

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

WILLIAM L. DE WILDE for  
and on behalf of EYLA C. JOHNSTON,  
  
Plaintiff,

NO. 77-C-113

ALLAN W. HING AND III, a  
corporation, and OKLAHOMA  
SOUTH ENERGY, a corporation,  
  
Defendants.

**FILED**  
JUL 29 1977  
Jack G. Silver, Clerk  
U. S. DISTRICT COURT

On July 27, 1977, the hearing on the application  
of the plaintiff for summary judgment. The Court  
finds that all issues have been compromised and settled between  
the parties and that said action is hereby dismissed with pre-  
judice to any further or future action.

*W. J. DeLoach*

\_\_\_\_\_  
JUDGE OF THE UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT  
OF OKLAHOMA

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

FILED

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

JUL 29 1977

and

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

RETAIL CLERKS UNION, LOCAL NO. 73

Plaintiffs.

CIVIL ACTION  
NO. 75-C-522

v.

SAFEWAY STORES, INC.,

CONSENT DECREE

Defendant

TULSA GENERAL DRIVERS, WAREHOUSEMEN  
& HELPERS, LOCAL 523; AMALGAMATED  
MEAT CUTTERS & BUTCHERS, WORKMEN OF  
NORTH AMERICA, AFL-CIO, DISTRICT  
LODGE NO. 644; SOUTH CENTRAL  
DIVISION RETAIL CLERKS UNION &  
EMPLOYEES HEALTH & WELFARE TRUST,

Defendants Under Rule 19(a)(2)

Plaintiff, Equal Employment Opportunity Commission, ("EEOC") filed a Complaint on November 13, 1975, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. ("Title VII") against Safeway Stores, Inc. ("the Company") and certain named Local Unions as Rule 19(a)(2) Defendants. All Rule 19(a)(2) Defendants shall be referred to as "The Local Unions." On February 17, 1976, the Court entered an order allowing the realignment of the Retail Clerks Union, Local No. 73 as a Party Plaintiff.

The Amended Complaint alleges that the Company, in its manufacturing, distribution and retail operations in the Tulsa Division in Tulsa, Oklahoma and its environs, has engaged in certain unlawful employment practices.

Whereas, the parties are desirous of resolving the subject matter of this action without the necessity of contested litigation, the Court having jurisdiction of the parties and subject matter of this action pursuant to Title VII, the Company having assured the Court of its intention to comply in all respects with Title VII and it being agreed that this Order is entered with the consent of the respective parties and shall not constitute an adjudication or finding on the merits of any of Plaintiff's allegations, and shall in no manner be construed either as an admission by the Company of any past discriminatory practice, or a waiver by the EEOC of any of its contentions herein.

NOW THEREFORE, it is ordered, adjudged and decreed as follows:

I. GENERAL PROVISIONS

A. The Company, its officers, agents, employees, successors, and all persons acting in concert or participation with it, will not:

1. Engage in any act or practice which has the purpose or effect of discriminating against any individual or class of individuals on the basis of such individual's race (Black) or sex (female).

2. Discharge, harass, segregate, or classify, or fail or refuse to hire, promote, or train an individual on the basis of race or in any way deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee or as an applicant for employment because of such individual's race or sex.

3. Retaliate against or penalize any past or present employee who asserts any right under this Order, or any person who assists the EEOC in seeking compliance with this Order, or interfere with, or in any way hinder efforts of any person or

party in his or her status as an employee or as an applicant for employment on the basis of such individual's race or because of his or her attempt to seek legal redress under Title VII by filing a charge and/or helping in the investigation of a charge.

- B. This Consent Decree applies to the Company's facilities administered by the Tulsa Division, within the United States' Government's Tulsa Standard Metropolitan Statistical area (Tulsa SMSA) consisting of the Oklahoma counties of Osage, Creek and Tulsa.
- C. For the purpose of the Consent Decree, the following definitions shall apply:
  - 1. "Minority" shall refer to Blacks.
  - 2. "Affected Class" shall mean all past, present and future Black and female employees of the of the Company's facilities within the Tulsa Division.
  - 3. "Facility shall mean the Tulsa Division Distribution Center, the Division office or any one of the retail stores of the Tulsa Division, in the Osage, Creek and Tulsa Counties.
- D. All requirements of the Company or the EEOC set forth in this Consent Decree are requirements of good faith efforts, as more fully defined at Section II. B. herein.
- E. In the event of any conflict between the provisions of this Consent Decree and a provision of any collective bargaining agreement between the Company and any of the local unions, the provisions of this Consent Decree shall prevail.

F. Any dispute concerning compliance with this Consent Decree shall be resolved by the Court upon motion of any party and the only issue in such a proceeding shall be compliance with the Consent Decree, and not liability under Title VII. In the event the Court should determine that the Company has failed to comply with the terms of this Consent Decree, and the Company fails to explain to the satisfaction of the Court why it has not complied, all waivers, releases and covenants not to sue shall be null and void with respect to those provisions of the Consent Decree concerning which the Court has made such a finding.

G. This Consent Decree resolves all issues between the EEOC and the Company which were complained of in the Amended Complaint filed herein and shall be considered a full, complete, and final resolution of all claims which the EEOC raised or could have raised against the Company in this action as a result of any alleged failure of the Company to comply with the provisions of Title VII or any other legislation guaranteeing the rights of persons against discriminatory employment practices at any time prior to the date of this Consent Decree.

H. The doctrines of res judicata and collateral estoppel shall apply to the EEOC with respect to all issues of law and fact and matters of relief within the scope of the Complaint or Amended Complaint filed herein or this Consent Decree; provided however, that at any time hereafter the EEOC may, in addition to any remedy set forth in this Consent Decree, file a charge of employment discrimination or bring suit against the Company, within the period of limitations and in the manner prescribed by law, for any alleged failure of the Company to comply with Title VII with respect to any ground of discrimination specified therein. This Consent Decree is final and binding upon the signatories hereto and their successors and is final and binding on all other persons to whom this Court determines this Consent Decree to be applicable.

I. This Consent Decree is not intended nor shall it have the effect of precluding any individual from filing a charge of employment discrimination against the Company at any time after the effective date hereof regarding any matter about which such individual could otherwise have filed a timely charge, nor shall it preclude such individual from pursuing any other avenue of relief otherwise available.

## II. DISCHARGE AND DISCIPLINE

A. The Company will continue to utilize its current program for progressive discipline of employees, where applicable, and additionally establish the progressive discipline program for facilities or misconduct not yet within the coverage of existing procedures. Nothing herein shall be construed to prevent imposition of discipline up to, and including discharge, as appropriate, without prior warning or progressive discipline for offenses such as, but not limited to, theft where the concept of progressive discipline is not warranted.

B. Before final discipline is imposed, the employee will be afforded the right to present his or her position regarding the alleged misconduct.

C. Prior to the final discipline or discharge of any employee, the Company shall make every reasonable effort to determine:

1. Whether sufficient cause for discipline exists;
2. Whether the employee's alleged improper conduct was in any way caused by discriminatory treatment by his or her supervisor;
3. Whether the provisions of any applicable collective bargaining agreement were complied with;
4. Whether the Company followed its procedures of progressive discipline;
5. Whether other employees were disciplined or discharged for similar misconduct; and

6. Whether mitigating circumstances of the employee's previous work record indicate that the penalty of discipline or discharge is unduly harsh.

III. FUTURE HANDLING OF CHARGES

OF

EMPLOYMENT DISCRIMINATION

All charges of employment discrimination filed with the EEOC after the date of this Consent Decree and within the effective period thereof shall be processed expeditiously by the Oklahoma City-Albuquerque District Office of the EEOC in accordance with the procedures set forth herein.

A. Within ten (10) days of the filing of a charge, EEOC shall serve said charge on the Company.

B. Within forty (40) days of receipt of said charge, the Company will either offer some basis for Pre-Determination Settlement or file a statement of position denying the allegations of the charge. Such Pre-Determination Settlement offer, when made, shall remain open for thirty (30) days.

C. In the event the charge is not resolved by Pre-Determination Settlement and the Company files a statement of position denying the allegations of the charge, the EEOC will investigate the charge and issue its findings as expeditiously as possible.

D. Thereafter, should the EEOC find probable cause to believe Title VII has been violated, the parties will meet as soon as practicable for the purpose of conciliating the charge of discrimination.

IV. DISSEMINATION OF EEO POLICY

A. The Company shall periodically reaffirm its policy of equal employment opportunity by disseminating that policy through all levels of Company management at each of the facilities covered by this Decree.

B. The Company shall commit and direct all levels of management, including the Division Manager, Retail Operations Managers, District Managers, the Employee-Relations Manager, Affirmative Action staff and other responsible executives to give increased support to the Company's Local Affirmative Action Plan and equal employment opportunity policy. Meetings shall be held on a regular basis with such personnel for the purpose of discussions concerning the Local Affirmative Action Program, the Company's equal employment opportunity policy and the requirements of the Consent Decree,

C. The Company shall continue to disseminate its equal employment opportunity policy to all employees.

D. The Company, through its management personnel, shall participate actively in minority and female community affairs. Participation in such affairs shall not be limited to affirmative action personnel only, but shall involve upper level management personnel as well.

E. Store management and other supervisory personnel shall be informed that failure to support and implement the Company's equal employment opportunity policy and participation in acts of intimidation and harassment of minorities and females will subject those individuals to disciplinary action, up to and including discharge.

F. The Company shall support actively the role of its affirmative action personnel. The role of the affirmative action representatives of the Company in equal employment opportunity activity and their availability for counseling and aid in furthering the equal employment opportunity policy of the Company shall be communicated in a formal manner to all employees.

V. SPECIFIC RELIEF

The Company will pay the following amounts to the individuals listed below in full settlement and compromise of the discrimination claims against such Company which claims are the basis for this action. The amounts shall be paid by the Company upon receiving a release and covenant not to sue signed by the charging party and notarized in the form of Appendix A, attached:

1. Merin James Oakley     \$ 500.00
2. Valerice Rogers        \$1000.00

VI. RECORDS AND REPORTS

A. As part of its review of compliance with this Consent Decree and in addition to the written reports set forth below, the EEOC may inspect premises, examine witnesses upon reasonable notice, and examine and copy documents.

B. All reports required to be submitted to the EEOC shall be submitted in writing to the Assistant General Counsel, U.S. Equal Employment Opportunity Commission, 1531 Stout Street, Sixth Floor, Denver, Colorado 80202 on a bi-annual basis. The Company shall retain all other reports at a central location in the Tulsa Division office.

C. The Company shall submit in writing the following documents:

1. Discharge and Discipline
  - a. Copies of all notices of suspension or termination involving Black and female employees;
  - b. The names of all employees subject to such disciplinary action listing each such employee's race or national origin, sex, nature of discipline and reason;
  - c. This information is to be submitted every six months.

2. Future Handling of Charges - Copies of all Pre-Determination Settlement Agreements.

D. The Company shall maintain on file at the Tulsa Division office the following documents:

Dissemination of Policy - Dates of affirmative action meetings, names of those in attendance and a summary of matters discussed.

VII SICK LEAVE

A. The Company shall afford females sick leave as normally issued by the Company, for pregnancy-related absences, if the Supreme Court decision on the sick leave pregnancy-related absence issue in Richmond Unified School District v. Berg or other dispositive case would so require.

B. In accordance with the decision of the Supreme Court, if that decision is in favor of requiring employers to allow females to use accumulated sick leave for pregnancy-related absences, the Company will give effective notice to all identified class members by publishing a notice in local newspapers for two weeks, payroll notice stuffing, Company bulletin board or other effective means.

C. Contingent upon the decision of the Supreme Court, the Company agrees to pay the sick leave pay which was denied by the Company's pregnancy absence policy to those females, employed by the Company between May 1971 and present, who were denied sick leave for pregnancy-related absences and who were otherwise eligible.

VIII. NOTICE OF DECREE

The Company shall retain a copy of this Consent Decree which it shall have available at its Division Office at reasonable times for inspection and copying by charging parties.

IX. RETENTION OF JURISDICTION,  
ENTRY OF JUDGMENT

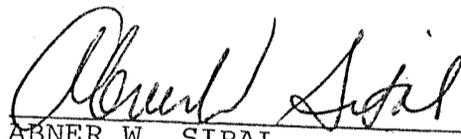
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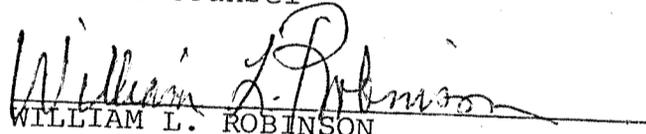
TERM OF DECREE

A. The Court reserves jurisdiction with respect to the construction, enforcement and administration of this Consent Decree, including, but not limited to, entry of appropriate orders required by the procedure set forth at Section I.F., approval of claims and attorneys' fees.

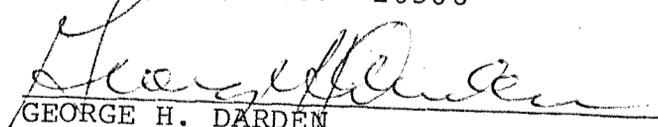
B. The Court hereby expressly determines that there is no just reason for delay in the entry of the Consent Decree and final judgment and accordingly directs that the Consent Decree is a final judgment and is entered and deemed a final judgment in accordance with Rule 54(b) of the FRCP.

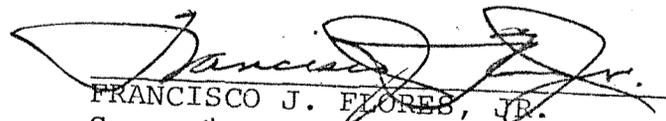
C. This Consent Decree shall have a term of five (5) years from the date of entry and shall expire by its terms at the end of said five-year-period.

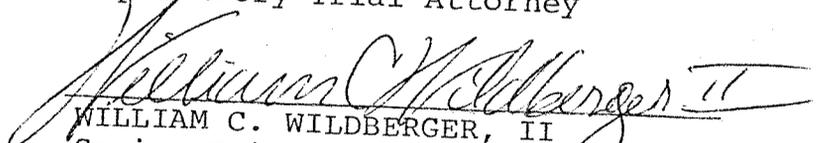
  
ABNER W. SIBAL  
General Counsel

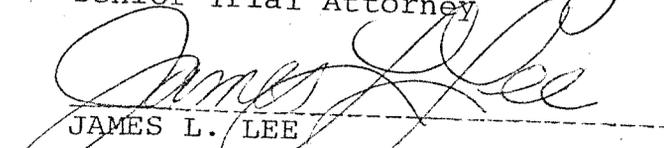
  
WILLIAM L. ROBINSON  
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Office of General Counsel  
2401 E. Street, N.W.  
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GEORGE H. DARDEN  
Assistant General Counsel

  
FRANCISCO J. FLORES, JR.  
Supervisory Trial Attorney

  
WILLIAM C. WILDBERGER, II  
Senior Trial Attorney

  
JAMES L. LEE  
Trial Attorney

*T. Hillis Eskridge*

T. HILLIS ESKRIDGE  
Attorney for Safeway Stores, Inc.

JOHN M. KEEFER  
Attorney for Retail Clerks  
Union, Local No. 73

*Maxnard I. Ungerman*

MAXNARD I. UNGERMAN  
Attorney for Tulsa General  
Drivers, Warehousemen &  
Helpers, Local 523

GEORGE S. THOMPSON  
Attorney for Amalgamated  
Meat Cutters & Butchers,  
Workmen of North America,  
AFL-CIO, District Lodge  
No. 644

SO ORDERED:

*Allen E. Barnes*

UNITED STATES DISTRICT JUDGE

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

**FILED**

JUL 29 1977

OKIE PIPELINE COMPANY, a )  
Kansas Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STALLINGS EXCAVATION COMPANY, )  
an Oklahoma Corporation, )  
 )  
Defendant. )

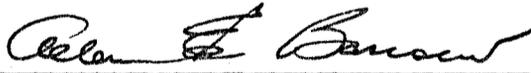
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 76-C-634-B

ORDER OF DISMISSAL

ON this 29<sup>th</sup> day of July, 1977, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

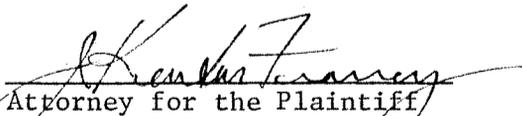
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the Defendant be and the same hereby is dismissed with prejudice to any future action.



