

Entered

FILED

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

JAN 31 1986

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

ABERSON'S, INC., ABERSON'S)
ALLEY, INC., and NEXT DOOR)
BY ABERSON'S, INC.,)

Plaintiffs,)

-vs-)

No. 85-C-513-B

ROBERT B. AIKENS &)
ASSOCIATES, INC., a)
corporation, and KELLY-NELSON,)
contractor,)

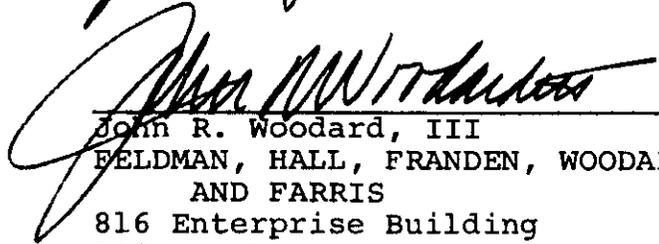
Defendants.)

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiffs, Aberson's, Inc., Aberson's Alley, Inc. and Next Door by Aberson's, Inc., and Defendants, Robert B. Aikens & Associates, Inc. and Kelly-Nelson Construction Company (sued herein as "Kelly-Nelson"), hereby advise the Court that this matter has been resolved by a Compromise and Settlement Agreement entered into between the parties and, accordingly, it is hereby stipulated by all parties to this action that the action is dismissed, with prejudice to the refiling thereof. This dismissal includes the claims asserted in the initial Petition for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction and Damages filed by Plaintiffs in the District Court in and for Tulsa County, State of Oklahoma, Case No. CJ-85-03140, the Application for Citation for Contempt filed by Plaintiffs therein (which Petition and Application for Citation for Contempt were filed prior to the removal of the action to this Court) and the

claims asserted in Plaintiffs' First Amended Complaint, filed herein on August 16, 1985.

DATED this 30th day of January, 1986.



John R. Woodard, III
FELDMAN, HALL, FRANDEN, WOODARD
AND FARRIS

816 Enterprise Building
522 South Boston
Tulsa, Oklahoma 74103-4609
918/583-7129
ATTORNEY FOR PLAINTIFFS



Richard B. Noulles
GABLE & GOTWALS
20th Floor, Fourth National Bldg.
Tulsa, Oklahoma 74119
918/582-9201
ATTORNEY FOR DEFENDANTS

Entered

FILED

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

JAN 31 1985

GARLIN M. BAILEY,)
)
 Plaintiff,)
)
 v.)
)
 INEZ KIRK, et al.,)
)
 Defendants.)

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

No. 80-C-643-B

ORDER OF DISMISSAL

The Court, for good cause shown and upon the joint stipulation of the parties, finds that the defendants ARTIE PALK, DAVID LUNDY, DON COBLE, SAM CHILDERS, TOM GILBERT, BARRY HACKER and KIM TILLEY should be, and the same are hereby, dismissed as party defendants.

IT IS THEREFORE ORDERED that the plaintiff's claims as to the defendants ARTIE PALK, DAVID LUNDY, DON COBLE, SAM CHILDERS, TOM GILBERT, BARRY HACKER and KIM TILLEY are hereby dismissed without prejudice.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

This Order Prepared By:

P. Thomas Thornbrugh, OBA #8995
1722 South Boston
Tulsa, OK 74119
(918) 582-1112
Attorney for Plaintiff

FILED

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

JAN 31 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CLYDE L. BUTLER, d/b/a)
 ROYAL AMERICAN INN,)
)
 Plaintiff,)
)
 vs.)
)
 DOWELL DIVISION OF THE DOW)
 CHEMICAL COMPANY,)
)
 Defendant.)

Case No. 84-C-273-E

JOURNAL ENTRY OF JUDGMENT

This cause comes on for jury trial this 23rd day of January, 1986, and Plaintiff, Clyde L. Butler, appears in person and by and through his attorney Bert C. McElroy and Defendant, Dowell Division of the Dow Chemical Company, appears by and through its attorney Fred C. Cornish.

Both parties announcing ready for trial, Plaintiff presents his evidence and rests. Defendant moves that this action be dismissed which the Court overrules. Defendant presents its evidence and rests. Defendant renews its motion to dismiss and the Court overrules the motion. Plaintiff presents his rebuttal evidence and both parties rest. Both parties move the Court for a directed verdict.

The Court having heard all the evidence and arguments of counsel and being fully advised in the premises finds that the motion for directed verdict for the Plaintiff should be denied and

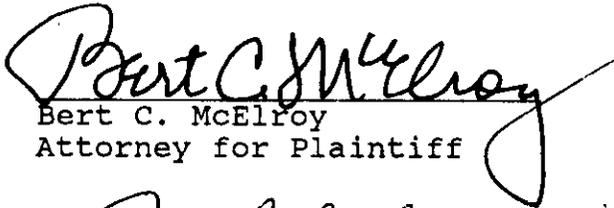
the motion for directed verdict on behalf of the Defendant should be granted.

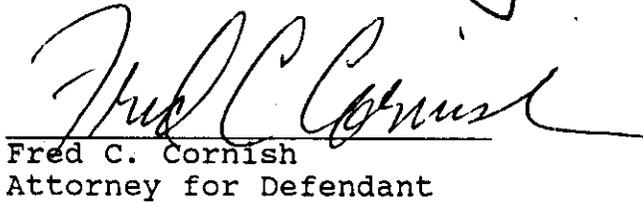
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Defendant's motion for a directed verdict is sustained and the Defendant be and hereby is granted judgment against the Plaintiff and is awarded its costs, including a reasonable attorneys' fee.

WALTER D. HUSON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


Bert C. McElroy
Attorney for Plaintiff


Fred C. Cornish
Attorney for Defendant

FILED

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

JAN 31 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

WILLIAM CHRIS BOHANNON, a minor,)
by his next friend,)
MICKEY BOHANNON,)
Plaintiff,)

vs.)

No. 85-C-993-C

JAMES F. HUBBARD,)
BANETHA BUCHANAN,)
CATHY WOODRELL,)
KIM HEFLEY,)
JOHN FOLKS,)
RALPH TEAGUE,)
LLOYD GRAHAM, and)
JENNINGS DEPENDENT SCHOOL)
SYSTEM,)
Defendants.)

ORDER

Now before the Court for its consideration is the motion of defendants John M. Folks and Lloyd Graham to dismiss, said motion filed on December 18, 1985. The Court has no record of a response to this motion from plaintiff. Rule 14(a) of the Local Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

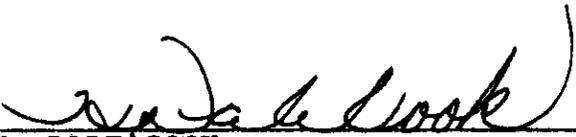
(a) Briefs. Each motion, application and objection filed shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within ten (10) days after the filing of the motion or objection, and any reply memoranda shall be filed within ten (10) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party

not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Therefore, since no response has been received to date herein, in accordance with Rule 14(a), the failure to comply constitutes a confession of the motion to dismiss.

Accordingly, it is the Order of the Court that the motion of defendants Folks and Graham to dismiss should be and hereby is granted.

IT IS SO ORDERED this 30 day of January, 1986.



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

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

FILED

JAN 30 1986

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

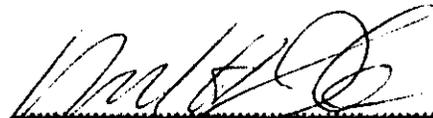
GEORGE THOMAS PITNER and)
NELDA GENE PITNER,)
)
Plaintiffs,)
)
vs.)
)
FIBREBOARD CORPORATION, et al.,)
)
Defendants.)

No. 84-C-284-E

STIPULATION FOR DISMISSAL

COME NOW the plaintiffs through their attorney of record, Mark H. Iola, joining with the defendant, Standard Insulation, Inc., through its attorneys of record, King, Roberts & Beeler, and submit the following Stipulation to the Court for an Order of Dismissal of the above captioned cause.

It is stipulated and agreed by and between the parties that the Court may enter an Order dismissing the above captioned cause, with prejudice against the filing of any future actions thereon, for the reason that on the 20 day of January, 1986, the parties entered into a compromise settlement.



Mark H. Iola
Attorney for Plaintiffs



Georgiana T. Hammett
Attorney for Standard Insulation,
Inc.

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

CHARLES BICE and EARLENE)
BICE,)
)
Plaintiffs,)
)
FIREMAN'S FUND INSURANCE)
COMPANY,)
)
Intervenor,)
)
vs.)
)
RYDER TRUCK RENTAL, INC.,)
)
Defendant.)

No. 84-C-824-E

FILED
JAN 30 1986

JUD. CLERK, DISTRICT
U.S. DISTRICT COURT

ORDER OF DISMISSAL

This matter came on for consideration on this 30th day of January, 1986 upon the Joint Application For Dismissal With Prejudice filed herein by the plaintiffs, Charles Bice and Earlene Bice, and the defendant Ryder Truck Rental, Inc. The Court being duly advised in the premises, finds that said Application For Dismissal is in the best interests of justice and should be approved, and the above styled and numbered cause of action of the plaintiffs dismissed with prejudice to a refileing.

The Court further finds that the claim of the intervenor Fireman's Fund Insurance Company is specifically reserved to said intervenor for such further proceedings against the defendant Ryder Truck Rental, Inc., as may be allowed by law.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Joint Application For Dismissal With Prejudice by

the plaintiffs, Charles Bice and Earlene Bice, and the defendant Ryder Truck Rental, Inc., be and the same is hereby approved and the cause of action of said plaintiffs and their Complaint is dismissed with prejudice to a refiling.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the claim of the intervenor, Fireman's Fund Insurance Company, is reserved for such further proceedings as are allowed by law.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

O.K.:


M. David Riggs
Attorney for plaintiffs


Donald Church
Attorney for defendant

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

FILED
IN OPEN COURT

JAN 30 1986

NETWORK COMPUTER SYSTEMS, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
NETWORK SYSTEMS CORPORATION,)
a Delaware corporation,)
)
Defendant.)

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

No. 83-C-980-E

FINAL JUDGMENT

Upon Defendant's Motion To Vacate Judgment And For Default Judgment, Or In The Alternative, For Summary Judgment, and for cause shown, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. This Court's Judgment Dismissing Action By Reason Of Settlement filed herein on February 12, 1985 should be, and the same is hereby, vacated.
2. All claims asserted by Plaintiff against Defendant herein should be, and the same are hereby, dismissed with prejudice.
3. Defendant is entitled to, and is hereby granted, judgment against Plaintiff as set forth hereinafter.
4. On and after the date hereof, Plaintiff Network Computer Systems, Inc., its officers, shareholders, directors, agents and employees and all of those in active concert or participation with Network Computer Systems, Inc. in its business, shall be enjoined from:

- (a) Any further use of the designation "Network Computer Systems" in any form whatsoever in relation to business, whether as a trade name, trademark, service mark or otherwise;
- (b) Any use of the term "Network" as a trade name, trademark, service mark, or in any other form as a means of identification of source of origin of products or business entity identification; and,
- (c) Use of any trade name, trademark, service mark or other business identity identification or product source identification confusingly similar to "Network Systems" or "Network Systems Corporation".

5. Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for further orders or directions as may be necessary or appropriate for enforcement of this judgment, or for punishment for any violations of its provisions.

6. This judgment is a Final Judgment. It is determined that there is no just reason for delay in the entry of this Final Judgment and the Clerk of this Court is directed to now enter this Final Judgment.

DATED this 30th day of January, 1986.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

JAN 20 1985

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

WAGNER & BROWN,)
partnership,)
)
Plaintiff,)
)
v.)
)
TRANSOK, INC., a)
corporation, and PUBLIC)
SERVICE COMPANY OF OKLAHOMA,)
a corporation,)
)
Defendant.)

Case No. 85-C-756-E

ORDER

Pursuant to the Stipulation Of Dismissal With Prejudice,
which has been executed by all parties hereto and filed with the
Court, the above styled action is dismissed with prejudice, with
each party to bear its own fees and costs.

S/ JAMES C. GIBSON

United States District Judge

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

TULSA PARKING AUTHORITY, a)
public trust,)
)
Plaintiff,)
)
vs.)
)
WATERSCAPE IRRIGATION, a)
Division of LINE CONSTRUCTION)
COMPANY, a Kansas corporation,)
and FIDELITY AND DEPOSIT)
COMPANY OF MARYLAND, a Maryland)
corporation,)
)
Defendants,)
)
and)
)
H. R. HANNAFORD, MURRAY)
JONES MURRAY, INCORPORATED,)
JOE BRAUN AND BRAUN BINION)
BARNARD, INC.,)
)
Additional Defendants.)

No. 84-C-900-E

FILED

JAN 5 0 1985

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

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

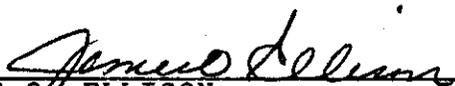
The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies

of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 30th day of January, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

JAN 30 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
JACK C. SILVER, CLERK
DISTRICT COURT

MARY RUSSELL, TINA WOOTEN,)
CHARLENE BOWLER, BARBARA)
MOORHOUSE, and EVELYN-DEWEESE,)
)
Plaintiffs,)

v.)

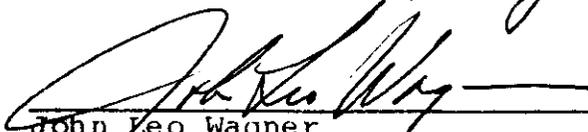
Civil Action
No. 84-C-109 B

DOVER CORPORATION/)
NORRIS DIVISION, and)
UNITED STEELWORKERS OF)
AMERICA, AFL-CIO, LOCAL)
UNION NO. 4430,)
)
Defendants.)

JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law filed simultaneously herewith, it is hereby Ordered that Judgment be entered in favor of Defendants Dover Corporation/Norris Division and United Steelworkers of America, AFL-CIO, Local Union No. 4430, that Plaintiff take nothing, and that the action be dismissed on its merits. All parties are to bear their own costs of action.

IT IS SO ORDERED this 30th day of January, 1986.



John Leo Wagner
United States Magistrate

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

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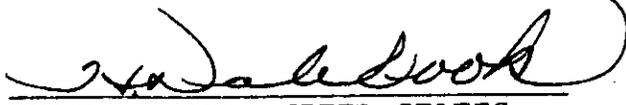
JAN 30 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

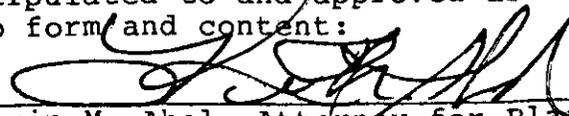
CENTURY BANK, an Oklahoma)	
banking corporation,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 85-C-154-C
)	
BILLY V. HALL, M.D.,)	
)	
Defendant.)	

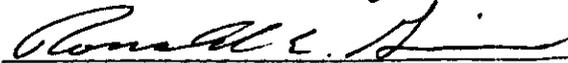
JUDGMENT

NOW, this ³⁰ day of January, 1986, the Court having granted the Plaintiffs' Motion for Summary Judgment by separate order on the 21st day of January, 1986, the Court hereby enters judgment on behalf of the Plaintiff and against the Defendant in the specified sum of \$224,084.39 as of January 29, 1986, plus legal interest thereon from the date of this judgment at the rate specified in 28 U.S.C. §1961 until the judgment is satisfied, together with \$1,000.12 in costs (and all future accruing costs incident to collection of this judgment), plus a \$16,806.33 attorney's fee (and all future accruing attorney's fees incident to collection of this judgment) for a total judgment as of January 29, 1986 of \$241,890.84.


JUDGE OF THE UNITED STATES
DISTRICT COURT

Stipulated to and approved as
to form and content:


Kevin M. Abel, Attorney for Plaintiff


Ronald E. Goins, Attorney for Defendant

Entered

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

HELEN MILLS, ADMINISTRATRIX
OF THE ESTATE OF LOUIS L.
DEWEY and MAGGIE M. DEWEY,
DECEASED, *

Plaintiff, *

VS. *

MICHAEL CURTIS GEIGER, *
BILL L. VINSON, d/b/a *
VINSON CONSTRUCTION COMPANY, *
VANGUARD MILK PRODUCERS *
COOP OF MISSOURI, BOB VINSON, *
BILL L. VINSON, JR. and *
PAT VINSON, *

Defendants. *

CASE NO. 85-C-678-B

FILED

JAN 30 1985

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

STIPULATION AND ORDER OF DISMISSAL
OF DAN VINSON, BILL L. VINSON, JR. AND PAT VINSON

The parties below having so stipulated, and good cause appearing therefor, IT IS ORDERED

All claims of Plaintiff, HELEN MILLS, Administratrix of the Estate of Louis L. Dewey and Maggie M. Dewey, Deceased, set forth in her First Amended Complaint dated September 10, 1985, against Defendants, DAN VINSON, BILL L. VINSON, JR. and PAT VINSON, are hereby dismissed, pursuant to Rule 41 of the Federal Rules of Civil Procedure.

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

We stipulate to enter this Order:

Dated: _____

WILLIAM E. HORNBUCKLE
Attorney for Plaintiff

Dated: _____

JAMES K. SECREST
Attorney for Defendants,
Dan Vinson, Bill L. Vinson, Jr.
and Pat Vinson

SO ORDERED on January 28, 1986.

S/ THOMAS R. BRETT

HON. THOMAS R. BRETT
United States District Judge

Copies of this instrument were sent to all other counsel of record.

Entered

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

HELEN MILLS, ADMINISTRATRIX
OF THE ESTATE OF LOUIS L.
DEWEY and MAGGIE M. DEWEY,
DECEASED,

Plaintiff,

VS.

MICHAEL CURTIS GEIGER,
BILL L. VINSON, d/b/a
VINSON CONSTRUCTION COMPANY,
VANGUARD MILK PRODUCERS
COOP OF MISSOURI, BOB VINSON,
BILL L. VINSON, JR. and
PAT VINSON,

Defendants.

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CASE NO. 85-C-678-B

FILED

JAN 30 1985

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

STIPULATION AND ORDER OF DISMISSAL
OF VANGUARD MILK PRODUCERS COOP OF MISSOURI

The parties below having so stipulated, and good cause appearing therefor, IT IS ORDERED

All claims of Plaintiff, HELEN MILLS, Administratrix of the Estate of Louis L. Dewey and Maggie M. Dewey, Deceased, set forth in her First Amended Complaint dated September 10, 1985, against Defendant, VANGUARD MILK PRODUCERS COOP OF MISSOURI, are hereby dismissed with prejudice, pursuant to Rule 41 of the Federal Rules of Civil Procedure.

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

We stipulate to enter this Order:

Dated: _____

WILLIAM E. HORNBuckle
Attorney for Plaintiff

Dated: _____

JOHN R. PAUL
Attorney for Defendant,
Vanguard Milk Producers Coop
of Missouri

SO ORDERED on January 28, 1986.

S/ THOMAS R. BRETT
HON. THOMAS R. BRETT
United States District Judge

Copies of this instrument were sent to all other counsel of record.

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

FILED

JAN 30 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

ROBERT RANDALL ZIEGLER, #95842)
)
 Petitioner,)
)
 v.)
)
 JOHN MAKOWSKI and THE ATTORNEY)
 GENERAL OF THE STATE OF)
 OKLAHOMA,)
)
 Respondents.)

No. 86-C-8-E

ORDER

Petitioner, Robert Randall Ziegler, filed this action for federal habeas corpus relief pursuant to 28 U.S.C. § 2254. Petitioner is presently incarcerated in the Oklahoma Department of Corrections facility at Hominy, Oklahoma pursuant to a Judgment and Sentence rendered in the District Court of Tulsa County, Oklahoma, Case No. CRF-77-686-687-688-689-690-691.

After his conviction and sentencing Petitioner filed a direct appeal to the Oklahoma Court of Criminal Appeals. Ziegler v. State, 610 P.2d 251 (Okl.Cr. 1980). The Court of Criminal Appeals affirmed Petitioner's convictions as to all charges but modified his sentences on the authority of Thigpen v. State, 571 P.2d 467 (Okl.Cr. 1977), which had declared the sentencing statute under which Petitioner was sentenced unconstitutional. See Title 21 O.S. Supp. 1977. § 51(B).

Petitioner originally filed a Petition for a Writ of Habeas Corpus in March of 1982. Ziegler v. Murphy, et al., No. 82-C-290-BT. The Honorable Thomas R. Brett, United States District Judge for the Northern District of Oklahoma dismissed

Petitioner's application without prejudice to permit him to exhaust his state remedies, presumably an appeal to the Oklahoma Court of Criminal Appeals from the denial of his application for post-conviction relief. - Thereafter, on March 1, 1983 the Court of Criminal Appeals entered an Order Denying Post-Conviction relief and Petitioner again filed a petition for federal habeas corpus with this court. Case No. 83-C-248-C.

In his response to Petitioner's second habeas corpus application the respondent conceded that the sentences being served by petitioner were invalid and stated that Petitioner would be at least entitled to a resentencing by another jury. Petitioner contended that the only relief available was for the state to modify his sentences to the minimum provided by statute. See Title 21 O.S. Supp. 1976 § 51(A). Petitioner alleged that allowing him to be resented by another jury would violate his equal protection rights under the U. S. Constitution. The Honorable H. Dale Cook, United States District Judge for the Northern District of Oklahoma, found his argument to be without merit and delayed further ruling on the Petition for Writ of Habeas Corpus pending the resentencing of Petitioner in the state courts of Oklahoma.

On April 4, 1984 Petitioner was resented before Judge Margaret Lamm, District Judge of Tulsa County. A 12-person jury was convened and heard evidence on behalf of both the state and the Petitioner. The jury recommended the following punishment: (1) one hundred (100) years on each of the two rape counts; (2) one hundred (100) years on each of the two sodomy charges; (3)

one hundred (100) years for the count of burglary; and (4) ten (10) years on the count of unauthorized use of a motor vehicle. Judge Lamm ordered that the five 100-year sentences run consecutively and that the ten-year sentence run consecutively to the five 100-year sentences. The amended Judgments and Sentences were filed by the District Court of Tulsa County on April 9, 1984.

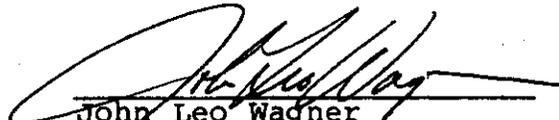
The Petitioner appealed the outcome of his resentencing and agreed to dismiss without prejudice his Petition for Habeas Corpus pending the outcome of his state appeal. An order dismissing his petition without prejudice was entered May 3, 1985.

Petitioner filed this instant action on January 13, 1986. In his petition, he contends that his constitutional rights to due process and equal protection were violated at his resentencing. Petitioner urges this court to assume jurisdiction in this matter due to unreasonable delays in adjudication of his post-conviction application pending before the Oklahoma state courts.

28 U.S.C. § 2254 excuses the requirement of failure to exhaust state remedies when there are "circumstances rendering such process ineffective to protect the rights of the prisoner." Unreasonable delay may in some cases constitute such circumstances. Reynolds v. Wainwright, 460 F.2d 1026 (5th Cir. 1972) However, this court is unwilling to hold that in this case the amount of time which has elapsed renders the state process

ineffective. Therefore, it is the Order of the Magistrate that since Petitioner has not exhausted his available state remedies, his Petition for Writ of Habeas Corpus should be and is hereby denied.

Dated this 30th - day of January, 1986.



John Leo Wagner
United States Magistrate

Entered copy

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

FILED

JAN 30 1986

BANK OF OKLAHOMA, TULSA, N. A.,)
)
 Plaintiff,)
)
 vs.)
)
 MARIO A. POSILLICO and J. D.)
 POSILLICO, INC., a New York)
 corporation,)
)
 Defendants.)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 85-C-1144-C

Notice

DISMISSAL OF COUNT II

COMES NOW Bank of Oklahoma, Tulsa, N. A., Plaintiff herein,
and pursuant to the provisions of Rule 41(a) F. R. Civ. P. hereby
dismisses Count II of its Complaint herein together with
paragraphs 2 and 3 of the prayer.

ROBINSON, BOESE & DAVIDSON

By 

C. S. Lewis, III - OBA 5402
P. O. Box 1046
Tulsa, Oklahoma 74101
(918) 583-1232

Certificate of Service

I hereby certify that on the 30 day of January, 1986, a true
and correct copy of the above and foregoing document was mailed,
with full and sufficient postage affixed thereon, to: Mario A.
Posillico and J. D. Posillico, Inc., 100 Broad Hollow Road,
Farmingdale, New York, 11735.


C. S. Lewis, III

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 29 1986

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

HOWARD B. WICKINGS,)

Defendant.)

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

CIVIL ACTION NO. 85-C-919-E

ORDER OF DISMISSAL

Now on this 29 day of January, 1986, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Howard B. Wickings have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Howard B. Wickings, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

JAN 29 1986

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

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THE CHARTER OAK FIRE INSURANCE)
COMPANY,)
))
Plaintiff,)
))
v.)
))
BOBBY D. CONDITT, DEENA CONDITT,)
JAMES CONDITT and BETTY J.)
CONDITT,)
))
Defendants.)

Case No. 84-C-874-E

ORDER OF DISMISSAL WITH PREJUDICE

On joint motion of the Plaintiff and Defendants, it is
Ordered that;

The Complaint, the Counterclaims and this action are
dismissed by the Court, with prejudice to the bringing of another
action on the claims asserted herein by the parties.

Entered this 29th day of January, 1986.

S/ JAMES O. ELLISON

JAMES O. ELLISON, District Judge

FILED

JAN 29 1986

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

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

LEONARD G. DURANT,)
)
Plaintiff,)
)
v.)
)
LARRY R. MEACHUM, et al.,)
)
Defendants.)

No. 85-C-923-C

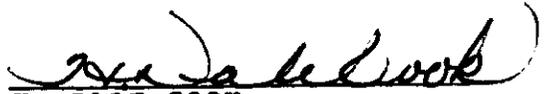
ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed January , 1986 in which the Magistrate made recommendations on Defendants' Motion to Dismiss and Plaintiff's civil rights complaint. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that Defendants' Motion to Dismiss is hereby granted and that Plaintiff's Complaint is dismissed.

It is so Ordered this 28th day of January, 1986.


H. DALE COOK
CHIEF JUDGE

FILED

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

JAN 29 1986

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

JAMES COLVARD,)
)
 Plaintiff,)
)
 v.)
)
 CHRISTY ROPER and JAMES)
 BROOKS,)
)
 Defendants.)

No. 85-C-462-C

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed January , 1986 in which it was recommended that the case be dismissed without prejudice. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

It is therefore Ordered that this case be and is hereby dismissed without prejudice.

It is so Ordered this 28th day of Jan., 1986.

W. C. Silver

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

MELVIN L. JONES,)
)
 Plaintiff,)
)
 vs.)
)
 SUN REFINING AND MARKETING)
 COMPANY, a subsidiary of)
 Sun Company, Inc., a)
 Pennsylvania corporation,)
)
 Defendant.)

Case No. 84-C-784-E

FILED

JAN 29 1985

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

ORDER

The Court having been advised by counsel that the parties herein have reached a mutually satisfactory settlement of this cause, it is hereby

ORDERED that this cause be dismissed with prejudice and that the parties shall bear their own costs and attorney's fees.

Done this 29 day of Jan, 1985.

[Faint signature]

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 29 1986

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RANDOLPH H. RICHIE, et al.,)
)
 Defendants.)

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

CIVIL ACTION NO. 83-C-576-E

O R D E R

Good cause having been shown, it is hereby ORDERED,
ADJUDGED AND DECREED that the above-referenced action is hereby
dismissed without prejudice.

Dated this 29 day of ^{January}~~December~~ 1986.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FILED

JAN 29 1986

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

TRANSMISSION STRUCTURES)
LIMITED, an Oklahoma)
corporation,)
)
Plaintiff,)
)
vs.)
)
MINERICH, INC., a Kentucky)
corporation,)
)
)
Defendant.)

