

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JACK E. FIELDS, JR.,)
)
 Defendant.)

CIVIL ACTION NO. 79-C-426-Bt ✓

FILED

JUL 31 1980

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

DEFAULT JUDGMENT

This matter comes on for non-jury trial this 28th day of July, 1980, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Jack E. Fields, Jr., appearing not.

The Court finds that the sum of \$1,074.47 is due and owing to the United States by the Defendant.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the Plaintiff have and recover Judgment against Defendant, Jack E. Fields, Jr., for the principal sum of \$1,074.47 plus interest at the rate of 12% from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

7-31-80

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) CIVIL ACTION NO. 80-C-302-B
)
 KENNETH A. BRIANS, PATRICIA A.)
 BRIANS, and HOMEMAKERS FINANCE)
 SERVICE, INC. d/b/a GECC FINANCIAL)
 SERVICES,)
)
 Defendants.)

FILED
JUL 1980
U.S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 31st
day of July, 1980, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and the Defendants, Kenneth A.
Brians, Patricia A. Brians, and Homemakers Finance Service, Inc.
d/b/a GECC Financial Services, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Kenneth A. Brians and
Patricia A. Brians, were served with Summons and Complaint on
June 2, 1980, and the Defendant, Homemakers Finance Service, Inc.
d/b/a GECC Financial Services, was served with Summons and Complaint
on May 28, 1980, all as appears on the United States Marshal's
Service herein.

It appearing that the Defendants, Kenneth A. Brians,
Patricia A. Brians, and Homemakers Finance Service, Inc. d/b/a
GECC Financial Services, have failed to answer herein and that
default has been entered by the Clerk of this Court.

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

Lot Twenty-Four (24), Block Four (4), LAKE-VIEW
HEIGHTS AMENDED ADDITION to the City of Tulsa,
Tulsa County, State of Oklahoma, according to
the recorded plat thereof.

THAT the Defendants, Kenneth A. Brians and Patricia A. Brians, did, on the 25th day of March, 1977, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,750.00 with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Kenneth A. Brians and Patricia A. Brians, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$9,856.76, as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from May 1, 1979, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Kenneth A. Brians and Patricia A. Brians, in rem, for the sum of \$9,856.76 with interest thereon at the rate of 8 1/2 percent per annum from May 1, 1979, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, Homemakers Finance Service, Inc. d/b/a GECC Financial Services.

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.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney


BY: ROBERT P. SANTEE
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JACK BARLOW and)
 SANDRA BARLOW,)
)
 Defendants.)

FILED

JUL 3 1980

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

CIVIL ACTION NO. 80-C-272-E

DEFAULT JUDGMENT

This matter comes on for consideration this 29th
day of July, 1980, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney for the Northern District
of Oklahoma, and the Defendants, Jack Barlow and Sandra Barlow,
appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, Jack Barlow was personally
served with Summons and Complaint on May 14, 1980, and that
Defendant Sandra Barlow was personally served with Summons and
Complaint on June 25, 1980, and that Defendants have failed
to answer herein and that default has been entered by the Clerk
of this Court.

The Court further finds that the time within which
the Defendants could have answered or otherwise moved as to
the Complaint has expired, that the Defendants have not answered
or otherwise moved and that the time for the Defendants to
answer or otherwise move has not been extended, and that Plaintiff
is entitled to Judgment as a matter of law.

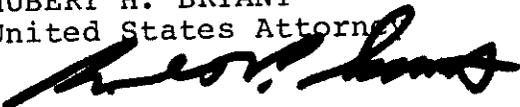
IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that
the Plaintiff have and recover Judgment against Defendants,
Jack Barlow and Sandra Barlow, for the principal sum of \$4,262.78
plus the accrued interest of \$1,337.71, as of April 1, 1980, plus

interest at 6% from April 1, 1980, until the date of Judgment,
plus interest at the legal rate on the principal sum of \$4,262.78
from the date of Judgment until paid.


UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney


ROBERT P. SANTEE
Assistant U. S. Attorney

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

APPLIANCE BUYERS CREDIT)
CORPORATION, a corporation,)
)
Plaintiff,)
)
v.) NO. 80-C-225-E
)
ERNEST E. SKELTON, JR., d/b/a)
SKELTON HEATING & AIR)
CONDITIONING,)
)
Defendant.)

FILED

JUL 8 1980

NOTICE OF DISMISSAL OF ACTION

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

TO: ERNEST E. SKELTON, JR.
Rt. 2, Box 186A or: 1100 South Lyons
Okmulgee, OK 74447 Broken Arrow, OK 74728

Comes now Plaintiff, Appliance Buyers Credit Corporation, through its undersigned counsel, and pursuant to Rule 41(a)(1) (i), Federal Rules of Civil Procedure, 28 U.S.C., and without prejudice to the rights of Plaintiff hereby dismisses this action in its own behalf for the reason that the Defendant has, since the filing of this action, filed a Voluntary Petition in Bankruptcy in the Bankruptcy Court for the Eastern District of Oklahoma and the Plaintiff has filed appropriate pleadings in those bankruptcy proceedings.


James H. Bellingham of the firm of
McClelland, Collins, Bailey,
Bailey & Manchester
600 Hightower Building
Oklahoma City, OK 73102
235-9371
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on this 29th day of July, 1980, a true and correct copy of the above and foregoing instrument was mailed to Ernest E. Skelton, Rt. 2, Box 186A, Okmulgee, Oklahoma 74447 or 1100 South Lyons, Broken Arrow, Oklahoma 74728, Defendant herein.


James H. Bellingham

Fidelity Union Life Insurance Company seeks to recover attorney fees pursuant to 36 O.S. §3629(B) (1977 Supp.) which provides, in pertinent part:

"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 the insured within ninety (90) days of receipt of that proof of loss. Upon judgment rendered to either party, costs and attorney fees shall be allowed to the prevailing party."

Case 76-C-30-C, styled "Charlotte Meier Yoing, etc., Plaintiff, vs. Fidelity Union Life Insurance Company, Defendant", decided by the Honorable H. Dale Cook, and affirmed by the Tenth Circuit Court of Appeals in Young v. Fidelity U. Life Ins. Co., 597 F.2d 705 (10th Cir. 1979), was filed prior to the enactment of 36 O.S. §3629(B) (1977 Supp.) and Fidelity claimed no attorney fees in that case, nor was Fidelity entitled to claim attorney fees in that case.

Fidelity Union Life Insurance Company contends it is entitled to recover attorney fees and costs in this action as the prevailing party.

The evidence and exhibits in the present case (attached to the Answer of Fidelity Union Life Insurance Company) reveal plaintiffs made an oral demand for the benefits they claimed on March 6, 1975; a written demand on March 12, 1975; filed a Casualty Report and Proof of Death Claim on March 19, 1975. The evidence further shows Fidelity Union Life Insurance Company denied in writing the benefits on March 6 and April 18, 1975. The Court finds this correspondence sufficient to bring the defendant insurance company within the confines of 36 O.S. §3629(B) (1977 Supp.) and entitle it to claim attorney fees and costs.

At the hearing, Fidelity Union Life Insurance Company filed an Affidavit in open Court, with an exhibit attached, which revealed the claim of the insurance company for legal fees as follows: 79.75 hours at \$45.00 per hour--\$3,588.75; 1.25 hours at \$50.00 per hour--\$62.50; total claim--\$3,651.25.

Fidelity Union Life Insurance Company also called as a witness Mr. David Fist, a member of the bar of this Court, who after being duly sworn and qualified, testified as to the reasonableness of the fees sought by the insurance company. Mr. Fist testified in his opinion the claimed attorney fees were low and modest and certainly reasonable.

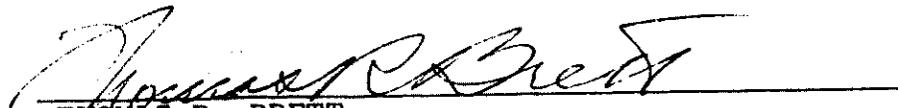
The Court, upon reviewing the entire record and the evidence adduced finds the attorney fees sought in the amount of \$3,651.25 are reasonable.

The Court finds Fidelity Union Life Insurance Company is entitled to recover attorney fees in the sum of \$3,651.25 pursuant to 36 O.S. §3629(B) (1977 Supp.) and is entitled to have judgment rendered in that amount on its counterclaim.

IT IS, THEREFORE, ORDERED as follows:

1. Plaintiffs' Motion for New Trial and Motion to Reconsider be overruled.
2. Defendant, Fidelity Union Life Insurance Company is entitled to recover attorney fees in the amount of \$3,651.25 on its counterclaim and have judgment entered in its favor and against Charlotte Marie Young; Glenn O. Young, as the Administrator of the Estate of Thomas Alexander Young; and Glenn O. Young, as Father and Next Friend of Ulrich Waldemar Young and Norbert Nelson Young.

ENTERED this 29 day of July, 1980.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

V.I.P. FOODS, INC., a)
Washington corporation,)
)
Plaintiff,)
)
vs.)
)
VULCAN PET, INCORPORATED,)
an Alabama corporation,)
)
Defendant.)

No. 78-C-581-C

F I L E D

JUL 29 1980

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

J U D G M E N T

The Court on July 29, 1980, filed its Findings of Fact and Conclusions of Law which are hereby incorporated herein and made a part of its Judgment.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Judgment be entered in favor of the Plaintiff VIP Foods, Inc., in accordance with this Court's Findings of Fact and Conclusions of Law.

It is so Ordered this 29th day of July, 1980.


H. DALE COOK
Chief Judge, U. S. District Court

3. Plaintiff owns the following federally registered trademarks:

<u>REGISTRATION NO.</u>	<u>REGISTRATION DATE</u>	<u>MARK</u>
899,311	September 22, 1970	VIP
899,312	September 22, 1970	V.I.P.

Plaintiff has used the V.I.P. mark (no. 899, 312) on a canned coffee product in the past, but has not used the mark for a substantial period of time.

4. Webster's Third New International Dictionary (Merriam-Webster, 1967) defines "V.I.P." as "a person of considerable influence or prestige; a high official receiving special privileges." The Court takes judicial notice of "V.I.P." as a common term used to designate quality, as in a V.I.P. suite in a hotel, or "V.I.P. treatment" being a special quality of treatment, respect, or courtesy.

5. Plaintiff uses its Trademark No. 899,311 on various food products for human consumption, which include frozen vegetables and fruits, frozen fruit-pies and pizzas, and various other frozen and non-frozen foods. Plaintiff's products are marketed in some fourteen states, including Oklahoma and Texas. Plaintiff's products are sold to wholesalers or to grocery store chains, and are ultimately sold retail in grocery stores and supermarkets. Plaintiff also sells to "food service customers", that is, customers such as hospitals and schools that buy food to prepare for people to consume on their premises. Plaintiff has three other trademarks (LeMans, Grand Prix, and Food Trend) that are generally sold as food service foods; however, VIP-labeled food has also been sold to food service customers. Plaintiff does not sell any food for non-human, that is, animal consumption, under the VIP mark or under any other mark.

6. Defendant sells dog and cat food, and since December, 1977, has been selling it under the mark "V.I.P." Defendant sells the following varieties of dog and cat food:

Dog food

- (i) all beef
- (ii) beef and chicken
- (iii) beef and liver
- (iv) all chicken

Cat food

- (i) all beef
- (ii) beef and chicken
- (iii) chicken and kidney
- (iv) chicken and liver
- (v) all fish

Defendant markets its product in much the same way as plaintiff, by sales to wholesalers and grocery chains for ultimate retail sale in grocery stores and supermarkets. Defendant markets its products in the southeastern United States, and as far west as Texas. Thus, both plaintiff's and defendant's products are sold in Texas. Defendant does not produce any food for human consumption, the parties are not in competition, and there is no likelihood that they will be in the future.

7. Defendant has applied for but as yet has been unable to obtain federal registration of its V.I.P. mark for animal foods.

8. The parties' logos are similar. Plaintiff's VIP logo is a circle outlined in black with a white center and the letters "VIP" (without periods). Defendant's logo is an oval outlined in either black or brown, around a yellow center, with the letters "V.I.P." (with periods) in blue or brown. Defendant has recently altered its label to include a dog or cat, and has altered the "V.I.P." logo slightly.

9. Plaintiff and defendant use similar, and sometimes identical channels to distribute and advertise their products.

10. Both parties' geographic markets are expanding. They already overlap in Texas, and will likely overlap in several other places in a few years.

11. Although the parties are not in competition, and although their products are not complementary, their products are related in the following ways:

- (a) Both are sold, both wholesale and retail in the same manner, and are sold retail from grocery stores and

supermarkets;

(b) They are advertised in the same manner;

(c) Plaintiff's products are for human consumption, and although defendant's products are for animal consumption, all consist of foods that are also eaten by humans;

(d) Both plaintiff's and defendant's products are meant for occupants (human and animal respectively) of a house; it is important here to note the distinction between animal food meant for household pets and animal food meant for other animals such as farm animals. One result of this distinction is that defendant's products are likely to be kept in the house, probably with or near human food, while food for farm animals is less likely to be kept in the house. Defendant's products are much more likely than other animal food to be seen with and identified with plaintiff's human food. Thus, the fact that defendant's product is animal food does not make it entirely unrelated to plaintiff's product.

12. There is a likelihood that consumers will identify plaintiff's and defendant's products as having a common source, because of the use of the VIP mark, the fact that both are sold in grocery stores, and other factors of similarity noted above. Two instances of such confusion were offered in evidence by the plaintiff. In the first one, the Bi-Rite Food Company of Tennessee returned discount coupons to plaintiff and included defendant's discount coupons. A second illustration of the likely confusion is provided by a market survey conducted by Ruddick and Associates, a market research firm in Tulsa, Oklahoma. The survey was conducted in Houston, Texas, where both parties' products are sold. The Ruddick survey was objective and in accordance with professional standards. It sampled the relevant subject for this case--shoppers in grocery stores and supermarkets--and

attempted, as far as possible, to obtain an accurate cross-section of consumers, considering factors of age, sex, and economic status. It also attempted, as far as possible, to eliminate bias from the survey questions. The results of the Ruddick survey show a consumer tendency to confuse the origin of the parties' products, and further show some negative reaction to plaintiff's products when their origin is confused with defendant's products. This negative reaction to plaintiff's products is a reasonable one--mistakenly identifying the source of human food with that of animal food--and is one that is likely to be repeated and cause plaintiff damage in the future.

13. Plaintiff has thus far suffered no ascertainable damage or loss of profits from defendant's use of the V.I.P. mark, but is likely to suffer damage in the form of loss of sales in the future if defendant continues to use that mark.

14. Plaintiff has asserted five (5) causes of action against defendant:

- (a) Trademark infringement under Title 15 U.S.C. §1114,
- (b) False designation of origin under Title 15 U.S.C. §1125,
- (c) Unfair competition,
- (d) Deceptive trade practice under Title 78 Okla. Stat. Annot. §§51 et seq., and
- (e) Injury to business reputation.

For its relief, plaintiff requests a permanent injunction, damages, attorney fees and costs.

CONCLUSIONS OF LAW

1. This Court has jurisdiction in this case under the Lanham Act, Title 15 U.S.C. §§1051 et seq., and Title 28 U.S.C. §1338(a), for plaintiff's causes of action in trademark infringement and false designation of origin.

2. The law is unclear whether plaintiff's third cause of action for unfair competition is one of federal common law or state law. See e.g. Spangler Candy Co. v. Crystal Pure Candy Co., 235 F.Supp. 18 (N.D.Ill. 1964), aff'd 353 F.2d 641 (7th Cir. 1965), holding that state law controls in all cases, and Wells Fargo & Co. v. Wells Fargo Express Co., 358 F.Supp. 1065 (D.Nev. 1973), vacated on other grounds, 556 F.2d 406 (9th Cir. 1977), holding that federal substantive common law would apply in this case. If federal substantive law is applicable, this Court's jurisdiction lies under Title 28 U.S.C. §1338(a). If Oklahoma law is applicable, jurisdiction is under Title 28 U.S.C. §1338(b). There is no difference, in this case, between Oklahoma law and federal common law as to the unfair competition claim asserted.

3. Jurisdiction for plaintiff's fourth cause of action under the Oklahoma Deceptive Practices Act is under Title 28 U.S.C. §1338(b).

4. In its fifth cause of action for injury to business reputation, plaintiff has not offered any cases or statutes to suggest whether jurisdiction for this claim is to be considered under Oklahoma law, the Lanham Act, or federal common law. Accordingly, it will not be treated as a separate cause of action, but as an additional claim under the Lanham Act.

5. Defendant has admitted to in personam jurisdiction and venue on all causes of action in this case.

6. Plaintiff's first cause of action is for trademark infringement under §32 of the Lanham Act (Title 15 U.S.C. §1114). That statute provides in pertinent part:

(1) Any person who shall, without the consent of the registrant--

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with such use is likely to cause confusion, or to cause mistake, or to deceive; or

(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) of this section, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

The key issue here is "whether there is any likelihood that an appreciable number of ordinarily prudent purchasers are likely to be misled, or indeed simply confused, as to the source of the goods in question." Mushroom Makers, Inc. v. R.G. Barry Corp., 580 F.2d 44, 47 (2d Cir. 1978); 3 R. Callman, The Law of Unfair Competition, Trademarks and Monopolies §84, at 929 (3d ed. 1969); Restatement of Torts §717 and Comment b at 567 (1938); quoted in McGregor-Doniger Inc. v. Drizzle Inc., 599 F.2d 1126 (2d Cir. 1979). The factors to be examined to determine the likelihood of confusion are:

- (1) the strength of the mark,
- (2) the proximity of the goods,
- (3) the similarity of the marks,
- (4) any evidence of actual confusion,
- (5) the marketing channels used,
- (6) the type of goods and the degree of care likely to be exercised by the purchaser,
- (7) defendant's intent in selecting the mark, and
- (8) likelihood of expansion of the product lines.

See AMF Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-49 (9th Cir. 1979); McGregor-Doniger, supra at 1130. Before considering each of these factors, the Court would note that although other trademark cases may offer guidance, each trademark case must be determined on its own facts. La Touraine Coffee Co.

v. Lorraine Coffee Co., 157 F.2d 115 (2d Cir. 1946). The Court further notes that while competition may be a factor, it is not an essential element in any of plaintiff's causes of action. See AMP Inc. v. Foy, 540 F.2d 1181 (4th Cir. 1976).

