

FILED

JUL 30 1976

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

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

LUCILLE DAVIS,)
)
Plaintiff,)
)
vs.)
)
VAN ALSTYNE ASSOCIATES, INC.,)
WILLIAM I. SOLNIKOV, and)
VAN ALSTYNE, NOEL & CO.,)
)
Defendants.)

No. 75-C-390 - B[✓]

O R D E R

NOW, on this 30th day of July, 1976, upon Motion of the Plaintiff, Lucille Davis, for dismissal of her claim against William I. Solnikov without prejudice, the Court finds that such dismissal should be and is hereby granted.

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff, Lucille Davis, be allowed to dismiss her claim *and cause of action & complaint* in the above cause without prejudice.

Allen E. Barrett

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

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

JUL 30 1976

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.	)	CIVIL ACTION NO. 76-C-249-B
)	
)	
SAM MITCHELL and)	
CHARLYNE E. MITCHELL,)	
)	
Defendants.)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 30th day of July, 1976, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; and the Defendants, Sam Mitchell and Charlyne E. Mitchell, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Sam Mitchell and Charlyne E. Mitchell, were served with Summons and Complaint on June 13, 1976, as appears from the United States Marshal's Service herein.

It appearing that the Defendants, Sam Mitchell and Charlyne E. Mitchell, 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 Fifty-Six (56), Block Two (2), SUBURBAN ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Sam Mitchell and Charlyne E. Mitchell, did, on the 14th day of July, 1975, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,000.00 with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of \$69.21 principal and interest.

The Court further finds that Defendants, Sam Mitchell and Charlyne E. Mitchell, 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 \$8,960.96 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from September 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, Sam Mitchell and Charlyne E. Mitchell, in personam, for the sum of \$8,960.96 with interest thereon at the rate of 8 1/2 percent per annum from September 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 Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. 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

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

JUL 30 1976

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 BARBARA A. ELMORE a/k/a)
 BARBARA ELMORE EDOZIE)
 and TERMPPLAN OF DOWNTOWN)
 TULSA, INC.,)
)
 Defendants.)

CIVIL ACTION NO. 76-C-36-B

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 30th
day of July, 1976, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and, the Defendants, Barbara A.
Elmore a/k/a Barbara Elmore Edozie and Termplan of Downtown
Tulsa, Inc., appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, Termplan of Downtown
Tulsa, Inc., was served with Summons, Complaint, and Amendment
to Complaint on March 9, 1976, that Defendant, Barbara A. Elmore
a/k/a Barbara Elmore Edozie, was served by publication as shown
on the Proof of Publication filed herein.

It appearing that the Defendants, Barbara A. Elmore
a/k/a Barbara Elmore Edozie and Termplan of Downtown Tulsa, 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 Nine (9), Block Five (5), in HARTFORD
HILLS ADDITION to the City of Tulsa, Tulsa
County, Oklahoma, according to the recorded
plat thereof.

THAT, the Defendant, Barbara A. Elmore a/k/a Barbara
Elmore Edozie, did, on the 30th day of July, 1973, execute

and deliver to the Administrator of Veterans Affairs, her mortgage and mortgage note in the sum of \$9,000.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Barbara A. Elmore a/k/a Barbara Elmore Edozie, 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 \$8,829.29 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from March 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, Barbara A. Elmore a/k/a Barbara Elmore Edozie, in rem, for the sum of \$8,829.29 with interest thereon at the rate of 4 1/2 percent per annum from March 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, Termplan of Downtown Tulsa, 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 E. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED

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

RECEIVED
JUL 29 1976

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.)
)
FRANK BURLEY, a single person,)
AETNA FINANCE COMPANY, a)
corporation, COUNTY TREASURER,)
Tulsa County, and BOARD OF)
COUNTY COMMISSIONERS, Tulsa)
County,)
)
Defendants.)

CIVIL ACTION NO. 76-C-141-C ✓

FILED
JUL 30 1976
Jack C. Silver, Clerk
DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 30th day of July, 1976, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendant, Aetna Finance Company, appearing by its attorney, Don Gasaway; the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by Gary J. Summerfield, Assistant District Attorney; and the Defendant, Frank Burley, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Aetna Finance Company, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, were served with Summons and Complaint on April 2, 1976. all as appears from the U.S. Marshals Service herein, and Defendant, Frank Burley, was served by publication, as appears from the Proof of Publication filed herein.

It appearing that Defendant, Aetna Finance Company, has duly filed its Disclaimer herein on April 21, 1976, that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on April 22, 1976, that Defendant, Frank Burley, has failed to answer herein and that default has been entered by the Clerk of this Court.

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

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

Lot Thirty-eight (38), Block Forty-five (45), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendant, Frank Burley, did, on the 17th day of April, 1973, execute and deliver to the Administrator of Veterans Affairs, his mortgage and mortgage note in the sum of \$11,000.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Frank Burley, 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 \$10,742.81 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from May 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 Defendant, Frank Burley, the sum of \$ none plus interest according to law for personal property taxes for the year(s) — and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Versa Louise Olten, former owner, the sum of \$ none plus interest according to law for personal property taxes for the year(s) — and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Frank Burley, in rem, for the sum of \$10,742.81 with interest thereon at the rate of 4 1/2 percent per annum from May 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.

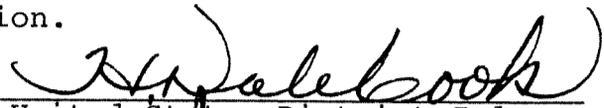
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendant, Frank Burley, for the sum of \$ none as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Versa Louise Olten, former owner, for the sum of \$ none as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

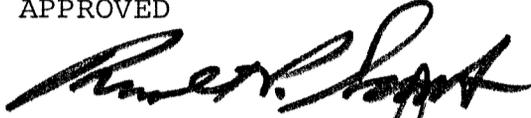
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendant to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing

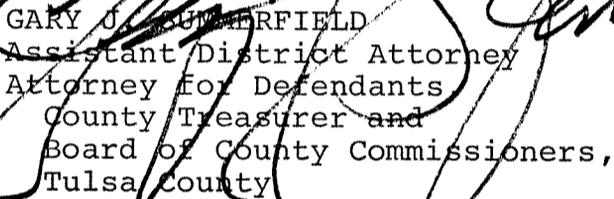
of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.


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

bcs

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 75-C-548-C

RICHARD TURECEK and BETTY
I. TURECEK,

Plaintiffs,

vs.

A & W INTERNATIONAL, INC.,
a California corporation,

Defendant.

JUDGMENT

JUL 29 1976

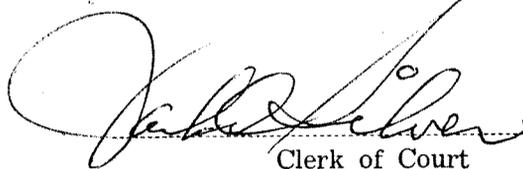
Jack O. Silver, Clerk
U.S. District Court

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 judgment is entered for the Defendant and against the Plaintiffs on the Plaintiffs' complaint.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered for the Defendant on its counterclaim and against the Plaintiffs in the amount of \$30,000.00, and that the Defendant recover of the Plaintiffs its costs of action.

Dated at Tulsa, Oklahoma, this 29th day
of July, 1976.



Clerk of Court

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 24.68 Acres of Land, More or)
 Less, Situate in Washington)
 County, State of Oklahoma, and)
 Donald E. Deshazo, et al., and)
 Unknown Owners,)
)
 Defendants.)

CIVIL ACTION NO. 74-C-464

Tract No. 108

FILED

JUL 30 1976

J U D G M E N T

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

1.

NOW, on this 30th day of July, 1976, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on June 24, 1976, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

This judgment applies to the entire estate condemned in Tract No. 108, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the subject property. Pursuant thereto, on November 21, 1974, the United States of

America filed its Declaration of Taking of a certain estate in such tract of land, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of the described estate in the subject tract a certain sum of money, and none of this deposit has been disbursed, as set out below in paragraph 12.

7.

The Report of Commissioners filed herein on June 24, 1976, is accepted and adopted as a finding of fact as to subject tract. The amount of just compensation for the estate taken in the subject tract, as fixed by the Commission, is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estate taken in subject tract and the amount fixed by the Commission and Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendants named in paragraph 12 as owners of the estate taken in subject tract are the only defendants asserting any interest in such estate. All other defendants having either disclaimed or defaulted, the named defendants were (as of the date of taking) the owners of the estate condemned herein and, as such, are entitled to receive the just compensation awarded by this judgment.

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 the subject tract, as such tract is

described in the Complaint filed herein, and such property, to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of November 21, 1974, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the estate taken herein in subject tract were the defendants whose names appear below in paragraph 12, and the right to receive the just compensation for such estate is vested in the parties so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on June 24, 1976, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estate taken in subject tract, as shown by the following schedule:

TRACT NO. 108

Owners: Donald E. Deshazo ----- 1/2 and Kirk D. Deshazo ----- 1/2		
Award of just compensation pursuant to Commissioners' Report -----	\$24,087.00	\$24,087.00
Deposited as estimated compensation -	2,160.00	
Disbursed to owners -----		<u>None</u>
Balance due to owners -----		\$24,087.00 plus interest
Deposit deficiency -----	\$21,927.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for the subject tract as shown in paragraph 12, in the amount of \$21,927.00, together with interest on such deficiency at the rate of 6% per annum from November 21, 1974, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tract in this civil action.

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

To: Donald E. Deshazo ---- 1/2
Kirk D. Deshazo ----- 1/2.

15/ Allen E. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED:

15/ Hubert A. Marlow
HUBERT A. MARLOW
Assistant United States Attorney

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

M. H. JONES,)	
)	
Plaintiff,)	
)	
vs.	)	No. 75-C-214 (B)
)	
UNITED STATES OF AMERICA,)	
	)	FILED
Defendant.	)	JUL 29 1976
)	
JERRY JONES,	)	Jack C. Silver, Clerk
	)	U. S. DISTRICT COURT
Plaintiff,)	
)	
vs.	)	No. 75-C-215 (B)
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.	)	(CONSOLIDATED CASES)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

I

1. A non-jury trial was conducted, pursuant to regular assignment, on June 9 and 10, 1976; the plaintiffs appearing in person and through their attorneys, Charles B. Tetrick, John M. Imel and Donald P. Moyers; and defendant appearing by and through its attorney, John G. Truelson.

2. These two cases, involving similar issues of law and fact, were consolidated for trial by order of the Court dated October 14, 1975.

3. The issue to be determined is whether certain service station operators were independent contractors or employees of plaintiffs under the Federal Insurance Contributions Act (FICA), 26 U.S.C. §3101 et seq.; Federal Unemployment Tax Act (FUTA), 26 U.S.C. §3301 et seq.; and the Collection of Income Tax At The Source on Wages (income tax withholding), 26 U.S.C. §3401 et seq.

4. Based on the evidence adduced at said trial and a perusal of the entire file and all exhibits and depositions introduced, the following Findings Of Fact are made.

II

FINDINGS OF FACT

1. These consolidated cases are suits for the refund of employment taxes (FICA, FUTA and income tax withholding) paid by plaintiffs for the periods April 1, 1970, through December 31, 1970; January 1, 1971, through December 31, 1971; and January 1, 1972, through September 30, 1972.

2. The Internal Revenue Service assessed the following employment taxes, interest and penalties against plaintiff, M. H. Jones: (Exhibit A, Pretrial Order)

<u>PERIOD</u> <u>ENDING</u>	<u>FICA -</u> <u>WITHHOLDING</u>	<u>FUTA</u>	<u>PENALTY</u>	<u>TOTAL</u>
6-30-70	\$ 2,530.01 (A)		\$4.00 (A)	\$ 2,534.01
9-30-70	4,736.13 (A)			4,736.13
12-31-70	6,342.44 (A)	\$ 715.16 (C)		7,057.60
3-31-71	5,930.91 (B)			5,930.91
6-30-71	5,864.51 (B)			5,864.51
9-30-71	6,485.35 (B)			6,485.35
12-31-71	5,588.52 (B)	1,326.05 (D)		6,914.57
3-31-72	7,414.07 (B)			7,414.07
6-30-72	7,581.25 (B)			7,581.25
9-30-72	9,823.33 (B)			9,823.33
	<u>\$62,296.52</u>	<u>\$2,041.21</u>	<u>\$4.00</u>	\$64,341.73
Total interest assessed				<u>11,475.41</u>
Total assessment				<u>\$75,817.14</u>

- (A) Assessed October 14, 1974
- (B) Assessed November 18, 1974
- (C) Assessed September 30, 1974
- (D) Assessed September 16, 1974

3. Plaintiff, M. H. Jones, paid a portion of the assessed taxes and penalties for each period involved in the total amount of \$4,197.78, together with assessed interest in the amount of \$7,168.27.

The payments were made on September 26, 1974, October 9, 1974, and January 9, 1975. (Complaint of plaintiff, M. H. Jones)

4. On January 22, 1975, plaintiff, M. H. Jones, filed timely claims for refund with the Internal Revenue Service Center, Austin, Texas, to recover the taxes, penalties and interest paid. (Complaint of plaintiff, M. H. Jones) The Internal Revenue Service rejected in full the claims for refund and plaintiff, M. H. Jones, was notified of the disallowance by notices dated April 10, 1975. (Exhibits D, E and F to Complaint of plaintiff, M. H. Jones)

5. The Internal Revenue Service assessed the following employment taxes, interest and penalties against plaintiff, Jerry Jones: (Exhibit B, Pretrial Order)

<u>PERIOD ENDING</u>	<u>FICA - WITHHOLDING</u>	<u>FUTA</u>	<u>PENALTY</u>	<u>TOTAL</u>
6-30-70	\$ 923.94 (A)			\$ 923.94
9-30-70	1,466.89 (A)			1,466.89
12-31-70	1,191.66 (A)	\$ 721.52 (C)	\$4.00 (C)	1,917.18
3-31-71	1,255.84 (B)			1,255.84
6-30-71	1,328.44 (A)			1,328.44
9-30-71	1,545.51 (A)			1,545.51
12-31-71	1,458.95 (A)	834.10 (D)		2,293.05
3-31-72	1,763.76 (A)			1,763.76
6-30-72	2,033.64 (A)			2,033.64
9-30-72	<u>2,824.01 (A)</u>			<u>2,824.01</u>
	<u>\$15,792.64</u>	<u>\$1,555.62</u>	<u>\$4.00</u>	\$17,352.26
Total interest assessed				<u>3,034.23</u>
Total assessment				<u>\$20,386.49</u>

- (A) Assessed October 21, 1974
- (B) Assessed October 28, 1974
- (C) Assessed September 30, 1974
- (D) Assessed September 16, 1974

6. Plaintiff, Jerry Jones, paid a portion of the assessed taxes and penalties for each period involved in the total amount of \$3,217.99, together with interest in the amount of \$2,453.93. The payments were made on September 26, 1974, October 9, 1974, and January 9, 1975. (Complaint of plaintiff, Jerry Jones)

7. On January 22, 1975, plaintiff, Jerry Jones, filed timely claims for refund with the Internal Revenue Service Center, Austin, Texas, to recover the taxes, penalties and interest paid. (Complaint of plaintiff, Jerry Jones) The Internal Revenue Service rejected in full the claims for refund and plaintiff, Jerry Jones, was notified of the disallowance by notices dated April 10, 1975. (Exhibits D, E and F to Complaint of plaintiff, Jerry Jones)