Case No. 85-C-1061 E ✓

Notice

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW, Transmission Structures Limited, an Oklahoma corporation, Plaintiff in the above-referenced cause, and, pursuant to Rule 41A (1)(i) F.R.C.P., hereby dismisses the above-referenced cause with prejudice; and in support of such Stipulation of Dismissal, Plaintiff would respectfully advise the Court as follows:

1. This cause was instituted in the District Court of Craig County, State of Oklahoma, in its Case No. C-85-213, on November 7, 1985.

2. That said cause was removed to this Honorable United States District Court by appropriate proceedings filed herein on November 27, 1985.

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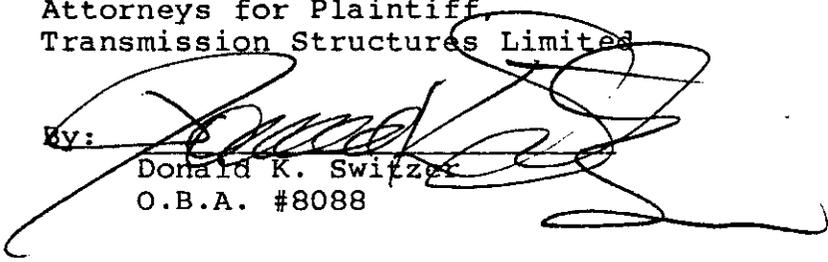
3. Subsequent to the filing of the Petition in the State Court, no Answer or Motion for Summary Judgment has been filed by the adverse party, i.e., Defendant Minerich, Inc.

4. This cause has, in fact, now been resolved by settlement, and Defendant has no objection to this Stipulation of Dismissal with Prejudice.

Respectfully submitted,

LOGAN, LOWRY, JOHNSTON,
SWITZER, WEST & McGEADY
P. O. Box 558
Vinita, Oklahoma 74301
(918) 256-7511

Attorneys for Plaintiff
Transmission Structures Limited

By: 

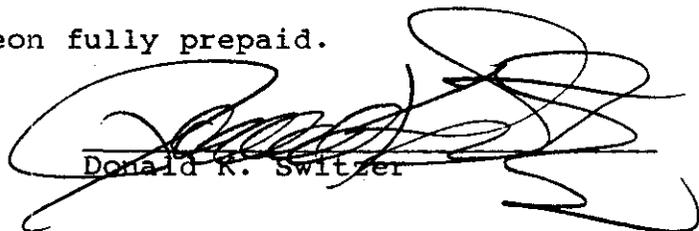
Donald K. Switzer
O.B.A. #8088

CERTIFICATE OF MAILING

I, Donald K. Switzer, do hereby certify that on this 23rd day of January, 1986, I mailed a true and correct copy of the above and foregoing "Stipulation Of Dismissal With Prejudice" to:

Oliver S. Howard, Esquire
Gable & Gotwals
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119

with proper postage thereon fully prepaid.


Donald K. Switzer

Entered

FILED

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

JAN 29 1986 *ef*

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

ASHLAND OIL, INC.,

Plaintiff,

v.

COTTON PETROLEUM CORPORATION,

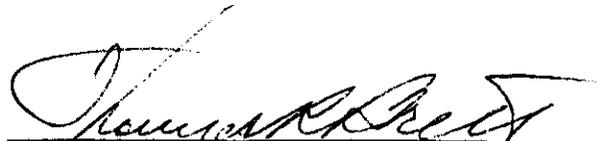
Defendant.

No. 83-C-587-B ✓

J U D G M E N T

In keeping with the Court's order of this date, judgment is hereby entered in favor of defendant Cotton Petroleum Corporation and against plaintiff Ashland Oil, Inc. Costs are assessed against plaintiff, with each party to pay its respective attorney fees.

IT IS SO ORDERED, this 29th day of January, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

JAN 29 1983 *uf*

ASHLAND OIL, INC.,)
)
 Plaintiff,)
)
 v.)
)
 COTTON PETROLEUM CORPORATION,)
)
 Defendant.)

JACK G. SILVER, CLERK
U.S. DISTRICT COURT

No. 83-C-587-B ✓

ORDER

This matter comes before the Court on defendant's renewed Motion to Dismiss, filed pursuant to F.R.Civ.P. 12(b)(6). Plaintiff has objected to the motion. For the reasons set forth below, the defendant's motion is sustained.

BACKGROUND

The federal government controlled the price of domestically produced oil from August 1973 to January 1981. Pursuant to the price control program, the Department of Energy (DOE) on August 26, 1977, issued a remedial order to Cotton Petroleum Corporation in which DOE determined Cotton had overcharged for crude oil sold from the North Goose Lake Unit in Montana to Ashland Oil, Inc., between November 1, 1973, to December 31, 1975. The remedial order directed Cotton to refund \$714,677 to Ashland. Ashland received notice of the remedial order and of Cotton's subsequent appeal of the order. Following a hearing in which Ashland declined to participate, DOE denied Cotton's appeal of the remedial order on January 18, 1978.

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In April 1979, Cotton filed suit in this Court challenging the remedial order. DOE counterclaimed to enforce the order [Cotton Petroleum Corporation v. Hodel, No. 79-C-b]. Ashland was not a party to the action and never sought leave to intervene. In March 1983, DOE moved to remand the remedial order to the agency so it could modify the refund requirement to reflect decontrol of oil prices and the resulting potential inequity of allowing refunds to refiner-purchasers such as Ashland.

In June 1983, DOE and Cotton reported to the Court an agreement in principle had been reached to settle the lawsuit. Meanwhile, on June 6, 1983, Cotton, by its attorneys, sent a letter and proposed agreement to Ashland concerning restitution of the \$714,677.90 in alleged overcharges. Apparently, Cotton and Ashland pursued negotiations on proposed repayment through June; however, on June 29, 1983, Cotton informed Ashland it had agreed to pay DOE the \$714,677.90 and would not pay the amount to Ashland. In September 1983, a final agreement was executed by Cotton and DOE and approved by the Court, thus settling the original lawsuit.

Under the settlement agreement, Cotton will pay over \$1 million into a separate government escrow account to be distributed in accordance with DOE's regulations for distributions of such refunds [See Special Procedures for Distribution of Refunds, 10 C.F.R. §§205.280-88]. These regulations--known as subpart V regulations--provide for publication of a proposed decision and order by DOE, receipt of

public comments, and issuance of a final decision and order. Following issuance of the final decision, any person entitled to a refund may file an application for refund. Decisions by DOE to grant or deny an application are subject to judicial review.

On July 11, 1983, Ashland brought this action ("Ashland v. Cotton") against Cotton on the following theories: 1) repayment of overcharges under Section 210 of the Economic Stabilization Act; 2) treble damages for willful, intentional and reckless disregard of DOE regulations under Section 210 of the Economic Stabilization Act; 3) enforcement of the DOE remedial order to Cotton to pay Ashland the amount of the alleged overcharges; and 4) damages for a debt acknowledged by Cotton as being due and owing.

Simultaneously, Ashland sued DOE and Cotton seeking to overturn or modify the settlement agreement of the parties in the original lawsuit, in a case styled Ashland Oil, Inc. v. The United States Department of Energy, Donald Hodel, Secretary of Energy, and Cotton Petroleum Corporation, ("Ashland v. DOE and Cotton"), No. 83-C-588-B, which case was consolidated with this case.

On March 21, 1984, the Court entered an order dismissing Ashland v. DOE and Cotton for failure to exhaust administrative remedies and lack of judicial ripeness. The Court ruled plaintiff should petition the DOE through Subpart V proceedings for a refund of the money it alleged was due before attempting to obtain the funds through court action.

On April 23, 1984, making no findings on the merit of plaintiff's claims in this lawsuit or on the merits of defendant's defenses, this Court dismissed Ashland v. Cotton pending the outcome of DOE Subpart V proceedings. Applicable statutes of limitations on plaintiff's claims were tolled until the outcome of those administrative proceedings.

Ashland appealed the March 21, 1984, dismissal of its lawsuit against DOE and Cotton and the April 23, 1984, dismissal of its lawsuit against Cotton. On April 3, 1985, the Temporary Emergency Court of Appeals ("TECA") affirmed dismissal of Ashland v. DOE and Cotton and affirmed the order of dismissal with respect to Count III of Ashland v. Cotton. TECA reversed the dismissal of Counts I, II and IV, without resolving the arguments for dismissal raised by Cotton in this court, and remanded the case to this court for further proceedings. Thereafter, defendant renewed its motion to dismiss.

Defendant Cotton contends in the motion to dismiss that plaintiff's first and second claims under the Economic Stabilization Act are barred by applicable statutes of limitations. Cotton contends that plaintiff's fourth claim for a debt due and owing fails to state a claim for which relief can be granted, is preempted by federal law and is barred by an applicable statute of limitations.

PLAINTIFF'S ESA CLAIMS

Section 210 of the Economic Stabilization Act provides in pertinent part:

(a) Any person suffering legal wrong because of any act or practice arising out of this title, or any order or regulations issued pursuant thereto, may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for ... damages.

(b) In any action brought under subsection (a), ... the court may, in its discretion, award the plaintiff reasonable attorney's fees and costs, plus whichever of the following sums is greater:

(1) an amount not more than three times the amount of the overcharge upon which the action is based or

(2) not less than \$100 or more than \$1,000; except in any case where the defendant establishes that the overcharge was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to the avoidance of such error the liability of the defendant shall be limited to the amount of the overcharge....

Section 210 of the Economic Stabilization Act contains no statute of limitations provision. Absent a federal limitation period, a federal court will apply the most analogous statute of limitations of the forum state in which the court is located. Runyon v. McCrary, 427 U.S. 160, 179-80 (1976). The Temporary Emergency Court of Appeals (TECA) has characterized claims for overcharges and treble damages under Section 210 of the Economic Stabilization Act as two distinct claims governed by different statutes of limitations. Ashland Oil Company of California v. Union Oil Company of California, 567 F.2d 984 (TECA 1977), cert. denied, 435 U.S. 994 (1978). In Union, TECA characterized the treble damages claim as an action for a penalty, subject to forum state California's one-year statute of limitations. Id. at

989-990. TECA viewed the claim for overcharges as an action "upon a liability created by statute, other than a penalty or forfeiture," Cal.Civ.Proc. Code §338(1), subject to a three-year statute of limitations. Id. at 991.

Oklahoma statute of limitations are similar to those of California in the Union case. An "action upon a statute for penalty or forfeiture" is subject to a one-year limitation period under 12 Okl.St. Ann. §95, paragraph "Fourth", and an "action upon a liability created by statute other than a forfeiture or penalty" is subject to a three-year limitation period under 12 Okl.St. Ann. §95, paragraph "Second."

The alleged charges which are the subject of this suit occurred between November 1, 1973, and December 3, 1975. Applying the Oklahoma statutes of limitation, Ashland's claim for damages for overcharges is barred unless brought within three years of the last date of the overcharges, or by December 31, 1978. The treble damage claim is barred unless brought within one year of the last date of overcharges, or by December 31, 1976. Plaintiff initiated this action on July 11, 1983.

Plaintiff argues that even if its claims are barred by applicable statutes of limitation, the claims were revived by defendant's purported acknowledgment during negotiations in June 1983 that it owed plaintiff the amount claimed in overcharges. Defendant's acknowledgment consisted of a written settlement proposal and letter sent to plaintiff. In this regard, 12 Okl.St. Ann. §101 provides:

"In any case founded on contract, when ... an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise; but such acknowledgment must be in writing, signed by the party to be charged thereby."

Ashland argues that its claim for overcharges is founded on contract and that, therefore, Cotton's alleged acknowledgment of debt revives any claims which are time-barred. However, the Temporary Emergency Court of Appeals in Johnson Oil Co., Inc. v. DOE, 690 F.2d 191, 196 (TECA 1982), expressly rejected the concept that an action under the statute is one for breach of contract. In Johnson, a crude oil refiner sued a crude oil reseller for overcharges under the Emergency Petroleum Allocation Act. In determining whether the refiner's claims were barred by an applicable statute of limitations, the trial court applied Wyoming's 10-year limitation which applies to "an action upon ... any contract ... in writing." Wyo. Stat. §1-3-105 (1977). The trial court reasoned that the action was based on contract because the parties had contracted for crude oil at "the highest legal price."

However, TECA reversed the trial court's ruling on the statute of limitations, holding that a two-year limitation statute applied. This statute applies to "... a liability created by a federal statute ... for which no period of limitation is provided in such statute" Wyo. Stat. §1-3-115 (1977). The court said:

We are of the opinion that the most analogous and the more specific statute of limitations is the two-year statute governing liabilities created by federal statute. The highest legal price is the maximum lawful price under the EPAA. The elements necessary to prove a violation of the pricing regulations for overcharging must be proved to establish a breach of the parties' contract for exceeding the "highest legal price." The dominant claim in this case is for violation of the pricing regulations.

Id. at 196 (emphasis added). In light of TECA's ruling in Johnson, the court finds that plaintiff's claims under section 210 of the Economic Stabilization Act are claims for violation of federal pricing regulations and not claims based on contract. Therefore, 12 Okl.St. Ann. §101 is inapplicable.¹

ACTION ON "DEBT OWING"

Ashland's final claim is that Cotton owes Ashland for the money it overcharged for crude oil. This claim is a common law claim on a debt due and owing. Cotton contends that plaintiff is limited to the statutory remedy created in Section 210 of the Economic Stabilization Act for overcharges and treble damage; thus plaintiff has failed to state a claim upon which relief can be granted. Defendant also contends plaintiff's fourth claim is preempted by federal law and is barred by an applicable statute of limitations.

Under a final agreement between Cotton and the Department of Energy executed by the parties and signed by the district court

¹ In light of the court's decision that plaintiff's claims are not based on contract, the court finds it need not address the issues of whether defendant's purported acknowledgment of a debt owing revives those claims under 12 Okl.St. Ann. §101, or whether evidence of the alleged acknowledgment is admissible under Rule 408, Federal Rules of Evidence.

on September 9, 1983, Cotton's complaint against DOE and DOE's counterclaim against Cotton were dismissed with prejudice. The court-approved settlement agreement provided that Cotton would pay \$1,104,165.00 plus interest into a separate escrow account within 18 months. The funds were then to be distributed in accordance with the DOE's so-called Subpart V regulations. 10 C.F.R. §§205.280 et seq. These regulations establish procedures by which refunds may be made to persons injured by violations of the DOE price control regulations. The regulations control two situations: First, where the DOE is unable to identify persons who are entitled to a refund specified in a Remedial Order, a Remedial Order for Immediate Compliance, an Order of Disallowance or a Consent Order. Second, where the DOE is unable to "readily ascertain the amounts that such persons are to receive." 10 C.F.R. §205.280.

In December 1983, Cotton paid \$1,156,493.14 to the DOE for distribution under the Subpart V procedures. The Economic Regulatory Administration of DOE commenced Subpart V proceedings by petitioning the Office of Hearings and Appeals within DOE for the implementation of special refund procedures. Public notice of this petition and of the refund procedures proposed to be used were published in the Federal Register. 49 Fed.Reg. 2941 (Jan. 24, 1984); 49 Fed.Reg. 6542 (Feb. 22, 1984). In the February 22 notice, the OHA stated its tentative conclusion that the kind of crude oil pricing violations alleged against Cotton were unlikely to have injured any refiner who purchased the crude

oil after November 1, 1974, the effective date of the entitlements program. Nevertheless, OHA proposed to permit such refiners to submit claims in the Subpart V refund procedure and demonstrate their injury. With respect to overcharges occurring before the November 1, 1974, effective date, the OHA said that in order to receive a refund a purchasing refiner would be required to demonstrate only that it had not passed on the overcharges to its customers. Ashland filed comments in which it objected to the entire proceeding.

Ashland's claim for a debt due and owing seeks repayment for Cotton's violation of the federal petroleum pricing regulations. However, Section 210 of the Economic Stabilization Act and the Subpart V procedures adopted by the Department of Energy clearly spell out procedures by which persons injured by a violation of the pricing regulations can seek redress. Section 210(b) of the ESA provides that a person injured by overcharges such as in the instant case may recover actual or treble damages. The Subpart V procedures were established to meet those situations in which DOE cannot determine who has been the victim of overcharging or how much of a refund each victim is entitled to.

Under the final agreement with DOE, Cotton was ordered to pay the money it received from overcharges, plus interest, into an escrow account for DOE to disburse to the injured parties. Ashland's claim on a debt thus directly conflicts with the remedies provided in Section 210 of the ESA and the procedure adopted by the DOE under Subpart V.

Preemption of state law by federal law is not favored in the absence of persuasive reasons - "either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." Chicago and North Western Transportation Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 317 (1981). However, a state law is void to the extent it actually conflicts with a valid federal statute. Ray v. Atlantic Richfield Co., 435 U.S. 151, 158 (1978). A state law conflicts with a federal law when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Id.

In adopting the Economic Stabilization Act, Congress sought to address pressing national problems. The goals of the Act were wide-ranging. Congress sought to reduce inflation, hold unemployment to a minimum, improve the nation's competitive position in world trade, and protect the purchasing power of the American dollar. Economic Stabilization Act §202. In order to achieve these goals, Congress found it necessary to stabilize prices, rents, wages, salaries, dividends and interest. In order to maintain and promote competition in the petroleum industry and assure sufficient supplies of petroleum products to meet the nation's needs it was necessary to provide a system for rational and equitable distribution of these products. Id. In short, Congress sought to address problems of a national scope. The Court finds that to allow Ashland to pursue a claim for violation of national petroleum pricing regulations by pursuing a

common law state claim would conflict with Congress' intent and objectives in adopting a legislative scheme enacting regulations controlling oil prices and implementing a system for dealing with violations of the mandated price controls. Further, in directing Cotton to pay its overcharges into an escrow account for disbursement, DOE has undertaken responsibility for determining who was injured by Cotton's overcharges and how much individual victims should be refunded. Allowing Ashland to maintain its debt action would subject Cotton to the possibility of being held liable twice for the same pricing violations. The Court finds that Congress' objective in adopting the Economic Stabilization Act and in giving DOE the authority to develop procedures for refunding overcharges would be frustrated by allowing individual claimants to maintain common law debt actions for overcharges. Congress has clearly preempted state law in this area.

In addition, Ashland's fourth claim, even were it not preempted by federal law, is barred by an applicable statute of limitations. As discussed supra, absent a federal limitation period, a federal court will apply the most analogous statute of limitations of the forum state in which the court is located. Runyon v. McCrary, supra. Ashland's debt claim is predicated upon a liability established by federal statute. Under Oklahoma law, an action upon "a liability created by statute other than a forfeiture or penalty" must be brought within three (3) years. 12 Okl.St. Ann. §95, para. "Second." Any debt to Ashland became due and owing on December 31, 1975, the final date of the

overcharges alleged in DOE's Remedial Order. Therefore, Ashland had until December 31, 1978, to bring any action on this debt. Ashland did not initiate this lawsuit until July 1983, well after the statutory limitation period.

Ashland contends that even if its debt action is barred by the statute of limitations, the action was revived by Cotton's alleged acknowledgment of the debt in the context of negotiations on Cotton's suit challenging the remedial order issued by DOE under Section 210 of the Economic Stabilization Act. Assuming for the purpose of this issue that a valid acknowledgment actually occurred, the Court finds it would conflict with Congressional intent to permit Ashland to pursue an action based on an alleged "debt due." The remedial order has been withdrawn, the parties to the original suit have settled the claim and Cotton has paid more than \$1 million into a DOE subpart V fund. As discussed supra, Ashland's debt action is preempted by federal law and barred by the applicable statute of limitations.

For the above reasons, Defendant's Motion to Dismiss Counts I, II and IV of Ashland's complaint is sustained.

IT IS SO ORDERED, this 29 day of January, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

and Complaint; however, this Defendant did file an Answer with the County Treasurer in this case.

The Court further finds that the Defendants, James A. White and Donna J. White, were served by publishing notice of this action in the Miami News Record, a newspaper of general circulation in Ottawa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 16, 1986, and continuing to November 20, 1986, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Since counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, James A. White and Donna J. White, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known addresses of the Defendants, James A. White and Donna J. White. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Farmers Home Administration, and its attorneys, Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant

United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this court to enter the relief sought by the Plaintiff, both as the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer herein on June 18, 1986; and that the Defendants, James A. White, Donna J. White, and Briercroft Service Corporation, have failed to answer and their default has been entered by the Clerk of this Court on January 13, 1987.

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

Lot 19 in Block 6 in NANCY LEE ADDITION to the City of Miami, Ottawa County, Oklahoma, according to the Amended Plat thereof.

The Court further finds that on June 17, 1980, the Defendants, James A. White and Donna J. White, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$13,700.00, payable in monthly installments, with interest thereon at the rate of eleven percent (11%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, James A. White and Donna J. White, executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated June 17, 1980, covering the above-described property. Said mortgage was recorded on June 17, 1980, in Book 399, Page 510, in the records of Ottawa County, Oklahoma.

The Court further finds that the Defendants, James A. White and Donna J. White, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, James A. White and Donna J. White, are indebted to the Plaintiff in the principal sum of \$13,540.31, plus accrued interest in the amount of \$1,175.18 as of October 23, 1985, plus interest accruing thereafter at the rate of eleven percent (11%) per annum, or \$4.0536 per day, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$11.96 for the year 1984 and \$10.66 for the year 1985. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Briercroft Service Corporation, is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, James A. White and Donna J. White, in the principal sum of \$13,540.31, plus accrued interest in the amount of \$1,175.18 as of October 23, 1985, plus interest accruing thereafter at the rate of eleven percent (11%) per annum, or \$4.0536 per day, until judgment, plus interest thereafter at the current legal rate of 5.75 percent per annum until paid, plus the costs 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 Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have and recover judgment in the amount of \$22.62 for personal property taxes for the years 1984 and 1985, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Briercroft Service Corporation, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, James A. White and Donna J. White, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for

the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

Third:

In payment of the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, in the amount of \$22.62, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

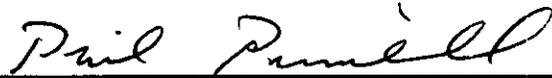
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney



PHIL PINNELL
Assistant United States Attorney



DAVID L. THOMPSON
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Ottawa County, Oklahoma

Entered

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

FILED

JAN 29 1985

JACK C. SEVER, CLERK
U.S. DISTRICT COURT

KURT KELTNER,

Plaintiff,

-vs-

NGOC TRAN,

Defendant.

No. 84-C-921-B

ORDER

On this 28th day of January, 1985, the Joint Application of the parties for an Order of Dismissal With Prejudice came on before the Court for hearing. The Court finds that the parties have settled the claims herein.

IT IS THEREFORE ORDERED, AJUDGED AND DECREED that the above captioned matter be Dismissed With Prejudice to refiling.

BY THOMAS R. BACHT

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

Frank Evans

FRANK EVANS
Attorney for Plaintiff

Dennis King

DENNIS KING
Attorney for Defendant

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

FILED

JAN 27 1986

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

PAUL ELLEDGE and LINDA ELLEDGE,)
)
 Plaintiffs,)
)
 v.) NO. 85-C-69-B ✓
)
 JUSTIN INDUSTRIES, INC.,)
)
 Defendant.)

ORDER

This matter comes before the Court on the motion for summary judgment or partial summary judgment of defendant Justin Industries ("Justin"). For the reasons set forth below, the motion is granted.

The following facts supplied by defendant in support of the motion for summary judgment or partial summary judgment are uncontroverted. Plaintiffs Paul Elledge and Linda Elledge are residents of Nowata, Oklahoma. Defendant Justin is a Texas corporation whose Acme Brick Company Division ("Acme") manufactures and sells bricks. On or about August 19, 1976, the plaintiffs entered into an oral contract with Acme to purchase bricks for the construction of a house in Nowata, Oklahoma. Acme delivered the bricks to the house, then under construction, on or about August 19, 1976. During the winter of 1978-1979, the plaintiffs first noticed that some of the exterior bricks were "flaking." They noticed more flaking bricks the following winter, 1979-80, and first attempted to contact Acme by telephone concerning the bricks during the winter of 1980-1981. A

representative of Acme, Darrell Cook ("Cook"), investigated the plaintiffs' complaints on August 6, 1981. Cook informed Linda Elledge that the flaking bricks needed to be replaced and that he would report the problem to Acme. There were no further communications between the plaintiffs and Acme between the August 6, 1981 visit and August 19, 1981. Plaintiffs had telephone conversations with Bill Lemond, the manager of the Tulsa office of Acme Brick, on November 8, 1982, May 25, 1983, and shortly before August 24, 1983. Plaintiffs first told Acme they were considering hiring an attorney shortly before August 24, 1983. They hired legal counsel on May 8, 1984. Plaintiffs and representatives of Acme met on June 20, 1984 and July 10, 1984, to discuss the problem. Acme offered to install new matching bricks to replace the flaking bricks, but took the position that the flaking was due to inadequate construction rather than improper manufacture. Plaintiffs filed this action on December 21, 1984.

Plaintiffs do not contest the facts related above, but contend that additional facts must be considered. Plaintiffs have submitted the affidavits of James Haynes, a brick mason from Nowata, Oklahoma, and Kenneth Tate, a purchaser and seller of brick, cement, cement blocks, and other construction supplies, for the proposition that all the exterior brick is defective and should be removed. Plaintiff Linda Elledge states in her affidavit that she believes she made at least four telephone calls to the Acme offices in Tulsa, Oklahoma during the winter of

1979-80, an allegation which conflicts with her deposition testimony. Deposition of Linda Elledge, p. 13. She further states that she spoke with Bill Lemond "at least twice" prior to the August 6, 1981 investigation by Darrell Cook, as well as on January 11, 1983 and on May 25, 1983. Plaintiffs allege that Cook admitted to plaintiff Linda Elledge on August 6, 1981 that the brick was defective and that Cook "gave [her] no reason to think that there would not be somebody out there to replace the brick that they felt was bad." Deposition of Linda Elledge, p. 20. Plaintiffs bring this action for breach of the implied warranties of merchantability and fitness for a particular purpose.

Justin first contends that the plaintiffs' claim is barred by the statute of limitations. Because the sale of bricks is a sale of goods, 12A O.S. §2-275 applies:

"(1) An action for breach of any contract for sale must be commenced within five years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

"(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered."

Justin tendered delivery of the bricks on August 19, 1976. The cause of action accrued on that date rather than on the date plaintiffs discovered the defect because there was no "warranty

explicitly extend[ing] to future performance of the goods..." Beckmire v. Ristokrat Clay Products Co., 343 N.E.2d 530 (Ill. App. 1976) [where plaintiffs sued brick manufacturer eight years after tender of delivery, the limitations period began to run from tender of delivery, in the absence of an express warranty guaranteeing future performance or quality of the brick]. Standard Alliance Industries v. Black Clawson Co., 587 F.2d 813, 820 (6th Cir. 1978).

Plaintiffs argue that the statute of limitations was tolled by the conduct, representations, and actions taken by defendant's agents and employees. Plaintiffs cite Bowman v. Oklahoma Natural Gas Co., 385 P.2d 440 (Okla. 1963), which provides in pertinent part:

"[A]ttempts by the seller to remedy the defects which give rise to the cause of action do not toll the statute of limitations unless the seller at the time of attempting to remedy the defects, represents that such remedial repairs will make the chattel comply with the warranty."

In Bowman, the only representation made was that the repair work would make the defective air conditioning unit operate "reasonably trouble free." Plaintiffs failed to allege therein that the defendants had represented that remedial work would make the unit function properly. In the present action, plaintiffs allege that Cook admitted to Linda Elledge that the bricks were defective and that he would "go back and talk to them [the company], or give them my [Cook's] report." Deposition of Linda Elledge, pp.19-20. Linda Elledge also stated that Cook "didn't give me any indication at all that there was any doubt that they

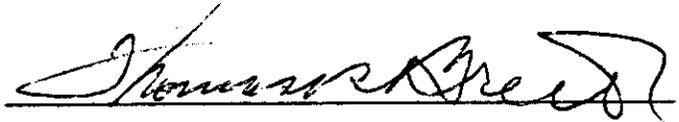
[the bricks] would be replaced" and that Cook "gave me no reason to think that there would not be somebody out there to replace the brick that they felt was bad." Deposition of Linda Elledge, p. 20. Cook's actions and representations, as alleged by plaintiffs, did not constitute "an attempt by the seller to remedy the defect" and did not therefore toll the statute of limitations.

