



In his first cause of action plaintiff alleges that he was a salaried employee of defendant, working out of the Tulsa branch, with a title of branch manager; that on April 20, 1976, he was terminated (with an accrued employment length of service of twenty years). Plaintiff alleges that such termination was without notice and without given cause and was wrongful and malicious and contrary to the existent written company policy. Plaintiff further avers that such termination constituted a breach of contract. The damages he seeks by virtue of the first cause of action are uncertain, but believed, by plaintiff, to be as much as \$25,000.00.

Neither party has submitted to the Court any written company policy concerning this case. The Court additionally notes that it is not clear from the complaint, as filed in the State Court, prior to removal, whether plaintiff seeks severance pay only, fringe benefits or the like.

In *Freeman v. Chicago, Rock Island and Pacific Railroad Co.*, 239 F.Supp. 661 (USDC WD Okl. 1965), the Court said:

"The Oklahoma cases hold that where a contract of employment is for an indefinite period, it is terminable at will by either party. *Foster v. Atlas Life Ins. Co.*, 154 Okl. 30, 6 P.2d 805. The theory behind this conclusion is that there must be mutuality of obligation regarding the employee's right to quit and the employer's right to discharge to entitle the employee to damages, and moreover, from a practical standpoint, there must be a definite term of employment as to the employee in order to determine the loss of earnings suffered due to the employer's breach by wrongful premature termination. Thus, where there is a contract of employment at will by either of the parties, an action for damages for wrongful termination will not lie under Oklahoma law for lack of mutuality."

The Court went on to say:

"Therefore, in Oklahoma no right to recover damages for alleged wrongful discharge from employment is recognized in favor of any employee whose employment contract leaves him free to terminate the relationship at his own will. Any limitation imposed upon the employer's right to discharge, such as the 'just cause' provision is without legal actionability for breach of employment contract by wrongful discharge in Oklahoma because of a lack of mutuality in respect to this phase of the employment relationship."

In *Jeter v. Jim Walter Homes, Inc.*, 414 F.Supp. 791 (USDC

WD Okl. 1976) the Court said:

"Defendant has filed herein a Motion for Summary Judgment with supporting Brief on the basis that Plaintiff's termination is not actionable as the employment contract was not for a term certain and contracts of employment which are not for a specified term are terminable at will by either party. Defendant relies on Freeman v. Chicago, Rock Island and Pacific Railroad Co. 239 F.Supp. 661 (W.D.Okl.1975) and cases cited therein. Plaintiff has responded to said Motion by Brief and opposes the same. Upon examination of the file, the Court finds and concludes that it lacks subject matter jurisdiction herein. The Court has a duty to look to its own jurisdiction and lack of subject matter jurisdiction may be asserted by the Court, sua sponte, at any time. See discussion 5 Federal Practice and Procedure, Wright & Miller, §1350.

"Jurisdiction in this case is asserted under 28 U.S.C. §1332. This section requires that the amount in controversy exceed the sum or value of \$10,000.00. The test the Court must apply in determining whether the jurisdictional amount requirement of 28 U.S.C. §1332 is satisfied is whether under settled state law the Plaintiff's claims are not, to a legal certainty, recoverable in an amount in excess of \$10,000.00. City of Boulder v. Snyder, 396 F.2d 853 (Tenth Cir.1968); Renfroe v. Preferred Risk Mutual Insurance Company, 296 F.Supp. 1137 (N.D.Okl. 1969).

"It is clear that, as the instant contract of employment was not for a term certain, Plaintiff is not entitled to recover loss of future wages. Freeman v. Chicago, Rock Island and Pacific Railroad Co., supra. Indeed, Plaintiff, in his Brief in response to Defendant's Motion for Summary Judgment, admits that he is not entitled to recover for loss of future wages. Therefore, on the face of the pleadings herein the amount recoverable in this action is, to a legal certainty, under State law less than \$10,000.00. The combined prayer, without future wages, is less than \$2,000.00. Accordingly, the Court lacks subject matter jurisdiction and sua sponte this action should be remanded to the State Court from which it was removed. The Clerk will take the necessary action to remand the case."

This Court, therefore, finds that the instant case, sua sponte, that this case should be remanded to the District Court for Tulsa County, Oklahoma, leaving for that Court the determination of the Motion to Dismiss pending presently in this case.

IT IS, THEREFORE, ORDERED SUA SPONTE, that this cause of action and complaint be and the same is hereby remanded to the District Court for Tulsa County, Oklahoma.

ENTERED this 31st day of January, 1977.



CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
 Plaintiff, ) CIVIL ACTION NO. 76-C-339-C  
 )  
 vs. ) This action applies only to  
 ) the Oil Leasehold Interest  
 ) in the estate taken in:  
 4.15 Acres of Land, More or )  
 Less, Situate in Osage County, ) Tract No. 601ME  
 State of Oklahoma, and Andover )  
 Oil Company, et al., and )  
 Unknown Owners, )  
 ) (Included in D.T. filed in  
 Defendants. ) Master File #401-2) FILED

J U D G M E N T

JAN 28 1977

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

1.

Now, on this 28<sup>th</sup> day of January, 1977, this matter comes on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 601ME, as such estate and tract are described in the Complaint filed in this action.

3.

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

4.

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

described in said Complaint. Pursuant thereto, on June 24, 1976, the United States of America filed its Declaration of Taking of a certain estate in such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of a certain estate in subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 11.

7.

On the date of taking in this action, the owner of the estate taken in subject property was the defendant whose name is shown below in paragraph 11. Such named defendant is the only person asserting any interest in the estate taken in such property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estate condemned in subject property is in the amount shown as compensation in paragraph 11 below, and such Stipulation should be approved.

9.

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 property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and all defendants herein and all other

persons interested in such estate are forever barred from asserting any claim to such property.

10.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the estate condemned herein in subject property was the defendant whose name appears below in paragraph 11 and the right to receive the just compensation for the estate taken herein in this property is vested in the party so named.

11.

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

TRACT NO. 601ME

OWNER:

Andover Oil Company

<u>Award</u> of just compensation		
pursuant to Stipulation -----	\$17.00	\$17.00
<u>Deposited</u> as estimated compensation -----	<u>\$17.00</u>	
<u>Disbursed</u> to owner -----		<u>None</u>
Balance due to owner -----		\$17.00

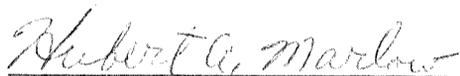
12.

It Is Further ORDERED that the Clerk of this Court now shall disburse the deposit made by the Plaintiff in this action as follows:

To Andover Oil Company ----- \$17.00.

APPROVED:

  
UNITED STATES DISTRICT JUDGE

  
HUBERT A. Marlow  
Assistant United States Attorney

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

FILED

JAN 27 1977 *mw*

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BILBO NEWMAN COMPANY, INC., )  
 et al., )  
 )  
 Defendants. )

CIVIL ACTION  
No. 76-C-614-6  
*John C. Silver, Clerk*  
DISTRICT COURT

ORDER DISMISSING DEFENDANT  
MERCANTILE BANK AND TRUST  
COMPANY FROM THIS ACTION

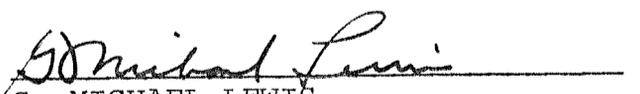
Now on this 27<sup>th</sup> day of January, 1977, there comes before the Court in chambers the Motion to Dismiss of Defendant Mercantile Bank and Trust Company filed herein on December 23, 1976, together with the Response of Plaintiff United States of America, which Response states that the said Plaintiff has no objection to the Court entering an Order dismissing from this action the Defendant Mercantile Bank and Trust Company; and the Court being fully advised in the premises, finds that the said Defendant is entitled to such dismissal Order.

IT IS THEREFORE ORDERED that the Defendant Mercantile Bank and Trust Company be and is dismissed from this action and shall bear its own costs herein.

  
H. DALE COOK  
United States District Judge

Approved as to form and substance:

  
ROBERT P. SANTEE  
Attorney for Plaintiff  
United States of America

  
G. MICHAEL LEWIS  
Attorney for Defendant  
Mercantile Bank and Trust Company

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

F. W. MYERS & COMPANY, INC. )  
a corporation, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
CAN-AM DISTRIBUTORS and )  
WAREHOUSE, INC., )  
a corporation, )  
 )  
Defendant, )  
 )  
And )  
 )  
DEWANE FRANKS, JAMES T. )  
FEEMSTER, and DONALD DOYLE, )  
 )  
Third Party )  
Defendants. )

No. 75-C-133-C

**FILED**

JAN 26 1977

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

ORDER DISMISSING

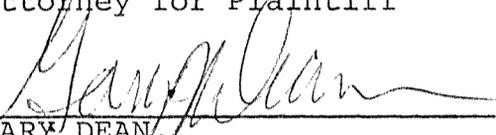
Now on this 20th day of January, 1977, comes on for hearing pretrial conference in the above entitled and numbered cause, all parties appearing by and through their attorneys of record. All parties stipulate that the defendant Can-Am Distributors and Warehouse, Inc., an Oklahoma corporation, shall be permitted to intervene in the matter of Doyle vs. Franks, et al pending in the District Court of Tulsa County, Oklahoma, cause numbered C-75-2186 without objection, and formalities waived with reference to said intervention; in consideration of said stipulation, the defendant Can-Am Distributors and Warehouse, Inc., and additional party defendant James T. Feemster then orally move to dismiss without prejudice, their cross complaints against the additional parties defendant herein, which motion is sustained by this Court.

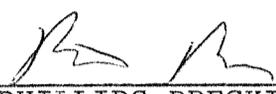
IT IS THEREFORE ORDERED, ADJUDGED, DECREED, AND DECLARED by the Court that the third party complaints and cross complaints of Can-Am Distributors and Warehouse, Inc. and James T. Feemster be and the same are hereby dismissed, pursuant to stipulation, without prejudice.

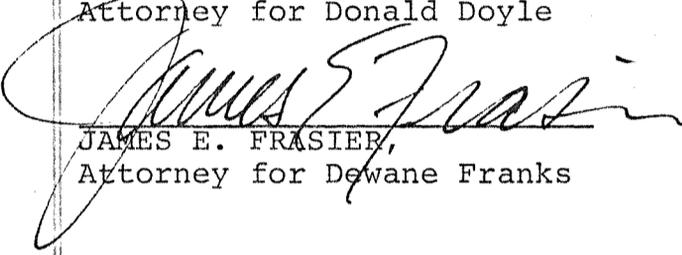
  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
\_\_\_\_\_  
JOHN B. WIMBISH,  
Attorney for Plaintiff

  
\_\_\_\_\_  
GARY DEAN,  
Attorney for Can-Am Distributors &  
Warehouse, Inc. and  
James T. Feemster

  
\_\_\_\_\_  
PHILLIPS BRECKINRIDGE,  
Attorney for Donald Doyle

  
\_\_\_\_\_  
JAMES E. FRASIER,  
Attorney for Dewane Franks

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONNIE L. NIMAN and  
CONNIE L. NIMAN,

Defendants.

CIVIL ACTION NO. 76-C-490-B

FILED

JAN 26 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26th  
day of January, 1977, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney, and the Defendants,  
Ronnie L. Niman and Connie L. Niman, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendants, Ronnie L. Niman and  
Connie L. Niman, were served by publication, as appears from  
the Proof of Publication filed herein.

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

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

Lot Fifteen (15), Block Five (5), LAKE-VIEW HEIGHTS  
AMENDED ADDITION to the City of Tulsa, Tulsa County,  
State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Ronnie L. Niman and Connie L. Niman,  
did, on the 30th day of December, 1974, execute and deliver  
to the Administrator of Veterans Affairs, their mortgage and  
mortgage note in the sum of \$9,500.00 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, Ronnie L. Niman and Connie L. Niman, 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 \$9,519.51 as unpaid principal with interest thereon at the rate of 9 1/2 percent per annum from January 1, 1976, 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, Ronnie L. Niman and Connie L. Niman, in rem, for the sum of \$9,519.51 with interest thereon at the rate of 9 1/2 percent per annum from January 1, 1976, 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.

15/Allen E. Barrow  
UNITED STATES DISTRICT JUDGE

APPROVED



ROBERT P. SANTEE  
Assistant United States Attorney

bcs

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

FILED

HELEN M. WOLFE, Individually, )  
and FRANK B. WOLFE, III and )  
STEPHEN C. WOLFE, Co-Executors )  
of the Estate of FRANK B. WOLFE, )  
Deceased, )

JAN 26 1977

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

Plaintiffs, )

vs. )

No. 75-C-43

UNITED STATES OF AMERICA, )

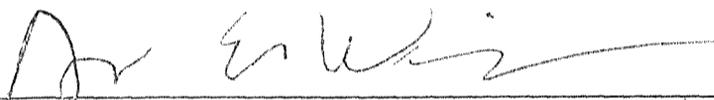
Defendant. )

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

IT IS HEREBY STIPULATED AND AGREED that the above-entitled action be dismissed with prejudice, each party to bear its own costs.



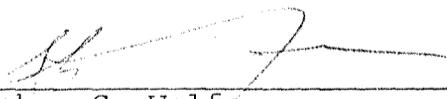
Robert P. Santee  
Asst. U. S. Attorney  
U. S. Court House  
Federal Building  
Tulsa, Oklahoma



DON E. WILLIAMS  
Attorney for Plaintiffs  
1701 South Boston  
Tulsa, Oklahoma 74119  
(918) 582-8000

CERTIFICATE OF DELIVERY

The undersigned hereby certifies that on the 30<sup>th</sup> day of November, 1976, he delivered a true and correct copy of the above and foregoing Stipulation to the Office of the United States Attorney, Nathan G. Graham, by personally delivering same to said office in the United States Courthouse in Tulsa, Oklahoma.



Stephen C. Wolfe

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

KIMBERLY GUILFOYLE, A MINOR, )  
by DONALD E. SMOLEN, her next )  
friend, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JERRY WATTS AND VIRGINIA WATTS, )  
husband and wife, )  
 )  
Defendants. )

No. 76-C-590-B

**FILED**

JAN 26 1977

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

ORDER

Now, on this 26<sup>TH</sup> day of January, 1977, there came on  
before the undersigned Judge of the United States District Court for the  
Northern District of Oklahoma a party Stipulation for Dismissal it being  
shown to the Court that the disputes between the parties have been  
resolved and settled and that an Order for Dismissal with Prejudice  
should be filed in the above styled case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the <sup>cause of</sup> ~~action~~ <sup>and</sup> ~~complaint  
<sup>are</sup> hereto brought by the plaintiff ~~is~~ dismissed with prejudice the rights  
of bringing any future action.~~

Allen E. Barrow  
UNITED STATES DISTRICT JUDGE



filed in the State Court prior to removal and it will then appear that technically the defendant, Audrey Bartram, is in default in the instant litigation.

Additionally, before referring to the grounds raised by the plaintiffs in their Motion to Remand, the Court will look at the pertinent allegations of the petition for removal. The removing defendant alleges:

"4. That summons was served personally upon the defendant, Audrey Bartram, on October 26, 1976, and fewer than thirty days have elapsed between the service of said summons and the filing of this Petition. Defendants KSI Farm Lines Co-Op, Inc., a corporation, and Jerry Seidman, have not been served with summons in this matter.

"5. The defendant Audrey Bartram and Jerry Seidman are individuals, residents and citizens of the State of Wisconsin. The defendant KSI Farm Lines Co-Op, Inc., is a corporation organized and existing under the laws of the State of Wisconsin, having its principal place of business in Kenosha, Wisconsin. The plaintiffs are individuals and residents of Tulsa County."

It is apparent from a reading of the above two paragraphs in the removal petition that said allegations are jurisdictionally defective.

Turning, now, to the allegations raised by plaintiffs' Motion to Remand, plaintiffs contend that defendant, Audrey Bartram, did not give notice to the plaintiffs of the filing of the petition for removal as required by 28 U.S.C. §1446(e). The affidavit of C. B. Savage, plaintiffs' attorney, attached to said motion is to the effect.

Defendant, Audrey Bartram, counters in his response that notice was mailed to plaintiffs' attorney at his office address and has not been returned to defendant's counsel. Audrey Bartram supports this allegation by the affidavit of Gregory G. Gibson, an associate of John M. Freese, attorney for Audrey Bartram.

Plaintiffs contend that they accidentally discovered the litigation had been removed and even up to the date of filing the Motion to Remand, plaintiffs had not received notice of said removal.

Section 1446(e) requires that written notice that a removal petition has been filed be given to all adverse parties, and that a copy of the petition shall be filed with the state court

promptly after the filing of such petition and bond. Actual notice must be given. Wright & Miller, Federal Practice, Volume 14, §3736; Kovell v. Pennsylvania Railroad Company, 129 F.Supp. 906 (USDC ND Ohio ED 1954); Coletti v. Ovaltine Food Products, 274 F.Supp. 719 (USDC D Puerto Rico, 1967).

The Court, therefore, finds that the Motion to Remand should be sustained and the complaint and cause of action remanded to the District Court of Tulsa County, Oklahoma.

IT IS, THEREFORE, ORDERED that plaintiffs' Motion to Remand be and the same is hereby sustained and the cause of action and complaint are hereby remanded to the District Court of Tulsa County, Oklahoma.

ENTERED this 26<sup>th</sup> day of January, 1977.