8. Plaintiffs timely filed these actions on May 30, 1975, for the recovery of employment taxes, penalties and interest alleged to have been erroneously assessed, collected and retained by defendant. (Complaints of plaintiffs, M. H. Jones and Jerry Jones)

9. Prior to the institution of these actions, the Internal Revenue Service abated a substantial portion of the withholding taxes, FICA taxes and interest assessed against plaintiffs. (Exhibit A, Pretrial Order) Defendant counterclaimed for the unpaid balance of the assessments in the amount of \$34,842.08 with respect to plaintiff, M. H. Jones, and \$10,140.94 with respect to plaintiff, Jerry Jones. (Defendant's Amendment to Answer and Counterclaims)

10. During the years 1970, 1971 and 1972, M. H. Jones and his son, Jerry Jones, were wholesalers of gasoline and diesel fuel. (Tr. 5, 130) They operated their separate businesses as sole proprietorships and shared common office space in Vinita, Oklahoma. (Tr. 8, 134) Plaintiffs conducted their business under the name Jones Oil Company, which was sometimes abbreviated as "JOCO". (Tr. 27, 28) Plaintiffs sold gasoline and diesel fuel to service station operators and to other oil companies. (Tr. 9, 10, 131)

11. Plaintiffs purchased gasoline and diesel fuel from three sources, namely, the Okmulgee Refinery; Bell Oil and Gas; and Oshee Gas and Oil. (Tr. 8, 131) Plaintiffs did not handle any products other than gasoline and diesel fuel. (Tr. 18, 72)

12. Jerry Jones owned two or three transport trucks during the period involved herein which were used to transport the gasoline and diesel fuel to customers. (Tr. 8, 130, 131) The transport truck drivers were acknowledged employees of Jerry Jones. (Tr. 84) Plaintiffs also employed three office workers in Vinita, Oklahoma, who likewise were acknowledged employees. (Tr. 77) The status of the transport truck drivers and office workers is not in issue in these cases. (Tr. 133, 134)

13. During the years 1970, 1971 and 1972 M. H. Jones owned or had under lease twelve service stations, which were located in Oklahoma, Arkansas and Missouri. (Tr. 9, 34, 59 through 71) During this same period Jerry Jones owned or had under lease seven service stations, all of which were located in the State of Oklahoma. (Tr. 134, 135) Only six of the seven service stations of Jerry Jones were considered in the revenue agent's examination. (Tr. 135) Plaintiffs had the right to sublease the service stations which they leased from others. (Tr. 34)

14. Plaintiffs' investment in each station they owned ranged from \$6,000.00 to \$25,000.00. Their investment consisted of land, buildings, pumps, tanks, compressors, signs and some fixtures. (Tr. 59, 62, 64, 65, 66, 67, 69, 71, 150, 153, 201)

15. Plaintiffs leased the service stations to operators. (Tr. 9, 122, 187, 201, 209, 236) The lease arrangement between plaintiffs and each operator was entirely oral, but it was understood by the parties that plaintiffs would sell gasoline and diesel fuel to the operators at a "stated price" per gallon, which reflected plaintiffs' refinery cost, transportation charges, station rental and a margin of profit. (Tr. 9, 10, 124, 172, 201)

16. Sales of gasoline and diesel fuel to the service station operators were made on a consignment basis. (Tr. 10, 108, 131) The consignment method of sale was used by plaintiffs because many of

the operators were unwilling or unable to purchase full transport truck loads. (Tr. 10, 140)

17. Under the consignment arrangement the operators were obligated to pay plaintiffs for the consigned gasoline and diesel fuel at the "stated price" as the products were sold by them. (Tr. 10, 11, 109, 234) The operators normally paid plaintiffs on a daily basis by cashier's check. (Tr. 10, 90, 109, 163, 198, 224, 234, 294) Plaintiffs never made payments to the operators because plaintiffs did not receive the entire proceeds from the sale of the consigned gasoline and diesel fuel. (Tr. 10; Deposition of C. R. Botts, p. 31)

18. Occasionally, operators would remit personal checks of customers in payment of their purchases. (Tr. 40, 41) The operators were responsible for bad checks and sustained the losses thereon. (Tr. 40, 41, 136, 160, 161, 192, 214, 238, 287; Deposition of Leland Greenhaw, pp. 48, 49) At the request of several operators, plaintiffs made available BankAmericard in 1972. (Tr. 164, 165, 166, 280, 295) The operators sustained the loss on any bad accounts. (Tr. 309)

19. The operators prepared and submitted to plaintiffs daily remittance reports showing the consigned gasoline and diesel fuel sold by them. (PX 7, 8; Tr. 86, 163, 193, 214, 215, 234) Other products handled by the operators were not reflected on the daily reports. (PX 7, 8). These reports were used by the operators to account for the consignment inventory and to remit funds due to plaintiffs. (PX 7, 8; Tr. 88, 141) The operators did not account to plaintiffs for the profits made at their stations. (Tr. 20, 25, 28, 31, 32, 35; Deposition of Leland Greenhaw, p. 40)

20. Utilities for the stations were carried in plaintiffs' names and plaintiffs normally paid the cost of the utilities. (Tr. 29, 132, 133) This practice was established to insure that the utilities would not be turned off during periods the service stations were vacant. Electricity was essential for night lights to protect

plaintiffs' consignment inventory of gasoline and diesel fuel and other property owned by plaintiffs at the station sites. (Tr. 132, 133) Plaintiffs also paid certain maintenance costs relative to the property they owned, such as buildings, pumps, tanks and compressors. (Tr. 78, 79, 158) Plaintiffs recovered the utility and maintenance costs in the price of the gasoline sold to the operators. (Tr. 9, 29, 133, 179, 180)

21. Plaintiffs as lessors paid real estate taxes and personal property taxes on the property they owned. (Tr. 80, 197) Plaintiffs carried, fire, theft and glass breakage insurance (Tr. 74) and public liability insurance. (Tr. 75) The public liability insurance carried by plaintiffs was a lessor's risk only type policy and did not cover negligence by the operators. (DX 2, Tr. 75, 146)

22. The operators hired assistants without the knowledge or approval of plaintiffs and paid all required employment taxes with respect to their employees. (PX 12; PX 13; PX 14; Tr. 24, 30, 189, 190, 210, 232; Deposition of Leland Greenhaw, p.62)

23. The operators granted discounts to customers and absorbed the discounts against their profits. (Tr. 40, 41, 136, 215; Deposition of Ida Mae Parsley, p.31)

24. The operators determined the sales prices of gasoline and diesel fuel at the pump. (Tr. 11, 14, 18, 24, 123, 191, 213, 230; Deposition of C. R. Botts pp.10, 11; Deposition of Leland Greenhaw; p.45) In order to be competitive the operators generally established prices to meet competition. (Tr. 123, 230, 231, 307; Deposition of Leland Greenhaw, p.45, 65) Plaintiffs offered no price support to the operators. (Tr. 14) Operators were forced to either sell at a loss or discontinue sales when competitors dropped their prices below the operators' cost. (Tr. 15, 215) Some operators sought advice from the Vinita, Oklahoma, office for price changes, but

these inquiries were not solicited or required by plaintiffs. (Tr. 250, 299; Deposition of Ida Mae Parsley, p.13, 14)

25. Each operator set the hours per day and days per week his station would be open. (Tr. 19, 24, 25, 189, 226, 230, 231, 292; Deposition of Ida Mae Parsley, p.21, 25) The hours varied from station to station. (Tr. 24, 31, 32, 213, 292, 307; Deposition of C. R. Botts, p.18,19; Deposition of Leland Greenhaw, p.41) Some of the stations operated on a 24 hour basis. (Tr. 24, 30)

26. The operators were free to close their stations for vacations, illness or other reasons without consulting plaintiffs. (Tr. 18, 19, 190, 213, 214, 232; Deposition of C. R. Botts, p.29, 41, 42) Each operator had his own key to the station and plaintiffs had no duplicates. (Tr. 49, 50, 214, 307; Deposition of C. R. Botts, PP28, 41; Deposition of Leland Greenhaw, p.40; Deposition of Ida Mae Parsley, p.28) There was no requirement that the operator devote his full time to the operation of the station. (Tr. 38, 190; Deposition of Leland Greenhaw, p.34) Members of the operator's family often assisted in the operation of the station. (Tr. 215, 225, 286)

27. Each operator was free to carry on any lawful business at his station site. (Tr. 9, 135, 136, 139, 189, 226; Deposition of C. R. Botts, p.36) A wide variety of products and services were sold at the stations including tires, tubes, batteries, motor oil and oil additives, automobile accessories, automobile service and repairs, grocery items, vegetables, gift items, souvenirs, used cars, fireplace wood, fishing tackle, vending machine goods, soda pop, beer, snacks and restaurant service. (PX 3, PX 4; Tr. 22, 23, 30, 33, 35, 188, 210, 230, 286; Deposition of Leland Greenhaw, p.38, 39; Deposition of C. R. Botts, p.7) The plaintiffs were not involved in these activities and received no portion of the profits from the operators' sale of the varied and diverse products

delineated above. (Tr. 18, 28, 136)

28. The operators owned or leased from others a variety of tools and equipment including service trucks, tire changing equipment, battery chargers, hydraulic jacks, automobile repair equipment, refrigeration equipment and vending machines. (PX 3; PX 4; Tr. 15, 16, 188, 210, 223, 228; Deposition of Leland Greenhaw, p.37, 38) The investment of the operators in merchandise inventory and equipment ranged from approximately \$350.00 to \$10,000.00. (Tr. 189; Deposition of Leland Greenhaw, p.10)

29. The operators were permitted to make alterations and additions to the stations at their own expense. (Tr. 26, 39) One operator built a restaurant and curio shop which cost approximately \$30,000.00. (Tr. 26, 72) Another operator built a building. (Tr. 39)

30. State inspectors checked the accuracy of the station pumps from time to time (Tr. 112) and tested the gasoline to see that it met state specifications. (Tr. 112) The results of the inspections were mailed to the operators rather than to plaintiffs. (PX 14, Tr. 112, 212)

31. Depending on the state requirements, the operators had one or more licenses to sell gasoline and other merchandise. (Tr. 73, 92, 192, 193, 213, 214, 237, 298; Deposition of C. R. Botts, pp. 32, 33) Plaintiffs did not pay for the operators' licenses. (Tr. 73, 74, 137, 138; Deposition of C. R. Botts, p.32)

32. The operators advertised their businesses in their own names. (Tr. 26, 27, 212, 282) The advertising consisted of radio advertising, newspaper advertising, business cards, signs on service trucks, calendars, key chains, matches and pencils. (Tr. 205, 212, 282; Deposition of Leland Greenhaw, p.13) The operators paid for their own advertising. (Tr. 27, 212, 282; Deposition of Leland Greenhaw, p.13)

33. The arrangement between plaintiffs and the operators could be terminated on short notice. (Tr. 175) If the operators had an inventory of merchandise and equipment remaining after said termination, they either had to sell the merchandise and equipment or take it with them. (Tr. 122, 206; Deposition of Leland Greenhaw, p.27) The operators also had an obligation to pay plaintiffs the stated price for consigned gasoline and diesel fuel sold by them prior to termination. (Tr. 113) The operators did not believe that plaintiffs could terminate the lease arrangement without good cause. (Tr. 122, 203; Deposition of Ida Mae Parsley, pp. 19, 20; Deposition of Leland Greenhaw, p. 28)

34. Plaintiffs did not impose any minimum requirements as to cleanliness or maintenance of the stations. (Tr. 43, 44) The operators were not required to carry any specific brand of motor oil or accessories and were not required to render any particular services to customers. (Tr. 43; Deposition of Leland Greenhaw, p.40)

35. Plaintiffs did not train or otherwise instruct the operators as to how to run the stations. (Tr. 40; Deposition of C. R. Botts, p.29) No sales quotas were imposed. (Tr. 214; Deposition of Leland Greenhaw, p.43; Deposition of Ida Mae Parsley, p.29) The operators were not required to display any advertising material bearing the name "JOCO" or Jones Oil Company, and they were not required to wear special uniforms. (Tr. 191, 214; Deposition of C. R. Botts, pp29, 30)

36. Plaintiffs provided no fringe benefits to the operators such as medical insurance or group life insurance. (Tr. 49; Deposition of C. R. Botts, pp34, 35) Plaintiffs did not carry workmen's compensation insurance on the operators. (Tr. 49)

37. Plaintiffs' contacts with the operators were infrequent. (Tr. 43, 192, 214, 232; Deposition of Leland Greenhaw, p. 39, 43; Deposition of Ida Mae Parsley, p.29) Plaintiffs did not travel

to the station sites often due to the distances involved. (Tr. 42, 43) Plaintiffs had no foremen, supervisors or sales managers to check on the operations of the stations. (Tr. 42; Deposition of C. R. Botts, p.29; Deposition of Ida Mae Parsley, p.30) When a station changed hands, the new operator usually purchased the inventory and supplies of the outgoing operator but this was not a condition to taking over the station. (Tr. 21, 120, 187) New operators were usually engaged on the recommendations of other operators. (Tr. 81)

38. The service station operators regarded themselves as self-employed businessmen. (Tr. 195, 216, 227, 232, 312; Deposition of Ida Mae Parsley, p.10, 31) The evidence reflects that the operators filed individual income tax returns, reported the profit they made from the service stations on those returns and paid income taxes and self-employment taxes for the years 1970, 1971 and 1972. (Tr. 194, 195, 216, 251, 287, 302; Deposition of C. R. Botts, p.27; Deposition of Leland Greenhaw, p.61; Deposition of Ida Mae Parsley, pp 26, 47)

39. Three service station operators called as witnesses by defendant testified that they had paid self-employment taxes during the years at issue but they had filed claims for refund at the insistence of the examining revenue agent. (Tr. 289, 290, 302, 303, 311, 312) Mr. Olin Smith's testimony on redirect examination regarding his claim for refund was as follows: (Tr 288, 289)

"Q. You have filed a claim for refund to get back the self-employment taxes you have paid?

A. Yes.

Q. What reason was that for?

A. The Internal Revenue man came out to the house and talked to me.

Q. Please don't go into the conversation.

The Court: No, you asked, now you are stuck with it.

A. I was asked to by the Internal Revenue man to file the form for my taxes owed that year, yes."

One of these witnesses testified that he had already received a refund in excess of One Thousand Dollars. (Tr. 311)

40. The opportunity for profit and the risk of loss was in the hands of the operators. (Deposition of Leland Greenhaw, p.52, 53) The operators derived their income from the sale of gasoline, diesel fuel and a variety of other products. (Deposition of C. R. Botts, p.9) Gas wars were prevalent during the period involved herein. (Tr. 11, 191; Deposition of Leland Greenhaw, p.53) One operator testified he sold gasoline below his cost for a period of time to meet competition. (Tr. 191) For the year 1971 which is the only complete year before the Court, the evidence showed that two operators made profits in excess of \$15,000.00 from sales of gasoline. (PX 1, 2) The majority of the other operators were in the \$10,000.00 to \$15,000.00 range. (PX 1, 2; Tr. 227) Without considering profits from the sale of other products, they received substantial profits by any standards.