Even if Cook's statements to Linda Elledge could be said to constitute an "attempt to remedy the defect" two weeks before the five-year limitations period was to run, plaintiffs waited another three years, until December 21, 1984, to file this action. Plaintiffs' claim is therefore barred under the doctrine of laches for their inexcusable delay in filing suit. Olansen v. Texaco, Inc., 587 P.2d 976 (Okla. 1978); Fablok Mills, Inc. v. Cocker Machine & Foundry Co., 125 N.J.Super. 251, 310 A.2d 491, 497 (1973); 44 A.L.R.3d 760 (1972). Assuming, arguendo, that the limitations period was tolled on August 6, 1981, plaintiffs' subsequent unreasonable failure to file suit when they could get no satisfaction from defendant started the limitations period running again. The evidence before the Court indicates that plaintiffs waited over a year after Cook's inspection, until November 8, 1982, to telephone Bill Lemond at the Tulsa office of Acme. Had Cook's actions tolled the statute, plaintiffs' lack of action restarted the running of the limitations period at some point within a year thereafter and would have run prior to November 8, 1982.

Justin is not estopped from asserting the statute of limitations defense as there is no evidence that Acme suggested to plaintiffs that they forego the filing of a timely action while negotiations or remedial action was pursued. Douglass v. Douglass, 188 P.2d 221 (Okla. 1947; National Zinc Co., Inc. v. Crow, 103 P.2d 560 (Okla. 1940).

Defendant's motion for summary judgment is granted.

IT IS SO ORDERED this 27 day of January, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

FILED

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

JAN 27 1986

CESSNA FINANCE CORP.,

Plaintiff,

v.

ROBERT E. CRISP and JO M. CRISP,

Defendants.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 85-C-757-B

ORDER

COMES NOW to be heard this *23rd* day of *January*, 1986, the plaintiff's Motion To Dismiss With Prejudice. The Court finds that the plaintiff's motion should be granted.

It is therefore ORDERED, ADJUDGED, and DECREED that this cause be dismissed with prejudice.

S/ THOMAS R. BRETT

United States District Judge

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

FILED

JAN 27 1986

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

PAUL ELLEDGE and)
LINDA ELLEDGE,)
)
Plaintiffs,)
)
vs.)
)
JUSTIN INDUSTRIES, INC.,)
)
Defendant.)

No. 85-C-69-B

JUDGMENT

This action having come before the court on the motion for summary judgment of defendant, Justin Industries, Inc., and the motion for summary judgment having been granted,

IT IS ORDERED AND ADJUDGED that the plaintiffs, Paul Elledge and Linda Elledge, take nothing, that the action be dismissed on the merits, and that the defendant Justin Industries recover of the plaintiffs its costs of action.

Dated at Tulsa, Oklahoma, this 27th day of January, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

1985

ARTHUR SULENSKI, SUSAN
SULENSKI, DANIEL SULENSKI, and
DAVID SULENSKI,

Plaintiffs,

vs.

HOWELL COUNTY, et al,

Defendants.

NO. 85-C-826-C

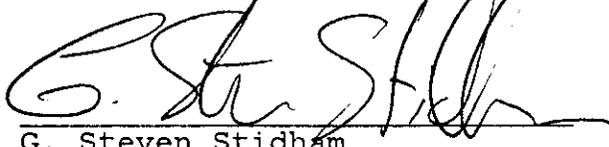
Notice of

DISMISSAL WITHOUT PREJUDICE AGAINST
HOWELL-OREGON ELECTRIC CO-OP, INC. ONLY

COME NOW the parties and show the Court that Plaintiffs
dismiss their Cause of Action without prejudice against
Howell-Oregon Electric Co-op, Inc., only. Plaintiffs do not
dismiss against any other Defendant herein.

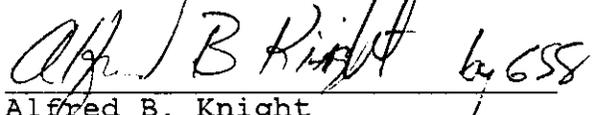
Respectfully submitted,

SNEED, LANG, ADAMS,
HAMILTON, DOWNIE & BARNETT

By 

G. Steven Stidham
Sixth Floor
114 East Eighth Street
Tulsa, Oklahoma 74119
(918) 583-3145

Attorneys for Plaintiff

By  by CSS

Alfred B. Knight
233 West 11th
Tulsa, Oklahoma 74119
(918) 584-6457

CERTIFICATE OF MAILING

I, G. Steven Stidham, do hereby certify that on the ^{27th} day of January, 1986, I caused to be mailed a true and correct copy of the above and foregoing instrument, proper postage thereon prepaid, to:

R. P. Redemann, Esq.
2800 Fourth National Building
Tulsa, Oklahoma 74119

Joseph F. Glass, Esq.
300 Oil Capital Building
507 South Main
Tulsa, Oklahoma 74103

Richard C. Honn, Esq.
117 East Fifth
Tulsa, Oklahoma 74103

Alfred Knight, Esq.
P. O. Box 2635
Tulsa, Oklahoma 74101-2635.


G. Steven Stidham

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

FILED

JAN 24 1986

MELVIN EDWARDS,)
)
 Plaintiff,)
)
 v.)
)
 FRANK THURMAN, et al.,)
)
 Defendants.)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 85-C-996-E

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on January ¹⁰~~9~~, 1986 in which the Magistrate recommends that the Petition for Writ of Habeas Corpus be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues presented by the Petition for Writ of Habeas Corpus, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted as the Findings and Conclusions of this Court.

Therefore, the Petition for Writ of Habeas Corpus is denied.

It is so Ordered this 23rd day of January, 1986.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

JAN 24 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

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

ROY L. RICE,)
)
 Plaintiff,)
)
 v.)
)
 DRESSER INDUSTRIES, INC.,)
)
 Defendant.)

No. 85-C-518-B ✓

ORDER AND JUDGMENT

Before the Court for consideration is defendant Dresser Industries, Inc.'s motion for summary judgment and its application for order determining waiver of objection and granting motion for summary judgment. Defendant filed its motion for summary judgment on December 20, 1985 and filed its application for order determining waiver of objection on January 2, 1986. Plaintiff has responded to neither the motion nor the application. Pursuant to Rule 14(a) of the Rules of the United States District Court for the Northern District of Oklahoma, the motion for summary judgment is deemed confessed.

IT IS THEREFORE ORDERED judgment is hereby entered in favor of the defendant, Dresser Industries, Inc., and against the plaintiff, Roy L. Rice. Plaintiff's action is dismissed with costs against plaintiff.

DATED this 23rd day of January, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
BILLY L. SMITH,)
)
Defendant.)

JAN 24 1986

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

CIVIL ACTION NO. 85-C-270-E

ORDER OF DISMISSAL

Now on this 23rd day of January, 1986, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Billy L. Smith, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FILED

JAN 23 1986 *ag*

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

A. G. BECKER, INCORPORATED,)
)
 Plaintiff,)
)
 v.)
)
 ALBERT J. BLAIR,)
)
 Defendant.)

No. 83-C-631-B ✓

FINDINGS OF FACT AND CONCLUSIONS OF LAW
CONCERNING DISCOVERY SANCTIONS UNDER
FED. R. CIV. P. 37(d)

The plaintiff's motion for sanctions, pursuant to Fed.R.Civ. P. 37, for failure of the defendant to comply with the rules of discovery was heard by the Court on December 31, 1985. After considering the relevant facts and the issues presented, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Court has jurisdiction of the subject matter and the parties herein pursuant to Title 28, United States Code, §1332. The plaintiff's action was commenced on July 18, 1983, which essentially is a suit on account for alleged securities transactions consummated.

2. Defendant failed to comply with the Court's order of March 8, 1985, which ordered that defendant respond no later than March 22, 1985, to plaintiff's first set of interrogatories served on December 6, 1984.

3. Plaintiff filed a motion for sanctions or, alternatively, to compel answers to interrogatories on May 13, 1985, after good faith consultation with defendant's counsel to secure answers to interrogatories. Plaintiff's motion was necessary and reasonable in order to obtain answers to its interrogatories.

4. The defendant answered the interrogatories in June of 1985.

5. Plaintiff has repeatedly sought to obtain discovery seeking in good faith to arrange depositions mutually convenient to defendant and his counsel.

6. Plaintiff served on defendant's counsel proper notice to appear at depositions scheduled for July 23, 1985, July 31, 1985, September 30, 1985, November 27, 1985 and December 2, 1985.

7. Defendant, Albert J. Blair, was informed by his counsel of the date, time and place of each of the scheduled depositions and the defendant failed without justification to attend the depositions.

8. Defendant's counsel knowingly failed to notify plaintiff's counsel that the dates set for depositions could not conveniently or for some reasonable justification be met, nor did defendant's counsel notify plaintiff's counsel that neither plaintiff nor his counsel would attend the depositions.

9. Plaintiff's counsel drove from Oklahoma City to Tulsa to attend each of the properly scheduled depositions. These trips were made without notice of cancellation to plaintiff's counsel

and unnecessarily made causing expense to the plaintiff, A. G. Becker, without any benefit to the plaintiff.

10. The Court entered its order compelling defendant's attendance at the deposition scheduled for September 30, 1985, after a hearing was conducted by Magistrate John Leo Wagner. Notwithstanding the Court's Order, neither counsel for defendant, nor the defendant, appeared.

11. Defendant's counsel was cautioned by Magistrate Wagner during a telephone conference between plaintiff's counsel and defendant's counsel on November 27, 1985, that should the defendant fail to attend the deposition scheduled on December 2, 1985, sanctions would be imposed.

12. Plaintiff has filed three motions and briefs for sanctions, an application and brief to compel discovery, and a motion for judgment under Local Rule 14. Each of these pleadings was necessary and reasonable because of the defendant's and his counsel's disregard of the Federal Rules of Civil Procedure and reasonable orders by the Court.

13. Defendant's counsel responded to only one of plaintiff's pleadings. That pleading urged that a subpoena was required in order to secure the defendant's attendance at a deposition notwithstanding the fact that the defendnat was a party.

14. Because of defendant's recalcitrance and failure to cooperate in the discovery process, additional counsel with more trial experience was assigned by the law firm representing the plaintiff to assist in this case.

15. Defendant offered no evidence excusing or justifying his failure to attend the depositions or failure to notify plaintiff's counsel that the depositions should be rescheduled or cancelled. With regard to plaintiff's request and the Court's order for production of documents, defendant's counsel represented for the first time at the hearing on the motion for sanctions that no documents are in the defendant's possession.

16. The hourly rate for the professional services of attorney Susie Pritchett in the amount of \$125.00 per hour is conceded by all parties to be reasonable based on years of trial experience and customary rates in the area.

17. The hourly rate for the professional services of attorney N. Sue Allen in the amount of \$80.00 per hour is conceded to be reasonable by all parties based on years of experience and customary rates in the area.

18. The number of attorney hours expended seeking discovery in this case is reasonable. (N. Sue Allen spent 78.00 hrs at \$ 80 = \$6,240; Susie Pritchett spent 32.08 hrs at \$125 = \$4,010)

19. The attorney's fees incurred by the plaintiff, A. G. Becker, seeking discovery through December 6, 1985 is in the total sum of \$10,250.00. Said amount does not include the attorney hours spent by plaintiff's counsel in traveling to Tulsa for the hearing on the motion for sanctions.

20. The expenses incurred by A. G. Becker in seeking discovery is in the total sum of \$565.76. This amount does not include the expense incurred in attending the hearing on the motion for sanctions.

21. The defendant, Albert J. Blair, should be required to pay reasonable expenses, including attorney fees, incurred by A. G. Becker, Inc., in seeking discovery in the total sum of \$10,855.76 for his failure to properly participate in the discovery process herein as provided by law. Counsel, Kenn Bradley, should be jointly responsible, along with the defendant, Albert J. Blair, Jr., to reimburse expenses to the plaintiff in the sum of \$565.76.

CONCLUSIONS OF LAW

1. Any Finding of Fact above which might be properly characterized a Conclusion of Law is included herein.

2. In view of or in addition to the sanctions authorized by Federal Rule of Civil Procedure 37(d), the Court shall require the parties failing to attend a deposition, serve answers to interrogatories, or respond to requests for production of documents to pay reasonable expenses and attorney fees caused by their failure. Fed.R.Civ. P. 37(d).

3. Sanctions may be imposed without regard to whether the Court has ordered the delinquent party to appear for his deposition or answer interrogatories. Robinson v. TransAmerica Insurance Company, 368 F.2d 37, 39 (10th Cir. 1966).

4. Attorney fees and costs should be awarded to the innocent party and against the party not cooperating in the discovery process. Hamilton v. Motorola, Inc., 85 F.R.D. 549 (W.D. Okla. 1979).

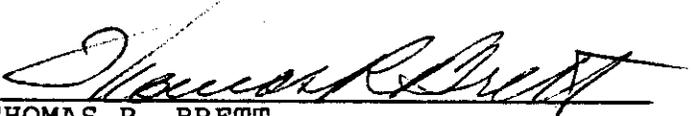
5. The party or the attorney advising him or both may be required to pay reasonable expenses, including attorney fees. Fed.R.Civ.P. 37(d).

6. The attorney fees, based upon the reasonable hourly rates and reasonable time expended, and expenses comport with the standards for determining attorney fees as set forth in State ex rel. Burk v. City of Oklahoma City, 598 P.2d 659 (Okl. 1979). The particular pertinent considerations herein concerning the amount of the attorney fees are the hourly rate, hours expended, as well as the results achieved in this Court's Order.

7. The Court will withhold the entry of a final judgment in keeping with these Findings of Fact and Conclusions of Law as expressed herein. However, when a final judgment is entered on the merits of the case, incorporated therein will be a judgment for attorney fees and expenses as expressed above in the sum of \$10,855.76 against the defendant, Albert J. Blair, Jr.; of which judgment \$565.76 will be entered as a joint judgment against Kenn Bradley, counsel for said Albert J. Blair, Jr.

8. The alternative requested sanction of plaintiff for entry of a judgment in favor of the plaintiff, A. G. Becker, Inc., against Albert J. Blair, Jr., on the merits is hereby denied. However, should the defendant, Albert J. Blair, Jr., persist in such conduct as set out above, entry of a judgment on the merits against the defendant in favor of the plaintiff will be reconsidered.

ENTERED this 22nd day of January, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JAN 23 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

AIMEE VANCE, Widow of)
Bruce A. Vance,)
)
Plaintiff,)
)
vs.)
)
STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY, a foreign)
corporation,)
)
Defendant.)

No. 85-C-566

J U D G M E N T

This matter came on before the Court on motion of defendant State Farm for partial summary judgment. The issues having been duly considered and a decision having been duly rendered, in accordance with the Order filed simultaneously herein,

IT IS ORDERED AND ADJUDGED that judgment be hereby entered in favor of defendant State Farm and against plaintiff Aimee Vance as to uninsured motorist coverage under State Farm policy No. S16-5967-C02-36B, against which the Court adjudges plaintiff to have no uninsured motorist coverage claim.

IT IS SO ORDERED this 22nd day of January, 1986.


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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 23 1986

JACK C. SWAFFORD, JR.
U. S. DISTRICT JUDGE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
KATHERYN L. SWAFFORD,)
)
Defendant.)

CIVIL ACTION NO. 85-C-1049-E

ORDER OF DISMISSAL

Now on this 22nd day of January, 1986, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve her have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Katheryn L. Swafford, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Plaintiff,)

vs.)

No. 85-C-901-B

DAVID ALAN ISELEY, RICHARD BRINTON)
WILES, KIMBERLY ANN CLAPP, ESTATE)
OF JASON MARSHALL, JEANNE H. WILES,)
MR. DAVID ISELEY, MRS. DAVID ISELEY,)
MR. TOM MARSHALL, MRS. TOM MARSHALL,)
MR. ELMER CLAPP, and MRS. ELMER CLAPP,)

Defendants.)

notice of
DISMISSAL

JAN 23 1986
WALKER G. SILVER, CLERK
U.S. DISTRICT COURT

COMES NOW the plaintiff, State Farm Mutual Automobile Insurance Company,
and dismisses the above-captioned action against Mr. Elmer Clapp and Mrs. Elmer
Clapp without prejudice to the refiling of said action.

Respectfully submitted,

BEST, SHARP, THOMAS, GLASS & ATKINSON

By *[Signature]*
John H.T. Sheridan, OBA #10957
300 Oil Capital Building
507 S. Main
Tulsa, Oklahoma 74103
(918) 582-8877

CERTIFICATE OF SERVICE

This is to certify that on this the 23rd day of January, 1986, a true,
correct and exact copy of the above and foregoing instrument was mailed to:

Jeanne H. Wiles, Defendant, 11914 E. 112 Place No., Owasso, OK 74055
Richard Brinton Wiles, Defendant, 11914 E. 112 Place No., Owasso, OK 74055

with proper postage thereon fully prepaid.

[Signature]

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR 23 1986
THE NORTHERN DISTRICT OF OKLAHOMA

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CHERRY P. WILLIAMS, individually
and on behalf of her minor
son as next friend, RODERICK
BROOKS; VERONICA SWAIM;
EMANUAL HIGHTOWER; CHRISTINE
BROOKS, individually and on
on behalf of her minor children
as next friend, DAVID TURNER
and SHAMIKO LOUIE; and
BRENDA PARKER, on behalf of her
minor daughter as next
friend, TANARA OLIVER,
Plaintiffs,

v.

HERTZ CORPORATION, a
corporation,
Defendant.

No. 82-C-567-B

JOURNAL ENTRY OF JUDGMENT

This cause came on for trial pursuant to agreement of the parties on this 23rd day of January, 1986 at which time Cherry P. Williams, individually and Cherry P. Williams on behalf of her minor son as next friend, Roderick Brooks; Veronica Swaim; Emanuel Hightower; Christine Brooks, individually and on behalf of her minor children as next friend, David Turner and Shamiko Louie, appeared by their attorney, Stanley D. Monroe, and Plaintiff Brenda Parker on behalf of her minor daughter as next friend, Tanara Oliver, appeared by her attorney Phil Frazier, and Defendant appeared by its attorney, Rhodes, Hieronymus, Jones,

Tucker & Gable. The parties waived their right to trial by jury and put on their evidence.

Having heard and considered the testimony of witnesses and statements of counsel, the Court finds:

1. That each Plaintiff is a resident of Tulsa County.
2. That this is an action to recover for uninsured motorist benefits for personal injuries resulting from an automobile accident in Arkansas on November 30, 1981 involving a car driven by Christine Brooks and an unidentified motor vehicle, and this Court has jurisdiction of the parties hereto and the subject matter.
3. That Hertz has made an offer to compromise and settle this claim which has been accepted by each Plaintiff which offer is as follows:
 - A. Cherry P. Williams - \$11,660.00.
 - B. Cherry P. Williams on behalf of her minor son as next friend, Roderick Brooks - \$550.00
 - C. Veronica Swaim - \$3,640.00
 - D. Emanuel Hightower - \$1,000.00
 - E. Christine Brooks - \$2,250.00
 - F. Christine Brooks on behalf of her minor child David Turner - \$1,475.00
 - G. Christine Brooks on behalf of her minor child Shamiko Louie - \$1,425.00

- H. \$8,000.00 for costs and attorney's fee to Stanley D. Monroe, attorney for Plaintiffs A thru G.
- I. Brenda Parker, on behalf of her minor daughter as next friend, Tanara Oliver - \$30,000.00.
- 4. That the medical bills, suit expenses and attorneys' fees of Tanara Oliver exceed \$30,000 and accordingly, no deposit to a () account is required for the proceeds of the settlement in her behalf.
- 5. That the offer and acceptance of settlement is in compromise of all claims and causes of action against Hertz Corporation by the Plaintiffs and by its offer, Hertz does not admit liability or coverage.
- 6. That it is in the best interest of the parties hereto that the claims of the Plaintiffs be reduced to judgment, the law favoring an open and fair compromise of claims.
- 7. That judgment should be entered upon the offer of settlement and judgment.

IT IS THEREFORE ORDERED that:

- 1. That each Plaintiff is a resident of Tulsa County.
- 2. That this is an action to recover for uninsured motorist benefits for personal injuries resulting from an automobile accident in Arkansas on November 30, 1981 involving a car driven by Christine Brooks and an unidentified motor vehicle, and this Court has jurisdiction of the parties hereto and the subject

matter.

3. That Hertz has made an offer to compromise and settle this claim which has been accepted by each Plaintiff which offer is as follows:
 - A. Cherry P. Williams - \$11,660.00.
 - B. Cherry P. Williams on behalf of her minor son as next friend, Roderick Brooks - \$550.00
 - C. Veronica Swaim - \$3,640.00
 - D. Emanuel Hightower - \$1,000.00
 - E. Christine Brooks - \$2,250.00
 - F. Christine Brooks on behalf of her minor child David Turner - \$1,475.00
 - G. Christine Brooks on behalf of her minor child Shamiko Louie - \$1,425.00
 - H. \$8,000.00 for costs and attorney's fee to Stanley D. Monroe, attorney for Plaintiffs A thru G.
 - I. Brenda Parker, on behalf of her minor daughter as next friend, Tanara Oliver - \$30,000.00.
4. That the medical bills, suit expenses and attorneys' fees of Tanara Oliver exceed \$30,000 and accordingly, no deposit to a trust account is required for the proceeds of the settlement in her behalf.
5. That the offer and acceptance of settlement is in compromise of all claims and causes of action against Hertz Corporation by the Plaintiffs and by its offer, Hertz does not admit liability or coverage.

6. That it is in the best interest of the parties hereto that the claims of the Plaintiffs be reduced to judgment, the law favoring an open and fair compromise of claims.
7. That judgment should be entered upon the offer of settlement and judgment.
8. That all the claims and causes of action of Plaintiffs against the Defendant herein arising out of and occasioned by the motor vehicle accident described in Plaintiffs' Complaint are herein merged into judgment but which shall not be held to be an admission of fault, liability or coverage on the part of Defendant and that each party bear its own costs.

S/ THOMAS R. BRETT

U.S. District Judge

APPROVED:

Stanley D. Monroe, Attorney for Plaintiffs: Cherry P. Williams individually and on behalf of her minor son as next friend, Roderick Brooks; Veronica Swaim; Emanuel Hightower; Christine Brooks, individually and on behalf of her minor children as next friend, David Turner and Shamiko Louie.

John H. Tucker, Attorney for Defendant Hertz Corporation

Phil Frazier, Attorney for Plaintiff Brenda Parker, on behalf of her minor daughter, as next friend, Tanara Oliver

FILED

JAN 23 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

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

D. L. CURL, individually and)
d/b/a ABUNDANT LIFE TABERNACLE,)
)
Plaintiff,)
)
vs.)
)
FEDERAL KEMPER INSURANCE CO.,)
)
Defendant.)

No. 85-C-890-C ✓

O R D E R

Now before the Court for its consideration is the motion of defendant Federal Kemper Insurance Company for change of venue, said motion filed herein on October 29, 1985, and the motion of defendant Federal Kemper Insurance Company to dismiss, said motion filed herein on October 22, 1985. The plaintiff's having responded to these motions, the Court finds the matters ready for its determination.

Considering the motion for change of venue, the Court notes that defendant is an Illinois corporation with its principal place of business in Decatur, Illinois. It has never sold policies of insurance in the State of Oklahoma nor transacted any other business in Oklahoma, although it is registered with the Secretary of the State of Oklahoma and licensed to transact business here. Plaintiff, an individual doing business as the Abundant Life Tabernacle, was, at the time her suit was

instituted and still is, a resident of Tulsa County, Tulsa, Oklahoma, located in the Northern District of Oklahoma.

On July 21, 1984, defendant issued a policy of fire insurance to the Abundant Life Tabernacle, a ministerial association formed according to the laws of West Virginia on March 23, 1984, and physically located in West Virginia. All of the real and personal property covered by the policy was located in that State. Defendant is licensed to transact the business of selling fire and other types of insurance in West Virginia.

On or about March 15, 1985, a fire destroyed the premises of Abundant Life Tabernacle. This lawsuit was filed by plaintiff to recover for alleged bad faith breach of contract by reason of defendant's failure to pay proceeds allegedly due plaintiff under the policy terms.

The controlling statutory provision, Title 28 U.S.C. §1404(a) provides:

For the convenience of parties and witnesses, and in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

Initially, the Court notes the threshold requirement established in §1404(a) has been met. It is clear this case could have been brought in the United States District Court for the Northern District of West Virginia, as the district in which the claim arose, pursuant to 28 U.S.C. §1391.

A transfer under Section 1404(a) is within the discretion of the trial court. Wm. A. Smith Contracting Co. v. Travelers Indemnity Co., 467 F.2d 662 (10th Cir. 1972). The burden of

establishing that the action should be transferred is on the movants. Unless the evidence and circumstances of the case are strongly in favor of the transfer, the plaintiff's choice of forum should not be disturbed. Houston Fearless Corp. v. Teter, 318 F.2d 822 (10th Cir. 1963).

Consideration of the plaintiff's choice of forum greatly diminishes where none of the conduct complained of occurred in the selected forum. Koeneke v. Greyhound Lines, Inc., 289 F.Supp. 487 (W.D.Okla. 1968). Location of witnesses is also a proper factor to consider. Northwest Animal Hospital, Inc. v. Earnhardt, 452 F.Supp. 191 (W.D.Okla. 1977). Defendant asserts there are many critical witnesses as to plaintiff's amount of loss, cause of loss, and bad faith claim, located in West Virginia and thus out of subpoena range if the case remains here.

Lastly, a court must consider the interests of justice. Trial in West Virginia would afford easier access to the sources of proof. There would be a greater availability of compulsory process for unwilling witnesses, and a trial there would be less expensive for willing witnesses. A jury view of the fire premises would be available for the jury, as the cause of action arose in West Virginia. Finally, a court sitting in diversity jurisdiction would be acquainted with the state law that would be governing the action.

Plaintiff, lifetime pastor and founder and head trustee of Abundant Life Tabernacle, asserts that her financial condition since the fire is such that her ability to proceed with her suit in West Virginia would be difficult. While a factor to be

considered, the Court nonetheless finds the balance of factors to weigh in favor of defendant. This Court has no connection with the transactions or conduct underlying the plaintiff's cause of action, save for the fact that plaintiff maintains a residence in Tulsa, apparently in addition to one in West Virginia.

Based upon the foregoing consideration of the circumstances of this case and Section 1404(a), the Court finds and concludes that defendant has sufficiently established that the trial of this action would be more conveniently carried through and the interests of justice more completely served in the United States District Court for the Northern District of West Virginia.

Accordingly, it is Ordered that the motion of defendant for change of venue should be and hereby is sustained. This case should be transferred to the United States District Court for the Northern District of West Virginia. The Clerk of this Court will effect the transfer without delay.

It is further Ordered that the motion of defendant to dismiss is hereby rendered moot by reason of this venue change.

IT IS SO ORDERED this 22nd day of January, 1986.


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

FILED

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

JAN 25 1986

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

MARYLAND NATIONAL INDUSTRIAL)
FINANCE CORPORATION,)
)
Plaintiff,)
)
vs.)
)
THOMAS W. BEAVERS, et al.,)
)
Defendants.)

No. 85-C-866-E

ORDER GRANTING ATTORNEY'S FEES
AND COSTS OF COLLECTION

On this 22^d day of January, 1986, the Court has for its consideration that portion of the motion for entry of default judgment against Defendants by the Plaintiff, Maryland National Industrial Finance Corporation, which seeks an award of attorney's fees and costs of collection.