(1) The Strength of Plaintiff's VIP Mark

In 1976 the Second Circuit reviewed the terms used to denote the strength of a trademark, and listed the following four terms, arranged in ascending order of strength: (1) generic, (2) descriptive, (3) suggestive, and (4) arbitrary or fanciful. See Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 9 (2d Cir. 1976). A generic term can never become a valid trademark and cannot be registered. A descriptive term can be registered only if it has "become distinctive of the applicant's goods in commerce," [Title 15 U.S.C. §1052(f)], that is, only if it has acquired "secondary meaning." Suggestive marks, falling between the merely descriptive and the arbitrary or fanciful, are entitled to registration without proof of secondary meaning, as are fully arbitrary or fanciful terms. The boundaries between these categories are not fixed. See McGregor-Doniger, supra at 1131.

Although the term "V.I.P." is a common term, it may nonetheless be used as a trademark. It is neither generic nor descriptive of plaintiff's product; rather it is a vague term suggestive of quality (thus falling within the third category--the suggestive term). Plaintiff is therefore entitled to protection without proof of secondary meaning. Watkins Products, Inc. v. Sunway Fruit Products, Inc., 311 F.2d 496 (7th Cir. 1962).

(2) the proximity of the goods

Plaintiff and defendant both have expanding geographic markets, and are now both marketed in the Houston, Texas area, with a likelihood that additional common marketing

areas will occur in the future. Both plaintiff's and defendant's product are retailed in grocery stores and supermarkets, and while not likely to be sold on adjacent shelves in the same store, the purchaser is likely to be exposed to both products if both are sold in the same store. Purchasers are moreover likely to be exposed to both product lines even where marketed in separate stores, to the degree that consumers do not patronize one store exclusively. Purchasers of plaintiff's products that do not patronize a store selling defendant's products may learn of the VIP-labeled animal food through advertising channels. As to the relation of the product lines, human food versus animal food, though not in the same category, both are purchased at the same place, probably on the same shopping trip. Plaintiff's purchasers who do not own pets are likely to see defendant's products if sold in the same store.

(3) the similarity of the marks

Plaintiff's mark is sufficiently similar to defendant's to create confusion. Plaintiff's mark is a black-lettered "VIP", without periods, on a white background in a circle. Defendant's mark is a black-lettered "V.I.P.", with periods on a non-white background in an oval. The use of periods and the difference in background color is not sufficient to distinguish the marks to consumers. The Court would note here that plaintiff has registered the "V.I.P." mark, with the periods. Defendant argues that plaintiff's non-use of the mark with the periods constitutes abandonment, and thus entitled defendant to use the mark as it is now doing. The Court finds to the contrary that the abandonment issue is irrelevant. The reason that defendant's use of the mark will be proscribed is its similarity to plaintiff's mark without the periods and the resulting likelihood of confusion; if plaintiff never had registered or used the mark with the periods, defendant's use of the mark with the periods would

nonetheless infringe on plaintiff's mark without the periods.

(4) evidence of actual confusion

Plaintiff's marketing survey in Houston, Texas illustrates a likelihood that consumers will confuse the manufacturer of plaintiff's and defendant's products.

(5) marketing channels

Plaintiff's and defendant's product lines are both sold in retail grocery stores and supermarkets, and are advertised in similar fashion in the newspaper.

(6) the type of goods;
the purchaser's degree of care

As noted in (2) supra, plaintiff's and defendant's products are not in the same category; they are however, purchased in the same store, probably on the same shopping trip, and thus not totally unrelated. As to the purchaser's degree of care, there is little chance that a purchaser will mistake a can of defendant's pet food for human food. There is, however, a likelihood that the consumer will conclude that plaintiff's and defendant's products come from the same manufacturer without bothering to read the identifying information on the label.

(7) defendant's intent

Defendant had no intent to deceive or confuse the public, or to infringe on plaintiff's trademark. Little or no evidence was offered from which the Court could infer such a finding. However, intent is not an essential element of an infringement action. S.C. Johnson & Son, Inc. v. Johnson, 266 F.2d 129 (6th Cir. 1959).

(8) expansion of the product lines

No evidence was offered that either party will expand its product line, and it is not likely that plaintiff and defendant will be marketing competing products.

A consideration of the above factors compels the conclusion that confusion is likely to result from defendant's

use of the "V.I.P." mark. Plaintiff is therefore entitled to judgment in its cause of action for infringement, and plaintiff's request for a permanent injunction enjoining defendant's use of the V.I.P. mark will be granted. Plaintiff has offered no evidence of any monetary or other actual damage it has sustained because of defendant's use of the V.I.P. mark up to now. Plaintiff's claim for damages, insofar as it relates to the infringement claim, will not be allowed and judgment will be for defendant on that issue.

7. Defendant's acts in this case constitute false designation of origin under Title 15 U.S.C. §1125, which provides in pertinent part:

(a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.

To prevail here, plaintiff must show (1) that goods or services are involved, (2) interstate commerce is affected, and (3) that defendant falsely designated the origin of its product. N.S. Meyer, Inc. v. Ira Green, Inc., 326 F.Supp. 338, 341-42 (S.D.N.Y. 1971). The evidence has established that goods (human food and pet food) are involved, and that both parties market their products in interstate commerce. The test for the third element, false designation, is whether defendant's use of its mark is likely to cause confusion as to the origin of defendant's product. National Lampoon, Inc. v. American Broadcasting Companies, Inc., 376 F.Supp. 733, 746 (S.D.N.Y. 1974), aff'd 497 F.2d 1343 (2d Cir. 1974). Intent is not a necessary element of this tort. Parkway

Baking Co. v. Freihofer Baking Co., 255 F.2d 641, 648 (3d Cir. 1958). Moreover, defendant's trademark does not have to duplicate exactly plaintiff's mark if there is a substantial likelihood of confusion by the public. American Brands Inc. v. R.J. Reynolds Tobacco Co., 413 F.Supp. 1352 1356 (S.D.N.Y. 1976). The gist of §1125 is public reaction, not literal falsehood. American Home Products Corp. v. Johnson and Johnson, 577 F.2d 160, 165 (2d Cir. 1978). The Court has already decided, in considering the infringement claim, that defendant's use of the mark is likely to confuse the public, and suggesting to purchasers that plaintiff's and defendant's products are from the same source. This is sufficient to make out a case of false designation of origin under §1125, and plaintiff is entitled to an injunction against defendant's further use of the V.I.P. mark. For the same reasons as in Conclusion No. 6, supra, plaintiff is not entitled to an award of damages.

8. Defendant's acts amount to unfair competition under federal common law. This decision follows from the above decision in favor of plaintiff on the infringement claim. Unfair competition may exist independently of trademark infringement, but there cannot be a trademark infringement without the presence of acts which amount to unfair competition. Coca-Cola Co. v. Cahill, 350 F.Supp. 1231, 1233 (W.D.Okla. 1972), aff'd 480 F.2d 153 (10th Cir. 1973). Plaintiff is entitled to the same relief under this cause of action as under the first two causes of action.

9. Defendant is in violation of Oklahoma's Deceptive Trade Practices Act, Title 78 Okla.Stat.Annot. §§51 et seq. That Act provides in pertinent part that:

A person engages in a deceptive trade practice when in the course of his business, vocation, or occupation, he:

(1) passes off goods or services as those of another;

Title 78 Okla.Stat.Annot. §53(a). Decisions reached thus

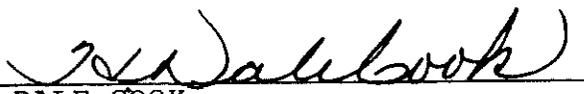
far in this opinion are sufficient to meet the single element above. As in the other causes of action, plaintiff is entitled only to injunctive relief and not to damages.

10. The Court determined in Conclusion No. 4, supra, that plaintiff's claim for damage to business reputation would be treated as an additional claim under the Lanham Act. The Court further notes that plaintiff has shown no injury to its reputation from acts by the defendant; it has merely shown the likelihood of such injury. The likelihood of an injury to business reputation is merely supportive of plaintiff's other claims, and is not entitled to consideration as a separate claim.

11. Because plaintiff has not suffered any actual damages, it is not entitled to any portion of defendant's profits, as prayed for in the Complaint.

12. Plaintiff is entitled to reasonable attorney fees and the costs of this action, pursuant to Title 15 U.S.C. §1117, and Title 78 Okla.Stat.Annot. §54(b).

It is so Ordered this 29th day of July, 1980.


H. DALE COOK
Chief Judge, U. S. District Court

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

SHARON L. GREGG,)
)
 Plaintiff,)
)
 vs.)
)
 BIG SKY FARMERS AND RANCHERS)
 MARKETING COOPERATIVE OF)
 MONTANA, a Montana corporation;)
 and VERNON M. RAY,)
)
 Defendants.)

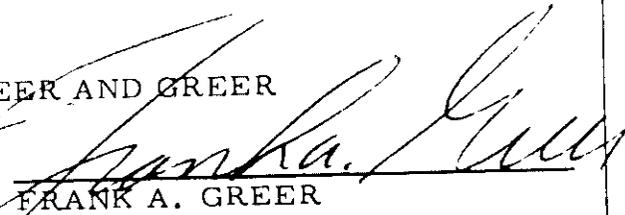
U.S. DISTRICT COURT
No. 80-C-309-~~E~~B ✓

NOTICE OF DISMISSAL

COMES now the Plaintiff, SHARON L. GREGG, and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, shows the Court that the Defendants, BIG SKY FARMERS AND RANCHERS MARKETING COOPERATIVE OF MONTANA and VERNON M. RAY, have not filed an answer, nor a motion for summary judgment. That therefore, under Rule 41(a)(1) of the Federal Rules of Civil Procedure, Plaintiff is entitled to dismiss without prejudice.

Plaintiff therefore dismisses her cause of action without prejudice to the bringing of a further cause of action.

GREER AND GREER

BY: 

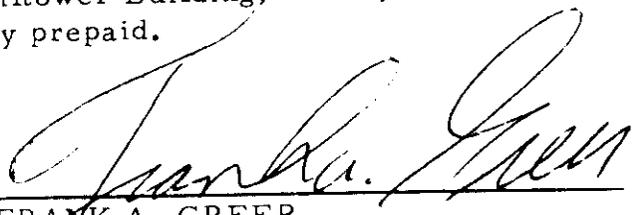
FRANK A. GREER

206 Beacon Building
Tulsa, Oklahoma 74103
Telephone: 584-3591

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I, FRANK A. GREER, do hereby state and certify that on the 29th day of July, 1980, I mailed a true and correct copy of the above and foregoing NOTICE OF DISMISSAL to Defendants' attorneys of record, Mr. Donald Church, CHURCH & ROBERTS, 501 Philtower Building, Tulsa, Oklahoma 74103, with proper postage thereon fully prepaid.


FRANK A. GREER

FILED

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

NOV 20 1980

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

WILLIAM LAWSON HOUCK,)
)
) Petitioner,)
)
 vs.)
)
) NORMAN B. HESS, WARDEN,)
)
) Respondent,)
)
) and)
) THE ATTORNEY GENERAL OF THE)
) STATE OF OKLAHOMA)
)
) Additional)
) Respondent.)

No. 80-~~CR~~^C-7-BT ✓

O R D E R

The Court has for consideration this petition for writ of habeas corpus pursuant to 28 U.S.C.A. §2254 filed pro se, in forma pauperis, by petitioner, William Lawson Houck.

Petitioner is presently incarcerated in the Oklahoma State Penitentiary, McAlester, Oklahoma, by virtue of a judgment and sentence rendered on July 9, 1976, in the District Court of Tulsa County, State of Oklahoma. Petitioner received a term of ten (10) years to life imprisonment upon conviction of the crime of murder in the second degree, Case No. CRF-76-631. On direct appeal to the Oklahoma Court of Criminal Appeals, Case No. F-76-905, the conviction was affirmed. See Houck v. State, 563 P2d 665 (Okla. Crim. 1977). Petitioner filed an application for post-conviction relief in the District Court of Tulsa County pursuant to the Oklahoma Post-Conviction Procedures Act, 22 Okl.Stat. Ann., §§1080, et seq., (1971). The District Court denied said application on September 18, 1979. Petitioner subsequently appealed the District Court's order denying application for post-conviction relief to the Oklahoma Court of Criminal Appeals, Case No. PC-79-598. The Oklahoma Court of Criminal Appeals affirmed the District Court's order on December 12, 1979. Petitioner has therefore exhausted all State remedies concerning the issues in this action.

Petitioner claims as grounds for relief the following:

1. There was constitutional error on the part of the trial court by not instructing the jury in accordance with the language of 21 Okl.Stat. Ann. §693 (1971).
2. The trial court failed to require the jury to find premeditation.
3. Instruction No. 4 constituted error of constitutional proportion.
4. The trial court erred in failing to give an instruction on self-defense.

Petitioner's first contention is directed to the trial court's failure to give an instruction according to the language of 21 Okl. Stat. Ann, §693 (1971). The United States Court of Appeals for the Tenth Circuit stated in Martinez v. Patterson, 371 F2d 815 (1966) that a failure to give an instruction concerning circumstantial evidence is "reviewable only on direct appeal and is not a ground for collateral attack by habeas corpus." See also Chavez v. Baker, 399 F2d 943 (10th Cir. 1968); Alexander v. Daugherty, 286 F2d 645 (10th Cir. 1961); Woods v. Muns, 347 F2d 948 (10th Cir. 1965).

Petitioner's present claim concerns the omission of an instruction based on 21 Okl. Stat. Ann. §693 (1971), which provides:

"No person can be convicted of murder or manslaughter, or of aiding suicide, unless the death of the person alleged to have been killed and the fact of the killing by the accused are each established as independent facts beyond a reasonable doubt."

This Court finds no judicial support of the proposition that the provisions of 21 Okl. Stat. Ann. §693 are a mandatory part of the instructions in Oklahoma jury trials. Cudjo v. Hess, (W.D. Okl., No. CIV-79-570-T, January 18, 1980). It should also be noted that the Trial Court in this action specifically instructed the jury with regard to the petitioner's presumed innocence and as to proving beyond a reasonable doubt each material element of the offense. (Instruction No. 1, No. 2) The Court then gave instructions on each material element of the offense. (Instruction Nos. 3, 4, 5, 6,9)

Because a review of jury instructions is not within the scope of a habeas corpus action, Chavez v. Baker, supra, Alexander v. Daugherty, supra, Cudjo v. Hess, supra, and because the jury was

properly instructed as to the elements of the offense and the State's burden of proving each element beyond a reasonable doubt, petitioner's first contention is without merit.

Petitioner's second contention is that the Trial Court did not require a finding of premeditation and, therefore, violated his constitutional rights.

Petitioner's second allegation is unsupported by the record. An examination of the jury instructions contained in the original record reveals the Trial Court specifically addressed the premeditation requirement. In Instruction No. 3 the Trial Court defined murder in the second degree as a "homicide...when perpetrated without authority of law, and with a premeditated design to effect the death of a person." (O.R.44) Instruction No. 4 contains an implication of premeditation and Instruction No. 6 states that "the distinction between the two offenses is that in murder there is a premeditated design to effect death, while in manslaughter there is no premeditated design to effect death. If there is a premeditated design to effect death, homicide is murder, no matter how angry a slayer may be at the time of the homicide." (O.R.47)

The jury returned a verdict of murder in the second degree as defined by the Court's instructions (homicide committed with a premeditated design to effect death). Petitioner's second contention is, therefore, not supported by the official record and is without merit.

The third ground for relief sought concerns an interpretation of Instruction No. 4 which states:

"A design to effect death is inferred from the fact of the killing, unless the circumstances raise a reasonable doubt whether such design existed." (O.R. 45)

Petitioner is alleging that Instruction No. 4 shifts the burden of proof to the defendant rendering it unconstitutional. Two recent cases, Ulster County Court v. Allen, ___ U.S. ___, 60 L.Ed.2d 777, 99 S.Ct. 2213 (1979), and Sandstrom v. Montana, ___ U.S. ___, 61 L.Ed.2d 39, 99 S.Ct. ___ (1979), address themselves to this issue. In Ulster, firearms were discovered in the

defendants' car when they were stopped for speeding. The trial judge "instructed the jury that they were entitled to infer possession from the defendant's presence in the car." 60 L.Ed.2d at 784. It was determined that this instruction did not shift the burden of proof and was, therefore, constitutionally permissible. The court also emphasized that the test to determine the constitutionality of a presumption used against a criminal defendant is whether or not the presumption takes the responsibility of determining the facts away from the jury. The instruction in Ulster was held to be a permissive presumption allowing the jury to accept or reject the inference without a shift of the burden of proof.

In Sandstrom, supra, the Court held that a mandatory presumption requiring a jury to find an elemental fact or forcing the defendant to disprove such a fact, through evidence, is not constitutionally permissible. A permissive presumption, however, is permissible. This position has also been taken in Cudjo v. Hess, supra, where an instruction identical to the one now in question was attacked on the same grounds. See also, Hankerson v. North Carolina, 432 U.S. 233 (1977).

The instruction in this action is entirely permissive and the phrase "unless the circumstances raise a reasonable doubt whether such design existed" left for the jury the authority to reject any inference. The instruction never placed the burden of proof upon the defendant and, therefore, petitioner's claim is without merit.

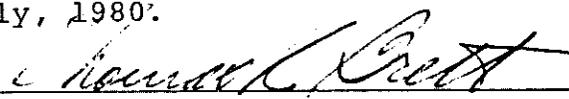
Petitioner in his fourth ground for relief claims that the Court erred in failing to instruct the jury on self-defense.

In McMurray v. United States, 298 F2d 619 (10th Cir. 1962), the Court held that a criminal defendant cannot complain of omitted jury instructions when he has failed to request such instructions. This position is supported in United States v. Hagen, 470 F2d 110 (10th Cir. 1972) and Lewis v. United States, 373 F2d 576 (9th Cir. 1967). In this action petitioner failed to submit any instructions on self-defense and in fact declined any objection to the instructions that were submitted to the Court. (Tr. 192)

It has also been held that a defendant is entitled to an instruction on his theory of defense only when the evidence presented supports such a theory. United States v. Nance, 502 F2d 615 (8th Cir. 1974); Apel v. United States, 247 F2d 277 (8th Cir. 1957); United States v. Burgos, 579 F2d 747 (2nd Cir. 1978). In this case the petitioner's theory of defense was not self-defense and the record shows that no evidence was submitted. Therefore, the Court's omission of an instruction on self-defense was proper. Because petitioner failed to request an instruction on self-defense, and because the evidence did not support such a theory, petitioner's fourth ground for relief is also without merit.

