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

PHYLLIS J. CORNELIUS and)
ERNEST H. CORNELIUS,)
)
Plaintiffs,)
)
vs.)
)
DARRIELL T. PIGOTT, JACK)
WARD FREEMAN, PROFESSIONAL)
BUSINESSMEN'S ASSOCIATION, LTD.,)
and MARKETWAYS, INC.,)
)
Defendants.)

No. 80-C-534-C

F I L E D

NOV 28 1980

W. A. CLARK, Clerk
U. S. DISTRICT COURT

ORDER

Plaintiffs bring this action in the alternative alleging breach of contract on their first count and fraud and misrepresentation on their second count. The Clerk of this Court on October 24, 1980, entered default against defendants, Darriell T. Pigott and Marketways, Inc., said defendants having been served, but having failed to Answer.

The Court having reviewed the pleadings filed herein announced the case ready, and found that defendants, Darriell T. Pigott and Marketways, Inc., having neither answered nor appeared, were liable to plaintiffs for their damages. The Court after hearing the evidence and testimony of the plaintiffs found as follows:

Plaintiff, Ernest Cornelius, is entitled to judgment against the defendant, Darriell T. Pigott, in the sum of \$10,500.00 as actual damages; the sum of \$20,000.00 as punitive damages; and cancellation of the promissory note dated October 23, 1979, given by Ernest Cornelius to Darriell T. Pigott.

Further plaintiff, Ernest Cornelius, is entitled to judgment against defendant, Marketways, Inc., in the amount of \$14,500.00 as actual damages with interest thereon at the legal rate.

Plaintiff, Phyllis Cornelius, is entitled to judgment against Darriell T. Pigott in the sum of \$5,000.00 as actual damages with interest thereon at the legal rate.

IT IS SO ORDERED this 28 day of November, 1980.

H. DALE COOK

H. DALE COOK
United States District Judge

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

PETER LEE JAMES AUGERBRIGHT,)

Plaintiff,)

-vs-)

C. RAY SMITH,)

Defendant,)

SUMMIT HOME INSURANCE COMPANY,)

Garnishee.)

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NOV 28 1980

U.S. DISTRICT COURT

NO. 80-C-50-C

JUDGMENT ON JURY VERDICT

This action came on for trial before the Court and a jury, the Honorable Dale Cook, District Judge, presiding, and the issues have been tried and the jury having duly rendered its verdict.

IT IS ORDERED AND ADJUDGED that the plaintiff recover nothing from the garnishee, Summit Home Insurance Company and the garnishee recover from the plaintiff the costs of this action.

DATED at Tulsa, Oklahoma, this 28th day of November, 1980.

E. DALE COOK

UNITED STATES DISTRICT JUDGE,
DALE COOK

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

NATIONAL CAR RENTAL SYSTEM,)
INC.,)
)
Plaintiff,)
)
vs.)
)
INSUREX INTERNATIONAL, INC.,)
an Oklahoma corporation, and)
WILLIAM G. PHILLIPS, III,)
)
Defendants.)

No. 79-C-721-E

FILED

NOV 28 1980

U.S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 28th day of Nov, 1980, for good cause shown and based upon the stipulation of all parties that a settlement agreement has been reached, the Court finds that based upon the agreement of the parties, the complaint of the plaintiff, National Car Rental System, Inc., should be dismissed with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the complaint of the plaintiff, National Car Rental System, Inc., should be, and the same hereby is, dismissed with prejudice to the filing of any further action.

DATED this 28th day of Nov, 1980.



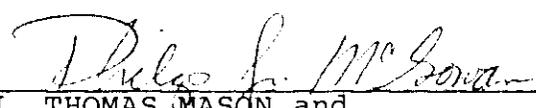
JUDGE OF THE DISTRICT COURT

APPROVED:



JOHN N. HERMES

of
McAfee & Taft
Fifth Floor, 100 Park Avenue
Oklahoma City, Oklahoma 73102
(405) 235-9621
Attorneys for Plaintiff



J. THOMAS MASON and
PHILIP J. MCGOWAN

of
Sanders & Carpenter
205 Denver Building
Tulsa, Oklahoma 74119

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

SERVICE DRILLING CO.,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES R. DRUMMOND and)
 LOUIS ROSS, CO., - Trustees)
 of the R. C. Drummond Ranch)
 Trust)
)
 Defendants.)

Civil Action
No. 80-C-276-E

FILED

NOV 28 1980

ORDER OF DISMISSAL

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

The plaintiff, Service Drilling Co., having filed its voluntary dismissal in the above civil action, and the defendants never having appearing herein;

IT IS ORDERED that the above civil action is hereby dismissed, without prejudice. Each party shall bear and pay its own costs herein incurred.

SO ORDERED this 28th day of November, 1980.


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
TULSA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION)	
)	
Plaintiff,)	
	)	CIVIL ACTION NO.
vs.)	
	)	80-C-338-B
BAMA PIE, INC.,)	
)	
Defendant.)	
_____)	

ORDER

The parties having stipulated to dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(2) based on the unavailability of Geraldine Watson who's claims are the subject of this action,

IT IS HEREBY:

Ordered, adjudged and decreed that this proceeding be dismissed without costs to either party.

NOV 23 1980

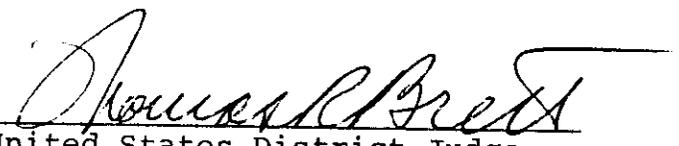
DATE

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

ADJUDGED, ORDERED and DECREED that the persons
named in the Certification of Election filed as aforesaid
by the plaintiff are the duly elected officers and shall
serve for the full constitutional term of office.

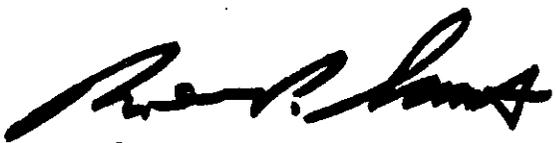
Entered this 28 day of Nov., 1980.


United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 26 day of
NOV., 1980, I served the attached (1) Notice of
Motion and Motion for Entry of Final Judgment, (2) Certi-
fication of Election, (3) Affidavit of Richard G. Hunsucker,
and (4) proposed Judgment upon Counsel for the defendant by
mailing one copy of each, postage prepaid, to:

William K. Powers, Esquire
Tom L. Armstrong, Esquire
Dyer, Powers, Marsh, Turner
& Armstrong
525 South Main Street, Suite 210
Tulsa, Oklahoma 74103


ROBERT P. SANTE
Asst. United States Attorney

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

NOV 26 1980

NELSON ELECTRIC SUPPLY)
COMPANY, a Texas corporation,)
)
Plaintiff,)
)
VS.)
)
GREEN COUNTRY CABLE SYSTEMS,)
INCORPORATED, an Oklahoma)
corporation,)
)
Defendant.)

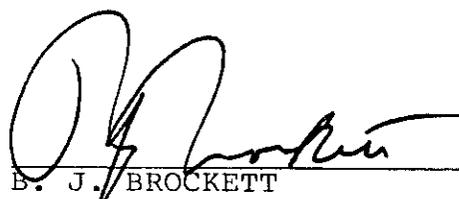
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CASE NO. 80-C-445-B ✓

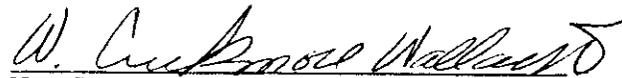
MOTION FOR DISMISSAL WITH PREJUDICE

COME NOW the parties, Nelson Electric Supply Company and Green Country Cable Systems, Incorporated, and hereby move the Court to dismiss the above entitled cause with prejudice to the filing of any future suit or action thereon for the reason that the parties have settled and compromised the controversy.

BROCKETT, GRACE & BRADY
Attorneys at Law
2905 CITY NATIONAL BANK TOWER
OKLAHOMA CITY, OKLAHOMA 73102
(405) 272-0552



B. J. BROCKETT
Attorney for Plaintiff
2905 City National Bank Tower
Oklahoma City, Oklahoma 73102
(405) 272-0552

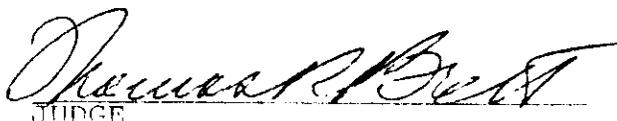


W. CREEKMORE WALLACE, II
Attorney for Defendant
P. O. Box 90
15 S. Poplar, Suite 107
Sapulpa, Oklahoma 74066
(918) 224-1176

ORDER OF DISMISSAL

On this 28 day of November, 1980, the above joint motion of the parties comes on for hearing and the Court, being advised in the premises and for good cause shown, hereby

ORDERS that the cause herein be, and the same hereby is, dismissed with prejudice to any future suit or action thereon.


JUDGE

FILED
NOV 21 1980

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

CHRIS HOOPER,)
)
Plaintiff,) 79-C-624-BT
)
vs.)
)
REGENCY OLDSMOBILE,)
)
Defendant.)

ORDER

The Court has for consideration the Motion to Reconsider and Vacate Judgment filed by the plaintiff; the briefs in support and opposition thereto, and being fully advised in the premises, finds:

The argument propounded by plaintiff in support of his motion is the same argument heretofore considered by this Court on the Motion for Summary Judgment.

IT IS, THEREFORE, ORDERED the Motion to Reconsider and Vacate Judgment filed by the plaintiff is overruled.

ENTERED this 26th day of November, 1980.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JAMES PARKER,)
)
Plaintiff,)
)
vs.) No. 80-C-321
)
JOHN FRANKLIN LOWER,)
)
Defendant.)

MAUREEN PARKER,)
)
Plaintiff,)
)
vs.) No. 80-C-320 ✓
)
JOHN FRANKLIN LOWER,)
)
Defendant.)

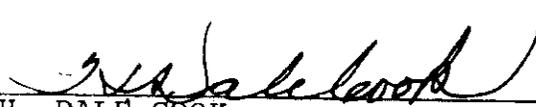
O R D E R

Now before the Court for its consideration is the motion of the defendant Equipco., Inc. for summary judgment. In the amended pre-trial order, plaintiffs have conceded that the defendant's motion is meritorious.

A review of the records in these two cases indicate that the activity in which the defendant Lower was engaged at the time of the accident was personal rather than incident to the business of his employer. Therefore, under the test for vicarious liability in Oklahoma, the employer, Equipco, cannot be held responsible for Lower's conduct which does not meet the scope of employment test. Retail Merchants v. Peterman, 99 P.2d 130, 131 (Okla. 1940); Dill v. Rader, 533 P.2d 650 (C.A.Okla. 1975).

Thus, the motion of defendant Equipco for Summary Judgment is hereby sustained.

It is so Ordered this 26th day of November, 1980.


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

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

JAMES PARKER,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN FRANKLIN LOWER,)
)
 Defendant.)

No. 80-C-321 ✓

MAUREEN PARKER,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN FRANKLIN LOWER,)
)
 Defendant.)

No. 80-C-320

Handwritten notes and signature

O R D E R

Now before the Court for its consideration is the motion of the defendant Equipco., Inc. for summary judgment. In the amended pre-trial order, plaintiffs have conceded that the defendant's motion is meritorious.

A review of the records in these two cases indicate that the activity in which the defendant Lower was engaged at the time of the accident was personal rather than incident to the business of his employer. Therefore, under the test for vicarious liability in Oklahoma, the employer, Equipco, cannot be held responsible for Lower's conduct which does not meet the scope of employment test. Retail Merchants v. Peterman, 99 P.2d 130, 131 (Okla. 1940); Dill v. Rader, 533 P.2d 650 (C.A.Okla. 1975).

Thus, the motion of defendant Equipco for Summary Judgment is hereby sustained.

It is so Ordered this 26th day of November, 1980.

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

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

WAL-MART STORES, INC.,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
ROBERT H. ALEXANDER, d/b/a)
Zuber Manufacturing Company,)
)
Defendant.)

No. 80-C-186-C ✓

O R D E R

The Court has before it for consideration the motion of the defendant to dismiss or transfer, as well as the motion of the plaintiff to strike or deny defendant's motion to dismiss or in the alternative to transfer this action to the United States District Court for the Western District of Oklahoma, pursuant to 28 U.S.C. §1404 (1970).

Plaintiff is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas, and defendant is a citizen of the State of Oklahoma. Plaintiff states that this Court has jurisdiction under 28 U.S.C. 1332 (1970) and alleges proper venue as a significant portion of the contracts underlying the claim asserted herein occurred in this judicial district. Plaintiff admits that it has filed a compulsory counterclaim in the Western District of Oklahoma against Seat Covers Inc d/b/a Zuber Manufacturing Co which makes the same claim for relief as set out herein on April 4, 1980 (an action styled "Seat Covers, Inc. d/b/a Zuber Manufacturing Company v. Wal-Mart Stores, Inc., et al.," No. Civ. 80-157-T, alleging inter alia breach of contract against the plaintiff herein, Wal-Mart Stores, Inc.) Defendant alleges, in his motion to dismiss, that venue is improper in that defendant is a

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resident of the Western District of Oklahoma, that there is another action pending in the Western District of Oklahoma involving this same transaction or series of transactions, and thus it is not in the best interests of judicial economy to allow plaintiff to pursue the identical claim in this Court. Defendant further alleges that plaintiff has failed to state a claim.

Neither the plaintiff nor the defendant is alleged to reside in this judicial district. Both parties allege that venue is appropriate in the Western District of Oklahoma since defendant resides there. Title 28 U.S.C. §1391(a) provides as follows: "A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, or in which the claim arose."

Based on the facts alleged by both plaintiff and defendant, it appears that venue would be appropriate in the Northern District, based on the unrefuted allegation that the claim arose here; or in the Western District, based on the unrefuted allegation that the defendant resides therein. In this case, both parties have moved for transfer to the Western District. Pursuant to 28 U.S.C. 1404(a) plaintiffs as well as defendants can move for a transfer. Philip Carey Manufacturing Company v. Taylor 286 F.2d 782 (6th Cir. 1961), cert. denied 366 U.S. 948, 81 S.Ct. 1903, 6 L.Ed.2d 1242 (1961). The burden is upon the moving party to establish that the action should be transferred, and that the party must generally demonstrate that the balance is strongly in its favor. Unless the balance is strongly in favor of the movant, the plaintiff's choice of forum should rarely be disturbed. Wm. A. Smith Contracting Co., Inc. v. Travelers Indemnity Company, 467 F.2d 662 (10th Cir. 1972); Texas Gulf

Sulphur Company v. Ritter, 371 F.2d 145 (10th Cir. 1967).

In this case, since both parties agree that transfer is appropriate in anticipation of consolidation of this action with Seat Covers, Inc. v. Wal-Mart Stores, Inc., the motion of plaintiff and defendant to transfer this case to the Western District of Oklahoma is hereby granted.

It is so Ordered this 26th day of November, 1980.



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

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

JOHN UNDERWOOD,)
)
 Plaintiff,)
)
 vs.)
)
 DARRELL FELL,)
)
 Defendant and Third-Party)
 Plaintiff,)
)
 vs.)
)
 KENNETH FROST,)
)
 Third-Party Defendant and)
 Cross-Complainant.)

79-C-563-BT ←

FILED

NOV 26 1980

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This case was tried to a jury August 18 through 20, 1980. On August 20, 1980, the jury returned verdicts wherein they found no negligence on the part of any of the parties involved. Judgment was entered on August 20, 1980. Plaintiff, John Underwood, has filed a motion for new trial and, the Court being fully advised in the premises, finds:

John Underwood asserts seven grounds for granting a new trial.

- (i) Error of the Court in refusing to sustain plaintiff's Motion in Limine relative to benefits paid him by his employer during the period of time he was unable to work.
- (ii) Error of the Court in refusing plaintiff's Motion for a Directed Verdict in his behalf.
- (iii) Error of the Court in instructing the jury on the contributory or comparative negligence of the plaintiff, John Underwood.
- (iv) Inadvertent error of the court in reversing the names of the defendant and third-party plaintiff on the title sheet to the jury instructions.
- (v) Misconduct of counsel for Darrell Fell in closing argument.
- (vi) Jury finding that the defendants were guilty of no negligence was erroneous, unwarranted, unjust and resulted in a miscarriage of justice.
- (vii) Verdict of the jury was totally unjustifiable under

the evidence of the case and indicates itself to be the result of caprice, prejudice, or other improper motive.

A Motion for New Trial is directed to the sound discretion of the Trial Court. Holmes v. Wack, 464 F.2d 86 (10th Cir. 1972); Sanden v. Mayo Clinic, 495 F.2d 221, 226 (8th Cir. 1974).

On a Motion for New Trial, the Court is required to view the evidence in a light which is most favorable to the nonmoving party. U.S. v. Fenix and Scisson, Inc., 360 F.2d 260 (10th Cir. 1966), cert. den. 386 U.S. 1036, 87 S.Ct. 1474, 18 L.Ed.2d 599, rehrg. den. 388 U.S. 924, 87 S.Ct. 2096, 18 L.Ed.2d 1378; Bates v. Hensley, 414 F.2d 1006, 1011 (8th Cir. 1969).

The moving party has not shown to the satisfaction of the Court that prejudicial error has been committed or substantial justice has not been achieved. Seven Provinces Ins. Co., Ltd. v. Commerce & Ind. Ins. Co., 65 F.R.D. 674, 683 (USDC WD Mo. 1975).

The trial court has discretion in ruling on the admissibility of evidence. The Court has re-examined the instructions given and finds they adequately state the law to be considered by the jury in this case.

The Court has reviewed the entire case and all relevant factors, and concludes plaintiff has failed to show that the verdict is against the clear weight of the evidence, nor is there any prejudicial error in the record or substantial injustice so as to warrant the granting of a new trial. Therefore, plaintiff's Motion for New Trial should be denied.

IT IS, THEREFORE, ORDERED plaintiff's Motion for a New Trial is overruled.

ENTERED this 25 day of November, 1980.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

CLOW CORPORATION, a)
corporation,)
)
Plaintiff,)
)
VS.)
)
BOWLINE CONSTRUCTION)
COMPANY, a corporation,)
and OKLAHOMA SURETY COMPANY,)
a corporation,)
)
Defendants,)

NO. 80-C-258-E

F I L E D

NOV 25 1980

ORDER OF DISMISSAL

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

Upon the Application of the Plaintiff, for good cause shown,

IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT that the above styled and numbered cause be and the same is hereby dismissed, with prejudice and without costs.

DONE THIS 25th day of November, 1980.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

benefits. This decision was affirmed by the Appeals Council and plaintiff thereafter commenced this action requesting judicial review.

An applicant for Social Security Disability Insurance Benefits has the burden of establishing that he was disabled on or before the date on which he last met the statutory earnings requirements. McMillin v. Gardner, 384 F.2d 596 (10th Cir. 1967); Stevens v. Mathews, 418 F.Supp. 881 (USDC WD Okl. 1976); Dicks v. Weinberger, 390 F.Supp. 600 (USDC WD Okl. 1974); see Johnson v. Finch, 437 F.2d 1321 (10th Cir. 1971).

The term "disability" is defined in the Social Security Act as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which....has lasted....for a continuous period of not less than 12 months." 42 U.S.C. §§416(i)(1)(A); 423(d)(1)(A); 20 C.F.R. 404.1501(a)(i).

The scope of the Court's review authority is narrowly limited by 42 U.S.C. §405(g). The Secretary's decision must be affirmed if supported by substantial evidence. Gardner v. Bishop, 362 F.2d 917 (10th Cir. 1966); Stevens v. Mathews, supra. Substantial evidence is more than a scintilla. It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971); Beasley v. Califano, 608 F.2d 1162 (8th Cir. 1979); Stevens v. Mathews, supra. However, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Consolo v. Federal Maritime Commission, 383 U.S. 607, 86 S.Ct. 1018, 16 L.Ed.2d 131 (1966); Stevens v. Mathews, supra.

In conducting this judicial review, it is the duty of this Court to examine the facts contained in the record, evaluate the conflicts and make a determination therefrom whether the facts

support the several elements which make up the ultimate administrative decision. Heber Valley Milk Co. v. Butz, 503 F.2d 96 (10th Cir. 1974); Nickol v. United States, 501 F.2d 1389 (10th Cir. 1974); Stevens v. Mathews, supra. In this case, the ultimate administrative decision is evidenced by the Findings of the Administrative Law Judge before whom plaintiff originally appeared.

The Findings of the Administrative Law Judge were as follows:

(TR 12-13)

- "1. The claimant filed an application for a period of disability and for disability insurance benefits on May 4, 1976, alleging disability from March 31, 1976. The claimant was found to be disabled beginning March 31, 1976.
2. The claimant is age 49; has the GED equivalent of a twelfth-grade education; and has worked as a boiler-maker (refinery).
3. The claimant met the special earnings requirements on March 31, 1976, the date of alleged disability, and continues to meet them at least through December 31, 1980.
4. The claimant's medically determinable condition consists of status postoperative triple vessel coronary bypass.
5. The claimant's medically determinable condition, in combination or in conjunction with other complaints, is no longer, after September, 1978, of sufficient severity to significantly limit his ability to perform basic work-related functions, pursuant to Regulation 404.1504(a).
6. The claimant is unable to perform his past relevant work but has the residual functional capacity to perform light or sedentary work as defined by Regulation 404.1510(c) and 404.1510(b).
7. The claimant was no longer under a 'disability' after September, 1978 as defined by the Social Security Act, as amended.
8. Entitlement to disability benefits ended with the close of November, 1978."

The elements of proof which should be considered in determining whether plaintiff has established a disability within the meaning of the Act are: (1) objective medical facts; (2) medical opinions; (3) subjective evidence of pain and disability; and

(4) the claimant's age, education and work experience. Hicks v. Gardner, 393 F.2d 299 (4th Cir. 1968); Stevens v. Mathews, *supra*; Morgan v. Gardner, 254 F.Supp. 977 (USDC ND Okl. 1966); Meek v. Califano, 488 F.Supp. 26 (USDC Neb. 1979).

The Secretary's initial determination of disability was based on medical evidence concerning plaintiff's heart impairment and his postoperative status following triple vessel heart surgery. His disability benefits were terminated in September, 1978.