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CHIEF UNITED STATES DISTRICT JUDGE

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

**F I L E D**

JAN 26 1977

JACK MCGHEE, SR. and JACK MCGHEE,	)
JR. d/b/a GRANDAD'S COUNTRY AND	)
WESTERN STORE,	)
	)
Plaintiffs	)
	)
vs.	)
	)
FIREMAN'S FUND INSURANCE COMPANY,	)
a corporation,	)
	)
Defendant	)

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

No. 75-C-560-B ✓

ORDER

NOW, on this 17th day of January, 1977, the above styled and captioned cause comes on for jury trial on the merits pursuant to regular setting and notice, plaintiffs appearing by and through their attorney, Gary Madison of Tulsa, Oklahoma, and defendant appearing by its attorney, Michael P. Atkinson of the firm of Best, Sharp, Thomas & Glass of Tulsa, Oklahoma.

Whereupon, counsel for plaintiffs presented a Motion for Continuance which was overruled and exception allowed.

Whereupon, counsel for defendant moved that the above styled and numbered cause be dismissed for want of prosecution, a jury having been selected and the parties previously having announced ready for trial on January 12, 1977. After hearing statement of counsel and being fully advised in the premises, the Court finds that its inherent power to marshall its docket in order to effect a speedy disposition of said civil trial docket, coupled with the facts presented herein, requires that an Order enter dismissing the above cause with prejudice.

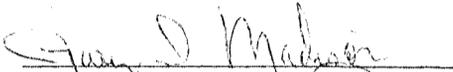
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above captioned cause is dismissed with prejudice, with the costs attendant empaneling the jury being taxed against the plaintiffs; furthermore, IT

IS HEREBY ORDERED, ADJUDGED AND DECREED that if the plaintiffs pay the

costs as taxed above within thirty (30) days from this date, that the <sup>Court,</sup>  
*upon application, will consider modifying the*  
foregoing Order shall be modified and show the above cause dismissed  
*to reflect dismissal without prejudice.*

  
District Judge

APPROVED AS TO FORM:

  
Attorney for Plaintiffs

  
Attorney for Defendant



The defendant, Turner Corporation of Oklahoma, Inc. (said defendant having not joined in the removal petition) has filed the following response to the Motion to Remand:

"On behalf of the defendant, Turner Corporation of Oklahoma, Inc., we do not object if the Court sees fit, to the Court granting plaintiffs' motion to remand this case to the State Court."

On January 20, 1977, the defendant, Preston L. Ray, filed an application for extension of time within which to plead. In his application he states:

"That this action was originally filed in the Tulsa County District Court, Case No. C-76-2189, and this Defendant, within the time allowed, filed an entry of appearance therein. That unknown to this Defendant or his attorney, said action was removed to this Court from the said Tulsa County District Court on the 9th day of November, 1976, and neither this Defendant nor his attorney received any notice that such had been removed until the 4th day of January, 1977, and therefore this Defendant, through no fault of his own or of his attorney, is out of time in the filing of a pleading herein."

Turning to the complaint filed by the plaintiffs in State Court, plaintiffs seek damages in the sum of \$9,827.54, with interest, for alleged losses resulting from a flood occurring on May 30, 1976.

The removing defendants contends that by virtue of Title 42 U.S.C. §4053 the Federal Court has exclusive jurisdiction in the instant litigation. That section provides in pertinent part:

"\*\*\* and, upon disallowance by any such company or other insurer of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance of the claim, may institute an action on such claim against such company or other insurer in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy." (Emphasis supplied)

Removing defendants further rely on 24 CFR §1912.22, which provides:

"Upon the disallowance of the Association or its agents of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any such claim, after

appraisal pursuant to the policy provisions, the claimant within one year after the date of mailing of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4053, institute an action on such claims against the Association, only in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated without regard to the amount in controversy." (Emphasis supplied)

It should be noted in the regulation promulgated in CFR the word "only" has been inserted, while not appearing in the statute as enacted by the Congress.

The legislative history concerning §4053 is found in U.S. Code Cong, & Adm. News, 1968, Volume 2, page 3022, Section 1113, which states:

"This section authorizes private insurers participating in the pool to adjust and pay claims for losses and permits any claimant, upon disallowance or partial disallowance of a claim, to institute an action, within 1 year after notice of the disallowance was mailed in the U.S. district court for the district in which the insured property or the major portion of it was situated. Jurisdiction would be conferred on the district court without regard to the amount in controversy. (Claimants could, of course, also avail themselves of legal remedies in State courts.)" (Emphasis supplied)

This Court finds nothing in the language of §4053 that infers exclusive jurisdiction in the federal court, and, in fact, the legislative history hereinabove delineated expressly states that claimants are not precluded from availing themselves of legal remedies in State Courts.

This Court will not discuss the myraid number of cases in detail found in Volume 46, Statutes, keynote 227, Modern Federal Practice Digest, discussing the semantic connotation placed on the use of the words "shall" and "may", other than to state that the word "shall" is generally construed as being mandatory or directive and the word "may" as permissive or discretionary.

Additionally, the Court finds that there is no allegation or contention in the complaint filed by the plaintiffs that presents an issue or controversy in respect to the validity, construction or effect of the Act raised by the moving defendants.

It appears to the Court that the provision cited in CFR extends jurisdiction in excess of that delineated in the statute, and in fact oversteps the boundaries of interpretation of the statute, especially in view of the legislative history. It is fundamental that a rule or regulation may only implement the law, be in furtherance of the intention of the legislature as evidenced by the acts of the legislative body. By the insertion of the word "only", the effect is the confer exclusive jurisdiction on the federal court and this Court does not so read the statute or the legislative history .

IT IS, THEREFORE, ORDERED that plaintiffs' Motion to Remand be and the same is hereby sustained and this cause of action and complaint are hereby remanded to the District Court of Tulsa County, Oklahoma.

ENTERED this 26<sup>th</sup> day of January, 1977.



---

CHIEF UNITED STATES DISTRICT JUDGE

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

HAROLD G. WHITEIS, a sole proprietor,  
d/b/a MOTOR SPORTS OF TULSA,

Plaintiff

vs.

YAMAHA INTERNATIONAL CORPORATION,  
a corporation,

Defendant

No. 74-C-456

**FILED**

JAN 26 1977

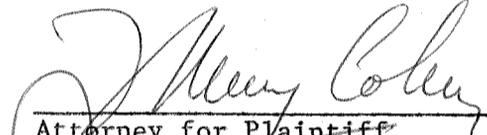
STIPULATION OF DISMISSAL WITH PREJUDICE Jack C. Silver, Clerk  
U. S. DISTRICT COURT

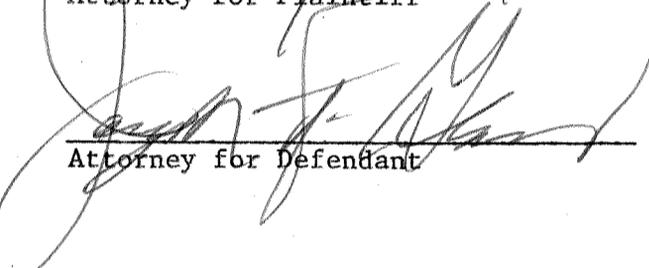
COMES now the plaintiff, through his attorney, Murray Cohen,  
and the defendant, through his attorney, Joseph F. Glass, and stipulate  
that the above captioned cause of action be dismissed with prejudice to  
filing a future action herein.

**FILED**

JAN 26 1977

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

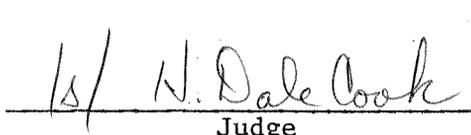
  
\_\_\_\_\_  
Attorney for Plaintiff

  
\_\_\_\_\_  
Attorney for Defendant

ORDER

And now on this 26<sup>th</sup> day of January, 1977, there  
came on for consideration before the undersigned Judge of the United  
States District Court for the Northern District of Oklahoma, stipulation  
of the parties hereto of dismissal, parties hereto having advised the  
Court that all disputes between the parties have been settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above  
styled cause be and the same is hereby dismissed with prejudice to the  
rights of the plaintiff to bring any future action arising from said  
cause of action.

  
\_\_\_\_\_  
Judge

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

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

CIVIL ACTION NO. 76-C-396-C

ROBERT G. COLLINS, JR., )  
JEANETTE COLLINS, TULSA )  
TASK FORCE FEDERAL CREDIT )  
UNION, INC., MRS. EDDIE D. )  
VANN, SIDNEY LEE MOORE a/k/a )  
SIDNEY MOORE, SR., and )  
LUCILLE L. MOORE, )

Defendants. )

**FILED**

JAN 26 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26<sup>th</sup>  
day of January, 1977, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney, and the Defendants,  
Robert G. Collins, Jr., Jeanette Collins, Tulsa Task Force  
Federal Credit Union, Inc., Mrs. Eddie D. Vann, Sidney Lee  
Moore a/k/a Sidney Moore, Sr., and Lucille L. Moore, appearing  
not.

The Court being fully advised and having examined  
the file herein finds that Defendants, Robert G. Collins, Jr.,  
Jeanette Collins, and Tulsa Task Force Federal Credit Union,  
Inc., were served by publication, as appears from the Proof  
of Publication filed herein; that Defendant, Mrs. Eddie D. Vann,  
was served with Summons and Complaint on August 16, 1976; and  
that Defendants, Sidney Lee Moore a/k/a Sidney Moore, Sr., and  
Lucille L. Moore, were served with Summons and Complaint on  
August 10, 1976, all as appears from the U.S. Marshals Service  
herein.

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

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

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

Lot Fourteen (14), Block Three (3), in SHARON HEIGHTS ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Robert G. Collins, Jr., and Jeanette Collins, did, on the 18th day of October, 1972, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$13,250.00 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, Robert G. Collins, Jr., and Jeanette Collins, 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 \$13,055.11 as unpaid principal with interest thereon at the rate of 7 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, Robert G. Collins, Jr., and Jeanette Collins, in rem, for the sum of \$13,055.11 with interest thereon at the rate of 7 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 the Plaintiff have and recover judgment, in rem, against Defendants, Tulsa Task Force Federal Credit Union, Inc., Mrs. Eddie D. Vann, Sidney Lee Moore a/k/a Sidney Moore, Sr., and Lucille L. Moore.

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

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

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

  
UNITED STATES DISTRICT JUDGE

APPROVED



ROBERT P. SANTEE  
Assistant United States Attorney

bcs

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

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
vs. )  
 )  
 )  
 )  
LARRY R. EDWARDS, a/k/a LARRY )  
RONALD EDWARDS, PATRICIA EDWARDS, )  
a/k/a PATRICIA ANN EDWARDS, )  
and UTICA NATIONAL BANK AND )  
TRUST COMPANY, INC., )  
 )  
 ) Defendants. )

CIVIL ACTION NO. 76-C-542-C

**FILED**

JAN 26 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26<sup>th</sup>  
day of January, 1977, the Plaintiff appearing by Robert  
P. Santee, Assistant United States Attorney, the Defendant, Utica  
National Bank and Trust Company, Inc., appearing by its attorney,  
Jim B. Shofner, and the Defendants, Larry R. Edwards, a/k/a Larry  
Ronald Edwards, and Patricia Edwards, a/k/a Patricia Ann Edwards,  
appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendants, Larry R. Edwards and Patricia  
Edwards, were served by publication, as appears from the Proof of  
Publication filed herein, and that Defendant, Utica National Bank  
and Trust Company, Inc., was served with Summons and Complaint on  
November 5, 1976, as appears from the U.S. Marshals Service herein.

It appearing that Defendant, Utica National Bank and  
Trust Company, Inc., has duly filed its Answer and Disclaimer  
herein on December 6, 1976, and that Defendants, Larry R. Edwards  
and Patricia Edwards, have failed to answer herein and that  
default has been entered by the Clerk of this Court.

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

Lot Fourteen (14), Block Four (4), SUBURBAN ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Larry R. Edwards and Patricia Edwards, did, on the 28th day of January, 1972, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,750.00 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, Larry R. Edwards and Patricia Edwards, made default under the terms of the afore-said 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 \$9,414.04 as unpaid principal with interest thereon at the rate of 7 1/2 percent per annum from February 1, 1976, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Larry R. Edwards and Patricia Edwards, in rem, for the sum of \$9,414.04 with interest thereon at the rate of 7 1/2 percent per annum from February 1, 1976, 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.

  
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

W. W. BARNES, )  
)  
Plaintiff, )  
)  
vs. )  
)  
FORD MOTOR COMPANY, a )  
corporation, FORD MOTOR )  
CREDIT COMPANY, a corpora- )  
tion, DAN TRANTHAM, NICK )  
KERPON and JAMES NAIL, )  
)  
Defendants. )

FILED

JAN 25 1977

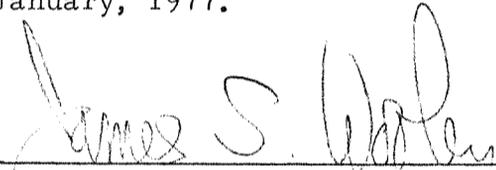
Jack E. Silver, Clerk  
U.S. DISTRICT COURT

No. 74-C-377

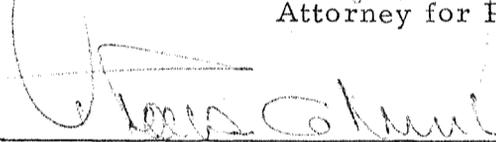
*OF*  
STIPULATION FOR DISMISSAL

It is hereby stipulated that the above-entitled action may be dismissed with prejudice, each party to bear his own costs.

Dated this 24<sup>th</sup> day of January, 1977.



Attorney for Plaintiff



Attorney for Defendant

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERNEST RAY DAVIS,  
BARBARA JEAN DAVIS,  
ORKIN EXTERMINATING COMPANY, INC.,  
A CORPORATION,  
VERNON HESTER d/b/a TULSA PLUMBING,  
HEATING & AIR CONDITIONING,  
STEWART'S INC., NOW STEWART'S  
FASHIONS, INC.,  
COUNTY TREASURER, TULSA COUNTY,  
BOARD OF COUNTY COMMISSIONERS,  
TULSA COUNTY,

Defendants.

FILED

JAN 25 1977

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

No. 75-C-535-B

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17<sup>th</sup> day  
of January, 1977, the plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney, the defendants Board  
of County Commissioners, Tulsa County, and County Treasurer,  
Tulsa County, appearing by their attorney Gary J. Summerfield,  
Assistant District Attorney, and the defendants Ernest Ray Davis,  
Barbara Jean Davis, Orkin Exterminating Company, Inc., A  
Corporation, Vernon Hester d/b/a Tulsa Plumbing, Heating & Air  
Conditioning, and Stewart's Inc., now Stewart's Fashions, Inc.  
appearing not.

The Court being fully advised and having examined the  
file herein finds that the defendant Ernest Ray Davis was served  
with Summons and Complaint on April 20, 1976; that the defendant  
Barbara Jean Davis was served with Alias Summons and Complaint  
on September 13, 1976; that the defendant Orkin Exterminating  
Company, Inc., A Corporation, was served with Summons and  
Complaint on November 26, 1975; that the defendant Stewart's Inc.,  
now Stewart's Fashions, Inc. was served with Summons and Complaint  
on December 1, 1975; that the defendant Board of County Commissioners,

Tulsa County, was served with Summons and Complaint on November 25, 1975; that the defendant County Treasurer, Tulsa County, was served with Summons and Complaint on November 25, 1975; and that the defendant Vernon Hester d/b/a Tulsa Plumbing, Heating & Air Conditioning was served by publication, as appears from the Proof of Publication filed herein on November 22, 1976.

It appearing that the County Treasurer, Tulsa County, and the Board of County Commissioners, Tulsa County, have duly filed their Answers on December 15, 1975; and that the defendants Ernest Ray Davis, Barbara Jean Davis, Orkin Exterminating Company, Inc., A Corporation, Vernon Hester d/b/a Tulsa Plumbing, Heating & Air Conditioning, and Stewart's Inc., now Stewart's Fashions, 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 and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Seven (7), Block Three (3), Carbondale Third Addition to the City of Tulsa, Tulsa County Oklahoma, according to the recorded plat thereof

THAT the defendants, Ernest Ray Davis and Barbara Jean Davis, did, on the 14th day of November, 1969, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the sum of \$8,775.00, with 8 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants Ernest Ray Davis and Barbara Jean Davis made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$8,458.31, as unpaid principal, with interest thereon at the rate of 8 percent per annum from October 14, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from defendants Ernest Ray Davis and Barbara Jean Davis, the sum of \$ 16.00 for the year 1974, and the sum of \$ 14.00 for the year 1975, plus interest according to law, for personal property taxes, 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.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Ernest Ray Davis and Barbara Jean Davis, in personam, for the sum of \$8,458.31, with interest thereon at the rate of 8 percent per annum from October 14, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against defendants Ernest Ray Davis and Barbara Jean Davis, for the sum of \$ 30.00 as of the date of this judgment plus interest according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendants Orkin Exterminating Company, Inc., A Corporation, Vernon Hester d/b/a Tulsa Plumbing, Heating & Air Conditioning, Stewart's Inc., Now Stewart's Fashions, Inc.