In view of these findings, IT IS ORDERED the petition for a writ of habeas corpus is denied.

DATED this 29th day of July, 1980.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

FILED

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

JUL 29 1980

B

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

PHILLIPS MACHINERY COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
LeBLOND, INC., a corporation,)
)
Defendant.)

No. 77-C-304-BT ✓

JUDGMENT

Judgment is hereby entered in favor of the defendant,
LeBlond, Inc., a corporation, and against the plaintiff,
Phillips Machinery Company, a corporation, in keeping with
the Court's Memorandum Opinion sustaining said defendant's
motion for summary judgment of this date.

DATED this 29th day of July, 1980.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE **F I L E D**
NORTHERN DISTRICT OF OKLAHOMA

PHILLIPS MACHINERY COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
LeBLOND, INC., a corporation,)
)
Defendant.)

JUL 2 1980
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 77-C-304-BT ✓

MEMORANDUM OPINION

On February 12, 1973, the parties in this case entered into a Distributor Agreement whereby plaintiff, Phillips Machinery Company, Inc., became the distributor in Oklahoma for machine tools manufactured by defendant, LeBlond, Inc. This agreement was cancelled in accordance with its terms by LeBlond on January 24, 1977. Following the cancellation, plaintiff commenced this action alleging breach of contract and seeking damages for lost profits and punitive damages. Defendant answered and counter-claimed for monies due on open account. By order of March 30, 1978, the Court granted summary judgment for defendant on its counter-claim. Thereafter, defendant filed a motion for summary judgment in which it asserted that Paragraph 7(a) of the agreement allowed it to terminate the agreement at will. By order of March 14, 1979, the Court ruled that the good faith requirements of the Oklahoma Uniform Commercial Code, Title 12A O.S. §§1-203, 1-201(17) and 2-103(1)(b), were applicable. The Court further found that there remained an issue of fact regarding the good faith or bad faith of defendant in cancelling the agreement and that summary judgment was, therefore, inappropriate.

Defendant has again moved for summary judgment on both the actual and punitive damages prayed for by plaintiff based on Paragraph 7(g) of the agreement which excludes damages for lost profits resulting from cancellation of the agreement, and upon Title 23 O.S. §9. Upon reflection the Court believes the defendant's motion for summary judgment should be sustained because the consequential damage exclusion of the contract is enforceable and determined not to be unconscionable. The issues raised by defendant's motion and plaintiff's response are addressed separately below.

In its response, plaintiff first asserts that the previous denial of summary judgment is res judicata or the law of the case and bars any further motions for summary judgment. As authority for its assertion, plaintiff cites Munson Line v. Green, 6 F.R.D. 470 (S.D. N.Y. 1947). In that case, the Court stated:

"The grounds for dismissal now urged could have been urged on the previous motion to dismiss. In my opinion on a motion to dismiss for insufficiency all the reasons for dismissal should be presented and any not presented should be treated as having been waived and not available on a later motion for summary judgment. Although I discover no case directly in point and although the situation is not directly covered by the Rules, it is certainly within their spirit, for they were 'designed to encourage the consolidation of motions and to discourage the dilatory device of making them in series.' Thorne, Neale & Co. v. Coe, D.C.D.C., 3 F.R.D. 259, 260.

"My conclusion also derives support from that portion of Rule 12(g) which provides that 'If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he should not thereafter make a motion based on any of the defenses or objections so omitted.' "

The Court then went on to conclude that

"Whether or not the reasoning and conclusions I have adopted be sound, the circumstances here seem to me to show that this motion and Green's supporting affidavit are not presented in good faith but solely for the purpose of delay."

In this case, we are faced not with Rule 12 Motions to Dismiss but with motions for summary judgment under Rule 56. Further, the grounds for the two motions are not the same. In the first motion, defendant contended that Paragraph 7(a) of the agreement gave it an absolute right to terminate. In this second motion, defendant contends that, even if the right to terminate is not absolute, and even if defendant breached its duty of good faith, plaintiff still cannot recover the lost profits it seeks because the only damages sought are specifically excluded by the agreement. The Court within its discretion may timely review previous rulings on a motion for summary judgment.

While the previous order may well be the law of the case as to the question whether the good faith provisions of the Uniform Commercial Code apply, it does not bar further motion on a separate

ground. Lindsey v. Dayton-Hudson Corporation, 592 F.2d 1118 (10th Cir. 1979); A. M. Namirowski v. Nabisco, Inc., 421 F.Supp. 349 (1976). Butterman v. Walston, 50 F.R.D. 189 (D.C. Wis. 1970) does not support plaintiff's contention since in that case the grounds for the two motions were the same.

Plaintiff next contends that defendant's challenge to the claim for exemplary damages cannot properly be raised in a motion for summary judgment, but that the proper method is a motion to strike under Rule 12(f), F.R.C.P. This contention has no merit. While the cases cited by plaintiff indicate that a motion to strike is a proper method for attacking a punitive damages claim, neither supports the proposition that a motion to strike is the exclusive method. Further, if there is any question of fact or law raised by the defense, a motion to strike is improper and the issue must be decided later on the merits when more information is available. Myers v. Beckman, 1 F.R.D. 99 (D.C. Okl. 1940); Gilbert v. Eli Lilly and Co., 56 F.R.D. 116 (D.C. Puerto Rico 1972).

Having determined that the motion for summary judgment may properly be used, the Court now turns to the merits of the motion. The first ground urged by defendant is that, even if it has breached the duty of good faith implied by the Uniform Commercial Code, the plaintiff is not entitled to recover damages for lost profits because such damages are excluded by Paragraph 7(g) of the Distributor Agreement, which provides:

"(g) Neither party shall by reason of cancellation of this Agreement, be liable to the other for compensation, reimbursement or damages either on account of present or prospective profits on sales or anticipated sales, or on account of expenditures, investments or commitments made in connection therewith, or in connection with the establishment, development or maintenance of the business or good will of the other or on account of any other cause or thing whatsoever; provided, however, that such cancellation shall not affect the rights or liabilities of the parties with respect to Machines previously sold hereunder or with respect to any indebtedness then owing by either party to the other."

Under the U.C.C., such exclusions are permitted by 12A O.S. §2-719(3):

"(3) Consequential damages may be limited or excluded unless the limitation or exclusion is

"unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not."

Plaintiff contends that Paragraph 7(g) is unconscionable and cannot be enforced.

The section of the U.C.C. which deals with unconscionability is Title 12A O.S. §2-302, and provides:

"(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

"(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination."

When the issue of unconscionability was raised by plaintiff, this Court held a hearing in accordance with §2-302(2) at which the parties were afforded an opportunity to present any evidence on the issue. At hearing, held February 7, 1980, the parties submitted for the Court's consideration a number of depositions and exhibits, as well as oral arguments and briefs. The evidence reveals that sometime during the latter part of 1972 or the early part of 1973, Mr. Robert Kohorst, Vice-President of defendant, came to Tulsa seeking a distributor for LeBlond machine tools. Using a list prepared beforehand and the Tulsa telephone directory, Kohorst contacted several companies. In the course of making a number of telephone calls, Kohorst made contact with Richard Blake, who, in turn, contacted Howard Raskin, President of plaintiff, Phillips Machinery Company. Kohorst, Blake and Raskin met together and, after discussion, an oral agreement was entered into whereby Phillips would become distributor for LeBlond machine tools with the understanding the agreement would later be reduced to a formal written contract. In connection with this agreement, Phillips employed Blake to head up a new machine tool division and handle the LeBlond products.

On February 15, 1973, Kohorst sent to Raskin the formal agreement for signature. Neither Raskin nor Blake read the entire agreement before signing. Raskin did read the Schedule of Discount Rates and Schedule A. Raskin does not remember whether the contract was reviewed by counsel before it was signed, and recalls no conversations with anyone regarding the particular clause involved. In fact, there appears to have been no discussion of the clause between the parties at all. There is no contention that Raskin was misled or not given ample opportunity to read the agreement before signing.

The distributorship agreement consists of a cover page and approximately two and one-half letter size pages of printed material. Attached to the basic document are various schedules setting forth territory and discount rates as well as an additional page containing additional terms. The whole agreement consists of twelve pages, including the cover page. None of the parts of the agreement contain any fine print; on the other hand, none of the terms is conspicuous compared with the rest. All the printing is the same size and darkness.

As to Raskin's business experience, the evidence reveals he had been employed for 10 years by another company in sales of machine tools and other industrial products and had been president and owner of Phillips for a number of years. Prior to 1973, and since 1977, the company has been engaged primarily in handling lift trucks and related equipment. One of the primary reasons that LeBlond granted the distributorship to Phillips was Raskin's experience and ability as a business man.

The evidence further reveals that in the trade here involved, distributorships are the usual method by which manufacturers sell their products. Further, while limitations of damages clauses such as this one do not appear in all distributorship agreements, they are not uncommon. The purpose of such clauses is to protect both parties from having to pay lost profits in the event of termination, since either the manufacturer or distributor may decide to terminate and give their business to a competitor.

LeBlond, the manufacturer, is a larger entity than Phillips and its product is a very desirable one for a distributor to handle. However, the business is highly competitive and there are quite a number of companies that manufacture products comparable to and competitive with the LeBlond line.

The distributorship agreement was prepared by LeBlond. There is no evidence whether LeBlond would have been amenable to negotiating the contested paragraph if requested to do so.

Paragraph 7(g) applies to both the distributor and the manufacturer.

In at least one lease agreement, Phillips has a clause excluding claims of lost profits by its lessee.

The question of unconscionability is one of law for the Court to decide. The comments to §2-302 state that the basic test is:

"...whether, in the light of the general commercial background and the commercial needs of the particular trade or case, the clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the contract.....The principle is one of the prevention of oppression and unfair surprise (citation omitted) and not of disturbance of allocation of risks because of superior bargaining power."

This test is to be applied as of the time of formation of the contract.

The language of §2-719(3) indicates that in deciding whether a clause excluding consequential damages is unconscionable, the Court must first determine whether the contract is between a consumer and a business entity, or a contract between businessmen. If the former, then limitations of consequential damages for injury to the person are prima facie unconscionable. However, if the loss is commercial, as in this case, there is no prima facie unconscionability. In fact, in a commercial setting, the burden of proving unconscionability is on the party seeking to invalidate the contract or clause. W.L. May Co. v. Philco-Ford Corporation, 543 P2d 283 (Or. 1975); Schroeder v. Fageol Motors, Inc., 544 P2d 20 (Wash.1975).

The Court finds no Oklahoma case which addresses the precise question presented here. The case of Tuttle v. Kelly-Springfield Tire Co., 585 P2d 1116 (Okl. 1978) involved a limitation of remedy in a consumer contract where the consumer-plaintiff suffered injury as a result of a blow-out on a tire purchased from defendant. The Court held, in accordance with §2-719(3), that the limitation of consequential damages for injury to the person was prima facie unconscionable, and that the burden was on the defendant to overcome the presumption.

While the Tuttle holding involves a consumer transaction, there is dicta in the opinion that "remedy limitations for non-consumer goods would probably be tested for unconscionability in the same manner as disclaimers." However, in a footnote the Court indicated that whether the standards of §2-316 would apply is "a question for another day."

This question was considered by the Supreme Court of Washington, Schroeder v. Fageol Motors, Inc., 544 P2d 20 (Wash.1975). That court reached the conclusion that the presence or absence of negotiation of an exclusionary term and conspicuousness or lack of it were factors to be considered along with others in determining whether such a clause is unconscionable. Citing Williams v. Walker-Thomas Furniture Co., 350 F2d 445 (D.C. Cir., 1965), the Schroeder court noted

"...consideration must be given to 'all the circumstances surrounding the transaction,' including '[t]he manner in which the contract was entered,' whether each party had 'a reasonable opportunity to understand the terms of the contract,' and whether 'the important terms [were] hidden in a maze of fine print...' "

The court then went on to state that also to be considered are prior course of dealings between the parties and usage of trade, and that the presence of a practice or policy excluding consequential damages would "support a finding of unconscionability in spite of lack of 'negotiations' or the 'inconspicuous' appearance of the clause."

Other courts have considered the question of unconscionability of clauses excluding lost profits in contracts between businessmen.

In such cases, the courts generally examine the circumstances existing at the time the contract was made in the light of the general commercial background and the needs and practices of the particular trade involved. W. L. May Co., Inc. v. Philco-Ford Corporation, 543 P2d 283 (Or. 1975). In County Asphalt, Inc. v. Lewis Welding & Engineering Corp., 323 F.Supp. 1300 (S.D. N.Y. 1970), the court identified "typical" cases of unconscionability as "where one party has been misled as to the nature of the bargain, where there appears to have been a severe imbalance in bargaining power, or where specific terms appear 'outrageous.' "

There is no requirement that there be equality of bargaining power. The comments to §2-302 make it clear that the section does not invalidate clauses simply because they allocate risks to the party having less bargaining power. There must be, in addition, some element of deception or substantive unfairness. Wille v. Southwestern Bell Telephone Co., 549 P2d 903 (Kan. 1976).

In addition, in order to find such a clause unconscionable, the party challenging the clause must show that there is no reasonable relation to the risks involved and that the terms are so one-sided as to be oppressive. W.L. May Co., Inc. v. Philco-Ford Corporation, supra.

Careful consideration of the evidence in light of the applicable law convinces the Court that the plaintiff has failed to meet its burden of showing that Paragraph 7(g) of the agreement is unconscionable. There is no evidence that LeBlond abused its right to contract freely, and no evidence that the contract is "one-sided, oppressive and unfairly surprising." Wille, supra. Nor is there any evidence that the manner in which the contract was entered was oppressive or misleading. After the parties reached an oral agreement, LeBlond sent the written contract to Phillips, and Raskin had ample opportunity to read it and to raise any objections he may have had. The fact that he failed to read it, under these circumstances, does not relieve Phillips from its terms. Bradford v. Plains Cotton Cooperative Association, 539 F2d 1249 (10th Cir. 1976) Further, Raskin is not a consumer, but an experienced businessman,

The limitation has a reasonable relationship to the risks involved and is equally applicable to both parties. While it is true that the term was not "conspicuous" or "negotiated", neither was it hidden in fine print, and the few pages involved could have been easily read by a man of Mr. Raskin's business experience.

Plaintiff has argued that this clause cannot be enforced because it, in effect, deprives plaintiff of any effective remedy, and therefore the remedies provided by the contract fail of their essential purpose. The argument continues that the very reason for entering into such a contract is to make a profit, and therefore any exclusion of lost profits as a remedy for breach is unconscionable and contrary to public policy. This argument is unsound. The contract contains no limitation on damages other than lost profits. The fact that plaintiff does not claim other damages is immaterial. Further, the U.C.C. specifically provides for such exclusions, negating the public policy argument. Such reasoning as set forth by plaintiff would leave §2-719(3) without any effect by invalidating all such limitations between businessmen.

It is plaintiff's position that defendant's good faith or bad faith in terminating the contract is a factor that should be considered in determining whether this exclusionary clause is unconscionable. That position has some support in the case of County Asphalt, Inc. v. Lewis Welding and Engineering Corp., supra. However, it is important to distinguish between unconscionability in formation of a contract and a subsequent breach of the good faith obligation. In determining whether a clause authorized by §2-719(3) is enforceable, the test is whether the clause or contract is unconscionable at the time of contracting. Subsequent events will not make a valid provision unconscionable. Bradford v. Plains Cotton Cooperative Association, supra. The good faith requirement, on the other hand, is "an implied term of the contract requiring cooperation on the part of one party to the contract so that another party

will not be deprived of his reasonable expectations." Corenswet, Inc. v. Amana Refrigeration, Inc., 594 F2d 129 (5th Cir. 1979), citing Farnsworth, Good Faith Performance and Commercial Reasonableness under the Uniform Commercial Code, 30 U.Chi. L.Rev. 666 (1973). It follows, then, that a breach of the implied contract term will not invalidate the other terms of the contract. It should again be emphasized that this paragraph does not prevent plaintiff from asserting a breach of the contract or from recovering any actual damages except lost profits. Since the exclusionary clause is part of the contract and is not unconscionable, it is difficult to comprehend how enforcing the clause could deprive plaintiff of its reasonable expectations. By the terms of the contract, plaintiff cannot reasonably expect to recover lost profits.

In considering a motion for summary judgment, the Court must consider the evidence in the light most favorable to the non-moving party, and if there is any indication of a genuine issue as to any material fact, summary judgment should not be granted. Exnicious v. United States, 563 F2d 418 (10th Cir. 1977); United States v. Kansas Gas and Electric Company, 287 F2d 601 (10th Cir. 1961) This does not mean, however, that the existence of any fact issue precludes the granting of summary judgment. Rather, summary judgment is inappropriate only if the fact issue is material. British Airways Board v. Boeing Company, 585 F2d 946 (9th Cir. 1978). A fact issue is material if it may affect the outcome of the litigation. Mutual Fund Investors v. Putnam Management Company, Inc., 553 F2d 620 (9th Cir. 1977).

It is true in this case that a fact issue remains as to the good faith of defendant in terminating the distributor agreement. That fact issue, however, is not material. Under §2-719(3) of the U.C.C., contractual exclusions of consequential damages are valid unless unconscionable. Unconscionability by the terms of §2-302 is a question of law for the Court. Since the clause involved in this case is not unconscionable as a matter of law, the question of good faith of defendant is immaterial, since it cannot affect the outcome of the litigation. Even if defendant terminated the contract in bad faith, plaintiff cannot recover lost profits as damages.

Since the contract between these parties excludes damages for lost profits, the exclusion is not unconscionable, and the only actual damages sought are lost profits, the Court finds that defendant's motion for summary judgment should be granted.