Plaintiff was admitted to Doctor's Hospital complaining of chest pain and shortness of breath of April 1, 1976. He was seen in consultation by Drs. Copple and Lynch and was diagnosed as pre-infarction angina. He was transferred to Hillcrest Medical Center for angiography and probable by-pass surgery. (TR 89-110)

Plaintiff was admitted to Hillcrest Medical Center on April 4, 1976 and discharged on April 17, 1976, where he underwent by-pass surgery. (TR 111-118)

Dr. Robert M. Lynch was contacted June 16, 1976. At that time Dr. Lynch had seen plaintiff once on a follow-up basis. He said plaintiff was doing relatively well. He further stated plaintiff was still experiencing some incisional type chest discomfort but had not experienced any angina pectoris. Plaintiff was walking 2 to 3 miles per day. Dr. Lynch did not think plaintiff, at that time, should perform strenuous physical labor involving lifting more than 50 pounds but "in terms of other types activity or employment" could "see no reason why he would not be eligible for that such as light to moderate work. (TR 119-120)

Thereafter, Dr. Lynch rendered an undated hand written report wherein he stated he had seen plaintiff on 6/7, 7/14 and 7/27. Dr. Lynch stated he considered the plaintiff disabled at that time. (TR 120)

On July 15, 1978, Dr. Lynch rendered a written report. He stated plaintiff's diagnoses was arteriosclerotic coronary artery disease, angina pectoris, previous triple vessel coronary

bypass surgery, and essential hypertension. The doctor stated plaintiff had a "rather slow convalescence(sic)" from the surgery and that he was readmitted to the hospital in January of 1977 for evaluation of an episode of chest discomfort which was characteristic of angina pectoris with no evidence of myocardial infarction. He stated the patient was most recently seen on April 3, 1978, when his condition appeared stable. Dr. Lynch noted he planned a treadmill test in the future. (TR 121)

On July 30, 1976, Charles J. Lilly, M.D. rendered a report discussing plaintiff's hospitalization in April, 1976, and the bypass surgery. Dr. Lilly stated: "Mr. Chapman is making a satisfactory recovery from his surgery. I feel it is unlikely that he will be able to resume his usual occupational duties following this surgery....I have seen Mr. Chapman only one time since his surgery and have not followed him closely, since the cardiologist was doing so." (TR 122)

The hospital records for plaintiff's readmittance to the hospital in January of 1977, referred to in Dr. Lynch's report of July 15, 1978, appear at pages 123-126 of the transcript. After this hospitalization the diagnostic impression on the hospital records indicates:

1. Angina Pectoris.
2. Arteriosclerotic coronary artery disease.
3. Post-op triple-vessel coronary bypass surgery.
4. Hypertension, currently normotensive.

Dr. Lynch rendered another report on September 14, 1978, wherein he delineated plaintiff's medical background and noted a treadmill test had been accomplished. (TR 127-129) Dr. Lynch described the treadmill test as follows:

"The patient did undergo a treadmill test with the reclining and standing pre-exercise electrocardiograms being within normal limits and mild ST-T wave changes present with hyperventilation. Using the Brude Test Protocol, the patient did exercise for seven minutes and reached a heart rate of 168 per minute which is greater than 90% of his maximum heart rate of 159 per minute. The treadmill test was terminated because of fatigue. There was not any occurrence of angina pectoris with his level of exercise. The maximum blood pressure during exercise was 184/100. There was no occurrence of arrhythmias.

There were minor ST segment changes following exercise but no distinct ischemic changes and the test was interpreted as normal...."

His final diagnoses included:

1. Mild stable angina pectoris.
2. Moderately severe arteriosclerotic coronary artery disease.
3. Status post-op triple vessel coronary bypass surgery.
4. Mild essential hypertension.

Dr. Lynch stated the patient's prognosis was good. With reference to plaintiff's ability to perform work related functions, he stated "it would appear that he does develop significant symptomatology with moderately heavy physical activity particularly that involves lifting and/or straining. I do feel that he is capable of performing sedentary and light forms of physical activity."

W. F. Kempe, D.O., rendered a report dated January 23, 1979 (TR 130) in which he enclosed records concerning plaintiff and commented his last contact with the patient was July 25, 1978, for a tension headache problem.

On August 1, 1979, Guy Boyles, Counselor, Rehabilitative Services, Department of Institutions, Social and Rehabilitative Services, State of Oklahoma, rendered a report, as follows:

(TR 141)

"I have talked with Wayne Chapman (SSN 440-28-5340) and reviewed medical reports sent to us by the Social Security Administration. Mr. Chapman apparently has no saleable skill since he cannot return to his previous occupation. In my opinion, he would need at least a year's training to obtain a saleable skill in keeping with his disability in order to obtain substantial gainful employment. He will need some assistance with living expenses in order to get involved in a full time training program."

Prior to February 26, 1979, when a claimant was unable to return to his previous occupation, a vocational expert was required. Salas v. Califano, 612 F.2d 480 (10th Cir. 1979); Willem v. Richardson, 490 F.2d 1247 (8th Cir. 1974); Garrett v. Richardson, 471 F.2d 598 (5th Cir. 1972); Kerner v. Flemming, 283 F.2d 916 (2nd Cir. 1960).

On February 26, 1979, new regulations became effective for adjudicating claims for disability insurance benefits under the Social Security Act. 20 C.F.R. §404.1503 et seq. (1979).

The Secretary applied the rules in Subpart P, App. 2, as guidelines for determining the individual's residual capacity to perform work-related functions. The Secretary further in determining if plaintiff was disabled, used the sequential evaluation process provided in 20 C.F.R. §404.1503.

The Secretary found plaintiff had the residual capacity to perform sedentary or light work as defined in the regulations. Rule 202.00, Subpart P, App.2 states in pertinent part: "The functional capacity to perform a full range of light work as defined in §404.1510(c) includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration of within 30 days and do not require special skills or experience."

In Social Security Disability cases, the claimant bears the burden of showing the existence of disability as defined by the Act. Demandre v. Califano, 591 F.2d 1088, 1090 (5th Cir. 1979); Lewis v. Califano, 574 F.2d 452 (8th Cir. 1978); McDaniel v. Califano, 568 F.2d 1172 (5th Cir. 1978); Turner v. Califano, 563 F.2d 669 (5th Cir. 1977); Valentine v. Richardson, 468 F.2d 588 (10th Cir. 1972).

It is not the function of the Court to re-weigh the evidence. See, e.g., Trujillo v. Richardson, 429 F.2d 1149 (10th Cir. 1970).

The function of the Administrative Law Judge is to weigh the evidence.

In the instant case it seems clear that plaintiff is afflicted with some heart problems. It has been held claimants who have suffered from heart disease have been able to do many jobs in the existing economy. Dvorak v. Celebrezze, 345 F.2d 894 (10th Cir. 1965); See also, Valentine v. Richardson, 468 F.2d 588 (10th Cir. 1972). The issue present, however, is whether the record supports plaintiff's contention that his impairment is "of such severity" that he cannot engage in gainful employment.

The statement by a physician that an individual is or is not disabled and unable to work is a conclusion upon the ultimate issue to be decided by the Secretary, and is not determinative of the question of whether the claimant is disabled. 20 C.F.R. §404.1526.

In Salas v. Califano, *supra*, 612 F.2d 480 (10th Cir. 1979) the Court held once plaintiff established his claim of inability to return to his former occupation, the burden of showing the claimant could nonetheless obtain other gainful activity and that such gainful activity is available shifted to the Secretary. See also, Brenem v. Harris, 621 F.2d 688 (5th Cir. 1980).

The Court finds the Secretary has met his burden. The evidence in the case supports a finding that plaintiff, though disabled from returning to his previous level of work, is still able to perform other gainful activity.

After thoroughly examining the administrative record before it, the Court is of the opinion that substantial evidence is contained therein to support the Secretary's decision that plaintiff was not disabled within the meaning of the pertinent provisions of the Social Security Act and regulations applicable thereto.

Accordingly, the Secretary's decision should be affirmed and

a judgment of affirmance will be entered this date.

ENTERED this 25 day of November, 1980.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

INTERNATIONAL BUSINESS)
AIRCRAFT, INC., an)
Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
BREMEN AVIATION, INC., an)
Ohio corporation; MICHAEL F.)
RILEY, an individual,)
)
Defendants.)

No. 80-C-²⁰⁴104-B

FILED
NOV 25 1980
Jack C. Smith, Clerk
U. S. DISTRICT COURT

ORDER DISMISSING, WITH PREJUDICE,
COUNT THREE OF PLAINTIFF'S COMPLAINT

Upon consideration of the stipulation for dismissal of Count Three of plaintiff's Complaint, the Court being fully advised and for good cause shown finds that Count Three and each and every cause of action and claim for relief set forth therein should be dismissed, with prejudice, to the bringing of a future action thereon and IT IS THEREFORE ORDERED that the Third Count of plaintiff's Complaint and each and every cause of action and claim for relief set forth therein are hereby dismissed with prejudice to the bringing of a future action thereon, each party to bear its own costs and attorneys' fees as to that claim.

Dated this 24th day of November, 1980.

S/ THOMAS R. BRETT

JUDGE

United States District Court for the
Northern District of Oklahoma

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

PHYLLIS J. CORNELIUS,

Plaintiff,

vs.

DARRIELL T. PIGOTT, an
individual doing business as
Darriell T. Pigott & Associates,

Defendant.

80-C-285-BT ✓

F I L E D

NOV 25 1980

W. S. STEVENSON, Clerk
U. S. DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

A default judgment was entered by the Court on July 23, 1980, it being made to appear to the Court the defendant, after having been duly served with process, had failed to appear or answer. Thereafter, on July 29, 1980, the Court entered an order setting aside that portion of the default judgment assessing actual damages. Plaintiff's claim for actual damages and punitive damages was set for evidentiary hearing before the Court on August 18, 1980. Due notice was given to the defendant of the hearing.

On August 18, 1980, plaintiff appeared in person and by her counsel, Kathy Evans Borchardt. The defendant did not appear. The Court proceeded to hear testimony and adduce evidence. The plaintiff was directed to file proposed Findings of Fact and Conclusions of Law and the matter was taken under advisement.

The Court has carefully perused the entire file; considered the testimony and evidence adduced at the hearing; considered the exhibits attached to the plaintiff's proposed Findings of Fact and Conclusions of Law; and makes the following Findings of Fact and Conclusions

FINDINGS OF FACT

1. On August 10, 1979, plaintiff and defendant entered into a partnership agreement whereby plaintiff purchased a 1/2 interest

in a business owned by defendant known as "Sippin' in Style" located in Southroads Shopping Center #2B, Lower Level, Tulsa, Oklahoma

2. Plaintiff paid the defendant \$15,000 for the 1/2 interest purchased.

3. On August 22, 1979, defendant represented to plaintiff the inventory had increased in value and plaintiff paid defendant an additional sum of \$1573.18 on the purchase price.

4. The "Sippin' in Style" opened August 15, 1979 and closed December 15, 1979.

5. The partnership agreement provided plaintiff was to manage the store and be paid a salary of \$800.00 per month, which she was in fact paid. [Total of \$3,200.00 for four months.]

6. During the time the store was in operation it lost a total of \$9,470.21. (Plaintiff's Exhibit D)

7. Plaintiff incurred an additional accountant's fee in the sum of \$902.54. (Plaintiff's Exhibit E).

8. Although the partnership agreement provided the partnership losses would be shared equally, defendant only paid into the partnership account the sum of \$1,500.00 and \$1,003.00, but refused to bear his shares of the losses despite due demand.

9. The evidence reveals plaintiff has sustained actual losses as follows:

Sums paid for 1/2 interest in the partnership	\$16,573.18
Operating losses	\$ 9,470.21
Salary	\$ 3,200.00
Accountant's fee	\$ 902.54
	<u>\$30,145.93</u>
Less sums paid by defendant	<u>\$ 2,503.00</u>
Total actual loss sustained by plaintiff	\$27,642.93

10. Defendant misrepresented the value of the assets; misrepresented the leasehold rent; misrepresented the store hours; and misrepresented his financial worth to plaintiff. Such misrepresentations were made for the purpose of inducing plaintiff to enter the partnership agreement and constituted a fraudulent act on the part of the defendant.

11. There is presently pending in the District Court of Tulsa County litigation concerning a default on a lease involving the store premises here involved, being number C-80-194, Balcor Realty Investors, Ltd.-75 vs. Darriell T. Pigott, d/b/a Sipping' In Style, Ernest Cornelius and Phyllis Cornelius, filed January 23, 1980.

CONCLUSIONS OF LAW

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

1. This Court has jurisdiction of the subject matter and the parties.

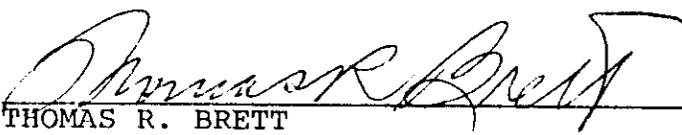
2. Plaintiff has suffered actual damages in the sum of \$27,642.93.

3. The misrepresentations of defendant were fraudulent, thus entitling plaintiff to punitive or exemplary damages in the sum of \$5,000.00. Title 23 O.S. §9.

4. Plaintiff is not entitled to a judgment of this Court holding her harmless on the leasehold agreement and granting her indemnification for costs and expenses incurred in the State Court action since all parties are not before this Court for a proper determination. Plaintiff is not precluded from asserting these matters properly in the State Court action.

5. A Judgment shall be entered in favor of the plaintiff and against the defendant in the sum of \$27,642.93 actual damages and \$5,000 punitive damages.

ENTERED this 25th day of November, 1980.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

BILLY JOHN HUGHES,)
ROBERT WAYNE WENSELL,)
CHARLES C. MORRISON, JR.,)
TIMOTHY ALVESTER GAFFNEY,)
OPIE DONNELL PITTS, II, and)
RAYMOND BLAIR HUSELTON, JR.,)
Petitioners,)
vs.)
ATTORNEY GENERAL OF THE)
STATE OF OKLAHOMA,)
Respondent.)

FILED

NOV 25 1980

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

No. 80-C-552-E
(Consolidated with 80-C-598,
80-C-605, 80-C-606 and 80-C-602)

O R D E R

The Court has before it for consideration Petitioners' Petitions for Writ of Habeas Corpus.

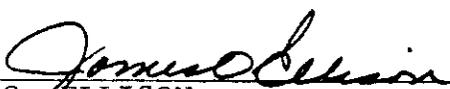
It appears from a careful consideration of the files that Petitioners have not exhausted their state court remedies. See Karlin v. State of Oklahoma, 412 F.Supp. 635 (W.D. Okla. 1976); Brown v. Crouse, 395 F.2d 755 (Tenth Cir. 1968); Omo v. Crouse, 395 F.2d 757 (Tenth Cir. 1968); McDonald v. Faulkner, 378 F.Supp. 573 (E.D. Okla. 1974).

In addition, special circumstances must be present before the federal courts exercise their habeas corpus powers to stop state criminal proceedings, Dolack v. Allenbrand, 548 F.2d 891 (Tenth Cir. 1977); Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L. Ed.2d 669; Ex Parte Royall, 117 U.S. 241, 6 S.Ct. 734, 29 L.Ed. 868.

Therefore, since Petitioners have not exhausted their state court remedies and for the reason that the special circumstances necessary to prevent state criminal proceedings are not present, the Petitions for Writ of Habeas Corpus are hereby dismissed.

IT IS THEREFORE ORDERED that the Petitions for Writ of Habeas Corpus be and the same are hereby dismissed.

It is so Ordered this 25th day of November, 1980.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

findings. In Re Williamson, 431 F.Supp. 1023 (USDC WD Okl. 1976);
Wolfe v. Tri-State Insurance Company, 407 F.2d 16 (10th Cir. 1969);
Kansas Federal Credit Union v. Niemeier, 227 F.2d 287 (10th Cir.
1955).

The record discloses no "cogent reasons" for disturbing the findings of the Bankruptcy Court.

The Court therefore finds:

1. The Findings and Recommendations of the Magistrate should be affirmed.
2. The Objections of the Appellant should be overruled.
3. The Judgment of the Bankruptcy Court should be affirmed.

IT IS, THEREFORE, ORDERED:

1. The Findings and Recommendations of the Magistrate are affirmed and adopted.
2. The Objections of the Appellant are overruled.
3. The Judgment of the Bankruptcy Court is affirmed.

ENTERED this 25th day of November, 1980.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

NOV 24 1980

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

U.S. District Court
Northern District of Oklahoma

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 VANN J. DRAKE,)
)
 Defendant.))

CIVIL ACTION NO. 80-C-281-B

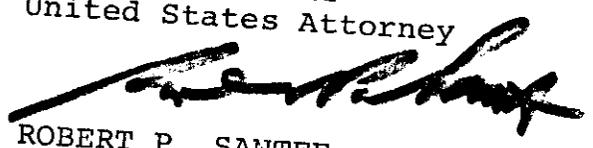
NOTICE OF DISMISSAL

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 24th day of November, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

NOV 24 1980

WILSHIRE FOAM PRODUCTS, INC.,
a corporation,

Plaintiff,

-vs-

AMERICAN SAFETY SYSTEMS, INC.,
a corporation,

Defendant.

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

No. 80-C-592-B ✓

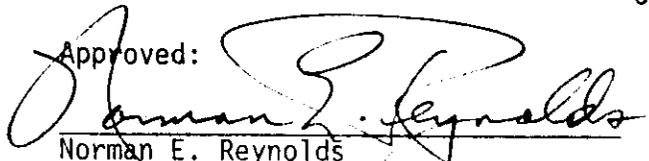
J U D G M E N T

This cause came on for hearing on the motion of the plaintiff for a default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure and it appearing to the Court that the Complaint in the above case was filed in this court on the 10th day of October, 1980, and that the summons and Complaint were duly served on the defendant, American Safety Systems, Inc., on the 17th day of October, 1980, and that no Answer or other defense has been filed by the said defendant, and that default was entered on the 14th day of November, 1980, in the office of the Clerk of this Court, and that no proceedings have been taken by said defendant since said default was entered, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff, Wilshire Foam Products, Inc., have judgment against the defendant, American Safety Systems, Inc., for \$11,606.60, together with interest thereon at the rate of 6% per annum from April 1, 1980 to date of judgment and at the rate of 12% per annum after judgment until paid, attorneys fees of \$ 1,750.⁰⁰, and costs of this action in the amount of \$63.00.

Dated this 24 day of November, 1980.


United States District Judge

Approved: 
Norman E. Reynolds
Attorney for Plaintiff
2808 First National Center
Oklahoma City, Oklahoma 73102
405/232-8131

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 24 1980

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL S. BAIR,)
)
 Defendant.)

CIVIL ACTION NO. 80-C-316-B

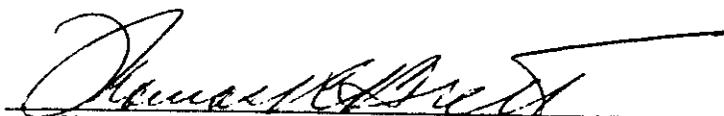
DEFAULT JUDGMENT

This matter comes on for consideration this 24 day of November, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Michael S. Bair, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Michael S. Bair, was personally served with Summons and Complaint on June 23, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

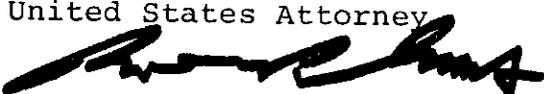
The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is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

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Michael S. Bair, for the principal sum of \$913.27 (less the sum of \$100.00 which has been paid) 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

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NOV 24 1980

Jack S. Sibley, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JESSE C. WHITE,)
)
 Defendant.)

CIVIL ACTION NO. 80-C-391-B

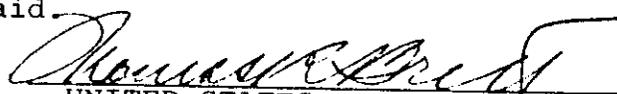
DEFAULT JUDGMENT

This matter comes on for consideration this 24
day of November, 1980, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney for the Northern District of Oklahoma,
and the Defendant, Jesse C. White, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendant, Jesse C. White, was personally
served with Summons and Complaint on July 15, 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, Jesse C.
White, for the principal sum of \$765.00 (less the sum of \$50.00
which has been paid) plus the accrued interest of \$258.07 as of
August 8, 1979, plus interest at 7% from August 8, 1979, until the
date of Judgment, plus interest at the legal rate on the principal
sum of \$765.00 (less the sum of \$50.00 which has been paid) 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

FILED

BILLY GENE MARSHALL,)
)
) Petitioner,)
)
 vs.)
)
) NORMAN B. HESS, Warden, and)
) THE STATE OF OKLAHOMA,)
)
) Respondents.)

NOV 24 1980

No. 80-C-168-E

Jack G. Phipps, 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 incarcerated in the Oklahoma State Penitentiary in McAlester, Oklahoma. Petitioner was convicted by a jury in the District Court of Osage County, State of Oklahoma, case no. CRF-73-394. That case was reversed by the Court of Criminal Appeals of the State of Oklahoma and Petitioner was retried in Osage County, case no. CRF-75-73 and convicted of the crime of Robbery by Fear. The Petitioner was sentenced to 30 years imprisonment.

The Petitioner appealed to the Oklahoma Court of Criminal Appeals, case no. 75-550. The conviction was affirmed by that Court on March 16, 1977, in Marshall v. State of Oklahoma, 561 P.2d 1370 (Okla. Cr. 1977). The Petitioner filed an application for post-conviction relief in the District Court of Osage County, Oklahoma, case no. CRF-73-394 which was denied. An appeal was taken to the Court of Criminal Appeals of the State of Oklahoma. On October 15, 1979, the Court of Criminal Appeals for the State of Oklahoma entered an order, No. PC-79-303 affirming denial of post-conviction relief.

The Court now has before it Petitioner's Application for Writ of Habeas Corpus alleging:

1. The Court erred in allowing the reading of prior recorded testimony of witnesses. He alleges this violated his right of confrontation and cross-examination.
2. Petitioner alleges he was denied due process in that

the use of a former conviction was not a felony in Oklahoma.

3. Petitioner alleges the Court erred in ruling he could receive a greater sentence on retrial for the same offense than he received at the first trial. He argues he was placed in double jeopardy.
4. Petitioner alleges that he was a juvenile under the law of Oklahoma and Kansas at the time of the former conviction and was never certified as an adult.

The Petitioner states that he has raised all of the above issues on appeal and that he has exhausted all state court remedies. The State has responded to the Petition and the Petitioner has filed a Traverse Petition.

It appears from the file that Petitioner has not exhausted his state court remedies as to all of his grounds of error, as will be further shown in this order. The Court has reviewed the entire file, including the transcripts of the state court proceedings, and concludes that this matter is now in a proper posture for dispositive ruling.

In Townsend v. Sain, 372 U.S. 293 (1963), the Supreme Court laid down the test applicable to a determination of whether the Petitioner was entitled to an evidentiary hearing. See 28 U.S.C. § 2254(d), Rule 8, Rules Governing § 2254 cases. In reviewing the record, under the test of Townsend, the Court finds that an evidentiary hearing is not necessary.