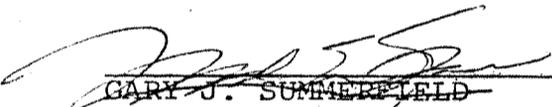
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property 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. SUMMERFELD  
Assistant District Attorney  
Attorney for Defendants, County  
Treasurer and Board of County  
Commissioners, Tulsa County

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

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

CIVIL ACTION NO. 76-C-535-B )

FRANK E. BERNA, a/k/a F. E. )

BERNA, a/k/a FRANK BERNA, )

KATHLEEN BERNA, a/k/a KATHLEEN )

E. BERNA, ROBERT W. BOOTH, )

Attorney at Law, GARY JAY, )

Attorney at Law, DISTRICT )

COURT CLERK, Tulsa County, )

CREDIT CONTROL SYSTEMS, INC., )

and OSTEOPATHIC HOSPITAL FOUNDERS )

ASSOCIATION, INC., d/b/a OKLAHOMA )

OSTEOPATHIC HOSPITAL, a )

Corporation, )

Defendants. )

**FILED**

JAN 25 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 25<sup>th</sup>  
day of January, 1977, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney; the Defendant, District  
Court Clerk, Tulsa County, appearing by Gary J. Summerfield,  
Assistant District Attorney; the Defendant, Robert W. Booth,  
Attorney at Law, appearing, pro se; the Defendant, Gary Jay,  
Attorney at Law, appearing, pro se; and the Defendants, Frank E.  
Berna, a/k/a F. E. Berna, a/k/a Frank Berna, Kathleen Berna,  
a/k/a Kathleen E. Berna, Credit Control Systems, Inc., and  
Osteopathic Hospital Founders Association, Inc., d/b/a Oklahoma  
Osteopathic Hospital, a Corporation, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendants, Frank E. Berna and Kathleen  
Berna, were served with Summons and Complaint on December 12,  
1976, and that Defendants, Robert W. Booth, Attorney at Law, Gary  
Jay, Attorney at Law, District Court Clerk, Tulsa County, Credit  
Control Systems, Inc., and Osteopathic Hospital Founders Association,  
Inc., d/b/a Oklahoma Osteopathic Hospital, a corporation, were

served with Summons and Complaint on November 5, 1976, all as appears from the U.S. Marshals Service herein.

It appearing that Defendants, Robert W. Booth and Gary Jay, Attorneys at Law, have duly filed their Entry of Appearance and Disclaimer herein on November 17, 1976, that Defendant, District Court Clerk, Tulsa County, has duly filed his Answer herein on November 23, 1976, and that the Defendants, Frank E. Berna, Kathleen Berna, Credit Control Systems, Inc., and Osteopathic Hospital Founders Association, Inc., d/b/a Oklahoma Osteopathic Hospital, a corporation, 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 Three (3), Block Two (2), LAKEVIEW HEIGHTS SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Frank E. Berna and Kathleen Berna, did, on the 17th day of May, 1974, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,700.00 with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Frank E. Berna and Kathleen Berna, 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 \$9,659.60 as unpaid principal with interest thereon at the rate of 7 percent per annum from December 1, 1975, until paid, plus the cost of this action accrued and accruing.

The Court further finds that Defendant, District Court Clerk, Tulsa County, is entitled to judgment against Defendant, Kathleen Berna, in the amount of \$16.15 costs, plus interest according to law, plus accrued court costs, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Frank E. Berna and Kathleen Berna, in personam, for the sum of \$9,659.60 with interest thereon at the rate of 7 percent per annum from December 1, 1975, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, District Court Clerk, Tulsa County, have and recover judgment, in personam, against the Defendant, Kathleen Berna, in the amount of \$16.15 costs, plus interest according to law, plus accrued court costs as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Credit Control Systems, Inc., and Osteopathic Hospital Founders Association, Inc., d/b/a Oklahoma Osteopathic Hospital, a corporation.

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.

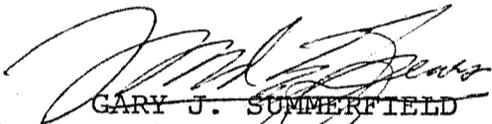
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed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

*151 Allan C. Barrow*  
UNITED STATES DISTRICT JUDGE

APPROVED



ROBERT P. SANTEE  
Assistant United States Attorney



GARY J. SUMMERFIELD  
Assistant District Attorney  
Attorney for Defendant,  
District Court Clerk,  
Tulsa County

bcs

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

FILED

JAN 24 1977

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

OLIN D. SMITH, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FORD MOTOR COMPANY, a foreign )  
 corporation; and YELLOW FREIGHT )  
 SYSTEM, INC., a foreign )  
 corporation, )  
 )  
 Defendants. )

No. 76-C-153-B

*Notice of*

DISMISSAL WITH PREJUDICE

Comes the plaintiff, OLIN D. SMITH, and dismisses with prejudice his cause of action filed herein against Yellow Freight System, Inc. Said dismissal is with prejudice since all of the issues between plaintiff, Olin D. Smith, and Yellow Freight System, Inc. have been fully settled and compromised by the parties.

DALE F. MCDANIEL

By

*Dale F. McDaniel*  
Attorney for Plaintiff

FILED

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

JAN 24 1977

DAVID B. DRUMMOND, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ADDRESSOGRAPH MULTIGRAPH )  
 CORPORATION, a corporation, )  
 )  
 Defendant. )

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

No. 76-C-548 (B) ✓

PARTIAL DISMISSAL

Comes now the Plaintiff, David B. Drummond, and hereby  
dismisses his second cause of action only in the above cause  
without prejudice.

Dated this 24 day of January, 1977.

LANG & JAMES

By E. Carleton James  
E. Carleton James  
2626 E. 21st St., Suite 2  
Tulsa, Okla. 74114

Attorney for Plaintiff,  
David B. Drummond

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of January, 1977,  
I mailed a full and true copy of the foregoing Partial Dismissal  
to: Mr. John S. Athens, 2400 First National Tower, Tulsa, Okla.,  
74103, Attorney for Defendant.

E. Carleton James  
E. Carleton James

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

DONNA ANN CUMMINGS, by and through )  
her natural Guardian and next friend, )  
DONALD CUMMINGS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STATE FARM MUTUAL AUTOMOBILE )  
INSURANCE COMPANY, )  
 )  
Defendant. )

No. 76-C-365-C

**FILED**  
**IN OPEN COURT**  
JAN 21 1977

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

JOURNAL ENTRY OF JUDGMENT

And now on this 21st day of January, 1977, there came on before me, the undersigned United States District Judge for the Northern District of Oklahoma, the above styled case, plaintiff appearing in person and by her attorney, Cecil Drummond, and the defendant appearing by its attorney, Best, Sharp, Thomas & Glass, by Jack M. Thomas, and a jury having been waived, evidence was introduced, and the court finds that the plaintiff is entitled to judgment in her favor and against the defendant in the sum of \$7,500.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover from the defendant the sum of \$7,500.00 for which let execution lie.

W. H. Dale Cook  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Cecil A. Drummond  
Attorney for Plaintiff

Jack M. Thomas  
Attorney for Defendant

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

FILED

JAN 20 1977

VIVIAN WILLIAMS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WESTINGHOUSE ELECTRIC )  
 CORPORATION, a corporation, )  
 )  
 Defendant. )

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

No. 75-C-429-B ✓

APPLICATION TO SETTLE

COMES now the parties hereto and would show the court that their differences have been resolved and nothing further remains to be litigated in this action. Therefore, the parties jointly request the court to enter an Order of Dismissal with Prejudice in this action.

*Vivian Williams*  
PLAINTIFF

*James L. Lee*  
PLAINTIFF'S ATTORNEY

*James L. Lee*  
DEFENDANT'S ATTORNEY

ORDER OF DISMISSAL

NOW on this 21<sup>st</sup> day of January, 1977, the court finds that this cause <sup>of action / complaint</sup> should be and the same <sup>are</sup> ~~is~~ hereby dismissed with prejudice. It is therefore ordered, adjudged and decreed by the court that this action be dismissed with prejudice at costs of plaintiff.

FILED

*Allen E. Barrow*  
UNITED STATES DISTRICT JUDGE

JAN 25 1977

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

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 76-C-108-C

DAVID E. GADIENT,
vs.
NEW YORK LIFE INSURANCE COMPANY,
Plaintiff,
Defendant.

JUDGMENT FILED

JAN 19 1977

Jack C. 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 on behalf of the Defendant, New York Life Insurance Company, and against the Plaintiff, David E. Gadiant, and that the Defendant recovers its costs of action.

Dated at Tulsa, Oklahoma, this 19th day of January, 19 77.

[Handwritten signature of Jack C. Silver]
Clerk of Court





my race and therefore I have been discriminated against by City Personnel Department."

5. The Commission terminated the matter without suit and issued its "Notice of Right to Sue Within 90 Days" letter on December 19, 1974.

6. Southwestern Bell Telephone Company paid the plaintiff the sum of \$150.00 as a result of this charge. (Mikel Dep. p. 8)

7. Plaintiff had never done any accounting work and did not have any accounts receivable nor accounts payable experience when she made application for the position with the City of Tulsa. (Mikel Dep. p. 8)

8. Plaintiff had not taken any accounting courses in schools at the time she applied for the position. (Mikel Dep. 9)

9. Her duties at Southwestern Bell, when she was employed, consisted of being a teletypist and proofreader. (Mikel, Dep. 9)

10. After leaving the initial interview at the City of Tulsa, plaintiff felt that she would be employed. (Mikel, Dep. p. 24)

11. Plaintiff was denied employment at the City of Tulsa and she felt that the bad reference from Southwestern Bell Telephone Company had some bearing on the decision of the City of Tulsa. (Mikel, Dep. p. 12)

12. Although she had had no personal experience, plaintiff felt that because she was black, people were automatically prejudiced against her. (Mikel, Dep. p. 16)

13. Plaintiff obtained employment with the Education Service Center and was so employed for one year and about seven months. (Mikel Dep. p. 6) She left such employment to continue her education and at the time of the taking of the deposition was still in school. (Mikel Dep. p. 6)

14. Plaintiff thought that Mr. Fritch of the telephone company had given her a bad reference from said company. (Mikel Dep. p. 25)

15. Mr. Fritch, District Manager for Southwestern Bell, Tulsa West District, when called for a recommendation on plaintiff, responded that Mrs. Mikel had worked for Southwestern Bell, her job title, how long she had been there, when she left, and that she left due to a pregnancy leave. (Fritch, Dep. pp. 4, 8)

16. Mr. Fritch did not give any information concerning plaintiff's attendance record while employed. (Fritch, Dep. p. 8)

17. It was the policy of Southwestern Bell to refuse to comment on a person's attendance if such attendance was substandard. (Fritch, Dep. p. 17, 18)

18. Mr. Fritch did not know whether the policy of no comment on substandard attendance was generally known or not. (Fritch, Dep. p. 17, 18)

19. Louise Covington (formerly Bohanon), an Order Supervisor at Southwestern Bell, was contacted by a representative of the City of Tulsa on a reference check. (Covington, Dep. pp. 3, 4)

20. Mrs. Covington told the inquirer that plaintiff did a satisfactory job. (Covington, Dep., pp. 3, 4)

21. Mrs. Covington gave no information concerning plaintiff's attendance. (Covington, Dep. p. 5)

22. Madeline Parker is the Accounts Payable Supervisor with the Auditing Department, City of Tulsa, and talked to plaintiff on February 8, 1973. (Affidavit)

23. Mrs. Parker considered hiring Mrs. Mikel after she was sent from Personnel because her Department was shorthanded and even though Mrs. Mikel did not have the desired work experience. (Affidavit)

24. Mrs. Parker, in accordance with the policy and practice that a reference check be had concerning a prospective employee if the last employer was a local firm, did check with the office of Mrs. Mikel's last employer, Southwestern Bell Telephone Company. (Affidavit)

25. If a prospective employee last worked for an out-of-state firm, a reference check was not had. (Parker's Affidavit).

26. Mrs. Parker first contacted plaintiff's immediate supervisor and that supervisor (Mrs. Bohanon, now Covington) gave her nothing concerning the attendance record or work record, but did state that plaintiff "clowned around", was disruptive, kept her coworkers "entertained", was immature, and that the Personnel Department of the telephone company should be contacted for the attendance record. (Parker's Affidavit)

27. Mrs. Parker did contact Mr. Fritch and he gave her nothing other than that Mrs. Mikel had been employed, how long, when she left and why, but flatly refused to give any other information. (Parker's Affidavit)

28. During her conversation with Mr. Fritch, Mrs. Mikel's race was not discussed. (Parker's Affidavit)

29. Mrs. Parker communicated with Mr. Fred Scott, head of the Auditing Department, City of Tulsa, with the recommendation that Mrs. Mikel not be hired on that date but that a final decision be postponed pending interview of further applicants. (Parker's Affidavit)

30. Three or four days later another applicant was hired (her references were not checked since they were out-of-state). (Parker's Affidavit)

31. Mr. Fred Scott compared the previous work experience, maturity, qualifications and work records and recommendations of Mrs. Parker and selected a Mrs. Beverly Stephens, a white woman, for the position. (Scott's Affidavit)

32. Mr. Scott advised the plaintiff that she had been rejected because he found a more suitable individual with previous work experience in accounting, receivables and payables. (Scott Affidavit)

33. Mr. Scott informed Mr. Phil Kates of the Personnel Department that he selected Mrs. Stephens for her experience and rejected plaintiff because of a bad reference from a former employer. (Scott Affidavit)

34. Richard Walker, Affirmative Action Coordinator for the City of Tulsa, while the EEOC charges were pending, contacted plaintiff to negotiate a settlement and advised plaintiff that the Personnel Department would find her another job with the City of Tulsa. (Walker Affidavit).

#### CONCLUSIONS OF LAW

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

1. This Court does have jurisdiction in this pending litigation.

2. The Court finds, that as a matter of law, that plaintiff cannot prove a prima facie case. In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) the Supreme Court of the United States set up the test, as follows:

" The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualification, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications."

See also *Sime v. Trustees of Cal.State University & Colleges*, 526 F.2d 1112 (9th CCA, 1975); *Garrett v. Mobil Oil Corp.*, 531 F.2d 892 (8th Cir. 1976); *Abrams v. Johnson*, 534 F.2d 1226 (6th CCA 1976).

3. Additionally, under the facts hereinabove stated and found by the Court, the reference check by the City of Tulsa which resulted in a less than satisfactory recommendation has not been shown to have been in bad faith. *Parham v. Southwestern*

Bell Telephone Co., 433 F.2d 421 (8th Cir. 1970).

4. No evidence has been adduced in the instant case to show the plaintiff was rejected for employment by virtue of her race.

5. The Motion for Summary Judgment filed by the defendants should be sustained.

IT IS, THEREFORE, ORDERED that the Motion for Summary Judgment filed by the defendants be and the same is hereby sustained.

ENTERED this 19<sup>th</sup> day of January, 1977.



---

CHIEF UNITED STATES DISTRICT JUDGE

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

FILED

WILLIE E. BURNETT, as Administrator of )  
the Estate of Arlie J. Burnett, deceased, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TRANSWORLD AIRLINES, INC. and )  
JOHN DOE. Hilton, )  
 )  
Defendant. )

JAN 19 1977

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

No. 74-C-307

APPLICATION FOR DISMISSAL

COME NOW the parties hereto, and apply to this Court for an Order of Dismissal, with prejudice, in the above-styled and numbered cause for the reason that the parties have negotiated a settlement of all issues herein for the sum of \$13,000.00 as and for compensatory damages in this action.

*s/ Robert H. Tips*

ROBERT H. TIPS  
for FARMER, WOOLSEY, TIPS & GIBSON  
Attorneys for Plaintiff

*Dan Rogers*

DAN ROGERS  
of ROGERS, ROGERS & JONES  
Attorneys for Defendants

FILED

JAN 19 1977

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

ORDER

For good cause shown, the above-styled and numbered cause is Dismissed with Prejudice.

*of action & complaint*

*Allen E. Bonar*

Judge

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

PUBLIC SERVICE COMPANY OF OKLAHOMA,  
an Oklahoma corporation,

Plaintiff,

vs.

A 130 foot wide easement and right-of-way for electric power transmission line purposes to be located upon, over and across a certain tract of land in Tulsa County, Oklahoma;

AND

THE UNITED STATES OF AMERICA as a matter affecting the title to certain Creek Indian lands previously allotted in fee with certain restraints on alienation and presently owned by restricted Creek and Cherokee Indians;

AND

MAY ANDERSON NOW DOVER, Creek and Cherokee not enrolled; and LINDA ANDERSON NOW BATTLES, Creek and Cherokee not enrolled;

Defendants.

NO. 76-C-370-C

**FILED**

JAN 19 1977

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

FINAL DECREE AUTHORIZING TAKING IN CONDEMNATION

NOW, on this the 19<sup>th</sup> day of January, 1977, this cause comes on for hearing regularly to be heard. Plaintiff appearing by its attorney, P. Jay Hodges, and Defendants, The United States of America, May Anderson now Dover, Creek and Cherokee not enrolled, and Linda Anderson now Battles, Creek and Cherokee not enrolled, appearing by their attorney, Hubert A. Marlow, Assistant United States Attorney for the Northern District of the State of Oklahoma.