41. The plaintiffs did not exercise or have the right to exercise the degree of control over the service station operators necessary to make them employees during the years 1970, 1971 and 1972. (Entire Record)

III

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and of the subject matter under 28 U.S.C. §1346(a)(1). The Court has jurisdiction of the defendant's counterclaims under 28 U.S.C. §1346(c). (Pretrial Order)

2. The provisions of Sections 3121(d) and 3306(i) of the Internal Revenue Code of 1954 [26 U.S.C. §§3121(d) and 3306(i)] provide that the common-law rules are applicable in determining who are employees under the Federal Insurance Contributions Act and Federal Unemployment Tax Act. The same common-law test is applied to determine employment status for purposes of income tax withholding. Section 31.3401(c)-1(b) of the Treasury Regulations on Employment Tax [26 C.F.R. §31.3401(d)-1].

3. The applicable portions of the above cited statutes and regulations read as follows:

26 U.S.C. Section 3121(d): "Employee---For purposes of this chapter, the term 'employee' means---

- (1) any officer of a corporation; or
- (2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee;
* * *

26 U.S.C. Section 3306(i): "Employee---For purposes of this chapter, the term 'employee' includes an officer of a corporation, but such term does not include---

- (1) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or
- (2) any individual (except an officer of a corporation) who is not an employee under such common law rules."

26 C.F.R. §31.3401(c)-1: "Employee.

- (b) Generally, the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the service, not only as to result to be accomplished by the work but also as to the details and means by which that result is accomplished.***"

4. The Courts and Congress have long recognized that the usual common law rules are to be used in determining the existence

of the employer-employee relationship and that such rules are to be realistically applied. S. Rep. No. 1255, 80th Cong., 2d Sess., p. 7; Illinois Tri-Seal Products, Inc. v. United States, 353 F.2d 216 (Ct. Cl. 1965).

5. The determination of one's status as an employee is one of fact. McGuire v. United States, 349 F.2d 644 (9th Cir. 1965); Service Trucking Co., Inc. v United States, 347 F.2d 671 (4th Cir. 1965). No one factor is controlling and the entire circumstances must be viewed. United States v. Silk, 331 U.S. 704, 67 S. Ct. 1463, 91 L. Ed. 1757 (1947); Cape Shore Fish Co. v. United States, 330 F.2d 961 (Ct. Cl. 1964).

6. No useful purpose would be served by an exhaustive review of the many factors considered in other cases as each case must stand on its own facts. In the final analysis, it is the degree of control exercised by the taxpayer that is controlling, not only as to what is done, but also as to how it is done. Lifetime Siding, Inc. v. United States, 359 F.2d 657 (2d Cir. 1966).

7. Plaintiffs' lack of a right of control is amply demonstrated in the record. The service station operators determined their own working schedule (hours and days) and set their own prices. The operators were not required to devote their full time to the operation of the stations and were free to close the stations at any time. The operators had an opportunity for profit and carried on a variety of activities at their stations. Many of the operators had a substantial investment in merchandise inventory and equipment. The operators hired assistants and paid employment taxes on their employees. The operators secured licenses in their own names, and advertised in their own names. The operators granted discounts and extended credit at their own risk. The operators were free to make alterations to the premises and were not required to maintain the premises in an approved manner. The operators conducted their

businesses free of supervision by plaintiffs. The operators considered themselves independent businessmen and paid income taxes and self-employment taxes as independent businessmen. Considering all of these factors and upon careful consideration of the entire record, it is concluded that plaintiffs neither had the right to exercise, nor exercised, the degree of control over the service station operators necessary to make them their employees during the years 1970, 1971 and 1972.

8. The case of United States v. Wholesale Oil Co., Inc., 154 F.2d 745 (10th Cir. 1946) cited by the defendant presented a substantially different factual situation. The service stations operators in Wholesale Oil could do very little without the approval of the Company. In these cases, the operators conducted their businesses free of direction and control by plaintiffs.

9. Plaintiffs are severally entitled to a refund of withholding taxes, FICA taxes, FUTA taxes and interest claimed in their Complaints.

10. In Civil Action No. 75-C-214(B) plaintiff M. H. Jones is entitled to judgment and to recover from defendant for the overpayment of employment taxes, penalties and interest in the amount of \$11,366.05 plus interest as provided by law for the periods April 1, 1970, through December 31, 1970; January 1, 1971, through December 31, 1971; and January 1, 1972, through September 30, 1972.

11. In Civil Action No. 75-C-215(B) plaintiff Jerry Jones is entitled to judgment and to recover from defendant for the overpayment of employment taxes, penalties and interest the amount of \$5,671.92 plus interest as provided by law for the periods April 1, 1970, through December 31, 1970; January 1, 1971, through December 31, 1971; and January 1, 1972, through September 30, 1972.

12. Defendant's counterclaims are denied and plaintiffs are entitled to judgment thereon and plaintiffs are further entitled to their costs of these actions.

The Court directs that counsel for the plaintiffs prepare a judgment in accordance with the findings and conclusions so entered within ten (10) days of this date.

Dated this 29 day of July, 1976.

Allen E. Barlow
United States District Judge

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

LARRY G. LINEBARGER AND)
GEARY W. WOFFORD,)
)
Plaintiffs, Pro Se,)
)
vs.)
)
BRICE C. COLEMAN,)
SHERIFF OF CREEK COUNTY,)
OKLAHOMA, et al.,)
)
Respondents.)

No. 76-C-66-C ✓

FILED
JUL 29 1976 *rcm*
Joseph G. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The plaintiffs in the above-styled case, Larry G. Linebarger and Geary W. Wofford, have submitted to the Court a "request that the above suit be dropped [sic] against all parties [sic] mentioned." Said request is signed by both plaintiffs and subscribed and sworn to before a Notary Public. Plaintiffs state therein: "The above plaintiffs at this time moves [sic] and informs this Honorable Court, that it is our desire that the Civil Complaint be dropped [sic] against Brice C. Coleman et al. . . . "

The plaintiffs having filed their Complaint pro se, the Court will consider the request filed herein as a Motion to Dismiss. Said Motion is hereby sustained, and this cause of action is dismissed as to all defendants.

It is so Ordered this 28th day of July, 1976.

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

Larry G. Linebarger 87152

Geary W. Wofford

Versus.

Brice C. Coleman, et.al.

July 24, 1976

RECEIVED RECEIVED

TO: District Court, Presiding Judge:

JUL 26 1976

JUL 26 1976

Dear Sir,

IN RE:

ALLEN E. BARROW
U. S. DISTRICT JUDGE JUDGE H. DALE COOK
U. S. DISTRICT COURT

The above plaintiff's, at this time moves and informs this Honorable Court, that it is our desire that the Civil Complaint be dropped against Brice C. Coleman et.al., for the following reasons to wit:

Plaintiff's witnesses-Two of them are not able to testify, one has passed away and the other is in the Hospital with Termal-Cancer, therefore plaintiff's feel at this time they would just be wasting the Courts time and money in pursuing the within matter.

Therefore, we the plaintiff's respectfully request that the above suit be dropped against all partie's mentioned.

Respectfully Submitted

Linebarger Linebarger

Geary W. Wofford

Subscribed and sworn to before me this 24th day of July - 1976

My Commission Expires 5-14-79

Notary Public C. J. Stamps

CC:
Brice C. Coleman, Sheriff Creek County
Sapulpa, Oklahoma.

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

LEE ROY BOYD,)
)
 Petitioner,)
)
 vs.) No. 76-C-265-C
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

2767

ORDER OF DISMISSAL

The petitioner, Lee Roy Boyd, has filed a pro se Motion for Issuance of Transcripts in this Court requesting that the Court order the production of transcripts of various proceedings at government expense. Petitioner has been allowed to proceed in this case in forma pauperis.

Petitioner states that:

"1.) Petitioner was originally the defendant in criminal case No.#14064, in and for the Northern District of Oklahoma. Petitioner was found guilty by jury/pled guilty of N.M.V.T.A. and Possession of Sawed-off shotgun, in violation of the National Motor Vehicle (sic) Act and National Fire-Arms (sic) Act, and sentenced to 2 to 5 years running consecutive.(sic)

2.) Petitioner avers that the transcripts of minutes of proceedings requested are needed for adequate appeal, in support of petitioner's 'Motion to Vacate Sentence' that petitioner in (sic) now framing; in order to gain a 'record of sufficient completeness to permit proper consideration of his claims.' (Citations Omitted)."

Petitioner seeks a transcript of the following:

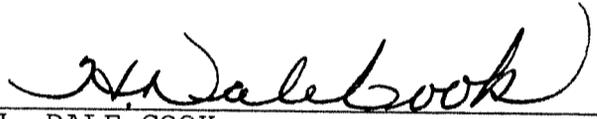
- 1). Arraignment
- 2). Preliminary Hearing
- 3). Trial
- 4). Sentencing

Defendant was convicted of a violation of Title 18 U.S.C. § 2312 and a violation of Title 26 U.S.C. § 5851 in Case No. 14064 on May 19, 1964 and sentenced on June 2, 1964. No appeal

was taken from this conviction and sentence. The time for appeal has now expired. Therefore petitioner's request can only apply to a petition for relief which petitioner is "now framing" in support of a "Motion to Vacate Sentence."

The United States Supreme Court has recently ruled that an indigent is not entitled to a transcript of the proceedings prior to the filing of a Motion Pursuant to 28 U.S.C. § 2255. United States v. MacCollom, ___ U.S. ____ (Decided June 10, 1976). See United States v. Hereford, Unpublished No. 75-1757 (10th Cir. May 19, 1976). There being no such motion pending before this Court the petitioner's request for transcripts is denied and this case is hereby dismissed.

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



H. DALE COOK
United States District Judge

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

AFFILIATED FM INSURANCE)
COMPANY,)
)
Plaintiff,)
)
vs.)
)
NORDSTROM-LARPENTEUR AGENCY,)
)
Defendant.)

C
No. 75-C-249 ✓

FILED
JUL 27 1976 *ph*

JUDGMENT

On the 2nd day of July, 1976, there came on for hearing before me, the undersigned Judge, the defendant's application to assess attorney's fees and the plaintiff's objection to the assessment of costs by the Clerk of the Court. The plaintiff was present and represented by its attorney, Richard Sonberg, and the defendants were present and represented by their attorney, Robert L. Shepherd. After hearing arguments of counsel and being fully advised in the premises, the Court denies the application for the assessment of attorney's fees and overrules the plaintiff's objection to the assessment of the costs by the Clerk of the Court.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the application to assess attorney's fees on behalf of the defendant is hereby denied, and the objection by the plaintiff to the assessment of court costs by the Clerk is hereby overruled, and the defendant does herewith have judgment against the plaintiff in the sum of Five Hundred Seventy-eight and 21/100 Dollars (\$578.21).

W. Dale Book

Judge

Approved:

Richard T. Sonberg

Richard Sonberg
Attorney for Plaintiff
Robert L. Shepherd

Robert L. Shepherd
Attorney for Defendant

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

SHARON R. CLINE,)
)
 Plaintiff,)
)
 vs.) No. 74-C-355-C
)
 McCRORY CORPORATION d/b/a)
 OTASCO, INC. and MTD PRODUCTS)
 COMPANY, a corporation,)
)
 Defendants.)

FILED
JUL 27 1976
Jack C. Silver, Clerk
" S. DISTRICT COURT"

ORDER

The Court has before it for consideration a Motion for New Trial filed on behalf of the plaintiff, Sharon R. Cline. Plaintiff asserts that the verdict on behalf of the defendants was against the clear weight of the evidence produced during the trial and also that a new trial should be granted for the reason that hearsay evidence was improperly presented to the jury.

In regard to plaintiff's first proposition, in order to justify a court in setting aside the verdict of a jury, the verdict must be clearly, decidedly, or overwhelmingly against the weight of the evidence. Locke v. Atchison, Topeka and Santa Fe Railway Company, 309 F.2d 811 (10th Cir. 1962). As stated by the court in Champion Home Builders v. Shumate, 388 F.2d 806 (10th Cir. 1967):

"In reviewing the record, we are mindful that the jury verdict must not be preempted unless it has no basis in fact. Insufficiency of the evidence is a ground for directing a verdict or granting a new trial [Citations omitted]. But, as we said in United States v. Hess, 10 Cir. 341 F.2d 444, . . . to be insufficient to support a verdict, the evidence must all be one way from which only one reasonable inference can be drawn. In this regard, the evidence must be viewed in a light most favorable to the party against whom a motion is made and he must be given the benefit of all

inferences fairly drawn therefrom. United States v. Fenix and Scisson, Inc., 360 F.2d 260 (10th Cir. 1966)"

Based upon a review of the evidence presented at trial, it is the determination of the Court that, viewing the evidence in a light most favorable to the defendant, it amply supports the jury verdict.

In regard to plaintiff's second proposition of error, at trial Hollie Sowell testified that immediately prior to the accident he saw plaintiff pumping the brakes and that although he called to her to work the brakes, they didn't appear to function. Penny McAlister testified that on the day of the accident she saw Sowell at the hospital at which time he made statements to the effect that plaintiff didn't know what she was doing -- that she had not ridden it before -- and that she panicked.

Rule 613, Federal Rules of Evidence, provides:

"(a) Examining witness concerning prior statement. --

In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel."

"(b) Extrinsic evidence of prior inconsistent statement of witness. --

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. . . . "

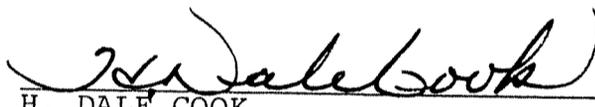
The witness Sowell was certainly afforded an opportunity to explain or deny the prior inconsistent statement as testified to by Penny McAlister.

Furthermore, as noted by defendants, the testimony of Penny McAlister was not offered to prove the truth of the matters asserted therein, but was offered for the sole purpose of impeachment. As defined in Rule 801(c), Federal Rules of Evidence,

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial . . . offered in evidence to prove the truth of the matter asserted." In the context and for the purpose for which it was admitted, the statements made by Penny McAlister were not improper hearsay evidence.

It is therefore the determination of the Court that the Motion for New Trial should be and hereby is overruled.

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



H. DALE COOK
United States District Judge

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

LILLIE MAE BOYD,

Plaintiff,

-vs-

BALL JANITOR SERVICE, Inc.,

Defendant,

No. 75-C-240 B

FILED

JUL 27 1976

Judge of the Court
U. S. DISTRICT COURT

ORDER

Upon voluntary and timely application of the Plaintiff, Lillie Mae
Boyd, the above entitled cause/~~s~~ ^{of of action & complaints are} hereby dismissed with prejudice.

Dated this 27th day of July, 1976.

Allen E. Brown
Judge of the District Court

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

Bernice K. McCoy,
Plaintiff,

vs.

Alfred J. Rooks and
Donnie Don Carter,
Defendants.

No. 75-C-192

FILED
JUL 26 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Upon application of the plaintiff filed herein, it appearing that the said settlement agreement between the parties has been consummated, the above entitled cause is hereby dismissed with the plaintiff paying the court costs.



U. S. DISTRICT JUDGE

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

~~FILED~~
JUL 25 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROGER C. GUSTAFSON d/b/a)
 R & G CATTLE CO.,)
)
 Defendant.)

CIVIL ACTION NO. 76-C-179-B

FILED
JUL 26 1976

DEFAULT JUDGMENT

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

THIS MATTER COMES on for consideration this 12th day of July, 1976, the Plaintiff appearing by Hubert H. Bryant, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Roger C. Gustafson d/b/a R & G Cattle Co., appearing not.

The Court being fully advised and having examined the file herein finds that the Defendant was served with Summons and Complaint on April 29, 1976, as appears from the United States Marshal's Service herein and that the Defendant has failed to answer herein and that default has been entered by the Court.

