Award of just compensation pursuant to Court's findings -----	\$150.00	\$150.00
Deposited as estimated compensation ---	<u>\$150.00</u>	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$150.00

11.

It is further ORDERED that the Clerk of this Court shall not disburse the deposit for the subject tract to the owner at present because the address of said owner is wholly unknown. In the event that such owner is located the Court will enter an appropriate order of disbursal.

In the event that the balance due to such defendant remains on deposit for a period of five years from the date of filing this judgment, then, after that period, the Clerk of this Court, without further order, shall disburse the balance on deposit for subject tract to the Treasurer of the United States of America, pursuant to the provisions of Title 28, Section 2042, U.S.C.

APPROVED:


UNITED STATES DISTRICT JUDGE


HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

FEB 20 1976

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

United States of America,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NO. 75-C-143v.
)
5.83 Acres of Land, More or) Tract No. 109-B
Less, Situate in Washington)
County, State of Oklahoma,)
and Norma Chandler Sebastian,)
et al., and Unknown Owners,)
)
Defendants.) (Included in D.T. filed in
Master File #400-7)

J U D G M E N T

NOW, on this 20th day of February, 1976, this matter came on for non-jury trial, before the Honorable H. Dale Cook, Judge of the United States District Court for the Northern District of Oklahoma. Plaintiff, United States of America, appeared by Hubert A. Marlow, Assistant United States Attorney, for the Northern District of Oklahoma. None of the defendants appeared either in person or by counsel. After hearing the evidence presented at the trial and being fully advised in the premises, the Court finds and concludes that:

1.

This judgment applies to the entire estate condemned in the tract listed in the caption hereof, as such estate and tract are described in the Complaint filed in this action.

2.

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

3.

Service of Process has been perfected by personal service upon each of the defendants in this action, as provided by Rule 71A of the Federal Rules of Civil Procedure.

4.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the

right, power and authority to condemn for public use the property described above in paragraph 1. Pursuant thereto, on April 16, 1975, the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

5.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of subject property a certain sum of money, and none of this deposit has been disbursed, as set out below in paragraph 10.

6.

On the date of taking of the subject property the owner thereof, as shown by the land records of Washington County, State of Oklahoma, was the person whose name is shown below in paragraph 10. No other defendants appeared at the trial to make any claim for compensation for the subject taking. Therefore, the person named below in paragraph 10 is entitled to receive the just compensation awarded by this judgment.

7.

At the trial of this case Mr. Harold Smith testified as a witness for the Plaintiff. Mr. Smith is a petroleum engineer and is qualified by training and experience to testify as an expert witness regarding the value of oil, gas and other minerals under the subject tract. Mr. Smith testified that immediately before the taking in this case the fair market value of all minerals, including coal under the subject tract, was \$60.00. Since the minerals were taken under the entire tract, this amount should be adopted as the just compensation for the subject taking.

8.

It, is, therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tract 109-B, as such tract, is described in the Complaint filed herein, and such tract, to the extent of the estate described in such Complaint is condemned, and title

thereto is vested in the United States of America, as of April 16, 1975, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

9.

It is further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owner of the estate taken herein in subject tract was the defendant whose name appears below in paragraph 10, and the right to receive the just compensation for the taking of such estate is vested in the owner so named.

10.

It is further ORDERED, ADJUDGED and DECREED that the award of just compensation for the estate taken in subject tract is as shown in the following schedule:

TRACT NO. 109-B

Owner:	Norma Chandler Sebastian		
Award of just compensation			
pursuant to Court's findings	-----	\$60.00	\$60.00
Deposited as estimated compensation	-----	<u>\$60.00</u>	
Disbursed to owner	-----		<u>None</u>
Balance due to owner	-----		\$60.00

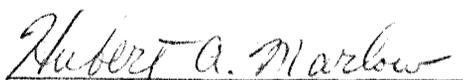
11.

It is further ORDERED that the Clerk of this Court shall now disburse the deposit for the subject tract to the owner as follows:

To: Norma Chandler Sebastian ----- \$60.00.


UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

FEB 20 1976

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

United States of America,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NO. 75-C-37 ✓
)
0.97 Acres of Land, More or) Tracts Nos. A-148-2 and
Less, Situate in Tulsa County,) A-148E
State of Oklahoma, and Ruth E.)
Lundy, et al., and Unknown)
Owners,) (Included in D.T. filed in
) Master File #268-1407
Defendants.)

J U D G M E N T

NOW, on this 20th day of February, 1976, this matter came on for non-jury trial, before the Honorable H. Dale Cook, Judge of the United States District Court for the Northern District of Oklahoma. Plaintiff, United States of America, appeared by Hubert A. Marlow, Assistant United States Attorney, for the Northern District of Oklahoma. None of the defendants appeared either in person or by counsel. After hearing the evidence presented at the trial and being fully advised in the premises, the Court finds and concludes that:

1.

This judgment applies to the entire estates condemned in the tracts listed in the caption hereof, as such estates and tracts are described in the Complaint filed in this action.

2.

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

3.

Service of Process has been perfected by personal service upon each of the owners of subject property, as provided by Rule 71A of the Federal Rules of Civil Procedure.

4.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the

to condemn for public use Tracts A-148-2 and A-148E, as such tracts are described in the Complaint filed herein, and such tracts, to the extent of the estates described in such Complaint are condemned and title thereto is vested in the United States of America, as of January 28, 1975, and all defendants herein and all other persons are forever barred from asserting any claim to such estates.

9.

It is further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the estates taken herein in subject tracts were the defendants whose names appear below in paragraph 10, and the right to receive the just compensation for the taking of such estates is vested in the owners so named.

10.

It is further ORDERED, ADJUDGED and DECREED that the award of just compensation for the estates taken in subject tracts is as shown in the following schedule:

TRACTS NOS. A-148-2 and A-148E
(Undivided 1/8 of the 8/8 oil & gas rights interest)

Owners:

Ruth E. Lundy ---- 1/16 of 8/8 (1/2 of subject property)
 Margaret B. Smith --- 1/16 of 8/8 (1/2 of subject property)

Award of just compensation		
pursuant to Court's findings -----	\$10.00	\$10.00
Deposited as estimated compensation ---	<u>\$10.00</u>	
Disbursed to owners -----		<u>None</u>
Balance due to owners -----		\$10.00

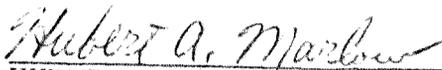
11.

It is further ORDERED that the Clerk of this Court shall now disburse the deposit for the subject tracts to the owners as follows:

To: Ruth E. Lundy ----- \$5.00
 Margaret B. Smith ----- \$5.00.

APPROVED:


 UNITED STATES DISTRICT JUDGE


 HUBERT A. MARLOW

Assistant U. S. Attorney -3-

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

LYNN CLYMA,

Plaintiff,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD
COMPANY, a corporation,

Defendant and
Third-Party Plaintiff,

vs.

THE CITY OF TULSA, OKLAHOMA,
a municipal corporation,

Third-Party Defendant.

73-C-312

FILED

FEB 19 1976

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

ORDER

The Court has for consideration the Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial filed by the defendant, Missouri-Kansas-Texas Railroad Company, the response thereto filed by the plaintiff, Lynn Clyma, and, being fully advised in the premises, finds:

That the Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial should be overruled.

IT IS, THEREFORE, ORDERED that the Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial filed by the defendant, Missouri-Kansas-Texas Railroad Company, be and the same is hereby overruled.

ENTERED this 19th day of February, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

SAFECO INSURANCE COMPANY,

Plaintiff,

vs.

CLEM WHOLESALE GROCER, INC.,
an Arkansas Corporation,
PAUL LOCKE and R. L. SCHULER,

Defendants.

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) 75-C-445
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FILED

FEB 18 1976

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

ORDER SUSTAINING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Based on the Findings of Fact and Conclusions of Law filed
this date,

IT IS ORDERED that Plaintiff's Motion for Summary Judgment
be and the same is hereby sustained.

ENTERED this 18th day of February, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

SAFECO INSURANCE COMPANY,

Plaintiff,

vs.

CLEM WHOLESALE GROCER, INC.,
an Arkansas Corporation,
PAUL LOCKE and R. L. SCHULER,

Defendants.

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) 75-C-445
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FILED

FEB 18 1976

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

ORDER SUSTAINING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Based on the Findings of Fact and Conclusions of Law filed
this date,

IT IS ORDERED that Plaintiff's Motion for Summary Judgment
be and the same is hereby sustained.

ENTERED this 18th day of February, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

SAFECO INSURANCE COMPANY,

Plaintiff,

vs.

CLEM WHOLESALE GROCER, INC.,
an Arkansas corporation,
PAUL LOCKE and R. L. SCHULER,

Defendants.

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) 75-C-445
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FILED

FEB 1 1976

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH
REFERENCE TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

The Court has for consideration the Motion for Summary Judgment filed by the plaintiff, the briefs, affidavits and exhibits filed by the parties, and, having carefully perused the entire file, and, being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Exhibit "1" attached to the complaint is a copy of an Agreement entered into July 29, 1974, between Locke-Schuler Corporation; Locke-Schuler Energy Corporation; Clem Wholesale Grocer Co., Inc., as principal, and Safeco Insurance Companies, as surety. The indemnity agreement was executed by the officers of the various corporations and by Paul Locke and R. L. Schuler, individually.

2. Exhibit "2" attached to the complaint is a copy of a General Agreement of Indemnity, executed October 4, 1973, between Safeco Insurance Company as surety and Locke-Schuler Corporation; Any Affiliated or Subsidiary Corporation; Any other person, firm or Corporation for whom Locke-Schuler Corporation may request that a bond be written.

3. Exhibit "1", attached to the affidavit of Robert G. Brockmann, is a copy of a Motor Fuel Distributors Bond, being number 2390954, entered into between Locke-Schuler Corporation, as principal and Safeco Insurance Company of America, as surety, with the State of Arkansas. Said bond is dated February 5, 1974.

4. By letter dated December 13, 1974, the following demand was made on Safeco Insurance Company of America by Robert H. Johnson, Manager, Motor Fuel Tax Section, State of Arkansas:

"This is to advise that Locke-Schuler Corporation of Tulsa, Oklahoma, has filed a Chapter X Voluntary Bankruptcy and is delinquent in their account as a Licensed Distributor in the State of Arkansas.

"After an audit of their account, we find the Distributor Report for the month of October in the amount of \$16,008.05 is delinquent. The total penalty of the Bond is \$15,000.00, therefore, will be the full extent of liability.

"I am attaching the Distributor Report for the month of October supporting this Claim.

"If you need additional information in order to process, please advise."

This letter is reflected as Exhibit "2" to Mr. Brockmann's affidavit.

5. Exhibit "4" to said affidavit is a copy of a check issued by Safeco Insurance Company to the Commissioner of Revenues of the State of Arkansas in the amount of \$15,000.00, dated May 14, 1975, on behalf of Locke-Schuler Corporation.

6. The following notation was made on Exhibit "1" to Mr. Brockmann's affidavit:

"Received payment in the amount of \$15,000.00 in full this 4th day of June, 1975. State of Arkansas. Commissioner of Revenues, By Robert G. Brockmann, Attorney."

7. On August 1, 1975, the following assignment was made, Exhibit to Affidavit and Complaint:

"KNOW ALL MEN BY THESE PRESENTS:

"That I, Walter Skelton, Assistant Director for Revenues of the State of Arkansas by and through my attorney, Robert G. Brockmann, in consideration of full payment in the principal sum of \$15,000.00, to me in cash in hand paid by SAFECO INSURANCE COMPANY OF AMERICA, the receipt of which is hereby acknowledged, do hereby bargain, sell, transfer, assign, set over, and deliver to said SAFECO INSURANCE COMPANY OF AMERICA, and to its successors and assigns, all the right, title and interest due the Commissioner of

Revenues of the State of Arkansas under Motor Fuel Distributor's Bond Number 2390954 in the principal sum of \$15,000.00 with Locke-Schuler Corporation as principal and Safeco Insurance Company of America as surety and notarized on the 5th day of February, 1974.

"WITNESS my hand this 1st day of August, 1975."

8. Locke-Schuler Corporation has a proceeding for re-organization pending in this Court in Cause 74-B-1191. An order has been entered in said proceeding enjoining plaintiffs, among others, from proceeding against Locke-Schuler Corporation. By reason of said stay order, plaintiff cannot proceed against Locke-Schuler Corporation.

