

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

EUGENE LEONARD CHAPMAN,)
)
) Petitioner,)
vs.)
))
))
STATE OF OKLAHOMA, et al.,)
) Respondents.)

NO.

76-C-27-^B ✓
FILED

JUN 30 1976

Jack C. Silver, Clerk

U.S. DISTRICT COURT *Sh*

O R D E R

The Court has for consideration a pro se, in forma pauperis petition filed by Eugene Leonard Chapman, a prisoner in the Oklahoma State Penitentiary, McAlester, Oklahoma, pursuant to conviction and sentence in 1973 in the District Court of Washington County, State of Oklahoma, in case No. CRF-72-354, and revocation on December 8, 1975, of parole granted December 8, 1975, on said sentence. Petitioner asserts that he files his petition pursuant to "Title 12 § 1331 Et Seq." However, he seeks immediate release from prison for alleged unconstitutional conduct of the officials of the Oklahoma State Penitentiary. Therefore, the Court treats the pleading as a petition for writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 et seq.

This cause was filed in the United States District Court for the Eastern District of Oklahoma and erroneously was transferred to this District pursuant to 28 U.S.C. § 2241(d) by Order of the Honorable Joseph W. Morris. The Petitioner does not in any way challenge herein his original conviction and sentence in Washington County, Oklahoma, which would have supported the transfer. Rather, petitioner states as the grounds for his petition that he is deprived of his rights guaranteed by the Constitution of the United States against double jeopardy and to due process of law because he was not given credit toward service of his sentence for the time he was free on parole when his parole was revoked. This claim is a matter regarding the prison authorities and the board of parole and should properly remain in the Eastern District of Oklahoma. Nevertheless, this Court does have jurisdiction, and being fully advised in the premises after review of the petition and response finds that petitioner has exhausted his State remedies.

It is the law of the State of Oklahoma that if a parolee breaches the conditions of his parole thereby causing a revocation of his parole, all time served on parole is forfeited. Shelton v. Page, Okl. Cr., 430

P.2d 13 (1967). Interpretation of a State Statute by the highest Court of the State will generally be followed by the Federal Court unless the interpretation is inconsistent with the fundamental principles of liberty and justice. Goldsmith v. Cheney, 447 F.2d 624 (10th Cir. 1971). It is also the law regarding a parolee from a Federal sentence that when the prisoner violates conditions of his parole and parole is revoked, the time he was on parole does not diminish the time he was sentenced to serve. Looney v. Lenz, 217 F.2d 841 (10th Cir. 1954) cert. denied 349 U. S. 965 (1955). The petition before the Court is clearly without merit and should be denied.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Eugene Leonard Chapman be and it is hereby denied and the case is dismissed.

Dated this 30th day of June, 1976, at Tulsa, Oklahoma.



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

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

BILLY RAY HARDIN,)
)
 vs.) Petitioner,)
)
 RICHARD CRISP, Warden, et al.,)
) Respondents.)

NO. F75-C-542-^{B ✓}

JUN 30 1976

O R D E R

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

The Court has for consideration a pro se, in forma pauperis petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Billy Ray Hardin. He is a State prisoner presently confined in the Oklahoma State Penitentiary by virtue of the judgment and sentence rendered in the District Court of Tulsa County, Oklahoma, in Case No. CRF-74-607, wherein, after a plea of not guilty to the charge of murder in the first degree, he was tried by a jury and found guilty of manslaughter in the first degree. On the 24th day of May, 1974, he was sentenced to a term of 98 years in the custody of the State Department of Corrections of the State of Oklahoma.

A direct appeal was perfected to the Court of Criminal Appeals of the State of Oklahoma and on September 22, 1975, the judgment and sentence of the District Court of Tulsa County, Oklahoma, was affirmed. Hardin v. State, Okl. Cr., 540 P.2d 1204 (1975). Petitioner's State remedies have been exhausted.

Petitioner demands his release from custody and as grounds therefor alleges:

- 1) The trial Court erred by failing to sustain the petitioner's demurrer to the evidence on murder in the first degree;
- 2) the trial Court erred by instructing the jury on murder in the first degree; and
- 3) petitioner was prejudiced by comments made by the prosecuting attorney.

The Court being fully advised in the premises, having carefully reviewed the petition, response, and transcripts of the State proceedings, finds that the allegations of the petitioner are without merit and his petition should be denied.

The Supreme Court of the State of Oklahoma in Hardin v. State, supra. at 1207 stated:

PK

"We do not reach the question of whether the defendant, convicted of the lower degree of the offense, was prejudiced by the giving of an instruction on the higher degree because we find that the giving of the instruction on Murder in the First Degree was not error. There was evidence which, if believed, tended to show that defendant's homicidal act was done without authority of law and with a premeditated intent to kill during the commission of an armed robbery. Upon this record whether the defendant was guilty of Murder in the First Degree under 21 O.S. 1973 Supp. § 701.1, paragraph 2, was for the consideration of the jury."

Alleged insufficiency of evidence is not reviewable by habeas corpus in Federal Courts. Nor are alleged improper instructions unless there is a clear showing that the errors complained of were gross or the trial fundamentally unfair. Where these alleged violations have been presented to the Oklahoma Court of Criminal Appeals and found to be without merit, in which this Court concurs, it is not incumbent on the Federal District Court to make additional findings on these issues. See, Young v. State of Alabama, 443 F.2d 854 (5th Cir. 1971) cert. denied 405 U. S. 976 (1972).

Habeas corpus is not available to set aside a conviction on the basis of erroneous jury instructions unless the error has such an effect upon the trial as to render it so fundamentally unfair that it constitutes the denial of a fair trial in the constitutional sense. Linebarger v. State of Oklahoma, 404 F.2d 1092 (10th Cir. 1968) cert. denied 394 U. S. 938 (1969). This Court finds no such error in the proceedings under consideration.

Reversal of conviction due to extravagant jury argument by the prosecutor is proper only if there is prejudice or if the case is otherwise so weak that assumption of no prejudice is unwarranted. Bryant v. Caldwell, 484 F.2d 65 (5th Cir. 1973) rehearing denied 486 F.2d 1403, cert. denied 415 U. S. 981 (1974). The trial transcript further discloses that no objections were made to the argument by petitioner's counsel. Consequently, the probability that petitioner was prejudiced is slight, and the ends of justice would not be served by reversal. See, Donnelly v. DeChristoforo, 416 U. S. 637 (1974). In the instant case, the evidence against petitioner was substantial and the prosecutor's remarks were well within permissible limits.

The review of the State record in this case conclusively shows on the issues raised to this Court that the State Judgment is supported by both law and fact and that petitioner is not entitled to relief. There-

fore, there is no necessity for this Court to hold an evidentiary hearing. Ramirez v. Rodriguez, 467 F.2d 822 (10th Cir. 1972) cert. denied 410 U. S. 987; Maxwell v. Turner, 411 F.2d 805 (10th Cir. 1969).

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Billy Ray Hardin be and it is hereby denied and the case is dismissed.

Dated this 30th day of June, 1976, at Tulsa, Oklahoma.

Alan E. Benson
CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

he may seek relief by way of mandamus pursuant to 12 U.S.C. § 1451 et seq., to the Oklahoma Court of Criminal Appeals. Thereafter, if he has obtained no relief, a petition to this Court would be appropriate, but he may not circumvent or bypass adequate and available State procedures. No principle in the realm of Federal habeas corpus is better settled than that State remedies must be exhausted.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of George M. Hallaway be and it is hereby denied, without prejudice, for failure to exhaust adequate and available remedies in the State of Oklahoma, and the case is dismissed.

Dated this 28th day of June, 1976, at Tulsa, Oklahoma.



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

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

MARION ODELL MORROW,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

NO. 76-C-65

FILED

JUN 28 1976

Jack C. Silver, Clerk

O R D E R

The Court has for consideration a motion pursuant to 28 U.S.C. § 2255 filed pro se, in forma pauperis by Marion Odell Morrow, a prisoner confined in the United States Penitentiary, Leavenworth, Kansas. Petitioner is incarcerated pursuant to convictions of this Court upon his pleas of guilty to the charges of interstate transportation of a stolen automobile in two cases, specifically No. 74-CR-94 and No. 74-CR-98. He was sentenced September 5, 1974, to the maximum period of 5 years in each case for study and report to the Court within 90 days pursuant to 18 U.S.C. § 4208(b). Following receipt and review of the requested report, definitive sentences were imposed November 19, 1974, and in each case petitioner was sentenced to imprisonment for a period of 5 years, eligible for parole at such time as the Board of Parole should determine as provided in 18 U.S.C. § 4208(a)(2), and the sentence in case No. 74-CR-98 was made to run concurrently with the sentence in case No. 74-CR-94.

In the present motion, petitioner does not in any way challenge the validity of his plea, conviction or sentence in this Court. Rather, he challenges the parole commission's application of its guidelines to his case, and he claims that as a result of their application of the guidelines he will have to serve over one-third of his sentence before he is reconsidered for parole which defeats the § 4208(a)(2) sentence of this Court. His motion should be denied. It is well settled that eligibility for parole is wholly within the discretion of the Board of Parole.

Walker v. Taylor, 338 F.2d 945 (10th Cir. 1964); Sexton v. Wise, 494 F.2d 1176 (5th Cir. 1974).

Further, petitioner's challenge of the parole commission's application of its guidelines to his case is an administrative responsibility unrelated to the sentencing process. That issue should be presented by way of habeas corpus, or possibly mandamus, to the United States District

Court having jurisdiction over the place of his incarceration, if his administrative remedies have been fully exhausted.

IT IS, THEREFORE, ORDERED that the motion herein of Marion Odell Morrow be, and it is hereby, overruled, without prejudice to his presenting his challenge of the parole commission's application of its guidelines to his case in the proper forum in Kansas if necessary after he has exhausted his administrative remedies, and the case before this Court is dismissed.

Dated this 28th day of June, 1976, at Tulsa, Oklahoma.



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

FILED

JUN 28 1976

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

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

DAVID EUGENE EVANS,)	
)	
vs.)	NO. 75-C-531
)	
STATE OF OKLAHOMA, et al.,)	
)	
)	Respondents.

O R D E R

The Court has for consideration the pro se, in forma pauperis petition pursuant to 28 U.S.C. § 2254 of David Eugene Evans. He is a prisoner confined in the Oklahoma State Penitentiary by virtue of the judgment and sentence rendered in Case No. CRF-74-719 in the District Court of Tulsa County, Oklahoma. After a plea of not guilty to the charge of robbery by fear after former conviction of a felony, petitioner was tried by a jury and upon a finding of guilty he was, on the 6th day of June, 1974, sentenced to a term of 85 years in the custody of the State Department of Corrections of the State of Oklahoma. A direct appeal of the judgment and sentence was perfected to the Court of Criminal Appeals of the State of Oklahoma and on the 20th day of August, 1975, the judgment and sentence was affirmed. Evans v. State, Okl. Cr., 539 P.2d 744 (1975). The file reflects that petitioner has exhausted those remedies available to him in the Courts of the State of Oklahoma.

Petitioner demands his release from custody and as grounds therefor alleges:

- 1) The court erred in refusing to quash his in-court identification;
- 2) Error was committed by prejudicial comments made by the prosecutor during his closing argument;
- 3) Error was committed by the court in failing to submit requested instructions concerning in-court identification;
- 4) The court erred in allowing improper and prejudicial former convictions to be admitted during second stage of proceedings; and
- 5) The cumulative effect of all the above errors considered as a whole deprived petitioner of a fair and impartial trial.

Having reviewed the petition and response thereto, and being fully advised in the premises, the Court finds:

Petitioner's first allegation is without merit. The transcript of the trial proceedings of petitioner's preliminary hearing discloses that the state witness, Dale Edward Roberts, identified petitioner as the per-

son who committed the crime. (Tr. p. 4-5) The state witness, Mrs. Ginger Lamer, likewise identified petitioner as the person who committed said crime. (Tr. p. 21-22) The identification by both of the aforementioned witnesses was based on their observation of the petitioner at the time of the commission of the crime charged. The same witnesses identified petitioner as the person who committed the crime during the trial in the District Court. Tr. pp. 11-12, and 37-38) It is not necessary to inquire into the propriety of lineups where the in-court identification of petitioner is based upon origins independent of lineup. Thornton v. Beto, 470 F.2d 657 (5th Cir. 1972) cert. denied sub. nom. Thornton v. Estelle, 411 U. S. 920 (1973). Even if it be assumed that there was a constitutionally defective pre-trial confrontation, there was clear and convincing evidence in the trial record to show that the in-court identification had an independent source. United States v. Wade, 388 U. S. 218 (1967).

Petitioner's second allegation is without merit. Reversal of conviction due to extravagant jury argument by prosecutor is proper only if there is prejudice or if case is otherwise so weak that an assumption of no prejudice is unwarranted. Bryant v. Caldwell, 484 F.2d 65 (5th Cir. 1973), rehearing denied 486 F.2d 1403, cert. denied 415 U. S. 981 (1974). In petitioner's case, the evidence against petitioner was substantial and the prosecutor's remarks were well within permissible limits. Consequently, the probability that petitioner was prejudiced is slight, and the ends of justice would not be served by a reversal.

Petitioner's third allegation is without merit. Instructions must be considered as a whole and will be sufficient if, when so considered, they fairly and correctly state the law applicable to the case. Barber v. State, Okl. Cr., 388 P.2d 320 (1963). In the instant case it is apparent that the trial Court sufficiently and adequately instructed the jury concerning the burden of proof and the means and ability to identify the perpetrator of the alleged crime. It cannot, therefore, be said that the trial Court abused its discretion in failing to submit petitioner's requested instructions. Even if the trial Court's failure to give petitioner's requested instruction were to be considered error, habeas corpus is not available to set aside a conviction on the basis of erroneous jury

instructions unless the error had such an effect on the trial as to render it so fundamentally unfair that it constituted a denial of a fair trial in a constitutional sense. Linebarger v. State, 404 F.2d 1092 (10th Cir. 1968) cert. denied 394 U. S. 938 (1969); Lorraine v. United States, 444 F.2d 1 (10th Cir. 1971). Habeas corpus is not a substitute for an appeal and matters involving trial error may not be reviewed collaterally. Chavez v. Baker, 399 F.2d 943 (10th Cir. 1968) cert. denied 394 U. S. 950 (1968). A petitioner is not entitled to an error free trial and habeas corpus proceedings are not to be used as a substitute for appeal. Bledsoe v. Nelson, 318 F.Supp. 114 (D.C.Cal. 1969) affirmed 432 F.2d 923 (9th Cir. 1970); Rhay v. Browder, 342 F.2d 345 (9th Cir. 1965).

Petitioner's fourth allegation is without merit. This allegation was answered by the Supreme Court of the State of Oklahoma in Dean v. Crisp, Okl. Cr., 536 P.2d 961 (1975). In Dean, the Court in addressing itself to the question of necessity of certifying a minor as an adult before trial stated:

"From 1941 until April 4, 1972, the effective date of Enrolled House Bill Number 1705 which amended 10 O.S. 1971, §1101 to define 'child' to mean any person under the age of eighteen, there was an unconstitutional and ineffective statutory definition of 'delinquent child'. During that period, the effective statute was that one which was last constitutional which was the statute of 1931 in which 'delinquent child' was defined as a child under the age of sixteen who violates a law." [See Compiled Statutes of Oklahoma, 1921, Chapter 14, Article 4, § 1729]

The Court, in Evans v. State, supra at p. 748, after quoting from Dean, supra., stated:

"We, therefore, held that from 1941 to 1972 there was a valid statute defining the 'delinquent child' as one under the age of sixteen and it was, therefore, not necessary during that interim to certify a seventeen year old minor as an adult to stand trial. The judgment and sentence complained of was therefore not void and it was not error for the trial court to have admitted same into evidence."

The record clearly shows that the Oklahoma Court of Criminal Appeals for the State of Oklahoma has fully and adequately considered petitioner's Federal claim. No further evidentiary hearing is necessary. Dehaemers v. State of Minnesota, 456 F.2d 1291 (8th Cir. 1972).

Petitioner's final allegation is without merit. In this allegation, petitioner claims that the cumulative errors as asserted in his allegations 1, 2, 3 and 4, when considered as a whole, deprived him of his con-

stitutional and statutory right to a fair and impartial trial and denied him due process in violation of the Fourteenth Amendment to the Constitution of the United States of America. It must follow that since the prior allegations have been found to be without merit, that the same finding must apply here. Mere conclusions that the trial Court committed prejudicial error, without any facts to support it, does not provide basis for habeas corpus relief. Smith v. Haskins, 421 F.2d 1297 (6th Cir. 1970).

The review of the State record in this case conclusively shows on the issues raised to this Court that the State Judgment is supported by both law and fact and that petitioner is not entitled to relief. Therefore, there is no necessity for this Court to hold an evidentiary hearing. Ramirez v. Rodriguez, 467 F.2d 822 (10th Cir. 1972) cert. denied 410 U. S. 987 (1972); Maxwell v. Turner, 411 F.2d 805 (10th Cir. 1969).

IT IS, THEREFORE, ORDERED that the petition herein of David Eugene Evans be and it is hereby denied and the case is dismissed.

Dated this 28th day of June, 1976, at Tulsa, Oklahoma.


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

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

NANCY FRANCES MIXON,)
)
) Petitioner,)
vs.)
)
) UNITED STATES OF AMERICA,)
)
) Respondent.)

NO. 76-C-173

FILED

JUN 28 1976

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

O R D E R

The Court has for consideration a pro se, in forma pauperis motion pursuant to 28 U.S.C. § 2255 filed by Nancy Frances Mixon. Petitioner is a prisoner at the Federal Reformatory for Women, Alderson, West Virginia, pursuant to conviction by this Court, in case No. 74-CR-70, upon her plea of guilty to Count One of an indictment charging interstate transportation of a falsely made and forged security in violation of 18 U.S.C. § 2314. Therein, petitioner was sentenced November 12, 1974, to imprisonment for a period of 18 months, eligible for parole at such time as the board of parole should determine as provided in 18 U.S.C.A. § 4208(a)(2). She was at all times before this Court on ad prosequendum writ from the Harrison County Jail, Gulfport, Mississippi, and at the close of the Federal proceedings, she was returned to the State of Mississippi.

Petitioner seeks to have the Judgment and sentence of this Court set aside on the grounds that her Mississippi State sentence was imposed to run concurrently with her Federal sentence yet rather than being taken into the custody of the United States her State sentence was served in a State institution. Further, she alleges that she has not been before a Federal Parole Board for parole review which violates her § 4208 (a)(2) sentence from this Court.

The Court, with full recollection of her plea and sentence, having reviewed the present motion and prior criminal file, and being fully advised in the premises, finds that petitioner's allegations do not in any way challenge the validity of her plea, conviction or sentence in this Court. Rather, she challenges matters falling within the perview of the Bureau of Prisons and the Parole Commission, which are administrative responsibilities unrelated to the sentencing process. Her issues, if her administrative remedies have been fully exhausted, should be presented by way of habeas corpus, or possibly mandamus, to the United States Dis-

trict Court having jurisdiction over the place of her incarceration, and her motion to this Court should be denied.

IT IS, THEREFORE, ORDERED that the motion herein of Nancy Frances Mixon be, and it is hereby overruled, without prejudice to her presenting her issues to the proper forum in West Virginia if necessary after exhausting her administrative remedies, and the case before this Court is dismissed.

Dated this 28th day of June, 1976, at Tulsa, Oklahoma.

Allen E. Benson

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

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

JEWEL McCOWAN and EVELYN McCOWAN,)
)
Plaintiffs,)

vs.)

No. 75-C-204-C)

THE ATCHESON, TOPEKA AND SANTA FE)
RAILROAD COMPANY, a corporation;)
JOE BRENNAN, individually and as)
Division Special Agent for the)
ATCHESON, TOPEKA AND SANTA FE)
RAILROAD, Eastern Division,)
Emporia, Kansas; ROGER W. SHENK,)
individually and as Special Agent)
for the ATCHESON, TOPEKA AND)
SANTA FE RAILROAD, Eastern Division,)
Emporia, Kansas; LEONARD AMES,)
individually and as Detective of)
the Bartlesville, Oklahoma Police)
Department; PATRICK J. BALLARD,)
individually and as Detective of)
the Bartlesville, Oklahoma Police)
Department; and WILLARD J. JARVIS,)
individually and as Chief of Police)
of the Bartlesville, Oklahoma)
Police Department,)
)
Defendants.)

FILED

JUN 25 1976

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

ORDER

A Petition for Revival of Action and Substitution of Personal Representative as Plaintiff has been filed. Petitioner, Jewel McCowan, states that Evelyn McCowan died intestate on February 17, 1976, and that her husband, Jewel McCowan was appointed administrator of her estate. Petitioner requests "he be substituted to represent her for those causes of action that survive her." As hereinafter stated, in plaintiff's responsive brief, plaintiff narrows the alleged cause of action to a 42 U.S.C. § 1983 cause of action for "false or unfounded criminal charges, together with an unlawful arrest." The Court must therefore determine whether a § 1983 action for malicious prosecution or false arrest may be revived on behalf of a deceased plaintiff.

In C. Antineau, Federal Civil Rights Acts § 110 (1971) the author notes that 42 U.S.C. § 1988 provides that federal courts shall exercise their jurisdiction "in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but . . . where they are not adapted to the object . . . the common law, as modified and changed by the constitution and statutes of the state . . . shall be extended to and govern the said courts in the trial and disposition of the cause. . . ." The author states:

"The principal effect of this section has been to make applicable in civil rights actions the state laws on periods of limitation and survival."