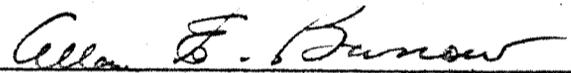
The Court further finds this is a civil action brought by the United States of America for the recovery of forfeitures and for a permanent injunction under the Packers and Stockyards Act, 1921, as amended and supplemented, and that by reason of the failure of the Defendant, Roger C. Gustafson d/b/a R & G Cattle Co., to file the annual report with the Secretary of Agriculture on or before June 1, 1975, as required by the Federal Trade Commission Act and by reason of his failure to do so that the Defendant is now indebted to the Plaintiff in the amount of \$40,700.00 as of July 12, 1976, plus costs in the amount of \$45.44.

The Court further finds that the Defendant, Roger C. Gustafson d/b/a R & G Cattle Co., for so long as he remains

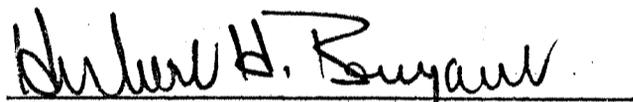
subject to the provisions of the Packers and Stockyards Act should be permanently enjoined from failing to file within the time fixed by the Secretary of Agriculture in the regulations such annual or special reports as the Secretary may require pursuant to the Act and the regulations issued thereunder.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Roger C. Gustafson d/b/a R & G Cattle Co., for the sum of \$40,700.00 plus costs in the amount of \$45.44.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the Defendant, Roger C. Gustafson d/b/a R & G Cattle Co., is permanently enjoined so long as he remains subject to the provisions of the Packers and Stockyards Act from failing to file within the time fixed by the Secretary of Agriculture in the regulations such annual or special reports as the Secretary may require pursuant to the Act and regulations issued thereunder.


UNITED STATES DISTRICT JUDGE

APPROVED


HUBERT H. BRYANT
Assistant United States Attorney

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

JUNE COCHRAN,)
)
 Plaintiff,)
)
 vs.)
)
 PUBLIC SERVICE COMPANY OF OKLAHOMA;)
 R. O. NEWMAN, individually and in his)
 capacity as President of the Public)
 Service Company of Oklahoma;)
 CHARLES SIMMONS, individually and in)
 his capacity as Customer Service Repre-)
 sentative Handling Diversions for Public)
 Service Company of Oklahoma; PRENTISS)
 CARTER, individually and in his capacity)
 as Diversion Specialist for Public Service)
 Company of Oklahoma;)
)
 Defendants.)

NO. 76-C-155-C ✓

FILED
JUL 26 1976 *ph*
Jack C. Silver, Clerk
DISTRICT COURT

ORDER SUSTAINING DEFENDANTS'
MOTION TO DISMISS

This case is before the Court on the Motion of Defendants, Public Service Company of Oklahoma, R. O. Newman, Charles Simmons and Prentiss Carter, to Dismiss the Complaint for Failure to State a Claim upon which Relief can be Granted. The thrust of defendants' Motion is that the Public Service Company of Oklahoma is not sufficiently connected with the State of Oklahoma so that its actions constitute state action. The individual named defendants are officers, agents or employees of the defendant corporation.

Plaintiff, June Cochran, has brought this action alleging that defendant terminated electric service to her home without notice and a right to be heard in violation of plaintiff's rights guaranteed to her by the Fourteenth Amendment of the United States Constitution and Title 42 U.S.C. § 1983 (1974). Jurisdiction is premised on Title 28 U.S.C. § 1343(3) and (4).

Plaintiff has also brought this action under Title 28 U.S.C. §§ 2201, 2202 (1959) seeking a declaratory judgment in favor of the plaintiff. Diversity of citizenship is not alleged. Jurisdiction is not present under Title 28 U.S.C. § 1331 (1966) unless a federal question is raised.

In considering the Motion the Court has perused the entire record and is fully advised in the premises.

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 proceedings for redress."

Before relief can be granted under § 1983 the plaintiff must establish that the prohibited action was taken "under color of" state or local law.

"The statutory prerequisites to liability under 42 U.S.C. § 1983 are: (1) that the defendant act 'under color of' state or local law, and (2) that the plaintiff be subjected to a 'deprivation of any rights, privileges, or immunities secured by the Constitution and laws.'" (Citations Omitted). Stringer v. Dilger, 313 F.2d 536, 540 (10th Cir. 1963). See Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961); Marland v. Heyse, 315 F.2d 312 (10th Cir. 1963).

Whether particular conduct is private or amounts to "state action" presents a question with no easy answer. The solution lies in sifting facts and weighing circumstances. Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961). See Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972).^{1/} While "state action" defies precise definition the Burton Court recognized that state responsibility follows from "'state participation through any arrangement, management, funds or property.'" Cooper v. Aaron, 358 U.S. 1, 4 (1958)". 365 U.S. at 722. Actions prohibited by

^{1/} A useful analysis of factors considered by various courts in determining "state action" may be found in Jackson v. Statler Foundation, 496 F.2d 623 (2nd Cir. 1973).

the Fourteenth Amendment to the Constitution of the United States must also be actions taken under authority of the State.

"The Due Process Clause of the Fourteenth Amendment provides: '[N]or shall any State deprive any person of life, liberty, or property, without due process of law.' In 1883, this Court in the Civil Rights Cases, 109 U.S. 3, affirmed the essential dichotomy set forth in that Amendment between deprivation by the State, subject to scrutiny under its provisions, and private conduct, 'however, discriminatory or wrongful,' against which the Fourteenth Amendment offers no shield. Shelley v. Kraemer, 334 U.S. 1 (1948)."
Jackson v. Metropolitan Edison Co., 419 U.S. 345, 349, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974).^{2/}

Plaintiff contends that Public Service Company of Oklahoma is sufficiently connected with the State of Oklahoma to satisfy the requirement of "state action." Plaintiff asserts that the denial of electrical power without due process violates her Fourteenth Amendment protections.

In order to determine whether the State of Oklahoma is sufficiently involved in the activities of the defendant, the Court must look at the nature of the State control.

Public Service Company of Oklahoma is a corporation operating and existing by virtue of the "Business Corporation Act" of the State of Oklahoma. Title 18 Okla. Stat. §§ 1.1 et seq. (1953). The Oklahoma Corporation Commission has general supervisory authority over public utilities such as the Public Service Company of Oklahoma. This authority includes such supervisory responsibilities as regulating rates, imposing rules and regulations, correcting abuses, preventing unjust discrimination, inspecting books and records and designating classifications. Art. 9 Okla. Const. § 18; Title 17 Okla. Stat. § 152 (1953). Utility companies have the right of eminent domain in

^{2/} Section 1 of the Fourteenth Amendment provides in part:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

the State of Oklahoma. 27 Okla. Stat. § 7 (1976).

The case of Jackson v. Metropolitan Edison Co., supra, dealt with a factual situation very similar to that which is presented in this case. In Jackson the Metropolitan Edison Co., a privately owned and operated Pennsylvania corporation terminated petitioner's electrical service without notice and an opportunity to be heard. Petitioner brought an action against Edison under Title 42 U.S.C. § 1983 alleging a violation of her Fourteenth Amendment right to due process. In concluding that the State of Pennsylvania did not stand in a sufficiently close nexus to the actions of Edison to constitute state involvement the Supreme Court found that a monopoly status and heavy regulation by the State of Pennsylvania did not in itself comprise "state action." The Jackson Court also found that regulated businesses which provide goods and services which are "affected with a public interest" do not necessarily convert their actions into those of the state. Jackson 419 U.S. at 354.

The plaintiff asserts that the Corporation Commission of Oklahoma has approved the practices followed by the defendant in terminating electrical service. Plaintiff has made no showing that the Oklahoma State Corporation Commission has ordered the termination of service in a manner followed by the defendant.

"The nature of governmental regulation of private utilities is such that a utility may frequently be required by the state regulatory scheme to obtain approval for practices a business regulated in less detail would be free to institute without approval from a regulatory body. Approval by a state utility commission of such a request from a regulated utility, where the Commission has not put its own weight on the side of the proposed practice by ordering it, does not transmute a practice initiated by the utility and approved by the Commission into 'state action'.

Jackson, 419 U.S. at 357
(Emphasis of this Court).

The failure of the Oklahoma Corporation Commission to prevent termination without a hearing indicates that said Commission merely has no objection to such a practice.

The Jackson Court considered a situation where the private entity enjoyed the power of eminent domain and stated:

"If we were dealing with the exercise by Metropolitan of some power delegated to it by the State which is traditionally associated with sovereignty, such as eminent domain, our case would be quite a different one. Jackson, 419 U.S. at 353. (Emphasis of this Court.)

In the case of Teleco, Inc. v. Southwestern Bell Telephone Co., 511 F.2d 949 (10th Cir. 1975) the court considered the question of whether termination of telephone service in Oklahoma without a hearing constituted "state action." In relying on Jackson, supra, the Tenth Judicial Circuit held that federal due process was not violated by interrupting such service without a hearing in that the actions of Southwestern Bell Telephone Co. did not constitute "state action." Teleco, Inc., 511 F.2d at 952.

The State of Oklahoma has granted the power of eminent domain to telephone companies. Title 18 Okla. Stat. § 601 (Amended 1961); Title 18 Okla. Stat. § 438.4 (1953). While the Teleco court did not specifically address the question of what effect the power of eminent domain would have had in determining "state action", in finding that the regulation of telephone companies by the Oklahoma Corporation Commission did not constitute "state action" the Tenth Circuit rejected "eminent domain" as a compelling factor.

Finally, the Jackson, supra, Court noted that while the respondent was obligated to furnish service, Pennsylvania law imposed no such obligation on the State. In commanding the Corporation Commission to regulate the Public Service Company of Oklahoma, the State of Oklahoma has not imposed a duty on the State to supply electrical power but has merely determined that where electrical service is provided it must be regulated.

Premised on the rulings of Jackson and Teleco and the facts presented in this case, it is the conclusion of the Court that the State of Oklahoma is not sufficiently connected with the

actions of the defendant, Public Service Co. of Oklahoma, and therefore with the actions of the individual named defendants, in terminating the plaintiff's electrical service to constitute action attributable to the State of Oklahoma for purposes of the Fourteenth Amendment. Therefore the plaintiff has failed to state a claim upon which relief can be granted under Title 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution. Accordingly:

IT IS ORDERED ADJUDGED AND DECREED that the Motion of the defendants, Public Service Co. of Oklahoma, R. O. Newman, Charles Simmons, and Prentiss Carter, to Dismiss for Failure to State a Claim upon Which Relief can be Granted is sustained and this cause is hereby dismissed.

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


H. DALE COOK
United States District Judge

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

MELLON BANK N.A., a)
National Banking Association,)
)
Plaintiff,)
)
vs.)
)
WINFORD DALE ARNOLD and)
ARCHALENE ARNOLD,)
Defendants.)

No. 76-C-184-B

~~JUL 2 1976~~

JUL 2 1976

NOTICE OF DISMISSAL

The plaintiff, Mellon Bank N.A., a national banking association hereby files its Notice of Dismissal without prejudice of the captioned suit in accordance with Rule 41(a)(1)(i), Federal Rules of Civil Procedure.

Frederic N. Schneider III
Frederic N. Schneider III
of BOONE, ELLISON & SMITH
900 World Building
Tulsa, Oklahoma 74103
Attorneys for Plaintiff

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.)

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.)

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

Defendants.)

FILED

JUL 20 1976

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

No. 73-C-65

Above Cause
CONSOLIDATED With

No. 72-C-54

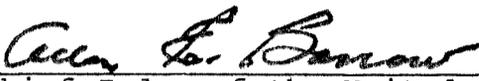
ORDER OF DISMISSAL

Now on this 26 day of July, 1976, this matter coming on for consideration before me, the undersigned Chief Judge of the United States District Court for the Northern District of Oklahoma, upon the Application for Order of Dismissal filed by Plaintiffs in Case No. 72-C-54,

The Court finds that said Application is made for good cause and should be granted, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Case No. 72-C-54 be, and the same is hereby dismissed with prejudice as to the Defendant Semco Industries, Inc., and

IT IS FURTHER ORDERED ADJUDGED AND DECREED that
the above-styled action be, and the same is hereby dismissed
without prejudice as to the Defendant R. L. Pope.



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

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

MAPLERIDGE ASSOCIATION, an
unincorporated association,

Plaintiff,

vs.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation of
the United States of America;
OKLAHOMA STATE HIGHWAY
COMMISSION; and CITY OF TULSA,
STATE OF OKLAHOMA,

Defendants.

FILED

JUL 23 1976

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

ph

No. 75 C 228 - *e*

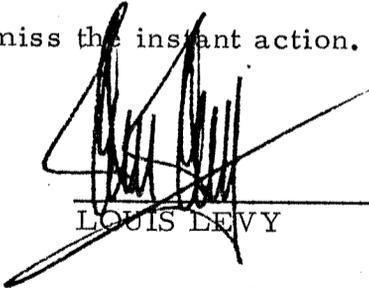
STIPULATION

of Dismissal

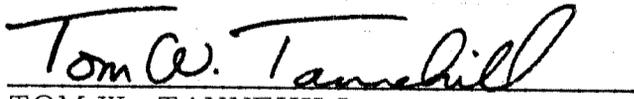
The parties stipulate as follows:

1. The defendants will not construct the "Detroit Overpass" which is the subject of the above-styled litigation, presently planned to run from Cincinnati Avenue at 17th Place, to Detroit Avenue at 13th Street, in the City of Tulsa, Oklahoma, defendants recognizing that the continuance of the instant litigation would slow construction on the southeast interchange of the Inner Dispersal Loop of I-244 in Tulsa, Oklahoma and defendants are desirous of expediting construction of said interchange.

2. Plaintiffs will dismiss the instant action.



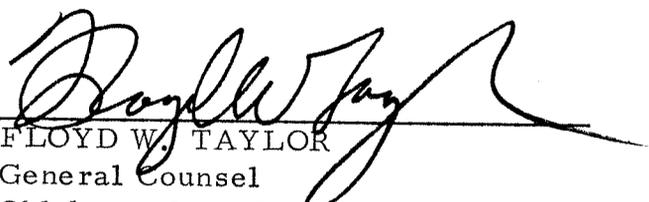
LOUIS LEVY



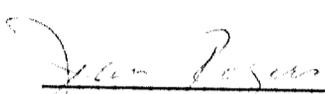
TOM W. TANNEHILL
Attorneys for Plaintiff



ROBERT H. TIPS
Attorney for Defendant,
City of Tulsa, Oklahoma


FLOYD W. TAYLOR
General Counsel
Oklahoma State Highway Commission


ROBERT SANTEE
Assistant United States Attorney


JEAN ROGERS
Attorney
Federal Highway Administration

Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,000.00 with 7 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Eddie Ray Bock and Judy Kay Bock, 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 \$9,778.24 as unpaid principal with interest thereon at the rate of 7 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, Eddie Ray Bock and Judy Kay Bock, in rem, for the sum of \$9,778.24 with interest thereon at the rate of 7 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 Defendant, Interstate Securities Company.

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

15/ Allen E. Barrow
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

UNITED STATES OF AMERICA,
Plaintiff,
vs.
BRUCE REED, a single person,
Defendant.