9. Locke-Schuler Energy Corporation was never fully organized as a viable corporation.

10. Plaintiff is proceedings against the remaining indemnitors, i.e., Clem Wholesale Grocer, Inc., an Arkansas corporation; Paul Locke and R. L. Schuler.

11. The indemnity agreement dated July 29, 1974, contains the following provision:

" INDEMNITY TO SURETY: Undersigned agree to pay to Surety upon demand:

"1. All loss and expense, including attorney fees, incurred by Surety by reason of having executed any Bond or incurred by it on account of any breach of the agreement by any of the Undersigned:

"2. An amount sufficient to discharge any claim made against Surety on any Bond. This sum may be used by Surety to pay such claim or be held by Surety as collateral security against loss on any Bond.

12. Said agreement further provides:

"With respect to claims against Surety:

"1. Surety shall have the exclusive right for itself and the Undersigned to determine in good faith whether any claim or suit upon any Bond shall, on the basis of liability, expediency or otherwise, be paid, compromised, defended or appealed.

"2. Surety's determination in good faith of the foregoing shall be final and conclusive upon the Undersigned."

13. On December 19, 1975, Joseph R. Roberts, attorney for Paul Locke and R. L. Schuler filed the following affidavit:

"I, JOSEPH R. ROBERTS, of lawful age, being first duly sworn upon oath, deposes and states:

"I am attorney representing Paul Locke and R. L. Schuler

in Case No. 75-C-445, United States District Court for the Northern District and that I have personally talked with Jim Eagleton, Attorney for the Trustee of the Locke-Schuler Corporation and with Plaintiff's Attorney, David H. Sanders, and each has stated that they have already made an agreement respecting the 'Motor Fuel Distributor's Bond', and 'General Agreement of Indemnity Company', wherein Jim Eagleton, as Trustee for Locke-Schuler Corporation is to pay to Plaintiff, SAFECO Insurance Company, the sum of \$7,500.00."

14. On December 29, 1975, James R. Eagleton, filed the following Affidavit:

"I, JAMES R. EAGLETON, of lawful age, being first duly sworn upon oath, deposes and states:

"I am attorney representing Clem Wholesale Grocer Co., Inc. in the subject cause.

"Clem Wholesale Grocer Co., Inc. and I as its attorney have not settled with Safeco Insurance Company of America the controversy represented by the subject suit.

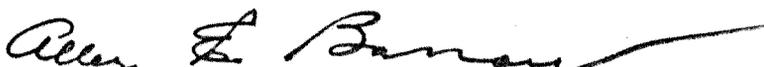
"My recollection of my conversation with Mr. Joseph R. Roberts is that a week to two weeks ago he telephoned me and stated, 'I understand, Jim, that you have settled with Safeco.' I told him that I had not discussed the matter with him or his clients and that I had not settled this controversy in that Mr. Dave Sanders said that he would not settle prior to judgment in that it would deprive the court of jurisdiction, but that after judgment he thought he could recommend to Safeco a settlement based on a written covenant to be entered into after judgment. I specifically told Mr. Roberts that we had not made a settlement but I anticipated that one would be made after judgment had been rendered for the Plaintiff in the subject cause."

CONCLUSIONS OF LAW

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

1. The Court has jurisdiction of the subject matter and the parties.
2. There is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.
3. That the plaintiff's Motion for Summary Judgment should be sustained and Judgment entered in favor of the plaintiff and against the defendants.

ENTERED this 18th day of February, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

GM/ja
2/9/76

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

PUROLATOR, INC., a corporation,

Plaintiff,

-vs-

WATTS MOTOR SUPPLY, INC.,
a corporation,

Defendant.

Civil Action No. 75 C-561-2

FILED

FEB 18 1976

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

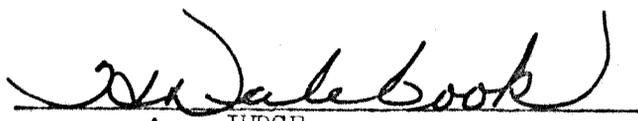
JUDGMENT BY DEFAULT
UPON APPLICATION TO COURT

In this action the defendant, WATTS MOTOR SUPPLY, INC., a corporation, having been regularly served with the summons and Complaint, and having failed to plead or otherwise defend, the legal time for pleading or otherwise defending having expired, and the default of the said defendant, WATTS MOTOR SUPPLY, INC., a corporation, in the premises having been duly entered according to law; upon the application of the plaintiff, judgment is hereby entered against the aforesaid defendant in pursuance of the prayer of said Complaint.

WHEREFORE, by virtue of the law and by reason of the premises aforesaid:

IT IS ORDERED, ADJUDGED AND DECREED that the said plaintiff, PUROLATOR, INC., a corporation, do have and recover from the said defendant, WATTS MOTOR SUPPLY, INC., a corporation, the sum of THIRTEEN THOUSAND FIVE HUNDRED SEVEN DOLLARS AND SEVENTY-ONE CENTS (\$13,507.71), together with interest thereon at the rate of ten (10) percent per annum from date of judgment, together with an attorneys' fee in the sum of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00), to be taxed as costs, together with all other costs of this matter, and that plaintiff have execution therefor.

JUDGMENT RENDERED this 18th day of February, 1976.


JUDGE

LAW OFFICES
UNGERMAN,
GRABEL &
UNGERMAN

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

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

LEOTA C. GIVENS,)
)
 Plaintiff,)
)
 vs.)
)
 MARCUS HORN and THE AMERICAN)
 NATIONAL BANK & TRUST COMPANY)
 OF SAPULPA, OKLAHOMA,)
)
 Defendants.)

No. 74C-127 In the
U.S. District Court,
Northern District of
Oklahoma

FILED
FEB 18 1976

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

ORDER

IT IS THEREFORE THE ORDER OF THIS COURT pursuant to a
Motion for Dismissal filed herein by the Plaintiff that the claim
for relief ^{*Cause of action & Complaint*} stated by the Plaintiff be dismissed with prejudice.

Signed this 18th day of February, 1976.

Cecil E. Barrow

JUDGE OF THE UNITED STATES
DISTRICT COURT

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

LUIS M. MIRELEZ,

Plaintiff,

vs.

CASPAR WEINBERGER, SECRETARY
OF HEALTH, EDUCATION AND
WELFARE,

Defendant.

)
)
) 74-C-367
)
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FILED

FEB 13 1976

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

ORDER REMANDING

The Court, having reviewed the entire file, the briefs, transcript, and the additional medical submitted by the plaintiff, and, being fully advised in the premises, finds:

That in the interests of justice this case should be remanded for resubmission to the Hearing Examiner.

SUA SPONTA, IT IS ORDERED that this case be and the same is hereby remanded to the Hearing Examiner, Department of Health, Education and Welfare, for further hearing and determination.

ENTERED this 13th day of February, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

FILED

FEB 13 1976

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

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

ROSS ACCELERATED GROUND)
SCHOOLS, INC.)

Plaintiff)

v.)

ACCELERATED GROUND)
SCHOOLS, INC.)

Defendant)

Civil Action No. 74-C-596 ✓

ACCELERATED GROUND)
SCHOOLS, INC.)

Plaintiff)

v.)

ROSS ACCELERATED GROUND)
SCHOOLS, INC. and)
JOSEPH R. ROSS)

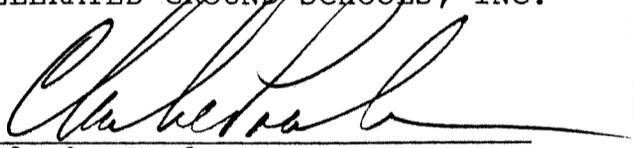
Defendants)

Civil Action No. 75-C-99

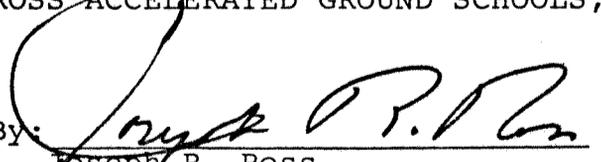
STIPULATION OF DISMISSAL

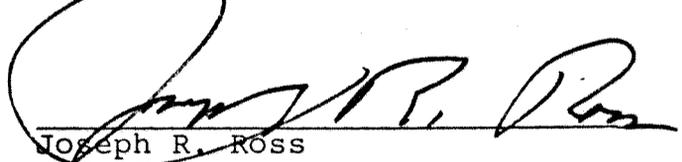
Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, it is hereby stipulated that the above-entitled actions be dismissed without prejudice, each party to bear its own costs.

ACCELERATED GROUND SCHOOLS, INC.

By: 
Clarke Poole
President

ROSS ACCELERATED GROUND SCHOOLS, INC.

By: 
Joseph R. Ross
President


Joseph R. Ross
Individually

FILED

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

FEB 13 1976

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

ROSS ACCELERATED GROUND)
SCHOOLS, INC.)
)
Plaintiff)
)
v.)
)
ACCELERATED GROUND)
SCHOOLS, INC.)
)
Defendant)

Civil Action No. 74-C-596

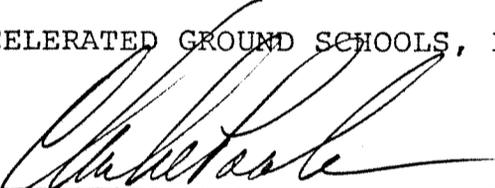
ACCELERATED GROUND)
SCHOOLS, INC.)
)
Plaintiff)
)
v.)
)
ROSS ACCELERATED GROUND)
SCHOOLS, INC. and)
JOSEPH R. ROSS)
)
Defendants)

Civil Action No. 75-C-99

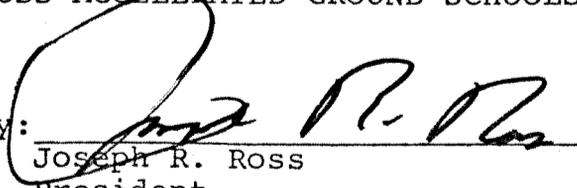
STIPULATION OF DISMISSAL

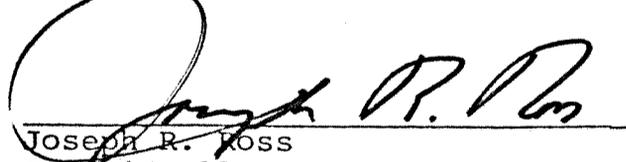
Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, it is hereby stipulated that the above-entitled actions be dismissed without prejudice, each party to bear its own costs.

ACCELERATED GROUND SCHOOLS, INC.

By: 
Clarke Poole
President

ROSS ACCELERATED GROUND SCHOOLS, INC.

By: 
Joseph R. Ross
President


Joseph R. Ross
Individually

7.

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

JOHN T. DUNLOP, SECRETARY OF LABOR,)
UNITED STATES DEPARTMENT OF LABOR,)
)
) Plaintiff,)
)
)
vs.)
)
)
THE RESOURCE SCIENCES CORPORATION,)
a Corporation,)
)
)
) Defendant.)

No. 74-C-316

FILED
FEB 13 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER SUSTAINING DEFENDANT'S MOTION TO DISMISS

On November 7, 1975, the defendant, Resource Sciences Corporation, moved the Court to dismiss paragraph VIII of plaintiff's complaint and any other parts of plaintiff's complaint which claim relief for a violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. Defendant contends that the plaintiff, before filing suit, failed to notify defendant that it had been administratively found guilty of discriminatory practices under said Act and that the plaintiff failed to attempt conciliation, conference and persuasion as required by § 626(b) of the Act.

The Court carefully considered the arguments of counsel both in support and in opposition to the defendant's Motion to Dismiss. After reviewing the entire file, the Court issued an Order which was filed in the record on January 23, 1976, wherein the Court extensively explored the jurisdictional requirements of Title 29 U.S.C. § 621 and specifically addressed itself to the language of 29 U.S.C. § 626(b) in regard to the requirement of attempting conciliation, conference and persuasion. The Court concluded that the plaintiff had not fully responded to all of the defendant's Requests for Admissions filed on August 8, 1975, and directed him to respond to these requests no later than February 2, 1976.

Plaintiff has admitted the Defendant's Request for Admissions with the qualification as asserted in his first answers to the Request filed on September 8, 1975, which is that the defendant refused to cooperate with the Wage and Hour Compliance Officer, Mr. J. Dean Speer, and that such failure to cooperate effectively prevented plaintiff from following the procedures and making the determinations which normally are a part or by-product of plaintiff's investigatory and conciliatory efforts. In the response to Defendant's Request for Admission No. 5 the plaintiff states that the last telephone conversation of Mr. George T. Avery, Regional Solicitor, with Mr. Harry Seay, III, counsel for defendant, occurred on January 30, 1974.

