

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

FILED

RALPH W. REED,

Plaintiff,

-vs-

TRAVELERS INSURANCE COMPANY,

Defendant.

AUG 31 1977

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

No. 77-C-318-B

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Ralph W. Reed, the plaintiff in the above styled and captioned proceeding, hereby dismisses the above action without prejudice to the filing of any future claim.

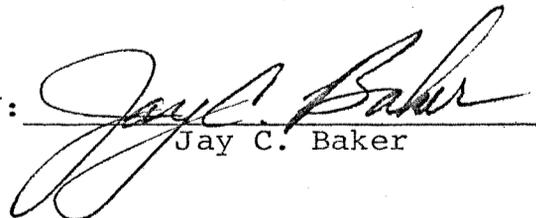
Plaintiff states that this is one of those actions enumerated by Rule 41(a) of the Federal Rules of Civil Procedure in which an action may be dismissed without leave of Court for the reason that the defendant in the above styled action has not at this time made service of an answer or of a motion for Summary Judgment.

Plaintiff further states that the action is being dismissed for the reason that the controversy has for the time being been compromised and that continued prosecution of this action is unnecessary.

Dated this 23rd day of August, 1977.

BAKER, BAKER AND MARTIN,
Attorneys for Plaintiff

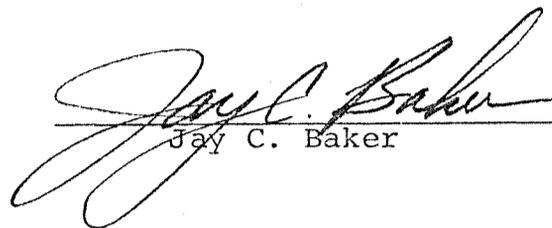
BY:


Jay C. Baker

CERTIFICATE OF SERVICE

I, Jay C. Baker, hereby certify that on the 23 day of August, 1977, I mailed a true and correct copy of the above and foregoing Notice of Dismissal Without Prejudice to Mr John M. Hutto, Assistant Manager, Travelers Insurance Company, 5310 East

31st Street, Tulsa, Oklahoma 74135, with sufficient postage pre-
paid thereon to entitle same to due passage in the United States
mail.


Jay C. Baker

IT IS, THEREFORE, ORDERED that the Order of the Referee in Bankruptcy be and the same is hereby sustained, affirmed and adopted by this Court and Judgment entered in favor of the appellee and against the appellants.

ENTERED this 29th day of August, 1977.

Allen F. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

AUG 29 1977 *JK*

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

RAY MARSHALL, Secretary of Labor,)	
United States Department of Labor,)	
)	
Plaintiff,)	Civil Action
)	
v.)	No. 75-C-389-CV
)	
ALUMINUM WINDOW PRODUCTS, INC.,)	
REPUBLIC GLASS COMPANY, INC., VEGA)	
ALUMINUM WINDOW PRODUCTS, INC., and)	
BOB POOL,)	
)	
Defendants.)	

ORDER

This matter having come before the court for consideration of plaintiff's motion to dismiss the petition for adjudication in civil contempt; it is therefore,

ORDERED that the petition for adjudication in civil contempt be dismissed without prejudice.

W. Dale Cook
UNITED STATES DISTRICT JUDGE

The defendant contends that the plaintiff has undertaken no discovery in the instant litigation and has failed in other ways to comply with court orders, and, thus, the case is ripe for dismissal for failure to prosecute.

Defendant further contends that this Court has the inherent power to sua sponte dismiss this case for failure to prosecute.

The case law is replete as to the discretionary power of the court to sua sponte dismiss a case. *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962); Moore' Federal Practice, Volume 5, ¶41.11[2]; *Stanley v. Continental Oil Company*, decided June 23, 1976 (10th Cir., No. 75-163).

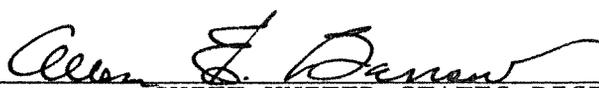
What constitutes "failure to prosecute", of course, depends on the facts and circumstances of the particular case, and the Court must consider all the pertinent circumstances in exercising its discretion. The operative condition of the Rule is lack of due diligence on the part of the plaintiff---not a showing by the defendant of prejudice.

This Court is aware of the various opinions holding that a dismissal for failure to prosecute is indeed a "harsh sanction" and that Courts should determine whether less drastic alternatives are available.

Considering all of the alternatives, the Court finds that defendant's Motion to Dismiss for Failure to prosecute should be sustained and the complaint and cause of action dismissed for failure to prosecute. Having so determined and the Court ruling being dispositive of this action, there is no need to consider the alternative motion by the defendant for default judgment and attorney fees.

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

ENTERED this 26th day of August, 1977.



CHIEF UNITED STATES DISTRICT JUDGE

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

LINDA SUE ASTON,)
)
 Plaintiff,)
)
 vs.) No. 76-C-216-B
)
 MISSOURI-KANSAS-TEXAS RAILROAD)
 COMPANY, a Delaware corporation,)
)
 Defendant.)

FILED

AUG 23 1977

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

MOTION TO DISMISS WITH PREJUDICE

COMES NOW the plaintiff, Linda Sue Aston, and moves the Court to dismiss the Complaint and cause of action with prejudice for the reason that the parties have negotiated a settlement.

FREDERIC N. SCHNEDIER III
REUBEN DAVIS

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

AND

Joseph F. Glass
of BEST, SHARP, THOMAS & GLASS
200 Franklin Building
Tulsa, Oklahoma 74103

ATTORNEYS FOR THE PLAINTIFF.

SO ORDERED this 23rd day of August, 1977.

Allen E. Barrow

JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARCUS JAMES STEWART, KATHY)
SUE STEWART, and KRISTIE)
STEWART, a minor, by and)
through MARCUS JAMES STEWART,)
her father and next-of-kin,)

Plaintiffs,)

-vs-)

SMITHWAY MOTOR EXPRESS, INC., an)
Iowa corporation, and BANKERS)
AND SHIPPERS INSURANCE COMPANY)
OF NEW YORK, their carrier, and)
ROGER K. SWEET, an individual,)

Defendants.)

NO. 77 C 69

FILED

AUG 19 1977

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

ORDER OF DISMISSAL

ON This 19th day of August, 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.

1st H. Dale Cook
JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

PHIL FRAZIER,

By [Signature]

Attorney for the Plaintiffs.

ALFRED B. KNIGHT,

[Signature]

Attorney for the Defendants.

C
O
P
Y

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

FOREMOST PETROLEUM)
CORPORATION, INC.,)
)
Plaintiff,)
)
vs.)
)
JAMAR OIL COMPANY and)
JIM SMITH,)
)
Defendants.)

Case No. 77-C-299-C

FILED

AUG 19 1977

ORDER OF DISMISSAL WITH PREJUDICE

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

NOW on this 19th day of August, 1977, this matter comes to be heard by me, the undersigned United States District Judge, upon the Joint Motion of Plaintiff and Defendants to Dismiss Complaint and Counterclaim, and the Court finds that said Joint Motion should be granted in all respects, and

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the above-styled action be and the same is hereby dismissed with prejudice.


UNITED STATES DISTRICT JUDGE

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

RICHARD EUGENE HARRIS,)
)
 Petitioner,)
)
 v.)
)
 RICHARD CRISP, WARDEN,)
 ET AL.,)
)
 Respondents.)

No. 77-C-228-C

FILED

AUG 19 1977

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

ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS

The Court has for consideration the Petition of Richard Eugene Harris who is presently confined at the Oklahoma State Penitentiary, McAlester, Oklahoma, for a Writ of Habeas Corpus and has reviewed the file and the Findings and Recommendations filed herein, and being fully advised in the premises, finds that the Petition for Writ of Habeas Corpus should be dismissed.

Petitioner alleges that he was convicted of Second Degree Murder by a jury in the District Court of Tulsa County, Oklahoma, on April 27, 1977, in Case No. CRF-76-2364; that before his conviction he had been released on a \$25,000 bond; that after conviction pending sentencing he was released on a \$65,000 bond; that on May 6, 1977 he was sentenced to a term of ten (10) years to life; that at the time he was sentenced he made oral application for bond to be set pending his appeal, which application was denied; that he immediately filed a Petition for a Writ of Habeas Corpus in the Oklahoma Court of Criminal Appeals in Case No. H-77-323 on May 6, 1977 seeking an order allowing bail pending appeal of his conviction; and that on May 12, 1977 the Oklahoma Court of Criminal Appeals entered an Order denying his Petition for Writ of Habeas Corpus for bail.

Available state remedies have been exhausted by petitioner and he now demands his release from custody, claiming that he is being deprived of his liberty in violation of his rights under the Constitution of the United States of America. In particular, he claims "that a refusal of bail pending his appeal is in violation of his constitutional

rights as provided by the Fourteenth and Eighth Amendments of the United States Constitution as to cruel and unusual punishment."

Petitioner states that while on bond prior to his conviction and sentencing by the Tulsa County District Court he always appeared when ordered to do so. He further states that he has never before "been in any trouble or incarcerated by any law enforcement" and that he would be a good risk to remain on bond pending his appeal. Petitioner states that his appeal is not frivolous and contends that "no citizen should be penally incarcerated until a final conviction has been imposed in full accordance with the supreme law of the land." In support of his argument the petitioner cites Hensley v. Municipal Court, 411 U.S. 345; 93 S.Ct. 1571; 36 L.Ed. 294 (1973).

The issue before the Supreme Court in Hensley was "whether a person released on his own recognizance is 'in custody' within the meaning of the federal habeas corpus statute, 28 U.S.C. §§2241(c)(3), 2254(a)." 411 U.S. at 345. The Court stated:

"The question presented for our decision is a narrow one: namely, whether the conditions imposed on petitioner as the price of his release constitute 'custody' as that term is used in the habeas corpus statute." 411 U.S. at 348.

As indicated, the Court in Hensley considered only the single jurisdictional question relating to "custody" under federal habeas corpus statutes. The Court did not deal with the question raised by petitioner in this proceeding, viz., whether denial of bail pending appeal is cognizable under federal habeas corpus statutes.

In the case of Hamilton v. State of New Mexico, 479 F.2d 343, (10th Cir., 1973) the Court said:

"The real issue is whether appellant has a claim which is cognizable by federal habeas corpus. A state prisoner has no absolute federal constitutional right to bail pending appeal." (citations omitted) 479 F.2d at 344.

The Court further stated:

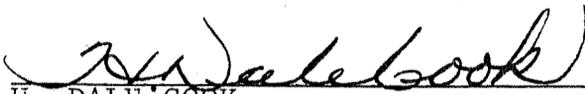
"Federal courts do not sit as appellate courts to review the use or abuse of discretion of state courts in granting or withholding bail

pending final appeal. * * * And, generally, denial of bail is not an available basis for seeking post-conviction relief." (Citations omitted) 479 F.2d at 344.

See also McInnes v. Anderson, 366 F.Supp. 983. (E.D. Okl.1973)

For the reasons stated above, the Petition for Writ of Habeas Corpus is dismissed.

It is So Ordered this 19th day of August, 1977.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

MICHAEL WAYNE EDENS,
Petitioner,

v.

ARTHUR M. BOOSE, ET AL.,
Respondents.

No. 77-C-254-6

FILED

AUG 19 1977

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

ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS

The Court has for consideration the Petition of Michael Wayne Edens for a Writ of Habeas Corpus and has reviewed the file and the Findings and Recommendations filed herein, and being fully advised in the premises, finds that the Petition for Writ of Habeas Corpus should be dismissed.

Petitioner was charged on May 5, 1976 in the District Court, Washington County, Case No. CRF-76-249, with having on January 1, 1975, committed the offense of Unlawful Delivery of Marihuana, in violation of 63 O.S.Supp.1975, § 2-401. On June 15, 1976, a preliminary hearing was held and the defendant was bound over. On June 22, 1976, the defendant filed a motion to set aside the information on the ground that he was denied his constitutional right to a speedy trial due to the delay of 17 months from the date of the offense to the filing of the information on May 5, 1976. The District Court sustained the defendant's motion and the state appealed. On April 15, 1977, in Case No. 0-76-969 the Oklahoma Court of Criminal Appeals reversed the Order of the District Court, citing United States v. Marion, 404 U.S. 307, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971), and instructed the District Court to reinstate the cause upon the docket, and to proceed as if the order setting aside the information had never been entered. On June 17, 1977, the Petitioner was arraigned on the information and trial was set, over the objections of the Petitioner, for June 22, 1977. The Court is informed that upon Petitioner's Motion for Continuance, the case has now been set for trial in September, 1977.