The court in Hall v. Wooten, 506 F.2d 564 (6th Cir. 1974) stated:

"[F]ollowing section 1988, we look to state law in fashioning federal common law since the provisions of section 1983 do not effectuate the broad remedial purpose of that Act by specifically providing for survival of actions."

The majority of the courts confronted with this issue have similarly held that the state law in regard to survival of actions should be looked to. See Shaw v. Garrison, 391 F.Supp. 1353 (E.D. La. 1975); Spence v. Staras, 507 F.2d 554 (7th Cir. 1974); Brazier v. Cherry, 293 F.2d 401 (5th Cir. 1961); Hall v. Wooten, supra; Pritchard v. Smith, 289 F.2d 153 (8th Cir. 1961); 382 F.Supp. 131 (S.D.N.Y. 1974).

Title 12 O.S. 1051 provides:

"In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to the person, or to real or personal estate, or for any deceit or fraud, shall also survive; and the action may be brought, notwithstanding the death of the person entitled or liable to the same."

The Court notes that in Lauderdale v. Smith, 186 F.Supp. 958 (E.D. Ark. 1960), in which an action was brought pursuant to § 1983 alleging improper arrest and detention without right

to see counsel, the court held:

"The right of action plaintiff seeks to enforce was created by Congress and is governed by federal substantive law. . . . In the absence of Congressional provision for the survival of such cause of action we must resort to the common law, as developed in federal courts."

Regardless of whether the appropriate criteria is the state law in regard to survival of actions, or whether the Lauderdale court is correct, it is clear that a federal court sitting in Oklahoma must look to common law in order to determine whether a § 1983 cause of action for malicious prosecution or unlawful arrest may be revived.

In Lauderdale, the plaintiff died subsequent to the filing of a complaint alleging due process violations incident to plaintiff's arrest. Looking to common law as developed in the federal courts, the court stated:

"[T]he rule is said to be that causes of action akin to contract actions or to tort actions affecting property rights survive, while those akin to tort actions in the nature of personal wrongs abate"

In Barnes Coal Corp. v. Retail Coal Merchants Association, 128 F.2d 645 (4th Cir. 1942) the court stated its belief that the modern rule as to survivability is that "actions for torts in the nature of personal wrongs, such as slander, libel, malicious prosecution, etc., die with the person, whereas, if the tort is one affecting property rights, the action survives."

The court noted:

"Underlying the distinction between actions that die with the person and those that survive is the basic thought that the reason for redressing purely personal wrongs ceases to exist either when the person injured cannot be benefited by a recovery or the person inflicting the injury cannot be punished, whereas, since the property or estate of the injured person passes to his personal representatives, a cause of action for injury done to these can achieve its purpose as well after the death of the owner as before."

See also Sullivan v. Associated Billposters and Distributors,
6 F.2d 1000 (2nd Cir. 1925).

Similarly, the Oklahoma Supreme Court in Columbian
National Life Ins. Co. v. Lemmons, 96 Okla. 228, 222 P. 255
(1924), quoting from 1 Cyc. p. 49 stated:

"The question of whether an action survives depends upon the nature of the action and not upon the form of it. It has been held that the line of demarcation at common law, separating those actions which survive from those which do not, is that in the first the wrong complained of affects primarily and principally property and property rights, and the injuries to the person are merely incidental, while in the latter the injury complained of is to the person, and the property and rights of property affected are merely incidental."

In keeping with the law of the State of Oklahoma and the common law as stated by both the federal courts and the state courts of Oklahoma, it is the determination of the Court that plaintiff's alleged cause of action for malicious prosecution or unlawful arrest is in the nature of a personal wrong, and a cause of action based thereon brought pursuant to § 1983 may not be revived on behalf of a deceased plaintiff. The Petition for Revival of Action is therefore hereby denied.

The Court also has before it for consideration a Motion to Dismiss Or In The Alternative Motion For Summary Judgment filed by defendants Leonard Ames, Patrick J. Ballard and Willard J. Jarvis; and also a similar motion filed on behalf of defendants, The Atchison, Topeka and Santa Fe Railway Company, Joe Brennan and Roger W. Schenk.

The defendants, by way of deposition and affidavits, supported by numerous exhibits, allege the following factual events preceded the filing of this action. On or about February 18, 1974, defendant Roger Schenk, a Special Agent for the defendant Atchison, Topeka and Santa Fe Railway Company and defendant Joe Brenner, a Division Special Agent for the defendant railway company, apprehended two individuals in Kansas while they were

proceeding to steal uncoated copper telegraph wire from the telegraph poles of the defendant railway company. On about February 19, 1974 one of the individuals apprehended disclosed that on prior occasions he had sold stolen wire to a junk dealer by the name of McCowan in Bartlesville, Oklahoma. Based upon this information defendants Brenner and Schenk went to Bartlesville and discussed the matter with defendant Detective Leonard Ames of the Bartlesville, Oklahoma Police Department. Defendants allege that thereafter, on February 20, 1974, defendant Schenk, acting with the other defendants, sold sixty-five pounds of copper wire to the McCowans. On March 1, 1974, defendant Ames went to the McCowans' salvage yard and asked if they had purchased any copper wire within the previous two-week period. The McCowans denied any such purchases and defendant Ames, finding none on the premises, turned this information over to the Washington County District Attorney's Office. Thereafter, the District Attorney's Office filed criminal misdemeanor informations against the McCowans for violation of Title 59 O.S. § 1407. This statute provides that each purchase of thirty-five pounds or more of copper or copper alloy utilized by persons or corporations engaged in telegraph communications "shall be held separate and apart so that such copper and copper alloy shall be readily identifiable from all other purchases for a period of not less than ten days from the date of purchase. . . ."

Subsequent to the filing of criminal charges, a jury trial was commenced on May 23, 1974 which resulted in the acquittal of the McCowans. At trial both Jewel and Evelyn McCowan testified that they purchased the copper wire in question on February 10, 1974 rather than on February 20, 1974 and they introduced into evidence a receipt dated February 10, 1974 which was signed by defendant Schenk for the sale of sixty-five pounds of copper wire. Thereafter, on approximately November 28, 1974, defendant Brenner discovered in a coverall pocket the receipt Schenk had allegedly received from Evelyn McCowan. The receipt appeared

identical to the receipt earlier introduced at trial with the exception that the receipt discovered by Brennan was undated. Upon discovery of the above receipt and a review of the trial proceedings, the District Attorney of Washington County filed perjury charges against the McCowans. That charge remains pending against Jewel McCowan.

Plaintiff alleges in the Complaint that this action is brought to redress deprivation of rights secured "to the plaintiffs by the fourth, fifth and fourteenth amendments to the Constitution of the United States, 42 USCA 1983." In the Complaint numerous allegations are made, to-wit:

(1) That defendants subjected plaintiffs to a systematic pattern of conduct consisting of joint and individual acts of intimidation and humiliation.

(2) That the defendants entered into a preconceived design or scheme with which to entrap the plaintiffs into committing a violation of Oklahoma statutes.

(3) That defendant Brennan violated rights of plaintiffs with the design to conceal and withhold knowledge that he was secretly making electronic transmissions or recordings.

(4) That defendant Schenk sold the plaintiffs the sixty-five pounds of copper wire without advising them of their rights under the Miranda decision.

(5) That during the trial defendants did not disclose or submit evidence which would justify defendants' having centered attention on plaintiffs and that there was no probable cause for the continued course of willful and malicious harrassment that occurred.

The Court is in agreement with defendants that the allegations summarized in (1) through (4) above do not give rise to a cause of action under 42 U.S.C. § 1983. In plaintiff's brief in response to the Motion for Summary Judgment, he concedes that

although "there are numerous references in their complaint to defamatory statements and artles [sic] about the plaintiffs . . . and also references to the defendants' scheme to entrap and falsely imprison them, such are not relied upon to give this Court jurisdiction." Plaintiff alleges, however, that false or unfounded criminal charges, together with an unlawful arrest are actionable under Title 42 U.S.C. § 1983.

The Court finds no allegation to support the contention of an unlawful arrest, there being no factual allegations to indicate that plaintiff was not arrested pursuant to a properly executed warrant. However, plaintiff's allegation that false or unfounded charges were brought appears to be an allegation of malicious prosecution. The courts have not frequently been faced with the allegation of a § 1983 cause of action based upon malicious prosecution. However, according to C. Antieau, Federal Civil Rights Acts § 56 (1971):

"A person has the right to be free from malicious prosecution by others acting under 'color of law,' and defendants violating this right are liable in actions under 42 U.S.C. § 1983."

In Muller v. Wachtel, 345 F.Supp. 1960 (S.D.N.Y. 1972) the court overruled defendants' motion to dismiss a § 1983 action against New York State Police investigators stating:

"Plaintiff specifically alleges that defendants, under color of state law, intentionally conspired to, and did, deprive him of his constitutional rights to due process and to be free from unlawful arrest and malicious prosecution by arresting him and instituting criminal proceedings against him for the crime of grand larceny maliciously and without probable cause. Consequently, defendants' motion to dismiss for lack of subject matter jurisdiction is denied."

The court in Nesmith v. Alford, 318 F.2d 110 (1963) touched upon the subject in an action for false imprisonment and malicious prosecution based upon the law of the State of Alabama and brought in the federal court pursuant to 28 U.S.C. § 1332 and also for conspiracy to deprive plaintiffs of their consti-

tutional rights pursuant to 42 U.S.C. § 1983. The court stated:

"[T]he commencement and prosecution of unfounded criminal prosecution might under certain circumstances constitute, not only malicious prosecution under the state law but a violation of Civil Rights as well. Since the matter is not directly before use, we ought not to explore fully what those facts must be or what legal principles will be finally controlling. . . . [S]ince we are dealing here with rights protected either by federal statute or the Constitution, there is no purpose to make every state criminal prosecution which ends in an acquittal automatically a violation of Federal Civil Rights Statutes. There must be something more. And the added elements may well partake substantially of traditional general tort law to bring in elements akin to want of probable cause, or malice, or both. If that is so, then the federal claim may turn at times upon personal motivation and certainly the conduct of the particular officer-defendant as the actor. The trial court must therefore take pains that all of these issues are appropriately submitted."

Plaintiff, Jewel McCowan, states by way of affidavit that the sixty-five pounds of copper wire in question was bought by his wife, in his presence, on February 10, 1974. Further, affiant states that "no hard drawn copper wire was sold by either him or Evelyn McCowan to anyone until after February 20, 1974." If, in fact, the wire was purchased by the McCowans on February 10, 1974, plaintiff's failure to have possession of the copper wire on March 1, 1974 could not properly form the basis of a criminal charge based on a violation of 59 O.S. § 1407; more than ten days having passed from time of the initial sale. In ruling on a motion for summary judgment, the Court must construe the affidavits in the light most favorable to the party opposing the motion. DeWitt Motor Company v. Chrysler Motors Corporation, 391 F.2d 912 (6th Cir. 1968). Therefore, taking plaintiff's statement that the original sale occurred on February 10, 1974 as true, there would have been no probable cause on which to initiate the bringing of charges and the

information furnished by defendant Ames to the District Attorney's Office was untrue.

The defendants Brennan, Schenk and The Atchison, Topeka and Santa Fe Railroad Company did not furnish the allegedly erroneous information which formed the basis of the prosecution to the District Attorney's Office. Defendants Brennan and Schenk did confer with Willard Boone of the District Attorney's Office prior to the commencement of the investigation and informed him of the statement made by the individual apprehended in Kansas, Emmett Van, in regard to the sale of stolen copper wire to individuals by the name of McCowan in Bartlesville. The fact that such statements were made by Van is not contradicted by the record although it appears that other individuals named McCowan were actually implicated. The charges brought against the plaintiff were not based on this information and it resulted only in further investigation being conducted. Defendants Brennan and Schenk state by way of Affidavit:

"I at no time talked to any District Attorney for Washington County, Oklahoma in reference to having the charges on which the McCowans were acquitted filed."

It appears that neither Brennan or Schenk initiated the bringing of the criminal charges. Also, since the doctrine of respondeat superior is not applicable in actions brought under § 1983, the railway company would not be liable based solely on the actions of its employees even if Brennan or Schenk had initiated the charges. See Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967); Seals v. Nicholl, 378 F.Supp. 172 (N.D. Ill. 1973). It is therefore the determination of the Court that the Motion for Summary Judgment filed on behalf of defendants Brennan, Schenk and The Atchison, Topeka and Santa Fe Railway Company should be sustained.

In regard to defendant Willard J. Jarvis, acting Chief of Police of the Bartlesville Police Department, plaintiff alleges:

"That despite the fact that he knew or should have known that this pattern of conduct was being carried out by his agents and employees the defendant Willard J. Jarvis has taken no steps and made no efforts to order a halt to this course of conduct, to make redress to the plaintiffs or to take any disciplinary action whatever against any of his agents, employees, or personnel under his direction."

As stated in Richardson v. Snow, 340 F.Supp. 1261 (D.Md. 1972):

"As a general rule, an official will not be liable in an action brought under the Civil Rights Act, 42 U.S.C. § 1983, unless he directly and personally participates in conduct under color of state law which deprives the plaintiff of rights, privileges, and immunities secured him by the federal constitution."

It is not sufficient to hold a chief of police liable for the wrongful acts of his subordinates merely to show that the wrongdoer was acting under the general supervision of the chief.

Richardson v. Snow, supra; Barrows v. Faulkner, 327 F.Supp. 1190 (N.D. Okla. 1971). It is therefore the determination of the Court that the Motion for Summary Judgment filed on behalf of Willard J. Jarvis should be sustained.

Likewise, in regard to defendant Ballard the Complaint for the most part makes only unsupported general allegations that Ballard conspired to harrass the McCowans and hurt their reputations. The only specific reference to conduct on the part of Ballard states:

"That Patrick Ballard did on the first day of March, 1974, accompany Leonard Ames to the plaintiffs' residence after the plaintiffs had become a focus of attention in a criminal matter and did fail, refuse and neglect to inform them of their rights under the Miranda decision and further stated that the period of time that Leonard Ames inquired of the plaintiff's recent purchases of copper for a period of two weeks, which is wholly unrelated to the time period listed in the above named statutes under which criminal charges were brought. That at this time in no way did either Leonard Ames or Patrick Ballard communicate in any way to the plaintiffs in this action on the first of March 1974, that they were at that time being subjected to an examination out of which would arise filing of criminal charges."

The allegations made in regard to defendant Ballard do not give rise to a cause of action. It is therefore the determination of the Court that the Motion for Summary Judgment filed on behalf of Patrick J. Ballard should be sustained.

In regard to defendant Ames, the Affidavit of Sandra Thomas, who was at the time of this incident employed by the Washington County District Attorney's Office as an Assistant District Attorney, states that:

"Based upon conversations with Lt. Ames, conversations with the District Attorney for Washington County at that time, Mr. Willard Boone, and a review of their investigative reports, I proceeded to file one misdemeanor criminal information against Jewel McCowan. . . and one misdemeanor criminal information against Evelyn McCowan."

If, as sworn to by plaintiff, the initial sale took place on February 10, 1974, defendant Ames might be found liable for initiating the prosecution knowing there existed no probable cause to prosecute for violation of this statute. In an action for malicious prosecution, when evidence has been submitted to prove or disprove the existence of probable cause, the court must submit to the jury its credibility and what fact it proves. Miller v. Bourne, 208 Okla. 362, 256 P.2d 431 (1953).

In Fuqua v. Deapo, 34 F.R.D. 111 (W.D. Ark. 1964) the court discussed the appropriate criteria for the sustaining of a motion for summary judgment:

"The theory underlying a motion for summary judgment is substantially the same as that underlying a motion for a directed verdict. The essence of both motions is that there is no genuine issue of material fact to be resolved by the trier of the facts. In accordance with the theory of a directed verdict, a court should not grant summary judgment where it could not properly direct a verdict, although it might properly set a verdict aside as against the weight of the evidence. Thus, a motion for summary judgment should not be granted on the ground that if a verdict were rendered for the adverse party, the court would set it aside as against the weight of the evidence."

Therefore, even were the Court to find, based upon the evidence presented in the record, that subsequent to trial it might prove

necessary to set aside a verdict if rendered on behalf of plaintiff as being against the weight of the evidence, the Court cannot properly sustain defendant Ames' Motion for Summary Judgment since a material issue of fact in regard to the date of the original sale remains to be litigated.

As stated by the court in Thomason v. Hospital T.V. Rentals, Inc., 272 F.2d 263 (8th Cir. 1959):

"No matter how reasonably it may be surmised or predicted that a plaintiff will be unable to establish on a trial the claim stated in his complaint or to obtain any relief, he is, nevertheless entitled to make the attempt unless it appears beyond doubt that he can prove no set of facts in support of his claim which would entitle him to any relief."

Similarly, in Lada v. Wilkie, 250 F.2d 211 (8th Cir. 1957), the court noted that although a plaintiff's claim may at trial on the merits prove to be groundless, as stated by Justice Brandeis in Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 58 S.Ct. 459, 82 L.Ed.2d 638:

"Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact."

It is, therefore, the Order of the Court that the Motion To Dismiss Or In The Alternative Motion For Summary Judgment filed on behalf of Leonard Ames, should be and hereby is overruled.

It is further the Order of the Court that the Motions For Summary Judgment filed on behalf of the defendants Patrick J. Ballard, Willard J. Jarvis, Joe Brennan, Roger W. Schenk and The Atchison, Topeka and Santa Fe Railway Company should be and hereby are sustained.

It is so Ordered this 25th day of June, 1976.


H. DALE COOK
United States District Judge

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

ARCHIE HUSTON CAMPBELL,)
)
Petitioner,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

FILED
No. 76-C-126
JUN 25 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has for consideration a pro se motion pursuant to 28 U.S.C. §2255 filed by Archie Huston Campbell. Petitioner is a prisoner at the Federal Penitentiary, Leavenworth, Kansas, pursuant to conviction of this Court upon his plea of guilty to bank robbery in violation of 18 U.S.C., §2113(a) and (d). He was sentenced June 26, 1973, to the maximum period of 25 years for study and report to the Court within 90 days pursuant to 18 U.S.C. §4208(b). Following receipt of the 90-day report, definitive sentence was imposed November 23, 1973, to a maximum period of seven (7) years, eligible for parole at such time as the board of parole might determine as provided in 18 U.S.C. §4208(a)(2).

In the present motion, petitioner does not in any way challenge the validity of his plea, conviction or sentence in this Court. Rather, he challenges the parole commission's application of its guidelines to his case. He claims the guidelines used by the parole commission are not compatible with his §4208(a)(2) sentence; that he has served one-third of his sentence and should have been given meaningful consideration upon his parole consideration, however, due to the range of months established by the guidelines used by the parole commission his §4208(b) sentence has been nullified. On these grounds, he asks this Court to resentence him and place him on probation, or to Order the parole commission to release him forthwith.

What petitioner actually seeks from this Court is a reduction of sentence, and his previous letter requests for that relief have been denied by this Court on grounds that the 120-days from date of sentence had expired. On August 7, 1974, the Court wrote the petitioner stating in part:

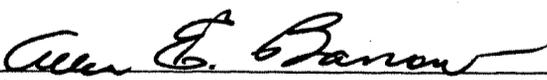
"I did at that time [April 23, 1974] review your file, 73-CR-78, and I found, and find, that your sentence as reduced and imposed November 20, 1973, is lenient and proper, and no further reduction should be made."

The Court, being fully advised in the premises, remains of that conviction, and regardless, the petition before the Court treated as a Rule 35, Federal Rules of Criminal Procedure, motion is out of time; and treated as a §2255 motion, no grounds are stated upon which this Court may act, and the motion should be overruled.

As to the petitioner's challenge of the parole commission's application of its guidelines to his case, that is an administrative responsibility unrelated to the sentencing process. That issue should be presented by way of habeas corpus, or possibly mandamus, to the United States District Court having jurisdiction over the place of his incarceration, if his administrative remedies have been fully exhausted.

IT IS, THEREFORE, ORDERED that the motion herein of Archie Huston Campbell be, and it is hereby overruled, without prejudice to his presenting his challenge of the parole commission's application of its guidelines to his case in the proper forum in Kansas, and the case before this Court is dismissed.

Dated this 25th day of June, 1976, at Tulsa, Oklahoma.


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

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

FILED

JUN 25 1976

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

DAVID TAYLOR & PATRICIA TAYLOR
husband and wife

Petitioners,

vs.

THE SHERIFF OF CREEK COUNTY,
OKLAHOMA, BRICE COLEMAN and
the HONORABLE CLYDE T. PATRICK,
SPECIAL DISTRICT JUDGE, SAPULPA
DIVISION, CREEK COUNTY, OKLAHOMA

Respondents.

No. 76-C-94-C

ORDER

This cause coming on to be heard before me, the undersigned Judge of the Court on the 25th day of June, 1976 upon Petitioners application to dismiss this cause.

The Court having examined the pleadings on file, finds that said application should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said cause be dismissed.