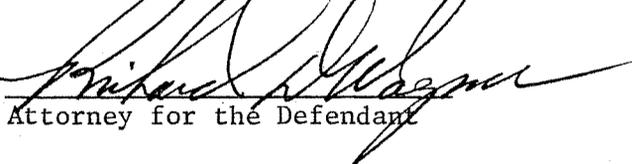
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

J. KENTON FRANCY

  
Attorney for the Plaintiff

RICHARD D. WAGNER

  
Attorney for the Defendant



of the United States Constitution; that the defendant, Cliff Hopper, acted wilfully, wrongfully, with felonious intent and in direct violation of the code of ethics as prescribed for assistant district attorneys; that as a result of such acts by the defendant the plaintiff has been deprived of his constitutional rights of due process of law, equal protection of the law and double jeopardy.

The defendant filed a Motion to Dismiss in which he contends that he is immune from prosecution for acts performed while acting in his official capacity as assistant district attorney; that the plaintiff has failed to allege any facts showing that the defendant acted beyond the scope of his authority, exceeded his duties of his office, or that plaintiff has been denied any rights, privileges or immunity secured to him by the United States Constitution or laws as required by 42 U.S.C. §1983. In support of his claim of absolute immunity, the defendant relies on *Imbler v. Pachtman*, 424 U.S. 409, (1976) where the Supreme Court said:

"We conclude that the considerations outlined above dictate the same absolute immunity under §1983 that the prosecutor enjoys at common law. To be sure, this immunity does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty. But the alternative of qualifying a prosecutor's immunity would disserve the broader public interest. It would prevent vigorous and fearless performance of the prosecutor's justice system. (Footnotes omitted)."

The Court further noted:

"Various post-trial procedures are available to determine whether an accused has received a fair trial. These procedures include the remedial powers of the trial judge, appellate review, and state and federal post-conviction collateral remedies. In all of these the attention of the reviewing judge or tribunal is focused primarily on whether there was a fair trial under law. This focus should not be blurred by even the subconscious knowledge that a post-trial decision in favor of the accused might result in the prosecutor's being called upon to respond in damages for his error or mistaken judgment. (Footnotes omitted)."

It is the defendant's position that the face of the Complaint shows that the acts of the defendant occurred during the course of the trial; that there are no allegations to support a finding that the defendant acted beyond the scope of his authority or exceeded the duties of his office. Therefore, the defendant asserts that he is entitled to absolute immunity from a civil suit for damages under 42 U.S.C. §1983.

The plaintiff contends that in order to assert the defense of absolute immunity, the acts of the prosecuting attorney must have been an "intergal part of the judicial process." In this case the plaintiff argues that the acts of the defendant in making prejudicial comments to the press during the course of the trial which the defendant knew would be published and disseminated to the public was outside the normal duties of the defendant's office "and hours removed so as to preclude any possibility that the complained of acts might have been an intergal part of the judicial process." In his brief the plaintiff states that the remarks of the defendant occurred when the press interviewed the defendant by telephone at his home the evening of May 12, 1976. The defendant argues that the motive of the defendant in pursuing this course of action was to intentionally cause a mistrial because the "defendant was aware that an acquittal was forthcoming from the jury and that any conviction against plaintiff would have to be (obtained) in a future trial." Plaintiff urges that the law requires this Court to examine the nature of the acts of the prosecutor in this case to determine whether the defendant was acting in his protected quasi-judicial capacity or in a role outside the cloak of absolute immunity. A persuasive argument that statements to the news media by a prosecuting attorney which might prejudice the accused in obtaining a fair trial are beyond the scope of his official duties and unprotected by the shield of absolute immunity is found in the concurring opinion in *Martin v. Merola*, 532 F.2d 191 (2nd Cir. 1976). In that case the concurring opinion states:

"It is true that many of the earlier cases have seemed to say that the prosecutor's immunity is virtually absolute and that he may speak with impunity about an indicted defendant. Doubtless it is true that all too many prosecutors have acted on that assumption in times past. But at least by 1966 it had come to be recognized that improper pre-trial publicity endanger a fair trial and may constitute a denial of due process. In *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed. 60 (1966), decided in June of that year, Mr. Justice Clark noted in reversing a murder conviction that,

unfair and prejudicial news comment on pending trials has become increasingly prevalent ...

Given the pervasiveness of modern communications and the

difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to insure that the balance is never weighed against the accused...Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures. 384 U.S. at 362-363, 86 S.Ct. at 1522."

The opinion further points out that in 1969 the American Bar Association adopted the Code of Professional Responsibility which the Court states:

"... precludes an attorney from the time of filing of an indictment or issuance of an arrest warrant, from making any extrajudicial statements whose public dissemination is reasonably foreseeable and which relates to 'the character, reputation or prior criminal record ... of the accused.' In accord, Report of the Commission on the Operation of the Jury System on the 'Free Press-Fair Trial' Issue, 45 F.R.D. 391."

However, this Court is of the view that the acts of the defendant in this case in making comments to the press about the defendant and the events that occurred during the trial, although improper, were nevertheless, not clearly outside the authority or jurisdiction of the office. The alleged improper acts might indeed subject the defendant to disciplinary action. This does not mean, however, that such a breach of his prosecutorial responsibility results in a deprivation of rights, privileges, or immunities secured by the United States Constitution or permits an action under 42 U.S.C. §1983. Unless the acts complained of are clearly outside the authority or jurisdiction of the office, the prosecutor should have absolute immunity from a civil action for damages. In *Bauers v. Heisel*, 361 F.2d 581 (3rd Cir. 1966) the Court said:

"Because immunity is conferred on an individual solely by virtue of the office he holds, reason requires us to adopt a rule which does not provide immunity for those acts which are done clearly outside the authority or jurisdiction of the office." 361 F.2d at 590, 591.

See also *McNamara v. Hawks*, 354 F.Supp. 492 (S.D.Fla. 1973), where the Court dismissed the 42 U.S.C. §1983 action against the prosecuting attorney in which the plaintiff had alleged that the prosecution

had made unfair remarks to the jury suggesting plaintiff's guilt and had also conspired to keep a witness favorable to the plaintiff from testifying. The Court held that the prosecutor enjoyed immunity from damage claims arising out of such acts, stating:

"The immunity exists despite the alleged improper use of such authority so long as the alleged wrongful acts were conducted within the apparent jurisdiction. See Mullins v. Oakley, 437 F.2d 1217 (4th Cir. 1971); Goodwin v. Williams, 293 F.Supp. 770 (D.C.Tex. 1968)."

In the recent case of Atkins v. Lanning, No. 76-1694 (10th Cir., June 8, 1977) the Court stated:

"Case law indicates that the denial of immunity to a state prosecutor would doubtless require a gross abuse of the prosecutorial function, such as deliberately concealing evidence proving a defendant's innocence."

In Atkins, supra, the prosecutor was alleged to have conspired with others in the unlawful arrest and confinement of the plaintiff. The question as to the District Attorney was whether he was acting in his quasi-judicial capacity in his investigative or "police-related" role. The District Judge sustained a Motion for Summary Judgment on behalf of the district attorney, finding that the investigative role of the district attorney in the investigation itself did not violate plaintiff's constitutional rights, but that the violation, if any, was the bringing of the criminal charge without probable cause, which was within the quasi-judicial role for which the Supreme Court in Imbler, supra, has provided absolute immunity. Atkins v. Lanning, 415 F.Supp. 186 (N.D.Okla. 1976).

In Gaito v. Strauss, 249 F.Supp. 923 (W.D.Pa, 1966) the Court dismissed the plaintiff's 42 U.S.C. §1983 and 1985 action against the district attorney for damages for allegedly conspiring with others to convict the plaintiff of certain crimes in the Courts of Pennsylvania through the use of illegally obtained evidence, perjured testimony and other violations of plaintiff's constitutional rights.

In its opinion the Court stated:

"Judges and district attorneys acting in their official capacities in connection with criminal and commitment proceedings are entitled to absolute immunity from Civil Rights Act and other damage suits arising out of their judicial and quasi-judicial acts, without regard to their alleged motives in so acting, and notwithstanding such acts may have been performed in excess of jurisdiction. (citations omitted)" Gaito at 930.

The District Court in *Clark v. Zimmerman*, 394 F.Supp. 1166 (M.D. Pa., 1975) dismissed the Plaintiff's Complaint as frivolous, pursuant to 28 U.S.C. §1915(d), without issuance of process. The thrust of Plaintiff's Complaint in *Zimmerman* was that he had been arbitrarily arrested, incarcerated, and held for trial by the individual and concerted acts of a police officer, magistrate and district attorney in a manner that violated his constitutional rights. The district attorney was alleged to have exerted undue influence on the magistrate so as to cause the plaintiff to be held for grand jury action on false criminal charges without a proper evidentiary hearing.

The Court stated:

"The only exception to judicial and prosecutorial immunity are acts of a judge or prosecuting attorney which are clearly outside his jurisdiction, as distinguished from acts which are merely in excess of his jurisdiction, the latter not being actionable. (citations omitted)". *Zimmerman* at 1175.

In the case of *Ney v. State of California*, 439 F.2d 1285 (9th Cir. 1971) the Court held that even though the facts alleged that the prosecutor knowingly used altered tapes in the trial of the defendant, the acts were done in the course of his prosecuting function and therefore he had complete immunity.

The ruling of the Court in *Ney*, *supra*, is consistent with *Imbler*, *supra*, where the Supreme Court cautioned that absolute immunity does in some cases "leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty." *Imbler*, *supra* at 427.

In the case before this Court the plaintiff has indeed alleged that the defendant acted "wilfully, wrongfully (and) with felonious intent." Nevertheless, because of the finding of this Court that the plaintiff's complaint does not allege facts to show that the defendant acted clearly outside the scope of his authority or jurisdiction, it is the view of the Court that the defendant is entitled to complete immunity from liability for damages under 42 U.S.C. §1983. This is so even though such alleged acts were improper or in excess of or abusive of such authority or jurisdiction.

Because of this Court's holding that the defendant has complete immunity, it is unnecessary for the Court to reach the additional questions presented by the motion. However, even if the alleged acts of the defendant were clearly outside the scope of his authority or jurisdiction, it is doubtful that such acts resulted in the deprivation of plaintiff's constitutional rights.

The plaintiff contends that such acts of the defendant caused him to be "twice put in jeopardy of his life" in violation of his Fifth Amendment rights under the United States Constitution. According to the briefs filed in this case, the plaintiff's counsel moved for a mistrial because certain jurors had read the newspaper article quoting the defendant.

The plaintiff has failed to allege in his complaint whether the mistrial was declared without his consent or was granted upon his motion. If in fact the plaintiff moved for a mistrial and the new trial was granted upon his motion and with his consent, the plaintiff cannot assert the defense of double jeopardy. See *Clapp v. State*, 124 P.2d 267 (1942), where the Oklahoma Court of Criminal Appeals held:

"The defendant, when a new trial is granted on his own motion, waives his constitutional right to interpose the plea of having been once put in jeopardy. (citations omitted)."

IT IS, THEREFORE, ORDERED that the defendant's Motion to Dismiss be and the same is hereby sustained and the cause of action and complaint are hereby dismissed for failure to state a cause of action.

ENTERED this 29<sup>th</sup> day of July, 1977.

*Allen E. Barrett*

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CHIEF UNITED STATES DISTRICT JUDGE

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

EASTMAN KODAK CO., )  
 )  
 Plaintiff )  
 )  
 vs. ) No. 76-C-235-B  
 )  
 J. E. DAUGHERTY, a/k/a )  
 JERRY DAUGHERTY and )  
 MRS. J. E. DAUGHERTY, )  
 )  
 Defendants )

**FILED**

JUL 29 1977

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

ORDER FOR SUMMARY JUDGMENT

This cause having come on to be ~~heard~~<sup>considered</sup> on the Motion of Plaintiff for a Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the Court having considered the pleadings in the action, the Stipulation of the parties dated July 13, 1977, the Pre-Trial Order filed herein, and the Brief of Plaintiff filed in support of its Motion for Summary Judgment, and having found that there is no genuine issue of fact to be submitted to the Trial Court and that the parties jointly apply for this Order for Summary Judgment, and having concluded that Plaintiff is entitled to judgment as a matter of law, it is hereby

ORDERED, that Plaintiff's Motion for a Summary Judgment is in all respects granted, and it is further

ORDERED, ADJUDGED AND DECREED, that the Plaintiff, Eastman Kodak Co., recover against the Defendants, J. E. Daugherty, a/k/a Jerry Daugherty and Mrs. J. E. Daugherty, the sum of \$25,930.23 with interest at the rate of 6% per annum from May 1, 1975 until date of judgment, a reasonable attorney's fee in the amount of \$2,500.00, and Plaintiff's costs of action.

DATE:

July 29, 1977

Allen E. Barrow  
UNITED STATES DISTRICT JUDGE

FILED

JUL 29 1977

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

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

GILFORD D. DeLOZIER,

Plaintiff,

vs.

TEXAS CONSUMER FINANCE  
CORPORATION,

Defendant.

76-C-617-B ✓

ORDER DISMISSING FOR FAILURE TO PROSECUTE

SUA SPONTE, IT IS ORDERED that this cause of action and complaint be and the same is hereby dismissed for failure to prosecute for the following reasons:

On April 1, 1977, the following Minute Order was entered:

"Parties are directed to hold pre-trial conference on or before 6-10-77 and to file an agreed pre-trial order on or before 6-17-77."

No pre-trial order has been filed and no extension has been requested to file said pre-trial order.

Commencing on June 2, 1977, and at various and sundry periods thereafter, plaintiff's counsel was contacted and directed to either file said pre-trial order, or request an extension.

As of this date no pre-trial order has been filed, nor has plaintiff's counsel requested an extension of time to file said pre-trial order. The burden is on the plaintiff to initiate the pre-trial conference and submit the pre-trial order.

For the failure of plaintiff to comply with the Order of this Court, this case is dismissed for failure to prosecute.

ENTERED this 29<sup>th</sup> day of July, 1977.