The plaintiff has filed a further statement in opposition to the defendant's Motion to Dismiss where he again asserts that conciliation attempts were prevented by the defendant's refusal to make its records available. The plaintiff cites to the case of Brennan v. Ace Hardware Corp., 495 F.2d 368 (8th Cir. 1974) as support for his request for a stay of this proceeding to permit the Secretary to make necessary additional efforts toward effecting voluntary compliance. The plaintiff has attached a copy of an Order issued by the District Court for the District of New Mexico in the case of Dunlop v. Sandia Corporation (No. 75-150) wherein the District Court granted a stay to permit the Secretary to make further efforts at conciliation.

After again considering the circumstances surrounding the defendant's Motion to Dismiss the claims under Title 29, U.S.C. § 621 et seq. and after perusing the entire record, it is the finding and conclusion of the Court that the jurisdictional prerequisites of attempted conciliation, conference and persuasion have not been met as required by 29 U.S.C. § 626(b). In making its determination, the Court incorporates herein the reasoning and conclusions of its Order entered on January 23, 1976. The thrust of Brennan v. Ace Hardware Corp., supra, is that without

an attempt on the part of the Secretary to conciliate, this Court has no jurisdiction to hear the complaint based on the Age Discrimination in Employment Act. Without explanation the Secretary waited six (6) months after the last contact with the defendant before filing suit. The plaintiff admits that he did not make a determination as to the fact and extent of age discrimination. The Court is not unsympathetic to the difficulties encountered in investigating a complaint against a recalcitrant employer. Yet the Secretary is not without the power to effect an investigation when he has the force of subpoena as provided by 29 U.S.C. § 209. Congress has given the Secretary the tools which aid in an investigation. Where the Congress has provided the means to effect an investigation, the Secretary is not provided with a choice of either conducting an investigation by following § 209 or investigating by means of discovery after a suit is filed. He must utilize the procedures provided under the Act.

The circumstances of each case circumscribe the reasonableness of conducting an investigation. Such circumstances will direct the point at which conciliation conference and persuasion becomes an appropriate activity. In some cases an investigation may not be necessary. The statute does not require that an investigation be conducted. The statute does require an attempt to conciliate. The Court cannot simply ignore the mandate of 29 U.S.C. § 626(b).

"Before instituting any action under this Section, the Secretary shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion."

(emphasis supplied).

To conciliate means to reconcile, compromise, placate or otherwise satisfy the grievance of the complainant. To attempt conciliation means to take some affirmative action or to make some reasonable effort to resolve the differences. The record before

the Court is devoid of any affirmative action which the Secretary took in an effort to resolve the alleged age discrimination. The Secretary asserts that he did not attempt conciliation because the defendant was uncooperative in the investigation of the charges. Failure to cooperate in an investigation does not relieve the Secretary of his obligation to attempt conciliation.

In the case of John T. Dunlop v. Sandia Corp., No. 75-150 (D.N.M. 1975) the District Court stated that the burden to conciliate falls on the Secretary.

"In order to conciliate meaningfully, the Secretary should demonstrate the validity of its claim notwithstanding the fact that the data is available to defendant in its own files."

While the court in Sandia Corp. granted a stay to allow the Secretary to attempt conciliation, the action was filed because the statute of limitations was about to run. In the case before the Court the action on behalf of Victor H. Houser under the Age Discrimination in Employment Act accrued on October 15, 1973. (See Answer to Interrogatory IV p. 9, filed April 16, 1975.) A two-year statute of limitations is provided in Title 29 U.S.C. § 255(a) and would not have run until October 15, 1975. Plaintiff filed suit on August 5, 1974, more than one year before plaintiff would have been foreclosed by the statute. The first request of plaintiff for a stay to attempt conciliation appeared in "Plaintiff's Statement in Opposition to Defendant's Motion to Dismiss" filed in the record on November 20, 1975. More than two years after the alleged offense the Secretary requests a stay to further attempt to conciliate. Even if § 626(b) permitted the Court to grant such a stay the plaintiff has had ample opportunity prior to this late date to attempt or further attempt conciliation.

It is the finding and conclusion of the Court that plaintiff has failed to conciliate the charges of age discrimination as required by Title 29 U.S.C. § 626(b) and that attempted

conciliation is a jurisdictional prerequisite to maintaining this cause in this Court. Regretfully the Court has no choice but to sustain defendant's Motion to Dismiss for lack of jurisdiction and to dismiss plaintiff's cause under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.

It is so Ordered this 13th day of February, 1976.



H. DALE COOK
United States District Judge

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

VULCAN TANK CORPORATION,
Plaintiff,

vs.

AIRTEK CORPORATION,
Defendant.

No. 76-C-6

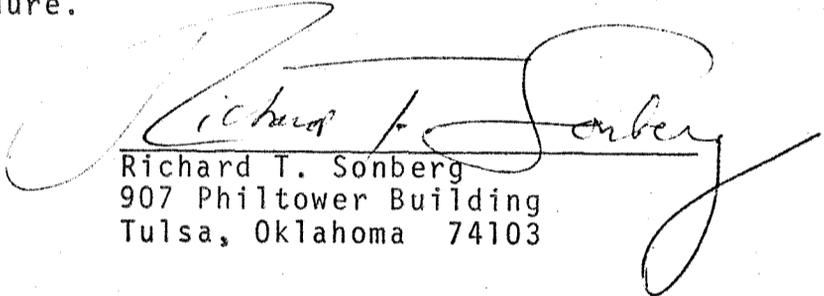
FILED

FEB 13 1976

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

NOTICE OF VOLUNTARY DISMISSAL BY PLAINTIFF

COMES NOW the plaintiff by and through its attorney and gives notice that it hereby dismisses the above captioned civil action pursuant to Rule 41(a) of the Federal Rules of civil procedure.


Richard T. Sonberg
907 Philtower Building
Tulsa, Oklahoma 74103

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
 vs.)
)
 COLONY CLUB, An Oklahoma)
 Limited Partnership,)
)
) Defendant.)

CIVIL ACTION NO. 75-C-463

FILED

FEB 13 1976

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

J U D G M E N T

THIS MATTER COMES on for consideration this 13th
day of February, 1976, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney for the Northern District
of Oklahoma, and the Defendant, Colony Club, An Oklahoma Limited
Partnership, appearing by its attorney, Jay C. Baker.

The Court being fully advised and having examined the
file herein finds that the Defendant, Colony Club, An Oklahoma
Limited Partnership, was served with Summons and Complaint by
serving Don Welch, General Partner and Norman Retherford, Limited
Partner, on October 8, 1975, as appears from the United States
Marshal's Service herein.

The Defendant, Colony Club, An Oklahoma Limited
Partnership, filed its answer herein on October 29, 1975.

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 upon the following described real
property, located in Tulsa County, Oklahoma, within the Northern
Judicial District of Oklahoma:

Part of the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Eleven (11), Township Nineteen (19) North, Range Thirteen (13) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, being more particularly described as follows, to-wit: BEGINNING at the Northeast corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 11, Township 19 North, Range 13 East, Tulsa County, Oklahoma; thence S 0 $^{\circ}$ 10' 04" West and along the East line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, a distance of 660.12 feet to the Southeast corner of said SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence Due West and along the South line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ a distance of 660.08 feet to the Southwest corner of said SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, thence N 0 $^{\circ}$ 09' 51" East and along the West line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ a distance of 660.19 feet to the Northwest corner of said SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence S 89 $^{\circ}$ 59' 44" East and along the North line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ a distance of 287.49 feet to a point on the West line of Lot 23, Block 7, MOELLER HEIGHTS ADDITION; thence N 26 $^{\circ}$ 01' 09" West and along said West line for 98.54 feet to the Northwest corner of said Lot 23, Block 7, thence N 65 $^{\circ}$ 06' 19" East for 172.47 feet; thence S 89 $^{\circ}$ 49' 56" East for 229.82 feet to the Northeast corner of Lot 26, Block 7, MOELLER HEIGHTS ADDITION; thence S 0 $^{\circ}$ 10' 04" West and along the East line of said Lot 26, Block 7, for 161.87 feet to a point on the North line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the Southeast corner of Lot 26, Block 7, MOELLER HEIGHTS ADDITION, thence S 89 $^{\circ}$ 59' 44" East and along the North line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ for 30.00 feet to the point of beginning.

THAT the Defendant, Colony Club, An Oklahoma Limited Partnership, did on the 28th day of January, 1971, execute and deliver to the Midwest Mortgage Company its mortgage and mortgage note in the sum of \$2,520,600.00 with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest. Said mortgage was recorded on January 28, 1971, in Book 3594, Page 1397, records of Tulsa County, State of Oklahoma.

THAT by Assignment of Mortgage of Real Estate dated November 21, 1972, Midwest Mortgage Company assigned the note by endorsement thereon and the mortgage by separate instrument of assignment to Zenith Mortgage Company, said instrument of assignment being recorded on November 21, 1972, in Book 4044, Page 1736, records of Tulsa County, State of Oklahoma. That by Assignment of Mortgage of Real Estate dated June 18, 1974, Zenith Mortgage Company assigned the note by endorsement thereon and the mortgage by separate instrument of assignment to the

Secretary of Housing and Urban Development, which instrument of assignment was recorded July 11, 1974, in Book 4127, Page 1492, records of Tulsa County, State of Oklahoma.

The Court further finds that this is a suit based upon foreclosure of a Financing Statement and Security Agreement securing said aforementioned Promissory Note and upon the following described personal property:

208 Refrigerators - GE TA 12SL
208 Dishwashers - SP 250 N
208 Ranges & Ovens - JGS 302
208 Disposals - H 1000

THAT the Defendant, Colony Club, An Oklahoma Limited Partnership, did, on November 21, 1972, execute and deliver to Midwest Mortgage Company a Financing Statement and Security Agreement covering the above-described personal property, which Financing Statement and Security Agreement was evidenced by a UCC-1 Financing Statement and was filed on November 21, 1972, as Statement #465203, records of Tulsa County, State of Oklahoma.

THAT by Assignment dated November 21, 1972, Midwest Mortgage Company assigned all of its interest in the Financing Statement and Security Agreement by separate instrument of assignment to Zenith Mortgage Company; that by Assignment dated June 18, 1974, Zenith Mortgage Company assigned all of its interest in the Financing Statement and Security Agreement to the Secretary of Housing and Urban Development by separate instrument of assignment. A UCC-3 Assignment Statement was filed on July 11, 1974, in connection with Statement #465203, records of Tulsa County, State of Oklahoma.

The Court further finds that the Defendant, Colony Club, An Oklahoma Limited Partnership, made default under the terms of the aforesaid mortgage note by reason of its failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendant is now indebted to the Plaintiff in the sum of \$2,961,256.88 as of November 15, 1975, plus interest thereafter at the rate of 8 1/2 percent per annum

until paid plus the cost of this action accrued and accruing.

The Court further finds that the Plaintiff, United States of America, has a lien prior and superior to any other lien or claim against the property described in said mortgage and said Financing Statement and Security Agreement.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff, United States of America, have and recover judgment, in rem, against the Defendant, Colony Club, An Oklahoma Limited Partnership, in the amount of \$2,961,256.88 as of November 15, 1975, plus interest thereafter at the rate of 8 1/2 percent per annum plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting or sums for the preservation of the subject property.

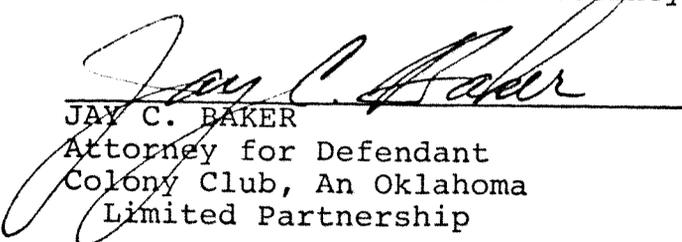
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real and personal property described in this judgment and apply the proceeds thereof in satisfaction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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, the Defendant and each and all persons claiming under it are forever barred and foreclosed of any right, title, interest or claim in or to the real property and personal property or any part thereof.