United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

W. J. USERY, JR., Secretary of Labor,)
United States Department of Labor,)
)
Plaintiff)
) Civil Action
v.)
) No. 76-C-18
ANCO MANUFACTURING & SUPPLY COMPANY,)
a corporation, and W. M. WATTMAN,)
individually, president,)
)
Defendants)

FILED

JUN 25 1976

ORDER OF DISMISSAL

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

This cause came on for consideration upon the stipulation of the parties, and it appearing that the defendants promised plaintiff and this Court that Anco Manufacturing & Supply Company will comply with the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 USC 201, et seq.), hereinafter referred to as the Act, that Anco Manufacturing & Supply Company has paid to the plaintiff the back-wages in the amount stipulated which the Court finds to be the total due to Mary H. Collins under the Act to date of this order, and the Court being otherwise fully advised in the premises, it is,

ORDERED, ADJUDGED and DECREED that this action be, and the same hereby is, dismissed with prejudice and it is further

ORDERED that upon receipt by Plaintiff of unpaid wages as provided in this order, he shall promptly proceed to make distribution to Mary H. Collins or to her legal representative if she should become deceased. If after making reasonable and diligent efforts to disburse said unpaid wages to Mary H. Collins, or to her legal representative, if she should become deceased, plaintiff is unable to do so because of inability to locate Mary

H. Collins, or because of her refusal to accept payment, he shall as provided in 28 U.S.C. 2041, deposit such funds with the Clerk of this Court. Any of such funds may be withdrawn for payment to a person entitled thereto upon order of this court.

W. Dale Cook

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

FILED

NATIONWIDE MUTUAL INSURANCE COMPANY,)
a foreign insurance company,)
Complainant,)

JUN 25 1976 *ms*

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

-vs-

BILLY M. HATCHETT, SR., BILLY M.)
HATCHETT, JR., TERRY M. TOLLESON,)
PATSY L. TOLLESON and ROY T. PEARSON)
and MARGARET PEARSON, parents and)
next of kin of ROY T. PEARSON, II,)
Deceased,)
Defendants.)

Civil Action
No. ~~74~~-C-272-c ✓

J U D G M E N T

On the 9th day of June, 1976, the separate Motions for Summary Judgment of complainant and all defendants came on for hearing before the Court, Honorable H. Dale Cook, District Judge, presiding. Thomas L. Palmer appeared as counsel on behalf of complainant, Nationwide Mutual Insurance Company (Nationwide Mutual Fire Insurance Company), hereinafter referred to as "Nationwide." Ed R. Crockett appeared as counsel on behalf of defendants, Billy M. Hatchett, Sr. and Billy M. Hatchett, Jr., hereinafter referred to as "Hatchett" and "Billy", respectively. Donald E. Herrold appeared as counsel on behalf of defendants, Terry M. Tolleson and Patsy L. Tolleson, hereinafter collectively referred to as the "Tollesons." Gerard K. Donovan appeared as counsel on behalf of defendants, Roy T. Pearson and Margaret Pearson, parents and next of kin of Roy T. Pearson, II, deceased, hereinafter collectively referred to as the "Pearsons."

The parties, by their respective counsel, each announced in open Court their stipulation that no substantial controversy existed as to any material fact or circumstance offered by way of verified writings, documents, memoranda and sworn

answers to interrogatories and depositions in support of the pending motions; further, that there was no additional evidence to be offered by any party and each requested the Court consider and decide the merits of the action instant, waiving their respective right to further trial.

The Court having considered said announcements, the pleadings, evidence offered and admitted, the argument and authorities presented by respective counsel, and being otherwise fully advised in the premises, finds:

That jurisdiction is properly predicated under the federal declaratory judgments act, codified in 28 USC 2201 et seq.; by diversity of citizenship between the complainant and all defendants; and, the fact that the amount in controversy exceeds \$10,000, exclusive of interest and costs.

That Nationwide made and issued Hatchett a family automobile insurance policy No. 72 205017 on May 25, 1973, at his place of residence in Anchorage, Alaska

That said policy afforded Hatchett, his spouse and residents of his household (including Billy, Hatchett's minor 16 year old son) liability coverage to the extent of \$25,000/\$50,000/\$10,000 while driving a 1965 Volkswagen, listed on the declarations page of said policy, and other automobiles as defined by said policy.

That the declarations page of said policy was amended effective July 13, 1973, to show replacement of the 1965 Volkswagen by a 1970 Toyota Land Cruiser, with addition of physical damage coverage.

That all premiums charged and billed by Nationwide, including additional charges applicable to Billy as an under age driver, were fully paid by Hatchett to Nationwide as same became due and owing on a quarterly basis.

That Nationwide Mutual Fire Insurance Company, affiliate of Nationwide Mutual Insurance Company, issued a "public employee" discounted premium declarations page numbered 72PE205017 effective on July 26, 1973, applicable to said policy.

That Billy departed Anchorage on about August 15, 1973, to return to the State of Oklahoma in anticipation of his family's move there in the Fall. The factors of Billy's age, family plans, continued parental supervision and control, and temporary

separation contemplated indicates that Billy remained a resident of the policyholder's household within the meaning of said policy.

That a 1966 Chevrolet Impala Super Sport Coupe bearing VID #168376L#11472 was purchased by Billy in Tulsa, Oklahoma, pursuant to express direction and control of Hatchett from Mr. and Mrs. Michael Crisp, Tulsa, Oklahoma, on August 22, 1973.

That an Oklahoma certificate of title was subsequently issued to "Billy Hatchett" for said 1966 Chevrolet;

That it was the intention of the parties that said 1966 Chevrolet be and it was the sole and separate property of Hatchett, not Billy.

That said policy at p.VI(1)(b) provides coverage for newly acquired automobiles of policyholder or spouse when reported to Nationwide within 30 days of acquisition which was accomplished by Hatchett in this action on or about September 9, 1973.

That Nationwide retained unearned premiums applicable to Billy while prosecuting this action and never tendered or delivered same to Hatchett prior to or during prosecution of this action.

That the automobile collision that occurred August 31, 1973, in Tulsa County, Oklahoma, involving the said 1966 Chevrolet while being driven by Billy was within the coverages provided Hatchett and Billy under the express terms of the policy at paragraph VI(1)(b) thereof.

That the plaintiff's complaint for declaratory judgments and all other relief should be dismissed and all defendants allowed to go hence with their Court costs and upon proper application the Court should consider the matter of defendants' attorney's fees and it is accordingly

ORDERED, ADJUDGED AND DECREED by the Court that automobile insurance policy No. 72PE205017 issued by complainant to Hatchett, to the extent of policy limits therein expressed, insured Hatchett's 1966 Chevrolet Impala Super Sport Coupe VID #168376L#11472 and Billy M. Hatchett, Jr., its driver, against all loss or legal liability sustained or which might be sustained by Billy M. Hatchett, Sr. and Billy M. Hatchett, Jr. arising out of an automobile collision that

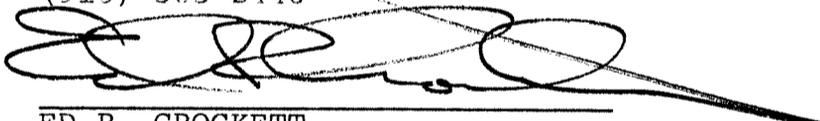
occurred in Tulsa County on August 31, 1973, with a 1967 Ford Fairlane owned and operated by Terry M. Tolleson. That the complaint for declaratory judgments and other relief be and it is hereby denied, and all defendants are allowed to go hence with their costs. That defendants are hereby granted leave to file appropriate applications with this Court for attorney's fees to be assessed against complainant, together with authorities in support thereof on or before June 19, 1976.



H. DALE COOK, UNITED STATES
DISTRICT JUDGE

O.K.:

THOMAS L. PALMER
520 Center Office Building
630 West Seventh Street
Tulsa, Oklahoma 74127
(918) 585-2448



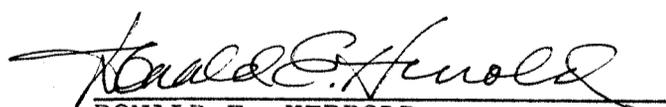
ED R. CROCKETT

of
ASTON & CROCKETT
3733 East 31st
Tulsa, Oklahoma 74135
(918) 749-2265



GERARD K. DONOVAN

of
DONOVAN, FREESE & MARCH
700 Mid-Continent Building
Tulsa, Oklahoma 74103
(918) 582-3164



DONALD E. HERROLD

of
MORREL, HERROLD & WEST
6-6 Southland Financial Center
4111 South Darlington
Tulsa, Oklahoma 74135
(918) 664-2424

Close this case -

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

ANCHOR CONCRETE COMPANY,)	
a corporation,)	
)	
Plaintiff,)	
)	Civil Action
vs.)	
)	No. 76-C-72-B ✓
LEW HAMMER, INC.,)	
)	
Defendant.)	

FILED

JUN 23 1976 J.

ORDER OF DISMISSAL WITH PREJUDICE *John C. Silver, Clerk*
" U S DISTRICT CO "

The parties to this action having compromised and settled all issues in the action and having stipulated that the Complaint, Counter-Claim and this action may be dismissed with prejudice, it is therefore;

ORDERED, that the Complaint, Counter-Claim and ^{*the causes of*} ~~this~~ action are, by the Court, dismissed with prejudice to the bringing of another action upon the same cause or causes of action.

Entered this 23^d day of June, 1976.

Allen E. Bonow
UNITED STATES DISTRICT JUDGE

3

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

FILED

JUN 23 1976

JOANN P. LONG and)
GEORGE J. LONG,)
)
Plaintiffs,)
)
-vs-)
)
ANDREW NEWTON SCHMIDT,)
)
Defendant.)

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

B ✓
NO. 75-C-334 &
75-C-381 ✓
(Consolidated)

ORDER OF DISMISSAL

ON this 23rd day of June, 1976, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

Allen E. Benson

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

APPROVAL:

John B. Sellers

JACK B. SELLERS,
Attorney for Plaintiffs

Ray H. Wilburn

RAY H. WILBURN
Attorney for Defendant

RECEIVED JUN 21 1976

30 11

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

PECAN & AGRICULTURAL EQUIPMENT,)
INC., a corporation,)
)
Plaintiff,)
)
vs.)
)
LOCKWOOD CORPORATION, a Delaware)
corporation,)
)
Defendant,)
)
and)
)
JOE A. IHLE,)
)
Additional Party Defendant)
to Counterclaim.)

No. 74-C-286-C

FILED

JUN 23 1976

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

JUDGMENT

This case was originally filed in the District Court for Creek County, Bristow Division, Oklahoma, against the defendants, Lockwood Corporation and Jimmie D. James. The defendants Lockwood Corporation and Jimmie D. James, in a Joint Petition, removed the case to this Court on the basis of diversity jurisdiction. Upon the presentation of a joint application of the plaintiff and the defendants for dismissal of defendant Jimmie D. James, said individual defendant Jimmie D. James was dismissed without prejudice as a party to this lawsuit on October 18, 1974.

The case came on for non-jury trial before the undersigned Judge on February 17, 1976, with plaintiff, Pecan & Agricultural Equipment, Inc., present by and through its president, Joe A. Ihle and its counsel of record, David H. Loeffler and Fred S. Nelson and the defendant Lockwood Corporation present by and through Joe Asche, Vice President, Marketing of the defendant and its counsel Sidney G. Dunagan. During the trial the parties announced settlement of causes three, four, five and six as alleged

in plaintiff's state court petition. Thereafter, evidence was presented only as to the first, second and seventh causes of action.

Plaintiff's first cause of action alleges a breach of contract in that defendant terminated the Dealer's Sales Agreement entered into between the parties on July 3, 1970 without cause.

Plaintiff's second cause of action alleges unfair competition and a conspiracy to restrain trade in violation of 79 Okla. Stat. § 1 et seq. (1965). In particular the second cause of action charges that defendant in violation of its exclusive sales agreement with plaintiff entered into a dealership agreement with Jimmie James, d/b/a James-Way Equipment Company of Bowie, Texas for the purpose of selling in the State of Oklahoma pecan harvesting equipment at a sum less than the established price therefor and the amount offered to plaintiff's customers by the plaintiff.

Plaintiff's seventh cause of action prays for such further relief as the Court deems appropriate.

FINDINGS OF FACT

Plaintiff, Pecan & Agricultural Equipment, Inc., is now and was at the time this action was filed a corporation incorporated under the laws of the State of Oklahoma with its principal place of business in Bristow, Oklahoma. Defendant, Lockwood Corporation, is now and was at the time this action was filed a corporation incorporated under the laws of the State of Delaware, with its principal place of business in Gering, Nebraska. Joe A. Ihle, additional party defendant to defendant's Amended Counterclaim, is a citizen of the State of Oklahoma and resides in Bristow, Oklahoma. The amount in controversy exceeds the sum of \$10,000.00.

In the year 1969 defendant, Lockwood Corporation, began a serious effort to manufacture and sell pecan harvesting equipment.

Prior to the year 1969, no major effort was undertaken by defendant to develop a competitive mechanical pecan harvester. Defendant learned of a pecan harvesting machine being developed by W. L. (Slim) Sides of Goldthwaite, Texas. In 1969 defendant negotiated a licensing agreement with Metal Masters Machine Shop whereby Slim Sides retained the patent rights to the pecan harvester while defendant became the exclusive manufacturer of said machine. (Deposition of W. L. Sides). Having no personnel experienced in the development and marketing of pecan harvesting equipment, defendant, through an equipment dealer named Marshall Flint, sought the advice and assistance of Joe A. Ihle. Defendant drew upon the practical knowledge and experience of Ihle who was active in the pecan growers associations on both the state and national levels and relied upon his vast acquaintance with the pecan industry. There is no dispute that before committing himself and the plaintiff, of which he is the principal owner, Ihle required of defendant that he be granted an exclusive marketing territory, the State of Oklahoma, and that his right to market the defendant's pecan products could be cancelled only for the cause agreed to between the parties. Ihle expressed his concern in that he did not want to build up a prosperous pecan equipment sales business through hard work and expense and have it poached by other Lockwood dealers. Ihle also expressed concern in that he did not want to build a prosperous business which could be terminated at any time without cause.

In the summer of 1969, Ihle was granted a dealership, an exclusive sales territory which consisted of the State of Oklahoma, and protection against termination without cause by the defendant. (Deposition of John Ellis pp. 10, 11 & 16) (Testimony of Joe Ihle).

The agreement of 1969 between Joe A. Ihle and the defendant became the basic working agreement between said persons.

Plaintiff, Pecan & Agricultural Equipment, Inc., was organized on September 19, 1969. (Testimony of Joe A. Ihle).

A Dealer's Sales Agreement between Joe A. Ihle, President of Pecan & Agricultural Equipment, Inc., and Lockwood Corporation (signed by Joe E. Asche, Vice-President - Marketing) was executed on August 22, 1969. (Plaintiff's Exhibit #2).

On July 3, 1970, plaintiff and defendant entered into a second Dealer's Sales Agreement. (Plaintiff's Exhibit #4). In this agreement under paragraph 1 entitled "Territory" appear the words: "This paragraph is subject to letter of amendment dated April 29, 1970." Under paragraph 17 entitled "Repurchase on Termination" of the July 3, 1970 Dealer's Sales Agreement appear the words: "This paragraph is subject to letter of amendment dated April 29, 1970." This sentence was added to paragraphs 1 and 17 of said agreement by direction of David H. Loeffler, attorney for plaintiff, prior to its being returned to the defendant for approval. The addition of this sentence in paragraphs 1 and 17 served as a reminder to defendant of the letter agreement of April 29, 1970. Defendant through its Vice-President - Marketing, Joe E. Asche, approved the addition of this sentence. (Defendant's Exhibit #1).

The letter of April 29, 1970 grants to the plaintiff herein those rights originally granted to Joe A. Ihle and incorporates the basic working agreement of 1969 into the basic working agreement between the plaintiff and the defendant. With the exception of the exclusive sales territory in the State of Oklahoma, this basic agreement between the parties was never changed or modified and was in force and effect at the time of plaintiff's termination as a Lockwood dealer.

The letter of April 29, 1970 is the basic agreement between the parties in regard to termination and operates in lieu of paragraphs 1 and 17 of the Sales Agreement dated July 3, 1970. Said agreement provides for the retention of the plaintiff as its exclusive dealer of pecan equipment in the State of Oklahoma for so long as: "1. The dealer contract is not violated. 2. No credit problems arise that our credit department becomes dissatisfied.

3. The dealership is wholly supervised by the district supervisor and he is satisfied that the dealership is reaching our state potential of sales, considering all the factors. 4. The customers of Lockwood equipment are satisfied with parts and service, regardless of their geographic location in the state." (Plaintiff's Exhibit #3).

On May 24, 1971, the plaintiff and defendant entered into a third Dealer's Sales Agreement. (Plaintiff's Deposition Exhibit #22 Attached to Deposition of Tony Popp). Under paragraphs 1 and 17 entitled "Territory" and "Repurchase on Termination" respectively of said agreement the following sentence appears: "This paragraph is subject to letter amendment dated May 24, 1971." Said sentence serves as a reminder to the parties that agreement of 1969 controls and is substituted in lieu of paragraphs 1 and 17 of the Dealer Sales Agreement dated May 24, 1971.

The letter dated May 13, 1971, from Dan Walter to Joe Ihle provides for an exclusive dealership in the State of Oklahoma of pecan equipment and for termination only for the reasons set out therein. (Plaintiff's Deposition Exhibit #22 Attached to Deposition of Tony Popp). This letter of May 13, 1971 states that said letter is to serve as an amendment to the Dealer's Sales Agreement dated May 24, 1971 and clearly shows the agreement and intent of the parties as to the right of plaintiff to be terminated only for the causes stated.

On May 18, 1972 the plaintiff and defendant entered into a fourth Dealer's Sales Agreement. (Defendant's Exhibit #4).

The letter of Paul J. Reiff, Western Division Sales Manager of defendant, to Mr. Joe Ihle dated May 6, 1972 (Defendant's Exhibit #6) is a statement to the effect that paragraph 1 of the Dealer's Sales Agreement of May 18, 1972 controls in regard to exclusive territory. In said amendment the defendant specifically states that it does not assign and enforce specific dealer territories.

Mr. Kerry Smith by direction of Paul J. Reiff personally delivered the letter of May 6, 1972 and the Dealer's Sales Agreement of May 18, 1972 to plaintiff in Bristow, Oklahoma and

directed Joe A. Ihle president of plaintiff to sign the agreement without inserting any additional provisions.

The Dealer's Sales Agreements entered into between the parties on August 22, 1969, July 3, 1970, May 24, 1971 and May 18, 1972 are defendant's standard form dealer sales contracts. These contracts were operating agreements between the parties and provided for the technical aspects of their agreement such as freight charges, discounts and warranty claims.

The letter dated May 6, 1972 and made a part of paragraph 1 of the Dealer's Sales Agreement dated May 18, 1972 clearly states the defendant's intent to withdraw any previous grant of an exclusive territory. Plaintiff was aware of the intent of the defendant in regard to exclusive territory and signed the contract of May 18, 1972. Plaintiff gave up any right it had to an exclusive territory by executing the contract of May 18, 1972.

Each of the four Dealer's Sales Agreements entered into between the parties contained paragraph 17 which provided for termination by either party with or without cause by giving 30 days notice by registered letter to the other party. Each of the four dealer sales contracts was subject to the letter agreement in regard to termination only for a cause stated in said letter agreement.

Plaintiff had no intent to relinquish its right to termination only for cause and did not relinquish this right by executing the agreement of May 18, 1972. The matter of relinquishing plaintiff's right to termination only for cause was never discussed by the parties.

Plaintiff was terminated as a dealer for defendant by letter dated March 11, 1974 with termination to become effective thirty days from March 11, 1974 under the terms of paragraph 17 of the Dealer's Sales Agreement between the parties dated May 18, 1972.

None of the agreed to causes for termination existed at the

time plaintiff was terminated.

Plaintiff was terminated without cause in breach of the agreement between the parties that plaintiff would be terminated only for any one or all of the causes stated in the letter agreement of April 29, 1970 and May 13, 1971.

Plaintiff has suffered damages as a result of defendant's breach of contract.

CONCLUSIONS OF LAW

The Court has jurisdiction under Title 28 U.S.C. § 1332.

The law of the State of Nebraska must be applied in interpreting the provisions of the disputed Dealer's Sales Agreement. (Paragraph 28, Dealer's Sales Agreement dated May 18, 1972).

See Title 15 Okla. Stat. § 162 (1966); National Life & Accident Ins. Co. v. Whitlock, 198 Okla. 561, 180 P.2d 647 (1946); Midland Savings & Loan Co. v. Henderson, 47 Okla. 693, 150 P. 868 (1915).

The laws of Nebraska and Oklahoma do not differ in interpreting the contract in dispute (Defendant's Trial Brief filed February 9, 1976).

The Court may look to the surrounding circumstances to determine the intent of the parties. First National Bank in Dallas v. Rozelle, 493 F.2d 1196 (10th Cir. 1974). Keokuk Steel Casting Co. v. Lawrence, 178 F.2d 788 (10th Cir. 1949).

The appropriate measure of damages is the amount which will compensate the party aggrieved for all the detriment proximately caused by a breach of an obligation. Title 23 Okla. Stat. § 21 (1955). Under Nebraska law a contract prepared by defendant should be given the construction that the party preparing it supposed the plaintiff would give it. Gallager v. Vogel, 61 N.W.2d 245 (Neb. 1953); Flory v. Supreme Tribe of Ben Hur, 98 Neb. 160, 152 N.W. 295 (1915).

The dealer sales agreements between the parties are subject to the Uniform Commercial Code. 12A Okla. Stat. § 2-102 (1963).

No consideration is required to modify a contract subject

to Article 2 of the Uniform Commercial Code. 12A Okla. Stat. § 2-209(1). Neb. Rev. Stat. § 2-209(1)(1971).

Defendant did not combine, agree or conspire with Jimmie James to restrain trade in violation of Title 79 Okla. Stat. § 1 et seq. 1965).