The Court further finds that summary judgment should be granted defendant on plaintiff's claim for punitive damages. The availability of punitive damages is controlled by statute, Title 23, O.S. §9, which provides:

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

Since plaintiff's action is based on a breach of contract, punitive damages may not be awarded. Further, since there are no recoverable actual damages, there can be no recovery of punitive damages.

Moore v. Metropolitan Utilities Company, 477 P2d 692 (Okla.1970)

IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment is hereby granted. In keeping with this Memorandum Opinion, a separate judgment in favor of the defendant LeBlond, Inc., a corporation, and against the plaintiff, Phillips Machinery Company, a corporation, will be entered.

DATED this 29th day of July, 1980.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

JUN 26 1980

DOCKET NO. 330

PATRICIA D. HOWARD
CLERK OF THE PANEL

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE SWINE FLU IMMUNIZATION PRODUCTS LIABILITY LITIGATION

80-1821

United States District Court
for the District of Columbia
A TRUE COPY

Rosemary Story v. United States of America
N.D. Oklahoma, C.A. No. 80-C-344-F

FILED

337

JUL 28 1980

JUL 21 1980

JAMES F. DAVEY, CLERK

CONDITIONAL TRANSFER ORDER

Jack C. Silver, Clerk
U. S. DISTRICT COURT
JAMES F. DAVEY, Clerk

On February 28, 1978, the Panel transferred 26 related civil actions to the United States District Court for the District of the District of Columbia for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 800 additional actions have been transferred to the District of the District of Columbia. With the consent of that court, all such actions have been assigned to the Honorable Gerhard A. Gesell.

It appears from the pleadings filed in the above-captioned action that it involves questions of fact which are common to the actions previously transferred to the District of the District of Columbia and assigned to Judge Gesell.

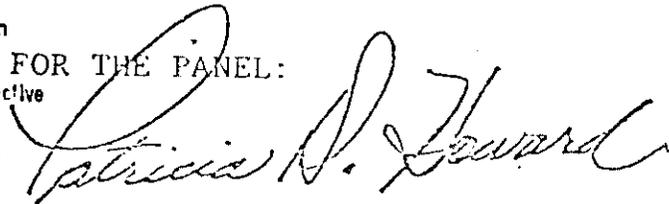
Pursuant to Rule 9 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 78 F.R.D. 561, 567-68, the above-captioned tag-along action is hereby transferred to the District of the District of Columbia on the basis of the hearings held on January 27, 1978, May 26, 1978, September 29, 1978, November 1, 1978, March 23, 1979 and April 27, 1979, and for the reasons stated in the opinions and orders of February 28, 1978, 446 F. Supp. 244, July 5, 1978, 458 F. Supp. 648, and January 16, 1979, 464 F. Supp. 949, and with the consent of that court assigned to the Honorable Gerhard A. Gesell.

This order does not become effective until it is filed in the office of the Clerk for the United States District Court for the District of Columbia. The transmittal of this order to said Clerk for filing shall be stayed fifteen days from the entry thereof and if any party files a Notice of Opposition with the Clerk of the Panel within this fifteen day period, the stay will be continued until further order of the Panel.

Inasmuch as no objection is pending at this time, the stay is lifted and this order becomes effective

FOR THE PANEL:

JUL 14 1980



Patricia D. Howard
Clerk of the Panel

THIS IS A TRUE COPY

Patricia D. Howard
Clerk of the Panel

Patricia D. Howard
Clerk, Judicial Panel on
Multidistrict Litigation

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 28 1980

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 P. C. SCHLESINGER, JR.,)
)
 Defendant.)

CIVIL ACTION NO. 80-C-151-E

DEFAULT JUDGMENT

This matter comes on for consideration this 28th day of July, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, P. C. Schlesinger, Jr., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, P. C. Schlesinger, Jr., was personally served with Summons and Complaint on March 28, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

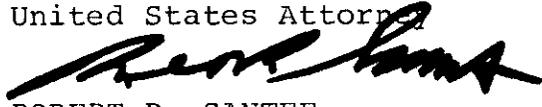
The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, P.C. Schlesinger, Jr., for the principal sum of \$1,256.49, plus interest at the legal rate from the date of this Judgment until paid.


UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant U. S. Attorney

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

F 1 1 1 1
JUL 28 1980
Jack R. Brett, Clerk
U. S. DISTRICT COURT

MELODIE SHAHAN, and MELODIE)
SHAHAN as next friend of)
JOHNNY DEAN S. SHAHAN,)
a minor,)
)
Plaintiffs,)
)
v.)
)
BORDEN, INC.,)
a corporation,)
)
Defendant.)

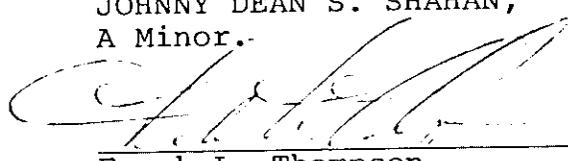
No. 80-C-99-B

JOINT DISMISSAL WITH PREJUDICE

Come now the parties herein and show to the Court that they have compromised and settled all of their differences in this litigation and Plaintiffs therefore dismiss their causes of action, and the parties jointly request this Honorable Court to make and enter its Order of Dismissal With Prejudice.

Done and Dated this 24 day of July, 1980.

MELODIE SHAHAN and MELODIE
SHAHAN as next friend of
JOHNNY DEAN S. SHAHAN,
A Minor.



Frank L. Thompson
Attorney for Plaintiffs

BORDEN, INC., A Corporation
FELDMAN, HALL, FRANDEN & WOODARD

By: W S Hall

William S. Hall
Attorneys for Defendant
Borden, Inc.

JUL 28 1980
Jack R. Brett
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

The Court being fully advised in the premises and on consideration of the above and foregoing Joint Dismissal With Prejudice finds that Plaintiffs' causes should be dismissed with prejudice.

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiffs' causes be, and the same are, hereby dismissed with prejudice.

Done and Dated this 28th day of July, 1980.

Thomas R. Brett
Thomas R. Brett
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

~~FILED~~
JUL 25 1980
Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 240.00 Acres of Land, More or)
 Less, Situate in Washington)
 County, State of Oklahoma,)
 and Jack Hollingworth, Jr.,)
 et al., and Unknown Owners,)
)
 Defendants.)

CIVIL ACTION NO. 78-C-33-Bt
Tract No. 409

~~FILED~~
JUL 28 1980
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

1.

NOW, on this 28 day of July, 1980, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on June 26, 1980, and the Court, after having examined the files in this action and being advised by counsel, finds that:

2.

This judgment applies to the entire estate taken in Tract No. 409, as such estate and tract are described in the Complaint filed in this case.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the subject property.

Pursuant thereto, on January 23, 1978, the United States of America filed its Declaration of Taking of a certain estate in such tract of land, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

6.

Simultaneously with filing of the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of the described estate in the subject tract a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 12.

7.

The Report of Commissioners filed herein on June 26, 1980, is accepted and adopted as a finding of fact as to subject tract. The amount of just compensation as to the estate taken in subject tract, as fixed by the Commission, is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estate taken in subject tract and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The Court has heretofore found, on March 26, 1979, that the defendant, Floyd Fitzsimmons, who was made a party because of a claim of a lease on subject property, had no interest in the subject property when such property was taken in this case.

A certain oil and gas lease assigned to the defendant, L. E. French, on June 16, 1954, recorded in the Washington County land records at Book 298, Page 446, had expired by its own terms as of the date of taking, because of lack of production of oil and/or gas, and therefore, said L. E. French had no interest in subject property on the date of taking.

All other defendants having either disclaimed or defaulted, the defendants named below in paragraph 12 were (as of the date of taking) the owners of the estate condemned herein, and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tract, as it is described in the Complaint filed herein, and such property, to the extent of the estate described in such Complaint is condemned, and title thereto is vested in the United States of America, as of January 23, 1978, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the estate taken herein in subject tract were the defendants whose names appear below in paragraph 12, and the right to receive the just compensation for such estate is vested in the parties so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on June 26, 1980, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estate taken in subject tract, as shown by the following schedule:

TRACT NO. 409

OWNERS:

Jack Hollingworth, Jr. ----- 1/2

Subject to two mortgages owned by:

1. Ozark Production Credit Association and
2. Ralston Purina Company

Faye H. Hubbard ----- 1/2

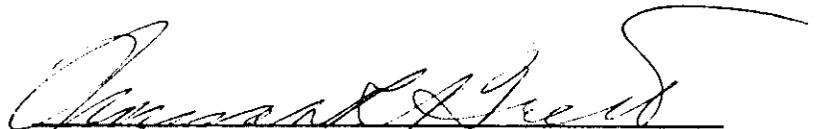
<u>AWARD</u> of just compensation pursuant to Commissioners' Report -----	\$229,500.00	\$229,500.00
<u>DEPOSITED</u> as estimated compensation -----	170,000.00	
<u>DISBURSED</u> to owners -----		<u>170,000.00</u>
<u>BALANCE DUE</u> to owners -----		\$ 59,500.00 plus interest
<u>DEPOSIT DEFICIENCY</u> -----	\$ 59,500.00 plus interest	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for the subject tract as shown in paragraph 12, in the amount of \$59,500.00, together with interest on such deficiency at the rate of 6% per annum from January 23, 1978, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tract in this civil action.

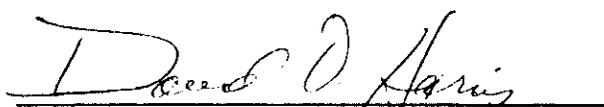
After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tract as follows:

To Jack Hollingworth, Jr., Ozark Production
Credit Association, and Ralston Purina
Company, jointly ----- 1/2 of the sum on deposit,
and
To Faye H. Hubbard ----- 1/2 of the sum on deposit.


UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW
Assistant United States Attorney


DAVID O. HARRIS
Attorney for Defendants

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

AMERICAN DUPLICATING CORPORATION,)
a Tennessee corporation, and)
JAMES W. CARELL,)

Plaintiffs,)

vs.)

UNITED BUSINESS SERVICES, INC.,)
an Oklahoma corporation, and)
HAROLD J. HAUS, JR., individually,)

Defendants.)

No. 78-C-151-~~B~~ *C*

E I L E D

JUL 28 1980

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

JUDGMENT

Now on this 13th day of February, 1980, this case comes on for continued trial for the closing arguments of counsel and judgment by the Court.

The Court finds that the trial was commenced on October 15, 1979, and both parties completed their evidence and rested on October 20, 1979, and the case was continued to this date for final arguments.

This Court finds, upon hearing the final arguments of counsel and upon consideration of the evidence and testimony adduced in open Court and the trial briefs submitted by counsel, as follows:

1. That these parties entered into a certain Asset Purchase Contract on or about August 6, 1975;
2. That the assets in such sale included certain equipment leases with Nelson Electric Company, Family Security Life Insurance Company, Cathodic Protection Company and Chandler Engineering Company;
3. That defendant United Business Services, Inc., had executed and delivered to each such lessee a separate agreement permitting the earlier cancellation of such equipment leases;

4. That defendant Haus was the principal stockholder, director and Chief Executive Officer of United Business Services, Inc., and that defendant Haus was in charge thereof;

5. That subsequent to the asset sale of April 5, 1975, Albert Equipment Company acquired all the capital stock of defendant United Business Services, Inc.. That prior to that time United Business Services, Inc., had had a cash flow problem;

6. That on or about the month of May of 1975, plaintiffs learned that defendants were contemplating the sale of business, that plaintiff James W. Carell met with defendant Harold J. Haus, Jr. but that no agreement then resulted. That thereafter in the month of June of 1975, plaintiff Carell came to Tulsa and brought with him a proposed contract which was rejected by the defendants;

7. That negotiations ensued and that on or about July 27, 1975, plaintiff Carell met with defendant Haus and others and a contract was entered into dated June 27, 1975, under the terms of which plaintiff American Duplicating made a downpayment of \$10,000.00;

8. That on or after June 27, 1975, a second meeting occurred between the parties but that negotiations then failed. This Court finds no evidence was made by plaintiffs for a demand for the return of the downpayments at that time and that negotiations thereafter continued and resulted in the final contract of August 6, 1975, which was introduced in evidence at trial;

9. That Schedule D to such contract was an itemization of the lease contracts in issue in the case, there being four

such lease contracts involved as follows: (1) lease contract of September 19, 1975, between defendant United Business Service, Inc., and Nelson Electric Company, for a period of 60 months after October 1, 1975, for a rental of \$18,750.00, which defendant Haus amended on behalf of defendant United Business Service by a separate right to cancel letter of September 24, 1975, providing for cancellation on 30 day notice and further providing such lease would not be sold, and which lease was cancelled by the named lessee on or about June 21, 1976, such cancellation to be effective July 15, 1976; (2) lease agreement between defendant and Chandler Engineering Company of February 27, 1975, providing for the payment of \$135.00 per month thereafter and the total rental of \$4,750.00, which the defendants modified by a side letter agreement dated February 24, 1975 and allowing cancellation upon 30 day notice after the first 12 months, and which the named lessee did cancel on or about December 3, 1975, effective as of the end of the said first 12 months; (3) lease contract of March 26, 1974, between defendant United Business Service, Inc., and Family Security Life Insurance Company, for a period of 60 months at \$148.29 per month, which was supplemented with a side letter of March 29, 1974, providing for cancellation if the service were unsatisfactory and that the named lessee did cancel on June 24, 1977, with a balance then due of \$3,558.96; (4) lease contract of October 1, 1974, between defendant and Cathodic Protection Company, for a term of 60 months thereafter at \$151.67 per month, or total rental of \$6,250.00, which was supplemented with a side letter of October 30, 1974, providing for cancellation and that the named lessee did cancel on October 28, 1976;

10. That defendant Haus never advised the plaintiffs of the existence of such side letters during the negotiations;
11. That defendant Haus did testify that the lease agreement with Nelson Electric Company was nonassignable but this Court finds that same was never alleged transferred by defendants to plaintiffs;
12. That Russell Frans, an employee of United Business Services, Inc., negotiated certain loan agreements which involved the aforesaid leases but that he had no knowledge of the side letters and cancellation agreements;
13. That no evidence was submitted as to whether or not the side letters were ever actually in the lease files or other files which were available to plaintiffs prior to the closing of their contract of July 15, 1976;
14. That the facts as to the side letters indicate clearly an intent by defendants to deceive plaintiffs;
15. That this Court had jurisdiction of the parties and of the subject matter;
16. That the nondisclosure as to the existence of such side letters by defendants constituted an omission of a material fact;
17. That defendants knew of such side letters and had a duty to reveal their existence to plaintiffs;
18. That plaintiffs had no knowledge of the existence of such side letters and that plaintiffs relied upon the other representations of plaintiffs in the contract between these parties and that, in so relying, the plaintiffs changed their positions to their detriment;

19. That the statute of limitations had not run on this action because in viewing the totality of facts that the misrepresentations were not discovered until June of 1976; That the statute of limitations had begun to run only when plaintiffs had sufficient knowledge or should have had sufficient knowledge of the existence of such side letters, as aforesaid;

20. That the value of the lease agreements were diminished because of the existence of the side letters and that the plaintiffs would have sustained damage even if the aforesaid lease cancellations had not occurred;

21. That the measure of damages should be the difference between value represented as to such lease contracts and the value received by plaintiffs and that plaintiffs sustained a loss because of the said material misrepresentations and fraud of defendants; that the payments which were received by the plaintiffs from the various lessees who did cancel will serve to mitigate the damages and that such damages are susceptible of mathematical calculation;

22. That plaintiffs are not entitled to punitive and exemplary damages and that the misrepresentation of defendants was not sufficient to justify judgment for attorney fees for plaintiffs;

23. That plaintiffs should recover money judgment, jointly and severally, against defendants on the grounds of fraud for the sum of \$23,016.30, together with interest according to law and the costs of this action.

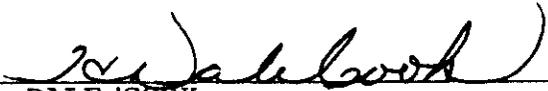
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

1. That plaintiffs are granted judgment, jointly and severally, against defendants on the grounds of fraud and misrepresentation for actual damages in the sum of \$23,016.30, together with interest

according to law, until paid, and for costs of \$508.68 for all of which executions shall issue forthwith;

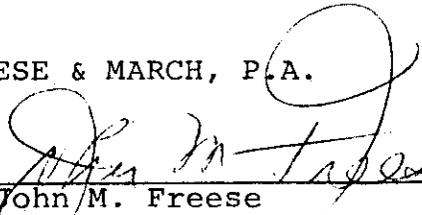
2. That plaintiffs are denied judgment for exemplary and punitive damages and for attorney fees;

3. That plaintiffs and defendants are each granted exceptions to the findings in judgment of this Court.

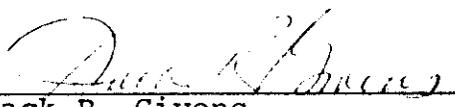

H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

FREESE & MARCH, P.A.

By: 
John M. Freese
Attorneys for Plaintiffs

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

By: 
Jack R. Givens
Attorneys for Defendants

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

FILED
JUL 24 1980
JAMES O. ELLISON, Clerk
U. S. DISTRICT COURT

KAMILLE GANEM,)
)
Plaintiff,)
)
VS.)
)
E. TERRILL CORLEY and)
THOMAS F. GANEM,)
)
Defendants,)

No. 80-C-136E

APPLICATION TO DISMISS WITH PREJUDICE

COMES NOW the Plaintiff and moves the Court to enter an order dismissing the above entitled cause with prejudice to the refiling of said action for the reason the parties hereto have mutually agreed to dismiss their respective claims.

Kamille Ganem
KAMILLE GANEM, Plaintiff

Leroy J. Patton
LEROY J. PATTON of
BAKER AND WILLIS
218 S. Muskogee Avenue
Tahlequah, Oklahoma 74464

FILED
JUL 28 1980
JAMES O. ELLISON, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

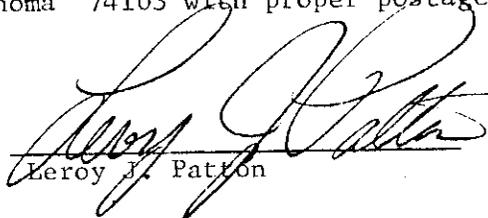
NOW on this the 25th day of July, 1980, the above entitled cause comes on for hearing on the Application of the Plaintiff to Dismiss with Prejudice the above and foregoing action and the Court after considering said application is of the opinion the same should be and the same is hereby dismissed with prejudice to the refiling of another claim.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF MAILING

I, Leroy J. Patton, hereby certify that I mailed a true and correct copy of the above and foregoing Plaintiff's Application and Order for Dismissal with Prejudice on the 3rd day of July, 1980 to Richard D. Wagner, 310 Beacon Building, Tulsa, Oklahoma 74103 and to Thomas F. Ganem, 1809 E. 15th Street, Tulsa, Oklahoma 74103 with proper postage prepaid.


