

FILED

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

APR 25 1978

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

ALLEN ARCHERY, INC.,)
)
 Plaintiff,)
)
 v.) Civil Action No. 78-C-43-B
)
 BRUNSWICK CORPORATION,)
)
 Defendant.)
 _____)

CONSENT JUDGMENT AND DECREE

Upon the consent and agreement of plaintiff, Allen Archery, Inc., and defendant, Brunswick Corporation, it is hereby ordered, adjudged and decreed as follows:

1. Plaintiff, Allen Archery, Inc., is a Missouri corporation having its principal place of business at Billings, Christian County, Missouri 65610, and is the owner of U. S. Letters Patent No. 3,486,495.
2. Defendant, Brunswick Corporation, is a corporation of the State of Delaware and has a regular and established place of business at 6101 East Apache, Tulsa, Oklahoma 74101.
3. The Nonexclusive License Agreement of June 1, 1975, between plaintiff and defendant, granting defendant certain non-exclusive rights under Letters Patent No. 3,486,495, was terminated on January 19, 1978, and subsequent to such termination defendant, Brunswick Corporation, from January 19, 1978, to March 31, 1978, has infringed claims 3-8, 10 and 12-14 of said patent No. 3,486,495 by making, using or selling in this judicial district, compound bows under the general trade designation "Ben Pearson" and under such specific model designations as Pro Staff Hunter, 6000 Target,

4000 Target, Pro Staff 2000, Pro Staff 1000, Shadow 600, Shadow 300, Shadow 100, Model 250, Model 210 and Model 200.

4. Said patent No. 3,486,495 as between the parties is good and valid in law as to claims 3-8, 10 and 12-14 thereof.

5. The aforesaid defendant, its officers, agents, servants, employees, successors and assigns, and all other persons in privity with or controlled by it, are hereby permanently enjoined and restrained from directly or contributorily infringing, or inducing the infringement of, any of claims 3-8, 10 and 12-14 of said patent No. 3,486,495.

6. Plaintiff's complaint in this action is merged into this Consent Judgment and Decree.

7. No monetary award is granted to either the plaintiff or the defendant and each party shall bear its own costs of this action.

8. No appeal from this Consent Judgment and Decree shall be taken by either party.

Done by the Court this 25th day of April 1978,
1978.

Allen E. Barron
United States District Judge

APPROVED:

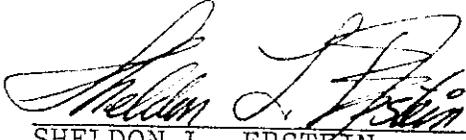
D. A. N. Chase
D. A. N. Chase
D. A. N. CHASE LAW OFFICES
930 Ozark National Life Bldg.
906 Grand Avenue
Kansas City, Missouri 64106

ALLEN ARCHERY, INC.

William S. Dorman
WILLIAM S. DORMAN
Suite 1401
National Bank of Tulsa Bldg.
Tulsa, Oklahoma 74103

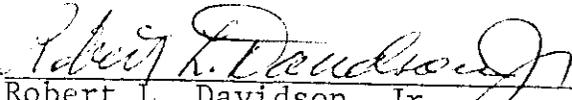
By Douglas T. Allen
Douglas T. Allen, President

APPROVED:

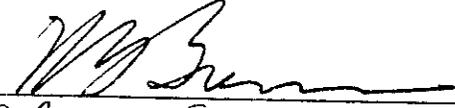


SHELDON L. EPSTEIN
Brunswick Corporation
One Brunswick Plaza
Skokie, Illinois 60076

BRUNSWICK CORPORATION



Robert L. Davidson, Jr.
ROBINSON, BOESE & DAVIDSON
P. O. Box 1046
Tulsa, Oklahoma 74101

By 
Title ASSISTANT SECRETARY

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

ARTHUR HALE,)
)
Plaintiff,)
)
v.)
)
JESS O. WALKER, SHERIFF OF)
CRAIG COUNTY, OKLAHOMA;)
SHERIFF JOHN DOE, INDIVIDU-)
ALLY AND IN HIS OFFICIAL)
CAPACITY AS SHERIFF OF)
CRAIG COUNTY, OKLAHOMA,)
VINITA, OKLAHOMA,)
)
Defendant.)

77-C-356-B ✓

FILED

APR 24 1978 *B*

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

ORDER

The Court has for consideration Defendant Jess O. Walker's Motion to Dismiss Complaint for Failure to State a Claim and Defendant Jess O. Walker's Motion to Dismiss Amended Complaint for Failure to State a Claim and has reviewed the file, the briefs and all of the recommendations concerning the motions, and being fully advised in the premises, finds:

That Defendant Jess O. Walker's Motion to Dismiss Complaint for Failure to State a Claim and Defendant Jess O. Walker's Motion to Dismiss Amended Complaint for Failure to State a Claim should be sustained for the following reasons:

1. In his complaint Plaintiff alleges that this Court has jurisdiction over this cause pursuant to 42 U.S.C. 1983, and 28 U.S.C. 1343(3); that defendant Jess O. Walker refused to remove or cause to be removed an entry on plaintiff's FBI "Rap Sheet", listed as "Arrest for Murder"; and that plaintiff has suffered physical and mental harm therefrom.

2. Defendant Jess O. Walker moved to dismiss the complaint and amended complaint for failure to state a claim against the defendant upon which relief can be granted on the basis and for the reason that the Craig County Sheriff has no jurisdiction or control over the records kept by the F.B.I. and also that the complaint fails to state any facts

which show that Jess O. Walker either committed or omitted to do anything within his capacity as the Craig County Sheriff which caused any denial of Plaintiff's rights as protected by the Constitution and laws of this State or of the United States.

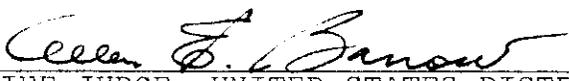
3. The Federal Courts are limited in their power to order expungement of records, United States v. McMain, 540 F.2d 387 (8th Cir. 1976). Rogers v. Slaughter, 469 F.2d 1084 (5th Cir. 1972), United States v. Seascholtz, 376 F. Supp. 1288 (N.D Okla. 1974), United States v. Rosen, 343 F. Supp. 894 (S.D. N.Y. 1972), Tarlton v. Saxbe, 507 F.2d 1116, 1128 (U.S. D.C. Cir. 1974).

4. Although Plaintiff's complaint states that because he was acquitted of the Murder charge in 1960, his arrest record in that case should be expunged, an acquittal standing alone is not in itself sufficient to warrant expungement of an arrest record, United States v. Linn, 513 F. 2d 925 (10th Cir. 1975). The entry on the record shows the acquittal.

Plaintiff has failed to allege facts sufficient to state a cause of action under 42 U.S.C. 1983 against the defendant Jess O. Walker.

IT IS, THEREFORE, ORDERED that the motion of Defendant Jess O. Walker to dismiss the complaint and amended complaint for failure to state a claim upon which relief can be granted, be and is hereby sustained.

Dated this 24th day of April, 1978.


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

"3. There is no evidence to support the conclusions of law of the referee and his findings and conclusions of law are clearly erroneous.

Rule 810 of the Rules of Bankruptcy Procedure states:

"Upon an appeal the district court may affirm, modify, or reverse a referee's judgment or order, or remand with instructions for further proceedings. The court shall accept the referee's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the referee to judge of the credibility of the witnesses."

The Bankruptcy Judge made the following Findings of Fact:

1. The bankrupt was in the business of developing oil and gas leases. R. Stanley Evans, the claimant, is a lease broker.
2. Evans owned two oil and gas leases on lands in Kay County, Oklahoma, and negotiated with the bankrupt through its president, John E. McAlpine, for the development of these leases.
3. The proposed development contemplated assignment of the leases by Evans to the bankrupt for \$4,800. Evans was to retain a royalty interest in the leases and the bankrupt was to drill a well sufficient to test Wilcox sand. In the course of negotiations McAlpine told Evans that the ability of the bankrupt to take the deal and develop the leases was contingent upon a successful registration of the undertaking with the Securities and Exchange Commission and the raising of necessary funds.
4. Under date of April 11, 1973, McAlpine subscribed to a letter which had been prepared by Evans and which reads as follows:

Dear Mr. Evans:

This letter will serve to confirm our agreement entered into the 10th day of April, 1973, relative to my purchase and acquisition of the above-described oil and gas lease, consisting of 240 acres, more or less. The assignment from you to McAlpine Oil Company shall be effective May 1, 1973.

I agree to drill a well in the Center of the NW/4 SE/4 to a depth of 5,000 feet, or to the Wilcox sand, whichever comes first, to be commenced on or before September 7, 1973. It is also agreed that I will carefully check any and all potential producing zones above that depth. Mr. J.L. Stratton, consultant geologist, of Stillwater, Oklahoma, will be engaged to watch the well.