CHIEF UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 THELL WILSON, VANTEEN WILSON, )  
 HANNA REMODELING, INC., C & C )  
 TILE AND CARPET COMPANY, INC., )  
 CHARLES PEST CONTROL, INC., )  
 MUTUAL PLAN OF TULSA, INC., )  
 OKLAHOMA EMPLOYMENT SECURITY )  
 COMMISSION, MERCHANTS CENTRAL )  
 SERVICE, INC., ASSOCIATES )  
 FINANCIAL SERVICES COMPANY OF )  
 OKLAHOMA, INC., HOUSING )  
 AUTHORITY OF THE CITY OF TULSA, )  
 MERLENE JONES, BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 and COUNTY TREASURER, Tulsa )  
 County, )  
 Defendants. )

CIVIL ACTION NO. 77-C-31-B

FILED

JUL 29 1977

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 29<sup>th</sup>  
day of July, 1977, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney; the Defendant, C & C  
Tile and Carpet Company, Inc., appearing by its attorney, G.  
Nash Lamb; the Defendant, Mutual Plan of Tulsa, Inc., appearing  
by its attorney, Julie E. Lamprich; the Defendant, Oklahoma  
Employment Security Commission, appearing by its attorney, Christine  
Taylor; the Defendants, Board of County Commissioners, Tulsa County,  
and County Treasurer, Tulsa County, appearing by Kenneth L. Brune,  
Assistant District Attorney; and the Defendants, Thell Wilson,  
Vanteen Wilson, Hanna Remodeling, Inc., Charles Pest Control, Inc.,  
Merchants Central Service, Inc., Associates Financial Services  
Company of Oklahoma, Inc., Housing Authority of the City of Tulsa,  
and Merlene Jones, appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendant, Thell Wilson, was served by  
publication, as appears from the Proof of Publication filed herein;

that Defendant, Vanteen Wilson, was served with Summons and Complaint on February 11, 1977; that Defendant, Hanna Remodeling, Inc., was served with Summons and Complaint on February 23, 1977; that Defendants, C & C Tile and Carpet Company, Inc., Charles Pest Control, Inc., Mutual Plan of Tulsa, Inc., and Housing Authority of the City of Tulsa, were served with Summons and Complaint on February 16, 1977; that Defendants, Oklahoma Employment Security Commission and Associates Financial Services Company of Oklahoma, Inc., were served with Summons and Complaint on January 25, 1977; that Defendant, Merchants Central Service, Inc., was served with Summons and Complaint on February 8, 1977; that Defendant, Merlene Jones, was served with Summons and Complaint on March 16, 1977; and that Defendants, Board of County Commissioners, Tulsa County, and County Treasurer, Tulsa County, were served with Summons and Complaint on January 24, 1977, all as appears from the U.S. Marshals Service herein.

It appearing that Defendant, C & C Tile and Carpet Company, Inc., has duly filed its Answer and Cross-Petition herein on February 23, 1977; that Defendant, Mutual Plan of Tulsa, Inc., has duly filed its Disclaimer herein on February 22, 1977; that Defendant, Oklahoma Employment Security Commission, has duly filed its Answer and Cross-Petition herein on February 7, 1977; that Defendants, Board of County Commissioners, Tulsa County, and County Treasurer, Tulsa County, have duly filed their Answers herein on February 9, 1977; and that Defendants, Thell Wilson, Vanteen Wilson, Hanna Remodeling, Inc., Charles Pest Control, Inc., Merchants Central Service, Inc., Associates Financial Services Company of Oklahoma, Inc., Housing Authority of the City of Tulsa, and Merlene Jones, 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 Eighteen (18), in Block Seven (7), SUBURBAN HILLS ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Thell Wilson and Vanteen Wilson, did, on the 13th day of March, 1972, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$11,500.00 with 7 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Thell Wilson and Vanteen Wilson, 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 \$11,026.24 as unpaid principal with interest thereon at the rate of 7 1/2 percent per annum from April 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 Defendants, Thell Wilson and Vanteen Wilson, the sum of \$ 225<sup>22</sup>/100 plus interest according to law for personal property taxes for the year(s) 1971-76 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, C & C Tile and Carpet Company, Inc., is entitled to judgment against Defendants, Thell Wilson and Vanteen Wilson, in the amount of \$397.00, with interest at the rate of 6 percent per annum from the 19th day of April, 1972, until the date of judgment, and at the rate of 10 percent per annum from the date of judgment until paid, together with an attorney's fee of \$150.00, plus accrued court costs, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

The Court further finds that Defendant, Oklahoma Employment Security Commission, is entitled to judgment against Defendants, Thell Wilson and Vanteen Wilson, in the amount of \$8.91, together with lawful interest at the rate of 1 percent per month on the said

taxes of \$6.85 from January 26, 1977, until paid, plus accrued court costs, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Thell Wilson, in rem, and Vanteen Wilson, in personam, for the sum of \$11,026.24 with interest thereon at the rate of 7 1/2 percent per annum from April 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 Defendants, Thell Wilson and Vanteen Wilson, for the sum of \$ 225<sup>22</sup>/<sub>100</sub> 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, C & C Tile and Carpet Company, Inc., have and recover judgment against the Defendants, Thell Wilson, in rem, and Vanteen Wilson, in personam, in the amount of \$397.00, with interest at the rate of 6 percent per annum from the 19th day of April, 1972, until the day of judgment and at the rate of 10 percent per annum from the date of judgment until paid, together with an attorney's fee of \$150.00, plus accrued court costs as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, Oklahoma Employment Security Commission, have and recover judgment, against the Defendants, Thell Wilson, in rem, and Vanteen Wilson, in personam, in the amount of \$8.91, together with lawful interest at the rate of 1 percent per month on the said taxes of \$6.85 from January 26, 1977, until paid, plus accrued court costs as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Hanna Remodeling, Inc., Charles Pest Control, Inc., Merchants Central Service, Inc., Associates Financial Services Company of Oklahoma, Inc., Housing Authority of the City of Tulsa, and Merlene Jones.

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 E. BRUNE  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County

*G. Nash Lamb*

G. NASH LAMB  
Attorney for Defendant,  
C & C Tile and Carpet Company, Inc.

*Nancy Gorman Craig*

Nancy Gorman Craig  
Attorney for Defendant,  
Oklahoma Employment Security Commission

RECEIVED  
MAY 21 1964  
U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION

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

**FILED**

JUL 29 1977

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

L. A. HORTON d/b/a  
HORTON'S ELECTRICAL CENTER,

Plaintiff,

vs.

STEVEN H. JANCO, et al.,

Defendants.

75-C-182-B ✓

TULSA FABRICATORS AND DISTRIBUTORS,  
INC., an Oklahoma corporation,

Plaintiff,

vs.

STEVEN H. JANCO, et al.,

Defendants.

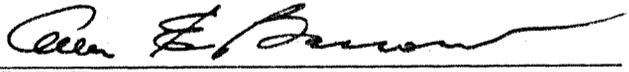
76-C-59-B

CONSOLIDATED

JOURNAL ENTRY OF SUMMARY JUDGMENT

Pursuant to the Court's Order, Findings of Fact and Conclusions of Law dated February 4, 1977, and the Court's Order dated July 29<sup>th</sup>, 1977, summary judgment is hereby entered for the defendant, United States of America and against plaintiffs, L. A. Horton, d/b/a Horton's Electrical Center, Tulsa Fabricators and Distributors, Inc., and defendants Steven H. Janco; William R. Satterfield; Richard S. Sudduth; Michael L. O'Donnell, d/b/a Aci Hi Construction Company; Anchor Concrete Company; Tom Dolan Heating Company; Lights of Tulsa Inc.; and Matt Collins, d/b/a World Wide Mechanical, in this consolidated cause of action.

Dated this 29<sup>th</sup> day of July, 1977.

  
CHIEF  
UNITED STATES DISTRICT JUDGE

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

HILDA WHITTEN and HENRY L. KING, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 WILLIAM S. JANNEY, )  
 )  
 Defendant. )

**FILED**

76-C-492-B

JUL 29 1977

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

JOURNAL ENTRY OF JUDGMENT

This cause came on for hearing on the 31st day of May, 1977, upon Plaintiffs' Application for Default Judgment, and the Court being fully advised in the premises and fully familiar with the files and records herein, and having heard the statements of counsel for the Plaintiffs and having three times called the Defendant in open Court, and the Defendant having failed to appear personally or by his counsel or other representative, the Court finds as follows:

1. That this matter was set by this Court on the 18th day of May, 1977, at the hour of 9:45 o'clock A.M., and on the 4th day of May, 1977, this Court caused the Defendant to be noticed of such setting. That thereafter and more than 3 days prior to the 18th day of May, 1977, the Defendant was advised by his previous counsel of such setting, and further advised that his failure to appear either personally or by his representative or counsel would result in the issuance of a default judgment against him. That thereafter on the 24th day of May, 1977, Plaintiffs by and through their counsel caused to be filed herein an application for default judgment, and this Court did on the 25th day of May, 1977, cause the Defendant to be noticed that said Application for Default Judgment would be heard at the hour of 10:00 o'clock A.M. on the 31st day of May, 1977, and that this Court did, by and through its staff, cause the Defendant's office to be advised by telephone of such setting; and the Defendant having been called 3 times in open Court appearing not nor by his representative or counsel the Court granted Plaintiffs' Motion for Default Judgment and referred the matter to the United States Magistrate for

the purpose of taking testimony as to the amount of the judgment to be entered.

Based upon the Findings and Recommendations of the Magistrate filed herein on June 13, 1977, the Court finds that the Plaintiff, Hilda Whitten, should have judgment in the amount of \$48,840.00; that the Plaintiff, Henry L. King, should have judgment in the amount of \$49,771.73; that the Plaintiffs should have judgment for their costs herein accrued and accruing; that the Plaintiff, Henry L. King, should have judgment for reasonable attorney fees for the use and benefit of his attorney, William F. Powers, in the amount of \$1,000.00; and that this judgment should carry interest at the rate of 10% per annum from May 31, 1977 until fully paid.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that judgment be and is hereby entered in favor of the Plaintiffs and against this Defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, Hilda Whitten have judgment in the amount of \$48,840.00; and that the Plaintiff, Henry L. King, have judgment in the amount of \$49,771.73; that the Plaintiffs have judgment for their costs herein accrued and accruing; that the Plaintiff, Henry L. King, have judgment for reasonable attorney fees for the use and benefit of his attorney, William F. Powers in the amount of \$1,000.00; and that this judgment carry interest at the rate of 10% per annum from May 31, 1977 until fully paid.

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

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

IN RE

RICHARD GEORGE STRANICK  
d/b/a DINETTE AND BAR  
STOOL DESIGNS OF TULSA,

Bankrupt,

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

RICHARD GEORGE STRANICK,  
d/b/a DINETTE AND BAR  
STOOL DESIGNS OF TULSA,

Defendant-Appellant.

77-C-173-B ✓

(Bk. #76-B-561)

**FILED**

JUL 29 1977 K

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

ORDER DISMISSING

SUA SPONTE, IT IS ORDERED that this cause of action and complaint be dismissed for failure to prosecute for the following reasons:

1. This appeal was filed by the Defendant-Appellant from a decision of the Bankruptcy Court on April 29, 1977.
2. Rule 808 of the Rules of Bankruptcy Procedure provides:  
"Unless a local rule or court order excuses the filing of briefs or provides for different time limits:  
"(1) The appellant shall serve and file his brief within 15 days after entry of the appeal on the docket pursuant to Rule 807.  
"(2) The appellee shall serve and file his brief within 15 days after service of the brief of the appellant.  
"(3) The appellant may serve and file a reply brief within 5 days after service of the brief of the appellee."  
3. This case was set on the disposition docket on July 7, 1977, for failure of the parties to file briefs. The appellant's brief was due on May 14, 1977 and the appellee brief was due on May 29, 1977.

4. At the disposition docket the appellant was represented by Earl W. Wolfe and the appellee was represented by Hubert H. Bryant.

5. The Court ordered the appellant 10 days to file his brief and the appellee 20 days thereafter to file its brief. The parties were advised at that time that failure to file the briefs as directed by the Court would result in a dismissal for failure to prosecute.

6. The appellant has failed to file his brief and the case is therefore dismissed for failure to prosecute.

ENTERED this 29<sup>th</sup> day of July, 1977.



---

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

BANK OF OKLAHOMA, N.A., AND )  
JOHN ROGERS, CO-EXECUTORS )  
OF THE ESTATE OF HORACE G. )  
BARNARD, DECEASED, )

Plaintiffs, )

vs. )

REPUBLIC GAS & OIL CO.; )  
UNITED STATES DEPARTMENT OF )  
THE INTERIOR, BUREAU OF INDIAN )  
AFFAIRS, OSAGE AGENCY; AND DAVE )  
BALDWIN, SUPERINTENDENT OF THE )  
OSAGE AGENCY, PAWHUSKA, )  
OKLAHOMA, )

Defendants. )

CIVIL NO. 77-C-115-C

FILED

JUL 28 1977

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

ORDER

The Motion to Dismiss as to Certain Named Defendants filed in the captioned cause by the United States Department of the Interior, Bureau of Indian Affairs and the Osage Agency, and the Motion filed by plaintiffs to Amend First Amended Complaint, to Drop Parties Defendant, to Add Party Defendant and to Correct Misnomer, and the arguments filed in support and in response thereto having been examined, reviewed and considered this 28th day of July, 1977, and the Court thereby being fully advised, it is

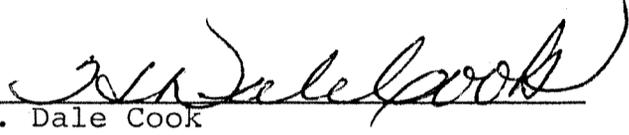
ORDERED that the "United States Department of the Interior, Bureau of Indian Affairs, Osage Agency" be and is herewith dismissed as a party to this action.

IT IS FURTHER ORDERED that Cecil D. Andrus, Secretary of the Interior of the United States of America (hereinafter "Secretary"), upon proper service of process or waiver of service of process become a party defendant in the captioned cause and that all pleadings heretofore filed in said action

NOTE: THIS ORDER IS TO BE MAILED  
BY MOVANT TO ALL COUNSEL AND  
PRO SE LITIGANTS IMMEDIATELY  
UPON RECEIPT.

be held to apply to said defendant, Secretary, and that, specifically, all references to "Bureau" in Paragraph II 5 and elsewhere within the plaintiffs' First Amended Complaint be deemed to relate to "Secretary".

IT IS FURTHER ORDERED that all references to Dave Baldwin, Superintendent of the Osage Agency, Pawhuska, Oklahoma, be held to refer to David Baldwin, Superintendent of the Osage Agency, Pawhuska, Oklahoma.

  
H. Dale Cook  
United States District Judge

Rogers and Bell  
P. O. Box 3209  
Tulsa, Oklahoma 74101  
(918) 582-5201

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

RUSSELL J. R. BUCKMASTER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TULSA COUNTY SHERIFF and )  
 CITY POLICE DEPARTMENT, )  
 )  
 Defendants. )

No. 77-C-127-C

**FILED**

JUL 28 1977 *nc*

O R D E R

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

This is an action brought pro se pursuant to Title 42 U.S.C. § 1983. The plaintiff alleges certain mistreatment of him by a police officer employed by the defendant City (of Tulsa) Police Department and by medical personnel employed by the defendant Tulsa County Sheriff. Now before the Court are motions to dismiss filed by both defendants.

It is now well settled that a municipality is not a "person" within the meaning of Title 42 U.S.C. § 1983, regardless of whether the relief sought is legal or equitable. City of Kenosha v. Bruno, 412 U.S. 507, 93 S.Ct. 2222, 37 L.Ed.2d 109 (1973); Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961). Actions under that statute against municipal police departments are also barred for the same reason. Henschel v. Worcester Police Department, 445 F.2d 624 (1st Cir. 1971); United States ex rel. Lee v. Illinois, 343 F.2d 120 (7th Cir. 1965); Burmeister v. New York City Police Department, 275 F.Supp. 690 (S.D.N.Y. 1967); Shackman v. Arnebergh, 258 F.Supp. 983 (D.C. Calif. 1966). Therefore, the motion to dismiss of the City Police Department is hereby sustained.

The doctrine of respondeat superior does not apply in civil rights cases under Title 42 U.S.C. § 1983. Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973), cert. denied 414 U.S. 1033 (1973); Jennings v. Davis, 476 F.2d 1271 (8th Cir.