EXAMINATION OF FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Breach of Contract

The evidence presented in this case clearly shows that in the year 1969 defendant, Lockwood Corporation, actively pursued services of Joe A. Ihle as a consultant in the manufacture of pecan harvesting equipment. The evidence further shows that Joe A. Ihle was interested in a dealership and expressed such interest to the defendant's officials. In 1969 Joe A. Ihle was granted a dealership after he had clearly stated that he had no desire to build a successful business without first being assured that he would not be terminated except for cause and that he would be given an exclusive territory in the State of Oklahoma.

There is little dispute that the letter agreements of April 29, 1970 and May 13, 1971 were part of the Dealer's Sales Agreements of July 3, 1970 and May 24, 1971.

The agreement of May 18, 1972 as well as the three previous Dealer's Sales Agreements are defendant's standard form dealer contracts. Except for variations in bonuses, discounts, equipment available and other provisions relative to particular allowances and operating procedures, these four dealer contracts are identical. The evidence is also clear that the parties to these four contracts readily submitted and accepted modifications and addendums to said agreements. Keokuk Steel Casting Co. v. Lawrence, 178 F.2d 788 (10th Cir. 1949).

Plaintiff asserted its understanding of the initial agreement of the parties when counsel for Joe A. Ihle, David Loeffler inserted a reference to the letters granting plaintiff an exclusive sales territory and the protection of termination only for cause. Defendant is in no position to contend that in 1970 and in 1971 it did not recognize the agreement to grant the exclusive territory and protection on termination since the written addendum was prepared and submitted to plaintiff by the defendant.

The letter amendment of May 6, 1972 which is designated as a part of the dealer contract between the parties makes reference to the exclusive sales territory claimed by plaintiff and to procedures to be followed by the parties. No reference is made to plaintiff's claim of no termination without cause. Under the law of the State of Nebraska where one party prepares the contract it must be construed as the party who prepared it supposed the other party would construe it. Flory v. Supreme Tribe of Ben Hur, 98 Neb. 160, 152 N.W. 295 (1915).

The letter of May 6, 1972 from Paul Reiff of defendant to Joe A. Ihle (Defendant's Exhibit #6), clearly states that the defendant did not intend to enforce exclusive territories. It was the clear intent of defendant to rescind any previous agreement which bound the defendant to an exclusive territory for the plaintiff. Plaintiff was aware of this change in the original agreement between the parties prior to executing the Dealer's Sales Agreement of May 18, 1972. Therefore, upon signing the Dealer's Sales Agreement of May 18, 1972 plaintiff gave up its right to claim an exclusive sales territory.

However, no change in plaintiff's claim for termination only upon such showing of cause as set out in the initial agreement was ever discussed or mentioned by the parties. Defendant never indicated to plaintiff that it was rescinding

its agreement to terminate only for cause. This aspect of the initial agreement stands and was a part of the total agreement between the parties after May 18, 1972. In terminating plaintiff without cause defendant breached its initial contract with plaintiff.

The Court is well aware of paragraph 26 of the Dealer's Sales Agreement of May 18, 1972 which states:

"This contract contains the entire agreement between Dealer and Lockwood and when effective supercedes and cancels all previous contracts between the parties.

"No representative or person has the authority to change, alter or waive any portion of this agreement without the prior written approval of an executive officer of Lockwood and the provisions of this contract shall not be modified except by written agreement duly signed by Dealer and by Lockwood."

The fact of the matter is that the standard form was not the entire agreement as the May 6, 1972 letter indicates. Paragraph 17 which provides for termination with or without cause upon 30 days written notice by either party as set out in the standard form contract was subject to the original agreement of the parties and therefore was not binding on the plaintiff. The standard paragraph 17 was waived at the outset of the relationship between the parties. Each party understood and intended that it be waived. In lieu of paragraph 17, the original agreement controlled. Plaintiff was protected from termination except where such cause existed as set out in the initial agreement. Plaintiff had no intention of incurring the expenses of a new business where he was not protected by a guarantee that he would be terminated only for the causes agreed upon by the parties. To give any other construction to the agreement between the parties would be to ignore the clear history of the relationship between the parties and allow the defendant to construct the agreement as it finds convenient.

As early as 1971 officers of defendant discussed terminating plaintiff as a dealer and questioned the effect of their original letter agreement. Defendant supposed that plaintiff intended that it had a dealership unless it violated a requirement of the initial agreement and subjected itself to termination for cause. In contrast to the change in the original agreement regarding exclusive territory, defendant gave no indication that it would not be bound by the terms concerning termination. By signing the May 18, 1972 standard agreement, plaintiff gave up its claim to exclusive sales rights in Oklahoma as defendant made it clear that it intended to modify its original agreement. Such is not the case in the termination provisions.

The testimony adduced at trial shows that much of the conflict between the parties was due to demands of the plaintiff for more efficient service from the defendant. The evidence also shows that Joe A. Ihle's approach to various officials of defendant was considered by them to be offensive. Nonetheless, there is evidence that plaintiff merely sought or demanded quality products and services. There is sufficient evidence to conclude that defendant, for a considerable period of time, sought a means to terminate plaintiff's dealership and finally, without cause, determined that it no longer desired to retain the plaintiff as a dealer. Plaintiff was terminated despite the clear understanding of the parties that plaintiff's dealership was protected from termination without cause.

The Court may look to the circumstances surrounding the contract to determine the intent of the parties even though no ambiguity exists.

"The contract may be explained by reference to the circumstances under which it was made and the matter to which it relates. (Citations Omitted). And construing the contract in the light of the surrounding circumstances known to the parties at the time of its execution does not violate the parol evidence rule, even though the writing is not deemed ambiguous (Citations Omitted)."
First National Bank in Dallas v. Rozelle,
493 F.2d 1196, 1200 (10th Cir. 1974).

The intent of the parties in 1969, 1970, and 1971 was that plaintiff was to be terminated only for the causes set out in the letter addendums of 1970 and 1971. This was not changed in 1972. As a general rule

". . . . a party to a contract may waive a right thereunder by conduct indicating an intention to relinquish it." Teleco, Inc. v. Southwestern Bell Tel. Co., 511 F.2d 949, 952 (10th Cir. 1975).

The parties relinquished their right to terminate under the 30 day provision of paragraph 17 and substituted the clause of termination only for cause.

The testimony adduced at trial supports the conclusion that the plaintiff was not terminated for cause as required by the terms of the contract but rather was terminated under the 30 day provision of the standard form contract paragraph 17. The defendant therefore breached the contract between the parties and is liable for damages arising therefrom.

Unfair Trade Practices

The crux of plaintiff's action under Title 79 Okla. Stat. § 1 et seq. (1965) is that the defendant entered into a sales agreement with another dealer for the purpose of selling pecan harvesting equipment in the State of Oklahoma at a sum less than the established price.

The pertinent provisions of the Oklahoma Statutes which deal with Restraint of Trade are set forth in Appendix I. Title 79 Okla. Stat. § 1 (Amended 1971) declares that agreements which restrain trade are illegal in the State of Oklahoma. Such agreements must constitute a monopolistic scheme in restraint of commerce. An isolated act is not sufficient to find that a monopoly existed or was intended. 79 Okla. Stat. § 1 (Amended 1971); Thomas v. Belcher, 184 Okla. 410, 87 P.2d 1084 (1939). The evidence must show an intent to hinder competition or to restrain trade.

79 Okla. Stat. § 2 (1965); James v. Okla. Natural Gas Co., 181 Okla. 54, 72 P.2d 495 (1937).

There is no evidence in this case that the defendant entered into an agreement which was designed to restrain trade in Oklahoma and to create a monopoly. However, had the defendant entered into an agreement with Jimmie James which in effect was designed to restrain trade, the isolated sales which Jimmie James made in the State of Oklahoma could not constitute a restraint of trade under Title 79 of the Oklahoma Statutes.

The evidence shows that Jimmie James was granted a dealership by the defendant in 1973. Defendant did not restrict James to a specific sales territory. On several occasions James sold Lockwood equipment in the State of Oklahoma. No maximum or minimum price was set by the defendant for the sale by James of Lockwood equipment in Oklahoma. Defendant reimbursed James for the cost of advertising Lockwood products in Oklahoma but such reimbursement was not limited to the advertising in Oklahoma.

(Deposition of Jimmie James)

It is the conclusion of the Court that no violation of Title 79 Okla. Stat. § 1 et seq. in regard to an agreement in restraint of trade has been shown by the plaintiff and that no recovery on plaintiff's Second Cause of Action is warranted.

Damages

The law of Oklahoma governs the measure of damages. (Trial Brief of defendant Lockwood p. 4)

The proper measure of damages for breach of contract is found in Title 23 Okla. Stat. § 21 (1955). Section 21 states:

"For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this chapter, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom. No damages can be recovered for a breach of contract, which are not clearly ascertainable in both their nature and origin."

Damages awarded must be capable of reasonably accurate measurement. Groendyke Transport, Inc. v. Merchant, 380 P.2d 682 (Okla. 1963). Loss of profits must be established with reasonable certainty. Megert v. Bauman, 206 Okla. 651, 246 P.2d 355 (1952).

The Court may determine loss of future profits from the best evidence according to the nature of the case. Southwest Ice & Dairy Products Co. v. Faulkenberry, 203 Okla. 279, 220 P.2d 257 (1950).

In computing the profit and loss of plaintiff from the figures provided in interrogatories #48 and #49 of Plaintiff's and Third Party Defendant's Second Additional Response to Defendant's Third Request for Answers to Interrogatories filed February 5, 1976 the following results of sales of equipment other than that of defendant is recorded. In regard to receipts from 1969 through 1975 on Cleaners, Sprayers, Shakers and Rakes the Court has made the proper adjustment to allow for plaintiff's fiscal year which ran from September 1 to August 31 of each calendar year. Thus plaintiff's total receipts from the sale of non-Lockwood products are as follows: (Computed from information contained in Interrogatory #48.)

<u>1969-70</u>	<u>1970-71</u>	<u>1971-72</u>	<u>1972-73</u>	<u>1973-74</u>	<u>1974-75</u>
\$ 23,134.37	\$ 60,248.13	\$ 64,466.77	\$158,446.12	\$200,209.57	\$226,503.76

Expenses from the sale of non-Lockwood products are as follows:

(Taken from the answer to Interrogatory #49)

<u>1969-70</u>	<u>1970-71</u>	<u>1971-72</u>	<u>1972-73</u>	<u>1973-74</u>	<u>1974-75</u>
\$ 24,135.78	\$ 68,727.65	\$ 63,032.89	\$120,835.60	\$219,743.44	\$163,724.01

Total net income from non-Lockwood sales:

<u>1969-70</u>	<u>1970-71</u>	<u>1971-72</u>	<u>1972-73</u>	<u>1973-74</u>	<u>1974-75</u>
\$ -1,001.41	\$ -8,479.52	\$ 1,433.88	\$ 37,610.52	\$-19,533.87	\$ 62,779.75

The plaintiff testified that his net income for the calendar year was as follows:

<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>
\$ 4,981.00	\$ 21,394.95	\$ 52,309.79	\$ 34,785.63	\$ 35,000.00	\$ 33,056.81

By converting plaintiff's net income which was stated in the calendar year to fiscal year the plaintiff's net income for its fiscal year was as follows:

Total Net Income					
<u>1969-70</u>		<u>1970-71</u>		<u>1971-72</u>	
1/3 '69	\$ 1,660.33	1/3 '70	\$ 7,131.65	1/3 '71	\$ 17,436.59
2/3 '70	<u>14,263.30</u>	2/3 '71	<u>34,873.18</u>	2/3 '72	<u>23,190.42</u>
	\$ 15,923.63		\$ 42,004.83		\$ 40,627.01
<u>1972-73</u>		<u>1973-74</u>		<u>1974-75</u>	
1/3 '72	\$ 11,595.21	1/3 '73	\$ 11,666.66	1/3 '74	\$ 11,018.93
2/3 '73	<u>23,333.32</u>	2/3 '74	<u>22,037.86</u>		
	\$ 34,928.53		\$ 33,704.52		\$ 11,018.93

In combining plaintiff's net income from non-Lockwood products with its total net income now converted to a fiscal year, the following net income (profit) is shown from the sale of Lockwood products:

<u>1969-70</u>	<u>1970-71</u>	<u>1971-72</u>	<u>1972-73</u>	<u>1973-74</u>
\$ 15,923.63	\$ 42,004.83	\$ 40,627.01	\$ 34,928.53	\$ 33,704.52
<u>1,001.41*</u>	<u>8,479.52*</u>	<u>- 1,433.88</u>	<u>37,610.52</u>	<u>19,533.87*</u>
\$ 16,925.04	\$ 50,484.35	\$ 39,193.13	\$- 2,681.99	\$ 53,238.39

*Where plaintiff shows a loss from the sale of non-Lockwood products the amount is added to its total net income.

Average income (profit) from Lockwood products from 1969 through 1974 is \$31,431.78. The Court recognizes that the amounts designated by plaintiff are not exact. The above computations were made by the Court in an effort to determine approximate loss of profits due to the wrongful termination by defendant. It must be noted that no allowance was made by the Court for any bonus,

discount, freight charge or other allowance claimed by the plaintiff to have been improperly withheld by defendant during the time of their relationship. The Court was not informed whether the settlement of causes 3, 4, 5 and 6 would have caused plaintiff to have an average total net annual income greater or less than that computed by the Court.

Joe A. Ihle testified that plaintiff's average gross profit from the sale of Lockwood products for the years 1971, 1972 and 1973 was \$60,526.24. (Plaintiff's Exhibit #80). It is not inconceivable that plaintiff incurred an average expense of \$29,094.46 for these years to give the plaintiff an average net profit of \$31,431.78 from the sale of Lockwood equipment.

Plaintiff argues that the Court should grant an award in damages in the amount of the gross profit since plaintiff would have incurred no additional expense in selling Lockwood products while it sold non-Lockwood products. Said another way, plaintiff contends that its expenses remained the same whether it offered for sale Lockwood equipment or merely sold non-Lockwood equipment. The evidence does not support this conclusion as plaintiff, since 1969, sold other than Lockwood products and did not enjoy an annual fiscal total net income of \$60,526.24. It is reasonable to infer that plaintiff would not simultaneously have been capable of selling other equipment to the extent it sold Lockwood. If expenses accrued due to sales of non-Lockwood, they would accrue due to the sale of Lockwood. Therefore, the Court rejects an award based on average gross profits and finds that the award should be based on an average annual net profit from the sale of Lockwood equipment in the amount of \$31,431.78.

The Court must consider the information provided in interrogatories #48 and 49, which shows a profit to the plaintiff in the amount of \$62,779.95 from the sale of non-Lockwood equipment in fiscal year 1974-75. From these calculations it appears that plaintiff would have realized a net profit of \$94,211.73 had the

Lockwood dealership not been terminated. This amount is far in excess of the previous five year average net income. The Court can only conclude that the plaintiff substantially mitigated its damages after the Lockwood dealership was terminated.

It is reasonable to conclude that the dealership would have continued for another five years had defendant not wrongfully terminated. The loss suffered by plaintiff due to the termination of Lockwood sales in fiscal year 1974-75 is approximately 33% of the total sales which plaintiff would otherwise have realized. It is reasonable to assume that plaintiff would have continued to substantially mitigate its loss over the remaining four years. Therefore, after considering all of the facts surrounding the loss of the dealership, it is the conclusion of the Court that the plaintiff has suffered damages in the total amount of \$75,000.00. While this amount is not calculated to a mathematical certainty, an award of damages may be granted which will reasonably compensate plaintiff for its loss of profits due to the breach by the defendant. Bigelow v. RKO Radio Pictures, Inc., 327 U.S. 251, 66 S.Ct. 574, 90 L.Ed. 1040 (1946); United Telecommunications, Inc., v. American Television and Communications Corp., No. 75-1462 (10th Cir. 1976); Whiteis v. Yamaha International Corp., No. 75-1037 (10th Cir. 1976).

Plaintiff in its Seventh Cause of Action seeks any other relief which the Court deems appropriate. The Court finds that no other relief is appropriate.

Accordingly:

IT IS ORDERED ADJUDGED AND DECREED that judgment be entered in favor of the plaintiff and against the defendant for the reasons stated herein.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that damages be assessed in favor of the plaintiff and against the defendant in the total amount of \$75,000.00.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that no other relief is appropriate under the circumstances of this case.

It is so Ordered this 23rd day of June, 1976.


H. DALE COOK
United States District Judge

APPENDIX I

§ 1. Trust in restraint of trade illegal

Every act, agreement, contract, or combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce within this state is hereby declared to be against public policy and illegal.
Amended by Laws 1971, c. 157, § 1, emerg. eff. May 24, 1971.

§ 2. Discriminations in buying and selling commodities unlawful

It shall be unlawful for any person, firm, corporation or association, engaged in the production, manufacture, distribution, purchase or sale, of any commodity of general use, or rendering any service to the public or engaged in the sale or furnishing of advertising or advertising service or space for advertisements in publications thereof, to directly or indirectly, either in person or by or through any agent or representative, discriminate between different persons, firms, associations or corporations, or between different sections, communities or cities of the state;

(A) By selling such commodity, or rendering such service at a lower price or rate in one section, community or city than another, or at the same price or rate at a point away from that of production or manufacture as at the place of production or manufacture, after making due allowance, in either instance, for the difference, if any, in the grade, quantity or quality, and in the actual cost of transportation from the point of production or manufacture, if the effect or intent thereof is to establish or maintain a virtual monopoly hindering competition or restraining trade, or to destroy the competition of any regular established dealer in such commodity or to prevent the competition or any person who, in good faith, intends and attempts to become such dealer;

(B) By selling such commodities, or rendering such service, or by selling or furnishing such advertising or advertising service or space for advertisements in publication thereof, at a lower price or rate to one person, firm, co-partnership, corporation or association than to another, if the effect or intent thereof is to establish or maintain a virtual monopoly hindering competition or restraining trade, or to destroy the competition of any regular established dealer in such commodity or to prevent the competition of any person who in good faith intends and attempts to become such a dealer, or to destroy the competition of any person, firm, co-partnership, corporation, or association who is engaged in furnishing such service, or in the sale or furnishing of such advertising, advertising service or space for advertisements in publications thereof;

(C) By buying such commodity at a higher price in one section, community or city than another, after making due allowance for the difference, if any, in the grade, quantity or quality of the commodity and in the actual cost of its transportation from the point of purchase to the point where such commodity is to be sold by the purchaser, or to be consumed, or to be used in the manufacture of commodities or products, if the effect or intent thereof is to establish or maintain a virtual monopoly hindering competition or restraining trade, or to destroy the competition of any regular established dealer in such commodity or to prevent the competition of any person who, in good faith, intends or attempts to become such dealer;

(D) By buying such commodity in any section, community, or city of the state at a higher price from one person, firm, corporation or association than from another, after making due allowance for the difference, if any, in the grade, quantity or quality of such commodity, if the effect or intent thereof is to establish or maintain a virtual monopoly hindering competition or restraining trade, or to destroy the competition of any regular established dealer in such commodity or to prevent the competition of any person who, in good faith, intends and attempts to become such a dealer. R.L.1910, § 8227; Laws 1923, ch. 29, p. 41, § 1; Laws 1933, ch. 112, p. 224, § 1; Laws 1935, p. 338, § 1.

§ 3. Combinations in restraint of trade unlawful

It shall be unlawful for any person, partnership, firm, association, corporation, or joint stock company, or agent thereof, to issue, or to own, trust certificates, or for any person, firm, partnership, association, joint stock company, or corporation, agent, officer, employee, or the director or stockholders of any corporation, association or joint stock company, to enter into any combination, contract or agreement with any person, corporation or association, firm, or partnership, or with any stockholder, director or officer, agent or employe of the same, the purpose or effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the conduct or operation of the same, or the output or manufactured product thereof, or the marketing of the same, in the hands of any trust or trustees, holding corporation or association, firm or committee, with the intent or effect to limit or fix the price, or lessen the production or sale of any product or article of commerce, or the use or consumption of the same, or to prevent, restrict, limit or diminish the manufacture or output of any such article of commerce, use or consumption; and every person, firm, partnership, association, joint stock company or corporation, or any agent, employee, officer, or director of the same, that shall enter into any such combination, contract, management or agreement for the purpose aforesaid, shall be deemed and adjudged guilty of conspiracy in restraint of trade, and punished as provided for in Section 8228¹ in so far as applicable: Provided, that this section shall not be construed to extend beyond the scope and meaning of the first section of this article.² R.L.1910, § 8232.

§ 81. Unfair discrimination defined

Any person, firm or corporation, foreign or domestic, doing business in the State of Oklahoma, and engaged in the production, manufacture or distribution of any commodity in general, that intentionally, for the purpose of destroying the competition of any regular, established dealer in such commodity, or to prevent the competition of any person who, in good faith, intends and attempts to become such dealer, shall discriminate between different sections, communities or cities of this state by selling such commodity at a lower rate in one section, community or city, or any portion thereof, than such person, firm or corporation, foreign or domestic, charges for such commodity in another section, community or city, or that shall discriminate between different sections, communities or cities of this state by selling such commodity at a lower rate in one section, community or city, or any portion thereof, than such person, firm or corporation, foreign or domestic, charges for such commodity in another section, community or city after equalizing the distance from the point of production, manufacture or distribution and freight rates therefrom, shall be deemed guilty of unfair discrimination, which is hereby declared to be a misdemeanor. Laws 1913, ch. 114, p. 211, § 1.

