

to understand and comprehend all that was taking place in the Courtroom. Furthermore, the record clearly supports that from the trial Judge's questions and the petitioner's responses the petitioner was satisfied that he was adequately represented by appointed counsel.

A guilty plea is a solemn act not to be disregarded because of belated misgivings about the same. United States v. Woosley, 440 F.2d 1280 (8th Cir. 1971). Also see, Brady v. United States, 397 U. S. 742 (1970); McMann v. Richardson, 397 U. S. 759 (1970); Parker v. North Carolina, 397 U. S. 790 (1970). Recognizing that a guilty plea is a solemn act to be accepted only with care and discernment, the Court finds that the State Judge's caution in the taking of the plea of the defendant, petitioner herein, equals the epitome of excellence in meeting that standard.

In proof of the claim that his plea was the result of ineffective assistance of appointed counsel, pretense and threats, petitioner asserts that on the day of trial when he asked his attorney if he could plead guilty and tell the Court that he was not guilty, counsel stood up angrily as if to walk out, which petitioner feared would leave him to face the jury unrepresented. Petitioner further claims fear of going to jury trial was instilled in him by his counsel's telling him that if the case went to trial the District Attorney, himself, would prosecute and seek the death penalty. The major thrust of petitioner's claim seems to be that defense counsel told petitioner that he had interviewed the doctor who examined the alleged rape victim, but the attorney had actually not done so; and further petitioner does not believe that his counsel checked into the statement of another attorney the petitioner claims had told him the victim had picked another man as the assailant from a lineup. Lastly, petitioner asserts that he did not feel his attorney was prepared for trial or interested in defending him, especially after the affirmance came down of petitioner's conviction in a prior prosecution for attempted rape. The cumulation of these things petitioner contends placed him in such fear that he untruthfully pled guilty to this first degree rape charge which he did not commit, his only wrong being illicit sexual play with a willing and consenting female married to another.

The Court finds that petitioner's charges fall far short of proof that he was "so gripped by fear of the death penalty or hope of leniency that he did not or could not, with the help of counsel, rationally weigh the advantages of going to trial against the advantages of pleading guilty." Brady, Supra p. 750. Also see, Runge v. United States, 427 F.2d 122 (10th Cir. 1970); North Carolina v. Alford, 400 U.S. 25 (1970).

In Ellis v. State of Oklahoma, 430 F.2d 1352 (10th Cir. 1970) cert. denied 401 U. S. 1010 (1971), cited with approval in Johnson v. United States, 485 F.2d 240 (10th Cir. 1973), the Court stated:

"The burden on appellant to establish his claim of ineffective assistance of counsel is heavy. Neither hindsight nor success is the measure for determining adequacy of legal representation. 'It is the general rule that relief from a final conviction on the ground of incompetent or ineffective counsel will be granted only when the trial was a farce, a mockery of justice, or was shocking to the conscience of the reviewing court, or the purported representation was only perfunctory, in bad faith, a sham, a pretense, or without adequate opportunity for conference and preparation. Goforth vs. United States (10th Cir. 1963) 314 F.2d 868; ' Williams vs. Beto, 354 F.2d 698, 704 (5th Cir. 1965)."

The United States Supreme Court has held that "an otherwise valid plea is not involuntary because induced by the defendant's desire to limit the possible maximum penalty to less than that authorized if there is a jury trial. Parker v. North Carolina. 397 U.S. 790, 795 (1970); Brady v. United States, Supra.

The Court finds that the representation herein was professionally adequate and although the defendant might not conclude the investigation nor the preparation for the defense of a criminal charge was the best, such allegation after considering the evidence in this case, is not tantamount to a sham, farce or mockery. The advice received was within the range of competence demanded of attorneys in criminal cases. See, McMann v. Richardson, Supra.; Tollett v. Henderson, 411 U. S. 258, 267 (1973). The petitioner's plea of guilty was not coerced, and the plea was intelligently made with the petitioner fully aware of what it connoted. Moore v. Anderson, 474 F.2d 1118, 1119 (10th Cir. 1973).

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

Dated this 30th day of June, 1977, at Tulsa, Oklahoma.


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

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

JOHNNY ENLOE,)
)
) Plaintiff,)
vs.)
)
A. B. CHANCE COMPANY, a)
Delaware corporation, et al.,)
)
) Defendants.)

No. 76-C-248-C

FILED

JUN 30 1977

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

ORDER OF DISMISSAL

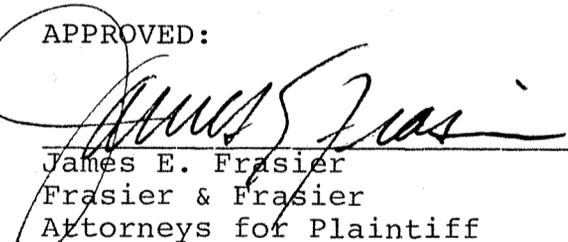
The above cause comes on for hearing upon the application of the plaintiff and his attorneys of record for a dismissal of the above and foregoing action, and the Court, being well advised in the premises, FINDS that the Order of Dismissal should issue.

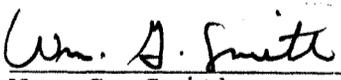
IT IS THEREFORE ORDERED that the above entitled cause, and each claim thereof, be and the same are hereby dismissed upon the merits and with prejudice to a future action, each party to bear its own costs.

DATED this 30th day of June, 1977.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED:


James E. Frasier Of
Frasier & Frasier
Attorneys for Plaintiff


Wm. G. Smith Of
Fenton, Fenton, Smith, Reneau & Moon
Attorneys for Defendant A. B. Chance Company

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

JOHNNY ENLOE,

Plaintiff,

vs.

A. B. CHANCE COMPANY, a
Delaware corporation, et al.

Defendants.

No. 76-C-248-C

FILED

JUN 30 1977

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

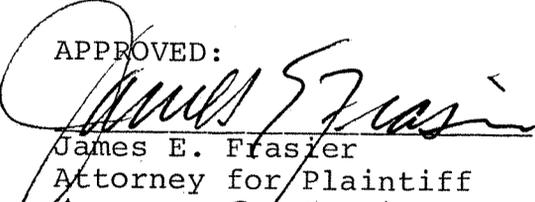
ORDER OF PARTIAL JUDGMENT

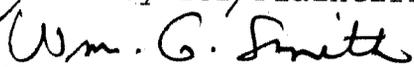
Motion for Summary Judgment having been heretofore filed on behalf of the named defendant Pitman Manufacturing Company, a Division of A. B. Chance Company, the Court having reviewed depositions of lay witnesses and plaintiff's expert witnesses, Colwell and Newton, the pleadings and documents filed herein, and the statements, stipulations and admissions of counsel, and being fully advised in the premises, FINDS:

That the evidence is wholly insufficient to state a claim as against the defendant Pitman Manufacturing Company, a Division of A. B. Chance Company, as relates to the aerial lift device manufactured by Pitman and being used by the plaintiff in this accident; and that there is no evidence of any defect in design or manufacture of the aerial lift device which caused or contributed to the cause of the plaintiff's injuries. There being no material factual issue as to the claim against the said Pitman Manufacturing Company, the said defendant is entitled to a judgment as a matter of law.

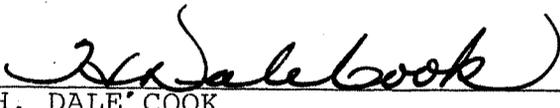
IT IS THEREFORE ORDERED that judgment be entered in favor of defendant Pitman Manufacturing Company, a Division of A. B. Chance Company, and against the plaintiff, and the plaintiff's action against Pitman Manufacturing Company, a Division of A. B. Chance Company, is hereby dismissed.

APPROVED:


James E. Fraser
Attorney for Plaintiff


Wm. G. Smith

Attorney for Defendant Pitman
Manufacturing Company


H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

ROBERT S. TRIPPET,)
)
 Plaintiff,)
)
 vs.)
)
 HERBERT R. SMITH,)
 GLENN E. WOOD, AND)
 SAMUEL V. SHAW,)
 TRUSTEES OF THE HOME-)
 STAKE PRODUCTION COMPANY)
 DEFERRED COMPENSATION TRUST,)
)
 Defendants.)

No. 77-C-73-C

FILED

JUN 30 1977 *ph*

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

O R D E R

This is an action in which the plaintiff asks the Court to enjoin the defendants from violating the terms of the Home-Stake Production Company Deferred Compensation Trust Instrument (Trust Instrument) and the Employee Retirement Income Security Act of 1974 (ERISA). The defendants were named as trustees under the Trust Instrument, and the plaintiff is a former employee of the Home-Stake Production Company (Home-Stake) and claims to be a beneficiary of the trust (Trust) created by the Trust Instrument. Specifically, the plaintiff alleges that the defendants exceeded their authority in making a determination that the plaintiff had forfeited his benefits under the terms of the Trust Instrument. On November 1, 1973, the defendants commenced an action in the District Court in and for Tulsa County, State of Oklahoma captioned In the Matter of the Administration of the Home-Stake Production Company Deferred Compensation Trust, No. C-73-2161, pursuant to Title 60 O.S. § 175.23, wherein the court was requested, among other things, to supervise and assist the administration and liquidation of the Trust and its assets. On December 3, 1976, the defendants filed in the state action an Application for Order Affirming Forfeiture of Trust Account. This application was granted by the state court on March 23, 1977. It is the

actions of the defendants in forfeiting the plaintiff's account, which were specifically upheld by the state court, that the plaintiff now asks this Court to enjoin. The jurisdiction of this Court is invoked pursuant to Title 29 U.S.C. §§ 1132(a)(3) and 1132(e)(1). All parties have filed motions for summary judgment which are now pending before the Court.

The facts relevant to the Court's determination are the following, which do not appear to be in substantial dispute. The Trust was established on December 14, 1963. On July 17, 1973 the following resolution was unanimously approved by the board of directors of Home-Stake:

"RESOLVED, that the Home-Stake Production Company Deferred Compensation Trust shall be terminated and the assets distributed to the beneficiaries according to the terms of the Trust Agreement."

The defendants argue that because the Trust was terminated prior to the effective date of ERISA, this Court lacks subject matter jurisdiction over the plaintiff's cause of action. Plaintiff alleges that his request for an injunction is brought pursuant to Title 29 U.S.C. § 1132(a)(3). The jurisdictional statute upon which he relies is Title 29 U.S.C. § 1132(e)(1), which provides in pertinent part as follows:

"Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. . . ."

Assuming, without deciding, that this is not an action under subsection (a)(1)(B) and that the Trust is the type of employee benefit plan which ERISA intends to regulate, it is apparent that this cannot be a civil action "under this subchapter" if the particular Trust in question is not covered by the terms of ERISA.

The provisions of ERISA which govern the effective dates of the relevant parts of Subchapter I all have effec-

tive dates later than July 17, 1973. Title 29 U.S.C. § 1061 applies to the participation and vesting provisions of ERISA. It provides in part as follows:

"(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

* * *

(b)(2) . . . [I]n the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975."

Identical provisions are contained in subsections (a) and (b) of Title 29 U.S.C. § 1086, which applies to the funding provisions of ERISA. The effective date of the fiduciary responsibility provisions is contained in Title 29 U.S.C. § 1114, which provides in part:

"(a) Except as provided in subsections (b), (c), and (d) of this section, this part shall take effect on January 1, 1975.

* * *

(b)(3) This part shall take effect on September 2, 1974 with respect to a plan which terminates after June 30, 1974, and before January 1, 1975. . . ."

None of the parties has referred the Court to a case interpreting these sections within a factual framework similar to that present in the instant case, and the Court has likewise discovered none. Comments on these effective dates contained in the legislative history of ERISA help to clarify the sections somewhat. The United States Senate and House of Representatives Conference Committee, in discussing the effective dates of the participation and vesting provisions of the Act, reported that,

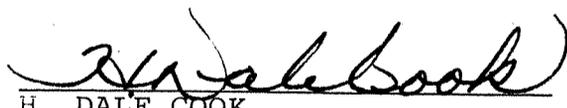
"[u]nder the conference substitute the changes made in the bill with respect to participation and vesting are to apply to new plans in plan years beginning after the date of enactment. For plans in existence on January 1, 1974, the general effective date of these provisions is to be plan years beginning after December 31, 1975." 1974 U.S. Code Cong. & Adm. News, p. 5048.

Similarly, Representative Al Ullman described the same effective dates as follows:

"The participation and vesting standards adopted by this legislation become effective for new plans on the date of enactment; for existing plans, these standards become effective in plan years beginning after December 31, 1975. The later effective date for existing plans was provided in order to give them time to make the necessary changes to conform to the new requirements." 1974 U.S. Code Cong. & Adm. News, p. 5169.

It appears to the Court, after examining the legislative history of ERISA, that Congress intended the Act to apply, as to the participation and vesting provisions, only to plans which began or continued to exist after the date of enactment, and as to the fiduciary responsibility provisions, only to plans which were in existence after the date of enactment or which terminated after June 30, 1974. The conspicuous absence among the detailed provisions regarding the effective dates of the various sections of ERISA of any provision concerning plans which terminated prior to the effective date of the Act leaves little room for any other interpretation of these sections. The corporate records of Home-Stake show that the Trust in question terminated on July 17, 1973, well before any of the effective dates contemplated by ERISA. Therefore, the provisions of that Act do not apply to that Trust or to its trustees, and this action is not one brought "under this subchapter" for purposes of Title 29 U.S.C. § 1132(e)(1). Consequently, this Court does not have subject matter jurisdiction of the plaintiff's cause of action. The plaintiff's motion for summary judgment is hereby overruled, and the motion for summary judgment of the defendants is hereby sustained.

It is so Ordered this 30th day of June, 1977.


H. DALE COOK
United States District Judge

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

FRANK HENDRICKSON, CELESTE)
WAGENBLAST, and DANIEL P. COX,)

Plaintiffs,)

vs.)

No. 76-C-228-C

INDEPENDENT SCHOOL DISTRICT NO. 9,)
TULSA COUNTY, OKLAHOMA, THE BOARD)
OF EDUCATION OF INDEPENDENT SCHOOL)
DISTRICT NO. 9, UNION PUBLIC SCHOOLS,)
WESLEY JARMAN, THOMAS E. FRY, JAMES)
R. DARNABY, DARWIN P. MAXEY, LARRY)
R. HENDERSON, and WILLIAM P. SCOTT,)

Defendants.)

FILED

JUN 30 1977

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

MEMORANDUM OPINION AND ORDER

This is an action instituted by three plaintiffs (two school teachers of the Union Public Schools and one principal of Boevers Elementary School) by complaint alleging each has been employed by the Board of Education of the Union Public Schools for a time preceding and including the 1975-1976 school year.

The individual defendants are the members of the Union Board of Education with the exception of defendant Jarman, who is the Superintendent of the Independent School District. The Union School Board of Education is the governing body of the Tulsa County Independent School District No. 9. In addition to the individual defendants, also named as defendants are the Independent School District No. 9, and the Board of Education of Independent School District No. 9.

The Complaint alleges that the defendants failed to renew the employment contracts of plaintiffs without stating any reason therefor, and further refused to permit a hearing to establish just cause or the lack thereof for the termination. Notice of termination was sent effective at the close of the 1975-1976 school year.

It is admitted that the plaintiffs are not tenured

teachers such as to bring them within the terms of the tenured teachers statute, Title 70 O.S. § 6-122.

Plaintiffs contend that by reason of many years of certain practices and procedures the Union Public School established the practice not to dismiss or fail to renew employee contracts except on advance notice with opportunity for hearing. Plaintiffs further contend that it was a part of the "established pattern of practice" that no teacher would be dismissed or contract not renewed in absence of good cause. Plaintiffs also claim that they were aware of this established history at the time that each accepted employment and relied thereon. Plaintiffs claim that the Board had adopted "certain unwritten administrative rules and regulations limiting the condition and circumstances regarding non-renewal of employees and had written rules to the same effect as to certified personnel.

Plaintiffs assert that the Board had therefore created an implied contract with the employees who entered into an employee relationship with the Board, the substance of said implied contract being that the plaintiffs would not be non-renewed in the absence of good cause and in no event without hearing in which representatives of the school district would be required to show good cause. (Complaint, p.5, ¶8) It is further alleged that the effect of the history of dealing by the Board with its teachers and other certified personnel was to accord such personnel "de facto tenure" whether or not such person had obtained tenure under the statutes of the State of Oklahoma.

The Complaint further alleges that the Board has the responsibility of contracting with teachers and the Board wrongfully relinquished, surrendered and delegated to the Superintendent, defendant Wesley Jarman, the responsibility in regard to employment relationships and concludes that the result was an improper surrendering of responsibility by the defendant Board, which constitutes an improper carrying out

of the laws of the State of Oklahoma.

Plaintiffs further allege that they at various times spoke out on various professional matters and therefore believe that their statements incurred the disfavor of the Superintendent and that their non-renewal was in "large part" due to and in retaliation for said declarations.

Plaintiffs further allege that on March 11, 1976, they received a letter signed by the Superintendent advising them that the Board had a meeting on the first day of March of that year and voted to decline to renew each of plaintiffs' teaching contracts. It is further alleged that the plaintiff Hendrickson was present at the Board meeting and requested to be heard and was denied the right of hearing. The plaintiffs further allege that they have requested the individual members of the Board to provide an explanation to them for their action of non-renewal, which request has been refused.

In summary, plaintiffs' Complaint alleges that:

- A. The conduct of the defendants was to breach an implied contract between plaintiffs and the School District in that they would not be terminated without notice and hearing and in no event without just cause.
- B. The effect of the defendants' conduct was to breach a contract between the School District and the North Central Association of Schools and Colleges of which plaintiffs had standing to enforce.
- C. That the defendants' conduct deprived plaintiffs of their rights of free speech as guaranteed under the First Amendment of the United States Constitution.
- D. That the conduct of the defendants deprived plaintiffs of liberty or property without due process of law in violation of the Fourteenth Amendment and the Constitution of the United States and the State of Oklahoma, and,
- E. That the conduct of the defendant was such as to deny plaintiffs equal protection of the law in violation of the Fourteenth Amendment.

The Court recognizes that under certain circumstances a teacher may acquire a property interest in continued employment of which he or she cannot be deprived without the procedural

due process guaranteed under the Fourteenth Amendment.
Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d
570 (1972). "However, to have a property interest and a
benefit, a person clearly must have more than an abstract
need or desire for it. He must have more than a unilateral
expectation of it." Board of Regents vs. Roth, 408 U.S. 564,
92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). As stated in Roth:

"Property interests, of course, are not
created by the Constitution. Rather,
they are created and their dimensions
are defined by existing rules or under-
standings that stem from an independent
source such as state law . . ."

In Roth, as in the case at bar, the plaintiff was a
non-tenured teacher in a state which had a specific statute
which provided that a teacher could acquire tenure only
after a specific time, and the plaintiff's contract was for
a one-year term. In denying that the plaintiff had acquired
a constitutionally protected interest in re-employment, the
Supreme Court looked to the statutory provisions of the
state and held:

"Just as [a] welfare recipient's 'property'
interest in welfare payments was created
and defined by statutory terms, so the
respondent's 'property' interest in
employment at Wisconsin State University
was created and defined by the terms of
his employment."

Title 70, § 6-122, of the Oklahoma Statutes, clearly
grants tenure to a teacher only after he has been employed
for a period of three years. Further, Title 70, § 5-117 of
the Oklahoma Statutes provides that in Oklahoma the local
board of education may only "make rules and regulations not
inconsistent with the law . . ." It should also be noted
that Title 70, O.S. § 6-101 requires that all teachers'
contracts be in writing. This section states and requires
that "no person shall be permitted to teach in any school
district of the State without a written contract, . . ." and
further that, "one copy shall be filed with the Clerk of the
Board of Education . . . and retained by the teacher." Also,

§ E thereof provides that the Board of Education shall have authority to enter into written contracts with teachers for the ensuing fiscal year prior to the beginning of such year. It also states in § E that if prior to August 10th, a Board has not entered into a written contract or notified him in writing or registered or certified mail that he will not be employed for the notified the Board in writing or by registered mail or certified mail that he does not desire to be re-employed, the teacher is considered employed on a continuing contract basis. These sections seem to require that teachers' contract agreements must be in writing and further that subsection E of § 6-101 which delegates the authority by the Legislature to the School Board to enter into contracts with teachers specifically states that they shall have authority to enter into only written contracts with teachers. Thus the theory of implied contract in the face of the statutory delegation by the Legislature may fail. At least it can be said there is a substantial question that it is a valid theory under these circumstances. The Court also notes the case of Miller v. Temple Independent School District No. 101, 538 P.2d 607 (1975) in which the Oklahoma Supreme Court has held that "The right of renewal of a teacher's contract is entirely a creature of statute." Further that the Attorney General of Oklahoma has held that the contract period for a teacher as provided by law in Oklahoma begins July 1 and ends June 30. See Opinion of Attorney General, No. 71-30 (Sept. 30, 1971).

Thus the reasonable expectancy right as taught by the Sindermann case may very well be inapplicable to the factual situation as alleged by the plaintiffs, if the State courts hold that a School Board is without authority to enter into implied contracts and unwritten contracts. Further tenure may very well be held to be a creature of statute granted only to those as provided by statute and in which case it would appear that the plaintiffs' assertion of de facto

tenure may be inconsistent with and run afoul of the Oklahoma statutes.

As stated by Chief Justice Burger in his concurring opinion in Roth, "whether a particular teacher in a particular context has any right to such administrative hearing hinges on a question of state law", and he further stated that because the availability of the Fourteenth Amendment right to a prior administrative hearing turns in each case on a question of state law, the issue of abstention would arise in future cases contesting whether a particular teacher is entitled to a hearing prior to nonrenewal of his contract. Justice Burger further advised that if relevant state contract law is unclear, a federal court should, in his view, abstain from deciding whether a teacher is constitutionally entitled to a prior hearing, and the teacher should be left to resort to state courts on the questions arising under state law.

The Tenth Circuit has similarly recognized the appropriateness of looking to the state. In Powers v. Mancos School District Re-6, No. 75-1386 decided May 10, 1976 and in Weathers v. West Yuma County School District R-J-1, No. 75-1134, decided February 25, 1976, the Court, quoting from Jeffries v. Turkey Run Consolidated School District, 492 F.2d 1 (7th Cir. 1974) stated:

"In our opinion the questions whether a nontenured teacher, whose contract is not renewed, has any right to a statement of reasons or to judicial review of the adequacy or accuracy of such a statement are matters of state law, not federal constitutional law."

The Court in Powers concluded: "It is well settled that in the area of teacher employment the question as to whether a teacher has a property right within the meaning of the due process clause of the Fourteenth Amendment of the Constitution is determined by the law of the state, inasmuch as there is no federal constitutional right to public employment."