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANTEE
Assistant United States Attorney


JAY C. BAKER
Attorney for Defendant
Colony Club, An Oklahoma
Limited Partnership

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

FILED

FEB 12 1976 *JS*

ALFRED L. JOHNSON AND
JACK STRIPLIN,

Plaintiffs,

vs.

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

Defendants.

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

Nos. 75-C-188 and
75-C-189 ✓

(Consolidated)

ORDER OF DISMISSAL

Upon stipulation of dismissal executed by the parties and their attorneys showing this case has been settled, it is the order of this Court that these cases, *and cause of action* are dismissed with prejudice, ~~subject only to payment of taxable costs as may hereafter be fixed and assessed.~~

February 12, 1976

Allen E. Barrow

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

FILED

FEB 12 1978

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

IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF OKLAHOMA

VULCAN TANK CORPORATION,
an Oklahoma corporation,

Plaintiff,

vs.

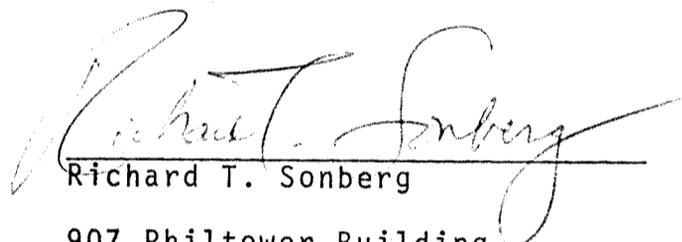
HEATRAN, INCORPORATED,

Defendant.

No. 76-C-7 ✓

NOTICE OF VOLUNTARY DISMISSAL BY PLAINTIFF

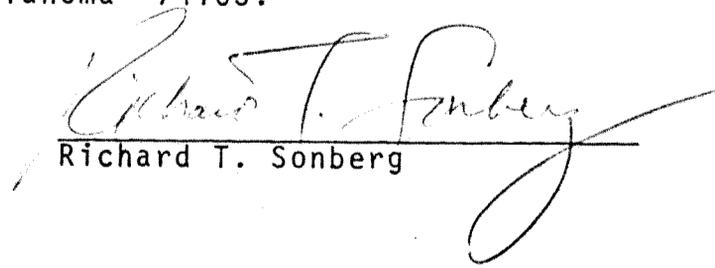
COMES NOW the plaintiff by and through its attorney and gives notice that it hereby dismisses the above captioned civil action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.


Richard T. Sonberg

907 Philtower Building
Tulsa, Oklahoma 74103

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Notice of Voluntary Dismissal by Plaintiff has been mailed, postage prepaid, on this 14 day of February, to Donald E. Cummings, Attorney for Defendant, 408 North Boston, Tulsa, Oklahoma 74103.


Richard T. Sonberg

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 12 1976

JOHN T. DUNLOP, Secretary of Labor,)
United States Department of Labor,)
)
Plaintiff,)
)
v.)
)
TULSA TRUCK PLAZA, INC., a corporation,)
TULSA PLAZA RESTAURANT, INC., a cor-)
poration doing business as COUNTRY)
KETTLE, and WILLIAM H. HALL, an)
individual,)
)
Defendants.)

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

Civil Action

No. 74-C-451

J U D G M E N T

It is Ordered, Adjudged and Decreed by the Court as follows:

1. Upon consideration of the evidence presented at trial and the briefs and arguments of the parties, and in accordance with the findings of fact and conclusions of law stated in the oral opinion rendered by the Court at the conclusion of the trial, the allegations of the Complaint that Defendants violated §§6 and 15(a)(2) of the Fair Labor Standards Act [29 U.S.C. §§206, 215(a)(2)] by paying the employees of Tulsa Plaza Restaurant, Inc., at wage rates less than the minimum required under those sections, and that Defendants violated §§7 and 15(a)(2) of the Act [29 U.S.C. §§207, 215(a)(2)] by failing to compensate the employees of Tulsa Plaza Restaurant, Inc., for work in excess of 40 hours per workweek at rates not less than one and one-half times the rates at which they were employed, are hereby dismissed, and the prayer for injunctive relief with respect to said allegations is hereby denied.

2. Upon the stipulation and agreement of the parties, it is adjudged that Defendant, Tulsa Truck Plaza, Inc., and Defendant, Tulsa Plaza Restaurant, Inc., have employed oppressive child labor in violation of §§12(c) and 15(a)(4) of the Act [29 U.S.C. §§212(c), 215(a)(4)]. The said Defendants, their officers, agents, servants, employees, and all other persons acting or claiming to act in their behalf and interest, are permanently enjoined and restrained from violating §§12(c) and 15(a)(4) of the Act.

3. Upon the stipulation and agreement of the parties, it is adjudged that Defendant, Tulsa Truck Plaza, Inc., violated §§7 and 15(a)(2) of the Act [29 U.S.C. §§207, 215(a)(2)] by failing to compensate the mechanics employed at the said Defendant's car care center for work in excess of 40 hours per workweek at rates not less than one and one-half times the rates at which they were employed. The said Defendant is hereby enjoined and restrained from withholding payment of overtime compensation in the total amount of \$1,100.00, which represents the amount of backwages due to the said mechanics by reason of such failure to pay overtime. The provisions of this paragraph shall be deemed satisfied when the defendant delivers to the plaintiff's Regional Solicitor a certified or cashier's check, payable to "Employment Standards Administration-Labor" in the total amount of \$1,100.00. Such payment is ordered to be made within thirty days of the entry of the judgment. Plaintiff, upon receipt of such certified or cashier's check from the defendant shall promptly proceed to make distribution, less income tax and social security withholdings to defendant's employees or former employees to whom it is owing, or to the legal representative of any deceased person so named. If, after making reasonable and diligent efforts to distribute such amounts to the person entitled thereto, plaintiff is unable to do so because of inability to locate a proper person, or because of a refusal to accept payment by any such person, plaintiff, pursuant to 28 U.S.C. section 2041, shall deposit

such funds with the clerk of this Court. Any such funds may be withdrawn for payment to a person entitled thereto upon order of the Court.

Furthermore, Defendant, Tulsa Truck Plaza, Inc., its officers, agents, servants, employees, and all other persons acting or claiming to act in its behalf and interest, is permanently enjoined and restrained from violating §7 of the Act with respect to the mechanics employed in its car care center.


UNITED STATES DISTRICT JUDGE

Date: February 12, 1976

Approved as to Form:


Attorney for Defendants *W. H. Wilcox*


Attorney for Plaintiff

5. A member of the staff of the Regional Office then conducts an investigation of the charge, which may include interviewing witnesses and reviewing documents. 29 C.F.R. Section 101.4.

6. On September 2, 1975, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (hereinafter designated UAW) filed unfair labor practice charges with the offices of the Sixteenth Region of the General Counsel, NLRB, alleging that plaintiff had performed certain acts on or about August 28, 1975, which acts were said to be in violation of Section 8(a)(1) and (3) of the NLRA.

7. After the filing of the charge, the defendant took jurisdiction of the case, and made an investigation of the matter.

8. On October 30, 1975, a complaint was issued against the plaintiff by the NLRB.

9. Plaintiff thereafter filed its answer on November 3, 1975..

10. The case was set for hearing before an Administrative Law Judge. Said hearing was scheduled for January 8, 1976, and later was rescheduled by agreement of the parties, at the request of the Court, to February 12, 1976, pending the outcome of this litigation.

11. On December 20, 1975, pursuant to the provisions of the Freedom of Information Act (hereinafter designated FOIA), plaintiff requested the following materials be made available for inspection and copying prior to the scheduled hearing of January 8, 1976. The information requested was as follows:

(a) Written statements, signed and unsigned taken by the Board, from all persons whom the counsel for General Counsel can reasonably anticipate will be called to testify in support of his case in chief in the hearing on the complaint and any amendments thereto.

(b) Reference the reasonably anticipated witnesses set forth in the paragraph above, all notes in possession of the Board regarding testimony that counsel for the General Counsel can reasonably anticipate will be introduced in support of his case in chief at the hearing and any amendments thereto.

(c) Any and all physical evidence, including but not limited to, documents, business records, personnel records, pictures, and etc., in the possession of the Board, which the counsel for the General Counsel can reasonably anticipate will be introduced as evidence to support his case in chief in the hearing on the Complaint, and any amendments thereto in the captioned case.

(d) Any and all materials referred to in Paragraphs (a) through (c) that may hereafter come into the possession of the counsel for the General Counsel which can reasonably be anticipated to be introduced as evidence to support his case in chief in the hearing on the Complaint, and any amendments thereto in the captioned case.

12. On December 31, 1975, plaintiff received a response to its request for materials from Edwin Youngblood, Regional Director, wherein it was stated that all requested matters were "privileged" by exemptions 7(A), 7(C) and 7(E) of Section 552(b) of the Freedom of Information Act. In said letter Mr. Youngblood also advised:

"Your motion for indefinite postponement of the hearing on the Complaint presently scheduled for hearing on January 8, 1976 on the basis of our denial of the information you request is hereby denied."

He further advised:

"***You may obtain a review of that determination under the provisions of Section 102.117(c)(2)(ii) of the Board's Rules and Regulations by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D.C. 20570, within 20 days of the receipt of this letter. An appeal should contain a complete statement of the reasons upon which it is based."

13. On January 6, 1976, plaintiff filed the instant litigation, and on January 7, 1976, the following Minute Order was entered by the Court.

"The Court has for consideration the motion of plaintiff for a temporary restraining order, and having orally conferred with the attorneys for both parties, and having been advised this date by Mr. Ray (sic), attorney, for defendant, that although the defendant would not agree to a temporary restraining order, they would pass the scheduled hearing from January 8, 1976, to February 12, 1976, in order to give this Court time to hear this matter on the request for preliminary injunction and hearing on the merits, pursuant to Rule 65 of the Federal Rules of Civil Procedure, and both parties being in agreement to accelerate said matter and hear the preliminary injunction and the merits,

"IT IS ORDERED that this matter on preliminary injunction and the merits be set for January 29, 1976, at 10 o'clock a.m.

"IT IS FURTHER ORDERED that parties submit simultaneous briefs ten days from this date."

The case was thereafter, with agreement of parties, rescheduled for hearing on February 3, 1976.

14. The defendant, additionally, claims Exemption 5.

15. Mr. Everett Rea, counsel for defendant, announced in the hearing that the defendant waived the 20 day appeal to the Board in Washington, stating that he felt that the Board would sustain the defendant's position. The waiver was made in order that plaintiff need not be concerned with the exhaustion of administrative remedies and could proceed under the Freedom of Information Act in this Court.

16. The defendant, by counsel, in open Court, delineated the reasons for claiming that the materials sought came within the Exemptions of the Freedom of Information Act.

CONCLUSIONS OF LAW

The Court, based on the foregoing Findings of Fact, makes the following Conclusions of Law.

1. This Court has jurisdiction by virtue of Section (a)(4)(B) of the Freedom of Information Act, as amended, 5 U.S.C. Section 552(a)(4)(B), 88 Stat. 1562.

2. Sections 5, 7(A), 7(C) and 7(D) provide as follows:

"This section does not apply to matters that are---

"(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

"(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, *(C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, ***."

4. The right of the plaintiff to receipt of the material sought must be considered to be the same as that of any other member of the public. That right is neither increased nor diminished by the fact that the plaintiff is the respondent in an enforcement proceeding. N.L.R.B. V. Sears, Roebuck and Co. (1975) 421 U.S. 132; Climax Molybdenum Co. v. N.L.R.B. (D.C., Colo., Nov. 14, 1975, 90 LRRM 3126.

5. The Supreme Court stated in *Sears Roebuck and Company v. N.L.R.B.*, supra:

"The Act seeks to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language. S.Rep. No. 813, 89th Cong., 1st Sess. ***. As the Act is structured, virtually every document generated by an agency is available to the public in one form or another, unless it falls within one of the Act's nine objections."

The Court went on to say that in implementing the FOI Act it is imperative that the courts construe the obligation to produce broadly and the exemptions from this obligation narrowly. *Ethyl Corporation v. EPA* (4th CCA, 1973) 478 F.2d 47.

6. An amendment to the FOIA was offered by Senator Hart, and said amendment was subsequently enacted, which limited Section 7, as cited in Conclusion 2 hereinabove. This amendment was submitted as a result of a series of cases in the District of Columbia Circuit, *National Policy Review, etc. v. Weinberger* (C.A. D.C., 1974) 502 F.2d 370; *Ditlow v. Brinegar* (C.A. D.C., 1974) 494 F.2d 1073; *Aspin v. Secretary of Defense* (C.A. D.C., 1973) 491 F.2d 24; *Weisberg v. Department of Justice* (C.A. D.C., 1973) 489 F.2d 1195.