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

FLOYD ROSE and FRANCES ROSE,)
husband and wife)
)
Plaintiffs)
-vs-)
)
DON THORNTON FORD, INC., an)
Oklahoma corporation, and)
LeROY ERWIN)
)
Defendants)
)
)

Siled
June 21, 1976
ph

No. 76-C-58 - *e* ✓

STIPULATION OF SETTLEMENT

It is hereby stipulated by and between FLOYD and FRANCES ROSE, husband and wife, Plaintiffs in the above styled Civil Action, by and through their Attorney, Ernest B. Day Jr., and DON THORNTON FORD INC., a Defendant in said action, that the Plaintiffs agree to accept from this Defendant the sum of FIVE HUNDRED DOLLARS (\$500.00) as settlement of any claims they might have arising out of the subject matter of this action.

Neither this stipulation nor anything contained herein or therein shall constitute evidence or an admission or adjudication with respect to any allegation of a complaint or any fact or conclusion of law with respect to any matters alleged or arising out of the Complaint, or of any wrong doing or misconduct on the part of this Defendant or of any Director, Officer or affiliated person thereof.

No representations or promisses of any kind, other than as contained in this Stipulation have been made by either party to the other to induce them to enter into this stipulation.

Dated this 21 day of June, 1976.

Ernest B. Day Jr.
Ernest B. Day Jr., Attorney for Plaintiff

Thomas G. Marsh
Thomas G. Marsh, Attorney for Defendant
Don Thornton Ford, Inc.,

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

E. R. McKEE, et. al.,)
)
 Plaintiff,)
)
 v.)
)
 GENE HOPKINS, et. al.,)
)
 Defendant.)

NO. 75 C 373 C

FILED

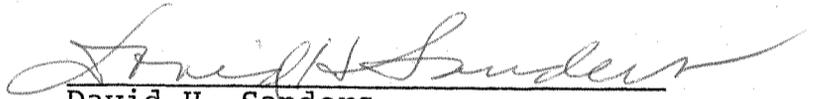
JUN 21 1976

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

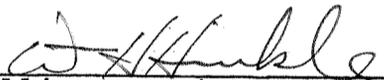
STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the plaintiffs E. R. McKee and Ruth McKee, by their attorney, David H. Sanders; and the cross-claimants Gene Hopkins and Sharon Hopkins, by their attorney, William H. Hinkle, and pursuant to Rule 41(a)(1)FRCP, dismiss the above styled cause with prejudice as to the defendants Bill B. DeGeer and D. Linn Thomason.

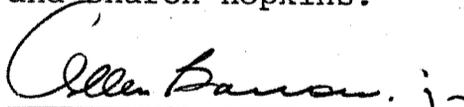
DATED this 17th day of June, 1976.



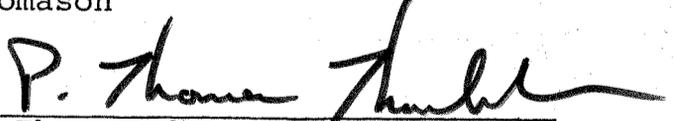
David H. Sanders,
Attorney for Plaintiffs, E. R. McKee
and Ruth McKee.



William H. Hinkle,
Attorney for Cross-Claimants, Gene
and Sharon Hopkins.



Allan Barrow, Jr.
Attorney for Defendant, D. Linn
Thomason



P. Thomas Thornbrugh
Attorney for Defendant, Bill B. DeGeer

THAT the Defendant, Samuel H. Adams, did, on the 1st day of December, 1973, execute and deliver to the Administrator of Veterans Affairs, his mortgage and mortgage note in the sum of \$9,500.00 with 6 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Samuel H. Adams, made default under the terms of the aforesaid mortgage note by reason of his failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendant, is now indebted to the Plaintiff in the sum of \$9,483.04 as unpaid principal with interest thereon at the rate of 6 percent per annum from April 1, 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 Defendant, Samuel H. Adams, in personam, for the sum of \$9,483.04 with interest thereon at the rate of 6 percent per annum from April 1, 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 Defendant, Home Service Club of America, Inc.

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.

S/Allen G. Barrow
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

G. M. CHAROLAIS, INC.,
an Oklahoma Corporation,

Plaintiff,

-vs-

ROBERT L. JERNIGAN, d/b/a
JERNIGAN'S CHAROLAIS SALES
MANAGEMENT OF TYLER, TEXAS,

Defendant.

No. 76-C-79-B

E I L E D

JUN 17 1976

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

ORDER *Dismissing*
Cause of Action and Complaint

Now on this 17th day of June, 1976, upon stipulation

for dismissal by the parties herein the above styled cause *of action*

& Complaint are hereby ordered dismissed *with prejudice*.

Allen E. Barrett

Judge of the District Court

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

FILE

JUN 16 1976

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

JOE A. CRUTCHER, on behalf)
of DENISE CRUTCHER, a minor,)
and JANE VICK,)

Plaintiffs,)

vs.)

J. J. CHILDRESS, d/b/a)
THUNDERBOLT BATTERY,)

Defendant.)

No. 76-C-241-B

NOTICE OF DISMISSAL

COMES NOW the Plaintiffs, JOE A. CRUTCHER, on behalf of DENISE CRUTCHER, a minor, and JANE VICK, and, pursuant to the provisions of Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, dismiss the above-styled action with prejudice.

SNEED, LANG, TROTTER & ADAMS

By J. David Trotter
J. David Trotter
Attorneys for Plaintiffs
411 Thurston National Building
Tulsa, Oklahoma 74103

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE No. 74-C-355-C

SHARON R. CLINE,

Plaintiff,

vs.

McCRORY CORPORATION d/b/a OTASCO, INC.,
and MTD PRODUCTS COMPANY, a corporation,

Defendants.

JUDGMENT

This action came on for trial before the Court and a jury, Honorable H. Dale Cook
, United States District Judge, presiding, and the issues having been duly tried and
the jury having duly rendered its verdict,

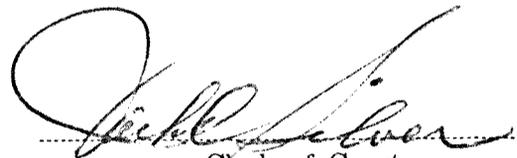
It is Ordered and Adjudged that the plaintiff take nothing and that the
defendants recover of the plaintiff their costs of this action.

FILED

JUN 16 1976

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

Dated at Tulsa, Oklahoma , this 16th day
of June , 19 76.


Clerk of Court

FILED

JUN 15 1976

Jack C. Silver, Clerk
U S DISTRICT COURT ✓

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

IN THE MATTER OF:)	In Proceedings of the Re-
HOME-STAKE PRODUCTION CO.,)	organization of a Corporation
Debtor.)	Under the Provisions of
)	Chapter X
)	No. 73-B-922-B ✓

ORDER

The Court has for consideration the Order Overruling Motions of the United States of America entered by the Bankruptcy Judge on April 19, 1976, having been appealed to this Court by Notice of Appeal of the United States of America, on April 26, 1976, and, having carefully perused the entire file, and, being fully advised in the premises, finds:

That the Order of the Bankruptcy Judge is not clearly erroneous and is substantiated by the evidence and law in the instant litigation, and is proper in all respects.

IT IS, THEREFORE, ORDERED that the Order Overruling Motions of the United States of America signed by the Bankruptcy Judge on April 16, 1976, and filed of record April 19, 1976, being the subject of an appeal filed April 26, 1976, be and the same is hereby adopted and affirmed by this Court.

ENTERED this ^{15th} ~~14th~~ day of June, 1976.

Allen E. Bonawit

CHIEF UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.) CIVIL ACTION NO. 76-C-74-C
)
LARRY BRIDGETT BROWN a/k/a)
LARRY BROWN, BEVERLY ANN BATTLE)
BROWN, S. J. SAKELARIS, Attorney-)
at-Law, Dr. F. L. SOMMER, and)
CHARLYE BROWN,)
)
Defendants.)

FILED

JUN 15 1976

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 15th
day of June, 1976, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney, and the Defendants, Larry
Bridgett Brown a/k/a Larry Brown, Beverly Ann Battle Brown,
S. J. Sakelaris, Attorney-at-Law, Dr. F. L. Sommer, and Charlye
Brown, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Larry Bridgett Brown
and Beverly Ann Battle Brown, were served by publication, as
appears from the Proof of Publication filed herein, that De-
fendant, Charlye Brown, was served with Summons and Complaint
on March 17, 1976, that Defendant, Dr. F. L. Sommer, was served
with Summons and Complaint on February 23, 1976, and that De-
fendant, S. J. Sakelaris, Attorney-at-Law, was served with
Summons and Complaint on February 24, 1976, all as appears
from U.S. Marshals Service herein.

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

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

Lot Twenty-two (22), in Block Nineteen (19), in NORTHBRIDGE, an addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Larry Bridgett Brown and Beverly Ann Battle Brown, did, on the 1st day of September, 1973, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,500.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Larry Bridgett Brown and Beverly Ann Battle Brown, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$9,241.98 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from June 1, 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, Larry Bridgett Brown and Beverly Ann Battle Brown, in rem, for the sum of \$9,241.98 with interest thereon at the rate of 4 1/2 percent per annum from June 1, 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, S. J. Sakelaris, Attorney-at-Law, Dr. F. L. Sommer, and Charlye Brown.

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

bcs

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

CHARLES A. LEWIS,

Plaintiff,

vs.

CAROL LEWIS, ET AL.,

Defendants.

)
)
) 74-C-7-B ✓
)
)
)
)
)
)

FILED

JUN 14 1976

Jack C. Silver, Clerk

U. S. DISTRICT COURT

ORDER SUSTAINING JOINT MOTION TO DISMISS AND DISMISSING
CAUSE OF ACTION AND COMPLAINT

The Court has for consideration the Joint Motion to Dismiss,
and, being fully advised in the premises, finds:

That said Motion should be sustained.

IT IS, THEREFORE, ORDERED that the Joint Motion to Dismiss
be sustained and this cause of action and complaint are hereby
dismissed.

ENTERED this 14th day of June, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

WILLIS WAYNE PRICE,)
)
 Plaintiff,)
)
 -vs-)
)
 GIT-N-GO, INC.,)
)
 Defendant.)

No. 75-C-411-*c* ✓

FILED

JUN 14 1976 *hm*

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

ORDER DISMISSING COMPLAINT

Now on this 14th day of June, 1976, the Defendant's Motion To Dismiss Complaint comes on for consideration and the Court, having reviewed Defendant's Motion, the exhibits attached thereto and the brief in support thereof and the Court having been notified that Plaintiff's counsel does not desire to oppose said Motion, and is willing to confess that said Motion to Dismiss should be granted, the Court finds:

1. Plaintiff has failed to comply with 29 U.S.C. §626(d) which requires not less than sixty (60) days notice of an intention to file an action under said Section. The evidence is conclusive that the sixty-day period was not allowed to lapse prior to the filing of this action. The Court finds that the expiration of the period is jurisdictional.

2. In regard to the alleged discrimination in connection with his discharge, the Plaintiff failed to file any notice with the Secretary of Labor and the statutory 180 days has expired. This notice is also jurisdictional. It is therefore

ORDERED, that the Plaintiff's Complaint should be and the same is hereby dismissed, and since Plaintiff does not contest the Motion, the Clerk is instructed to forthwith enter judgment on behalf of the Defendant and against the Plaintiff. By agreement of the parties, there is to be no award of costs or attorney's fees.

[Signature]
Attorney for Plaintiff
[Signature]
Attorney for Defendant

[Signature]
United States District Judge for the
Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

WILLIAM HAMILTON; WILLIAM
DUKE, JR.; ALVAN N. JOHNSON;
EDWARD E. BROWN; ALEX G. BERRY;
HARRY DORSEY; STERLING M. SCOTT;
C. G. MILLER; NATHANIEL W.
ANDERSON; LARUE A. THOMPSON;
JESSE JAMES JONES; CORNELIUS
GRUGGS; CARL R. SCOTT; and
COMMITTEE ON EQUAL EMPLOYMENT
PRACTICES,

Plaintiffs,

vs.

VICKERS TULSA DIVISION OF
SPERRY RAND,

Defendant,

and

LOCAL LODGE 790 OF THE INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO and
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO,

Defendants.

CIVIL ACTION NO.

74-C-606 ✓

FILED

JUN 14 1976 *ph*

Jack G. S. [unclear]
U. S. DISTRICT COURT

ORDER

This cause having come before this Court on June 9, 1976, on a hearing regarding the proposed approval of a Consent Decree between Plaintiffs and the Defendant Company, and the Court having been fully advised in the premises after affording all parties an opportunity to appear and be heard, it is, therefore,

ORDERED, ADJUDGED, AND DECREED that:

1. The objection by the Committee on Equal Employment Practices to the failure of the Consent Decree to

specifically name them as recipients of monetary relief is OVERRULED, it appearing that the parties have made sufficient private arrangements for the handling of any claims by the Committee for costs expended in this action.

2. The objection by the Committee On Equal Employment Practices to the failure of the Consent Decree to name Carl Scott as a recipient of monetary relief is OVERRULED, it appearing to the Court that Carl Scott did fail to make lawful discovery in this action and that any claims presented by him should therefore be stricken pursuant to Rule 37 of the Federal Rules of Civil Procedure.
3. The objection by the Committee On Equal Employment Practices to the failure of the Consent Decree to provide that the Committee be in charge of monitoring compliance with the terms of the Decree is OVERRULED, it appearing to the Court that such a provision is not necessary, based upon the facts of this case.

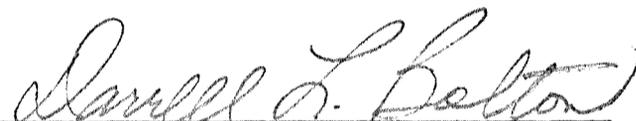
4. The objection by the Reverend Hamilton to the Consent Decree on the grounds that the distribution of monies being paid thereunder allowed certain persons to receive money to which they were not entitled is OVERRULED, it appearing to the Court that the parties have agreed to such payments, and it further appearing to the Court that such payments appear fair and equitable under all of the circumstances.
5. The objection by the Committee On Equal Employment Practices and by Reverend Hamilton to the term of the Decree is SUSTAINED, and the Court hereby approves the oral stipulation of the parties that Article VIII of the Consent Decree be modified so as to reflect that such Decree remain in effect until January 1, 1978.
6. The Court further approves the oral stipulation of the parties that the Revised Seniority Article (Appendix A of the Consent Decree) should be modified by substituting Appendix C, attached, for the Appendix C currently appended to that Revised Seniority Article.

7. Subject to the above and foregoing revisions, and the Court having determined that all absent interested persons have received proper notice of the pendency of this action and have been afforded full opportunity to present any objections to the proposed Consent Decree, it is hereby ORDERED that the Consent Decree is approved, as modified, and is entered as an Order of this Court effective June 21st 1976. 1976.

So Ordered this 14th day of June, 1976.


U. S. DISTRICT COURT JUDGE

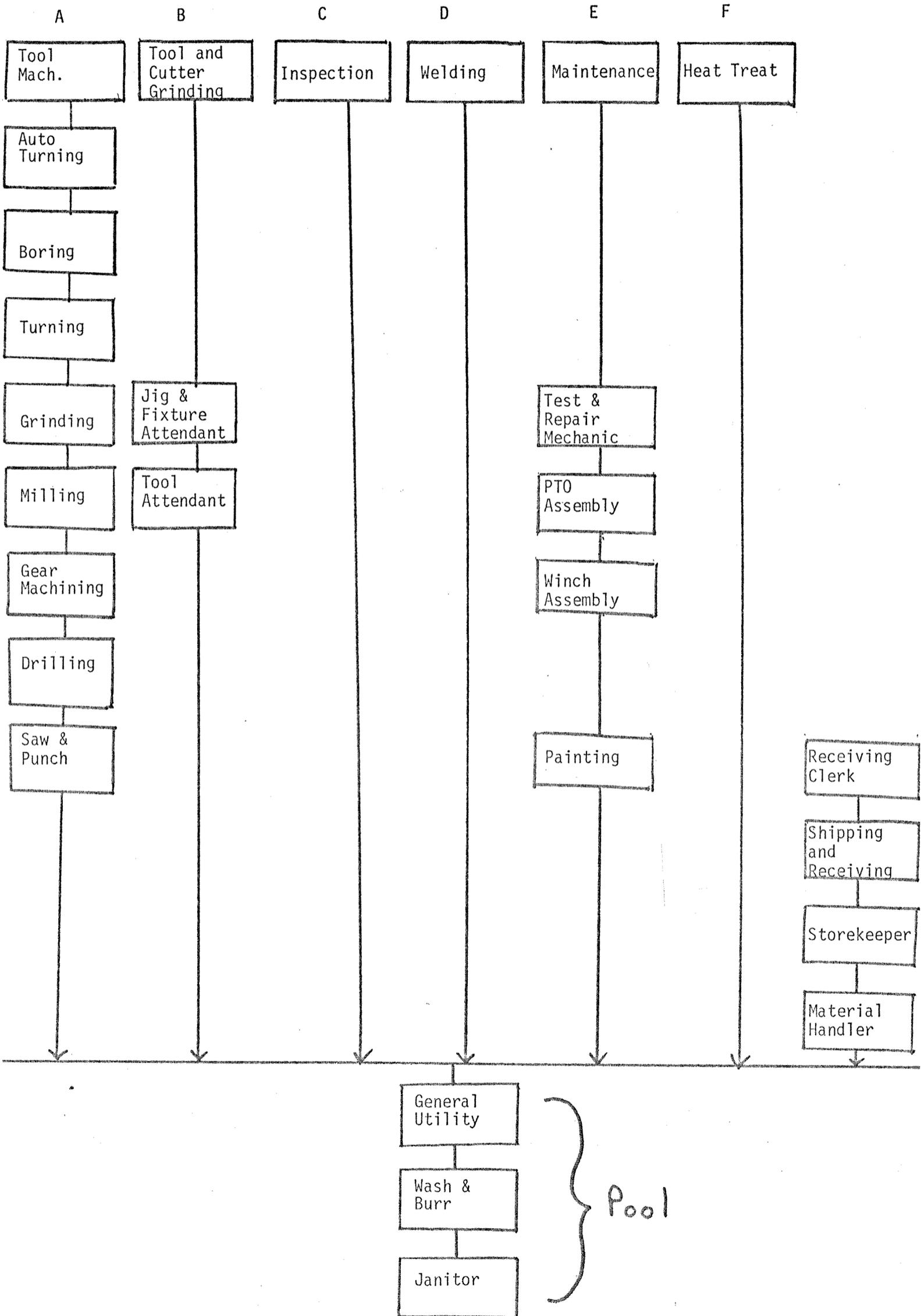
APPROVED:


Attorney for Plaintiffs


Attorney for Defendant Company

APPENDIX "C"

JOB FAMILIES



IN THE UNITED STATES DISTRICT COURT FOR THE **FILED**
 NORTHERN DISTRICT OF OKLAHOMA
 TULSA DIVISION

JUN 14 1976

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

TOMMY LEE NASH,)
)
 Plaintiff,)
)
 vs.)
)
 AMERICAN AIRLINES; TRANSPORT)
 WORKERS UNION OF AMERICA,)
 AFL-CIO; and AIR TRANSPORT)
 LOCAL 514, TRANSPORT WORKERS)
 UNION OF AMERICA, AFL-CIO,)
)
 Defendants.)

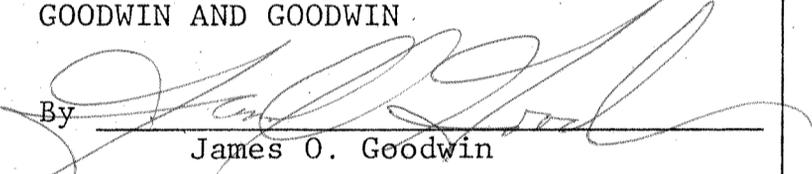
CIVIL ACTION NO.
 74-C-491

STIPULATION FOR DISMISSAL
 AND
 ORDER

IT IS HEREBY STIPULATED by and between plaintiff and
 defendant AMERICAN AIRLINES, INC., through their respective
 attorneys of record, that the above-entitled action may be
 dismissed with prejudice as to defendant AMERICAN AIRLINES,
 INC., pursuant to Rule 41(a)(1)(ii) of the Federal Rules of
 Civil Procedure.

DATED: April 12, 1976.

GOODWIN AND GOODWIN

By 
 James O. Goodwin

Attorneys for Plaintiff
 TOMMY LEE NASH

BENEFIELD, SHELTON, LEE, WILSON & TYREE
 OVERTON, LYMAN & PRINCE

By 
 George Christensen

Attorneys for Defendant
 AMERICAN AIRLINES, INC.

/ / /

/ / /

FILED

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

JUN 11 1976

Oscar E. King, and Oklahoma Farm Bureau)
Mutual Insurance Company,)

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

Plaintiffs,)

-vs--)

No. 75-C-543

The Atchison, Topeka and Santa Fe)
Railway Company, a corporation,)

Defendant.)

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, through their respective attorneys of record, that defendant has this date paid to plaintiff Oscar E. King the sum of Nine Thousand Dollars (\$9,000.00), in full settlement, release and satisfaction of plaintiffs' cause of action as set forth in the complaint herein, and that plaintiff Oscar E. King and Oklahoma Farm Bureau Mutual Insurance Company have accepted said sum in full satisfaction, release and discharge of the causes of action and claims against the defendant.

IT IS, THEREFORE, FURTHER STIPULATED AND AGREED that this cause of action be dismissed, with prejudice, each party to bear its own costs.

DATED this 9th day of June, 1976.