I agree to pay to you the sum of \$200.00 per acre for the lease, for a total of \$4,800.00, and you will retain a 1/16th of 7/85h overriding royalty interest.

5. The preparation and issuance of the letter was at

partly motivated by Evans' desire to be able to evidence to certain of his creditors some activity regarding development of the leases. Evans did not subscribe to the letter.

6. On May 1, 1973, Evans orally requested payment of the \$4,800 for the assignments. At that time Evans was told by McAlpine that he had not been able to raise sufficient funds and because of certain problems being experienced with the Securities and Exchange Commission the bankrupt would probably not be able to take the deal.

7. Evans did not deliver the leases or assignments but made demands for payment by letters dated May 1, 1973; May 23, 1973; May 29, 1973. On June 7, 1973, with neither party having acted further, Evans filed a civil action in the District Court for Tulsa County, Oklahoma, seeking judgment for \$4,800. No judgment was entered in the civil action prior to the filing of this bankruptcy case on November 16, 1973.

8. The leases expired without development by Evans. A subsequent lessee developed the property and obtained a producing well. The cost of drilling the well which had been contemplated by Evans and McAlpine was \$52,000 and the value of the royalty interest Evans was to retain, assuming such a well was ultimately drilled, would have been \$50,000.

9. Evans asserts claims against the estate of the bankrupt for \$4,800, for \$52,000, and for \$50,000 damages arising out of a breach of the contract he asserts existed which bound the bankrupt to purchase and develop the leases. All claims have been objected to by the trustee in bankruptcy of the estate of the bankrupt.

"The Court is required to accept the findings of fact in the Referee's Report, unless clearly erroneous. General Order in Bankruptcy No. 47, 11 U.S.C.A. following Section 53; Rule 53(e)(2), Federal Rules of Civil Procedure; Mountain Trust Bank v. Shifflett, 4 Cir., 255 F.2d 718 (1958); and In Re Supnick, 160 F.Supp. 355 (E.D.Pa. 1958). This is especially true when the findings of the referee are based upon conflicting evidence, and where the credibility of witnesses is involved. When the referee has heard the witnesses and observed their demeanor, great weight attaches to his conclusions." In the Matter of Custom-Built Homes, Inc. (USDC MD N.Car. 1963), 214 F.Supp. 806

In Collier's on Bankruptcy, Volume 13, ¶810-05 it is said:

"The principle, that the referee's findings of fact shall

accepted unless clearly erroneous, is retained by Rule 810. Also to be retained, undoubtedly, will be the many misconceptions, misunderstandings and misapplications of the rule. It does not give the referee's orders and judgments the standing of holy writ. It is limited, by its terms, to findings of fact. The district judge is free to make his own conclusions of law, and to draw inferences or deductions, different from the referee's on documentary, undisputed or stipulated evidence.

"The rule is based on sound common sense. Where testimony conflicts, where credibility of witnesses is involved, the referee who saw and heard the witnesses, who observed their demeanor and the intonations in their voices, is better able to make findings of fact than the district judge reviewing a cold record."

The Court finds that the Findings of Fact of the Referee, based on sharply conflicting testimony, are not clearly erroneous and will be adopted and affirmed by the Court.

The Bankruptcy Judge concluded, as a matter of law, that the transaction was "only a sale for cash on delivery that was contemplated". The Bankruptcy Judge further concluded that:

"If a contract of sale upon exchange had been consummated, the bankrupt may then have been obligated to develop a lease pursuant to the terms of the letter. But the sale never took place and no contract existed to be breached by the bankrupt."

After so concluding, the Bankruptcy Judge ruled that all claims of R. Stanley Evans were denied and the Trustee's objections thereto were sustained.

The Trustee contends that the Bankruptcy Judge correctly concluded there was no contract to be breached by the bankrupt. The Trustee further contends that the Bankruptcy Judge correctly recognized and implemented the principles pertaining to conditions precedent to contracts, to-wit:

[A condition precedent] is one which calls for the performance of some act or the happening of some event after the contract is entered into and upon the performance or happening of which its obligations are made to depend. Rollins v. Rayhill, 191 P.2d 934, 937 (Okla. 1948)

As previously noted, the Bankruptcy Judge found, that the finding is not against the clear weight of the evidence, that McAlpine Oil Company was to accept assignment of the lease and drill a well on the property so leased only if McAlpine Oil Company could successfully register an undertaking to raise funds with the Securities and Exchange Commission, and then successfully raise

those funds. It is undisputed in the record that McAlpine Oil Company was unsuccessful both in registering the undertaking and in raising funds. Therefore, the satisfaction of the condition precedent, i.e. the raising of the money for the project was never satisfied. The Bankruptcy Judge correctly concluded that by reason of the failure of the condition precedent, the April 11 letter never matured into an enforceable contract.

Appellant claims in this Court that since this condition was oral, and not expressed in the April 11 letter, it is parol evidence and thus inadmissible. This point was raised in the trial court and rejected by the Bankruptcy Judge. The Court concludes the Bankruptcy Judge's ruling on this point was correct in view of the holdings in *Harlow Publishing Company v. Waldon*, 32 P.2d 278 (Okla. 1934); *Fane Development Company v. Townsend*, 381 P.2d 1012 (Okla. 1963); and *Bredouw v. Jones*, 431 P.2d 413 (Okla. 1967).

While it is true that the law of Oklahoma provides that parol evidence may not be introduced to vary the terms of a written instrument, this rule does not apply to the introduction of parol evidence to prove a condition precedent. As stated by the Oklahoma Supreme Court in the case of *Harlow Publishing Company v. Waldon*, supra:

"Evidence offered for the purpose of showing that a written instrument was delivered conditionally does not constitute contradicting or varying a written instrument by parol evidence. Such evidence does not tend to show any modification or alteration of the written agreement, but that it never became operative and that its obligations never commenced. A written contract must be in force to make it subject to the parol evidence rule." (Syllabus No. 3).

The Bankruptcy Judge chose to believe John McAlpine in his testimony describing the condition precedent. This finding served as the basis for the conclusion of law that there existed a condition precedent which never was satisfied and thus no formation of an operative contract between the parties ever occurred.

The Bankruptcy Judge further concluded, as a matter of law, that the letter of April 11, 1973, must be considered as subject to the Oklahoma Statute of Frauds, 15 OSA §136. The evidence

adduced revealed that though the letter was signed by the proposed purchaser it was not signed by Evans, the proposed seller, and pursuant to such Statute is not enforceable as against him. The letter lacks mutuality and does not constitute a contract under any reasonable construction of 15 O.S.A. §2, 51, and 66.

An examination of the Oklahoma Statute of Frauds (supra) and the several cases appearing in the annotations thereto (particularly at note 192; *Cloud v. Winn*, Okl., 303 P.2d 305 (1956); *Sohio Petroleum Co. v. Brannan*, 205 Okl. 1, 235 P.2d 279 (1951); *Aikman v. Evans*, 181 Okl. 94, 72 P.2d 479 (1937)), compels the conclusion that the letter is no more than a memorandum of a parol agreement. It may be sufficient to charge the bankrupt, the proposed purchaser signing the letter, with the obligations of that parol agreement but such obligations, as disclosed by the evidence, were simply to attempt to raise the necessary funds. The Bankruptcy Judge found that the only contract contemplated by the parties and which was agreed to in any respect by Evans, was that which was to be accomplished by a concurrent exchange of case for assignments. No executory contract of purchase and sale was contemplated nor did one exist.

IT IS, THEREFORE, ORDERED that the Judgment, Findings of Fact and Conclusions of Law of the Bankruptcy Judge be and the same are hereby affirmed.

IT IS FURTHER ORDERED that the objections to the Findings and Recommendations of the Magistrate be and the same are hereby overruled.

ENTERED this 24th day of April, 1978.



CHIEF UNITED STATES DISTRICT JUDGE

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

PAT THOMAS, Individually, and as)
attorney-in-fact for Stephen W.)
Slaughter,)

Plaintiff,)

vs.)

No. 78-C-173-C

MICKEY INC., d/b/a AAMCO)
AUTOMATIC TRANSMISSIONS, an)
Oklahoma Corporation,)

Defendant.)

FILED

APR 24 1978

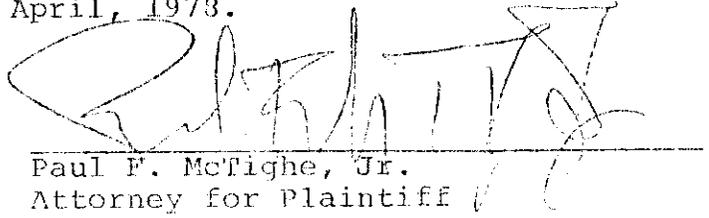
NOTICE OF DISMISSAL

To: The above-named defendant:

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

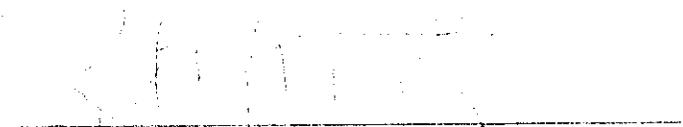
You will take notice that the above-captioned lawsuit is hereby dismissed with prejudice by the plaintiff herein.