The Plaintiff is represented by its attorneys of record, English, Jones & Faulker by Carol Wood. The Defendants appear not. The Court, having heard testimony in support of the Plaintiff's application, and having reviewed the Plaintiff's motion for default judgment, the affidavit of Carol Wood attached thereto, and the exhibits attached to the motion finds as follows:

1. The guaranty executed by Susan L. Miller and the guaranty executed by Thomas W. Beavers and Anita Beavers provides that they agree to indemnify and save the Plaintiff harmless from any and all costs and expenses incurred by the Plaintiff in endeavoring to collect or

- enforce any of the borrower's liabilities, or in maintaining or disposing of any collateral or security therefor, including, without limitation, all attorney's fees and expenses incurred by the Plaintiff in its collection efforts.
2. The Plaintiff has incurred costs of collection in the sum of \$9,668.75 for attorney's fees in connection with the Plaintiff's first cause of action.
 3. The Plaintiff has incurred costs for filing fees, reproduction and certification costs, service fees, recording fees, deposition costs, delivery fees and long-distance telephone expenses in connection with its collection of the indebtedness which is the subject of Plaintiff's first cause of action in the amount of \$1,122.88.
 4. The Plaintiff has incurred costs for filing fees, reproduction and certification costs, service fees, recording fees, delivery fees and long-distance telephone expenses related to collection of the indebtedness which is the subject of Plaintiff's second cause of action in the amount of \$148.40.
 5. The Plaintiff was the prevailing party in its action against the Defendants and that default judgment was entered by the Court herein on November 4, 1985 on both causes of action brought by the Plaintiff.
 6. Considering the time and labor required in order to obtain the default judgment on the guaranty agreements,

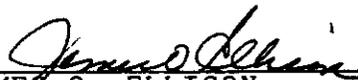
the novelty and difficulty of the questions, the skill requisite to perform the legal service properly, the amount involved and the results obtained, and the experience, reputation, and ability of the attorneys, the Court finds that a reasonable attorney's fee for the services provided on behalf of the Plaintiffs is \$1,000.00. The Court further finds that the hourly rate charged by the Plaintiff's attorney is reasonable, but that the number of hours expended in preparation of the pleadings to obtain the default judgment and the award of attorney's fees is slightly excessive, thereby necessitating a reduction in the amount of fees awarded from that sought in the motion for default judgment.

7. Plaintiff is entitled to an award of attorney's fees pursuant to 12 O.S. § 936.
8. Plaintiff is entitled to be awarded a judgment for its costs of collection under the terms of its guaranty agreement with the Defendants. Black v. O'Haver, 567 F.2d 361 (10th Cir. 1977).

IT IS THEREFORE ORDERED that the Plaintiff is awarded an attorney's fee of \$1,000.00 against the Defendants, Thomas W. Beavers, Anita S. Beavers, and Susan L. Miller, for which they are jointly and severally liable, and that Plaintiff is awarded a judgment against Thomas W. Beavers, Anita S. Beavers, and Susan L. Miller for the costs of collection of its first cause of action in the amount of \$10,791.63, and Plaintiff is awarded judgment for the costs of collection in connection with its

second cause of action against Susan L. Miller in the sum of \$148.40.

It is so Ordered this 22^d day of January, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

JOE R. HARRISON,
Plaintiff,
VS
FARMERS AND RANCHERS
LIVESTOCK AUCTION, INC.,
Defendant.

No. 84-C-785-E

FILED

JAN 22 1986

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

STIPULATION FOR DISMISSAL

COMES NOW the parties to the above styled cause, by and through their respective attorneys of record and herewith stipulate to the dismissal with prejudice of said cause.

JOE R. HARRISON, Plaintiff

WALLACE AND OWENS

By [Signature]
Coy B. Morrow
OBA# 6443
Attorneys for Plaintiff
P. O. Box 1168
Miami, OK 74355
(918) 542-5501

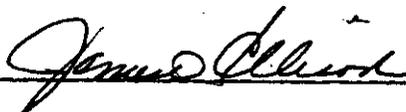
FARMERS AND RANCHERS LIVESTOCK
AUCTION, INC.

By [Signature]
Joe Hartley
Attorney for Defendant

ORDER

NOW on this 22nd day of January, 1986, upon stipulation of the parties hereto, the above styled cause is dismissed with prejudice.

JUDGE



FILED

JAN 23 1986

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

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 22 1986

JACK O'NEVER, CLERK
U.S. DISTRICT COURT

RICHARD J. KIMBROUGH,)
)
 Plaintiff,)
)
 vs.)
)
 MARGARET M. HECKLER,)
 Secretary of Health and)
 Human Services,)
)
 Defendant.)

CIVIL ACTION NO. 85-C-1000-C

O R D E R

Upon the Motion of the Defendant, Secretary of Health and Human Services, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and for good cause shown, pursuant to the Social Security Disability Benefits Reform Act of 1984, it is hereby ORDERED that this case be remanded to the Secretary for readjudication.

Dated this 21st day of January, 1986.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

LAYN R. PHILLIPS
United States Attorney

Phil Pinnell
PHIL PINNELL
Assistant U.S. Attorney

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

FILED

JAN 22 1986

GARY LEE BARNES,

Plaintiff,

vs.

INTERSTATE BRANDS CORPORATION;
TULSA GENERAL DRIVERS,
WAREHOUSEMEN AND HELPERS,
LOCAL UNION NO. 523; and
SAM WHITTEN,

Defendants.

No. 84-C-981-C

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

J U D G M E N T

This matter came on before the Court on motion of defendants Interstate Brands Corporation and Sam Whitten for partial summary judgment. The issues having been duly considered and a decision having been duly rendered in accordance with the Order filed simultaneously herein,

IT IS ORDERED AND ADJUDGED that defendants Interstate Brands Corporation and Sam Whitten be and are hereby granted summary judgment as against plaintiff Gary Lee Barnes on Count III of the Removed Petition.

IT IS FURTHER ORDERED AND ADJUDGED that judgment be and hereby is granted as against plaintiff and in favor of defendants Interstate Brands Corporation; Tulsa General Drivers, Warehousemen and Helpers, Local Union No. 523; and Sam Whitten on

Counts I, II, and IV of the Removed Petition, pursuant to orders entered to that effect on April 17, 1985.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff take nothing on this Removed Petition and that this action should be and hereby is dismissed.

IT IS SO ORDERED this 22nd day of January, 1986.


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

Entered

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

FILED

JAN 22 1986 *cf*

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

HERNDON DRILLING CO.,)
MICHAEL C. HERNDON,)
PATRICIA HERNDON SHADDAY,)
JUDITH ELISE COWAN,)
C. B. EDWARDS, and)
HAROLD J. BORN,)

Plaintiffs,)

v.)

No. 84-C-971-B ✓

NORTHERN NATURAL GAS COMPANY,)

Defendant.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This declaratory judgment action pursuant to Title 28, United States Code, §2201, comes on for trial to the Court, sitting without a jury. The parties submitted to the Court their extensive Agreed Statement of Facts, filed September 23, 1985, which includes the pertinent written natural gas contract documents entered into by the parties. The parties have agreed the case is to be decided by the Court based upon the agreed record. After considering the evidence, the applicable legal authority and the arguments of counsel, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The parties have entered into the following Agreed Statement of Facts, filed herein on September 23, 1985, that the Court hereby adopts: (Findings of Fact 1 through 15 hereafter)

1. This is an action for declaratory judgment pursuant to Title 28, U.S. Code, §2201, for the purpose of determining a question of actual controversy that exists between the parties.

2. The Plaintiffs are citizens and residents of the following states:

Herndon Drilling Co. is a corporation organized and existing under the laws of the State of Oklahoma and has its principal place of business in Tulsa, Oklahoma.

Michael C. Herndon, Patricia Herndon Shadday and Harold J. Born are residents of Tulsa, Oklahoma.

Judith Elise Cowan is a resident of Carbondale, Colorado.

C. B. Edwards is a resident of Bend, Oregon.

3. The Defendant, Northern Natural Gas Company, is a division of Internorth, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Omaha, Nebraska. The Defendant is licensed to do

business in the State of Oklahoma and has offices and is doing business in the City of Tulsa, Oklahoma.

4. There is a diversity of citizenship between the parties and since the amount in controversy exceeds \$10,000, exclusive of interest and costs, jurisdiction of this action is based on Title 28, U.S Code, §1332(a). The venue of this action is the United States District Court for the Northern District of Oklahoma since this judicial district is regarded as the residence of the Defendant corporation for venue purposes under Title 28, U.S. Code, §1391(a)(c).

5. The Plaintiffs are all the present owners of oil and gas leasehold interests in the following described oil and gas leases located in Edwards County, Kansas. Herndon Drilling Co. is a non-operating company acting as a holding company for its individual stockholders. Michael Herndon, Patricia Shadday, Harold Born, Judith Cowan and C. B. Edwards are individual investor-owners and not engaged in the oil and gas business generally.

The Defendant is an interstate gas pipeline company, and, under Natural Gas Purchase Contracts hereafter described, at all times pertinent hereto, has purchase the natural gas produced from said leases. Said oil and gas leases, and the Defendant's meter station numbers for the respective leases are as follows:

<u>Lease Name</u>	<u>Description</u>	<u>Station Number</u>
A. Zuercher	W/2, Sec. 15, Township 24 South, Range 16 West	
B. Zuercher No. 1	NW/4, Sec. 22, Township 24 South, Range 16 West	119003
C. Zuercher No. 2	SW/4, Sec. 22, Township 24 South, Range 16 West	490020

D.	Breitenbach	W/2, Sec. 26, Township 24 South, Range 16 West and E/2 NE/4, Sec. 27, Township 24 South, Range 16 West	119004
E.	Fisher	NW/4 and W/2 NE/4, Sec. 27, Township 24 South, Range 16 West	490021
F.	Hart	SE/4, Sec. 11 and SW/4 Sec. 12, and N/2, Sec. 14, Township 24 South, Range 16 West	119006

6. That the Plaintiffs' predecessors in title to the above described oil and gas leases, to-wit: Alden E. Branine and F. G. Holl, entered into the following described Natural Gas Purchase Contract with the Defendant, which said Contracts are still in full force and effect between the Plaintiffs and the Defendant. They are as follows:

A. Contract dated December 31, 1954, hereinafter called "Base Contract" covering the Zuercher Lease, attached as Exhibit "A" hereto. Said Base Contract was amended by Supplemental Agreement dated July 21, 1966, attached as Exhibit "B" hereto.

B. Contract dated May 31, 1956, covering the Zuercher No. 1 and Zuercher No. 2 Leases, which adopted the "Base Contract" attached as Exhibit "C" hereto. Said Contract was amended by Supplemental Agreement dated July 21, 1966, attached as Exhibit "D" hereto.

C. Contract dated April 6, 1957, covering the Breitenbach and Fisher Leases, which adopted the "Base Contract", attached as Exhibit "E", hereto. Said Contract was amended by Supplemental Agreement dated July 21, 1966, attached as Exhibit "F" hereto.

D. Contract dated December 23, 1958, which extended the coverage of the Contract dated June 14, 1957, which adopted the "Base Contract", to cover the Hart Lease. Contract of December 23, 1958, is attached hereto as Exhibit "G" and the Contract of June 14, 1957, is attached hereto as Exhibit "H". Said Agreements were amended by Supplemental Agreement dated July 21, 1966, attached as Exhibit "I" hereto.

7. That the Plaintiffs individually owned the decimal working interest set opposite their respective names in the respective leases and stations numbers applicable thereto, as follows:

A. Fisher Lease, Station No. 490021:

<u>Owner</u>	<u>Decimal Interest</u>
Herndon Drilling Co.	.70068360
Patricia Shadday	.05126960
Judith Cowan	.02563475
Harold Born	.02563475
Michael Herndon	.05126950
Royalty and Overriding Royalty	.14550780

B. Hart Lease, Station No. 119006:

<u>Owner</u>	<u>Decimal Interest</u>
Herndon Drilling Co.	.7175
Patricia Shadday	.0525
Judith Cowan	.0525
Michael Herndon	.0525
Royalty	.1250

C. Zuercher No. 1 Lease, Station No. 119003:

<u>Owner</u>	<u>Decimal Interest</u>
Herndon Drilling Co.	.52971720
C. B. Edwards	.21533200
Patricia Shadday	.03875966
Judith Cowan	.03875967
Michael Herndon	.03875967
Royalty and Overriding Royalty	.13867180

D. Zuercher No. 2, Station No. 490020:

<u>Owner</u>	<u>Decimal Interest</u>
Herndon Drilling Co.	.56478550
C. B. Edwards	.21533200
Patricia Shadday	.03875960
Michael Herndon	.03875970
Royalty and Overriding Royalty	.14236320

E. Breitenbach, Station No. 119004:

<u>Owner</u>	<u>Decimal Interest</u>
Herndon Drilling Co.	.70068360
Patricia Shadday	.05126950
Judith Cowan	.05126950
Michael Herndon	.05126960
Royalty and Overriding Royalty	.14550780

The Defendant has paid to Herndon Drilling Co., through its agent, J D Operating Company, all of the royalty and overriding royalty interest portion of purchase price for the gas purchased from the above described oil and gas leases, and J D Operating Company on behalf of Herndon Drilling Co. has made payment to the various royalty and overriding royalty interest owners, as their respective interests appear, for the gas purchased by the Defendant. That the Defendant has been purchasing and paying directly to Herndon Drilling Co., Patricia Shadday, Judith Cowan, C. B. Edwards, Harold Born, and Michael Herndon, Plaintiffs, for the gas purchased from their respective working interests in the leases.

8. That under the terms of the above described Gas Purchase Agreements, the Defendant, Northern Natural Gas Company, is the owner of the meters on each of the leases described above and is responsible for the installation, maintenance and operation of said meters free of cost to the Plaintiffs and may make changes in the meter elements as it sees fit. Each meter on each lease is given a "station number" which is the meter station number indicated for the respective leases in paragraph 5 above.

9. A meter for the measuring of the quantity of gas passing through the meter is composed of various internal mechanical elements, including the "orifice plate", the "static element", and

the "differential range spring", as well as the charts produced in conjunction with the meter elements. These meter elements vary in size and function and each variable element has an assigned numerical coefficient factor which must be used in a formula to compute the correct quantity of gas which has passed through the meter. The charts from the meter are taken to the gas accounting department where the chart readings are integrated and multiplied by the proper numerical coefficients for each meter element in the meter to determine the gas volumes. If one or more of these elements in a meter are changed, the coefficient factor or factors of the new element or elements must be changed in the formula or the formula will not correctly compute the quantity of gas metered. Plaintiffs contend that the errors in the quantity of gas metered were "inaccurate measurement calculations", and the Defendant contends same were "inaccurate computations" of the quantity of gas metered.

This is what happened in this case. The various elements were changed in each meter but the formula was not changed in the gas accounting department which resulted in inaccurate computations of gas volumes which, when priced, resulted in overpayments to the Plaintiffs. Upon discovery, the Defendant recomputed the volumes using the correct coefficients and gave notice to Plaintiffs of such fact and billed the Plaintiffs for the overpayments. Some Plaintiffs made some repayments and stopped. The Defendant then commenced deducting monies from future purchases of gas from the Plaintiffs to recoup the overpayments. The specifics as to each lease are detailed in the following paragraphs.

10. With respect to the Fisher Lease, Meter Station No. 490021, the Defendant, without the knowledge of the Plaintiffs, on August 8, 1983, changed the meter orifice plate element in the meter from 3.068 x 1.000 to 3.068 x .750. After the change of the orifice plate size, which would require a change of the coefficient for the orifice plate in the formula for determining the quantity of gas passing through the meter, the Defendant failed or neglected to change the coefficient factor in the formula which resulted in inaccurate computation of the volume of gas being delivered by the Plaintiffs to the Defendant for the month of August, 1983, and subsequent months through April, 1984. The Defendant's gas accounting department is responsible for making the calculations using the proper coefficients for each meter element to determine the quantity or volume of gas delivered. On July 13, 1984, Defendant notified the Plaintiffs of Defendant's inaccurate calculations of the volume of gas delivered for the months of August, 1983 through April, 1984, and that instead of 73,303 MCF having been delivered collectively by the Plaintiffs for the period, only 39,767 MCF had been delivered, which, according to the Defendant, resulted in an alleged overpayment to the Plaintiffs of \$98,544.63 plus interest. The Defendant made a claim against Plaintiffs for the return of said sums. The Plaintiffs relied on the accuracy of Defendant's measurement calculations and disposed of the money paid by the Defendant to the Plaintiffs as received. The Plaintiff Born paid \$2,526.17, and the Plaintiffs Shadday and Michael Herndon paid \$1,650, respectively and stopped paying. The Plaintiffs otherwise refused to

pay said sums to the Defendant. The Defendant immediately commenced the withholding of the purchase price of gas purchased from Plaintiffs (except for Born) for the month of June, 1984, and subsequent months thereafter until it had recouped the full amount the Defendant claimed to be due from each Plaintiff plus interest.

For the period between April 13, 1984, and July 13, 1984, (the three month period immediately preceding the date Defendant notified Plaintiffs of the inaccurate calculations) the alleged overpayment on the Fisher Lease would collectively equal \$4,295.83 for the 1,437 MMBTU which did not pass through the meter for that period of time.

Since the filing of the Petition, the Plaintiffs and the Defendant have agreed that the original amount claimed by the Defendant contained certain arithmetic calculation errors based upon misapplication of facts totalling \$2,838.49. Attached as Exhibit "J" to this Statement of Facts, is a schedule which indicates the original amount claimed by the Defendant on the Fisher Lease which has been allocated to the Plaintiffs as their interests appear, together with the adjustment for arithmetic calculation errors. The Exhibit further indicates the principal amount which has been withheld by the Defendant from the various Plaintiffs together with the interest withheld by the Defendant as to each Plaintiff.

11. With respect to the Hart Lease, Meter Station No. 119006, the Defendant, without the knowledge of the Plaintiffs on November 8, 1983, changed the static element in the meter from 0-1,000 psi to 0-500 psi, and changed the differential range

spring from 0-50 inches to 0-20 inches. After the change of the static element and differential range spring, which would both require a change of the coefficients for the static element and the differential range spring in the formula for determining the quantity of gas passing through the meter, the Defendant failed or neglected to change the coefficient factors in the formula which resulted in inaccurate computation of the volume of gas being delivered by the Plaintiffs to the Defendant for the month of November, 1983 and subsequent months through July, 1984. The Defendant's gas accounting department is responsible for making the calculations using the proper coefficients for each meter element to determine the quantity or volume of gas delivered. On September 14, 1984, Defendant notified the Plaintiffs of Defendant's inaccurate calculations of the volume of gas delivered for the months of November, 1983, through July, 1984, and that instead of 20,147 MMBTU having been delivered collectively by the Plaintiffs for the period, only 9,251 MMBTU had been delivered, which, according to the Defendant, resulted in an alleged collective overpayment to the Plaintiffs of \$45,826.50 plus interest. The Defendant made a claim against Plaintiffs for the return of said sum. The Plaintiffs relied on the accuracy of Defendant's calculations and of the money paid by the Defendant to the Plaintiffs as received. The Plaintiffs refused to pay said sums to the Defendant. The Defendant immediately commenced withholding of the purchase price of the gas purchased from the Plaintiffs for the month of September, 1984, and subsequent months thereafter until

it had recouped the full amount the Defendant claimed to be due from each Plaintiff plus interest.

For the period between July 14, 1984, and September 14, 1984, (the three-month period immediately preceding the date Defendant notified Plaintiffs of the inaccurate calculations) the alleged overpayment on the Hart Lease would collectively equal \$7,174.09 for the 1,735 MMBTU which did not pass through the meter for that period of time.

Attached as Exhibit "J" to this Statement of Facts is a schedule which indicates the original amount claimed by the Defendant on the Hart Lease, which has been allocated to the Plaintiffs as their interests appear. The Exhibit further indicates the principal amount which has been withheld by the Defendant from the various Plaintiffs together with the interest withheld by the Defendant as to each Plaintiff.

12. With respect to the Zuercher No. 1 Lease, Meter Station No. 119003, the Defendant, without the knowledge of the Plaintiffs on October 18, 1983, changed the static element in the meter from 0-1,000 psi to 0-500 psi, and changed the differential range spring from 0-50 inches to 0-20 inches. After the change of the static element and the differential range spring, which would both require a change of the coefficient for the static element and the coefficient for the differential range spring in the formula for determining the quantity of gas passing through the meter, the Defendant failed or neglected to change the coefficient factors in the formula which resulted in inaccurate computations of the volume of gas being delivered by the Plaintiffs to the Defendant

for the month of October, 1983, and subsequent months through July, 1984. The Defendant's gas accounting department is responsible for making the calculation using the proper coefficients for each meter element to determine the quantity or volume of gas delivered. On October 12, 1984, Defendant notified the Plaintiffs of Defendant's inaccurate calculations of the volume of gas delivered for the months of October, 1983, through July, 1984, and that instead of 8,775 MCF having been delivered collectively by the Plaintiffs for the period, only 4,164 MCF had been delivered, which, according to the Defendant, resulted in an alleged collective overpayment to the Plaintiffs of \$18,927.09 plus interest. The Defendant made a claim against Plaintiffs for the return of said sums. The Plaintiffs relied on the accuracy of Defendant's calculations, and disposed of the money paid by the Defendant to the Plaintiffs as received. The Plaintiffs refused to pay said sums to the Defendant. The Defendant immediately commenced the withholding of the purchase price of gas purchased from Plaintiffs for the month of October, 1984, and subsequent months thereafter until it had recouped the full amount the Defendant claimed to be due from each Plaintiff plus interest.

For the period between July 12, 1984, and October 12, 1984, (the three-month period immediately preceding the date Defendant notified Plaintiffs of the inaccurate calculations) the alleged overpayment on the Zuercher No. 1 Lease would collectively equal \$1,088.49 for the 258 MMBTU which did not pass through the meter for that period of time.

Attached as Exhibit "J" to this Statement of Facts is a schedule which indicates the original amount claimed by the Defendant on the Zuercher No. 1 Lease which has been allocated to the Plaintiffs as their interest appear. The Exhibit further indicates the principal amount which has been withheld by the Defendant from the various Plaintiffs together with the interest withheld by the Defendant as to each Plaintiff.

13. As to the Zuercher No. 2 Lease, Meter Station No. 490020, the Defendant, without the knowledge of the Plaintiffs, on October 18, 1983, changed the static element in the meter from 0-1,000 psi to 0-500 psi. After the change of the static element, which would require a change of the coefficient for the static element in the formula for determining the quantity of gas passing through the meter, the Defendant failed or neglected to change the coefficient factor in the formula which resulted in inaccurate calculations of the volume of gas being delivered by the Plaintiffs to the Defendant for the month of October, 1983, and subsequent months through June, 1984. The Defendant's gas accounting department is responsible for making the calculations using the proper coefficient for each meter element to determine the quantity or volume of gas delivered. On September 14, 1984, the Defendant notified the Plaintiffs of Defendant's inaccurate calculations of the volumes of gas delivered for the months of October, 1983, through June, 1984, and that instead of 7,373 MCF having been delivered collectively by the Plaintiffs for the period, only 5,280 MCF had been delivered, which, according to the Defendant, resulted in an alleged collective overpayment to the

Plaintiffs of \$8,365.35 plus interest. The Defendant made a claim against Plaintiffs for the return of said sums. The Plaintiffs relied on the accuracy of Defendant's calculations, and disposed of the money paid by the Defendant to the Plaintiffs as received. The Plaintiffs refused to pay said sum to the Defendant. The Defendant immediately commenced the withholding of the purchase price of the gas purchased from Plaintiffs for the month of September, 1984, and subsequent months thereafter until it had recouped the full amount the Defendant claimed to be due from each Plaintiff plus interest.

For the period between June 14, 1984, and September 14, 1984, (the three-month period immediately preceding the date Defendant notified the Plaintiffs of the inaccurate calculations) the alleged overpayment on the Zuercher No. 2 Lease would collectively equal \$372.78 for the 91 MMBTU which did not pass through the meter for that period of time.

Since the filing of the Petition, the Plaintiffs and the Defendant have agreed that the original amount claimed by the Defendant contained certain arithmetic calculation errors based upon misapplication of facts totalling \$128.51. Attached as Exhibit "J" to this Statement of Facts, is a schedule which indicates the original amount claimed by the Defendant on the Zuercher No. 2 Lease which has been allocated to the Plaintiffs as their interests appear, together with the adjustment for arithmetic calculation errors. The Exhibit further indicates the principal amount which has been withheld by the Defendant from the

various Plaintiffs together with the interest withheld by the Defendant as to each Plaintiff.

Attached as Exhibit "J" to this Statement of Facts, is a schedule which indicates the original amount claimed by the Defendant on the Zuercher No. 2 Lease, which has been allocated to the Plaintiffs as their interests appear. The Exhibit further indicates the principal amount which has been withheld by the Defendant from the various Plaintiffs together with the interest withheld by the Defendant as to each Plaintiff.

14. With respect to the the Breitenbach Lease, Meter Station No. 119004, the Defendant, without knowledge of the Plaintiffs, on October 18, 1983, changed the differential range spring in the meter from 0-50 inches to 0-20 inches. After the change of the differential range spring, which would require a change in the coefficient for the differential range spring in the formula for determining the quantity of gas passing through the meter, the Defendant failed or neglected to change the coefficient factor in the formula which resulted in inaccurate computation of the volume of gas being delivered by the Plaintiffs to the Defendant for the month of October, 1983, and subsequent months through July, 1984. The Defendant's gas accounting department is responsible for making the calculations using the proper coefficients for each meter element to determine the quantity or volume of gas delivered. On October 12, 1984, Defendant notified the Plaintiffs of Defendant's inaccurate calculations of the volume of gas delivered for the months of October, 1983, through July, 1984, and that instead of 23,295 MCF having been delivered collectively by the

Plaintiffs for the period, only 14,980 MCF had been delivered, which, according to the Defendant, resulted in an alleged collective overpayment to the Plaintiffs of \$4,902.13 plus interest. The Defendant made a claim against Plaintiffs for the return of said sums. The Plaintiffs relied on the accuracy of Defendant's calculations, and disposed of the money paid by the Defendant to the Plaintiffs as received. Plaintiffs refused to pay said sums to the Defendant. The Defendant immediately commenced the withholding of the purchase price of gas purchased from the Plaintiffs for the month of October, 1984, and subsequent months thereafter until it had recouped the full amount the Defendant claimed to be due from each Plaintiff plus interest.

For the period between July 12, 1984, and October 12, 1984, (the three-month period immediately preceding the date Defendant notified Plaintiffs of the inaccurate calculations) the alleged overpayment on the Breitenbach Lease would collectively equal \$240.58 for the 402 MMBTU which did not pass through the meter for that period of time.

Since the filing of the Petition, the Plaintiffs and the Defendant have agreed that the original amount claimed by the Defendant contains certain arithmetic calculation errors totalling \$195.40. Attached as Exhibit "J" to this Statement of Facts is a schedule which indicates the original amount claimed by the Defendant on the Breitenbach Lease which has been allocated to the Plaintiffs as their interests appear, together with the adjustment for arithmetic calculation errors. The Exhibit further indicates the principal amount which has been withheld by the Defendant from

the various Plaintiffs together with the interest withheld by the Defendant as to each Plaintiff.

15. That Herndon Drilling Co., through its agent, J D Operating Company, was paid the royalty and overriding royalty portion of the proceeds from the gas sales for the months in question for each of the five leases. The sums, as to each lease, was disbursed by Herndon Drilling Co. to the royalty and overriding royalty interests when received from the Defendant. This disbursement of royalty and overriding royalty was disbursed on behalf of all of the Plaintiffs in each lease.

With respect to the Fisher Lease, the royalty interest equaled 12.5 percent and the overriding royalty interest equaled 2.05078 percent, or a total of 14.55078 percent. Therefore, of the total amount claimed by the Defendant of \$98,544.63, the Plaintiffs had disbursed to the royalty and overriding royalty interest owners \$14,339.01.