I.

WHETHER THE COURT ERRED IN ALLOWING
THE READING OF PRIOR RECORDED TESTIMONY
OF WITNESSES? WHETHER THIS VIOLATED
PETITIONER'S RIGHT OF CONFRONTATION
AND CROSS EXAMINATION?

Habeas corpus relief is only available to state prisoners on denial by the State of federal constitutional rights. 28 U.S.C.A. § 2254; Townsend v. Sain, supra; Karlin v. State of Oklahoma, 412 F.Supp. 635 (W.D. Okla. 1976); United States ex rel. Little v. Twomey, 477 F.2d 767 (Tenth Cir. 1973), cert. denied, 414 U.S. 846, 94 S.Ct. 112, 38 L.Ed.2d 94. The relief is not available to

review mere trial errors in criminal cases. Karlin v. State of Oklahoma, supra; Pierce v. Page, 362 F.2d 544 (Tenth Cir. 1965).

The right of confrontation and cross-examination is a fundamental right and one essential to a fair trial. However, an exception is made to the requirement where a witness is unavailable and has given testimony at a previous judicial proceeding against the same defendant which was subject to confrontation and cross-examination by that defendant. U.S.C.A. Const. Amendments 6, 14; Poe v. Turner, 353 F.Supp. 677, (D.C. Utah 1972), affirmed 490 F.2d 329.

It appears to the Court that the state satisfied the good faith standard of effort to locate the witnesses and Petitioner's Sixth and Fourteenth Amendment rights were not violated when the state read into the record witnesses' testimony at a prior trial. The transcript of the unavailable witnesses' gave a sufficient indication of reliability to afford the trier of fact a satisfactory basis to evaluate the truth of the prior testimony. The Petitioner was represented by counsel in the prior proceeding and the right to cross-examination was exercised. A review of the file reveals a proper predicate was laid for the introduction of the unavailable witnesses' testimony.

Therefore, after a careful review of the files, briefs and applicable authorities, it is the opinion of this Court that the Court did not err in allowing the reading of prior recorded testimony of witnesses.

II.

WHETHER THE PETITIONER WAS DENIED DUE PROCESS IN THAT THE USE OF A FORMER CONVICTION WAS NOT A FELONY IN OKLAHOMA?

The Petitioner argues that if the Kansas conviction had occurred in Oklahoma, it would have been a misdemeanor. The Petitioner was a defendant in the District Court of Sedwick County, Kansas, in case no. CR-73-83, and pled guilty to the crime of Burglary (21 K.S.A. § 3715) which states as follows:

Burglary is knowingly and without authority entering into or remaining within any build-

ing, mobile home, tent or other structure, or any motor vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a felony therein.

The Court having reviewed 21 K.S.A. § 3715 and § 4501 determines that burglary is a felony in Kansas, therefore it was proper for the sentencing court to take into consideration the Petitioner's previous conviction for the crime of burglary in sentencing in the subsequent crime of robbery in the State of Oklahoma. Therefore the Petitioner was not denied due process as alleged in ground II.

III.

WHETHER THE PETITIONER WAS PLACED
IN DOUBLE JEOPARDY BECAUSE HE
RECEIVED A GREATER SENTENCE ON
RETRIAL FOR THE SAME OFFENSE.

At the Petitioner's first trial, the jury returned a sentence of ten (10) years. Then the Petitioner appealed that conviction which was reversed. Petitioner was granted a new trial before a jury and received a sentence of thirty (30) years.

The trial court, in imposing sentence, is empowered to impose a more severe sentence upon remand if the record reflects reasons justifying it. U.S. v. Latimer, 548 F.2d 311 (Tenth Cir. 1977). Neither the double jeopardy provision nor the Equal Protection clause of the U. S. Constitution impose an absolute bar to a more severe sentence on reconviction. However, when a judge imposes a more severe sentence upon a defendant after a new trial, he must affirmatively give his reasons for doing so. North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072 (1969).

In Chaffin v. Stynchcombe, 412 U.S. 17, 93 S.Ct. 1977, 36 L.Ed.2d 714 (1973), the court held the Pearce rule does not apply where the second sentence is imposed by a jury.

The jury in the second trial after hearing the evidence presented, returned a verdict of guilty and sentence of thirty (30) years. After a careful examination of the file and the sentence imposed, it is the opinion of this Court that Petitioner's third ground for relief must be dismissed. The sentence was within the

punishment prescribed by statute and the double jeopardy argument urged by Petitioner is not valid under the circumstances of this case.

IV.

WHETHER THE COURTS OF THE STATE OF
OKLAHOMA HAD NO JURISDICTION TO DETERMINE
THE VALIDITY OF THE CERTIFICATION
STATUTE OF THE STATE OF KANSAS?

Petitioner alleges he was a juvenile under the law of Oklahoma and Kansas at the time of the former conviction and was never certified as an adult. The certification statute of the State of Kansas is 38 K.S. Supp., 1979, § 38-808. The Court notes that as to this ground of error, the Petitioner has not exhausted his state court remedies in the State of Kansas. However, the Court also states that, pursuant to Rule 1, Rules of Appellate Procedure in 28 U.S.C. § 2254 actions, it does not have jurisdiction over the proceedings complained of in the Kansas State courts.

IT IS THEREFORE ORDERED THAT the Petition for Writ of Habeas Corpus, be and the same is hereby denied.

It is so Ordered this 24th day of November, 1980.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 21 1980

AERO VIDEO CORPORATION,
an Oklahoma corporation,
and GLENN E. WYNN, an
individual,

Plaintiffs,

vs.

SENTINEL RESEARCH, INC.,
an Oklahoma corporation,
and JAMES W. BOLT, an
individual,

Defendants.

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

Case No. 79-C-504-~~B~~C

CONSENT ORDER OF JUDGMENT

THIS MATTER comes on for hearing before the undersigned United States District Judge for the Northern District of Oklahoma pursuant to the joint Application for Entry of Consent Judgment upon joint Stipulations filed herein by the plaintiffs, AERO VIDEO CORPORATION, an Oklahoma corporation, and GLENN E. WYNN, an individual, by and through their attorney of record, P. Thomas Thornbrugh; the defendant SENTINEL RESEARCH, INC., an Oklahoma corporation, by and through its attorney, John R. Williams, and the defendant, JAMES W. BOLT, an individual, and his attorney, Michael L. Fought.

The Court having examined the files and records herein together with the aforesaid Application for Entry of Consent Judgment upon joint Stipulations, and being fully advised in the premises finds that the Application for Entry of Consent Judgment upon joint Stipulations should be and the same is hereby granted.

The Court further finds that this Court has jurisdiction over the subject matter and the parties herein and that the personal property which is the subject of this action and Consent Order is one (1) Cessna Aircraft, Model T207, Serial No. 20700342; F.A.A. registration number N1742U and which aircraft is presently owned by Sky Flite Incorporated, an Oklahoma corporation.

The Court further finds that the mechanic's lien dated July 6, 1978, filed July 7, 1978, and recorded July 18, 1978, as document number I03516; which mechanic's lien is filed by the defendant SENTINEL RESEARCH, INC., an Oklahoma corporation, against the plaintiff, AERO VIDEO CORPORATION, in the sum of Fourteen thousand three hundred twenty-six and no/100 Dollars (\$14,326.00) is invalid, that said lien constitutes a wrongful cloud upon the title of said aircraft and that the said lien should be, and the same is ordered, adjudged and decreed to be null and void and of no legal force or effect.

The Court further finds that the assignment of lien document number I03516 dated September 18, 1978, filed September 25, 1978, refiled October 24, 1978, and recorded October 26, 1978 as document number U42576; which assignment is by and between the defendant SENTINEL RESEARCH, INC., an Oklahoma corporation, and defendant, JAMES W. BOLT, an individual, is invalid, that the same constitutes a wrongful cloud upon the title of said aircraft and that said assignment of lien should be, and the same is hereby ordered, adjudged and decreed to be null and void and of no legal force or effect.

The Court further finds that plaintiffs should be and they are hereby allowed to withdraw their claims for the assessment of attorney's fees and costs against defendants, and each of them, and their attorneys, and each of them, and that plaintiffs should be, and they are hereby allowed to dismiss with prejudice the allegations contained in plaintiffs' Second Cause of Action.

The Court further finds that the defendant BOLT should be, and he is hereby allowed to withdraw and dismiss with prejudice each and every allegation contained in his Amended Answer and Cross-Complaint.

The Court further finds that the defendant SENTINEL RESEARCH, INC., an Oklahoma corporation, should be, and it is hereby authorized and allowed to withdraw its Answer to plaintiffs' Complaint.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the mechanic's lien dated July 6, 1978, filed July 7, 1978, and recorded July 18, 1978 as document number I03516; which mechanic's lien is filed by SENTINEL RESEARCH, INC., an Oklahoma corporation, against AERO VIDEO CORPORATION, an Oklahoma corporation, in the sum of Fourteen thousand three hundred twenty-six and no/100 Dollars (\$14,326.00) is invalid, that the same constitutes a wrongful cloud upon the title of said aircraft, Serial No. 20700342, F.A.A. registration number N1742U, and that said mechanic's lien is hereby ordered, adjudged and decreed to be null and void and of no legal force or effect.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the assignment of lien document number I03516 dated September 18, 1978, filed September 25, 1978, refiled October 24, 1978, and recorded October 26, 1978, as document number U42576; which assignment of lien is by and between SENTINEL RESEARCH, INC. and JAMES W. BOLT is invalid, that said assignment constitutes a wrongful cloud upon the title of said aircraft and that said assignment of lien is hereby ordered, adjudged and decreed to be null and void and of no legal force or effect.

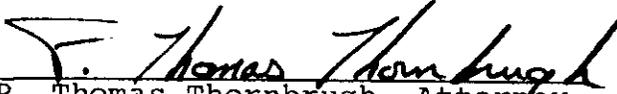
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that plaintiffs' Second Cause of Action is dismissed with prejudice.

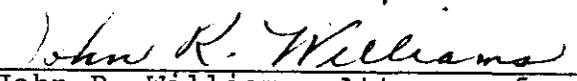
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that defendant JAMES W. BOLT'S Amended Answer and Cross-Complaint is dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that defendant SENTINEL RESEARCH, INC.'S Answer is stricken upon stipulation and that plaintiffs' claims for assessment of attorney's fees and costs against defendants, and each of them, and defendants' attorneys, and each of them, are hereby stricken upon stipulation.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:


P. Thomas Thornbrugh, Attorney
for Plaintiffs, and each of them


John R. Williams, Attorney for
Sentinel Research, Inc.


James W. Bolt, Defendant


Michael L. Fought, Attorney for
James W. Bolt

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL C. MILLER,)
)
 Defendant.)

CIVIL ACTION NO. 80-C-409-C

NOV 19 1980
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DEFAULT JUDGMENT

This matter comes on for consideration this 19th
day of November, 1980, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney for the Northern District of
Oklahoma, and the Defendant, Michael C. Miller, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendant, Michael C. Miller, was personally
served with Summons and Complaint on August 1, 1980, and that
Defendant has failed to answer herein and that default has been
entered by the Clerk of this Court.

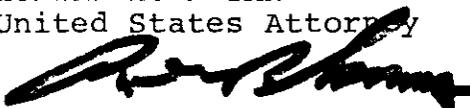
The Court further finds that the time within which
the Defendant could have answered or otherwise moved as to the
Complaint has expired, that the Defendant has not answered or
otherwise moved and that the time for the Defendant to answer
or otherwise move has not been extended, and that Plaintiff is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

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that
the Plaintiff have and recover Judgment against Defendant, Michael C.
Miller, for the principal sum of \$1,474.65 plus interest at the
legal rate from the date of this Judgment until paid.

131 W. Dace Cook
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

FILED

1979 10 20

60

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

CLYDE E. SARGENT,)
)
Plaintiff,)
)
vs.)
)
E.W.ALLENSWORTH, M.D.,)
)
Defendant.)

No. 79-C-682-BT ✓

O R D E R

It is well settled that for federal jurisdiction to attach under 28 U.S.C. §1332, diversity of citizenship must be present on the day when the suit is commenced. See e.g. Great American Insurance Company v. Louis Lesser Enterprises, 353 F.2d 997 (8th Cir. 1965).

In Oklahoma, an action is deemed commenced by properly filing a petition and causing a summons to be issued thereon. 12 Okl.Stat.Ann. §151. When a plaintiff causes an alias summons to be issued, the alias summons renders the original summons void. Parton v. Iven, 354 P.2d 211 (Okl.1960). The general rule is that if the first summons is issued and served, the alias summons becomes the original summons and the one on which the jurisdiction of the Court depends. Harder v. Woodside, 165 P.2d 841 (Okl. 1946).

In the present case, the first summons was filed September 24, 1979, when plaintiff was a citizen of Arkansas. In October of 1979 plaintiff became a citizen of Oklahoma.

On September 15, 1980, plaintiff caused an alias summons to be issued upon defendant. Under the law, the date on which the alias summons was issued is the date when the suit is deemed commenced. The Court must focus on this point in time to determine whether federal jurisdiction exists. See Harder, supra.

The Court finds that on the date when the alias summons issued, plaintiff and defendant were both citizens of Oklahoma. Therefore, the action lacks the diversity of citizenship necessary for federal jurisdiction under 28 U.S.C.A. §1332.

In view of the above, the Court finds that defendant's Motion to Dismiss should be sustained and the cause of action dismissed.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

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

11-18-80

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

FILED

NOV 19 1980

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MORGAN-ROURKE AIRCRAFT)
SALES, INC., an Oklahoma)
corporation,)
)
Plaintiff,)
)
v.)
)
METRO AIR, INC., a)
California corporation,)
)
Defendant.)

No. 79-C-722-E ✓

O R D E R

The Court has before it for consideration the Findings and Recommendations of the Magistrate filed on November 5, 1980, in which it is recommended that Defendant's Motion to Dismiss be sustained. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

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

It is so Ordered this 18th day of November, 1980.



JAMES J. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NOV 19 1980

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

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-95-E
)	
vs.	)	Tract No. 269-Part A
)	
60.00 Acres of Land, More or	)	As to Gas Rights <u>only</u>
Less, Situate in Washington	)	in the estate taken.
County, State of Oklahoma,)	
and Walter S. Hoyt, et al.,)	
and Unknown Owners,)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #400-14)

J U D G M E N T

NOW, on this 18th day of November, 1980, this matter came on for non-jury trial, before the Honorable James O. Ellison, Judge of the United States District Court for the Northern District of Oklahoma. Plaintiff, United States of America, appeared by Hubert A. Marlow, Assistant United States Attorney, for the Northern District of Oklahoma. None of the defendants appeared either in person or by counsel. After hearing the evidence presented at the trial and being fully advised in the premises, the Court finds and concludes that:

1.

This judgment applies to the entire estate condemned in the tract listed in the caption hereof, as such estate and tract are described in the Complaint filed in this action.

2.

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

3.

Service of Process has been perfected by personal service upon each of the defendants in this case except Walter S. Hoyt, and has been perfected as to him by publication, as provided by Rule 71A of the Federal Rules of Civil Procedure.

4.

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 1. 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.

5.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of subject property a certain sum of money, and none of this deposit has been disbursed, as set out below in paragraph 11.

6.

On the date of taking of the subject property the owner thereof, as shown by the land records of Washington County, State of Oklahoma, was the person whose name is shown below in paragraph 11. No other defendants appeared at the trial to make any claim for compensation for the subject taking. Therefore, the person named below in paragraph 11 is entitled to receive the just compensation awarded by this judgment.

7.

At the trial of this case Mr. Donald Warnken testified as a witness for the Plaintiff. Mr. Warnken is a petroleum engineer and is qualified by training and experience to testify as an expert witness regarding the value of gas minerals under the subject tract. Mr. Warnken testified that the decrease in market value of the gas rights under the subject tract, caused by the subordination taken in this case, was \$540.00. Since no evidence was given by any other witness, and Mr. Warnken's opinion was supported by the factual evidence presented by him, the Court will adopt his opinion as the basis for the award of just compensation for the subject taking.

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 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 11.

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 Tract No 269-Part A, as such tract is described in the Complaint filed herein, and such tract, 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.

10.

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 tract was the defendant whose name appears below in paragraph 11, and the right to receive the just compensation for the taking of such estate is vested in the owner so named.

11.

It Is Further ORDERED, ADJUDGED and DECREED that the award of just compensation for the estate taken in subject tract is as shown in the following schedule:

Tract No. 269-Part A

Owner: Walter S. Hoyt

<u>Award</u> of just compensation		
pursuant to Court's findings --	\$540.00	\$540.00
Deposited as estimated compensation ---	270.00	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$540.00
Deposit deficiency -----	\$270.00	

12.

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 tract as shown in paragraph 11, in the total amount of \$270.00,

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 tract in this civil action.

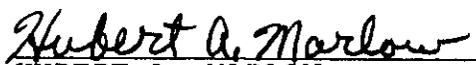
13.

It Is Further ORDERED that the Clerk of this Court shall not disburse the deposit for the subject tract to the owner at the present time because the address of said owner is wholly unknown. In the event that such owner is located the Court will enter an appropriate order of disbursal.

In the event that the balance due to such defendant remains on deposit for a period of five years from the date of filing this judgment, then, after that period, the Clerk of this Court, without further order, shall disburse the balance on deposit for subject tract to the Treasurer of the United States of America, pursuant to the provisions of Title 28, Section 2042, U.S.C.


UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW

Assistant U. S. Attorney

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

TURNPIKE AUTO SALVAGE, INC.,)
an Oklahoma corporation,)

Plaintiff,)

vs.)

THE AMERICAN ROAD INSURANCE)
COMPANY, a Michigan corpora-)
tion, and FORD MOTOR COMPANY,)
a Delaware corporation,)

Defendants.)

Case Number 80-C-48-C

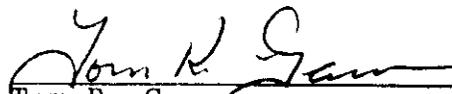
F I L E D

NOV 19 1980

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

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED by and between the Plaintiff,
Turnpike Auto Salvage, Inc., and the Defendant, The American
Road Insurance Company and Ford Motor Company, that the above-
captioned case is dismissed with prejudice.



Tom R. Gann
ATTORNEY FOR THE PLAINTIFF



Thomas G. Marsh
ATTORNEY FOR THE DEFENDANTS

FILED

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

NOV 19 1980

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

KAREN KLAR,)
)
 Plaintiff,)
)
 vs.) No. 79-C-665-E
)
 ORKIN EXTERMINATING CO., INC.)
)
 Defendant.)

ORDER OF DISMISSAL WITH PREJUDICE

This cause came on to be heard on plaintiff's Motion To Dismiss With Prejudice the above entitled cause; the Court finds after due deliberation that this cause should be dismissed with prejudice and the defendant, Orkin Exterminating Co., Inc., should be and is released from any and all claims which said plaintiff may have against said defendant arising out of the transaction and occurrence which is the subject of this lawsuit.

IT IS THEREFORE ORDERED that this cause be and is hereby dismissed with prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FILED

NOV 17 1980

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

EDNA M. CARROLL, an individual,)
and d/b/a EDDI CARROLL OIL)
PRODUCERS,)
)
Plaintiff,)
)
vs.)
)
JON M. CARROLL, an individual,)
and d/b/a CARROLL OIL PRODUCERS,)
)
Defendant.)

No. 80-C-197-E

ORDER AND JUDGMENT TAXING
ATTORNEYS' FEES AS COSTS

This matter comes on for hearing this 5th day of November, 1980, on defendant's motion to tax attorneys' fees as costs in this action. Defendant appears by his counsel, Gable, Gotwals, Rubin, Fox, Johnson & Baker, by Teresa B. Adwan, and plaintiff appears by her counsel, Moyers, Martin, Conway, Santee & Imel, by Steve Knippenberg.

The Court having examined the files and the pleadings and briefs submitted by the parties, and having considered the authorities cited therein, and having heard the arguments of counsel, and being fully advised in the premises, finds:

That, defendant having prevailed herein on his motion to dismiss this action for lack of personal jurisdiction, the defendant is the "prevailing party" in this action within the meaning of 12 O.S. §936, and such statute accordingly authorizes the award of attorneys' fees as costs in this action.

The Court further finds that attorneys' fees should be allowed in this case.

The Court finds that the amount of fees claimed in defendant's verified bill of costs and motion, in the amount of \$2,921.25, is reasonable, that defendant's counsel's services were necessary, and that the parties have stipulated to their necessity and reasonableness.

The Court further finds that attorneys' fees should be awarded and taxed as costs in the sum of \$2,921.25.

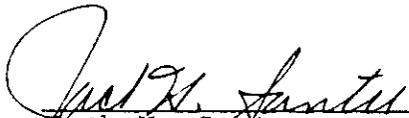
IT IS THEREFORE ORDERED that attorneys' fees in the amount of \$2,921.25 be and they are hereby taxed as costs against the plaintiff in this action and judgment is granted in favor of the defendant and against the plaintiff in the sum of \$2,921.25.

DATED this 14th day of November, 1980.

S/ JAMES C. LILSON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



Jack H. Santee
Steve Knippenberg
Attorneys for Plaintiff



Timothy M. McKee
Sidney G. Dunagan
Teresa B. Adwan
Attorneys for Defendant

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

FILED
NOV 17 1980

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

LELAND EQUIPMENT COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES L. GUNNELLS and)
 GARY N. COBB,)
)
 Defendants.)

NO. 79-C-711-E

JOURNAL ENTRY OF JUDGMENT

Now on this 14th day of November, 1980, the Court having previously ruled on motions presented by Plaintiff and Defendants on October 17, 1980, and ruled upon that day in open Court, it is hereby

ORDERED, DECREED AND ADJUDGED, that Plaintiff have judgment against Defendants, and each of them, jointly and severally, with interest thereon at the rate of 1½% per month from February 13, 1979 until the day of judgment, in the sum of \$352,742.40, as provided by the terms of the promissory note; together with the costs and disbursements of this action, with interest on the whole at the rate of 12% from judgment until paid; and it is further

ORDERED, ADJUDGED AND DECREED, that Defendant Gunnells take nothing for his Counter-claim, and that it be, and the same hereby is, dismissed pursuant to Rule 12(b)(6) Fed. R. Civ. P.

Plaintiff may file an application to tax as costs a reasonable attorneys fee, and upon hearing and determination of the reasonableness thereof, the Court will grant such fee, the same to be entered as part of this judgment.

Done this 14th day of November, 1980.


UNITED STATES DISTRICT JUDGE

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

FILED

1980 17 1000

DAVID O. NORVELL,)
)
 Plaintiff,)
)
 vs.) No. 80-C-154-E
)
 SYS MANUFACTURING CO., d/b/a)
 SYSTEMS MANUFACTURING CO., a)
 foreign corporation,)
)
 Defendant.)