Leroy J. Patton

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

GC WIRELINE SERVICES, INC., A Division)
of Gearhart- Owen Industrues, Inc., a)
Texas coporation,)
)
Plaintiff,)

vs.)

WAGON WHEEL ENERGY, INC., an Oklahoma)
corporation; RAYMOND STARNs,)
individually; TITAN PIPELINE OF)
OKLAHOMA, INC., an Oklahoma corporation;)
and CITIES SERVICE GAS COMPANY, a)
Delaware corporation,)
)
Defendant.)

NO. C-80-215-B

FILED

JUL 25 1980

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

DISMISSAL OF COMPLAINT AS TO CITIES SERVICE GAS COMPANY, ONLY.

NOW on this day of July, 1980, comes on for presenta-
tion to this Honorable Court a Notice of Dismissal by the Plaintiff
above named of the Defendant according to this action being Cities
Service Gas Company, a Delaware corporation, and the Court being
fully advised that it has filed an Answer herein and have denied
having any transactions of any kind, such as a natural gas purchase
contract with the Plaintiff herein, premises considered.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the
complaint and together with all allegations therein containing
against said Cities Service Gas Company, a Delaware corporation,
be and it is hereby dismissed as a party Defendant in and to the
above and entitled action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

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

FORD MOTOR CREDIT COMPANY,

Plaintiff,

vs.

FRED EARL STONEMAN, d/b/a
STONEMAN FORD,

Defendant.

FILED

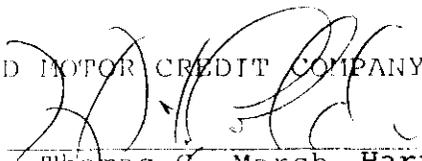
JUL 25 1980

Jack C. Egan, Clerk
U. S. DISTRICT COURT
No. 80-C-386-E
286

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED by and between Plaintiff and
Defendant, that this cause is dismissed without prejudice, at
the cost of the Plaintiff.

FORD MOTOR CREDIT COMPANY

By: 

Thomas G. Marsh, Harry Goldman
Attorney for Plaintiff
525 South Main, Suite 210
Tulsa, Oklahoma 74103
Telephone: (918) 587-0141

FRED EARL STONEMAN, d/b/a
STONEMAN FORD

By: 

George Briggs
Attorney for Defendant
205 Triangle Building
Pawhuska, Oklahoma 74056
Telephone: (918) 287-1812

FILED

JUL 25 1980

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

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

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-178-Bt
)	
vs.	)	This action applies to all
	)	interests in the estate
3.16 Acres of Land, More or	)	taken:
Less, Situate in Osage County,)	
State of Oklahoma, and Lyndelle	)	Tracts Nos. 513E-3 and
Herrera, et al., and Unknown	)	513E-4
Owners,)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #398-17)

J U D G M E N T

1.
 NOW, on this 25 day of July, 1980, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of certain parties and a contract signed by other parties hereto, agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel, finds:

2.

This judgment applies to the entire estate condemned in Tracts Nos. 513E-3 and 513E-4, as such estate and tracts are described in the Complaint filed in this action.

3.

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

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint herein give the United States of America the right, power and authority to condemn for public use the property

described in such Complaint. Pursuant thereto, on March 29, 1979, the United States of America filed its Declaration of Taking of such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing the Declaration of Taking.

6.

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

7.

The defendants named in paragraph 11 as owners of the subject property are the only defendants asserting any interest in such property. All other defendants having either disclaimed or defaulted, the named defendants were, as of the date of taking, the owners of the subject property and, as such, are entitled to receive the just compensation awarded by this judgment.

8.

The owner of an undivided 1/3 interest in the subject tracts and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estate hereby condemned in such 1/3 interest in subject tracts is in the amount shown as compensation in paragraph 11 below, and such Stipulation should be approved.

The owner of an undivided 2/3 interest in the subject tracts and the United States of America, prior to the filing of this case, executed a contract, as alleged in the Complaint, whereby they agreed that the amount of just compensation for the estate to be condemned in such 2/3 interest in subject tracts would be in the amount shown as compensation in paragraph 11 below. Such contract should be approved.

9.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tracts Nos. 513E-3 and 513E-4, as such tracts are particularly described in the Complaint filed herein; and such tracts, to the extent of the estate described in such Complaint, are condemned, and title thereto is vested in the United States of America, as of March 29, 1979, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

10.

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

11.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation mentioned in paragraph 8 above and the contract, described in paragraph 6 of the Complaint, hereby are confirmed. The sum of \$2,500.00 is adopted as the total award of just compensation for the estate condemned in subject tracts, and such award is allocated as follows:

TRACTS NOS. 513E-3 and 513E-4

OWNERS:

Lyndelle Herrera ----- 2/3

Carol Ann Davis ----- 1/3

Award of just compensation
for all interests ----- \$2,500.00

Deposited as estimated compensation ----- \$2,500.00

Allocation of award:

To 2/3 (Herrera) interest -- \$1,666.67

To 1/3 (Davis) interest ----- \$833.33

Disbursals:

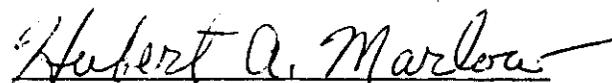
To Lyndelle Herrera ----- \$1,666.67

To Carol Ann Davis ----- \$833.33


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. KELLY


HUBERT A. MARLOW
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 25 1980

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 BILLY J. DAULTON,)
)
 Defendant.)

CIVIL ACTION NO. 79-C-731-E

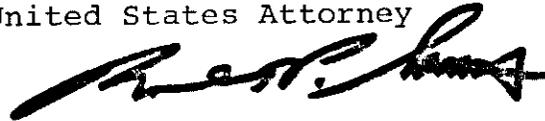
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, 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 25th day of July, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

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

CHARLES C. STEPHENSON,)
)
 Plaintiff,)
)
 -vs-)
)
 GEORGE W. INGRAM,)
)
 Defendant.)

FILED

JUL 24 1980 *mm*

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

No. 78-C-233-C

JUDGMENT

NOW on this 14th day of July, 1980, the above styled cause comes on before the Court for non-jury trial. The Court, having heard the evidence and having observed the demeanor of witnesses sworn and examined in open Court, finds that in accordance with the Findings of Fact and Conclusions of Law as filed by the Court herein, that judgment should be, and the same is hereby rendered, in favor of the plaintiff, Charles C. Stephenson, and against the defendant, George W. Ingram, in the sum of \$43,861.37.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, Charles C. Stephenson, have and recover judgment against the defendant, George W. Ingram, in the sum of \$43,861.37, together with interest thereon at the rate of twelve percent (12%) per annum from the 14th day of July, 1980 until paid and for the costs of the action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the plaintiff, Charles C. Stephenson, have and recover judgment against the defendant, George W. Ingram, in the sum of \$4,386.13, as and for attorneys fees for the use and benefit of the plaintiff's attorney of record, as set forth in the Promissory Note.

[Signature]
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

[Signature]
RODNEY A. EDWARDS,
Attorney for Plaintiff

[Signature]
FREDERIC N. SCHNEIDER, III,
Attorney for Defendant

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

CHARLES C. STEPHENSON,)
)
 Plaintiff,)
)
 -vs-)
)
 GEORGE W. INGRAM,)
)
 Defendant.)

FILED

JUL 24 1980

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

No. 78-C-233-C ✓

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 14th day of July, 1980, the above styled cause comes on before the Court in its regular setting for non-jury trial. The plaintiff appears in person and with his attorney, Rodney A. Edwards of the law firm of Jones, Givens, Gotcher, Doyle & Bogan, Inc., and the defendant appears in person with his attorney, Frederic N. Schneider, III of the law firm of Boone, Smith, Davis & Minter. The Court, having reviewed the pleadings filed herein, having heard the testimony of witnesses sworn and examined in open Court, and being fully advised in the premises, finds the following issues of fact and conclusions of law.

FINDINGS OF FACT

1. The plaintiff, Charles C. Stephenson, is an individual and resident of Tulsa County, Oklahoma; the defendant, George W. Ingram, is an individual and resident of Houston, Texas; and the amount in controversy exceeds \$10,000.00. Diversity of citizenship exists between the parties and the Court is vested with jurisdiction in the matter.

2. The defendant, George W. Ingram, from his office in Houston, Texas, called the plaintiff, Charles C. Stephenson, in Tulsa, Oklahoma, in late December of 1977 and reported to the plaintiff regarding a Board of Directors meeting for Data Research Associates, Inc. The defendant further reported that the corporation, Data Research Associates, Inc., was involved in a cash flow problem and solicited the plaintiff, Charles C. Stephenson, to loan to him personally,

for the purpose of loaning to the corporation for operating capital, the sum of \$35,000.00. This loan to the defendant would be for a term of approximately thirty (30) days.

3. That contemporaneous with the execution of the Note by the defendant, the defendant transferred to the plaintiff 1600 shares of the capital stock of Data Research Associates, Inc.

4. That the plaintiff, Charles C. Stephenson, did loan to the defendant, George W. Ingram, the sum of \$35,000.00, as evidenced by the plaintiff's Exhibit No. 3, introduced into evidence before the Court and that said Promissory Note from the defendant, George W. Ingram, to the plaintiff, is due and payable in full according to its terms.

5. That the stock transfer, contemporaneous with the signing of the Promissory Note, was not a transfer by the defendant, George W. Ingram, to obtain the loan of \$35,000.00, but was in fact a gratuity for the assistance of the plaintiff, Charles C. Stephenson.

6. The Court further finds that with regard to the applicable law, the law of the State of Texas applies.

CONCLUSIONS OF LAW

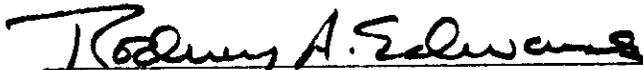
1. The plaintiff, Charles C. Stephenson, is entitled to recover judgment against the defendant, George W. Ingram, upon the Promissory Note which was introduced into evidence as plaintiff's Exhibit No. 3, for the sum of \$35,000.00, together with interest thereon at the rate of three-quarters of one percent ($3/4$ of 1%) above the prime rate of the First National Bank of Tulsa, Oklahoma, from the 6th day of January, 1978 until the 6th day of February, 1978, in the sum of \$273.53, with interest on the principal and interest thereafter at the rate of ten percent (10%) per annum in the sum of \$8,587.84, with interest from the 14th day of July, 1980 at the rate of twelve percent (12%) per annum.

2. That the transfer of the 1600 shares of Data Research Associates, Inc. capital stock, contemporaneous with the transfer of the Promissory Note, was not a condition for the loan of \$35,000.00, and it does not constitute usurious interest, but was in fact a gratuity.

3. The Court finds that the laws of the State of Texas apply to the Promissory Note, which is the subject matter of this suit.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


RODNEY A. EDWARDS,
Attorney for Plaintiff


FREDERIC N. SCHNEIDER, III,
Attorney for Defendant.

FILED

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

JUL 23 1980

COMMUNITY NATIONAL BANK,

Plaintiff

vs.

CIVIL ACTION NO. 80-C-263-B ✓

CHRISTOPHER J. CLANCY,

Defendant

JUDGMENT

On this day came on to be heard the above-entitled and numbered cause, and the Plaintiff, Community National Bank, acting by and through their attorney of record, Philip Lawrence Spies, and Christopher J. Clancy, the Defendant, though duly served with summons and complaint, failed to appear and answer herein and wholly made default. The legal time for pleading or otherwise defending has expired; consequently, upon the application of the Plaintiff, the Community National Bank, judgment is hereby entered against the Defendant according to the complaint. The Court notes that the Defendant, Christopher J. Clancy, has made payments during the pendency of this proceeding, and that the Plaintiff, Community National Bank, has granted the Defendant an offset and credit, both as to principal and interest paid to Plaintiff.

It is therefore, ORDERED, ADJUDGED and DECREED that the Plaintiff, the Community National Bank, recover of and from the Defendant, Christopher J. Clancy, judgment in the sum of EIGHT THOUSAND FIVE HUNDRED FIFTY-THREE DOLLARS AND EIGHTY-NINE CENTS, (\$8,553.89), as of July 15, 1980, plus 14.55% interest per annum, from date of judgment as provided by law, until paid, and all costs of court incurred in this proceeding.

SIGNED and ENTERED the 23 day of July, 1980.

JACK C. SILVER, CLERK
United States District Clerk

By B. Sullivan
Deputy Clerk

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

KAMILLE GANEM,

Plaintiff,

vs.

E. TERRIL CORLEY and
THOMAS F. GANEM,

Defendants

No. 80-C-136E

FILED

JUL 23 1980

JAMES H. SAMPSON, CLERK
U. S. DISTRICT COURT

APPLICATION TO DISMISS WITH PREJUDICE

COMES NOW the Defendants, E. Terril Corley and Thomas F. Ganem, and join in the Application of the Plaintiff to dismiss this cause with prejudice to any refiling.

THOMAS F. GANEM, Defendant

E. TERRIL CORLEY, Defendant

DAN WAGNER, Attorney for
Defendant, E. Terril Corley

CERTIFICATE OF MAILING

I, Thomas F. Ganem, hereby certify that I mailed a true and correct copy of the above and foregoing Defendant's Application for Dismissal with Prejudice on the ____ day of July, 1980 to Leroy J. Patton, Attorney for Plaintiff, 218 S. Muskogee Avenue, Tahlequah, Oklahoma 74464 with the proper postage thereon fully prepaid.

Thomas F. Ganem

FILED

JUL 28 1980

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

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

ROBERT H. GARDNER,)
)
 Plaintiff,)
)
 vs.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

CIVIL ACTION NO. 79-C-576-B

O R D E R

NOW, on this 23rd day of ~~June~~ ^{July}, 1980, there came on for consideration the Stipulation for Remand executed by both parties. The Court finds that based on such Stipulation, this matter should be remanded.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that this matter be and the same is hereby remanded to the United States Civil Service Commission, now the Merit Systems Protection Board, for action pursuant to the Stipulation for Remand.


UNITED STATES DISTRICT JUDGE

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

NORTH AMERICAN BAIT FARMS, INC.)
)
) Plaintiff)
)
) v.)
)
) GAYLORD SHIPLEY, d/b/a)
) CHEROKEE STRIP WORM RANCH,)
)
) Defendant)
)
) v.)
)
) RONALD E. GADDIE, JOHN F. BURKE,)
) EDWARD HAGER and BARBARA HICKOX,)
)
) Cross-Claim)
) Defendants)

FILED

JUL 23 1980

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

No. 78-C-215-B

ORDER

Now on this 23rd day of July, 1980, upon the filing of a Stipulation of Settlement and Dismissal with Prejudice the Court finds that a settlement agreement has been entered into by and between the parties and that all claims asserted in plaintiff's complaint and defendant's cross-claim should be dismissed with prejudice.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the claims set forth in plaintiff's complaint are hereby dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claims set forth in defendant's cross-claim are hereby dismissed with prejudice.

S/ THOMAS R. BRL...

UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA JUL 23 1980

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 STEVEN A. CLAYBERG,)
)
 Defendant.)

CIVIL ACTION NO. 80-C-145-B

J U D G M E N T

This matter having come before the Court and the Court having considered the pleadings herein, an Order was entered on June 30, 1980, allowing a set-off to the Defendant in the amount of \$712.80.

IT IS ORDERED that Judgment is granted in favor of the Defendant in the amount of \$712.80 as a set-off against an untimely claimed sum of \$1,257.44 for the school period of August 21, 1978, to December 19, 1978, which sum was never collected by the Defendant from the Veterans Administration.

5/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F 1
JUL 2 1980

U.S. DISTRICT COURT

United States of America,)
)
Plaintiff,)
)
vs.)
)
32.47 Acres of Land, More or)
Less, Situate in Osage County,)
State of Oklahoma, and Ruby)
Webb Wilson, et al., and)
Unknown Owners,)
)
Defendants.)

CIVIL ACTION NO. 77-C-428-Bt

Tracts Nos. 716 & 716E

(Included in D.T. filed in
Master File #398-9)

J U D G M E N T

NOW, on this 23rd day of July, 1980, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estates condemned in Tracts Nos. 716 and 716E, as such estates and tracts are described in the Complaint filed in this action.

3.

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

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on October 17, 1977

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

6.

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

7.

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

8.

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

9.

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

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to

condemn for public use Tracts Nos. 716 and 716E, as such tracts are particularly described in the Complaint filed herein; and such tracts, to the extent of the estates described in such Complaint, are condemned, and title thereto is vested in the United States of America, as of October 17, 1977, and all defendants herein and all other persons interested in such estates are forever barred from asserting any claim to such estates.

11.

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

12.

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

TRACTS NOS. 716 and 716E

OWNER: Ruby Webb Wilson

Award of just compensation pursuant to Stipulation -----	\$10,700.00	\$10,700.00
Deposited as estimated compensation -----	\$10,565.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$10,700.00
Deposit deficiency -----	\$ 135.00	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, in this Civil Action, to the credit of subject property, the deficiency sum of \$135.00, and the Clerk of this Court then

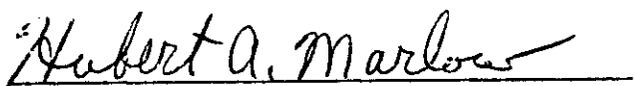
shall disburse the deposit for subject tracts as follows:

To - Ruby Webb Wilson ----- \$10,700.00.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW
Assistant United States Attorney

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

JERRY D. SMITH,
Plaintiff,

vs.

No. 76-C-404-B

GEORGE CURTIS, individually,
and in his official capacity
as Mayor of the City of Miami,
Oklahoma; NEIL NORTON, STEVE
WALKER, BYRON WYATT and GEORGE GUINN,
individually and in their official
capacity as members of the City
Council, City of Miami, Oklahoma,
and JAMES WOOLEY in his capacity
as City Attorney for the City of
Miami, Oklahoma; WILLIAM MELTON,
Chief of Police of Miami, Oklahoma,
Defendants.