All parties having announced ready for hearing, the Court's attention was drawn to each and every one of the following pleadings heretofore filed in this proceeding, to-wit:

The Complaint and application for order directing manner of service, verified under oath; Order of this Court dated July 13, 1976, directing manner of service of Notice;

Notice by the Clerk of the Court to the Area Director, Muskogee Area Office, Bureau of Indian Affairs, U. S. Department of Interior, Muskogee, Oklahoma, and to May Anderson now Dover, and to Linda Anderson now Battles; Notice to the Attorney General of the United States and the United States Attorney for the Northern District of Oklahoma, by attorneys for Plaintiff; Affidavit of Mailing and Service of Notice executed under oath by P. Jay Hodges, attorney for Plaintiff; Notice of Appearance of Defendants; Motion for More Definite Statement; Brief of Defendants in Support of Their Motion for a More Definite Statement; minute order dated July 30, 1976; Brief of Plaintiff in Response to Motion for a More Definite Statement; First Amended Complaint; Order Appointing Commissioners; Oath of Commissioners; Report of Commissioners; Commissioners' Receipt; Certificate of Court Clerk as to deposit of amount of commissioners' award; Notice by Court Clerk of filing of Report of Commissioners; and Demand for Jury Trial by Plaintiff.

Whereupon Plaintiff, by and through its attorneys, in open court, withdrew its demand for jury trial and said defendants, The United States of America, May Anderson now Dover, and Linda Anderson now Battles, by and through their attorney, in open court, agreed and stipulated to accept the Report of Commissioners on file herein relative to the damages suffered by the parties in interest in and to the lands herein sought to be condemned and which will result from appropriation by Plaintiff of a perpetual easement and right-of-way for an electric power transmission line, all as hereinafter more particularly set out, and the Court having examined the Report of Commissioners filed herein and thus being fully advised in the premises;

THE COURT FINDS: That the matters set out in the verified Complaint and First Amended Complaint herein filed by Plaintiff are true and correct and said Plaintiff, a corporation organized under the laws of the State of Oklahoma,

authorized and qualified to furnish light, heat and power by electricity, engaged in the generation and production of electricity for light, heat and power purposes, and for the distribution and sale thereof throughout Eastern and Southwestern areas of the State of Oklahoma, characterized by the laws of the said State as a public service corporation, and operating as such, is therefore endowed with the right of eminent domain in the appropriation and use of properties and interests therein necessary to or required by its proper purposes, and it further appearing that the taking and use of an easement and right-of-way for said purposes is a taking and use for a public purpose and that said Plaintiff should be granted the relief prayed in its said Complaint and First Amended Complaint; and that this Court has proper jurisdiction of this cause by reason of the Act of Congress of March 3, 1901, Chap. 832, Section 3, 31 Stat. 1084, 25 USC Sec. 357; and that notice of this proceeding has been served according to law and the order of this Court upon all parties in interest in and to the land involved herein, including the United States of America which is an interested party by reason of the fact that this matter affects the title to certain Creek Indian lands previously allotted in fee with certain restraints on alienation which are still in effect with respect to said land and presently owned by restricted Creek and Cherokee Indians; that all necessary parties to this cause are now properly before the Court for final disposition of this proceeding; that Plaintiff has withdrawn its demand for jury trial; that all defendants have waived their right to jury trial and that Plaintiff and all defendants have joined in praying that final disposition be made of this proceeding and agree and stipulate that the Report of Commissioners on file herein fairly and fully awards compensation for the easement and right-of-way sought to be condemned by Plaintiff herein; that by said taking and use of said right-of-way and easement, Plaintiff obtains no

ownership of the oil, gas or minerals (if any) underlying the subject lands.

THE COURT FURTHER FINDS: That the description of the lands upon, over and across which Plaintiff seeks herein to condemn said easement and right-of-way together with the owners thereof, Defendants herein, and the reasonable and adequate damages occurring to said lands as a result of said appropriation of said easement and right-of-way is as follows:

TRACT NO. 1:

The Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$  NE $\frac{1}{4}$ ) and the South Half of the Northeast Quarter (S $\frac{1}{2}$  NE $\frac{1}{4}$ ), both of Section 33, Township 19 North, Range 11 East, Tulsa County, Oklahoma.

To construct upon, over and across said tract an electric power transmission line carrying an initial nominal voltage of 345 KV having 3 conductors and 2 shield wires mounted on a double-pole, H-frame structure upon an easement 130 feet in width, the centerline of which is described as follows:

Entering said tract at a point approximately 888 feet South of the Northeast Corner thereof; thence North 54° 03" West a distance of 92 rods; and leaving said tract at a point approximately 1235 feet West of the Northeast Corner thereof.

Including the location of 1 double-pole, H-frame structure.

OWNERS: May Anderson now Dover and Linda Anderson now Battles

ORIGINAL ALLOTTEE: Andrew Anderson (deceased),  
3/4 blood Creek, Roll No. 2819.

TENANT AND LESSEE INTERESTS NOT INCLUDED.

TOTAL DAMAGES: Thirty Six Thousand Dollars (\$36,000)

THE COURT FURTHER FINDS: That the nature of the property and the rights with respect to said lands so to be taken and the uses for which such property is to be taken are:

A perpetual easement and right-of-way 130 feet in width for the purpose of erecting, constructing, reconstructing, operating and maintaining, repairing and removing, upon, over and along the route and across the lands hereinafter fully described, an electric power transmission line, consisting of a double-pole, H-frame

structure carrying wires and fixtures, operating initially at a nominal voltage of 345 thousand volts, carrying, for transmission, electric power and energy, and telephone and telegraph messages necessary to the operation thereof, together with the right and privilege of ingress and egress from the nearest, convenient, accessible public road as well as such rights of ingress and egress as necessary to avoid and circumvent obstructions thereon for the purpose of erecting, constructing, reconstructing, operating, maintaining, repairing and removing said electric power transmission line at any time and including also the right to trim, chemically treat, cut down or remove trees or brush and to prohibit the placement of or remove other obstacles which may in Plaintiff's judgment interfere with or endanger said line, its maintenance or operation, within an area of 65 feet on either side of the centerline thereof, PROVIDED, however, that Plaintiff does not herein seek the right to fence all or any portion of said easement and right-of-way; AND PROVIDED, that Plaintiff does not herein seek ownership of the oil, gas or minerals themselves (if any) underlying the subject lands; AND RESERVING, nevertheless, to the landowners, lessees, and tenants of said lands, at all times, the right to make any use of said lands (both surface estate and mineral estate), including the full width of said easement and right-of-way, as is not inconsistent with or dangerous to the operation and maintenance of said electric power line.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the entry upon and taking forthwith of said rights, perpetual easement and right-of-way as found and described above herein, upon, over and across said lands as hereinbefore set out, by Plaintiff, for erecting, constructing, reconstructing, operating, maintaining, repairing and removing this electric power transmission line, all as prayed for in said Complaint and First Amended Complaint is hereby authorized and confirmed in all things and said Plaintiff, Public Service Company of Oklahoma, is hereby vested with said rights, perpetual easement and right-of-way, together with perpetual right of ingress and egress, all free and clear of any and all claims of Defendants herein who are hereby perpetually enjoined and barred from hereafter claiming adversely to Plaintiff's said rights, privileges and estate ordered, adjudged, decreed and granted herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the sum of \$36,000.00 heretofore paid into the

depository of this Court by Plaintiff as damages be by the Clerk of this Court made payable and distributed to and for the use of the owners of said tract, according to their interests as hereinafter set out, all as provided by law.

Bureau of Indian Affairs, Muskogee,  
Oklahoma, for deposit to the Individual  
Indian Money Account of May Anderson now  
Dover, Creek and Cherokee not enrolled \$18,000.00

Bureau of Indian Affairs, Muskogee,  
Oklahoma, for deposit to the Individual  
Indian Money Account of Linda Anderson  
now Battles, Creek and Cherokee not  
enrolled. \$18,000.00

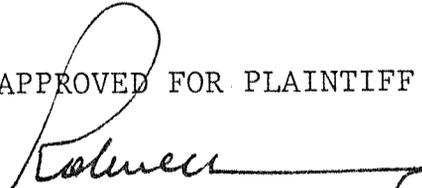
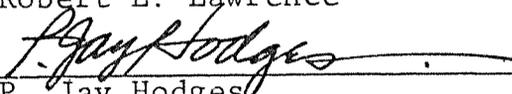
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the perpetual easement and right-of-way taken by Plaintiff and described herein and the operation of said electric power transmission line does not convey any ownership of the oil, gas or minerals (if any) underlying the subject lands, and further that the damages awarded herein shall not be construed as concluding the rights of any Defendant, to the extent of their interests therein, if entitled to claim, to sue for and recover damages, if any, that may occur, in the future, occasioned by the maintenance of said electric power transmission line.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount of the commissioners' fees shown in the Receipt of commissioners herein is hereby approved.

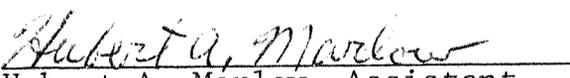
IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY the Court that the costs of this proceeding be taxed against the Plaintiff and the case be and hereby is closed.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

APPROVED FOR PLAINTIFF:

  
Robert L. Lawrence  
  
P. Jay Hodges  
Its Attorneys

APPROVED FOR ALL DEFENDANTS:

  
Hubert A. Marlow, Assistant  
United States Attorney for  
the Northern District of  
Oklahoma



FILED

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

JAN 18 1977 J.

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

P. J. MENAN ASSOCIATES, INC., )  
 a corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WORD INDUSTRIES PIPE )  
 FABRICATING, INC., a )  
 corporation, )  
 )  
 Defendant. )

No. 75-C-251-B ✓

ORDER OF DISMISSAL

The court has for consideration the Joint Motion for Dismissal filed by the plaintiff, P. J. Menan Associates, Inc., a corporation, and the defendant, Word Industries Pipe Fabricating, Inc., a corporation, for dismissal with prejudice of the captioned litigation upon payment by check by the defendant, Word Industries Pipe Fabricating, Inc., of \$130,000.00, in settlement of the subject lawsuit, and being fully advised in the premises, the court finds that said Motion should be sustained.

IT IS THEREFORE ORDERED that the Joint Motion for Dismissal With Prejudice be, and the same is, hereby sustained upon payment by check by the defendant, Word Industries Pipe Fabricating, Inc., of \$130,000.00 to the plaintiff, P. J. Menan Associates, Inc., a corporation, in settlement of the captioned litigation.

DATED this 18<sup>th</sup> day of January, 1977.

*Cleen E. Barrett*  
CHIEF UNITED STATES DISTRICT JUDGE

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

GEORGE S. THOMPSON and )  
WARREN G. MORRIS, Co-Trustees )  
of the Estate of Eastland )  
Mall Shopping Center, Inc., )  
in corporate reorganization )  
proceedings under Chapter X )  
of the Bankruptcy Act, )  
Plaintiffs, )

vs. )

No. 75-557-C

GORDON A. TAYLOR, CHURCHILL )  
G. CAREY, EUGENE L. AMBER, )  
J. C. TYLER, JR., JOHN D. )  
UIBLE and JOHN H. ROGERS, )  
Trustees of GUARDIAN MORTGAGE )  
INVESTORS, a Massachusetts )  
Business Trust; GORDON A. )  
TAYLOR, CHURCHILL G. CAREY, )  
EUGENE L. AMBER, J. C. )  
TYLER, JR., JOHN D. UIBLE )  
and JOHN H. ROGERS, )  
individually and d/b/a )  
GUARDIAN MORTGAGE INVESTORS; )  
CHARTER ADVISORY COMPANY, )  
a corporation; MERRITT & )  
HARRIS, INC., a corporation; )  
and JOHN DOES I, II and III, )  
whose real names are unknown, )  
Defendants. )

FILED

JAN 17 1977

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

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 17<sup>th</sup> day of January, 1977,  
the above matter coming on for consideration upon the Stipu-  
lation to Dismissal With Prejudice, filed on behalf of all  
Plaintiffs and Defendants in this cause agreeing and stipu-  
lating that the above-entitled action may be dismissed with  
prejudice, each party to bear its own costs, and the Court  
having examined such Stipulation, and it appearing to the  
Court that the above-entitled action has been fully settled  
and compromised, and for good cause shown:

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED  
that the above-entitled action be, and the same is hereby  
dismissed with prejudice, each party to bear its own costs.

*[Handwritten signature]*

United States District Judge

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

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

CIVIL ACTION NO. 76-C-245-B

FREDDIE D. NEWTON, LUCILLE  
FOSTER, a/k/a LUCILLE MARIE  
FOSTER, CHERRI M. BODY, TROY  
FOSTER, a/k/a TROY LEE FOSTER,  
TRUMAN A. BODY, JR., STEWARTS,  
INC., EAST RIVER SAVINGS BANK,  
a Corporation, IDEAL CO-OP  
INVESTMENT AND LOAN COMPANY,  
a Corporation, OKLAHOMA  
NATURAL GAS COMPANY, a  
Corporation, SOONER FEDERAL  
SAVINGS AND LOAN ASSOCIATION,  
and FIRST FEDERAL SAVINGS AND  
LOAN ASSOCIATION,

Defendants.

FILED

JAN 17 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17th  
day of January, 1977, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney; the Defendant, Sooner  
Federal Savings and Loan Association, appearing by its attorney,  
Edward L. Jacoby; the Defendant, Ideal Co-op Investment and  
Loan Company, appearing by its manager, Faye Hunter; the De-  
fendant, Oklahoma Natural Gas Company, appearing by its attorney,  
John M. Sharp; and the Defendants, Freddie D. Newton, Lucille  
Foster, a/k/a Lucille Marie Foster, Cherri M. Body, Troy Foster,  
a/k/a Troy Lee Foster, Truman A. Body, Jr., Stewarts, Inc., East  
River Savings Bank, a corporation, and First Federal Savings and  
Loan Association, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendants, Freddie D. Newton and Truman  
A. Body, Jr., were served by publication, as appears from the  
Proof of Publication filed herein; that Defendant, Cherri M. Body,  
was served with Summons and Complaint on August 23, 1976; that  
Defendant, Troy Foster, a/k/a Troy Lee Foster, was served with

Summons and Complaint on August 24, 1976; that Defendant, Lucille Foster, a/k/a Lucille Marie Foster, was served with Summons and Complaint on August 25, 1976; that Defendants, Ideal Co-op Investment and Loan Company and First Federal Savings and Loan Association, were served with Summons and Complaint on June 8, 1976; that Defendants, East River Savings Bank, Stewarts, Inc., and Oklahoma Natural Gas Company, were served with Summons and Complaint on June 9, 1976, all as appears from the U.S. Marshals Service herein.

It appearing that Defendant, Oklahoma Natural Gas Company, has duly filed its Disclaimer herein on June 10, 1976, that Defendant, Ideal Co-op Investment and Loan Company, has duly filed its Disclaimer herein on June 15, 1976; that Defendant, Sooner Federal Savings and Loan Association, has duly filed its Disclaimer herein on June 21, 1976; that Defendants, Freddie D. Newton, Lucille Foster, a/k/a Lucille Marie Foster, Cherri M. Body, Troy Foster, a/k/a Troy Lee Foster, Truman A. Body, Jr., Stewarts, Inc., East River Savings Bank, and First Federal Savings and Loan Association, 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 Three (3), Block Three (3), SUBURBAN ACRES THIRD ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendant, Freddie D. Newton, did, on the 11th day of May, 1974, execute and deliver to the Administrator of Veterans Affairs, his mortgage and mortgage note in the sum of \$9,500.00 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 Defendant, Lucille Foster, a/k/a Lucille Marie Foster, was the grantee in a deed from Defendant, Freddie D. Newton, dated and filed March 3, 1975, in Book 4155, Page 863, records of Tulsa County, wherein Defendant, Lucille Foster, a/k/a Lucille Marie Foster, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendant, Cherri M. Body, was the grantee in a deed from Defendant, Lucille Foster, a/k/a Lucille Marie Foster, dated June 1, 1975, filed June 3, 1975, in Book 4167, Page 1861, records of Tulsa County, wherein Defendant, Cherri M. Body, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Freddie D. Newton, Lucille Foster, a/k/a Lucille Marie Foster, and Cherri M. Body, 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 \$9,494.07 as unpaid principal with interest thereon at the rate of 8 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, Freddie D. Newton, in rem, Lucille Foster, a/k/a Lucille Marie Foster, in personam, and Cherri M. Body, in personam, for the sum of \$9,494.07 with interest thereon at the rate of 8 1/2 percent per annum from June 1, 1975, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Troy Foster, a/k/a Troy Lee Foster, Truman A. Body, Jr., Stewarts, Inc., East River Savings Bank, and First Federal Savings and Loan Association.

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 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

RONALD E. DUNHAM, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 UNITED CABLE TELEVISION, an )  
 Oklahoma corporation, and JOE )  
 ORABANEC, )  
 )  
 Defendants. )

76-C-425-B

**FILED**

JAN 17 1977

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

ORDER REMANDING

The Court has for consideration the Motion to Remand filed by the plaintiff, the briefs in support and opposition thereto, and, having carefully perused the entire file and being fully advised in the premises, finds:

This case was originally commenced in the District Court of Tulsa County, Oklahoma, and removed to this Court by the defendant, United Cable Television.