Dated this 24th day of April, 1978.


Paul F. McFigue, Jr.
Attorney for Plaintiff
424 Beacon Building
Tulsa, Okla. 74103
Phone: 582-8850

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the above and foregoing Notice to Mickey Inc., 8115 East 15th Street, Tulsa, Oklahoma 74112 with proper postage thereon fully prepaid.


Paul F. McFigue, Jr.

FILED

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

APR 21 1978

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

REPUBLIC BANK & TRUST COMPANY,)
a state bank,)
))
Plaintiff,)
))
vs.))
))
J. P. MORGAN INTERFUNDING CORP.,)
a corporation; EASTLAND ASSOCIATES)
II, a Limited Partnership; and)
EASTLAND INVESTMENT COMPANY, INC.,)
a corporation,)
))
Defendants.)

No. 75-C-326-B ✓

ORDER OF DISMISSAL

NOW on this 21st day of April, 1978, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by plaintiff and defendants. Based upon the representations and requests of the parties, as set forth in the foregoing stipulation, it is

ORDERED that plaintiff's complaint for interpleader be and the same is hereby dismissed with prejudice. It is further

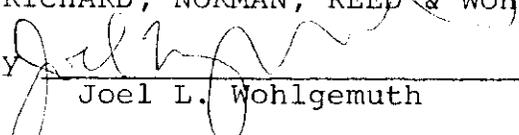
ORDERED that defendant J. P. Morgan Interfunding Corporation's counterclaim and claim for relief against the plaintiff be and the same is hereby dismissed with prejudice. It is further

ORDERED that the claims for relief set forth in the answers filed by the defendants Eastland Investment Company and Eastland Associates II be and the same are hereby dismissed with prejudice. The Court further directs that each party shall bear its own costs.


CHIEF UNITED STATES DISTRICT JUDGE

APPROVED:

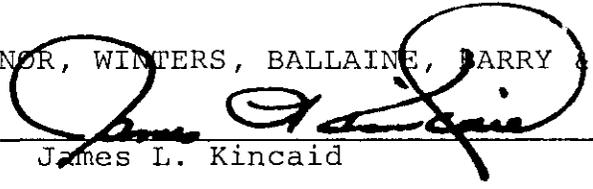
PRICHARD, NORMAN, REED & WOHLGEMUTH

By 
Joel L. Wohlgemuth

Attorneys for Republic Bank & Trust Co.

CONNOR, WINTERS, BALLAINE, BARRY & MCGOWEN

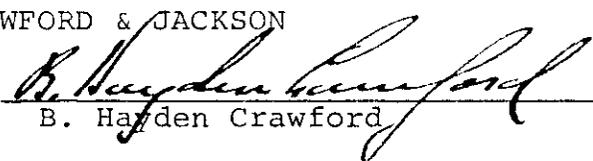
By


James L. Kincaid

Attorneys for J. P. Morgan
Interfunding Corporation

CRAWFORD & JACKSON

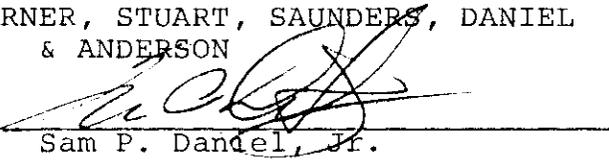
By


B. Hayden Crawford

Attorneys for Eastland Associates II

DOERNER, STUART, SAUNDERS, DANIEL
& ANDERSON

By


Sam P. Dandel, Jr.

Attorney for George S. Thompson,
Trustee for Eastland Investment Co.

FILED

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

NO APR 21 1978

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
LENNIS NORMAN, JR., PHIL)
ARCHER, D.D.S., COUNTY)
TREASURER, Tulsa County,)
Oklahoma, and BOARD OF)
COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,)
)
Defendants.)

Civil Action No. 77-C-103-B ✓

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 2/21
day of April, 1978, the Plaintiff appearing by Robert
P. Santee, Assistant United States Attorney; and the Defendants,
County Treasurer, Tulsa County, Oklahoma and Board of County
Commissioners, Tulsa County, Oklahoma, appearing by its attorney,
James F. Raymond; and the Defendant Phil Archer, D.D.S., appear-
ing by his attorney, John R. Woodard, III, and the Defendant,
Lennis Norman, Jr., appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, Lennis Norman, Jr. was
served by publication as shown on Proof of Publication filed
herein; that Defendants, Phil Archer, D.D.S., County Treasurer,
Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa
County, Oklahoma, were served with Summons and Complaint on
September 27, 1977, all as appear on the United States Marshals
Service herein.

It appearing that the Defendants, County Treasurer,
Tulsa County, Oklahoma and Board of County Commissioners, Tulsa
County, Oklahoma, have duly filed their answers herein on
October 20, 1977; that the Defendant, Phil Archer, D.D.S., has
filed his answer and cross-claim herein on October 11, 1977; and

that the Defendant, Lennis Norman, Jr., has failed to answer herein and that default has been entered by the Clerk of this Court.

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

Lot Thirty-seven (37), in Block Eighteen (18), in VALLEY VIEW ACRES ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendant, Lennis Norman, Jr., did, on the 26th day of April, 1976, execute and deliver to the Administrator of Veterans Affairs, his mortgage and mortgage note in the sum of \$8,000.00, with 9 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Lennis Norman, Jr., made default under the terms of the aforesaid mortgage note by reason of his failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the sum of \$8,108.04 as unpaid principal with interest thereon at the rate of 9 percent per annum from July 1, 1976, until paid, plus the cost of this action accrued and accruing.

The Court further finds that the Defendant, Phil Archer, D.D.S., is entitled to judgment against Lennis Norman, Jr., in the amount of \$350.00, plus \$5.00 costs, plus interest according to law, plus accrued Court costs, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendant, Lennis Norman, Jr., the sum of \$ 0, plus interest according to law for personal property taxes assessed against Charles M. Harris, former owner, for the year(s) 0 and that

Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Lennis Norman, Jr., in rem, for the sum of \$8,108.04, with interest thereon at the rate of 9 percent per annum from July 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.

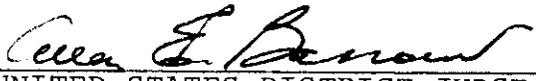
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Phil Archer, D.D.S., have and recover judgment against Lennis Norman, Jr., in the amount of \$350.00, plus \$5.00 costs, plus interest according to law, plus accrued court costs as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendant, Lennis Norman, Jr., for the sum of \$ — 0 — as of the date of this judgment plus interest thereafter according to law for personal property taxes assessed against Charles M. Harris, former owner, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

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

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

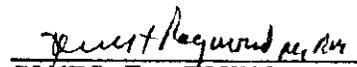
this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any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


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANTEE
Assistant United States Attorney


JOHN R. WOODARD, III
Attorney for Defendant, Phil Archer, D.D.S.


JAMES F. RAYMOND
Assistant District Attorney of District No. 14
Tulsa County Treasurer
Board of County Commissioners

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

FILED

APR 21 1978

AMC AIR CONDITIONING CO.,)
a Texas Corporation,)
)
)
Plaintiff,)
)
)
vs.)
)
)
THERMO KING OF TULSA, INC.,)
an Oklahoma Corporation,)
)
)
Defendant.)

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

No. 77-C-502-B

JOURNAL ENTRY OF JUDGMENT

This cause came on for hearing on the 17th day of April, 1978, upon the plaintiff's application for a default judgment, and the Court being fully advised in the premises and fully familiar with the files and records herein and having heard the statements of counsel for the plaintiff and having three times called the defendant in open court and the defendant having failed to appear personally or by its counsel or representative, the Court finds as follows:

That this matter was set by the Court on February 1, 1978, for disposition, at which time the plaintiff appeared, but the defendant failed to appear personally or by its counsel or other representative.

That on April 17, 1978, pursuant to notice, the Magistrate conducted a hearing, taking evidence in support of the motion for default judgment, including attorney's fees, and costs, at which time the plaintiff appeared by its attorney, David H. Sanders, and its representative, Lee Sawin, and the defendant appeared not nor by its representative or counsel, but again wholly made default and the Magistrate heard the evidence of witnesses sworn and examined in open court.