In Scheelhaase v. Woodbury Central Community School District,

488 F.2d 237 (8th Cir. 1973), the Court therein stated the issue before it was one of Federal jurisdiction with respect to the continued employment of a nontenured teacher under Iowa law which provided that teachers did not enjoy tenure but rather were to be hired on a year-to-year basis. The Court noted the interest of the State in enacting such a provision and stated:

"It is argued that this statute was enacted for the protection of the teacher. There is quite as much reason for saying that it was enacted primarily for protecting the school district. Prior to the enactment of this particular feature of the statute, there existed in many parts of the state quite a notorious and nefarious practice on the part of outgoing school boards whereby teachers selected by the outgoing board were employed for a term of years and this was done for the purpose of circumventing the incoming school board in their legitimate selection of teachers during the terms of their own incumbency. The single disability contained in this section was effective to stop such practice."

The plaintiff therein contended that a failure to renew a teacher's contract for a reason lacking basis is contrary to due process fairness where the teacher enjoys a legitimate expectation of re-employment. The Court noted that it would follow from such an argument that such factors as a teacher's years of service with a school district could thereby be said to vest in her such a "property" in her job that the theretofore unlimited discretion of the school board no longer would obtain, and being thus vested would create tenure, despite the contrary wording of the state statute. The Court held:

"The administration of the internal affairs of the school district before us has not passed by judicial fiat from the local board, where it was lodged by statute, to the Federal court. Such matters as the competence of teachers, and the standards of its measurement are not, without more, matters of constitutional dimensions. They are peculiarly appropriate to state and local administration."

In the case of Schultz v. School District of Dorchester in the County of Saline, 367 F.Supp. 467 (D.Neb. 1973) the Court similarly was presented with the issue of whether

under state law, conduct of the Board in entering into a school teacher contract coupled with relevant statutory law created a sufficient expectancy of re-employment to rise to the level of a property right. Since the State Supreme Court had not considered the statute in light of those circumstances, the Court was faced with the question of whether it should decide what it thought the State Supreme Court would hold if the issue were presented to it or whether it should abstain, even though neither party had raised the issue of abstention. In that case the Court concluded:

"Under the circumstances of this case I think the abstention route is the sensible one. Interpretation of the statute by the Supreme Court of Nebraska is highly to be desired. If I should interpret the statute favorably to the teachers, the probability of the Supreme Court of Nebraska's being provided the opportunity of interpreting it is dimmed; if I interpret it favorably to the school board and if that interpretation were wrong, the result would be unfair to the plaintiff here."

Further support for the proposition that a federal court should abstain from interpreting the unsettled scope or effect of a state statute is found in Norman v. Duval County School Board, et al., 361 F.Supp. 1167 (M.D.Fla. 1973). In that case the plaintiff was hired for the position of community school coordinator. Nine days later the Board's superintendent terminated the plaintiff's appointment on grounds that were never fully disclosed to the plaintiff. The question of the propriety of plaintiff's termination involved an unsettled area of Florida law. The Court quoted from Reetz v. Bozanich, 397 U.S. 82 (1970) where it is stated:

"Proper exercise of federal jurisdiction requires that controversies involving unsettled questions of state law be decided in the state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions. . . . That is especially desirable where the questions of state law are enmeshed with federal questions. . . . In such a case, when the state court's interpretation of the statute or evaluation of its validity under the state constitution may obviate any need

to consider its validity under the Federal Constitution, the federal court should hold its hand, lest it render a constitutional decision unnecessarily." 361 F.Supp. at 1173.

The Court in Norman concluded:

"The question of whether Norman's interest in the alleged annual contract in the case at bar is a mere subjective 'expectancy' or a 'property interest' sufficient to invoke procedural due process will in turn depend on a question of state law, the determination of which this Court should not attempt prior to an authoritative state adjudication on the matter." 361 F.Supp. at 1174.

See also Robinson v. Jefferson County Board of Education, 485 F.2d 1381 (5th Cir. 1973).

In the case at bar plaintiffs contend that conduct of the Board has created a de facto tenure. As previously stated, the Supreme Court of Oklahoma held in Miller v. Temple Independent School District No. 101, supra, that "the right of renewal of a teacher's contract is entirely a creature of statute." Whether a school board in Oklahoma has the authority to create de facto tenure or whether past actions can give rise to de facto tenure in light of the Oklahoma statutes are questions which have not been ruled on by the Supreme Court of Oklahoma. It is certainly an important question of state law. Since the case of Railroad Commission v. Pullman Co., 312 U.S. 496 (1941) it has been settled law that when a federal constitutional claim is premised on an unsettled state law, the federal court should stay its hand in order to provide the state courts an opportunity to settle the underlying state law question and thus avoid the possibility of unnecessarily deciding a constitutional question. This policy was more recently reiterated in Harris County Commissioners Court, et al., v. Moore, et al., 420 U.S. 77 (1975) in which the Court stated:

"[W]hen the state law questions have concerned matters peculiarly within the province of the local courts . . . we have inclined toward abstention Among the cases that call most insistently for abstention are those

in which the federal constitutional challenge turns on a state statute the meaning of which is unclear under state law."

In keeping with this directive, the Court for the Eastern District of Oklahoma in Singleterry v. Independent School District No. 19, No. 74-289-C, filed Sept. 30, 1975, abstained in a case similar to the one here before the Court. Also in Summers v. Civis, et al., a case decided in the United States District Court for the Western District of Oklahoma October 21, 1976, and cited at 420 F.Supp. 993 (1976) the Court abstained from determining the unsettled questions of state law relating to untenured and probationary teachers.

In addition to the basic issue of de facto tenure presented in plaintiffs' Complaint, the plaintiffs make certain allegations that their First Amendment rights have been infringed upon. As stated in Fanning v. The School Board . . . of Jefferson County, CIV-73-842-B (W.D. Okla. filed May 8, 1975):

"First Amendment rights are not so clear cut and do require some balancing, which militates for the provincial forum having some opportunity to examine local problems. A combination of these and other factors necessitates a local scrutiny of local matters which this Court believes it should be slow in moving into . . . Plaintiff's civil rights elements are viable and well understood in the forums of each of these United States."

The Court in Fanning therefore applied the abstention doctrine and permitted the state courts of Oklahoma to determine the effect of Oklahoma's tenure statute along with the First Amendment issues raised.

The Court is fully aware of the Uniform Certification of Questions of Law Act and the alternative course that could be pursued by this Court in certifying the questions of law to the Supreme Court of the State of Oklahoma rather than applying the abstention doctrine. However, it appears to the Court that the better procedure is to permit the State courts to fully develop the facts in matters such as

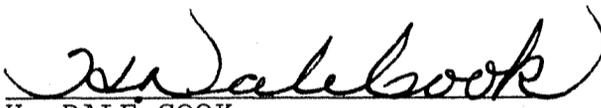
are now before this Court so that the courts of the State of Oklahoma can more fully determine these unsettled questions of law. There are instances when a pure question of law, unattended by disputed questions of fact, would make such certification more appropriate. It is the opinion of the Court that the case at bar is not such a situation.

Based upon the foregoing, it is the determination of the Court that the Court should allow the State of Oklahoma to rule upon the issues presented; and that this Court therefore abstains and dismisses the action herein without prejudice.

Accordingly, it is hereby ordered that the plaintiffs' claims be and the same are hereby dismissed.

Further that the Court shall abstain from further proceeding to permit litigation of the questions of State law in the courts of the State of Oklahoma.

It is so Ordered this 29th day of June, 1977.


H. DALE COOK
United States District Judge

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

LELAND L. COMPTON and)
MARY M. COMPTON,)
husband and wife,)
)
Plaintiffs,)
)
vs.)
)
SOCIETE EUROSUISSE, S. A.,)
a corporation, and)
ALLAN H. APPLESTEIN,)
an individual,)
)
Defendants.)

No. 75-C-374-C

FILED

JUN 30 1977

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

J U D G M E N T

The Court on June 30, 1977 filed its Findings of Fact and Conclusions of Law which are hereby incorporated herein and made a part of its Judgment.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Judgment be entered in favor of the plaintiffs, Leland L. Compton and Mary M. Compton, and against the defendant, Allan H. Applestein, and that total damages be entered in favor of the plaintiffs and against the defendant in the amount of \$100,000.00 actual damages, plus interest on \$100,000.00 at the rate of six percent (6%) per annum, from October 18, 1974 to this date, plus \$20,000.00 punitive damages, in light of this Court's Findings of Fact and Conclusions of Law.

It is so Ordered this 30th day of June, 1977.


H. DALE COOK
United States District Judge

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

LELAND L. COMPTON and)
MARY M. COMPTON,)
husband and wife,)
)
Plaintiffs,)
)
vs.)
)
SOCIETE EUROSUISSE, S. A.,)
a corporation, and)
ALLAN H. APPLESTEIN,)
an individual,)
)
Defendants.)

No. 75-C-374-C

FILED

JUN 30 1977

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

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This is an action in which the plaintiffs seek to recover \$100,000.00 allegedly due to them from the defendants for the purchase of their shares of stock in three corporations. The plaintiffs have alleged six causes of action in breach of contract and fraud, and have asked for punitive damages in the amount of \$1,000,000.00 from defendant Applestein. The case was tried to the Court on March 7, 1977. The parties have submitted trial briefs and proposed findings of fact and conclusions of law, and the case is now ready for disposition on the merits.

After considering the pleadings, the testimony and exhibits admitted at trial, all of the briefs and arguments presented by counsel for the parties, and being fully advised in the premises, the Court enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The plaintiffs are citizens of the State of Kansas. The defendant Applestein is a citizen of the State of Maryland. The amount in controversy is in excess of \$10,000.00.

2. The defendant Societe Eurosuise, S.A. (Societe) has never been properly served and is no longer a party to

this action.

3. As of June 25, 1974, the plaintiffs were the owners of 15,108 shares of the outstanding common stock of Coffeyville Packing Company, Inc., 55 shares of the outstanding common stock of H & R Meat Company and 3,021-3/5ths shares of the outstanding common stock of Consolidated Meat International, Ltd. (hereinafter referred to collectively as "the stock").

4. Negotiations for the purchase by Applestein of the plaintiffs' stock culminated in an agreement entered into between the plaintiffs and Societe on or about June 25, 1974 (the Agreement) (Plaintiffs' exhibit 4).

5. It was understood by the plaintiffs that it was Applestein who was in fact purchasing the stock and that the stock was to be transferred to Societe for Applestein's personal tax reasons.

6. The Agreement provided in paragraph three that "Sellers agree to sell and Buyers agree to buy said stock for the sum of \$150,000.00 in cash by certified check or cashier's check."

7. On Friday, September 6, 1974, at approximately 5:00 P.M., the plaintiffs received a bank draft, in the amount of \$150,000.00. The draft was from the Sterling Bank and Trust Company, Ltd., Grand Cayman, British West Indies and drawn on Citizens and Southern International Bank, Miami, Florida. (Plaintiffs' exhibit 15).

8. On Monday, September 9, 1974, at approximately 8:30 A.M., the plaintiffs deposited the bank draft in The First National Bank and Trust Company of Tulsa. First National then prepared a Certificate of Deposit for \$150,000.00. It was understood between the bank and the plaintiffs that the bank would hold the Certificate of Deposit until the bank draft cleared and that if the draft cleared, the bank would give the Certificate of Deposit to the plaintiffs. If the bank draft did not clear, it was understood that the Certificate of Deposit would not be valid.

9. Under the circumstances, the plaintiffs acted with due diligence in waiting until September 9, 1974 to purchase the Certificate of Deposit. Their actions in handling the bank draft were at all times reasonable and proper.

10. On September 11, 1974, the Sterling Bank and Trust Company Ltd. stopped payment on its \$150,000.00 check issued to the plaintiffs. (Plaintiffs' exhibit 15).

11. The plaintiffs had been making arrangements to transfer their stock to Societe. When they discovered that the bank draft had not cleared, they refused to release the stock until they were paid.

12. On September 28, 1975, Applestein came to Tulsa, Oklahoma to meet with the plaintiffs and "revitalize" the transaction.

13. On September 23, 1974, Applestein had written to the plaintiffs asking them to bring the new stock certificates, issued to Societe, to the September 28 meeting. (Plaintiffs' exhibit 20).

14. At that meeting, Applestein told the plaintiffs that he needed the stock certificates to borrow the funds, and he promised to personally pay the plaintiffs \$150,000.00 within fourteen (14) banking days if they would turn the stock certificates over to him. (Testimony of Leland L. Compton and C. William Lee).

15. The plaintiffs did not receive the money by October 17, 1974, or fourteen (14) banking days after the promise to pay was made by Applestein. (Testimony of Leland L. Compton).

16. Applestein never intended to personally pay the plaintiffs anything for their stock. (Applestein deposition at 136-137).

17. The plaintiffs were reluctant to transfer the stock certificates to Applestein on September 28, 1974, but acting in reliance upon his personal promise to pay them \$150,000.00, they did so transfer the certificates to him. But for Applestein's personal promise to pay them, the

plaintiffs would not have released the stock certificates.
(Testimony of Leland L. Compton and C. William Lee).

18. On October 11, 1974, the plaintiffs received a check in the amount of \$50,000.00 in partial satisfaction of the \$150,000.00 due them. (Plaintiffs' exhibit 23).

19. The plaintiffs have not yet received \$100,000.00 that was promised to them by Applestein on September 28, 1974. (Testimony of Leland L. Compton).

20. Subsequent correspondence from Applestein and others acknowledged that the plaintiffs were still owed \$100,000.00. (Plaintiffs' exhibits 24, 25, 29, 30 and 36).

CONCLUSIONS OF LAW

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

2. The Uniform Commercial Code, Title 12A O.S. §§ 1-101 et seq. governs the legal effect of the \$150,000.00 check drawn on the Citizens and Southern International Bank.

3. A cashier's check is a bill of exchange drawn by a bank upon itself and accepted in advance by the act of issuance. Munson v. American National Bank & Trust Co. of Chicago, 484 F.2d 620 (7th Cir. 1973); State of Pa. v. Curtiss Nat. Bank of Miami Springs, Fla., 427 F.2d 395 (5th Cir. 1970).

4. Title 12A O.S. § 3-411 provides:

"(1) Certification of a check is acceptance. . . ."

5. Title 12A O.S. § 3-410 provides:

"(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification."

6. The \$150,000.00 check of September 2, 1974 was neither a cashier's check nor a certified check and thus did not satisfy the requirements of the June 25, 1974 agreement between the plaintiffs and Societe.

7. Title 12A O.S. § 3-802 provides in part:

"(1) Unless otherwise agreed where an instrument is taken for an underlying obligation

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor. . . ."

8. Because the parties "otherwise agreed" that the plaintiffs would receive cash for their stock (see above Finding of Fact number 6) and that the plaintiffs were still owed \$100,000.00 after the check was dishonored (see above Finding of Fact number 20), the underlying obligation of Societe was not discharged by the plaintiffs' acceptance of the September 2, 1974 check.

9. Title 76 O.S. § 2 provides;

"One who wilfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers."

10. An action to recover damages for fraud inducing the making of a contract is not based on the contract but on tort. Z. D. Howard Company v. Cartwright, 537 P.2d 345 (Okla. 1975).

11. The elements of actionable fraud are: (1) That the defendant made a material representation; (2) that it was false; (3) that he made it when he knew it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. All of these facts must be proven with a reasonable degree of certainty, and all of them must be found to exist. State ex rel. Southwestern Bell Tel. Co. v. Brown, 519 P.2d 491 (Okla. 1974).

12. An agent who fraudulently makes representations, uses duress, or knowingly assists in the commission of tortious fraud or duress by his principal or by others is subject to liability in tort to the injured person although

the fraud or duress occurs in a transaction on behalf of the principal. Restatement (Second) of Agency § 348 (1958).

13. The acts of defendant Applestein, and the acts of the plaintiffs induced thereby (see above Findings of Fact numbers 13 through 19), satisfy all of the elements of actionable fraud, and have been proven with a reasonable degree of certainty.

14. Title 23 O.S. § 61 provides:

"For the breach of an obligation not arising from contract, the measure of damages . . . is the amount which will compensate for all detriment proximately caused thereby, whether it could have been anticipated or not."

15. The fraud of the defendant has proximately caused damages to the plaintiffs in the amount of \$100,000.00.

16. Title 23 O.S. § 6 provides:

"Any person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by an act of the creditor from paying the debt."

17. The legal rate of interest in Oklahoma is six percent (6%) per annum. Title 15 O.S. § 266.

18. The right of the plaintiffs to recover damages from the defendant vested in them on October 18, 1974, or fifteen (15) banking days after September 28, 1974. Such damages were certain at that time. The plaintiffs are therefore entitled to recover from the defendant Applestein interest on \$100,000.00 at the rate of six percent (6%) per annum, accruing from October 18, 1974 to this date.

19. Title 23 O.S. § 9 provides:

"In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant."

20. Because the defendant Applestein has been guilty of fraud, the Court finds that the plaintiffs should recover

from him the sum of \$20,000.00, as exemplary or punitive damages.

21. The plaintiffs are entitled to recover from the defendant, Allan H. Applestein, damages in the amount of:

- (a) \$100,000.00 in actual damages, plus
- (b) Interest on \$100,000.00 at the rate of six percent (6%) per annum, from October 18, 1974 to this date, plus
- (c) \$20,000.00 in punitive damages.

It is so Ordered this 30th day of June, 1977.


H. DALE COOK
United States District Judge

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

LARRY ISLEY,)
)
Plaintiff,)
)
vs.)
)
JOSEPH A. CALIFANO, JR.,)
THE SECRETARY OF HEALTH,)
EDUCATION AND WELFARE,)
)
Defendant.)

No. 76-C-267-C ✓

FILED

June 29 1977

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

J U D G M E N T

This is an action brought by Larry Isley, plaintiff, to review the final determination of the defendant, the Secretary of the Department of Health, Education and Welfare, denying disability benefits under Sections 216(i) and 223 of the Social Security Act, as amended. (42 U.S.C. §§ 416(i) and 423.)

The Court in its review has been granted authority to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, will be conclusive. In this action, the plaintiff alleges the record does not support the determination of the Secretary by substantial evidence.

The matter was first heard, on record, by an Administrative Law Judge of the Bureau of Hearings and Appeals of the Social Security Administration whose written decision was issued October 28, 1975, in which it was found that the claimant had met the special earnings requirement for disability purposes in April, 1974, the date he stated he became unable to work and will continue to meet them through the date of the Administrative Law Judge's decision. The Administrative Law Judge further found that the evidence showed that claimant did in fact have cervical and lumbar sprain

with headaches; that he was not able to do heavy manual labor or work which required him to be around moving machinery but otherwise was able to function in the normal manner, both mentally and physically. The Administrative Law Judge further found that considering the claimant's physical and mental ability, his age, education and work history, he would be able to do jobs such as electronics assembly, spray painter, security guard, warehouseman, assembly and packaging jobs, which jobs were present in significant numbers in the region where the claimant lives and in several regions in the country. Also it was found by the Administrative Law Judge that the claimant was not prevented from engaging in any substantial gainful activity for any continuous period beginning on or about the date of decision which would last or can be expected to last for at least twelve months. The conclusion by the Administrative Law Judge was that the claimant was not under a disability as defined by the Social Security Act, as amended, at any time prior to the date of that decision. Thereafter the decision of the Administrative Law Judge denying disability payments was appealed to the Appeals Council of the Bureau of Hearings and Appeals, which council advised that it had considered all the evidence in the case, the applicable law and regulations, the reasoning and evaluation of the facts in the decision, and the reasons of the plaintiff for believing that his claim should be allowed. The Appeals Council determined that the decision is correct and directed that the hearings decision of the Administrative Law Judge shall stand as the final decision of the Secretary. Thus, the decision of the Administrative Law Judge became the final decision of the Secretary of the Department of Health, Education and Welfare. Court review of the Secretary's denial of Social Security disability benefits is limited to a consideration of the pleadings and the transcript filed by the Secretary as required by 42 U.S.C. § 405(g), and is not a trial de novo. Atteberry v. Finch, 424 F.2d 36 (10th Cir.

1970); Hobby v. Hodges, 215 F.2d 754 (10th Cir. 1954). The findings of the Secretary and the inferences to be drawn therefrom are not to be disturbed by the Courts if there is substantial evidence to support them. 42 U.S.C. § 405(g); Atteberry v. Finch, supra. In National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300, 59 S.Ct. 501, 83 L.Ed. 660 (1939), the Court interpreting what constitutes substantial evidence stated:

"It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."

Atteberry v. Finch, supra; Gardner v. Bishop, 362 F.2d 917 (10th Cir. 1966). See also Haley v. Celebrezze, 351 F.2d 516 (10th Cir. 1965); Folsom v. O'Neal, 250 F.2d 946 (10th Cir. 1957).

The transcript of the entire record of proceedings relating to the application of the plaintiff, Larry Isley, and filed of record in this case has been carefully reviewed. The principal issue presented herein is whether the record, by substantial evidence, sustains the findings that the plaintiff is not under disability as defined by the Social Security Act at any time prior to the date of that decision.

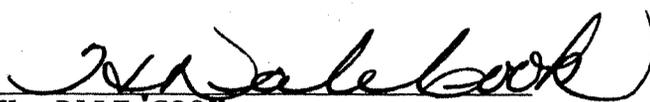
Section 223(d)(1) of the Social Security Act defines disability, as pertinent to the matters here in issue, as the "inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." Section 223(d)(2)(A) further provides that "an individual (except a widow, surviving divorced wife, or widower for purposes of §§ 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any kind of substantial gainful work which exists

in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."

A review of the entire record discloses conflicting evidence therein. However, a vocational expert testified at the hearing concerning the residual and transferrable skills retained by the plaintiff giving his opinion as to work positions which existed in the national economy for which plaintiff was capable and qualified to perform. The Administrative Law Judge found that although plaintiff did have an impairment with regard to his back and head which would constitute a moderate degree of functional limitation, he retained sufficient residual mental and physical capability when viewed with his work and education experience that would permit sustained sedentary to light physical exertion. Further, the Administrative Law Judge found, and the evidence is sufficient to support a finding of the Administrative Law Judge that the testimony of the vocational expert was creditable, realistic and in accord with the evidence of record as indicating the claimant did have the vocational capabilities to engage in occupational undertaking other than his former work.

The Court therefore finds that the determination of the Administrative Law Judge to the effect that even though plaintiff was unable to engage in his previous employment, he could, considering his age, education and work experience, engage in other substantial gainful work activity which did exist in the national economy, is supported by substantial evidence of record. The findings of the Secretary thus being supported by substantial evidence of record are affirmed, and Judgment is hereby entered on behalf of the defendant.