FILED

JUL 27 1980

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

MOTION TO DISMISS WITH PREJUDICE

COMES NOW the Plaintiff, Jerry D. Smith, and moves that
this Court dismiss with prejudice the above styled matter.

JERRY D. SMITH
Plaintiff

BY

Fred H. Demier
FRED H. DEMIER
Attorney for Plaintiff

APPROVED:

Jerry D. Smith
JERRY D. SMITH

FILED

JUL 27 1980

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

ORDER

COMES NOW the Court upon the Motion of the Plaintiff herein
and dismisses the above styled matter with prejudice.

Howard R. Best

7-22-80

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

FILED

JUL 22 1980

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

MYRAN KENT MOUNTFORD,

Plaintiff,

vs.

POPLARVILLE MANUFACTURING
COMPANY and MARKLEY
IMPLEMENT, INCORPORATED,

Defendants.

No. 78-C-91-E

O R D E R

This case was tried to a jury from March 26, 1980 to April 3, 1980. The jury returned a verdict in favor of Defendants and against Plaintiff. The Court now has before it for consideration Plaintiff's Motion for New Trial.

Plaintiff raises a number of grounds for this motion, which can be divided into the following general categories: failure of the Court to allow Plaintiff's counsel to properly and adequately examine and cross-examine witnesses; failure of the Court to restrict certain evidence and arguments and error in the admission of certain evidence; prejudicial surprise; and the contrariness of the verdict to the law and evidence. Plaintiff also argues that the Court erred in allowing evidence which would have had bearing on the case had Kansas law been applicable.

As to the last contention, the Court raised the possibility of a choice of law problem at a pretrial conference. The parties introduced evidence having a bearing on this question, and the Court ultimately determined that the law of Oklahoma applied. This was the position urged by Plaintiff, and the jury was instructed as to the law of Oklahoma. The Court can find no prejudicial impact upon the Plaintiff as to this contention.

The Court's power to grant a new trial is governed by Rule 59, F.R.Civ.P. Rule 59(a)(1) provides that "a new trial may be granted... for any of the reasons for which new trials have heretofore been

granted in actions at law in the courts of the United States."
See generally 6A Moore's Federal Practice ¶¶59.05 [1], 59.05 [2].

As to Plaintiff's contention that certain rulings of the Court relating to the introduction of evidence, and the arguments and conduct of counsel, were in error, it suffices to say that the Court, at the time it made the rulings now complained of, heard the arguments of counsel and made what it believed to be the correct rulings. Plaintiff has presented nothing to the Court which would persuade it to alter those rulings. Plaintiff also argues that the evidence is insufficient to sustain the verdict. When the Court believes that the verdict is against the weight of the evidence, a new trial is proper, e.g., Holmes v. Wack, 464 F.2d 86 (10th Cir. 1972). However, the burden is upon the movant to demonstrate that "the verdict was clearly or overwhelmingly against the weight of the evidence." Prebble v. Brodrick, 535 F.2d 605, 617 (10th Cir. 1976). Plaintiff has failed to sustain that burden, and the Court is of the opinion that the evidence is sufficient to support the verdict.

Accordingly, the Court concludes that Plaintiff's Motion for New Trial should be denied.

It is so Ordered this 27th day of July, 1980.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED
JUL 22 1980

CONSOLIDATED PIPE & SUPPLY)
COMPANY, INC., a corporation,)
)
Plaintiff,)
)
v.)
)
TITAN PIPELINE OF OKLAHOMA)
INCORPORATED, a corporation,)
and E. C. DONNELL,)
)
Defendants.)

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

No. 80-C-311-E

JUDGMENT BY DEFAULT

This cause coming on for hearing on this 16TH day of July, 1980, upon the application of Consolidated Pipe & Supply Company, Inc., plaintiff in the above-entitled cause, for a default judgment, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, and it appearing to the court that the complaint in the above cause was filed in this court on the 3rd day of June, 1980, and that the summons and complaint were duly served on the defendants, Titan Pipeline of Oklahoma Incorporated and E. C. Donnell, a/k/a E. C. Donnell, Jr., on the 11th day of June, 1980, and that no answer or other defense have been filed by said defendants; and that said defendants are not infants or incompetent persons nor in the military service within the meaning of the Soldiers' and Sailors' Civil Relief Act, and it further appearing that the default was entered on the 16TH day of July, 1980, in the office of the clerk of this court, and that no proceedings have been taken by the said defendants since said default was entered, and that, under the complaint herein, there is due plaintiff from such defendants, jointly and severally, the sum of \$137,536.87, together with interest thereon at the rate of eighteen percent (18%) per annum from February 1, 1980, on \$89,000.00, and from April 3, 1980, on \$48,536.87, until paid, together with a reasonable attorneys' fee which the court finds to be \$3,131.25, and that taxable costs amount to \$70.20.

IT IS, THEREFORE, ORDERED ADJUDGED and DECREED that the plaintiff, Consolidated Pipe & Supply Company, Inc., shall have

and recover from the defendants, Titan Pipeline of Oklahoma Incorporated and E. C. Donnell, a/k/a E. C. Donnell, Jr., jointly and severally, judgment in the amount of \$137,536.87, together with interest thereon at the rate of eighteen percent (18%) per annum from February 1, 1980, on \$89,000.00, and from April 3, 1980, on \$48,536.87, until paid, together with a reasonable attorneys' fee in the amount of \$3,131.25, and its costs in the action in the amount of \$70.20.

1st James O. Ellison

JAMES O. ELLISON
United States District Judge
Northern District of Oklahoma

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

F I L E D

JUL 22 1980

KATHERINE BRASEL,)
)
 Plaintiff,)
)
 vs.)
)
 PATRICIA ROBERTS HARRIS,)
 Secretary of Health, Education,)
 and Welfare,)
)
 Defendant.)

Jack O. Ellison, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 80-C-160-E

O R D E R

The Court has for consideration the Motion to Remand filed by the Defendant, the Brief in Support thereof, and, being fully advised in the premises, finds:

Section 205(g) of the Social Security Act, as amended, 42 U.S.C. 405(g) provides:

"* * *The Court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary* * *."

IT IS, THEREFORE, ORDERED that the Motion to Remand of the Defendant be and the same is hereby sustained and this cause of action and complaint are hereby remanded to the Secretary of Health, Education, and Welfare for further action.

ENTERED this 22nd day of July, 1980.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

ROBERT PAUL RALPH GOFORTH,)
)
) Petitioner,)
)
)
 vs.)
)
)
)
) SAM C. FULLERTON, III,)
) Ottawa County District Judge,)
) District Court Ottawa County,)
) Oklahoma and THOMAS H. MAY,)
) District Attorney,)
)
) Respondents.)

No. 79-C-673-E

JUL 21 1980

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

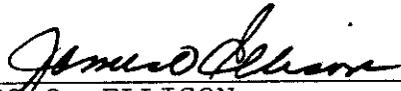
O R D E R

The Court has before it for consideration Petitioner's Petition for Writ of Habeas Corpus. Petitioner is presently in the custody of the Oklahoma Department of Corrections and is solely under their control by virtue of a Judgment rendered December 10, 1979, in the District Court of Ottawa County, State of Oklahoma. Petitioner received a life sentence upon conviction of the crime of Murder in the First Degree, Case No. CRF-77-931. Regular appeal to the Oklahoma Court of Criminal Appeals has not yet occurred.

It appears from a careful consideration of the file that Petitioner has not exhausted his state court remedies. See Karlin v. State of Oklahoma, 412 F.Supp. 635 (W.D. Okla. 1976); Brown v. Crouse, 395 F.2d 755 (10th Cir. 1968); Omo v. Crouse, 395 F2d 757 (10th Cir. 1968).

Therefore, since Petitioner has not exhausted his state court remedies, the Petition for Writ of Habeas Corpus is hereby dismissed.

IT IS THEREFORE ORDERED THAT the Petition for Writ of Habeas Corpus be and the same is hereby dismissed. Entered this 21ST day of July, 1980.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 18 1980

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

United States of America,)
)
Plaintiff,) CIVIL ACTION NO. 79-C-108-E
)
vs.) Tracts Nos. 327-2 and 327E-3
)
11.55 Acres of Land, More or) As to all interests in the
Less, situate in Washington) estate taken.
County, State of Oklahoma, and)
Harold O. Edens, et al., and)
Unknown Owners,)
) (Included in D.T. filed in
Defendants.) Master File #400-14)

J U D G M E N T

1.

NOW, on this 18th day of July, 1980, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on May 23, 1980, and the Court after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

This judgment applies to the entire estate condemned in Tracts Nos. 327-2 and 327E-3, as such estate and tracts are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, on February 13,

1979, the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

6.

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

7.

The Report of Commissioners filed herein on May 23, 1980 is approved, and adopted as a finding of fact as to subject tracts. The amount of just compensation for the estate taken in the subject tracts, as fixed by the Commission, is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estate taken in subject tracts and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendant named in paragraph 12 as owner of the estate taken in subject tracts is the only defendant asserting any interest in such estate. All other defendants having either disclaimed or defaulted, the named defendant was (as of the date of taking) the owner of the estate condemned herein and, as such, is entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tracts, as they are described in the Complaint filed herein, and such property, to the extent of the estate described in such Complaint is condemned, and title thereto is

vested in the United States of America, as of February 13, 1979, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

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

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on May 23, 1980, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estate taken in the subject tracts, as shown by the following schedule:

TRACTS NOS. 327-2 and 327E-3

OWNER:

Harold O. Edens

Award of just compensation pursuant to Commissioners' Report -----	\$520.00	\$520.00
Deposited as estimated compensation --	208.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$520.00 plus interest
Deposit deficiency -----	\$312.00 plus interest	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owner the deposit deficiency for the subject tracts as shown in paragraph 12, in the amount of \$312.00, together with interest on such deficiency at the rate of 6% per annum from February 13, 1979, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tracts in this civil action.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tracts

To - Harold O. Edens.

S/ JAMES O. ELISON
UNITED STATES DISTRICT JUDGE

APPROVED:

Hubert A. Marlow
HUBERT A. MARLOW
Assistant United States Attorney

B2

FILED

JUL 16 1980 K

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES T. BOWMAN,)
)
 Defendant.)

CIVIL ACTION NO. 80-C-317-E ✓

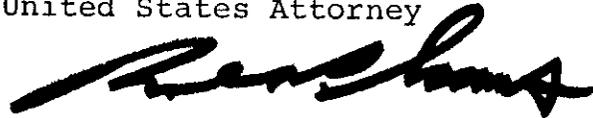
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, 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 16th day of July, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED

JUL 15 1980 K

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

----- X

ROBERT A. BRADY,
Plaintiff, :

- against - :

CHEMICAL CONSTRUCTION CORPORATION,
AEROJET-GENERAL CORPORATION,
Defendants. :

78 Civ. 1949 (VLB)
80 - C - 64 - E ✓

MOTION FOR
VOLUNTARY DISMISSAL

----- X

CHEMICAL CONSTRUCTION CORPORATION,
Plaintiff, :

- against - :

ROBERT A. BRADY, TERCO, INC.,
a/b/a BOSCO SERVICES, TERRY BOSWELL,
ROBERT GRUSCHIN, FLOYD BEYERSDORFF,
THE HARTFORD ACCIDENT AND INDEMNITY
COMPANY, NATIONAL SURETY CORPORATION,
a member of the FIREMAN'S FUND
INSURANCE COMPANIES,
Defendants. :

----- X

CHEMICAL CONSTRUCTION CORPORATION,
Third-Party Plaintiff, :

- against - :

THE HARTFORD ACCIDENT AND
INDEMNITY COMPANY,
Third-Party Defendant. :

----- X

NOW COMES CHEMICAL CONSTRUCTION CORPORATION by its
attorneys Roger R. Scott and David Loeffler, and, pursuant
to Rule 41(a) (2) of the Federal Rules of Civil Procedure,
move the Court to dismiss, with prejudice, the action

pending against FLOYD BEYERSDORF for the following reasons:

1. In June of 1978, CHEMICAL CONSTRUCTION CORPORATION ("CHEMICO") commenced an action against Terco, Inc., a/b/a Bosco Services, Terry Boswell, Robert Gruschin and Floyd Beyersdorf, among others, in the Federal District Court for the Southern District of New York. 78. Civ. 1949 (VLB).

2. In January 1980, in response to a defendants' motion to dismiss for lack of personal jurisdiction and appropriate venue, the Federal District Court for the Southern District of New York held that personal jurisdiction and venue in the Southern District were established with respect to all defendants except Beyersdorf. The action against Beyersdorf was transferred to the Federal District Court for the Northern District of Oklahoma pursuant to 28 U.S.C.A. 1404(a).

3. In September 1978, Terco, Inc. a/b/a Bosco Services, commenced an action against Chemico for breach of contract. 78. C. 481 E.

4. In February 1980, the Federal District Court for the Southern District of New York held that Terco, Inc., must pursue its contract claim as a counterclaim in 78. Civ. 1949 (VLB) in the federal district court in the southern district of New York. The New York district court also enjoined further prosecution of the action in 78. C. 481. E in the Federal District Court for the Northern District of Oklahoma.

5. Given the concentration of the litigation in the southern district for New York, Chemico finds that the costs of pursuing litigation, (arising from a continuous series

of transactions) in more than one federal forum outweighs any incremental, cumulative benefits Chemico could obtain.

WHEREFORE, CHEMICO asks:

That the Court enter an order, pursuant to Rule 41(a)(2), Federal Rules of Civil Procedure, dismissing the action against Floyd Beyersdorf which action was transferred to the Federal District Court for the Northern District of Oklahoma by the January 15, 1980 Order of the Federal District Court for the Southern District of New York.

Date:

LAWRENCE, SCOTT & LAMB

By


(A Member of the Firm)

525 South Main Street
Tulsa, Oklahoma 74102

(918) 583-8201

LAYTON and SHERMAN

By


(A Member of the Firm)

50 Rockefeller Plaza
New York, New York 10020

(212) 586-4300

FILED

JUL 16 1980

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

So ordered:


United States District
Judge

FILED

JUL 15 1979

Jack P. ...
U. S. DISTRICT COURT

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

HALLS MOVING AND STORAGE, INC.,)	
)	
Plaintiff,)	
)	
v.	)	No. 79-C-728-B
)	
SOUTHWESTERN BELL TELEPHONE)	
COMPANY,)	
)	
Defendant.)	

STIPULATION OF DISMISSAL

COME NOW the parties herein, Halls Moving and Storage, Inc., a corporation, plaintiff, and Southwestern Bell Telephone Company, a corporation, defendant, pursuant to Rule 41(ii), Federal Rules of Civil Procedure, and stipulate that the captioned be and hereby is dismissed with prejudice, each party to bear its costs.

HALLS MOVING AND STORAGE, INC., Plaintiff

SOUTHWESTERN BELL TELEPHONE COMPANY, Defendant

By Dennis Q. Neal
President

By Carey Evans
O. CAREY EVANS
Its Attorney

By John M. Young
JOHN M. YOUNG
Its Attorney

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

UNITED STATES FIDELITY)
AND GUARANTY COMPANY,)
a Maryland corporation,)

Plaintiff,)

vs.)

NO. 80-C-288-C

DALE EUGENE MOLER, THEDA)
P. MOLER, JERRY DALE)
MOLER, GLEN ROYSTER,)
and ETHEL ROYSTER,)

Defendants.)

O R D E R

There came on for hearing pursuant to regular assignment the Motion for Default Judgment of the Plaintiff herein.

After a review of the Complaint and the allegations therein, the Court finds that United States Fidelity and Guaranty Company, plaintiff, is licensed to do business in the State of Oklahoma and its citizenship and principal place of doing business is in the State of Maryland and the City of Baltimore, Maryland. The Court further finds that the amount in controversy, exclusive of interest and costs, exceeds TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00). The Court specifically finds that the Court has venue and jurisdiction of the case.

The Court further finds that notice has been transmitted to Dale Eugene Moler, Theda P. Moler, Jerry Dale Moler, Glen Royster, and Ethel Royster, defendants, of the Motion for Default Judgment.

The Court further finds that the plaintiff is entitled to the relief prayed for.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the policy of insurance, No. FAP3520128186, does not afford coverage for and claims made as a result of an accident occurring sometime after April 19, 1980, that the plaintiff is under no obligation to defend any of the defendants in any suit which may be brought against them on account of the accident which was mentioned above, or to indemnify any of the defendants or pay any judgments that may be recovered for or

against them, arising out of said accident.

IT IS FURTHER ORDERED that Dale E. Moler, Theda P. Moler, Jerry D. Moler, Glen Royster and Ethel Royster are enjoined and restrained from prosecuting or litigating any claim against this plaintiff predicated on the above numbered policy.

(Signed) H. Dale Cook

JUDGE, UNITED STATES DISTRICT COURT

DATED THIS 14 DAY OF JULY, 1980.

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

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

JUL 14 1980

HENRY CORNWALL, an individual,
and SHERWIN McMICHAEL, an
individual,

Plaintiffs,

vs.

JOHN HADDEN PUBLISHERS, INC., an
Oklahoma corporation, DAVID R.
ROBINSON, an individual, and
INTERSTATE BOOK COMPANY, a
Kansas corporation,

Defendants.

No. 80-C-315-E

Jack C. Stone, Clerk
U. S. District Court

JUDGMENT AND ORDER OF REMAND

This cause having come on for hearing on June 24, 1980 on the motion of Defendants David R. Robinson and John Jadden Publishers, Inc. (hereinafter called "the removing defendants") to remand this case to the District Court Within and for Tulsa County, State of Oklahoma, and the court having considered briefs and affidavits submitted by the removing defendants and by Plaintiffs in support of the motion, having heard the argument of counsel, and being fully advised in the premises, and it appearing to the court that this case was improperly removed to this court in that the removing defendants' Petition for Removal filed herein on June 5, 1980 was not joined by all defendants to this action, there being so separate and independent controversy as between Plaintiffs and said removing defendants, and

This cause having come on for further hearing on July 8, 1980 on Plaintiffs' Motion to Tax Costs and Attorneys' Fee and the court having considered briefs and affidavits in support of and in opposition to that motion, having heard the argument of counsel, and being fully advised in the premises, and it appearing to the court that this case was wrongfully removed to this court frivolously.