Based upon the findings and recommendations of the Magistrate filed herein on the 20th day of April, 1978, the Court finds that the plaintiff, AMC Air Conditioning Co., a Texas Corporation, should have judgment of and from the defendant, Thermo King of Tulsa, Inc., an Oklahoma Corporation, for the sum of \$14,360.82, with interest thereon at the rate of 6% per annum from June 24, 1977, until date hereof and thereafter at the rate of 10% per annum until paid in full and for a reasonable attorney's fee of \$4,400.00 to be levied, assessed, taxed, and collected as costs in this action, and for the costs accrued and accruing.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that judgment be and the same is hereby entered in favor of the plaintiff and against the defendant.

IT IS, THEREFORE, FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, AMC Air Conditioning Co., a Texas Corporation, have and recover judgment of and from the defendant, Thermo King of Tulsa, Inc., an Oklahoma Corporation, for the sum of \$14,360.82, with interest thereon at the rate of 6% per annum from June 24, 1977, until date hereof and thereafter at the rate of 10% per annum until paid in full and for a reasonable attorney's fee of \$4,400.00 to be levied, assessed, taxed, and collected as costs in this action, and for accrued and accruing court costs.



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

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

REPUBLIC BANK & TRUST COMPANY,)
a state bank,)
)
Plaintiff,)
)
vs.)
)
J. P. MORGAN INTERFUNDING CORP.,)
a corporation,)
)
Defendant.)

No. 76-C-377-C **FILED**

APR 21 1978

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

ORDER OF DISMISSAL

NOW on this 21st day of April, 1978, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by plaintiff and defendant. Based upon the representations and requests of the parties, as set forth in the foregoing stipulation, it is

ORDERED that plaintiff's complaint and claim for relief against the defendant J. P. Morgan Interfunding Corp. be and the same is hereby dismissed with prejudice. The Court further directs that each party shall bear its own costs.

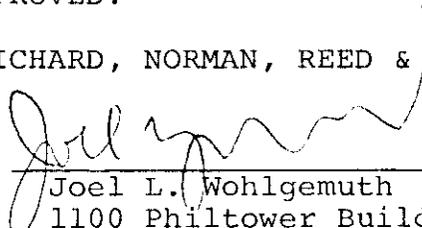


UNITED STATES DISTRICT JUDGE

APPROVED:

PRICHARD, NORMAN, REED & WOHLGEMUTH

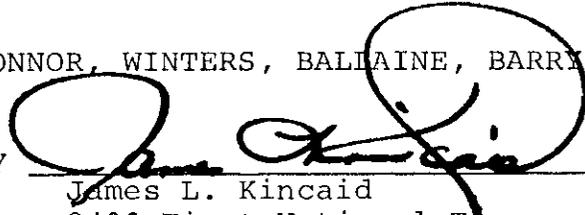
By


Joel L. Wohlgemuth
1100 Philtower Building
Tulsa, Oklahoma 74103

Attorneys for the Plaintiff

CONNOR, WINTERS, BALLAINE, BARRY & MCGOWEN

By


James L. Kincaid
2400 First National Tower
Tulsa, Oklahoma 74103

Attorneys for the Defendant

any other legal proceedings against the plaintiff in connection with this matter. Dorene J. Fine admits that the payment of fees claimed by plaintiff is wholly discretionary with the Court, but recommends that plaintiff be paid the sum of \$650.00 as reasonable costs and fee.

The defendant, Theresa Fine, has filed here response, wherein she objects to the injunction; objects to the discharge; and objects to the allowance of an attorney fee, stating that "there is no authority for the allowance of attorney fees in Oklahoma in interpleader actions.

The Court will first turn to the question of attorney fees in an interpleader action. In *Lincoln Income Life Ins. Co. v. Harrison*, 71 F.R.D. 27 (WD Okl. 1976) a rather lengthy discussion is rendered concerning the allowance of an attorney fee in an interpleader action (including the argument as to 12 Oklahoma Statutes 1971 §§238-243 not providing an allowance for attorney fees).

The Court, in the exercise of its discretion, finds that the plaintiff in this case is entitled to a reasonable attorney fee out of the funds deposited in the Court in this suit. In this connection it is noted as in *Lincoln Income Life Ins. Co. v. Harrison*, supra:

"***that Plaintiff lays no claim to the fund, there is no conflict between the Plaintiff and the Defendants as to the fund, the Plaintiff has preserved and paid the fund into Court and seeks no significant relief herein and Plaintiff has proceeded with this interpleader suit in good faith. The Court deems it is fair and equitable in the circumstances of this case to allow the stakeholder a reasonable attorney's fee."

The Court finds that a reasonable attorney fee in this case is the sum of \$1,000.00, based on the Court's own experience and knowledge in this area.

As to the expenses claimed by the Plaintiff, the Court determines that plaintiff is entitled to recover its expenses herein from the deposited funds, but the amount of same shall be taxed by the Clerk of the Court upon timely and proper application for same under Rule 54(d), Federal Rules of Civil Procedure.

The Court further finds that the plaintiff is entitled to be discharged from this action and is entitled to the injunction prayed for herein.

IT IS, THEREFORE, ORDERED that the application of plaintiff for discharge be and the same is hereby granted and plaintiff is dismissed from this litigation.

IT IS FURTHER ORDERED that the defendants, and each of them, are enjoined from any further proceedings against the plaintiff arising out of or in connection with any claim to the proceeds of the insurance policy here involved.

IT IS FURTHER ORDERED that the plaintiff is granted an attorney fee of \$1,000 to be paid out of the deposited funds in this case.

IT IS FURTHER ORDERED that plaintiff is entitled to recover its expenses herein from the deposited funds, but the amount of same shall be taxed by the Clerk of the Court upon timely and proper application for same under Rule 54(d) of the Federal Rules of Civil Procedure.

ENTERED this 19 day of April, 1978.



CHIEF UNITED STATES DISTRICT JUDGE

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

FILED

STEEL RIGGERS AND CONSTRUCTORS, INC.,)
previously Steel Constructors, Inc.,)
)
Plaintiff,)
)
-vs-)
)
GORDON A. TAYLOR, et al,)
)
Defendants.)

APR 19 1978

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

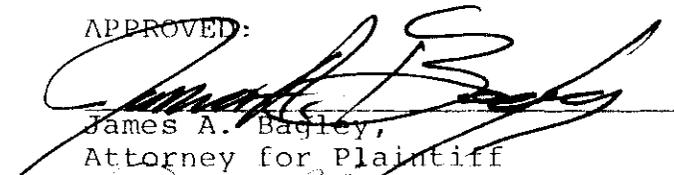
No. 77-C-490-B

ORDER DISMISSING CAUSE WITHOUT PREJUDICE AS AGAINST
GORDON A. TAYLOR, CHURCHILL G. CAREY, EUGENE L. AMBER,
JOHN D. UIBLE AND JOHN H. ROGERS, IN THEIR INDIVIDUAL CAPACITIES

THIS CAUSE coming on before me, the undersigned Judge, this 19th day of April, 1978, on the joint stipulation of the plaintiff, Steel Riggers and Constructors, Inc., and the defendants, Gordon A. Taylor, Churchill G. Carey, Eugene L. Amber, John D. Uible and John H. Rogers, in their individual capacities only, and not in their fiduciary capacities as Trustees, by the terms of which stipulation each of said parties has agreed and consented that the pending action as against such defendants may be dismissed without prejudice to the bringing of another action for the same, and the Court being satisfied for good cause shown that such order should issue;

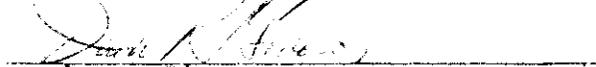
IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED and DECREED that the above styled ^{cause of and complaint} action filed by the plaintiff herein as against the defendants, Gordon A. Taylor, Churchill G. Carey, Eugene L. Amber, John D. Uible and John H. Rogers, in their individual capacities only, and not in their fiduciary capacities as Trustees, be and the same is hereby dismissed without prejudice to the bringing of another action for the same, any court costs paid or incurred to be borne by the plaintiff herein.