It is so Ordered this 29th day of June, 1977.


H. DALE COOK
United States District Judge

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

RONALD G. LYNCH,)
)
 Plaintiff,)
)
 vs.)
)
 PATRICIA M. HOEBEL,)
 LARRY D. and DOROTHY)
 J. PENNY,)
)
 Defendants.)

No. 77-C-82-C ✓

FILED

JUN 29 1977 *per*

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

O R D E R

Plaintiff, Ronald G. Lynch, filed this action on February 23, 1977, alleging he is entitled to declaratory injunctive relief pursuant to 42 U.S.C. § 1983. Based upon an examination of the Complaint as filed it appeared to the Court that plaintiff had failed to state a cause of action against the defendants for which relief could be granted. However, in order to give plaintiff every opportunity to present his cause of action, the Court issued an Order dated March 15, 1977, reviewing the issues of law and granting plaintiff twenty (20) days in which to file a statement in support of his allegations and/or to supplement or amend the Complaint. On April 5, 1977 the plaintiff filed a "Supplement in Support of Allegations" in which he simply reiterated the statements previously made in the Complaint.

Based upon the Complaint and Supplement thereto and for the reasons previously set out by the Court in its Order dated March 15, 1977 it is the determination of the Court that plaintiff's Complaint should be and hereby is dismissed.

It is so Ordered this 29th day of June, 1977.

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

FILED

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

JUN 29 1977 jmw

RONALD HADDOCK, Administrator of the Estate
of Delma Haddock, deceased,)
Plaintiff,)
vs.)
TOM PRICE, et al.,)
Defendant.)

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

No. 76-C-567 - e ✓

ORDER DISMISSING CAUSE AS TO DEFENDANTS
RONNIE VANCE AND EDDIE AUSTIN

Upon stipulation of the parties at Pre-trial Conference, this
cause of action is hereby dismissed as to the defendants Ronnie Vance and
Eddie Austin.

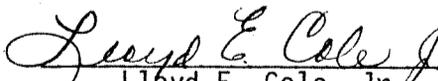

H. Dale Cook, U. S. District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of June, 1977, I mailed a
true and correct copy of the above and foregoing Order to the following
with proper postage thereon fully prepaid, to-wit:

Mr. Gary M. Jay
Attorney at Law
P.O. Box 368
Pryor, Oklahoma 74361

Mr. W.M. "Bill" Thomas
Attorney at Law
P.O. Box 217
Pryor, Oklahoma 74361


Lloyd E. Cole, Jr.

ph

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
LAWRENCE ROBERTS, a/k/a L. R.)
ROBERTS, BARBARA ROBERTS,)
WILLIE BELL ROBERTS, DISTRICT)
COURT CLERK, Tulsa County,)
COUNTY TREASURER, Tulsa County,)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, and FROUG'S, INC.,)
)
Defendants.)

CIVIL ACTION NO. 77-C-22-C

FILED

JUN 29 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 29th
day of June, 1977, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; the Defendant, Froug's
Inc., appearing by its attorney, Don E. Gasaway; the Defendants,
District Court Clerk, Tulsa County, County Treasurer, Tulsa County,
and Board of County Commissioners, Tulsa County, appearing by
Kenneth L. Brune, Assistant District Attorney; and the Defendants,
Lawrence Roberts, a/k/a L. R. Roberts, Barbara Roberts, and Willie
Bell Roberts, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendants, District Court Clerk, Tulsa
County, County Treasurer, Tulsa County, and Board of County
Commissioners, Tulsa County, were served with Summons and Complaint
on January 17, 1977, and were served with Amendment to Complaint
on March 3, 1977; that Defendant, Froug's Inc., was served with
Summons, Complaint, and Amendment to Complaint on March 3, 1977,
all as appears from the U.S. Marshals Service herein; that Defendant,
Willie Bell Roberts, was served by publication, as appears from
the Proof of Publication filed herein; and that Defendants, Lawrence
Roberts, a/k/a L. R. Roberts, and Barbara Roberts, were served
with Summons and Complaint on February 16, 1977, and were served

Amendment to Complaint by publication, as appears from the U.S. Marshals Service and Proof of Publication filed herein.

It appearing that Defendant, Froug's, Inc., has duly filed its Disclaimer herein on March 17, 1977; that Defendants, District Court Clerk, Tulsa County, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on January 31, 1977; that Defendants, Lawrence Roberts, a/k/a L. R. Roberts, Barbara Roberts, and Willie Bell Roberts, 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 Seventeen (17), Block Two (2), SHARON HEIGHTS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Lawrence Roberts and Barbara Roberts, did, on the 20th day of December, 1974, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,500.00 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, Lawrence Roberts and Barbara Roberts, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$10,360.91 as unpaid principal with interest thereon at the rate of 9 1/2 percent per annum from June 1, 1976, 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 Arthur Waller and Lacyrene Waller, former owners, the sum of \$ 8 ²³/₁₀₀ plus

interest according to law for personal property taxes for the year(s) 1977 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

The Court further finds that Defendant, District Court Clerk, Tulsa County, is entitled to judgment against, Defendant, L. R. Roberts, in the amount of \$15.00, plus interest according to law, 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, Lawrence Roberts and Barbara Roberts, in rem, for the sum of \$10,360.91 with interest thereon at the rate of 9 1/2 percent per annum from June 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.

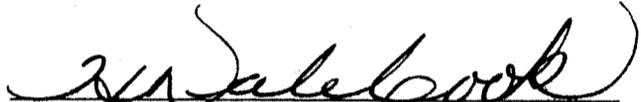
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Arthur Waller and Lacyrene Waller, former owners, for the sum of \$ 8 ²³/₁₀₀ as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, District Court Clerk, Tulsa County, have and recover judgment, in rem, against Defendant, L. R. Roberts, in the amount of \$15.00, plus interest thereafter according to law, 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 Defendant, Willie Bell Roberts.

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.

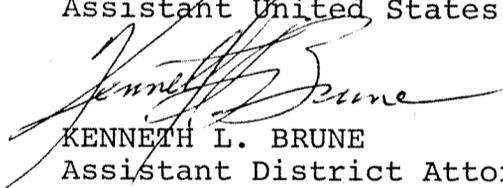
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed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


UNITED STATES DISTRICT JUDGE

APPROVED



ROBERT P. SANTEE
Assistant United States Attorney


KENNETH L. BRUNE

Assistant District Attorney
Attorney for Defendants,
County Treasurer, Tulsa County,
Board of County Commissioners, Tulsa County, and
District Court Clerk, Tulsa County

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

HOMER PRICE, #85778)
)
) Petitioner,)
)
) v.)
)
) STATE OF OKLAHOMA, ET AL.,)
)
) Respondents.)

No. 76-C-635-C

FILED

JUN 29 1977

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

ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS

The Court has before it for consideration the Petition of Homer Price for a Writ of Habeas Corpus, filed pro se pursuant to Title 28 U.S.C. § 2254. Respondent has filed a Response, pursuant to an Order of the Court directing it to show cause why the Writ of Habeas Corpus should not be granted.

Petitioner was convicted in the District Court of Tulsa County, Oklahoma of the offense of murder and was sentenced to life imprisonment. The judgment and sentence was affirmed by the Oklahoma Court of Criminal Appeals. Price v. State, 541 P.2d 373 (1975). Petitioner demands his release from custody and as grounds therefor claims that:

- 1) That the prosecution knowingly used false testimony to obtain his conviction;
- 2) That his counsel was inadequate in that he did not call certain witnesses in petitioner's behalf, and that the prosecution denied him the right to call witnesses in his own behalf;
- 3) That he was denied the right to confront a key prosecution witness; and
- 4) That prejudicial statements were made by the prosecuting attorney during cross-examination of petitioner and during closing arguments.

Essentially these same arguments were raised in the Tulsa County District Court in Petitioner's Application for Post-Conviction Relief. Denial of this Application was affirmed by the Oklahoma Court of Criminal Appeals on August 5, 1976, Case No. PC-76-566. Petitioner has exhausted available state remedies.

In determining whether an evidentiary hearing is necessary prior to ruling upon the validity of petitioner's allegations, this Court must look to the requirements established by the United States Supreme

Court in Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963).

"Where the facts are in dispute, the federal Court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of trial or in a collateral proceeding."
372 U.S. at 312.

Petitioner claims that certain witnesses were not called who would have testified in his behalf, and that two witnesses, Dr. Leo Lowbeer and Mary Jean Gordon testified falsely. However, there is no indication from a reading of the complete record that the underlying facts surrounding the charge of murder against the defendant were not adequately developed during the trial process. Therefore, the Court deems it unnecessary to conduct an evidentiary hearing.

In his first allegation, Petitioner contends that the prosecutor knowingly used false testimony to obtain his conviction. In particular, Petitioner claims that the testimony of Dr. Leo Lowbeer, the medical examiner who performed the autopsy on the body of the deceased victim, was false and that the State knew it was false. Petitioner also claims that the State knowingly used false testimony of the witness Mary Jean Gordon.

Dr. Lowbeer testified that from his examination it appeared that the body of the victim had been shot three times; that the first bullet pierced the lip, shattered the jaw and penetrated through the neck and lodged in the deceased's shirt; that the second bullet went through the chest wall, grazed the lung and heart and passed through and lodged in the loose skin before exiting the body; that the third bullet went into the back of the shoulder and passed through the body exiting out the front of the body. He stated that the cause of death was the passage of the second bullet through the lung and heart. He also testified that the trajectory of the first bullet on entry, passing through the lip, could not possibly have been fired into the

deceased while the deceased was standing. Dr. Lowbeer's opinion that the deceased was lying down at the time the shots were fired is consistent with the testimony of the eye witness, Mary Jean Gordon.

According to Mary Jean Gordon's account of the shooting, she was asleep in the living room of the defendant's mother's home when she heard the door open and then heard a "click" and a "bang" at which time she looked up and saw the defendant with a rifle pointed at the victim who was lying asleep on the couch. She further said that as she looked at the victim she saw blood flowing from his jaw; that before she could get up she heard a second "click" and "bang" as the defendant fired a second shot; that she then grabbed the gun but could not pull it away from the defendant before the gun discharged the third time; that the defendant then took the gun and ran out the door.

Petitioner claims that he shot the victim in self defense; that there were three entry wounds on the victim, one at the left side of the stomach from the front, another at the right side of the mouth from the front and the third in the center of the head from the front.

The issue relating to the use of allegedly perjured testimony was not raised by Petitioner in his direct appeal. Price, supra. It was raised on his Application to the Tulsa County District Court for Post-Conviction Relief which application was denied. The Order denying relief was affirmed by the Oklahoma Court of Criminal Appeals on August 5, 1976, Case No. PC-76-566.

The requirements which must be satisfied by the petitioner in order to show a conviction through the use of perjured testimony are set out in McBride v. United States, 446 F.2d 229, 232 (10th Cir. 1971):

"While use of perjured testimony to obtain a conviction may be grounds for a vacation of a conviction, the petitioner has the burden of establishing that (a) testimony was false; (b) that it was material; and (c) that it was knowingly and intentionally used by the government to obtain a conviction. Oyler v. Taylor (10th Cir. 1964)

338 F.2d 260, cert. denied, 382 U.S. 847
86 S.Ct. 92, 15 L.Ed.2d 87; Lister v.
McLeod (10th Cir. 1957) 240 F.2d 16, Ryles
v. United States, supra, 198 F.2d 199.
Conclusionary allegations to this effect
are not sufficient. Early v. United States
(D.C. Kan. 1969) 309 F.Supp. 421."

After reviewing the record as it pertains to the allegation of perjured testimony it is the conclusion of the Court that Petitioner has not established that the testimony of either Dr. Lowbeer or Ms. Gordon was false. Therefore the petition on the ground that the conviction was obtained by use of perjured testimony must be denied.

Petitioner's second ground for relief is directed at his retained counsel's failure to call four witnesses to testify on his behalf. Each of the four witnesses was listed in the State's Information and each was subpoenaed by the State, although none called to testify. Petitioner claims that one of the four witnesses was the only eye witness to see the first shot and could also testify as to what happened before the first shot was fired. The other three witnesses are said by Petitioner to have heard the conversation between Mary Gordon and the victim when the Petitioner left the house which conversation according to Petitioner lead to the shooting.

Trial techniques and the witnesses to be used or not used in a trial is a matter for the trial counsel to determine by the exercise of professional judgment. See Grant v. State of Oklahoma, 382 F.2d 270, 272 (10th Cir. 1967).

The guidelines for determining when defense counsel was ineffective or incompetent were set forth in Ellis v. State, 430 F.2d 1352, 1356 (10th Cir. 1970).

"It is the general rule that relief from a final conviction on the ground of incompetent or ineffective counsel will be granted only when the trial was a farce, or a mockery of justice, or was shocking to the conscience of the reviewing court, or the purported representation was only perfunctory, in bad faith, a sham, a pretense, or without adequate opportunity for conference and preparation. Goforth v. United States (10th Cir. 1963), 314 F.2d 868 ***. Williams v. Beto, 354 F.2d 698, 704 (5th Cir. 1965). And this test is applicable to cases in which counsel is retained by or for an accused as well as to cases in which counsel is appointed to represent an indigent defendant. Bell v. State of Alabama, 367 F.2d 243 (5th Cir. 1966)."

The record shows that Petitioner's counsel provided effective legal assistance to the Petitioner throughout the course of the trial. The contention of Petitioner to the contrary is without merit and therefore fails to support his Petition for relief.

The next ground alleged by Petitioner is that he was denied the right to confront a key prosecution witness. He claims that three of the State's witnesses were permitted to testify as to the statements made by Evelyn Marie Scott who was not called as a witness. Petitioner claims that such testimony is hearsay and therefore inadmissible.

In particular Petitioner points to certain testimony of the State's witness Brenda Louise Gordon found at Pages 124 to 127 of the Trial Transcript; to the testimony of the State's witness Garland Parker found at Pages 157 and 159 of the Trial Transcript; and to the testimony of the State's witness Mary Jean Gordon found at Pages 204 and 205 of the Trial Transcript. No objection was made to any of the testimony referred to by Petitioner, nor does it appear that any was objectionable as hearsay. Most of the testimony cited by the Petitioner were conversations had in the presence of the testifying witnesses between the Petitioner and Ms. Scott. Other testimony described certain acts of the Petitioner or acts of Ms. Scott in the presence of the Petitioner observed by the testifying witness.

The alleged error in admission of this evidence in the state court trial was cognizable only on direct appeal and not on collateral attack in habeas corpus proceeding. Ellis v. Raines, 294 P.2d 414 (10th Cir. 1961), cert. den. 368 U.S. 1000, 82 S.Ct. 628, 7 L.Ed.2d 538. See also Cassell v. People of the State of Oklahoma, 373 F.Supp. 815 (E.D. Okla. 1973); Carrillo v. United States, 332 F.2d 202 (10th Cir. 1964). Therefore, Petitioner's third ground for relief is also without merit and must be denied.

In his final allegation, Petitioner claims that prejudicial statements were made by the prosecuting attorney during cross-examination of petitioner and during closing arguments. In his brief, the Petitioner states that the "prosecutor deliberately violated the petitioner constitution rights, by going outside the record by expressing his personal opinion in cross-examine the defendant." The cross-examination referred to by Petitioner is found at Pages 335 and 336 of the Trial

Transcript and set out on Page 5 of Petitioner's brief. No objection was made to this cross-examination nor did the Petitioner raise this issue on his direct appeal.

In regard to the cross-examination of the petitioner by the prosecutor, the Petitioner particularly objects to the question:

"Was your mother having some sort of a relationship with Judge Brandom?"

The standard to be applied in determining whether there has been a denial of a fair and impartial trial is whether the proceedings were ". . . conducted in such a manner as amounts to a disregard of 'that fundamental fairness essential to the very concept of justice,' and in a way that 'necessarily prevent(s) a fair trial.'" Redford v. Smith, 543 F.2d 726, 731 (10th Cir. 1976), citing Lyons v. Oklahoma, 322 U.S. 596, 605, 64 S.Ct. 1208, 1213, 88 L.Ed. 1481 (1944). The burden of showing this essential unfairness is upon ". . . him who claims such injustice and seeks to have the result set aside, and . . . it must be sustained not as a matter of speculation but as a demonstrable reality." Adams v. United States ex rel. McCann, 317 U.S. 269, 281, 63 S.Ct. 236, 87 L.Ed. 268 (1942).

A review of the entire record surrounding the examination and cross-examination of the Petitioner shows that Petitioner was not denied a fair and impartial trial as a result of any improper cross-examination.

Petitioner also complains of statements by the prosecuting attorney in his closing argument to the effect that Petitioner lied on the witness stand. The particular remarks are found in the trial transcript at Page 429 where the prosecuting attorney described the testimony of the defendant as "completely ridiculous and improbable" and a "lie;" at Page 431 as "unbelievable;" and at Page 432 as "just another one of these fantastic, unrealistic and absurd concocted tales of woe."

There are two categories of such comments which have been recognized and should be distinguished. One category contains state-

ments of belief based upon the evidence adduced at trial, and the other includes "statements of belief that the jury was expected to understand came from the prosecutor's personal knowledge of, and from the prosecutor's prior experience with, other defendants." United States ex rel. Haynes v. McKendrick, 350 F.Supp. 990 (S.D. N.Y. 1972). The former are not wholly improper in the absence of any intimation that they were founded on personal knowledge or matters not in evidence, Id.; Williams V. United States, 265 F.2d 214 (9th Cir. 1959), while the latter are clearly improper. United States ex rel. Haynes v. McKendrick, supra; Stewart v. United States, 247 F.2d 42 (D.C. Cir. 1957).

The comments of the prosecution in the instant case were based upon the evidence presented at trial and not upon his personal knowledge. In considering the issue of improper argument on the part of the prosecuting attorney, the Court of Criminal Appeals of Oklahoma said:

"In reviewing the arguments of counsel for the State, this Court is of the opinion that nothing therein constitutes error of a fundamental nature." Price v. State, supra, at 379.

This Court agrees with that conclusion and finds Petitioner's final ground to be unsupportive as a basis for relief under 28 U.S.C. 2254.

The Petition for Writ of Habeas Corpus is denied.

It is so Ordered this 29th day of June, 1977.

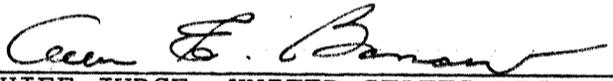

H. DALE COOK
UNITED STATES DISTRICT JUDGE

The laws of the State of Oklahoma provide for direct appeal, 22 O.S.A. § 1051, et seq., and also for post-conviction relief, 22 O.S.A. § 1080, et seq., and habeas corpus 12 O.S.A. § 1331, et seq. Prior to a ruling by the high-Court of the State on the issues, a habeas corpus petition is premature in the Federal Court.

A petitioner may not deliberately by-pass adequate and available State remedies and proceed in Federal Court, and it has been repeatedly held that the probability of success is not the criterion of the adequacy of State remedies and their ineffectiveness may not be established if no attempt is made to obtain relief thereunder. Daegele v. Crouse, 429 F.2d 503 (10th Cir. 1970) cert. denied 400 U. S. 1010. There is no principle in the realm of Federal habeas corpus better settled than that State remedies must be exhausted.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Bobby Allen Brown be and it is hereby denied for failure to exhaust adequate and available Oklahoma State remedies and the cause is dismissed without prejudice to a later petition, if necessary, after the State remedies have been exhausted.

Dated this 28th day of June, 1977, at Tulsa, Oklahoma.


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

punishment by this much incarceration;" that further incarceration can only be detrimental to her and her son's happiness and future; that she recognizes her mistake and feels that she can now live in society without committing further unlawful acts. She then pleads with the Court to "give me relief from this sentence or show me just cause where it would be beneficial to me and my family to have to have further incarceration."

In effect ground one of defendant's motion must be treated as constituting a Motion for Reduction or a Modification of Sentence under Rule 35, which allows the sentencing court to reduce or modify the sentence imposed within 120 days of the date of sentencing or to correct an illegal sentence at any time. The period of 120 days is jurisdictional and may not be enlarged. United States v. Kirkland No. 75-1559, P. 3 (10th Cir. 1976). Therefore the Court is without jurisdiction to consider such ground in that more than 120 days have elapsed since the defendant was sentenced on July 23, 1976.

As her second ground for relief, the defendant alleges that her retained counsel, John Street was "incompetent." Although she states that she feels "that after all of the lies and false hopes that my astranged attorney have fed me and my family that I was not only misrepresented now in the past two months but during all of my trials," her specific allegations of "incompetency" are directed only at her attorney's failure to file a Motion pursuant to 28 U.S.C. 2255. She claims that John Street told her that he had filed a "Writ and a Motion" on her behalf the second week of January; that on February 14, 1977 he told her there were orders on Judge H. Dale Cook's desk for him to sign for her to "come back and be relieved from this;" that he has lied to her and misled her causing her anxiety and anticipation for something that wasn't taking place; that this has caused her more punishment and is "cruel and unjust for anyone to bear on top of incarceration."

Defendant's second ground also fails to support her claim for relief under 28 U.S.C. 2255. Defendant has stated no factual basis

for relief. Her motion is completely void of any factual allegations of "incompetency" of her retained counsel during the course of her appearances before this Court for Arraignment, Plea and Sentencing. Following her imprisonment, even if her attorney mislead her as to his efforts in filing a motion on her behalf pursuant to 28 U.S.C. 2255, the defendant has not been prejudiced by such failure or the delay, if any, caused thereby. A review of the file in this case shows that the defendant has continuously made her complaints known to the Court commencing with her letter of August 9, 1976, this letter was treated by the Court as a Rule 35 Motion for Reduction of Sentence, and was denied. Again, on September 22, 1976 the Court received a letter from the defendant which was also considered and promptly ruled upon. Thereafter, the Court received letters on October 29, 1976 and November 17, 1976 from the defendant which the Court again considered as a Rule 35 Motion for Reduction of Sentence and granted the Motion on December 1, 1976 by reducing the period of imprisonment from two (2) years to eighteen (18) months. On December 15, 1976 the Court received another letter from the defendant in which the defendant thanked the Court for reducing her sentence. This letter made no additional requests of the Court for relief. On January 3, 1977 the defendant again wrote the Court requesting a further reduction of her sentence. The Court responded to this letter on January 6, 1977 advising the defendant that the Court had no jurisdiction to reduce the sentence because more than 120 days had elapsed from the date of her sentence. The Court also advised the defendant that she or her attorney could file any other appropriate Motion or Application. The Court received additional letters from the defendant on January 14, 1976 and January 17, 1976 in which the defendant complained about her mail having been opened before it reached her and inquired as to motions that she could file to reduce her sentence or reopen her case. On January 19, 1977 the Court replied by reminding the defendant that the Court was without authority to reduce the sentence

and that only in the event that there had been a deprivation of her constitutional rights could any additional relief be granted. The Court further noted that in its view her rights have been scrupulously protected throughout all the proceedings that have been held. As to defendant's complaint about her mail being opened, the Court suggested that the defendant follow the grievance procedures provided by the Bureau of Prisons for that purpose.