)
)
) CIVIL ACTION NO. 76-C-252-B
)
)
)
)
)
)

FILED
JUL 28 1976

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 22nd
day of July, 1976, the Plaintiff appearing by Robert
P. Santee, Assistant United States Attorney, and the Defendant,
Bruce Reed, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, Bruce Reed, was served
with Summons and Complaint on June 13, 1976, as appears from
the U.S. Marshals Service herein.

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

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

Lot Thirty-four (34), Block Forty-one (41), VALLEY VIEW
ACRES SECOND ADDITION to the City of Tulsa, County of
Tulsa, State of Oklahoma, according to the recorded
plat thereof.

THAT the Defendant, Bruce Reed, did, on the 26th day
of March, 1975, execute and deliver to the Administrator of
Veterans Affairs, his mortgage and mortgage note in the sum
of \$10,300.00 with 9 percent interest per annum, and further
providing for the payment of monthly installments of principal
and interest.

The Court further finds that Defendant, Bruce Reed, 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 \$10,338.68 as unpaid principal with interest thereon at the rate of 9 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, Bruce Reed, in personam, for the sum of \$10,338.68 with interest thereon at the rate of 9 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 appraisal the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, the Defendant be and he is 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.

15/Allen E. Barrow
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

JUL 2 1976

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.) CIVIL ACTION NO. 76-C-43-B
)
)
LA WAYNE BURNS and)
TINA L. BURNS,)
)
Defendants.)

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 22nd
day of July, 1976, the Plaintiff appearing by Robert
P. Santee, Assistant United States Attorney, and the Defendants,
La Wayne Burns and Tina L. Burns, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, La Wayne Burns and Tina L.
Burns, were served by Publication, as appears from the Proof of
Publication filed herein.

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

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

Lot Twenty-one (21), Block Nine (9), CHANDLER-FRATES
SECOND ADDITION to the City of Tulsa, Tulsa County,
Oklahoma, according to the recorded plat thereof.

THAT the Defendants, La Wayne Burns and Tina L. Burns,
did, on the 1st day of February, 1975, execute and deliver
to the Administrator of Veterans Affairs, their mortgage and
mortgage note in the sum of \$10,000.00 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, La Wayne Burns and Tina L. Burns, 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 \$10,035.12 as unpaid principal with interest thereon at the rate of 9 1/2 percent per annum from May 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, La Wayne Burns and Tina L. Burns, in rem, for the sum of \$10,035.12 with interest thereon at the rate of 9 1/2 percent per annum from May 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 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.

Allen E. Barrow
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

J. W. MORRIS,)
Plaintiff)
VS)
WILLIAM D. LANCASTER,)
CLIFTON THRONEBERRY, JR.,)
PIPELINERS LOCAL UNION NO. 798,)
Defendants)

No. 75-C-303 - *B*

JUL 27 1976

O R D E R

On this 22nd day of July, 1976, the Plaintiff, J. W. Morris, having filed a verified application requesting that the above captioned cause be dismissed on the grounds that the original issues contained therein have become moot; and stating that the Defendants voice no objections; and after hearing testimony and examining the records it appears that the Plaintiff's application is justified.

THEREFORE, LET IT BE ORDERED, ADJUDGED AND DECREED that the Plaintiff be, and he hereby is, granted a dismissal *as to the cause of action and Complaint*

Alan L. Bennett

FEDERAL 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-137-C
)
)
 VERNON POPE and)
 EVA D. POPE,)
)
) Defendants.)

FILED
JUL 23 1976

Jack C. Silver, Clerk
S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 22
day of July, 1976, the Plaintiff appearing by Robert
P. Santee, Assistant United States Attorney, and the Defendants,
Vernon Pope and Eva D. Pope, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Vernon Pope and Eva D.
Pope, were served by publication, as appears from the Proof of
Publication filed herein.

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

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

Lot Twenty-nine (29), Block Seventeen (17), VALLEY VIEW
ACRES ADDITION to the City of Tulsa, Tulsa County,
Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Vernon Pope and Eva D. Pope, did,
on the 2nd day of May, 1970, execute and deliver to the Administrator
of Veterans Affairs, their mortgage and mortgage note in the
sum of \$10,250.00 with 8 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, Vernon Pope and Eva D. Pope, 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 \$9,793.60 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from August 2, 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, Vernon Pope and Eva D. Pope, in rem, for the sum of \$9,793.60 with interest thereon at the rate of 8 1/2 percent per annum from August 2, 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 appraisalment the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

151 W. Dale Cook
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

FILED
JUL 22 1976
U. S. DISTRICT COURT

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

Plaintiffs,)

vs.)

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.)

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

Defendants.)

No. 73-C-65

Above Cause
CONSOLIDATED With

No. 72-C-54 ✓

NOTICE OF DISMISSAL

COME NOW the Plaintiffs, in Case No. 72-C-54 Francis F. Summy, Charlene Summy, Johnnie Summy, James E. Nunn, and Willard Culp, and, pursuant to the provisions of Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, dismiss said Case No. 72-C-54 without prejudice as to the Defendants Kelley R. Haney, Sr.; Jacques Spee; R. E. Hancock; Gayle Welcher; and J. R. Hooker, Jr.; none of said Defendants having filed an answer or any other pleading herein.

SNEED, LANG, TROTTER & ADAMS

By Brian S. Gaskill
Brian S. Gaskill
Attorneys for Plaintiffs Francis F. Summy, Charlene Summy, Johnnie Summy, James E. Nunn and Willard Culp
411 Thurston National Building
Tulsa, Oklahoma 74103

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

WESTINGHOUSE ELECTRIC CORPORATION,)
a Pennsylvania corporation,)

Plaintiff,)

-vs-

AMERICAN LAUNDRY DISTRIBUTING CO.,)
INC., an Oklahoma corporation,)
FRED WASHINGTON and PATRICIA)
WASHINGTON,)

Defendants.)

No. 75-C-88-B

FILED

JUL 22 1976

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

JUDGMENT

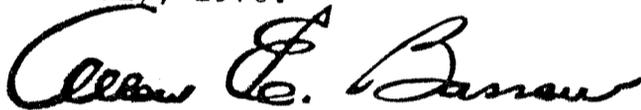
This action was heard in open court on July 12, 1976, on motion of Plaintiff for default judgment against Defendant American Laundry Distributing Co., Inc. (hereafter "Defendant corporation"), pursuant to Rule 55 of the Federal Rules of Civil Procedure and Rule 17(c) and Rule 32(b) of the Rules of the United States District Court for the Northern District of Oklahoma. Subsequent to the filing of the Complaint in this action on March 6, 1975, and the serving of the summons and complaint on Defendant corporation, through its president, Fred Washington, as required by law, Defendant corporation appeared herein through counsel. However, Defendant corporation has defaulted in that it has failed to comply with the Court's orders to meet with Plaintiff for a pre-trial conference to prepare a pre-trial order, or to submit its own proposed pre-trial order and the time to submit such order has expired on three separate occasions; and has been without counsel since September 24, 1975, having failed to appoint new counsel, and the time to appoint substitute counsel has expired. It further appears that a motion for default judgment was filed in this Court against Defendant corporation on June 4, 1976 and that no proceedings have been

taken by Defendant corporation since the filing of said motion by Plaintiff. Further said Defendant corporation has failed to appear at this hearing.

The Court has examined the files and heard the statements of Plaintiff's counsel in open court and has found that Plaintiff is entitled to recover damages from Defendant corporation. Therefore, it is

ORDERED AND ADJUDGED by the Court that Plaintiff have and recover from Defendant American Laundry Distributing Co., Inc., the sum of \$134,103.30 with ten percent interest per annum from this date until paid, attorney's fees ^{to be assessed upon application} of _____ and costs to be taxed by the Clerk of this Court.

DATED this ^{22nd} ~~12th~~ day of July, 1976.



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

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

6-1-13-1
JUL 20 1976
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 -v-)
)
 HERMAN T. MANN, ET AL,)
)
 Defendants.)

Civil Action No. 76-C-61 B ✓

STIPULATION OF DISMISSAL

COME NOW the United States of America, by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and Steve Conatser, attorney for the defendant Credithrift of America, Inc., and hereby stipulate and agree that this action may be and the same is hereby dismissed, without prejudice.

Dated this 20th day of July, 1976.

UNITED STATES OF AMERICA
NATHAN G. GRAHAM
United States Attorney

Steve Conatser
STEVE CONATSER, Attorney for
CREDITHRIFT OF AMERICA, INC.

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

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

CEMENT ASBESTOS PRODUCTS COMPANY,)
A Corporation,)

Plaintiff,)

vs.)

No. 75-C-252-B

RUCKER CONSTRUCTION COMPANY, INC.,)
A Corporation, and UNITED STATES)
FIDELITY AND GUARANTY COMPANY, A)
Corporation,)

Defendants.)

FILED

JUL 20 1976

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

ORDER OF DISMISSAL

In accordance with the Stipulation and Application for
Order of Dismissal filed by the parties herein, the said Stipu-
lation is approved. The Complaint ^{and cause of action} of the Plaintiff Cement
Asbestos Products Company against Rucker Construction Company,
Inc. and United States Fidelity and Guaranty Company ^{are} ~~is~~ hereby
dismissed with prejudice to the said Plaintiff.

Each party shall pay its own costs.

DATED this 20th day of July, 1976.

Allen E. Barrow

ALLEN E. BARROW

UNITED STATES DISTRICT JUDGE

APPROVED:

DOERNER, STUART, SAUNDERS,
DANIEL & LANGENKAMP
Attorneys for Plaintiff

By: *Michael Lewis*

WILCOXEN, CATE & SCHERER
Attorneys for Defendants

By: *Stephen J. Scherer*

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

U. J. USERY, Secretary of Labor,)
(Successor to John T. Dunlop))

United States Department of Labor,)

Plaintiff,)

vs.)

VERNON PRICE, doing business as)
Upright Drywall Company,)

Defendant.)

CIVIL ACTION

NO: 73-C-269 ✓

FILED

JUL 16 1976 *JK*

ORDER NUNC PRO TUNC *Jack C. Silver, Clerk*
DISTRICT COURT

NOW on this 16th day of July, 1976, there comes on for hearing

before this Honorable Court the application for an order nunc pro tunc to amend and correct and to reflect the true intent of the parties, that certain Judgment entered herein on the 12th day of March, 1976 in favor of the Plaintiff and against the Defendant, and the Court finds that the terms of said Judgment should remain in full force and effect together with the Findings of Fact and Conclusions of Law as entered on March 12, 1976 except as to said judgment constituting a lien against real estate;

The Court further finds that it was the intent of the parties that the \$58,000.00 overtime compensation and interest amount was and is a sum of money owed by the Defendant to the employees and should be paid in accordance with the schedule of payments set out in said judgment but the money due said employees was intended to constitute an arrearage approved by the parties and the Court and it was not contemplated that said arrearage would constitute or be construed as a judgment lien against real estate owned by the Defendant as set out, defined and provided for by the Statutes of the State of Oklahoma.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the judgment and Findings of Fact and Conclusions of Law approved by the parties hereto and entered by the Court on March 12, 1976 be altered, changed and amended to reflect the intent of the parties hereto insofar as the overtime compensation and interest award owed to the employees of the

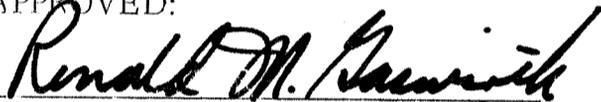
Defendant in the amount of \$58,000.00 ; that said judgment remain in full force and effect insofar as the arrearage amount, interest and schedule of payments be concerned but that said arrearage amount should represent a sum of money due as an arrearage and should not operate as a judgment lien against the Defendant, Vernon Price or real estate in which he may have an interest, as contemplated and defined by the Statutes of the State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the balance of the remaining terms of the judgment rendered in favor of the Plaintiff and against the Defendant on the 12th day of March, 1976 shall be and remain in full force and effect.



ALLEN E. BARROW, Judge

APPROVED:



Regional Solicitor



Deputy Solicitor



ALLEN L. PRINCE

Attorney

Attorneys for Plaintiff

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

GERALD GRESHAM,)
)
 Plaintiff,)
)
 v.) 74-C-427-B
)
 NEILL-PRICE CONSTRUCTION CO.)
 and NEILL-PRICE INTERNATIONAL,)
 INC.,)
)
 Defendants.)

FILED

JUL 16 1976

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

O R D E R

This cause came on to be heard on the 12th day of July, 1976, upon the Disposition Docket at which time plaintiff appeared not; defendants appeared by their attorney, Rhodes, Hieronymus, Holloway & Wilson by John H. Tucker.

After reviewing the file and the record in this cause and it appearing to the Court that plaintiff has failed to comply with Rule 5(h) of the Rules of the United States District Court for the Northern District of Oklahoma, and it further appearing to the Court that plaintiff has failed to prosecute this action with due diligence,

IT IS ORDERED, sua sponte, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure that this action be and it is hereby dismissed with prejudice and that the Counterclaim of defendants be dismissed as moot.



United States District Judge

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

JULIETTE DAVISON,)
)
 Plaintiff,)
)
 vs.) No. 75-C-480
)
 ST. JOHN'S HOSPITAL,)
)
 Defendant.)
 _____)

FILED

JUL 16 1976

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

ORDER OF DISMISSAL

This cause having come before the Court for hearing on July 12, 1976, at 11:00 A.M., upon the Court's own Motion, and all parties having received notice of such hearing and and opportunity to appear and be heard, and the Court having found that the Plaintiff has failed to prosecute her action and the Court having further found that the Plaintiff did fail to appear at such hearing to offer any good cause for such failure to prosecute, her action, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the cause of action ^{and Complaint} of the Plaintiff be, and hereby ^{are} ~~is~~, DISMISSED WITH PREJUDICE.

Dated this 16th day of July, 1976.

Allen E. Bonner

UNITED STATES DISTRICT COURT JUDGE

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

MASSEY-FERGUSON, INC.,)
a corporation,)
)
Plaintiff,)
)
vs.) No. 76-C-97-B ✓
)
BILBO NEWMAN CO., INC.,)
a corporation, and P. E. NEWMAN,)
also known as PURSER NEWMAN,)
individually,)
)
Defendants.)

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

ORDER ALLOWING ATTORNEYS' FEES AND COSTS

The Court having entered judgment herein on July 12, 1976, pursuant to previous setting and hearing, and the plaintiff having appeared by its attorney, John C. Harrington, Jr., of Lytle Soule & Emery, and the Court having awarded judgment to the plaintiff, Massey-Ferguson, Inc., a corporation, against the defendants, Bilbo Newman Co., Inc., a corporation, and P. E. Newman, also known as, Purser Newman, individually, for the sum of \$82,081.33, together with interest on said sum at the rate of 10% per annum from date.

The plaintiff's attorney thereafter having orally applied to the Court for an award of an attorney's fee equal to 10% of the amount of the judgment, or \$8,208.13, and the Court having heard the sworn testimony of said attorney in support of such claimed fee, and the reasonableness of such

4.

CH:cs

fee having been attested to by attorney McDaniel, also present in the courtroom.

The Court finds that the plaintiff, Massey-Ferguson, Inc., a corporation, is entitled to have and recover judgment against the defendants, Bilbo Newman Co., Inc., a corporation, and P. E. Newman, also known as Purser Newman, individually, for its reasonable attorneys' fees in the amount of \$8,208.13.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED, that the plaintiff, Massey-Ferguson, Inc., a corporation, have and recover judgment against the defendants, Bilbo Newman Co., Inc., a corporation, and P. E. Newman, also known as Purser Newman, individually, for its attorneys' fees in the amount of \$8,208.13, to be taxed as costs in this action.