BREWER, WORTEN & ROBINETT

By [Signature]

P. O. Box 1066
Bartlesville, Oklahoma 74003

Attorneys for Plaintiffs

RAINEY, WALLACE, ROSS & COOPER

By [Signature]

735 First National Center West
Oklahoma City, Oklahoma 73102

ATTORNEYS FOR DEFENDANT.

ORDER OF DISMISSAL

NOW on this 11th day of June, 1976, comes on for hearing the Stipulation of Dismissal of plaintiffs and de-

fendant in the above entitled cause. The court finds that said cause has been compromised and settled between said parties and, after due consideration of said Stipulation of Dismissal, finds that said dismissal should be entered.

IT IS, THEREFORE, ORDERED that this cause ^{of action & complaint} ~~be~~ and the same ^{are} ~~is~~ hereby dismissed with prejudice, each party to bear its own costs.

Allen E. Brown

UNITED STATES DISTRICT JUDGE

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

BARBARA LOY,)
)
Plaintiff,)
)
vs.)
)
MOBILE HOUSING, INC.,)
)
Defendant.)

No. 75-C-457-B

FILED

JUN 11 1976

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

ORDER OF DISMISSAL

NOW ON this 11th day of June, 1976, the above styled and numbered cause of action coming on for hearing before the undersigned Judge, upon the Stipulation and Motion for Dismissal of the Plaintiff and Defendant herein; and the Court having examined the pleadings and said Stipulation and Motion for Dismissal and being well and fully advised in the premises, is of the opinion that said cause should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled and numbered cause ^{of action & complaint} ~~be~~ and the same ^{are} ~~is~~ hereby dismissed with prejudice.

Allen E. Brown

UNITED STATES DISTRICT JUDGE

APPROVED:

Robert G. GEE
ROBERT GEE
Attorney for Plaintiff

William B. Selman
WILLIAM B. SELMAN
Attorney for Defendant

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

D. L. WITHINGTON,
Plaintiff,
v.
FEDERAL ENERGY ADMINISTRATION,
et al.,
Defendants.

Civil Action No.

75-C-345 **FILED**

JUN 10 1976 *ph*

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

O R D E R

This matter comes before the Court on the "Motion to Dismiss or in the Alternative for Summary Judgment" filed by defendants Frank G. Zarb, Administrator of the Federal Energy Administration and the Federal Energy Administration. The Court having read all memoranda and the administrative record filed in this action and having heard oral arguments presented by the parties has determined that there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law. Accordingly, it is this 10th day of June, 1976,

ORDERED, that defendants' Motion is granted and judgment is entered in favor the defendants.


H. DALE COOK
United States District Judge

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CIVIL ACTION NO. 76-C-71-C ✓

JORDAN CONNER a/k/a JORDON CONNER,)
JESSIE MAE CONNER, CITY FINANCE)
COMPANY OF OKLAHOMA, INC., SAND)
SPRINGS BRANCH, CURTIS A. PARKS,)
Attorney-at-Law, and BELL FINANCE)
COMPANY, INC.,)

Defendants.)

FILED

JUN 10 1976 *mm*

Jack C. Silver, Clerk
S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 10th
day of June, 1976, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and, the Defendant, Curtis A.
Parks, Attorney-at-Law, appearing by his attorney, Michael J.
Beard; and the Defendants, Jordan Conner a/k/a Jordon Conner,
Jessie Mae Conner, City Finance Company of Oklahoma, Inc.,
Sand Springs Branch, and Bell Finance Company, Inc., appearing
not.

The Court being fully advised and having examined
the file herein finds that Defendant, Bell Finance Company, Inc.,
was served with Summons and Complaint on February 19, 1976;
that Defendants, City Finance Company of Oklahoma, Inc., Sand
Springs Branch, and Curtis A. Parks, Attorney-at-Law, were
served with Summons and Complaint on February 23, 1976; that
Defendant, Jordan Conner a/k/a Jordon Conner, was served with
Summons and Complaint on April 23, 1976; and, that Defendant,
Jessie Mae Conner, was served with Summons and Complaint on
April 26, 1976; all as appears from the United States Marshal's
Service herein.

It appearing that the Defendant, Curtis A. Parks,
Attorney-at-Law, has duly filed his answer on March 9, 1976;
and, that Defendants, Jordan Conner a/k/a Jordon Conner, Jessie

Mae Conner, City Finance Company of Oklahoma, Inc., Sand Springs Branch, and Bell Finance Company, Inc., have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Twenty-eight (28), Block Five (5),
CHANDLER-FRATES FOURTH ADDITION to the
City of Tulsa, Tulsa County, State of
Oklahoma, according to the recorded plat
thereof.

THAT the Defendants, Jordan Conner and Jessie Mae Conner, did, on the 20th day of December, 1974, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the sum of \$8,000.00 with 9 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, Jordan Conner and Jessie Mae Conner, made default under the terms of the aforesaid mortgage note by reason of their failure to make the monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$7,984.12 as unpaid principal with interest thereon at the rate of 9 1/2 percent per annum from June 1, 1975, until paid, plus the cost of this action accrued and accruing.

The Court further finds that Defendant, Curtis A. Parks, Attorney-at-Law, is entitled to judgment against Defendant, Jordan Conner, in the amount of \$80.38 with interest at the rate of 10 percent per annum from December 18, 1974, until paid, plus accrued court costs, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Jordan Conner and Jessie Mae Conner, in personam, for the sum of \$7,984.12 with interest thereon at the rate of 9 1/2 percent per annum from June 1, 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 Defendant, Curtis A. Parks, Attorney-at-Law, have and recover judgment against Defendant, Jordan Conner, in personam, in the amount of \$80.38 with interest at the rate of 10 percent per annum from December 18, 1974, until paid, plus accrued court costs as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, City Finance Company of Oklahoma, Inc., Sand Springs Branch, and Bell Finance Company, Inc.

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


MICHAEL J. BEARD
Attorney for Defendant
Curtis A. Parks
1736 South Carson
Tulsa, Oklahoma 74119

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

FILED

JUN 9 1975

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

JS

KARL DOUGLAS BUTLER, JR.,)
)
Plaintiff,)
)
v.)
)
BUD BEASTON,)
)
Defendant.)

CIVIL ACTION NO.
75-C-179 ✓

NOTICE OF DISMISSAL BY PLAINTIFF WITHOUT PREJUDICE

Plaintiff, KARL DOUGLAS BUTLER, JR., hereby dismisses
without prejudice his Complaint in the above-identified action,
pursuant to Rule 41(a)(1)(i), F.R.C.P.

Respectfully submitted,

RICHARDS, HARRIS & MEDLOCK
2420 Republic Nat'l Bank Tower
Dallas, Texas 75201
(214/742-8013)

By

D. Carl Richards

D. Carl Richards

PRAY, SCOTT & LIVINGSTON
2910 Fourth Nat'l Bank Building
Tulsa, Oklahoma 74119
(918/583-1366)

By

Roger R. Scott

Roger R. Scott

ATTORNEYS FOR PLAINTIFF

CERTIFICATE

Although Defendant BUD BEASTON has not answered or otherwise appeared of record in this action, a copy of the foregoing Notice of Dismissal by Plaintiff Without Prejudice was served on the attorney who has informally contacted undersigned counsel and advised that he represents defendant Bud Beaston, by first class mail to the following address on this 5 day of June, 1975:

Alfred B. Knight
Knight, Wilburn & Wagner
312 Beacon Building
Tulsa, Oklahoma 74103

A handwritten signature in cursive script, reading "D. Carl Richards", written over a horizontal line.

D. Carl Richards

7. On March 6, 1974, said Reconsideration request was denied by the Division of Reconsideration, Bureau of Disability Insurance, Department of Health, Education and Welfare. (TR-71)

8. On March 14, 1974, plaintiff filed a "Request for Hearing. (TR-27)

9. On April 23, 1974, a hearing was held at Tulsa, Oklahoma, before The Administrative Law Judge, Brude L. Evans. Plaintiff was represented at said hearing by her attorney, Joseph M. Bonner.

10. On June 17, 1974, the Administrative Law Judge filed the "Hearing Decision". (TR-19 through 24)

11. This decision was affirmed by the Appeals Council on March 27, 1975. (TR-4)

12. The Findings of the Administrative Law Judge (TR-23) were as follows:

"Based upon a preponderance of the credible evidence of record, and after careful consideration thereof, the Administrative Law Judge makes the following findings:

"1. The claimant stated that she was born on October 2, 1920, that she completed eleven years of schooling, and has worked as a waitress and grocery checker.

"2. The claimant met the special earnings requirement in 1967, the alleged date of disability onset and continued to meet them through September 30, 1969.

"3. The claimant had a duodenal ulcer, hiatus hernia, and a fracture of her right leg.

"4. Considering the claimant's residual physical capacity, and her vocational background, she was able to perform jobs such as waitress and grocery store checker, which was her previous occupations, on or before September 30, 1969.

"5. The claimant was not prevented from engaging in any substantial gainful activity for any continuous period on or before September 30, 1969, which lasted for at least twelve months.

"6. The claimant was not under a 'disability' as defined in the Social Security Act, as amended, at any time on or prior to September 30, 1969.

13. The claimant last met the special earnings requirement on September 30, 1969.

15. The medical evidence presented by the plaintiff, as reflected in the Transcript of the Administrative record, reveals the following:

On October 29, 1964, plaintiff was diagnosed as having (1) Spastic colon; (2) Colitis; (3) Deformity of the cecum by adhesions. (TR-92)

On February 9, 1967, plaintiff was operated for a duodenal ulcer and hiatus hernia. (TR-116 through 117)

On May 5, 1968, plaintiff was treated in the emergency room, with a diagnosis of: (1) Multiple abrasions of the right side of the body and leg, including the nose and chin; (2) Laceration of the left side under the chin 2 inches in length; (3) Simple fracture of the right tibia and fibula." (TR-120 through 121) On page 119 of the transcript the emergency room record reflects the following notation: "How accident occurred. Door opened and patient fell out of car on the Richland Highway. Car speed approximately 60 m.p.h.. Happened about 3 p.m."

On September 22, 1970, plaintiff was admitted to St. Francis Hospital in Tulsa, with a diagnosis as follows: (1) Spastic colitis; (2) Cancerophobia; (3) Two Compression fractures (2) of dorsal vertebrae, old; (4) Pulmonary histoplasmosis, healed. (TR-126)

The medical history taken at St. Francis Hospital, reflected at page 127 of the Transcript reflects a gallbladder and hysterectomy in 1955; vagotomy and pyloroplasty in 1967 and a cyst of the right breast in 1970.

16. The Administrative Law Judge referred to these physical problems in his evaluation of the evidence. (TR-22)

17. The Administrative Law Judge found that "a study of the medical evidence of record convinces the Administrative Law Judge that the primary diagnosis requiring evaluation on and before September 30, 1969, relates to the claimant's diagnosis of duodenal ulcer and hiatal hernia and injuries received in an automobile accident on May 5, 1968, which included multiple abrasions on the right side of the body and leg, laceration of the left side under the chin and simple fracture of the right tibia and fibula."

18. The Administrative Law Judge further found: "Claimant testified that she had worked as a grocery checker up to the latter part of 1966 when she quit because she moved. She worked a little, part-time, as a waitress during 1967 and up to May, 1968, when she was involved in an automobile accident. She stated that she has not worked since that time."

19. The Administrative Law Judge further found:

"The Administrative Law Judge is convinced from a study of the medical evidence that the claimant has had numerous medical problems, however, the medical evidence does not reflect that any of these conditions were totally disabling for a continuous period of twelve months or longer, on and before September 30, 1969, the last date that the claimant met the special earnings requirement."

CONCLUSIONS OF LAW

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

1. This Court has jurisdiction pursuant to §205(g) of the Social Security Act, as Amended, 46 U.S.C. §405(g).

2. Section 216(i) of the Social Security Act provides for the establishment of a period of disability, and Section 223 of said Act provides for the payment of disability insurance benefits where the requirements specified therein are met.

3. Section 223(d)(1) of the Social Security Act defines disability (except for certain cases of blindness) and the "inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

4. Section 223(d)(2)(A) further provides that "an individual (except a widow, surviving divorced wife, or widower for purposes of section 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), 'work which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country."

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

6. Section 404.1524(c) of the Regulation No. 4 states, in part, that the 'evidence shall also describe the individual's capacity to perform significant functions such as the capacity to sit, stand, or move about, travel, handle objects, hear or speak, and, in cases of mental impairment, the ability to reason or to make occupational, personal, or social adjustments."

7. A claimant, seeking benefits for disability under the Social Security Act, has the burden of establishing that he was disabled on or before the date on which he last met the Act's statutory earnings requirement. *McMillan v. Gardner*, 384 F.2d 596 (10th Cir., 1967); *Lucus v. Richardson*, 348 F.Supp. 1156 (DC Kans., 1972); *Brock v. Finch*, 313 F.Supp. 1187 (DC Kans., 1970); *Dicks v. Weinbarger*, 390 F.Supp. 660 (DC Okla., 1974).

8. The elements or proof which should be considered in determining whether plaintiff has established a disability within the meaning of the Act are: 1) Objective medical facts; 2) Medical opinions and diagnosis; 3) Subjective evidence of pain and disability; and 4) Background, education and working history and age. *Hicks v. Gardner*, 393 F.2d 299 (4th CCA, 1968); *Black v. Richardson*, 356 F.Supp. 861 (DC S.C., 1973).

9. If a claimant establishes that he is unable, by reason of medically determined physical or mental impairment, to do his previous work, the burden of proof shifts to the Secretary to come forward with evidence which establishes the reasonable availability of work which the claimant is able to do. *Kirby v. Gardner*, 369 F.2d 302 (10th Cir., 1966); *Gardner v. Brian*, 369 F.2d 443 (10th Cir., 1966); *Keating v. Secretary of Health, Ed. and Welf. of U.S.*, 468 F.2d 788 (10th Cir., 1972).

10. The Federal District Court may not try a social security disability case de novo and substitute its findings for those of

the Secretary of Health, Education and Welfare. 42 U.S.C.A. §§ 405(g), 416(i), 423; Garrett v. Richardson, 363 F.Supp. 83 (USDC, S.C., 1973); Byrd v. Richardson, 362 F.Supp. 957 (DC, S.C., 1973).

11. In conducting an administrative review it is the duty of the court to examine the facts contained in the administrative record, evaluate the conflicts, and make a determination therefrom whether the facts support the several elements which make up the ultimate administrative decision. Herber Valley Milk Company v. Butz, 503 F.2d 96 (10th CCA, 1974).

12. On the state of the record, the Court concludes that defendant's decision is supported by substantial evidence. 42 U.S.C.A. §405(g); Richardson v. Perales, 402 U.S. 391 (1971); Oldenbur v. Clark, 489 F.2d 839 (10th CCA, 1974).

13. The Secretary is not required to believe the testimony of plaintiff even if it is not squarely contradicted. Fox v. Gardner, 363 F.2d 25 (8th CCA, 1966).

14. Plaintiff has failed to establish that the Secretary's findings are clearly erroneous or not supported by substantial evidence.

15. Accordingly the Secretary's decision must be affirmed.
ENTERED this 24 day of June, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

IN THE MATTER OF:)
)
HOME-STAKE PRODUCTION COMPANY,)
)
Debtor,)
)
UNITED STATES OF AMERICA,)
)
Appellant,)
)
vs.)
)
ROYCE H. SAVAGE, Trustee,)
)
Appellee.)

Civil No. 75-C-427 ✓

FILED

JUN 9 1976

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

ORDER ON MOTION FOR REHEARING AND
APPLICATION FOR ORDER DIRECTING TRUSTEE TO REJECT
EXECUTORY CONTRACTS OF THE DEBTOR

The Court has for reconsideration the Appeal filed by the United States of America from the Order of the Referee in Bankruptcy concerning the 1966 Mississippi Gas Program of the debtor. This matter is presented to the Court in the following context:

A. On July 15, 1975 the Referee in Bankruptcy entered Findings of Fact and Conclusions of Law.

B. On August 7, 1975 the Referee in Bankruptcy entered Supplement to and Amendment of Findings of Fact and Conclusions of Law.

C. On August 13, 1975 the Referee in Bankruptcy entered an Order stating in material part:

"IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. The Trustee shall execute and deliver an assignment to each participant in the Home-Stake 1966 Mississippi Gas Program covering his interest in the mineral leases subject to such Program.

2. The Trustee shall pay over to each such participant his share of the accumulated net income of the Program.

3. The Trustee is authorized to discontinue performance of accounting responsibilities with respect to the Program upon acceptance of such responsibility by James W. Harris Production Co.

4. The Trustee shall require from each participant in the Program a waiver of all claims in connection with the transaction against the estate of Home-Stake Production Company, the Home-Stake 1966 Mississippi Gas Program and the Trustee, including, without limitation, claims concerning funds received to date by the debtor corporation and the Trustee, and all unliquidated claims and all claims against the Trustee in connection with the transaction."

D. On August 21, 1975 the United States of America filed its Notice of Appeal of the August 13, 1975 Order of the Referee in Bankruptcy.

E. On September 29, 1975 this Court entered its Order Approving and Affirming Order and Findings of Fact and Conclusions of Law and Supplement to and Amendment of Findings of Fact and Conclusions of Law of the Referee in Bankruptcy.

F. On October 9, 1975 the United States of America filed both a Motion for Rehearing with respect to the September 29, 1975 Order of this Court and an Application for Order Directing Trustee to Reject Executory Contracts of the Debtor. The Motion and Application were set for hearing to be held on January 7, 1976.

G. On January 7, 1976 this Court, at the hearing, (i) granted the request of the United States of America for an opportunity to present oral argument and file a brief relative to its appeal, (ii) heard oral argument on the appeal and (iii) heard evidence and argument on the application of the United States of America for an order directing the Trustee to reject the contracts with the participants in the 1966 Mississippi Gas Program as executory. At the conclusion of the hearing, the Court entered its Order on Motion for Rehearing and on Application for Order filed by the United States of America, which

Order was filed January 26, 1976. In that Order, the Court established the briefing schedule and directed certain matters to be discussed in the briefs.

H. Subsequent to the hearing, and on January 30, 1976 the parties filed, without objection, the Affidavit of David E. Melendy, which the Court has considered as evidence in this matter.

I. Post-hearing memoranda and briefs have been filed by all interested parties and considered by the Court.

In connection with the Motion for Rehearing, the Court finds and concludes, upon reconsideration of all of the evidence and authorities presented, and upon consideration of the arguments presented at the hearing, that:

- (a) The referee's findings of fact are not clearly erroneous, and this Court's action, as set forth in the Order of September 29, 1975 was correct. The government's argument that the leasehold interests comprising the 1966 Mississippi Gas Program were acquired for less money and prior to the establishment of the trust relationship with the investor-participants is not deemed material, since the Court finds that the requisite trust relationship was legally established thereafter and long prior to bankruptcy.
- (b) Evidence introduced at the hearing in connection with the government's application raising the executory contract issue (the Melendy Affidavit) is relevant to the issues raised in the Motion for Rehearing. That evidence further supports the findings of fact made by the referee.
- (c) The authorities presented by the United States of America are not applicable to the factual situation presented in the debtor's 1966 Mississippi Gas Program and the Trustee's Application. The recording statutes of Mississippi are similarly inapplicable.
- (d) Since the debtor was only a trustee and had no beneficial interest in or claim against the leases in the 1966 Mississippi Gas Program, even though it held the legal title thereto which passed to the Trustee, the authorities require that the Court turn the property over to the true owners where possible. 4A Collier on Bankruptcy, 14th Ed., 1971 §70.25. In Re German, DC Ill., 193 F.Supp. 948 (1961), U.S. v. Luther, 10th Cir., 255 F.2d 499 (1955), cert. den. 76 S.Ct. 321, 350 U.S. 947, Cattle Owners Corp. v. Arkin, D.C. Iowa, 252 F.Supp. 34 (1966) and Todd v. Pettit (In re Elliott), 5th Cir., 108 F.2d 139 (1939). The interest in the leases and the

Program held by the Trustee for the benefit of the debtor estate is, of course, unaffected by this proceeding and will be retained by the Trustee.

- (e) The Motion for Rehearing should be overruled and this Court's Order of September 29, 1975 reaffirmed.

In connection with the government's Application for Order Directing Trustee to Reject Executory Contracts of the Debtor, the Court finds and concludes, upon consideration of all of the evidence, pleadings, authorities, and oral argument presented at the hearing, that:

- (a) The letter agreements originally entered into between the participants in the 1966 Mississippi Gas Program and the debtor were executory in nature since the debtor had continuing obligations to the participants.
- (b) These continuing obligations of the debtor will be eliminated under the terms of the Order of August 13, 1975 entered by the referee.
- (c) While it appears that revenues from production under the leases will not result in recovery by the participants of their investment and costs, the Court can not determine that such recovery will not ever occur. Under the referee's Order, the 20% reversionary interest in the leases owned by the debtor under the letter agreements will be retained as an asset of the debtor estate in the event such recovery by the participants occurs.
- (d) In consideration for the conveyance of their interests and payment of accrued funds, each participant will release the Trustee and the debtor estate from all claims. This provision, contained in the referee's Order of August 13, 1975 is beneficial to the debtor estate.
- (e) Under all of the circumstances, the performance by the Trustee of the letter agreements would not be detrimental nor unduly onerous to the debtor estate and would not adversely effect the possibilities of reorganization. Rejection of the letter agreements as executory contracts would expose the debtor estate to claims which could substantially exceed any benefit which might be derived from such rejection.
- (f) The Application of the United States of America should be denied. Collier on Bankruptcy, Vol. 6, §3.23(4).