No further correspondence was received from the defendant until February 14, 1977 at which time a letter came in which the defendant stated that she had talked with her attorney John Street who she said had advised her that he had filed a "Writ and Motion" the second week of January. She requested that she be "brought back on the writ and have a re-trial or re-sentencing" in her case. This letter was referred to the Clerk of the Court for reply and on February 15, 1977 the Clerk advised defendant that no Writ or Motion as described had been filed on behalf of the defendant in this Court. This caused the defendant to again write the Court a letter which was received on February 22, 1977 and responded to on February 24, 1977. In her letter, the defendant complained about her lawyer's failure to file certain motions or writs and requested the Court to consider the letter as a Motion for another reduction of sentence or a Writ of Habeas Corpus. Once again the defendant was reminded that the Court was without jurisdiction to act upon her request for reduction of sentence. The Court further informed the defendant that a Petition for Writ of Habeas Corpus must be filed on specific forms which could be secured from the Office of the Court Clerk. Additionally the Court advised defendant that such a Writ could be granted only if she were being held in deprivation of her constitutional rights.

On February 28, 1977 the Court received a letter from the defendant in which she states that she has filed a writ with the Court Clerk and that she felt she would get a lot further ahead by filing it herself because she would then know that it was filed. Because the defendant had not used the proper form the Clerk

returned the motion together with proper forms to the defendant. Finally on March 2, 1977 the defendant filed her formal Motion to Vacate, Set aside or Correct Sentence pursuant to 28 U.S.C. 2255 which is the Motion now before this Court. Two more letters were received from the defendant on May 19, 1977. These letters described defendant's despair in being separated from her son and her disappointment with the action of the United States Parole Commission in denying her request for release.

Thus it is abundantly clear that the defendant has alleged no facts showing she has been prejudiced by any action or inaction on the part of her retained counsel. In Gomez v. United States, 371 F. Supp. 1178 (D.C. N.Y. 1974) the Court said:

"Petitioner must, however, do more than merely allege in a conclusory manner that his counsel was incompetent. United States v. Tribote, 297 F.2d 598, 601 (2d Cir. 1961); United States ex rel. Jablonsky v. Follette, 291 F. Supp. 828 (S.D.N.Y. 1968). He must point to specific prejudice resulting from the alleged incompetence. United States ex rel. Hardy v. McMann, 292 F. Supp. 191, 194 (S.D.N.Y. 1968), and he must allege facts demonstrating that the conduct of counsel was 'of such a kind as to shock the conscience of the Court and make the proceedings a farce and mockery of justice'." (citing authority)

See also Lorraine v. United States, 444 F.2d 1 (10th Cir. 1971).

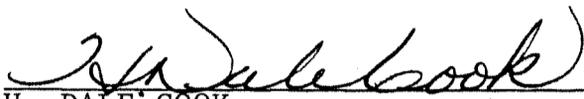
Moreover, such generalities and conclusions impose no obligation on the Court to conduct an evidentiary hearing. Martinez v. United States, 344 F.2d (10th Cir. 1965); Stephens v. United States, 246 F.2d 607 (10th Cir. 1957).

"Cruel and Unusual Punishment" is claimed as defendant's final ground for relief. This she contends is due to the action of the United States Parole Commission denying her release following her appearance at a hearing held on February 25, 1977. She states that the hearing was a "mockery and formality" and that "as a person I was not treated justly." Again, as pointed out by the Court in connection with defendant's second ground, generalities and conclusory statements fall short of supporting relief under 28 U.S.C. 2255. Furthermore, it appears that defendant has failed to exhaust administrative remedies

provided by the United States Parole Commission and available to her. See Owens v. Alldridge, 311 F. Supp. 667 (W.D. Okla. 1970); Hess v. Blackwell (5th Cir. 1969).

For the reasons stated defendant's motion for relief herein is denied.

It is so Ordered this 27th day of June, 1977.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

JOE BOYD,)
)
 Plaintiff,)
)
)
 -vs-)
)
)
 SAFEWAY STORES, INCORPORATED,)
 a foreign corporation,) No. 76-C-547-C ✓
)
 Defendant.)

FILED

JUN 28 1977

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

JOURNAL ENTRY OF JUDGMENT

Now on this 7th day of June, 1977, this case comes on for non-jury trial pursuant to regular setting by the Court. The Plaintiff appearing in person and by his attorney Allen B. Mitchell. The Defendant appearing in person by its representatives and by its attorney, T. H. Eskridge. Both sides having announced ready, Plaintiff and Defendant each make opening statements and then the Plaintiff presents his evidence and at the end of the day the court recesses. This June 8, 1977, non-jury trial of this case continues and Plaintiff continues presentation of evidence and rests. The Defendant presents its evidence and rests. The Court hears closing arguments of counsel, and being well and truly advised in the premises, finds the issues generally in favor of the Defendant, and specifically finds that the discharge of Joe Boyd from his employment with Safeway Stores, Incorporated was not motivated by racial considerations either in whole or in part, and did not contravene the provisions of Title VII of the Civil Rights Act of 1964.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff take nothing, that the action be dismissed on the merits, and that Defendant recover of the Plaintiff its costs of action.

Done in open court this 8th day of June, 1977.


H. DALE COOK, JUDGE
United States District Court
Northern District of Oklahoma

APPROVED:

Allen B. Mitchell
Attorney for Plaintiff

J. H. Eshelby
Attorney for Defendant

The Court further finds that Defendant, Sylvester Eugene Daniels, made default under the terms of the aforesaid mortgage note by reason of his failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the sum of \$8,731.37 as unpaid principal with interest thereon at the rate of 9 percent per annum from May 1, 1976, until paid, plus the cost of this action accrued and accruing.

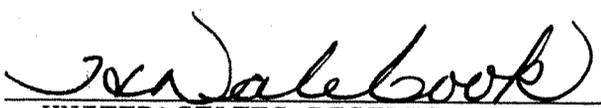
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Sylvester Eugene Daniels, in rem, for the sum of \$8,731.37 with interest thereon at the rate of 9 percent per annum from May 1, 1976, plus the cost of this action accrued and accruing, plus 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 Defendant to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, the Defendant be and he is forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney


UNITED STATES DISTRICT JUDGE

JUN 27 1977

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

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

ROBERT LEE GREEN,)	
)	
)	NO. 77-C-93
)	
DONALD HORACE HOLT,)	
)	
)	NO. 77-C-94
)	
v. ...)	
)	
RICHARD A CRISP, Warden, et al.,)	
)	
)	Respondents.

O R D E R

The Court has for consideration the pro se, in forma pauperis petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2254 of Robert Lee Green and Donald Horace Holt. Petitioners are prisoners in the Oklahoma State Penitentiary upon conviction by jury in the District Court of Tulsa County, State of Oklahoma, Case No. CRF-74-2983, of robbery with firearms after former felony convictions. In the second stage of the trial regarding the sentence to be imposed, after guilt had been established, petitioners were each sentenced to 500 years imprisonment. On direct appeal, the Oklahoma Court of Criminal Appeals affirmed the convictions, but found that in the second stage of the proceeding regarding sentencing the prosecutor's remarks may have suggested to the jury that parole considerations necessitated lengthy sentences, and the sentence as to each defendant was modified from 500 years to life imprisonment. Holt v. State, Okl. Cr., 551 P.2d 285 (1976). Thereafter, Petitioners each filed a petition for writ of habeas corpus, consolidated cases Nos. H-77-109 and H-77-110, in the State Court alleging that their rights to due process and equal protection of the law as guaranteed by the Constitution of the United States had been violated by the modification of sentence, and the Oklahoma Court of Criminal Appeals denied relief by Order dated February 22, 1977, and filed February 23, 1977. The issue presented to this Federal Court is the same as presented in the State habeas corpus petitions:

Denial of due process and equal protection of the law by modification of sentence from 500 years to life imprisonment.

and petitioners' State remedies have been exhausted.

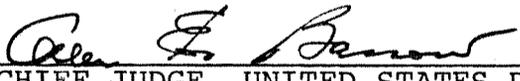
Having carefully reviewed the petitions and being fully advised in the premises, the Court finds that each of the above actions involves a common question of law and fact and that they should be consolidated pursuant to Rule 42(a), Federal Rules of Civil Procedure. Further, the Court finds that response is unnecessary, an evidentiary hearing is not required, and the petitions are without merit and should be denied.

The error alleged occurred in the second stage of the proceedings after guilt had been established. The modification of sentence served to correct any error that may have been committed in the second, sentencing stage of the proceedings. The sentences as originally imposed as well as the modified sentences are within the statutory limits of punishment fixed for the crime of which the defendants had been found guilty. Petitioners were not deprived of due process, a fair trial, or equal protection of the law in a constitutional sense. The degree or manner in which a sentence within statutory limits is modified by the State Court does not raise a claim cognizable under habeas corpus. By analogy, see, Byrne, et al. v. Anderson, Unpublished 71-1747 (10th Cir. filed February 25, 1972). Also see, In re Bonner, 151 U. S. 242, 260 (1894); King v. United States, 98 F.2d 291, 296 (D.C.Cir. 1938); Bozza v. United States, 330 U. S. 160, 167 (1947); McCleary v. Hudspeth, 124 F.2d 445 (10th Cir. 1941); Williams v. Oklahoma, 358 U. S. 576 (1959) rehearing denied 359 U. S. 956.

IT IS, THEREFORE, ORDERED that these causes of action, the habeas corpus petitions of Robert Lee Green and Donald Horace Holt, be and they are hereby consolidated and the Clerk is directed to effect the necessary steps to consolidate them.

IT IS FURTHER ORDERED that the petitions for writ of habeas corpus of Robert Lee Green and Donald Horace Holt be and they are hereby denied and the cases are dismissed.

Dated this 27th day of June, 1977, at Tulsa, Oklahoma.


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

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

ASHLAND OIL, INC.,

Plaintiff,

vs.

H. A. CHAPMAN;
R. J. STILLINGS d/b/a GASTILL COMPANY;
FRANK O. BENNETT;
DONALD H. CANFIELD;
CAP OIL COMPANY, a partnership;
RALPH L. ABERCROMBIE; and
CHESTER H. WESTFALL, JR.,

Defendants.

No. 75-C-108-B

FILED

JUN 24 1977

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

O R D E R

Now, on this 24 day of June, 1977, their having been submitted to the Court a Stipulation for Dismissal, filed on behalf of all parties to the above entitled action and stipulating that said action may be dismissed with prejudice, the Court finds that the stipulated dismissal should be allowed.

NOW IT IS, THEREFORE, ORDERED, that the above entitled *Case of* ~~action~~ *and Complaint* be, and the same hereby ~~is~~ *are* dismissed with prejudice, each party to bear its own costs, in accordance with the Stipulation for Dismissal filed herein.

Allen E. Barrow
United States District Judge
Northern District of Oklahoma

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

JEWELLDEAN LOWERY,)
)
 Plaintiff,)
)
 v.)
)
 CITIES SERVICE COMPANY,)
 a Corporation,)
)
 Defendant.)

No. 76-C-523-C **FILED**

JUN 24 1977

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

O R D E R

The motion of Plaintiff for dismissal of the above entitled action without prejudice came on regularly for hearing;

And it appearing that Defendant in his answer makes no counterclaim against the Plaintiff and will not be prejudice by dismissal and further has stipulated that he has no objection to such dismissal; Therefore,

It is ordered that the above entitled cause be and it is hereby dismissed without prejudice.

Dated this 24TH day of June, 1977.

s/ H. Dale Cook
JUDGE OF THE DISTRICT COURT

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

CALVIN L. KAIN)

Plaintiff,)

v.)

No. 76-C-407-C)

KAIN'S RESEARCH AND)
DEVELOPMENT COMPANY, INC.)
et al.,)

Defendants.)

FILED

JUN 24 1977

ORDER OF DISMISSAL
WITH PREJUDICE

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

In accordance with the stipulation of the parties entered herein this date, and the Court having reviewed the settlement agreements entered into by the parties,

It is therefore Ordered that this action and the causes of actions set forth in the complaint of the plaintiff herein be, and the same is hereby, dismissed with prejudice, each party to bear their respective costs and expenses herein.

It is so Ordered this 24th day of June, 1976.

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

UNITED STATES DISTRICT COURT
NORHTERN DISTRICT OF OKLAHOMA

BARBARA ANN COOKS, individually,)
and on behalf of all others similarly)
situated.)

PLAINTIFF,)

-vs-)

PATTON FURNITURE COMPANY,)
a corporation,)

DEFENDANT,)

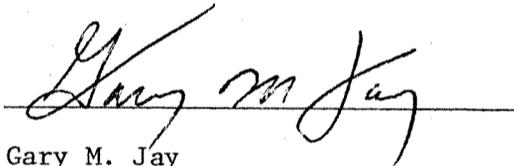
CIVIL CASE NO.)
76-C103-C)

FILED
in open court
JUN 24 1977 *hww*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

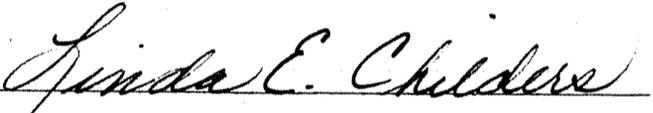
STIPULATION OF DISMISSAL

Comes now the parties and pursuant to the provisions of Rule 41 (a) (1) (i i) of the Federal Rules of Civil Procedure stipulate to the dismissal of this cause. Said dismissal is with prejudice.

Linda E. Childers & Lantz McClain
Attorneys for Plaintiff



Gary M. Jay
Attorney for Defendant
Booth & Jay
Counsellors Building
1419 South Denver
Tulsa, Oklahoma 74119

By: 

Linda E. Childers
Suite 111, 201 West Fifth
Tulsa, Oklahoma 74103

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

FILED

JOHN FREDRICK SHELTON, #90212,)
) Petitioner,)
))
v.)
STATE OF OKLAHOMA,)
) Respondent.)

No. 76-C-482-C

JUN 23 1977 *JS*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS

The Court has before it for consideration the Petition of John Fredrick Shelton for a Writ of Habeas Corpus filed pro se pursuant to Title 28 U.S.C. § 2254. Plaintiff has responded to an Order of the Court directing him to supplement his petition. Respondent has filed a response, pursuant to an Order of the Court directing it to show cause why the Writ of Habeas Corpus should not be granted.

Petitioner was convicted in the District Court, Tulsa County, of the offense of Robbery with Dangerous Weapon, After Former Conviction of Felony and sentenced to a term of Fifteen (15) years imprisonment. The judgment and sentence was affirmed by the Oklahoma Court of Criminal Appeals, Shelton v. State, 546 P.2d 1348 (Okla. Cr. 1976). Plaintiff demands his release from custody and as grounds therefor claims that he is being deprived of his rights under the Fourth and Fourteenth Amendments to the United States Constitution. In particular, petitioner claims:

1. The trial court erred by allowing into evidence the fruits of the search of certain rooms in his apartment residence;
2. The trial court erred by allowing into evidence the conversation between Betty Jo Broome and Officer R. H. Patty;
3. The sentence imposed was excessive; and
4. Ineffective assistance of counsel.

The first three issues were raised in petitioner's direct appeal to the Oklahoma Court of Criminal Appeals. Only the first issue was raised in Petitioner's Application for Post-Conviction Relief. As to the fourth issue, petitioner states in the supplement to his Petition for Writ of Habeas Corpus as follows:

"Moreover, I allege that I was denied the effective assistance of Trial Court and that I did not acquiesce in the purported waiver by the defense counsel" * * * "I told my lawyer to object but he did not. My request does not appear on the record."

These statements by petitioner were made in response to the court's order directing him to answer certain questions regarding the introduction of State Exhibits 1 and 2 into evidence.

The exhaustion doctrine requires that petitioner first present his claims to the state courts. 28 U.S.C. § 2254(b). Picard v. Connor, 404 U.S. 270, 92 S.Ct. 509, 30 L.Ed.2d 438 (1971); Gurule v. Turner, 461 F.2d 1083 (10th Cir. 1972); McInnes v. Anderson, 366 F. Supp. 983 (E.D. Okla. 1973). The record reflects that the petitioner has failed to present the question of ineffective counsel to the Oklahoma Courts and therefore has failed to exhaust his state court remedies. This Court must dismiss this claim without prejudice for failure to exhaust the remedies available in the Oklahoma Courts.

The record supports the conclusion that no factual issues are raised with respect to issues 2 and 3 but that the legal issues were considered and rejected by the Oklahoma Court of Criminal Appeals on petitioner's direct appeal. Shelton, supra. As pointed out by the State in its response, these issues were not raised in petitioner's state application for post-conviction relief. As further noted by respondent, however, this Court may consider those issues even though petitioner did not fully exhaust his state remedies. Chavez v. Baker, 399 F. 2d 943 (10th Cir. 1968), Cert. den. 394 U.S. 50 (1969).

In determining whether an evidentiary hearing is necessary prior to ruling upon the validity of petitioner's allegations, this Court must look to the requirements established by the United States Supreme Court in Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L. Ed.2d 770 (1963).

"Where the facts are in dispute, the federal court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of trial or in a collateral proceeding."
372 U.S. at 312.

In the instant case, the material facts do not appear to be in dispute. Rather, petitioner seems to argue that it is the legal conclusions drawn by the state courts from these facts which are incorrect. There is no indication that the underlying facts themselves were not adequately developed during the trial process. For these reasons, this Court deems it unnecessary to conduct an evidentiary hearing.

In petitioner's first allegation he contends that State's Exhibits Nos. 1 and 2 were the fruits of an unlawful search and seizure and inadmissible. This issue was litigated in the state courts as shown by the following excerpt from the opinion of the Oklahoma Court of Criminal Appeals in Shelton, supra:

"Although defendant did interpose an objection to testimony regarding the discovery and identification of State's Exhibit No. 2 (Tr. 65), no objection was made to such testimony regarding State's Exhibit No. 1 (Tr. 6 and 62), and even before the exhibits were formally offered into evidence defense counsel expressly abandoned any objection to the introduction or admission of these exhibits in stating, 'Your Honor, if he wants to enter 1 and 2 and 3, we have no objection to it being received in evidence.' (Tr. 83) This proposition was therefore not preserved for review on appeal. See, Matthews v. State, Okl.Cr., 530 P.2d 1044 (1975)."

Therefore, the Court finds that petitioner has been provided with an opportunity for full and fair litigation of this Fourth Amendment claim. Consequently, the Court is precluded from considering the claim again in this proceeding. Stone v. Powell, 428 U.S. 465.(1976)

Petitioner's second claim is directed at the trial court's alleged error in admitting certain testimony of officer Patty relating to statements made by Betty Jo Broome in petitioner's apartment at the time petitioner and Broome were arrested and which statements Officer Patty testified were made in the presence of petitioner.

This claim is also without merit. Alleged error in admission of evidence in prosecution in state court was cognizable only on direct appeal and not on collateral attack in habeas corpus proceeding. Ellis v. Raines, 294 F.2d 414 (10th Cir. 1961), Cert. den.

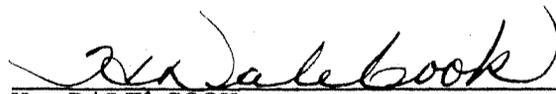
82 S.Ct. 628, 368 U.S. 1000, 7 L.Ed.2d 538. Trial errors such as erroneous admission of evidence cannot afford basis for collateral attack on state conviction in a federal habeas corpus proceeding. Cassell v. People of the State of Oklahoma, 373 F. Supp. 815 (E.D. Okla. 1973); Carillo v. United States, 332 F.2d 202 (10th Cir. 1964). Moreover, a review of the evidence complained of did not operate to deprive the petitioner of the essentials of due process guaranteed by the Fourteenth Amendment. See Odell v. Hudspeth, 189 F.2d 300 (10th Cir. 1951).

The case of Schneble v. Florida, 405 U.S. 427, 31 L.Ed.2d 340, 92 S.Ct. 1056 (1972) is dispositive of this issue. A reading of the complete trial record of the state court proceedings conclusively shows that the admission of the testimony of Officer Patty concerning statements of Mrs. Brocme was harmless.

Petitioner's final ground for relief is that the sentence imposed was excessive. In its opinion the Oklahoma Court of Criminal Appeals states "this punishment assessed by the jury was well within the range provided by law." The length of sentence is not a federal question since it involves the interpretation of state statutes and does not involve a constitutional question. Avent v. Peyton, 294 F.Supp. 262 (E.D.Va. 1968). Federal courts have no right to review any sentence of a state court which does not exceed the statutory maximum which may be imposed under the laws of the state. Pisani v. Warden, Maryland Penitentiary, 289 F.Supp. 232 (D.Md. 1968). See also Sheldon v. State, 401 F.2d 342 (8th Cir. 1968).

Therefore, based upon an examination of the entire record in this case, the Court finds that petitioner is not in custody in violation of the Constitution of the United States. The Petition for Writ of Habeas Corpus should be and is hereby dismissed.

It is so Ordered this 23rd day of June, 1977.


H. DALE COOK
United States District Judge

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

FILED

UNITED STATES OF AMERICA,)
)
 v.)
)
 ALFRED LEE BLUNT, #39836-115,)
)
 Movant.)

No. 77-C-171
76-CR-88

JUN 23 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The above-named Movant (defendant), a prisoner in the United States Penitentiary at Leavenworth, Kansas, has filed herein a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. 2255. After a plea of guilty to having violated Title 18, U.S.C. § 1702, this Court on August 3, 1976, sentenced defendant Alfred Lee Blunt, to two (2) years imprisonment. The Court further ordered that the defendant may become eligible for parole at such time as the U. S. Parole Commission may determine as provided in Title 18 U.S.C. § 4205(b)(2).

On two previous occasions the Court has considered defendant's Motions for Reduction of Sentence pursuant to Rule 35 of the Fed.R.Crim. P. Rule 35 allows the sentencing court to reduce or modify the sentence imposed within 120 days of the date of sentencing or to correct an illegal sentence at any time. The period of 120 days is jurisdictional and may not be enlarged. United States v. Kirkland, No. 75-1559, P. 3 (10th Cir. 1976).