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

O R D E R

The Court has before it for consideration Plaintiff's Motion to Remand. After carefully reviewing the files and the relevant authorities, this Court hereby makes the following determinations.

The Plaintiff originally filed an action against the Defendant under the name of "Systems Manufacturing Co.". The summons was issued to the Secretary of State who sent it to Systems Manufacturing Co. On January 4, 1980, the Vice-President of the Defendant company signed the return receipt.

Thereafter, the Plaintiff realized the Defendant's correct legal name is "SYS Manufacturing Co." although the Defendant does business as Systems Manufacturing Company. In order to correct an erroneous answer date in the summons and the name of the Defendant, the Plaintiff filed a Motion to Amend Summons. The Plaintiff had an alias summons issued and amended its Complaint to reflect the correct name of the Defendant. The return of service on the alias summons shows that on March 19, 1980, the Vice-President of Defendant company received it.

On March 25, 1980, the Defendant filed its removal petition stating that diversity of citizenship exists. The Plaintiff on the 25th day of April filed its Motion to Remand alleging that the proper removal papers had not been attached and that the removal petition was not timely filed. The Plaintiff alleged that the original petition contained merely a misnomer and the amended petition only changed the Defendant's legal name, therefore the Defendant should have removed within 30 days of the

initial petition. The parties have both filed briefs in support of their respective positions.

28 U.S.C. § 1446(b) provides in part:

"The petition for removal ... shall be filed within 30 (thirty) days after receipt by the defendant, through service or otherwise ..."

"If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable."

The fundamental principle which is the basis of the statute is that the time to remove begins to run when the defendant receives notice of the action. An amendment of the complaint will not revive the time for removal if the case previously was removable but the defendant failed to exercise his right to do so. Wright, Miller & Cooper, Federal Practice & Procedure: Jurisdiction § 3732.

In the case at hand, George Harvey, the Vice-President of SYS Manufacturing Co., d/b/a Systems Manufacturing Co., received the copy of the original Petition on January 4, 1980. Diversity jurisdiction was clear from the original petition regardless of the misnomer in the Defendant's business name. The Defendant did respond to the original petition by filing various pleadings and using the name of Systems Manufacturing Co.

Not all amendments to a Complaint will revive the removal period. There must be an amended pleading and a ground for asserting removability that exists for the first time. O'Bryan v. Chandler, 496 F.2d 403 (Tenth Cir. 1974); Lee v. Volkswagen of America, Inc., 429 F.Supp. 5 (W.D. Okla. 1976).

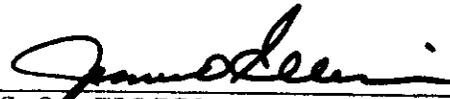
Based upon a careful reading of the briefs and the applicable authorities, it is the order of this Court that the Motion to Remand on the grounds that Defendant's Petition for Removal was untimely filed is hereby granted.

IT IS THEREFORE ORDERED That Plaintiff's Motion to Remand be and hereby is sustained, and the Court remands this case to

the District Court of Creek County, State of Oklahoma, Bristow
Division.

The Clerk of the Court is hereby directed to take the
necessary action to remand this case without delay.

It is so Ordered this 17th day of November, 1980.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

NOV 17 1980

WILLIAM THOMAS WRIGHT,)
)
Petitioner,)
)
vs.) No. 80-C-470-E
)
A. I. MURPHY, Warden, Okla-)
homa State Penitentiary and)
THE ATTORNEY GENERAL FOR THE)
STATE OF OKLAHOMA,)
)
Respondents.)

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, pursuant to 28 U.S.C. § 2254.

Petitioner was convicted of the offense of Burglary in the Second Degree, After Former Conviction of a Felony, after trial by jury in the District Court of Tulsa County, Oklahoma, Case No. CRF-77-1542. Petitioner was sentenced to a term of 55 years. On appeal to the Oklahoma Court of Criminal Appeals, the judgment was affirmed, Wright v. State, 50 Okla. B. J. 2277 (October 17, 1979, No. F-78-451), but his sentence modified to 40 years, for reasons not relevant to this proceeding.

The State, at the punishment stage of Petitioner's trial, produced a "three-way" certificate from Sedgwick County, Kansas, the journal entry of judgment, and the appearance docket of that court, to prove that Petitioner had been convicted of a felony.

Petitioner contends that at that stage of the trial, the evidence produced by the State was insufficient to discharge the burden placed upon it when it seeks to prove that a defendant was formerly convicted of a felony.

The Petition in this case was filed on August 21, 1980, the State's Response filed on September 29, 1980, the transcript of the state proceedings having been received on September 26, 1980.

The Court, having reviewed the entire file in this matter, including the transcript of the state proceedings, concludes that this case is now ready for dispositive ruling.

In Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745 (1963), the Supreme Court laid down the test applicable to a determination of whether the petitioner was entitled to an evidentiary hearing:

We hold that a federal court must grant an evidentiary hearing to a habeas applicant under the following circumstances: If (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state court hearing; or (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing.

372 U.S. at 313, 88 S.Ct. at 757. See also 28 U.S.C. § 2254(d); Rule 8, Rules Governing § 2254 cases.

In reviewing the record, under the test of Townsend, the Court finds that an evidentiary hearing is not necessary.

In Williams v. Page, 289 F.Supp. 661 (E. D. Okla. 1968), the Petitioner contended that he was denied the right of confrontation because his former conviction was proven only by the introduction of the information and judgment of conviction in the former case. Speaking to this contention, the court said:

[T]he state is not limited in the manner in which it proves the former conviction, which may be done by presentation of the record of the former conviction, by cross-examination of the accused, or by stipulation of prosecution and defense.

289 F.Supp. at 663.

In its Syllabus in Williams v. State, 364 P.2d 702 (Okla. Crim. 1961), the court said:

In regard to proof of former conviction ... the identity of name of the defendant and the person previously convicted is prima facie evidence of identity of person, and, in the absence of rebutting testimony, supports a finding of such identity. This will leave the question of identity to be determined by the jury, after a proper instruction has been given, upon a consideration of all surrounding facts and circumstances, such as commonness or unusualness of the name, the character of the former crime or crimes, and the place of its commission.

See also Haughey v. State, 447 P.2d 1019 (Okla. Crim. 1969); Holt v. State, 551 P.2d 285 (Okla. Crim. 1976); Louder v. State, 568 P.2d 344 (Okla. Crim. 1977); Wilson v. State, 568 P.2d 1323 (Okla. Crim. 1977), and the cases collected in Annot., "Evidence of Identity for Purposes of Statute as to Enhanced Punishment in Case of Prior Conviction," 11 A.L.R.2d 870 (1950).

In this case, after the return of the jury's verdict of guilty in the first stage of the proceedings, the jury was read the second stage of the State's Information, charging that Petitioner had been convicted on July 11, 1969, in the District Court of Sedgwick County, Kansas, of the crime of first degree robbery, a felony. The State introduced its Exhibit No. 7, a "three-way certificate" signed by the Clerk of the District Court of Sedgwick County, Kansas, a Judge of that Court, and the Deputy County Attorney. The documents certified show that a William Thomas Wright was represented by counsel in Case No. CR-5773, State of Kansas v. William Thomas Wright, that he was found guilty after trial to a jury, that he was sentenced to a term of not less than 10 nor more than 21 years, and that there was no appeal pending of that conviction.

After reading Exhibit No. 7, the State rested. The Defense then waived opening statement and rested.

In Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979), the Supreme Court stated:

We hold that in a challenge to a state criminal conviction brought under 28 U.S.C. § 2254 - if the settled procedural prerequisites for such a claim have otherwise been satisfied - the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt.

99 S.Ct. at 2792.

In explaining its holding, the Court had previously stated:

After Winship [397 U.S. 358, 90 S.Ct. 1068] the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed,

but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. But this inquiry does not require a court to "ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt." Woodby v. INS, 385 U.S. 276, 282, 87 S.Ct. 483, 486, 17 L.Ed.2d 362. Instead the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Johnson v. Louisiana, 406 U.S. 356, 362, 92 S.Ct. 1620, 33 L.Ed.2d 152. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution.

99 S.Ct. at 2789 (footnotes omitted).

Applying the test announced in Jackson to this case, and viewing the evidence produced by the State in the light most favorable to the prosecution, the Court is convinced that a rational trier of fact could have concluded that Petitioner was convicted of a felony in Kansas.

It is, therefore, the Order of this Court that the Petition be denied.

Entered this 14th day of November, 1980.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

SAM BRANHAM, a/k/a SAMUAL BRANHAM,)
JR., and GUY ANN BRANHAM,)
individually and as partners; THE)
FIRST NATIONAL BANK AND TRUST)
COMPANY OF VINITA, OKLAHOMA; CRAIG)
COUNTY WATER DISTRICT NO. 2, INC.,)
a non-profit Oklahoma corporation;)
SHANAHAN-PARKER LUMBER CO., an)
Oklahoma corporation; and COUNTY)
TREASURER and BOARD OF COUNTY)
COMMISSIONERS OF CRAIG COUNTY,)
OKLAHOMA,)

Defendants.)

CIVIL ACTION NO. 80-C-244-C

FILED

(1980)

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17th
day of November, 1980, the Plaintiff appearing by
Robert P. Santee, Assistant United States Attorney; and the
Defendant, the First National Bank and Trust Company of
Vinita, Oklahoma, appearing by its attorney O. B. Johnston
III; and the Defendants, Sam Branham, a/k/a Samuel Branham,
Jr.; and Guy Ann Branham, individually and as partners;
Craig County Water District No. 2, Inc., a non-profit
Oklahoma corporation; Shanahan-Parker Lumber Co., an
Oklahoma corporation; and County Treasurer and Board of
County Commissioners of Craig County, Oklahoma, appearing
not.

The Court being fully advised and having examined

the file herein finds that Defendants Sam Branham, a/k/a Samual Branham, Jr. and Guy Ann Branham, individually and as partners, were served by publication as shown on the Proof of Publication filed herein; that Defendants, the First National Bank and Trust Company of Vinita, Oklahoma, and Craig County Water District No. 2, Inc., a non-profit Oklahoma corporation, were served with Summons and Complaint on May 2, 1980; that the Defendant, Shanahan-Parker Lumber Co., an Oklahoma corporation, was served with Summons and Complaint on May 3, 1980; that Defendants, County Treasurer and Board of County Commissioners of Craig County, Oklahoma, were served with Summons and Complaint on May 2, 1980; all as appear from the United States Marshal's Service herein.

It appearing that the Defendant, the First National Bank and Trust Company of Vinita, Oklahoma, has duly filed its answer herein on May 20, 1980 and that the Defendants, Sam Branham, a/k/a Samual Branham, Jr., and Guy Ann Branham, individually and as partners; Craig County Water District No. 2., Inc., a non-profit Oklahoma corporation; Shanahan-Parker Lumber Co., an Oklahoma corporation; and County Treasurer and Board of County Commissioners of Craig County, Oklahoma; 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 Craig County, Oklahoma, within the Northern Judicial District of Oklahoma:

A tract, piece or parcel of land lying in the Northeast Quarter of the Southeast Quarter of Section One (1), Township Twenty-five (25) North, Range Eighteen (18) East of Indian Meridian, more particularly described as follows, to-wit:

Beginning at a point on the Northeast Corner of said Northeast Quarter of the Southeast Quarter; thence Westerly on and along the North boundary of said Northeast Quarter of the Southeast Quarter go 1223.0 feet to the Center line of U.S. Highway #60; thence Southeasterly on a curve to the right having a radius of 5729.6 feet, go 859.1 feet; thence South 52 degrees 27 minutes East go 705.4 feet to a point on the East boundary of said Northeast Quarter to the Southeast Quarter; thence go North on and along said East boundary a distance of 903.0 feet to the point of beginning, and containing 12.2 acres, more or less, according to the United States Government Survey thereof.

THAT the Defendants, Sam Branham, a/k/a Samual Branham, Jr., and Guy Ann Branham, individually and as partners, did on the 9th day of August, 1976, execute and deliver to the Oklahoma State Bank & Trust Company, Vinita, Oklahoma, their mortgage and mortgage note in the sum of \$37,500.00 with 10 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

THAT by Assignment of Real Estate Mortgage dated May 14, 1979, the Oklahoma State Bank & Trust Company, Vinita, Oklahoma, assigned and transferred said note and mortgage to the Small Business Administration.

The Court further finds that Defendants Sam Branham, a/k/a Samual Branham, Jr., and Guy Ann Branham, individually and as partners, 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 principal sum of \$34,410.07 together with interest accrued thereon in the amount of \$5,380.13 as of February 6, 1980, plus interest accruing thereafter at the rate of \$10.04 per day until paid, plus the costs of this action accrued and

accruing.

The Court further finds that plaintiff is entitled to judgment against The First National Bank and Trust Company of Vinita, Oklahoma, determining that the lien of the plaintiff is prior to and superior to the lien of the defendant The First National Bank and Trust Company of Vinita, Oklahoma, and that the Cross-Petition of the defendant The First National Bank and Trust Company of Vinita, Oklahoma, be and the same is hereby dismissed without prejudice for the reason that the defendant The First National Bank and Trust Company of Vinita, Oklahoma, did not obtain service upon the defendants Sam Branham, a/k/a Samual Branham, Jr., and Guy Ann Branham, individually and as partners.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Sam Branham, a/k/a Samual Branham, Jr., and Guy Ann Branham, individually and as partners; for the principal sum of \$34,410.07 together with interest accrued thereon in the amount of \$5,380.13 as of February 6, 1980, plus interest accruing thereafter at the rate of \$10.04 per day until paid, 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 against the defendant The First National Bank and Trust Company of Vinita, Oklahoma, determining the lien of the plaintiff to be prior to and superior to that of said defendant and further, that

the Cross-Petition of the defendant The First National Bank and Trust Company of Vinita, Oklahoma, be and the same is hereby dismissed without prejudice against the defendants Sam Branham, a/k/a Samual Branham, Jr., and Guy Ann Branham, individually and as partners.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Craig County Water District No. 2, Inc., a non-profit Oklahoma Corporation; and Shanahan-Parker Lumber Co., an Oklahoma corporation.

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, subject to outstanding taxes which are a lien on this property, with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

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

W. H. New Cook
UNITED STATES DISTRICT JUDGE

APPROVED

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney


BY: ROBERT P. SANTEE
Assistant United
States Attorney


O. B. JOHNSTON III
Attorney for Defendant First
National Bank and Trust
Company of Vinita

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

FILED
NOV 17 1980

CAMILLA A. ADAMS,)
)
 Plaintiff,)
)
 vs.) No. 80-C-273-B
)
 SAFEWAY STORES, INC.,)
)
 Defendant.)

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

ORDER OF DISMISSAL

Upon the representation of the parties that this case has been settled and upon their Stipulation that it may be dismissed with prejudice,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this case shall be and the same is hereby dismissed with prejudice to the refiling thereof.

S. Thomas R. Brett
UNITED STATES DISTRICT JUDGE

APPROVED:

[Signature]
Attorney for Plaintiff

[Signature]
Attorney for Defendant

FILED

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

NOV 1 1980

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
GINGER L. ARCHER,)
)
Defendant.)

CIVIL ACTION NO. 79-C-469-Bt

ORDER OF DISMISSAL

NOW, on this 14th day of November, 1980, there came on for consideration the Notice of Dismissal filed herein on October 16, 1980, by the Plaintiff, United States of America. The Court finds this action, based on such Notice of Dismissal, should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this action be and the same is hereby dismissed.

/s/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Approved:

HUBERT H. BRYANT
United States Attorney

By: Paula S. Ogg
PAULA S. OGG
Assistant United States Attorney

Lawrence A. Mgsoud
LAWRENCE A. MGSOUD
Counsel for Defendant

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

FILED
NOV 17 1980 *Am*

BILLY JOHN HUGHES,)
)
 Petitioner,)
)
 vs.)
)
 ATTORNEY GENERAL OF THE)
 STATE OF OKLAHOMA,)
)
 Respondent.)

No. 80-C-552-E ✓
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.

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 (Tenth Cir. 1968); Omo v. Crouse,
395 F.2d 757 (Tenth Cir. 1968); McDonald v. Faulkner, 378 F.Supp.
573 (E.D. Okla. 1974).

In addition, special circumstances must be present before the
federal courts exercise their habeas corpus powers to stop state
criminal proceedings, Dolack v. Allenbrand, 548 F.2d 891 (Tenth
Cir. 1977); Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d
669; Ex Parte Royall, 117 U.S. 241, 6 S.Ct. 734, 29 L.Ed. 868.

Therefore, since Petitioner has not exhausted his state
court remedies and for the reason that the special circumstances
necessary to prevent state criminal proceedings are not present,
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.

It is so Ordered this 17TH day of November, 1980.



JAMES C. ELLISON
UNITED STATES DISTRICT JUDGE

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

WESTERN WORLD INSURANCE
COMPANY, INC., a foreign
insurance corporation,

Plaintiff,

vs.

COY BLAGG WRECKING COMPANY,
an Oklahoma partnership; DYKE
EXPLOSIVE SERVICE COMPANY, INC.,
an Oklahoma corporation;
HENRY PARKER, an individual
d/a/b A & A WRECKING COMPANY;
DEBRA A. COE, individually and
as mother and next friend of
FREDERICK C. COE, IV, and
ZACHARY A. COE, minors; and
MICHAEL T. SHIREMAN and DOROTHY
J. SHIREMAN, individually and as
husband and wife; and FEDERATED
MUTUAL INSURANCE COMPANY, an
insurance corporation,

Defendants.

80-C-325-BT

FILED

NOV 12 1980

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

ORDER

Plaintiff commenced this action on June 10, 1980, seeking a declaratory judgment as to its rights and liabilities under a certain policy of insurance, No. GLA 72045, effective 9-7-78 to 9-7-79, issued by plaintiff to Coy Blagg Wrecking Company and commonly known as a Manufacturer's or Contractor's Liability Policy, including Owner's or Contractor's Protective Liability coverages, involving the operation of Coy Blagg Wrecking Company at the site of the Connors Hotel a 10-story building in Joplin, Missouri. Certain litigation has been commenced in various courts arising out of the premature collapse of the Connors Hotel Building on November 11, 1978.

Coy Blagg Wrecking Company filed an Answer and Counterclaim. Debra A. Coe, individually and as mother and next friend of Frederick C. Coe, IV, and Zachary A. Coe, minors, has filed an Answer. Dyke Explosive Service Company, Inc., has filed its Answer.

The other named defendants have not made an appearance in this litigation.

On September 30, 1980, plaintiff, Western World Insurance Company, Inc., and defendant, Coy Blagg Wrecking Company, filed a Joint Stipulation and Dismissal, stating they, as the principal parties, had resolved the controversy and agreed the policy of insurance issued by plaintiff covered the incident which occurred on November 11, 1978, at the Connors Hotel Building.

By letter dated October 7, 1989, from her attorney, Debra A. Coe, individually and as mother and next friend of Frederick C. Coe, IV, and Zachary A. Coe, minors, advised the Court of no objection to the dismissal.

The defendant, Dyke Explosive Services Company, Inc. (hereinafter referred to as "Dyke") has filed a response. Dyke does not have any objection to plaintiff admitting the Coy Blagg Wrecking Company was covered under the insurance policy. Dyke, however, opposes the dismissal of the lawsuit, stating the joint dismissal does not remove all issues raised by the pleadings. In support of this contention, Dyke asserts that its answer effectively raises a counterclaim, although not specifically denoted counterclaim. In the prayer of its Answer, Dyke requests the Court enter judgment either dismissing this matter for want of a judicial controversy or enter judgment declaring the policy covers the operation of Dyke. It is this alternative prayer for relief which Dyke asserts constitutes the counterclaim. Dyke contends it is entitled to a determination by this Court as to whether coverage under the policy is afforded Dyke. Dyke indicates it has no objection to the other defendants being dismissed, but contends it is entitled to an order directing plaintiff answer the alleged counterclaim and furnish Dyke a copy of the insurance policy.

A counterclaim seeks affirmative relief, and the burden of pleading a counterclaim is on the party attempting to make use of Rule 13, F.R.Civ.P. The pleading of a counterclaim is subject to the same Rule 8 standards that apply to the statement of any claim for relief. 6 Wright & Miller, Federal Practice and Procedure, §1407.

Implicit in Dyke's prayer for relief is a request for affirmative action which, although not complying with Rule 8, F.R.Civ.P., is subject to amendment in the discretion of the Court.

IT IS, THEREFORE, ORDERED as follows:

1. The Joint Stipulation and Dismissal filed by Western World Insurance Company, Inc. and Coy Blagg Wrecking Company, pursuant to Rule 41, is hereby sustained and the complaint and cause of action are dismissed against all defendants except Dyke Explosive Service Company, Inc.

2. Dyke Explosive Service Company, Inc. is directed to file an Amendment to its Answer properly setting up its alleged cause of action pursuant to Rule 8 within 10 days from this date.

3. Plaintiff, Western World Insurance Company, Inc., is granted 10 days after the amendment is filed to file its answer to the counterclaim.

ENTERED this 17 day of November, 1980.



THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

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

CENTURY GEOPHYSICAL CORPORATION OF)
COLORADO, a Corporation)
)
Plaintiff)
)
vs.)
)
THE ANACONDA COPPER COMPANY, a Division)
of THE ANACONDA COMPANY, a Corporation)
)
Defendant)

No. 80-C-29-E

FILED

NOV 11 1980

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

ORDER

Defendant, Anaconda Copper Company, a division of The Anaconda Company, a corporation, filed a Motion to Dismiss the above captioned cause on the ground that the prerequisite diversity of citizenship necessary to give the Court jurisdiction was lacking. Said motion was set for hearing on November 4, 1980. Plaintiff admitted that if defendant's contentions were correct the Court would not have jurisdiction of the cause. Plaintiff, however, contended that the evidence as to the corporate citizenship of Anaconda Company was not clear from the pleadings on file. The Court thereupon ordered defendant to submit further proof of the corporate citizenship of The Anaconda Company.

On November 6, 1980, defendant filed the Affidavit of Colin Howard, Assistant Secretary of The Anaconda Company. Based upon said affidavit the Court finds that plaintiff is a Colorado Corporation with its principal place of business in Tulsa, Oklahoma while the defendant is a Delaware Corporation with its principal place of business in Denver, Colorado. The Court finds that the necessary diversity of citizenship to give the Court jurisdiction in the instant case is lacking. 28 U.S.C. Sec. 1332(c).

The defendant's motion is therefore sustained and said cause is dismissed.

Dated this 14th day of November, 1980.