Petitioner has exhausted available state remedies and now demands his release from custody, claiming that he is being deprived of his liberty in violation of his rights under the Constitution of the United States of America. In particular, petitioner claims that he was denied a speedy trial in violation of the Sixth Amendment.

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

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

Since there is no factual dispute surrounding Petitioner's Sixth Amendment claims it is not necessary for the Court to conduct an evidentiary hearing.

Petitioner claims to have been prejudiced by the delay in that the state used the delay in filing the charges in Case No. CRF-76-249 to gain some tactical advantage in another case against the petitioner (Case No. CRF-75-416) which was scheduled for trial prior to the time of the filing of the charges in 76-249; that the petitioner was denied the opportunity to obtain concurrent sentences in Cases CRF-76-249 and CRF-75-416 pursuant to the provisions of 21 O.S.1971, § 61; and that the delay has interfered with petitioners ability to defend himself because witnesses may no longer be available and the memories of witnesses if available may be impaired.

In Marion, the Supreme Court declined "to extend the reach of the amendment [Sixth] to the period prior to arrest." 404 U.S. at 321. The Court stated:

"Until this event occurs, [arrest] a citizen suffers no restraints on his liberty and is not the subject of public accusation: his situation does not compare with that of a defendant who has been arrested and held to answer. Passage of time, whether before or after arrest, may impair memories, cause evidence to be lost, deprive the defendant of witnesses, and otherwise interfere with his ability to defend himself. But this possibility of prejudice at trial is not itself sufficient reason to wrench the Sixth Amendment from its proper context. Possible prejudice is inherent in any delay, however short; it may also weaken the Government's case. ." 404 U.S. at 321-322.

The Court further stated:

"There is thus no need to press the Sixth Amendment into service to guard against the mere possibility that pre-accusation delays will prejudice the defense in a criminal case since statutes of limitation already perform that function." 404 U.S. at 323.

Further the Court stated:

"Nevertheless, * * * it is appropriate to note here that the statute of limitations does not fully define the appellees' rights with respect to the events occurring prior to indictment. Thus, the Government concedes that the Due Process Clause of the Fifth Amendment would require dismissal of the indictment if it were shown at trial that the pre-indictment delay in this case caused substantial prejudice to appellees' rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused." 404 U.S. at 324.

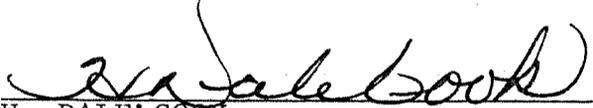
The Court finally concluded:

"Events of the trial may demonstrate actual prejudice, but at the present time appellees' due process claims are speculative and premature." 404 U.S. at 326.

See also Acree v. United States, 418 F.2d 427 (10th Cir. 1969) and United States v. Reed, 413 F.2d 338 (10th Cir. 1969).

The facts in Petitioner's case fall clearly within the purview of Marion. Therefore for the reasons stated above, the Petition for Writ of Habeas Corpus is dismissed.

It is So Ordered this 19th day of August, 1977.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

FILED

AUG 19 1977 *JS*

GEORGE BROUKAL,)
)
 Plaintiff,)
)
 vs.)
)
 ABC PRODUCE CO., INC.,)
)
 Defendant.)

Civil Action No. 76-C-219-B ✓

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

O R D E R

This cause coming on to be heard on the motion of Plaintiff under Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, and the Court being advised in the premises and being of the opinion that the motion of the Plaintiff should be granted, it is hereby

ORDERED that the above-entitled cause of action and complaint be and the same is hereby dismissed with prejudice to all future action.

Allen E. Barrow

U. S. DISTRICT COURT JUDGE

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

STATE FARM MUTUAL AUTOMOBILE INSURANCE)
COMPANY, a corporation,)
)
Plaintiff,)
)
vs.)
)
ANN LYNETTE RUDD, et al,)
)
Defendant.)

No. 77-C-110-C

FILED

AUG 18 1977

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

ORDER

It appearing to the satisfaction of this Court that all matters and controversies have been compromised by and between the parties, as evidenced by the signatures of their attorneys on the stipulation filed herein on the 17th day of August, 1977; therefore,

IT IS ORDERED that the plaintiff's suit be, and the same is hereby, dismissed with prejudice; and

IT IS FURTHER ORDERED that the costs of this Court, in the sum of \$15.00 be taxed against the plaintiff, for which let execution issue, if necessary. No attorney's docket fee will be taxed, the same having been waived by counsel.

Dated 18th day of August, 1977.

W. Walbrook
Judge of the District Court

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

FILED

AUG 16 1977

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

UNITED STATES OF AMERICA; and)
DON TIBBETTS, Revenue Officer,)
Internal Revenue Service,)
)
Petitioners,)
vs.)
DECK SUMTER,)
)
Respondent.)

No. 77-C-328-C

ORDER DISCHARGING RESPONDENT
AND DISMISSAL

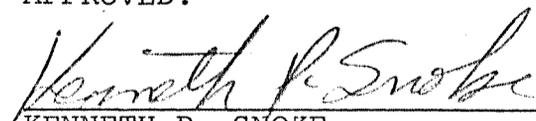
On this 16th day of August, 1977, Petitioners' Motion To Discharge Respondent And For Dismissal came for hearing and the Court finds that Respondent has now complied with the Internal Revenue Service Summons served upon him August 12, 1977, that further proceedings herein are unnecessary and that the Respondent, Deck Sumter, should be discharged and this action dismissed upon payment of \$51.56 costs by Respondent.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that the Respondent, Deck Sumter, be and he is hereby discharged from any further proceedings herein and this cause of action and Complaint are hereby dismissed upon payment of \$51.56 costs by said Respondent.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED:


KENNETH P. SNOKE
Assistant United States Attorney

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

BRUCE HENDRICKSON,)

Plaintiff,)

-vs-)

NO. 76-C-215-C)

JONES & LAUGHLIN STEEL)
CORPORATION, a Foreign)
Corporation,)

Defendant.)

FILED

AUG 16 1977

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

JOURNAL ENTRY OF JUDGMENT

Now on this, the 8th day of August, 1977, this cause comes on for jury trial pursuant to regular setting. Plaintiff appeared in person and by his attorneys, Leroy Mushrush and Whitten, McDaniel, Osmond, Goree & Davies, by Dale F. McDaniel, and the defendant, Jones & Laughlin Steel Corporation appeared by its attorneys, Don Hull of the Office of the General Counsel of defendant, and Green, Feldman, Hall & Woodard by Wm. S. Hall. All parties announced ready for trial, whereupon a jury was selected and sworn to try the case, and thereupon the Court recessed the case until the following day.

Now on this 9th day of August, 1977, the matter proceeded to trial and continued from day to day through August 12, 1977.

At the conclusion of plaintiff's evidence in chief, the defendant moved the Court for a directed verdict, which said motion was overruled by the Court. Whereupon, the defendant introduced its evidence and rested and after rebuttal evidence by all parties and after all parties announced they were resting their case, each of the parties moved for a directed verdict, which motions were by the Court overruled.

Whereupon, the case was argued by counsel and after instructions by the Court the jury retired and at 7:00 o'clock P.M. on August 12, 1977, returned its unanimous verdict into open court which, omitting the caption, is in words as follows:

"We, the jury, find for the defendant, Jones & Laughlin Steel Corporation, under the theory of manufacturer's products liability.

s/ Richard R. Perryman,
Foreman"

"We, the jury, find for the defendant, Jones & Laughlin Steel Corporation, under the theory of negligence.

s/ Richard R. Perryman,
Foreman"

Whereupon, the Court ordered said verdicts filed of record and pronounced judgment thereon.

BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court, that pursuant to the jury vereicts herein, Jones & Laughlin Steel Corporation have judgment against the plaintiff, Bruce Hendrickson, and that said plaintiff take nothing by his amended complaint.

Done and dated this 16th day of August, 1977.

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

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

VALIANT CONSTRUCTION COMPANY,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
EQUITABLE LIFE ASSURANCE)
SOCIETY OF THE UNITED STATES,)
a New York corporation,)
)
Defendant,)
)
vs.)
)
DOROTHY J. PELT,)
)
Third Party Defendant,)

FILED
AUG 16 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 77-C-60-C

JOURNAL ENTRY OF JUDGMENT

On this 2nd day of August, 1977 the above styled and numbered cause of action comes on for hearing to the regular setting. The Plaintiff ("Valiant") was represented by its attorney David H. Sanders, of Sanders, McElroy & Carpenter. The Defendant, Equitable Life Assurance Society of the United States ("Equitable") was represented by its attorney, John R. Woodard III of Green, Feldman, Hall & Woodard. The Third Party Defendant, Dorothy J. Pelt ("Pelt") was represented by her attorney James S. Steph.

The Court after full and complete consideration of the statements and representations of counsel, and the pleadings filed herein makes the following findings:

- 1) That this court has jurisdiction of this civil action.
- 2) That Equitable has in force a policy of insurance #73383522 with Marvin J. Pelt a named insured with \$150,000. life coverage and \$150,000. accidental death coverage, all as more specifically set out in the policy attached as Exhibit "A" to Equitable's Amended Answer and

Complaint in Interpleader.

3) That Marvin J. Pelt was killed by accidental means on or about January 17, 1977.

4) That Valiant and Pelt are claiming the \$300,000.00 in insurance proceeds as beneficiaries of the deceased Marvin J. Pelt.

5) That Equitable has heretofore deposited the \$300,000.00 life insurance proceeds at the registry of this court there to abide the judgment of this court.

6) That Valiant and Pelt have made claim upon Equitable for said proceeds asserting their respective claims to said proceeds.

7) ~~That Equitable, through its attorneys has attempted~~  ~~to resolve the dispute between Valliant and Pelt but to no avail.~~ Equitable further asserts it is not responsible for interest on the \$300,000.00 life insurance proceeds paid into this court.

8) That neither Valiant or Pelt make any claim against Equitable and the pending litigation other than the funds heretofore deposited into the registry of this court.

9) That no interest should be assessed against Equitable on said proceeds and funds.

10) That Equitable have and receive judgment against each of the parties hereto and is hereby discharged from any further liability by reason of its actions herein either to the Plaintiff Valiant Construction Company or the Third Party Defendant Dorothy J. Pelt and their respective heirs, successors and assigns.

11) That Equitable have and receive its court costs herein laid out and expended in the sum of \$25.36 and a reasonable attorney's fee in the sum of \$750.00, payable from the sums deposited herein in the registry of this court.

12) That a permanent injunction be entered against Valiant Construction Company and Dorothy J. Pelt restraining them from instituting or prosecuting any proceedings in any state or U.S. Court affecting the \$300,000.00 life insurance contract involved herein or in any way pertaining

to the Defendant Equitable, by reason thereof.

13) That the Defendant Equitable be dismissed as a party to this litigation and be exonerated from any liability herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1) That Equitable have and receive judgment as against each of the other parties hereto and is hereby discharged from any further liability by reason of its actions herein, either to the Plaintiff Valiant Construction Company or the Third Party Defendant Dorothy J. Pelt and their respective heirs, successors and assigns.

2) That no interest be assessed against Equitable on the life insurance proceeds and funds heretofore deposited in the registry of this court.

3) That Equitable have and receive its court costs herein laid out and expended in the sum of \$25.36 and a reasonable attorney's fee in the sum of \$750.00 payable from the sums deposited herein in the registry of this court.

4) That a permanent injunction enter against Valiant Construction Company and Dorothy J. Pelt restraining them from instituting or prosecuting any proceeding in any state or U.S. Court affecting the \$300,000. life insurance contract involved herein or in any way pertaining to the Defendant Equitable, by reason thereof.

5) That the Defendant Equitable be dismissed as a party to the instant case and exonerated from any liability herein.

6) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the clerk of this court, upon the renewal date of that certain Certificate of Deposit, purchased pursuant to order of this court dated April 8, 1977, cause to withdraw therefrom the total sum of \$775.36 and pay such sum to Green, Feldman, Hall & Woodard, as their reasonable attorney's fee and reimbursement for costs herein laid out and expended

on behalf of the Defendant Equitable Life Assurance Society of the
United States.

Dated this ^{16th} 2nd day of August, 1977.

H. Dale Cook
United States District Judge

Approved as to Form:

David H. Sanders
David H. Sanders,
Attorney for Valiant Construction Company

John R. Woodard III
John R. Woodard III,
Attorney for Equitable Life Assurance Society
of the United States

James S. Steph
James S. Steph,
Attorney for Dorothy J. Pelt

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

MERLIN JAMES OAKLEY,

Plaintiff,

vs.

SAFEWAY STORES,

Defendant.

77-C-253-B

FILED

AUG 16 1977

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

ORDER

On June 22, 1977, the Court entered an order, ordering the plaintiff to:

"IT IS, THEREFORE, ORDERED that plaintiff's Application to Proceed in Forma Pauperis be and the same is hereby denied.