Ground one of defendant's motion seeks a modification of his sentence. In support thereof, defendant states that he is placing himself at the mercy of the Court. He then enumerates several reasons why the Court should reduce his sentence, i.e., his good behavior at the Penitentiary, his prior law abiding life in society, his good work record and his opportunity now to attend Oklahoma State Tech at Okmulgee. In effect, this ground constitutes a Motion for Reduction or Modification of Sentence under Rule 35. The Court is without jurisdiction to consider such ground in that more than 120 days have elapsed since the defendant was sentenced on August 3, 1976.

As his second ground for relief, the defendant alleges that his court appointed counsel, Robert B. Copeland, was ineffective in his

representation of the defendant. In particular, the defendant claims that his lawyer told him that it was an open and shut case and that the only alternative was to enter a plea of guilty because his previous convictions were against him and that he really didn't have the time to waste on him. Additionally the defendant alleges that he went to see his lawyer on July 22, 1976 and that he refused to see him. He further states that his lawyer refused to see him and his wife on several other occasions. Finally he says that he was told by his lawyer to "go on (and) serve whatever time they give you, cause there is no way that you are going to be considered for probation. And any other lawyer you get will only do it for the money. You're already convicted. There isn't a Judge in this country who would think of giving an Ex-con a probation."

A reading of the transcript of the proceedings in this Court at the time of the Arraignment and Plea on July 2, 1976 and the Sentencing on August 3, 1976 clearly show that the defendant understood what he was charged with in the indictment; that he had discussed the plea with his attorney; that he had the right to trial by jury; that his plea of guilty was voluntarily made and completely and exclusively of his own free will and accord; that he had not been forced, coerced, threatened or promised anything to cause him to enter a plea of guilty; that the maximum sentence the Court could impose was imprisonment not to exceed five years, a fine not to exceed \$2,000, or both fine and imprisonment; and that he was satisfied with his counsel, Mr. Copeland. (Tr. 2-9)

After being advised by the Court of his rights and the consequences of his plea of guilty, the defendant entered a plea of guilty. The defendant then under oath detailed the facts surrounding his felonious taking of the letter from the carrier as charged in the indictment. (Tr. 5)

At the time of sentencing the Court stated to the defendant that he would hear anything he had to say in his own behalf and would receive any additional information that the defendant desired the

Court to consider before pronouncing sentence. The defendant responded that he had nothing to say. (Tr. 15-16)

It is thus apparent that the defendant's second claim for relief is totally insubstantial and devoid of merit. The guidelines for determining when defense counsel was ineffective or incompetent were set forth in Ellis v. State, 430 F.2d 1352, 1356 (10th Cir. 1970).

"It is the general rule that relief from a final conviction on the ground of incompetent or ineffective counsel will be granted only when the trial was a farce or a mockery of justice, or was shocking to the conscience of the reviewing court, or the purported representation was only perfunctory, in bad faith, a sham, a pretense, or without adequate opportunity for conference and preparation. Goforth v. United States (10th Cir. 1963), 314 F.2d 868 ***. Williams v. Beto, 354 F.2d 698, 704 (5th Cir. 1965). And this test is applicable to cases in which counsel is retained by or for an accused as well as to cases in which counsel is appointed to represent an indigent defendant. Bell v. State of Alabama, 367 F.2d 243 (5th Cir. 1966)."

The files and record of the proceedings of the Arraignment, Plea and Sentencing of the defendant unequivocally support the conclusion that the defendant fully understood the nature of the proceedings and the consequences of his guilty plea. Under these circumstances it is unnecessary to hold a factual hearing in connection with defendant's motion. Semet v. United States, 369 F.2d 90 (10th Cir. 1966).

Accordingly, defendant's motion for relief herein is denied.

It is so Ordered this 23rd day of June, 1977.


H. DALE COOK
United States District Judge

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

JAMES R. SWEENEY and)
MALCOLM S. SWEENEY,)
)
Plaintiffs,)
)
-vs-)
)
THE GENERAL TIRE AND)
RUBBER COMPANY, a foreign)
corporation,)
)
Defendant.)

No. 76-C-599-C ✓

FILED

JUN 23 1977 *hm*

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

JOURNAL ENTRY OF JUDGMENT

This matter coming on for trial before me the undersigned Judge of the United States District Court for the Northern District of Oklahoma on the 6th day of June, 1977, in its regularly scheduled order. The Plaintiffs, James Sweeney and Malcolm Sweeney appeared in person and with their attorney, John A. Gladd; the Defendant appeared through its attorney, Jack Thomas, and representative, Wendell Kegg, and both sides announced ready for trial, whereupon a jury of six persons was duly impaneled and sworn upon their oaths to well and truly try the issues.

Thereafter the Plaintiffs introduced testimony through witnesses who were first sworn upon their oaths and examined thereunder. Further, that Plaintiffs introduced certain exhibits after which time the Plaintiffs rested. Thereupon the Defendant enters its demur to the evidence herein and after consideration the demur of the Defendant was overruled. The Defendant then introduced testimony through a witness who was first duly sworn upon his oath and examined thereunder. Thereafter the Defendant rested and the Plaintiff introduced testimony of two rebuttal witnesses who had previously been sworn under their oaths and rested.

Thereafter arguments were submitted by the attorneys for the parties hereto and the jury instructed concerning the law applicable herein after which time the jury retired to deliberate

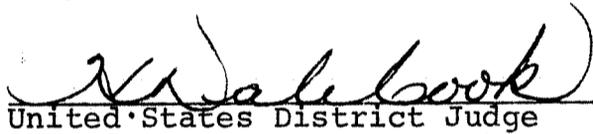
and after said deliberation, which said trial and deliberations ended on the 8th day of June, 1977, found the issues in favor of the Plaintiffs and against the Defendant and assessed damages as follows:

For the Plaintiff, James R. Sweeney, the sum of \$20,560.00;

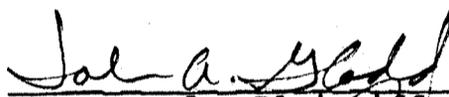
For the Plaintiff, Malcolm S. Sweeney, the sum of \$3,383.00;

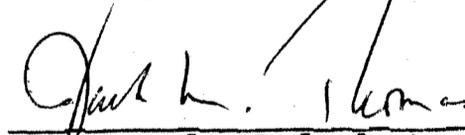
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, James R. Sweeney, have and recover judgment against the Defendant, The General Tire and Rubber Company, the sum of \$20,560.00 together with his costs expended herein and interest at the statutory rate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff, Malcolm S. Sweeney, have and recover judgment against the Defendant, The General Tire and Rubber Company, in the sum of \$3,383.00 together with his costs and interest herein at the statutory rate.


United States District Judge

APPROVED AS TO FORM:


Attorney for Plaintiffs


Attorney for Defendant

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

UNITED STATES OF AMERICA,)
)
) Petitioner,)
)
 vs.) No. 77-C-168-B
)
) ONE 1975 DODGE SPORTSMAN)
) MAXIWAGON, VEHICLE IDENTIFICA-)
) TION NUMBER B36BF5X102497,)
) ITS TOOLS AND APPURTENANCES)
)
) Respondent.)

FILED

JUN 21 1977

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

DEFAULT JUDGMENT OF FORFEITURE

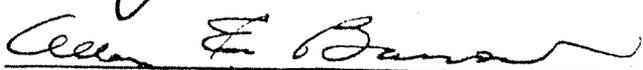
Upon Application by the Administration of General Services, United States of America, and upon the Motion for Default Judgment of Forfeiture and the accompanying Affidavit in support thereof by Kenneth P. Snoke, Assistant U.S. Attorney, Northern District of Oklahoma, and it appearing therefrom, and from the files and records in this case, that proper proceedings have been had for the forfeiture of the respondent vehicle under the Complaint in Rem for forfeiture, filed April 26, 1977, and that no person has filed any claim or answer in this action, it is therefore:

ORDERED, ADJUDGED, and DECREED that the default of all persons interested in said respondent vehicle be and is entered forthwith and that said respondent vehicle be and hereby is condemned and forfeited to the United States of America;

IT IS FURTHER ORDERED that the United States Marshal, pursuant to the Application made and filed with the Court by the Administrator of General Services, deliver the respondent vehicle, described in the Complaint in Rem for forfeiture, to the Assistant Regional Director, Drug Enforcement Administration, 1100 Commerce Street, Dallas, Texas.

IT IS FURTHER ORDERED that each party shall bear its own costs.

Dated this 21st day of June, 1977.


ALLEN E. BARROW
Chief U.S. District Judge

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

ARDA FAYE BRUCE,)

Plaintiff)

vs.)

No. 76-C-161-C)

HORIZON CORPORATION, a Delaware)
Corporation; HORIZON PROPERTIES)
CORPORATION, a Delaware Corpo-)
ration; HORIZON DEVELOPMENT)
CORPORATION, a Delaware Corpo-)
ration,)

Defendants)

FILED
JUN 21 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court that their differences have been compromised and that nothing remains to be litigated in this action and, therefore, move the Court for an Order of Dismissal with Prejudice of this cause.

Arda Faye Bruce
ARDA FAYE BRUCE, Plaintiff

Don L. Smith
Attorney for Plaintiff

Joseph M. Best
Attorney for Defendants

ORDER OF DISMISSAL

NOW on this 21st day of June, 1977, upon the Application of the parties hereto for an Order of Dismissal, the matter having been compromised and resolved, the Court herewith enters an Order of Dismissal with Prejudice to the filing of a future action.

W. J. Albrook
UNITED STATES DISTRICT JUDGE

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

LLOYD BRUCE,

Plaintiff

vs.

HORIZON CORPORATION, a Delaware
Corporation; HORIZON PROPERTIES
CORPORATION, a Delaware Corpo-
ration; HORIZON DEVELOPMENT
CORPORATION, a Delaware Corpo-
ration,

Defendants

No. 76-C-162-C

FILED
JUN 21 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court that their differences have been compromised and that nothing remains to be litigated in this action and, therefore, move the Court for an Order of Dismissal with Prejudice of this cause.

Lloyd Bruce
LLOYD BRUCE, Plaintiff

Don L. Switz
Attorney for Plaintiff

Joseph M. Best
Attorney for Defendants

ORDER OF DISMISSAL

NOW on this 21st day of June, 1977, upon the Application of the parties hereto for an Order of Dismissal, the matter having been compromised and resolved, the Court herewith enters an Order of Dismissal with Prejudice to the filing of a future action.

W. J. Lake
UNITED STATES DISTRICT JUDGE

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

NANCY E. KING,

Plaintiff

vs.

HORIZON CORPORATION, a Delaware
Corporation; HORIZON PROPERTIES
CORPORATION, a Delaware Corpo-
ration; HORIZON DEVELOPMENT
CORPORATION, a Delaware Corpo-
ration,

Defendants

No. 76-C-163-C

FILED
JUN 21 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court
that their differences have been compromised and that
nothing remains to be litigated in this action and, there-
fore, move the Court for an Order of Dismissal with Pre-
judice of this cause.

Nancy E. King
NANCY E. KING, Plaintiff

Don L. Switz
Attorney for Plaintiff

Joseph M. Best
Attorney for Defendants

ORDER OF DISMISSAL

NOW on this 21st day of June, 1977, upon the Appli-
cation of the parties hereto for an Order of Dismissal, the
matter having been compromised and resolved, the Court
herewith enters an Order of Dismissal with Prejudice to the
filing of a future action.

W. Wakebook
UNITED STATES DISTRICT JUDGE

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

DAVID S. KING,

Plaintiff

vs.

HORIZON CORPORATION, a Delaware
Corporation; HORIZON PROPERTIES
CORPORATION, a Delaware Corpo-
ration; HORIZON DEVELOPMENT
CORPORATION, a Delaware Corpo-
ration,

Defendants

No. 76-C-164-C

FILED

JUN 21 1977

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

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court
that their differences have been compromised and that
nothing remains to be litigated in this action and, there-
fore, move the Court for an Order of Dismissal with Pre-
judice of this cause.

David S. King

DAVID S. KING, Plaintiff

Don L. Smith

Attorney for Plaintiff

Joseph M. Best

Attorney for Defendants

ORDER OF DISMISSAL

NOW on this 21st day of June, 1977, upon the Appli-
cation of the parties hereto for an Order of Dismissal, the
matter having been compromised and resolved, the Court
herewith enters an Order of Dismissal with Prejudice to the
filing of a future action.

W. Dale Cook
UNITED STATES DISTRICT JUDGE

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

MELVIN LITTLE,

Plaintiff

vs.

HORIZON CORPORATION, a Delaware
Corporation; HORIZON PROPERTIES
CORPORATION, a Delaware Corpo-
ration; HORIZON DEVELOPMENT
CORPORATION, a Delaware Corpo-
ration,

Defendants

No. 76-C-165-C

FILED
JUN 21 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court that their differences have been compromised and that nothing remains to be litigated in this action and, therefore, move the Court for an Order of Dismissal with Prejudice of this cause.

x Melvin Little
MELVIN LITTLE, Plaintiff

Dou L. Smith
Attorney for Plaintiff

Joseph M. Best
Attorney for Defendants

ORDER OF DISMISSAL

NOW on this 21st day of June, 1977, upon the Application of the parties hereto for an Order of Dismissal, the matter having been compromised and resolved, the Court herewith enters an Order of Dismissal with Prejudice to the filing of a future action.

W. Dale Cook
UNITED STATES DISTRICT JUDGE

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

DONNA LITTLE,

Plaintiff

vs.

HORIZON CORPORATION, a Delaware
Corporation; HORIZON PROPERTIES
CORPORATION, a Delaware Corpo-
ration; HORIZON DEVELOPMENT
CORPORATION, a Delaware Corpo-
ration,

Defendants

No. 76-C-166-C

FILED
JUN 21 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court that their differences have been compromised and that nothing remains to be litigated in this action and, therefore, move the Court for an Order of Dismissal with Prejudice of this cause.

Donna Little
DONNA LITTLE, Plaintiff

Don L. Swift
Attorney for Plaintiff

Joseph M. Best
Attorney for Defendants

ORDER OF DISMISSAL

NOW on this 21st day of June, 1977, upon the Application of the parties hereto for an Order of Dismissal, the matter having been compromised and resolved, the Court herewith enters an Order of Dismissal with Prejudice to the filing of a future action.

W. Dale Book
UNITED STATES DISTRICT JUDGE

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

LINDA LITTLE,

Plaintiff

vs.

HORIZON CORPORATION, a Delaware
Corporation; HORIZON PROPERTIES
CORPORATION, a Delaware Corpo-
ration; HORIZON DEVELOPMENT
CORPORATION, a Delaware Corpo-
ration,

Defendants

No. 76-C-167-C

FILED
JUN 21 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court
that their differences have been compromised and that
nothing remains to be litigated in this action and, there-
fore, move the Court for an Order of Dismissal with Pre-
judice of this cause.

Linda Little
LINDA LITTLE, Plaintiff

Don L. Smith
Attorney for Plaintiff

Joseph M. Best
Attorney for Defendants

ORDER OF DISMISSAL

NOW on this 21st day of June, 1977, upon the Appli-
cation of the parties hereto for an Order of Dismissal, the
matter having been compromised and resolved, the Court
herewith enters an Order of Dismissal with Prejudice to the
filing of a future action.

W. Wakebook
UNITED STATES DISTRICT JUDGE

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

ROY LITTLE,

Plaintiff

vs.

No. 76-C-168-C

HORIZON CORPORATION, a Delaware
Corporation; HORIZON PROPERTIES
CORPORATION, a Delaware Corpo-
ration; HORIZON DEVELOPMENT
CORPORATION, a Delaware Corpo-
ration,

Defendants

FILED
JUN 21 1977
Jack C. Silver, Clerk
U.S. DISTRICT COURT

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court that their differences have been compromised and that nothing remains to be litigated in this action and, therefore, move the Court for an Order of Dismissal with Prejudice of this cause.

Roy Little
ROY LITTLE, Plaintiff

Don L. Switz
Attorney for Plaintiff

Joseph M. Best
Attorney for Defendants

ORDER OF DISMISSAL

NOW on this 21st day of June, 1977, upon the Application of the parties hereto for an Order of Dismissal, the matter having been compromised and resolved, the Court herewith enters an Order of Dismissal with Prejudice to the filing of a future action.

W. Dale Cook
UNITED STATES DISTRICT JUDGE

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

OWEN S. KING, Administrator of)
the Estate of Richard L. King,)
Deceased,)
Plaintiff)

vs.)

HORIZON CORPORATION, a Delaware)
Corporation; HORIZON PROPERTIES)
CORPORATION, a Delaware Corpo-)
ration; HORIZON DEVELOPMENT)
CORPORATION, a Delaware Corpo-)
ration,)
Defendants)

No. 76-C-169-C

FILED

JUN 21 1977

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

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court that their differences have been compromised and that nothing remains to be litigated in this action and, therefore, move the Court for an Order of Dismissal with Prejudice of this cause.

Owen S. King
OWEN S. KING, Plaintiff

Don L. Smith
Attorney for Plaintiff

Joseph M. Best
Attorney for Defendants

ORDER OF DISMISSAL

NOW on this 21st day of June, 1977, upon the Application of the parties hereto for an Order of Dismissal, the matter having been compromised and resolved, the Court herewith enters an Order of Dismissal with Prejudice to the filing of a future action.

W. J. Leback
UNITED STATES DISTRICT JUDGE

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

DALE HARDZOG,

Plaintiff

vs.

HORIZON CORPORATION, a Delaware
Corporation; HORIZON PROPERTIES
CORPORATION, a Delaware Corpo-
ration; HORIZON DEVELOPMENT
CORPORATION, a Delaware Corpo-
ration,

Defendants

No. 76-C-437-C

FILED
JUN 21 1977
Jack C. Silver, Clerk
U.S. DISTRICT COURT

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court that their differences have been compromised and that nothing remains to be litigated in this action and, therefore, move the Court for an Order of Dismissal with Prejudice of this cause.

Dale H. Dzug
DALE HARDZOG, Plaintiff

Don L. Smith
Attorney for Plaintiff

Joseph M. Best
Attorney for Defendants

ORDER OF DISMISSAL

NOW on this 21st day of June, 1977, upon the Application of the parties hereto for an Order of Dismissal, the matter having been compromised and resolved, the Court herewith enters an Order of Dismissal with Prejudice to the filing of a future action.

W. Dale Cook
UNITED STATES DISTRICT JUDGE

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

JAMES P. NOLAN, and NATIONAL
ASSOCIATION OF BROADCAST EMPLOYEES
AND TECHNICIANS, AFL-CIO,

Plaintiffs,

vs.

AMERICAN BROADCASTING COMPANY,
ABLE ELECTRIC COMPANY, WTCG
TELEVISION, WTVJ TELEVISION,
AMPEX COMPANY, NORELCO, and
LECLEDE, INC.,

Defendants.

77-C-245-B ✓

FILED

JUN 17 1977 *kw*

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

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This matter came on for hearing before the Court on June 17, 1977, on Plaintiffs' Request for a temporary restraining Order. Plaintiff, James P. Nolan, appeared in person and on behalf of National Association of Broadcast Employees and Technicians, AFL-CIO, and by their attorney, Thomas Dee Frasier; the defendants appeared by their attorney, Carl D. Hall, Jr.

The Court heard the argument of counsel and witnesses called by plaintiffs and defendants, and took the matter under advisement.

Having carefully considered the argument of counsel, the evidence and testimony adduced at the hearing, and, having carefully perused the entire file and all documentation, and, having independently researched the matters raised, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. There are presently 124 persons employed and functioning in performance of duties that would normally be performed by members of plaintiff Union at Southern Hills Country Club for the televising of the U.S. Open Golf Game.

2. Of these 124 persons, 116 persons are aiding and helping the defendant television system for the first time during a strike.

3. The remaining 8 persons are employed by WTCG of Atlanta, Georgia, an affiliated broadcasting station. All 8 of these persons are performing essential functions for the taping and broadcast. Of these 8 persons, 3 have assisted the network on two occasions and 5 have assisted the network on 1 occasion during a strike.

4. The 124 persons now functioning are essential to the taping and broadcast of the U.S. Open Golf Tournament at Southern Hills Country Club.

5. The defendant companies, other than the defendant network, furnish equipment only to the defendant network and not functioning personnel.

6. The defendant network has expended the sum of \$1,617,000.00 in preparation of televising of this golf tournament.

7. The loss of revenues to the defendant network for advertising were not available.

CONCLUSIONS OF LAW

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

1. This Court has jurisdiction based upon Title 28 U.S.C. §§1332 and 1441, there being complete diversity and an amount in controversy which exceeds the sum of \$10,000.00, exclusive of interest and costs.

2. When this case was removed to this Court from the State Court, the Labor Management Relations Act and the Norris-LaGuardia Act became viable and applicable in this litigation.

3. This case involves an unfair labor practice, as defined in 29 U.S.C. §158(a).

4. This case also involves a labor dispute, as defined in 29 U.S.C. §113(c).

5. This case does not fall within one of the classes of cases enumerated in 29 U.S.C. §104, nor various decisions of the Supreme Court of the United States expanding, by interpretation, §104 to encompass situations not before this Court. Thus, this Court is not

deprived of jurisdiction to entertain the request for an injunction by virtue of the Norris-LaGuardia Act.

6. Title 29 U.S.C. §107 delineates the criteria to be considered by the Court in entertaining the issuance of an injunction, i.e.

(a) That unlawful acts have been threatened and will be committed unless restrained;

(b) That substantial and irreparable injury to plaintiffs will follow;

(c) That as to the relief, greater injury will be inflicted upon the plaintiffs by the denial of the relief than will be inflicted upon the defendants by granting of relief;

(d) That plaintiffs have no adequate remedy at law;

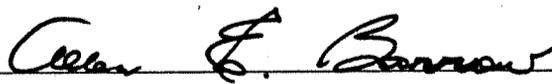
(e) That the public officers charged with the duty to protect plaintiffs' property are unable or unwilling to furnish adequate protection.

7. That the plaintiffs have not met the burden of proof required by Title 29 U.S.C. §107. The Court has weighed the factors adduced in the evidence in arriving at the decision that the request for temporary restraining order should be denied.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED that the plaintiffs' request for a temporary restraining order be and the same is hereby denied.

ENTERED this 17th day of June, 1977.