APPROVED:


James A. Bagley,
Attorney for Plaintiff

(Signed) Allen E. Barrow

UNITED STATES DISTRICT JUDGE


Jack R. Givens
Attorney for Said Defendants

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

CONCRETE MACHINERY COMPANY, INC., :

Plaintiff, :

v. :

JOHN SULLIVAN, :

Defendant. :

Civil Action No. 77-C-505-B

FILED

APR 19 1978

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

CONSENT JUDGMENT

The parties having agreed to the terms of a Consent Judgment, and the Court having considered and approved such terms, it is hereby:

Ordered, Adjudged and Decreed:

I. Defendant admits the validity and enforceability of the following copyrights of Plaintiff:

<u>Catalog Number</u>	<u>Item</u>	<u>Class</u>	<u>Registration No.</u>
280	Angel	G	GP31727 GP105097
467	Royal Urn	G	GP69525 GP105109
17	Bell Pedestal	G	GP36555 GP105111
547	Round End Grecian, Short	G	GP44409 GP103462
548	Round End Grecian	G	GP44409 GP103462
549	Round End Grecian, Long	G	GP44409 GP103462
18	Pedestal With Cats	G	GP64234 GP105411
345	Donkey	G	GP34951
345B	Donkey Cart	G	GP34739
99	Jr. Serrated Bowl	G	GP25865

<u>Catalog Number</u>	<u>Item</u>	<u>Glass</u>	<u>Registration No.</u>
212	Senior Swan	G	GP25866
410	Princess	G	GP24625
358L	Medium Size Standing White Tail Deer	G	GP29666 GP105101
113A	Clam Shell Bowl	G	GP21329
354L	Standing North Woods Fawn	G	GP29662 GP105104
117	Jr. Tulip Bowl	G	GP36555 GP10511

II. Defendant admits that he has infringed the following copyrights by the manufacture, use and/or sale of the following specifically identified molds:

<u>Item</u>	<u>Approximate No. of Unauthorized Molds Manufactured, Used and/or Sold By Defendant</u>
No. 280 Angel	5
No. 467 Royal Urn	4-8
No. 17 Bell Pedestal	2-3
No. 549 Round End Grecian, Short	6-8
No. 18 Pedestal With Cats	1
No. 345 Donkey	6
No. 345B Donkey Cart	6
No. 212 Senior Swan	10-15
No. 410 Princess	2-3
No. 358L Medium Size Standing White Tail Deer	10-15
No. 113A Clam Shell Bowl	4-5
No. 354L Standing North Woods Fawn	10-15
No. 117 Jr. Tulip Bowl	25-30
No. 548 Round End Grecian	3-4

Defendant further admits that he has manufactured and sold infringing molds to Mr. Ralph Sitler, now deceased, other than those set forth above, but Defendant cannot recall the specific molds manufactured or the quantities thereof.

III. Defendant is permanently enjoined from infringing any of the copyrights specifically enumerated in Paragraph I above.

IV. Defendant will destroy the following molds within (10) days of the date of entry of this Consent Judgment, such molds constituting infringements of the copyrights enumerated in Paragraph I above:

1. No. 17 Bell Pedestal
2. No. 345 Donkey
3. No. 345B Donkey Cart
4. No. 18 Pedestal With Cats

Such destruction shall take place in the presence of an impartial witness.

V. Defendant will destroy, within ten (10) days of the date of entry of this Consent Judgment, all statuary in his possession, custody, or control which has been made from molds infringing the copyrights specifically enumerated in Paragraph I above and which do not bear Plaintiff's copyright notice. Such destruction shall take place in the presence of an impartial witness.

VI. Defendant shall, within fifteen (15) days of the date of entry of this Consent Judgment, submit to Plaintiff an affidavit under oath, in the form set forth in Attachment A to this Consent Judgment, certifying that the destruction

of items required in Paragraphs IV and V of the Consent Judgment has been completed and identifying the person who witnessed the destruction.

VII. Because of Defendant's financial condition and the recognition by Plaintiff of the potential costs of litigation, the parties have agreed that Defendant shall pay to Plaintiff the sum of four thousand eight hundred and fifty dollars (\$4850.00) within five (5) days of the date of entry of this Consent Judgment.

VIII. Plaintiff acknowledges that the molds listed in Attachment B to this Consent Judgment were on the premises of John Sullivan and inspected by Plaintiff on February 27, 1978 and that such molds are copyrighted molds manufactured and sold by Plaintiff.

IX. Plaintiff hereby releases Defendant from any and all liability or claims whatever, resulting from the manufacture or sale of molds or Defendant's own use of molds, identified in Paragraph II, which constitute:

(a) infringement of the copyrights set forth in Paragraphs I and II above occurring prior to the date of entry of this Consent Judgment;

(b) violations of 15 U.S.C. §1525 alleged in Count II of the Complaint occurring prior to the date of entry of this Consent Judgment; and

(c) acts of unfair competition and deceptive trade practices alleged in Count III of the Complaint occurring prior to the date of entry of this Consent Judgment.

This release is in no way intended to affect the liability of any third parties and, accordingly, does not release any third parties from any liability resulting from the manufacture use, or sale of the molds identified in Paragraphs I and II of this Consent Judgment.

X. On February 27, 1978, a meeting was held between Plaintiff and Defendant. Present at that meeting were the President of Plaintiff corporation, Vernon S. Flowers, Plaintiff's counsel, Alfred A. D'Andrea, Jr., Esq., Defendant John Sullivan and Defendant's counsel, J. R. Hall, Esq. During that meeting, certain discussions were held between the parties concerning infringements by third parties. A transcript of these discussions, as recorded by Defendant's counsel, has been retained by counsel for each of the parties.

Defendant agrees to maintain the contents of these discussions in confidence and not to discuss, refer to, or relate any information contained therein to any third party.

Defendant further willingly agrees that, if necessary, he will cooperate with Plaintiff should the facts revealed during these discussions lead to litigation against third parties.

Plaintiff is under no obligation to maintain the contents of these discussions in confidence, or to refrain from using or revealing the contents of these discussions, except as specifically agreed by Plaintiff during these discussions.

XI. Both parties shall bear their own costs.

Date: April 19, 1978

Allen E. Barrow

U.S. District Judge

Consented to:

CONCRETE MACHINERY COMPANY, INC., Plaintiff

By: Vernon S. Flowers
Vernon S. Flowers
President

March 28, 1978
Date

JOHN SULLIVAN, Defendant

By: John Sullivan
John Sullivan

3-30-1978
Date

ATTACHMENT A

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

CONCRETE MACHINERY COMPANY, INC., :
 :
 : Civil Action No. 77-C-505-B
 :
 Plaintiff, :
 :
 :
 v. :
 :
 :
 JOHN SULLIVAN, :
 :
 :
 Defendant. :

AFFIDAVIT OF JOHN SULLIVAN

John Sullivan, being duly sworn, states:

1. I am the Defendant in the above-captioned action.
2. In accordance with the terms of Paragraph VI of the Consent Judgment entered in the above-captioned matter on _____, I hereby certify that the following molds and statuary have been destroyed in the presence of _____, as required by Paragraphs IV and V of the Consent Judgment:

MOLDS

- 1 No. 17 Bell Pedestal Metal Mold
- 1 No. 345 Donkey Metal Mold
- 1 No. 345B Donkey Cart Metal Mold
- 1 No. 18 Pedestal With Cats Metal Mold

STATUARY

(List Applicable Statuary Destroyed)

This the _____ day of _____, 1978.

John Sullivan

State of _____)
County of _____) ss.

Subscribed and sworn to before me this _____ day of _____, 1978.

Notary Public

(Seal)

My Commissioner Expires:

AFFIDAVIT OF WITNESS

_____, being duly sworn, states:

1. I witnessed the destruction of all of the molds and statutory set forth above.

This the _____ day of _____, 1978.

State of _____)
County of _____) ss.

Subscribed and sworn to before me this _____ day of _____, 1978.

Notary Public

(Seal)

My Commission Expires:

ATTACHMENT B

LIST OF INSPECTED COPYRIGHTED MOLDS

<u>Catalog No.</u>	<u>Item</u>	<u>Quantity</u>
117	Jr. Tulip Bowl	1
113	Large Clam Shell Bowl	1
549	Round End Grecian, Long	1
280	Angel	1
13	Sea Horse Pedestal	1
182	Wittie Winnie	1
301, 302	Lions	2
345	Donkey	1
345B	Donkey Cart	1
16	Tri-Fish Pedestal	1
447 1/2	Lady Grecian	1
212	Senior Swan	1
358L	Standing White Tail Deer	1
354L	Standing North Woods Fawn	1
250B	Cardinal With Base	1
547	Round End Grecian, Short	1
389	Lady With Jar	1

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

DENNY C. WHINERY and CONNIE L. WHINERY,)
)
)
 Plaintiffs)
)
 v.)
)
 SWINSON CHEVROLET, INC.,)
)
 Defendant and Third)
 Party Plaintiff)
)
 v.)
)
 JAMES E. LOGAN, d/b/a Jim Logan)
 Motors,)
)
 Third Party Defendants)
 and Third Party Plaintiff)

No. 77-C-155-C

FILED

APR 17 1978

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

ORDER

Now on this 17 day of April, 1978, the Motion for Dismissal of the plaintiffs herein coming on for consideration, and counsel for plaintiffs herein representing and stating that all issues, controversies, debts and liabilities between the parties herein having been paid, settled and compromised.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said action be, and the same is, hereby dismissed with prejudice to the bringing of another or future action between the parties herein.