It its petition for removal the defendant, United Cable Television, generally alleges that the action was commenced on October 6, 1975 and that service has never been effected on the individual defendant, Joe Orabanec. United Cable Television further alleges that on July 29, 1976, the plaintiff elected to proceed to trial against United Cable Television Corporation alone without obtaining service on the defendant, Joe Orabanec, insisting that the case be set for trial on the next available docket and that the case was set against United Cable Television alone for a trial on October 18, 1976. On August 12, 1976, the petition for removal was filed in the United States District Court for the Northern District of Oklahoma. The three jurisdictional allegations pertinent to the Motion to Remand contained in the petition for removal are as follows:

"3. The plaintiff, Ronald E. Dunham, was at the time of the commencement of this action, and still is at the time of the filing of this Petition for Removal, a citizen and resident of the State of Oklahoma, residing in Tulsa County.

"4. Your petitioner and removing defendant, United Cable Television Corporation, was at the time of the commencement of the action, and still is at the time of filing of this Petition for Removal, a Delaware corporation, (even though it is referred to as an Oklahoma corporation in the petition.)

"6. That at the time of filing the suit and at the time of filing this removal, there was and is a diversity of citizenship and residence between the plaintiff and this removing defendant as the plaintiff is a citizen and resident of the State of Oklahoma, and this removing defendant is a citizen and resident of a State other than the State of Oklahoma, and since the plaintiff has elected to proceed against this removing defendant alone, without obtaining service of the defendant, Joe Orabanec \*\*\*." (Emphasis supplied.)

Turning to the allegations of the removal petition first, no where has the defendant, United Cable Television Corporation, stated where its principal place of business is. It has alleged that it is a Delaware corporation and that it is a citizen and resident of a State other than the State of Oklahoma.

A corporation is now "deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business"; thus if the latter differs from the state of incorporation, the corporation has a dual citizenship for the purposes of diversity.

Title 28 U.S.C. §1653 provides:

"Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts."

In *Hendrix v. New Amsterdam Casualty Company*, 390 F.2d 299, 300 (10th CCA, 1968) it was said:

"The jurisdictional allegations of the original petition for removal were defective for failure to specify, beyond the general claim of diversity of citizenship, the principal place of business was in a state other than that of the citizenship of the plaintiff, and because citizenship, as distinguished from residence of the plaintiff, was not expressly alleged. However, by amendment of the petition with leave of court these deficiencies were remedied, and the amendment related back to the time of the filing of the original petition if they were allowable.

"We are not unmindful of numerous district court opinions which question the power to allow such amendments under varying circumstances after the time for initially filing removal petitions has expired. But if applied to circumstances comparable to those of the present case, we believe that their reasoning would be too grudging with reference to the controlling statute, too prone to equate imperfect allegations of jurisdiction with the total absence of jurisdictional foundations, and would tend unduly to exalt form over substance and legal flaw-picking over the orderly disposition of cases properly committed to federal courts. If so applied they also would be out of harmony with prior decisions originating in this jurisdiction. It is notable, too, that where other appellate courts have dealt with comparable problems, power to allow such amendments generally has been recognized, as evidenced by the cases cited in the margin.

"In *Buell v. Sears, Roebuck & Co.*, 321 F.2d 468 (10th Cir. 1963), supra, this court, sua sponte, granted leave for a removal petition to be amended to sustain jurisdiction despite the initial absence of any allegation concerning the principal place of business of the defendant corporation. In a case originating in the District Court for the District of Utah, *Kinney v. Columbia Savings & Loan Assn.*, 191 U.S. 78 (1903), supra, reference to 'residence' rather than 'citizenship' in a removal petition was held to constitute a defect which properly could be amended in the lower court after the period for removal had expired. Without questioning that removal requirements should be strictly applied, the statute authorizing correction of defects by amendment to conform to the true facts should not be dissipated in the process, but should be given practical effect in accordance with its apparent intent. To be unduly restrictive in determining 'defects' amendable under the statute in removal proceedings in principle would preclude the practical correction of similar inadvertences in proceedings originally brought in the federal courts, since the statute concerning amendments pertains to both." (cites to 28 U.S.C. § 1653, quotes hereinabove)

In *Barrow Development Co. v. Fulton Insurance Co.*, 418 F.2d 316 (9th CCA, 1969), the Court said:

"This is an appeal in a civil action brought in the Superior Court of the State of Alaska and removed on the grounds of the diverse citizenship of the parties (28 U.S.C. §1332(a)(1)), to the United States District Court for the District of Alaska. Appellee--defendant below--prompted by our question concerning the sufficiency of the showing of diversity, now seeks to amend the removal petition (28 U.S.C. §1446), pursuant to 28 U.S.C. §1653 which provides that 'defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate court.'. We are firmly convinced that the statute applies to removed actions as well as to those initiated in United States District Courts. *Hernandez v. Watson Bros. Transportation Co.*, 165 F.Supp. 720 (D.C.D.Colo. 1958); *Firemen's Ins. Co. of Newark*,

N.J. v. Robbins Coal Co., 288 F.2d 349 (5th Cir. 1961), cert.den. 368 U.S. 875; Royal Crest Development Corp. v. Republic Ins. Co., 225 F.Supp. 76 (E.D.N.Y.1963). However, since removal must be effected by a defendant within 30 days after receiving a copy of the complaint (28 U.S.C. §1446), the removal petition cannot be thereafter amended to add allegations of substance but solely to clarify 'defective' allegations of jurisdiction previously made. Hernandez v. Watson Bros. Transportation Co., Inc., 165 F.Supp. 720 (D.C.D. Colo.1958). See also, Wright on Federal Courts, §40 p. 123, n. 30.

"The view appears to be pretty generally held by courts and text writers alike that in removed cases involving corporations a direct allegation of citizenship does not satisfy the requirement in the removal statute of a 'short and plain statement of the facts' (28 U.S.C. §1446(a)); instead, the allegation should disclose both the state of incorporation and the location of the corporation's principal place of business. Firemen's Ins. Co. of Newark, N.J. v. Robbins Coal Co., Inc. 288 F.2d 349 (5th Cir. 1961); Hendrix v. New Amsterdam Casualty Co., 390 F.2d 299 (10th Cir. 1968); Hernandez v. Watson Bros. Transportation Co., 165 F.Supp. 720 (D.C.D. Colo. 1958); 1A Moore Fed.Practice 0.168, p. 2303-5, Wright, Fed. Courts §40 p. 123. See also: Evans-Hailey Co. v. Crane Co., 207 F.Supp. 193 at 201 (D.C.M.D.Tenn.1962); Bradford v. Mitchell Bros. Truck Lines, 217 F.Supp. 816, 817 (D.C.W.D.Mo.1965); F & L Drug Corp. v. American Central Ins. Co., 200 F.Supp. 718 (D.C.D.Conn.1961); Yarbrough v. Blake, 212 F.Supp. 133, 137 (D.C.W.D.Ark. 1962)."

The Court went on to say:

"One line of decision, typified by district court cases such as Evans-Hailey Co. v. Crane Co., 207 F.Supp. 193, and F & L Drug Corp. v. American Central Ins. Co., 200 F.Supp. 718, regards such allegations as legal nullities and hence not susceptible to amendment.

"The conclusion is rested upon numerous grounds, the principal one, common to most cases, being that 'removal statutes are to be strictly construed against removal'. Evans-Hailey Co. v. Crane Co., 207 F.Supp. 193, 198. See also: F & L Drug Corp. v. American Central Ins. Co., 200 F.Supp. 718, 723 c.Hn. 708).

"The other line of decision, which it is interesting to note, is the one uniformly followed by appellate courts, c.c. Hendrix v. New Amsterdam Casualty Co., 390 F.2d 299 (10th Cir. 1968), treats such allegations as defective in form but not so lacking in substance as to prevent their amendment. We believe the latter view is the correct one, for a direct allegation of a corporation's citizenship should be construed in the light of 28 U.S.C. §1332, and when so considered the instant allegation is at worst ambiguous; nor do we believe this view violates the policy requiring strict construction of the statutes conferring diversity jurisdiction: 'To be observant of these restrictions is not to indulge in formalism or sterile technicality \*\*\*.' Buell v. Sears Roebuck & Co., 321 F.2d 468 470 (10th Cir.1963). \*\*\* Our conclusion being that the allegations are merely defective, the amendment is allowed."

See also Handy v. Uniroyal, Inc., 298 F.Supp. 301 (USDC Del. 1969).

The Court notes that nowhere in the pleadings has the removing defendant alleged the principal place of business of the defendant.

The Court additionally notes that the defendant has never moved to amend the Petition for Removal. The Court is aware that the Court can allow such an amendment sua sponte, but this Court does not know, and evidently the defendant is the only one that does know and does not want to reveal the principal place of business of the defendant corporation.

For this reason, the Court finds that the Motion to Remand should be sustained.

The second ground raised by the plaintiff for remand is that the defendant, Joe Orabanec, the resident defendant, has now been served with summons. In his brief in support of Remand the plaintiff shows that on August 13, 1976, Joe Orabanec was served with summons.

In Sands v. Geller, 321 F.Supp. 559 (USDC SD NY 1971) it was said:

"A third basic issue is also raised by plaintiff's motion to remand. Webb was not served with process prior to the removal proceeding. Diversity therefore existed at the time the petition to remove was filed. In Salem Trust Co. v. Manufacturers' Finance Co., 264 U.S. 182 (1924), the Supreme Court said, '[t]he right of removal depends upon the case disclosed by the pleadings when the petition therefore is filed.' However, Pullman Co. v. Jenkins, 305 U.S. 534, 539 (1939) held that where all the parties named in the pleadings were not citizens of different states, diversity jurisdiction was not created merely by the omission to serve the resident defendant prior to the removal petition.

"Since Pullman, however, the removal statute has been amended to say that an action 'shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which the action is brought.' 28 U.S.C. §1441(b). Barron & Holtzoff focuses on the change in the statutory language and says, "[t]he implication seems clear that there can be removal where the resident defendant has not been served.' 1 Barron & Holtzoff, Federal Practice and Procedure, §103, n. 31 (Supp.1970). Several cases

follow this line of reasoning. E.g., Duff v. Aetna Casualty & Surety Co., 287 F.Supp. 138 (N.D.Okl. 1968); Robertson v. Nye, 275 F.Supp. 497 (W.D.Okl. 1967). But see contra, Clarence E. Morris, Inc. v. Vitek, 412 F.2d 1174, 1176 (9th Cir. 1969); Wolsum v. J. W. Bateson Co., 182 F.Supp. 879 (W.D.Mo.1960).

"Professor Moore takes the position that failure to serve a resident defendant does not permit the non-resident defendant to remove because 'one cannot ignore the practical reality that simultaneous service upon multiple defendants will not occur.' 1A Moore, Federal Practice, ¶0.168 [3.-2] at 1174 (2d ed. 1965)."

In Moore, Federal Practice, Volume 1A, ¶0.168[3.-2] at page 452 it is stated:

"But where a nonresident defendant is served prior to removal, or jurisdiction is obtained over him subsequent to removal, the effect thereof upon removal should be considered upon a motion to remand."

In Clarence E. Morris, Inc. v. Vitek, 412 F.1d 1174 (9th CCA, 1969) it was said:

"The second ground for the District Court's decision that removal jurisdiction existed was that Vitek could be ignored because he was an unserved, nonresident defendant. The ruling is contrary to Pullman Co. v. Jenkins (1939) 305 U.S. 534. Pullman states two rules: (1) A nonresident defendant cannot remove a 'non-separable' action is the citizenship of any codefendant, joined by the plaintiff in good faith, destroys complete diversity, regardless of service or nonservice upon the codefendant; (2) a nonresident defendant can remove a 'nonseparable] action without joining in his petition unserved codefendants whose citizenship would not destroy diversity. Whenever federal jurisdiction in a removal case depends upon complete diversity, the existence of diversity is determined from the fact of citizenship of the parties named and not from the fact of service."

In footnote one to this statement the following language is found:

"Occasional holdings that unserved codefendants can be ignored in deciding removal petitions stem from the erroneous assumption that Pullman turned on a distinction between unserved nonresident defendants and unserved resident defendants, rather than upon want of diversity, and the further misassumption that 28 U.S.C. §1441(b), by implication, expanded removal jurisdiction to permit removal, despite want of diversity, if a resident defendant whose presence would defeat diversity had not been served. (citing cases.)"

Based on all of the above, the Court finds that the requisite diversity jurisdiction is not present in the instant case and the cause of action and complaint should be remanded to the District Court of Tulsa County, Oklahoma.

IT IS, THEREFORE, ORDERED that the Motion to Remand (denominated by plaintiff in the file as Plaintiff's Answer to Defendant's Petition for Removal) be and the same is hereby sustained and this cause of action and complaint are hereby remanded to the District Court of Tulsa County, Oklahoma.

ENTERED this 17<sup>th</sup> day of January, 1977.

*Allen E. Burrow*

---

CHIEF UNITED STATES DISTRICT JUDGE

FILED

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

JAN 17 1977

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

CIVIL ACTION FILE NO. 75-C-19-C

VERNARD W. HULSEY,

Plaintiff,

vs.

INLAND STEEL COMPANY,

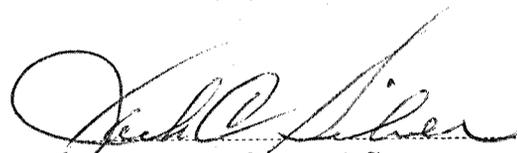
Defendant.

JUDGMENT

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

It is Ordered and Adjudged that the plaintiff, Vernard W. Hulsey, recover judgment from the defendant, Inland Steel Company, in the amount of \$300,000.00, and that the plaintiff be awarded its costs of action.

Dated at Tulsa, Oklahoma, this 17th day of January, 19 77.

  
Clerk of Court

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

OLIN D. SMITH, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FORD MOTOR COMPANY, a foreign )  
 corporation; and YELLOW FREIGHT )  
 SYSTEM, INC., a foreign )  
 corporation, )  
 )  
 Defendants. )

No. 76-C-153-B ✓

JAN 14 1977 U

Jack S. Platt, Clerk  
U. S. DISTRICT COURT

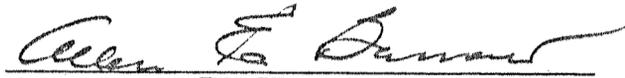
JOURNAL ENTRY OF JUDGMENT

This cause came on for trial in its regular order on this 14th day of January, 1977, jury having been waived by Olin D. Smith and Ford Motor Company, and plaintiff appeared by his attorney, Dale F. McDaniel, and the defendant, Ford Motor Company, appeared by their attorney, John R. Woodard, III. The Court, after having heard and considered the testimony of witnesses sworn and examined in open court, and being fully advised in the premises finds that the Court has jurisdiction of the parties hereto and the subject matter hereof. The Court further finds that this is an action grounded in manufacturer's products liability and this Court has jurisdiction of the subject matter hereof.

The Court, after hearing evidence and being advised in the premises, finds the issues in favor of the plaintiff as against the defendant, Ford Motor Company, for the sum of \$40,000.00. The Court finds that the plaintiff, Olin D. Smith, is entitled to have and recover a judgment of and from the defendant, Ford Motor Company, for the sum of \$40,000.00.

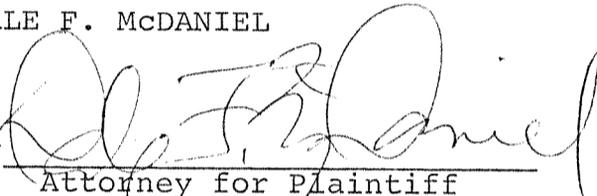
NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that the Court has jurisdiction of the parties hereto and of the subject matter hereof.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, Olin D. Smith, have and recover a judgment of and from the defendant, Ford Motor Company, for the sum of \$40,000.00 for all of which let execution issue.

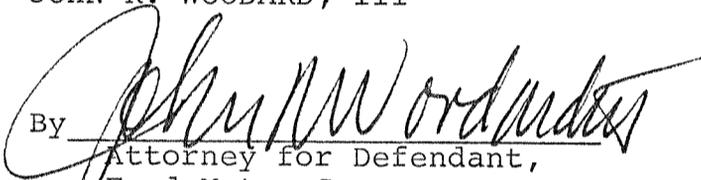
  
JUDGE

APPROVED:

DALE F. MCDANIEL

By   
Attorney for Plaintiff

JOHN R. WOODARD, III

By   
Attorney for Defendant,  
Ford Motor Company

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

BILL WEEMS, as husband and )  
next friend of CLYDA LYNN )  
WEEMS and CLYDA ANN WEEMS, )  
an individual, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
G. D. SEARLE & COMPANY, )  
 )  
Defendants. )

No. 76-C-411 (B)

**FILED**

JAN 12 1977

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

ORDER OF DISMISSAL

ON this 12<sup>th</sup> day of December, 1976, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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



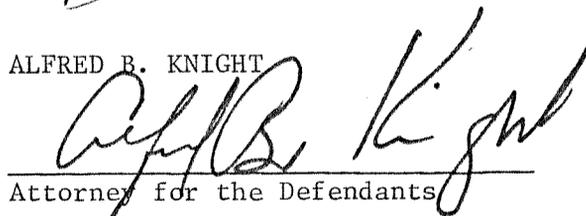
JUDGE, DISTRICT COURT OF THE UNITED STATES  
NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

JON B. WALLIS

  
Attorney for the Plaintiffs

ALFRED B. KNIGHT

  
Attorney for the Defendants

FILED

JAN 11 1977

Jack S. Stone, Clerk  
U. S. DISTRICT COURT *JS*

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

SHARON KAY DANIELS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 76-C-457-B ✓
	)	
ERNEST GENE BOYCE,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL

ON this 11<sup>th</sup> day of January, 1977, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

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

*Allen E. Jensen*

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

APPROVAL:

LARRY A. GULLEKSON

*Larry A. Gullekson*  
Attorney for the Plaintiff

ALFRED B. KNIGHT

*Alfred B. Knight*  
Attorney for the Defendant

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

W. A. KLINGER, INC., a corporation, )  
)  
Plaintiff, )  
)  
-vs- )  
)  
C. F. BRAUN & CO., a corporation, )  
and NIPAK, INC., a corporation, )  
)  
Defendants. )

Case No. 76-C-261-B ✓

FILED

JAN 11 1977

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

DISMISSAL WITH PREJUDICE

Comes now W. A. Klinger, Inc., the Plaintiff herein, C. F. Braun & Co., and Nipak, Inc., the Defendants herein, and in consideration of the Settlement Agreement previously filed of record and request that this Honorable Court dismiss with prejudice the above styled and numbered case, *and cause of action & complaint* henceforth, forever quieting the claims of all parties to this action.