DATED this 16th day of July, 1976.


Allen E. Barrow
Chief United States District Judge

APPROVED AS TO FORM:


John C. Harrington, Jr.
OF LYTLE SOULE & EMERY
2210 First National Center
Oklahoma City, Oklahoma 73102

Attorneys for Plaintiff

FILE

JUL 16 1976

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

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

WESTINGHOUSE CREDIT CORPORATION,
a corporation,

Plaintiff,

vs.

THOMAS N. KELLY, an individual;
BOAT BROKERS, INC., a corporation,

Defendants.

Case No. 76-C-276-B

APPLICATION FOR DISMISSAL WITH PREJUDICE

Westinghouse Credit Corporation, plaintiff herein,
shows the Court that an amicable resolution of the issues
of this case has been reached between the parties without
the necessity of presently continuing this litigation;

WHEREFORE, plaintiff applies to the Court to
dismiss the herein styled Complaint with prejudice to the
filing of a future action.

Dated this 15th day of July, 1976.

EAGLETON, NICHOLSON & PATE

By George S. Sepherity
Attorneys for Plaintiff

O R D E R

On application of the plaintiff and for good cause
shown, the Complaint in the herein styled cause ^{of action & Complaint are} hereby
ordered dismissed with prejudice to the filing of a future
action.

Dated this 16th day of July, 1976.

Allen F. Brown
United States District Judge

FILED

JUL 15 1976

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

FILED

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

JUL 16 1976

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

JAMES R. SIMPSON,

Plaintiff,

vs.

No. 75-C-346-B

MARY TRAMMEL, a/k/a MARY VALLIER,
and VALHOMA INDUSTRIES, INC., an
Oklahoma corporation,

Defendants.

^{STIPULATION OF}
DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, James R. Simpson, and pursuant
to an agreement of the parties hereto dismisses the above
styled cause of action with prejudice.

James R. Simpson
JAMES R. SIMPSON

Ronald M. Schuman
SCHUMAN, MILSTEN & JACKSON
Attorney for Plaintiff
The Tower Suite, Philtower Bldg.
Tulsa, Oklahoma 74103

Mary L. Callicott
VALHOMA INDUSTRIES, INC.

ATTEST AND SEAL:

Mari R. Dudley
Secretary

Mary Trammel, a/k/a Mary Vallier
Mary Trammel, a/k/a Mary Vallier

WOODSON & GASAWAY
By: Don Gasaway
Attorney for Defendant.

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 74-C-431-*c* ✓

CHARLES L. HAM,
Plaintiff,
vs.
SOUTHWESTERN BELL TELEPHONE COMPANY,
Defendant.

JUDGMENT

This action came on for trial (~~hearing~~) before the Court, Honorable H. DALE COOK
, United States District Judge, presiding, and the issues having been duly tried
~~heard~~ and a decision having been duly rendered,

It is Ordered and Adjudged that the Court finds in favor of the Defendant
and against the Plaintiff on the issue of liability, and further finds
for the Defendant and against the Plaintiff on the counterclaim in the
amount of \$1,300.00.

FILED

JUL 15 1976 *hm*

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

Dated at Tulsa, Oklahoma , this 15th day
of July , 19 76 .

Jack C. Silver
Clerk of Court

West v. Gilbert, 361 F.2d 314 (2nd Cir. 1966) cert. denied, 385 U.S. 919 (1966);
Darlington v. Studebaker-Packard Corporation, 261 F.2d 903 (7th Cir. 1959);
United States v. Packfic Fruit & Produce Co., 138 F.2d 367 (9th Cir. 1943);
Stanley v. Continental Oil Company, No. 75-1613, decided June 23, 1976 (10th
Cir.)

In Link v. Wabash, 370 U.S. 626, at 630, 631 (1962), the Court said:

"The authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an 'inherent power', governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."

The record in this case reflects dilatory and unjustifiable conduct on the plaintiff's conduct in failing to prosecute and to comply with the Court's order to file a pre-trial order and appear at disposition docket.

IT IS, THEREFORE, ORDERED SUA SPONTE, that plaintiff's cause of action and complaint be and the same are hereby dismissed for failure to prosecute.

ENTERED this 11th day of July, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

PACIFIC FINANCE LOANS, INC.,

vs.

EMMA HAYS.

)
) No. M-729
)
)
)
)

F I L E D

JUL 14 1976

U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter having been duly set on the 12th day of July, 1976, for asset hearing, and plaintiff appeared not, and defendant appeared in person and by her attorney, Charles E. Daniel of Drumright, Oklahoma.

The Court, thereupon, inquired of the Clerk regarding notice to the attorney for the plaintiff and was informed by the clerk that said attorney was furnished notice.

Thereupon, for good cause shown, the application and order setting this matter for asset hearing are hereby stricken for failure of the plaintiff to prosecute.

ENTERED this 14th day of July, 1976.

Allen F. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

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

FILED

UNITED STATES OF AMERICA)
for the Use and Benefit of)
McMICHAEL CONSTRUCTION CO., an)
Oklahoma Corporation,)
)
Plaintiff,)
)
vs.)
)
KANDY, INC., a corporation,)
and INDUSTRIAL INDEMNITY)
COMPANY, a California)
corporation,)
)
Defendants.)

JUL 14 1976

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

No. 76-C-91-B

ORDER OF DISMISSAL

NOW on this 14th day of July, 1976, upon the written application of plaintiff and for good cause shown, the Court finds that the captioned matter has been settled in its entirety and plaintiff has been satisfied in full and that the captioned action should be dismissed with prejudice AND IT IS SO ORDERED.

Allen E. Bonaw
Judge

adjudication upon the merits."

It is established that every court has inherent power, in the exercise of sound discretion, to dismiss a cause for want of prosecution. *Link v. Wabash Railroad Co.*, 370 U.S. 626(1962); *Shotkin v. Westinghouse Electric & Mfg. Co.*, 169 F.2d 825 (10th Cir. 1948); *Sweeney v. Anderson*, 219 F.2d 756 (10th Cir. 1942); *West v. Gilbert*, 361 F.2d 314 (2nd Cir. 1966), cert. denied, 385 U.S. 919 (1966); *Darlington v. Studebaker-Packard Corporation*, 261 F.2d 903 (7th Cir. 1959); *United States v. Pacific Fruit & Produce Co.*, 138 F.2d 367 (9th Cir. 1943); *Stanley v. Continental Oil Company*, No. 75-1613, decided June 23, 1976 (10th Cir.)

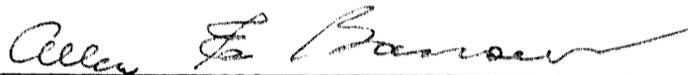
In *Link v. Wabash*, 370 U.S. 626, at 630, 631 (1962), the Court said:

"The authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an 'inherent power', governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."

The record in this case reflects dilatory and unjustifiable conduct on the plaintiff's conduct in failing to prosecute and to comply with the Court order to secure counsel, or notify the Court of exhaustion of all avenues in seeking counsel. The court has been lenient and has waited several months before setting this case on the disposition docket.

IT IS, THEREFORE, ORDERED that plaintiff's cause of action be and the same is hereby dismissed for failure to prosecute.

ENTERED this 4th day of July, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

ABEX CORPORATION, a corporation,)
)
Plaintiff,)
)
vs.)
)
PARA-MED, INC., a corporation,)
d/b/a TULSA EMERGENCY & SAFETY)
EQUIPMENT COMPANY,)
)
Defendant.)

NO. Civil Action 76-C-50-B

FILED
IN OPEN COURT

JUL 12 1976

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

JUDGMENT BY DEFAULT UPON
APPLICATION TO COURT

In this action, the defendant, PARA-MED, INC., a corporation d/b/a TULSA EMERGENCY & SAFETY EQUIPMENT COMPANY, having been regularly served with the summons and Complaint, and having failed to plead or otherwise defend, the legal time for pleading or otherwise defending having expired, and the default of the said defendant, PARA-MED, INC., a corporation d/b/a TULSA EMERGENCY & SAFETY EQUIPMENT COMPANY, 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, APEX CORPORATION, a corporation, do have and recover from the said defendant, PARA-MED, INC., a corporation, d/b/a TULSA EMERGENCY & SAFETY EQUIPMENT COMPANY, the sum of TEN THOUSAND FORTY-TWO and 93/00 DOLLARS (\$10,042.93), together with interest thereon at the rate of ten (10) per cent per annum from date of judgment until paid, together with an attorneys' fee in the sum of TWO THOUSAND AND NO/00 DOLLARS (\$2,000.00), to be taxed as costs, together with all other costs of this matter, and that plaintiff have execution therefor.

JUDGMENT RENDERED this 12th day of July, 1976.

Allen E. Barrow

JUDGE

LAW OFFICES

UNGERMAN,
GRABEL &
UNGERMAN

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

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

INEXCO OIL COMPANY,
a corporation,

Plaintiff,

vs.

BLAKLEY & BLACKBURN, INC.,
a/k/a BLAKLEY-BLACKBURN, INC.,
a corporation,

Defendant.

75-C-467-B

FILED

JUL 1 1976

Judge
U.S. DISTRICT COURT

AGREED JUDGMENT

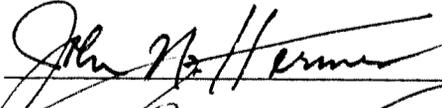
This matter coming on for hearing on the 12th day of July, 1976,
on a duly called disposition docket, and the parties having advised the
Court that they desired time to discuss a settlement, and,

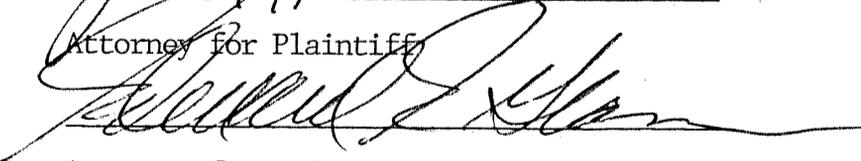
NOW, THE parties, through their counsel, having advised that they
have reached a settlement of the dispute and desire the Court enter judgment
in accordance with said settlement,

IT IS, THEREFORE, ORDERED that Judgment be entered in favor of the
plaintiff and against the defendant in the sum of \$13,000.00, plus costs and
attorney fees.

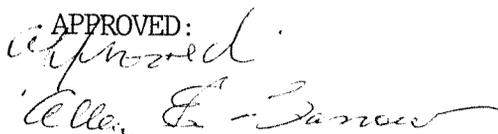
IT IS FURTHER ORDERED that Judgment be entered in favor of plaintiff
and against the defendant in the sum of \$267,880.03.

ENTERED this 12th day of July, 1976.


Attorney for Plaintiff


Attorney for Defendant

APPROVED:


July 12, 1976

CHIEF UNITED STATES DISTRICT JUDGE

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

MAC BOWLIN and KENNETH MASSEY,)
)
Plaintiffs,)
)
Vs.)
)
R. L. WAGNON and BEVERLY A.)
WAGNON, d/b/a Wagnon Heating)
and Air Conditioning,)
)
Defendant.)

No. 75-C-283 - C ✓

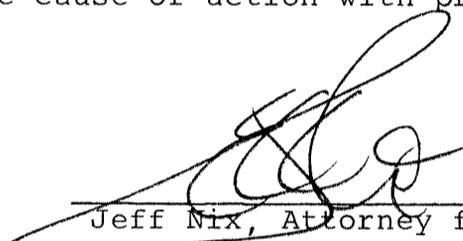
FILED

JUL 12 1976 Jm

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

STIPULATION OF DISMISSAL

Comes now the Plaintiff by its attorney, Jeff Nix, and advises the Court that the instant matter has been settled between the parties and that there is no further issue to be resolved by the Court therefore the Plaintiff requests this Honorable Court to dismiss the cause of action with prejudice to its refiling.



Jeff Nix, Attorney for Plaintiffs

Upon the motion of the Plaintiff the above cause is hereby dismissed with prejudice. It is so ordered.



Judge

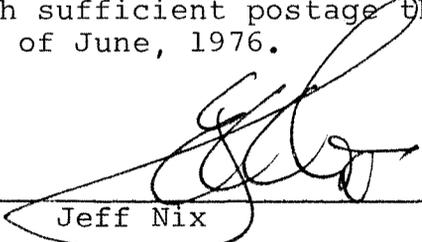
Agreed:



Maynard I. Ungerman

CERTIFICATE OF MAILING

I, Jeff Nix, hereby certify that I mailed a true and exact copy of the above and foregoing to Maynard I. Ungerman, Wright Building, Tulsa, Oklahoma, with sufficient postage thereon fully prepaid this 29 day of June, 1976.



Jeff Nix

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

In the Matter of:)
RALLY DODGE CO.,)
a corporation, Bankrupt,)
)
)
WARREN L. McCONNICO,)
Trustee in Bankruptcy for)
RALLY DODGE CO.,)
)
Plaintiff,)
)
vs.)
)
CHRYLSEER CREDIT CORPORATION,)
)
Defendant.)

No. 75-C-554 (C)

FILED
JUL 12 1976
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Stipulation of Dismissal with Prejudice submitted by the parties in the above captioned action, the Court does hereby enter its order of dismissal with prejudice.

SO ORDERED this 12th day of July, 1976.

1 S/ H. Dale Cook
United States District Judge

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

FILED
IN OPEN COURT

JUL 12 1976

Jack C. Silver
Clerk, U. S. District Court

MASSEY-FERGUSON, INC.,)
a corporation,)
)
Plaintiff,)
vs.) No. 76-C-97-B
)
BILBO NEWMAN CO., INC.,)
a corporation, and P. E.)
NEWMAN, also known as PURSER)
NEWMAN, individually,)
)
Defendants.)

JUDGMENT

There having been presented to the undersigned as Clerk of this Court, the request of the plaintiff, Massey-Ferguson, Inc., a corporation, that the Clerk of this Court enter judgment against the defendants, Bilbo Newman Co., Inc., a corporation, and P. E. Newman, also known as Purser Newman, individually, in accordance with Rule 55 of the Federal Rules of Civil Procedure, and the plaintiff having filed herein its affidavit with respect to the amount owed and such sum being a sum certain, the Clerk of this Court as provided by such Rule does hereby enter judgment in favor of the plaintiff, Massey-Ferguson, Inc., a corporation, against the defendants, Bilbo Newman Co., Inc., a corporation and P. E. Newman, also known as Purser Newman, individually, for the sum of \$82,081.33, together with interest on said sum at the rate of 10% per annum from ~~August 1, 1975~~ ^{July 12, 1976} until paid.

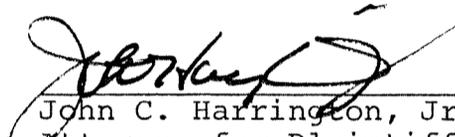
In accordance with the request of the plaintiff, there is reserved for determination by the Court a reasonable attorney's fee upon application by the plaintiff as well as the award of costs

to be supported by a Bill of Costs on behalf of the plaintiff.

Dated this 12th day of July, 1976.


U. S. ~~COURT CLERK~~ Judge
NORTHERN DISTRICT OF OKLAHOMA

APPROVED:


John C. Harrington, Jr.
Attorney for Plaintiff

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

FIRST NATIONAL BANK OF CHELSEA,
OKLAHOMA, a National Banking
Association,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
acting through the FARMERS HOME
ADMINISTRATION,

Defendant.