James Deane
Judge

11-11-80
I hereby certify that I attached a copy of
the above Affidavit and motion to the above
captioned cause since stated,
11-11-80
James Deane, Judge

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

FILED

NOV 17 1980

BEN PATRICK SNYDER, a minor child,)
by and through his next friend,)
Lowell D. Milburn, Director of the)
Department of Child Care of the)
Baptist General Convention of the)
State of Oklahoma,)

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

Plaintiff,)

No. 80-C-570-B

vs.)

ROBIN LOUISE TABOR, an individual,)
and ST. LOUIS-SAN FRANCISCO RAILWAY)
COMPANY, a Missouri corporation,)

Defendants.)

STIPULATION FOR DISMISSAL WITH PREJUDICE

The parties hereto advise the Court that they have agreed to fully settle this case and thereby stipulate that plaintiff's cause of action be dismissed with prejudice.

George Miller

George Miller
1212 Colcord Building
Oklahoma City, Oklahoma 73102
Attorney for Plaintiff

Ben Franklin

Ben Franklin
1606 Park/Harvey Center
Oklahoma City, Oklahoma 73102
Attorney for Defendant,
St. Louis-San Francisco Railway Co.

ORDER

Upon stipulation of the parties and for good cause shown, plaintiff's cause of action against the defendant, St. Louis-San Francisco Railway Company, is hereby dismissed with prejudice to the refiling of such action.

IT IS SO ORDERED this 17 day of November, 1980.

S/ THOMAS R. BRETT

United States District Judge

FILED

NOV 17 1980

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

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

OKLAHOMA GAS AND ELECTRIC COMPANY,
an Oklahoma corporation,

Plaintiff,

v.

NO. 76-C-231-C

UNITED STATES OF AMERICA, Trustee
and Owner of the legal title to said
land for the use and benefit of a
certain restricted Indian, and

WILLIS E. ROBEDEAUX and JUANITA A.
ROBEDEAUX, his wife; and

THE UNITED STATES OF AMERICA, ACTING
THROUGH THE FARMERS HOME ADMINISTRA-
TION, UNITED STATES DEPARTMENT OF
AGRICULTURE, and

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES, and

CITIZENS STATE BANK, MORRISON,
OKLAHOMA, and

RED ROCK CO-OP,

Defendants.

FILED

NOV 14 1980

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

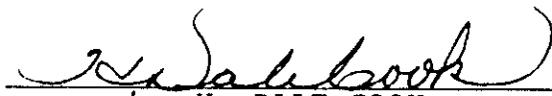
JOURNAL ENTRY AND FINAL DECREE

NOW ON this ²⁶14 day of Nov., 1980, the above matter comes on to be closed by a final order; and the Court being fully advised does find as follows:

That heretofore this Court on the 23rd day of September, 1977 entered its order herein whereby an exchange of properties between Plaintiff and Defendants, Willis E. Robedeaux and Juanita A. Robedeaux, husband and wife, subject to acceptance by the Secretary of Interior, was approved subject to all the terms and conditions therein stated and set forth in a Memorandum of Intent between said parties and attached thereto, to all of which reference is hereby made, and the same is hereby made a part hereof by reference as if completely set forth herein; and the Defendants, Citizens State Bank of Morrison, Oklahoma, and Red Rock Co-op, having appealed said order and holding of this Court to the United States District Court of Appeals, Tenth Circuit, and said Court having upheld and affirmed said order, and the matter having become final;

IT IS THEREFORE THE JUDGMENT OF THIS COURT that said exchange of properties as outlined in said Order be approved and confirmed and that this matter be closed in conformity with such Order.

IT IS FURTHER ORDERED BY THE COURT that the Court Clerk return the Commissioners' Award in the amount of \$66,000.00 to Plaintiff upon the filing of this Journal Entry and Final Decree and the Clerk is so directed.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

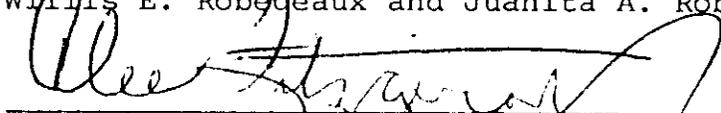
APPROVED:



Paul Walters
Walter A. Shumate
ATTORNEYS FOR PLAINTIFF



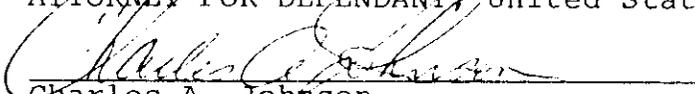
Roy E. Grantham
ATTORNEY FOR DEFENDANTS,
Willis E. Robedeaux and Juanita A. Robedeaux



Cleo Fitzgerald
ATTORNEY FOR DEFENDANT,
Red Rock Co-op.



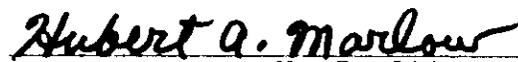
Hubert A. Marlow
Assistant U. S. District Attorney
ATTORNEY FOR DEFENDANT, United States of America, Trustee



Charles A. Johnson
ATTORNEY FOR DEFENDANT,
Citizens State Bank, Morrison, Oklahoma



Ronald R. Hadwiger
ATTORNEY FOR DEFENDANT,
The Equitable Life Assurance Society
of the United States



Assistant U. S. Attorney
ATTORNEY FOR DEFENDANT,
United States of America, Acting Through
the Farmers Home Administration,
U.S. Department of Agriculture

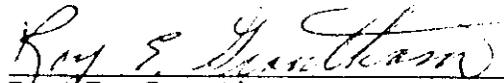
IT IS THEREFORE THE JUDGMENT OF THIS COURT that said exchange of properties as outlined in said Order be approved and confirmed and that this matter be closed in conformity with such Order.

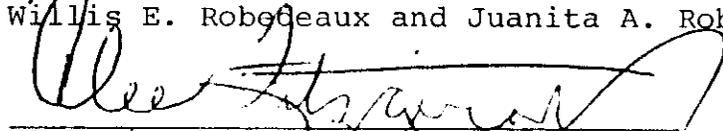
IT IS FURTHER ORDERED BY THE COURT that the Court Clerk return the Commissioners' Award in the amount of \$66,000.00 to Plaintiff upon the filing of this Journal Entry and Final Decree and the Clerk is so directed.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

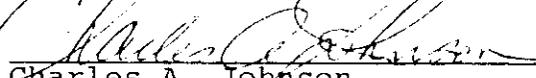
APPROVED:

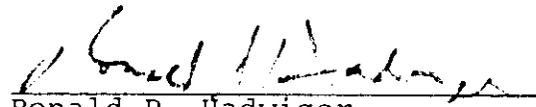

Paul Walters
Walter A. Shumate
ATTORNEYS FOR PLAINTIFF

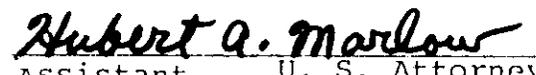

Roy E. Grantham
ATTORNEY FOR DEFENDANTS,
Willis E. Robedeaux and Juanita A. Robedeaux


Cleo Fitzgerald
ATTORNEY FOR DEFENDANT,
Red Rock Co-op.


Hubert A. Marlow
Assistant U. S. District Attorney
ATTORNEY FOR DEFENDANT, United States of America, Trustee


Charles A. Johnson
ATTORNEY FOR DEFENDANT,
Citizens State Bank, Morrison, Oklahoma


Ronald R. Hadwiger
ATTORNEY FOR DEFENDANT,
The Equitable Life Assurance Society
of the United States


Assistant U. S. Attorney
ATTORNEY FOR DEFENDANT,
United States of America, Acting Through
the Farmers Home Administration,
U.S. Department of Agriculture

NOV 14 1980

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

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

KEITH SPILLMAN,)	
)	
Plaintiff,)	
vs.	)	No. 80-C-110-B
)	
NATIONAL MIDWEST SAFE, INC.,)	
an Oklahoma Corporation,)	
)	
Defendant.)	

ORDER DISMISSING PLAINTIFF'S COMPLAINT WITH
PREJUDICE AND STRIKING CAUSE FROM JURY DOCKET

THIS MATTER coming on by way of Defendant's Motion to Dismiss with Prejudice, it is the finding of the Court that the parties hereto have settled the allegations of the complaint and desire the complaint be dismissed with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff's complaint be and is hereby dismissed with prejudice and that this cause be stricken from the November 15, 1980, jury docket.

Thomas A. [Signature]
U. S. District Judge
11-14-80

APPROVED AS TO FORM:

[Signature]
Attorney for Defendant

[Signature]
Attorney for Plaintiff

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

ALLEGHENY LUDLUM CREDIT)
CORPORATION, a Pennsylvania)
corporation,)
)
Plaintiff,)
)
-vs-)
)
PHILLIPS MACHINERY INDUSTRIES,)
INC., an Oklahoma corporation,)
)
Defendant.)

No. 79-C-694-B

FILED

NOV 14 1980

ORDER OF DISMISSAL

Jack O. Silver, Clerk
U.S. District Court

Upon written application of the parties for an order of dismissal with prejudice of the complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the complaint and have requested the Court to dismiss the complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said complaint should be dismissed.

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

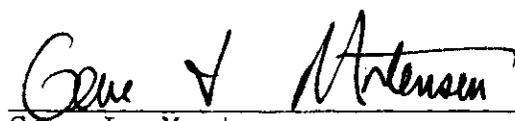
THOMAS R. BRETT

THOMAS R. BRETT, U.S. DISTRICT JUDGE

APPROVED AS TO FORM:



Ronald N. Ricketts,
Attorney for Plaintiff



Gene L. Mortensen,
Attorney for Defendant

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 75-CR-51-C
)
 RICHARD LEE LEWIS,)
)
 Defendant.)

F I L E D

NOV 13 1980

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

O R D E R

Now before the Court for its consideration is Richard Lee Lewis' motion pursuant to Title 28 U.S.C. §2255 to vacate, set aside, or correct sentence by a person in federal custody.

The movant was charged by indictment in Case No. 75-CR-51-C with a violation of Title 26 U.S.C. §5861(d), in that he did knowingly and willfully possess an unregistered firearm. Movant entered a plea of guilty to the charge and on June 25, 1975, was sentenced to four (4) years imprisonment. Movant was processed in this Court pursuant to writs of habeas corpus ad prosequendum issued to the Sheriff of Tulsa County, Oklahoma. The movant was in the custody of the Tulsa County Sheriff awaiting trial on certain State charges.

At the time of sentencing, the Court was asked whether the sentence on the Federal charge would run concurrently with the sentence on the State charges. The Court replied that

this sentence is a sentence not to run concurrent with. If the state desires their sentence to run concurrent with and relinquish jurisdiction, that's up to the state. That's actually what the Court is saying. Sentencing transcript, p.42.

The movant here contends that the Court had no jurisdiction

to impose a sentence on him to run consecutively with a sentence in another jurisdiction which may or may not have been imposed at some future date, and that the sentence of this Court is therefore unconstitutional and in violation of law.

Movant's contention is clearly without merit.

It is well settled that in our two systems of courts, the one which first takes custody of a prisoner in criminal cases is entitled to the custody of the prisoner until final disposition of the proceedings in that court, but during this time the prisoner is not immune from prosecution by the other sovereign. (citations omitted) Williams v. Taylor, 327 F.2d 322, 323 (10th Cir. 1964).

Even though the sentence in the instant case was not specifically made a consecutive sentence, it is permissible for a Federal court to impose a sentence to run consecutive to a State sentence that has not and may not ever be imposed. See Anderson v. United States, 405 F.2d 492 (10th Cir. 1969). See also Chaney v. Ciccione, 427 F.2d 363 (8th Cir. 1970); United States v. Kanton, 362 F.2d 178 (7th Cir. 1966); Williams v. Taylor, supra.

It plainly appears from the face of the motion, the annexed exhibits, and the prior proceedings in this case that the movant is not entitled to relief. It is therefore ordered that this motion is hereby summarily dismissed.

It is so Ordered this 12th day of November, 1980.

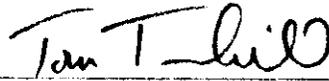

H. DALE COOK
Chief Judge, U. S. District Court

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

WAYNE L. GARDEN,)
)
Plaintiff,)
)
vs.)
)
REGENCY INDUSTRIES, INC., a) Case No. 80-C-456-E
Kansas Corporation, STEVEN L.)
BELDON, and JOHN F. MILLER,)
)
Defendants.)

NOTICE OF DISMISSAL WITHOUT PREJUDICE
AS TO STEVEN L. BELDON & JOHN F.
MILLER, ONLY

COMES NOW the Plaintiff, Wayne L. Garden, who does herein
Dismiss his cause of action in the above styled cause against
the Defendants Steven L. Beldon and John F. Miller only, with-
out prejudice to the filing of any future actions. This Notice
is filed through and by Plaintiff's attorney, Tom Tannehill.



Tom Tannehill
Attorney for Plaintiff
1918 E. 51st, Suite Two West
Tulsa, Oklahoma 74105

CERTIFICATE OF MAILING

I, the undersigned Tom Tannehill, hereby certify that on
or about the 13th day of November, 1980 I mailed a true and correct
copy of the foregoing Notice to Harry M. Crowe, Jr., 1714 First
National Bldg., Tulsa, Oklahoma 74103, Joe L. Norton, P.O. Box
534, Olathe, Kansas 66061, and Mr. Jon B. Wallis, 1717 S. Chey-
enne, Tulsa, Oklahoma 74119, postage prepaid.



Tom Tannehill

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

TULSA TRIBUNE COMPANY, an)
Oklahoma Corporation,)
)
Plaintiff,)
)
v.)
)
PATRICIA ROBERTS HARRIS,)
Secretary of the Department)
of Health, Education and)
Welfare,)
)
Defendant.)

No. 79-C-525-BT ✓

FILED

NOV 1-2 1980

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

JUDGMENT

In accordance with the Findings of Fact and Conclusions of Law set forth in the Court's Memorandum Opinion filed herein on this date, it is:

ORDERED, ADJUDGED AND DECREED that Defendant, Patricia Robert Harris, Secretary of the Department of Health, Education and Welfare, her agents, employees and all other persons in active concert and participation with Defendant are permanently enjoined and restrained from disclosing to the public in any manner the deleted portions of the investigative reports showing the names and/or duties and/or number of ex-addict employees of the Tulsa Drug Treatment Center as contained in the investigative reports for the years 1975, 1976, 1977 and 1979.

IT IS FURTHER ORDERED that Defendant, Patricia Roberts Harris, Secretary of the Department of Health, Education and Welfare, her agents, employees and all other persons in active concert and participation with Defendant are permanently enjoined and restrained from withholding the deleted portions of the investigative reports showing the budgetary and financial information as contained in the investigative reports for the years 1976, 1977 and 1979 from the Plaintiff, Tulsa Tribune Company.

IT IS FURTHER ORDERED that the Defendant shall furnish Plaintiff those portions of the investigative reports containing

said budgetary and financial information for the years 1976, 1977 and 1979 within ten (10) days from the date of this Judgment.

IT IS FURTHER ORDERED that Defendant pay the costs of this action including Plaintiff's reasonable attorney fees and litigation costs based on its partial recovery; which costs shall be determined by the Court upon application by Plaintiff to be filed within ten (10) days from the date of this judgment with response by Defendant within five (5) days thereafter.

Dated this 12th day of November, 1980.



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

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

TULSA TRIBUNE COMPANY, an)
Oklahoma Corporation,)
)
Plaintiff,)
)
vs.)
)
PATRICIA ROBERTS HARRIS,)
Secretary of the Department)
of Health, Education and)
Welfare,)
)
Defendant.)

No. 79-C-525-BT ✓

FILED

NOV 12 1980

Jack C. Silver, Clerk ^{BS}
U. S. DISTRICT COURT

MEMORANDUM OPINION

Plaintiff, Tulsa Tribune Company ("Tribune") brings this action under the Freedom of Information Act ("FOIA") 5 U.S.C. §552, to compel Defendant, Patricia Roberts Harris, Secretary Department of Health, Education and Welfare ("Secretary") to produce certain agency records claimed to be improperly withheld from Plaintiff. Plaintiff also seeks recovery of reasonable attorneys fees and other litigation costs.

The facts as stipulated by the parties are as follows: On June 1, 1979 Plaintiff requested Defendant to furnish "all inspection and audits, evaluations or other documents which are public records on the Tulsa Drug Treatment Center, a part of the Department of Mental Health of the State of Okla." Plaintiff was "particularly interested in obtaining the last three inspections of the center by the U. S. Federal Drug Administration." (Plaintiff's Exhibit A). Defendant responded on June 21, 1979 to Plaintiff's request by furnishing investigative reports for the years 1975, 1976, 1977, (1978 was omitted), and 1979, with certain portions of the reports excised (Plaintiff's Exhibits B, D, F, G, H, I and J). On July 6, 1979 Plaintiff requested Defendant to furnish "complete" copies of its records without excising any portions thereof (Plaintiff's Exhibit C). Defendant made no reply to Plaintiff's request of July 6, 1979. Throughout its existence, the Tulsa Drug Treatment Center ("the Center") was completely funded with public monies,

was operated by Eastern State Hospital until May of 1979, by Central State Hospital after May of 1979, both hospitals being under the Oklahoma State Department of Mental Health. During the summer of 1979 the State of Oklahoma announced the closing of the methadone program by November 30, 1979. Plaintiff's request for information pursuant to the FOIA was made for the purpose of obtaining background research needed for a number of stories written and published by Plaintiff on the Tulsa Drug Treatment Center during the summer of 1979. The Drug Abuse Office and Treatment Act of 1972, 21 U.S.C., §1101, et seq., requires any drug treatment center such as the Tulsa Drug Treatment Center wishing to receive federal funds to disclose certain information to the Secretary.

The excised portions of the records furnished Plaintiff included the names, duties and number of ex-addict employees of the Center and certain budgetary and financial information. As to the ex-addict employees information, Defendant claims that disclosure of such information is expressly prohibited by 21 U.S.C. §1175 and is therefore exempt from disclosure under 5 U.S.C. §522(b)(3). Defendant also contends that such information is within Exemption 6, 5 U.S.C. §552(b)(6), since disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy."

Defendant further claims that the deleted budgetary and financial information is within Exemption 4 of the FOIA, 5 U.S.C. §522(b)(3).

The Court finds that the deleted portions of the Defendant's records showing the names, duties and number of ex-addict employees as set out below are exempt from disclosure under Exemption 6 of the FOIA. The Court further finds that the deleted budgetary and financial information contained in Defendant's records as set out below is not exempt under Exemption 4 of the FOIA and may not be withheld from Plaintiff.

Exemption 6 provides:

- (b) This section does not apply to matters that are --

* * *

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

As stated by the Court in Wine Hobby USA, Inc. v. United States Internal Rev. Serv., 502 F.2d 133 (3rd Cir. 1974):

"To qualify under Exemption (6), the requested information must consist of 'personnel, medical or similar files,' and the disclosure of the material must constitute a 'clearly unwarranted invasion of personal privacy.'

"We believe that the list of names and addresses is a 'file' within the meaning of Exemption (6). A broad interpretation of the statutory term to include names and addresses is necessary to avoid a denial of statutory protection in a case where release of requested materials would result in a clearly unwarranted invasion of personal privacy. * * *

"* * * The common denominator in 'personnel and medical and similar files' is the personal quality of information in the file, the disclosure of which may constitute a clearly unwarranted invasion of personal privacy."

The Court further held:

"* * * the statute and its legislative history lead us to conclude, in the language of the District of Columbia Circuit, that 'Exemption (6) necessarily requires the court to balance a public interest purpose for disclosure of personal information against the potential invasion of individual privacy.' Getman v. N.L.R.B., 450 F.2d at 677 n. 24 (1971)."

In the case of Campbell v. United States Civil Service Commission, 539 F.2d 58 (10th Cir. 1976), the Court held that "the District Court has a broad discretion in determining whether the Government has sustained its burden of establishing the applicability of the exemption." In Campbell, two employees of the Environmental Research Laboratory ("ERL") were denied access to a United States Civil Service Commission ("Commission") report of a routine investigation by the commission of personnel management. The report was "an assessment of how ERL management is carrying out basic responsibilities for the effective selection, development and use of man power resources." The report contained information as to "employees erroneously classified in the GS service

in that their classifications were too high for the duties they were performing." The report also included the name of "an employee who had apparently been promoted contrary to the Commission regulations." The Court found that the employee information fell "within the phrase 'similar files' since they contained personnel information such as job classifications and duties." The Court also held that Exemption 6 requires:

"* * * a balancing test between an individual's right of privacy and the preservation of the public's right to government information. See Rose, supra, and Getman, supra. In applying the test, these factors are considered:

1. Would disclosure result in an invasion of privacy and, if so, how serious?
2. The extent or value of the public interest, purpose or object of the individuals seeking disclosure.
3. Whether the information is available from other sources. Rural Housing Alliance v. United States Department of Agriculture, 162 U.S.App.D.C. 122, 498 F.2d 73 (1974)."

In the present case, the first deletion in Defendant's reports appears at Page 2 of Plaintiff's Exhibit D (1975) as follows:

"I made brief, but not significant contacts with employees Sue Postier, R.N.; Anita Forsee, R.N.; (deleted), Community aid; and Connie Moore, Secretary."

The second deletion also appears on Page 2 of Plaintiff's Exhibit D (1975). The paragraph in which the deletion is made states:

- "c. Name and title of responsible individuals at this location.
Ms. Suzanne Vanenburg Ewing, Director & Master Social Worker
Dr. Clint McClenahan, M.D.

Sue Postier, R.N.
Anita Forsee, R.N.
Irine Bookbinder, Master Social Worker
Arvaliane Stiles, Social Worker Assistant III
Cheri LaTrous, Social Worker Assistant I
()
()
(Deleted)
()
Warren Sayles, Resident (live in) Custodian

Dr. Angie Wallenbrook, M.D. Pay performs Physician duties on Wednesdays, but quits as of 6-30-75"

The next two deletions appear on Page 5 of Plaintiff's Exhibit D (1975). The paragraphs in which the deletions are made state:

"b. Number of non-physician professionals, titles, responsibilities, degree(s), full or part-time.