IT IS THEREFORE ORDERED that:

1. The Motion for Rehearing is overruled. The Court's Order of September 29, 1975 is confirmed.
2. The Application for Order Directing Trustee to Reject Executory Contracts of the Debtor is denied.
3. The Trustee is directed to comply with the August 13, 1975 Order of the Referee.

Dated June 9th, 1976.


Allen E. Barrow
Chief United States District Judge

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

VIOLA MINNERS and HOUSING)
AUTHORITY OF THE CITY OF TULSA,)

Defendants.)

CIVIL ACTION NO. 76-C-133-B

FILED

JUN 9 1976

JUDGMENT OF FORECLOSURE

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

THIS MATTER COMES on for consideration this 9th
day of June, 1976, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and, the Defendant, Housing
Authority of the City of Tulsa, appearing by its attorney,
Robert S. Rizley, Rizley, Prichard, Ford, Norman & Reed; and
the Defendant, Viola Minners, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, Viola Minners, was served
with Summons and Complaint on April 1, 1976; and, the Defendant,
Housing Authority of the City of Tulsa, was served with Summons
and Complaint on April 2, 1976; both as appears from the United
States Marshal's Service herein.

It appearing that the Defendant, Housing Authority of
the City of Tulsa, has duly filed its Disclaimer on April 29,
1976; and, that the Defendant, Viola Minners, has failed to
answer herein and that default has been entered by the Clerk
of this Court.

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

Lot Twenty-seven (27), Block Two (2), SUBURBAN
ACRES FOURTH ADDITION to the City of Tulsa,
Tulsa County, State of Oklahoma, according to
the recorded plat thereof.

THAT the Defendant, Viola Minners, did, on the 11th day of July, 1974, execute and deliver to the Administrator of Veterans Affairs her mortgage and mortgage note in the sum of \$9,500.00 with 8 3/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Viola Minners, made default under the terms of the aforesaid mortgage note by reason of her failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the sum of \$9,435.16 as unpaid principal with interest thereon at the rate of 8 3/4 percent per annum from July 1, 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 Defendant, Viola Minners, in personam, for the sum of \$9,435.16 with interest thereon at the rate of 8 3/4 percent per annum from July 1, 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 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.

s/Allen G. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney

FILED

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

JUN 8 1976

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

COLUMBIA ACCIDENT & HEALTH)
INSURANCE COMPANY, a)
Pennsylvania corporation,)
)
Plaintiff,)
)
v.)
)
FRANK COPELAND, DON W. COLLINS,)
and SAINT FRANCIS HOSPITAL, INC.,)
an Oklahoma corporation,)
)
Defendants.)

NO. 76-C-128-B

ORDER OF DISMISSAL

Now on this 8th day of June, 1976, the above captioned cause, and the cause of action of each party thereto against any other party or parties, is hereby dismissed, with prejudice, on stipulation and motion of all parties thereto.

Allen E. Brouer

UNITED STATES DISTRICT JUDGE

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

FILED

JUN 8 1976

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

UNITED STATES OF AMERICA and)
CHARLES BEIBEL, Revenue Officer)
Internal Revenue Service,)
)
) Petitioners,)
)
vs.) No. 76-C-210-B
)
RONALD D. FLANAGAN,)
)
) Respondent.)

ORDER DISCHARGING RESPONDENT
AND DISMISSAL

On this 8th day of June, 1976, Petitioners' Motion To Discharge Respondent And For Dismissal came for hearing and the Court finds that Respondent has now complied with the Internal Revenue Service Summons served upon him January 26, 1976, that further proceedings herein are unnecessary and that the Respondent, Ronald D. Flanagan, should be discharged and this action dismissed upon payment of \$38.48 costs by Respondent.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that the Respondent, Ronald D. Flanagan, be and he is hereby discharged from any further proceedings herein and this cause of action and Complaint are hereby dismissed upon payment of \$38.48 costs by said Respondent.

Allen F. Bennett
UNITED STATES DISTRICT JUDGE

APPROVED:

Kenneth P. Snoke
KENNETH P. SNOKE
Assistant United States Attorney

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

CORA MAE JONES,
Plaintiff,
VS.
OKLAHOMA NATURAL GAS COMPANY,
Defendant.

NO. 76-C-64 ✓

FILED
JUL 8 1976
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITHOUT PREJUDICE

Now on this 8th day of June, 1976, this matter comes on for pre-trial in its regularly scheduled order. The Court, after reviewing the pleadings and hearing the stipulations of the parties finds that the principal place of business of the defendant is the State of Oklahoma and, therefore, federal jurisdiction may not be invoked.

IT IS THEREFORE ORDERED, that this case be dismissed without prejudice to its being refiled in the proper State Court.


DISTRICT JUDGE

MAILING CERTIFICATE

I, Don L. Dees, do hereby certify that on this 8th day of June, 1976, I did mail a true, correct and exact copy of the foregoing Dismissal to Mr. Alfred B. Knight, Attorney at Law, 310 Beacon Building, Tulsa, Oklahoma 74103, with sufficient postage prepaid.

DON L. DEES

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

LLOYD E. MINKER and VIRGINIA)
MINKER, husband and wife, and)
surviving parents and next of)
kin of FREDDY GAY MINKER,)
Deceased,)

Plaintiffs)

vs.)

No. 75-C-39

ST. LOUIS-SAN FRANCISCO RAILWAY)
COMPANY, a foreign corporation, and)
PAULA JEAN CARROLL DAVISON,)

Defendants)

FILED

JUN 7 1976

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

JOURNAL ENTRY OF JUDGMENT

Now on this 25th day of May, 1976 this cause comes on for jury trial pursuant to regular setting. The plaintiffs appeared in person and by their attorneys, Green, Feldman & Hall by Wm. S. Hall; the defendant St. Louis-San Francisco Railway Company, a foreign corporation, appeared by its attorneys, Franklin, Harmon & Satterfield, Inc. by Ben Franklin; and the defendant Paula Jean Carroll Davison appeared in person and by her attorneys, Best, Sharp, Thomas & Glass by Jack M. Thomas.

All parties announced ready for trial, whereupon the cause proceeded to trial. A jury was duly selected and sworn and opening statements made. Plaintiffs introduced their evidence and rested; whereupon the defendants and each of them moved to dismiss, which motions were by the Court overruled and exceptions allowed. The defendants commenced introduction of their evidence and at 5:30 P. M. the cause recessed until the following day.

Now on this 26th day of May, 1976 the cause continued on trial and defendants introduced their evidence and rested and, there being no

rebuttal evidence, all parties announced they were resting their case. Whereupon the defendants and each of them moved for a directed verdict, which motions were by the Court overruled and exceptions allowed.

Closing arguments were made by counsel, the jury was duly instructed by the Court, and at 4:20 P. M. the jury retired to consider its verdict, and at 6:50 P. M. the jury returned its unanimous verdict into open court which, omitting the caption, is in words and figures as follows:

"We, the Jury, find for the plaintiffs and against the defendants and fix their damages in the amount of \$31,302.71.

May 26, 1976
(Date)

/s/ Betty Tanner
(Foreman)"

The Court received the verdict, ordered that same be filed of record, and pronounced judgment thereon as follows:

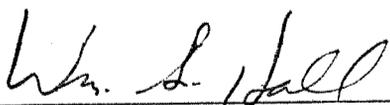
BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that pursuant to the jury's verdict the plaintiffs have money judgment against the defendants and each of them, jointly and severally, in the sum of Thirty-one Thousand Three Hundred Two Dollars and Seventy-one Cents (\$31,302.71), with interest thereon at the rate of ten per cent (10%) per annum from and after *May 26*, 1976 until paid, and the costs of this action.

DONE AND DATED this *7th* day of *June* 1976.



United States District Judge

Approved as to form:


Attorney for Plaintiffs


Attorney for St. Louis-San Francisco Railway Company


Attorney for Paula Jean Carroll Davison

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

RAYMOND ALVIN CALDWELL;)
LUCILLE CALDWELL; KARLA K.)
CALDWELL; RONALD R. CALDWELL;)
ROBERT F. FRETWELL and)
SHIRLEY J. FRETWELL,)

Plaintiffs,)

vs.)

No. 73-C-65 ✓

SEMCO INDUSTRIES, A Corpora-)
tion; SYSTEMEX CORPORATION, A)
Corporation; ROBERT L. BROOKS;)
KELLEY R. HANEY, SR.; L. E.)
BROOKS and R. L. POPE,)

Defendants.)

Above Cause
CONSOLIDATED With

FRANCIS F. SUMMY and CHARLENE)
SUMMY; JOHNNIE SUMMY; JAMES)
E. NUNN and WILLARD CULP, On)
Behalf of Themselves and All)
Others Similarly Situated,)

Plaintiffs,)

vs.)

No. 72-C-54

SEMCO INDUSTRIES, INC.;)
ROBERT L. BROOKS; KELLEY R.)
HANEY, SR.; L. E. BROOKS;)
JACQUES SPEE; R. E. HANCOCK;)
GAYLE E. WELCHER; R. L. POPE)
and J. R. HOOKER, JR.,)

Defendants.)

FILED

JUN 4 1976

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

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 4th day of June, 1976, there comes before this Court for its consideration the joint Stipulation for Dismissal filed on behalf of all of the plaintiffs in Case No. 73-C-65 and the defendant Robert L. Brooks.

Whereupon, such Stipulation being prepared pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, and the Court finding that the within named parties, by their attorneys,

urge that this Court enter an Order of Dismissal with Prejudice covering all plaintiffs and all defendants named herein;

IT IS HEREBY ORDERED that the above referenced civil *cause of*
and complaint *are*
action, No. 73-C-65, ~~is~~ hereby dismissed with prejudice against the rights of any of the parties thereto to refile the same, with each of the parties to bear his respective costs and attorneys' fees.


United States District Judge

APPROVED AS TO FORM:



Eric J. Groves of
JERNIGAN GROVES, BLEAKLEY & HOOD
Attorneys for Plaintiffs



Jack R. Givens of
JONES, GIVENS, BRETT, GOTCHER,
DOYLE & BOGAN, INC.
Attorneys for Defendant Robert L. Brooks

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

CARRIER-TRANSCOLD CO.,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
CIMARRON EQUIPMENT CORP.,)
a corporation,)
)
Defendant.)

Civil Action No. 76-C-148-B

FILED

JUN 4 1976

Jack C. Silver, Clerk
U S DISTRICT COURT

JUDGMENT BY DEFAULT UPON
APPLICATION TO COURT

In this action, the defendant, CIMARRON EQUIPMENT CORP., 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 said defendant, CIMARRON EQUIPMENT CORP., 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, CARRIER-TRANSCOLD CO., a corporation, have and recover from the said defendant, CIMARRON EQUIPMENT CORP., a corporation, the sum of Fourteen Thousand Dollars (\$14,000.00), with interest thereon at the rate of ten (10) per cent per annum from March 15, 1976 until paid, together with an attorneys' fee in the sum of Four Thousand Dollars (\$4,000.00), to be taxed as costs, together with all other costs of this matter, and that plaintiff have Execution therefor.

JUDGMENT RENDERED this 4th day of June, 1976.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT
JUDGE

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

CORY FOOD SERVICES, INC.,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
DELMAR D. FARTHING and)
FORRESTINE FARTHING,)
)
Defendants.)

FILED

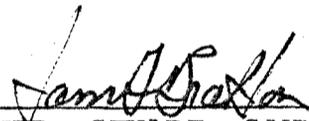
JUN 4 1976

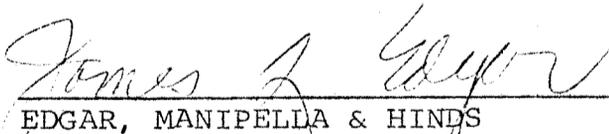
Jack C. Silver, Clerk
" S. DISTRICT COURT

No. 75-C-453-B

STIPULATION OF DISMISSAL OF
CLAIM AND COUNTERCLAIM

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the Plaintiff, Cory Food Services, Inc., hereby voluntarily dismisses its Complaint with prejudice, and the Defendants, Delmar D. Farthing and Forrestine Farthing hereby dismiss their Counterclaim with prejudice.


DOERNER, STUART, SAUNDERS, DANIEL
& LANGENKAMP
R. DOBIE LANGENKAMP
SAM G. BRATTON II
1200 Atlas Life Building
Tulsa, Oklahoma 74103
Attorneys for Plaintiff


EDGAR, MANIPELLA & HINDS
JAMES L. EDGAR
6111 East Skelly Drive
Tulsa, Oklahoma 74135
Attorneys for Defendants

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

FILED

JUN 4 1976

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

RAYMOND ALVIN CALDWELL;)
LUCILLE CALDWELL; KARLA K.)
CALDWELL; RONALD R. CALDWELL;)
ROBERT F. FRETWELL and)
SHIRLEY J. FRETWELL,)

Plaintiffs,)

vs.)

No. 73-C-65

SEMCO INDUSTRIES, A Corpora-)
tion; SYSTEMEX CORPORATION, A)
Corporation; ROBERT L. BROOKS;)
KELLEY R. HANEY, SR.; L. E.)
BROOKS and R. L. POPE,)

Defendants.)

FRANCIS F. SUMMY and CHARLENE)
SUMMY; JOHNNIE SUMMY; JAMES)
E. NUNN and WILLARD CULP, On)
Behalf of Themselves and All)
Others Similarly Situated,)

Plaintiffs,)

vs.)

Above Cause
CONSOLIDATED With

No. 72-C-54 ✓

SEMCO INDUSTRIES, INC.;)
ROBERT L. BROOKS; KELLEY R.)
HANEY, SR.; L. E. BROOKS;)
JACQUES SPEE; R. E. HANCOCK;)
GAYLE E. WELCHER; R. L. POPE)
and J. R. HOOKER, JR.,)

Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 4th day of June, 1976,
there comes before this Court for its consideration the joint
Stipulation for Dismissal filed on behalf of all of the plaintiffs
in Case No. 72-C-54 and the defendants Robert L. Brooks and
L. E. Brooks.

Whereupon, such Stipulation being prepared pursuant to
Rule 41(a) of the Federal Rules of Civil Procedure, and the Court
finding that the within named parties, by their attorneys, urge
that this Court enter an Order of Dismissal With Prejudice
covering all plaintiffs and all defendants named herein.

IT IS HEREBY ORDERED that the above referenced civil *cause of*
and complaint action, /No. 72-C-54, ~~is~~ *are* hereby dismissed with prejudice against
the rights of any of the parties thereto to refile the same,
with each of the parties to bear his respective costs and attorneys'
fees.

Allen E. Bonaw

United States District Judge

APPROVED AS TO FORM:

James C. Lang
James C. Lang of
SNEED, LANG, TROTTER & ADAMS
Attorneys for Plaintiffs

Jack R. Givens
Jack R. Givens of
JONES, GIVENS, BRETT, GOTCHER
DOYLE & BOGAN, INC.
Attorneys for Defendant
Robert L. Brooks

Robert F. Biolchini
Robert F. Biolchini of
DOERNER, STUART, SAUNDERS, DANIEL
& LANGENKAMP
Attorneys for Defendant
L. E. Brooks

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 75-C-187

MORRELL BRUSH MANUFACTURING CORP.

Plaintiff,

vs.

TANDY INDUSTRIES, INCORPORATED

Defendant.

FILED

JUN 8 1976

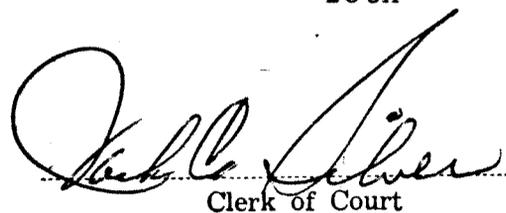
Jack C. Silver, Clerk
U. S. DISTRICT COURT

This action came on for trial before the Court and a jury, Honorable Allen E. Barrow, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, for the Defendant.

It is Ordered and Adjudged that the Plaintiff take nothing and that the Defendant recover of the Plaintiff their costs of action.

Dated at Tulsa, Oklahoma
of May , 19 76

, this 28th day


Clerk of Court

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

LARRY EUGENE WRIGHT,)
)
 Plaintiff,)
)
 vs.)
)
 S. THOMAS COLEMAN, JR.,)
 Assistant Public Defender,)
 Tulsa County, Tulsa, Oklahoma,)
)
 and)
)
 ROBERT S. DURBIN, Assistant)
 Public Defender, Tulsa)
 County, Tulsa, Oklahoma,)
)
 Defendants.)

No. 76-C-20-C ✓

FILED
JUN 3 1976 *hm*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration Motions to Dismiss filed on behalf of defendants S. Thomas Coleman and Robert S. Durbin.

Plaintiff, Larry Eugene Wright, alleges in his Complaint that this is a civil rights action brought pursuant to 42 U.S.C. § 1983 to compel the defendants to furnish plaintiff with a copy of the following:

1. Casemades
2. Preliminary transcripts
3. All motion hearing transcripts
4. Bill of information
5. All legal documents pertaining to motion hearing
6. District arraignment
7. District trial
8. Formal sentencing
9. Warrant
10. Affidavits supporting warrant
11. All other documents pertaining to the styled case CRF-73-1131-State of Oklahoma vs. Wright.

Plaintiff alleges that on or about June 15, 1973, he was arrested for the crime of Robbery by Force and Fear and that on or about December 13, 1973 he was tried, found guilty, and sentenced to a term of 99 years imprisonment in the Oklahoma State Penitentiary. On or about December 27, 1973, he filed

notice of intent to appeal and requested preparation of records and transcripts of evidence. Plaintiff further alleges that on about December 28, 1975 the District Court of Tulsa County appointed two public defenders, Robert S. Durbin and S. Thomas Coleman, Jr., defendants herein, to perfect an appeal to the Court of Criminal Appeals. Thereafter on January 21, 1975, the Judgment and Sentence of the District Court was affirmed by the Court of Criminal Appeals. Plaintiff alleges that on September 3, 1975 he wrote letters to the defendants requesting copies of all transcripts and records in connection with his trial and appeal "in order to exercise his constitutional rights to attack said State conviction in Federal Court. . . ." Plaintiff does not allege any impropriety, lack of diligence or incompetence with respect to defendants' performance of their duties as assistant public defenders in regard to his appeal. He simply alleges that "the defendants' refusal . . . to provide plaintiff . . . his transcripts and court records . . . constitutes cruel and unusual punishment . . . and deprives plaintiff of life, liberty and property without due process of law"

Plaintiff not only does not allege facts sufficient to constitute a deprivation of his constitutional rights; but furthermore, even if he were entitled to the materials sought, the defendants are not in a position to furnish them. Title 42 U.S.C. § 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

In order to state a claim under § 1983, therefore, plaintiff must allege that defendants have subjected him to the deprivation of some right, privilege, or immunity secured by the Constitution.

Plaintiff does not allege that he has filed a petition for Writ of Habeas Corpus in any court. Nor does he allege a particularized need for the materials sought. Plaintiff does not have a constitutional right to the transcript and other records under the facts set out in the case at bar. In Hines v. Baker, 422 F.2d 1002 (10th Cir. 1970) the court rejected the contention that an indigent is denied equal protection of the laws where the State refuses to furnish him with a transcript of the trial proceeding. The court stated:

"The denial of Hines' claim for a transcript should be affirmed for lack of merit, since Wade does not intimate that the state or federal government must furnish a transcript for exploratory use in collateral federal proceedings. . . . "

See also Harris v. State, 320 F.Supp. 100 (D. Neb. 1970);
Culbert v. United States 325 F.2d 920 (8th Cir. 1964).

Even if plaintiff were entitled to the materials sought, they are not officially maintained by the named defendants. Furthermore, even if a copy of the transcript remained in the Public Defender's Office, an Administrative Order issued by the Presiding Administrative Judge of the District Court of Tulsa County, directs that Public Defenders are "not [to] relinquish physical possession of the transcript for any reason unless ordered by the court."

Based upon the above it is the determination of the Court that plaintiff has failed to state a cause of action against these defendants, and the Motions to Dismiss are hereby sustained.

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


H. DALE COOK
United States District Judge

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

LEO GLENN LEONARD, II,)
)
) Petitioner)
)
 vs.)
)
) UNITED STATES OF AMERICA,)
)
) Respondent.)

No. 76-C-229-C

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

ORDER DISMISSING MOTION FOR BOND CREDIT
BROUGHT PURSUANT TO 28 U.S.C. § 2255

The Court has before it for consideration the pro se Motion of petitioner, Leo Glenn Leonard, II, for Bond Credit filed pursuant to Title 28 U.S.C. § 2255 (1971). The petitioner states that he was arrested and charged with a crime on or about the 17th day of April, 1975 and that he was released on bond from the 23rd day of April, 1975 until the 20th day of August, 1975 at which time he reported to the United States Marshal for the commencement of his sentence. Petitioner seeks to have this Court award to him approximately 120 days of credit toward service of his sentence. Petitioner contends that while free on bond he was restricted to such an extent that such conditional release constitutes custody for which period he is entitled to approximately 120 days of credit.

Leave has been granted to the petitioner to proceed in forma pauperis without pre-payment of costs. The following facts are pertinent to a ruling on the Motion now before the Court. Petitioner was released on bond on April 28, 1975 under the usual conditions of release which are essentially that the party make the designated court appearances and not leave the judicial district. After a plea of guilty to a one-count violation of Title 18, U.S.C. § 371 this Court on August 13, 1975

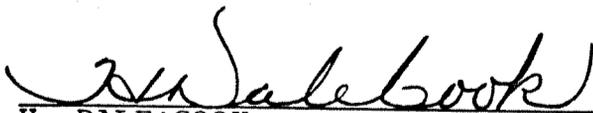
sentenced the petitioner to five (5) years imprisonment. The Court deferred execution of the sentence until August 20, 1975, on which date the petitioner surrendered himself to the United States Marshal for the purpose of beginning his sentence.