7. In the debate concerning the 1974 Amendment, Senator Hart of Michigan stated:

"My reading of the legislative history suggests that Congress intended that this seventh exemption was to prevent harm to the Government's case in court by not allowing an opposing litigant earlier or greater access to investigative files than he would otherwise have.

"Recently, the courts have interpreted the seventh exception to the Freedom of Information Act to be applied whenever an agency can show that the document sought is an investigatory file compiled for law enforcement purposes---a stone wall at that point. The Court would have the exemption applied without the need of the agency to show why the disclosure of the particular document should not be made.

"That, we suggest is not consistent with the intent of Congress when it passed this basic act in 1966. Then, as now, we recognized the need for law enforcement agencies to be able to keep their records and files confidential where a disclosure would interfere with any one of a number of specific interests, each of which is set forth in the amendment that a number of us are offering.

"***.

"Our amendment is broadly written, and when any one of the reasons for nondisclosure is met, the material will be unavailable. But the material cannot be and ought not be exempt merely because it can be categorized as an investigatory file compiled for law enforcement purposes."

8. The purpose of this Court is to determine whether the NLRB has proved the applicability of the exemption it claims, not to rubber-stamp its approval of agency-imposed classifications and regulations. *Deering Milliken, Inc. v. N.L.R.B.* (USDC, Carolina, Nov. 12, 1975) 90 LRRM at 3138.

9. The materials claimed are exempt under Exemption 7(A) of the FOIA, in that to allow disclosure would result in a premature disclosure of the results of the Government's investigation so that it could not present its strongest case and in order to protect the Government's sources of information so that persons having information would feel free to volunteer it without fear of reprisal or invasion of their privacy. *Wellman Industries, Inc. v. N.L.R.B.* (C.A., 4th, 1974) 490 F.2d 427; *Frankel v. Securities and Exchange Commission* (C.A. 2nd, 1972) 460 F.2d 813. Cert. denied in both cases. In this connection, it is noted that while the Board has authority under 29 U.S.C. Section 160(b) to prescribe discovery procedures, it is not required to adopt those of the Federal Rules of Civil Procedure. Litigants in Board proceedings do not have access to affidavits obtained by Board Agents in investigation of a case unless and until the affiant is called to testify in a formal hearing. *North American Rockwell Corp. v. N.L.R.B.* (C.A. 10, 1969) 389 F.2d 866.

10. Under the Board's rules, after the affiant has testified, his affidavit is available for the limited purpose of "examination by the respondent and use for cross-examination". 29 CFR 102.118(b)(1).

11. The materials at issue in this case are exempt from compelled disclosure under Exemption 5 of FOIA, in that they are privileged and not routinely available through civil discovery procedures to a private party in litigation with an agency. *N.L.R.B. v. Sears Roebuck & Company*, supra.

12. Among the privileges incorporated in Exemption 5 is the attorney work-product privilege. *N.L.R.B. v. Sears Roebuck & Co.*, supra. The attorney work product privilege applies to trial preparation material assembled by nonlawyer field examiners as well as to the trial preparation of attorneys. *J. H. Rutter Rex Mft. Co., Inc. v. N.L.R.B.* (C.A. 5, 1973) 473 F.2d 223, cert. denied, 414 U.S. 822.

13. Affidavits taken as preparation for a possible trial are within the attorney work product privilege as codified in Rule 26(b)(3) of the Federal Rules of Civil Procedure, and thus are available in the civil discovery context only on a showing of "substantial need". *Hickman v. Taylor*, 329 U.S. 495 (1947); *Brennan v. Engineered Products, Inc.* (C.A. 8, 1974) 506 F.2d 299.

14. Statements taken from informants who have been given assurances of confidentiality and/or who have given a statement in circumstances under which confidentiality can be reasonably inferred, which statements would tend to identify the affiants are exempt from compelled disclosure pursuant to Clause D of Exemption 7. In this connection the Court notes that these portion can be determined only by in camera inspection of the affidavits at issue. However, the Court does not reach this issue inasmuch as it has determined that the materials come within the Exemptions of 7(A) and Exemption 5. This would be true if found exempt pursuant to Clause C of Exemption 7. *Kaminer v. N.L.R.B.* (S.D. Miss., 1975) 90 LRRM 2271.

The Court therefore finds that the Motion for Preliminary Injunction should be denied and judgment entered in favor of defendant and against the plaintiff.

ENTERED this 11th day of February, 1976.

A handwritten signature in cursive script, reading "Allen E. Berman", is written above a horizontal line.

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
) Plaintiff,)
)
 vs.) CIVIL ACTION NO. 75-C-36
) Master File No. 268-1407
)
 0.97 Acres of Land, More or)
 Less, Situate in Tulsa County,) Tracts Nos. A-148-2 and
 State of Oklahoma, and John L.) A-148E
 Boyd, et al., and Unknown)
 Owners,)
)
 Defendants.))

FINAL JUDGMENT

1.

NOW, on this 10th day of February, 1976, this matter comes on for disposition on application of the Plaintiff, United States of America, and the Defendants, John L. Boyd and Mariellen S. Boyd, for entry of a final judgment in this matter. After having examined the files in this action and being advised by counsel, the Court finds:

2.

This judgment applies to the entire estates condemned in Tracts A-148-2 and A-148E, as such estates and tracts are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the

FILED
FEB 10 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, On January 28, 1975, the United States of America filed its Declaration of Taking of the property described above in paragraph 2, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of the property described above in paragraph 2, a certain sum of money, and none of this deposit has been disbursed, as set out below in paragraph 14.

7.

On November 19, 1975, there came on for non-jury trial, the Honorable H. Dale Cook presiding, the issue raised by the pleadings, of whether a certain "memorandum" executed on January 4, 1965 by the former landowner and Thomas M. Smith, an attorney employed by the Tulsa District Corps of Engineers, was a valid agreement binding the Plaintiff, United States of America, to an exchange of lands set forth in such memorandum. At such trial evidence was presented on behalf of both parties to this action. Subsequent thereto, briefs were submitted by the parties and examined by the Court.

On December 18, 1975 this Court executed and filed herein a "Memorandum Opinion" in which the Court found that the terms and conditions of the "Memorandum" are not binding upon the Government, the exchange not having been authorized by the Secretary of the Army.

Said "Memorandum Opinion" left open the issue of just compensation for the taking of the property described above in paragraph 2. Reference is hereby made to said "Memorandum Opinion" entered by this Court on December 18, 1975, and such document is incorporated in this Final Judgment as fully as though recited in full herein.

8.

Thereafter, on February 9, 1976, the parties filed in this action their executed Stipulation As To Just Compensation wherein they agreed that just compensation for the taking of the property described above in paragraph 2 is \$1,500.00, inclusive of interest, and such Stipulation should be approved by the Court.

9.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the taking of the property described above in paragraph 2, and the amount fixed by the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 14.

10.

The defendants named in paragraph 14 as owners of the property described above in paragraph 2, are the only defendants asserting any interest in such property. All other defendants having either disclaimed or defaulted, the named defendants were, as of the date of taking, the owners of the subject property, and, as such, are entitled to receive the just compensation awarded by this judgment.

11.

It is, therefore, ORDERED, ADJUDGED and DECREED that, for the reasons set forth in the "Memorandum Opinion", described above in paragraph 7, the terms and conditions of the "Memorandum", executed on January 4, 1965, by Thomas M. Smith and Wm. S. Bailey, Jr., are not binding upon the Government.

12.

It is further ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tracts Nos. A-148-2 and A-148E, as such tracts are described in the Complaint filed herein, and such tracts, to the extent of the estates described in such Complaint,

are condemned and title thereto is vested in the United States of America, as of January 28, 1975, and all defendants herein and all other persons are forever barred from asserting any claim to such estates.

13.

It is further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the property described above in paragraph 2 were the defendants whose names appear below in paragraph 14, and the right to receive the just compensation for the taking of such property is vested in the parties so named.

14.

It is further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described above in paragraph 8, is approved and the award of just compensation for the taking of the property described above in paragraph 2, as fixed by the parties in such Stipulation, is adopted by the Court, as shown in the following schedule, to-wit:

TRACTS NOS. A-148-2 and A-148E
(Estates taken as described in Paragraph 2)

OWNERS: John L. Boyd and
Mariellen S. Boyd

Award of just compensation		
Pursuant to Stipulation -----	\$1,500.00	\$1,500.00
Deposited as estimated com-		
pensation -----	\$ 590.00	
Disbursed to owners -----		<u>None</u>
Balance due to owners -----		\$1,500.00
Deposit deficiency -----	\$ 910.00	

15.

It is further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for the subject property as shown in paragraph 14, in the total amount

of \$910.00, and such sum shall be placed in the deposit for this civil action.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject property to the owners, as follows:

To John L. Boyd and Mariellen S. Boyd,
jointly, the sum of ----- \$1,500.00.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HUBERT A. MARLOW

HUBERT A. MARLOW
Assistant United States Attorney

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

JERRY RAY JAMES,)
)
Plaintiff,)
)
vs.)
)
DAVE FAULKNER, SHERIFF OF TULSA)
COUNTY, OKLAHOMA,)
)
Defendant.)

No. C 76-8

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FEB 10 1976

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

ORDER

Now on this 3rd day of February, 1976, this cause coming on for hearing before the undersigned Judge. Plaintiff herein being represented by his counsel of record, Thomas G. Hanlon, and the Defendant herein being represented by Marvin Spears, Assistant District Attorney of Tulsa County, Oklahoma. The Court, having heard the evidence and the Plaintiff having confessed to Defendant's response in the above styled and numbered cause, the Court finds:

That the Plaintiff herein, Jerry Ray James, has not exhausted his State remedies in accordance with Title 28, U.S.C.A. 2254.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that said Plaintiff's cause in the above styled and numbered matter is hereby dismissed on motion of said Plaintiff.

A. W. Dale Cook
UNITED STATES DISTRICT JUDGE

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

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

Plaintiffs,)

vs.)

No. 74-C-102)

TIPPERARY LAND AND EXPLORATION)
CORPORATION, a corporation,)
et al.,)

Defendants.)

FILED

FEB 10 1976

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

ORDER OF DISMISSAL

Before the Honorable H. Dale Cook, Judge of the United States District Court for the Northern District of Oklahoma, this matter was presented to the Court upon stipulation of the parties, and the Court thereupon dismisses the above entitled action with prejudice, each party to bear its own costs.

DATED this 10th day of February 1976.

H. Dale Cook
H. DALE COOK
United States District Judge
Northern District of Oklahoma

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

LAWRENCE EDWARD HELM,)
)
 Bankrupt,)
)
 ROSS HUTCHINS, Trustee)
 in Bankruptcy for the)
 Above Named Bankrupt,)
)
 Plaintiff,)
)
 vs.) No. 75-C-519
)
 GENERAL MOTORS ACCEPTANCE)
 CORPORATION,)
)
 Defendant.)

FILED
FEB 10 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

General Motors Acceptance Corporation, the defendant in the above-styled action, has filed an appeal to this Court from the judgment of the Referee entered in this case on October 21, 1975, wherein the Referee concluded that the security interest of General Motors Acceptance Corporation in a 1968 One-Half Ton Pick Up Truck was not perfected and is therefore subordinate to the rights of the plaintiff herein.

The defendant, pursuant to Rule 806 of the Rules of Bankruptcy Procedure, submits the following statement of the issue appealed:

"Whether the Bankruptcy Judge erred in concluding that a xeroxed copy of a duly executed Security Agreement is not sufficient to constitute a financing statement for the reason that 12A O.S. § 9-402(1) requires 'actual' rather than 'reproduced' signatures of the parties."

Exhibits filed herein indicate that a financing statement covering the collateral was filed on July 24, 1974, in the office of the County Clerk of Tulsa County. The financing statement was signed by a representative of General Motors Acceptance Corporation but was not signed by the bankrupt. However, attached to the

financing statement was a photographic reproduction of the duly executed Security Agreement.

Title 12A O.S. 1971 § 9-402(1) provides in pertinent part:

"A financing statement is sufficient if it is signed by the debtor A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties." (emphasis added)

In the case at bar, defendants did file a copy of a properly signed security agreement.