"IT IS FURTHER ORDERED that plaintiff pay the filing costs in this litigation and any other costs necessary to prosecute this action within ten (10) days from this day, or this action will be dismissed.

"IT IS FURTHER ORDERED that plaintiff's application for the appointment of counsel be and the same is hereby denied without prejudice to being renewed at such time as it appears that plaintiff has presented a meritorious claim which he cannot adequately pursue pro se and has exhausted all avenues available to him in procuring counsel to represent him in this action, and plaintiff is granted ten days to comply, or this action will be denied."

Plaintiff has not submitted the costs nor has he made any showing of an attempt to obtain counsel or renewed his motion for the appointment of counsel.

IT IS, THEREFORE, ORDERED that this cause of action and complaint be and the same are hereby dismissed for failure to comply with the Order of this Court and failure to prosecute.

ENTERED this 16th day of August, 1977.



CHIEF UNITED STATES DISTRICT JUDGE

FILED

AUG 15 1977

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

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

L. A. HORTON d/b/a)	
HORTON'S ELECTRICAL CENTER,)	
)	
Plaintiff,)	
)	75-C-182-B
vs.)	
)	
STEVEN H. JANCO, et al.,)	
)	
Defendants.)	
)	
)	
TULSA FABRICATORS AND DISTRIBUTORS,)	
INC., an Oklahoma corporation,)	
)	
Plaintiff,)	
)	76-C-59-B
vs.)	
)	
STEVEN H. JANCO, et al.,)	
)	
Defendants.)	CONSOLIDATED

DISMISSAL WITH PREJUDICE

Comes now defendant and cross-claimant, Lights of Tulsa, Inc., and hereby dismisses its cross-claim in the captioned proceeding with prejudice, with the costs to be taxed to defendants Steven H. Janco and William R. Satterfield.

Daniel F. Allis

Daniel F. Allis

Thomas S. Vandivort

Thomas S. Vandivort

Attorneys of Record for Defendant
and Cross-Claimant Lights of Tulsa,
Inc.

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

FILED

AUG 15 1977

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

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

Plaintiff,

75-C-182-B

vs.

STEVEN H. JANCO, et al.,

Defendants.

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

Plaintiff,

76-C-59-B

vs.

STEVEN H. JANCO, et al.,

Defendants.

CONSOLIDATED

DISMISSAL WITH PREJUDICE

Comes now the plaintiff, L. A. Horton d/b/a Horton's Electrical Center, by and through its attorneys of record, and hereby dismisses the above-captioned proceeding with prejudice, with the costs to be taxed to defendants Steven H. Janco and William R. Satterfield.

ROLLINS & COMBS

By: 

Attorneys for Plaintiff, L. A. Horton
d/b/a Horton's Electrical Center

FILED

AUG 15 1977

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

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

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

75-C-182-B

vs.)

STEVEN H. JANCO, et al.,)
)
Defendants.)

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

76-C-59-B

vs.)

STEVEN H. JANCO, et al.,)
)
Defendants.)

CONSOLIDATED

DISMISSAL WITH PREJUDICE

Comes now the plaintiff, Tulsa Fabricators and Distributors, Inc., an Oklahoma corporation, by and through its attorneys of record, and hereby dismisses the above-captioned proceeding with prejudice, with the costs to be taxed to defendants Steven H. Janco and William R. Satterfield.

DOERNER, STUART, SAUNDERS, DANIEL
& LANGENKAMP

By Sam G. Bratton II
Sam G. Bratton II

Attorneys for Plaintiff, Tulsa
Fabricators and Distributors,
Inc.

IT IS, THEREFORE, ORDERED that the Motion for New Trial and the Amended Motion for New Trial should be overruled.

IT IS FURTHER ORDERED that the application for hearing filed by the plaintiff should be and the same is hereby denied.

ENTERED this 15th day of August, 1977.

Allen J. Barrows

CHIEF UNITED STATES DISTRICT JUDGE

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

FILED

CORI ANN KILBURN, an infant who sues)
by and through her Father and next)
friend, James Kilburn,)
)
Plaintiff,)
)
-vs-)
)
CLIFFORD AND LORETTA DIXON, husband)
and wife, and KIM DIXON,)
)
Defendants.)

AUG 12 1977

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

NO. 76-C-463-C

JOURNAL ENTRY OF JUDGMENT

NOW on this 12th day of August, 1977, this cause came on for hearing pursuant to regular assignment, and trial by jury was waived in open Court by the parties hereto. Plaintiffs appeared in person and by their attorney, John W. Hampton, and defendants appeared by their attorney, Ray H. Wilburn. Both parties thereupon presented their evidence; after oral argument and the Court being fully advised in the premises, the Court finds that said cause is brought by Cori Ann Kilburn, an infant who sues by and through her Father and next friend, James Kilburn, and the Court further finds that the parties hereto have entered into an agreed settlement in the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) of which James Kilburn is to receive TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) for his cause of action; and of which CORI ANN KILBURN is to receive SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$7,500.00) on her cause of action; and the Court finds same is reasonable and to the best interest of the minor.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that Cori Ann Kilburn, an infant who sued by and through her father and next friend, James Kilburn, have and recover from the defendants the sum of SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$7,500.00) on her cause of action; and that James Kilburn have and recover the sum of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) on his cause of action, and that he have his costs herein expended.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY the Court that James Kilburn, as the natural father and next friend of Cori Ann

Kilburn, a minor, is appointed legal guardian of said minor and as such is ordered and directed to protect said funds received on behalf of said minor in all respects as provided by law; that said guardian is ordered to deposit said funds, less any attorney fees incurred in the handling of this matter in the _____ said deposit may be made by a Certificate of Deposit or otherwise. That until said minor reaches majority, withdrawal of said money from such account shall solely be made pursuant to order of the District Court; for all of which let execution issue.

18/ H. Dale Cook
JUDGE

APPROVED AS TO FORM:

John W. Hampton
JOHN W. HAMPTON
Attorney for Plaintiff

Ray H. Wilburn
RAY H. WILBURN
Attorney for Defendants

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

IN THE MATTER OF:)
) No. 77-C-260
GARDENS OF CORTEZ,)
)
) (In Bankruptcy)
Debtor-Appellant.) No. 76-B-897

FILED

APR 11 1977

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

O R D E R

This is an appeal from an order of the Bankruptcy Judge dismissing appellant's petition for real property arrangement under Chapter XII of the Bankruptcy Act, Title 11 U.S.C.

§§ 801 et seq. The petition was dismissed for failure of the proposed arrangement to be accepted by the required number of creditors as provided in Title 11 U.S.C. § 868. Prior to the dismissal, appellee had filed a complaint seeking relief from the automatic stay of its state foreclosure action against appellant required by Title 11 U.S.C. § 828. As a counterclaim to this complaint, appellant had alleged tortious conduct on the part of appellee which had in part been responsible for appellant's financial difficulties. The counterclaim requested affirmative relief in the form of damages against appellee. A hearing was conducted on the issues raised by the complaint and counterclaim, but the proposed arrangement was rejected by appellee prior to a ruling by the Bankruptcy judge. At that point the Judge dismissed appellant's Chapter XII petition. Because the dismissal rendered appellee's complaint moot, the Judge determined that it was not necessary for him to rule on appellant's counterclaim. Appellant now challenges the actions of the Bankruptcy Judge and has raised the following issues on appeal:

1. Whether the Bankruptcy Judge erred in dismissing this Chapter XII proceeding pursuant to Rule 12-41 of the Rules of Bankruptcy Procedure and Section 481 of the Bankruptcy Act.

2. Whether the Bankruptcy Judge erred in ordering the

dismissal of this Chapter XII proceeding without rendering findings of fact and conclusions of law following trial of an adversary proceeding involving the secured party's request for relief from the stay against lien enforcement and the debtor's counterclaim for affirmative relief against the secured party.

3. Whether the Bankruptcy Judge erred in determining that the Court could not exercise jurisdiction to determine the issues raised by the debtor's counterclaim on the ground that the complaint of the secured party was rendered moot by the order of dismissal.

As to the first issue raised, appellant contends that the Bankruptcy Judge erred by not allowing it to propose an alternate arrangement prior to the dismissal of its petition. The claims of all unsecured creditors had been satisfied prior to the dismissal. Appellee was the holder of over 90% of appellant's secured indebtedness, the remainder being a debt of appellant's general partner, Stanley Melnick, held by Lakeshore Commercial Enterprises. Both secured creditors had rejected appellant's proposed arrangement. Title 11 U.S.C. § 868 provides that to be confirmed, an arrangement must be accepted in writing by the creditors of each class, holding two-thirds in amount of the debts of such class affected by the arrangement. It is therefore clear that an arrangement could not be confirmed without the acceptance of the appellee and that this is, in essence, a one-on-one situation between appellant and appellee.

Title 11 U.S.C. § 881 and Bankruptcy Rule 12-41 provide that a Chapter XII petition may be dismissed if an arrangement is not confirmed. Nonetheless, appellant argues that it should have been permitted to propose an alternate plan prior to any such dismissal. While the Court agrees with appellant that the purpose of Chapter XII "is to restore, not to dismantle, the economically distressed debtor," it has been held that where the sole affected creditor rejects

a Chapter XII plan, dismissal of the petition is proper. Owners of "SW 8" Real Estate v. McQuaid, 513 F.2d 558 (9th Cir. 1975); Taylor v. Wood, 458 F.2d 15 (9th Cir. 1972). See also Arey & Russell Lumber Co. v. American Nat. Bank & Trust Co., 201 F.2d 508 (4th Cir. 1953). Therefore, because appellee is in effect the sole affected creditor and has consistently maintained that no plan of arrangement would ever be satisfactory to it, the dismissal must be upheld, unless the so-called "cramdown" provisions of Title 11 U.S.C. § 861(11) are applicable in this case. That section provides for creditors affected by the arrangement who do not accept it by protecting them in the realization of the value of their debts against the property dealt with by the arrangement. Sumida v. Yumen, 409 F.2d 654 (9th Cir. 1969). However,

". . . it was obviously not the purpose of [that] Section . . . to dispense with an arrangement when no creditors can be found to consent to it; nor does it authorize the bankruptcy court to force secured creditors, unanimously opposed to the plan, to accept it simply because adequate protection is provided."

Meyer v. Rowen, 195 F.2d 263, 266 (10th Cir. 1952). See also Sumida v. Yumen, supra. Under the circumstances of this case, Title 11 U.S.C. § 861(11) is not applicable, and the dismissal of appellant's petition was proper.

Bankruptcy Rule 12-60 (a) (5) provides that Part VII of the Bankruptcy Rules govern the type of proceeding instituted by the filing of appellee's complaint in the bankruptcy court. The second issue raised on appeal relates to the failure of the Bankruptcy Judge to render findings of fact and conclusions of law under Bankruptcy Rule 752. The dismissal of appellant's petition was based solely upon the failure to achieve requisite approval of its plan of arrangement and not upon any facts developed at the adversary hearing in the bankruptcy court. In the case of In re Metropolitan Realty Corporation, 433 F.2d 676 (5th Cir. 1970),

the district court had dismissed appellant's Chapter X petition, without filing findings of fact and conclusions of law, on the ground that it was not filed "in good faith", and the court had filed a short order to that effect. In affirming the dismissal, the appellate court said:

"The purpose of Rule 52(a) [the counterpart to Bankruptcy Rule 752(a)] 'is to aid the appellate court by affording it a clear understanding of the ground or basis of the decision of the trial court.' . . . When, as here, there are no genuine material factual issues presented, specific findings of fact and separate conclusions of law are not required. . . . From the recommendation of the referee in bankruptcy and the court's written order, we have no trouble in determining the basis of the court's decision." (citations omitted)

Id. at 679-680. Likewise, in the instant case, it is clear that the Bankruptcy Judge dismissed appellant's petition because the proposed plan of arrangement was not approved by the required number of creditors and that the dismissal was not based upon any disputed factual issues. Therefore, the Bankruptcy Judge was not in error in not filing formal findings of fact and conclusions of law.

The complaint filed by appellee in the bankruptcy court was one to obtain a relief from the automatic stay of its state court foreclosure action against appellant and was filed pursuant to Bankruptcy Rule 12-43(d). Appellant's counterclaim for affirmative relief was filed pursuant to Bankruptcy Rule 713. In the third issue raised on appeal, appellant contends that the Bankruptcy Judge was in error in failing to rule on the issues raised in its counterclaim after dismissing appellant's Chapter XII petition.