(Signed) H. Dale Cook

H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

~~FILED~~
APR 13 1978
Jack C. Silver, Clerk
U. S. DISTRICT COURT

RICHARD MEEKS,)
)
Plaintiff,)
)
vs.)
)
READING & BATES OFFSHORE DRILLING)
COMPANY, a Corporation, READING &)
BATES DRILLING COMPANY, a Corpora-)
tion, and READING & BATES BORNEO)
DRILLING COMPANY, LTD., a Corpora-)
tion,)
)
Defendants.)

CIVIL ACTION
No. 76-C-629-B ✓

FILED
APR 14 1978
Jack C. Silver, Clerk
U. S. DISTRICT COURT

APPLICATION FOR DISMISSAL
WITH PREJUDICE

COMES NOW the Plaintiff Richard Meeks and moves for an order of the Court dismissing his Complaint and his causes of action against the Defendants herein with prejudice to the refiling or reassertion thereof for the reason that the parties have negotiated a settlement of the case.

DOERNER, STUART, SAUNDERS, DANIEL
& ANDERSON
1200 Atlas Life Building
Tulsa, Oklahoma 74103

STIPE, GOSSETT, STIPE & HARPER
P.O. Box "S"
McAlester, Oklahoma 74501

BY G. Michael Lewis
G. Michael Lewis

BY Richard L. Gossett
Richard L. Gossett

Attorneys for the Defendants

Attorneys for the Plaintiff

ORDER OF DISMISSAL

The Complaint and all causes of action of the Plaintiff against the Defendants thereunder are dismissed with prejudice to the refiling or reassertion thereof.

SO ORDERED this 17 day of April, 1978.

Allen E. Barrow
ALLEN E. BARROW
Chief United States District Judge

FILED

APR 17 1978 ✓

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

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION NO. 78-C-114-B
)
 An article of food consisting)
 of 45 bales, more or less,)
 labeled in part:)
)
 (bale bag))
)
 "12-2 LB. BAGS OLDE MILL STONE)
 GROUND YELLOW CORN MEAL MILLED)
 & PACKED BY ARROWHEAD MILLS,)
 INC. HEREFORD, TEXAS ***")
)
 Defendant.)

FILED

APR 13 1978

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

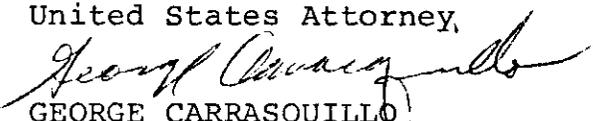
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, George Carrasquillo, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 13th day of April, 1978.

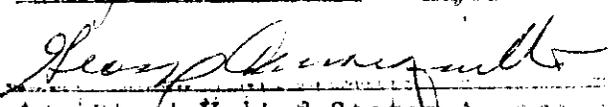
UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney,


GEORGE CARRASQUILLO
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 13th day of April, 1978.


Assistant United States Attorney

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APR 13 1978

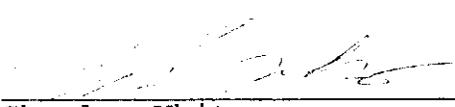
U.S. District Court
DISTRICT COURT

A. J. GRASGRIN,)
)
 Plaintiff,)
)
 vs.)
)
 BILL SATTERFIELD, d/b/a CLASSIC)
 AUTOS; ERNIE A. BAIL, CHRIS)
 NIKEL'S AUTOHAUS, an Oklahoma)
 Corporation; and SIGGI-GRIMM)
 MOTORS, INC., an Oklahoma)
 Corporation,)
)
 Defendants.)

No. 78-C-143-C

NOTICE OF DISMISSAL

COMES NOW the plaintiff above named and hereby gives Notice of Dismissal, without prejudice, of the above action against defendant SIGGI-GRIMM MOTORS, INC., an Oklahoma corporation. Said dismissal is against stated defendant only.



Charles Whitman
Attorney for Plaintiff
1141 East 37th Street
Tulsa, Oklahoma 74105
(918) 747-8001

CERTIFICATE OF MAILING

I, Charles Whitman, hereby certify that a true and correct copy of the above and foregoing NOTICE OF DISMISSAL was mailed to the following persons: Mr. James G. Fehrle, Attorney for Siggig-Grimm; Mr. Bill Satterfield, 4153 East 47th Place, Tulsa, Oklahoma; Mr. Ernie Bail, 1303 East 11th Street, Tulsa, Oklahoma; Chris Nikel's Autohaus, 3717 South Memorial Drive, Tulsa, Oklahoma, by depositing same in the United States Postal Service with sufficient, prepaid postage on this 3rd day of April, 1978.



Charles Whitman

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

DOMINIC OBIELI,)
)
 Plaintiff)
)
 v.) No. 77-C-58-C
)
 CAMPBELL SOUP COMPANY,)
)
 Defendant)

FILED

APR 13 1978

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

ORDER

The Court has for consideration the defendant's Motion for New Trial and Motion for Judgment N.O.V. The defendant has pled in the alternative for a remittitur of the jury verdict heretofore rendered on December 15th, 1977, in the amount of \$23,532.82. The Court has reviewed all the pleadings, briefs, partial transcripts of trial testimony, and listened to oral arguments of counsel on the 4th day of April, 1978.

The Court finds that the defendant's Motion for New Trial and Motion for Judgment N.O.V. should be overruled.

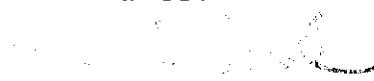
The Court further finds that the defendant's Motion for Remittitur should be granted because the jury verdict granted in this matter is deemed to be excessive. The judgment should be reduced to the amount of \$10,000.00 and the Court finds, therefore, that a remittitur in the amount of \$13,532.82 should be ordered.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the defendant's Motion for New Trial and defendant's Motion for Judgment N.O.V. is hereby overruled.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant's Motion for Remittitur is hereby granted and a

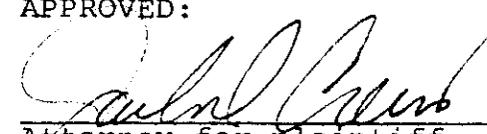
Remittitur in the amount of \$13,532.82 is ordered.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the plaintiff will advise the Court within ten days from this date whether plaintiff will accept the remittitur. If the plaintiff declines to accept the order of remittitur, then the Court will order a new trial on said date.

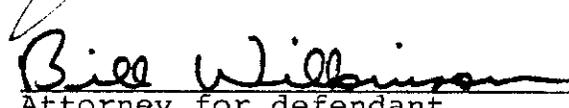


H. DALE COOK
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

APPROVED:



Attorney for plaintiff



Attorney for defendant

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

UTICA NATIONAL BANK & TRUST COMPANY,)
a National Banking Association,)
)
Plaintiff,)
)
vs.)
)
FLYNN W. STEWART, FLYNN W. STEWART)
II, and ROLAND STEWART,)
)
Defendants.)

No. 74-C-423-C

FILED

APR 13 1978

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

ORDER OF DISMISSAL

Now on this 13th day of April, 1978, the Court has for consideration the Joint Stipulation for Dismissal filed by all parties herein. Upon consideration thereof, and for good cause shown,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's First Cause of Action, as set forth in numbered paragraphs 1 through 10 of plaintiff's Amended Complaint, is dismissed as to the defendants Flynn W. Stewart, Flynn W. Stewart II and Roland Stewart, with prejudice to refiling as to said defendants.
2. Plaintiff's Second Cause of Action, as set forth in numbered paragraphs 1 through 4 and 11 through 17 of plaintiff's Amended Complaint, is dismissed as to the defendants Flynn W. Stewart, Flynn W. Stewart II and Roland Stewart, without prejudice to refiling.
3. Each party shall bear its own costs.

H. DALE COOK
United States District Judge

on the 17th day of September, 1977.

Title 36 O.S.A. §3629(B) provides:

"It shall be the duty of the insurer, receiving a proof of loss, to submit a written offer of settlement or rejection of the claim to be insured within ninety (90) days of receipt of the proof of loss. Upon a judgment rendered to either party, costs and attorney fees shall be allowable to the prevailing party. For purposes of this section, the prevailing party is the insurer in those cases where judgment does not exceed written offer of settlement. In all other judgments the insured shall be the prevailing party. This provision shall not apply to uninsured motorist coverage."