Terry P. Malloy  
Terry P. Malloy  
SPRADLING, STAGNER, ALPERN & FRIOT  
801 Philtower Bldg.  
Tulsa, Oklahoma  
Attorney for Plaintiff, W. A. Klinger, Inc.

Richard B. Noulles  
Richard B. Noulles  
GABLE, GOTWALS, RUBIN, FOX & BAKFR  
2010 Fourth National Bank Bldg.  
Tulsa, Oklahoma  
Attorney for Defendant C. F. Braun & Co.

R. Michael Carter  
R. Michael Carter, atty for Def. Nipak, Inc.  
HOLLIMAN, LANGHOLZ, RUNNELS & DORW  
Suite 700 Holarud Bldg., Tulsa, Okla.

WHEREFORE, upon a review of the application recited above, it is hereby ordered, adjudged, and decreed that the above styled and numbered case, *and complaint & cause of action* be dismissed with prejudice.

Dated this 11<sup>th</sup> day of January, 1977, 1976.

Allen E. Bonner  
Chief United States District Judge



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

MFA INSURANCE COMPANY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TIMOTHY BLACKBURN and )  
 O. W. JOHNSTON, )  
 )  
 Defendants. )

No. 75-C-562-B

FILED

JAN 11 1977

Jack C. Gilmer, Clerk  
U. S. DISTRICT COURT *JK*

ORDER OF DISMISSAL WITHOUT PREJUDICE

This matter coming on for hearing before the Court on this 11<sup>th</sup> day of January, 1977, upon the application of the plaintiff for order of dismissal without prejudice in this cause, plaintiff appearing by counsel, Dale F. McDaniel, and the defendant appearing by counsel, Tom L. Armstrong, and the Court being advised in the premises and having examined the application of the plaintiff herein, finds that the case should be dismissed without prejudice and that plaintiff's application should be granted.

BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that this cause be and the same is hereby dismissed without prejudice to future actions.

*Allen E. Bennett*  
\_\_\_\_\_  
JUDGE

APPROVED:  
*Dale F. McDaniel*  
\_\_\_\_\_  
Dale F. McDaniel  
Attorney for Plaintiff

*Tom L. Armstrong*  
\_\_\_\_\_  
Tom L. Armstrong  
Attorney for Defendant,  
O. W. Johnston

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

FILED

JAN 11 1977

BILL H. BARRY, )  
Plaintiff, )  
vs. )  
KEITH WALDEN, )  
Defendant. )

Jack G. Singer, Clerk  
U. S. DISTRICT COURT *JK*

NO. 75-C-549 (B) ✓

DISMISSAL WITH PREJUDICE

This cause came on for consideration upon the application of the plaintiff herein and it appearing that it is the plaintiff's desire that the above cause of action be dismissed as to the defendant, the court being otherwise fully advised in the premises, it is

ORDERED, ADJUDGED AND DECREED that this <sup>cause of</sup> <sup>and complaint</sup> action <sup>be,</sup> and the same hereby <sup>are</sup> is, dismissed with prejudice at plaintiff's costs. *Entered January 11, 1977*

*Cecilia E. Benbow*  
UNITED STATES DISTRICT JUDGE

APPROVED:

~~*[Signature]*~~  
Louis Levy  
Attorney for Plaintiff

*Tom W. Tannehill*  
Tom W. Tannehill  
Attorney for Plaintiff

*W. Robert Wilson*  
W. Robert Wilson  
Attorney for Defendant

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

W. A. KLINGER, INC., a corporation, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 C. F. BRAUN & CO., a corporation, )  
 and NIPAK, INC., a corporation, )  
 )  
 Defendants. )

Case No. 76-C-261-B ✓

FILED

JAN 11 1977

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

DISMISSAL WITH PREJUDICE

Comes now W. A. Klinger, Inc., the Plaintiff herein, C. F. Braun & Co., and Nipak, Inc., the Defendants herein, and in consideration of the Settlement Agreement previously filed of record and request that this Honorable Court dismiss with prejudice the above styled and numbered case, *and cause of action & complaint* henceforth, forever quieting the claims of all parties to this action.

*Terry P. Malloy*  
\_\_\_\_\_  
Terry P. Malloy  
SPRADLING, STAGNER, ALPERN & FRIOT  
801 Philtower Bldg.  
Tulsa, Oklahoma  
Attorney for Plaintiff, W. A. Klinger, Inc.

*Richard B. Noulles*  
\_\_\_\_\_  
Richard B. Noulles  
GABLE, GOTWALS, RUBIN, FOX & BAKER  
2010 Fourth National Bank Bldg.  
Tulsa, Oklahoma  
Attorney for Defendant C. F. Braun & Co.

*R. Michael Carter*  
\_\_\_\_\_  
R. Michael Carter, atty for Def. Nipak, Inc  
HOLLIMAN, LANGHOLZ, RUNNELS & DORWA  
Suite 700 Holarud Bldg., Tulsa, Okla.

WHEREFORE, upon a review of the application recited above, it is hereby ordered, adjudged, and decreed that the above styled and numbered case, *and complaint & cause of action* be dismissed with prejudice.

Dated this *11th* day of *January*, *1977*, ~~1976~~.

*Cecil E. Benson*  
\_\_\_\_\_  
Chief United States District Judge

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

DALE E. CROWDER, )  
 )  
 ) Petitioner, )  
 )  
 vs. ) No. 76-C-638-C  
 )  
 EDWARD H. LEVI, U.S. )  
 ) Attorney General, )  
 )  
 ) Respondent. )

F I L E D

JAN 11 1977

O R D E R

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

On January 3, 1977, the Court received a letter from Mr. Dale E. Crowder requesting that counsel be appointed in regard to allegations made by Mr. Crowder and filed as Case No. 76-C-638. Pursuant to this request, the Court has carefully considered the information and statement of facts submitted by Mr. Crowder and makes the following determination.

It appears from the record that Mr. Crowder initially attempted to file what he entitled "Petition For The Writ of Habeas Corpus." Said "petition" was not submitted on the proper form, and therefore was not filed. On November 19, 1976, the Court Clerk transmitted the proper forms to Mr. Crowder and by accompanying letter instructed Mr. Crowder in regard to the filing thereof. On December 20, 1976, the Office of the Court Clerk received and filed said forms and docketed them as Case No. 76-C-638. The Court, in an effort to determine whether counsel should be appointed, has carefully reviewed the allegations contained in the material submitted by Mr. Crowder. The Court notes initially that Mr. Crowder has stricken the portion of the form which states that the action is brought pursuant to 28 U.S.C. 2254, and has written "Not Applicable" in response to the inquiries made in the form, including questions in regard to whether he has exhausted state remedies. His only other response

is made in the portion entitled "Supporting facts," under which he states the following:

"I was denied the extradition process guaranteed by the 5th, 6th, & 14th Amendments to the U.S. Constitution. Transported by U.S. Marshal's from Leavenworth, Kansas to Tulsa, Oklahoma, in violation of extradition process and U.S. Bureau of Prisons Policy #7300-13. I have had no counsel thereto. State Counsel assigned December 1, 1976 does not have access to federal Court. Petitioner was lodged in Tulsa County Jail November 8, 1976. Wherefore Petitioner prays the Court will bring him before the Court so that he may further clarify, or that the Court will bar further prosecution."

In regard to Mr. Crowder's contention that he was denied extradition process, the Court finds that Mr. Crowder was transported pursuant to a Writ of Habeas Corpus Ad Prosequendum. The Court has examined the Application for Writ of Habeas Corpus Ad Prosequendum filed In the District Court Within and for Tulsa County, State of Oklahoma, and also the Writ of Habeas Corpus Ad Prosequendum issued pursuant thereto. The Court finds said Writ to be proper on its face. (Copies of same are attached hereto.)

As stated in Lawrence v. Willingham, 373 F.2d 731 (10th Cir. 1967) in regard to a writ of habeas corpus ad prosequendum:

"This writ is 'necessary as a tool for jurisdictional potency.' Carbo v. United States, 364 U.S. 611, 81 S.Ct. 338, 5 L.Ed.2d 329 (1961). The traditional use of the writ has been to bring a defendant in the custody of another sovereign to trial before the court issuing the writ. See Lunsford v. Hudspeth, 126 F.2d 653 (10th Cir. 1942); United States ex rel. Moses v. Kipp, 232 F.2d 147 (7th Cir. 1956)."

In Alston v. United States, 405 F.Supp. 354 (W.D. Va. 1975) petitioner contended that the Virginia court removed petitioner from the State of Maryland without an extradition hearing. The court stated:

"[T]his is answered by stating that petitioner was transferred to the Western District of Virginia from Maryland on a writ of habeas corpus ad prosequendum. This writ is a jurisdictional tool which allows for the

removal of a prisoner to the proper jurisdiction for prosecution and represents no violation of petitioner's constitutional rights. Yodock v. United States, 101 F. Supp. 480 (M.D. Pa. 1951), Rose v. United States, 365 F.Supp. 841 (N.D. Ill. 1973). Furthermore, courts have consistently held that a prisoner has no standing to contest his removal from one state to another when accomplished through a writ of habeas corpus ad prosequendum. Derengowski v. United States Marshal, Minneapolis Office, Minnesota Division, 377 F.2d 223 (8th Cir. 1967), cert. denied 389 U.S. 884, 88 S.Ct. 144, 19 L.Ed.2d 180 (1967); Chunn v. Clerk, 451 F.2d 1005 (5th Cir. 1971)."

In considering whether to dismiss the action filed by Mr. Crowder for failure to state a claim, this Court takes the handwritten, pro se allegations made therein as true. Cooper v. Pate, 378 U.S. 546 (1964). The Court finds, however, that Mr. Crowder has failed to state a cause of action therein, or stated facts that could give rise to a deprivation of Mr. Crowder's constitutional rights.

In Estelle v. Gamble, \_\_\_\_ U.S. \_\_\_\_, No. 75-929 (November 30, 1976) the Supreme Court considered the merits of a civil rights action which the District Court, sua sponte, had dismissed for failure to state a claim upon which relief could be granted. The Supreme Court noted by way of footnote, that the District Court dismissed the complaint simultaneously with granting leave to file it in forma pauperis. The Circuit Court of Appeals reversed the District Court's action. The Supreme Court thereafter held that in regard to complainant's failure to state a claim against certain of the defendants, the District Court determination was proper.

As stated in Applegate v. Waterfront Commission of New York Harbor, 184 F.Supp. 33 (S.D.N.Y. 1960):

"We hold that, where the complaint is insufficient as a matter of law, this Court sitting alone has power to dismiss."

The Court having determined that Mr. Crowder has failed to state facts which could give rise to a cause of action, the Court hereby dismisses the action docketed as Case No. 76-C-638.

It is so Ordered this 11<sup>th</sup> day of January, 1977.

  
\_\_\_\_\_  
H. DALE COOK  
United States District Judge

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

VERNARD W. HULSEY, )  
 )  
Plaintiff )  
 )  
vs )  
 )  
ATCHISON, TOPEKA and SANTA FE )  
RAILWAY COMPANY, A Kansas )  
Corporation; ST. LOUIS-SAN )  
FRANCISCO RAILWAY COMPANY, A )  
Missouri Corporation; and )  
COLORADO FUEL AND IRON, A )  
Wholly Owned Subsidiary of )  
CRANE COMPANY, An Illinois )  
Corporation, )  
 )  
Defendants )

No. 75-C-19-C ✓

FILED

JAN 10 1977 *fmw*

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

ORDER

The Court has before it for consideration a Motion for Summary Judgment filed herein by the defendant, St. Louis-San Francisco Railway Company (hereinafter referred to as Frisco). Frisco asserts, pursuant to Rule 56(b), Federal Rules of Civil Procedure, that based upon the depositions of Vernard W. Hulsey, James E. Ball and Gilbert Camacho, filed in this case, and upon the affidavits of J. R. Wilson and of G. E. Patrick, also filed in this case simultaneously with its motion, that there is no genuine issue as to any material fact creating a legal cause of action against Frisco, and further asserts that Frisco is entitled to judgment as a matter of law. Plaintiff has filed his responsive brief to Frisco's motion, but in no way disputes the facts upon which Frisco relies, nor has plaintiff filed any counter affidavits.

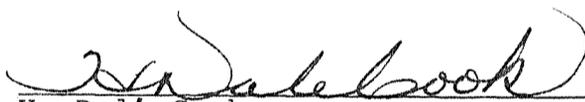
The depositions and affidavits in this case conclusively show that Frisco was neither the owner of the railroad car in issue, nor was it the initial or originating carrier in the transportation of this carload of steel to Tuloma Stevedoring, Inc., in Catoosa, Oklahoma, where plaintiff's accident occurred. Frisco was merely a connecting carrier in the movement, being the last railroad to accept the railroad car from the other carriers in its route to the consignee. The law is clear that a railroad which merely transports a loaded freight car

along its route to the ultimate carrier does not have the burden to discover and warn of hidden or latent defects in the railroad car which might cause injury to employees of a consignee, who might be later working in or around the car. CASELLA VS NORFOLK & WESTERN RY. CO., 4th Cir., 381 F.2d 473 (1967); SMITH VS LOUISVILLE & NASHVILLE R. CO., D.C. Ohio, 267 F.Supp. 716 (1966); and AVERY VS NORFOLD & WESTERN RY. CO., D.C. Ohio, 52 F.R.D. 356 (1971).

Plaintiff's entire claim against Frisco is based upon the fact that Frisco did not warn plaintiff of the hole in the floor of the railroad car, which caused him to fall. But the undisputed proof clearly shows that the defect was latent in nature and not such as could have been discovered by Frisco by a reasonable inspection, which was all Frisco was required to do.

The Court finds that under the proof and under the authorities, there is no showing in this case of the violation of any duty owed to plaintiff by Frisco and that such defendant is entitled to judgment. The Motion of the defendant, St. Louis-San Francisco Railway Company, for Summary Judgment is hereby sustained, and plaintiff's cause of action against said defendant is hereby dismissed.

IT IS SO ORDERED on this the 10<sup>th</sup> day of January, 1977.

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

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

FRED RIZK,

Plaintiff,

vs.

THE HANSON DEVELOPMENT COMPANY,  
THORNTON ASSOCIATES, and  
CROSSTOWN ASSOCIATES,

Defendants and  
Third Party Plaintiffs,

vs.

MAURICE FERRIS,

Third Party Defendant.

No. 74-C-142-C

*filed 1-10-77*

O R D E R

It appearing to the satisfaction of the Court that all matters and controversies have been compromised by and between the parties hereto as evidenced by the signatures of their attorneys of record pursuant to the Stipulation filed herein on the 10th day of January, 1977.

IT IS, THEREFORE, ORDERED that the plaintiff's action be, and the same is hereby dismissed with prejudice to a further refiling and,

IT IS FURTHER ORDERED that the action by Counterclaim and Third Party Complaint of the Defendants and Third Party Plaintiffs, THE HANSON DEVELOPMENT COMPANY, THORNTON ASSOCIATES, and CROSSTOWN ASSOCIATES, shall be and the same is hereby dismissed with prejudice to a further refiling and,

IT IS FURTHER ORDERED that each party to this action shall bear their own costs.

SO ORDERED this 10th day of January, 1977.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 76-C-336-<sup>c</sup>  
 )  
vs. ) This action applies only to  
 ) the Overriding Royalty Inter-  
9.70 Acres of Land, More or ) rest in the Oil and Gas  
Less, Situate in Osage County, ) Leasehold Interest in the  
State of Oklahoma, and Ray L. ) estate taken in:  
Constant, et al., and Unknown )  
Owners, ) Tracts Nos. 422ME-1 and  
 ) 422ME-2  
 )  
 ) (Included in D.T. filed in  
Defendants. ) Master File #401-2) JAN 10 1977

J U D G M E N T

1.

Now, on this 7<sup>th</sup> day of January, 1977, this matter comes on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

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

3.

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

4.

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

described in said Complaint. Pursuant thereto, on June 24, 1976, the United States of America filed its Declaration of Taking of a certain estate in such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of a certain estate in subject property a certain sum of money and all of this deposit has been disbursed, as set out below in paragraph 11.

7.

On the date of taking in this action, the owners of the estate taken in subject property were the defendants whose names are shown below in paragraph 11. Such named defendants are the only persons asserting any interest in the estate taken in such tracts. All other persons having either disclaimed or defaulted, such named defendants are entitled to receive the just compensation awarded by this judgment.

8.