The plaintiff cites 66 AM. JUR. 2d Records and Recording Law, § 128 (1973) which provides:

"The recording of a copy of an instrument instead of the original, which might itself have properly been recorded, is invalid if not authorized by statute, and the record so made is therefore not notice to third parties."

The recording of a copy of the security agreement is specifically authorized by 12A O.S. 1971 § 9-402(1), and the recording is therefore not invalid.

Plaintiff relies on Comment (4) of the Oklahoma Code Comment Section 9-402, which states:

"Only an 'original' instrument may be filed. This means the instrument filed must contain the actual signatures of the parties. There of course may be more than one 'original', the bodies of which are carbon copies, so long as they contain actual signatures."

As noted by defendants, the Oklahoma Code Comment is merely an annotation and carries no official sanction. This particular comment does not have a corresponding section in the official Uniform Commercial Code Comment. Rather, the Uniform Commercial Code Comment 1 provides in language similar to the statute:

"A copy of the security agreement may be filed in place of a separate financing statement, if it is signed by both parties and contains the required information."

As noted in 69 AM. JUR. 2d Secured Transactions § 387 (1973), "A reproduction or photocopy of an original should also be considered a 'signed' copy under most circumstances."

The allowance of the filing of a copy of a signed security agreement in place of a financing statement is in keeping with the purpose of Section 9-402(1). As noted in American Nat'l Bank & Trust Co. v. National Cash Register Co., 473 P.2d 239 (Okla. 1970), "The framers of the Uniform Commercial Code, by adopting the 'notice filing' system, had the purpose to recommend a method of protecting security interests which at the same time would give subsequent potential creditors and other interested persons information and procedures adequate to enable the ascertainment of the facts they needed to know." In view of the broad purposes of the act, the Oklahoma Courts have not given a restrictive construction to the provisions which set forth what constitutes a "sufficient" financing statement. American Nat'l Bank & Trust Co. v. National Cash Register Co., supra. Unquestionably, the security agreement that was filed in the case at bar was adequate to give potential creditors and other interested persons information sufficient to enable the ascertainment of pertinent facts.

In the case at bar the issue is in regard to the adequacy of filing a photographic copy of a signed security agreement pursuant to § 9-402(1). However, a consideration of the purpose of requiring a signature on a financing statement, if utilized to accomplish filing, is illuminating. In 6E Bender's Uniform Commercial Code Service § 9-401 A3, the authors comment on a Referee's holding that a financing statement containing photo-copied signatures of the debtor and secured party was insufficient to satisfy the requirements of 9-402(1).

"The referee held that in the present case the financing statement was insufficient because the photo-copied signatures of the secured party and debtor did not arise to a signing. This would appear to be a needlessly narrow reading of the statute. The primary function of a financing statement is to give notice to sellers and lenders that there is certain property which they must not look to for security, and this notice-giving function does not appear to

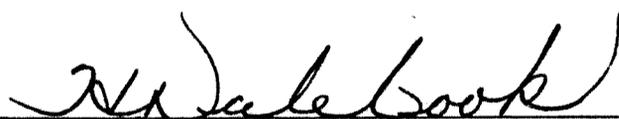
be seriously jeopardized by a looser standard of signing than the referee in the present case will countenance. Granted that it is the debtor's credit rating and ability to buy and borrow that may be at stake. Granted that reasonable precautions should be taken, where possible, to prevent a secured party from fraudulently tampering with the financing statement. But if the secured party is going to tamper with it -- say, by making it appear to cover more of the debtor's property than he actually has an interest in -- the requirement that the debtor manually sign the financing statement does not appear to help. It gives him no additional control over what goes into it. It is the secured party who almost always files the statement, and if he is inclined to fraud, he can do what he wants with the financing statement before he files it. The fact that the statement is manually signed or photographically signed is not going to influence him one way or the other."

In the case at bar, the authenticity of the signatures appearing on the photographic copy of the security agreement is not contested. Plaintiff merely alleges that only an original signature would suffice. However, the statute clearly states that a copy of the security agreement may be filed. Little purpose would be served by requiring the debtor to come in and sign a photographic copy of a security agreement which already bears his signature.

It is therefore the determination of the Court that the filing of the xeroxed copy of the duly executed Security Agreement was sufficient to constitute a financing statement pursuant to 12A O.S. 1971 § 9-402(1).

This case is hereby remanded to the Referee in Bankruptcy for further proceedings in accordance with the determination herein.

It is so Ordered this 10th day of February, 1976.


H. DALE COOK
United States District Judge

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

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FEB 9 1976

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

WALTER R. WINFORD, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 HOMER L. DUNCAN,)
)
 Defendant.)

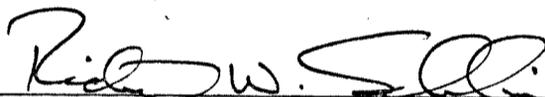
No. 76-C-26

NOTICE OF DISMISSAL

NOTICE OF DISMISSAL OF ACTION

To: Homer L. Duncan, Defendant
RFD 2, Box 159
Chelsea, Oklahoma 74016

Please take notice that there having been no Answer
nor Motion for Summary Judgment filed by defendant, the above-
entitled action is hereby dismissed.

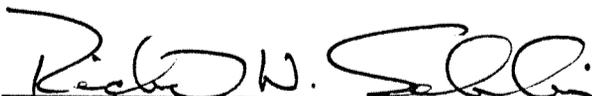


Richard W. Schelin
MARTIN, LOGAN, MOYERS, MARTIN & CONWAY
920 National Bank of Tulsa Building
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of February, 1976,
I mailed a true and correct copy of the foregoing Notice of Dis-
missal of Action, postage prepaid, to the defendant herein, Homer
L. Duncan, RFD 2, Box 159, Chelsea, Oklahoma 74016.



Richard W. Schelin

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

FILED

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

MORRIS MEYER,

Plaintiff,

-vs-

NATIONAL FIDELITY LIFE
INSURANCE COMPANY,

Defendant.

No. 75-C-529

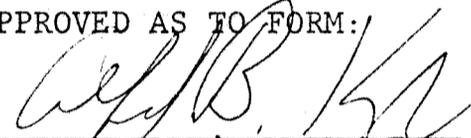
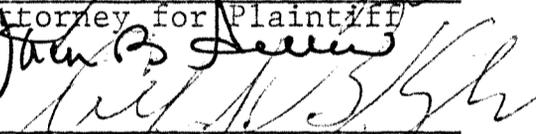
ORDER PERMITTING DISMISSAL
WITHOUT PREJUDICE

This ~~January~~ ^{February 6} ~~6~~, 1976, upon motion of plaintiff for order permitting dismissal without prejudice of the above styled cause of action ^{and complaint} to which defendant has stipulated, it is the order of this court that plaintiff's petition as removed from State Court and the cause of action stated there ^{and complaint are} in ~~is~~ hereby allowed and ordered dismissed without prejudice to future action as permitted by law.



United States Judge
Northern District of Oklahoma

APPROVED AS TO FORM:


Attorney for Plaintiff

Attorney for Defendant

It appearing that the Defendant, Sooner Federal Savings and Loan Association, has duly filed its Disclaimer herein on October 14, 1975; that Defendant, Peoples State Bank, has duly filed its Disclaimer herein on October 15, 1975; and that the Defendants, John W. Horn, if living, or if not, his unknown heirs, assigns, executors and administrator; Colon T. Horn, Beneficial Finance Company of Tulsa, and La Mode Cleaners, 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 Eleven (11), SUBURBAN HILLS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

That the Defendants, John W. Horn and Colon T. Horn, did, on the 5th day of November, 1971, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,200.00 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, John W. Horn and Colon T. Horn, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 11 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$9,742.98 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from February 5, 1975, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, John W. Horn, if living, or if not, his unknown heirs, assigns, executors and administrators; and Colon T. Horn, in rem, for the sum of \$9,742.98 with interest thereon at the rate of 4 1/2 percent per annum from

February 5, 1975, 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, Beneficial Finance Company of Tulsa and La Mode Cleaners.

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, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.


United States District Judge

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney

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

ANNA N. KLENTOS,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)

No. 75-C-482 ✓

FILED

FEB 4 1978

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

O R D E R

Defendant herein, United States of America, has filed a Motion to Dismiss for Want of Jurisdiction, with brief. Plaintiff has filed a brief in response to said motion, to which defendant has filed a reply. Based upon a thorough examination of the briefs and affidavits filed herein and the law applicable thereto, the following determination is made.

Plaintiff, Anna N. Klentos, brings this action against the United States of America for the recovery of income taxes which plaintiff claims were illegally and erroneously assessed and collected. According to the uncontroverted affidavit of Tomas Rhodus filed herein, on or about December 1, 1969, the Internal Revenue Service assessed deficiencies against plaintiff with respect to income taxes due and owing to the United States of America for each of the years 1956 through 1967 inclusive in the total amount of \$35,166.17, such amount being inclusive of penalties and statutory interest. Federal income tax returns were filed by plaintiff on February 17, 1969, for each of the calendar years 1956 through 1967 inclusive. The assessments in issue were satisfied by payments received from plaintiff on December 31, 1969, and August 26, 1970. Claims for refund were received from plaintiff by the Internal Revenue Service with respect to such payments on or about February 5, 1973. Exhibit

"A" to plaintiff's Complaint shows that by a letter dated October 23, 1973, the Director notified plaintiff that her claim could not be allowed. The letter further stated:

"This letter is your legal notice that your claim is disallowed in full.

"If you wish to begin suit or proceedings for the recovery of any taxes, penalties, or other moneys for which this notice of disallowance is issued, the law requires you to do so within 2 years from the mailing date of this letter."

The Complaint herein was filed on October 22, 1975.

Title 26 U.S.C. § 6511 provides in pertinent part:

"(a) Period of limitation on filing claim.-- Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later"

"(b) Limitation on allowance of credits and refunds.--

"(1) Filing of claim within prescribed period.--

No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period."

In addition, Title 26 U.S.C. § 7422(a) provides that no suit shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority until a claim for refund or credit has been duly filed with the Secretary or his delegate.

Defendant contends that this court lacks jurisdiction in this matter since plaintiff's claim for refund with respect to these taxes was not filed with the Internal Revenue Service until on or about February 5, 1973, more than two years after the payment of the taxes and more than three years after filing the tax returns.

In First National Bank of Miami v. United States, 226 F.Supp. 166 (S.D.Fla. 1963), affirmed 341 F.2d 737 (5th Cir. 1965), the sole question before the Court was whether the Court had jurisdiction of the action when the taxpayer's claims for refund were filed more than three years after the filing of gift tax returns and more than two years after the payment of the taxes sought to be recovered. The Court held:

"The statute clearly prescribes the period of limitation and neither this Court nor the taxpayer can enlarge the period of limitation beyond what Congress has prescribed. . . . Therefore, absent the showing of a timely filing of a claim for refund of taxes, this Court must dismiss this suit for refund for lack of jurisdiction."

Similarly, in Thompson v. United States, 209 F.Supp. 530 (E.D.Tex. 1962), reversed on other grounds 332 F.2d 657 (5th Cir. 1964), the Court stated:

"It is now well established that the timely filing by a taxpayer of a claim for refund with the Internal Revenue Service is a statutory prerequisite to recover taxes alleged to have been illegally assessed and collected, and if such a claim is not timely filed, the courts are without jurisdiction to hear and determine such a claim for refund of taxes. United States v. Felt & Tarrant Co., 283 U.S. 269, 51 S.Ct. 376, 75 L.Ed. 1025; Carmack v. Scofield (5th Cir.) 201 F.2d 360; and Snead v. Elmore (5th Cir.) 59 F.2d 312."

See also Ancel v. United States, 398 F.2d 456 (7th Cir. 1968); Bell v. Gray, 191 F.Supp. 328 (D.C.Ky. 1960), affirmed 287 F.2d 410 (6th Cir. 1960); Silverman v. U.S., 172 F.Supp. 308 (D.C.Pa. 1959).

Plaintiff relies on language contained in the Disallowance of Claim notification dated October 23, 1973, which states, as previously quoted, that if plaintiff wishes to begin suit for the recovery of taxes it must be brought within 2 years from the mailing of the letter. Plaintiff therefore contends that defendant should be estopped to assert want of jurisdiction. However, a party to a lawsuit cannot waive a jurisdictional prerequisite. In United States v. Garbutt Oil Co., 302 U.S.