In Matter of Essex Properties, Ltd., 12 C.B.C. 201 (N.D. Calif. 1977), the debtor had filed a counterclaim, raising issues similar to those raised by appellant's counterclaim in the instant case, in response to a creditor's complaint filed pursuant to Bankruptcy Rule 12-43(d). In affirming the bankruptcy court's dismissal of the counterclaim, the district court held:

"(1) that appellee's complaint to vacate stay did not constitute a claim within the meaning of Rules 12(b) or 13 of the Federal Rules of Civil Procedure; (2) that the appropriate forum for appellant's affirmative defenses and counterclaims was the trial court in the foreclosure action; and (3) that the defenses and counterclaims did not direct themselves to the termination of the stay but to the validity of appellee's security interest and other matters not before the bankruptcy court."

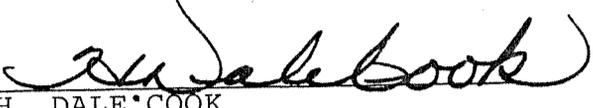
Id. at 205. The Essex Properties court relied in part for its decision on Matter of Groundhog Mountain Corporation, 4 C.B.C. 387 (S.D.N.Y. 1975). That court, in a Chapter XI case, affirmed a dismissal of counterclaims filed in response to a complaint seeking relief from a stay under Bankruptcy Rule 11-44, the counterpart to Rule 12-43 in Chapter XII. The court in that case recognized that the debtor would be put to the expense of defending a foreclosure suit and to the hazard of ultimately having the property foreclosed and held:

"A compulsory counterclaim cannot be asserted unless first there be a claim asserted; and a request for relief from an injunction to permit the assertion of a claim against a debtor or its property is not a claim, within the meaning of the Federal Rules, sufficient to support what is, at best, a permissive counterclaim going, not to the merits of the suit seeking relief from a stay, but rather to the merits of the very suit which the plaintiff hopes to bring if only the Court will act favorably and relieve it from the Rule 11-44 stay." Id. at 391.

The Court is in agreement with the interpretation given by those courts to the nature of a complaint filed pursuant to Bankruptcy Rule 12-43. The issues raised by appellant's counterclaim did not direct themselves to the termination of the stay and can be more properly considered by the state court in appellee's foreclosure action. Therefore, the Bankruptcy Judge was not in error in refusing to rule on appellant's counterclaim prior to the dismissal of the petition.

For the foregoing reasons, the actions of the Bankruptcy Judge are hereby affirmed.

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


H. DALE COOK
United States District Judge

FILED

AUG 11 1977

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

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

RONALD HADDOCK, Administrator of the
Estate of Delma Haddock, deceased,

Plaintiff

vs.

TOM PRICE, et al.,

Defendants)

No. 76-C-567-C

FILED

AUG 11 1977

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

ORDER DISMISSING CAUSE

Now on this 11th day of August, 1977, there coming on before
the undersigned the Motion of the plaintiff above named to dismiss the
above styled and numbered cause, and upon due consideration of the same,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that
the said cause be and the same is hereby dismissed.


H. Dale Cook, U. S. District Judge

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

JANET G. NICKOPOULOS,)
)
 Plaintiff,)
)
 vs.) No. 76-C-565-C
)
 JOSEPH A. CALIFANO, JR.,)
 Secretary of Health,)
 Education and Welfare,)
)
 Defendant.)

FILED

AUG 11 1977

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

ORDER

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

This matter was 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 July 16, 1976, in which it was found that the claimant was not entitled to a period of disability or to disability insurance benefits under §§ 216(i) and 223, respectively, of the Social Security Act, as amended. Thereafter the decision of the Administrative Law Judge was appealed to the Appeals Council of the Bureau of Hearings and Appeals which Council on September 9, 1976, issued its order finding that the decision of the Administrative Law Judge was correct and that further action by the Council would not result in any change which would benefit the plaintiff. Thus the decision of the Administrative Law Judge became the final decision of the Secretary of the Department of Health, Education and Welfare.

On July 22, 1977, plaintiff filed a Motion to Remand, requesting this cause be remanded to the Secretary of Health,

Education and Welfare pursuant to 42 U.S.C. § 405(g) and asserted the following grounds:

"1) Defendant applied an improper legal standard when he disregarded Plaintiff's subjective evidence of pain,

2) There is no competent vocational testimony in the record to support Defendant's conclusion that alternative work is available to the Plaintiff."

Remand to the Secretary for the purpose of taking additional evidence can only be had on a showing of "good cause" as required by Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g). Hess v. Secretary of HEW, 497 F.2d 837 (3rd Cir. 1974); Sykes v. Finch, 443 F.2d 192 (7th Cir. 1971).

The Court has carefully considered the entire record in this action, including the transcript of the hearing conducted before the Administrative Law Judge June 25, 1976, the exhibits of record and the decision as rendered by the Administrative Law Judge.

While the Administrative Law Judge summarized in his decision the medical testimony which he considered pertinent, he did not make any specific findings as to the residual physical and mental capabilities of the plaintiff. Further, the Administrative Law Judge made no findings in regard to the extent or disabling effect of pain as testified to by plaintiff. As recognized by defendant in its brief in response to the Motion to Remand, pain is a recognized disabling factor for social security purposes if the condition is of such degree as to preclude any substantial gainful activity and is not remedial. The hearing transcript indicates that the Administrative Law Judge posed two hypothetical questions to the vocational expert. In response to the first hypothetical, the vocational expert responded that based upon what plaintiff reported as her problems, "she could not do any of her former work, nor any other work." The Administrative Law Judge then posed a second hypothetical which it appears was based on his findings in regard to

plaintiff's residual physical capabilities. This hypothetical did not consider disabling pain, and this Court is unable to determine, based upon the record, whether the Administrative Law Judge, in framing the hypothetical had made the determination on the basis of the other evidence of record that plaintiff did not suffer disabling pain or whether he failed to recognize pain as a basis to support a claim for benefits. No mention is made in the Administrative Law Judge's decision as to plaintiff's assertion of disabling pain. The Court in Davila v. Weinberger, 408 F.Supp. 738 (E.D. Pa. 1976) was faced with a similar record and held:

"The Administrative Law Judge's report makes no mention of the claimant's subjective complaints of disabling pain other than to acknowledge that such complaints were made. From this scant reference to the claimant's pain, we cannot determine whether the Administrative Law Judge disbelieved the claimant or whether he failed to recognize pain as a basis to support a claim for benefits. Baerga v. Richardson, 500 F.2d 309 (3d Cir. 1972.) It is, of course, the Administrative Law Judge's prerogative to disbelieve the claimant's testimony. Barats v. Weinberger, supra; Baith v. Weinberger, supra. If the Administrative Law Judge fails to make a finding concerning the claimant's testimony as to disabling pain, the record must be remanded so that he can do so. Human v. Weinberger, Civil Action No. 75-855 (E.D.Pa.), filed January 13, 1976; Bonenberger v. Weinberger, Civil Action No. 74-2055 (E.D.Pa.), filed October 8, 1975; Barats v. Weinberger, supra; Baith v. Weinberger, supra."

Based upon the foregoing it is the determination of the Court that plaintiff's Motion to Remand should be and hereby is sustained, and this action is hereby remanded to the Secretary.

It is so Ordered this 11th day of August, 1977.


H. DALE COOK
United States District Judge

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

PHILLIP GIBSON and)
MARY JO GIBSON,)
)
Plaintiffs,)
)
vs.)
)
PIZZA HUT OF MIAMI, INC.,)
and MICHAEL SAENZ,)
)
Defendants.)

No. 76-C-519-C

FILED

AUG 9 1977

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

JOURNAL ENTRY OF JUDGMENT

This cause came on for trial on its merits before the Court without a jury this 11th day of July, 1977. The parties appeared by their respective counsel of record and having announced ready for trial to the Court, the Court proceeded with the trial of the issues. After the evidence was heard and both sides rested, the Court concluded the plaintiff, Phillip Gibson, was entitled to judgment against the defendants in the amount of Two Thousand Five Hundred Forty One Dollars, plus the costs of this action, and the plaintiff, Mary Jo Gibson, offering no proof of damages, was entitled to nothing by way of judgment against the defendants.

IT IS THEREFORE ORDERED by the Court that the plaintiff, Phillip Gibson, is granted judgment against the defendants in the amount of Two Thousand Five Hundred Forty One Dollars (\$2,541.00), plus the costs of this action and that the plaintiff, Mary Jo Gibson, take nothing against the defendant, and in reference to the claim of Mary Jo Gibson the defendants are granted judgment thereon with costs assessed against the defendants herein.

15/14 Dale Cook
United States District Judge

APPROVED AS TO FORM:

15/ C. B. Savage
C. B. SAVAGE
Attorney for Plaintiffs

15/ Thomas R. Brett
THOMAS R. BRETT
Attorney for Defendants

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

FILED

AUG 8 1977 NO

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

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

IN RE:)	
)	
NOLLY JAMES SKIPPER,)	
)	
Bankrupt.)	
)	
PATRICK J. MALLOY III, Trustee,)	
)	
Plaintiff,)	
)	
v.)	No. 77-C-112-B ✓
)	
GENE DICKSON, CURTIS ROCK and)	
DICK ROBERTS, d/b/a Oil Sales,)	
a partnership,)	
)	
Defendant.)	

ORDER

The Court has for consideration the Appeal from the judgment of the Bankruptcy Court in its entirety and has carefully perused the entire file, the briefs and the recommendations concerning said appeal, and being fully advised in the premises, finds:

The sole issue on appeal involves the interpretation of 12A O.S. §2-326. That section deals with the rights of creditors with respect to consignment sales and provides in part as follows:

- "(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as 'on consignment' or 'on memorandum'. However, this subsection is not applicable if the person making delivery
 - (a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or
 - (b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the Article on Secured Transactions (Article 9)."

The Bankruptcy Judge held that under the above provisions of the Uniform Commercial Code the Trustee was not required to show that the creditors of the bankrupt detrimentally relied on a false assumption or belief that the bankrupt owned the goods in his possession on consignment from the appellants. The appellants claim that the objective of 12A §2-326 is the protection of creditors who may have relied upon or been misled by a secret reservation of goods on consignment and that unless the Trustee can prove that creditors have relied on or been misled by a secret reservation of goods on consignment, such creditors cannot claim the consignment in any way affected such creditors decision to advance funds to the bankrupt.

The Trustee argues that the language of the statute is clear; that there is no requirement that the Trustee prove that creditors detrimentally relied on a false assumption or belief that the bankrupt owned the goods involved and that in this case the Trustee met the requirements of the statute by proving: (1) that prior to the filing of this bankruptcy, the Appellants delivered to the bankrupt goods for resale on a consignment basis; (2) that at the time of delivery of the goods, the bankrupt maintained a place of business at which he dealt in goods of the kind involved under a name other than the name of the persons (Appellants) making delivery; and (3) that the consignors (Appellants) failed to comply with the filing provisions referred to in §2-326(3)(c). Additionally, the appellants failed to show that the bankrupt was generally known by his creditors to be substantially engaged in selling the goods of others.

Apparently there are no cases interpreting the statute involved in this proceeding as to whether the Trustee must show detrimental reliance by the creditors before invoking the provisions of 12A O.S. §2-326. In the Oklahoma Code Comment following 12A O.S.A. §2-326 at Page 211 it is stated: "This section (2-326(3)) changes

Oklahoma law. Its purpose is to protect the creditors of a merchant who appears to be the owner of the inventory, but which in fact is held on consignment." Also the Uniform Commercial Code Comment set out on Pages 212 and 213 states: " * * * subsection (3) resolves all reasonable doubts as to the nature of the transaction in favor of the general creditors of the buyer. * * * A necessary exception is made where the buyer is known to be engaged primarily in selling the goods of others or is selling under a relevant sign law, or the seller complies with the filing provisions of Article 9 as if his interest were a security interest. * * * The purpose of the exceptions is merely to limit the effect of the present subsection itself, * * * to cases in which creditors of the buyer may reasonably be deemed to have been misled by the secret reservation." (emphasis supplied) It is the last emphasized portion of the comment that appellants rely upon in urging that the act imposes the additional "detrimental reliance" requirement upon the creditors.

However, the Trustee reasons that if the legislature had intended to restrict the applicability of subsection (3) by requiring creditors to prove that they relied upon the false assumption that the bankrupt owned the consigned goods, such requirement would have been specifically written into the provisions of the statute and that absent such specific language, the Court should not rewrite the statute so as to embody such a requirement.

The Bankruptcy Judge agreed with the Trustee and concluded that under the provisions of 12A O.S. §2-326, the goods were subject to the claims of the bankrupt's creditors.

The language of a statute controls when sufficiently clear in its context. Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1975).