CHIEF UNITED STATES DISTRICT JUDGE

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

Lot Twenty-Two (22), Block Five (5), VALLEY VIEW ACRES ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendant, Ruby L. Walker, did, on the 20th day of December, 1974, execute and deliver to the Administrator of Veterans Affairs, her mortgage and mortgage note in the sum of \$10,500.00 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 Defendant, Ruby L. Walker, made default under the terms of the aforesaid mortgage note by reason of her failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the sum of \$10,422.61 as unpaid principal with interest thereon at the rate of 9 1/2 percent per annum from May 1, 1976, 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 Walter S. and Christine Willis, former owners, the sum of \$ 53 ⁹⁰/₁₀₀ plus interest according to law for personal property taxes for the year(s) 1971-72 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendant, Ruby L. Walker, the sum of \$ 14 ²⁸/₁₀₀ plus interest according to law

for personal property taxes for the year(s) 1976 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Ruby L. Walker, in rem, for the sum of \$10,422.61 with interest thereon at the rate of 9 1/2 percent per annum from May 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.

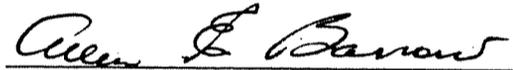
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Walter S. and Christine Willis, former owners, for the sum of \$ 53 $\frac{90}{100}$ as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendant, Ruby L. Walker, for the sum of \$ 14 $\frac{28}{100}$ as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

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

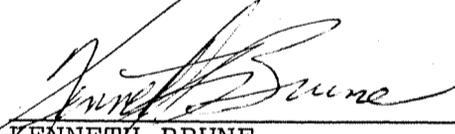
judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

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


UNITED STATES DISTRICT JUDGE

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney


KENNETH BRUNE
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

TRI-J DRILLING COMPANY,)
a foreign corporation,)
licensed to do business)
in the State of Oklahoma,)
Plaintiff,)
vs.)
INDEPENDENT TRUCKING COMPANY,)
an Oklahoma corporation,)
Defendant.)

No. 76-C-4-C ✓

FILED
JUN 17 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This is an action in negligence for damages caused to the plaintiff when the defendant overturned a truck upon which it was transporting a drilling rig owned by the plaintiff. The defendant has admitted its liability for the accident, and the only issue now before the Court is the amount of damages to be recovered by the plaintiff. The case was tried to the Court on January 3, 1977. The parties have submitted proposed findings of fact and conclusions of law, and the case is now ready for disposition on the merits.

After considering the pleadings, the testimony and exhibits admitted at trial, all of the arguments presented by counsel for the parties, and being fully advised in the premises, the Court enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The plaintiff is a Texas corporation with its principal place of business in the State of Texas. The defendant is an Oklahoma Corporation with its principal place of business in the State of Oklahoma. The amount in controversy is in excess of \$10,000.00.

2. The parties have admitted that the defendant has paid toward the repairs of the drilling rig owned by the

plaintiff, the sum of \$13,929.65.

3. The defendant has admitted liability for the following expenses of the plaintiff, all in the amounts as claimed by the plaintiff:

a. Labor expenses incurred on the following dates and in the following amounts:

August 21, 1975	-	\$ 485.84
August 22, 1975	-	\$ 382.96
September 1, 1975	-	\$ 101.44
September 15, 1975	-	\$ 101.44
September 19, 1975	-	\$ 145.76
September 22, 1975	-	\$ 218.27

b. Invoice of Waukesha-Pearce in the amount of \$234.52.

c. Invoice of Mid-Continent Supply Co. in the amount of \$143.06.

d. Invoice of Earthmovers, Inc. in the amount of \$374.75.

4. The Court finds that the following expenses were also reasonably incurred by the plaintiff as a result of the defendant's negligence:

a. The cost of moving the blocks, bales and drill lines from the repair yard back to the original location on September 20, 1975 - \$202.88.

b. The cost of re-stringing the blocks and rigging up air lines on September 21, 1975 - \$359.38. (1 Driller - 13 hours at \$7.86 per hour; 4 Roughnecks - 40 hours at \$6.43 per hour).

c. The wages of a toolpusher while he supervised the repair of plaintiff's drilling rig from August 20 to September 21, 1975 - \$480.00. (Nine days based on \$1,600.00 per month).

d. The toolpusher's mileage expense - \$141.00. (Nine days at \$5 per day; 1920 miles at \$.05 per mile).

- e. The toolpusher's trip expenses - \$54.00.
- f. Expenses incurred in transporting the drilling rig from the location to the repair yard and then back to the location - Invoices of Smith Truck Service in the total amount of \$2,713.74. (Defendant's Exhibit 7).
- g. The cost of repairing the plaintiff's drilling rig - \$12,571.17 (Invoice of Tri-State Sales and Service Co., Defendant's Exhibit 7, less the \$1,358.37 cost of modifying the rig, as per the deposition of Leslie E. Andersen).

5. The Court further finds that, but for the negligence of the defendant, the plaintiff would have utilized the drilling rig for the purpose of drilling three wells. Each well would have been completed in seven (7) days, or a total of twenty-one (21) days for the three wells. (Testimony of Dewey Ivan Alspaw).

6. The plaintiff would have earned a net profit of \$634.00 for each of the twenty-one (21) days. (Plaintiff's Exhibit 8).

7. The plaintiff suffered a loss of profits in the amount of \$13,314.00 due to the negligence of the defendant.

8. The remaining expenses claimed by the plaintiff were not reasonably incurred as a result of the negligence of the defendant.

CONCLUSIONS OF LAW

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

2. The issue of damages in this action is governed by Title 23 O.S. § 61, which provides:

"For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this chapter, is the amount which will compensate for all detriment proximately caused thereby, whether it could have been anticipated or not."

3. The expenses listed in paragraphs 3 and 4 of the above findings of fact were proximately caused by the negligence of the defendant, and they are therefore proper elements of damage in this case.

4. The loss of profits from an established business is a proper element of damages if the business is an established one whose profits are readily ascertainable, and if it is made reasonably certain what the amount of the loss actually is. Plummer v. Fogley, 363 P.2d 238 (Okla. 1961); Carpenters' Local 1686 v. Wallis, 237 P.2d 905 (Okla. 1951); Southwest Ice & Dairy Products Co. v. Faulkenberry, 220 P.2d 257 (Okla. 1950).

5. One who is injured by another's acts must take reasonable steps to mitigate his damages, Smith-Horton Drilling Co. v. Brooks, 182 P.2d 499 (Okla. 1947), but the burden of proving that damages could have been mitigated is on the party asserting it. Larrance Tank Corporation v. Burrough, 476 P.2d 346 (Okla. 1970).

6. The plaintiff has met its burden of proving loss of profits, while the defendant has failed to prove that those damages could have been mitigated. Consequently, the plaintiff is entitled to recover his lost profits in the amount calculated in paragraphs 5 through 7 of the above findings of fact.

7. The plaintiff is entitled to recover damages from the defendant in the amount of \$18,094.56, computed in the following manner:

	\$ 18,710.21	-	costs and expenses of dismantling the rig, transporting it, repairing the overturn damage and re-rigging necessary portions.
Plus	\$ 13,314.00	-	loss of profits
Less	\$ 13,929.65	-	amount previously received by plaintiff.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that Judgment be entered in favor of the plaintiff, Tri-J Drilling

Company and against the defendant, Independent Trucking
Company, in the amount of \$18,094.56.

It is so Ordered this 17th day of June, 1977.


H. DALE COOK
United States District Judge

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

TRI-J DRILLING COMPANY,)
a foreign corporation,)
licensed to do business)
in the State of Oklahoma,)
)
Plaintiff,)
)
vs.)
)
INDEPENDENT TRUCKING COMPANY,)
an Oklahoma corporation,)
)
Defendant.)

No. 76-C-4-C ✓

FILED

JUN 17 1977 *jm*

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

J U D G M E N T

The Court on June 17th, 1977, filed its Findings of Fact and Conclusions of Law which are hereby incorporated herein and made a part of its Judgment.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Judgment be entered in favor of the plaintiff, Tri-J Drilling Company and against the defendant, Independent Trucking Company, and that total damages be entered in favor of the plaintiff and against the defendant in the amount of \$18,094.56 in light of this Court's Findings of Fact and Conclusion of Law.

It is so Ordered this 17th day of June, 1977.

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

FILED

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

JUN 17 1977

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

WILLIAMS ENERGY COMPANY,)
)
) Plaintiff,)
)
 vs.)
)
 FEDERAL ENERGY ADMINISTRATION,)
 et al.,)
)
) Defendants.)

No. 75-C-135-B

O R D E R

Now, on this 17th day of June, 1977, there
having been submitted to the Court a Stipulation for Dismissal,
filed on behalf of all parties to the above entitled action
and stipulating that said action may be dismissed with preju-
dice, the Court finds that the stipulated dismissal should be
allowed.

case of
NOW IT IS, THEREFORE, ORDERED, that the above entitled
and complaints are
action *be*, and the same hereby *are* dismissed with prejudice,
each party to bear its own costs, in accordance with the
Stipulation for Dismissal filed herein.

Allen E. Bennett
United States District Judge
Northern District of Oklahoma

15 U.S.C. §761 et seq."

The petition for removal goes on to state:

"That specifically, during the week of May 9th, 1977, when supervised depositions were being taken in this case in front of the Honorable Richard Comfort, Special District Judge of the District Court of Tulsa County, State of Oklahoma, certain questions were asked of the witness being deposed under MAPCO's relations with the Federal Energy Administration. During the arguments concerning whether or not the witness should answer these inquiries, counsel for the plaintiff, Colorado Interstate Gas Company, informed the Court that this information was needed, and was necessary in order to determine whether or not MAPCO was following the guidelines and regulations set down by the Federal Energy Administration in determining the price it was reporting to the Federal Energy Administration. That the plaintiff, Colorado Interstate Gas Company, is claiming that it is entitled to an amount equal to fifty percent (50%) of the gross proceeds received by MAPCO from sales which it shall make of natural gasoline and liquid hydrocarbons. Colorado Interstate Gas Company is also alleging that under another contract allegedly made between the parties, and now allegedly in force and effect, that MAPCO is required to market liquid hydrocarbons in good faith and Colorado Interstate Gas Company is to have the right to receive twenty percent (20%) of the gross revenues from the marketing of said hydrocarbon, FOB the plant. That since the institution of price controls by the United States Government on the liquid hydrocarbon industry, the price of said hydrocarbons has been regulated and controlled by the United States Government through its various regulatory agencies. That it is now apparent, although it does not appear on the face of the original Petition filed in the District Court of Tulsa County, that Colorado Interstate Gas Company is making inquiry into the method that MAPCO, INC., is using to follow the regulations of the Federal Energy Administration and is questioning the price that MAPCO is determining.

"That as such, the case now takes on the posture as being a case or controversy arising under 15 U.S.C. §761, et seq., which the United States District Court has exclusive original jurisdiction of."

Plaintiff, in its Motion to Remand, sets forth the following grounds for remand:

1. The questions regarding this Court's jurisdiction under 15 U.S.C. §761 et seq were considered on May 6, 1977, by the Honorable H. Dale Cook, United States District Judge for the Northern District of Oklahoma in the case of Mapco, Inc. v. W. W. Means, Judge of the District Court of Tulsa County and Colorado Interstate Gas Company, case number 77-C-182-C in the United States District Court for the Northern District of Oklahoma when the Court dismissed that action.

2. The civil action herein is not founded on a claim or right arising under the Constitution, treaties or laws of the United States as required by 28 U.S.C. §1441 nor does it present a case or controversy arising under 15 U.S.C. §761 et seq. There is no federal "claim or right" nor "case or controversy" apparent on the fact of Plaintiff's Petition or any other pleading herein.

3. The legal issues pertaining to 15 U.S.C. §761 et seq were not raised by Plaintiff in its pleadings, but were first raised by Defendant as a defense to Plaintiff's cause of action.

4. The Petition for Removal was not timely filed.

5. Defendant has failed to comply with Rule 27 of the Rules for the United States District Court for the Northern District of Oklahoma in that Defendant has failed to file the requisite copies of all documents.

6. This action is a civil action between two Delaware corporations wherein Colorado Interstate Gas Company sued Mapco, Inc. for damages and an accounting for breach of contract as more clearly appears in the Petition bearing the State Court caption, a copy of which is attached to the Petition for Removal herein, and therefore, cannot be removed to this Court.

7. Plaintiff further requests that the Court order the payment to Plaintiff by Defendant of all costs, disbursements and attorney's fees incurred by reason of the removal proceedings.

The above cited Motion to Remand was filed on May 18, 1977, accompanied by a brief in support. On May 19, 1977, a Minute Order was entered directing and ordering the removing defendant to file a responsive brief within ten days. On May 31, 1977, defendant filed an application for extension of time, seeking 30 days to file its responsive brief. On May 31, 1977, plaintiff filed its objection to such extension. On June 2, 1977, the Court granted the defendant's application for extension, but granted defendant only 7 days instead of the 30 days requested. As a part of said order the Court ordered:

"IT IS FURTHER ORDERED that no further extensions will

be granted."

On June 9, 1977, the defendant filed another application for extension of time to file responsive brief, requesting an extension of 30 days. On June 10, 1977, the plaintiff filed an objection to such request for extension.

Initially, the Court notes that in the pleadings attached to the Petition for Removal there is no showing of any federal question raised in the State Court by said pleadings, and especially the pleadings submitted by plaintiff in the State Court action (attached to the Removal Petition).

The general rule is summed up by the Supreme Court in *Great Northern Ry. Co. v. Alexander* (Hall's Adm'r.), 246 U.S. 276 (1918), where it was said:

"The obvious principle of these decisions is that, in the absence of a fraudulent purpose to defeat removal, the plaintiff may by the allegations of his complaint determine the status with respect to removability of a case, arising under a law of the United States, when it is commenced, and that this power to determine the removability of his case continues with the plaintiff throughout the litigation, so that whether such a case non-removable when commenced shall afterwards become removable depends not upon what the defendant may allege or prove or what the court may, after hearing upon the merits, in invitum, order, but solely upon the form which the plaintiff by his voluntary action shall give to the pleadings in the case as it progresses towards a conclusion."

The Court, therefore, finds, without going into the merits of the other contentions raised by the plaintiff in support of its Motion to Remand, based on existing case law, that the Plaintiff's Motion to Remand should be sustained.

IT IS, THEREFORE, ORDERED that the defendant's application for extension of time be and the same is hereby denied.

IT IS FURTHER ORDERED that the Plaintiff's 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 15th day of June, 1977.



CHIEF UNITED STATES DISTRICT JUDGE

FILED

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

JUN 15 1977 *h/o*

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CARL E. MASON and)
 ZOLITA MASON,)
)
 Defendants.)

CIVIL ACTION NO. 77-C-17-B ✓

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 15th
day of June, 1977, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and the Defendants, Carl E.
Mason and Zolita Mason, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Carl E. Mason and Zolita
Mason, were served by publication as shown on the Proof of
Publication filed herein.

It appearing that the Defendants, Carl E. Mason and
Zolita Mason, have failed to answer herein and that default
has been entered by the Clerk of this Court.

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

Lot Eight (8), Block Fifty-Six (56), VALLEY
VIEW ACRES THIRD ADDITION to the City of Tulsa,
Tulsa County, State of Oklahoma, according to
the recorded plat thereof.

THAT the Defendants, Carl E. Mason and Zolita Mason,
did, on the 14th day of February, 1975, execute and deliver
to the Administrator of Veterans Affairs, their mortgage and
mortgage note in the sum of \$10,500.00 with 9 percent interest
per annum; and further providing for the payment of monthly
installments of principal and interest.

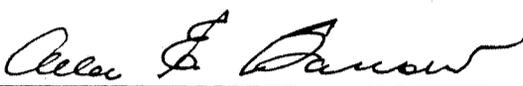
The Court further finds that Defendants, Carl E. Mason and Zolita Mason, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$10,428.31 as unpaid principal with interest thereon at the rate of 9 percent per annum from May 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, Carl E. Mason and Zolita Mason, in rem, for the sum of \$10,428.31 with interest thereon at the rate of 9 percent per annum from May 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 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.


UNITED STATES DISTRICT JUDGE

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney

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

T & W INVESTMENT COMPANY, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
THOMAS KURTZ and AETNA)
CASUALTY AND SURETY COMPANY,)
)
Defendant.)

No. 76-C-594-C ✓

FILED

JUN 15 1977 *[Signature]*

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

O R D E R

Plaintiff brings this action asserting a claim for money damages against defendant Thomas Kurtz (hereinafter Kurtz) pursuant to Title 42 U.S.C. § 1983. The plaintiff asserts that defendant Kurtz was appointed Receiver of Tulsa Whisenhunt Funeral Home (hereinafter Tulsa Whisenhunt) and T & W Investment Company, Inc., (hereinafter T & W) in the District Court of Tulsa County, Oklahoma. The Complaint states that on June 30, 1976, the Tulsa District Court ordered the sale of the assets of Tulsa Whisenhunt, and on September 15, 1976 the assets of Tulsa Whisenhunt were sold. Said sale was confirmed on September 28, 1976. Plaintiff alleges that in October, 1976, defendant Kurtz, by virtue of his appointment as Receiver for Tulsa Whisenhunt, removed fixtures and chattels real belonging to the plaintiff. Further, that in October, 1976, defendant Kurtz, by virtue of his appointment as Receiver for Tulsa Whisenhunt, removed a 1973 Chevrolet Kingswood station wagon belonging to plaintiff. Plaintiff further alleges that defendant Kurtz, acting as Receiver for Tulsa Whisenhunt, arbitrarily refused to authorize Tulsa Whisenhunt to pay the moneys due and owing under the lease of plaintiff's building and under the lease of plaintiff's vehicles. Likewise plaintiff alleges that defendant Kurtz, as Receiver for T & W, arbitrarily failed and refused to collect rent for the plaintiff's building and vehicle from Tulsa Whisenhunt. As a result of defendant

Kurtz' alleged refusal to collect the debt of plaintiff due and owing from Tulsa Whisenhunt, plaintiff states defendant impaired the earning ability of plaintiff resulting in F & M Bank bringing foreclosure proceedings against plaintiff.

While plaintiff alleges defendant Kurtz was acting "by virtue of his appointment as Receiver for Tulsa Whisenhunt", plaintiff states that defendant Kurtz had no authority under any order of the District Court to take the actions of which plaintiff complains. Plaintiff further states that defendant Kurtz was "acting in his individual capacity" when he took such action.

On December 30, 1976, defendant Kurtz filed a Motion to Dismiss pursuant to Rule 12b, Federal Rules of Civil Procedure. In support of said Motion, defendant filed an affidavit and other supporting materials. On March 23, 1977, a hearing was held in regard to said Motion. At that time the Court informed the parties that in light of the fact that affidavits and other supporting exhibits had been filed, the Court would consider the Motion to Dismiss as a Motion for Summary Judgment pursuant to Rule 56, Federal Rules of Civil Procedure, and plaintiff was given ten days in which to add additional matters it deemed appropriate to the record. On April 4, 1977, plaintiff filed what is entitled "Amendment to Petition and Exhibits in Response to Defendants' Motion for Summary Judgment." Attached thereto as Exhibits "A" and "B" are affidavits of Jack A. Sharp and Pat Berryhill. The Court will consider said exhibits in regard to the Motion for Summary Judgment.

Defendant asserts several bases for the dismissal of the Complaint, one of which being that the Complaint fails to state a claim upon which relief can be granted. In support of this assertion, defendant Kurtz contends he is immune from suit under the Civil Rights Act. The Court in Drexler v. Walters, 290 F.Supp. 150 (D. Minn. 1968) dismissed the plaintiff's Complaint on the grounds that the

Complaint failed to state a claim upon which relief could be granted, noting that the Complaint alleged that the defendant was a receiver of a District Court in the State of Minnesota, and that the defendant committed the specific acts complained of while acting in that capacity. Similarly, in the case at bar, plaintiff alleges the defendant Kurtz was acting by virtue of his appointment as Receiver for Tulsa Whisenhunt and for T & W. The Court in Drexler noted that under the state law, a receiver was an officer or representative of the court which appointed him subject to control of that court. Further, that the state court had long recognized the rule that judges and those acting in a judicial or quasi-judicial capacity are immune from civil liability for damages. As stated by the Court, "the policy behind the rule is to insure that such officers will act upon their convictions free from any apprehension of possible consequences." The Court noted that the desirability of such freedom of judicial action applies equally to court-appointed referees and receivers, and brings them within the cloak of judicial immunity.

In Smallwood v. United States, 358 F.Supp. 398 (E.D. Mo. 1973), in upholding the doctrine of immunity, the Court noted that the reasons for the judicial immunity rule apply regardless of the nature of relief sought and the Civil Rights Act creates no exception thereto. There is nothing in the legislative history of the Civil Rights Act which abrogates or in any way impairs the doctrine of judicial immunity. As stated by the Court:

"Officials of the judiciary are also entitled to the same immunity as judges. In particular, the clerks of courts have been held not subject to civil damage suits by reason of the doctrine of judicial immunity. (case citations omitted). Accordingly, referees in bankruptcy and trustees in bankruptcy should not be subject to civil damage suits under the doctrine of judicial immunity, for they are officers of the bankruptcy court. (case citations omitted)."

In addition, the Court noted that a court-appointed receiver is quasi-judicial officer within the protection afforded by the doctrine of judicial immunity. Similarly, in Bradford Audio Corp. v. Pious, 392 F.2d 67 (2nd Cir. 1968), the Court in holding an appointed receiver is a quasi-judicial officer within the protection of the immunity quoted from 2 Clark, Receivers, § 388 (3d Ed. 1959):

"Officers of the courts, such as . . . receivers . . . who act in obedience to the lawful mandate of the court or in obedience to lawful process of any sort are protected or privileged in respect to acts done under such lawful authority . . . a receiver obeying the orders of the court is not a guarantor of the correctness of the court's rulings."

Plaintiff repeatedly asserts it is not suing Kurtz in his official capacity as a receiver, but in his individual capacity. Plaintiff alleges that Kurtz, acting without the authority of the trial court misused and abused the power granted to him as a receiver by the courts of the State of Oklahoma. However, the plaintiff has stated in the Complaint that on February 6, 1976, the defendant Kurtz was appointed receiver for Tulsa Whisenhunt in Cause No. C-76-215 and on June 11, 1976, was likewise appointed receiver for plaintiff, T & W, in Cause No. C-76-285. It would appear to the Court that merely asserting that a receiver is acting in his individual capacity when the acts complained of fall within the purview of his receivership, is not sufficient to vitiate the judicial immunity of the receiver. The Court in United States v. Crocker, 194 F.Supp. 860 (D. Nev. 1961) considered a similarly confusing allegation that a receiver, acting "as receiver" was in effect acting in an individual capacity.