528 (1938), the respondent made timely claim for refund of an additional income tax. While this claim was pending, respondent sought to amend by setting up a further ground for relief. The respondent received notification from the Commissioner concerning the merits of the original claim and the amendment, stating that a refund would not be allowed but that a hearing could be had upon the proposed rejection if requested in writing. Subsequent thereto, a conference was held; but the record did not disclose whether the merits of the amendment were discussed. Thereafter, the Commissioner advised respondent that the claim would be rejected on the merits and that the new contention would be rejected as it was not referred to in the timely claim. The respondent contended in the Supreme Court that although the amendment was not timely, the Commissioner, in considering the merits of the position taken therein, waived any objection which might have been available to him. The Supreme Court, in holding that no officer of the Government has power to waive the statute of limitations, cited Finn v. United States, 123 U.S. 227 (1887) saying: "Such waivers, if allowed, would defeat the only purpose of the statute and impose a liability upon the United States which otherwise would not exist" The Court, therefore, held that the statement filed after the period for filing claims had expired was not a permissible amendment of the original claim presented. "It was a new claim untimely filed and the Commissioner was without power, under the statute, to consider it." Likewise, in the case at bar, the claim was not timely filed and therefore the Director of the Internal Revenue Service Center, Southwestern Region, was without power to consider it.

Plaintiff further alleges that prior to the filing of this claim for refund on or about February 1, 1973, the plaintiff, by and through her accountant, Dick Holmes, repeatedly requested necessary data from defendant pertaining to her claim and necessary to the preparation of a proper claim. Plaintiff alleges

said requests commenced no later than July 18, 1972, which was more than five weeks prior to the expiration of the statutory filing time. Plaintiff states she was unable to obtain the necessary and requested data and was still without response from the defendant at the time her claim was actually filed. Plaintiff therefore claims that defendant "effectively and knowingly" prevented her from filing a timely claim. The following language is found on the face of plaintiff's claim:

"Under date of July 18, 1972 we requested the files in the above cases. Under date of September 20, 1972 we received copies of some of the tax returns that had been prepared by the IRS Agent. We did not receive all of the return copies nor a copy of the Agent's Report. Under date of December 13, 1972 we wrote again requesting a copy of the Agent's report, to this date we have heard nothing."

Defendant has filed affidavits of E. C. Talley and Dale Wagner, agents of the Internal Revenue Service, in response to plaintiff's contention that defendant prevented a timely filing. In considering a Motion to Dismiss, an affidavit which is uncontroverted must be taken as true. Burchett v. Bardahl Oil Co., 470 F.2d 793 (10th Cir. 1972).

The affidavit of Dale Wagner states in pertinent part that when plaintiff executed income tax returns for the years 1956 through 1967, she was simultaneously furnished a copy of each such return by affiant. Further, at that time affiant also furnished her with a schedule of penalties and interest being assessed against her for such years, an accounting spreadsheet setting out the tax calculations and figures which formed the basis for the income tax liability assessed for such years, and an accounting spreadsheet showing the Internal Revenue Service's calculations to arrive at the amount of plaintiff's income for each of such years. Affiant further states that plaintiff was also furnished a copy of affiant revenue agent's report at that time.

Agent E. C. Talley states by affidavit that during the income tax investigation of plaintiff, plaintiff was represented by Cecil Powers, a certified public accountant, and by Tom Klentos, plaintiff's brother and an attorney. Further, that during the course of various interviews and conferences with Mr. Klentos and Mr. Powers, affiant informed both of them of the basis for the Internal Revenue Service's assessment of taxes, penalties, and interest against plaintiff. Affiant states that Mr. Powers participated in the formulation of the income figures which were the basis for the Internal Revenue Service's determination of the amount of income taxes owed by the plaintiff.

Based upon the above, plaintiff's contention that the defendant prevented her from timely filing a claim is found to be groundless.

Plaintiff having failed to timely file a claim pursuant to 26 U.S.C. § 6511(a), defendant's Motion to Dismiss is hereby sustained.

It is so Ordered this 4th day of February, 1976.


H. DALE COOK
United States District Judge

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

ALAN BAETJER RUSSO,)
)
 Plaintiff,)
)
 vs.)
)
 LYNN L. JONES, ROBERT A.)
 CHANCE, J. L. PARSONS, JIM)
 SHERL, SAM KEIRSEY and THE)
 CITY OF TULSA, Tulsa,)
 Oklahoma,)
)
 Defendants.)

No. 75-C-394

FILED

OCT 24 - 1976

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

O R D E R

On October 10, 1975, defendants herein, Robert A. Chance, J. L. Parsons, Jim Sherl, and Sam Keirsey filed a Motion to Dismiss for Failure to State a Claim Subject to Relief. On October 21, 1975, a Motion to Dismiss and a Motion to Strike were filed on behalf of the above-named defendants as well as on behalf of the defendant, City of Tulsa.

In the motion of October 10, 1975, defendants contend that the action does not state a claim pursuant to 42 U.S.C. § 1981. On October 17, 1975, plaintiff filed his Amended Complaint in which he limited his cause of action to a 42 U.S.C. § 1983 violation; and therefore this issue is moot.

Defendants secondly contend that the cause of action against defendants Jones, Chance and Parsons should be dismissed for the reason that the Complaint fails to allege or describe any action on the part of these defendants which was wrongful or deprived the plaintiff of any rights afforded him under the protection of Section 1983. Plaintiff responds by stating that, while the Complaint does not allege specific acts of "misfeasance" by the defendants, these defendants could be liable for their failure to act to prevent the alleged use of an unreasonable

degree of force. In Byrd v. Brishke, 466 F.2d 6 (7th Cir. 1972), relied on by plaintiff, the Court recognized liability for a policeman's failure to act when excessive force was used in his presence, stating:

"We believe it is clear that one who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge."

However, in the case at bar, plaintiff makes no statement in regard to the relative location of defendants Jones, Chance and Parsons to the scene of the alleged use of excessive force by defendants Sherl and Keirse. It is well established that general conclusionary allegations unsupported by facts are insufficient to constitute a cause of action under Section 1983. Hoffman v. Halden, 268 F.2d 280 (9th Cir. 1959). Furthermore, courts will disregard as mere conclusions loose, general and factually unsupported characterizations of the complained acts of a defendant as malicious, wrongful, or done for the purpose of depriving the plaintiff of constitutional rights. Morgan v. Sylvester, 125 F.Supp. 380 (D.C.N.Y. 1954), affirmed 220 F.2d 758 (2nd Cir. 1955). In Black v. Brown, 355 F.Supp. 925 (D.C.Ill. 1973), the Court dismissed an action brought under Section 1983 where the plaintiff failed to allege any overt acts of involvement by the defendant to substantiate his claim for money damages. The Court stated: "Personal involvement must be alleged to state a claim for relief." Since it is not alleged in plaintiff's Complaint that Parsons, Jones and Chance were even present at the time of the alleged violation of plaintiff's constitutional rights, no cause of action for misfeasance or nonfeasance has been stated or supported by factual allegations in regard to these defendants. Based upon the above, defendants' Motion to Dismiss in regard to defendants Parsons, Jones and Chance is sustained.

Defendants' final contention in the Motion of October 10, 1975, is that since a reasonable degree of force may be exercised to effect an arrest without incurring liability under Section 1983, plaintiff's failure to allege on the fact of the Complaint that his arrest was unlawful or that unreasonable force was used is a defect in pleading which is a proper basis for dismissal of the action. Determination of whether arresting officers acted in good faith, and in this case whether unreasonable force was used, should be determined on development of the facts rather than on a preliminary motion to dismiss. Ammlung v. City of Chester, 355 F.Supp. 1300 (E.D.Pa. 1973).

For the above reasons, defendants' Motion to Dismiss filed October 10, 1975, is denied as to defendants Sherl and Keirse and sustained as to defendants Parsons, Jones and Chance.

In regard to defendants' Motion to Dismiss filed October 12, 1975, movants first contend that the City of Tulsa is not a proper party defendant because it is not a "person" within the purview of 42 U.S.C. § 1983. It is well settled that a city is not a "person" under 42 U.S.C. § 1983 where equitable relief or damages are sought. City of Kenosha v. Bruno, 412 U.S. 507 93 S.Ct. 2222, 37 L.Ed. 2d 109 (1973); Moore v. County of Alameda, 411 U.S. 693, 93 S.Ct. 1785, 36 L.Ed.2d 596, (1973). Therefore, the Motion to Dismiss in regard to dismissal of the City of Tulsa is hereby sustained.

Defendants secondly contend in their Motion to Dismiss, that alleged damages of emotional and mental anguish are not actionable under Section 1983, and that as a result, plaintiff has failed to plead a cause of action under either the Fourteenth Amendment or 42 U.S.C. 1983. In the Complaint, plaintiff alleges that the defendants Sherl and Keirsey:

"without provocation, began to 'beat up' plaintiff by punching, choking and poking him. More specifically said defendants pulled some of plaintiff's hair out, pulled both of his ears so as to cause bleeding, punched plaintiff in the face

leaving a cut on his nose and punched plaintiff in the stomach and groin. This beating was serious enough that plaintiff had to visit the emergency room at St. Francis Hospital on September 14, 1974."

Under a subheading entitled "Damages" in the Complaint, plaintiff states:

"The action taken by the defendants resulted in loss of liberty and physical injury to plaintiff. As a direct result of defendants' wrongful actions, plaintiff has suffered severe emotional and mental anguish; such damages being in the amount of \$50,000.00. In addition plaintiff asks that because defendants acted wilfully and in gross disregard of plaintiff's rights and were at all times acting in their official capacities, under color of law and under the auspices of their employer, defendant City of Tulsa, that all defendants be made to pay punitive damages in the amount of \$100,000.00."

Defendants rely on the following language in Robinson v. McCorkle, 462 F.2d 111 (3rd Cir. 1972):

"Counts three and four were properly dismissed for failure to establish a claim for relief. Philip Robinson's parents' claim of physical and emotional distress are not actionable under §§ 1983 or 1985(3)."

The Court in Robinson does not state why the parents' claim is not actionable under § 1983 and this Court cannot read into the quoted language a holding that the sole reason for dismissal was because the damages were based on emotional distress. If the language were interpreted as proposed by defendants, one would have to assume the court also held that physical distress is not actionable under § 1983 either.

Regardless of the interpretation of the holding in Robinson, in the case at bar plaintiff has stated facts which, if true, constitute a violation of constitutionally guaranteed rights. As stated in Tracy v. Robbins, 40 F.R.D. 108 (D.C.S.C. 1966):

"In a claim for the violation of constitutionally guaranteed rights damages are recoverable, nominal damages may be presumed, and such may in appropriate circumstances support an award of exemplary damages."

As a matter of Federal common law it is not necessary to allege

nominal damages and nominal damages are proved by proof of deprivation of a right to which a plaintiff is entitled. Basista v. Weir, 340 F.2d 74 (3rd Cir. 1965). In addition, Federal courts have no authority to dismiss Federal civil rights cases merely because the damages seem de minimus. Chubbs v. City of New York, 324 F.Supp. 1183 (E.D.N.Y. 1971).

In Wilson v. Prasse, 325 F.Supp. 9 (1971), affirmed 463 F.2d 109 (1972), the court found the following instruction acceptable in regard to possible damages sustained by the plaintiff in a Section 1983 action. The court instructed that there were three kinds of damages to which plaintiff might be entitled:

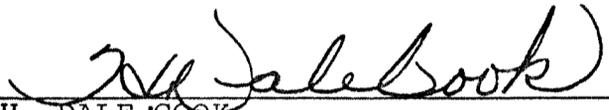
"First, there were actual damages covering expenses for which plaintiff was out of pocket . . . and also for humiliation, embarrassment and mental suffering. The jury was then told that if it found no actual damages but found that plaintiff's rights had been invaded by defendants without justification, then they would find for the plaintiff nominal damages. These damages would be awarded for the purpose of vindicating plaintiff's rights where no actual damages had been sustained. . . . The jury was further instructed with respect to punitive damages. . . . "

Plaintiff having stated sufficient facts which, if true, would constitute a violation of his constitutional rights, defendants' Motion to Dismiss for the reason that the damages alleged are not recoverable is hereby denied.

Defendants in their Motion to Strike seek to strike that portion of the Prayer in the Complaint in regard to attorney's fees. Movants recognize "that it is within the inherent power of this Honorable Court to award the recovery of attorney fees whenever the Court in its discretion, feels that the circumstances surrounding the case warrant such recovery." The basic question in regard to the awarding of attorney's fees in a Section 1983 action is whether the interests of justice require an award. Tatum v. Morton, 386 F.Supp. 1308 (D.D.C. 1974). Only after ascertaining the actual facts surrounding an action can the

Court exercise its discretion in accordance with the interests of justice. At this time, therefore, defendants' Motion to Strike is overruled.