In Skelly Oil Company v. United States, 255 F. Supp. 228, 233, 234 (W.D. Okl. 1966), reversed 392 F.2d 128, reversed 394 U.S. 678, 89 S.Ct. 1379, 22 L.Ed.2d 642, rehearing denied 395 U.S. 941, 89 S.Ct. 1992, 23 L.Ed.2d 458, the Court said:

"Where the meaning of a statute is clear, the statute must be enforced as written. United States v. Martin, 337 F.2d 171 (Eighth Cir. 1964)."

The Court further stated:

"The most persuasive evidence of the purpose of a statute is the words by which the Congress undertook to give expression to its wishes. If these words are sufficient in and of themselves to determine the purpose of the legislation their plain meaning should be followed."

It is the view of this Court that the language of the statute is clear and imposes no obligation on the Trustee to show detrimental reliance by the creditors.

IT IS, THEREFORE, ORDERED that the Judgment of the Bankruptcy Court be and is hereby affirmed.

Dated this 8th day of August, 1977.


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

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

FILED

HERBERT H. GRISSOM,)	
)	
Plaintiff,)	
)	
vs.)	
)	
OKLAHOMA STEEL CASTING CO.,)	
)	
Defendant.)	No. 76-C-81-B

JUL 5 1977

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

ORDER

NOW on this 7th day of July, 1977, the above-captioned matter comes on for hearing for disposition pursuant to notice to the attorneys representing the parties hereto, and the Court, having carefully perused the entire file, and being fully advised in the premises, finds:

That said action should be dismissed for failure to prosecute.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this ^{cause of} ~~action~~ ^{Complaint} be and ~~it is~~ ^{they are} hereby dismissed for failure to prosecute.

Allen E. Benbow
CHIEF UNITED STATES DISTRICT JUDGE

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

ROGER-MARK CO., INC., a corporation,
and CHARLES LIVINGSTON,

Plaintiff-Appellants,

vs.

BLACKSTONE CORPORATION,
a foreign corporation,

Defendant-Appellee.

No. 76-C-171-B

FILED

AUG 5 1977

HO

O R D E R

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

The Court has for consideration the defendant Blackstone Corporation's Motion for Reconsideration of Plaintiff's Motion for Stay, and the brief in support thereof; and having carefully perused the entire file, and, being fully advised in the premises, finds:

Defendant based its application on the ground that if the Court ruled on the question of taxation of costs, that ruling could also be considered on appeal, if necessary.

On June 21, 1977, the plaintiffs filed their Motion for Stay of defendant's Motion for Taxation of Costs and Attorneys Fees, upon filing of a bond . On June 22, 1977, the attorney for plaintiffs filed said bond. Rule 62(d) of the Federal Rules of Civil Procedure provides that "[w]hen an appeal is taken the appellant by giving a supersedeas bond may obtain a stay" Such bond is effective as of the date approved by the Court. Once the bond is approved by the Court, the Court has no jurisdiction to vacate a stay order previously entered or to take any action. In re Federal Facilities Realty Trust, 227 F.2d 651 (7th Cir. 1955); see 7 Moore's, Federal Practice ¶62.06, at 62-30, n.8 (2d ed. 1975).

IT IS, THEREFORE, ORDERED that defendant's Motion for Reconsideration of plaintiff's Motion for Stay be, and the same is, hereby overruled.

ENTERED this 5th day of August, 1977.


CHIEF UNITED STATES DISTRICT JUDGE

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

GARY LEE COCKRILL,)
)
) Petitioner,)
)
 vs.) No. 76-C-37-C
)
) STATE OF OKLAHOMA, RICHARD)
) CRISP, WARDEN OF THE OKLAHOMA)
) STATE PENITENTIARY, McALISTER)
) OKLAHOMA,)
)
) Respondent.)

FILED

AUG - 4 1977

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

O R D E R

The Court has before it for consideration a Petition for Writ of Habeas Corpus filed by Gary Lee Cockrill. Petitioner demands his release from custody and alleges violation of his constitutional rights in four particulars.

First, petitioner contends his guilty plea was not voluntarily entered in that he was laboring under a misapprehension in that he did not fully understand the charges against him and what avenues of defense were available to him. Petitioner was 25 years of age at time of sentencing and had some college education. An examination of the transcript shows the petitioner was informed that he was charged with Shooting With Intent To Kill and Attempted Robbery With Firearms. Petitioner indicated he knew what a jury trial was and knew that if he desired a jury trial, his case would so proceed. Further, the Court explained that if petitioner entered a plea of guilty, there would be no trial at all. Petitioner indicated to the Court that his plea was free and voluntary and that no one had threatened or coerced him into entering a guilty plea. Petitioner further indicated that he was not under the effects of any medication that could cloud his mind. In response to the Court's question as to whether petitioner understood the proceedings, petitioner stated: "I do, yes." Thereafter the Court

advised petitioner that every person is entitled to be confronted by witnesses appearing against him, has a right to take the witness stand in his own behalf, marshal evidence in his own behalf, to have an attorney appointed if he has no funds, and if he does have funds, the right to an attorney of his choosing. Again the Court asked petitioner if he was satisfied with the proceedings and understood them, to which petitioner responded affirmatively. In response to the Court's query, petitioner indicated his attorney had advised him that if he entered a plea of guilty to both of the charges he would receive 20 years in the State Penitentiary. The Court then discussed each separate charge with petitioner, ascertaining whether there was a factual basis for the plea and also advising petitioner of the minimum and maximum punishment provided as to each offense. Petitioner then stated that he hadn't really accepted the 20 years, but that he was just resigned to it because he had no other choice. The Court responded: "Well, you have a choice, of course." Petitioner then stated: "Well, I have a choice of trial but I believe it would not be to my benefit to go to trial." An examination of the transcript clearly shows that petitioner's plea of guilty was voluntary, that he fully understood the proceedings and the charges against him, and that he knowingly chose to waive his right to trial.

Secondly, petitioner alleges the trial court failed to give petitioner any warning against self incrimination; that petitioner did not at any time give a direct and express statement that he wished to plead guilty and that he had, in fact, indicated he wanted time to contact his family in order to retain private counsel. Petitioner also contends he entered a "partial tentative equivocal" plea under the conditions that he would be allowed to withdraw said plea, within forty-eight hours. In regard to these contentions, the Court finds petitioner's allegations concerning self

incrimination to be without merit. Further, examination of the transcript shows that petitioner knowingly and intentionally indicated his desire to plead guilty. In addition, the transcript does not support petitioner's contention that his plea was conditioned upon being allowed to withdraw the plea within forty-eight hours. Prior to the petitioner's entering of the plea, his counsel advised the Court that defendant requested forty-eight hours before sentencing after entering his guilty plea. After the entering of the plea the Court stated the following to petitioner:

"I am trying to tell you now that if you enter a plea of guilty after being notified by the State as to what their recommendation is going to be and you decide about it and think about it and then decide on Monday that no, that's too much time, I think I will just back out, you may have a tough time backing out. If you are going to back out, let's back out now while the witnesses are here and Mr. Hopper and your counsel are ready for trial."

The transcript does not support petitioner's allegation that prior to accepting the plea, the Court indicated to petitioner that he could enter merely a "tentative" plea or that he would have a right to change his plea at any time within the subsequent forty-eight hours. Rather, the Court made every effort to ascertain the plea was knowingly, voluntarily and intentionally made and further specifically advised petitioner of the difficulty of withdrawing a guilty plea once it has been made.

Thirdly, petitioner contends that the trial court failed to advise him of his right to appeal or to give any explanation of how petitioner must exercise his right to appeal. At time of sentencing, petitioner indicated his family might secure retained counsel. Petitioner's court-appointed counsel informed the Court that if retained counsel was not secured he would handle the appeal for petitioner. The Court stated that if there was a conflict between petitioner and the public defender's office, the Court could appoint private counsel for petitioner to perfect an appeal.

In compliance with petitioner's wishes, petitioner was allowed to remain in Tulsa County for ten days in order to perfect an appeal. The Court stated:

"And then we will hold up . . . for at least 10 days and such further time as it becomes necessary that the defendant be protected with all of his rights to appeal at the expense of the State if he has no funds and is unavailable to funds to hire an attorney of his own choosing." |

Counsel from the public defender's office thereafter cautioned petitioner: "Don't wait until the last of the 10 days and I am not going to do anything pending you finding out whether or not you can get a private attorney. Now, if you can't get a private attorney I will see what we can do about getting an attorney from the Bar Association outside of the public defender's office appointed to handle this appeal." The Court thereafter directed that petitioner be permitted to make sufficient phone calls to ascertain whether funds were available to retain counsel.

It appears from the record before the Court that petitioner was allowed to make several calls while incarcerated at the Tulsa County Jail and that his failure to secure appointed counsel to perfect an appeal should not be attributed to the conduct of the State. The Court further finds that even if petitioner's efforts to secure appointed counsel were hampered by state officials, petitioner has in no way been prejudiced thereby.

Petitioner filed a request for Post-Conviction Relief in the Oklahoma Court of Criminal Appeals and therein raised the issues pertaining to his plea of guilty. On October 9, 1975 the District Court of Tulsa County entered its Order Denying Application for Post-Conviction Relief. A review of its Order shows that it carefully considered the allegations raised herein and had before it the transcripts of the proceedings of September 12, 1974 and September 14, 1974 in which petitioner entered his plea of guilty and was sentenced. On January 20, 1976 the Court of Criminal Appeals of the

State of Oklahoma affirmed the denial of post-conviction relief after thoroughly considering the voluntariness of the plea of guilty.

Petitioner has been afforded judicial review of his allegations in regard to the plea of guilty. Even if petitioner's alleged efforts to secure appointed counsel were made more difficult by jail personnel, petitioner has not shown any prejudice. In Giles v. Beto, 437 F.2d 192 (5th Cir. 1971) the Court in denying habeas corpus relief noted:

"Other than alleging that his attorney failed to advise petitioner of his right to appeal, petitioner alleges nothing else that could be construed to be an allegation that he was afforded ineffective assistance of counsel. Since petitioner plead guilty, there would seemingly be no reason for him to have appealed. Nor does petitioner set forth grounds upon which an appeal could have been based."

Similarly, in Farmer v. Beto, 446 F.2d 1357 (5th Cir. 1971) the Court stated:

"[Petitioner] argues that his counsel withdrew from his case after the plea and never advised of his right to appeal. It is difficult to discern any prejudice flowing to Farmer from this alleged ineffective assistance. Upon what grounds would he appeal after a plea of guilty?"

There are, of course, grounds for appealing after a plea of guilty if the plea was not knowingly and voluntarily made. In the case at bar, this issue has been carefully considered by the District Court of Tulsa County, the Oklahoma Court of Appeals and by this Court, and the determination has been made that petitioner was not denied his constitutional rights in this regard. In Brown v. Allen, 344 U.S. 443 (1952) the Supreme Court stated:

"Where it is made to appear affirmatively, as here, that the alleged error could not affect the result, such errors may be disregarded even in the review of criminal trials."

It is the determination of the Court that petitioner's plea of guilty was voluntarily and knowingly made; that petitioner has failed to show in what manner he has been

prejudiced in regard to his rights to appeal; and that he was afforded a full and fair consideration in the post-conviction proceedings. Petitioner's Application for Writ of Habeas Corpus is therefore hereby denied.

It is so Ordered this 4th day of August, 1977.



H. DALE COOK
United States District Judge

E I L E D

108-31977

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

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

UNITED STATES OF AMERICA; and)
DON TIBBETTS, Revenue Officer,)
Internal Revenue Service,)
)
Petitioners,)
)
vs.) No. 77-C-321-C
)
W. E. SMITH,)
)
Respondent.)

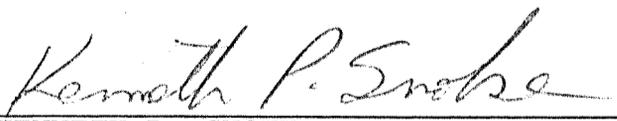
NOTICE OF VOLUNTARY DISMISSAL

COME NOW the petitioners, United States of America and Don Tibbets, Revenue Officer Internal Revenue Service, and pursuant to Rule 41(a) (1), Federal Rules of Civil Procedure, hereby give notice of, and do dismiss this cause of action without prejudice.

Petitioners would show the Court that respondent was never served with this Court's Order to Show Cause dated July 27, 1977, nor has respondent answered or otherwise plead. Further, respondent is apparently now a resident of Texhoma within the jurisdiction of the Western District of Oklahoma, where this matter will, if necessary, be reinstated.