1973); Casey v. Purser, 385 F.Supp. 621 (W.D. Okla. 1974);  
Barrows v. Faulkner, 327 F.Supp. 1190 (N.D. Okla. 1971).

The only allegation against the defendant sheriff is that he "is responsible for the hiring of peri-medics (sic) who treat and issue all medicene (sic) to inmates." No personal participation by this defendant is alleged. The case of Barrows v. Faulkner, supra, involved the same defendant. Under circumstances similar to those present in the instant case, that Court held:

" . . . Plaintiff nowhere alleges that Defendant directed or personally participated in any of the acts of which Plaintiff complains and which constitute her federal civil rights cause of action. This being the case, Plaintiff fails to state any claim based on a federal ground against Defendant Faulkner. . . ."

Likewise, the plaintiff in this case has failed to state a federal claim against the defendant Tulsa County Sheriff, and his motion to dismiss is hereby sustained.

It is so Ordered this 27<sup>th</sup> day of July, 1977.

  
H. DALE COOK  
United States District Judge

FILED

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

JUL 27 1977

BRADCO, INC., an Oklahoma )  
corporation, )  
) )  
Plaintiff, )  
) )  
vs. ) )  
) )  
JEFFREY J. SPANIER and PARKER- )  
HANNIFIN CORPORATION, an Ohio )  
corporation, )  
) )  
Defendant. )

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

NO. 77-C-172-C

NOTICE OF DISMISSAL - WITHOUT PREJUDICE

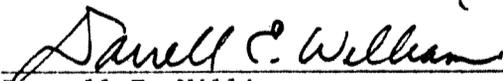
TO: Jeffrey J. Spanier, Defendant, and Parker-Hannifin Corporation, Defendant,  
and his attorneys, and its attorneys:  
BARROW, GADDIS, & GRIFFITH  
1600 Philtower Building  
Tulsa, Oklahoma 74103

Charles L. Freed  
Thompson, Hine and Flory  
National City Bank Building  
Cleveland, Ohio 44114

Lance Stockwell  
Boesche, McDermott & Eskridge  
1300 National Bank of Tulsa Bldg.  
Tulsa, Oklahoma 74103

Notice is hereby given that Bradco, Inc., an Oklahoma corporation,  
the above named plaintiff, hereby dismisses the above entitled action  
without prejudice, pursuant to Rule 41(a)(1)(i) of the Federal Rules  
of Civil Procedure, and hereby files this notice of dismissal with the  
Clerk of the Court before service by defendant of either an answer or  
a motion for summary judgment.

Dated July 27, 1977

  
\_\_\_\_\_  
Darrell E. Williams  
Attorney for Plaintiff  
2431 E. 51st St., Suite 602  
Tulsa, Oklahoma 74105  
Phone: (918) 749-8391

**NOTE:** THIS ORDER IS TO BE MAILED  
BY MOVANT TO ALL COUNSEL AND  
PRO SE LITIGANTS IMMEDIATELY  
UPON RECEIPT.

CERTIFICATE OF SERVICE

I hereby certify that on the 27<sup>th</sup> day of July, 1977, a true and correct copy of the foregoing Dismissal Without Prejudice was mailed to Barrow, Gaddis, & Griffith, 1600 Philtower Building, Tulsa, Oklahoma, 74103, and Charles L. Freed, Thompson, Hine and Flory, National City Bank Building, Cleveland, Ohio, 44114, and Lance Stockwell, Boesche, McDermott & Eskridge, 1300 National Bank of Tulsa Bldg., Tulsa, Oklahoma, 74103 with postage thereon fully prepaid.

*Darrell E. Williams*  
Darrell E. Williams

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

WHEEL HORSE SALES, INC., a )  
corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JAMES SPENCE, d/b/a EAST SIDE )  
SALES AND SERVICE, )  
 )  
Defendant. )

No. 76-C-630-C

FILED

JUL 27 1977

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

ORDER OF DISMISSAL

On the 3rd day of June, 1977, the above styled and entitled matter came on for hearing before the Honorable H. Dale Cook, United States District Judge for the Northern District of Oklahoma, pursuant to regular notice and setting of pre-trial conference. Plaintiff appeared by its attorney, Robert E. Manchester, and the defendant appeared by his attorney, Paul F. McTighe, Jr.

The Court then reviewed the pre-trial order prepared by the parties, and having fully examined the Order determined that the Court is without jurisdiction in this matter and specifically makes the following findings of fact:

(1) Plaintiff commenced this action in the United States District Court for the Northern District of Oklahoma, alleging federal jurisdiction pursuant to 28 U.S.C. Sec. 1332 in that plaintiff is a Missouri corporation, with its principal place of business at South Bend, Indiana, while the defendant is a citizen of the State of Oklahoma, and further that the defendant is indebted to the plaintiff in the amount of \$17,720.52, or a sum in excess of \$10,000, exclusive of interest and costs.

(2) By the pre-trial order, the defendant admitted an indebtedness in the sum of \$15,000 as due and owing to the plaintiff.

(3) By defendant admitting \$15,000 as due and owing, and the plaintiff having sued for a total amount of \$17,720.52, only \$2,720.52 remains in controversy between the parties, and the Court is, therefore, without jurisdiction to hear the matter on its merits pursuant to 28 U.S.C. Sec. 1332.

NOTE: THIS ORDER IS TO BE MAILED  
BY MOVANT TO ALL COUNSEL AND  
PRO SE LITIGANTS IMMEDIATELY  
UPON RECEIPT.

(4) The Court, therefore, finds that this matter should be dismissed on the Court's own motion, without prejudice to the bringing of this action in a state court proceeding.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above matter be, and the same is hereby, dismissed without prejudice to the bringing of a future action.

DATED this 27<sup>th</sup> day of July, 1977.

18/ H. Dale Cook  
H. DALE COOK,  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Robert E. Manchester  
ROBERT E. MANCHESTER,  
Attorney for Plaintiff

Paul F. McTighe, Jr.  
PAUL F. MCTIGHE, JR.,  
Attorney for Defendant

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

United States of America, )  
 )  
Plaintiff ) Civil Action No. 77-C-114-B  
 )  
v. )  
 )  
Articles of food consisting of the )  
following: ) DEFAULT DECREE OF CONDEMNATION  
 )  
409 bags, more or less, labeled )  
in part: )  
 )  
(bag) )  
 )  
"50 LBS. NET First Pick SPECIAL )  
PATENT FLOUR BLEACH ENRICHED )  
INGREDIENTS: \*\*\* Packed for )  
INSTITUTIONAL SALES INC. SUB. of )  
the FLEMMING CO. INC. GENERAL )  
OFFICES Topeka, Kansas 66601 )  
Kansas City - Austin - Houston )  
\*\*\*" )  
 )  
5 bags, more or less, labeled )  
in part: )  
 )  
(bag) )  
 )  
"\*\*\* Yeast Raised Donut NET WT. )  
50 LBS. INTERNATIONAL MULTIFOODS )  
MINNEAPOLIS, MINNESOTA 55402 \*\*\* )  
Yeast Raised Donut Mix 20204 \*\*\*" )  
 )  
Defendant. )

**FILED**

JUL 25 1977

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

On March 23, 1977, a Complaint for Forfeiture against the above-described articles was filed on behalf of the United States of America. The Complaint alleges that the articles proceeded against are foods, which were adulterated during shipment in interstate commerce within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342(a)(4) in that they (both lots) have been held under insanitary conditions whereby they may have become contaminated with filth. Pursuant to Monition issued by this Court, the United States Marshal for this District seized said articles.

It appearing that process was duly issued herein and returned according to law; that notice of the seizure of the above-described articles was given according to law; and that no persons have appeared or interposed a claim before the return day named in said process.

Now, therefore, the Acting United States Attorney for this District moves this honorable Court for a Default Decree of Condemnation and Destruction, the Court being fully advised in the premises, it is

ORDERED, ADJUDGED AND DECREED that the default of all persons be and the same are entered herein; and it is further

ORDERED, ADJUDGED AND DECREED that the seized articles are adulterated within the meaning of 21 U.S.C. 342(a)(4) and are hereby condemned and forfeited to the United States pursuant to 21 U.S.C. 334, and it is further

ORDERED, ADJUDGED AND DECREED that the United States Marshal for this District shall destroy the condemned articles and make due return to this Court.

DATED this 25th day of July, 1977.

  
Chief Judge United States District Court

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

UNITED STATES OF AMERICA, )  
for the use and benefit of )  
MID-CENTRAL MECHANICAL, INC., )  
 )  
Plaintiff, )

vs. )

INDUSTRIAL INDEMNITY COMPANY, )  
a foreign corporation, and )  
KANDY, INC., )  
a foreign corporation, )  
 )  
Defendants, )

No. 76-C-54-C )  
 ) Consolidated  
No. 76-C-55-C )

UNITED STATES )  
for the use and benefit of )  
MID-CENTRAL MECHANICAL, INC., )  
a Corporation, )  
 )  
Plaintiff, )

vs. )

SAFECO INSURANCE COMPANY, )  
a Washington Corporation, )  
SOUTHWEST CONSTRUCTION CORPORATION, )  
a corporation, and )  
KANDY, INC., a corporation, )  
 )  
Defendants. )

**FILED**  
JUL 22 1977  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

The Court on July 21<sup>st</sup>, 1977 filed its Findings of Fact and Conclusions of Law which are hereby incorporated herein and made a part of the Judgment of the Court.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that in Case No. 76-C-54 Judgment be entered in favor of Kandy, Inc. and against Mid-Central Mechanical, Inc. in the amount of \$21,267.20.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that in Case No. 76-C-55 Judgment be entered in favor of Kandy, Inc. and against Mid-Central Mechanical, Inc. in the amount of \$12,503.96.

It is so Ordered this 21<sup>st</sup> day of July, 1977.

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

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

UNITED STATES OF AMERICA, )  
for the use and benefit of )  
MID-CENTRAL MECHANICAL, INC., )  
 )  
Plaintiff, )

vs. )

INDUSTRIAL INDEMNITY COMPANY, )  
a foreign corporation, and )  
KANDY, INC., )  
a foreign corporation, )  
 )  
Defendants, )

UNITED STATES )  
for the use and benefit of )  
MID-CENTRAL MECHANICAL, INC., )  
a Corporation, )  
 )  
Plaintiff, )

vs. )

SAFECO INSURANCE COMPANY, )  
a Washington Corporation, )  
SOUTHWEST CONSTRUCTION CORPORATION, )  
a corporation, and )  
KANDY, INC., a corporation, )  
 )  
Defendants. )

No. 76-C-54-C )  
 ) Consolidated  
No. 76-C-55-C )

**FILED**

JUL 22 1977 *pl*

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

MEMORANDUM OPINION

The above styled actions were consolidated by Order of the Court dated May 24, 1976 and came on for trial to the Court on February 21, 1976. Mid-Central Mechanical, Inc., (hereinafter Mid-Central) brought these actions pursuant to the Miller Act, 40 U.S.C. § 270 to recover monies claimed to be due it as a subcontractor on two construction projects located within the territorial limits of this Court. In Case No. 76-C-54 Mid-Central performed work as a subcontractor to Kandy, Inc. (hereinafter Kandy) the prime contractor, on a project known as "Project Buildings and Access Road, Skiatook Lake, Hominy Creek, Oklahoma, Contract No. DACW 56-74-C-0085, for the Tulsa District Corps of Engineers" (hereinafter Hominy Creek Project). Pursuant to the requirements of the Miller Act as imposed by the above-referenced contract, Kandy, as principal, and The Industrial Indemnity

Company, as surety, executed a performance and payment bond. In Case No. 76-C-55 Mid-Central performed work as a second tier subcontractor under Kandy, who was a subcontractor for the mechanical portion of the work due to be performed by Southwest Construction Corporation, the prime contractor, on a project known as "Project Buildings and Access Road, Birch Creek Lake Project, Contract No. DACW 56-74-C-0068, for the Tulsa District Corps of Engineers" (hereinafter Birch Creek Project). Southwest Construction Corporation, as principal, and Safeco Insurance Company, as surety, executed a performance and payment bond.

Mid-Central alleges in both actions that Kandy breached its written agreements by failing to pay the monthly estimates as the work was performed and is indebted to Mid-Central in quantum meruit for the reasonable value of the work performed on the two projects. Kandy has filed an Answer and Counterclaim and alleges in said Counterclaim that plaintiff did not perform the work under its subcontracts as called for by the plans and specifications of the Corps of Engineers, and that when plaintiff failed to perform its work, Kandy, in accordance with the terms of the written contract, took over performance of the work contracted to be done by the plaintiff, and had said work done by other persons. Kandy alleges Mid-Central is liable for the reasonable cost to Kandy for the completion of the work contracted to be done by Mid-Central.

Based upon the testimony of the witnesses and evidence presented at trial the Court makes the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. In December, 1973, Mid-Central and Kandy began negotiations for Mid-Central to subcontract the mechanical portions on the Hominy Creek project and pursuant to an oral contract Mid-Central began performance of its subcontract. Early in 1974 Mid-Central entered into an oral agreement

with Kandy to perform the mechanical portions of the work on the Birch Creek Project and thereafter Mid-Central began performance.

2. Work proceeded on the projects pursuant to the oral contracts and on February 12, 1975 the parties executed written subcontracts on both projects. The specific sections of the specifications under which the work was to be performed by the plaintiff are set out in the written contract, and there is no dispute that the written contracts set out exactly the same work to be done and performed at the same price as was agreed upon in the original oral contracts.

Termination of the Working Relationship

3. By letter dated December 18, 1974, Mid-Central advised Kandy that they thereby noticed their intentions to do no further work on the projects until such time as they had written contracts or comparable written labor agreements as to the exact amounts of monies Kandy would pay Mid-Central to complete the projects. The letter concluded: "As of today we are instructing our employees to pull out our equipment, tools and materials."

4. On February 3, 1975 Frank King, president of Kandy, wrote to Mid-Central in regard to Kandy's dissatisfaction with the progress of the work and Mr. King stated Kandy would expend whatever sums were necessary for labor on any item of work that Mid-Central did not have adequately manned and would purchase materials required to complete Mid-Central's work, and would deduct these sums from Mid-Central's subcontract. The letter concluded: "We would still prefer that you complete these projects with your forces and if you are effectively progressing with your work during the first week of February, 1975, we will not intervene."

5. In a letter from Mid-Central to Kandy dated February 11, 1975, Mid-Central stated it was prepared to complete the project, with a signed financial agreement, as soon as

possible.

6. On February 12, 1975 the written subcontracts were executed.

7. On March 1, 1975 Mr. King contacted Mr. Blaine Smith by phone in regard to supervising the completion of the projects. Mr. King and Mr. Smith more fully discussed the problems involved at Mr. King's office in Texarkana, Texas on March 3, 1975.

8. By a letter dated March 3, 1975, Kandy advised Mid-Central that it appeared Mid-Central's staff was incapable of coping with the requirements of the Corps of Engineers and informed Mid-Central that Kandy intended to retain the services of someone competent enough to analyze the paper work problems and would assign him the sole responsibility of expediting Mid-Central's work.

9. On March 4, 1975, Mr. Blaine Smith attempted to contact Mr. Dale Morrow, president of Mid-Central, by phone. On March 5, 1975 Smith made three more unsuccessful attempts to contact Morrow. Again on March 6, 1975, Smith made three more calls and at 5:30 p.m. made an appointment with Morrow to discuss the problems that evening. At that time Smith offered to work with Mid-Central in completing the project but was told by Morrow that he could take the job and "cram it."