It is so Ordered this 4th day of February, 1976.


H. DALE COOK
United States District Judge

FILED

FEB 3 1976

Jack C. Silver, Clerk

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	CIVIL ACTION NO. 75-C-392
)	
)	
LOWELL EDWARD HARRIS, ERMA)	
DELOIS HARRIS, THURMAN L.)	
ROWE, BOARD OF COUNTY)	
COMMISSIONERS, Tulsa County,)	
and COUNTY TREASURER, Tulsa)	
County,)	
)	
Defendants.)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 3rd
~~January~~ ^{February} 1976, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by Gary J. Summerfield, Assistant District Attorney; and the Defendants, Lowell Edward Harris, Erma Delois Harris, and Thurman L. Rowe, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Lowell Edward Harris and Erma Delois Harris, were served by publication, as appears from the Proof of Publication filed herein; that Defendant, Thurman L. Rowe, was served with Summons and Complaint on September 5, 1975; and that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, were served with Summons and Complaint on September 2, 1975, all as appears from the United States Marshals Service herein.

It appearing that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on September 12, 1975, and that Defendants, Lowell Edward Harris, Erma Delois Harris, and Thurman L. Rowe, have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Twenty-four (24), Block Five (5),
SUBURBAN ACRES SECOND ADDITION to the
City of Tulsa, Tulsa County, Oklahoma,
according to the recorded plat thereof.

THAT the Defendants, Lowell Edward Harris and Erma Delois Harris, did, on the 26th day of October, 1971, execute and deliver to the North Tulsa Savings & Loan Association, their mortgage and mortgage note in the sum of \$11,950.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated March 13, 1972, the North Tulsa Savings & Loan Association assigned said Note and Mortgage to the Mercury Mortgage Co., Inc.; that by Assignment dated July 25, 1972, the Mercury Mortgage Co., Inc., assigned said Note and Mortgage to the Federal National Mortgage Association; and that by Assignment dated January 25, 1973, the Federal National Mortgage Association assigned said Note and Mortgage to the Secretary of Housing and Urban Development, Washington, D.C.

The Court further finds that Defendants, Lowell Edward Harris and Erma Delois Harris, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$11,848.56 as unpaid principal with interest thereon at the rate of 7 percent per annum from March 1, 1973, until paid, plus the cost of this action accrued and accruing.

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

Lowell Edward Harris and Erma Delois Harris, the sum of \$200.90 plus interest according to law for ad valorem taxes for the year(s) 1975 and that Tulsa County should have judgment, in rem, for said amount, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Lowell Edward Harris and Erma Delois Harris, in rem, for the sum of \$11,848.56 with interest thereon at the rate of 7 per cent per annum from March 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Lowell Edward Harris and Erma Delois Harris, for the sum of \$200.90 as of the date of this judgment plus interest thereafter according to law for ad valorem taxes, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

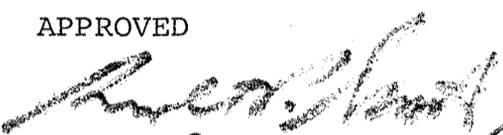
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, Thurman L. Rowe.

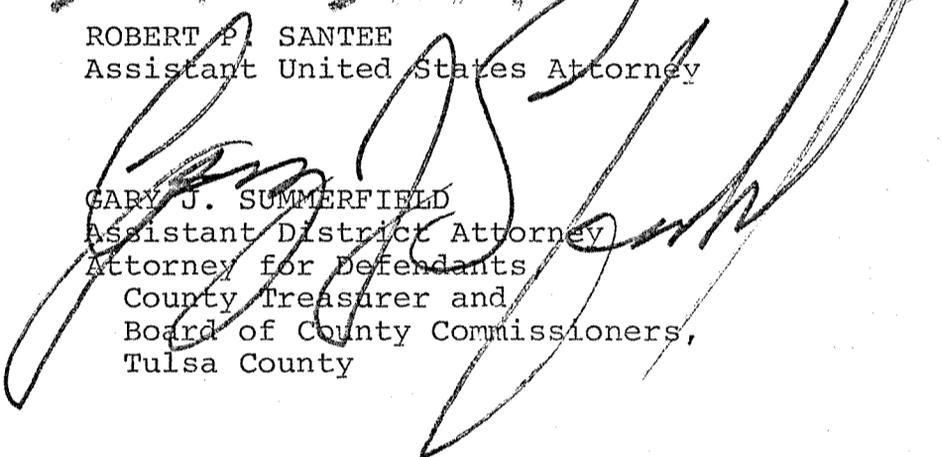
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property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

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

W. Allen E. Barrow
United States District Judge

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney


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

FILED

FEB 3 1976

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

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
 vs.)
)
)
 MARY L. JOHNSON a/k/a MARY LEE)
 JOHNSON, PAUL MARTIN JOHNSON,)
 RICHARD CLEVERDON, Attorney-at-)
 Law, COUNTY TREASURER, Tulsa)
 County, and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
)
) Defendants.)

CIVIL ACTION NO. 75-C-380

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 3rd
February,
day of ~~January~~ 1976, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; the Defendants,
County Treasurer, Tulsa County, and Board of County Commissioners,
Tulsa County, appearing by Gary J. Summerfield, Assistant
District Attorney; and the Defendants, Mary L. Johnson a/k/a
Mary Lee Johnson, Paul Martin Johnson, and Richard Cleverdon,
Attorney-at-Law, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, County Treasurer, Tulsa
County, and Board of County Commissioners, Tulsa County, were
served with Summons, Complaint, and Amendment to Complaint on
September 5, 1975; that Defendant, Richard Cleverdon, Attorney-
at-Law, was served with Summons, Complaint, and Amendment to
Complaint on August 20, 1975, and September 15, 1975, respectively;
that Defendant, Mary L. Johnson a/k/a Mary Lee Johnson, was
served with Summons, Complaint, and Amendment to Complaint on
September 17, 1975, all as appears from the U.S. Marshals Service
herein; and that Defendant, Paul Martin Johnson, was served by
publication, as appears from the Proof of Publication filed herein.

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

duly filed their Answers herein on September 18, 1975, and that Defendants, Mary L. Johnson a/k/a Mary Lee Johnson, Paul Martin Johnson, and Richard Cleverdon, Attorney-at-Law, have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Thirteen (13), Block Three (3), SUBURBAN ACRES FOURTH ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendant, Mary L. Johnson, did, on the 3rd day of September, 1974, execute and deliver to the Administrator of Veterans Affairs, her mortgage and mortgage note in the sum of \$9,500.00 with 9 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Mary L. Johnson, made default under the terms of the aforesaid mortgage note by reason of her failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the sum of \$9,575.89 as unpaid principal with interest thereon at the rate of 9 percent per annum from December 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendant, Mary L. Johnson, the sum of \$ -0- plus interest according to law for personal property taxes for the year(s) _____ and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Mary L. Johnson, in personam, for the sum of \$9,575.89 with interest thereon at the rate of 9 percent per annum from December 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendant, Mary L. Johnson, for the sum of \$ -0- as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Paul Martin Johnson and Richard Cleverdon, Attorney-at-Law.

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

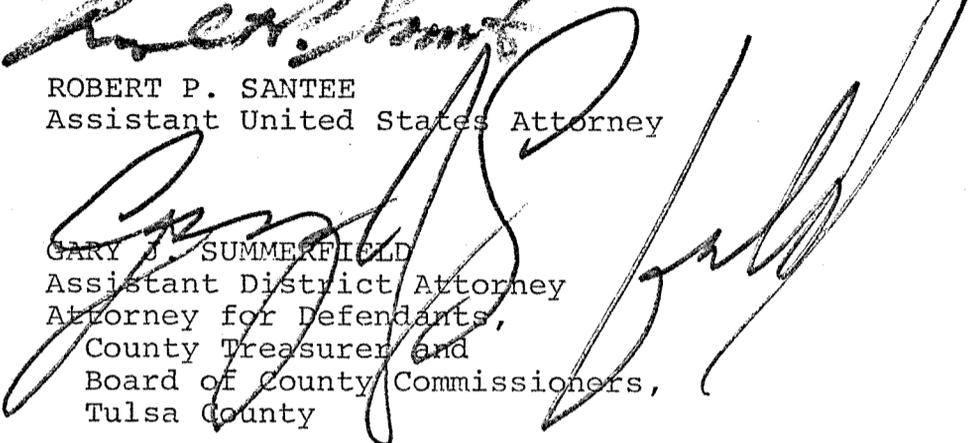
the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

151 Allen E. Barrow
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

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

CIMARRON MANUFACTURING CO.,)
a corporation,)

Plaintiff,)

vs.)

No. 75-C-574)

UTICA NATIONAL BANK & TRUST)
COMPANY, a National Banking)
Association,)

Defendant.)

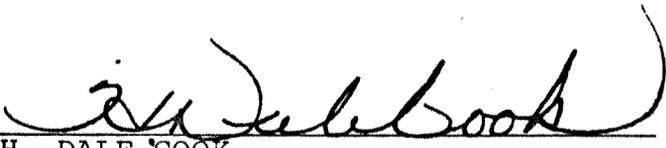
FILED
FEB 3 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Defendant herein, Utica National Bank & Trust Company, has filed a Motion to Dismiss pursuant to Rule 12(b), Federal Rules of Civil Procedure. Defendant states there is no diversity of citizenship between the parties and no allegation of Federal Question Jurisdiction. Plaintiff responds to said Motion by acknowledging that this Court lacks jurisdiction for the reason that there is no diversity of citizenship.

Therefore, defendant's Motion to Dismiss is hereby sustained.

It is so Ordered this 3rd day of February, 1976.


H. DALE COOK
United States District Judge

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

N. J. and K. L. DIEFFENBACH,)
)
 Plaintiffs,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)

No. 73-C-250 ✓

FILED

FEB 3 1976 *mm*

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

ORDER DENYING MOTION FOR NEW TRIAL

This cause comes before the Court upon plaintiffs' Motion for New Trial. The Court has very carefully considered the Motion, and has reviewed the file and the evidence heretofore introduced in this case and concludes that plaintiff's Motion for New Trial should be denied, and

IT IS SO ORDERED.

Dated this 7th day of February, 1976.

Arthur Bohannon
UNITED STATES DISTRICT JUDGE

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

J. SCOTT GASSAWAY and ANCHOR
PAD WEST, Inc., a California
corporation,

Plaintiff,

-vs-

APC, Inc., an Oklahoma corpora-
tion, STANLEY W. CEBUHAR, WILLIAM
J. O'CONNER, and C. RICHARD DAWES,
individually and doing business
as ANCHOR PAD EAST, and ANCHOR DYNE
CORPORATION,

Defendants.

FILED

FEB 2 1976

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

NO. 75-C-280

STIPULATION OF DISMISSAL

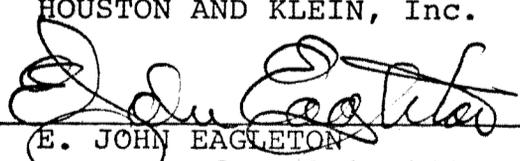
It is hereby stipulated that the complaint in the above
entitled cause be dismissed as to defendants, C. Richard Dawes
and Anchor Dyne Corporation.

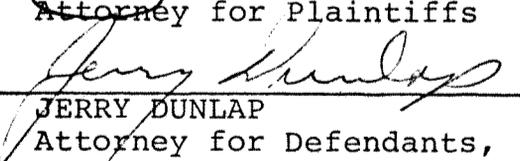
It is further stipulated and agreed that this stipulation
for dismissal applies only to C. Richard Dawes and Anchor Dyne
Corporation, and that plaintiffs expressly reserve the right to
proceed against remaining defendants, APC, Inc., an Oklahoma
corporation, Stanley W. Cebuhar and William J. O'Conner on the
causes of action alleged in the complaint.

DATED This 16 day of November 1975.

HOUSTON AND KLEIN, Inc.

BY:


E. JOHN EAGLETON
Attorney for Plaintiffs


JERRY DUNLAP

Attorney for Defendants,
APC, Inc., Stanley W. Cebuhar,
William J. O'Conner, C. Richard
Dawes and Anchor Dyne Corporation