Respectfully submitted,

HUBERT A. MARLOW
Acting United States Attorney


KENNETH P. SNOKE
Assistant United States Attorney

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

FILED

AUG - 3 1977

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

DAVID J. HOLCOMB,)
)
 Plaintiff)
)
 v.)
)
 JOHN W. BREDAHL,)
)
 Defendant)

No. 77-C-238-B

ORDER

Now on this 3rd day of August, 1977, the Court finds that the defendant's motion regarding the venue of this Court is good and should be sustained, and that this action should be herein transferred to the place of the accident involved herein, to-wit: The United States District Court for the District of Kansas.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this cause of action is hereby transferred to the United States District Court for the District of Kansas.

Allen E. Barrow

ALLEN E. BARROW, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

Attorney for plaintiff

Attorney for defendant

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

DONALD ELDEN and LOIS ELDEN,)

Plaintiffs,)

vs)

No. 77-C-325)

CLIFFORD L. ALEXANDER, JR.,)
SECRETARY OF THE ARMY;)
LIEUTENANT GENERAL JOHN W.)
MORRIS, CHIEF OF THE CORPS)
OF ENGINEERS, UNITED STATES)
ARMY; and COLONEL ANTHONY)
SMITH, CHIEF, TULSA DISTRICT)
CORPS OF ENGINEERS,)

Defendants.)

FILED

AUG 2 1977

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

ORDER

Defendant, having moved this Court, pursuant to Title 28, United States Code, Section 1406(c), for an order dismissing this action for improper venue, or, in the alternative, for an order transferring this action from this Court to the United States Court of Claims; and,

Such motion, having come on for hearing, and the Court, upon due deliberation, having found that the venue herein is improper for the reasons stated in the motion, and having further found that this action might have been brought originally in the United States Court of Claims, and that the interest of justice requires transfer; therefore,

IT IS ORDERED, pursuant to Title 28, United States Code, Section 1406(c), that this action be transferred to the United States Court of Claims; and

IT IS FURTHER ORDERED that the Clerk of this Court transmit to the Clerk of the United States Court of Claims, a certified copy of this order and all the pleadings and papers on file in his office relating to this action.

DATED August 2, 1977.

(Signed) H. Dale Cook

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

PAUL DeCOSTER and GWEN DeCOSTER,
d/b/a COAST-TO-COAST STORES,

Plaintiffs,

v.

SAN TEEN PRODUCTS, a Minnesota
corporation, and CONTINENTAL NATIONAL
AMERICAN (CNA), an Illinois corporation,

Defendants,

SUNBEAM PLASTICS, INC. and MONSANTO
COMPANY, a Delaware corporation,

Third Party Defendants.

No. 77-C-84-C

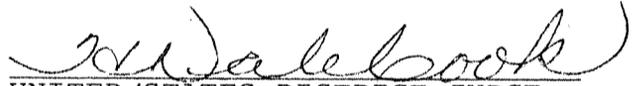
FILED

AUG 2 1977

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

ORDER OF DISMISSAL WITH PREJUDICE

Upon the joint application of the parties hereto for an order of dismissal with prejudice, and the court being fully advised herein, finds that there are no issues remaining between the parties to be decided by this court and that this cause should be and the same is hereby dismissed with prejudice.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


Richard Carpenter

Attorney for Paul DeCoster and
Gwen DeCoster, d/b/a Coast-to-
Coast Stores


Joseph Glass

Attorney for San Teen Products, a
Minnesota corporation, and
Continental National American
(CNA), an Illinois corporation

IN THE UNITED STATES DISTRICT COURT FOR THE **FILED**

NORTHERN DISTRICT OF OKLAHOMA

AUG - 2 1977

CAPITAL RESOURCES REAL
ESTATE PARTNERSHIP II,
a limited partnership,

Plaintiff,

v.

THE BROOKHOLLOW JOINT
VENTURE, a joint venture
composed of Hal R. Sundvahl,
II, J. Donald Walker, Fred
N. Chadsey and Harold R.
Patrick,

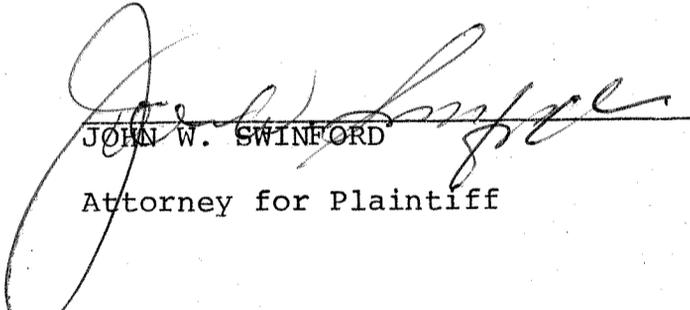
Defendants.

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

NO. 75-C-152

MOTION AND ORDER OF DISMISSAL

COMES NOW the plaintiff and shows to the Court that defendant, Harold R. Patrick has no counsel of record in this cause but has represented to plaintiff that he intends to file a Petition in Bankruptcy within the next few days thereby discharging his indebtedness to plaintiff and in reliance thereon plaintiff moves the Court to dismiss this action as against said defendant without prejudice.


JOHN W. SWINFORD

Attorney for Plaintiff

ORDER

consideration

The foregoing Motion having come on for ~~hearing~~ the Court finds that the defendant Harold R. Patrick has not requested any affirmative relief in this action and that the same should be dismissed upon plaintiff's Motion and it is therefore ordered that the above entitled *of action & Complaint* cause/be dismissed without prejudice as to the defendant, Harold R. Patrick.

DATED this 2nd day of August, 1977.


UNITED STATES DISTRICT JUDGE

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

NELLIE ATKINS ARMSTRONG,
Plaintiff,
-vs-
MAPLE LEAF APARTMENTS, LTD.,
a Limited Partnership;
BROKEN ARROW'S MALL, INC.,
a Corporation;
OWEN D. YOUNG and ROBERT L. LATCH,
d/b/a YOUNG & LATCH INVESTMENTS,
a General Partnership;
FIRSTUL MORTGAGE COMPANY,
a Corporation;
SACKMAN-GILLIAND CORPORATION,
a Corporation;
FIRST NATIONAL BANK & TRUST COMPANY
OF TULSA, OKLAHOMA, a Banking
Association;
HAMILTON INVESTMENT TRUST,
a Massachusetts Business Trust; and,
H. HAROLD BECKO,
Defendants.

No. 74-C-119

FILED

AUG - 2 1977

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

JUDGMENT

The Court, on this 2nd day of August, 1977,
filed in this cause its Findings of Fact and Conclusions of Law,
which are hereby incorporated herein and made a part of this Judg-
ment. Pursuant to such Findings of Fact and Conclusions of Law:

IT IS ORDERED, ADJUDGED AND DECREED that judgment be denied
the plaintiff on each count and cause of action alleged by plain-
tiff in her Complaint and amendments thereto and that judgment be
entered herein denying to plaintiff in its entirety the relief
sought by her in her Complaint and amendments thereto.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defen-
dants and cross-complaintants, Owen D. Young and Robert L. Latch,
d/b/a Young & Latch Investments, a general partnership, are the

owners of and vested with full and complete legal and equitable title in and to the following described real property, together with all improvements thereon and rights and appurtenances thereunto belonging, located in Tulsa County, State of Oklahoma, to-wit:

Lots One (1), Two (2) and Three (3), Block One (1), and Lot Two (2), Block Two (2), MAPLE LEAF ADDITION to the City of Broken Arrow, Tulsa County, Oklahoma, according to the recorded plat thereof,

and that said defendants and cross-complaintants are entitled to the peaceable possession and quiet enjoyment of all said real property, improvements and appurtenances.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that title to the above described real property and all improvements thereon and rights and appurtenances thereunto belonging be and the same is hereby quieted and confirmed in the defendants and cross-complaintants, Owen D. Young and Robert L. Latch, d/b/a Young & Latch Investments, a general partnership, against any and all claims there-to of the the plaintiff, Nellie Atkins Armstrong, and the third-party defendant herein, Ruskin Armstrong.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Nellie Atkins Armstrong, and the third-party defendant, Ruskin Armstrong, and each of them, have no right, title, estate, lien, claim or interest in and to the above described real property, improvements thereon and rights and appurtenances thereunto belonging, or any part thereof, and that said plaintiff and third-party defendant, and all those claiming or to claim by, through or under them, or any of them, be and they are hereby perpetually barred and enjoined from setting up or asserting any right, title, estate, lien, claim or interest in and to the above described real property and premises adverse to the title thereto of the defendants and cross-complaintants, Owen D. Young and Robert L. Latch, d/b/a Young & Latch Investments, a general partnership.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Nellie Atkins Armstrong, and said third-party defendant, Ruskin Armstrong, and all those claiming or to claim by, through or under

them, or any of them, be and they are each hereby perpetually barred and enjoined from interfering with the possession and quiet enjoyment of the aforesaid real property and premises by the defendants and cross-complainants, Owen D. Young and Robert L. Latch, d/b/a Young & Latch Investments, a general partnership, and their tenants and all other persons claiming by, through or under said defendants and cross-complainants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant and cross-complainant, Maple Leaf Apartments, Ltd., a limited partnership, is the owner of and vested with full and complete legal and equitable title in and to the following described real property, together with all improvements thereon and rights and appurtenances thereunto belonging, located in Tulsa County, State of Oklahoma, to-wit:

Lot One (1), Block Two (2), MAPLE LEAF ADDITION
to the City of Broken Arrow, Tulsa County, Oklahoma,
according to the recorded plat thereof,

and that said defendant and cross-complainant is entitled to the peaceable possession and quiet enjoyment of all said real property, improvements and appurtenances.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that title to the real property last above described and all improvements thereon and rights and appurtenances thereunto belonging be and the same is hereby quieted and confirmed in the defendant and cross-complainant, Maple Leaf Apartments, Ltd., a limited partnership, against any and all claims thereto of the plaintiff, Nellie Atkins Armstrong, and the third-party defendant herein, Ruskin Armstrong.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Nellie Atkins Armstrong, and the third-party defendant, Ruskin Armstrong, and each of them, have no right, title, estate, lien, claim or interest in and to the real property last above described, improvements thereon and rights and appurtenances thereunto belonging, or any part thereof, and that said plaintiff and said third-party defendant, and all those claiming or to claim by, through or

under them, or any of them, be and they are hereby perpetually barred and enjoined from setting up or asserting any right, title, estate, lien, claim or interest in and to the latter described real property and premises adverse to the title thereto of the defendant and cross-complaintant, Maple Leaf Apartments, Ltd., a limited partnership.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Nellie Atkins Armstrong, and said third-party defendant, Ruskin Armstrong, and all those claiming or to claim by, through or under them, or any of them, be and they are each hereby perpetually barred and enjoined from interfering with the possession and quiet enjoyment of the last above described real property and premises by the defendant and cross-complaintant, Maple Leaf Apartments, Ltd., a limited partnership, and their tenants and all other persons claiming by, through or under said defendant and cross-complaintant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Robert L. Latch, the duly appointed trustee in possession of the following described real property situated in Tulsa County, State of Oklahoma, to-wit:

Lot Two (2), Block Two (2), MAPLE LEAF ADDITION
to the City of Broken Arrow, Tulsa County, Okla-
homa, according to the recorded plat thereof,

be and he is hereby directed to immediately deliver peaceable possession of the latter described real property, together with all improvements thereon and appurtenances thereunto belonging, to the defendants, Owen D. Young and Robert L. Latch, d/b/a Young & Latch Investments, a general partnership. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said trustee in possession be and he is hereby directed to render to this Court within fifteen (15) days from the date hereof a written account of his acts as trustee reflecting all receipts and disbursements by him with respect to such trusteeship and said trustee is further ordered and directed by this Court to immediately and forthwith deposit with the Clerk of this Court all

monies in his possession received by him as trustee, the same together with all monies presently held by said Clerk as a part of such trusteeship to be hereafter distributed and disbursed pursuant to further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Will Mattoon, the duly appointed trustee in possession of the following described real property situated in Tulsa County, State of Oklahoma, to-wit:

Lot One (1), Block Two (2), MAPLE LEAF ADDITION
to the City of Broken Arrow, Tulsa County, Okla-
homa, according to the recorded plat thereof,

be and he is hereby directed to immediately deliver peaceable possession of the latter described real property, together with all improvements thereon and appurtenances thereunto belonging, to the defendant, Maple Leaf Apartments, Ltd., a limited partnership. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said trustee in possession be and he is hereby directed to render to this Court within fifteen (15) days from the date hereof a written account of his acts as trustee reflecting all receipts and disbursements by him with respect to such trusteeship and said trustee is further ordered and directed by this Court to immediately and forthwith deposit with the Clerk of this Court all monies in his possession received by him as trustee, the same together with all monies presently held by said Clerk as a part of the latter trusteeship to be hereafter distributed and disbursed pursuant to further order of this Court.

IT IS FINALLY ORDERED, ADJUDGED AND DECREED that the defendants and cross-complainants herein have and recover from the plaintiff judgment for all their costs herein expended.