10. Mr. Smith then related the conversation to King and on March 6, 1975, King contacted a representative of Space Mechanical in regard to the project and met with him on March 7, 1975.

11. By a letter dated March 5, 1975 from Kandy to Mid-Central, Kandy advised:

"In accordance with a letter to you of 3 February, 1975, our letter to you of 3 March, 1975, and in accordance with paragraph 7 of your subcontract agreement, we are assuming control of your work on subject projects because of your gross negligence and non-performance in the execution of the work required by

our agreements pertaining to same.

"Mr. Blaine Smith has been employed to take charge of this work and he will be doing so immediately . . . Your cooperation and assistance in helping Mr. Blaine Smith carry out these duties will be appreciated and certainly to your best interest."

The Court finds that this letter does not constitute a termination of the contract by Kandy as alleged by Mid-Central. While the letter does state that Kandy is sending Mr. Smith to supervise the work, it goes on to state that Mid-Central's cooperation and assistance would be appreciated. Had Kandy intended to terminate Mid-Central, certainly no request for future cooperation would have been made.

12. On March 11, 1975 Mid-Central wrote Kandy stating it was not guilty of negligence or non-performance of work and concluded by stating: "We are willing and able to finish the project." This concluding statement indicates that Mid-Central did not at that time consider that the contract had been terminated by Kandy.

13. Thereafter, on March 14, 1975 an attorney on behalf of Mid-Central sent a letter by certified mail to Kandy stating:

"For your default and failure to pay the September, 1974, and the February, 1975, estimates as same became due and owing under the contract, Mid-Central Mechanical, Inc. by reason of such default does hereby and by these presents terminate these two sub-contracts."

It would appear from this letter that Mid-Central did not consider the contract terminated by Kandy but was, in fact, terminating the contract itself for alleged failure to pay amounts due and owing.

#### Damages

#### Hominy Creek Project

14. On April 10, 1975, Mid-Central forwarded to Kandy an Amended Final Billing claiming an amount of \$28,134.74 as due and owing in regard to the Hominy Creek Project.

15. In regard to the Hominy Creek Project Kandy paid

Mid-Central the sum of \$33,535.79 as follows:

Kandy, Inc., Check No. 101	Dated - 25 March, 1974	\$ 19,066.63
Kandy, Inc., Check No. 201	Dated - 23 April, 1974	4,058.88
Kandy, Inc., Check No. 202	Dated - 23 April, 1974	4,210.28
Kandy, Inc., Check No. 288	Dated - 31 May, 1974	5,200.00
		<u>\$ 33,535.79</u>

16. Mid-Central has asserted that the sum of \$55,600.00 was earned by it based upon its estimates of the percentage of completion of different phases of the contract. However, in many instances Mid-Central's estimates of the percentage of completion is in excess of that determined by the Corps of Engineers. The Court finds that the percentages of completion as reflected by the Corps of Engineers Pay Estimates should be utilized in determining the amount due Mid-Central as of February 28, 1975 since the contract called for acceptance of the work by the Corps of Engineers and also because Kandy was being reimbursed by the Corps based upon these estimates. The Corps of Engineers' Pay Estimate No. 13 reflects that the net amount earned in regard to the sub-contracted work as of February 28, 1975 was \$44,520.56. (Although the final termination of the working relationship between the parties did not occur until March 14, 1975, an examination of the Construction Quality Control Reports indicates that Mid-Central did not perform any substantial amount of work subsequent to February 28, 1975; and therefore the net amount earned as of that date apparently covers all work done by Mid-Central as the subcontractor.)

17. The Court finds that Kandy was not delinquent in its payments to Mid-Central in an amount significant enough to constitute a breach of the contract. Of the \$44,520.56, indicated by the Corps of Engineers as net amount earned, \$4,452.06 was being retained by the Corps of Engineers. In addition, as of February 28, 1975 the Corps of Engineers Pay Estimate for the end of February shows that there was \$6,486.12 worth of stored materials on the site. The evidence indicates that Kandy had paid for these materials, which by the terms of the contract were to have been provided by Mid-Central. Had the project been completed by Mid-Central the cost of

these materials could have been deducted by Kandy from the amount due Mid-Central. Therefore they constitute a type of "advance" by Kandy to Mid-Central. Kandy had in effect paid or advanced the sum of \$40,021.91 to Mid-Central at a time when \$40,068.50 was due and owing. The Court finds that an arrearage of \$46.59 would not constitute a breach of the contract. (It appears based upon the evidence that Kandy may have, in fact, purchased materials in excess of the \$6,486.12 of materials on the jobsite and therefore had, as of February 28, 1975, possibly paid Mid-Central in excess of the amount due and owing.)

18. In regard to the Counterclaim filed by Kandy, the contract between the parties provides:

"Without prejudice to any other remedy it may have, Contractor may take control of this work for the purpose of completing the same under the terms hereof, either by its own employees or by other independent contract. If Contractor takes control of the work, Subcontractor shall be entitled, upon Contractor's completion of the work to the difference between the contract price and the reasonable cost and expense incurred by Contractor in finishing said work. . . ."

Although the contract does not state a requirement that the Contractor have good cause to assume control of the work, the Court finds that in the case at bar the evidence presented supports a finding that Kandy was justified in its actions in light of the limited progress made by Mid-Central on the project, its apparent delay in making submittals, and its general failure to expedite the work in a manner compatible with the total project requirements. The Court finds that Mid-Central did not proceed under its contract on either project in a diligent and reasonable manner.

19. The Court finds that the evidence supports Kandy's assertion that in addition to the \$33,535.79 paid by it to Mid-Central, it further expended the sum of \$65,048.94 for labor and materials to complete the project. The Court finds no credible evidence was introduced to indicate that said additional expenses were not both reasonable and necessary. Kandy expended the total sum of \$98,584.73 to complete the

project which Mid-Central contracted to complete at a total cost of \$71,247.00, the difference in said amounts being \$27,337.73.

20. The Court also finds that the testimony and exhibits support a finding that Mid-Central did extra work incidental to the contract at the request of Kandy in the sum of \$6,070.53.

Birch Creek Project

21. The Court finds that in regard to the Birch Creek Project, Kandy was not in default on payments to Mid-Central so as to constitute grounds for termination of the contract. Mid-Central claims that the amount of \$8,630.00 was earned by it on the Birch Creek Project, and claims that the Administration Building was 50 percent complete, or \$5,150.00 worth of material and labor had been expended, and that the comfort shelter was 40 percent complete constituting earnings of \$3,480.00. Kandy, however, asserts that the only work performed by Mid-Central on the Birch Creek Project was to rough-in the plumbing on the Administration Building. No Corps of Engineers pay estimates in regard to the Birch Creek Project were offered into evidence reflecting the Corps estimate of percentage of completion. Mid-Central placed into evidence its Job Cost Ledger for the Birch Creek Project which states a balance of \$6,465.00. However, the ledger reflects costs of materials supplied by Gladstein in May and June which other exhibits indicate were in fact paid for by Kandy. In addition, after the daily record of costs are listed, unexplained labor costs of over \$2,000.00 are reflected for May 31. The Court further attempted to ascertain the amount due Mid-Central by examining the Inspectors Shift Reports on the Birch Creek Project. Assuming said reports are complete, it would appear that a minimal amount of work was completed on the Birch Creek Project prior to Mid-Central's leaving the project. Based upon the evidence presented, the Court cannot say that the amount of \$3,150.00 paid by Kandy to Mid-Central was insufficient to cover the amount of work completed or constituted a default on the

contract.

22. As previously stated by the Court in regard to the Hominy Creek Project, the Court finds that pursuant to the contract Kandy had the right to assume the control of the project and Mid-Central is liable for the cost of completion over and above the contract price. Mid-Central presents no credible evidence to dispute Kandy's claim that the expenses incurred were both reasonable and necessary. The Court finds that the sum of \$23,133.96 was reasonably incurred by Kandy in completing this project. The contract amount was \$13,780.00 and Kandy paid Mid-Central \$3,150.00. It is therefore the finding of the Court that in regard to the Birch Creek Project Mid-Central is indebted to Kandy in the sum of \$12,503.96.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction of the matters involved in these two consolidated cases pursuant to the provisions of 40 U.S.C. § 2706.

2. The contracts in effect between the parties in regard to these projects were valid and binding.

3. Kandy was not in default in its payments to Mid-Central and Mid-Central did not, therefore, have the right to terminate the contracts so as not to be bound by the terms and conditions of the contracts.

4. Pursuant to the terms of the contract, Kandy was justified in asserting its contractual right to assume control of the project in light of Mid-Central's inadequate performance in regard to the project.

5. The requirements set out in Paragraph VII of the contract in regard to three days' notice in writing to the subcontractor prior to termination of the work of the subcontractor are inapplicable in the case at bar.

6. Approval of work performance by a representative of the contractor or Corps of Engineers during the progress of the work is not effective or binding on the Corps of

Engineers. The work must be performed in accordance with the plans and specifications and is subject to final inspection by the Corps of Engineers before acceptance of the project.

7. Pursuant to the terms of the contract Mid-Central is liable to Kandy for the reasonable and necessary costs to Kandy of completing the projects.

8. In regard to Case No. 76-C-54 concerning the Hominy Creek Project, Mid-Central is liable to Kandy in the sum of \$27,337.73 for completion of the project. The Court finds that Kandy is liable to Mid-Central in the sum of \$6,070.53 for extra work which Mid-Central performed pursuant to Kandy's request. Mid-Central is, therefore entitled to a set-off of this amount against the amount for which it is liable to Kandy.

9. It is therefore the determination of the Court that in Case No. 76-C-54 Mid-Central is liable to Kandy in the sum of \$21,267.20 and judgment is entered in accordance therewith. The Court further finds that Mid-Central is not entitled to recovery as against Kandy and Industrial Indemnity Company.

10. It is the further determination of the Court that in Case No. 76-C-55 concerning the Birch Creek Project, Mid-Central is liable to Kandy in the sum of \$12,503.96. Further, the Court finds that Mid-Central is not entitled to recovery as against Kandy, Safeco Insurance Company or Southwest Construction Corporation.

It is so Ordered this 21<sup>st</sup> day of July, 1977.

  
H. DALE COOK  
United States District Judge

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



CITIES SERVICE COMPANY, )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. )  
 )  
 ) FEDERAL ENERGY ADMINISTRATION )  
 )  
 ) and )  
 )  
 ) FRANK G. ZARB, Administrator, )  
 ) Federal Energy Administration, )  
 )  
 ) Defendants. )

Civil Action  
No. 76-C-237-B  
**FILED**  
JUL 21 1977

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

STIPULATION OF DISMISSAL

It is hereby stipulated and agreed between the plaintiff and defendants that the above action is hereby dismissed without prejudice.

CITIES SERVICE COMPANY

By:   
JON LEE PRATHER  
JONES, GIVENS, BRETT, GOTCHER,  
DOYLE & BOGAN  
THOMAS R. BRETT  
ATTORNEYS FOR PLAINTIFF

July 6, 1977  
Dated

FEDERAL ENERGY ADMINISTRATION,  
et al.

By:   
LINDA PENCE  
United States Department of Justice

July 14, 1977  
Dated

By:   
SCOTT L. LANG  
Federal Energy Administration  
ATTORNEYS FOR DEFENDANTS

July 13, 1977  
Dated

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

BROUGH J. GREEN and )  
RUTH L. GREEN, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
THE UNITED STATES OF AMERICA )  
and DONALD C. ALEXANDER, )  
COMMISSIONER OF THE INTERNAL )  
REVENUE SERVICE, )  
 )  
Defendants. )

No. 77-C-148-C ✓

FILED

JUL 19 1977 *jm*

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 declare an assessment of income taxes against them in the amount of \$203,162.50 illegal and invalid and to enjoin the defendant Commissioner of the Internal Revenue Service (Commissioner) from collecting or attempting to collect the amounts so assessed against them. The defendants have filed a motion for summary judgment or, in the alternative, to dismiss the complaint on the ground that this Court lacks jurisdiction by virtue of the anti-injunction provisions of Title 26 U.S.C. § 7421(a). The plaintiffs contend that they did not receive a notice of deficiency as required by Title 26 U.S.C. §§ 6212 and 6213 and that this suit is therefore not barred by § 7421(a).

The following facts relevant to the Court's consideration of the defendants' motion do not appear to be in substantial dispute. On November 27, 1974, Brough J. Green, one of the plaintiffs herein, was indicted in the Northern District of California for subscribing false joint individual income tax returns for each of the years 1968, 1969 and 1970, in violation of Title 26 U.S.C. § 7206(1). (Rhodus Affidavit, Attachment A). On March 14, 1975, Mr. Green entered a plea of nolo contendere to the charges against him and received a three year suspended sentence and a fine in the amount of \$10,000.00. (Rhodus Affidavit, Attachment B)

Following disposition of the criminal charges against Mr. Green, an Internal Revenue agent was assigned to conduct a civil audit of the plaintiffs with respect to their tax liabilities for the years 1965 through 1970. (Elliott Affidavit) On September 9, 1975, the agent was advised by a Mr. Leslie Hartman, who had a power of attorney for the plaintiffs, that the Greens were moving from Salinas, California to Tulsa, Oklahoma and could be contacted in Tulsa at the following address:

Brough & Ruth Green  
c/o Frank J. Persson Company  
2425 East 45th Street  
Tulsa, Oklahoma 74135

On April 12, 1976, the Internal Revenue Service prepared and mailed by certified mail the statutory notices of deficiency in issue in this action. Both were addressed to the plaintiffs, one at their former address in Salinas, California (being the same address appearing on the taxpayers' return for the year 1970, the last period here in issue), and the other in care of Frank Persson Company at the address shown above. (Attachment to Carmody Affidavit) In accordance with the provisions of Title 26 U.S.C. § 6213, assessment and collection activities were stayed for a period of 90 days following the mailing of the notices of deficiency. That 90-day period having elapsed, the taxes and penalties asserted in the statutory notices were assessed on October 11, 1976, plus interest thereon from the due date of the taxes in question. For the purpose of considering the defendants' motion, the Court will assume that the plaintiffs never actually received the original notice of deficiency, although, as the defendants suggest, the fact that the notices of assessment, addressed to plaintiffs in care of Frank Persson Co., are attached to the complaint is demonstrative of the efficacy of mail delivery to the plaintiffs at that address.

Title 26 U.S.C. § 7421(a), upon which the defendants rely, provides:

"(a) Except as provided in sections

6212(a) and (c), 6213(a), 7426(a) and (b)(1), and 7429(b), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

Title 26 U.S.C. § 6213(a) provides in pertinent part as follows:

"(a) . . . [N]o assessment of a deficiency in respect of any tax imposed by subtitle A or B . . . and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice [as provided in section 6212] has been mailed to the taxpayer . . . . Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court."

Thus, under ordinary circumstances, this Court has jurisdiction to entertain the plaintiffs' action only if the statutory notice of deficiency prescribed by Title 26 U.S.C. § 6212 was not properly mailed to the taxpayers.

Title 26 U.S.C. § 6212 provides in pertinent part as follows:

"(a) If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B . . . , he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

"(b) (1) In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax . . . , if mailed to the taxpayer at his last known address, shall be sufficient . . . even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence."

In construing the phrase "last known address", the courts have generally concluded that a notice of deficiency is sufficient if it is mailed to the address where the Commissioner reasonably believed the taxpayer wished to be reached.

United States v. Ahrens, 530 F.2d 781 (8th Cir. 1976);

Sorrentino v. Ross, 425 F.2d 213 (5th Cir. 1970); Delman v.