The owners of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estate condemned in subject property is in the amount shown as compensation in paragraph 11 below, and such Stipulation should be approved.

9.

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 property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and all defendants herein and all other

persons interested in such estate are forever barred from asserting any claim to such property.

10.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owners of the estate condemned herein in subject property were the defendants whose names appear below in paragraph 11 and the right to receive the just compensation for the estate taken herein in this property is vested in the parties so named.

11.

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

TRACTS NOS. 422ME-1 and 422ME-2

OWNERS:

Ray L. Constant and  
Nadine B. Constant

<u>Award</u> of just compensation pursuant to Stipulation -----	\$11.00	\$11.00
<u>Deposited</u> as estimated compensation -----	<u>\$11.00</u>	
Disbursed to owners -----		<u>\$11.00</u>

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney



he "was not responsible for what took place in regard to this charge" because there was another who had forced him to do the acts at gunpoint who could not be found. The Court refused to accept the plea, entered a plea of not guilty, and set July 22, 1974, as the trial date.

June 19, 1974, the defendant completed and filed of record a petition to enter plea of guilty, which included a certificate of counsel completed by defendant's attorney. The defendant answered "No" to each of the following questions on that petition:

- "30. Has any plea agreement been made with anyone which causes you to plead GUILTY?  
If so, exactly what is that agreement as you understand it?  
What are your reasons for making that agreement?
- "31. Has any promise been made by anyone which causes you to plead GUILTY, aside from the promises, if any, set out in your answer to question 30?
- "32. Has anyone suggested to you that you will receive a lighter sentence if you plead GUILTY?  
If so, who made the suggestion and exactly what was suggested?
- "33. Is it your understanding that the Judge has made any suggestion as to what the actual sentence will be?  
If so, what is your understanding of what the Judge has said?"

On June 26, 1974, defendant in open Court changed his plea to guilty. Before accepting the plea, the Court carefully reviewed the petition to enter plea filed June 19, 1974, with defendant and his counsel. The following is quoted from pages 4 and 5 of the transcript:

"THE COURT: Are you telling me now that although your attorney did go through them [the questions on the petition] with you, he did not instruct you on how or what to answer?

"DEFENDANT: He did not. He said, 'Be sure to answer them truthfully.'"

From the actual plea to the charges, as reflected in the transcript at pages 11-13, the following is quoted:

"THE COURT: All right. Now, Mr. Smith, do you make this plea of guilty because of any agreement or bargain that has been promised to you by your attorney or any other person based upon discussions or bargains with the Government's prosecuting attorney?

"DEFENDANT: No, sir.

"THE COURT: Now, I ask both counsel for the Government and counsel for the defense to disclose any agreement that has been made between you, if any, or with anyone, as to any recommendation or possible sentence the defendant might expect will be imposed or any charges that might be dismissed as a result of the plea, or if there not be any, indicate on the record that no agreement has been made.

"MR. GRESHAM: No agreement has been made.

"MR. BRYANT: No agreement, Your Honor.

"THE COURT: Mr. Smith, do you understand that counsel has stated there has been no agreement at all?

"DEFENDANT: I understand.

"THE COURT: Do you understand, also, that the Court has not participated, in any way, in any discussion regarding plea bargaining?

"DEFENDANT: I understand.

"THE COURT: And the Court is not bound by any plea agreement or to follow any recommended sentence?

"DEFENDANT: Yes, I do.

"THE COURT: The Court may impose a lesser or greater sentence, regardless of any recommendation, so long as the sentence does not exceed the maximum or is not less than the minimum that I have previously explained to you today. Do you understand that?

"DEFENDANT: Yes, I do.

"THE COURT: Understanding that any plea bargaining reached or that could have been reached, which is declined here stating there has been none, is merely a recommendation and not binding on the Court, do you wish to plead guilty or not guilty?

"DEFENDANT: Guilty, sir.

"THE COURT: Do you enter your plea of guilty voluntarily, that is, of your own choice, free of any threat or promise from any person?

"DEFENDANT: It is. Yes."

Later in the proceedings the following occurred as quoted from pages 17 and 18 of the transcript:

"THE COURT: Well, the other day when you started to first indicate you would like to enter a plea of guilty and you started giving reasons why you had doubt, on whether you did it, and indicated you might have been forced into it by some third party or some other party. You are now telling the Court there was no other party involved?

"DEFENDANT: Yes. My attorney, I think, told you why I did that. I hope he did.

"THE COURT: No, he didn't, but I want you to tell me. In other words, you are not saying today that anyone else was involved in it?

"DEFENDANT: No.

"THE COURT: This was your own idea that you concocted?

"DEFENDANT: Well, my family was all here.

"THE COURT: I thought you might find it embarrassing, and that's the reason you did so?

"DEFENDANT: Yes, it was."

At the close of these proceedings, the Court found the defendant guilty and sentenced him to the maximum term on each count and requested a study and report pursuant to 18 U.S.C. § 4208(b).

Definitive sentence was imposed November 19, 1975. The Court had carefully reviewed the report, the circumstances of the crime, and the sentence recommendation in the § 4208(b) report from the Federal Penitentiary at Leavenworth, Kansas, and informed all assembled prior to any statement by the prosecuting attorney that the Court did not agree with the recommendation from Leavenworth and thought the recommended sentence was too lenient. The ground asserted by the Defendant in his § 2255 motion is that the prosecuting attorney argued at sentence for the maximum penalty under the law in violation of a plea agreement, and his allegation is not supported by the record. The only statement made by the prosecutor appears at pages 15 and 16 of the transcript, and is as follows:

"THE COURT: . . . Mr. Bryant, in view of the report you have heard, what do you have to say?

"MR. BRYANT: Your Honor, I was amazed at the report of the prison authorities. Mr. Smith, while all statements are a highly intelligent man, this act was a cold, calculated act performed by him after much thought. It's obvious. I have yet to hear anyone speak on behalf of the victim. He, too, was a family man. The anguish that his children went through and his wife and father, you see. These are things that I think sometimes we lose sight of in attempting to think of what is an appropriate sentence, but I think the victim also should be considered; what he went through being kidnapped and what his family and his children and his father went through. This type of crime is one of the most heinous crimes that's ever been before this Court. Had Mr. Helmerich not been of a strong character and body -- suppose he had had a heart attack? Suppose his father had had a heart attack? These are things that could have happened had they not been of strong stock, but I think they should be considered. They were victimized by this crime. How many other people might be victimized by such a crime if we get reports like this and we accept them without further study? I think that Your Honor is entirely correct when you say similar types of crimes have received sentences from Your Honor which were not in line with that recommendation and I would ask that Your Honor do the same in this case."

As clearly appears, the United States Attorney made no sentence recommendation, but left it to the Court's judgment. The Court then asked the Defendant and his counsel if they had anything further to say, which they did not, and sentence was imposed on Count One to 15 years imprisonment. The sentence on Count Two was to 5 years imprisonment, to run consecutively

to the sentence on Count One, and a 90-day progress report was requested. The Defense Counsel was permitted to approach the Bench and asked if the United States Attorney, Mr. Graham, who was not present at sentencing because he was ill with the flu, had talked to the Court, to which the Court answered, "No."

Pursuant to request of defense counsel and the United States Attorney for a conference with the Court, one was granted January 16, 1975, and that discussion was made of record on January 17, 1976, and the transcript sealed. For the first time at this conference the Court became aware that there had been bargaining with regard to Defendant's crime. The bargaining took place between the State District Attorney, Chief of Police, F.B.I. officers, Assistant U. S. Attorney Hubert Bryant, and defense counsel, in the county courthouse, with the Defendant available in custody, and the United States Attorney on the phone. It was the agreement that the State would not file charges for kidnapping and extortion and that the Federal Government would file appropriate charges. The extortion charge in this Federal Court was the main thrust of the agreement, and for this the Defendant revealed where \$700,000 could be recovered. The United States Attorney further agreed that should there be a plea to the Federal charge, that he would support and not oppose a sentence recommendation of 5 years on the Federal charge, but it was to be made perfectly clear to the Defendant, which his counsel declares was done, that the Federal Court would probably not grant a pre-sentence conference to the United States Attorney and defense counsel, and that even if such a conference were arranged, the attorneys' requests would be only a recommendation and the Court would not be bound by any recommendations.

Thereafter, on February 19, 1975, a Rule 35 motion was filed by the Defendant, and hearing with Defendant present was held thereon March 14, 1975; the Court also having the benefit of the 90-day report requested at definitive sentencing. At this hearing, the United States Attorney stated of record that if the Court reduced the sentence to 5 years imprisonment, the Government would not object. Defendant Smith, at that hearing, page 21 of the transcript, made reference to an agreement made by his attorney, and the Court stated to the Defendant that if there had been a misunderstanding, if the Defendant thought there had been an agreement, it should

be brought out at the modification hearing, and the Court made fully aware of it. The Defendant given every opportunity said no more, and the Court reminded him that he had been advised by the Court at the plea that if there were an agreement the Court was not bound by it and had not been a party to it, which the Defendant admitted he had fully understood. Thereafter, the Court in conformance with the duty and responsibility to see that each sentence imposed serves as a deterrent not only to the defendant charged, but to others who might commit such infractions of the law, left the 20-year sentence in full force and effect as originally imposed, but did grant the modification motion to the extent of making the Defendant, on the imprisonment periods of the sentences in Counts One and Two, eligible for parole in the parole board's discretion pursuant to 18 U.S.C. § 4208(a)(2). Further, the Defendant was advised that the only reason the maximum sentence was not imposed was due to the fact that the victim had not been harmed or injured.

This Court has cautiously and carefully considered in relation to this proceeding the holding of the United States Supreme Court in Santobello v. New York, 404 U. S. 257 (1971), and finds that in the circumstances before the Court the interests of justice do not require the granting of the § 2255 motion under consideration, and there is no necessity for any further evidentiary hearing. The Defendant in his petition to enter plea of guilty, and in open Court, stated that there had been no plea bargaining. A guilty plea is a solemn act which should not be disregarded because of belated misgivings or dissatisfaction with the sentence. The Defendant shall not be allowed by this Court to convert his negotiations to be charged with a Federal crime rather than a State crime into what he now labels a plea agreement. The Defendant's allegation is without merit as supported by the record and transcripts. The Court's sentence was totally and wholly the Court's own decision as to what the proper sentence should be, and the § 2255 motion of Freddie D. Smith should be overruled.

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Freddie D. Smith be and it is hereby overruled, denied, and the case is dismissed.

Dated this 7<sup>th</sup> day of January, 1977, at Tulsa, Oklahoma.

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



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 7 1977

United States of America, )  
)  
Plaintiff, )  
) CIVIL ACTION NO. 74-C-68  
vs. )  
) Tract No. 507ME  
)  
160.00 Acres of Land, More or )  
Less, Situate in Osage County, ) (Gas Leasehold Interest  
State of Oklahoma, and Dyco ) Only)  
Petroleum Corporation, and )  
Unknown Owners, )  
) (Included in D.T. filed in  
Defendants. ) Master File #401-1)

United States of America, )  
)  
Plaintiff, )  
) CIVIL ACTION NO. 74-C-71  
vs. )  
) Tracts Nos 508ME-1,  
125.81 Acres of Land, More or ) 508ME-2 and 508ME-3  
Less, Situate in Osage County, )  
State of Oklahoma, and Dyco ) (Gas Leasehold Interest  
Petroleum Corporation, et al., ) Only)  
and Unknown Owners, )  
) (Included in D.T. filed  
Defendants. ) in Master File #401-1)

J U D G M E N T

1.

NOW, on this 7<sup>th</sup> day of January, 1977, this matter comes on for disposition on application of Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in these actions and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estates condemned in the tracts listed in the caption hereof, as such estates and tracts are described in the Complaints filed in these actions.

3.

The Court has jurisdiction of the parties and subject matter of these actions.

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 these actions who are interested in subject property.

5.

The Acts of Congress set out in paragraph 2 of the Complaints filed herein give the United States of America the right, power, and authority to condemn for public use the property described in said Complaints. Pursuant thereto, on January 29, 1974, the United States of America filed its Declaration of Taking of certain estates in such described property, and title to the described estates in such property should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

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

7.

On the date of taking in this action, the owner of the estates taken in subject property was the defendant whose name is shown below in paragraph 12. Such named defendant is the only person asserting any interest in the estates taken in such tracts. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estates condemned in subject property is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for the estates taken in subject property and the amount fixed by the Stipulation As To Just Compensation; and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out below in paragraph 12.

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 property particularly described in the Complaints filed herein; and such property, to the extent of the estates described in such Complaints, is condemned, and title to such described estates is vested in the United States of America as of January 29, 1974, and all defendants herein and all other persons interested in such estates are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owner of the estates condemned herein in subject property was the defendant whose name appears below in paragraph 12 and the right to receive the just compensation for the estates taken herein in this property is vested in the party so named.

12.

It is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation, described in paragraph 8 above, hereby is confirmed; and the sum therein fixed is adopted as the award of just compensation for the estates condemned in subject property as follows:

TRACTS NOS. 507ME, 508ME-1, 508ME-2,  
and 508ME-3, Combined

---

OWNER: Dyco Petroleum Corporation

Award of just compensation pursuant to Stipulation -----	\$73,192.00	\$73,192.00
Deposited as estimated compensation --	\$ 1,430.00	
(In 74-C-68 - \$800.00 In 74-C-71 - \$630.00)		
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$73,192.00
Deposit deficiency -----	\$71,762.00	

---

13.

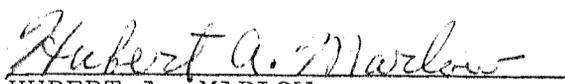
It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in Civil Action No. 74-C-68, to the credit of subject property, the deficiency sum of \$71,762.00, and the Clerk of this Court then shall disburse the deposits for subject tracts as follows:

From Civil Action No. 74-C-68 the sum of \$72,562.00 and from Civil Action No. 74-C-71 the sum of \$630.00, making a total of \$73,192.00, to Dyco Petroleum Corporation.



UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

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

FILED

JAN 6 1977

TULSA CHROME )

and )

INTERNATIONAL UNION OF OPERATION )  
ENGINEERS, LOCAL NO. 948, AFL-CIO )

77-C-4-B-*SR*

Case No. 16-CA-6764

O R D E R

NOW, on this 5th day of January, 1977, this matter comes on, on the Application of the National Labor Relations Board, through local counsel and Resident Officer, for an Order of the Court requiring the production of a necessary witness at a hearing in this cause on January 12, 1977.

The Court, having read the Application filed herein, having <sup>considered</sup> heard the statement of counsel in support thereof, finds that said Application should be allowed.

IT IS THEREFORE ORDERED that the United States Marshal for the Northern District of Oklahoma shall serve upon Jessie B. Davis, an Oklahoma State prisoner at McAlester, Oklahoma, a subpoena ad testificandum supplied him by the movant herein, and that the Marshal shall transport said witness to Tulsa, Oklahoma for a hearing in this cause January 12, 1977, remain with him during his attendance and return him to the proper authorities at the conclusion of the hearing.

IT IS FURTHER ORDERED that the Marshal serve a copy of this Order on the Warden, Oklahoma State Penitentiary,

*Allen E. Barron*  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America, )  
 )  
Plaintiff, ) CIVIL ACTION NO. 76-C-340-C  
 )  
vs. ) This action applies only to  
 ) the Oil and Gas Leasehold  
6.90 Acres of Land, More or ) Interest in the estate  
Less, Situate in Osage County, ) taken in:  
State of Oklahoma, and Rickel- )  
son Oil and Gas Company, et ) Tract No. 604ME  
al., and Unknown Owners, )  
 ) (Included In. D. T. filed in  
Defendants. ) Master File #401-2)

FILED

JAN 6 1977

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

J U D G M E N T

1.

Now, on this 6<sup>th</sup> day of January, 1977, this matter comes on for disposition on application of Plaintiff, United States of America, for entry of judgment on stipulations agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

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

3.

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

4.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause who are interested in subject 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 property described in said Complaint. Pursuant thereto, on June 24, 1976,

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

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of a certain estate in subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 11.

7.

On the date of taking in this action, the owners of the estate taken in subject property were the defendants whose names are shown below in paragraph 11. Such named defendants are the only persons asserting any interest in the estate taken in such tract. All other persons having either disclaimed or defaulted, such named defendants are entitled to receive the just compensation awarded by this judgment.

8.

One of the owners of the subject property, to-wit: Rickelson Oil and Gas Company, and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estate condemned in subject property is in the amount shown as compensation in paragraph 11 below, and such Stipulation should be approved.

Phillips Petroleum Company, the remaining owner of some interest in the subject property, has executed and filed herein on October 1, 1976, a Stipulation, whereby it agrees that all compensation to be paid for the taking of the subject property may be paid in its entirety to Rickelson Oil and Gas Company, and such Stipulation should be approved.

9.

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 property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

10.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owners of the estate condemned herein in subject property were the defendants whose names appear below in paragraph 11 and the right to receive the just compensation for the estate taken herein in this property is vested in the parties so named, in the manner as shown in such paragraph.

11.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation and the Stipulation regarding allocation of the subject award, described in paragraph 8 above, hereby are confirmed; and the sum therein fixed is adopted as the award of just compensation for the estate condemned in subject property, and the award is allocated, as follows:

TRACT NO. 604ME

OWNERS:

1. Of all interests except the leasehold interest in a gas purchase contract covering subject tracts.

Rickelson Oil and Gas Company

2. Leasehold interest in a gas purchase contract covering subject tracts.

Phillips Petroleum Company

Note: this owner has stipulated that the entire award may be paid to Rickelson Oil and Gas Company.