With respect to the Hart Lease, the royalty interest equaled 12.5 percent. Therefore, of the total amount claimed by the Defendant of \$45,826.45, the Plaintiffs had disbursed to the royalty interest owners \$5,728.31.

With respect to the Zuercher No. 1 Lease, the royalty interest equaled 12.5 percent and the overriding royalty interest equaled 1.36722 percent, or a total of 13.86722 percent. Therefore, of the total amount claimed by the Defendant of \$18,927.09, the Plaintiffs had disbursed to the royalty and overriding royalty interest owners \$2,624.66.

With respect to the Zuercher No. 2 the royalty interest equaled 12.5 percent and the overriding royalty interest equaled 1.73635 percent, or a total of 14.23635 percent. Therefore, of the total amount claimed by the Defendant of \$8,365.35, the Plaintiffs had disbursed to the royalty and overriding royalty interest owners \$1,190.92.

With respect to the Breitenbach 1 lease, the royalty interest equaled 12.5 percent and the overriding royalty interest equaled 2.05078 percent, or a total of 14.55078 percent. Therefore, of the total amount claimed by the Defendant of \$4,902.13, the Plaintiffs had disbursed to the royalty and overriding royalty interest owners \$713.30.

* * * * *

16. The base contract (Exhibit "A" to the Agreed Statement of Facts), together with the Supplemental Agreement (Exhibit "I" to the Agreed Statement of Facts), states in Article III (Measurements) Section 4 as follows:

"Section 4. Adjustment of Inaccuracies. If any meter is found to be inoperative or inaccurate, it shall be adjusted to register correctly. The amount of the error shall be determined by the most accurate method found feasible, and, if the error shall have resulted in an error of more than 3% in the measurement of gas, then the calculated deliveries of gas through such meter shall be adjusted to par accuracy to compensate for such error. Such adjustment shall be made for such period of inaccuracy as may be definitely known, or if not known, then for one-half the period since the date of the last meter test. In no event, however, shall any correction extend back beyond three months from the date the error was first made known by one party hereunder to the other."

The quoted Section 4 pertains to meter inaccuracies requiring corrections and not to inaccuracies as a result of arithmetical calculations, as herein.

17. Herndon Drilling Company, through its agent, J D Operating Company, has paid royalty and overriding royalty portions of the proceeds from the gas sales for the months in question for each of the five leases. The base contract (Exhibit "A" to the Agreed Statement of Facts) in the fourth unnumbered paragraph of Section 2, Article II (Price, Payment and Taxes) contains the following indemnification:

"... Notwithstanding Northern's payment of said royalty and other interests, or, in the event Northern ceases to so pay said royalty, Seller remains fully and completely responsible and liable for the proper payment of said royalty and other interests and agrees to indemnify, defend and save Northern harmless from any cost, expense or loss of any kind or character incident to such payment."

Therefore, Defendant is entitled to recoup the amount of the overpayments by Defendant to Herndon Drilling Company, allocable to royalty and overriding royalty payments because of said indemnification.

18. All matters of correction and accounting have been agreed upon by the parties in their Agreed Statement of Facts filed on September 23, 1985, as reflected on Exhibits "J" and "K" attached thereto.

19. The Defendant, Northern Natural Gas Company, is entitled to recoup the full amount of the alleged overpayment because it was made due to a mistake of fact from an error in

arithmetical computation. Therefore, the Defendant will pay to the respective Plaintiffs the negative amounts indicated and Plaintiffs will pay to the Defendant the positive amounts indicated in Column "F" of Exhibit "J", plus interest from the date said sums were withheld or not paid as the case may be.

20. The parties are bound by the terms of the written contractual documents herein (attached to the Agreed Statement of Facts filed September 23, 1985, Exhibits "A" through "I") as they are free of ambiguity.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter pursuant to Title 28, United States Code, §1332. This is an action for declaratory judgment pursuant to Title 28, United States Code, §2201, and for the purpose of determining the question of actual controversy that exists between the parties. The venue of this action is in the Northern District of Oklahoma under Title 28, United States Code, §1391(a)(c).

2. The Gas Purchase Agreement dated December 31, 1954, is the "Base Contract" which, with Supplemental Agreements, is binding upon the parties and is applicable to the Fisher, Hart, Zuercher No. 1, Zuercher No. 2, and Breitenbach Leases. The Base Contract was amended by Agreements dated July 21, 1966 (Agreed Statement of Facts filed September 23, 1985, Exhibits "A" through "I").

3. Any Finding of Fact above which might be properly characterized a Conclusion of Law is incorporated herein.

4. The Defendant Northern Natural Gas Company's failure to make the required changes in the coefficients applicable for the new meter elements in the formula was an arithmetical error in calculation and should not be characterized as conduct constituting gross negligence.

5. This action for recoupment or reimbursement is one of equitable jurisdiction and contemplates a full and complete investigation of the mutual acts of the parties and striking of a balance and rendition of a judgment in favor of the party entitled thereto, and is an action for money had and received.

When money is paid to another under the influence of a mistake of fact, that is, on the mistake and supposition of the existence of a specific fact which would entitle the other to the money and the money would not have been paid if it had been known to the payor that the fact was otherwise, it may be recovered. Continental Oil Company v. Rapp, 301 P.2d 198 (Okla. 1956). The ground upon which the equitable principle rests is that money paid through misapprehension of facts in equity and good conscience belongs to the person who paid it. Continental Oil Company v. Rapp, supra.

6. Herein, the Plaintiffs, and each of them, have not suffered damages by reason of the overpayments and in equity and good conscience should not be permitted to keep the overpayments paid to them by the Defendant as a result of a mistake of fact.

7. The base contract as supplemented is clear and unambiguous. The traditional rules of contract interpretation

accord primary significance to the mutual intent of the parties as it existed at the time the contract was formed. Humphreys v. Amerada Hess Corporation, 487 F.2d 800 (10th Cir. 1973).

A Judgment in keeping with the Findings of Fact and Conclusions of Law expressed herein shall be entered this date, as indicated on Column "F" of Exhibit "J" of the parties' Agreed Statement of Facts.

ENTERED this 21 day of January, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JAN 22 1986 *ef*

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
CLAIR E. DILLER,)
)
Defendant.)

CIVIL ACTION NO. 85-C-703-BV ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 22nd day of January, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Clair E. Diller, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Clair E. Diller, acknowledged receipt of Summons and Complaint on August 11, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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 the Defendant, Clair E. Diller, for the principal sum of \$4,953.92, plus accrued

interest of \$499.03, and administrative costs of \$12.11 as of May 28, 1985, plus interest thereafter at the rate of 15.05 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.85 percent per annum until paid, plus costs of this action.



UNITED STATES DISTRICT JUDGE

Entered

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

HERNDON DRILLING CO.,)
MICHAEL C. HERNDON,)
PATRICIA HERNDON SHADDAY,)
JUDITH ELISE COWAN,)
C. B. EDWARDS and)
HAROLD J. BORN,)
)
Plaintiffs,)
)
v.)
)
NORTHERN NATURAL GAS COMPANY,)
)
Defendant.)

FILED

JAN 22 1986

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

No. 84-C-971-B ✓

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered herein this date, Judgment is hereby entered in favor of the Plaintiffs, each of them named hereafter, and against the Defendant, Northern Natural Gas Company, in the negative amounts indicated hereafter, and Judgment is hereby entered on behalf of the Defendant, Northern Natural Gas Company, and against the Plaintiffs, each named hereafter, in the positive amounts so indicated:

Lease Name

Fisher Lease:

Herndon Drilling Co.	(\$2,401.91)
Patricia Herndon Shadday	2,650.44
Judith Elise Cowan	(375.95)
Harold J. Born	(72.76)
Michael C. Herndon	2,650.44

* Parenthesis indicates negative amount.

Hart Lease:

Herndon Drilling Co.	-0-
Patricia Herndon Shadday	\$1,867.66
Judith Elise Cowan	(538.21)
Michael C. Herndon	1,867.66

Zuercher No. 1:

Herndon Drilling Co.	-0-
C. B. Edwards	\$1,537.62
Patricia Herndon Shadday	-0-
Judith Elise Cowan	-0-
Michael C. Herndon	-0-

Zuercher No. 2:

Herndon Drilling Co.	(\$ 90.88)
C. B. Edwards	(27.67)
Patricia Herndon Shadday	319.26
Michael C. Herndon	319.26

Breitenbach Lease:

Herndon Drilling Co.	(\$ 165.34)
Patricia Herndon Shadday	(10.02)
Judith Elise Cowan	(10.02)
Michael C. Herndon	(10.02)

plus interest at the rate of 6% per annum from the date said sums were withheld or not paid as the case may be. The costs of this action are assessed against the plaintiffs and each party is to pay their own respective attorney fees.

ENTERED this 21st day of January, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHNNY J. MEDEARIS; M.F.A.)
 COOPERATIVE; COUNTY TREASURER,)
 Ottawa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Ottawa County, Oklahoma,)
)
 Defendants.)

FILED

JAN 22 1986

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

CIVIL ACTION NO. 85-C-190-B ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22nd day of January, 1986, Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendant, County Treasurer, Ottawa County, Oklahoma, and the Defendant, Board of County Commissioners, Ottawa County, Oklahoma, appearing by David L. Thompson, Assistant District Attorney, Ottawa County, Oklahoma; the Defendant, MFA Cooperative, appearing by John Sims, and the Defendant, Johnny J. Medearis, appearing not.

The Court having examined the file and being fully advised finds that the Defendant, MFA Cooperative acknowledged receipt of Summons and Complaint on March 4, 1985; the Defendant, County Treasurer, Ottawa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 7, 1985; and the Defendant, Board of County Commissioners, Ottawa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 11, 1985.

It appears that the Defendant. MFA Cooperative, filed its answer on March 13, 1985, and that the Defendants, County Treasurer. Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their answers on March 14, 1985.

The Court further finds that the Defendant, Johnny J. Medearis, was served by publication. The Court finds that Plaintiff has caused to be obtained an evidentiary affidavit from Photo Abstract Company, a corporation, a bonded abstracter, as to the last address of Johnny J. Medearis. which affidavit was filed on August 7, 1985; that the necessity and sufficiency of Plaintiff's due diligence search with respect to ascertaining the name and address of the Defendant, Johnny J. Medearis, was then determined by the Court conducting an evidentiary hearing on the sufficiency of the service by publication to comply with due process of law. From the evidence, the Court finds that the Plaintiff, United States of America, and its attorney, Peter Bernhardt, Assistant United States Attorney, appearing for Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, have fully exercised due diligence in ascertaining the true name and identity of the party served by publication, with his present or last known place of residence and/or mailing address.

The Court finds that Plaintiff and its attorneys have fully complied with all applicable guidelines and due process of law in connection with obtaining service by publication. Therefore, the Court approves and confirms that the service by

publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

The Court finds that this is one of the classes of cases in which service by publication may be had and that the Court's order for service by publication has been published in the Miami-News Record, a newspaper authorized by law to publish legal notices, printed in Ottawa County, Oklahoma, a newspaper of general circulation in Ottawa County, State of Oklahoma, for six (6) consecutive weeks commencing on September 29, 1985, and ending on November 3, 1985. by which said Defendant, Johnny J. Medearis, was notified to answer the complaint filed herein within 20 days after such publication, as more fully appears from the verified proof of such publication by the printer and publisher of said Miami-News record filed herein on December 5, 1985.

The Court finds that the Defendant, Johnny J. Medearis, has failed to answer and his default has been entered by the Clerk of this Court on December 12, 1985.

The Court finds that this is a suit based upon certain promissory notes for foreclosure of real estate mortgages securing such promissory notes upon the following described real property situated in Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 1, lying West of Spring River, in Section 28; and Lots 3, 4, 11, 12, 13 and 14 in Section 29, all in Township 28 North, Range 24 East of the Indian Meridian, Ottawa County, Oklahoma, AND The NW1/4 of the NW1/4 of Section 28: the SW1/4 of the SW1/4 of Section

21, and SE1/4 of the SE1/4 of Section 20, all in Township 28 North, Range 24 East of the Indian Meridian, Ottawa County, Oklahoma.

The Court further finds that on May 2, 1980, Johnny J. Medearis and Linda K. Medearis, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$3,630 00, payable in yearly installments, with interest thereon at the rate of nine (9) percent per annum.

The Court further finds that on May 2, 1980, Johnny J. Medearis and Linda K. Medearis executed and delivered to the United States of America, acting through the Farmers Home Administration, their Promissory Note in the amount of \$176.610.00, payable in yearly installments with interest thereon at the rate of three (3) percent per annum. This note was assumed by assumption agreement dated January 20, 1981.

The Court further finds that on July 28, 1981, Johnny J. Medearis executed and delivered to the United States of America, acting through the Farmers Home Administration, his Promissory Note in the amount of \$11,750.00 payable in yearly installments with interest thereon at the rate of five (5) percent per annum.

The Court further finds that on July 28, 1981, Johnny J. Medearis executed and delivered to the United States of America, acting through the Farmers Home Administration, his promissory note in the amount of \$24,850.00 payable in yearly installments with interest thereon at the rate of thirteen (13) percent per annum.

The Court further finds that as security for the payment of the notes dated May 2, 1980, Johnny J. Medearis and Linda K. Medearis, executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated May 2, 1980, and recorded on May 2, 1980, in Book 398, Page 644, in the records of Ottawa County, Oklahoma, covering the above-described real property.

The Court further finds that as security for the payment of all of the four promissory notes described above, Johnny J. Medearis executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated July 28, 1981, and recorded on July 28, 1981, in Book 408, Page 822, in the records of Ottawa County, Oklahoma, covering the above-described real property.

The Court further finds that the Defendant, Johnny J. Medearis, made default under the terms of the aforesaid promissory notes and mortgages by reason of his failure to make the yearly installments due thereon, which default has continued and that by reason thereof the Defendant, Johnny J. Medearis, is indebted to the Plaintiff in the principal sum of \$219,943.63, plus accrued interest of \$26,001.40 as of December 11, 1984, plus interest accruing thereafter at the rate of \$24.7655 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, MFA Cooperative, has a valid judgment lien against the Defendant, Johnny J. Medearis, by virtue of a judgment entered in the District Court of Ottawa County, Oklahoma, Case No. C-82-122, in

the amount of \$10,808.00 plus interest at 10% per annum, and attorneys' fees of \$2,500.00. This judgment is dated May 6, 1982, and recorded in Book 418, Page 382. in the records of Ottawa County, Oklahoma, on May 6, 1982. This judgment lien of the Defendant, MFA Cooperative, is subject and inferior to the first mortgage liens of Plaintiff.

The Court further finds that there is currently due and owing for ad valorem taxes on the subject property to the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, the sum of \$ 1,174.87 .

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Johnny J. Medearis, in the principal amount of \$219,943.63, plus accrued interest of \$26,001.40 as of December 11, 1984, plus interest accruing thereafter at the rate of \$24.7655 per day until judgment, plus interest thereafter at the current legal rate of 7.85 % per annum until paid, plus the costs of this action accrued and accruing plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, MFA Cooperative, has a valid judgment lien against the Defendant, Johnny J. Medearis, which is a second lien on the subject real property, subject and inferior to the first mortgage liens of the Plaintiff, by virtue of a judgment entered in the District Court of Ottawa County, Oklahoma, Case No. C-82-122, in

the amount of \$10,808.00, plus interest at 10% per annum, and attorneys' fees of \$2,500.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there are currently due and owing on the subject real property ad valorem taxes in the amount of \$ 1,174.87 to the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the Defendant, Johnny J. Medearis, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sale with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, in the amount of \$ 1,174.87 , ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein
in favor of the Plaintiff and

Fourth:

In payment of the judgment of the Defendant,
MFA Cooperative.

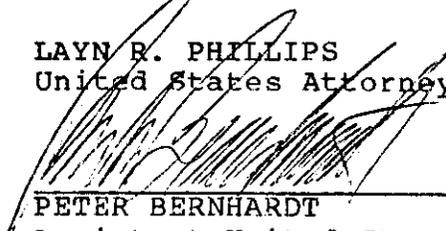
The surplus from said sale, if any, shall be deposited
with the Clerk of the Court to await further Order of the Court.

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


UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


PETER BERNHARDT
Assistant United States Attorney
Attorney for Plaintiff


JOHN R. SIMS
Attorney for MFA Cooperative
P.O. Box 326
Neosho, Missouri 64850


DAVID L. THOMPSON
Assistant District Attorney
Attorney for Defendants, County
Treasurer and Board of County
Commissioners Ottawa County, Oklahoma
Ottawa County Courthouse
Miami, Oklahoma 74354

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RICHARD M. BOLAND,)
)
 Defendant.)

JAN 22 1986

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

CIVIL ACTION NO. 85-C-216-B ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 22nd day of January, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Richard M. Boland, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Richard M. Boland, was served with Summons and Complaint on October 16, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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 the Defendant, Richard M. Boland, for the principal sum of \$349.50, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from August 12, 1983, and

\$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the current legal rate of 7.85 percent per annum until paid, plus costs of this action.

Howard R. Brett

UNITED STATES DISTRICT JUDGE

Entered

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

FILED

LANDMARK AMERICAN INSURANCE
COMPANY,

Plaintiff,

vs.

ROBERT C. HOLLOWAY, MARK
MAULDIN and LISA MAULDIN,

Defendants.

JAN 22 1986

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

85-C-1120B ✓

ORDER

On the 22nd day of January, 1986, the
above captioned cause came on for hearing before the undersigned
Judge of the District Court on plaintiff, Landmark American
Insurance Company, Application to Dismiss Party Plaintiff.
The Court having reviewed the same and finding no objection
thereto, finds that the same should be granted.

IT IS THEREFORE ORDERED that Guaranty National Companies
be dismissed as party plaintiff and this action proceed under
the Amended Complaint previously filed herein with Landmark
American Insurance Company as the proper party plaintiff.

Date this 22nd day of January, 1986.

Sharon R. Brett
UNITED STATES DISTRICT JUDGE

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

JAN 21 1986

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES J. TOWNS,)
)
 Defendant.)

CIVIL ACTION NO. 85-C-688-E

DEFAULT JUDGMENT

This matter comes on for consideration this 16th day of January, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Charles J. Towns, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Charles J. Towns, was served with Alias Summons and Complaint on November 4, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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, Charles J. Towns, for the principal sum of \$780.00, plus accrued interest of \$643.32 as of May 7, 1985, plus interest

thereafter at the rate of 4 percent per annum until paid, plus costs of this action, and all other and further relief as the Court deems just.

~~S/ JAMES O. ELISON~~
UNITED STATES DISTRICT JUDGE

Entered copy

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

FILED

JAN 21 1986

ROY T. RIMMER, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 HALE C. LAY,)
)
 Defendant.)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 84-C-67-C

AMENDED JUDGMENT

This matter came on before the Court on plaintiff's motion to amend the judgment, said judgment filed herein on October 1, 1985. The issues having been duly considered and a decision having been duly rendered in accordance with the order entered simultaneously herein,

IT IS SO ORDERED AND ADJUDGED that the Judgment entered of record herein on October 1, 1985, be hereby amended as to the third cause of action page two of the judgment, to provide as follows:

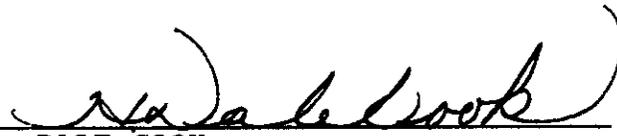
IT IS FURTHER ORDERED AND ADJUDGED, as to plaintiff's third cause of action for breach of contract damages regarding the "Exhibit C" gas processing plant purchase agreement, that judgment should be and hereby is entered on behalf of plaintiff Roy T. Rimmer, Jr. as against defendant Hale C. Lay in the amount of \$394,781.12, together, with interest thereon at the legal rate from November 12, 1984, to this date, until paid.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff is awarded a fifty percent (50%) ownership interest in the Meridian Energy, Inc. gas processing plant.

IT IS FURTHER ORDERED that plaintiff should receive one-half the net profits of the plant as they accrue and should be liable for one-half of the expenses attendant to operating and maintaining the plant.

IT IS FURTHER ORDERED AND ADJUDGED that no other provisions of the October 1, 1985 judgment are hereby revised, amended, deleted, or otherwise affected by this amended judgment.

IT IS SO ORDERED this 17 day of January, 1986.



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

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

FILED

JAN 21 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

TAURUS OIL CORPORATION, a)
Colorado corporation, and)
TAURUS DRILLING LIMITED 1980-III,)
a Colorado limited partnership,)

Plaintiffs,)

vs.)

No. 82-C-984-C

L. G. WILLIAMS OIL COMPANY, an)
Oklahoma corporation, and L. G.)
WILLIAMS, an individual,)

Defendants.)

ORDER

Upon the joint application of Plaintiffs Taurus Oil Corporation and Taurus Drilling Limited 1980-III and Defendant L. G. Williams, an individual, and for good cause shown, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' claims against Defendant L. G. Williams, an individual, are hereby dismissed with prejudice, with each party to bear its own costs and attorney's fees incurred herein.

DATED this 17 day of January, 1986.

(Signed) H. Dale Cook

THE HONORABLE DALE H. COOK
UNITED STATES DISTRICT JUDGE

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

FILED

JAN 21 1986

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

CUTLERY WORLD CORPORATION,
An Illinois Corporation,

Plaintiff,

vs.

SOONER CUTLERY, INC., and
BRYAN PATZKOWSKI,

Defendants.

No. 85-C-660-E

ORDER DISMISSING CAUSE OF ACTION

This court finds that for good cause shown, and without objection of either party, the Plaintiff's Fourth Cause of Action and Plaintiff's Fifth Cause of Action should be and hereby are dismissed without prejudice to the Plaintiff.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT that Plaintiff's Fourth Cause of Action and Plaintiff's Fifth Cause of Action are dismissed without prejudice.

S/ JAMES O. ELLISON

JAMES O. ELLISON, Judge for the
Northern District of Oklahoma

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

FILED

JAN 21 1986

MACHINE MAINTENANCE AND EQUIPMENT,)
INC.,)
)
Plaintiff,)
)
v.)
)
FRED ESCOTT d/b/a FRED ESCOTT)
DRILLING,)
)
Defendant,)
)
v.)
)
INGERSOLL-RAND FINANCIAL)
CORPORATION,)
)
Third Party Defendant.)

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

No. 84-C-437-E

JUDGMENT

THIS MATTER is before the Court upon the application of Third Party Defendant Ingersoll-Rand Financial Corporation for an award of attorneys' fees, as the prevailing party as a result of this Court's granting summary judgment to the Third Party Defendant on September 13, 1985. The Court finds that the Third Party Defendant, Ingersoll-Rand Financial Corporation, as prevailing party pursuant to 12 O.S. 1981 § 936 is entitled to its reasonable attorneys' fees. The Court is advised that the parties have reached an agreement as to a reasonable sum for attorneys' fees in the amount of \$35,000, and the Court upon examining Exhibit "A" to the Motion for Costs and Attorneys' Fees finds that such sum is a reasonable amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Third Party Defendant, Ingersoll-Rand Financial Corporation, be awarded the sum of \$35,000 as its reasonable attorneys' fees in defending the claims against it, and it should have judgment against the Defendant Fred Escott d/b/a Fred Escott Drilling in such amount.

THE COURT FURTHER ORDERS in accordance with Rule 54(b) of the Federal Rules of Civil Procedure that all matters between the Defendant and Third Party Defendant have been concluded and that the Court's Order of September 13, 1985 and this Judgment shall constitute final judgment as to all claims between the Defendant and Third Party Defendant and there is no just reason for further delay and therefore a judgment is hereby entered in favor of the Third Party Defendant on all claims of the Defendant against it and for costs and attorneys' fees as heretofore determined and awarded by the Court.

James O. Ellison, Judge
United States District Court

APPROVED AS TO FORM:

HUFFMAN ARRINGTON KIHLE GABERINO
& DUNN

By: _____

Larry D. Henry, OBA #41.05

ATTORNEYS FOR THIRD PARTY DEFENDANT

Darrell R. Dowty

ATTORNEY FOR DEFENDANT

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

FILED

JAN 21 1986

JERRY W. BROCKUS,

Plaintiff,

vs.

SOLNA, INC.; AMERICAN TYPE
FOUNDERS, CO., INC., a/k/a
A.T.F. - DAVIDSON CO., INC.,
a/k/a A.T.F. -DAVIDSON DITTO;
A.B. PRINTING EQUIPMENT;
A.B. PRINTING EQUIPMENT, INC.;
CARDINAL LITHOGRAPHING CO.,
INC.; TURNER EQUIPMENT CO.;
DOES 1-XV,

Defendants.

No. 85-C-1043-C

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

O R D E R

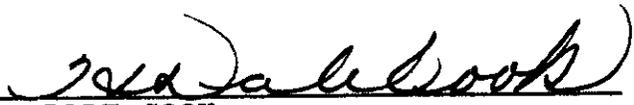
Now before the Court for its consideration is the motion of defendant Cardinal Lithographing Co. to dismiss for lack of personal jurisdiction, said motion filed on December 16, 1985. The Court has no record of a response to this motion from plaintiff. Rule 14(a) of the local Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) Briefs. Each motion, application and objection filed shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within ten (10) days after the filing of the motion or objection, and any reply memoranda shall be filed within ten (10) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Therefore, since no response has been received to date herein, in accordance with Rule 14(a), the failure to comply constitutes a confession of the motion to dismiss.

Accordingly, it is the Order of the Court that the motion of defendant Cardinal Lithographing Co. to dismiss for lack of personal jurisdiction should be and hereby is granted.

IT IS SO ORDERED this 17th day of January, 1986.


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

Entered

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

TOMMY L. BENSON,

Plaintiff,

v.

LT. DAN CHERRY, Captain
of the Tulsa County Jail,

Defendant.

No. 85-505-B ✓

FILED

JAN 17 1986

JCS
Jack C. Silver, Clerk

J U D G M E N T U. S. DISTRICT COURT

This matter having come before the Court on defendant's Motion for Summary Judgment, the issues having been duly considered and a decision having been duly rendered,

It is Ordered and Adjudged

that the plaintiff, Tommy L. Benson, take nothing, and that the action be dismissed on the merits.

DATED this 17th day of January, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

PAUL WM. POLIN and MARSHA POLIN,)

Plaintiffs,)

v.)

JEWS FOR JESUS a/k/a HINENI MINISTRIES,)
MOISHE ROSEN, SUSAN PERLMAN, DONNA HULL,)
LUCY WARD, GEORGE PECKNICK, JUDY)
PECKNICK, DORE SCHUPACK, PHYLISS HEWITT,)
CHARLES L. PACK, CEIL ROSEN,)

Defendants.)

No. 85-C-424-B ✓

FILED

JAN 17 1985 *gf*

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

O R D E R

This matter comes before the Court on the "motion to reconsider court order of dismissal and motion to dismiss non-diverse parties." For the reasons set forth below, the motion is denied.

The Court first notes that plaintiffs have failed to obtain service upon defendant Judy Pecknick, named in both the original complaint of April 26, 1985 and the amended complaint filed August 1, 1985. The Court hereby dismisses the claims against named defendant Judy Pecknick for lack of service.

Plaintiffs' original Complaint of April 26, 1985 stated two causes of action: the first was an action for enticement of a child from its parents, pursuant to 76 O.S. §8, against both diverse and non-diverse defendants; the second was an action for invasion of privacy ("false light") against diverse defendants. Defendants subsequently filed motions to dismiss for lack of subject matter jurisdiction because of incomplete diversity. On

May 24, 1985, plaintiffs sought an extension of time to file a response to the motions to dismiss. The Court granted plaintiffs an extension until June 27, 1985. On June 27, 1985, plaintiffs filed an application for leave to amend their original complaint. The Court received objections from defendants to plaintiffs' application which argued that plaintiffs would be unable to correct the lack of complete diversity and that an amended complaint would require a "second round" of unnecessary and duplicative motions to dismiss, resulting in additional time and expense before the case could be resolved.