Commissioner, 384 F.2d 929 (3rd Cir. 1967). If the notice is mailed to the last known address, it is valid even if it is not actually received by the taxpayer. United States v. Ahrens, supra; Delman v. Commissioner, supra; Luhring v. Glotzbach, 304 F.2d 556 (4th Cir. 1962). On the other hand, actual receipt by the taxpayer of the notice is sufficient, even if it is not sent to the last known address. Id. The Commissioner is required to exercise reasonable care and diligence in mailing a deficiency notice to the correct address, Arlington Corp. v. Commissioner, 183 F.2d 448 (5th Cir. 1950), and the burden of proof is upon the taxpayer to prove that this care and diligence was not exercised. Butler v. District Director, 409 F.Supp. 853 (S.D. Tex. 1975).

In the instant case, the plaintiffs contend that the Commissioner had knowledge that their true "last known address" was 7756 Charles Page Boulevard, Tulsa, Oklahoma. To demonstrate this, they rely upon a notice of overpayment of taxes, mailed to that address on May 3, 1976, regarding the year ended December 31, 1975, and a notice of federal tax lien mailed on December 8, 1976 and indicating the plaintiffs' residence as 7756 Charles Page Boulevard.

In Expanding Envelope & Folder Corp. v. Shotz, 385 F.2d 402 (3rd Cir. 1967), the taxpayer had filed with the Internal Revenue Service powers of attorney directing that all correspondence addressed to the taxpayer in the proceedings involving the years in question should be sent to designated attorneys-in-fact. In discussing this direction, the Court said:

"We think that when a taxpayer, through a duly executed and filed power, gives instructions such as those here given, he is in effect giving the Service a last known address for Section 6212 purposes. It is an address where he explicitly indicates he is likely to receive the notice." Id. at 404.

Likewise, in the instant case, the plaintiffs gave explicit, although less formal, mailing instructions to the agent in

charge of auditing their returns for the years here in issue. In Expanding Envelope, the taxpayer argued that events occurring after the filing of the powers, such as the filing of waivers of limitations and an inquiry of an attorney-in-fact by an IRS agent as to the taxpayer's "correct address", provided the Service with last known addresses which differed from those given in the powers. The Court rejected that argument and held that "[n]either activity is any evidence from which the Service should have inferred that the taxpayers were revoking the instructions contained in the powers." Id. This is essentially the same argument being advanced by the plaintiffs in this case.

The taxpayers in Luhring v. Glotzbach, supra, listed their address for the years 1957 and 1958 in Norfolk, Virginia. For the years 1959 and 1960, they had two different addresses in Florida and had received from the IRS refunds and tax forms for one or both of those years at the Florida addresses. The IRS agent who investigated them for the years 1957 and 1958 learned that they no longer lived in Norfolk and discovered their first Florida address. A deficiency notice was mailed to that address and returned to the IRS as "unclaimed". The IRS therefore knew that the taxpayers had received no actual notice of the deficiency. The taxpayers contended that their later address was known to the tax officials who processed their returns for subsequent years and that the deficiency notice should therefore have been sent to that address. In rejecting the taxpayers' argument, the Court first noted the "vast domain" over which the Commissioner presides and the numerous tax officials a taxpayer would encounter in moving from place to place within the United States, and then held:

". . . we think that the statute should be so construed as to hold a notice of deficiency valid if it is sent to the address shown on the taxpayer's return and the local officials have no knowledge of a change of address, even though the tax officials in another District have been

notified that the address has been changed. Especially must this be so if the new address appears on the tax returns filed in the new District of which the tax officials in the old District have no knowledge. In the case at bar the notice was adequate since it was sent to the address last known to the agents in the District where the return was filed." Id. at 559.

This case is factually very similar to the instant one, except that here the Commissioner had every reason to believe that the plaintiffs had received the notice of deficiency.

In Butler v. District Director, supra, the deficiency notice was also returned to the IRS, and it therefore had knowledge that the taxpayers had received no actual notice of the deficiency. In that case, the Court held that reliance upon the address provided on the return in question was proper because the agent was not aware of any "clear and concise notification" by the taxpayers of a definite change of address to which they wished sent any correspondence regarding the year being audited. The Court adopted the holding of Daniel Lifter, 59 T.C. 818 (1973), that:

"Other than the address given on their return for 1968, [the Revenue Agent] received no instructions from the petitioners as to how they should be reached regarding an audit of that return. Clearly, the addresses set forth in their subsequent returns did not constitute a direction as to the address to be used to reach them regarding the 1968 return."

Within the framework of the cited cases, it appears to the Court that the Commissioner was reasonable in believing that the plaintiffs wished to be reached c/o Frank J. Persson Company regarding the audit being conducted for the years 1965 through 1970. At the time that address was given, the plaintiffs knew that their returns for those years were being audited by the agent to whom the address was given. There is no indication, and the plaintiffs do not contend, that a specific notification was given to the IRS of a different address at which they wished to be reached concerning the audit then in progress. The listing of a different address on a subsequent return filed in another district did

not constitute such a specific notification. Therefore, under the circumstances of this case, the notice of deficiency was properly mailed to the plaintiffs' "last known address" for purposes of Title 26 U.S.C. § 6212.

Because the notice of deficiency was properly mailed under Title 26 U.S.C. § 6212, the plaintiffs' suit is barred by Title 26 U.S.C. § 7421(a) unless certain conditions prescribed by the United States Supreme Court in Enochs v. Williams Packing and Navigation Co., 370 U.S. 1, 82 S.Ct. 1125, 8 L.Ed.2d 292 (1962), are met. The Court in that case held that § 7421(a) will not bar an injunction if (1) it is clear that under no circumstances can the Government ultimately prevail, and (2) equity jurisdiction otherwise exists. The Court further defined the requirements as follows:

"We believe that the question of whether the Government has a chance of ultimately prevailing is to be determined on the basis of the information available to it at the time of suit. Only if it is then apparent that, under the most liberal view of the law and the facts, the United States cannot establish its claim, may the suit for an injunction be maintained. Otherwise, the District Court is without jurisdiction, and the complaint must be dismissed." 370 U.S. at 7.

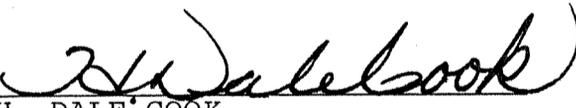
The Court also held that the intent of Congress was that ". . . such a suit may not be entertained merely because collection would cause an irreparable injury, such as the ruination of the taxpayer's enterprise." 370 U.S. at 6. The Court indicated that to satisfy the first requirement above, the facts must be similar to those present in Miller v. Standard Nut Margarine Co., 284 U.S. 498, 52 S.Ct. 260, 76 L.Ed.2d 422 (1932). In discussing that case, the Enochs Court said:

"Prior to the assessment in issue three lower federal court cases had held that similar products were nontaxable and, by letter, the collector had informed the manufacturer that 'Southern Nut Product' was not subject to the tax. This Court found that '[a] valid oleomargarine tax could by no legal possibility have been assessed against . . . [the manufacturer], and therefore the reasons underlying . . . [§ 7421(a)] apply, if at all, with little force.'" 370 U.S. at 5.

This Court's function under the Enoch test is not to determine the validity of the assessments in issue, but to determine if there is any basis upon which the assessments can be upheld. Cattle Feeders Tax Committee v. Shultz, 504 F.2d 462 (10th Cir. 1974). In the instant case, the plaintiffs' primary contention is that the defendants will be unable to prove the existence of fraud necessary to extend the statute of limitations governing the assessments in question. Their other arguments similarly relate to the merits of the assessments. However, the validity of the assessments is not before the Court at this time. Under the most liberal view of the law and the facts, there is certainly a basis upon which the assessments can be upheld. Therefore, the Enochs exception to Title 26 U.S.C. § 7421(a) is not applicable, and that statute operates as a bar to the plaintiffs' action.

For the foregoing reasons, it is the determination of the Court that it lacks jurisdiction over the plaintiffs' suit, and the defendants' motion to dismiss the complaint is hereby sustained.

It is so Ordered this 19<sup>th</sup> day of July, 1977.

  
H. DALE COOK  
United States District Judge

FILED

JUL 19 1977

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

JAMES N. FLOURNOY, and  
JUDITH B. FLOURNOY,  
husband and wife,

Plaintiffs,

-vs-

ARROWHEAD INVESTMENT AND  
DEVELOPMENT CO., a  
Corporation,

Defendant.

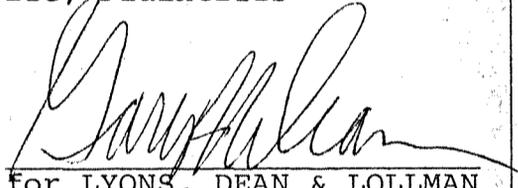
Civil Action  
No. 77-C-223-B

DISMISSAL WITH PREJUDICE

Comes now the Plaintiffs, JAMES N. FLOURNOY and JUDITH B. FLOURNOY, husband and wife, and voluntarily dismiss the above entitled and numbered cause, with prejudice to any other or future cause of action predicated upon the statements and allegations set forth in their petition filed herein.

Dated this 14<sup>th</sup> day of July, 1977.

JAMES N. FLOURNOY & JUDITH B. FLOURNOY,  
husband and wife, Plaintiffs

By: 

for LYONS, DEAN & LOLLMAN  
Their Attorneys  
P.O. Drawer 1047  
Pryor, OK 74361

Phone: (918) 825-2211

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

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 )  
vs. )  
 )  
 )  
 )  
WILLIAM M. REEVES, JR., )  
EDNA S. REEVES, BETTY WOODARD )  
a/k/a BETTY L. WOODARD a/k/a )  
BETTY LOU WOODARD, BILL WOODARD )  
a/k/a GERALD WOODARD, STATE OF )  
OKLAHOMA, ex. rel. OKLAHOMA TAX )  
COMMISSION, BUFFALO SAVINGS BANK, )  
a New York Corporation, MIDLAND )  
MORTGAGE CO., a Corporation, and )  
BERTHA A. WEST, )  
 )  
 ) Defendants. )

CIVIL ACTION NO. 77-C-53-C

**FILED**  
JUL 18 1977  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 18<sup>th</sup>  
day of July, 1977, the Plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney; and the Defendant, State of  
Oklahoma, ex. rel. Oklahoma Tax Commission, appearing by its  
attorney, Clyde Fosdyke; the Defendant, Buffalo Savings Bank,  
a New York Corporation, appearing by its attorney, William H.  
Halley; and the Defendants, William M. Reeves, Jr., Edna S.  
Reeves, Betty Woodard a/k/a Betty L. Woodard a/k/a Betty Lou  
Woodard, Bill Woodard a/k/a Gerald Woodard, Midland Mortgage Co.,  
a Corporation, and Bertha A. West, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendants, William M. Reeves, Jr.,  
Edna S. Reeves, Betty Woodard a/k/a Betty L. Woodard a/k/a  
Betty Lou Woodard, and Bertha A. West, were served by publication  
as shown on the Proof of Publication filed herein; that Defendants,  
State of Oklahoma, ex. rel. Oklahoma Tax Commission, Buffalo  
Savings Bank, a New York Corporation, and Midland Mortgage Co.,  
a Corporation, were served with Summons and Complaint on  
February 8, 1977; and, that Defendant, Bill Woodard a/k/a Gerald

Woodard, was served with Summons and Complaint on March 4, 1977, as appears on the United States Marshal's Service herein.

It appearing that the Defendant, State of Oklahoma, ex. rel. Oklahoma Tax Commission, has duly filed its Answer and Cross-Petition on March 3, 1977; that Defendant, Buffalo Savings Bank, a New York Corporation, has duly filed its Disclaimer on March 9, 1977; and, that Defendants, William M. Reeves, Jr., Edna S. Reeves, Betty Woodard a/k/a Betty L. Woodard a/k/a Betty Lou Woodard, Bill Woodard a/k/a Gerald Woodard, Midland Mortgage Co., a Corporation, and Bertha A. West, have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Twenty (20), in Block Two (2), NORTHGATE THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, William M. Reeves, Jr. and Edna S. Reeves, did, on the 10th day of May, 1974, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$11,250.00 with 8 1/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, William M. Reeves, Jr. and Edna S. Reeves, 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 \$11,177.05 as unpaid principal with interest thereon at the rate of 8 1/4 percent

per annum from March 1, 1976, until paid, plus the cost of this action accrued and accruing.

The Court further finds that Defendant, State of Oklahoma, ex. rel. Oklahoma Tax Commission, is entitled to judgment against Defendant, Betty L. Woodard, in the amount of \$102.14 plus interest and costs accrued and accruing, 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, William M. Reeves, Jr. and Edna S. Reeves, in rem, for the sum of \$11,177.05 with interest thereon at the rate of 8 1/4 percent per annum from March 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.

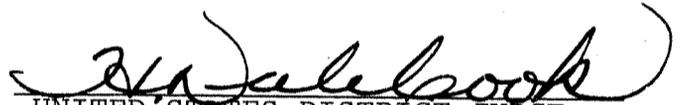
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the State of Oklahoma, ex. rel. Oklahoma Tax Commission have and recover judgment, in rem, against the Defendant, Betty L. Woodard, in the amount of \$102.14 plus interest and costs accrued and accruing as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Betty Woodard a/k/a Betty L. Woodard a/k/a Betty Lou Woodard; Bill Woodard a/k/a Gerald Woodard, Midland Mortgage Co., a Corporation, and Bertha A. West.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United

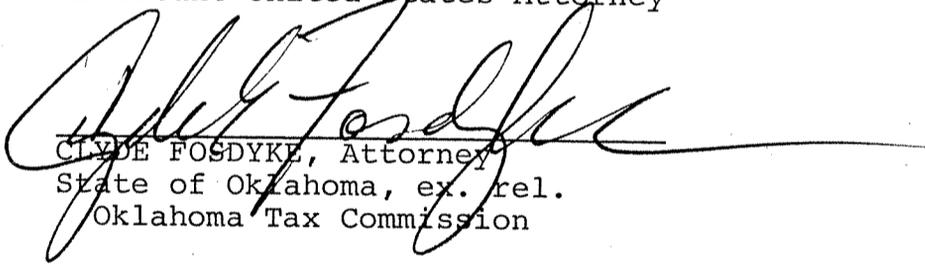
States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

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

  
UNITED STATES DISTRICT JUDGE

APPROVED

  
ROBERT P. SANTEE  
Assistant United States Attorney

  
CLYDE FOSDYKE, Attorney  
State of Oklahoma, ex. rel.  
Oklahoma Tax Commission

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

CLAUDE R. GRIFFIN, )  
)  
Plaintiff, )  
)  
vs. )  
)  
MISSOURI-KANSAS-TEXAS )  
RAILROAD COMPANY, a )  
Delaware Corporation, )  
)  
Defendant, )

No. 76-C-563

**FILED**

JUL 18 1977

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

JOURNAL ENTRY OF JUDGMENT

This matter having come on for trial on the 29th day of June, 1977, the Plaintiff appearing in person by his attorney, Jack I. Gaither, and the Defendant appearing by its attorney, A. Camp Bonds, Jr.