IT IS HEREBY ORDERED that the removing defendants' motion to remand be and the same hereby is granted, and that

this cause be remanded to the District Court Within and For Tulsa County, State of Oklahoma; and that a certified copy of this Order be mailed by the Clerk of this court to the Clerk of the District Court Within And For Tulsa County, State of Oklahoma; and

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Judgment be entered in favor of Plaintiffs and against Defendant David R. Robinson and Defendant John Hadden Publishers, Inc. and that Plaintiffs have and recover against Defendant David R. Robinson and Defendant John Hadden Publishers, Inc. an attorneys' fee in the amount of \$6,000 incurred in the defense of the wrongful and frivolous removal of this case to this court; and

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs have and recover their costs and disbursements in the amount of \$352.00 against Defendant David R. Robinson and Defendant John Hadden Publishers, Inc., to be taxed by the Clerk; and

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that the Clerk pay the cash removal bond in the amount of \$500.00 deposited with the Clerk by the removing defendants to plaintiffs as partial payment of the judgment as to costs and attorneys' fee hereby entered against the removing defendants.

Dated July 14, 1980.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

TIMOTHY EDWARD COWEN,)
)
) Plaintiff,)
)
 vs.) Case No. 78-C-403-E
)
)
) SIMPLEC MANUFACTURING CO., INC.,)
) a foreign corporation, and)
) MASSENGILL MACHINERY COMPANY, INC.,)
) a foreign corporation,)
)
) Defendants.)

O R D E R

THIS matter coming on before the undersigned Judge of the United States District Court for the Northern District of Oklahoma on this 27th day of June, 1980; the Plaintiff appearing by and through his attorney of record, Mr. James E. Frasier; the Defendants appearing by and through their attorney of record, Roger R. Scott; the Court having reviewed Defendants' Motion for a New Trial or Motion for Remittitur and their Memorandum of Points and Authorities in Support Thereof and Plaintiff's response; the Court heard arguments of counsel. The Court, being fully advised in the premises, finds that the following should be the Order of this Court.

IT IS THEREFORE ORDERED by this Court:

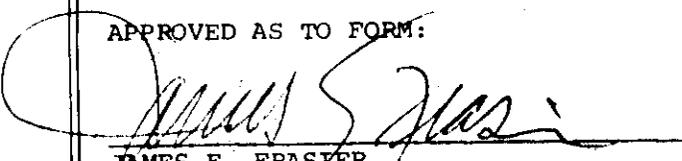
Defendants' Motion for a New Trial is overruled.

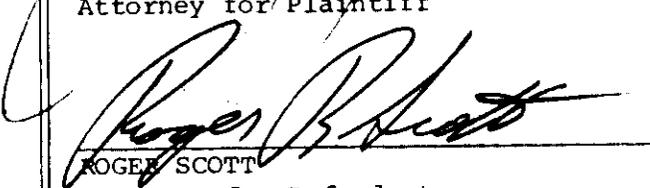
Defendants' Motion for Remittitur is overruled.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE FOR THE
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:


JAMES E. FRASIER
Attorney for Plaintiff


ROGER R. SCOTT
Attorney for Defendants

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

NANCY MURRAY,)
)
 Plaintiff,)
)
 VS.) No. 79-C-167-E
)
 CHRYSLER CORPORATION,)
)
 Defendant.)

ORDER OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Plaintiff's Application for Leave to Dismiss Without Prejudice and Defendant having no objection thereto, as shown by its Supplemental Response, and the Court being fully advised and upon good cause, it is

ORDERED that this action is hereby dismissed without prejudice, each party to bear its own costs.

DATED this 14 day of July, 1980.

13 James O Ellison
UNITED STATES DISTRICT JUDGE

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

MARION BRODSKY, Receiver for
BLAKLEY & BLACKBURN, a corporation,

Plaintiff,

-vs-

ROBERTS & SCHAEFER CO., a
corporation,

Defendant.

No. 79-C-370-*JE*

FILED

JUL 14 1980

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

ORDER OF DISMISSAL

On this 14th day of July, 1980, upon written application of the parties for an order of dismissal with prejudice of the complaint, counterclaim and all causes of action, the Court having examined said application, finds that said complaint should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the complaint, counterclaim and all causes of action filed herein be and the same are hereby dismissed with prejudice to any further action.

S/ JAMES O. ELLISON

U.S. DISTRICT JUDGE

JUL 1 1980

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

HENRIETTA MURR, now HENRIETTA)
SIDEBOTTOM,)
)
Plaintiff,)
)
vs.)
)
MANPOWER INC., OF TULSA,)
and CHAMPLIN PETROLEUM)
COMPANY, INC.,)
)
Defendants.)

Case No. 79-C-644-E

STIPULATED ORDER OF DISMISSAL

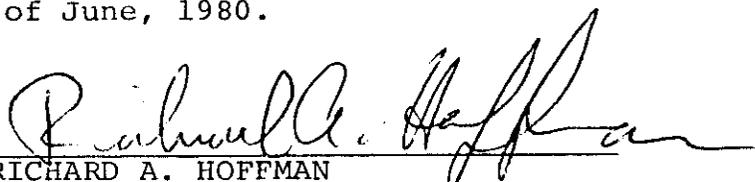
IT IS HEREBY STIPULATED, by and between counsel for all parties hereto subject to the approval of the court, as follows:

That the claim presented by the Complaint herein shall be dismissed with prejudice as to all parties pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

Each party shall bear his or her or its own costs and attorney's fees.

No party to this action shall assert or attempt to maintain any claim as to the alleged violation as set out in the Complaint herein, or any claim or action for attorney's fees or court costs herein. Any violation of this provision by any of the parties to this action may be enforced by contempt proceedings brought on by motion in this court.

Dated this 14th day of June, 1980.


RICHARD A. HOFFMAN
MORREL, HERROLD, WEST, HODGSON,
SHELTON & STRIPLIN, P.A.
4111 South Darlington, Suite 600
Tulsa, Oklahoma 74135

Attorneys for Defendant, Manpower
Inc. of Tulsa

Kelly Beaver

KELLY BEAVER, Esq.
HOLLIMAN, LANGHOLZ, RUNNEL &
DORWART
Suite 700, Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103

Attorneys for Defendant, Champlin
Petroleum Company, Inc.

Mitchell D. O'Donnell

MITCHELL D. O'DONNELL
MOREHEAD, SAVAGE, O'DONNELL, McNULTY &
CLEVERDON
Suite 500, Two Hundred One Office
Building
Tulsa, Oklahoma 74103

Attorneys for Henrietta Murr

So Ordered:

James L. Ellison

UNITED STATES DISTRICT JUDGE

Dated: July 14, 1980

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

7 11 1980

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 FLOYD C. MARSHALL,)
)
 Defendant.)

CIVIL ACTION NO. 80-C-62-B

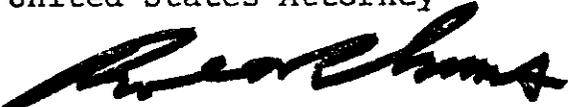
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, 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 11th day of July, 1980.

UNITED STATES OF AMERICA

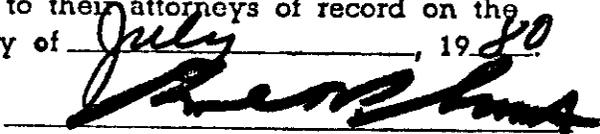
HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
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 11th day of July, 1980.


Assistant United States Attorney

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

HATTIE S. JESSEE, LALAH J. ADAIR)
and MARY LOUISE ADAIR,)

Plaintiffs,)

-vs-)

SOUTHWESTERN BELL TELEPHONE)
COMPANY, a Missouri corporation,)

Defendant.)

No. 79-C-437-E

JUL 11 1980
John G. Gilbert, Clerk
U. S. DISTRICT COURT

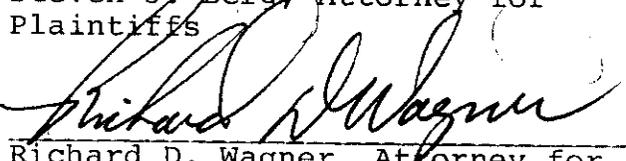
STIPULATION OF DISMISSAL WITH
PREJUDICE

Pursuant to the stipulation of all parties to this
cause, it is ordered that Plaintiffs' Petition is dismissed
with prejudice.


James O. Ellison, United States
District Judge

APPROVED AS TO FORM AND SUBSTANCE:


Steven J. Berg, Attorney for
Plaintiffs


Richard D. Wagner, Attorney for
Southwestern Bell Telephone Com-
pany


O. Carey Epps, Attorney for
Southwestern Bell Telephone
Company

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUL 11 1980

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

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 36.91 Acres of Land, More or)
 Less, Situate in Osage County,)
 State of Oklahoma, and Harry)
 Littleton, et al., and Unknown)
 Owners,)
)
 Defendants.)

CIVIL ACTION NO. 78-C-361-E

Tracts Nos. 119-1, 119-2
and 119E

J U D G M E N T

1.

NOW, on this 11TH day of July, 1980, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on April 30, 1980, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds that:

2.

This judgment applies to the entire estates condemned in Tracts Nos. 119-1, 119-2 and 119E, as such estates and tracts are described in the Complaint filed in this action.

3.

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

4.

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

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, on August 4,

1978, the United States of America filed its Declaration of Taking of certain estates in such tracts of land, and title to such property should be vested in the United States of America as of the date of filing such instrument.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the estates taken in the subject tracts a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 12.

7.

The Report of Commissioners filed herein on April 30, 1980, is accepted and adopted as findings of fact as to subject tracts. The amount of just compensation for the estates taken in the subject tracts, as fixed by the Commission, is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estates taken in subject tracts and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendants named in paragraph 12 as owners of the estates taken in subject tracts are the only defendants asserting any interest in such estates. All other defendants having either disclaimed or defaulted, the named defendants were (as of the date of taking) the owners of the estates condemned herein and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority

to condemn for public use the subject tracts, as such tracts are described in the Complaint filed herein, and such property, to the extent of the estates described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of August 4, 1978, and all defendants herein and all other persons are forever barred from asserting any claim to such estates.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the estates taken herein in subject tracts were the defendants whose names appear below in paragraph 12, and the right to receive the just compensation for such estates is vested in the parties so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on April 30, 1980, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the taking of the subject property, as shown by the following schedule:

TRACTS NOS. 119-1, 119-2 and 119E

OWNERS:

Harry Littleton
Naomi G. Littleton

Award of just compensation pursuant to Commissioners' Report -----	\$24,857.00	\$24,857.00
Deposited as estimated compensation	\$11,650.00	
Disbursed to owners -----		<u>\$11,650.00</u>
Balance due to owners -----		\$13,207.00 plus interest
Deposit deficiency -----	\$13,207.00 plus interest	

13.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for

the subject tracts as shown in paragraph 12, in the total amount of \$13,207.00, together with interest on such deficiency at the rate of 6% per annum from August 4, 1978, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tracts in this civil action.

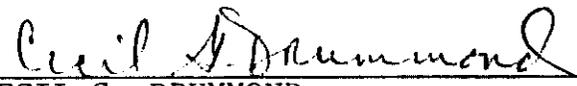
After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tracts, jointly,

To - Harry Littleton and
Naomi G. Littleton.


UNITED STATES DISTRICT JUDGE

A PPROVED:


HUBERT A. MARLOW
Assistant United States Attorney


CECIL G. DRUMMOND
Attorney for Defendants

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

IRENE K. NOLAN,)
)
 Plaintiff,)
)
 v.)
)
 PATRICIA HARRIS, Secretary)
 of Health, Education and)
 Welfare of the United)
 of America,)
)
 Defendant.)

No. 80-C-134-C

FILED

JUL 11 1980

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

O R D E R

The Court has before it for consideration the Findings and Recommendations of the Magistrate filed on July 10, 1980, in which it is recommended that the Defendant's Motion to Remand be sustained. Both Plaintiff and Defendant have asked that the case be remanded to the Secretary for further administrative action.

It is hereby Ordered that Defendant's Motion to Remand be sustained.

It is so Ordered this 11th day of July,
1980.


H. DALE COOK
CHIEF JUDGE

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

FIRST NATIONAL BANK OF COFFEYVILLE,)
COFFEYVILLE, KANSAS, a national)
banking association,)
)
Plaintiff,)
)
vs.)
)
FLOYD FITZSIMMONS,)
)
Defendant.)

CIVIL ACTION NO. J L U
79-C-609-C

JUL 1 1980

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

ORDER

Plaintiff has filed a Motion for Summary Judgment, and defendant has filed a response "stat[ing] that he offers no opposition to said Motion."

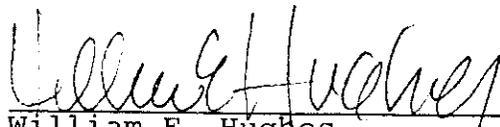
IT IS THEREFORE ORDERED that the plaintiff's Motion for Summary Judgment be and the same is hereby allowed.

ENTERED this 10 day of July, 1980.

(Signed) H. Dale Cook

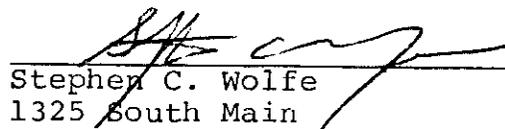
H. Dale Cook, Chief Judge,
United States District Court,
Northern District of Oklahoma

APPROVED AS TO FORM:



William E. Hughes
DOERNER, STUART, SAUNDERS, DANIEL
& ANDERSON
1200 Atlas Life Building
Tulsa, Oklahoma 74103
Tel. 918-582-1211

ATTORNEY FOR PLAINTIFF



Stephen C. Wolfe
1325 South Main
Tulsa, Oklahoma 74119
Tel. 918-582-1211

ATTORNEY FOR DEFENDANT

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

FIRST NATIONAL BANK OF COFFEYVILLE,
COFFEYVILLE, KANSAS, a national
banking association,

Plaintiff,

vs.

FLOYD FITZSIMMONS,

Defendant.

JUL 1 1980

CIVIL ACTION NO. 79-C-609-CJ, S. DISTRICT OF OKLAHOMA

JUDGMENT

Based on the Order filed this date, IT IS ORDERED that Judgment be entered in favor of the FIRST NATIONAL BANK OF COFFEYVILLE, COFFEYVILLE, KANSAS, and against defendant FLOYD FITZSIMMONS in the amount of \$119,415.13, plus interest accrued to July 1, 1980, in the amount of \$2797.02, plus interest at the rate of 10% per annum from the date of judgment until the Judgment is paid.

IT IS FURTHER ORDERED that plaintiff be awarded attorney's fees and disbursements in the amount of \$4022.38, plus interest thereon at the rate of 10% per annum from the date of this order until said fees and costs be paid.

(Signed) H. Dale Cook

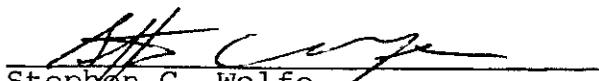
H. Dale Cook; Chief Judge,
United States District Court
Northern District of Oklahoma

APPROVED AS TO FORM:



William E. Hughes
DOERNER, STUART, SAUNDERS, DANIEL
& ANDERSON
1200 Atlas Life Building
Tulsa, Oklahoma 74103
Tel. 918-582-1211

ATTORNEY FOR PLAINTIFF



Stephen C. Wolfe
1325 South Main
Tulsa, Oklahoma 74119
Tel. 918-583-8574

ATTORNEY FOR DEFENDANT

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

1980

LELAND EQUIPMENT COMPANY)
)
 Plaintiff,)
)
 vs.) No. 80-C-67-B
)
 MIDWEST COAL & ENERGY CORP.)
)
 Defendant.)

DEFAULT JUDGMENT BY CLERK

The Defendant Midwest Coal & Energy Corp., having failed to plead or otherwise defend in this action and its default having been entered,

NOW, upon application of the Plaintiff and upon Affidavit that Defendant is indebted to Plaintiff in the sum of \$61,916.44, that Defendant has been defaulted for failure to appear and that Defendant is not an infant or incompetent person, and is not in the military service of the United States, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff recover of Defendant the sum of \$61,916.44, with interest at the rate of 12 percent per annum from the 10th day of September, 1979, costs in the sum of \$67.00, and ~~attorney's fees of \$9,300.00.~~

DATED: July 9th, 1980
Tulsa, Oklahoma

JACK C. SILVER, Clerk

BY 

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Grace Watashe as natural grandian of said minor is ordered and directed to protect said funds received on behalf of said minor in all respects as provided by law; that said Grace Watashe is ordered to deposit said funds, if any in excess of attorney fees and medical expenses as provide in 120.S. Sect.83, in the Plaza National Bank, Bartlesville, Oklahoma; said deposit may be made by a certificate of deposit or otherwise. That until said minor reaches majority, withdrawal of said monies from such account shall solely be made pursuant to order of the District Court of Washington County, Probate Division.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the Complaint and all causes of action of the plaintiffs filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JUDGE, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

BASSETT & STOCKER

By Nathan G. Graham
Attorneys for the Plaintiffs

KNIGHT, WAGNER, STUART & WILKERSON

By [Signature]
Attorneys for the Defendant

JUVENILE DIVISION

In the Matter of: WATASHE, Coletta Kirby Juanema
A child under eighteen (18) years of age.
To-wit: 3, 6 & 7 years

DISTRICT COURT
JUVENILE DIVISION
FILED
JUN 24 1980
DON E. AUSTIN, COURT CLERK
STATE OF OKLA. TULSA COUNTY

JFJ-78-464

FINDINGS AND RECOMMENDATIONS
REFEREE AND CONFIRMATION OF COURT

To the Honorable Joe Jennings, Judge, Juvenile and Family Relations Division of the District Court of Tulsa County, Oklahoma:

This matter came on for hearing this 28th day of May, 19 80, for the purpose of making findings and recommendations to the Honorable Joe Jennings, Judge of the Juvenile and Family Relations Division of the District Court of Tulsa County, Oklahoma, pursuant to Title 10, Okl. Stat. §1126, and that the following appeared in person:

- (1) Bill Shaw, Intake Counselor.