The Court stated:

"However wrongful defendant's actions in selling the property and disposing of the proceeds may have been, it would seem that he still was acting in his capacity as receiver. Indeed, in its complaint, the plaintiff alleges in Paragraph 13 thereof that 'the defendant, . . . as receiver for Novel Hendricks, sold the business.' The complaint further alleges in Paragraph 14 thereof

that 'the defendant, A. D. Crocker, as receiver, paid and distributed' the proceeds of the sale. Is plaintiff now contending that because defendant allegedly acted wrongfully that he was not doing so as a receiver? The proposition would seem to be untenable."

The Supreme Court of Oklahoma has stated: "This court is committed to the generally recognized view that a receiver is an officer of the Court." Eckles v. Busey, 132 P.2d 344 (Okla. 1942). As stated by the Oklahoma Supreme Court:

"When a court exercising jurisdiction in equity appoints a receiver of all the property of a corporation, the court assumes the administration of the estate; the possession of the receiver is the possession of the court; and the court itself holds and administers the estate through the receiver as its officer for the benefit of those whom the court shall ultimately adjudge to be entitled to it. (citation omitted.) The receiver is an arm of the court." Sinopoulo v. Portman, 137 P.2d 943, 947 (Okla. 1943).

Similarly in Superior Oil Corp. v. Matlock, 47 F.2d 993 (10th Cir. 1931) the Court, in applying Oklahoma law, held:

"But the receiver is the arm of the state court, and is subject to its direction. We must and do assume that the state court will see to it that every doubtful claim against the corporation is defended and that every proper claim of the corporation will be vigorously prosecuted."

Plaintiff asserts that the affidavits filed on its behalf show that Kurtz took personal property owned by plaintiff "without a court order authorizing him to do so." However, the Order of the District Court of Tulsa County, dated June 11, 1976, appointing Thomas Kurtz as receiver provides that he be appointed receiver "of all assets belonging to T & W Investment Company, wherever situated, and of every kind and nature whatsoever" and further provides he be "vested with full rights and powers as Receiver under the supervision, direction and jurisdiction of this Court." This is in keeping with the broad power and authority of receivers as provided in the Oklahoma Statutes. Title 12 O.S. § 1554 provides:

"The receiver has, under the control of the Courts, power to bring and defend actions in its own name, as receivers; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property if the courts may authorize."

Based upon defendant's status as a court-appointed receiver, in light of the broad powers thereby granted to him, it would appear to the Court that the acts complained of come within the purview of his authority as a receiver and he therefore has immunity as an officer of the Court. It is further noted that the Court in Drexler v. Walters, supra, stated that even had the receiver acted beyond the scope of his appointment, he would still be immune from suit. As stated by the Court, "in any event, and even if he had [acted beyond the scope of his appointment], the shield of judicial immunity has been held to extend to all judicial and quasi-judicial acts, however, erroneous." As noted by the Court, any other rule would render ineffective the policy behind the immunity.

The record before the Court reflects that the defendant Kurtz was fully released and discharged of all liabilities to T & W by the District Court of Tulsa County in October of 1976. The record before the Court indicates that T & W and all other interested parties were given notice of the hearing in regard to defendant Kurtz' Final Report and Accounting. As stated by the Oklahoma Supreme Court in Askin v. Taylor-Skinner Publishing Co., 56 P.2d 379 (Okla. 1936), "a creditor having actual knowledge of a receivership affecting his interest is charged with the duty of filing his claim with the receiver if he desires to participate in the distribution of the receivership funds." It appears no appeal has been taken in regard to the Court's acceptance of said report and its release and discharge of defendant Kurtz.

The Court further notes that on April 28, 1977, T & W asserted a claim in an action styled Clark Casket and Vault Company v. Tulsa-Whisenhunt Funeral Home, C-76-215, in the

District Court of Tulsa County. It appears that the assets sought therein by plaintiff were the same as form a basis for plaintiff's claims in the action at bar. The District Court of Tulsa County, by Order dated May 10, 1977, held that the matters asserted in the claim on behalf of T & W had been previously determined by that Court. The Court held the matter of rent was res judicata and had been determined against T & W. The Court further found that the matters set forth in items 2, 3 and 4 of the claim (basically the same claims as asserted in this Court) were part of the bid package and further that time for the filing of the claim on behalf of T & W or any other creditor against property and assets of Tulsa Whisenhunt had long since passed. The Court further found that T & W had made no objection to any items in the bid package, except as to the real estate included therein, which real estate was removed by the consent of the parties.

Just as the case law of Oklahoma provides that a court which appointed a receiver has the power to control controversies affecting property in the receiver's custody and thereby exclude interference by another coordinate district court, State v. Haley, 12 P.2d 523 (Okla. 1932), the federal courts have taken the position that they will not interfere in state court proceedings. Leggett v. Green, 188 F.2d 817 (8th Cir. 1951); United States v. Crocker, supra; Zachman v. Erwin, 142 F.Supp. 745 (D.C. Tex. 1955). As stated by the Court in United States v. Crocker, supra:

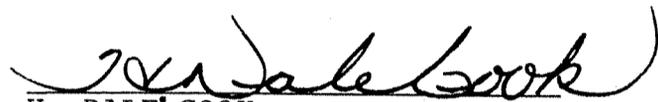
"Ordinarily questions concerning propriety of receiver's action should be raised in the receivership proceeding not by collateral attack. (citations omitted). The reason for this rule, of course, arises from the fact that it is the appointing court which is in the best position to interpret the statutes of the state and the order of the court under which the receiver is appointed."

The record in this action reflects that the plaintiff actively participated in the state court proceeding and had full opportunity to assert its claim in such proceeding. It

would appear to the Court that the District Court of Tulsa County was the proper forum for the allegations raised herein.

Based upon the foregoing it is the determination of the Court that the Motion for Summary Judgment filed on behalf of defendant Thomas W. Kurtz should be and hereby is sustained.

It is so Ordered this 15th day of June, 1977.



H. DALE COOK
United States District Judge

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

JACK B. HARWOOD, JOHN H. BURGHER,)
FENELON BOESCHE, L. R. CALONKEY,)
PERRY CATTS, DR. MAURICE COFFEY,)
FRED GLASSER, THOMAS HERNDON,)
DOUG HUBNER, VERNON T. JONES,)
ARTHUR W. KLAUSON, LOWRY MCKEE,)
RITA ROMANS, CRIS SEGER, D. M.)
SHIELDS, JOHN C. WILLIS,,)

Plaintiffs,)

vs.)

No. 76-C-347-C)

ROBERT BLOOM, Acting Comptroller)
of the Currency of the United)
States of America,)

Defendant.)

and)

BROWN JAMES AKIN, JR., ROGER)
MORRIS ATWOOD, TED C. BODLEY,)
JOHN CARSON BUMGARNER, WILLIAM)
NELSON DAWSON, PAUL DEAN HINCH,)
JOHN DOUGLAS MCCARTNEY, GLENN)
FRANKLIN PRICHARD, R. JAMES)
STILLINGS, WAYNE ELWYN SWEARINGEN)
and TAFT WELCH,)

Amicus Curiae.)

FILED

JUN 14 1977

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

O R D E R

This is an action in which the plaintiffs ask the Court to compel the defendant to prepare an Environmental Impact Statement (EIS), pursuant to Section 102(c) of the National Environmental Policy Act of 1969 (NEPA) (Title 42 U.S.C. § 4331 et seq.), prior to the final approval of the application of the proposed Western National Bank to engage in business as a national banking association in Tulsa, Oklahoma. On March 22, 1977 the Court entered an order postponing final approval of the application pending the filing by the defendant of an adequate statement of reasons for the failure to file an EIS in connection with the approval. The defendant has now filed such a statement, in which he concludes that the preparation of an EIS is neither appropriate nor required.

As the Court stated in its prior order, under NEPA, the burden is on the federal agency to prove there will be no environmental impact as a result of its actions. First National Bank of Homestead v. Watson, 363 F.Supp. 466 (D.D.C. 1973). In determining whether such an action will "significantly" affect the quality of the human environment, the agency should consider the following factors:

" . . . (1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area affected by it, and (2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area." Hanly v. Kleindienst, 471 F.2d 823, 830-831 (2nd Cir. 1972).

In the instant case, the defendant considered environmental factors primarily in terms of traffic congestion. According to the briefs and arguments of the parties and the affidavits filed by the plaintiffs, the traffic problem would appear to be the plaintiffs' primary concern in this action. In that regard, the defendant relied on the following factors in concluding that the preparation of an EIS was unnecessary:

1. The proposed location of the bank is in a highly urbanized area, containing 23 shopping centers, 47 office buildings and a new office park planned adjacent to the bank's premises. The estimated population of the area is 51,000, and housing units in the area increased some 37% from 1970 to 1974;

2. There is a considerable volume of traffic already present in the area which will not significantly increase should a bank be established there. The volume of traffic has remained constant for several years, and major traffic flow should remain close to the present levels in the foreseeable future;

3. A bank is not likely to increase peak volumes of

traffic because its business hours are generally compatible with the normal "rush" hours;

4. A detached drive-in facility two blocks away will reduce congestion by distributing the traffic flow;

5. A neighborhood bank could be expected to reduce overall traffic congestion, fuel consumption and atmospheric pollution by reducing the distance between the bank and its customers;

6. An additional roadway lane is to be constructed, at the expense of the developers, to facilitate the flow of traffic;

7. The proposed bank will comply with local zoning ordinances.

The final factor may well be the most important one under the circumstances of this case. Courts are generally reluctant to find that a proposed Federal action falls within Section 102(c) of NEPA when the proposed use will comply with existing local zoning ordinances. There is no indication in this case that the bank would not comply with the applicable zoning requirements.

"When local zoning regulations and procedures are followed in site location decisions by the Federal Government, there is an assurance that such 'environmental' effects as flow from the special uses of land . . . will be no greater than demanded by the residents acting through their elected representatives. There is room for the contention, and there may be even a presumption, that such incremental impact on the environment as is attributable to the particular land use proposed by the Federal agency is not 'significant,' that the basic environmental impact from the project derives from the land use pattern, approved by local authorities, that prevails generally for the same kind of land use by private persons. . . . NEPA has full vitality . . . where the proposal of the Federal Government reflects a distinctive difference in kind from the types of land use, proposed by private and local government sponsors, that can fairly be taken as within the scope of local controls." Maryland-National Capital Park & Planning Commission v. United States Postal Service, 487 F.2d 1029, 1036-1037 (D.C. Cir. 1973).

The same rationale was expressed by the Court in Hanly v. Kleindienst, supra, when it said:

"Where conduct conforms to existing uses, its adverse consequences will usually be less significant than when it represents a radical change. Absent some showing that an entire neighborhood is in the process of redevelopment, its existing environment, though frequently below an ideal standard, represents a norm that cannot be ignored. . . . An office building . . . may have an adverse impact in an area where such use does not exist and is not permitted by zoning laws . . . whereas the contrary would hold in a location where such uses do exist and are authorized by such laws." Id. at 831.

After analyzing these cases and the statements made by the plaintiffs in their briefs, arguments and affidavits, it appears to the Court that the present action would be more appropriately characterized as an attack on a local zoning ordinance rather than on the scope of any Federal action.

Statements much like the one filed by the defendant in this case were accepted as satisfying the Comptroller's requirements under NEPA by the courts in Country Club Bank of Kansas City v. Smith, Civil No. 74 CV 73-W-3 (W.D. Mo., Dec. 30, 1975) and First National Bank of Homestead v. Watson, supra. While the Court does not condone after-the-fact reconstructions of environmental analysis, it feels that the defendant has, in this case, met his burden of demonstrating that the approval of the application of Western National Bank will not cause significant adverse environmental effects, either by itself or in conjunction with any existing adverse conditions, and that the defendant has therefore complied with the Court's order of March 22, 1977. Consequently, the restrictions imposed in that order on the granting of final approval of the application of Western National Bank are hereby removed, and defendant's motion for summary judgment is hereby sustained.

It is so Ordered this 14th day of June, 1977.


H. DALE COOK
United States District Judge

FILED

JUN 13 1977

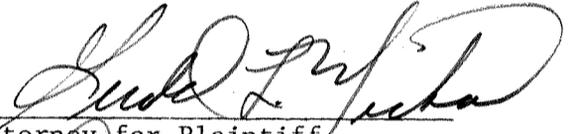
ROBERT E. MILLS,)
)
 Plaintiff,)
)
 vs.)
)
 RICHARD S.C. GRISHAM,)
)
 Defendant.)

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

No. 76-C-403

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES now the plaintiff, ROBERT E. MILLS, by and through his attorney, Gerald L. Michaud, 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.


Attorney for Plaintiff


Attorney for Defendant

FILED

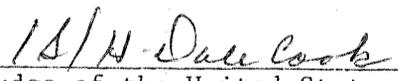
JUN 15 1977

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

ORDER

And now on this 23rd day of May, 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 right of the plaintiff to bring any future action arising from said cause of action.


Judge of the United States District
Court for the Northern District

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

DENVER R. MOORE,

Plaintiff,

vs.

JOSEPH A. CALIFANO, JR.,
Secretary of Health,
Education and Welfare,

Defendant.

No. 76-C-139-C

FILED

JUN 10 1977

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

O R D E R

This is an action for judicial review under Title 42 U.S.C. § 405(g), in which plaintiff challenges a decision by the defendant to deny him disability benefits. Plaintiff was found not to be under a disability, as defined by the Social Security Act, by the administrative law judge, which determination was affirmed by the Appeals Council. Plaintiff asks the Court to set aside the decision of the defendant, or, in the alternative, to remand the case for the purpose of taking additional evidence.

Title 42 U.S.C. § 405(g) provides that the Court may remand this case to the Secretary and order additional evidence to be taken "on good cause shown." "'Good cause' consists of something more than mere 'new evidence.' It must also be relevant and probative." Hess v. Weinberger, 363 F.Supp. 262, 267 (E.D. Penn. 1973). The burden of showing the existence of good cause is upon the moving party, Long v. Richardson, 334 F.Supp. 305 (W.D. Va. 1971), and remand should not be ordered ". . . where the Secretary's findings are not based upon vague, ambiguous or otherwise deficient evidence." Schad v. Finch, 303 F.Supp. 595, 599 (W.D. Penn. 1969).

Plaintiff's primary ground for his claim that new evidence justifies a remand of this case is a letter from a Dr. Koepke, who specializes in psychiatry, which plaintiff

contends demonstrates that he suffers from a mental impairment not considered by the administrative law judge. However, the letter indicates that the plaintiff's primary purpose in consulting Dr. Koepke was to enlist his help in receiving disability benefits, rather than to receive treatment for a mental impairment. The doctor related that the plaintiff ". . . was depressed in mood and was predominantly concerned with inability to receive compensation for past injuries." However, as the defendant suggests, this opinion may be as suggestive of a normal state of mind, under the circumstances, as of a psychological defect. Dr. Koepke also stated that "[i]t was our opinion at that time that he failed to express anything suggestive of a psychotic process," and plaintiff was eventually referred to his family physician by Dr. Koepke, whose last contact with the plaintiff was on October 13, 1975. There is no indication that the plaintiff has contacted any physician since that date for treatment for any mental impairment. Based upon the material submitted for its consideration, the Court finds that the plaintiff has failed to meet his burden of showing good cause to order remand of this case, and the motion to remand is hereby overruled.

Judicial review of a decision of the Secretary of Health, Education and Welfare is governed by Title 42 U.S.C. § 405(g), which provides, in pertinent part, that "[t]he findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive. . . ." Substantial evidence has been defined as ". . . such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and it must be based on the record as a whole." Glasgow v. Weinberger, 405 F.Supp. 406, 408 (E.D. Cal. 1975). The district court is not permitted to substitute its judgment for that of the Secretary, if the latter's is supported by substantial evidence. Pruchniewski v. Weinberger, 415 F.Supp. 112 (D.Md. 1976). The Court has

carefully examined the entire record presented for its consideration and has concluded that the Secretary's determination was based upon the record as a whole and is supported by substantial evidence. Therefore, judgment is hereby entered on behalf of the defendant.

It is so Ordered this 9th day of June, 1977.


H. DALE COOK
United States District Judge

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

BRUCE HENDRICKSON,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES STEEL CORPOR-)
 ATION, a foreign corporation;)
 BETHELEHEM STEEL CORPORATION,)
 a foreign corporation; JONES)
 & LAUGHLIN STEEL CORPORATION,)
 a foreign corporation; and)
 STEWART ENGINEERING &)
 EQUIPMENT COMPANY, INC., a)
 corporation,)
)
 Defendants.)

No. 76-C-215-C

FILED

JUN 10 1977

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

O R D E R

This is an action in which the plaintiff seeks to recover damages from the defendants for injuries he received when a load of steel fell on him during the course of his employment with Auxier-Scott Supply, Inc. in Tulsa, Oklahoma. The plaintiff alleges that the load was suspended from a crane manufactured by defendant Stewart Engineering & Equipment Company, Inc. (Stewart) and a wire rope manufactured by defendant Jones & Laughlin Steel Corporation (Jones & Laughlin). The plaintiff asserts two causes of action against each defendant, one based upon manufacturer's products liability and one based upon negligence. Both defendants have filed motions for summary judgment which are now pending before the Court.

The plaintiff's answers to the interrogatories of defendant Stewart filed on December 9, 1976 are dispositive of that defendant's motion for summary judgment. In those answers, plaintiff admitted that neither he nor any representative or agent of his or any person within his knowledge had any knowledge, information or evidence of the following: any defect in the crane (Interrogatory No. 3); any failure,

malfuction or impropriety as to the operation in the crane (Interrogatory No. 5); any impropriety, defect, or complaint of the design features or configurations of the crane (Interrogatory No. 7); any effect that the manufacturing, design or use of the crane had on the wire rope being used on the date of the accident, or any manner in which the crane contributed to the proximate cause of the separation of the wire rope and injuries to the plaintiff (Interrogatory No. 11). These answers were filed on February 24, 1977, and no effort has been made by the plaintiff to modify them since that date. Because proximate cause is a necessary element to be proved in any negligence action, plaintiff's admission that defendant Stewart's crane did not contribute to the proximate cause of his injuries disposes of his negligence claim against that defendant. Proof of a defect is a necessary element in a manufacturer's products liability action, see Kirkland v. General Motors Corporation, 521 P.2d 1353 (Okla. 1974), and plaintiff has admitted that the crane in question was not defective. Therefore, there is no genuine issue as to any material fact in either of plaintiff's two causes of action against this defendant, and defendant Stewart's motion for summary judgment is hereby sustained as to both causes of action.

Defendant Jones and Laughlin contends, as grounds for its motion for summary judgment, that there is no genuine issue as to whether the wire rope in question was defective under the doctrine of manufacturer's products liability. This contention is based primarily upon the reports of three testing laboratories, all of which concluded that there was no defect in the wire rope. The law of manufacturer's products liability in Oklahoma is based upon Section 402A of the Restatement (Second) of Torts, Kirkland v. General Motors Corporation, supra, and, while the evidence before the Court at this time does seem to indicate that the wire rope was not defective, there is authority from courts interpreting

substantive law based upon the same section of the Restatement that the issue of defectiveness is nevertheless a question for the jury.

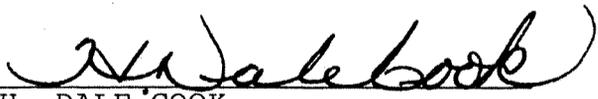
"Although plaintiff has the burden of showing the existence of a defect, a malfunction may itself, in the absence of abnormal use and reasonable secondary causes, be sufficient evidence of a defect to make the existence of a defect a jury question." Wojciechowski v. Long-Airdox Div. of Marmon Group, Inc., 488 F.2d 1111, 1116 (3rd Cir. 1973).

Such a rationale has been utilized to uphold jury verdicts which disregarded expert testimony that the existence of the alleged defect was scientifically impossible.

". . . [J]urors are not bound to accept the uncontradicted opinions of expert witnesses but have a right to use their own common sense and experience and to draw all reasonable inferences from the physical facts and occurrences." Remington Arms Company, Inc. v. Wilkins, 387 F.2d 48, 54 (5th Cir. 1967).

See also Franks v. National Dairy Products Corporation, 414 F.2d 682 (5th Cir. 1969); Houston-New Orleans, Inc. v. Page Engineering Company, 353 F.Supp. 890 (E.D. La. 1972). Therefore, even though the record in the instant case contains expert evidence that the wire rope was not defective, the jury has a right to ignore such evidence and to conclude that, based upon reasonable inferences drawn from the facts and circumstances as they find them to have existed at the time of the accident, the wire rope was defective. Consequently, the motion of defendant Jones & Laughlin for summary judgment is hereby overruled.

It is so Ordered this 9th day of June, 1977.


H. DALE COOK
United States District Judge

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

CHARLOTTE MEIER YOUNG,)
in person and as)
Assignee in trust for)
her minor sons,)
NORBERT NELSON and)
ULRICH WALDEMAR YOUNG,)
)
Plaintiff,)
)
vs.)
)
FIDELITY UNION LIFE)
INSURANCE COMPANY,)
a stock company,)
Dallas, Texas,)
)
Defendant.)

FILED

JUN 10 1977

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

No. 76-C-30-C

ORDER

Plaintiff herein has filed a Motion to Vacate and Amend Judgment. The Court has carefully considered said Motion and the briefs filed in regard thereto and finds that the issues raised by plaintiff do not constitute grounds for vacating or amending the Order sustaining defendant's Motion for Summary Judgment.

The Court having found its previous determination to be in accordance with the facts presented in the case and the law applicable thereto, plaintiff's Motion to Vacate and Amend Judgment is hereby overruled.

It is so Ordered this 10th day of June, 1977.


H. DALE COOK
United States District Judge

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CIVIL ACTION NO. 77-C-8-B)

ROBERT WAYNE HERBERT, MARY)
KATHERINE HERBERT, ORVAL K.)
DeFRIESE, if living, or if)
not, his unknown heirs, assigns,)
executors and administrators,)
HAZEL R. DeFRIESE, WILLIE MAY)
PENNY, if living, or if not,)
her unknown heirs, assigns,)
executors and administrators,)
STEWARTS, INC., TULSA TASK)
FORCE FEDERAL CREDIT UNION,)
INC., OKLAHOMA MORRIS PLAN)
COMPANY, a Corporation, COUNTY)
TREASURER, Tulsa County,)
BORAD OF COUNTY COMMISSIONERS,)
Tulsa County, BARBARA JONES,)
and WILMA RAMSEY,)

Defendants.)