On August 1, 1985, the Court granted plaintiffs the opportunity to correct the jurisdictional deficiencies in their complaint. Plaintiffs' First Amended Complaint was filed August 9, 1985. The First Amended Complaint differed from the original complaint only slightly; it merely split Count I of the original Complaint into two separate causes of action, one (Count I) against diverse defendant Jews for Jesus, the other (Count III) against non-diverse defendants Donna Hull, Lucy Ward, George Pecknick, Judy Pecknick, Dore Schupack, Phyllis Hewitt, and Charles Pack. Plaintiffs' theorized that pendent and/or ancillary jurisdiction applied to Count III and that the Court could therefore exercise jurisdiction over all three counts. Defendants then filed their second round of motions to dismiss, by necessity nearly identical to their first round, and primarily contending a lack of subject matter jurisdiction for lack of complete diversity.

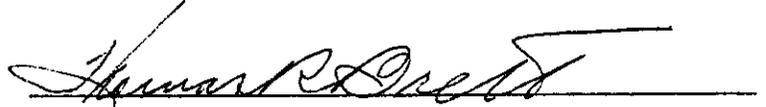
On October 7, 1985, the Court granted the motions to dismiss, concluding that to allow plaintiffs to split a cause of action into two claims, one against a diverse defendant, the other against non-diverse defendants, would make a sham of the requirement of diversity of citizenship. Plaintiffs now ask the court to dismiss the non-diverse defendants and reconsider the October 7, 1985 order of dismissal.

"[W]hen the plaintiff has named both diverse and nondiverse parties as defendants, it is not incumbent upon the trial court sua sponte to exercise its discretion to dismiss those nondiverse defendants who are not indispensable within the meaning of Rule 19 in order to preserve its diversity jurisdiction." Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d §3606, discussing Caperton v. Beatrice Pocahontas Coal Co., 585 F.2d 683 (4th Cir. 1978). It was therefore within the Court's discretion to dismiss the entire action in the October 7, 1985 Order, particularly in light of plaintiffs' failure to correct the lack of complete diversity after having been given the opportunity to do so.

The Court now declines to allow plaintiffs to amend their pleadings after their claims have been dismissed. Plaintiffs are barred by their own bad faith failure to cure the patent deficiency in the original complaint after having been given leave to amend by the Court. Foman v. Davis, 371 U.S. 178, 182 (1962). Plaintiffs' failure to drop the nondiverse defendants and their machinations to create jurisdiction on state claims among non-diverse parties caused the Court and defendants needless time and expense.

Plaintiffs' motion to reconsider is denied. The claims against defendant Judy Pecknick are dismissed for lack of service.

IT IS SO ORDERED this 17th day of January, 1986.



THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

JAN 17 1986

CROWN LEASING CORPORATION,)
)
 Plaintiff,)
)
 v.)
)
 CROWN VIDEO, INC.,)
)
 Defendant.)

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

CIVIL ACTION NO.

85-375-B ✓

FINAL JUDGMENT

The parties hereto having agreed to the entry of the following Findings of Fact and Conclusions of Law finally disposing of this action, it is hereby ORDERED, ADJUDGED and DECREED that:

Parties

1. Plaintiff, CROWN LEASING CORPORATION ("CROWN") is a Texas corporation having a principal place of business at 2010 Moores Lane, Texarkana, Texas 75503.

2. Defendant, CROWN VIDEO, INC. ("CROWN VIDEO") is a Missouri corporation having a principal place of business in Joplin, Missouri.

Nature of this Action; Jurisdiction of the Court

3. This is an action for false designation of origin and/or false description or representation arising under the Trademark

Act of 1946, as amended, 15 U.S.C. §§1051 et seq. and particularly 15 U.S.C. §1125(a); for trademark infringement under the Oklahoma Trademark Act, 78 Okla. Stats. §§21-34; for trademark infringement under the Arkansas Trademark Act, Ark. Stats. §§70-539 through 70-552; for trademark infringement and unfair competition under the common law of the States of Oklahoma and Arkansas; and for deceptive trade practices under the Oklahoma Deceptive Trade Practices Act, 78 Oklahoma Stats. §§51-55.

4. This Court has jurisdiction of this cause of action under the trademark laws of the United States, 15 U.S.C. §1121, and under the Judicial Code of the United States, 28 U.S.C. §§1332, 1338(a) and 1338(b). There is a diversity of citizenship between the parties and the amount in controversy, exclusive of interest and costs, exceeds ten thousand dollars (\$10,000).

Plaintiff, Its Business, and Its Marks

5. Plaintiff, CROWN LEASING CORPORATION (hereinafter referred to as "Plaintiff" or "Crown") is the owner and operator of stores which render television, appliance and videotape rental services and retail television and appliance services under the marks CROWN, CROWN TV AND APPLIANCE, CROWN HOME CENTERS, and CROWN TV AND APPLIANCE and Design (said marks hereinafter referred to collectively as the "CROWN Marks"). The television and appliance rental services and retail television and appliance services have

been offered by Crown under one or more of the CROWN Marks since at least as early as 1979.

6. Crown has extensively advertised its services under the CROWN Marks and has received publicity for its services. Crown offers its services under the CROWN Marks at 62 locations in fifteen states, including Oklahoma and Arkansas. As a result, the CROWN Marks are famous and are recognized as designations of the television and appliance rental services and retail television and appliance services offered by Crown under the CROWN Marks.

7. The CROWN Marks and the goodwill associated therewith are valuable assets of Crown, and are important to the continued success of Crown stores.

8. The CROWN Marks have become distinctive of the business and services of Crown, and are now recognized and relied upon by consumers in Oklahoma and Arkansas and other states to identify Plaintiff's business and services, and to distinguish them from the business and services of others.

Crown's Protection Of the CROWN Marks by Registration Thereof

9. In accordance with the provisions of the respective state laws, Plaintiff has registered one or more of the CROWN Marks in many of the states in which it does business. Included

among the state registrations which it has obtained are registrations of the following marks for the states indicated:

Mark	Reg. No.	Reg. Date	State
CROWN	18905	10/28/83	Oklahoma
CROWN TV & APPLIANCE	18908	10/28/83	Oklahoma
CROWN TV & APPLIANCE and Design	18906	10/28/83	Oklahoma
CROWN HOME CENTER	19472	08/13/84	Oklahoma
CROWN	210-82	10/18/82	Arkansas
CROWN TV & APPLIANCE	239-82	11/30/82	Arkansas
CROWN TV AND APPLIANCE and Design	211-82	10/18/82	Arkansas
CROWN HOME CENTER	229-84	08/28/84	Arkansas

10. These registrations were duly and legally issued.

11. The registrations are valid and subsisting.

Defendant and Its Activities

12. Defendant, CROWN VIDEO has been engaged in commerce in the business of rendering rental and retail services for video cassette movies, video disc movies, video cassette player-recorders, video disc players, and related goods in Oklahoma and Arkansas under the mark CROWN VIDEO and other marks which include the words CROWN VIDEO and a crown design (referred to CROWN VIDEO

and Design) and which each create an overall impression very similar to the mark CROWN TV AND APPLIANCE and Design of Plaintiff.

13. Defendant's use of the marks, CROWN VIDEO and CROWN VIDEO and Design, falsely indicates, falsely describes and/or falsely represents to the purchasing public that the Defendant and/or its services are in some manner connected with, sponsored by, affiliated with or related to Plaintiff and its services.

14. The above-mentioned activities of Defendant are likely to cause confusion, or to cause mistake, or to deceive customers or potential customers of Plaintiff.

15. The above-referenced utilization by Defendants of the marks, CROWN VIDEO and CROWN VIDEO and Design, constitutes a false designation of origin and/or false description or representation of Defendant's products and services, and is unlawful under 15 U.S.C. §1125(a).

16. Unauthorized use by Defendant of the marks CROWN VIDEO and CROWN VIDEO and Design, constitutes state trademark infringement under the Trademark Statute for Oklahoma, 78 Okla. Stat. §31.

17. Unauthorized use by Defendant of the marks, CROWN VIDEO CENTER and CROWN VIDEO CENTER and Design, constitutes state trademark infringement under the Arkansas Trademark Statute, Ark. Stats. §70-549.

18. The acts of Defendant complained of above further constitute trademark and service mark infringement under the common law of the States of Oklahoma and Arkansas.

19. The acts of Defendants complained of above also constitute unfair competition under the common law of the States of Oklahoma and Arkansas.

20. The acts of Defendant complained of above constitute deceptive trade practices, and are declared unlawful by the Oklahoma Deceptive Trade Practices Act, 78 Okla. Stats. §§51-54.

21. Defendant, its agents, servants, employees and all other persons acting in concert with it, or any of them, is permanently enjoined and restrained from using in Oklahoma or Arkansas, in connection with the promotion, advertising or sale of retail and rental services of electronic equipment, home furnishings, or related goods, the mark, CROWN; the mark CROWN TV AND APPLIANCE; the mark, CROWN HOME CENTER; the mark, CROWN TV AND APPLIANCE and Design; the mark, CROWN VIDEO; the mark CROWN VIDEO and Design; or any mark or name confusingly similar to any of said marks.

22. Each of the parties is to bear its own costs and attorneys' fees except as agreed between the parties.

SIGNED AND ENTERED this 17th day of January, 1986.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:



William D. Raman
Louis T. Pirkey
ARNOLD, WHITE & DURKEE
P. O. Box 4433
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Joseph W. Morris
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ATTORNEYS FOR PLAINTIFF



Thomas J. Elkins
RIDDLE & ASSOCIATES
5314 South Yale
Suite 200
Tulsa, Oklahoma 74135
(918) 494-3770

ATTORNEY FOR DEFENDANT

Entered

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAN 17 1983 *uf*

JACK O. S. EVER, CLERK
U.S. DISTRICT COURT

DAYS INNS OF AMERICA)
FRANCHISING, INC.,)
)
Plaintiff,)
)
vs.)
)
ITL-GEX, INC., a Connecticut)
corporation; DENZIL ROBBINS; KEY)
INVESTMENT COMPANY, an Oklahoma)
corporation; and ASHLEY HOTEL CO.,)
an Oklahoma corporation,)
)
Defendants.)

Civil Action No. 85-C-1141B ✓

ORDER

Upon the Application of Plaintiff, Days Inns of America Franchising, Inc. ("Days Inns"), and upon the approval and consent of Days Inns and Defendants, ITL-GEX, Inc. ("ITL"), Denzil Robbins ("Robbins"), Key Investment Company ("Key Investment"), and Ashley Hotel Co. ("Ashley"), the Court having reviewed the pleadings filed herein and being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants, ITL, Key Investment, Robbins and Ashley, individually and jointly, and their respective agents, employees or representatives, and anyone acting in concert with any Defendant, are hereby restrained and enjoined from:

1. Operating the property situated at I-44 at East 11th Street, Tulsa, Oklahoma ("Tulsa property"), and at I-40 at McArthur, Oklahoma City, Oklahoma ("Oklahoma City property"), as Days Inns franchise units;

2. Using any trademark, service mark or trade dress of Days Inns at the aforesaid locations, including any and all signs, printed materials and supplies bearing the Days Inns logo, and including menus, sugar packets, front desk folios, guest comment cards, directories, credit card imprinters, plaques, key tags, stationary, guest tickets, receipts, uniforms, name tags, brochures, matches, soap, rate cards, sanibags, Do-Not-Disturb cards, and telephone dialing instruction cards;

3. Holding out to the public in any manner that the units at the aforesaid addresses are authorized franchises of Days Inns; and,

4. Divulging to any person or entity, as further provided in the franchise agreement attached to the verified Complaint in this case as Exhibits "B" and "C", any confidential information obtained while operating the units as Days Inns.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

5. Defendants ITL, Robbins, Key Investment and Ashley shall immediately make any and all arrangements necessary to cover the outdoor advertising signs, containing the words "Days Inn", located on the property situated at I-44 at East 11th Street, Tulsa, Oklahoma and that I-40 at McArthur, Oklahoma City, Oklahoma. The aforesaid signs are to be covered so as to prevent the words "Days Inns" from being observed by or held out to the general public. The covering of the aforesaid outdoors signs is to be completed by January 17, 1986;

6. Said Defendants shall cause the aforesaid signs to remain so covered, until such time as new signs are built or erected, at which time Defendants shall cause to be taken down any and all outdoor signs or advertisements containing the

words "Days Inns" at the aforesaid locations, to include the removal of the components commonly known as the "panel" and the "can", and said new signs to be erected on or before February 15, 1986;

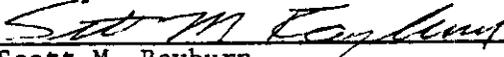
7. Said Defendants shall immediately make any and all arrangements necessary to repaint the outdoor roofs of any and all structures on the aforesaid locations, so as to cover or remove the currently existing red-orange coloring of these roofs, which is the distinctive trade dress of Plaintiff Days Inns, said repainting to be completed at the Oklahoma City property by May 1, 1986, and at the Tulsa property by May 1, 1986.

8. Said Defendants shall immediately make any and all arrangements necessary to remove from the roof at each aforesaid location, the cupola which is a distinctive trade dress of Plaintiff Days Inns, said removal to be completed by February 15, 1986.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Order is issued without prejudice to any party as to any issues, defenses or claims existing between Plaintiff Days Inns, and Defendants ITL-GEX, Robbins, Key Investment and Ashley.


UNITED STATES DISTRICT JUDGE

Approved:

By 
Scott M. Rayburn
3727 N.W. 63rd Street, 2nd Floor
Oklahoma City, Oklahoma 73116
(405) 848-8022

ATTORNEY FOR DEFENDANTS, DENZIL ROBBINS,
KEY INVESTMENT COMPANY, AND ASHLEY HOTEL
CO.

ITL-GEX, INC.

ITL-GEX, INC.

BY David M. Waters
~~XXXXXXXXXXXX~~
111 Founder's Plaza
Suite 1200
East Hartford, CT 06108
(203) 528-4831

and

By: [Signature]
111 Founder's Plaza
Suite 1200
East Hartford, CT 06108
(203) 528-4831

~~ATTORNEY FOR DEFENDANT
ITL GEX, INC.~~

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By William H. Hinkle
William H. Hinkle
John J. Carwile
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

ATTORNEYS FOR PLAINTIFF, DAYS INNS
OF AMERICA FRANCHISING, INC.

Entered

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

ELECTROPEDIC MANUFACTURING CORP.,)
)
Plaintiff,)
)
vs.)
)
JERRY COLLIE & LINDA COLLIE,)
individually and doing business)
as ELECTROPEDIC PRODUCTS OF)
OKLAHOMA, INC., doing business)
as ELECTROPEDIC, and doing)
business as ELECTROPEDIC)
PRODUCTS,)
)
Defendants.)

No. 83-C-49-B ✓

F I L E D

JAN 17 1986 *uf*

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

ORDER OF DISMISSAL

This matter came on for trial before the Court on July 29, 1985. Plaintiff was not present or represented by counsel. Defendant announced that the parties had settled and that settlement papers would be presented to the Court within ten (10) days thereof. As no settlement papers have been received, the matter is hereby dismissed.

IT IS SO ORDERED this 17 day of January, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

~~FILED
JAN 9 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT~~

GUY P. RANDALL,)
)
 Plaintiff,)
)
 vs.)
)
 SOUTHWESTERN BELL TELEPHONE)
 COMPANY, a Missouri)
 corporation, and SOUTHWESTERN)
 BELL MEDIA, INC.,)
)
 Defendants.)

No. 85-C-197-B

FILED
JAN 17 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

The Court being fully advised in the premises and on consideration of the parties' Joint Stipulation for Dismissal With Prejudice finds that such order should issue.

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff's cause be and the same is hereby dismissed with prejudice and the parties are to each bear their respective costs.

S/ THOMAS R. BRETT
THOMAS R. BRETT,
United States District Judge

61 + d

Entered

FILED

JAN 17 1986

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

GARLIN M. BAILEY,)
)
Plaintiff,)
)
v.)
)
INEZ KIRK, et al.,)
)
Defendants.)

No. 80-C-643-B

J U D G M E N T

NOW on this 17th day of January, 1986, this matter comes on for hearing pursuant to the plaintiff's Application for award of attorneys' fees and costs on appeal.

The Court, upon the joint stipulation of the parties hereto, finds that plaintiff's Application should be, and the same is hereby, granted.

IT IS THEREFORE ORDERED by the Court that the plaintiff, GARLIN M. BAILEY, is hereby awarded money judgment against the defendant, THE CITY OF SAND SPRINGS, OKLAHOMA, for the sum of Eight Thousand Four Hundred Twenty-Nine and 16/100 Dollars (\$8,429.16) as and for reasonable attorneys' fees incurred by the plaintiff by reason of the appeal taken in the above styled and captioned cause.

IT IS FURTHER ORDERED by the Court that the judgment awarded herein shall accrue interest at the rate of 7.57 percent per annum from the date of judgment herein until paid in full.

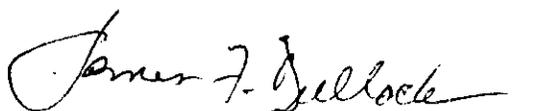
S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:



P. Thomas Thornburgh, OBA #8995
1722 South Boston
Tulsa, OK 74119
(918) 582-1112
Attorney for Plaintiff



James F. Bullock, OBA #1304
ONEOK Plaza, 9th Floor
Tulsa, OK 74103
(918) 584-4136
Attorney for Defendants

FILED

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

JAN 16 1986

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

BRITISH AMERICAN PRODUCTS COMPANY)
HOLDINGS, LTD., a British)
corporation,)

Plaintiff,)

vs.)

Case No. 84-C-380-E

THE BANK OF OKLAHOMA, a)
national banking association,)

Defendant.)

ORDER OF DISMISSAL

Pursuant to the Stipulation of the parties hereto, IT IS
HEREBY ORDERED that this matter be and the same 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

A. G. BECKER, INCORPORATED,)
)
 Plaintiff,)
)
 vs.)
)
 GEORGE F. CARNES AND E.)
 ALLEN COWEN,)
)
 Defendants.)

JAN 16 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 83-C-990-E

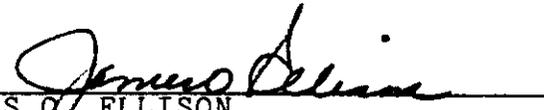
JUDGMENT

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and jury having rendered its verdict,

IT IS ORDERED AND ADJUDGED that the Plaintiff A. G. Becker, Incorporated recover judgment against the Defendants George F. Carnes and E. Allen Cowen.

IT IS FURTHER ORDERED that Plaintiff recover its costs of action.

DATED at Tulsa, Oklahoma this 15th day of January, 1986.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

DENNIS STEVEN WALDON,)
)
 Plaintiff,)
)
 vs.)
)
 GARY MAYNARD,)
)
 Defendant.)

No. 85-C-871-C

FILED

JAN 15 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

ORDER

Now before the Court for its consideration is the objections filed by the plaintiff, Dennis Steven Waldon, to the Findings and Recommendations of the Magistrate entered on November 26, 1985.

The Court has independently reviewed the file, including pleadings and exhibits, and after careful consideration of the record and all issues raised by the petition for writ of habeas corpus, the Court finds that the Findings and Recommendations filed by the Magistrate should be and hereby are affirmed.

WHEREFORE, premises considered, it is the Order of the Court that the petition for Writ of Habeas Corpus brought by the plaintiff, Dennis Steven Waldon, is hereby dismissed. The Court affirms and adopts the Findings and Recommendations of the Magistrate as the Findings and Conclusions of this Court.

IT IS SO ORDERED this 17th day of January, 1986.


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

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

JAN 15 1986

R. H. NERO, et al.,)	JACK C. SILVER, CLERK
)	U.S. DISTRICT COURT
Plaintiffs,)	
)	
vs.)	No. 84-C-557-C
)	
CHEROKEE NATION OF OKLAHOMA,)	
et al.,)	
)	
Defendants.)	

J U D G M E N T

This matter came on for consideration of the motion for summary judgment of defendants Dennis Springwater, Frank Farrell, and Joe Parker. The issues having been duly considered and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Court grants defendants' motion for summary judgment in accordance with the Order filed simultaneously herein, that plaintiffs take nothing and that the parties bear their own attorney fees and costs of this action.

IT IS SO ORDERED this 15th day of January, 1986.


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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 15 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

TIDWELL INDUSTRIES, INC.)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
J. CLAIR WILSON and JESSIE R.)
WILSON, d/b/a WILSON MOBILE)
HOME SALES,)
)
Defendants.)

Case No. 85-C-42-C

ORDER OF DISMISSAL

Upon the Motion of Plaintiff for Dismissal with Prejudice the Court hereby FINDS AND ORDERS that the case be dismissed with prejudice and that no costs be assessed to either party to this action.

DONE this 15 day of January, 1986.

(Signed) H. Dale Cook

Judge of the District Court

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

JAN 15 1986

SONJA MARIE WRAY BLACKWELL,)
)
 Plaintiff,)
)
 vs.)
)
 HENRY REILLY, an individual;)
 BEN WILLIAMS, an individual;)
 ROCKWELL INTERNATIONAL)
 CORPORATION, a Delaware)
 corporation; and)
 UNITED AUTOMOBILE, AEROSPACE)
 AND AGRICULTURAL WORKERS OF)
 AMERICA, LOCAL 952,)
)
 Defendants.)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 84-C-807-C ✓

J U D G M E N T

This matter came on for consideration of the motion for summary judgment of defendant United Automobile, Aerospace and Agricultural Workers of America, Local 952. The issues having been duly considered and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Court grants defendant's motion for summary judgment in accordance with the Order filed January 9, 1986, that plaintiff take nothing and that the parties bear their own attorney fees and costs of this action.

IT IS SO ORDERED this 15th day of January, 1986.


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



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

JAN 15 1986

SONJA MARIE WRAY BLACKWELL,)
)
 Plaintiff,)
)
 vs.)
)
 HENRY REILLY, an individual;)
 BEN WILLIAMS, an individual;)
 ROCKWELL INTERNATIONAL)
 CORPORATION, a Delaware)
 corporation; and)
 UNITED AUTOMOBILE, AEROSPACE)
 AND AGRICULTURAL WORKERS OF)
 AMERICA, LOCAL 952,)
)
 Defendants.)

JACK D. SILVER, CLERK
U.S. DISTRICT COURT

No. 84-C-807-C

J U D G M E N T

This matter came on for consideration of the motion for summary judgment of defendant United Automobile, Aerospace and Agricultural Workers of America, Local 952. The issues having been duly considered and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Court grants defendant's motion for summary judgment in accordance with the Order filed January 9, 1986, that plaintiff take nothing and that the parties bear their own attorney fees and costs of this action.

IT IS SO ORDERED this 15th day of January, 1986.


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

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

FILED

JAN 14 1986

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

ASSEMBLY OF GOD CHURCH OF)
MANNFORD, OKLAHOMA, a)
Religious Corporation,)
)
Plaintiff,)
)
vs.)
)
PREFERRED RISK MUTUAL INSURANCE)
COMPANY AND MID-WEST MUTUAL)
INSURANCE COMPANY,)
)
Defendants.)

Case No.: 85-C-1003 E

ORDER OF DISMISSAL

ON This 13 day of ~~December~~ ^{January} 1986, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises finds that said Complaint should be dismissed pursuant to said application.

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

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

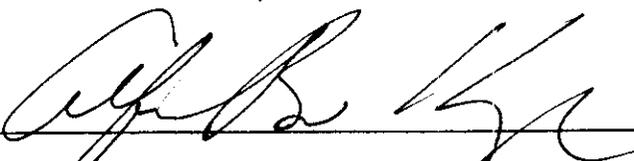
APPROVALS:

LANTZ McCLAIN,



Attorney for the Plaintiff,

ALFRED B. KNIGHT,



Attorney for the Defendants.

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

JAN 1 1985

EMILE PATRICK HURD,)
Administrator of the Estate)
of EMILE LEMORYEL HURD,)
Deceased, as Administator)
and in his own behalf,)
Plaintiff,)

-vs-

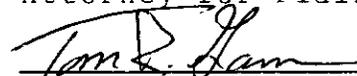
No. 84-C-504-E

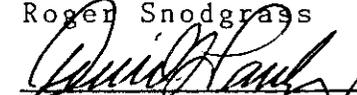
ROGER SNODGRASS,)
individually, and as a Police)
Officer of the City of Tulsa;)
HARRY STEGE, individually,)
and as former Police Chief)
of the City of Tulsa; and)
the CITY OF TULSA, a)
municipal corporation,)
Defendants.)

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, by and through his attorney of record, Harold Charney; the Defendant Harold Stege, by and through his attorney of record, David L. Pauling; and Defendant Roger Snodgrass, by and through his attorney of record, Tom R. Gann, and stipulate to the dismissal of the captioned action with prejudice insofar as it relates to Harry Stege and Roger Snodgrass, pursuant to the authorization contained at FRCP 41, § [a][1][ii], with prejudice to Plaintiff's right to hereafter reinstate such action as to said Defendants, with costs assessed to Plaintiff.


HAROLD CHARNEY,
Attorney for Plaintiff


TOM R. GANN,
Attorney for Defendant
Roger Snodgrass


DAVID L. PAULING,
Attorney for Defendant
Harry Stege

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

FILED
JAN 14 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

EVELYN TYLER,)
)
 Plaintiff,)
)
 vs.)
)
 F & M BANK & TRUST COMPANY,)
)
 Defendant.)

No. 85-C-1011-C

O R D E R

Now before the Court for its consideration is the motion of defendant, F & M Bank & Trust Company, to dismiss, filed on December 17, 1985. The Court has no record of a response to this motion from plaintiff, Evelyn Tyler. Rule 14(a) of the local Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) Briefs. Each motion, application and objection filed shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within ten (10) days after the filing of the motion or objection, and any reply memoranda shall be filed within ten (10) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Therefore, in that plaintiff, Evelyn Tyler, has failed to comply with local Rule 14(a) and no responsive pleading has been filed to date herein, the Court concludes that plaintiff has waived any objection to said motion and has confessed the matters contained therein.

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 14 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

DANIEL ALLEN SCROGGINS,)

Defendant.)

CIVIL ACTION NO. 85-C-1092-E

NOTICE OF DISMISSAL

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

Dated this 14th day of January, 1986

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Phil Pinnell

PHIL PINNELL
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 14th day of January, 1986, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Phil Pinnell
Assistant United States Attorney

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

FILED

JAN 14 1986

pt

IN RE:)
)
OPCO, INC.,)
Oklahoma Petroleum Corporation,)
)
Debtor.)
)
DRILLEX CONSULTING CORPORATION,)
)
vs.)
)
R. DOBIE LANGENKAMP,)
)
Trustee.)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 85-C-999-C ✓

O R D E R

Now before the Court for its consideration is the motion for leave to appeal of Drillex Consulting Corporation ("Drillex") pursuant to 28 U.S.C §158(a) from the Order Pursuant to Second Application, Authorizing Trustee to Disburse Nonasset Proceeds to Mineral Interest Owners and for Order Reserving Funds for Assessment of Costs and Authorizing Discharge of Lien entered by the United States Bankruptcy Court for the Northern District of Oklahoma on October 31, 1985.

Certain mineral properties with producing wells are part of the bankruptcy estate under the supervision of the Trustee. In his Second Application filed on September 23, 1985, and amended on September 30, 1985, the Trustee sought, inter alia, to disburse proceeds from production to owners of royalty interest such as Drillex. Drillex filed an objection on October 22, 1985, the Trustee filed his Response on October 24, 1985, and a hearing was held in the Bankruptcy Court on October 25, 1985. The Bankruptcy

8

Court's Order of October 31, 1985, from which Drillex seeks to appeal, ordered the Trustee to disburse the proceeds but did not impose any interest or penalty as Drillex sought.

Drillex has phrased its motion in the alternative, stating that it is unclear whether the Bankruptcy Court's Order should be characterized as final or interlocutory. Under 28 U.S.C. §158(a), if the Bankruptcy Court's order is deemed a final order, Drillex may appeal as of right. If the Bankruptcy Court's Order is deemed an interlocutory order, the decision to grant appeal rests with this Court. See also Bankruptcy Rules 8001 and 8003.