The within and foregoing Judgment is dated and entered this

2nd day of August, 1977.


CHIEF UNITED STATES DISTRICT JUDGE

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

AUG 2 1977

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

AMENDED JOURNAL ENTRY OF
JUDGMENT

Due to clerical error appearing in the Journal Entry of Judgment which was filed of record in this cause on July 18, 1977, the Court pursuant to Rule 60(a) of the Federal Rules of Civil Procedure hereby amends the Journal Entry of Judgment to read as follows:

This matter having come on for trial on the 29th day of June, 1977, the Plaintiff appearing in person and 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 of 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 and proper; that the train as it approached the crossing in question was clearly visible for a sufficient length of time and 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 of facts, the court concludes that the accident and the injuries sustained by the plaintiff were solely caused directly and proximately by the negligence of the plaintiff, Claude R. Griffin, and by reason of such negligence of 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

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

FILED

AUG - 2 1977

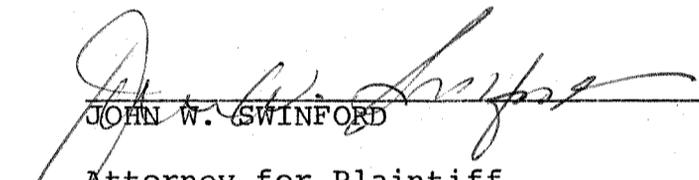
CAPITAL RESOURCES REAL)
ESTATE PARTNERSHIP II,)
a limited partnership,)
)
Plaintiff,)
)
v.)
)
THE BROOKHOLLOW JOINT)
VENTURE, a joint venture)
composed of Hal R. Sundvahl,)
II, J. Donald Walker, Fred)
N. Chadsey and Harold R.)
Patrick,)
)
Defendants.)

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

NO. 75-C-152

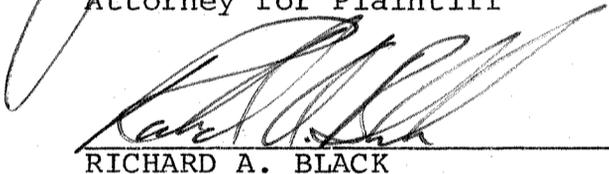
STIPULATION AND ORDER OF DISMISSAL

It is stipulated and agreed by and between plaintiff and defendant, J. Donald Walker that the above captioned case has been compromised and settled in full and that said cause may be dismissed as to said defendant.



JOHN W. SWINFORD

Attorney for Plaintiff



RICHARD A. BLACK

Attorney for Defendant J. DONALD WALKER

ORDER

The foregoing Stipulation is approved and the above entitled cause ^{of action & complaint are} ~~is~~ hereby dismissed as to the defendant J. Donald Walker.

Dated this 2nd day of August, 1977.



UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CIVIL ACTION NO. 76-C-631-C)

CLARENCE W. WILLIS, MARTHA E.)
WILLIS, COUNTY TREASURER,)
Tulsa County, BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
ROSE MARIE MINTER, a/k/a ROSE M.)
MINTER, a/k/a Marie Minter,)
ALDENS CATALOG OFFICES, INC.,)
TULSA ADJUSTMENT BUREAU, INC.,)
MELVIS L. MINTER, a/k/a MELVIS)
MINTER, COHEN AND STOUT)
OBSTETRICAL AND GYNECOLOGICAL)
ASSOCIATION, and ALMOND)
ELECTRIC COMPANY, INC.,)

Defendants.)

FILED

1977-1-18

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 10th
day of August, 1977, the Plaintiff appearing by Robert
P. Santee, Assistant United States Attorney; the Defendant,
Cohen and Stout Obstetrical and Gynecological Association, ap-
pearing by its attorney, Julie E. Lamprich; the Defendant, Tulsa
Adjustment Bureau, Inc., appearing by its attorney, D. Wm. Jacobus,
Jr.; the Defendant, Almond Electric Company, Inc., appearing by
its attorney, Thomas A. Landrith, Jr.; and the Defendants, County
Treasurer, Tulsa County, and Board of County Commissioners, Tulsa
County, appearing by Marvin E. Spears, Assistant District Attorney;
and the Defendants, Clarence W. Willis, Martha E. Willis, Rose
Marie Minter, a/k/a Rose M. Minter, a/k/a Marie Minter, Aldens
Catalog Offices, Inc., and Melvis L. Minter, a/k/a Melvis Minter,
appearing not.

The Court being fully advised and having examined the
file herein finds that Defendants, Clarence W. Willis and Martha E.
Willis, were served by publication, as appears from the Proof of
Publication filed herein; that Defendants, County Treasurer, Tulsa

County, and Board of County Commissioners, Tulsa County, were served with Summons, Complaint, and Amendment to Complaint on January 7, 1977, and January 10, 1977, respectively; that Defendants, Rose Marie Minter, a/k/a Rose M. Minter, a/k/a Marie Minter, and Melvis L. Minter, a/k/a Melvis Minter, were served with Summons, Complaint, and Amendment to Complaint on January 17, 1977; that Defendant, Aldens Catalog Offices, Inc., was served with Summons, Complaint, and Amendment to Complaint on March 15, 1977, and January 12, 1977, respectively; that Defendant, Tulsa Adjustment Bureau, Inc., was served with Summons, Complaint, and Amendment to Complaint on April 7, 1977; that Defendant, Cohen and Stout Obstetrical and Gynecological Association, was served with Summons, Complaint, and Amendment to Complaint on February 16, 1977; and that Defendant, Almond Electric Company, Inc., was served with Summons, Complaint, and Amendment to Complaint on January 11, 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 26, 1977; that Defendant, Tulsa Adjustment Bureau, Inc., has duly filed its Disclaimer herein on April 12, 1977; that Defendant, Cohen and Stout Obstetrical and Gynecological Association, has duly filed its Disclaimer herein on March 11, 1977; that Defendant, Almond Electric Company, Inc., has duly filed its Answer and Disclaimer herein on January 31, 1977; and that Defendants, Rose Marie Minter, a/k/a Rose M. Minter, a/k/a Marie Minter, Melvis L. Minter, a/k/a Melvis Minter, Aldens Catalog Offices, Inc., Clarence W. Willis, and Martha E. Willis, 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-three (33), Block Eleven (11), VALLEY VIEW ACRES ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Clarence W. Willis and Martha E. Willis, did, on the 9th day of August, 1974, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$12,000.00 with 9 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Clarence W. Willis and Martha E. Willis, 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 \$11,928.78 as unpaid principal with interest thereon at the rate of 9 percent per annum from January 1, 1976, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, Clarence W. Willis and Martha E. Willis, the sum of \$ 37¹¹/₁₀₀ plus interest according to law for personal property taxes for the year(s) 1973, 75, 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 there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, Melvis Minter and Marie Minter, the sum of \$ 0 plus interest according to law for personal property taxes for the year(s) None and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants,

Clarence W. Willis and Martha E. Willis, in rem, for the sum of \$11,928.78 with interest thereon at the rate of 9 percent per annum from January 1, 1976, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Clarence W. Willis and Martha E. Willis, for the sum of \$ 37¹⁴/₁₀₀ as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Melvis Minter and Marie Minter, for the sum of \$ 0 as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Rose Marie Minter, a/k/a Rose M. Minter, a/k/a Marie Minter, Aldens Catalog Offices, Inc., and Melvis L. Minter, a/k/a Melvis Minter.

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this

judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

12/1 N. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED



ROBERT P. SANTEE
Assistant United States Attorney



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

bcs

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

FILED

FORREST BUGHER, et al.,)
)
Plaintiffs,)
)
vs.)
)
THAYER INSPECTION SERVICE, INC.,)
)
Defendant.)

AUG - 1 1977 K

CIVIL ACTION Jack C. Silver, Clerk
U. S. DISTRICT COURT
NO. 77-C-184-B ✓

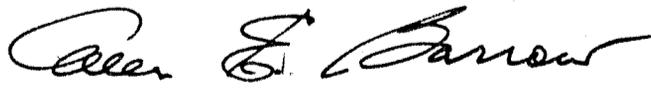
O R D E R

This cause coming on to be heard upon the joint motion of the parties hereto and it appearing to the Court that the parties have entered into a written stipulation dated June 24, 1977, in full and complete settlement and compromise of the claim of the Plaintiffs, and the same being filed in the Office of the Clerk of this Court, and the Court otherwise being fully advised in the premises:

IT IS HEREBY ORDERED

That the above-entitled cause ^{motion & Complaint} be dismissed without costs, subject however, to reinstatement on or before the 1st day of January, 1978, pursuant to the terms set forth in the stipulation of the parties hereto dated June 24, 1977 and filed in the Office of the Clerk of this Court. In the event the cause is not so reinstated on or before the 1st day of January, 1978, this dismissal shall then and there be deemed with prejudice.

ENTER:


United States District Judge

DATED:

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

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

No. 76-C-567-C

FILED

AUG 1 1977

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

O R D E R

This is an action brought pursuant to Title 42 U.S.C. §§ 1983 and 1985(2) and (3). Plaintiff, the administrator of the estate of Delma Haddock, seeks to recover damages resulting from the actions of the defendants which allegedly constituted deprivations of the constitutional rights of the decedent and which allegedly resulted in her death. At all times material to this action, defendant Price was Town Marshal of the town of Salina, Oklahoma, and defendants Crawford, Walters and Brown were members of the Board of Trustees of that town. All of these defendants have filed motions for summary judgment which are now before the Court.

It is well settled that 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). As this Court held in its Order filed in this case on March 17, 1977, ". . . a defendant must be present or have the opportunity or ability to intervene and prevent constitutional deprivation before he can be held responsible under the statutes relied upon by plaintiff." All four relevant defendants in this case have filed affidavits, uncontroverted by the plaintiff, in which each of

them states,

". . . that I did not have knowledge of or participate in the arrest of Delma Haddock at Salina, Oklahoma, on or about January 31, 1976; and that I did not have any knowledge that Delma Haddock was or had been confined in the Salina Jail, until after her confinement was ended."

It is therefore uncontroverted that these defendants had no knowledge of and did not directly participate in the arrest and confinement of Delma Haddock, and their motions for summary judgment as to plaintiff's cause of action under Title 42 U.S.C. § 1983 are hereby sustained.

Title 42 U.S.C. § 1985(3) provides in pertinent part as follows:

"If two or more persons . . . conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . , the party so injured or deprived may have an action for the recovery of damages. . . ."

To constitute a cause of action under this statute, ". . . there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Griffin v. Breckenridge, 403 U.S. 88, 102, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971). See also Lesser v. Braniff Airways, Inc., 518 F.2d 538 (7th Cir. 1975). The plaintiff must show that he was treated differently than anyone else would have been treated under the same circumstances. Joyce v. Ferrazzi, 323 F.2d 931 (1st Cir. 1963). In the instant case, the plaintiff has not alleged any discrimination -- racial, class-based or otherwise. In fact, he alleges that the defendants were engaged in a continuing course of conduct which resulted in all persons in custody being treated as the decedent was treated.

Title 42 U.S.C. § 1985 does not attempt to reach a conspiracy to deprive one of every constitutional right; it is directed solely to deprivations of "equal protection of the laws" or of "equal privileges and immunities under the

laws." Collins v. Hardyman, 341 U.S. 651, 71 S.Ct. 937, 95 L.Ed. 1253 (1951). The plaintiff in this case appears to base his claim primarily upon an alleged violation of the Eighth Amendment's ban on cruel and unusual punishment. There are no allegations of a deprivation of equal protection or equal privileges and immunities.

Finally, a plaintiff in a case under § 1985 must do more than merely state vague and conclusory allegations regarding the existence of a conspiracy.

"It [is] incumbent upon him to allege with at least some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy."

Powell v. Workmen's Compensation Board of the State of New York, 327 F.2d 131, 137 (2nd Cir. 1964). See also Guedry v. Ford, 431 F.2d 660 (5th Cir. 1970). In the instant case, plaintiff alleges that the defendants ". . . were conspirators engaged in a scheme designed to deny her of her rights granted to her by the United States constitution", in that they ". . . conspired with the defendant Parker to provide a place of incarceration (sic) without adequate supervision for inmates to protect and safeguard their safekeeping (sic) and general welfare." Such general allegations are insufficient to state a cause of action under § 1985 against these defendants.

For the foregoing reasons, the defendants' motions for summary judgment as to plaintiff's cause of action under Title 42 U.S.C. § 1985 are hereby sustained.

It is so Ordered this 1st day of August, 1977.


H. DALE COOK
United States District Judge

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

WHITE SEWING MACHINE COMPANY,
a corporation,

Plaintiff,

vs.