FILED

JUN 10 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 10th
day of June, 1977, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; the Defendants, County
Treasurer, Tulsa County, and Board of County Commissioners, Tulsa
County, appearing by Kenneth L. Brune, Assistant District Attorney;
and the Defendants, Robert Wayne Herbert, Mary Katherine Herbert,
Orval K. DeFriese, if living, or if not, his unknown heirs, assigns,
executors and administrators, Hazel R. DeFriese, Willie May Penny,
if living, or if not, her unknown heirs, assigns, executors and
administrators, Stewarts, Inc., Tulsa Task Force Federal Credit
Union, Inc., Oklahoma Morris Plan Company, a Corporation, Barbara
Jones, and Wilma Ramsey, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendants, County Treasurer, Tulsa County,
and Board of County Commissioners, Tulsa County, were served with
Summons and Complaint on July 10, 1976; that Defendant, Robert

Wayne Herbert, was served with Summons and Complaint on January 20, 1977; that Defendant, Hazel R. DeFriese, was served with Summons and Complaint on January 7, 1977; that Defendant, Stewarts, Inc., was served with Summons and Complaint on February 3, 1977; that Defendant, Oklahoma Morris Plan Company, a Corporation, was served with Summons and Complaint on January 10, 1977, all as appears from the U.S. Marshals Service herein; and that Defendants, Mary Katherine Herbert, Orval K. DeFriese, if living, or if not, his unknown heirs, assigns, executors and administrators, Willie May Penny, if living, or if not, her unknown heirs, assigns, executors and administrators, Tulsa Task Force Federal Credit Union, Inc., Barbara Jones and Wilma Ramsey, were served by publication, as appears from the Proof of Publication filed herein.

It appearing that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on January 28, 1977, that Defendants, Robert Wayne Herbert, Mary Katherine Herbert, Orval K. DeFriese, if living, or if not, his unknown heirs, assigns, executors and administrators, Hazel R. DeFriese, Willie May Penny, if living, or if not, her unknown heirs, assigns, executors and administrators, Stewarts, Inc., Tulsa Task Force Federal Credit Union, Inc., Oklahoma Morris Plan Company, a Corporation, Barbara Jones, and Wilma Ramsey, 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 Nine (9), Block Four (4), SUBURBAN ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Robert Wayne Herbert and Mary Katherine Herbert, did, on the 17th day of March, 1964, execute and deliver to the Administrator of Veterans Affairs, their

mortgage and mortgage note in the sum of \$9,500.00 with 5 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, Orval K. DeFriese and Hazel R. DeFriese, were the grantees in a deed from Defendants, Robert Wayne Herbert and Mary Katherine Herbert, dated August 2, 1964, filed August 5, 1964, in Book 3477, Page 484, records of Tulsa County, wherein Defendants, Orval K. DeFriese and Hazel R. DeFriese, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Robert Wayne Herbert, Mary Katherine Herbert, Orval K. DeFriese and Hazel R. DeFriese, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$7,550.02 as unpaid principal with interest thereon at the rate of 5 1/2 percent per annum from January 1, 1976, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendant, Willie May Penny, if living, or if not, her unknown heirs, assigns, executors and administrators, the sum of \$ 0.00 plus interest according to law for personal property taxes for the year(s) None and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Robert Wayne Herbert, in personam, Mary Katherine Herbert, in rem, Orval K. DeFriese, if living, or if not, his unknown heirs, assigns, executors and administrators, in rem, and Hazel R. DeFriese, in personam, for the sum of \$7,550.02 with interest thereon at the rate of 5 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 the County of Tulsa have and recover judgment, in rem, against Defendant, Willie May Penny, if living, or if not, her unknown heirs, assigns, executors and administrators, for the sum of \$ 0.00 as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Willie May Penny, if living, or if not, her unknown heirs, assigns, executors and administrators, Stewarts, Inc., Tulsa Task Force Federal Credit Union, Inc., Oklahoma Morris Plan Company, Barbara Jones, and Wilma Ramsey.

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.

Walter E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED

Robert P. Santee

ROBERT P. SANTEE
Assistant United States Attorney

Kenneth L. Brune

KENNETH L. BRUNE
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

KANSAS CITY FIRE & MARINE)
INSURANCE COMPANY, An)
Insurance Corporation,)
)
Plaintiff,)
)
vs.)
)
M-P DRILLING, INC., a)
Corporation, formerly)
DOMESTIC DRILLING COMPANY,)
INC.,)
)
Defendant.) No. 76-C-558-C

FILED
JUN 9 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

A stipulation of the parties herein, having been filed on the 9th day of June, 1977, that a judgment be entered for the plaintiff herein in the total amount sued for, to-wit: \$22,184.00 plus costs of the action, it is hereby

ORDERED, ADJUDGED AND DECREED, that plaintiff have and recover of the defendant the sum of \$22,184.00 plus costs of this action; and it is further

ORDERED, that enforcement or execution on this judgment be stayed until after July 20, 1977, pursuant to the stipulation and agreement of the parties previously filed herein.

DATED this 9th day of June, 1977.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

FILED

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

JUN 9 1977

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

JOHN PALZER,)
)
 Plaintiff,)
)
 vs.)
)
 RONALD TRIMBLE,)
)
 Defendant.)

No. 77-C-36-B

ORDER OF DISMISSAL

By agreement of the parties, and the Court being advised,
this cause of action and complaint are hereby dismissed as
settled, with prejudice, each party to bear any costs already
incurred without right to recover said costs from the other
party.

Entered June 9, 1977,

Walter E. Barrett
United States District Judge
Northern District of Oklahoma

THIS ORDER APPROVED FOR ENTRY

HALL, ESTILL, HARDWICK, GABLE,
COLLINGSWORTH & NELSON

By *Stephen R. Clark*
Stephen R. Clark
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74103
(918) 588-2651

Attorneys for Plaintiff

SANDERS, McELROY & CARPENTER

By *Thomas Mason*
Thomas Mason
Suite 205, 624 S. Denver
Tulsa, Oklahoma 74119
(918) 582-5181

Attorneys for Defendant

FILED

JUN 8 1977 nfo

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

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
vs.)
)
)
LARRY R. TYGART, YHULONDA E.)
TYGART, EUGENE McMILLON, KATHY)
THURMAN, CHESTER CLIFT, and)
LINCOLN PROPERTY COMPANY, a)
Corporation, Agent for Willowick)
Associates d/b/a Willowick Apts,)
)
) Defendants.)

CIVIL ACTION NO. 76-C-390-B ✓

AMENDMENT TO JUDGMENT OF FORECLOSURE

Now on this 8th day of June, 1977, there came on for consideration the Motion of the Plaintiff, United States of America, for the entry of an Amendment to Judgment of Foreclosure previously entered herein on February 28, 1977. The Court finds said Motion is well taken.

NOW IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Judgment of Foreclosure previously entered herein on February 28, 1977, be and the same is hereby amended as follows:

The second paragraph of page 1 is amended to read as follows:

"The Court being fully advised and having examined the file herein finds that Defendants, Larry R. Tygart and Yhulonda E. Tygart, were served with Summons and Complaint on July 28, 1976; that Defendant, Chester Clift, was served with Summons and Complaint on July 29, 1976; that Defendant, Lincoln Property Company, a corporation, agent for Willowick Associates d/b/a Willowick Apts, was served with Summons and Complaint on July 21, 1976, all as appears from the U.S. Marshals Service herein; and that Defendants, Eugene McMillon and Kathy Thurman, were served by publication, as appears from the Proofs of Publication filed herein."

The first paragraph of page 3 is amended to read as follows:

"IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Larry R. Tygart and Yhulonda E. Tygart, in personam,

and Kathy Thurman and Eugene McMillon, in rem, for the sum of \$7,381.63 with interest thereon at the rate of 5 1/2 percent per annum from August 1, 1975, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property."


UNITED STATES DISTRICT JUDGE

bcs

FILED

JUN 8 1977

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA Jack C. Silver, Clerk
U. S. DISTRICT COURT

JEROME NEY, JR. *

V. * CIVIL ACTION NO. 76-C-275-c

AUTOPILOTS CENTRAL, INC. *

ORDER OF DISMISSAL

The motion for voluntary dismissal without prejudice filed herein by plaintiffs having come to the Court's attention this 8th day of June, 1977, and the Court being of the opinion that the same is at this time well taken, it is accordingly,

ORDERED by the Court that the plaintiffs' motion for voluntary dismissal be granted and the cause is hereby dismissed without prejudice.

RENDERED, ENTERED AND SIGNED this 8th day of June, 1977.

W. Dalebrook
UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUN 8 1977

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

RAY MARSHALL, Secretary of Labor,)
United States Department of Labor,)
)
Petitioner)
)
v.)
)
EVANS PLATING WORKS, INC.,)
)
Respondent)

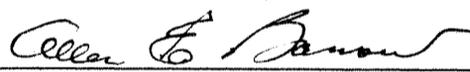
Civil Action
No. 77-C-176-B

O R D E R

After having considered Petitioner's Motion to Dismiss his Petition for Order for Entry, Inspection and Investigation Under the Occupational Safety and Health Act of 1970, and being otherwise fully advised in the premises of said motion, it is concluded that the motion should be granted. It is, therefore,

ORDERED that Petitioner's Petition for Order for Entry, Inspection and Investigation Under the Occupational Safety and Health Act of 1970 previously filed with this Court is dismissed.

Entered this 8th day of June, 1977.


UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE JUN 8 1977
NORTHERN DISTRICT OF OKLAHOMA

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	CIVIL ACTION NO. 77-C-77-B
)	
LARRY EMORY GRAYSON, JANICE)	
ANITA GRAYSON, MARK FRAZIER,)	
and JANICE FRAZIER,)	
)	
Defendants.)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 8th day of June, 1977, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the Defendants, Larry Emory Grayson, Janice Anita Grayson, Mark Frazier, and Janice Frazier, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Larry Emory Grayson and Janice Anita Grayson, were served by publication, as appears from the Proof of Publication filed herein; and that Defendants, Mark Frazier and Janice Frazier, were served with Summons and Complaint on March 16, 1977, 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 Three (3), Block Forty-one (41), VALLEY VIEW ACRES SECOND ADDITION, to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Larry Emory Grayson and Janice Anita Grayson, did, on the 6th day of April, 1973, execute and

deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,500.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Larry Emory Grayson and Janice Anita Grayson, 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 \$9,875.79 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from May 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 Emory Grayson and Janice Anita Grayson, in rem, for the sum of \$9,875.79 with interest thereon at the rate of 4 1/2 percent per annum from May 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 the Plaintiff have and recover judgment, in rem, against Defendants, Mark Frazier and Janice Frazier.

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 Allen E. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED



ROBERT P. SANTEE
Assistant United States Attorney

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

FILED

ROBERT A. WHITEBIRD,)
Restricted Non-competent)
Quapaw Indian,)
)
Plaintiff,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)

JUN 7 1977

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

No. 76-C-525-C

DISMISSAL BY STIPULATION OF COUNSEL

It is hereby stipulated by and between the parties to the above entitled action, by their respective attorneys of record, that the action be, and is hereby, dismissed without prejudice to either party thereto, and that an Order accordingly may be made and entered herein without further notice.

DATED: June 7, 1977

BARROW, GADDIS & GRIFFITH
Allen E. Barrow, Jr.
ALLEN E. BARROW, JR.
Attorney for Plaintiff

NATHAN G. GRAHAM,
United States Attorney

ROBERT P. SANTEE
Robert P. Santee
ROBERT P. SANTEE,
Assistant United States
Attorney,
Attorney for Defendant

SO ORDERED.

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

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

FILED
JUN 7 1977

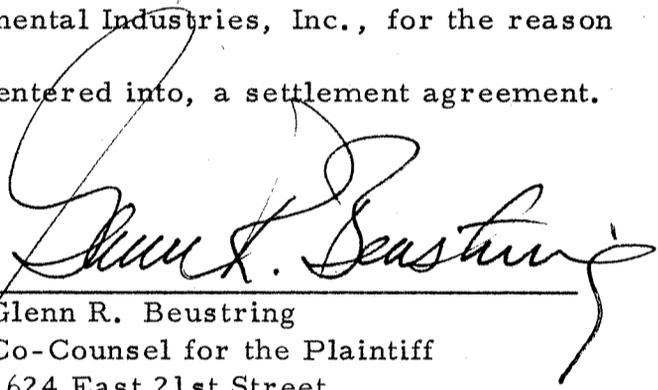
Jack C. Silver, Clerk
U. S. DISTRICT COURT

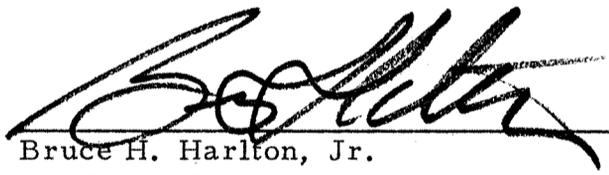
CAROLYN JO HILL,)
)
Plaintiff,)
)
vs.)
)
CONTINENTAL INDUSTRIES, INC.,)
)
Defendant.)

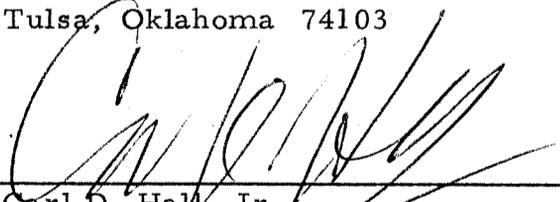
No. 75-C-498-C ✓

STIPULATION ^{of} FOR DISMISSAL WITH PREJUDICE

COMES NOW the above named parties, by and through their respective attorneys, and stipulate and agree that the above entitled action be, and the same hereby is, discontinued, and the Complaint herein dismissed with prejudice as to the Defendant, Continental Industries, Inc., for the reason that said parties have reached, and entered into, a settlement agreement.


Glenn R. Beustring
Co-Counsel for the Plaintiff
2624 East 21st Street
Tulsa, Oklahoma 74114


Bruce H. Harlton, Jr.
Co-Counsel for the Plaintiff
806 Beacon Building
Tulsa, Oklahoma 74103


Carl D. Hall, Jr.
HALL, SUBLETT & McCORMICK
Attorneys for the Defendant
Suite 1776, One Williams Center
Tulsa, Oklahoma 74103

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

FILED
JUN 3 1977 *JWS*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

DYER CONSTRUCTION COMPANY,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
THE PRESCON CORPORATION,)
a Delaware corporation,)
)
Defendant.)

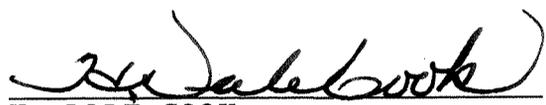
No. 75-C-307-C

O R D E R

The Court has before it for consideration the motion of the plaintiff to set a reasonable attorneys fee in this case in the amount of \$35,000. In support of this motion, plaintiff has submitted affidavits of the attorneys involved as to the amount of time expended in the representation of the plaintiff, as well as a summary of the testimony of several other attorneys in the community which would be offered in support of the motion. Defendant has responded to the motion but has offered no affidavits challenging those submitted by the plaintiff.

The Court has carefully considered all of the material submitted to it by both parties, in light of the factors listed in Disciplinary Rule 2-106 of the Code of Professional Responsibility, which governs the determination of the reasonableness of fees for legal services. After such consideration, it is the order of the Court that plaintiff's counsel be awarded reasonable attorneys fees in the amount of \$25,000.

It is so Ordered this 3rd day of June, 1977.


H. DALE COOK
United States District Judge

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

FILED

JUN 3 1977 *me*

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

DYER CONSTRUCTION COMPANY, an)
Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
THE PRESCON CORPORATION, a)
Delaware corporation,)
)
Defendant.)

No. 75-C-307-C ✓

O R D E R

This action was tried to the Court beginning on September 27, 1976. On December 28, 1976 the Court entered a judgment in favor of the plaintiff. The defendant has now filed a motion to correct and/or modify certain findings of fact and conclusions of law and to adopt additional findings and conclusions, as well as a motion for new trial.

The Court has reviewed the record in this case and studied the briefs filed by each party and has concluded that it fully complied with the requirements of Rule 52 of the Federal Rules of Civil Procedure. Moreover, the Court is convinced that its findings of fact are adequately supported by the evidence and are not "clearly erroneous" and that its conclusions of law correctly apply the applicable law to the facts. Therefore, the motions of the defendant to correct and/or modify findings of fact and conclusions of law, to adopt additional findings and conclusions, and for new trial are hereby overruled.

It is so Ordered this 2nd day of June, 1977.

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

FILED

JUN - 3 1977

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

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

RICHARD H. VAUGHN,)	
Plaintiff,)	75-C-212-B
vs.)	
INGERSOLL-RAND COMPANY,)	
Defendant.)	
TERRY JACKSON,)	
Plaintiff,)	
vs.)	75-C353-B
INGERSOLL-RAND COMPANY,)	
Defendant.)	
JERRY JOE CLAVER,)	
Plaintiff,)	
vs.)	75-C-362-B
AMERICAN MOTORIST INSURANCE CO. (Kemper Insurance),)	Consolidated
Third Party Plaintiff,)	
vs.)	
INGERSOLL-RAND COMPANY,)	
Defendant.)	

ORDER

The Court has for consideration the Stipulation of Dismissal signed by counsel for all parties, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, and, being fully advised in the premises:

IT IS ORDERED that the causes of action and complaints are hereby dismissed without prejudice to the institution of new actions.

ENTERED this 3rd day of June, 1977.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

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

FILED

LOUISE RAPER and)
MICKEY BOGGS, now BRAY,)
)
Plaintiffs,)
)
vs.)
)
GOULD, INC., SWITCHGEAR)
DIVISION,)
)
Defendant,)

JUN - 2 1977 *pm*

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

No. 77-96-C

ORDER

This matter comes on before the court on this 2nd day of June,
1977, upon a Joint Stipulation for Dismissal filed by the parties herein.

It is therefore ordered that this Cause of Action and Complaint be
dismissed as to the Defendant Gould, Inc., Switchgear Division.

W. Dale Book
United States District Judge

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

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
 vs.)
)
)
 LENNOX L. J. LAMB, JR. a/k/a)
 LENNOX N. LAMB, JR. a/k/a)
 LENNOX J. LAMB, JR. a/k/a)
 LENNOX LAMB a/k/a LENNOX LAMB, JR.)
 a/k/a LENNOX (LUCKY) LAMB, JR.,)
 if living, or if not, his unknown)
 heirs, assigns, executors, and)
 administrators, LUCILLE CLARA)
 LAMB a/k/a LUCILLE CLARRA LAMB,)
 if living, or if not, her unknown)
 heirs, assigns, executors, and)
 administrators, NEEDHAM TIRE)
 COMPANY, INC., TOM P. McDERMOTT,)
 INC., HARRINGTONS, INC., AETNA)
 FINANCE COMPANY, INC., AMERICAN)
 STATE BANK, ROBERT COPELAND,)
 Attorney-at-Law, and HARLEY J.)
 DOSSEY,)
)
) Defendants.)

CIVIL ACTION NO. 76-C-468-C —

FILED

JUN 1 1977 *WFO*

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 1st
day of ~~May~~ ^{June}, 1977, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and the Defendant, Robert
Copeland, Attorney-at-Law, appearing pro se; and, the Defendants,
Lennox L. J. Lamb, Jr., a/k/a Lennox N. Lamb, Jr., a/k/a
Lennox J. Lamb, Jr., a/k/a Lennox Lamb, a/k/a Lennox Lamb, Jr.,
a/k/a Lennox (Lucky) Lamb, Jr., if living, or if not, his
unknown heirs, assigns, executors, and administrators; Lucille
Clara Lamb a/k/a Lucille Clarra Lamb; Needham Tire Company, Inc.;
Tom P. McDermott, Inc.; Harringtons, Inc.; Aetna Finance Company,
Inc.; American State Bank; and Harley J. Dossey appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, Aetna Finance Company, Inc.,
was served with Summons, Complaint, and Amendment to Complaint
on September 9, 1976, and January 25, 1977, respectively; that
Defendant, Needham Tire Company, Inc., was served with Summons,

Complaint, and Amendment to Complaint on September 22, 1976, and February 23, 1977, respectively; that Defendant, Harringtons, Inc., was served with Summons, Complaint, and Amendment to Complaint on September 24, 1976, and February 3, 1977, respectively; that Defendant, Robert Copeland, Attorney-at-Law, was served with Summons, Complaint, and Amendment to Complaint on September 24, 1976, and February 16, 1977, respectively; that Defendant, Harley J. Dossey, was served with Summons, Complaint, and Amendment to Complaint on September 28, 1976, and February 17, 1977, respectively; that Defendant, American State Bank, was served with Summons, Complaint, and Amendment to Complaint on September 29, 1976, and February 16, 1977, respectively; that Defendant, Lucille Clara Lamb a/k/a Lucille Clarra Lamb, was served with Summons, Complaint, and Amendment to Complaint on October 6, 1976, and January 24, 1977, respectively; all as appears from the United States Marshal's Service herein; and, that Defendant, Lennox L. J. Lamb, Jr., if living, or if not, his unknown heirs, assigns, executors, and administrators, was served with Summons and Complaint on October 6, 1976, as appears from the United States Marshal's Service herein, and Amendment to Complaint was served by publication as shown on the Proof of Publication filed herein; and, that Defendant, Tom P. McDermott, Inc., was served by publication as shown on the Proof of Publication filed herein.

It appearing that the Defendant, Robert Copeland, Attorney-at-Law, has duly filed his Disclaimer herein on September 28, 1976; and, that Defendants, Lennox L. J. Lamb, Jr., if living, or if not, his unknown heirs, assigns, executors, and administrators, Lucille Clara Lamb a/k/a Lucille Clarra Lamb, Needham Tire Company, Inc., Tom P. McDermott, Inc., Harringtons, Inc., Aetna Finance Company, Inc., American State Bank, and Harley J. Dossey, have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Thirty-Three (33), Block Four (4),
HARTFORD HILLS ADDITION to the City of
Tulsa, Tulsa County, State of Oklahoma,
according to the recorded plat thereof.

Amend-
THAT the Defendants, Lennox L. J. Lamb, Jr. and Lucille Clara Lamb, did, on the 10th day of December, 1962, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,300.00 with 5 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, Lennox L. J. Lamb, Jr. and Lucille Clara Lamb, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$7,193.55 as unpaid principal with interest thereon at the rate of 5 1/2 percent per annum from July 1, 1975, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Lennox L. J. Lamb, Jr., if living, or if not, his unknown heirs, assigns, executors, and administrators, in rem and Lucille Clara Lamb, in personam, for the sum of \$7,193.55 with interest thereon at the rate of 5 1/2 percent per annum from July 1, 1975, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Needham Tire Company, Inc., Tom P. McDermott, Inc., Harringtons, Inc., Aetna Finance Company, Inc., American State Bank, and Harley J. Dossey.

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.


UNITED STATES DISTRICT JUDGE

APPROVED


ROBERT P. SANTEE
Assistant United States Attorney