Proper characterization of an order for purposes of appeal is a nebulous area, particularly in bankruptcy, where the unique proceedings have led courts to adopt a more flexible, "pragmatic", doctrine of finality. See, e.g., In re Mason, 709 F.2d 1313, 1318 (9th Cir. 1983). Decisions have tended to be rendered on a case-by-case basis, although one court approved the following definition:

An interlocutory order or decree is one which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits. Matter of Kutner, 656 F.2d 1107, 1111 (5th Cir. 1981) (quoting 1 Collier on Bankruptcy, ¶3.03 at 3-301 (15th ed. 1980)).

The Trustee argues that the Bankruptcy Court's Order is interlocutory, because Drillex did not object to the Trustee's disbursement per se, but rather sought the imposition of interest, pursuant to 52 Okla.Stat. §540. The Bankruptcy Court held that the state statute was not applicable to matters affecting the

administration of the estate (Bankruptcy Court's Order of October 31, 1985, ¶4 at 3). The Trustee asserts that Drillex has a remedy available to seek payment of interest or penalty, namely a claim against the estate pursuant to 11 U.S.C. §501, et seq. The Bankruptcy Court expressly left this avenue open:

In view of the objection interposed by Drillex, the Trustee should not release funds to parties in interest, except upon obtaining from such parties a release of any and all claims which such parties might assert against the Trustee or against the Estate of Opco, Inc. pursuant to 52 Okla. Stat. §540 or such other claims that may exist with respect to assessment of interest, penalties or other costs with respect to the administration, deposit and maintenance of production proceeds by the Trustee. Bankruptcy Court's Order of October 31, 1985, ¶5 at 3-4.

The statement of the Bankruptcy Court quoted immediately above appears contradictory with the Bankruptcy Court's conclusion that "the provisions of 52 Okla. Stat. §540 are inapplicable to matters affecting administration of the Estate before this Court" (Bankruptcy Court's Order of October 31, 1985, ¶4 at 3). However, a claim filed by Drillex against the Estate would permit a full hearing on the issues, and allow the calling of witnesses, which, Drillex states, was not permitted at the October 25, 1985, hearing. Likewise, the Trustee, in addition to presenting defenses to the claim, could assert any claim he might have against Drillex. Such a hearing would enable the Bankruptcy Court to develop fully its rationale regarding the applicability or non-applicability of the state law provisions contended for by Drillex. Drillex argues that filing a claim against the bankruptcy estate is inappropriate, because "the claim of Drillex is

against the Trustee and/or Cherokee Operating Company because it concerns monies owned by Drillex but being held by said Trustee or Cherokee Operating Company and not funds owned by the Estate of the Bankrupt." (Reply to Response of Trustee at 7). This characterization ignores the distinction between principal amount, to which Drillex is entitled and which the Trustee was ordered to disburse, and interest or penalty, the imposition of which is sought by Drillex. It is the assessment of interest or penalty against the Trustee which is the issue in dispute, and which appears not to have yet been fully litigated. Even viewing the adversary proceeding below as a discrete cause of action, this Court believes further steps are needed for a full adjudication on the merits resulting in an Order which a District Court may review. The Bankruptcy Court's Order of October 31, 1985, is therefore best characterized as interlocutory. Consequently, it lies within the discretion of this Court whether to grant leave to appeal.

Based on the analysis detailed above, this Court does not believe that the October 31, 1985, Order of the Bankruptcy Court issues from a proceeding sufficiently advanced to render it prudent for this Court to subject the Order to review. Without deciding the issue, this Court believes that the Bankruptcy Court's Order after the conclusion of a full hearing on a claim filed by Drillex against the estate would more likely be characterized as a final order, or as an interlocutory order from which leave to appeal should be granted.

Accordingly, it is the Order of the Court that Drillex's motion for leave to appeal is hereby denied.

IT IS SO ORDERED this 13th day of January, 1986.


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

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

FILED

JAN 14 1985

JACK G. SILVER, CLERK
U.S. DISTRICT COURT

IN RE:)
)
 KENNETH E. TUREAUD, a/k/a)
 KENNETH E. TUREAUD d/b/a)
 SAKET PETROLEUM COMPANY, a/k/a)
 KENNETH E. TUREAUD d/b/a)
 KESAT, a/k/a)
 SAKET PETROLEUM COMPANY, a/k/a)
 KENNETH E. TUREAUD d/b/a)
 SAKET DEVELOPMENT CORPORATION,)
 d/b/a)
 LINDA VISTA CORPORATION, d/b/a)
 SAKET DEVELOPMENT CORPORATION,)
 a New Mexico Corporation a/k/a)
 DEER PARK, INC., d/b/a)
 SAKET REALTY, INC., d/b/a)
 SOUTHERN LAKES DEVELOPMENT)
 CORPORATION, d/b/a)
 RIVER RIDGE DEVELOPMENT)
 CORPORATION,)
)
 Debtors.)
)
 WALTER E. HELLER & CO.,)
)
 Appellant,)
)
 vs.)
)
 R. DOBIE LANGENKAMP,)
)
 Appellee.)

No. 85-C-51-C

ORDER

Now before the Court for its consideration is the appeal of Walter E. Heller & Company, Southeast, Inc. (Appellant) from the Order Substantively Consolidating Estates entered by the United States Bankruptcy Court for the Northern District of Oklahoma on January 10, 1985.

1985, the Court announced from the Bench its decision to grant the Trustee's Application. On January 10, 1985, the Court filed its Order Substantively Consolidating Estates, now reported as In re Tureaud, 45 Bankr. 658 (Bankr. N.D.Okla. 1985). It is from this Order that the Appellant has timely perfected its appeal.

As an initial issue, the parties dispute the proper standard of review which this Court should employ. The Appellee contends that while the Bankruptcy Court's conclusions of law are subject to de novo review, the Bankruptcy Court's findings of fact are to be accepted unless clearly erroneous. The Appellee cites Bankruptcy Rule 8013 for the latter proposition. In opposition, the Appellant urges this Court to review both the findings of fact and the conclusions of law on a de novo basis. Although both parties have referred in their briefs to In re Reid, 757 F.2d 230 (10th Cir. 1985), neither party has addressed footnote five therein, Id. at 233-34 n.5, where the United States Court of Appeals for the Tenth Circuit discussed the distinction under the Bankruptcy Amendments and Federal Judgeship Act of 1984 between core and non-core proceedings, 28 U.S.C. §157. This discussion is relevant to the Appellant's position that consolidation is a non-core proceeding, and consequently is subject to de novo review. It is correct that both factual findings and legal conclusions in a non-core proceeding are reviewed de novo. See In re Production Steel, Inc., 48 Bankr. 841, 844 (Bankr. M.D.Tenn. 1985). However, this Court finds no authority for the proposition that consolidation is a non-core proceeding, nor any indication in the record that the matter was raised below.

relevant authority impresses the Court with the accuracy of one treatise's conclusion that "substantive consolidation cases are to a great degree sui generis". 5 Collier on Bankruptcy, ¶1100.06 at 1100-33 (15th ed. 1984) (footnote omitted). This is to be expected, for the source of the Bankruptcy Court's power to order consolidation is the grant of equitable powers in 11 U.S.C. §105(a). Clearly, there is no formulaic resolution, although the courts in Fish and Gulfco, and other courts addressing the issue, have tended to list relevant factors without ranking their importance. See also, e.g., In re Titio Castro Construction, Inc., 14 Bankr. 569, 571 (Bankr. D.Puerto Rico 1981) and In re Vecco Construction Industries, Inc., 4 Bankr. 407, 410 (Bankr. E.D.Va. 1980). Other courts have stated that the factors approach ultimately resolves into a balancing test, and that to order consolidation "the benefits of consolidation must outweigh the harm it would cause to creditors". In re DRW Property Co. 82, 54 Bankr. 489, 494 (Bankr. N.D.Tex. 1985). Whatever enumerated factors are discussed, they "should be evaluated within the larger context of balancing the prejudice from the proposed order of consolidation with the prejudice movant alleges it suffers from debtor's separateness". Id. at 495. The major thrust of Appellant's argument is that one factor listed in Fish, supra, that the Affiliate was created for the purpose of defrauding or hindering creditors, is the critical factor, and that the Bankruptcy Court was presented insufficient evidence to justify that conclusion. The Appellee responds that Fish and Gulfco demonstrate that a "totality of the circumstances" test is to be

subsidiary or otherwise causes its incorporation. (5) The subsidiary has grossly inadequate capital. (6) The parent corporation pays the salaries or expenses or losses of the subsidiary. (7) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation. (8) In the papers of the parent corporation, and in the statements of its officers, "the subsidiary" is referred to as such or as a department or division. (9) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take direction from the parent corporation. (10) The formal legal requirements of the subsidiary as a separate and independent corporation are not observed.

The list is repeated in Gulfco, 592 F.2d at 928-9, and again in the Order under review. 45 Bankr. at 662. In ordering consolidation, the Bankruptcy Court concluded that "the majority of the factors identified in Fish v. East are present in the instant case". 45 Bankr. at 663. This constitutes a sufficient rationale for such a discretionary decision under the Bankruptcy Court's general equity powers, if the factual findings of the Court survive the review of this Court on appeal. Since, as discussed supra, this Court has concluded that the clearly erroneous standard is the proper one to review the Bankruptcy Court's findings of fact, these findings will stand unless the record as a whole leaves the reviewing court with a "definite and firm conviction that a mistake has been committed". United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948). In reviewing the transcripts of the hearings of November 30, 1984 and December 3, 1984, this Court notes the thoroughness with which the fact-finding process was conducted. The Bankruptcy

Court's finding of fact in this regard is not clearly erroneous. There was also evidence presented of accounting difficulties (Transcript of November 30, 1984 at 82 LL. 7-11 and 89 LL. 4-13) and of inadequate or nonexistent records (Transcript of November 30, 1984 at 83 L.25 through 88 L.5; 79 LL. 7-11; 82 LL. 10-11; 86 L.13; 89 LL. 11-13). This evidence was uncontradicted and, while testimonial, this Court is required by Bankruptcy Rule 8013 to give due regard "to the opportunity of the Bankruptcy Court to judge the credibility of the witnesses". Again we cannot say that the Bankruptcy Court was clearly erroneous in concluding that "[i]t is impossible to accurately trace all transfers of funds and to untangle and unravel the affairs of the Affiliates and Tureaud". 45 Bankr. at 661.

In summarizing its conclusions, the court in Gulfco referred to none of the individual factors, but simply stated that "consolidation is not to be used to defeat the security of secured creditors or to reduce a secured creditor to the status of an unsecured creditor". 593 F.2d at 930. The Bankruptcy Court here expressly noted that it had balanced the prejudice caused by consolidation against the prejudice of continued separation, and that all security interests would be preserved. 45 Bankr. at 663. A witness for the Appellant testified that he did not believe that the Appellant would be injured by consolidation. (Transcript of November 30, 1984 at 129, LL 10-20). Under the evidence presented, the Bankruptcy Court's decision to consolidate was within its power, and should be affirmed.

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

FILED

JAN 14 1986

R. H. NERO, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CHEROKEE NATION OF OKLAHOMA,)
 et al.,)
)
 Defendants.)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 84-C-557-C

O R D E R

Now before the Court for its consideration is the motion of defendants Cherokee Nation of Oklahoma, Ross O. Swimmer; Dora Watie; Gary Chapman; Dorothy Worsham; Maude Davis; Elizabeth Sullivan; Marie Wadley, and Ray McSpadden (hereinafter referred to collectively as "non-federal defendants") for dismissal, pursuant to Rule 12 F.R.Cv.P., on the grounds that the plaintiffs' action is barred by tribal sovereign immunity.

This action was brought by seventeen persons on behalf of themselves and on behalf of a class described as Cherokee freedmen and their descendents. The defendants are those non-federal defendants listed above, as well as various federal officials. Jurisdiction is alleged under 28 U.S.C. §§1331 and 1343(4). Causes of action are alleged under the First, Fifth, Ninth, Thirteenth and Fifteenth Amendments of the United States Constitution; 42 U.S.C. §§1981, 1985(3) and 1986; Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971); 25 U.S.C §1301, et seq.; 42 U.S.C 2000d, and the Treaty of July 19, 1866 (14 Stat. 799). The plaintiffs allege that the

outside of internal tribal affairs, and (3) an action involving non-Indians. 623 F.2d at 685.

Considering these factors in turn, it is undisputed that tribal remedies were available, but were not sought. Plaintiffs have attempted to demonstrate that exhaustion of remedies is unnecessary by alleging that any attempt at tribal remedies would be futile. However, in White v. Pueblo of San Juan, 728 F.2d 1307 (10th Cir. 1984), the United States Court of Appeals for the Tenth Circuit held that "to adhere to the principles of Santa Clara, the aggrieved party must have actually sought a tribal remedy, not merely alleged its futility," Id. at 1312. This alone would seem to resolve the matter, in conjunction with the admonition in White that "the Dry Creek decision ought to be interpreted to provide a narrow exception to the traditional sovereign immunity bar from suits against Indian tribes in federal courts," Id. The Court will consider the other two Dry Creek factors in the interest of thoroughness. Second, this dispute regarding an election is purely an intratribal one. An action contesting a tribal election has been characterized as "an internal controversy" not subject to federal jurisdiction. Motah v. United States, 402 F.2d 1, 2 (10th Cir. 1968). Finally, this action does involve non-Indians in the presence of both the freedmen and the federal defendants, but the Court believes that the other two factors far outweigh this one. The Court does not believe that the Dry Creek Lodge exception is applicable here, and therefore sees no basis for plaintiffs' action against the Tribe under any constitutional provisions or the ICRA.

alleged a violation of the Treaty of 1866, jurisdiction exists because resolution of this action requires this Court to interpret a treaty of the United States. There is authority for this general position. See, e.g., Skokomish Indian Tribe v. France, 269 F.2d 555 (9th Cir. 1959). The Court is reluctant to inject itself into areas of tribal self-definition. The essence of the plaintiffs' concern is the fact that the Tribe bases many incidents of tribal membership, apparently including the right to vote, on a blood quantum requirement. In Daly v. United States, 483 F.2d 700 (8th Cir. 1973), the Court stated that a blood quantum requirement to hold office, if applied uniformly, did not violate equal protection. Id. at 705. More directly, the United States Court of Appeals for the Eighth Circuit has stated that "given the quasi-sovereign status of the Indian tribes, they should be permitted to determine the extent to which the franchise to vote is to be exercised in tribal elections, absent explicit Congressional legislation to the contrary," Wounded Head v. Tribal Council of Oglala Sioux Tribe, 507 F.2d 1079, 1083 (8th Cir. 1975). In light of these decisions and the established principle that Indian nations are "distinct political communities, having territorial boundaries, within which their authority is exclusive ..." McClanahan v. Ariz. State Tax Comm., 411 U.S. 164, 168 (1973) (quoting Worcester v. Georgia, 6 Pet. 515, 557 (1832)), the Court does not believe that the tribal actions in the case at bar are properly addressed in a federal forum, but should rather be handled internally. Therefore, the Court holds that the plaintiffs' complaint fails to state a claim against the Tribe.

FILED

JAN 14 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

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

THE CITIZENS BANK, Drumright,)
Oklahoma,)

Plaintiff,)

vs.)

No. 85-C-548-C

GREAT AMERICAN RESOURCES,)
INC.,; GREAT AMERICAN)
PARTNERS; PETER R. CHRISTL;)
GARY G. TAKESSIAN; TAYLOR)
INTERNATIONAL, INC.,)

Defendants,)

and)

W. J. TAYLOR; WM. BARRY)
HUBBARD; SARAH ANNE SHAWN;)
MILTON SKAGGS; MINDY SKAGGS;)
and BRUCE BONNETT,)

Defendants and Third)
Party Plaintiffs,)

vs.)

GAR PARTNERS, WAYNE M.)
HAMERSLY, SPECIAL ENERGY)
CORPORATION, RON MILLER d/b/a)
PREFERRED, INC., and NEEDCO)
OPERATING PARTNERSHIP,)

Third Party Defendants.)

ORDER DISMISSING ACTION

This matter comes before the Court on the motion of all Defendants for an Order dismissing the captioned action. The Court finds that the parties have reached a compromise and settlement and that the captioned action should be dismissed with prejudice.

DATED this 17 day of June, 1986.

(Signed) H. Dale Cook

JUDGE OF THE DISTRICT COURT

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

FILED

JAN 14 1986

LEONARD STROTHER,)
)
 Plaintiff,)
)
)
 STEVE DOWNING, HARRY W. STEGE,)
 and CITY OF TULSA,)
)
 Defendant.)

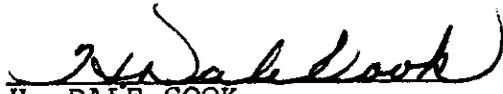
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 84-C-641-C

J U D G M E N T

This matter came before the Court for hearing on Defendants' Motion for Summary Judgment and the issues having been duly considered and the court having rendered its decision, it is therefore ordered, adjudged and decreed at this case be and is hereby dismissed as to all Defendants.

It is so Ordered this 14th day of January, 1986.


H. DALE COOK
CHIEF JUDGE

even filed an administrative claim before bringing the present action. The plaintiffs' allegations that seeking other remedies would be futile and their noting the denial of another party's administrative claim is insufficient to confer jurisdiction upon this Court. Therefore the claim on this basis is barred.

The plaintiffs also seek to base a cause of action on United States v. Mitchell, 463 U.S. 206 (1983), which held that the United States was accountable in money damages for alleged breaches of trust in connection with management of forest resources on allotted lands of an Indian reservation. The plaintiffs argue that they have sued the United States "not as a sovereign but as trustee of the Cherokee Nation," relying upon the Supreme Court's language that there exists a "general trust relationship between the United States and the Indian People," Mitchell, 463 U.S. at 225. Initially, the Court would note that the United States is a sovereign, regardless of a litigant's characterization and may be sued only in the event of an express waiver of sovereign immunity. Philadelphia Gear, supra. The question becomes, therefore, whether United States v. Mitchell, supra, stands for the proposition that a general trust relationship between the United States and the Indian people constitutes a waiver of sovereign immunity for an action such as the case at bar. The Supreme Court in Mitchell made clear that the lower court found that numerous federal statutes and regulations promulgated under these statutes "imposed fiduciary duties on the United States in its management of forested allotted lands," Id. at 211. The "general trust relationship," upon which the

e.g., Harlow v. Fitzgerald, 475 U.S. 800 (1982), and will necessitate consideration of matters outside the pleadings. The Court notes that the individual federal defendants have filed a separate motion for summary judgment, which the Court believes to be the proper vehicle for resolution of this issue.

Accordingly, it is the Order of the Court that the motion to dismiss of the federal defendants is granted as to defendants United States of America, Office of the President; United States Department of the Interior, Office of the Secretary; and the Bureau of Indian Affairs, and denied as to defendants Dennis Springwater, Frank Ferrell and Joe Parker.

Pursuant to this Order, the following defendants shall be dismissed from this action: United States of America, Office of the President; United States Department of the Interior, Office of the Secretary; and the Bureau of Indian Affairs.

IT IS SO ORDERED this 13th day of January, 1986.


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

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

FILED

JAN 14 1986

ASSEMBLY OF GOD CHURCH)
OF MANNFORD, OKLAHOMA, a)
Religious Corporation,)
)
Plaintiff,)
)
vs.)
)
PREFERRED RISK MUTUAL)
INSURANCE COMPANY: and)
MID-WEST MUTUAL INSURANCE)
COMPANY,)
)
Defendants.)

LEE G. SMITH, CLERK
U. S. DISTRICT COURT

Case No.: 84-C-948 E

ORDER OF DISMISSAL

ON This 12 day of January, 1986, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court habeing examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises finds that said Complaint should be dismissed pursuant to said application.

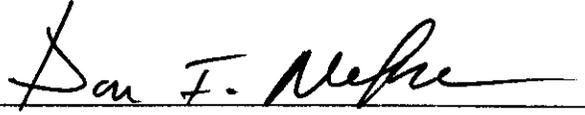
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

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

APPROVALS:

DON I. NELSON,



Attorney for the Plaintiff,

ALFRED B. KNIGHT,

Attorney for the Defendants.

FILED

JAN 14 1986

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

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

COX MOTOR COMPANY,

Plaintiff,

vs.

RESORTS SERVICES, INC.,

Defendant.

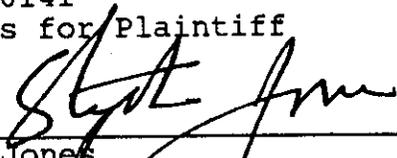
No. 85-C-935-E

STIPULATION OF DISMISSAL

Comes now the parties to the above entitled action and,
pursuant to rule 41(a) of the Federal Rules of Civil Procedure,
hereby stipulate that this matter be dismissed with prejudice.



John D. Rothman
MARSH & ARMSTRONG
808 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
918/587-0141
Attorneys for Plaintiff



Stephen Jones
JONES, BLAKLEY AND JENNINGS
P. O. Box 472
Enid, Oklahoma 73702
405/242-5500
Attorneys for Defendant

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

FILED

JAN 14 1986

R. EDWARD WALKER,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant,)
)
 FIRST NATIONAL BANK AND TRUST)
 COMPANY OF MIAMI, OKLAHOMA,)
)
 Additional Defendant.)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 84-C-875-C

J U D G M E N T

This matter came on for nonjury trial before the Court on November 1, 1985. The issues having been duly tried, the contentions of the parties and the law having been duly considered, the Court hereby enters judgment on behalf of the United States of America and against the First National Bank and Trust Company of Miami, Oklahoma, in the amount of \$47,702.74 plus interest at the legal rate from March 15, 1982, to the date of payment of this judgment.

IT IS SO ORDERED this 14th day of January, 1986.


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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MICHAEL DEVITO BROOKS, M.D.,)
)
Defendants.)

JAN 13 1986

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

Civil Action No. 85-C-889-E

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America,
by Layn R. Phillips, United States Attorney for the Northern
District of Oklahoma, through Peter Bernhardt, Assistant
United States Attorney, and hereby gives notice of dismissal
pursuant to Rule 41, Federal Rules of Civil Procedure, of this
action without prejudice.

Dated this 13th day of January, 1986.

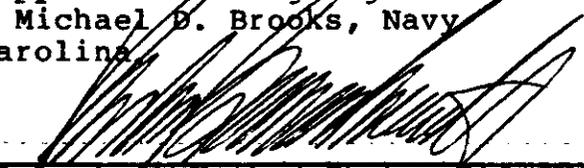
UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

PETER BERNHARDT
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of
January, a true and correct copy of the foregoing was mailed,
postage prepaid thereon, to: Michael D. Brooks, Navy
Hospital, Charleston, South Carolina.


Assistant United States Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 13 1986

JOHN DEERE COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 BILL A. BROWN,)
)
 Defendant.)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Case No. 85-C-1038C

ORDER

NOW, before me, the undersigned Judge of the U.S. District Court, Northern District of Oklahoma, comes the motion of John Deere Company to dismiss the above styled matter with prejudice to the refiling of the same and, after a review of the file;

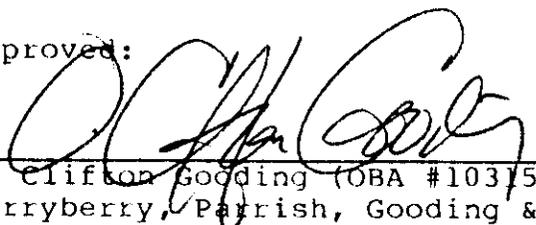
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above captioned matter be and it is hereby dismissed with prejudice to the refiling of the same.

DATED this 13th day of Jan, 1986.

(Signed) H. Dale Cook

Judge of the U.S. District Court

Approved:



O. Clifton Gooding (OBA #10315)
Derryberry, Parrish, Gooding &
McMahan

4420 N. Lincoln Blvd.
Oklahoma City, OK 73105
(405)424-5535
Attorney(s) for John Deere Company

claims against Defendant General Electric, that the action be dismissed on the merits as to Defendant General Electric, and that the Defendant General Electric recover of the Plaintiff its costs of action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Tools Capital take and recover nothing on its counterclaim against Plaintiff, Patty Precision Products, and that Plaintiff, Patty Precision Products, recover of the Defendant Tools Capital its costs of action.

Dated at Tulsa, Oklahoma this 10th day of January, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JAN 13 1986

FORD MOTOR CREDIT COMPANY,
a Delaware corporation,

Plaintiff,

vs.

THE COMMISSIONER OF THE
INTERNAL REVENUE SERVICE,
and OKLAHOMA TIRE CENTER,
INC., an Oklahoma corporation,

Defendants.

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

No. 85-C-1132E ✓

ORDER OF DISMISSAL

THIS cause came on to be heard on Plaintiff's Motion to dismiss the action against the Commissioner of the Internal Revenue Service, pursuant to Rule 41(a) of the Fed.R.Civ.P., and it appearing to the court that good cause has been shown, it is

ORDERED that this action be, and it is hereby, dismissed without prejudice against the Commissioner of the Internal Revenue Service without costs.

Dated January 16, 1986.


UNITED STATES DISTRICT JUDGE

respect to the second ground, denial of access to the jail law library. Defendant now moves for summary judgment with respect to this second claim. In support of his Motion for Summary Judgment, defendant has submitted the sworn affidavit of Lt. Dan Cherry and copies of law library request forms and records of outgoing mail pertaining to the plaintiff. Plaintiff has responded to defendant's Motion for Summary Judgment.

In the past 20 years, courts have recognized jail inmates' right of access to legal materials as it relates to their right of access to the courts. See, Bounds v. Smith, 430 U.S. 817, 828 (1977); Gilmore v. Lynch, 319 F.Supp. 105 (N.D.Cal. 1970), aff'd sub nom. Younger v. Gilmore, 404 U.S. 15 (1971).

Plaintiff contends he was denied access to the library of the Tulsa County Jail while he was a prisoner there from January to March of 1985. Specifically, plaintiff contends he was denied access to the library on March 22, 23, 24, 25, 26 and 27, 1985. However, the affidavit of Lt. Cherry states that jail records do not indicate the plaintiff made any requests for law library materials or books during the period from March 22 to March 27, 1985. Further, the affidavit of Lt. Cherry states that on March 22, 1985, two jail inmates escaped from the jail law library. Because of this, the library was closed for a short time while repairs were made and security improved. Plaintiff had escaped from the Tulsa County Courthouse in June 1984 while awaiting trial.

Restricted access to a prison law library is not a per se denial of access to the courts. Twyman v. Crisp, 584 F.2d 352 (10th Cir. 1978); See also, Elkanich v. Alexander, 315 F.Supp.

659 (D.Kan.), aff'd per curiam, 430 F.2d 1178 (10th Cir. 1970).

In response to defendant's Motion for Summary Judgment, plaintiff has offered little to substantiate his claims of civil rights violations. Plaintiff has largely reiterated claims that were dismissed by this court in its September 26, 1985, Order and which are irrelevant to the claim of denial of access to the jail law library. Summary judgment must be denied if a genuine issue of material fact is presented to the trial court. Exnicious v. United States, 563 F.2d 419, 425 (10th Cir. 1977). In making this determination, the evidence must be viewed in the light most favorable to the party against whom judgment is sought. National Aviation Underwriters, Inc. v. Altus Flying Service, Inc., 555 F.2d 778, 784 (10th Cir. 1977). Factual inferences tending to show triable issues must be resolved in favor of the existence of those issues. Lockett v. Bethlehem Steel Corp., 618 F.2d 1373, 1377 (10th Cir. 1980). However, summary judgment is proper where no issue of genuine fact remains and the moving party is entitled to judgment as a matter of law. Bruce v. Martin-Marietta, 544 F.2d 442, 445 (10th Cir. 1976).