That this case comes on for hearing for purpose of review. The Court receives and reviews a report submitted by Lana Roach, Social Worker in Washington County. The Court determines after reviewing the evidence and conferring with the parties that the above named children continue to reside in their own home where they receive adequate care. That supervision of this Court or the Oklahoma Department of Institutions, Social and Rehabilitative Services is no longer necessary. That the children are returned to the custody of their mother and the case is closed.

IT IS, THEREFORE, THE RECOMMENDATION OF THE REFEREE that the ~~XXXXXXXXXXXX~~ case be and hereby is, closed.

Helen Kennedy
Referee

Now on this 3rd day of June, 19 80, no objection having been filed herein, these findings and recommendations of the Referee are confirmed and become the order of this Court.

[Signature]
Judge

I, Don E. Austin, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true and correct copy of the instrument herewith set out and appears of record in the Court Clerk's Office of Tulsa County, Oklahoma, this 8th day of July, 19 80.
By *Ruby McDonald* Deputy
Don E. Austin
Court Clerk

Exhibit "A"

JUL 7 1980

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

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

JESSE ALEXANDER, CHARLES)	
ANDERSON, GENE FULTZ and)	
BILL McCAUSE,)	
)	
Plaintiffs,)	
)	
v.	)	No. 79-C-69-C
)	
BANFIELD MEAT COMPANY OF)	
TULSA, INC.,)	
)	
Defendant.)	

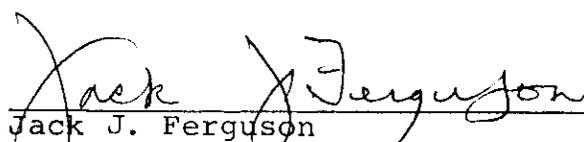
JOINT STIPULATION OF
DISMISSAL WITHOUT PREJUDICE

COME NOW the Plaintiffs herein, Jesse Alexander, Charles Anderson, Gene Fultz and Bill McCause, by and through their attorney of record, Jack J. Ferguson, and hereby stipulate with the Defendant herein, Banfield Meat Company of Tulsa, Inc., by and through its attorney of record, Richard L. Barnes, that any and all claims of the Plaintiffs against the Defendant asserted herein, together with any and all claims of the Plaintiffs against the Defendant which could have been asserted herein, are hereby dismissed without prejudice as authorized by Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, and that each party is to bear its own cost.

Defendant hereby agrees to and does waive any and all rights it may have to seek attorneys' fees in connection with any aspect of this action.

DATED this 8th day of May, 1980.

JACK L. FERGUSON
Attorney for Plaintiffs
306 Beacon Building
Tulsa, OK 74103
(918) 584-0318



Jack J. Ferguson

KOTHE, NICHOLS & WOLFE, INC.
124 East Fourth St.
Tulsa, OK 74103
(918) 584-5182



Richard L. Barnes

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

FILED

1980

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
	)	Civil Action
vs.)	
	)	No. 75-C-484-E
UNIVERSITY OF TULSA,)	
)	
Defendant.)	

ORDER OF DISMISSAL

Upon the Stipulation of Dismissal entered into by the parties and filed herein, and for good cause shown, this action shall be and is hereby dismissed with prejudice to the refileing thereof. Each party shall bear its own costs and attorneys' fees.

DATED this 7th day of July, 1980.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

By William B. Churchill
William B. Churchill
Senior Trial Attorney

UNIVERSITY OF TULSA

By T. H. Eskridge
T. H. Eskridge, Attorney

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

FIRST NATIONAL BANK OF HOMINY,)
OKLAHOMA, a banking)
corporation,)
)
Plaintiff,)
)
vs.)
)
THE CITIZENS AND SOUTHERN)
BANK OF COBB COUNTY,)
MARIETTA, GEORGIA,)
)
Defendant.)

No. 78-C-522-BT

FILED

JUL 3 1980

U. S. DISTRICT COURT

J U D G M E N T

Based on the Findings of Fact and Conclusions of Law filed
this date,

IT IS ORDERED Judgment be entered in favor of the plaintiff,
First National Bank of Hominy, Oklahoma, and against the defendant,
Citizens and Southern Bank of Cobb County, Marietta, Georgia, in
the sum of \$50,000.00, plus interest at the rate of 10% from
September 22, 1977, until July 3, 1980, and at the rate of 12%
thereafter until paid.

ENTERED this 3rd day of July, 1980.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

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

FIRST NATIONAL BANK OF HOMINY,
OKLAHOMA, a banking
corporation,

Plaintiff,

vs.

THE CITIZENS AND SOUTHERN
BANK OF COBB COUNTY,
MARIETTA, GEORGIA,

Defendant.

No. 78-C-522-BT

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

FILED
JUL 3 1980
JACK McALPINE, JR.
U. S. DISTRICT COURT

This case was tried without a jury to the Court on March 24, 1980. Plaintiff appeared through its representative and its attorney, James C. Lang. Defendant appeared through its representative and by its attorney, E. J. Raymond. At the conclusion of all the evidence, arguments and briefs of authorities, the case was submitted for decision. The Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff is a national bank operating in Hominy, Osage County, Oklahoma. (Stipulated)^{1/}
2. Defendant is a banking firm chartered pursuant to the laws of the State of Georgia, and operating in Marietta, Cobb County, Georgia. (Stipulated)
3. In October or November of 1976, Louis McAlpine (hereinafter referred to as "McAlpine") became a customer of Citizens and Southern Bank of Cobb County, Marietta, Georgia (hereinafter referred to as "C & S"). (Beville Depo.4)
4. John Beville was a branch manager and a commercial officer of C & S at the Windy Hill Branch, Marietta, Georgia, and had made approximately twenty car loans to McAlpine. (Beville Depo. 3, 5, 18)

^{1/} The parties, in the pre-trial order on file in this case, stipulated to certain facts and those stipulated fact will be designated in the Findings of Fact as "Stipulated."

5. McAlpine first borrowed money on his oil venture located in Osage County, Oklahoma, from C & S in June of 1977. (Beville Depo.5) The collateral for said loan was cars and an assignment of "oil rights as a back-up." (Beville Depo. 6)

6. In September of 1977, Beville instructed McAlpine he could "not continue to back the oil business in Georgia and that he would need to find a bank source in Oklahoma, where the business was - that it wasn't proper banking for us to finance oil wells in Georgia that were located in Oklahoma." (Beville Depo.6)

7. The mortgages, loans and debts outstanding with C & S were on the 5/6ths working interest in the following property located in Osage County, Oklahoma:

NW/4, Section 21, Township 20 North, Range 12 East
NW/4, Section 22, Township 20 North, Range 12 East
SW/4 Section 22, Township 20 North, Range 12 East

The loans from C & S to McAlpine and his associates covered leases, production and equipment upon the tracts. (Stipulated)

8. At all times pertinent to the events herein Beville was acting as the agent and representative of C & S.

9. On September 14, 1977, Thomas Wright, President of the First National Bank of Hominy, (hereinafter referred to as "Hominy") during banking hours telephoned Beville at the C & S Bank regarding McAlpine's request for a \$50,000 loan. During the discussion it was agreed additional equipment for the proposed gas portion of the lease in Oklahoma would enhance the value of the existing production. Beville stated C & S would subordinate McAlpine's security on its loans to First National Bank of Hominy if the bank in Hominy would make the \$50,000 loan to McAlpine. Beville further stated C & S would upon request repurchase Hominy's loan to McAlpine. Wright understood this to be a commitment by Beville for C & S. On the same day following the telephone conversation with Wright, Beville confirmed his oral statements by writing a letter to Wright, which stated (Pl. Ex.A):

"Per our telephone discussion, September 14, 1977, the C & S Bank of Cobb County agrees to repurchase your interest in a \$50,000 loan being made to Louis McAlpine. It is my understanding that this debt will be secured by gas rights and equipment. We will subordinate our position on the equipment to you as long as the debt remains outstanding on this particular note.

"It is my assumption that your debt is for a term of a minimum of nine months to one year. However, this would not be a requirement with reference to our guaranty. We will continue to have on file our financing statement on the equipment in that the subordinate will allow your first position.

"If you have further questions, please feel free to call."

10. Following receipt of the guaranty letter from Beville of C & S and in reliance thereon, the First National Bank in Hominy, Oklahoma, loaned McAlpine \$50,000.00 on September 22, 1977. A note was signed by McAlpine in the sum of \$50,000.00 with interest at 10% payable on September 22, 1978. (Pl. Ex. B1)

The note provided as follows:

"\$50,000.00 Hominy, Oklahoma, Sept.22, 1977

On the 22nd day of Sept.1978, I, we, or either of us, promise to pay to THE FIRST NATIONAL BANK, in Hominy, Oklahoma, or order, the sum of Fifty thousand and no/100 Dollars, for value received, with interest at the rate of ten per cent per annum from date payable annually at THE FIRST NATIONAL BANK, in Hominy, Oklahoma.

Should it become necessary for the holder hereof to incur any expense to procure payment hereof, such expense, reasonable attorney's fees and court costs shall be added hereto, become a part hereof and collected herewith.

The signers, sureties, endorsers and guarantors severally waive presentment for payment, notice of non-payment, protest and notice thereof, defense because of failure to or dilatory in instituting legal proceedings against any party hereto, or to enforce collection hereof, and agree that any number of extensions of time may be made without their consent or notice thereof, that after due date the holder hereof may sell without restrictions, any collateral security pertaining hereto.

Oil and Gas Equip &
Letter of Guaranty
From C. & S. Bank of
Atlanta, Georgia"

/s/ Louie McAlpine

11. The \$50,000 loan proceeds were placed by McAlpine in an account at Hominy Bank. (Pl. Ex. B-2; Stipulated)

12. On September 27, 1977, a check in the amount of \$50,000.00 was drawn upon McAlpine's account at the Hominy Bank, signed by McAlpine, to open a savings account, numbered 50-7204006 in C & S. (Pl. Ex. C; Stipulated)

13. The \$50,000.00 savings account was opened on September 27, 1977, for the purpose of collateralizing a loan to McAlpine by C & S in the amount of \$67,000.00. (Stipulated)

14. The \$67,000.00 loan was further collateralized by another savings account with a balance of \$17,000.00, which McAlpine assigned to C & S. (Stipulated)

15. A \$67,000.00 loan authorized by Beville was made on the same date to McAlpine by C & S. (Stipulated)

16. At the time the \$67,000.00 loan was made and promissory note executed, at least \$43,148.63 of the loan represented a consolidation of prior indebtedness of McAlpine or business associates of McAlpine to C & S. (Stipulated)

17. Before making the \$67,000.00 loan, Beville had knowledge the Hominy Bank had consummated a \$50,000.00 loan to McAlpine. (Beville Depo. 13)

18. The \$50,000.00 in savings account 50-7204006 was reduced by various withdrawals. (Stipulated)

19. Beville released some of the money in the \$50,000.00 savings account to cover some checks McAlpine had written. (Beville Depo.32)

20. Before the \$50,000.00 balance of the savings account was depleted, C & S applied \$21,899.85 of it to indebtedness of McAlpine to C & S. (Stipulated)

21. On November 15, 1977, McAlpine was arrested on criminal charges in Osage County, Oklahoma, and within two or three days Wright became aware of the arrest. (Stipulated)

22. McAlpine has defaulted upon the repayment of the \$50,000.00 loan to the Hominy Bank. (Stipulated)

23. Demand has been made upon McAlpine to repay the \$50,000.00 loan to Hominy, but he has refused and the loan remains unpaid. (Stipulated)

24. Demand has been made upon C & S to repurchase the loan for \$50,000.00 [in keeping with the September 14, 1977 repurchase agreement] and C & S has refused. (Stipulated)

25. After demand was made on C & S, C & S notified plaintiff Beville had left their employment and a search of their files did not reveal the September 14, 1977 letter but its authenticity is not in dispute herein. (Pl. Ex. H)

26. After Beville left his employment with C & S, C & S discovered: "...[l]oans were made which were excessive in relation to collateral values; collateral released without commensurate reduction in loan balances; and, loans made without proper documentation of the collateral being pledged." The bank further discovered

written loan commitments exceeding Beville's lending authority of \$10,000.00 and multiple loans to the same borrower in an apparent attempt to circumvent lending and reporting limits. (Pl. Ex.K)

27. When it became apparent the McAlpine loan would not be paid, Hominy did not offset existing balances in McAlpine's deposit account at Hominy against the existing loan. (Def. Ex.4)

CONCLUSIONS OF LAW

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

1. This Court has jurisdiction of this action based on diversity of citizenship and amount in controversy. 28 U.S.C. §1332.

2. Any Finding of Fact which could properly be characterized a Conclusion of Law is incorporated herein.

3. Neither party has raised the applicable state law except in reference to the authority of a State Bank in Georgia to enter into a guaranty under Georgia law. The federal Court must follow the conflicts law of Oklahoma, the state of the forum. Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941); Day and Zimmerman, Inc. v. Challoner, 423 U.S. 3 (1975). By statute in Oklahoma [15 O.S. §162], the interpretation of a guaranty [contract] is to be governed by the place of performance, or if no indication is given as to the place of performance, the place where it is made. Even under Georgia law, the same result would obtain. Georgia holds a contract [guaranty] is made where it is delivered as consumating the bargain. Residential Industrial Loan v. Brown, 559 F2d 438 (5th Cir. 1977). In this case the initial agreement was reached via telephone and the written guaranty was delivered in Oklahoma. The Court finds the law of Oklahoma is applicable in interpreting the guaranty agreement.

4. An obligation to repurchase a note can be treated as a guaranty. St. Petersburg Bank & Trust Company v. Boutin, 445 F2d 1028, 1030 (5th Cir. 1971). The terms guaranty and repurchase were used interchangeably (Pl. Ex. A--September 14, 1977 letter) so plaintiff could characterize Beville's statements on behalf of C & S as a guaranty of the obligation of McAlpine to the Hominy Bank.

5. Georgia Code Annot. §41A-1311 provides in pertinent part:

"(b) A bank may act as a surety or guarantor if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the institution's potential liability."

C & S had an interest in the enhancement of McAlpine's Oklahoma oil and gas leases and then used the loan proceeds of \$50,000.00 from Hominy to collateralize its loans to McAlpine.

6. Under Georgia law a principal may confer authority on an agent merely by a course of conduct holding out that person as an agent which induces others to rely on the statement of that agent. Ampex Credit Corp. v. Bateman, 554 F2d 750, 753 (5th Cir. 1977).

7. When a bank officer exceeds the scope of his authority to make a contract, and the bank secures a benefit therefrom, the bank will not thereafter be heard to urge nonliability on a plea of ultra vires. Crowder State Bank v. Aetna Powder Co., 41 Okl. 394, 138 P. 392 (Okl. 1913); First National Bank of Ada v. Womack, 56 Okl. 359, 156 P. 207 (Okl. 1916); Oklahoma City National Bank v. Ezzard, 58 Okl. 251, 159 P. 267 (Okl. 1916); Citizens Central National Bank v. Appleton, 216 U.S. 196, 30 S.Ct. 364, 54 L.Ed. 443 (1910); 10 Am. Jur.2d, Banks §§276, 300.

8. Under Georgia law, ratification of an unauthorized act of an agent can arise from slight acts of affirmance or even from mere silence or acquiescence when it appears that the principal has received the fruits of the unauthorized act. Advance Mortgage Corp. v. Guaranty Title Insurance Co., 416 F2d 451, 454 (5th Cir. 1969).

9. Although the evidence clearly establishes Beville exceeded his loan authority under the bank's policy, C & S benefited from the loan transaction consummated at the Hominy Bank though the proceeds of the \$50,000.00 loan were not specifically used for lease improvements as contemplated by the parties. The evidence reveals McAlpine used the proceeds of the Hominy bank loan to collateralize additional loans with C & S and Beville had knowledge of such use when he authorized the \$67,000.00 C & S loan to McAlpine.

10. An instrument guaranteeing a note is binding on a guarantor without actual notice of acceptance. Abbott v. National Bank of Commerce of Tulsa, 56 P2d 886 (Ok1. 1936); Oklahoma City National Bank v. Ezzard, supra; Midwest Eng. & Const. Co. v. Electric Regulator Corp., 435 P2d 89 (Ok1. 1967). C & S's offer of a guaranty in the September 14, 1977 letter was accepted by performance of the Hominy bank in making the loan.

11. Oklahoma law explicitly states that guaranty agreements are to be construed most strongly against the guarantor. Butler Paper Co. v. Business Forms, Ltd., 424 F2d 247 (10th Cir. 1970); Rucker v. Republic Supply Co., 415 P2d 951 (Ok1. 1966); Lamm & Co., v. Colcord, 22 Ok1. 493, 98 P. 214 (Ok1. 1908); First National Bank v. Cleveland, 127 Ok1. 176, 260 P. 80 (Ok1. 1927).

12. The written guaranty of September 14, 1977 by C & S of the \$50,000.00 loan from Hominy bank to McAlpine is under the facts and circumstances herein enforceable.

13. Judgment should be entered on the guaranty in the amount of \$50,000.00.

14. The Hominy Bank is entitled to interest at the rate of 10% from the date of said note, September 22, 1977, until July 3, 1980, the date of judgment, and 12% thereafter until paid. A judgment in keeping with these Findings of Fact and Conclusions of Law is filed herewith.

15. Timely application for costs and attorney fees with supporting authority will be set for hearing by the Court.

ENTERED this 3rd day of July, 1980.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

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

LESLIE and MARILYN SALES,)
)
 Plaintiffs,)
)
 vs.)
)
 DON SMEDLEY, d/b/a)
 MOHAWK TRAILER PARK,)
)
 Defendant.)

No. 78-C-623-C

FILED

JUL 1 1980

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

DISMISSAL

Upon plaintiffs' Motion to Dismiss the above matter is hereby dismissed with prejudice.

S/ THOMAS R. BRETT
JUDGE OF THE DISTRICT COURT

JUL 1 - 1980

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of _____, 1980, I mailed a true and exact copy of the foregoing Dismissal to Blackstock, Joyce, Pollard, Blackstock & Montgomery, 515 South Main Mall, Tulsa, Oklahoma 74103.

WESLEY E. JOHNSON

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

**WESLEY
JOHNSON**
ATTORNEY AT LAW
TULSA, OKLAHOMA 74119