According to Director & Coordinator Ms. Susanne Vanenburg Ewing, the nurses, counsellors, and Physicians all provide in-put during conferences to decide courses of actions to take concerning the patient clients. Nurses share workload on 'Pee Patrol' to observe urine sample collection as indicated by Exhibit 4. The Ex Addicts are considered counsellors and carry a client load as well as the counsellors with Bachelor's and Masters degrees, and both type counsellors participate in decisions concerning patient clients. These non-Physicians are listed below alongside their title & degree. (Emphasis supplied)

Susanne Vanenburg Ewing, Master Social Worker
Degree - Director & Coor.
Sue Postier, R.N. Nurse
Anita Forsee, R.N., Nurse
Irine Bookbinder, Master Social Worker (Masters Degree) Counsellor
Arvaliane Stiles, Social Worker Asst. III
(Bachelor's) Counsellor
Cheri LaTrous, Social Worker Asst. I
(Bachelor's Degree) ditto

The (deleted) listed below are ex-addict Counsellors with High School graduate level education.
()
()
(Deleted)
()

The next two deletions appear on Page 6 of Plaintiff's Exhibit D (1975). The paragraphs in which the deletions are made state:

"d. Number and duties of ex-addicts. (deleted) ex-addicts are listed and duties described under 'b.' on page 5.

Mrs. Ewing stated that there are no urine samples collected from any of the (deleted) ex-addicts. She stated that the former director-coordinator discussed the possibility or advisability of collecting urine samples from the ex-addicts, but that this had never been done."

In order to compel disclosure of the identity of the ex-addicts, the Court must find that the public's right to government information outweighs the individual's right to privacy. See Department of the Air Force v. Rose, 425 U.S. 352 (1976). As stated in Rural Housing Alliance v. United States Department of Agriculture, 498 F.2d 73, 77 (D.C. Cir. 1974), exemption 6 of the FOIA "is phrased broadly to protect individuals from a wide range of embarrassing disclosures." Information that a person is an ex-addict clearly is a "serious invasion of privacy." See e.g. Campbell, 539 F.2d at 62. Since there appears to be no compelling public need for the information deleted from Exhibit D (1975) such an invasion would be "unwarranted." Therefore, upon balancing the interests present in this case, the Court finds that the information deleted from Plaintiff's Exhibit D (1975) falls within Exemption 6 of the FOIA.

As to Plaintiff's Exhibit G (1976) the first deletion appears on Page 4. The paragraph in which the deletion is made is under the section of the report commencing on Page 3 setting out staff qualifications as follows:

"STAFF QUALIFICATIONS:

Number and Qualification of Physicians Full or Part-Time

This establishment employs one medical doctor for 20 hours per week as discussed above. For emergency, whenever Dr. Henry is not available, Dr. Ralph Richter is the alternate who fills in to assure continuous physician availability for this center.

Non-Physician Professionals:

Jack G. Nicar, Master Social Worker, is Program Director and counsels a load of clients.

Irene Bookbinder, Master Social Worker, is a Psychiatric Social Worker. Irene counsels a load of clients and acts as Director in Jack Nicar's absence.

"Ms. Arvaline Stiles, Master Social Worker, is a Psychiatric Social Worker who counsels a load of clients at this center.

The registered nurses who mix the methadone with orange juice and dispense the methadone to clients are Anita Forsee and Chris Wells.

Number and Duties of Other Employees:

Social Worker Assistant George Beltz is a Social Worker Assistant No. 1 who counsels a load of clients at this treatment center.

Number and Duties of Ex-Addicts:

()
()
(Deleted)
()"

Plaintiff's Exhibit G (1976) does not state the number and duties of the ex-addicts as did the investigative report for 1975, Plaintiff's Exhibit D. Under Staff Qualifications in the 1976 report, it shows at the time of the report that there are two medical doctors, two registered nurses, who "dispensed the methadone to clients," three master social workers who counsel clients and one social worker assistant who counsels clients, making a total of eight employees at the Center plus an undisclosed number of ex-addicts whose names and duties are not revealed.

For the reasons stated by the Court above in connection with Plaintiff's Exhibit D (1975), the Court finds that in applying the balancing test the names of the ex-addict employees deleted from Plaintiff's Exhibit G (1976) fall within exemption 6 of the FOIA. Furthermore, because of the small number of employees at the Center, it would not be appropriate to reveal the number or duties of the ex-addict employees since such information would provide the means by which the identity of the ex-addicts could be readily determined by anyone familiar with the operation of the Center. Rural Housing Alliance v. United States Department of Agriculture, supra.

Of course, this is not to say that in all cases information regarding the duties of ex-addicts in a facility of this kind may be withheld. However, when the total number of employees is so

small that disclosure of duties would reveal the respective identities of the ex-addicts, the Court should avoid effecting such an unwarranted invasion of privacy. The Court simply should not do indirectly what it is prohibited from doing directly. Therefore, the number and duties of ex-addicts contained in Exhibit G (1976) fall within exemption 6 of the FOIA. In addition, it should be noted that Exhibit D (1975) discloses the duties of ex-addicts at the Center. The fact that this disclosure was made in 1975 does not affect the opinion of the Court that such information may be withheld under the FOIA. It is the responsibility of the Court simply to balance the interests of the individuals with those of the general public as to this information. In applying this test the Court has determined that disclosure of the duties of the ex-addicts would constitute an unwarranted invasion of privacy and therefore such information falls under Exemption 6 of the FOIA.

The remaining deletions in Plaintiff's Exhibit G (1976) appear under the section dealing with "FUNDING" on Pages 6 and 7 as follows:

"FUNDING:

This drug treatment center is operated by State employees under the Oklahoma State Department of Mental Health and the program is financed with a Federal grant from National Institute of Drug Abuse and with matching State funds. Jack Nicar showed me a February 27, 1976 request for funds to operate this Center for the next fiscal year. This request was prepared by Susanne Vanenburg Ewing, and this showed a total of (deleted). Mr. Nicar also showed me a compiled list of costs submitted to the National Institute of Drug Abuse by the Oklahoma State Dept. of Mental Health and this showed a total estimated budget for the Tulsa Center as (deleted). The individual categories added to accomplish this total are as follows:

Patient Care - (deleted)
Personal S (deleted)
Equipment (deleted)
Supplies (deleted)
Other (deleted)

Mr. Nicar stated that he estimates that the cost for an addicted patient/client on methadone is

"three times the cost of other poly drug clients not receiving methadone treatment. Using this 3 to 1 ratio and the budget figure of (deleted), this would be a cost of (deleted) per year per methadone client and the cost per poly drug client not on methadone would be \$(deleted) per year."

Defendant claims that the above deleted budgetary and financial information is exempt from disclosure under Exemption 4 of the FOIA, 5 U.S.C. §522(b)(4), which provides:

(b) this section does not apply to matters that are --

* * *

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential.

In American Airlines, Inc. v. Nat. Mediation Bd., 588 F.2d 863 (2d Cir. 1978), the Court held that in order to come within the provisions of Exemption 4 information must be "(a) commercial or financial (b) obtained from a person and (c) privileged or confidential." All three requirements must be met. The Plaintiff contends that the budgetary and financial information is not exempt because it was not "obtained from a person" and not "confidential" information. The Court finds that while the agency from which the Defendant obtained the information is a "person", the information itself is not "confidential" within the meaning of the statute, and therefore Exemption 4 of the FOIA does not apply.

Plaintiff argues that the agency of the State of Oklahoma which furnished the information to the Secretary is not a "person" within the meaning of Exemption 4. Plaintiff cites Consumers Union of U.S. Inc. v. Veterans Administration, 301 F.Supp. 796 (S.D. N.Y. 1969), appeal dismissed, 436 F.2d 1363 (2nd Cir.1971) for the proposition that in order to be exempt the information must be obtained from "outside the government."

Consumers was an action to compel the Veterans Administration (VA) to make certain records of the VA's hearing-aid testing program available to it. The information sought was testing information which the VA had obtained by performing tests on hearing aids furnished by manufacturers. The VA

claimed the records came within Exemption 4 of the FOIA. The Court held that in order for the information to be exempt it must be obtained from "outside the government." Citing Benson v. General Services Administration, 289 F.Supp. 590 (W.D. Wash. 1968), the Court reasoned that the information was not "obtained from any person" or "confidential", since the testing information was the result of the tests made by government personnel.

The Defendant argues that the budgetary and financial information which Plaintiff seeks was obtained from "the state government" and "that the Consumers Union 'outside the government' requirement means outside the Federal government."

In Stone v. Export-Import Bank of the United States, 552 F.2d 132 (5th Cir. 1977), the Court held that Bank for Foreign Trade, an agency of the Soviet Union was a "person" within the meaning of Exemption 4 of the FOIA. The Court noted that there was nothing in the definition of "person" under the provisions of the FOIA which would exclude foreign citizens or agencies of a foreign government from the protection of the exemptions provided in the FOIA. See also Neal-Cooper Grain Co. v. Kissinger, 385 F.Supp. 769 (D.D.C. 1974) (holding that the Mexican government is a "person" within the meaning of 5 U.S.C. §§551(2) and 552(a)(3)).

It is the view of this Court that under Stone and Neal-Cooper Grain Co., the agency of the State of Oklahoma from which the Secretary obtained the information in this case is a "person" within the meaning of Exemption 4.

The definition of "confidential" information within the meaning of Exemption 4 of the FOIA was examined at length in National Parks and Conservation Ass'n. v. Morton, 498 F.2d 765 (D.C. Cir. 1974). There the Plaintiff brought an action against the Department of the Interior under the FOIA seeking information concerning concessions operated in the national parks. The Court held that Exemption 4 has the dual purpose of protecting the

interests of both the Government and the individual. The Court stated:

"The 'financial information' exemption recognizes the need of government policymakers to have access to commercial and financial data. Unless persons having necessary information can be assured that it will remain confidential, they may decline to cooperate with officials and the ability of the Government to make intelligent, well informed decisions will be impaired."

Id. at 767. The Court further stated:

"To summarize, commercial or financial matter is 'confidential' for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."

Id. at 770. The Court noted that the information being sought by the Parks Service in that case was information furnished "pursuant to statute" and held:

"Since the concessioners are required to provide this financial information to the government, there is presumably no danger that public disclosure will impair the ability of the Government to obtain this information in the future."
(Emphasis in original).

Id. at 770. The Court remanded the case to the District Court "for the purpose of determining whether public disclosure of the information in question poses the likelihood of substantial harm to the competitive positions of the parties from whom it has been obtained." Id. at 771.

The Court finds that the information which Plaintiff seeks in this case is not "confidential." The release of this information will not "impair the Government's ability to obtain necessary information in the future" because such information is supplied pursuant to the statutory requirements of 21 U.S.C., §1171, et seq. Additionally, the Court finds that the Defendant has not shown that the release of the budgetary and financial information in this case will "cause substantial harm" to the "competitive position of the person from whom the information was obtained", the Oklahoma State Department of Mental Health.

Therefore, the budgetary and financial information deleted from Plaintiff's Exhibit G (1976) may not be withheld.

As to Plaintiff's Exhibit H (1977), the first deletion appears on Page 2 under the section "PROGRAM HISTORY" as follows:

"According to Mr. Anderson, the four persons most responsible for operation of this establishment in order of their responsibility are Donald L. Anderson, Director; Gifford H. Henry, M.D., Program Physician; Billye Christine Wells, Registered Nurse; and Arvaline Stiles, Sr. Master Social Worker. Mr. Anderson stated that other employees at this establishment listed generally in order of their responsibility are Karen Farley, Registered Nurse; Linda Hallfelder, Registered Nurse; Roger Rhodes, Social Worker, Armin Sebran, Social Worker; Carrie White, Social Worker;

()
()
(Deleted)
()
Constance Moore, Secretary; Paul Barre, Custodian."

The next paragraph in which deletions appear is on Page 3 of Plaintiff's Exhibit H (1977) under the section on staff qualifications as follows:

"STAFF QUALIFICATIONS

Number and Qualification of Physicians Full or Part Time:

This establishment employs one medical doctor for 20 hours per week as discussed in the schedule above. For emergency whenever Dr. Henry is not available, Dr. Charles H. Eads is the alternate who is available to assure continuous physician availability for this center.

Non-Physician Professionals:

Mr. Donald L. Anderson is the Program Director, and Mr. Anderson counsels a load of clients. The center employs 3 registered nurses, one of which is at the present time on leave without pay. These 3 nurses are Billye Christine Wells, Karen Farley, and Linda Hallfelder. The Senior Master Social Worker, other than Mr. Anderson, is Ms. Arvaline Stiles. Three other professional social workers are Roger Rhodes, Armin Sebran, and Carrie White.

Number and Duties of Other Employees

This Center has 4 non-professional counselors. These are ex-drug addicts
(Deleted)
Two other non-professional employees are Secretary Constance Moore and Custodian Paul Barre." (Emphasis supplied)

For the reasons stated by the Court above regarding Exhibits D (1975) and G (1976), the Court finds that in applying the balancing test to the information deleted from Exhibit H (1977), the potential invasion of privacy outweighs the public right to know the names of the individuals in question. See Campbell, supra; Rural Housing Alliance, supra. Therefore, the names of the ex-addict employees contained in Exhibit H (1977) are within Exemption 6 of the FOIA.

The remaining deletions in Plaintiff's Exhibit H (1977) appear on Page 5 as follows:

"FUNDING:

This treatment center is operated by State employees under the Oklahoma State Department of Mental Health, and the program is financed with a federal grant from National Institute of Drug Abuse with matching State funds. According to Mr. Anderson, the total budget is (deleted), this would be (deleted) per patient based on the 97 patients on maintenance or would be (deleted) per patient based on the total number of 110 patients."

For the reasons stated by the Court above as to budgetary and financial information, the Court finds that such information does not fall under Exemption 4 of the FOIA. Therefore, the budgetary and financial information deleted from Plaintiff's Exhibit H (1977) may not be withheld.

As to Plaintiff's Exhibit I (1979), the first deletion appears on Page 5. The paragraph in which the deletion appears is under the section of the report commencing on Page 4 setting out staff qualifications as follows:

"STAFF QUALIFICATIONS

a. Number and Qualifications of Physicians

This center has one physician, as discussed above, who spends 40% of a week at this center. Dr. Henry's curriculum vitae has been previously submitted to Methadone monitoring staff at Bureau of Drugs.

"b. Number of Nonphysician Professionals

<u>Degree Or Other</u>	<u>Name Of Professional</u>	<u>Title Responsibilities</u>
Master Social Worker	Nancy Williams	Program Coordinator
Registered Nurse	Billie Christine Wells	#2 person & Nurse-Drug Dispenser
Registered Nurse	Helen Bishop	#3 person & Nurse Methadone Dispenser
BA Sociology	Gwen Eskridge	Social Assistant Worker I, #4 person & Counselor
L. P. Nurse	Elizabeth Walker	#5 person & Counselor
Master Social Worker	Claudette Petty	Psy. Social Worker I, Counselor
Master In Sociology	Robert Lewis	Social Ass't., Worker II, Counselor
Master in Psychiatry	Mary Lusch	Social Ass't., Worker III, Counselor
Registered Nurse	Karen Farley	Part-time Nurse & Methadone Dispenser

c. Number and Duties of Other Employees

Denice Ferguson, Program Secretary
Wanda Senters, Community Aide (mostly clerical work)
Mr. P. Barre, Custodian
(Deleted)

d. Number and Duties of Ex-Addicts

()
()
(Deleted)
()

For the reasons stated by the Court above in connection with Plaintiff's Exhibits D (1975), G (1976) and H (1977), the Court finds that in applying the "balancing test", the number, names, and duties of ex-addict employees contained in Exhibit I (1979) falls within Exemption 6 of the FOIA and may be withheld.

The remaining deletions in Plaintiff's Exhibit I (1979) are under the section dealing with "FUNDING" on Page 6 as follows:

"FUNDING

Nurse Wells stated that this program is funded by NIDA with matching state funds. She stated that the budget for Oklahoma City Treatment Center and Tulsa Treatment Center combined is (deleted) and that half of these funds go to Oklahoma City and half to Tulsa; thus the annual budget for this treatment center would be (deleted); which would mean an approximate cost of (deleted) per patient-client. There are no in-patients treated at this center.

The Federal Government agency providing funds to this center is NIDA.

This treatment center accepts all qualified clients that request help, thus funding is not a criteria concerning the size of this establishment at this time."

For the reasons stated by the Court above regarding budgetary and financial information, the Court finds that such information does not come under Exemption 4 of the FOIA. Therefore, the budgetary and financial information deleted from Plaintiff's Exhibit I (1979) may not be withheld.

Since the Court finds that the information as to the number, names, and duties of ex-addict employees falls under Exemption 6 of the FOIA, it is not necessary to determine whether such information also is exempt under Exemption 3 of the Act.

Plaintiff has asked the Court to award Plaintiff reasonable attorney fees plus litigation costs incurred by Plaintiff in this action.

In applicable part, 5 U.S.C., §522(a)(4)(E) provides:

"The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed."

The Court finds that the Plaintiff is entitled to reasonable attorney fees and other litigation costs under the provisions of the statute as set out above. However, the Court stated in Campbell v. United States Civil Service Commission, supra:

"On the question of attorney's fees, the amount of the district court's award, namely \$250.00 appears somewhat low. We recognize that the trial court has a broad discretion in this area, and we also recognize that the criterion for awarding a fee, which is contained in the Act, is whether the complainant substantially prevailed and whether a substantial contribution to public interest resulted. Adjudged by these criteria, it would seem that there should be at least, if not the maximum fee, an average one. We note that the legislative history contemplated the possible payment of \$35.00 per hour. H.R.Rep. No. 876, 93rd Con., 2d Sess., U.S.Code Cong. & Admin. News 1974, p. 6275. We are not suggesting that the case calls for a large fee, but the amount given does strike us as being arbitrarily low and so, then, we would remand the cause to the district court for purposes of reconsideration of the question of a more just award."

In Campbell, as in the case before this Court, the Court ordered some of the material sought by plaintiffs disclosed but found that certain other information was protected by Exemption 6 of the FOIA. Against this backdrop, the Court will conduct a hearing for the purpose of determining the amount of attorney fees and litigation costs to which Plaintiff is entitled.

Accordingly, an injunction shall issue enjoining the Defendant from disclosing the ex-addict employee information and further enjoining the Defendant from withholding the budgetary and financial information as set forth herein and ordering production to the Plaintiff of those portions of Defendant's records containing the budgetary and financial information.

This Memorandum Opinion shall constitute the Findings of Fact and Conclusions of Law required by Rule 52, Fed.Rules Civ. Proc.

Dated this 12TH day of November, 1980.


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

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

FILED

NOV 10 1980

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

GLACIER GENERAL ASSURANCE
COMPANY, a corporation,

Plaintiff,

vs.

No. 78-C-86-E

PACIFIC EMPLOYERS INDEMNITY
COMPANY OF HOUSTON, TEXAS,
a Division of Insurance
Company of North America,
a Texas corporation;
HARTFORD ACCIDENT AND INDEMNITY
COMPANY, a Connecticut
corporation; and LLOYD'S
UNDERWRITERS AT LONDON, a
foreign insurance corporation,

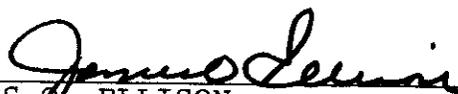
Defendants.

JUDGMENT

In conformity with the Findings of Fact and Conclusions of Law entered by the Court in this matter on this same date,

IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of Defendants Pacific Employers Indemnity Company, Hartford Accident and Indemnity Company and Lloyd's Underwriters at London, and against Plaintiff Glacier General Assurance Company.

Entered this 10TH day of November, 1980.


JAMES C. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

TERMPPLAN OF SOUTH MAIN,)
INC., an Oklahoma corpo-)
ration,)
)
Plaintiff,)
)
vs.)
)
NORTHLAND INSURANCE COMPANY,)
a Minnesota Insurance Corp.,)
)
Defendant.)

NOV 10 1980

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

No. 79-C-456-E

ORDER

This cause came on for hearing on this 4th day of November, 1980, upon the plaintiff's objections to the findings and recommendations of the Magistrate filed herein. The plaintiff appeared by its attorney, James R. Elder, and the defendant appeared by its attorney, Donald Church.

The Court has read the file including the pleadings and briefs submitted by the parties, has heard argument of counsel, and has carefully considered the findings and recommendations of the Magistrate. Being fully advised in the premises, the Court finds:

That the objections of Termplan of South Main, Inc. to the findings and recommendations of the Magistrate should be overruled; that the defendant's Motion to Dismiss (Summary Judgment) should be sustained; and the plaintiff's Motion for Summary Judgment should be overruled, for the reasons stated herein:

This is an action brought by plaintiff against defendant for alleged willful conversion of a 1974 White Freightliner Tractor, Serial No. CA213HLO84985. The defendant denies that it converted any property in which plaintiff had an interest. Both parties have asked the Court to render judgment on the basis of their Motions for Summary Judgment. Because the Court has considered evidence in reaching judgment on defendant's Motion to Dismiss, defendant's motion has been treated as a Motion for Summary Judgment.

The following facts are undisputed: On March 8, 1978 Larry Wallen purchased a 1973 White Freightliner Tractor, Serial Number ending with 077634 from Southwest Kenworth in Reno, Nevada for \$24,500.00. Wallen was mistakenly given title to a 1974 White Freightliner Tractor bearing Serial Number ending with 084985. Within approximately 10 days after Wallen was given the wrong title Southwest Kenworth discovered its error and mailed Wallen the title to the 1973 White Freightliner Tractor and requesting the return of the title on the 1974 White Freightliner Tractor. On July 6, 1978, Guaranty National Bank made a loan to Wallen describing in its Security Agreement the 1974 White Freightliner Tractor instead of the 1973 White Freightliner Tractor which Wallen actually owned. Guaranty required that Wallen provide insurance naming Guaranty as loss payee. The defendant Northland Insurance Company issued its insurance policy to Wallen describing in the insurance policy the 1974 White Freightliner Tractor instead of the 1973 White Freightliner Tractor which Wallen owned and further providing for payment to Wallen in the event the 1974 White Freightliner Tractor was damaged and naming Guaranty National Bank as loss payee under the policy.

Prior to the time the policy of insurance was issued by defendant, Wallen received a loan from the plaintiff on July 25, 1978. Plaintiff's Security Agreement also described the security as the 1974 White Freightliner Tractor, Serial No. CA213HLO84985 which was not owned by Wallen at the time instead of the 1973 White Freightliner Tractor which Wallen did own.

On September 19, 1978 the 1973 White Freightliner Tractor was damaged in a one vehicle collision and Wallen made a claim against Northland on his insurance policy. It was determined by Northland that the vehicle was a total loss since the cost of repairs exceeded the value of the tractor. Thereafter, defendant settled with Wallen by payment to Wallen and Guaranty National Bank jointly in the sum of \$22,500.00. The policy provided for \$500.00 deductible and further that the insurance

company had a right to take the damaged tractor as part of the settlement under the insurance agreement. Defendant took the damaged tractor and sold it for salvage for \$9,000.00.