CIVIL ACTION NO. 76-C-190-C

FILED
JUL 12 1976

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

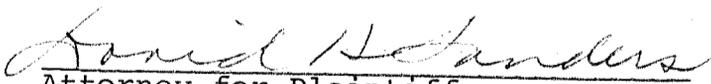
ORDER OF DISMISSAL WITHOUT PREJUDICE

Now on this 12th day of July, 1976, there came on for con-
sideration, the application of the plaintiff, First National Bank
of Chelsea, Oklahoma, for dismissal without prejudice. The Court
finds that said application should be sustained and that this
action should be dismissed without prejudice.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the
Court that this action be and the same is hereby and by these
presents dismissed without prejudice.


UNITED STATES DISTRICT JUDGE

APPROVED:


Attorney for Plaintiff.


Attorney for Defendant.

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

JOANN P. LONG,)	
)	
Plaintiff,)	
)	
vs.	)	75-C-334-B ✓
)	
ANDREW NEWTON SCHMIDT,)	
)	
Defendant.	)	FILED
	)	JUL 9 1976 K
GEORGE J. LONG,	)	Jack C. Silver, Clerk
	)	U.S. DISTRICT COURT
Plaintiff,	)	75-C-381-B
)	
vs.)	
)	
ANDREW NEWTON SCHMIDT,	)	(Consolidated)
)	
Defendant.)	

ORDER OF DISMISSAL OF COUNTER-CLAIM

On this 04 day of July, 1976, upon the written stipulation of the parties for a Dismissal with Prejudice of the Counter-Claim of the defendant against the plaintiff, Joann P. Long, the Court having examined said Stipulation, finds that the parties have entered into a compromise settlement of all claims involved in these actions, and the Court being fully advised in the premises finds that said Counter-Claim should be dismissed with prejudice pursuant to said Stipulation.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Counter-claim of the defendant against the plaintiff, Joann P. Long, be and the same hereby is dismissed with prejudice to any future action.



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

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

BENEDICT OIL COMPANY, a)
 Delaware Corporation and)
 BENEDICT I. LUBELL, as)
 Trustee of the Jeanette and)
 Samuel Lubell Foundation,)
 NORMA R. LUBELL and FIRST)
 NATIONAL BANK AND TRUST)
 COMPANY OF TULSA, as)
 Co-Trustees of the Trust)
 for the Benefit of Ann)
 Lubell Margolis, NORMA R.)
 LUBELL and THE FIRST)
 NATIONAL BANK AND TRUST)
 COMPANY OF TULSA, as Co-)
 Trustees of the Trust for)
 the Benefit of John David)
 Lubell, BENEDICT I. LUBELL,)
 GRACE L. BRANDT, SHIRLEY L.)
 BLACK, JOHN DAVID LUBELL,)
 JAN BORGENICHT SCHWARTZ,)
 BERTA BORGENICHT KERR, LOIS)
 BORGENICHT, LEON DAVID)
 BLACK, JUDITH ELLEN BLACK)
 NADLER, ANN LUBELL MARGOLIS,)
 M. ROBERT GALLOP, as)
 Trustees of the Trust for)
 the Benefit of Leon David)
 Black, and M. ROBERT GALLOP,)
 as Trustee of the Trust)
 for the Benefit of Judith)
 Ellen Black Nadler,)
)
 Plaintiffs)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant)

FILED

JUL 9 - 1976

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

CIVIL NO. 75-C-57 - 13

JUDGMENT

In accordance with the findings of fact and conclusions of law entered by the Court on July 1, 1976, it is hereby ORDERED, ADJUDGED, and DECREED that plaintiffs, Benedict Oil Company, et al., have and recover of defendant, the sum of \$125,105 in tax, plus interest as provided by law, and their costs.

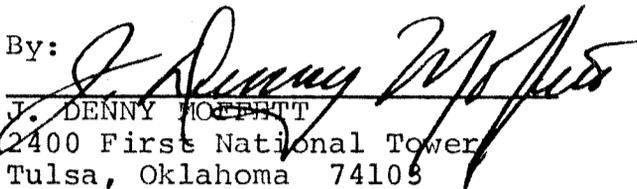
SIGNED this 9th day of July, 1976.

Allen E. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

CONNERS, WINTERS, BALLAINE, BARRY & ^{McGOWEN}~~NELSON~~

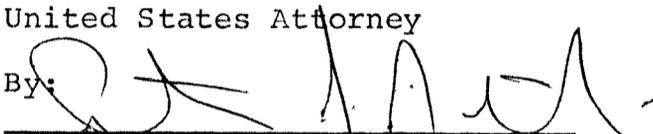
By:


J. DENNY McPHERSON
2400 First National Tower
Tulsa, Oklahoma 74103

ATTORNEY FOR PLAINTIFFS

NATHAN G. GRAHAM
United States Attorney

By:


PETER J. GRABICKI
Attorney, Tax Division
Department of Justice
Room 8B37, 1100 Commerce Street
Dallas, Texas 75242
214-749-1251

ATTORNEY FOR DEFENDANT

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CIVIL ACTION NO. 76-C-187-B

TROY C. RAY, ELLEN RAY, and)
AMERICAN LOAN AND BROKERAGE, INC.,)

Defendants.)

FILED

JUL 8 1976

Jack C. Silver, Clerk
U S DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 8th
day of July, 1976, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and the Defendants, Troy C.
Ray, Ellen Ray, and American Loan & Brokerage, Inc., appearing
not.

The Court being fully advised and having examined
the file herein finds that Defendants, Troy C. Ray and Ellen Ray,
were served with Summons and Complaint on May 11, 1976, and
Defendant, American Loan & Brokerage, Inc., was served with
Summons and Complaint on April 27, 1976, all as appears from
the United States Marshal's Service herein.

It appearing that the Defendants, Troy C. Ray, Ellen
Ray, and American Loan & Brokerage, 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 Fifteen (15), Block Forty-Seven (47)
VALLEY VIEW ACRES THIRD ADDITION to the
City of Tulsa, Tulsa County, Oklahoma,
according to the recorded plat thereof.

THAT the Defendants, Troy C. Ray and Ellen Ray, did,
on the 29th day of May, 1975, execute and deliver to the

Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,000.00 with 8 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, Troy C. Ray and Ellen Ray, 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 \$10,043.93 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from August 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, Troy C. Ray and Ellen Ray, in personam, for the sum of \$10,043.93 with interest thereon at the rate of 8 1/2 percent per annum from August 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.

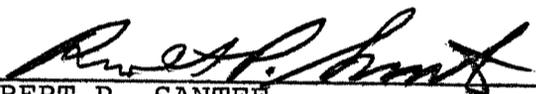
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, American Loan & Brokerage, Inc.

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.

S/Allen C. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney

FILED

JUL 20 1976

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

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

IN RE:)	
	)	MDL Docket No. 153 ✓
HOME-STAKE PRODUCTION COMPANY)	
SECURITIES LITIGATION	)	All Cases

PRE-TRIAL ORDER NO. 7

Classes 75-C-413

At Pre-Trial Conference No. 7, held this 24th day of June, 1976, after consideration of all briefs submitted and the oral arguments in open court, this Court enters the following orders:

1. The motions to dismiss without prejudice of the Plaintiffs in various cases, as listed in the Appendix hereto, are hereby granted, upon the condition that the current names and addresses of the dismissing Plaintiffs in Case No. 74-C-227 will be provided to counsel for Arthur Andersen & Co. It is specifically provided that the Court is making no ruling at this time as to what use, if any, may be made of this information and no inference with respect to such use shall be drawn from the Court's thus conditioning the dismissals of such Plaintiffs.

2. The counterclaims filed on behalf of William E. Murray and/or Murray, Patterson & Sharpe in various cases are dismissed as to all Plaintiffs who have dismissed their actions. Such dismissal is without prejudice to Murray and/or Murray, Patterson & Sharpe asserting such counterclaims in the Anixter class action in which they are defendants. The motion for summary judgment filed by Plaintiffs in the Wilkinson case with respect to the counterclaim of Murray, Patterson & Sharpe is dismissed as moot.

3. The motion to intervene as parties plaintiff and additional class representatives of Plaintiffs Bernard D. Broeker, W. H. Dennler, F. D. McCune, W. H. Mortenson, Beverly H. Warren, T. B. Westfall and John Lockton in the cases of Ivan A. Anixter et al. v. Home-Stake Production Company, et al. (73-C-337 and 73-C-382) (consolidated), is hereby granted, provided that the representative status of these

Plaintiffs may be subsequently challenged if and when appropriate. It is further ordered that the motion of Simpson Thacher & Bartlett that these interventions be conditioned upon the dismissal by the intervening Plaintiffs of their pending non-class actions is denied, subject to the right of any defendant to renew such motion for dismissal at a subsequent time upon a showing of actual prejudice resulting from the continued prosecution of such a Plaintiff's individual suit.

4. The Defendant Arthur Andersen & Co.'s motions² to dismiss the complaint in the case of Luce, et al. v. Arthur Andersen & Co., Case No. 75-C-431, and the Defendant McKee, Atkins & Schuler's motion to dismiss in the case of Robertson v. McKee, Atkins & Schuler, Case No. 75-C-432, are denied.

5. The Court's rulings granting Plaintiffs' motions for certification of class action in the cases of Luce v. Arthur Andersen & Co., No. 75-C-431, and Robertson v. McKee, Atkins & Schuler, No. 75-C-432, will be set forth in a separate order to be entered forthwith, which rulings and order shall not become effective until such order shall have been entered. Ruling on the motion to consolidate the Luce, et al. v. Arthur Andersen & Co. and Robertson v. McKee, Atkins & Schuler cases with the Anixter cases is deferred until the completion of discovery.

6. Each Defendant, with the exception of the Defendants Trippet, Kunkel, Sims, Klineman, Fitzgerald and Cross, whose testimony has been taken by the Securities & Exchange Commission and who presently possesses or controls a copy of the transcript of such testimony, is ordered to deposit a copy of said transcript in the Document Depository on or before July 19, 1976.

7. To the extent that any party other than Defendants Trippet, Kunkel, Sims, Klineman, Fitzgerald and Cross has not yet produced any documents for deposit in the Document Depository, counsel for such party shall, within ten (10) days from the date of this Order, produce all documents as previously ordered, or

file and serve an affidavit setting forth the reasons why no documents have been deposited by such party.

8. All objections filed by all parties to claims of non-discoverability of certain documents set forth in the affidavits of the counsel for such parties should be, and hereby are, referred to Honorable William E. Rutledge, Special Master, for hearing upon oral argument or written submission, or both, as he may direct, with such proceedings to be conducted pursuant to and consistent with Rule 53 of the Federal Rules of Civil Procedure.

9. Liaison Counsel reported the establishment by agreement of a schedule for Second-Wave Discovery prior to the next Pre-Trial Conference. This schedule, which is hereby ordered by the Court, but which may be changed by agreement of the parties, is as follows:

Depositions to be Conducted by Defendants

July 19-23	San Francisco	Representative Plaintiffs
August 16-20	New York	Representative Plaintiffs
September 13-17	To be agreed (probably San Francisco or Los Angeles)	Representative Plaintiffs
October 11-15	To be agreed (probably East Coast)	Representative Plaintiffs

Depositions to Be Conducted by Plaintiffs

August 2-6	Los Angeles	Ganong, Greer, Garland, Santa Maria Home-Stake Staff
August 30- September 3	Tulsa	Kothe & Eagleton, Inc. (John Eagleton and David F. James), Arthur Andersen & Co. (Sam Galloway)
September 27- October 1	Tulsa	First National Bank, Landrith
October 25-29	Tulsa	Gutelius, Metcalfe, Barton, Smith, Arthur Andersen & Co. (George Reno)

For the purpose of these depositions, and these depositions only, the following rules shall apply. Unless otherwise agreed by counsel for the witnesses, each deposition shall continue from day to day until completed, subject to rulings by the Court, before beginning the next. All parties recognize that time may not permit the completion of all scheduled deponents within the time allotted. (However,

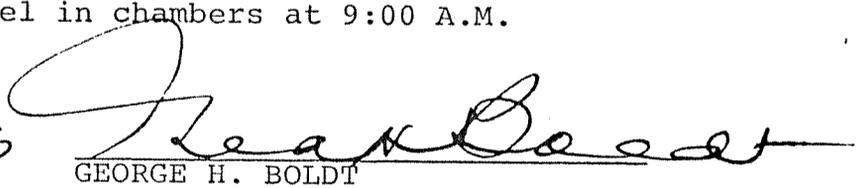
continuation beyond the dates specified may be agreed upon by all counsel present.) In such instances, the decision as to which deponents are to be re-scheduled subsequent to the November pre-trial shall rest with the counsel for Defendants or Plaintiffs, as the case may be, who are conducting the depositions. Parties further recognize that the schedule for deposition of persons who are not parties to the litigation is subject to contingencies which may necessitate similar re-scheduling. Notice of the particular representative Plaintiffs to be produced for deposition by Defendants shall be given by Plaintiffs no later than ten (10) days in advance of each such deposition week. Plaintiffs shall notify Defendants no later than ten (10) days in advance of the names of the parties to be deposed ^{such as} (In the case of the "Santa Maria Home-Stake Staff") and the proposed order of such depositions in each particular week.

Depositions conducted in these MDL proceedings shall not be reopened, once concluded, except upon leave of Court, unless otherwise agreed by counsel for the deponent. Such leave shall be sought by application setting forth the grounds upon which the application is based and shall briefly describe the matters into which inquiry will be directed should the application be granted. Leave to reopen will not be granted for inquiry into matters previously covered in the deposition sought to be reopened, except upon a showing of extraordinary circumstances.

10. All Defendants, with the exception of the Defendants in the criminal case listed in paragraph 6 above and First National Bank and Trust Company of Tulsa, shall file an answer to the complaints in the class action cases in which they are named within thirty (30) days after the entry of this Order.

11. The next Pre-Trial Conference is scheduled for November 18 and 19, 1976, and will convene at 10:00 A.M. on November 18, 1976, with a meeting of Liaison Counsel in chambers at 9:00 A.M.