In Clark v. National Travelers Life Insurance Co., 518 F.2d 1167 (6th Cir. 1975) it was said:

"The dispositive question is whether this request for a statutory penalty and attorney's fee, standing alone in the ad damnum clause and unsupported by any statement showing entitlement to these items of damages provides the amount indispensable for jurisdiction in excess of the \$10,000 claim under the policy. See, e.g. Doucet v. Travelers Insurance Co., 362 F.2d 263 (5th Cir. 1966). It is settled that the statutory penalty and a statutory attorney's fee can be considered in determining whether the jurisdictional amount is met, e.g. Missouri State Life Insurance Co. v. Jones, 290 U.S. 199, 54 S.Ct. 133, 78 L.Ed. 267 (1933); Peacock & Peacock, Inc. v. Stuyvesant Insurance Co., 332 F.2d 499 (8th Cir. 1964); Columbian National Life Insurance Co. v. Harrison, 12 F.2d 986 (6th Cir. 1926), even though the proofs fail to support the theory upon which this relief is requested as long as the claim was made in good faith. E.g., Rogers v. United States Automobile Ass'n., 410 F.2d 598 (6th Cir. 1969). And, we observe that both in Tennessee and in New York, the state legislatures have provided for recovery of a monetary penalty from an insurance company that refused in bad faith to pay a claim.***."

And in Moore's Federal Practice, Volume 1, ¶10.99[2] it is said

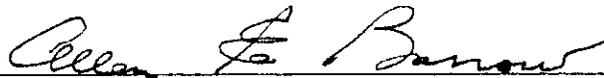
"And the Supreme Court has held that where attorney's fees are allowed by statute they may be included in the jurisdictional sum, even though the statute may speak of them as costs and make them taxable as costs, provided the benefit ultimately accrues to the plaintiff."

The Court finds no fault with the above cited law. But in this case, the statute imposing an attorney fee (36 O.S.A. §3629(B)) became effective October 1, 1977. There was no provision for attorney fees prior to the amendment in 1977. There is no language in the statute that it should be applied retrospectively. The cause of action in this case arose no later than September 17, 1977, prior to the effective date of the statute relied on by the defendants.

The Court, therefore, finds, without a determination of the question of fraudulent joinder, that the plaintiff's Motion to Remand should be sustained for lack of jurisdictional amount.

IT IS, THEREFORE, ORDERED that the plaintiff's Motion to Remand be and the same is hereby sustained and this case is hereby remanded to the District Court of Creek County, Bristow Division, State of Oklahoma.

ENTERED this 2nd day of April, 1978.



CHIEF UNITED STATES DISTRICT JUDGE

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

WORLD COURIER, INC., a New York Corporation,
Plaintiff,
vs.
WORLD COURIER SERVICE, INC.,
an Oklahoma Corporation,
Defendant.

78 - C - 156 - 7
No. _____

FILED

APR 11 1978

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

JUDGMENT OF PERMANENT
INJUNCTION BY CONSENT

World Courier, Inc., a New York Corporation ("Plaintiff"), has filed its Complaint herein, and it appearing to the Court that World Courier Service, Inc., an Oklahoma Corporation ("Defendant"), without admitting or denying any of the allegations in Plaintiff's Complaint, has stipulated and consented to the entry of a Judgment of Permanent Injunction by Consent, the Court finds:

1. That this Court has jurisdiction over the Plaintiff and Defendant and of the subject matter of this action;
2. That the service mark of the Plaintiff is "World Courier";
3. That the parties have entered into a Stipulation for Entry of Judgment of Permanent Injunction by Consent, whereby the Defendant, without admitting or denying the allegations in the Complaint, has stipulated to the entry of a Judgment of Permanent Injunction by Consent; and
4. That said Judgment of Permanent Injunction by Consent is hereby entered by the Court upon agreement of all parties;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant and each officer, director and employee of the Defendant are hereby jointly and severally enjoined and restrained throughout the United States or internationally from:

(a) the use or display of the words "World Courier" or any other words in the business style of the Defendant which are confusingly similar to the Plaintiff's service mark;

(b) imitating the service mark of Plaintiff in any manner and/or imitating the advertisements of Plaintiff in newspapers, magazines, brochures, or any other form of advertising media;

(c) the use of any business practice or advertisement which is likely to cause confusion, mistake or deception with the business and advertisements of Plaintiff or the service mark of Plaintiff;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant and each officer, director and employee of the Defendant promptly take the following action to effectuate the provisions of this final judgment:

(a) Destroy all advertisements, booklets, pamphlets, applications, forms, signs, brochures, manuals or copies of same, and all other items of any and all kinds which are in the possession, custody and control of the Defendant or any officer, director or employee of the Defendant which bear or otherwise include any service mark or advertisement which is confusingly similar to the service mark or advertisement of Plaintiff;

(b) Permanently abandon the use of the words "World Courier" in connection with any aspect of its business;

(c) Furnish a copy of this Judgment of Permanent Injunction by Consent to each officer, director and employee of the Defendant and require each officer,

director and employee of the Defendant to execute the original copy of the Judgment of Permanent Injunction by Consent which will be filed in this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant change its registered name with the Secretary of State of the State of Oklahoma from "World Courier Service, Inc." to a name that does not include the service mark of the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant notify each addressee to which it has mailed written or printed material containing the words "World Courier" (a) that such words are the service mark of the Plaintiff, (b) that the Plaintiff and Defendant are not affiliated entities, and (c) that the Defendant is changing its name to a name not containing the service mark of the Plaintiff.

DATED this 11th day of April, 1978.

J. H. Dale Cook
JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

APPROVED AS TO FORM AND CONTENT

SNEED, LANG, TROTTER,
ADAMS, HAMILTON & DOWNIE

By [Signature]
James C. Lang
Attorneys for Plaintiff
Fourth Floor
Thurston National Bldg.
Tulsa, Oklahoma 74103

EMPLOYEES, OFFICERS AND
DIRECTORS OF DEFENDANT

[Signature]

[Signature]

[Signature]

[Signature]
Wayne Woody
Attorney for Defendant
2431 East 51st Street
Tulsa, Oklahoma 74105

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

DENNY C. WHINERY and CONNIE L. WHINERY,)
)
)
 Plaintiff,)
)
 vs.)
)
 SWINSON CHEVROLET, INC.,)
)
 Defendant and Third-)
 Party Plaintiff,)
)
 vs.)
)
 JAMES E. LOGAN, d/b/a Jim Logan) No. 77-C-155-C
 Motors,)
)
 Third-Party Defendants,)
 and Third-Party)
 Plaintiff)
)
 and)
)
 FLOYD HAUGHE AUTO AUCTION, INC.,)
)
 and)
)
 GUNNER NANCE, d/b/a Gunner Used)
 Cars,)
)
 Third-Party Defendants.)

FILED

APR 11 1978

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

ORDER OF DISMISSAL

NOW on this 11th day of April, 1978, Swinson Chevrolet, Inc., Defendant and Third-Party Plaintiff's Motion for Dismissal coming on for consideration and counsel for Swinson Chevrolet, Inc., Defendant and Third-Party Plaintiff herein representing and stating that all issues, controversies, debts and liabilities between Swinson Chevrolet, Inc., Defendant and Third-Party Plaintiff and Floyd Haughe Auto Auction, Third-Party Defendant, have been paid, settled and compromised.

IT IS THE ORDER OF THIS COURT that said action be, and the same is, hereby dismissed with prejudice to the bringing of another of future action between the two parties, Swinson Chevrolet, Inc., and Floyd Haughe Auto Auction, Inc., herein.

J. H. Dale Cook
DISTRICT JUDGE

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 76-C-205-B

THE CATTS COMPANY,
an Oklahoma corporation,
vs.

GULF INSURANCE COMPANY,
a foreign Insurance Corporation,

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Royce H. Savage, Special Master, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, at the direction of the Court.

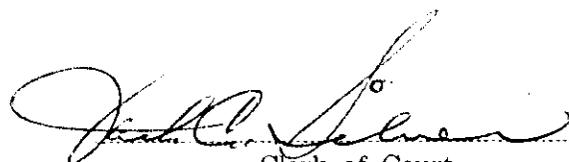
It is Ordered and Adjudged that judgment be entered in favor of the defendant and against the plaintiff, as directed by the Court.

FILED

APR 10 1978

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

Dated at Tulsa, Oklahoma, this 10th day
of April, 19 78.


Clerk of Court

Jack C. Silver

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

FILED

APR 10 1978

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

WENDELL MORRISON,)
)
 Plaintiff,)
)
 vs.)
)
 GRANT MANUFACTURING AND)
 EQUIPMENT COMPANY,)
)
 Defendant.)

NO. 77-C-282-C

O R D E R

NOW on this 10th day of April, 1978, comes on for consideration
the joint application for an order of dismissal, filed by
plaintiff and defendant.

This Court finds the same should be granted.

IT IS THEREFORE ORDERED that this action be and it is
dismissed with prejudice.

J. H. Dale Cook
United States District Judge

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

FILED

T. HOBART WILSON and)
ROLLAND COMSTOCK,)
co-administrators of the)
Estate of SAUNDRA L. NIX,)
Deceased,)
)
Plaintiffs,)
)
VS.)
)
YELLOW FREIGHT SYSTEM, INC.,)
a corporation,)
)
Defendant.)