In its Motion for Summary Judgment, plaintiff claims that it had a perfected security interest in the 1973 White Freightliner Tractor and/or the \$9,000.00 in proceeds received by defendant upon the sale of the damaged tractor to the extent of the balance due plaintiff from Wallen in the sum of \$8,578.21 plus interest. Plaintiff claims that in spite of the fact that the collateral was misdescribed in its Financing Statement and Security Agreement that such misdescription does not defeat its right to recovery.

There is no dispute that plaintiff's Financing Statement and Security Agreement properly described the 1974 White Freightliner Tractor with the correct serial number for that vehicle. However, it is also undisputed that Wallen owned no such vehicle at the time plaintiff and Wallen executed the Security Agreement or at any time thereafter. Plaintiff argues that with the adoption of the Uniform Commercial Code the need for specificity in describing collateral was abolished.

Plaintiff cites Central National Bank & Trust Co. v. Community Bank & Trust Co., 528 P.2d 710 (Okl. 1974); American National Bank & Trust Co. v. National Cash Register Co., 473 P.2d 234 (Okl. 1970); In re Thomas, 6 U.C.C. Rep. Serv. 976 (W.D. Okl. 1969 Bankruptcy Court decision); and Title 12A, Section 9-110 of the Uniform Commercial Code which provides:

"Sufficiency of Description. - For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described."

In the case of Mitchell v. Shepherd Mall State Bank, 324 F.Supp. 1029, 1032 (W.D. Okl. 1971), Judge Daugherty stated:

"There is a distinction to be observed between the description provisions of financing statements and security agreements. 12A Okl.St. Ann. Sec. 9-203, provides that the security agreement must be in writing and contain a 'description of the collateral.' 12A Okl.St. Ann. Sec.

9-402, provides that a financing statement must among other things contain 'a statement indicating the types, or describing the items, of collateral.' Gilmore, Security Interest in Personal Property, Sec. 11.4, p. 347, states:

'There is a sensible reason for the distinction between security agreement and financing statement. Under the notice filing system which Article 9 adopts, the document placed on record need be only a skeletal statement that the parties intend to engage in future transactions: *** Normally the parties doing a secured transaction will evidence their agreement in a written document which will contain a great deal more than the notice required in the Sec. 9-401 financing statement.'

"[3] The formal requisites (writing and description) of Sec. 9-203, are not only conditions for the enforceability of a security interest against third parties, they are in the nature of Statute of Frauds. UCC, Sec. 9-203, Comment No. 5."

Judge Daugherty further held that because the description of the collateral in the Security Agreement was unambiguous that it was error for the Referee in Bankruptcy to receive parol evidence in determining the collateral covered by the Security Agreement. The Court of Appeals for the Tenth Circuit affirmed Judge Daugherty's decision. Mitchell v. Shepherd Mall State Bank, 458 F.2d 700 (10th Cir. 1972). The Court stated at 703:

"[1,2] While Article 9 of the Uniform Commercial Code has stripped the formal requirements for creation of a security interest to the bone, certain minimal requirements must still be observed. 12A Okl.St. Ann. § 9-203 (1)(b) states that a non-possessory security interest is not enforceable against either the debtor or third parties unless, 'the debtor has signed a security agreement which contains a description of the collateral ...' 12A Okl.St. Ann. § 9-105(1)(h) supplies further explication by defining the term 'security agreement' as '... an agreement which creates or provides for a security interest.' Cases and treatises construing these two sections have almost uniformly come to the conclusion that in order for a security agreement to be effective it must contain language which specifically creates or grants a security interest in the collateral described."

See also Transport Equipment Co. v. Guaranty State Bank, 518 F.2d 377 (10th Cir. 1975); Shelton v. Erwin, 472 F.2d 1118 (8th Cir. 1973).

In its Complaint the plaintiff alleges that defendant willfully converted "personal property in which the plaintiff holds a perfected security interest." The personal property alleged to have been converted is the 1974 White Freightliner Tractor with Serial number ending in 084985. Since the undisputed facts show that the vehicle which the defendant acquired from Wallen was a 1973 White Freightliner Tractor with Serial number ending in 077634, it is the finding of the Court that Plaintiff had no Security Agreement covering such vehicle.

The defendant argues that even if the plaintiff had a perfected security interest in the 1973 White Freightliner Tractor, defendant had no obligation under its insurance agreement to plaintiff since the money paid by an insurer to reimburse a loss covered under its policy is not "proceeds" within the meaning of the Uniform Commercial Code. Defendant contends that an insurance contract is a personal agreement between the parties to the insurance contract only. Plaintiff argues that the defendant is not exempt from the provisions of the Uniform Commercial Code and that it has the same duty as any other person who purchases personal property on which there is a perfected security interest. In the case before this Court defendant exercised its rights under the insurance agreement to acquire the damaged 1973 Freightliner Tractor from Wallen. Plaintiff argues that defendant stands in no different position than any other person acquiring collateral on which there is a perfected security interest. Plaintiff claims that it had a perfected security interest in the 1973 Freightliner Tractor as well as the "proceeds" thereof. It is the view of the Court that if the plaintiff had acquired a valid security interest in the 1973 Freightliner Tractor, the defendant would be bound by the provisions of the Uniform Commercial Code and therefore obligated to account to plaintiff to the extent of the balance due plaintiff on its Security Agreement. See McConnico v. First National Bank of Dewey, No. 79-1215, 10th Cir. filed March 20, 1980; Paskow v. Calvert Fire Ins. Co., 579 F.2d 949 (5th Cir.1978);

PPG Indus., Inc. v. Hartford Fire Ins. Co., 531 F.2d 58 (2d Cir. 1976).

However, the Court finds that plaintiff failed to establish that it had any security interest in the 1973 White Freightliner Tractor as between plaintiff and defendant.

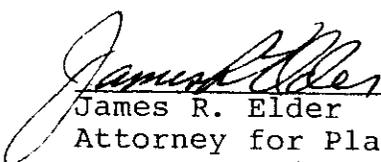
IT IS, THEREFORE, ORDERED that the plaintiff's Motion for Summary Judgment is overruled and the defendant's Motion for Summary Judgment be and hereby is sustained.

Dated this 10th day of November, 1980.

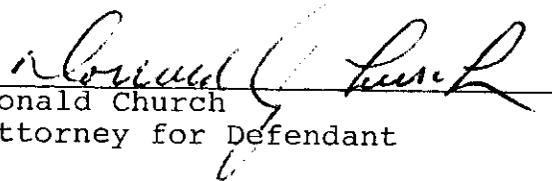


JAMES O. ELLISON
United States District Judge

O. K. as to form:



James R. Elder
Attorney for Plaintiff



Donald Church
Attorney for Defendant

122

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

FILED

NOV 8 1980

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

HOOVER UNIVERSAL, INC.,)
)
Plaintiff,)
)
vs)
)
C. L. BROOKS and JOHN LONGACRE,)
)
Defendants.)

NO. 79-C-676-BT

AMENDED JUDGMENT

The Judgment heretofore entered by this Court on October 1, 1980, is hereby amended to read as follows:

1. That Judgment is entered in favor of the Plaintiff, HOOVER UNIVERSAL, INC., and against C. L. BROOKS and the assets of Direct Lumber Company, in the sum of \$26,300.09 plus interest at the rate of 12% until paid.

2. That pursuant to the verdict of the jury rendered on September 26, 1980, Judgment is entered in favor of the Plaintiff HOOVER UNIVERSAL, INC., and against the Defendant, JOHN LONGACRE, jointly and severally, with C.L. BROOKS and Direct Lumber Company in the amount of \$20,004.10 plus interest at the rate of 12% per annum till paid, of the \$26,300.09 judgment entered against C. L. Brooks and Direct Lumber Company.

3. The assets, if any, remaining of the Direct Lumber Company (partnership) are to be applied in satisfaction of the judgment before the separate assets of John Longacre or C. L. Brooks may become subject for application toward any balance due on satisfaction of the judgment.

Entered this 8th day of Nov, 1980.


THOMAS R. BRETT
United States District Judge

APPROVED AS TO FORM:


STEPHEN L. OAKLEY
Attorney for Defendant John Longacre


RONALD RICKETTS
Attorney for Plaintiff, HOOVER UNIVERSAL, INC.

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

FILED

NOV 8 1980

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

OPAL SLINKARD; and)
BILLIE LEE SLINKARD, Executor)
of the Estate of W. H.)
SLINKARD, Deceased,)
)
Plaintiffs,)
)
vs.)
)
AETNA LIFE INSURANCE COMPANY)
a Corporation, and)
TRW, Inc.,)
)
Defendants.)

No. 79-C-139-BT ✓

ORDER OF DISMISSAL

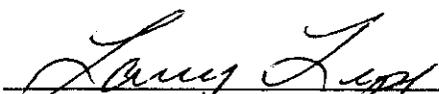
Defendant TRW, Inc. having filed a Motion to Dismiss and Plaintiffs Opal Slinkard and Billie Lee Slinkard having filed a Confession of Defendant TRW's Motion to Dismiss, and it appearing to the Court that there is no longer any cause of action stated as to Defendant TRW, Inc., IT IS,

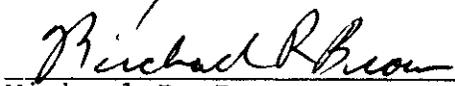
~~THEREFORE, ORDERED, DECREED AND ADJUDGED~~ that the Amended Complaint of Opal Slinkard, and Billie Lee Slinkard, Executor of the Estate of W. H. Slinkard, Deceased against Defendant TRW, Inc. is hereby dismissed with prejudice.

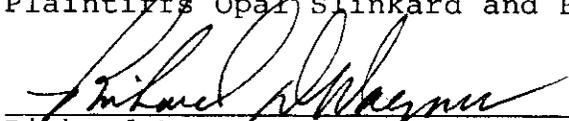
DATED this 8 day of November, 1980.


JUDGE OF THE UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:


Larry B. Lipe, Attorney for
TRW, Inc.


Michael R. Brown
Denzil D. Garrison, Attorneys for
Plaintiffs Opal Slinkard and Billie Lee Slinkard


Richard D. Wagner, Attorney
for Aetna Life Insurance Company

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

WALTER T. BANKS,)
)
 Petitioner,)
)
 vs.)
)
 THE HONORABLE RAYMOND)
 GRAHAM, and THE ATTORNEY)
 GENERAL of the State of)
 Oklahoma,)
)
 Respondents.)

No. 80-C-578-E

FILED

NOV 6 1980

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

O R D E R

The Court permitted this action to be filed on October 10, 1980, without prepayment of fees or costs, pursuant to 28 U.S.C. § 1915.

Petitioner, presently detained in the Tulsa County Jail, was, by his allegations, arrested on state charges on August 2, 1980. Petitioner alleges that he has not yet been taken to trial, in violation of the Federal Speedy Trial Act, 18 U.S.C. §§ 3161, et seq.

The Petition must be dismissed. The Speedy Trial Act applies to federal, not state prosecutions, see, e.g., United States v. Mejias, 417 F.Supp. 585 (S.D. N.Y. 1976), aff'd, 552 F.2d 435 (Second Cir. 1977), cert. denied, 434 U.S. 847, 98 S.Ct. 154 (1977).

As to the other claims raised by Petitioner, his failure to exhaust state remedies precludes consideration by this Court, e.g., Dolack v. Allenbrand, 548 F.2d 891 (Tenth Cir. 1977); United States ex rel. Scranton v. New York, 532 F.2d 292 (Second Cir. 1976).

Accordingly, the petition should be dismissed at this time. It is so Ordered this 6TH day of November, 1980.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

ENVICON DEVELOPMENT CORP.,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
ANNEX ASSOCIATES, an Oklahoma)
general partner, JOHN W.)
ANDERSON, an individual, and)
ROY D. SHANK, an individual,)
)
Defendants.)

No. 80-C-303-C ✓

FILED

NOV 5 1980 K

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

ORDER OF DISMISSAL

NOW, ON THIS 5th day of November, 1980, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by plaintiff and all of the respective defendants. Based upon the representations and requests of the parties, as set forth in the foregoing Stipulation, it is

ORDERED that plaintiff's Complaint and claims for relief against the defendants, Annex Associates, John W. Anderson and Roy D. Shank, be and the same are hereby dismissed with prejudice. It is further

ORDERED that the Cross Complaint and claims for relief of the defendant Roy D. Shank against the defendant John W. Anderson be and the same are hereby dismissed with prejudice.

Jack C. Silver
CHIEF UNITED STATES DISTRICT JUDGE

APPROVED:

Kenneth K. Pustilnik
FEIT & AHRENS
488 Madison
New York, New York 10022

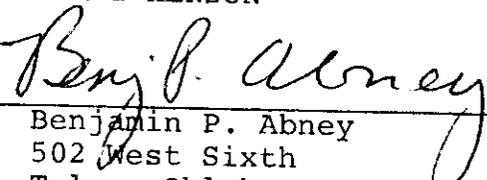
PRICHARD, NORMAN & WOHLGEMUTH

By *Timothy J. Sullivan*
Timothy J. Sullivan
909 Kennedy Building
Tulsa, Oklahoma 74103

Attorneys for the Plaintiff,
Envicon Development Corp.

CHAPEL, WILKINSON, RIGGS, ABNEY
KEEFER & HENSON

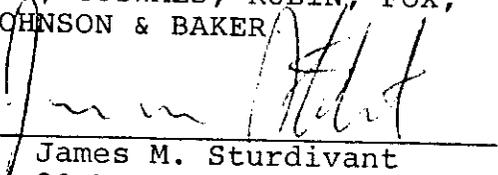
By


Benjamin P. Abney
502 West Sixth
Tulsa, Oklahoma 74119

Attorneys for Defendant Roy D.
Shank

GABLE, GOTWALS, RUBIN, FOX,
JOHNSON & BAKER

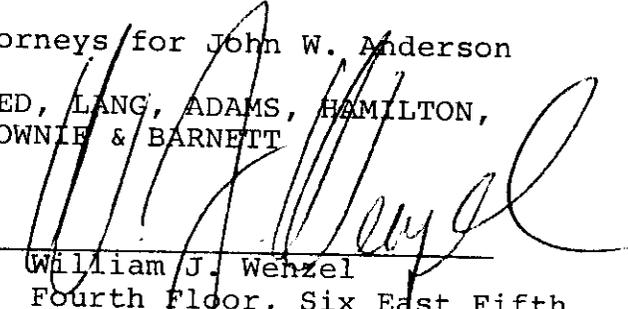
By


James M. Sturdivant
20th Floor, Fourth National Bldg.
Tulsa, Oklahoma 74119

Attorneys for John W. Anderson

SNEED, LANG, ADAMS, HAMILTON,
DOWNIE & BARNETT

By


William J. Wenzel
Fourth Floor, Six East Fifth
Tulsa, Oklahoma 74103

Attorneys for Defendant Annex
Associates

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

FILED
Nov 4 1980 AM
COURT

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,) CIVIL ACTION NO.
) 78-C-444-EV
v.)
)
BROOK INDUSTRIES, INC.,)
) CONSENT DECREE
)
Defendant)

1. This action was instituted by the Equal Employment Opportunity Commission of the United States of America (hereinafter referred to as the "Commission") to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq. (Supp. II, 1972), (hereinafter referred to as "Title VII") against Brook Industries, Inc., (hereinafter referred to as "Defendant") an operation located in Chelsea, Oklahoma. The Commission alleged in its Complaint that the Defendant engaged in acts and practices infringing upon the rights secured by Title VII, including discriminatorily discharging Ms. Linda Griffin in an act of reprisal for her inquiry as to maternity rights protected under Title VII, and prayed for injunctive relief from practices which would preclude or discourage Ms. Griffin or other persons similarly situated from seeking information about Title VII, prayed for injunctive relief rights, making charges, testifying, assisting or participating in an investigation, proceeding or hearing under Title VII or in any manner opposing a practice made unlawful by Title VII.

2. This Court has been advised that the Commission and the Defendant in this action wish to avoid the costs and burdens of contested litigation and that, in order to accomplish that end and to resolve the issues raised in this action, the

Commission and the Defendant have agreed that this Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by this Court.

3. This Decree being issued with the consent of the Defendant, shall not constitute an adjudication or finding on the merits of the case and shall in no manner be construed as an admission by the Defendant of any violation of said Title VII or of any other law, rule or regulation dealing, or in connection with, equal employment opportunity. The Defendant's position is that it has consented to the entry of this Decree to avoid the burdens of litigation.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

- A. That the Court has jurisdiction of the parties and subject matter of this action pursuant to Title VII.
- B. That the Defendant agrees that it and its officers, directors, managers, supervisors, agents, and its successors will not preclude or discourage any person from seeking information about Title VII rights, making charges, testifying, assisting or participating in an investigation, proceeding or hearing under Title VII or in any manner opposing a practice made unlawful by Title VII.
- C. That the Defendant agrees that it and its officers, directors, managers, supervisors, agents and its successors will not discriminate against any person who seeks information about Title VII rights, or who makes charges, testifies, assists or participates in an investigation, proceeding or hearing under Title VII or in any manner opposes a practice made unlawful by Title VII.
- D. That the Defendant shall within ten (10) days of entry of this Decree post and keep posted for a minimum of three years in conspicuous places upon its premises where

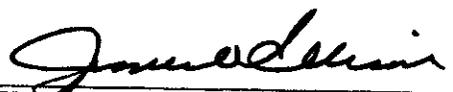
notices to employees are customarily posted a separate notice informing employees of their rights to be free from any intimidation or reprisal for their seeking information from the Oklahoma Human Rights Commission, the Equal Employment Opportunity Commission, or other sources about their rights under Title VII or under the laws of the State of Oklahoma prohibiting employment discrimination, or for their exercise of any rights thereunder, such separate notice to be worded as designated in Exhibit 1 attached hereto. The Defendant shall within ten (10) days of entry of this Decree, provide each employee a copy of said notice. The Defendant shall within twenty (20) days of entry of this Decree report in writing to the Commission, to the attention of Dale H. Jurgens, whose address is indicated hereinafter, regarding its execution of this paragraph (paragraph D).

- E. That the Defendant shall pay to Linda F. Griffin the sum of \$5000.00 in settlement of all claims or actions for employment discrimination which Linda F. Griffin has against the Defendant, its successors, directors, employees, agencies, and their respective heirs, legal representatives and assigns, and by acceptance of the amount provided herein, Linda F. Griffin, for herself, her heirs, legal representatives, successors and assigns, does forever waive and release any and all such claims. Payment shall be made by check made payable to Linda F. Griffin in the amount indicated, which check shall be mailed by certified mail to Dale H. Jurgens, Senior Trial Attorney, Equal Employment Opportunity Commission, Dallas District Office, 1900 Pacific Avenue, 13th Floor, Dallas, Texas 75201, within ten (10) days of entry of this Decree, for delivery to

Linda F. Griffin.

- F. That the Defendant shall pay to the Equal Employment Opportunity Commission the sum of \$596.16 for its costs of this litigation. Payment shall be made by check made payable to the Equal Employment Opportunity Commission in the amount indicated, which check shall be mailed by certified mail to Dale H. Jurgens, Senior Trial Attorney, Equal Employment Opportunity Commission, Dallas District Office, 1900 Pacific Avenue, 13th Floor, Dallas, Texas 75201, within ten (10) days of entry of this Decree.
- G. That at any time that any employer, prospective employer, employment agency, or any person seeks an evaluation or employment reference concerning Linda F. Griffin, the Defendant's response will be neutral, including only (a) dates of employment, (b) position and (c) pay rate information.

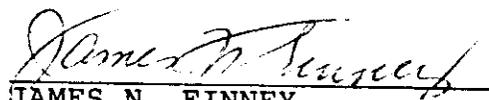
ENTERED this 3rd day of November, 1980.


UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:

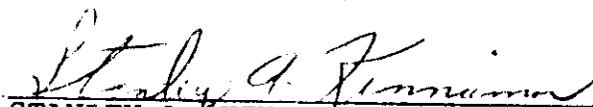
FOR THE PLAINTIFF:

LEROY D. CLARK
General Counsel

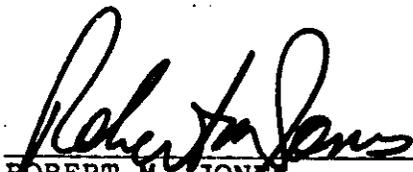

JAMES N. FINNEY
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
2401 E Street, N. W.
Washington, D. C. 20506

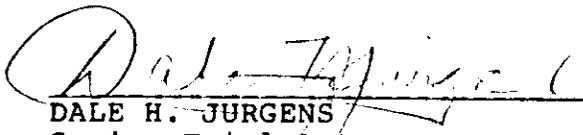
FOR THE DEFENDANT:


STANLEY A. KINNAMON
President
BROOK INDUSTRIES, INC.


RICHARD E. H. PHELPS, II
Holliman, Langholz, Runnels &
Dorwart
Holarud Building, Suite 700
10 East Third Street
Tulsa, Oklahoma 74103
Attorney for Defendant,
Brook Industries, Inc.


ROBERT M. JONES
Regional Attorney


IVAN RIVERA
Supervisory Trial Attorney


DALE H. JURGENS
Senior Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Dallas District Office
1900 Pacific, 13th Floor
Dallas, Texas

NOTICE TO ALL EMPLOYEES

1. If any employee wishes to seek information about her or his rights regarding employment discrimination on account of race, sex (including pregnancy), national origin, religion or age, the employee is free to seek such information from the Oklahoma Human Rights Commission, the Equal Employment Opportunity Commission, or other source without fear of intimidation or reprisal directly or indirectly from Brook Industries, its management or supervision.
2. If an employee believes he or she has been so discriminated against by Brook Industries, its management or supervision, the employee may contact directly the Oklahoma Human Rights Commission or the Equal Employment Opportunity Commission to exercise her or his rights without fear of intimidation or reprisal from Brook Industries, its management or supervision.
3. Any manager, official or supervisor of Brook Industries who engages in any act of intimidation or reprisal against any individual for seeking information about their rights or exercising their rights as described above will be subject to immediate discipline, up to and including discharge.
4. For information call or write to:

Oklahoma Human Rights Commission
Oklahoma State Office Building
440 South Houston, 106 Plaza Level
Tulsa, Oklahoma 74127
Telephone: (918) 581-2733

Equal Employment Opportunity Commission
50 Penn Place, Suite 504
Oklahoma City, Oklahoma 73118
Telephone: (405) 231-4911

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

CIMARRON INSURANCE CO., INC., a)
Foreign Insurance Corporation,)
Plaintiff,)
-vs-)
LINDA STEMMONS, et al,)
Defendants.)

No. 80-C-342-E

ORDER OF DISMISSAL

On this 3rd day of November, 1980, upon stipulation of the parties and by reason of a settlement rendering the issues of this case moot, it is hereby ordered that the said action be and is hereby dismissed.