MARVIN DOYLE RUMBAUGH, an individual,
d/b/a WHITE SEWING MACHINE SALES, INC.,
a/k/a RUMBAUGH'S WHITE SEWING CENTER,
and COLUMBUS LEE JONES, an individual,
and WHITE SEWING MACHINE SALES, INC.,
an Oklahoma Corporation,

Defendants.

NO. 76-C-222-B

FILED

AUG - 1 1977

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

DECREE OF INJUNCTION AND
JUDGMENT

This cause came on to be heard on the 1st day of August, 1977, upon agreement of the plaintiff and defendants, Marvin Doyle Rumbaugh and White Sewing Machine Sales, Inc. Defendant Columbus Lee Jones is not a party to this agreement. The plaintiff appeared by and through its attorney, Michael Minnis. Defendants Marvin Doyle Rumbaugh and White Sewing Machine Sales, Inc. appeared by and through their attorney, Byron Todd. The Court having considered the verified complaint of the plaintiff together with the exhibits attached thereto, the affidavits attached to plaintiff's motion for preliminary injunction, the affidavits attached to plaintiff's Motion for Summary Judgment, the admissions, interrogatories and depositions on file, and having heard the statements, arguments and stipulations of counsel, makes the following:

FINDINGS OF FACT

1. Plaintiff, White Sewing Machine Company, is a corporation duly organized, existing under and by virtue of the laws of the State of Delaware. It is a citizen thereof and has its principal

place of business in Cleveland, Ohio.

2. The defendant, Marvin Doyle Rumbaugh, is the president, chief stockholder, service agent and an employee of White Sewing Machine Sales, Inc. He is a citizen of the State of Oklahoma and resides in Tulsa County, Oklahoma. Beginning in 1962 and continuing until at least March of 1976, he operated a business for the sale of sewing machines for and on behalf of White Sewing Machine Sales, Inc. at 2613-C South Memorial and 2132 South Sheridan in Tulsa, Oklahoma under the name of White Sewing Center, a/k/a Rumbaugh's White Sewing Center.

3. Defendant, White Sewing Machine Sales, Inc. is a corporation duly organized and existing under and by virtue of the laws of the State of Oklahoma, is a citizen thereof and has its principal place of business in Tulsa, Oklahoma.

4. The defendant, Columbus Lee Jones, is a citizen of the State of Oklahoma, residing in Tulsa County, Oklahoma, and at all times mentioned hereinafter was an employee of or successor to the defendants, Marvin Doyle Rumbaugh or White Sewing Machine Sales, Inc. and/or both.

5. Jurisdiction of the suit arises under the trademark laws in the United States, and specifically U.S.C. §1121 and 28 U.S.C. §1338. In addition thereto, the matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00; a diversity of citizenship exists between the plaintiff and the defendants, so this Court has jurisdiction, pursuant to the provisions of 28 U.S.C. §1332.

6. The plaintiff, and its predecessors, have for over one hundred (100) years, marketed and sold sewing machines throughout the United States. In order to distinguish and identify their sewing machines, plaintiff adopted, inter alia, as six of its trademarks for its products, the words or letters "White", "White Sewing Machine Company", "White Sewing Machines since 1876",

"Dressmaster", "Sewmaster", and "W". These trademarks are now being used and have continuously been used to identify the products of the plaintiff's. They are widely known to the public as indicating the machines and products of plaintiff. Plaintiff has used the "W" as a trademark on sewing machines since June of 1958 and has acquired common law trademark rights to same with respect to its sewing machine from and after 1958. Application to formally seek federal registration of "W" as plaintiff's trademark was filed March 21, 1975.

7. The plaintiff and its predecessors registered the following trademarks under the laws of the United States on the dates indicated:

	<u>TRADEMARK</u>	<u>NUMBER</u>	<u>DATE</u>
1.	"WHITE"	699,234	Nov. 4, 1958
2.	"WHITE SEWING MACHINE CO."	57,903	Dec. 4, 1906
3.	"WHITE sewing machines since 1876"	822,334	Jan. 17, 1967
4.	"DRESSMASTER"	375,785	Feb. 27, 1940
5.	"SEWMASTER"	375,786	Feb. 27, 1940
6.	"W"	1028460	Dec. 30, 1975

These registrations are now operative and in full force and effect and now owned by the plaintiff.

8. Since adopting the trademarks first above mentioned, plaintiff has marketed its products in large quantities in most of the states of the United States of America. Plaintiff has expended large sums in the ethical promotion of its machines and trademarks. Plaintiff's machines have long been widely and favorably known to the public within the United States and a large demand has and does exist for the machines of the plaintiff throughout the United States. Plaintiff has long had and presently has a large and valuable good will in connection with its machines and in connection with the registered trademarks heretofore mentioned. The trademarks identify the plaintiff's machines and the plaintiff's products.

9. By reason of the high quality and dependability of the products sold under the trademarks hereinbefore mentioned, plaintiff's products enjoyed a high reputation with wholesalers and retailers of sewing machines in this country which allowed plaintiff to create a desirable mercantile outlet for its machines.

10. Plaintiff's machines are warranted by it and its warranty or guarantee backing the machines bearing plaintiff's trademark or trademarks is a factor of great value to plaintiff in the marketing of its machines.

11. The retail sewing machine business operated by defendants is in direct competition with other dealers in the Tulsa area who are authorized or franchised dealers of plaintiff.

12. The defendants, Marvin Doyle Rumbaugh and White Sewing Machine Sales, Inc., through their agents and employees herein including, but not limited to, Columbus Lee Jones, have offered for sale and sold to the public sewing machines which they represented to their customers to be machines, manufactured, distributed, warranted or guaranteed by plaintiff, but which, in fact, were not manufactured, distributed, warranted, guaranteed or connected in any fashion with plaintiff.

Further, said defendants, or their agents or employees including, but not limited to, Columbus Lee Jones, attached labels to non-plaintiff machines which labels contained one or more of the trademarks of the plaintiff and were used to create the impression that these non-plaintiff machines were in fact plaintiff machines. These labels included, inter alia, the label "Stitch-W-Master". These machines were purchased by said defendants or otherwise acquired from sources other than plaintiff and offered for sale to the public as plaintiff machines.

Further, said defendants placed new "White" sewing machines in conspicuous display positions throughout their store and conspicuously advertised that they sold products of the plaintiff

when, in fact, they did not intend to sell products of the plaintiff but would "switch" interested customers to sewing machines bearing one or more of the plaintiff's trademarks but which machines were not manufactured, distributed, guaranteed, warranted or connected in any way with plaintiff.

Further, said defendants, through the use of advertisements including, inter alia, newspapers, telephone yellow pages, and on-site posters and plastic signs, attempted to convince the public that said defendants were authorized and franchised dealers in the products of the plaintiff's when, in fact, they were not so authorized or franchised.

13. The above described acts of said defendants were done with full knowledge that the sewing machines offered and sold were not manufactured, distributed, warranted, guaranteed or connected in any fashion with plaintiff.

14. The acts of the said defendants hereinbefore set forth constitute trademark infringement of plaintiff's trademarks pursuant to and in violation of 15 U.S.C.A. §11014, et seq., and constitute willful and wanton torts by reason of the disregard of the said defendants for plaintiff's vested rights in these trademarks. By reason of the foregoing acts of infringement and willful torts by said defendants, plaintiff has suffered and will suffer irreparable damage and loss, and will continue to suffer such damage and loss until the defendants are restrained by this Court.

15. Plaintiff has suffered damages in an amount not less than Ten Thousand Dollars (\$10,000.00) for which it should recover against the said defendants.

On the basis of the foregoing the Court makes the following:

CONCLUSIONS OF LAW

1. Defendants have infringed upon the trademarks of the plaintiff.
2. Defendants have committed acts of unfair competition against the plaintiff.
3. Plaintiff is entitled to treble damages under 15 U.S.C.A. §1117.

ORDERED

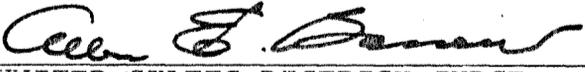
WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendants, White Sewing Machine Sales, Inc., an Oklahoma Corporation, and Marvin Doyle Rumbaugh, an individual, their assigns, successors, agents, servants and employees, and all persons in active concert and participation with them, be, and they are hereby permanently and perpetually restrained and enjoined from:

- (a) misrepresenting the sewing machines or products of others as being manufactured, distributed, warranted, guaranteed or in any fashion connected with plaintiff;
- (b) using the name of "WHITE" or any trademark of plaintiff in any manner in their business;
- (c) selling or offering for sale new "WHITE" Machines;
- (d) advertising the sale, service or repair of new or used "WHITE" machines;
- (e) using the name "WHITE" or any trademark of the White Sewing Machine Company for any advertising purposes whatsoever;
- (f) using the name "White Sewing Center" or "White Sewing Machine Sales, Inc."

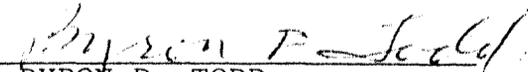
IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT plaintiff's damages in an amount of Ten Thousand Dollars (\$10,000.00) be trebled and that judgment in an amount of \$30,000.00 be awarded plaintiff, with interest thereon from the date of judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff be awarded reasonable attorney's fees in the amount of \$5,000.00.

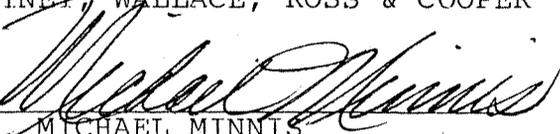
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff be awarded its costs in this action.


UNITED STATES DISTRICT JUDGE

APPROVAL OF COUNSEL:

By 
BYRON D. TODD
Attorney for Defendants,
Marvin Doyle Rumbaugh and
White Sewing Machine Sales, Inc.

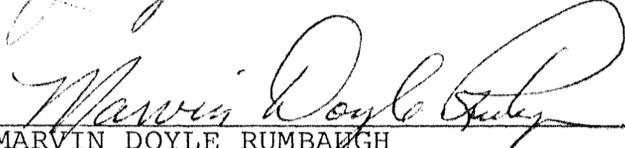
RAINEY, WALLACE, ROSS & COOPER

By 

MICHAEL MINNIS

Attorney for Plaintiff

I have read and approved this decree of injunction and judgment this 25th day of July, 1977.


MARVIN DOYLE RUMBAUGH

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

FILED

FORREST BUGHER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 THAYER INSPECTION SERVICE, INC.,)
)
 Defendant.)

AUG - 1 1977

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

NO. 77-C-184-B

O R D E R

This cause coming on to be heard upon the joint motion of the parties hereto and it appearing to the Court that the parties have entered into a written stipulation dated June 24, 1977, in full and complete settlement and compromise of the claim of the Plaintiffs, and the same being filed in the Office of the Clerk of this Court, and the Court otherwise being fully advised in the premises:

IT IS HEREBY ORDERED

That the above-entitled cause ^{of action & complaint} be dismissed without costs, subject however, to reinstatement on or before the 1st day of January, 1978, pursuant to the terms set forth in the stipulation of the parties hereto dated June 24, 1977 and filed in the Office of the Clerk of this Court. In the event the cause is not so reinstated on or before the 1st day of January, 1978, this dismissal shall then and there be deemed with prejudice.

ENTER:


United States District Judge

DATED:

Names and addresses of attorneys for Plaintiffs:

BERNARD M. BAUM
LOUIS E. SIGMAN
39 South LaSalle Street
Chicago, Illinois 60603
312-236-4316

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG - 1 1977 K

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

GRAND RIVER DAM AUTHORITY,)
)
 Plaintiff,)

vs.)

WESTINGHOUSE ELECTRIC CORPORATION,)
 et al.,)
)
 Defendants.)

No. 76-C-419-B ✓

CONSOLIDATED

GRAND RIVER DAM AUTHORITY,)
)
 Plaintiff,)

vs.)

WESTINGHOUSE ELECTRIC CORPORATION,)
 et al.,)
)
 Defendants.)

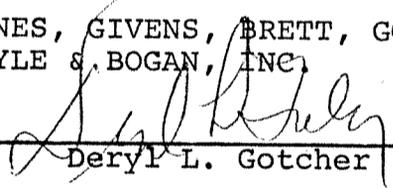
No. 76-C-422-B

DISMISSAL WITH PREJUDICE

Comes now the plaintiff, Grand River Dam Authority, and dismisses its action against the defendant, Westinghouse Electric Corporation, with prejudice to refileing said action, but specifically reserving its right herein to proceed against the remaining defendants in this action.

GRAND RIVER DAM AUTHORITY, PLAINTIFF

By JONES, GIVENS, BRETT, GOTCHER,
DOYLE & BOGAN, INC.

By 
Deryl L. Gotcher

Attorneys for Plaintiff