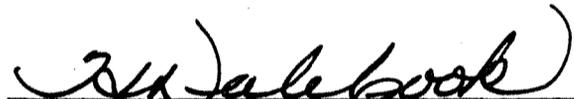
The parties having previously waived jury trial, the court as trier of the facts and law heard the opening statements of counsel, the testimony of witnesses, examined the various exhibits, as introduced into evidence and read the deposition of the Plaintiff's doctor, Doctor G. E. Moots and having heard the closing argument, counsel, the court makes the following findings of fact to-wit:

The Court finds that based upon all of the evidence, the demeanor of the witnesses and the testimony concerning their ability and opportunity to observe the facts about which they testified, the defendant, Missouri-Kansas-Texas Railroad Company and its employees were without fault and without negligence in causing the accident which is the subject matter of this suit; at the time of the accident the train was traveling at a speed of approximately 40 miles per hour which the court finds was reasonable improper; that the train as it approached the crossing in question was clearly visible for a sufficient length of time that the plaintiff in the exercise of ordinary care could and should have seen the approaching train, but either failed to look or failed to observe that which was clearly visible; that the engineer of the

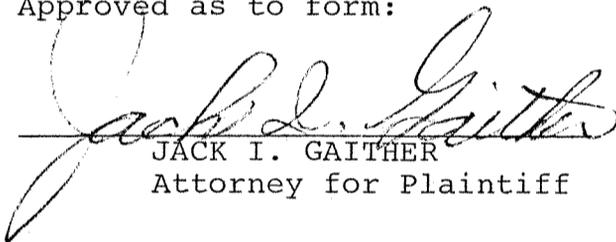
train did in fact sound the whistle in accordance with the state law and within a sufficient length of time that the plaintiff could have heard the whistle and should have heard the whistle and stopped his vehicle before going upon the crossing.

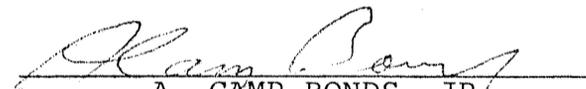
Based upon all of the evidence presented in said cause and based upon the above findings and facts, the court concludes that the accident and the injuries sustained by the plaintiff was solely caused directly and proximately by the negligence on the part of the defendant railroad, the plaintiff is not entitled to recover.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the plaintiff recover nothing by his action herein and that the defendant be granted judgment against the plaintiff and for its cost incurred.

  
DISTRICT JUDGE

Approved as to form:

  
JACK I. GAITHER  
Attorney for Plaintiff

  
A. CAMP BONDS, JR.  
Attorney for Defendant



FILED

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

JUL 18 1977

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

LOWERY MACHINE SHOP, )  
 An Oklahoma Corporation, )  
 )  
 Plaintiff, )  
 -vs- )  
 )  
 NATIONAL AMERICAN INSURANCE COMPANY; )  
 NORTH STAR MUTUAL INSURANCE COMPANY; )  
 and STATE AUTOMOBILE AND CASUALTY )  
 UNDERWRITERS, )  
 )  
 Defendants.)

No. 77-C-28-C

DISMISSAL WITHOUT PREJUDICE

Comes now the plaintiff and with permission of the Court,  
and by agreement with the defendants, hereby dismisses the  
above styled and numbered cause without prejudice to future  
action.



TROYE KENNON  
Attorney for Plaintiff  
301 Center Building  
Tulsa, Oklahoma 74127  
(918) 585-2451

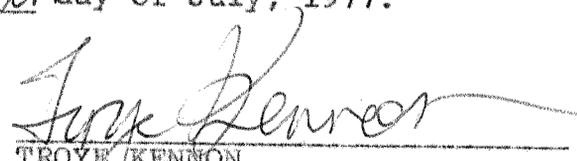
IT IS SO ORDERED.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the  
foregoing Dismissal Without Prejudice was mailed to the  
attorney for the defendants, Ray H. Wilburn, 603 Beacon  
Building, Tulsa, Oklahoma 74103, with sufficient postage  
thereon fully prepaid on this 15th day of July, 1977.



TROYE KENNON

FILED

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

JUL 18 1977

UNITED STATES FIDELITY  
AND GUARANTY COMPANY,  
a corporation,

Plaintiff,

-vs-

HAROLD D. BUZZARD,

Defendant.

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

NO. 77-C-29-B

DEFAULT JUDGMENT

In this action the plaintiff having moved for an order directing the Clerk of this court to enter default of the defendant, Harold D. Buzzard, and grant to the plaintiff a total judgment in the amount of Two Hundred Eight Thousand Forty Eight and 97/100 Dollars (\$208,048.97), the same being the principal amount of the note sued upon, together with the accrued interest; and

The Court having ordered that the Clerk enter the default of the defendant, Harold D. Buzzard, and enter default judgment in favor of the plaintiff in said amount;

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff, United States Fidelity and Guaranty Company, a corporation, have and recover from the defendant, Harold D. Buzzard, the sum of Two Hundred Eight Thousand Forty Eight and 97/100 Dollars (\$208,048.97), and that said sum shall carry, until paid, interest as provided by law at the rate of ten percent (10%) per annum, for all of which plaintiff may have execution.

Judgment rendered this 18<sup>th</sup> day of July, 1977.

Jack C. Silver, Clerk

CLERK

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

FILED

JUL 18 1977

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 -v- )  
 )  
 )  
 JEROME L. HUGHES, ET AL., )  
 )  
 ) Defendants. )

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

Civil Action No.

76-C-551 C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18<sup>th</sup> day of July, 1977, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the defendant Oklahoma Employment Security Commission appearing by its attorney, Milton R. Elliott; and the defendants Dr. C.A. Benton, Jerome L. Hughes, and Dorothy L. Hughes appearing not.

The Court, being fully advised and having examined the file herein, finds that Oklahoma Employment Security Commission was served with Summons and Complaint on November 3, 1976; that Dr. C.A. Benton was served with Summons and Complaint on November 2, 1976; and that Jerome L. Hughes and Dorothy L. Hughes were served with Summons and Complaint on November 2, 1976.

It appears that the Oklahoma Employment Security Commission has duly filed its Answer and Cross-Petition on November 17, 1976, and that Dr. C.A. Benton, Jerome L. Hughes, and Dorothy L. Hughes have failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot 1, in Block 2, in Green Brier Subdivision, located in the East Half of the Northeast Quarter of the Northeast Quarter; of Section 24, Township 24 North, Range 19 East, according to the recorded plat thereof.

THAT the defendants Jerome L. Hughes and Dorothy L. Hughes did, on the 6th day of May, 1971, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the amount of \$14,500.00, with 7-1/4 percent interest per annum, and further providing for the payment of annual installments of principal and interest.

The Court further finds that the defendants Jerome L. Hughes and Dorothy L. Hughes made default under the terms of the aforesaid mortgage note by reason of their failure to make annual installments due thereon, which default has continued, and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the amount of \$17,450.45 as of May 15, 1977, plus interest from and after said date at the rate of 7-1/4 percent per annum, until paid, plus the cost of this action, accrued and accruing.

The Court further finds that the Oklahoma Employment Security Commission is entitled to judgment against Dorothy L. Hughes in the amount of \$371.87, 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 Jerome L. Hughes and Dorothy L. Hughes, in personam, for the sum of \$17,450.45, with interest thereon at the rate of 7-1/4 percent per annum from May 15, 1977, 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 Oklahoma Employment Security Commission have and recover judgment against the defendant Dorothy L. Hughes in the amount of \$371.87, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendant Dr. C.A. Benton.

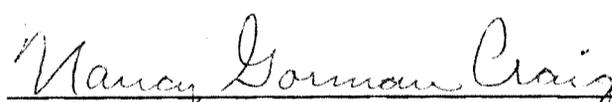
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property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

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

  
United States District Judge

APPROVED:

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

  
Nancy Gorman Craig, Attorney for  
Oklahoma Employment Security  
Commission

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

**FILED**

JUL 15 1977

*jm*

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

PAUL E. BAKER, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 VAN ALSTYNE ASSOCIATES, INC., )  
 DUDLEY D. MORGAN and VAN )  
 ALSTYNE, NOEL & CO., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

CIVIL ACTION NO. 75-C-363-B ✓

<sup>OF</sup>  
STIPULATION ~~FOR~~ DISMISSAL

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure it is hereby stipulated that the above-entitled action be discontinued and dismissed without cost to either party.

Dated this 15<sup>th</sup> day of July, 1977.

KOTHE, NICHOLS & WOLFE, INC.

*Ted M. Riseling*

Ted M. Riseling  
124 East Fourth Street  
Tulsa, Oklahoma 74103  
ATTORNEYS FOR PLAINTIFF

*James C. Lang*

James C. Lang  
Thurston National Building  
Tulsa, Oklahoma 74103  
ATTORNEY FOR DEFENDANT, DUDLEY  
D. MORGAN

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )

vs. )

CIVIL ACTION NO. 76-C-511-C

NAMON L. STEPHENSON, a/k/a )  
NAMON STEPHENSON, DELMA L. )  
STEPHENSON, OTASCO, a )  
Division of McCrory )  
Corporation, POSTAL FINANCE )  
COMPANY, INC., and CONSUMERS )  
SERVICE STATIONS, INC., )  
 )  
 Defendants. )

FILED

JUL 15 1977

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

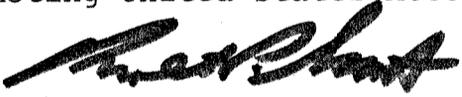
STIPULATION OF DISMISSAL

COME NOW the United States of America by and through Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and Robert W. Booth, Attorney for Namon L. Stephenson, a/k/a Namon Stephenson, and Delma L. Stephenson, and hereby stipulate that this action be dismissed on the ground and for the reason that the mortgage loan being sued upon herein has been reinstated to the satisfaction of the Veterans' Administration.

Dated this 15<sup>th</sup> day of July, 1977.

UNITED STATES OF AMERICA

HUBERT A. MARLOW  
Acting United States Attorney

  
ROBERT P. SANTEE  
Assistant United States Attorney

  
ROBERT W. BOOTH, Attorney for  
Namon L. Stephenson and Delma  
L. Stephenson, Defendants.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

THOMAS A. MARTIN, )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 F. L. SWANSON and )  
 EDITH L. SWANSON, )  
 )  
 Defendants )

No. 77-C-219-C

**E I L E D**  
JUL 13 1977  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

NOTICE OF DISMISSAL OF ACTION

TO: John Gladd, Esquire  
Attorney for Defendants  
Beacon Building  
Tulsa, Oklahoma

Please take notice that the above entitled action is hereby dismissed, with prejudice as to refiling. This notice is given pursuant to Fed. R. Civ. P. 41(a) (1).

HOUSTON AND KLEIN, INC.

By Vaden F. Bales  
Vaden F. Bales  
404 South Boston  
Tulsa, Oklahoma 74103  
Attorneys for Plaintiff

Thomas A. Martin  
THOMAS A. MARTIN, Plaintiff

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

UNITED STATES OF AMERICA and  
FLOYD C. HOUSER, Revenue Officer,  
Internal Revenue Service,

Petitioners, )

-v-

NORMAN L. SPANGLER,

Respondent. )

FILED

JUL 11 1977

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

No. 77-C-206 B

O R D E R

It appearing to the Court, from the Motion filed by  
Petitioners, and from the statements and representations made  
by Respondent at the hearing held July 11, 1977 at 10:00 a.m.,  
before the Court, that Respondent has now, or will within one  
month, comply with the Internal Revenue summons served upon him  
on February 23, 1977, that further proceedings herein are un-  
necessary, and that Norman L. Spangler should be discharged and  
this action dismissed, it is therefore

ORDERED, ADJUDGED AND DECREED that the Respondent,  
Norman L. Spangler, be released and discharged, and that this  
action is hereby dismissed, subject to reopening if Respondent  
fails to comply with his promise to provide verification, and  
documentation where required, to the Internal Revenue Service,  
within one month, of Respondent's 1974 and 1975 income tax status,  
and of his financial (assets) statement, as called for by the  
summons issued in this case.

DATED this 11<sup>th</sup> day of July, 1977.

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

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

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

CIVIL ACTION NO. 77-C-20-C

EARL E. SNELL, JOYCE SNELL, )  
a/k/a JOYCE ANN SNELL, a/k/a )  
JOYCE ANN JORDAN, SOONER )  
FEDERAL SAVINGS AND LOAN )  
ASSOCIATION, COUNTY TREASURER, )  
Tulsa County, and BOARD OF )  
COUNTY COMMISSIONERS, Tulsa )  
County, )

Defendants. )

**FILED**  
JUL 11 1977  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 11<sup>th</sup> day  
of July, 1977, the Plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney; the Defendant, Sooner  
Federal Savings and Loan Association, appearing by its attorney,  
Edward L. Jacoby; the Defendants, County Treasurer, Tulsa County,  
and Board of County Commissioners, Tulsa County, appearing by  
Kenneth L. Brune, Assistant District Attorney; and the Defendants,  
Earl E. Snell and Joyce Snell, a/k/a Joyce Ann Snell, a/k/a Joyce  
Ann Jordan, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendants, Earl E. Snell and Joyce  
Snell, a/k/a Joyce Ann Snell, a/k/a Joyce Ann Jordan, were served  
by publication, as appears from the Proof of Publication filed  
herein; that Defendant, Sooner Federal Savings and Loan Association,  
was served with Summons and Complaint on January 18, 1977; and  
that Defendants, County Treasurer, Tulsa County, and Board of  
County Commissioners, Tulsa County, were served with Summons and  
Complaint on January 17, 1977, all as appears from the U.S. Marshals  
Service herein.

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

filed their Answers herein on January 28, 1977, that Defendant, Sooner Federal Savings and Loan Association, has duly filed its Answer and Cross-Complaint herein on January 27, 1977, and that Defendants, Earl E. Snell and Joyce Snell, a/k/a Joyce Ann Snell, a/k/a Joyce Ann Jordan, 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 Thirty-one (31), Block Seven (7), FAIRHILL SECOND ADDITION, a subdivision to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Earl E. Snell and Joyce Snell, did, on the 26th day of March, 1973, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$13,000.00 with 7 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Earl E. Snell and Joyce Snell, 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 \$12,686.18 as unpaid principal with interest thereon at the rate of 7 1/2 percent per annum from March 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 Defendants, Earl E. Snell and Joyce Snell, the sum of \$ 22 <sup>88</sup>/<sub>100</sub> plus interest according to law for personal property taxes for the year(s) 1975-76 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, Sooner Federal Savings and Loan Association, is entitled to judgment against Defendants, Earl E. Snell and Joyce Snell, in the amount of \$4,796.52 with interest thereon at 15 percent per annum from July 20, 1976, until paid, plus \$579.00 attorney's fees, plus accrued court costs, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Earl E. Snell and Joyce Snell, in rem, for the sum of \$12,686.18 with interest thereon at the rate of 7 1/2 percent per annum from March 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 Defendants, Earl E. Snell and Joyce Snell, for the sum of \$ 12 <sup>88</sup>/<sub>100</sub> 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, Sooner Federal Savings and Loan Association, have and recover judgment in rem against the Defendants, Earl E. Snell and Joyce Snell, in the amount of \$4,796.52 with interest thereon at 15 percent per annum from July 20, 1976, until paid, plus \$579.00 attorney's fees, plus accrued court costs, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

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

apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

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

*J. D. Dale Cook*  
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

*Edward L. Jacoby*

EDWARD L. JACOBY  
Attorney for Defendant,  
Sooner Federal Savings and Loan Association

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

FILED

JUL 7 1977 *jm*

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

L. B. GRACE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SECRETARY OF HEALTH, )  
 EDUCATION AND WELFARE, )  
 )  
 Defendant. )

No. 76-C-418-C ✓

FILED

JUL 7 1977

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

J U D G M E N T

This is an action brought by the plaintiff, L. B. Grace, to review the final determination of the defendant, Secretary of the Department of Health, Education and Welfare (Secretary), denying disability benefits under Section 413(b) of the Federal Coal Mine Health and Safety Act of 1969, as amended. (Title 30 U.S.C. § 923(b)).

The Court in its review has been granted power 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 period. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive. In this action, the plaintiff alleges the record does not support the determination of the Secretary by substantial evidence.