151 James O. Ellison
JUDGE

APPROVED AS TO FORM

James E. Poe
JAMES E. POE
Attorney for Plaintiff

Ken Ray Underwood
KEN RAY UNDERWOOD
Attorney for Defendant, Stemmons

Michael P. Atkinson
MICHAEL P. ATKINSON
Attorney for Defendants,
Southerland and Parker

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

F I L E D

NOV 4 1980

LIVINGSTON ENERGY CORPORATION)
and ALAN N. LIVINGSTON,)
)
Plaintiffs,)
)
-vs-)
)
INDEPENDENT EXPLORATION)
COMPANY,)
)
Defendant.)

U.S. DISTRICT COURT

NO. 80-C-191-E

O R D E R

The plaintiffs and defendant having agreed that the defendant's motion for change of venue should be granted, IT IS HEREBY ORDERED that this action be transferred to the United States District Court for the Southern District of Texas, Houston Division, under 28 U.S.C. §1404(a).

IT IS FURTHER ORDERED that the motion of the defendant to dismiss for lack of jurisdiction and motion to dismiss or in the alternative to strike portions of the Complaint be transferred to the United States District Court for the Southern District of Texas, Houston Division.

IT IS SO ORDERED.

DATED: November 3, 1980

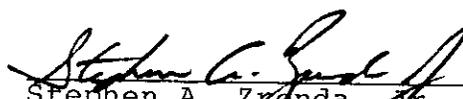


JAMES O. ELLISON,
United States District Judge

APPROVED:



Roy J. Davis, Esquire
William D. Watts
ANDREWS DAVIS LEGG BIXLER
MILSTEN & MURRAH
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Telephone: (405) 272-9241
ATTORNEYS FOR PLAINTIFFS,
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and ALAN N. LIVINGSTON



Stephen A. Zrenda, Jr., Esquire
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Oklahoma City, Oklahoma 73102
Telephone: (405) 235-8318
ATTORNEY FOR DEFENDANT,
INDEPENDENT EXPLORATION CO.

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

TEMPERLY TRUCKING COMPANY)
INC.,)
)
Plaintiff,)
)
vs.) 80-C-31-E
)
MARY ANN FIORINO,)
RYDER TRUCK RENTAL, INC.)
and NANCY CORCOWN,)
)
Defendants.)

ORDER

Now on this 3rd day of November, 1980, this matter comes on before me the undersigned Judge. The Court, after examining the Application, reviewing the file and otherwise being fully advised of the premises, finds that the Application should be granted.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that the plaintiff's Application for Dismissal is granted and the plaintiff's cause of action against all parties is dismissed with prejudice for the reason and upon the ground that all claims and disputes and issues of law and facts heretofore existing between the plaintiff and defendants have been settled.

S/ JAMES O. ELLISON

Judge of the United States District Court

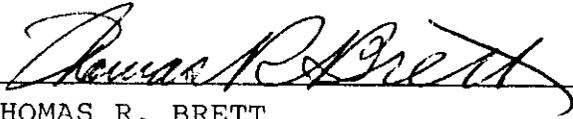
IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIE COMBS,)
)
 Plaintiff,)
)
 vs.) No. 79-C-130-BT
)
 HILLCREST MEDICAL CENTER,)
)
 Defendant.)

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law filed herewith, IT IS ORDERED that judgment be entered in favor of the defendant, Hillcrest Medical Center, and against the plaintiff, Willie Combs, the plaintiff to bear the costs herein, and each party pay their respective attorney's fees.

ENTERED this 4th day of November, 1980.



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

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

WILLIE COMBS,

Plaintiff,

vs.

HILLCREST MEDICAL CENTER,

Defendant.

No. 79-C-130-BT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case was tried to the Court on October 27 and 28, 1980. The plaintiff claims employment racial discrimination as a result of a required shift change, not being considered for the position of Assistant Food Service Director, and his ultimate discharge. The following are the Court's Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. This is a case of alleged racial discrimination in employment under Title 42 U.S.C. §2000e. The plaintiff is a black male citizen of the United States residing in Tulsa, Oklahoma, and a high school graduate who was employed by the Hillcrest Medical Center ("Hillcrest"), Tulsa, Oklahoma, from August 1963 through June 1977. During this period of time the plaintiff advanced through the positions of dishwasher, second cook, first cook, salad bar manager, one of three senior supervisors, and snack bar manager. The plaintiff was considered to be an excellent cook.

2. As a senior supervisor in the dietary department before April 1975 the plaintiff worked under Food Service Director J. C. Clayton. The plaintiff had a good working relationship with Mr. Clayton and was actually allowed employment privileges not enjoyed by other comparable level employees. In April 1975 when Bob Stephens became the new Food Service

Director there was a personality clash and a poor working relationship between Stephens and the plaintiff. The plaintiff never accepted Stephens as his superior and there was constant friction between the two. It is the Court's view this was not racially based, though perceived as such by the plaintiff, but a matter of Stephens' management style and the plaintiff's resistance to being responsible and accountable to him. The Court concludes the standards imposed by Food Service Director Stephens and his requirements of employees and particularly the plaintiff, were not unreasonable.

3. Approximately 30% to 40% of the employees in the Food Service Department are minorities, which is in excess of the percentage of minorities available in the job market, but there is practically a 100% annual turnover of Hillcrest food service employees.

THE SHIFT CHANGE ISSUE:

4. In January 1971 the plaintiff became a senior supervisor along with two white females of co-equal standing in the dietary area of the Food Service Department. In 1971 there was some shift rotation by the senior supervisors on a monthly basis. However, for in excess of three years before September 1975 the senior supervisors' shifts were as follows: 0600 to 1400, 0800 to 1630, and 1100 to 1930. The plaintiff's shift during this period of time was the more normal workday shift from 0800 to 1630 hours. On the late shift's day off the plaintiff's shift would be modified to 1000 hours to 1800 hours.

The usual operating hours of the dietary department were from approximately 0500 to 2030 hours. The existing senior supervisor work shifts resulted in there not being any supervisory coverage of approximately the first hour and the last hour and a half the dietary department was open. Without proper supervisory personnel present during these times, operational problems had developed as well as problems involving food security.

5. New Food Service Director Bob Stephens determined complete senior supervisory coverage of the dietary department's hours of operation was required. Senior supervisory shifts were established as follows: 0445 to 1330 and 1200 to 2030. The other senior supervisor would work a swing shift including the days off of the

other two, two days of early shift, two days of late shift, and on the fifth day, would work 10 A.M. to 6 P.M. The swing shift would have Saturday and Sunday off. This would insure senior supervisory coverage seven days a week during all hours the dietary department was open and the three senior supervisors rotated these shifts on a monthly basis.

6. The new shift change schedule was announced by the Food Service Director Stephens in early September 1975. The plaintiff refused to comply with the new shift change schedule because it interfered with his outside job and the defendant refused to give the plaintiff an additional \$500.00 per month salary as he requested.

7. The plaintiff was terminated on September 8, 1975 for failing to comply with the shift change schedule and he filed a grievance in accordance with Hillcrest's employee grievance procedure contending racial discrimination and that his seniority entitled him to be exempt from the new shift change schedule. The Hillcrest Assistant Administrator investigated the grievance and he and the Administrator determined the proposed shift change was a sound management requirement and fair to the employees involved.

8. The plaintiff was invited to return to his senior supervisor employment if he would agree to accept the shift change and rotation and further accept Bob Stephens as his department head. The plaintiff did so and returned to work on October 17, 1975.

9. The shift change and rotation was a reasonable and necessary management and personnel requirement not caused or brought about by any considerations of race, and particularly racial discrimination against the plaintiff.

FAILURE TO CONSIDER THE PLAINTIFF
FOR THE POSITION OF ASSISTANT FOOD
SERVICE DIRECTOR:

10. Following Food Service Director J. C. Clayton going on medical disability leave in March 1975, Bob Stephens became

the acting Food Service Director. New multi-floor dietary department facilities were occupied in March 1976. In April 1976 Food Service Director Clayton took medical disability and Bob Stephens became the Food Service Director.

11. In April 1976 the position of Assistant Food Service Director, previously occupied by Bob Stephens, was not filled because Assistant Administrator Michael Covert thought the Food Service Director with additional duties delegated to the head therapeutic dietitian and the three senior supervisors could adequately serve the department. Budgetary considerations were also a part of the decision not to fill the Assistant Food Service Director position. The decision not to fill the Assistant Food Service Director position was based upon legitimate management considerations and not a pretext for racial discrimination.

12. The Assistant Food Service Director position was not filled until January 1979 when a new Assistant Hospital Administrator determined the position should be reactivated. The position description (Defendant's Exhibit 30) stated in part:

"Incumbent should have a college degree or equivalent experience in food service administration and at least three years experience in hospital dietary department and must have demonstrated ability to apply scientific knowledge to food service for individuals and groups. The incumbent must understand the organization and operation of all units within the dietary department, have a complete knowledge of bacteriological principles as applied to food spoilage and sanitation, and be aware of new developments in the field of dietetics."

Before the position was filled in January 1979 the plaintiff had terminated his employment with Hillcrest in June 1977. In view of the position description and experience requirement, it is doubtful the plaintiff was qualified.

13. Although the Assistant Food Service Director job opening was not formally posted, the plaintiff did not apply for or seek promotion to this position. In January 1979 when the Assistant Food Service Director position was filled, a more qualified person, Carol Fuller, formerly Assistant Food Service Director (1968-70) and with an appropriate college degree, was employed.

There was no racial pretext involved in the decision not to fill the Assistant Food Service Director position from April 1977 to January 1979 and the filling of same involved no racial discrimination against the plaintiff.

DISCRIMINATION IN SUSPENSION
AND DISCHARGE:

14. In December 1976 the plaintiff applied for promotion to Snack Bar Manager which was approved by the Food Service Director Bob Stephens and he was so employed.

15. As Snack Bar Manager the plaintiff had problems properly reporting employee overtime, differences over menu implementation, and spending too much time in the kitchen away from his management duties. As the plaintiff's superior Bob Stephens would talk to and instruct the plaintiff in reference to these deficiencies the plaintiff would become noncommunicative and angry. At times the plaintiff would refuse to talk at all with Stephens. Because of the plaintiff's refusal to talk to Stephens he was suspended from his employment on April 29, 1977 to May 3, 1977. The plaintiff filed a grievance in reference to this suspension and was permitted to return to work on May 3, 1977 pending determination of the grievance.

16. When the plaintiff received his payroll check on May 5, 1977 he complained to Stephens for being docked or not being paid during his suspension from April 29 through May 2, 1977. Stephens informed the plaintiff no employee was paid during suspension. The plaintiff became very angry and said he would "Get the money back one way or another." During this discussion and while the plaintiff was angry he impetuously threatened physical injury to Stephens' wife and daughter.

17. Following this heated exchange the plaintiff was permitted a "cooling off" vacation and a leave of absence.

18. In June 1977 plaintiff filed a grievance alleging mismanagement and racial discrimination by Stephens. The hospital

administration investigated the grievance and determined it was without foundation.

19. It was determined by the defendant management in mid-June 1977 the plaintiff was unable to function as an employee subordinate of Food Service Director Stephens. The plaintiff was told the defendant would make an effort to find other employment in another hospital department for him. The plaintiff rejected this offer and was therefore discharged on June 30, 1977.

20. The plaintiff's discharge was not brought about by racial discrimination but because of the communication conflict between Food Service Director Stephens and the plaintiff and the plaintiff's refusal to work under and accept supervision by Stephens.

21. On July 29, 1977 the plaintiff filed a charge of racial discrimination with the local office of the Equal Employment Opportunity Commission (EEOC), asserting that he had been discriminated against on account of race by Hillcrest. After investigation the EEOC on November 27, 1978 entered its findings and further issued a notice of right to sue to the plaintiff. This action was commenced on February 26, 1979.

CONCLUSIONS OF LAW

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

1. The Court has jurisdiction of this action pursuant to Title 42 U.S.C. §2000e et seq and the parties.

2. Any Finding of Fact above that may also be properly characterized a conclusion of law is incorporated herein.

3. The evidence taken as a whole does not establish the defendant discriminated on the basis of race against the plaintiff in his employment in violation of Title 7 of the Civil Rights Act of 1964, 42 U.S.C. §2000e. McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 801-05, 36 L.Ed.2d 668, 677-79 (1973); see also Board of Trustees v. Sweeney, 439 U.S. 24, 99 S.Ct. 295, 58 L.Ed.2d 216 (1978); Furnco Construction Corp. v. Waters, 438 U.S. 567, 57 L.Ed.2d 957 (1978); Hernandez v. Alexander, 607 F.2d 920 (10th Cir. 1979). There was no racial discrimination toward the plaintiff by

the defendant in the shift change rotation, filling the position of Assistant Food Service Director, or in his suspension and discharge.

4. Even if it can be concluded the plaintiff established a prima facie case of discrimination, it was rebutted by the defendant's evidence its decisions were based upon reasonable and necessary management policies and the plaintiff's inability and refusal to accept the authority and supervision of his superior, the Food Service Director Bob Stephens. See McDonnell-Douglas Corp. v. Green, supra. The plaintiff's evidence does not establish the conduct and decisions of the defendant was a pretext for racial discrimination against the plaintiff.

5. The plaintiff has failed to establish that the treatment accorded to him as opposed to Caucasian or nonblack employees was disparate. The evidence taken as a whole supports the conclusion the manner in which the defendant treated or dealt with the plaintiff as an employee, including his discharge, was the same accorded to other employees irrespective of race. Givhan v. Western Line Consolidated School District, 438 U.S. 410, 58 L.Ed.2d 619 (1979); Mt. Healthy City Board of Education v. Doyle, 429 U.S. 274, 287, 50 L.Ed.2d 471, 484 (1978).

6. Judgment should be entered for the defendant and against the plaintiff with costs assessed to the plaintiff, each party is to pay their own attorney's fee.

DATED this 4th day of November, 1980.



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

NOV 4 1980

Jack C. Silver, Clerk
U S DISTRICT COURT

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

ROBERT E. COTNER,)	
)	
Plaintiff,)	
)	
vs.	)	80-C-438-BT
)	
TULSA MAYOR INHOFE,)	
JACK PURDIE,)	
CITY COUNCIL MEMBERS,)	
and et al.,)	
)	
Defendants.)	

ORDER

On August 4, 1980, the Court granted plaintiff, Robert E. Cotner, permission to proceed in forma pauperis to prosecute this complaint. Robert E. Cotner appears pro se.

Plaintiff brings this action pursuant to 42 U.S.C. §1983, complaining of the revocation by the City of Tulsa of his Private Detective, Guard and Patrol License without "probable cause" and without the benefit of a trial. Plaintiff alleges deprivation of his liberty, property and business license without "due process of law", or compensation. He further contends the revocation amounted to punishment for a crime for which he had already been punished. He contends such revocation is tantamount to excessive, cruel, unusual and unconstitutional punishment inflicted by defendants. ¹

He requests relief as follows:

1. A full federal investigation of corruption of Tulsa City and County officials.
2. Appointment of competent counsel for representation.
3. Issuance of a Restraining Order to prevent defendants from harming and harassing plaintiff.
4. A hearing.
5. \$200,000.00 plus costs and damages plus reinstatement of his Private Detective, Guard and Patrol License.

1/ The plaintiff has previously filed or there are pending in this Court approximately 15 other purported claims with civil rights overtones.

Defendants have moved for Summary Judgment and plaintiff has responded.

Title 21, Section 259 of the Revised Ordinances of the City of Tulsa provides:

"SECTION 259. SUSPENSION AND REVOCATION.

"Licenses issued hereunder may be suspended for definite period of time, or revoked by the Chief of Police.

"(a) Grounds for suspension or revocation:

"(6) If the licensee has, knowingly or willfully, falsely stated or represented matter or information contained as the part of an application for a license hereunder;

"(7) If the licensee has been convicted of violating any provisions of this chapter, or future amendments hereof, or has been convicted of a felony or a misdemeanor involving moral turpitude.

"(b) In the event that any person or employee thereof holding a license hereunder has done any of the things set forth in subdivision (a), paragraphs 1 through 7 hereof, the Chief of Police shall suspend or revoke the license of such person or employee."

In Kelley v. City of Tulsa, 569 P.2d 455 (Okla. 1977), the Oklahoma Supreme Court, in considering the denial of a private detective and guard license defined moral turpitude as follows:

"Moral turpitude broadly defined is any conduct contrary to justice, honesty and good morals. Moral turpitude implies something immoral in itself regardless of whether it is punishable by law. The doing of the act itself, and not its prohibition by statute determines the moral turpitude...."

A crime involves moral turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or to society in general. 21 Am.Jur.2d §24, Criminal Law.

Plaintiff was convicted of mail fraud in the United States District Court for the Northern District of Oklahoma, 73-CR-103, on January 22, 1974. (Def. Ex. 2) Plaintiff was convicted of Rape, 2nd Degree, in the Tulsa County District Court in case CRF 76-1099 on October 21, 1976 (Def. Ex. 3) Plaintiff was convicted of mailing threatening communications through the mails in the United States District Court for the Western District of Oklahoma, CR-80-34 on May 13, 1980. (Def. Ex. 4) Moral turpitude is implicit in each conviction.

Robert E. Cotner was issued a Private Detective, Guard and Patrol License in 1967, and it was annually renewed through November 27, 1976. The license application contains the following question: "If you have been arrested or convicted of a crime within the past year, give date, location and explain." On the renewal application dated October 25, 1974 there was no mention by plaintiff of his conviction for mail fraud on January 22, 1974, in the United States District Court for the Northern District of Oklahoma. Plaintiff allowed his license to lapse until June 15, 1978 (Def. Ex. 7) when he renewed his license. He again renewed his license on November 13, 1978 (Def. Ex. 8).

The affidavit of Harry W. Stege, Chief of Police, City of Tulsa (Def. Ex. 9) reveals the following:

"Robert E. Cotner came to my attention by information supplied me by Palmer Chemical and Equipment Company of Douglasville, Georgia. This company was checking the validity of a letter of recommendation for Robert E. Cotner approving the purchase of various restricted weapons. That letter of recommendation bore what purported to be my signature. As I had not authorized or signed as approving any such letter of recommendation, I instituted an investigation of this individual. After completing a criminal records review, it was determined that Mr. Cotner had been convicted of various crimes....

"I informed Mr. Robert E. Cotner by certified U.S. Mail, return receipt, on March 13, 1979 that the Guard, Detective and Patrol License issued him was revoked.... Notice of Appeal was received within the statutory time limits.... A hearing was had on May 4, 1979 before the duly elected City of Tulsa Board of Commissioners from which my decision to revoke said license was upheld.

Plaintiff had not filed a counter-affidavit.

The power to regulate the issuance and revocation of a private detective license is within the City of Tulsa's police power. The City has a substantial interest in the granting of such licenses and may properly inquire into conduct involving moral turpitude of those applying and being considered.

The Court, having carefully examined the file and the exhibits and affidavit submitted, finds no deprivation of fundamental rights; no deprivation of plaintiff's liberty, property or business license without due process of law; and no cruel, unusual or unconstitutional punishment.

Summary Judgment is appropriate only if there exists no genuine issue as to any material fact. Rule 56, F.R.Civ.P. The movant has the burden of proving there is no genuine issue of any material fact. Adickes v. Kress & Co., 398 U.S. 144, 157 (1970). The movant must show entitlement to summary judgment beyond a reasonable doubt. McClelland v. Facticeau, No. 77-1709 (10th Cir. Nov. 19, 1979); Madison v. Deseret Livestock Co., 574 F.2d 1027, 1037 (10th Cir. 1978).

In considering a motion for summary judgment, the materials presented by the parties must be viewed in the light most favorable to the party opposing the motion. United States v. Diebold, Inc., 369 U.S. 654 (1962).

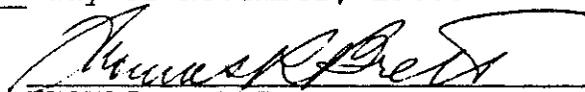
The Court concludes there is no genuine issue as to any material fact and defendants' Motion for Summary Judgment should be sustained.

Plaintiff, in his complaint, and in his response to the Motion for Summary Judgment, requests appointment of counsel. There is no right to counsel in Civil Rights cases. Harwick v. Ault, 517 F.2d 295, 298 (5th Cir. 1975). 28 U.S.C. §1915(d) provides that the Court may request an attorney to represent a party who is proceeding in forma pauperis in a civil case, but that section contains no provision for compensation of counsel. The decision of whether to appoint counsel rests within the sound discretion of the Court unless denial would result in fundamental unfairness impinging on due process rights. Heidelberg v. Hammer, 577 F.2d 429 (7th Cir. 1978). The Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. §1988, authorizes the court to allow the prevailing party a reasonable attorney's fee as part of the costs in a civil action. The act does not authorize the court to appoint counsel.

The Court, therefore, declines to appoint counsel in this case.

IT IS, THEREFORE, ORDERED the defendants' Motion for Summary Judgment is sustained.

ENTERED this 4th day of November, 1980.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

NOV. 3 1980

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

M. RAY KENOYER, M.D.,

Plaintiff

VS.

ROBERT KING, D.V.M.,

Defendant

§
§
§
§
§
§
§
§

CIVIL ACTION NUMBER
80-C-240-E

JOINT STIPULATION OF DISMISSAL

Plaintiff, M. Ray Kenoyer, M.D., by and through his attorney of record, Robert F. Maris, and Defendant, Robert King, D.V.M., by and through his attorney of record, Alfred B. Knight, pursuant to Federal Rule of Civil Procedure 41(a)(1), move the Court for the entry of an order of dismissal, without prejudice. In support of their motion, the parties state:

1. Plaintiff does not desire to continue the prosecution of this case at the present time.

2. Defendant is likewise desirous of a termination of this litigation.

3. This Joint Stipulation of Dismissal shall in no way prejudice the rights of either Plaintiff or Defendant to pursue claims which relate to the subject matter of this case.

4. It is agreed by Plaintiff and Defendant that all costs of court incurred in this action shall be borne by the party who incurred the costs.

5. Under the terms and conditions set forth herein, Plaintiff and Defendant stipulate that this action should be dismissed.

DATED this 3rd day of November, 1980.

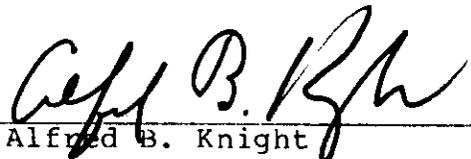
Respectfully submitted,

KOLODEY, THOMAS, DOOLEY,
MARIS & LILLY
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By 
Robert F. Maris

ATTORNEYS FOR PLAINTIFF

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(918) 584-6457

By 
Alfred B. Knight

ATTORNEYS FOR DEFENDANT