Award of just compensation pursuant to Stipulation -----	\$122.00	\$122.00
Deposited as estimated compensation --	<u>\$122.00</u>	
Disbursed to owners -----		<u>None</u>
Balance due to owners -----		\$122.00

---

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Clerk of this Court now shall disburse the deposit in the Registry of this Court for the subject property, as follows, to:

Rickelson Oil and Gas Company ---- \$122.00.

  
 UNITED STATES DISTRICT JUDGE

APPROVED:

  
 HUBERT A. MARLOW  
 Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 76-C-341-C ✓
vs.	)	
	)	This action applies only to
17.80 Acres of Land, More or	)	the Oil and Gas Leasehold
Less, Situate in Osage County,	)	Interest in the estate
State of Oklahoma, and Rickel-	)	taken in:
son Oil and Gas Company, et	)	
al., and Unknown Owners,	)	Tracts Nos. 607ME-1 and
	)	607ME-2
	)	
	)	(Included in D. T. filed in
Defendants.	)	Master File #401-2)

FILED

JAN 9 1977

Jack C. Spivey, Clerk  
District Court

J U D G M E N T

1.

Now, on this 6<sup>th</sup> day of January, 1977, this matter comes on for disposition on application of Plaintiff, United States of America, for entry of judgment on stipulations agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

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

3.

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

4.

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

described in said Complaint. Pursuant thereto, on June 24, 1976, the United States of America filed its Declaration of Taking of a certain estate in such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing said Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of the Court as estimated compensation for the taking of a certain estate in subject property a certain sum of money and none of this deposit has been disbursed, as set out below in paragraph 11.

7.

On the date of taking in this action, the owners of the estate taken in subject property were the defendants whose names are shown below in paragraph 11. Such named defendants are the only persons asserting any interest in the estate taken in such tracts. All other persons having either disclaimed or defaulted, such named defendants are entitled to receive the just compensation awarded by this judgment.

8.

One of the owners of the subject property, to-wit: Rickelson Oil and Gas Company, and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estate condemned in subject property is in the amount shown as compensation in paragraph 11 below, and such Stipulation should be approved.

Phillips Petroleum Company, the remaining owner of some interest in the subject property, has executed and filed herein on October 1, 1976, a Stipulation, whereby it agrees that all compensation to be paid for the taking of the subject property may be paid in its entirety to Rickelson Oil and Gas Company, and such Stipulation should be approved.

9.

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 property particularly described in the Complaint filed herein; and such property, to the extent of the estate described in such Complaint, is condemned, and title to such described estate is vested in the United States of America as of June 24, 1976, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

10.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking the owners of the estate condemned herein in subject property were the defendants whose names appear below in paragraph 11 and the right to receive the just compensation for the estate taken herein in this property is vested in the parties so named, in the manner as shown in such paragraph.

11.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation and the Stipulation regarding allocation of the subject award, described in paragraph 8 above, hereby are confirmed; and the sum therein fixed is adopted as the award of just compensation for the estate condemned in subject property, and the award is allocated, as follows:

TRACTS NOS. 607ME-1 and 607ME-2

OWNERS:

1. Of all interests except the leasehold interest in a gas purchase contract covering subject tracts.  
Rickelson Oil and Gas Company
2. Leasehold interest in a gas purchase contract covering subject tracts.  
Phillips Petroleum Company.

Note: This owner has stipulated that the entire award may be paid to Rickelson Oil and Gas Company.

Award of just compensation pursuant to Stipulation -----	\$316.00	\$316.00
Deposited as estimated compensation --	<u>\$316.00</u>	
Disbursed to owners -----		<u>None</u>
Balance due to owners -----		\$316.00

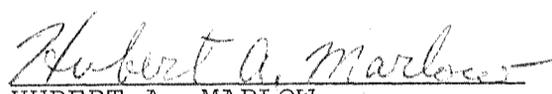
12.

It Is Further ORDERED, ADJUDGED AND DECREED THAT  
the Clerk of this Court now shall disburse the deposit in the  
Registry of this Court, for subject tracts, as follows, to:

Rickelson Oil and Gas Company ----- \$316.00.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant United States Attorney

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

AIR CAPITAL AIRCRAFT SALES,  
INC., a Kansas Corporation,

Plaintiff,

v.

MID-STATES AIRCRAFT ENGINES,  
INC., an Oklahoma Corporation,  
and AIR-KARE CORPORATION, an  
Oklahoma Corporation,

Defendants.

FILED

No. 76-C-417

JAN 7 1977

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

ORDER OF DISMISSAL

Pursuant to the stipulation of the parties,

IT IS ORDERED AND ADJUDGED that this <sup>cause of</sup> ~~action~~ <sup>and complaint</sup> be dismissed without pre-

judice as to both defendants, Mid-States Aircraft Engines, Inc., an Oklahoma Corporation, and Air-Kare Corporation, an Oklahoma Corporation.

ORDERED this 17<sup>th</sup> day of January, 1977.

  
\_\_\_\_\_  
Judge of the United States District Court

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

JAN 4 - 1977

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -v- )  
 )  
 )  
 CECIL J. PUCKETTE, )  
 ROSEALIE A. PUCKETTE, )  
 TULSA BELL FEDERAL CREDIT UNION, INC. )  
 MONTGOMERY WARD & CO., INC., )  
 STATE OF OKLAHOMA, ex rel OKLAHOMA )  
 TURNPIKE AUTHORITY, )  
 COUNTY TREASURER, PAWNEE COUNTY, )  
 BOARD OF COUNTY COMMISSIONERS, )  
 PAWNEE COUNTY, )  
 )  
 Defendants. )

FILED

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

Civil Action No.

76-C-352 B ✓

JUDGMENT OF FORECLOSURE

THIS MATTER comes on for consideration this 4<sup>th</sup>  
 day of January, 1977, the plaintiff appearing by  
 Robert P. Santee, Assistant United States Attorney; the defen-  
 dant Tulsa Bell Federal Credit Union, Inc. appearing by its  
 attorney, Jack Y. Goree; the defendants Cecil J. Puckette and  
 Rosealie A. Puckett appearing by their attorney, Jay C. Byers;  
 the defendant State of Oklahoma, ex rel Oklahoma Turnpike Author-  
 ity appearing by its attorney, Robert H. Mitchell; and the defen-  
 dants Montgomery Ward & Co., Inc.; County Treasurer, Pawnee County;  
 and Board of County Commissioners, Pawnee County; appearing not.

The Court, being fully advised and having examined the  
 file herein, finds that Cecil J. Puckette and Rosealie A. Puck-  
 ette were served with Summons and Complaint on July 9, 1976;  
 that the County Treasurer, Pawnee County, and Board of County  
 Commissioners, Pawnee County, were served with Summons and Com-  
 plaint on July 8, 1976; that Tulsa Bell Federal Credit Union,  
 Inc. was served with Summons and Complaint on July 7, 1976; and  
 that Montgomery Ward & Co., Inc. and State of Oklahoma ex rel  
 Oklahoma Turnpike Authority were served with Summons and Complaint

on July 2, 1976, as appears from the Marshal's Returns of Service filed herein.

It appears that the State of Oklahoma, ex rel Oklahoma Turnpike Authority has duly filed its Answer on July 22, 1976; that the Tulsa Bell Federal Credit Union, Inc. has filed its Disclaimer on July 28, 1976; and that Cecil J. Puckette, Rosealie A. Puckette, Montgomery Ward & Co., Inc., County Treasurer, Pawnee County, and Board of County Commissioners, Pawnee County, 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, covering the following-described real property located in Pawnee County, Oklahoma, within the Northern Judicial District of Oklahoma:

A 2.5 acre tract, more or less, in the Southwest Quarter (SW/4) of the Southeast Quarter (SE/4) of Section Nine (9), Township Twenty (20) North, Range Eight (8) East of the Indian Meridian, in Pawnee County, Oklahoma, more particularly described as follows: Beginning at a point on the West line of the SE/4 of Section 9, Township 20 North, Range 8 E.I.M., Pawnee County, Oklahoma, 290 feet North of the SW Corner of the SE/4 of said Section 9, for a point of beginning; thence East parallel with the South line of the SE/4 of said Section 9, a distance of 208 feet; thence North parallel with the West line of the SE/4 of said Section 9, a distance of 608 feet; thence West parallel with the south line of the SE/4 of said Section 9, a distance of 165 feet; thence South parallel with the West line of the SE/4 of said Section 9, a distance of 400 feet; thence West parallel with the South line of the SE/4 of said Section 9, a distance of 43 feet; more or less, to a point on the West line of the SE/4 of said Section 9; thence South along the West line of the SE/4 of said Section 9, for a distance of 208 feet; more or less, to the point of beginning, together with an easement with the right of ingress and egress to and from said tract of land along the West 30 feet of the South 290 feet of the SE/4 of said Section 9; all in Pawnee County, State of Oklahoma, according to the United States Government survey thereof; subject, however, to all valid outstanding easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record.

THAT the defendants Cecil J. Puckette and Rosealie A. Puckette did, on the 14th day of May, 1971, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the amount of \$16,500.00, with 7-1/4 percent interest per annum, and further providing for the payment of annual installments of principal and interest.

The Court further finds that the defendants Cecil J. Puckette and Rosealie A. Puckette made default under the terms of the aforesaid mortgage note by reason of their failure to make annual installments due thereon, which default has continued, and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the amount of \$19,226.04 as of August 15, 1976, plus interest from and after said date at the rate of 7-1/4 percent per annum, 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 Cecil J. Puckette and Rosealie A. Puckette, in personam, for the sum of \$19,226.04, with interest thereon at the rate of 7-1/4 percent per annum from August 15, 1976, 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 the defendants Montgomery Ward & Co., Inc.; County Treasurer, Pawnee County; and Board of County Commissioners, Pawnee County.

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, subject to outstanding real estate taxes, 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.

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

APPROVED:

  
ROBERT P. SANTEE,  
Asst. United States Attorney  
Attorney for Plaintiff

  
JAY C. BYERS  
Attorney for Defendants  
Cecil J. Puckette and  
Rosealie A. Puckette

  
ROBERT H. MITCHELL  
General Counsel, State of Oklahoma  
ex rel Oklahoma Turnpike Authority

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA E D

JAN 4 - 1977

ESCOA FINTUBE CORPORATION,  
An Oklahoma corporation,  
  
Plaintiff,  
  
vs.  
  
HEATRAN, INC.,  
  
Defendant.

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

No. 76-C-540-B

*NOTICE OF* DISMISSAL

STATE OF OKLAHOMA )  
                          ) ss  
COUNTY OF TULSA    )

Comes now the Plaintiff and hereby dismisses the  
above cause without prejudice.

DATED this \_\_\_\_\_ day of December, 1976.

ESCOA FINTUBE CORPORATION

By \_\_\_\_\_  
LESLIE S. HAUGER, JR.  
Attorney for Plaintiff

*Handwritten signature*

SOUTHWORTH CO

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

JUDITH M. EVANS, )  
 )  
 Plaintiff, )  
 )  
 JUDITH M. EVANS, ON BEHALF OF )  
 HERSELF AND OTHERS SIMILARLY )  
 SITUATED, )  
 )  
 Class-Plaintiffs, )  
 )  
 vs. )  
 )  
 GENERAL MOTORS ACCEPTANCE )  
 CORPORATION, )  
 )  
 Defendant. )

No. 76-C-512-C

FILED

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

ORDER SUSTAINING MOTION TO DISMISS

Defendant removed this cause from the District Court of Tulsa County, State of Oklahoma, pursuant to the provisions of 28 U.S.C. § 1441. The state Petition in the First Cause of Action alleges that on January 5, 1976, the named plaintiff executed a retail installment contract with Premier Pontiac, Inc., for the purchase of a 1976 automobile. This contract was later assigned to defendant. Plaintiff alleges that prior to the extension of credit, defendant failed to disclose the proper method of calculating rebate as prepayment upon default of plaintiff in violation of Title 14A Okla. Stat. § 2-302(1)(f) and sections 226.8(b)(4), 226.8(b)(7) of Regulation Z (12 C.F.R. § 226.1-.1002) of the Federal Truth in Lending Act (15 U.S.C. §§ 1601-65) as promulgated by the Federal Reserve Board of Governors. Plaintiff further alleges that prior to the extension of credit to her, the defendant failed to disclose the requirements of the retail installment contract in a clear and conspicuous manner in violation of Title 14A Okla. Stat. § 2-302(1)(a) and Section 226.6(a) of Regulation Z. Plaintiff seeks damages as allowed by Title 14A Okla. Stat. § 5-203(1) and Title 15 U.S.C. § 1640(a).

The Second Cause of Action alleged in the Petition alleges these same violations on behalf of a class of persons who have entered into credit transactions with the defendant under identical retail installment contracts.

Plaintiff challenges the jurisdiction of the Court and moves to remand on the grounds that defendant submitted itself to the jurisdiction of the Tulsa County District Court by entering a general appearance therein and that the amount in controversy as to each of the plaintiffs does not exceed \$10,000.00.

A general appearance in state court does not waive the right of removal to federal court unless there appear a clear intent to submit to the state court jurisdiction. Genie Machine Prod., Inc., v. Midwestern Machinery Co., 367 F.Supp. 897 (W.D. Mo. 1974). Defendant filed its general appearance on October 6, 1976, and timely filed its Petition for Removal on October 12, 1976. No other pleadings were filed in state court. Defendant did not delay in removing this case and did not waive its right to remove by its general appearance.

Under Title 15 U.S.C. § 1640(e) this Court has jurisdiction of actions brought for recovery of damages allowed under Title 15 U.S.C. § 1640. The amount in controversy is not related to the jurisdictional grant. The Motion to Remand is overruled.

The defendant has moved to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Fed.R.Civ.P. Defendant argues that the right of acceleration provided in the contract is not a charge required to be disclosed under the state and federal statutes alleged. Attached as Exhibit "A" to the Complaint is a copy of the retail installment contract. Plaintiff's claim is premised on paragraph 6 which states in part as follows:

"In the event buyer defaults in any payment due hereunder, or fails to comply with any of the terms or conditions hereof, or a proceeding in bankruptcy, receivership or insolvency be instituted by or against the

buyer or his property, or the seller has reasonable cause to believe that the property is in danger of misuse or confiscation, or in the event either that the buyer fails for any reason to comply with paragraph 3(a) above or that said required physical damage insurance (whether procured by the seller or by the buyer) is cancelled by the insurer prior to expiration thereof, the seller shall have the right, at his or its election, to declare the unpaid balance, together with any other amount for which the buyer shall have become obligated hereunder, to become immediately due and payable. . . ."

Plaintiff contends that under Oklahoma law she is entitled to a rebate upon prepayment of her credit transaction due to acceleration. She further contends that defendant's right to accelerate payment comes within the meaning of the phrase "default, delinquency, or similar charges" found in section 128(a)(9) of the Truth in Lending Act, (15 U.S.C. § 1638(a)(9)) and therefore the contract requires disclosure of the method of computation of prepayment as required under 12 C.F.R § 226.8(b)(7). The court in the case of Johnson v. McCrackin - Sturman Ford, Inc., 527 F.2d 257 (3rd Cir. 1975) held that: ". . . . McCrackin-Sturman's right to accelerate payment of the unpaid principal does not come within the meaning of the phrase 'default, delinquency, or similar charges' in section 128(a)(9) of the Truth in Lending Act." Johnson at 265. The Johnson court further held that Pennsylvania law specifically provided for the rebate of unearned finance charge and the method of computation and that such statutory provisions were by law a part of the contract. Title 14A Okla. Stat. § 2-210 specifically provides for such rebate and the method of compilation and became a part of the disputed contract which was entered into in Oklahoma.

The Johnson court held that acceleration is akin to prepayment. Johnson at 264. The disputed contract provides for computing a prepayment rebate at paragraph 13.

"Prepayment Rebate. Upon prepayment in full buyer is entitled to a rebate of the Finance Charge (Item 6) computed in accordance with the Rule of 78. A Minimum charge

will be retained in determining the amount of the rebate as follows: \$5 if the Amount Financed does not exceed \$75, \$7.50 if the Amount Financed exceeds \$75."

In the event of a late payment the disputed contract provides for the method of computing the charge in paragraph 11.

"If any installment is not paid within 10 days after it is due, buyer agrees to pay a delinquency charge equal to (a) 5% of unpaid installment not to exceed \$5 or (b) the Annual Percentage Rate applied to the installment for the period it remains unpaid, whichever is greater."

The contract shows the Annual Percentage Rate to be 11.89%.

Plaintiff also asserts that disclosure must be made under 12 CFR § 226.8(b)(4). The Johnson court considered a similar claim and rejected the argument that such disclosure was required. Based upon the reasoning and conclusions of Johnson v. McCrackin-Sturman Ford, Inc., supra, the Court finds and concludes that the retail installment contract entered into by the plaintiff and defendant is not in violation of the state and federal statutes alleged. The plaintiff has failed to state a claim upon which relief can be granted.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED taht the Motion of defendant General Motors Acceptance Corporation to dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted is sustained and the Complaint is hereby dismissed.

It is so Ordered this 30th day of December, 1976.

  
\_\_\_\_\_  
H. DALE COOK  
United States District Judge