This 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 December 3, 1974 in which it was found that the claimant was totally disabled due to pneumoconiosis, that his disability was a direct result of work as a coal miner and that the filing of a claim for workmen's compensation based on pneumoconiosis under the laws of the State of Oklahoma would be futile. The Administrative Law Judge

therefore held that the claimant was entitled to black lung benefits based on total disability under Title 30 U.S.C.

§ 921. Thereafter the case came before the Appeals Council of the Bureau of Hearings and Appeals on its own motion to review the decision of the Administrative Law Judge. On June 9, 1976, the Appeals Council issued its order reversing the decision of the Administrative Law Judge and holding that the claimant was not entitled to black lung benefits based on total disability under Title 30 U.S.C. § 921.

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, L. B. Grace, and filed of record in this cause has been carefully reviewed. The principal issue presented herein is whether the record, by substantial evidence, sustains the finding that the plaintiff is not under a disability as defined by the Federal Coal Mine Health and Safety Act at any time prior to the

date of that decision.

Title 30 U.S.C. § 921(b) provides that the Secretary shall by regulation prescribe standards for determining whether a miner is totally disabled due to pneumoconiosis. Title 20 C.F.R. § 410.412 provides in part as follows:

"(a) A miner shall be considered totally disabled due to pneumoconiosis if:

(1) His pneumoconiosis prevents him from engaging in gainful work in the immediate area of his residence requiring the skills and abilities comparable to those of any work in a mine or mines in which he previously engaged with some regularity and over a substantial period of time . . . and

(2) His impairment can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months. . . ."

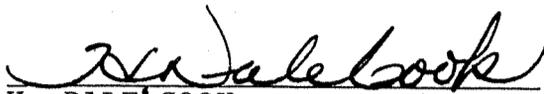
Title 20 C.F.R. § 410.418 provides for the establishment of an irrebuttable presumption of total disability where the existence of "complicated pneumoconiosis" is established by the chest x-ray, biopsy or autopsy as appropriate. Title 20 C.F.R. § 410.490(b) provides a rebuttable presumption of total disability where the existence of pneumoconiosis is established by x-ray or biopsy findings or, under certain conditions, where ventilatory tests show a level of lung function equivalent to or less than the applicable values specified in the Table in that section.

A review of the record discloses that the chest x-rays consist of films dated February 28, 1973 (Exhibit 12) and June 25, 1974 (Exhibit 20). The February 28, 1973 film was read by a certified reader as negative for pneumoconiosis on May 23, 1973 (Exhibit 15). Both films were reread as negative on May 31, 1975 (Exhibit AC-2). The ventilatory studies contemplated by 20 C.F.R. § 410.490(b) likewise did not meet the requirements for establishing the total disability of the plaintiff. (Exhibit 12).

The Court finds that the determination of the Appeals Council to the effect that the plaintiff is not totally disabled as a result of pneumoconiosis is supported by substantial evidence. 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 7<sup>th</sup> day of July, 1977.

  
H. DALE COOK  
United States District Judge

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

LUCILLE ROBEADEAUX, et al., )  
 )  
 Plaintiffs, )  
 )  
-vs- )  
 )  
 OKLAHOMA STATE DEPARTMENT OF )  
 CORRECTIONS, et al., )  
 )  
 Defendants. )

No. 76-C-358-C

FILED

JUL 7-1977

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

ORDER

This matter came on for hearing on June 21, 1977, and the court having heretofore considered the Motions presented by the defendants, the responsive brief filed by the plaintiffs as well as argument by counsel for all parties does hereby find and order that:

Defendant David Boren is dismissed as a party defendant because there has not been shown to be a sufficient legal relationship existing between the Governor of the State of Oklahoma and the plaintiffs.

Attorney General Larry Derryberry is dismissed as a party defendant because there has not been shown to be a sufficient legal relationship existing between the Attorney General of the State of Oklahoma and the plaintiffs.

It is so ordered this 7<sup>th</sup> day of July, 1977.

  
DISTRICT JUDGE

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

JAMES S. KEY, M.D.,  
Plaintiff,

-v-

FINANCIAL ANALYSTS, INC.  
and FRANK E. GOINES,  
Defendants.

No. 77-C-71-C

FILED

JUL 7 1977

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

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on for hearing upon the application of the plaintiff for an order dismissing the above entitled cause in consideration of an Agreement between the parties.

It is ordered that the above entitled cause of action including the Complaint of the plaintiff is hereby dismissed with prejudice to refiling the same.

DATED this 7<sup>th</sup> day of ~~June~~ <sup>JULY</sup>, 1977.



H. Dale Cook  
United States District Judge

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

AMERICAN ELECTRONIC  
LABORATORIES, INC.,

Plaintiff

vs.

CLAREMORE CABLE TELEVISION  
and  
GALE WELCH,

Defendants

No. 76-C-560-B

FILED

JUL 7-1977

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

ORDER

Upon the application of Plaintiff, it is hereby  
ordered that the above-entitled cause, *of action & complaint are* ~~is~~ dismissed with  
prejudice.

*Allen E. Barrow*

JUDGE ALLEN E. BARROW

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

FILED

JUL 7 - 1977 K

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

WILLIAM BOYD JONES, )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 THOMAS L. BONETA, )  
 )  
 Defendant )

No. 76-C-601-B ✓✓

APPLICATION FOR ORDER OF DISMISSAL

COME now the parties hereto and would show the Court that their differences have been compromised and concluded and they therefore pray for an Order of Dismissal with Prejudice of this cause.

*William Boyd Jones*  
WILLIAM BOYD JONES, Plaintiff

*James O. [unclear]*  
Attorney for Plaintiff

*Joseph M. Best*  
Attorney for Defendant

ORDER OF DISMISSAL WITH PREJUDICE

And now on this 11<sup>th</sup> day of July, 1977, upon the application of the parties hereto for an order of dismissal with prejudice, the court finds that all controversies have been compromised and concluded and therefore orders this ~~complaint~~ *complaint of Complaint be* dismissed with prejudice.

*Alan E. Bonawit*  
UNITED STATES DISTRICT JUDGE

FILED

JUL 11 1977 K

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

FILED

JUL 7-1977

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

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

J. C. JOHNSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 INTERNATIONAL BROTHERHOOD OF )  
 TEAMSTERS, CHAUFFEURS, WAREHOUSE- )  
 MEN AND HELPERS OF AMERICA LOCAL )  
 823, WILLIAM W. KITTS, an individual )  
 and T.I.M.E. - DC, Inc., )  
 )  
 Defendants. )

No. 76-C-376-B

ORDER OF DISMISSAL

This matter came on for consideration on this 7th day of July, 1977, upon the joint Stipulation of Dismissal filed herein. The Court being duly advised in the premises, finds that said joint Stipulation of Dismissal is in the best interests of justice and should be approved and the above styled and numbered cause of action dismissed with prejudice to a refiling.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the joint Stipulation of Dismissal by the parties be and the same is hereby approved and the above styled and numbered cause of action and Complaint is dismissed with prejudice to a refiling.

Allen E. Barrow  
Allen E. Barrow, Chief Judge  
United States District Court for  
the Northern District of Oklahoma

APPROVED:

James A. Gullett for James E. Frasier  
Attorney for Plaintiff

Barbara F. Claffen  
Attorney for International  
Brotherhood of Teamsters,  
Chauffeurs, Warehousemen  
and Helpers of America  
Local 823 and William W.  
Kitts

James E. Frasier  
Attorney for T.I.M.E.-DC, Inc.

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

**FILED**

CITIES SERVICE COMPANY  
Cities Service Building  
110 West Seventh Street  
Tulsa, Oklahoma 74119,

Plaintiff,

v.

FEDERAL ENERGY ADMINISTRATION  
Benjamin Franklin Post Office Building  
Washington, D. C. 20461,

JOHN O'LEARY, In His Official Capacity  
As Administrator,  
Federal Energy Administration  
Benjamin Franklin Post Office Building  
Washington, D. C. 20461,

D. M. FOWLER, In His Official Capacity  
As Regional Administrator, Region VI,  
Federal Energy Administration,  
2626 West Mockingbird Lane  
Dallas, Texas 75235,

and

GERALD E. KOESTER, In His Official  
Capacity  
As Tulsa Area Office Manager, Region VI,  
Division of Compliance, Federal Energy  
Administration,  
4528 South Sheridan Road  
South East Plaza Building  
Tulsa, Oklahoma 74145,

Defendants.

JUL 6 - 1977

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

Civil Action No.  
77-C-214-C ✓

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Plaintiff hereby dismisses without prejudice the above  
action.

This Notice of Dismissal Without Prejudice is made in  
accordance with the attached Stipulation entered into between  
Plaintiff and Defendants.

CITIES SERVICE COMPANY

By  
Jon Lee Prather  
Russell H. Smith  
Attorneys for Plaintiff

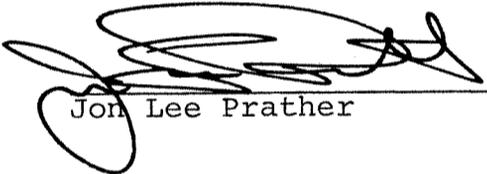
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Dismissal Without Prejudice was served on Defendants by mailing copies thereof, first class postage prepaid, this 6th day of July, 1977, to:

Linda L. Pence, Esq.  
U.S. Department of Justice  
Room 3734  
10th Street and Pennsylvania Ave., N.W.  
Washington, D. C. 20530

and

Hubert Marlow, Esq.  
U.S. Attorney  
U.S. Courthouse  
Tulsa, Oklahoma 74102

  
Jon Lee Prather

#### STIPULATION

It is hereby stipulated and agreed between Cities Service Company, plaintiff in Civil Action No. 77-C-214-C, U.S. District Court for the Northern District of Oklahoma, its agents, officers, employees and attorneys ("Cities Service"), and the Federal Energy Administration, John O'Leary, D.M. Fowler, and Gerald E. Koester, defendants in the referenced action, their agents, officers, employees and attorneys ("FEA") as follows:

1. FEA agrees to issue on or before July 1, 1977, an order rescinding the Remedial Order issued to Cities Service (Case No. 680R00136) and dated September 10, 1976. Such rescission shall be without prejudice to the reissuance by FEA of a revised remedial order in this matter.

2. Upon issuance by FEA of an order rescinding the Remedial Order referred to in paragraph (1), Cities Service agrees to file within five (5) days thereafter notice of a dismissal without prejudice in Civil Action No. 77-C-214-C, United States District Court for the Northern District of Oklahoma. A copy of this Stipulation shall be attached to the notice of dismissal.

3. Cities Service and FEA agree to commence promptly a joint review of the alleged overrecovery calculations contained in the rescinded Remedial Order. Such joint review represents a good faith effort by the parties hereto to reach a common basis of understanding as to the amount and manner of calculating the carryforward or apportionment of Cities Service's increased product costs for June and July 1973. Such review shall also include further consideration of the various mechanisms for correcting the alleged overcharges (e.g., refunds, rollbacks and/or bank adjustments).

The joint review is undertaken for the purpose of exploring possible bases for settlement of the dispute existing between the parties hereto in this matter.

4. The joint review shall be completed on or before August 1, 1977, unless extended by written agreement between the parties hereto. Either party may unilaterally terminate the review on or before August 1, 1977 by advising the other party, in writing, that it believes the joint review has been deemed to be completed.

5. Pursuant to such joint review, FEA, by June 30, 1977, will make available to Cities Service its pertinent working papers and other documents supporting FEA's calculations of alleged increased product cost overrecoveries by Cities Service.

6. Pursuant to such joint review, Cities Service will make available to FEA all pertinent working papers and other documents, including, but not limited to, (1) resubmitted FEA Forms 96 and P 110-M-1 (except for any such resubmissions pertaining to plaintiff's increased non-product costs, all of which shall be excluded from consideration), and (2) the Consent Order (and pertinent working papers) in FEA Case No. 680R00197.

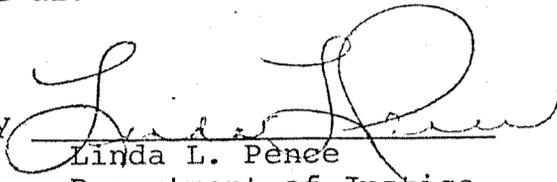
7. During the pendency of the joint review, and for a forty-five (45) day period following the completion of such joint review (pursuant to the terms set forth in paragraph four (4), above), Cities Service agrees that the interest bearing escrow account established pursuant to an Escrow Agreement dated October 21, 1976 between Cities Service and the First National Bank and Trust Company of Tulsa, will be maintained. It is further agreed that, if the FEA does not

issue a revised remedial order to Cities Service within the forty-five (45) day period following the completion of such joint review (pursuant to the terms set forth in paragraph four (4), above), the Escrow Agent is authorized on demand by Cities Service to return the proceeds of the Escrow Account to Cities Service.

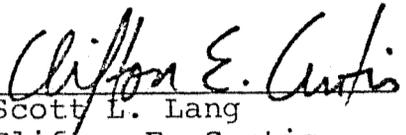
8. FEA agrees that it will not in any manner order or direct any disbursement from the Escrow Account referred to in paragraph (7) above during the duration of the period covered by this Stipulation and agrees further that, should Cities Service file a timely action for judicial review of any remedial order issued in this matter, FEA will not in any manner order or direct any disbursements from the Escrow Account pending determination by a court on a motion for preliminary injunction, if such a motion is filed by Cities Service.

9. Should the parties hereto be unable to find a mutually acceptable basis for settlement of this matter after completion of the joint review and a revised remedial order is issued by FEA in this matter, the parties hereto agree that such an order should and shall be deemed a final agency order: Provided, however, if a reviewing court in an action by Cities Service for judicial review determines sua sponte that Cities Service has failed to exhaust its administrative remedies, Cities Service shall be entitled to administrative appeal rights ordinarily available upon issuance by FEA of a remedial order. The time for the taking of such administrative appeal shall be deemed to commence on the date of any such judicial determination.

FEDERAL ENERGY ADMINISTRATION,  
et al.

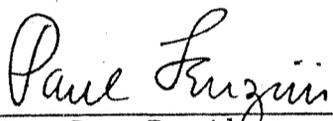
By   
Linda L. Pence  
Department of Justice

June 29, 1977  
Dated

By   
Scott L. Lang  
Clifton E. Curtis  
Federal Energy Administration

6-28-77  
Dated

CITIES SERVICE COMPANY

By   
Jon Lee Prather  
Paul Lenzini

June 29, 1977  
Dated

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

JUL 1 - 1977 K

RICHARD BISHOP, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DR. JAMES LEACH and )  
DR. V.L. ROBARDS, )  
 )  
Defendants. )

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

No. 76-C-85-B ✓✓

STIPULATION OF DISMISSAL WITH PREJUDICE

COME now the plaintiff and the defendant and stipulate that the case against the defendant V.L. Robards only may be dismissed with prejudice to the rights to the bringing of any future action.

BEST, SHARP, THOMAS & GLASS

Joseph F. Glass

BY: Joseph F. Glass  
200 Franklin Building  
Tulsa, Oklahoma 74103

DOUGLAS BISHOP

BY: Douglas Bishop  
Attorney for Plaintiff

FILED

JUL 7 1977 K

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

ORDER OF DISMISSAL

Now on this 17<sup>th</sup> day of July, 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~~ <sup>of action & complaint</sup> ~~be~~ <sup>is</sup> and the same ~~is~~ <sup>are</sup> hereby dismissed with prejudice to the right of the plaintiff to bring any future action arising from said cause of action.

Allen E. Benson  
Judge of the United States  
District Court for the  
Northern District of Oklahoma