The petitioner asserts that the restrictions placed on him while he was free on bail between April 28, 1975 and August 20, 1975 constitute "custody." Petitioner has cited numerous cases which espouse the rule of law that a person on bail is in sufficient "custody" to invoke federal jurisdiction under habeas corpus. Hensley v. Municipal Court, 411 U.S. 345, 93 S.Ct. 1571, 36 L.Ed. 2d 294 (1973); Capler v. City of Greenville, Miss., 422 F.2d 299 (5th Cir. 1970).

Title 18 U.S.C. § 3568 (1969) provides that the Attorney General of the United States shall give credit for the days spent in custody in connection with the offense.^{1/} Bruss v. Harris, 479 F.2d 392 (10th Cir. 1973). "Custody" as contemplated by § 3568 relates to actual custodial incarceration. Such custody does not include the time a criminal defendant is free on bond, either before or after conviction." Ortega v. United States, 510 F.2d 412 (10th Cir. 1975).

The petitioner is not entitled to the relief requested under the ruling of Ortega. The Court finds that petitioner's contentions are without merit and therefore the Motion for Bond Credit brought pursuant to 28 U.S.C. § 2255 is dismissed.

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


H. DALE COOK
United States District Judge

1/ 18 U.S.C. § 3568 provides in part:

"The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory or jail for service of such sentence. The Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed."

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

LEO GLENN LEONARD, II,)
)
 Petitioner)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

No. 76-C-232-C

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

ORDER DISMISSING MOTION FOR BOND CREDIT
BROUGHT PURSUANT TO 28 U.S.C. § 2255

The Court has before it for consideration the pro se Motion of petitioner, Leo Glenn Leonard, II, for Bond Credit filed pursuant to Title 28 U.S.C. § 2255 (1971). The petitioner states that he was arrested and charged with a crime on or about the 17th day of April, 1975 and that he was released on bond from the 23rd day of April, 1975 until the 20th day of August, 1975 at which time he reported to the United States Marshal for the commencement of his sentence. Petitioner seeks to have this Court award to him approximately 120 days of credit toward service of his sentence. Petitioner contends that while free on bond he was restricted to such an extent that such conditional release constitutes custody for which period he is entitled to approximately 120 days of credit.

Leave has been granted to the petitioner to proceed in forma pauperis without pre-payment of costs. The following facts are pertinent to a ruling on the Motion now before the Court. Petitioner was released on bond on April 28, 1975 under the usual conditions of release which are essentially that the party make the designated court appearances and not leave the judicial district. After a plea of guilty to a one-count violation of Title 18, U.S.C. § 472 in Case No. 75-CR-111, this Court on August 13, 1975 sentenced the petitioner to five (5) years imprisonment, said sentence to run concurrent with the sentence

imposed in Case No. 75-CR-90. The Court deferred execution of the sentence until August 20, 1975, on which date the petitioner surrendered himself to the United States Marshal for the purpose of beginning his sentence.

The petitioner asserts that the restrictions placed on him while he was free on bail between April 28, 1975 and August 20, 1975 constitute "custody." Petitioner has cited numerous cases which espouse the rule of law that a person on bail is in sufficient "custody" to invoke federal jurisdiction under habeas corpus. Hensley v. Municipal Court, 411 U.S. 345, 93 S.Ct. 1571, 36 L.Ed. 2d 294 (1973); Capler v. City of Greenville, Miss., 422 F.2d 299 (5th Cir. 1970).

Title 18 U.S.C. § 3568 (1969) provides that the Attorney General of the United States shall give credit for the days spent in custody in connection with the offense.^{1/} Bruss v. Harris, 479 F.2d 392 (10th Cir. 1973). "Custody" as contemplated by § 3568 relates to actual custodial incarceration. Such custody does not include the time a criminal defendant is free on bond, either before or after conviction." Ortega v. United States, 510 F.2d 412 (10th Cir. 1975).

The petitioner is not entitled to the relief requested under the ruling of Ortega. The Court finds that petitioner's contentions are without merit and therefore the Motion for Bond Credit brought pursuant to 28 U.S.C. § 2255 is dismissed.

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


H. DALE COOK
United States District Judge

^{1/} 18 U.S.C. § 3568 provides in part:

"The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory or jail for service of such sentence. The Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed."

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT J. WESLEY, MARILYN JOYCE
WESLEY, COUNTY TREASURER, Tulsa
County, Oklahoma, and BOARD OF
COUNTY COMMISSIONERS, Tulsa
County, Oklahoma,

Defendants.

CIVIL ACTION NO. 76-C-146-C

FILE

JUN 2 1976 *jm*

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 2ND
day of ~~May~~ ^{June}, 1976, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and the Defendants, County
Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners,
Tulsa County, Oklahoma, appearing by its attorney, Gary J.
Summerfield, Assistant District Attorney; and the Defendants,
Robert J. Wesley and Marilyn Joyce Wesley, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Robert J. Wesley and
Marilyn Joyce Wesley, were served with Summons and Complaint on
April 15, 1976; and, the Defendants, County Treasurer, Tulsa
County, Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, were served with Summons and Complaint on April 6, 1976;
all as appears from the United States Marshal's Service herein.

It appearing that the Defendants, County Treasurer,
Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa
County, Oklahoma, have duly filed its answers herein on April 22,
1976; and, that the Defendants, Robert J. Wesley and Marilyn Joyce
Wesley, 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 Nine (9), Block Four (4), SUBURBAN ACRES FOURTH ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

THAT, the Defendants, Robert J. Wesley and Marilyn Joyce Wesley, did, on the 20th day of December, 1974, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$7,600.00 with 9 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, Robert J. Wesley and Marilyn Joyce Wesley, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$7,712.08 as unpaid principal with interest thereon at the rate of 9 1/2 percent per annum from July 1, 1975, 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, Robert J. Wesley and Marilyn Joyce Wesley, the sum of \$ NONE plus interest according to law for real estate taxes for the year(s) _____ and that Tulsa County should have judgment, in rem, for said amount, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Connie Len and Joy A. Clark (former owners) the sum of \$ 24.35 plus interest according to law for personal property taxes for the

year(s) 1972 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Robert J. Wesley and Marilyn Joyce Wesley, in personam, for the sum of \$7,712.08 with interest thereon at the rate of 9 1/2 percent per annum from July 1, 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 County of Tulsa have and recover judgment, in rem, against Defendants, Robert J. Wesley and Marilyn Joyce Wesley, for the sum of \$ NONE as of the date of this judgment plus interest thereafter according to law for real estate taxes, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the County of Tulsa have and recover judgment, in rem, against Connie Len and Joy A. Clark (former owners) for the sum of \$ 24.35 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.

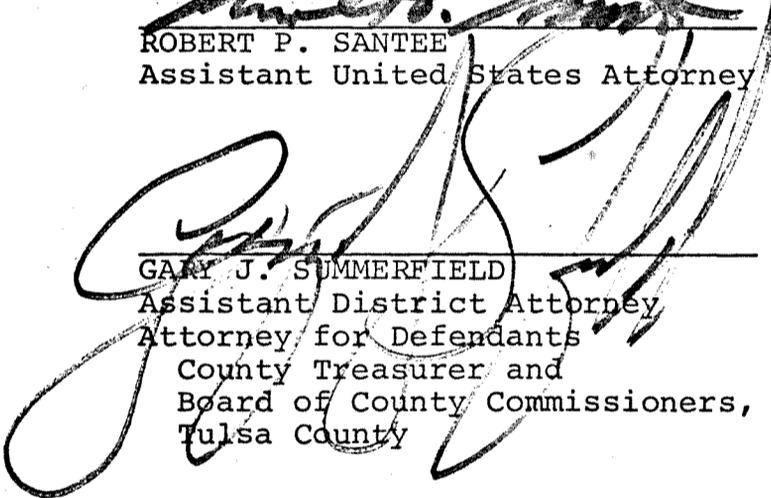
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property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

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


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

IN THE MATTER OF)
TULSA CRUDE OIL PURCHASING)
COMPANY, and its consolidated)
subsidiaries,)
Debtor.)

In Proceedings for the
Reorganization of a
Corporation

72-B-108-B

FILED

JUN 2 1976

Jack C. Silver, Clerk

ORDER OVERRULING MOTION TO VACATE ORDER OVERRULING
RULING DEFENDANT'S MOTION FOR ENLARGE-
MENT OF TIME TO FILE A
NOTICE OF APPEAL

The Court has for consideration the Motion to Vacate Order
Overruling Defendant's Motion for Enlargement of Time to File
Notice of Appeal, the brief in support thereof, and, being
fully advised in the premises, finds:

The Court adopts and incorporates herein its previous
orders of May 13, 1976, and May 20, 1976, as though set out
in their entirety.

The Court finds that said Motion should be overruled.

IT IS, THEREFORE, ORDERED that the Motion to Vacate Order
Overruling Defendant's Motion for Enlargement of Time to File a
Notice of Appeal be and the same is hereby denied and overruled.

ENTERED this *2nd* day of June, 1976.

Allen F. Bennett

CHIEF UNITED STATES DISTRICT JUDGE

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

JIMMY DALE BARRETT,)
)
) Petitioner,)
)
 vs.) No. 76-C-134-C
)
 UNITED STATES OF AMERICA,)
)
) Respondent.)

FILED

JUN 1 1976

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

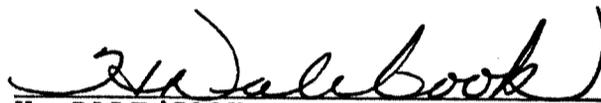
O R D E R

On April 8, 1976 petitioner, Jimmy Dale Barrett, filed a Petition for Writ of Habeas Corpus in which he alleged his former attorney had erroneously advised him in regard to the filing of an appeal. On April 15, 1976, Charles Whitman, former Court-appointed counsel for the petitioner, filed a response to petitioner's allegation. Under oath, Whitman specifically denied informing petitioner or his mother that the law allowed petitioner to delay filing of his Notice to Appeal until the disposition of the then pending state charges. Whitman further stated he advised petitioner of his rights to appeal and the time within which to file Notice of Appeal, at which time petitioner advised Whitman he did not wish to appeal.

On April 26, 1976, petitioner filed what is entitled "Traverse of Petitioner" in which he asked for the "opportunity to present evidence, by witnesses and document, in order to prove the allegation of fact made in the original petition." On April 27, 1976, the Court, therefore, directed petitioner to specifically state the names of all witnesses he contended could present evidence in support of his petition and the anticipated content of their testimony; and in addition to specify the document and content thereof which he considered relevant. Petitioner was given twenty days to file this response.

Petitioner has wholly failed to respond. The Court must assume, therefore, there are no such witnesses or documents available. Based upon a review of the record, in light of the affidavit of petitioner's former counsel, and petitioner's failure to respond, it is the determination of the Court that the petition filed herein by Jimmy Dale Barrett should be, and hereby is, dismissed.

It is so Ordered this 1st day of June, 1976.


H. DALE COOK
United States District Judge

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

FILED

JUN 1 1976

SOUTHWESTERN BANK & TRUST)
COMPANY OF OKLAHOMA CITY)
and STEWART SECURITIES,)
)
Plaintiffs,)
)
vs.)
)
METCALF STATE BANK,)
)
Defendant.)

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

No. 74-C-167 (B) ✓

ORDER

The Court has for consideration the objections of the defendant Metcalf State Bank to the reintervention of Billie F. Gaither as a plaintiff in the above captioned matter and have carefully perused the entire file, the briefs and all of the recommendations concerning same, and being fully advised in the premises,

IT IS, THEREFORE, ORDERED that the objection to the re-intervention of Billie F. Gaither as a plaintiff in the above captioned matter should and is hereby sustained.

Dated this 15th day of June, 1976.

Ben L. Sumner

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

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

LEO GASTON SIMONDS,
Plaintiff,

vs

LOUIS CUMMINGS, JOHN
DOE and SAFEWAY STORES, INC.
Defendants.

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)
)
)
)
)
)
)
)
)

NO. 76-C-39 ✓

FILED

JUN 1 1976

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

ORDER

This Court has for consideration plaintiff's motion to remand and the motion of the defendant, Louis Cummings, to dismiss, in their entirety and has carefully perused the entire file, the briefs and all of the recommendations concerning said motions, and being fully advised in the premises, finds:

The plaintiff's motion to remand should be and the same is hereby overruled for the reasons that plaintiff chose to sue a fictitious defendant, thereby waiving complaint of timeliness of removal, that removal was timely and that joinder of the fictitious defendant and defendant Louis Cummings was admittedly fraudulent.

The motion of the defendant, Louis Cummings, to dismiss should be and the same is hereby sustained for the reason that the plaintiff has not stated a cause of action against Louis Cummings and further that the plaintiff does not take issue with said defendant's motion to dismiss.

IT IS, THEREFORE, ORDERED that the motion of plaintiff to remand should be and is hereby overruled.

IT IS FURTHER ORDERED that the motion of the defendant, Louis Cummings, to dismiss should be and is hereby sustained and said defendant is dismissed as a defendant herein.

Dated this 1st day of June, 1976.

Allen E. Barnett
CHIEF UNITED STATES DISTRICT JUDGE

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

DONNA ROMINE and
TOMMY ROMINE,

Plaintiffs,

vs.

McCLEAN-ANDERSON CORPORATION,
a foreign corporation,

Defendant.

No. 75-C-503 (C) ✓

FILED

JUN 1 1976

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

ORDER OF DISMISSAL

ON this 1st day of June, 1976, upon the written

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

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

W. Dale Book
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

DALE WARNER,
STEPHEN CORTRIGHT,

By: [Signature]

Attorney for the Plaintiffs,

RICHARD GIBBON,

[Signature]
Attorney for Mid-Continent,

ALFRED B. KNIGHT,

[Signature]
Attorney for the Defendant.

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

FILED

JUN 1 1976

Jack C. Silver, Clerk
U S DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NO. 76-C-132-B
)
HENRY ALBERT BROWN and)
BETTY JEAN BROWN,)
)
Defendants.)

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 28th
day of May, 1976, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and, the Defendants, Henry
Albert Brown and Betty Jean Brown, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Henry Albert Brown and
Betty Jean Brown, were served with Summons and Complaint on
April 13, 1976, as appears from the United States Marshal's
Service herein.

It appearing that the Defendants, Henry Albert Brown
and Betty Jean Brown, 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 One (1), Block Nine (9), SUBURBAN ACRES
THIRD ADDITION to the City of Tulsa, County
of Tulsa, State of Oklahoma, according to
the recorded plat thereof.

THAT, the Defendants, Henry Albert Brown and Betty
Jean Brown, did, on the 28th day of January, 1972, execute and
deliver to the Administrator of Veterans Affairs their mortgage
and mortgage note in the sum of \$10,250.00 with 4 1/2 percent

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

The Court further finds that Defendants, Henry Albert Brown and Betty Jean Brown, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$9,767.36 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from June 28, 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, Henry Albert Brown and Betty Jean Brown, in personam, for the sum of \$9,767.36 with interest thereon at the rate of 4 1/2 percent per annum from June 28, 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 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 C. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED



ROBERT P. SANTEE
Assistant United States Attorney

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

FILED

LOUISE FRANCES GAST, Executrix)
of the Estate of Claudia Lenora)
Pettit, Deceased,)
)
Plaintiff,)
)
vs.)
)
DAVID L. BALDWIN, Superintendent)
of Osage Indian Agency,)
)
Defendant.)

JUN 1 1976

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

Civil Action No. 76-C-31-B ✓

ORDER

The Court has for consideration Defendant's Motion to Dismiss and Plaintiff's Motion for Summary Judgment in their entirety and have carefully perused the entire file, the briefs and all of the recommendations concerning said motion, and being fully advised in the premises, finds:

That the United States District Court for the Northern District of Oklahoma has only derivative jurisdiction of this action and that the District Court of Osage County, Oklahoma did not have and does not have jurisdiction to mandamus the defendant herein.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss filed by the defendant, David L. Baldwin, Superintendent of the Osage Indian Agency should and is hereby sustained and the Motion for Summary Judgment filed by the plaintiff should and is hereby overruled.

Dated this 1st day of June, 1976.

Allen E. Barron
CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 43.23 Acres of Land, More or)
 Less, Situate in Osage County,)
 State of Oklahoma, and James)
 P. Lloyd, et al., and Unknown)
 Owners,)
)
 Defendants.)

CIVIL ACTION NO. 75-C-451-B

Tract No. 303

FILED

JUN 1 1976

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

J U D G M E N T

1.

NOW, on this 1st day of June, 1976, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 303, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on Sept. 25, 1975,

the United States of America filed its Declaration of Taking of such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing the Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court, as estimated compensation for the taking of a certain estate in subject tract a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 13.

7.

The defendants named in paragraph 13 as owners of the subject property 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.

8.

The owners of the subject tract and the United States of America have executed and filed herein on May 28, 1976, a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estate condemned in subject tract is in the amount shown as compensation in paragraph 13 below.

As part of this Stipulation it was agreed that all fences situated on the subject tract on the date of taking would be excluded from the taking and title thereto revested in the former owners.

The aforesaid Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for the estate taken in subject tract and the amount fixed by the Stipulation As To Just Compensation, and the amount of such deficiency should be deposited for the benefit of the owners. Such deficiency is set out below in paragraph 13.

10.

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. 303, as such tract is particularly described in the Complaint filed herein; and such tract, to the extent of the estate described in such Complaint, but subject to the stipulation for exclusion of fences, is condemned, and title thereto is vested in the United States of America, as of September 25, 1975, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking, the owners of the estate condemned herein in subject tract were the defendants whose names appear below in paragraph 13, and the right to receive the just compensation for the estate taken herein in this tract is vested in the parties so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation for exclusion of property, designated in paragraph 8 above, is hereby confirmed, and title to all fences situated on the subject tract is revested in the former owners, subject to the provisions for removal of such fences, contained in such Stipulation.

13.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation mentioned in paragraph 8 above hereby is confirmed; and the sum thereby fixed is adopted as the award of just compensation for the estate condemned in subject tract as follows:

TRACT NO. 303

OWNERS: James P. Lloyd and Sandra M. Lloyd

Award of just compensation pursuant to Stipulation -----	\$27,700.00	\$27,700.00
Deposited as estimated compensation -----	17,300.00	
Disbursed to owners -----		<u>17,300.00</u>
Balance due to owners -----		<u>\$10,400.00</u>
Deposit deficiency -----	\$10,400.00	

14.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court in this civil action, to the credit of subject tract, the deposit deficiency in the sum of \$10,400.00, and the Clerk of this Court then shall disburse the deposit for such tract as follows:

To - James P. Lloyd and Sandra M. Lloyd,
jointly, the sum of ----- \$10,400.00.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

Hubert A. Marlow
HUBERT A. MARLOW
Assistant U. S. Attorney

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

GARY HOWARD KELLERMAN,)
)
 Petitioner,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

68-CR-111
No. 76-C-149-BO

FILED

JUN 1 1976 *mm*

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

ORDER

Now, on this 18th day of May, 1976, this cause comes on for hearing on the motion of the petitioner pursuant to 28 U.S.C. 2255 to vacate and set aside the sentence imposed in the case on November 21, 1968. Petitioner is represented by Mr. James M. Shellow, of Milwaukee, Wisconsin, who has been specially admitted to practice in this court for the purpose of this case, and by Mr. Irvine E. Ungerman, of Tulsa, Oklahoma. Respondent is represented by Mr. Ben F. Baker, Assistant United States Attorney for the Northern District of Oklahoma.

The Court, having reviewed the files and records in the original criminal case, 68-CR-111, and having reviewed the motion to vacate and set aside the sentence filed herein by the petitioner, and having read the response filed thereto by the United States of America, and having heard the oral arguments presented by counsel for both sides, finds that the first four points listed in the petition should be denied and that the fifth point raised by the petitioner should be sustained and that the sentence heretofore given the defendant should be corrected as to Count III.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that petitioner's motion to vacate and set aside the sentence is denied as to the first four points listed therein, and sustained as to the fifth point, and that the sentence in the case be corrected to appear as follows: Count II, defendant is sentenced to the custody of the Attorney General for a period of ten years. Count III, the defendant is sentenced to the custody of the Attorney General for a period of ten years, said term to run concurrently with the sentence imposed in Count II. Count IV, the defendant is sentenced to the custody of the Attorney General for ten years, said term to run concurrently with the terms imposed in Counts II and III. Count V, the defendant is sentenced to the custody of the Attorney General for a term of one year, said term to run concurrently with the sentence in Counts II, III and IV. Count VI, the defendant is sentenced to the custody of the Attorney General for a term of one year, said term to run concurrently with the sentences in Counts II, III, IV and V. Count VIII, the defendant is sentenced to the custody of the Attorney General for a term of one year, said term to run concurrently with the terms imposed in Counts II, III, IV, V and VI. Count IX, the defendant is sentenced to the custody of the Attorney General for a term of one year, said term to run concurrently with the terms imposed in Counts II, III, IV, V, VI and VIII.

It is the intent of the Court that the sentence in this case be corrected to impose a maximum sentence of ten years for all counts.

Dated this 28th day of May, 1976.

Luther Bohannon
UNITED STATES DISTRICT JUDGE