APR 7 1978

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

No. 77-C-517-C

O R D E R

This action was brought by the co-administrators of the estate of Sandra L. Nix, deceased. They are suing on behalf of the deceased's children and alleged husband for her wrongful death. This action was initially brought in the District Court of Creek County, Oklahoma, Sapulpa Division, and was removed to this Court by the defendant. In the Petition for Removal, defendant generally alleges that the parties are of diverse citizenship, and that the amount in controversy exceeds \$10,000.00, exclusive of interest and costs, giving the Court original jurisdiction of this action, and that therefore removal is proper. Now before the Court is the plaintiffs' Motion to Remand this action to the state court for the reason that the Petition for Revmoval allegedly fails to state that diversity existed at the time of removal.

Removability is determined as of the date when the petition for removal is filed and depends upon the case disclosed by the pleadings at that time. See Nash v. Hall, 436 F.Supp. 633, 634 (W.D. Okla. 1977). Where diversity of citizenship is the basis of removal jurisdiction, the pleadings must show that diversity existed both at the time the original action was filed in the state court and at the time of removal. See Kilpatrick v. Arrow Co., 425 F.Supp. 1378,

1380-81 (W.D. La. 1977); Van Horn v. Western Elec. Co., 424 F.Supp. 920, 922 (E.D. Mich. 1977). Furthermore, in a removal action based on diversity of citizenship, as in an original diversity action, the party asserting jurisdiction must allege both the place of incorporation and the principal place of business of a corporate party. 28 U.S.C. § 1332(c). See also Van Horn, supra.

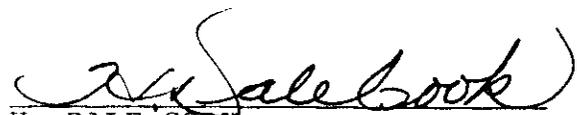
In this action, the original complaint does not state the principal place of business of the defendant. The removal petition does not state the principal place of business of the defendant either at the time of the original complaint or at the time of removal. In fact, except for a conclusory statement that diversity exists, the removal petition lacks complete allegations of the citizenship of either party at the time of removal. The original complaint alleges the citizenship of the co-administrators at the time the suit was initially commenced. But the removal petition is inconsistent with these allegations in that it refers to "plaintiff" as a "citizen and resident of the State of Oklahoma," when the original complaint refers to co-administrators, one being a citizen of Oklahoma, and the other being a citizen of Missouri.

Even though the defendant herein has not requested leave to amend his removal petition, the Court would note in passing that many courts approach the problem presented by this case by allowing the defendant to amend the removal petition pursuant to 28 U.S.C. § 1653 if the jurisdictional allegations contained therein are "defective." See Whitelock v. Leatherman, 460 F.2d 507 (10th Cir. 1972); Barrow Devel. Co. v. Fulton Ins. Co., 418 F.2d 316 (9th Cir. 1969); Hendrix v. New Amsterdam Cas. Co., 390 F.2d 299 (10th Cir. 1968); Handy v. Uniroyal, Inc. 298 F.Supp. 301 (D.Dela. 1969). But a perusal of the facts of those cases shows that the jurisdictional allegations in this case go beyond what those courts

considered to be "defective." Where, as here, essential jurisdictional allegations are completely missing, removal is not proper. See Van Horn, supra, at pp. 924-25.

For the foregoing reasons, plaintiffs' Motion to Remand is sustained and this case is remanded to the District Court of Creek County, Oklahoma, Sapulpa Division, from which it was improvidently removed.

It is so Ordered this 7th day of April, 1978.


H. DALE COOK
United States District Judge

FILED

APR 6 1978

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

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

JAMES R. SANDERS,

Plaintiff

v.

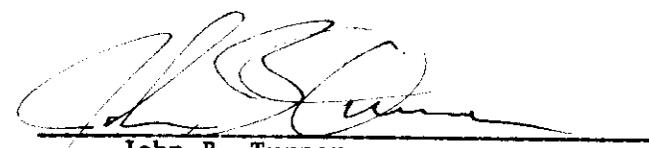
UNITED STATES,

Defendant

CIVIL ACTION NO. 76-C-475-B

STIPULATION OF DISMISSAL

It is hereby stipulated and agreed that the Complaint and Counterclaim in the above-entitled case be dismissed with prejudice, each party to bear its own costs.



John B. Turner
Doerner, Stuart, Saunders,
Daniel & Langenkamp
1200 Atlas Life Building
Tulsa, Oklahoma 74103
Attorney for Plaintiff

M. Carr Ferguson
Assistant Attorney General
Tax Division
Department of Justice
Attorney for Defendant

By:



JEAN E. KILPATRICK
Attorney, Tax Division
Department of Justice
Room 5B27, 1100 Commerce Street
Dallas, Texas 75242
(214) 749-1251

ATTORNEY FOR DEFENDANT

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

HELEN ALLEN,)
)
 Plaintiff,)

vs.)

TULSA NEIGHBORHOOD COMPREHENSIVE)
HEALTH SERVICES, INC., d/b/a)
MOTON HEALTH CENTER,)
)
 Defendant.)

NO. 76-C-608-C

FILED

APR 4 1978

MARCELLA HILL,)
)
 Plaintiff,)

vs.)

TULSA NEIGHBORHOOD COMPREHENSIVE)
HEALTH SERVICES, INC., d/b/a)
MOTON HEALTH CENTER,)
)
 Defendant.)

NO. 76-C-609-C

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

YVONNE COX,)
)
 Plaintiff,)

vs.)

TULSA NEIGHBORHOOD COMPREHENSIVE)
HEALTH SERVICES, INC., d/b/a)
MOTON HEALTH CENTER,)
)
 Defendant.)

NO. 76-C-610-C

JOURNAL ENTRY OF JUDGMENT

On March 21, 1978, to March 23, 1978, this action came on for trial before the Court, without a jury, the Honorable Dale Cook, District Judge, presiding. Bert McElroy and Phil McGowan appeared as attorneys for Plaintiffs, and James Goodwin and David Cole appeared as attorneys for Defendant. The Court having heard the testimony and considered the evidence, and good cause appearing therefore,

IT IS ORDERED, ADJUDGED AND DECREED that Defendant, Tulsa Neighborhood Comprehensive Health Services, Inc., d/b/a Moton Health Center, have judgment against each and all of the Plaintiffs, Yvonne Cox, Marcella Hill and Helen Allen, on their causes of action.

Dated at Tulsa, Oklahoma, this ^{4th} day of ^{April} ~~March~~, 1978.


HONORABLE DALE COOK
DISTRICT JUDGE FOR THE NORTHERN
DISTRICT OF OKLAHOMA

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

CONCORDIA DEVELOPMENT COMPANY,)
INC., a subsidiary of TRAMMELL)
CROW-AGRI COMPANY,)

Plaintiff,)

vs.)

CLARK EQUIPMENT & CONSTRUCTION)
INC., a/k/a HAROLD CLARK)
MACHINERY & CONSTRUCTION CO.)

Defendants.)

No. 76-C-591-C ✓

FILED

APR 4 1978 *mm*

JOURNAL ENTRY OF JUDGMENT

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

Now on this 25th day of March, 1978, plaintiff's Motion for Summary Judgment came on for hearing. Plaintiff was present and represented by its attorney of record, Leslie V. Williams, and defendant was present and represented by its attorney of record, Ron Stockwell. The Court, after reviewing the file, briefs submitted, hearing oral argument, and being fully advised in the premises, finds that the plaintiff's Motion for Summary Judgment should be sustained and plaintiff granted judgment against the defendant in the amount of \$87,800.00, together with interest and its costs.

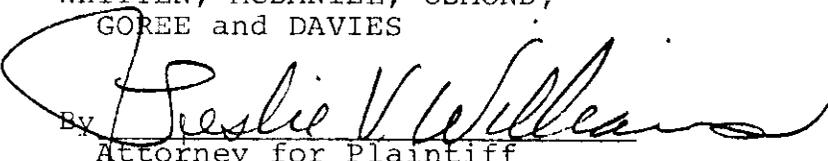
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff's Motion for Summary Judgment is sustained and plaintiff, Concordia Development Company, is granted judgment against the defendant, Clark Equipment & Construction, Inc., a/k/a Harold Clark Machinery & Construction Company, in the

amount of \$87,800.00, together with interest and its costs for all of which let execution issue.


H. DALE COOK, United States
District Judge

APPROVAL:

WHITTEN, McDANIEL, OSMOND,
GOREE and DAVIES

By 
Attorney for Plaintiff

RON STOCKWELL

By 
Attorney for Defendant