7/23/76



GEORGE H. BOLDT
United States District Judge

APPENDIX TO PRE-TRIAL ORDER NO. 7

As set forth in Paragraph 1 of Pre-Trial Order No. 7, the following actions have been dismissed without prejudice as to the parties shown:

Case No. 73-C-58, Home-Stake v. Halvorsen v. Trippet

All claims

Case No. 73-C-175, Streicher, et al. v. Home-Stake

Jerome Frankel
Samuel Kanarick
James E. Davis

Case No. 73-C-227, United California Bank, et al. v. Home-Stake

All plaintiffs

Case No. 74-C-180, Anderson, et al. v. Home-Stake

A. M. Anderson
Bank of America, National Trust and Savings Association,
as Trustee for Merl McHenry
Bernuth Realty and Oil Corporation
S. K. Bernuth
D. J. Cali
W. H. Colquhoun
S. W. Corbin
M. and S. DiMartino
J. M. Evans
M. C. Everett
I. Finkelstein
J. H. Gauss
R. Hart
R. M. Hurst
R. and E. Iannucci
H. Kaplan
M. F. Kent
H. and E. Kicherer
M. B. Lassing
J. Levin
M. Levin
R. W. McFall
J. F. Madden
E. R. Newman
F. A. Palermo
T. Plowden-Wardlaw
A. E. Schubert
M. Zimmerman

Case No. 74-C-181, Broeker, et al. v. Home-Stake

Ellen F. Loomis
A. Lee Loomis, Jr.
Frances W. Broeker

Case No. 74-C-224, Blesh, et al. v. Home-Stake

S. W. Corbin
I. Finkelstein
R. Hart
D. W. and D. B. Lynch
C. G. Suits

Case No. 74-C-225, Blesh, et al. v. Home-Stake

L. Bernhardt
S. W. Corbin
I. Finkelstein
R. Hart
C. M. Heiden
P. J. Jensen
M. F. Kent
M. B. Lassing
D. W. and D. B. Lynch
B. J. Mills
D. K. Mills
V. Strub, Estate of
C. G. Suits
R. E. Whitmyer

Case No. 74-C-226, Anton, et al. v. Home-Stake

R. J. Anton
S. K. Bernuth
M. H. Blesh
S. W. Corbin
I. Finkelstein
J. H. Gauss
M. W. Gillespie
R. Hart
C. M. Heiden
R. M. Hurst
P. J. Jensen
R. B. Keegan
M. F. Kent
M. B. Lassing
D. W. and D. B. Lynch
R. W. McFall
B. J. Mills
D. K. Mills
R. P. Strub
V. Strub, Estate of

Case No. 74-C-227, Anton, et al. v. Home-Stake

R. J. Anton
S. W. Corbin
I. Finkelstein
J. H. Gauss
R. Hart
C. M. Heiden
R. M. Hurst
P. J. Jensen
C. Keegan
R. Keegan
M. F. Kent
M. B. Lassing
D. W. and D. B. Lynch
R. W. McFall
B. J. Mills
D. K. Mills

T. Plowden-Wardlaw
R. P. Strub
V. Strub, Estate of

Case No. 74-C-228, Anderson, et al. v. Home-Stake

A. M. and S. Anderson
R. J. Anton
L. Bernhardt
S. K. Bernuth
S. W. Corbin
J. M. Evans
M. C. Everett
I. Finkelstein
R. Hart
C. J. Heiden
R. M. Hurst
C. Keegan
M. B. Lassing
J. Levin
M. Levin
E. Lienhard
D. W. and D. B. Lynch
R. W. McFall
H. Orloff
R. T. Parker, Jr.
M. Pauley
T. Plowden-Wardlaw
H. M. Reeder
L. P. Singer
R. P. Strub
J. H. Wood
S. Woolwich
M. Zimmerman

Case No. 74-C-229, Anderson, et al. v. Home-Stake

A. M. Anderson
R. J. Anton
Bank of America, National Trust and Savings Association,
as Trustee for Merl McHenry
S. K. Bernuth
D. J. Cali
S. W. Corbin
M. and S. DiMartino
J. Evans
M. C. Everett
I. Finkelstein
H. and E. Kicherer
M. B. Lassing
J. Levin
M. Levin
D. W. and D. B. Lynch
R. W. McFall
J. F. Madden
F. A. Palermo
R. T. Parker, Jr.
T. Plowden-Wardlaw
H. M. Reeder
R. Scott
L. P. Singer
J. H. Wood
S. Woolwich
M. Zimmerman

Case No. 74-C-230, Bank of America, et al. v. Home-Stake

R. J. Anton
Bank of America, National Trust and Savings Association,
as Trustee for Marcella McHenry
Bank of America, National Trust and Savings Association,
as Trustee for Merl McHenry
F. J. Borch
D. Breslauer
D. J. Cali
J. and M. Clark
W. H. Colquhoun
S. W. Corbin
M. and S. DiMartino
J. Evans
I. Finkelstein
J. H. Gauss
R. M. Hurst
W. S. Jones
H. Kaplan
H. and E. Kicherer
M. B. Lassing
J. Levin
M. Levin
D. W. and D. B. Lynch
R. W. McFall
J. F. Madden
C. J. Meloun
T. O. Paine
F. A. Palermo
R. T. Parker, Jr.
T. Plowden-Wardlaw
C. S. Semple
O. J. Troster
H. Zavaleta
M. Zimmerman

Case No. 74-C-231, Acker v. Home-Stake

G. and D. Acker
D. Brown
J. and M. Clark
J. J. Ferretti
I. Finkelstein
C. K. Fulton
H. Kaplan
H. and E. Kicherer
M. B. Lassing
J. Levin
M. Levin
R. W. McFall
J. F. Madden
H. B. Marshall
C. J. Meloun
R. T. Parker, Jr.
F. A. Palermo
A. Schepisi
N. Schepisi
M. Zimmerman

Case No. 75-C-413, Wilkinson, et al. v. Home-Stake

All plaintiffs

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

CREDIT SYSTEMS, INC.,
a Corporation,

Plaintiff,

-vs-

JUDY A. MARKS,

Defendant,

and

UNITED STATES POSTMASTER,
c/o United States Post Office,
Tulsa, Oklahoma,

Garnishee.

O R D E R

Civil Action No. 76-C-200-C ✓

FILED

JUL 2 1976

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

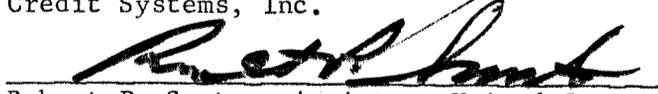
This matter comes on for hearing before me this 2nd day of ~~June~~ ^{July}, 1976, on the application of the plaintiff, Credit Systems, Inc., a corporation, to remand the garnishment proceedings back to the State Court; the plaintiff appearing by its attorney, Don E. Gasaway, and the defendant appearing by the United States District Attorney, Robert P. Santee, an Assistant United States Attorney, and having no objection, the Court finds that said Motion to Remand should be sustained.

IT IS, THEREFORE, ORDERED, AND ADJUDGED that the above set forth cause of action be remanded to the State Court and all litigation between the parties in the United States District Court for the Northern District of the State of Oklahoma, be and the same is hereby terminated.


United States District Judge

APPROVED AS TO FORM:


Don E. Gasaway, Attorney for Plaintiff,
Credit Systems, Inc.


Robert P. Santee, Assistant United States
Attorney

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

FILED

JUL 1 1976

ph

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

MILDRED AGEE, et al.,)
)
Plaintiffs,)
)
-v-)
)
PREFERRED SECURITY LIFE)
INSURANCE COMPANY OF)
OKLAHOMA, et al.,)
)
Defendants.)

Cause No. 72-C-410 ✓

DISMISSAL

COMES NOW the Plaintiff Class and, pursuant to the Settlement Agreement approved herein by the Court after notice and hearing in its Order of April 9, 1976, dismisses this action as against the defendants Preferred Security Life Insurance Company, A. L. Bennett, M. C. Fuquay, O. G. Garriott, F. Gass, H. R. Krob, G. E. McArthur, W. N. Pritchett, and William E. Golden.

HOLLIMAN, LANGHOLZ, RUNNELS & DORWART

By *Frederic Dorwart*
Frederic Dorwart

Suite 700, Holarud Building
10 East Third Street
Tulsa, Oklahoma 74103
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CERTIFICATE OF MAILING

I, Frederic Dorwart, hereby certify that on the 30th day of June, 1976, I mailed a true and correct copy of the foregoing "Dismissal", with proper postage prepaid thereon and placed in the United States mails at Tulsa, Oklahoma to:

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Frederic Dorwart

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

FILED

JUL 1 1976

ph

Jack C. Silver
U. S. DISTRICT COURT

MILDRED AGEE, et al,)
)
 Plaintiffs,)
)
 -v-)
)
 PREFERRED SECURITY LIFE)
 INSURANCE COMPANY OF)
 OKLAHOMA, et al,)
)
 Defendants.)

Cause No. 72-C-410 ✓

ORDER APPROVING DISMISSAL

Pursuant to the Settlement Agreement and Order of the Court dated April 9, 1976, the foregoing dismissal is hereby approved.

Royce H. Savage

Royce H. Savage, Special Master

1. This is an income tax refund suit brought by the Plaintiffs, Benedict Oil Company, et al., against the Defendant, United States of America, wherein Plaintiffs seek recovery of \$125,105.00 of taxes paid, together with interest thereon from date of payment, as provided by law.

2. Plaintiff, Benedict Oil Company (formerly named The Bell Oil and Gas Company), is a dissolved Delaware corporation. Plaintiff, Benedict I. Lubell, is the trustee of the Jeanette and Samuel Lubell Foundation, a trust created pursuant to the laws of the State of Oklahoma. Plaintiffs, Norma R. Lubell and The First National Bank and Trust Company of Tulsa, are co-trustees under the declaration of trust dated December 14, 1964, for the benefit of John David Lubell. Benedict I. Lubell is a citizen of Oklahoma. Grace L. Brandt, Jan Borgenicht Schwartz, Louis Borgenicht, and Judith Ellen Black Nadler are citizens of New York. Shirley L. Black and Leon David Black are citizens of Connecticut. Berta Borgenicht Kerr is a citizen of New Jersey. Plaintiff, Ann Lubell Margolis, is a citizen of Wisconsin. John David Lubell is a citizen of the United States, currently residing in Paris, France. Plaintiff, M. Robert Gallop, is trustee under the declaration of trust dated December 31, 1964, for the benefit of Judith Ellen Black Nadler. Samuel L. Lubell, who was a stockholder at the time of liquidation and dissolution, is deceased and the Jeanette and Samuel Lubell Foundation has succeeded to all his right, title and interest in any contingent assets of the estate. The Plaintiffs, other than Benedict Oil Company, were holders of all of the issued and outstanding stock of Benedict Oil Company at the time of its liquidation and dissolution. (Stipulation of Facts)

3. The Court has jurisdiction by reason of 28 U.S.C. §1346(a)(1). Venue of this action is proper. (Stipulation of Facts)

4. On March 15, 1966, Benedict Oil Company timely filed a Federal income tax return for the calendar year 1965 with the District Director of Internal Revenue for the State of Oklahoma, which return disclosed a total income tax liability of \$622,068.00. Of such tax, \$331,034.00 was paid on March 15, 1966, and \$331,034.00 was paid on June 13, 1966. (Stipulation of Facts)

5. On June 21, 1965, the stockholders of Benedict Oil Company adopted a plan of complete liquidation and dissolution in conformity with section 337 of the Internal Revenue Code of 1954. On July 1, 1965, Benedict Oil Company sold all of its assets, other than certain oil and gas properties and certain cash, to L. and V. Oil Company for \$10,500,000.00 and the assumption by L. and V. Oil Company of certain liabilities and obligations of Benedict Oil Company amounting to \$3,548,843.00, for a gross sales price of \$14,048,843.00. (Schedule 18-1 of Exhibit A attached to the Stipulation of Facts). Such liquidation and dissolution was pursuant to and in compliance with the requirements of section 337 of the Internal Revenue Code of 1954. Benedict Oil Company incurred and paid expenses in the aggregate amount of \$260,635.46 in connection with these transactions. Of such amount, \$25,000.00 was paid to C. E. McCune for financial and accounting consultation, of which \$2,500.00 was attributable to the sale of Benedict Oil Company's assets and \$22,500.00 was not attributable to such sale; \$210,000.00 was paid to John M. Winters, Jr., for brokerage in connection with the sale of Benedict Oil Company's assets to L. and V. Oil Company; and \$25,635.46 was paid to the law firm of Conner, Winters, Randolph & Ballaine for legal services, of which \$12,817.73 was attributable to the sale of Benedict Oil Company's assets and \$12,817.73 was not attributable to such sale. (Stipulation of Facts)

6. The 1965 income tax return of Benedict Oil Company showed a gain of \$2,396,711.00 on the sale to L. and V. Oil Company. Of such amount, \$966,505.00 was included in ordinary income pursuant to section 1245 of the Internal Revenue Code of 1954. The balance,

\$1,430,206.00 was not recognized as a taxable gain under the authority of section 337 of the Internal Revenue Code of 1954. (Schedule 18 of Exhibit A attached to the Stipulation of Facts)

7. On December 20, 1968, Benedict Oil Company timely filed with the Director of Internal Revenue a claim for refund of income taxes in the amount of \$589,027.00 for the tax year of 1965, plus interest thereon. (Stipulation of Facts)

8. On February 14, 1973, a Waiver of Statutory Notification of Claim Disallowance (Form 2297) was filed by Benedict Oil Company with the Director of Internal Revenue in which \$541,026.87 of the claim for refund of \$589,027.00 of 1965 income tax was disallowed. On October 15, 1973, a refund of \$48,000.13 was made to Benedict Oil Company of 1965 income taxes paid by Benedict Oil Company. This \$48,000.13 resulted from a reduction by \$100,000.00 of ordinary income reported by Benedict on its 1965 income tax return under section 1245 of the Internal Revenue Code of 1954, attributable to the sale of depreciable property.

9. No part of the amounts claimed in the claim for refund, except that amount referred to in paragraph 7 above, has been credited, refunded or repaid to plaintiffs. (Stipulation of Facts)

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the pleadings filed herein, the briefs submitted by the parties, and underlying authorities, plus additional independent research by the Court, the Court concludes:

1. There appears to be no question, either of fact or law, with respect to the deductibility of \$35,317.73 of the expenses incurred by Benedict Oil Company because such expenses were not related to the sale of assets. Therefore, it is uncontested that the Plaintiffs are entitled to a refund of \$16,952.51, plus interest, as provided by law.

2. The sole issue is whether \$225,317.73 of corporate expenses attributable to the sale of the assets of Benedict Oil

Company to L. and V. Oil Company, made pursuant to a plan of complete liquidation and dissolution complying with section 337 of the Internal Revenue Code of 1954, were deductible as ordinary and necessary business expenses. Although the courts are in conflict on this question, the Court of Appeals for the Tenth Circuit has ruled directly on the issue and this Court is compelled to follow the law of this Circuit, in the absence of a ruling to the contrary by the United States Supreme Court.

Pursuant to the authority of *United States v. Mountain States Mixed Feed Co.*, 365 F.2d 244 (10th CCA, 1966) the \$225,317.73 of expenses incurred by Benedict Oil Company is deductible as ordinary and necessary business expenses. The costs of liquidating a business are interwoven with the dissolution of the corporation. As the Tenth Circuit indicated: "***there is no reason why this sale of assets is not as much a part of the liquidation as the dissolution of the corporation. Certainly if the costs in kind may be deducted as ordinary expenses, the legal cost of sale of assets should likewise be deductible." *Mountain States*, supra, at 245, 246.

3. In addition to urging this Court to follow the law of the Tenth Circuit as established in *Mountain States*, supra, the Plaintiffs have raised other points in their brief. Defendant has responded to those points in its reply brief arguing that (a) the issues raised by Plaintiffs are at "variance" to the Claim for Refund, and (b) Plaintiffs' positions are substantively incorrect.

Because the Court of Appeals for the Tenth Circuit has ruled directly on the issue presented in this case, this Court finds it unnecessary to address these additional points. Only if the Tenth Circuit were to reverse its present position as set out in *Mountain States*, supra, would the Court then be required to consider the additional points raised by the Plaintiffs and the Defendant's answers thereto. This Court must follow *Mountain States*, supra, and no other inquiry or conclusion is necessary.

4. Defendant's Motion for Summary Judgment is denied.

5. Plaintiffs are entitled to judgment against the United States of America in an amount to be computed pursuant to paragraph 6 below, to include interest as provided by law, along with their costs.

6. In accordance with the Pre-Trial Order, the parties hereto will compute the amount of the Judgment to be entered pursuant hereto within seven (7) days of the above date.

ENTERED this 1st day of July, 1976.



CHIEF UNITED STATES DISTRICT JUDGE