Here, after reviewing the material before the court and examining the evidence in the light most favorable to the plaintiff, the Court finds there is no genuine issue of material fact with respect to defendant's alleged denial of access to the jail law library. The evidence shows nothing to indicate any request for library material was made by the plaintiff during the specific time period he complains of. In addition, the jail escape from the law library justified authorities limiting access to the library for a reasonable time period in order to ensure proper security. Finally, nothing in the record indicates that plaintiff was unable

to complete legal research and file pleadings concerning his case with the proper courts. In short, plaintiff has offered no evidence that he was denied access to the jail law library and no evidence that restrictions on inmate use of the library in the wake of the March 22, 1985, escape denied him access to the courts. For these reasons, defendant's Motion for Summary Judgment is hereby granted..

IT IS SO ORDERED, this 10th day of January, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

JAN 10 1986

AMERICAN HOME ASSURANCE)
COMPANY,)
)
Plaintiff,)
)
v.)
)
G.L. "PETE" LARKIN &)
CAROLYN RUTLEDGE,)
)
Defendants.)

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

No. 85-C-858-B

ORDER OF DISMISSAL

Upon Stipulation of the parties, the Court finds the issues in this case have been settled and it is hereby dismissed with prejudice.

Dated this 10th day of January, 1986.

S/ THOMAS R. BRETT

U. S. DISTRICT JUDGE

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

FILED

JAN 10 1986

CLARENCE NEESE,

Plaintiff, JACK C. SILVER, CLERK
U.S. DISTRICT COURT

v.

Case No. 85-C-811-C

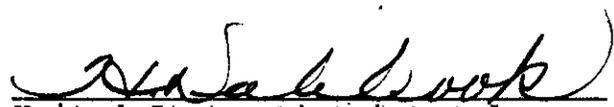
RICHARD S. C. GRISHAM, M.D.,

Defendant.

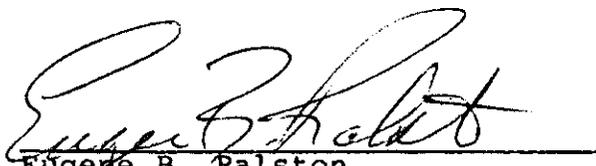
ORDER

NOW on this 9th day of January, 1986, comes on for hearing Plaintiff's Motion to Dismiss Without Prejudice. After hearing arguments of counsel, being duly advised in the premises and reviewing the file, and finding that Defendant has no objection to Plaintiff's Motion, the Court finds that Plaintiff's Motion is well taken and should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled action is herewith dismissed without prejudice.


United States District Judge

APPROVED BY:


Eugene B. Ralston
RALSTON & STARRETT
2913 S.W. Maupin Lane
P.O. Box 4837
Topeka, Kansas 66604-0837
(913) 273-8002
Attorneys for Plaintiff

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

CHARLES BICE AND CHARLENE BICE,)
)
 Plaintiff,)
)
 vs.)
)
 RYDER TRUCK RENTAL, INC.,)
)
 Defendant,)
)
 and)
)
 FIREMAN'S FUND INS. CO.,)
)
 Intervenor.)

No. 84-C-824-E

FILED

JAN 9 1986

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

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 9th day of January, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

ALLEN KROBLIN, CLAUDE GARDNER)
and MARIE GARDNER, individuals,)

Plaintiffs,)

vs.)

No. 84-C-1007-C

DAN R. ROGERS and THOMAS C.)
JOHNS, individuals, and/or as)
Partners of DARO PETROLEUM,)
INC.,)

Defendants.)

E I L E D

JAN 9 1986

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

J U D G M E N T

Upon motion by all parties herein involved in the above-styled matter, this Court enters judgment upon the following stipulation between the parties:

1. Defendant Johns confesses judgment upon the Breach of Contract count alleged in Plaintiff's Complaint in the sum of \$50,000.00, plus interest at ten percent (10%) per annum from the date of filing the Complaint, plus attorney fees in the amount of \$8,524.30 and costs in the amount of \$553.30.

2. The plaintiffs agree to dismiss all other counts against defendant Johns found in their Complaint.

3. The parties have agreed to a Settlement Agreement entered into on the 3rd day of December, 1985, effective and controlling between said parties.

FILED

JAN 9 1986

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

SERVICE PIPE AND SUPPLY)
COMPANY, INC.,)
)
Plaintiff,)
)
vs.)
)
BENCHMARK RESOURCES)
CORPORATION,)
)
Defendant.)

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

No. 84-C-845-E

JUDGMENT

This matter came on before the Court upon application for default judgment, and the Court, having found that default is proper pursuant to Rule 37 of the Federal Rules of Civil Procedure,

IT IS THEREFORE ORDERED AND ADJUDGED that the Plaintiff Service Pipe and Supply Company, Inc. recover of the Defendant Benchmark Resources Corporation the amount of \$17,749.01, plus interest from January 1, 1983 until date of judgment at the rate of 18% per annum, minus \$2,700.67 in interest payments thus far made, plus interest at the rate of 7.57% until paid, plus costs of action.

ORDERED this 9th day of January, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
SYDNEY LYNNE CLAYTON, a/k/a)
Sydney L. Shields,)
)
Defendant.)

Case No. 85-C-592-BT ✓

FILED

JAN 8 1986 *af*

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

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 8 day of JANUARY, 1986.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

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

FILED

JAN 8 1986

FREDERICK J. ORTH AND MARY ORTH,)
EDMOND DAVIS, RAY RENDON,)
FRANK NEWSOME, and M. BRIAN PAGE,)

Plaintiffs,)

v.)

No. 84-C-815E

MIDWESTERN INVESTMENTS &)
MARKETING, LTD., an Oklahoma)
Corporation; IMPERIAL DRILLING)
COMPANY, INC., a Kentucky)
Corporation; BROWNWOOD INVESTMENT)
CO., an Oklahoma Corporation;)
ALFRED LONDON; GARY L. JONES;)
DOUGLAS BRANTLEY; BRIAN RICE;)
A. L. RICE; BARRY RICE; VERNON L.)
GARBER; HENRY B. CRICHLow; JIM)
WILLIAMS and CALVIN JONES,)

Defendants.)

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

JUDGMENT

NOW on this 8 day of January, 1986, the above-styled cause comes on for consideration before me, the undersigned Judge of the United States District Court for the Northern District of Oklahoma, upon plaintiffs' Motion for Default Judgment filed herein. The Court finds that the defendant Imperial Drilling Company, Inc. was duly served with summons herein on February 6, 1985; the defendant Midwestern Investments & Marketing, Ltd. was duly served with summons on October 1, 1984; the defendant Gary L. Jones was duly served with summons on March 7, 1985; the defendant Douglas Brantley was duly

served with summons herein on March 7, 1985; and the defendant Vernon L. Garber was duly served with summons herein on or about September 28, 1984. None of the aforementioned defendants has filed an answer or any other pleading herein and is in default. Further, in view of the fact that said defendants have not filed an answer or any other pleading, no notice of the hearing of the Motion for Default Judgment filed by plaintiffs is required.

The Court finds that defendants Imperial Drilling Company, Inc., Midwestern Investments & Marketing, Ltd., Gary L. Jones, Douglas Brantley and Vernon L. Garber are in default and that plaintiffs are entitled to judgment pursuant to the allegations contained in their First Amended Complaint herein.

IT IS THEREFORE ORDERED that plaintiffs, Frederick J. Orth, Mary M. Orth, Edmond Davis, Ray Rendon, Frank Newsome, and M. Brian Page have judgment against defendants Imperial Drilling Company, Inc., Midwestern Investments & Marketing, Ltd., Gary L. Jones, Douglas Brantley and Vernon L. Garber in the principal sum of \$30,625.00, together with interest and costs in the sum of \$10,788.00, and additional interest from and after this date at the rate of 15% per annum.

~~IT IS FURTHER ORDERED that plaintiffs receive a reasonable attorney's fee from defendants in the sum of \$5,500.00, to be taxed as costs herein, and the costs of this action.~~

FOR ALL OF WHICH LET EXECUTION ISSUE.

S/ JAMES O. ELLISON

Judge of the United States
District Court

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

FILED

JAN 8 1986

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

CHARLES FREDERICK FISHER and)
BILLIE JEAN FISHER,)
)
Plaintiffs,)
)
vs.)
)
FIBREBOARD CORPORATION, et al.,)
)
Defendants.)

No. 85-C-379

ORDER

Now before the Court for its consideration is the motion of defendant, Raymark Industries, Inc., for summary judgment filed on December 10, 1985. The Court has no record of a response to this motion from plaintiffs, Charles Frederick Fisher and Billie Jean Fisher. Rule 14(a) of the local Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) Briefs. Each motion, application and objection filed shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within ten (10) days after the filing of the motion or objection, and any reply memoranda shall be filed within ten (10) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Therefore, in that plaintiffs have failed to comply with local Rule 14(a) and no responsive pleading has been filed to date herein, the Court concludes that plaintiffs have waived any objection to said motion and have confessed the matters contained therein.

WRC:sam
12-30-85

FILED

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

JAN -8 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

RAYMOND E. JOHNSON and)	
JANET JOHNSON,)	
)	
Plaintiffs,)	
)	
vs.)	NO. 85-C-1010-C
)	
STATE FARM FIRE AND CASUALTY)	
COMPANY,)	
)	
Defendant,)	

ORDER

NOW ON THIS 8 day of January, 1986, comes on for hearing defendant, STATE FARM FIRE AND CASUALTY COMPANY'S, Motion to Transfer the above styled cause to the United States District Court For the Western District of Oklahoma, pursuant to 28 U.S.C. 1404.

The Court finds that said Motion to Transfer was filed December 16, 1985 and pursuant to Local Rule 14 said motion is unopposed and therefore deemed confessed.

IT IS THEREFORE ORDERED that said cause be transferred from the United States District Court For the Northern District to the United States District Court For the Western District.

IT IS SO ORDERED.

Granted by Minute Order
on 1-8-85
JACK C. SILVER, CLERK

BY: Altaresif
Deputy Clerk

JUDGE OF THE DISTRICT COURT

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

FILED

JAN 8 1986

JOHN WESLEY McCONICO,

Plaintiff,

vs.

STATE OF OKLAHOMA, ATTORNEY
GENERAL OF THE STATE OF
OKLAHOMA,

Defendant.

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

No. 85-C-1048-E

O R D E R

This action is before the Court upon the Petition of John Wesley McConico for a Writ of Habeas Corpus, which is to be tested under Title 28 U.S.C. § 1915(d). This action was filed November 13, 1985, in forma pauperis, and transferred to this Court on November 21, 1985.

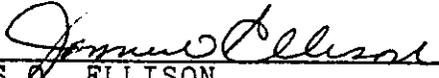
Under 28 U.S.C. § 1915(d) the petition, if found to be frivolous, improper, or obviously without merit, is subject to dismissal. Hemiksen v. Bentley, 644 F.2d 852 (10th Cir. 1981). The Tenth Circuit Court of Appeals has, on numerous occasions, stated that a trial court need not require service of the petition and filing of an answer in cases where, on the face of it, the action is frivolous.

Petitioner names, as a respondent, the State of Oklahoma. He does not name as respondent the person having actual custody over him. Therefore, this Court has no jurisdiction to consider this action. Moles v. State of Oklahoma, 384 F.Supp. 1148 (W.D. Okl. 1974); Moore v. U.S., 339 F.2d 448 (10th Cir. 1964).

Since Petitioner is entitled to no relief under the law, his claim is without merit and must be dismissed. Bennett v. Passic, 545 F.2d 1260 (10th Cir. 1976).

IT IS THEREFORE the order of this Court that the Petition for Writ of Habeas Corpus of John Wesley McConico be, and the same is hereby dismissed.

Dated this 7th day of Jan. ~~December~~, 1985.



JAMES C. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JAN 8 1986

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

SANTA FE-ANDOVER OIL COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 DELHI GAS PIPELINE CORPORATION,)
)
 Defendant,)
)
 and)
)
 C. F. BRAUN & CO., et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 DELHI GAS PIPELINE CORPORATION,)
)
 Defendant.)

84-C-864-E,
Consolidated Under
Case No. 85-C-38-E

ORDER FOR DISMISSAL

Upon stipulation and agreement of the parties hereto,
IT IS HEREBY ORDERED that the second and third claim for relief in Santa Fe-Andover Oil Company's Complaint and the first, second, fourth, fifth, sixth and seventh claims for relief in the Petition of C. F. Braun & Co., et al., as they relate to Contract No. WT-1358-GP dated June 12, 1979, and Contract No. WT-1436-GP dated October 10, 1979, only, are hereby DISMISSED WITH PREJUDICE.

DATED: 1-7-88

JAMES O. ELLISON
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JAN 7 1986

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

MAJOR S. LATIMER,)

Defendant.)

CIVIL ACTION NO. 85-C-451-E

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

J U D G M E N T

This case comes on before the Court on this 6 day of ~~December~~ ^{January}, 1986 upon the Motion for Summary Judgment of the United States of America.

Upon review of the court file, the Court finds that the United States filed its Complaint on May 7, 1985. On May 24, 1985, the Defendant, Major S. Latimer, filed his Answer by his attorney, Caesar C. Latimer. On August 16, 1985, Plaintiff mailed its Requests for Admissions to Major S. Latimer, in care of his attorney of record, Caesar C. Latimer. These Requests for Admissions were received by Defendant's attorney on August 19, 1985, as is evidenced by the return receipt for certified mail.

On October 3, 1985, the United States filed its Motion for Summary Judgment with Brief in Support thereof upon the grounds that pursuant to Rule 36 of the Federal Rules of Civil Procedure the matters covered in the Requests for Admissions were deemed admitted since the Defendant failed to serve an answer upon the Plaintiff. The motion and brief for summary judgment were mailed to Defendant's attorney of record on October 3, 1985.

No response has ever been filed by Defendant's attorney.

The Court finds that pursuant to Local Rule 14(a) the Defendant has waived any objection or opposition to the Plaintiff's Motion for Summary Judgment and the Motion is accordingly granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, United States of America, is entitled to summary judgment against the defendant, Major S. Latimer.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the United States of America shall have judgment against the defendant, Major S. Latimer, in the principal amount of \$743.68, plus accrued interest of \$68.72, as of January 31, 1985, plus interest thereafter at the rate of 7 percent per annum until paid, plus the costs of this action.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge

FILED

JAN 7 1986

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

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

LIFE INSURANCE COMPANY OF)
 THE SOUTHWEST,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN LEE BLACKBURN, GEORGE)
 LEWIS BLACKBURN, a minor,)
 by and through his grand-)
 father and next friend,)
 Sam Bush, and MICHAEL LEE)
 BLACKBURN, a minor, by and)
 through his grandfather and)
 next friend, Sam Bush,)
)
 Defendants.)
)

No. 85-C-188-E

AGREED JOURNAL ENTRY AND
ORDER DIRECTING PAYMENT OF FUNDS

Upon the application of the Defendants and Plaintiff, Life Insurance Company of the Southwest, and for good cause shown, IT IS ORDERED:

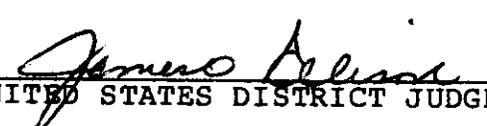
1. The Plaintiff, Life Insurance Company of the Southwest, is hereby discharged from any further liability as to the proceeds of the life insurance policy, No. GL-872, issued on the life of Cheryl A. Blackburn and is awarded its costs, including attorneys' fees, in the amount of \$500.00.

2. The Clerk of this Court is ordered forthwith to remit the sum of \$500.00 to Gable & Gotwals, as attorneys for the Plaintiff above-named, said sum being the amount awarded as costs and attorneys fees to the Plaintiff, the Plaintiff having been

7

released and discharged from any further liability as to the proceeds deposited with the Court.

3. The Clerk of this Court is ordered forthwith to remit the balance of the sum tendered into the registry of this Court by the Plaintiff to Samuel A. Bush and Juanita Bush, the co-guardians and conservators of Michael Lee Blackburn and George Lewis Blackburn, minor children. Copies of the Letters of Guardianship and Conservatorship and Adjudication and Dispositional Order Appointing Guardian and Conservator are attached to this Agreed Order as Exhibits "A" and "B" and incorporated herein.


UNITED STATES DISTRICT JUDGE

AGREED AS TO FORM AND CONTENT:


ELSIE DRAPER
Gable & Gotwals
Fourth National Building
Tulsa, OK 74119

ATTORNEYS FOR THE PLAINTIFF


~~G. BRUCE SEWELL~~
Larry W. Oliver & Associates
2211 E. Skelly Drive
Tulsa, OK 74105-5913

ATTORNEYS FOR DEFENDANT,
JOHN LEE BLACKBURN


JUDI E. BEAUMONT
Jarboe, Keefer & Swinson
1810 Mid-Continent Tower
Tulsa, OK 74103

ATTORNEYS FOR DEFENDANTS,
GEORGE LEWIS BLACKBURN AND
MICHAEL LEE BLACKBURN

IN THE DISTRICT COURT OF LABETTE COUNTY, KANSAS

In the Matter of the Guardianship and Conservatorship of MICHAEL LEE BLACKBURN, and GEORGE LEWIS BLACKBURN, minors

Case No. 85 P 37 PA

LETTERS OF GUARDIANSHIP AND CONSERVATORSHIP

FILED
LABETTE CO. DISTRICT COURT

JUL - 9 1985

E. STOVER, CLERK

KNOW ALL MEN BY THESE PRESENTS:

That Samuel A. Bush and Juanita Bush having been appointed and having qualified as co-guardian and conservator for Michael Lee Blackburn and George Lewis Blackburn, are hereby granted Letters of Guardianship and Conservatorship.

The following powers and duties of a guardian, as set out in K.S.A. 59-3018 and amendments thereto are hereby assigned to Samuel A. Bush and Juanita Bush.

Full power and authority in the premises including all the powers and duties of a guardian.

The following rights and duties of a conservator, as set out in K.S.A. 59-3019 and amendments thereto are hereby assigned to Samuel A. Bush and Juanita Bush.

Full power and authority in the premises including the rights and duties of a conservator.

IN TESTIMONY WHEREOF, I, the undersigned, Associate District Judge of the District Court of Labette County, Kansas, have hereunto subscribed my name and affixed the seal of this court this 9 day of July, 1985.

Associate District Judge

CERTIFICATE OF CLERK OF THE DISTRICT COURT

The above is a true and correct copy of the original instrument which is on file and of record in this court. Date this 9 day of July 1985.

[Signature] Clerk
[Signature] Deputy

IN THE DISTRICT COURT OF LABETTE COUNTY, KANSAS

In the Matter of the Guardianship
and Conservatorship of
MICHAEL LEE BLACKBURN, and
GEORGE LEWIS BLACKBURN, minors

Case No. 85 P37 PA

FILED
LABETTE CO. DISTRICT COURT

2:00 PM
JUL - 9 1985

ADJUDICATION AND DISPOSITIONAL ORDER
APPOINTING GUARDIAN AND CONSERVATOR

W. E. STOVER, CLERK
BY *[Signature]*

On this 25th day of June, 1985, this matter is heard on the application of Samuel A. Bush and Juanita Bush for the appointment of a guardian and conservator for Michael Lee Blackburn and George Lewis Blackburn, having been continued from June 11, 1985.

Petitioner appears in person and by Petitioner's attorney, Jones, Markham, Dearth, Markham & Johnson, Chartered. Michael Lee Blackburn and George Lewis Blackburn appear by their guardian ad litem, Timothy J. Grillo.

After examining the files, hearing the evidence, statements and arguments of counsel, and being duly advised in the premises, the court finds that:

1. Notice of this hearing has been given as required by law and the order of this court and proof has been duly filed herein and is hereby approved.
2. The allegations of the petition are true.
3. A jury trial is not requested.
4. Michael Lee Blackburn and George Lewis Blackburn are minors.
5. Michael Lee Blackburn and George Lewis Blackburn's estate is of the following character and value:

<u>TYPE</u>	<u>ESTIMATED VALUE</u>
Real Estate	.00
Personal Property	22,000.00

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 7 1985

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RICHARD C. ROTH,)
)
 Defendant.)

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

CIVIL ACTION NO. 85-C-747-E

ORDER OF DISMISSAL

Now on this 6th day of January, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Richard C. Roth have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Richard C. Roth, be and is dismissed without prejudice.

S/ JAMES C. NELSON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROY C. JOHNSON,
Plaintiff,

Civil Action No. 84-C-926-E

vs.

MAYOR TERRY YOUNG, et al.,
Defendants.

FILED

JAN 7 1986

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

ORDER FOR DISMISSAL WITH PREJUDICE

This matter having come on to be heard upon the filing of the attached Stipulation For Dismissal With Prejudice, and the Court being otherwise advised in the premises, now, therefore:

IT IS HEREBY ORDERED AND ADJUDGED that the above-captioned matter be and the same is hereby DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED AND ADJUDGED that neither party shall be considered the prevailing party in this litigation and neither party shall recover its costs or attorney fees from the opposing party.

HON. JAMES O. ELLISON
United States District Judge

Approved as to form & substance:

Alvin Hayes, Jr.
ALVIN HAYES, JR.
Attorney for Plaintiff

John F. Brady
RILEY AND ROUMELL
By John F. Brady
Co-Counsel for Defendants

Imogene Harris
IMOGENE HARRIS
Assistant City Attorney
Attorney for Defendants

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

FILED

JAN -7 1986

ALTA L. MAY,)
)
 Plaintiff,)
)
 vs.)
)
 TELEX COMPUTER PRODUCTS, INC.,)
)
 Defendant.)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 85-C-147-C

J U D G M E N T

This matter came on before the Court for determination of defendant's motion for summary judgment. Being that plaintiff failed to comply with local Rule 14(b); and a decision having been duly rendered in accordance with the Order granting summary judgment herein,

IT IS ORDERED AND ADJUDGED that the defendant, Telex Computer Products, Inc., is entitled to judgment against the plaintiff, Alta L. May.

IT IS SO ORDERED this 6th day of January, 1986.



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

FILED

JAN 7 1996

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

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

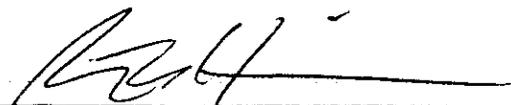
REGINA L. CLINE,)
)
Plaintiff,)
)
vs.)
)
ROLLIE DEAN BURROWS, et al.,)
)
Defendants.)

Case No. 85-C-457-C

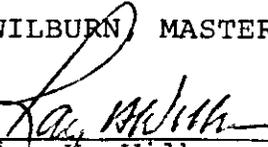
STIPULATION OF PARTIAL DISMISSAL WITHOUT PREJUDICE

COME NOW Plaintiff and Harry Davidson Trucking Co., Inc., an Arkansas corporation, being all the parties who have entered their appearance in the above styled and numbered cause, and stipulate to the Dismissal without Prejudice of Defendant Rollie Dean Burrows only.

FRASIER & FRASIER

By: 
Steven R. Hickman OBA#4172
1700 Southwest Blvd., S. 100
Tulsa, Oklahoma 74107
(918) 584-4724

WILBURN MASTERSON & HOLDEN

By: 
Ray H. Wilburn
2512-E East 71st Street
Tulsa, Oklahoma 74136

Entered

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

HEATHER YEOMAN, by and
through IRIS YEOMAN, her
mother,

Plaintiff,

v.

INDEPENDENT SCHOOL DISTRICT
NO. 23 of MIAMI, OTTAWA
COUNTY, OKLAHOMA; OKLAHOMA
STATE DEPARTMENT OF EDUCATION,

Defendants.

No. 85-C-329 ✓

FILED

JAN 6 1986 *es*

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

J U D G M E N T

This action was submitted to the Court for review of administrative action on the record. A hearing on the matter having been held and the issues having been duly heard and a decision duly rendered,

It is Ordered and Adjudged

that the plaintiff, Heather Yeoman, take nothing and that the action be dismissed on the merits. Each side is to bear its own costs and attorney fees.

DATED this 6th day of January, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

LUCILLE FRANCES RAME,)
)
 Petitioner,)
)
 v.)
)
 LARRY FIELDS, et al.,)
)
 Respondents.)

No. 85-C-392-BT ✓

FILED

JAN 6 1986

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

ORDER

Before the Court is the petition of Lucille Frances Rame challenging the validity of her conviction in the District Court of Craig County, Oklahoma, pursuant to 28 U.S.C. §2254.

On September 24, 1981, petitioner was convicted of first degree murder pursuant to 21 O.S. §701.7. Punishment was fixed at life imprisonment. Petitioner filed a direct appeal of her conviction to the Oklahoma Court of Criminal Appeals, Case No. F-82-28. That court affirmed petitioner's conviction in an unpublished opinion. Petitioner filed applications for post-conviction relief, pursuant to 22 O.S. §1080, et seq. (1981), on two separate occasions. Both applications were denied. The denials were appealed to the Court of Criminal Appeals and both were affirmed. PC-84-575, PC-84-807. Petitioner also sought a new trial based on newly discovered evidence. The Court of Criminal Appeals denied this request on March 19, 1985.

Petitioner alleges seven grounds in support of her petition for a writ of habeas corpus:

1. A government witness, Carol Wolfe, changed her testimony after being given immunity;

2. The state failed to question and bring to court an individual, Leroy Dearmond, who was at the scene of the crime and should have been charged as an accomplice or accessory;

3. The state presented perjured testimony on eight occasions during the trial;

4. The state failed to disclose evidence favorable to the petitioner;

5. The state used an unlawful identification procedure to identify suspects and cars seen at the scene of the crime;

6. The district court permitted the prosecutor to reopen the state's case to read the opening information in the case, and

7. Two jurors perjured themselves by telling the court they were not acquainted with petitioner.

After a review of the proceedings and record herein, the Court has determined pursuant to Rule 8(a), 28 U.S.C.A. foll. §2254, that an evidentiary hearing is not necessary.

On October 4, 1980, petitioner's husband was murdered in Craig County, Oklahoma. Subsequently, one Willie Wolfe was charged with and confessed to the slaying. Wolfe told authorities that he was hired by the petitioner to kill her husband for \$10,000. Petitioner denied the charge though she admitted giving money to Carol Wolfe, wife of Willie Wolfe. Petitioner claimed the Wolfes told her that if she did not give the Wolfes money, they would implicate her children in the slaying.

Petitioner was charged with conspiracy to commit murder. The charge was later amended to murder in the first degree. She was tried in the District Court for Craig County, Oklahoma, on September 21-23, 1981, and was found guilty. On November 24, 1981, she was sentenced to life in prison.

Petitioner brings this petition for a writ of habeas corpus relief acting pro se. Such pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519 (per curiam) (1971). Petitioner's complaint is often ambiguous and vague, however, the Court has broadly construed its contents in order to fully assess the allegations herein and determine whether petitioner is entitled to habeas corpus relief.

Several of petitioner's grounds for relief challenge factual findings of the trial court and admissibility of evidence. A state court's rulings on admissibility of evidence may not be questioned in a habeas corpus proceeding unless they made the trial so fundamentally unfair as to constitute denial of federal constitutional rights. Gillihan v. Rodriguez, 551 F.2d 1182, 1192-93 (10th Cir. 1977). Any error must have rendered petitioner's trial so fundamentally unfair as to deny her due process of law. Donnelly v. DeChristoforo, 416 U.S. 637 (1974).

A federal court has limited review power on a petition for writ of habeas corpus. In the absence of a finding that the contested matter falls within the provisions of 28 U.S.C. §2254(d) (1)-(7), the federal court must defer to the state court's findings. A federal court will not reassess witness credibility on a habeas corpus appeal. Marshall v. Lonberger, 459 U.S. 422 (1983).

Ultimately, the habeas corpus petitioner has the burden of proof to establish sufficient facts to warrant a finding that her constitutional rights were denied. E.g., Lokos v. Capps, 528 F.2d 576 (5th Cir. 1976); Burston v. Caldwell, 506 F.2d 24 (5th Cir.) cert. denied, 421 U.S. 990 (1975).

Petitioner's first complaint is that the State granted Carol Wolfe immunity from prosecution but did not revoke that immunity when the witness allegedly failed to testify about the murder of Fred Rame fully and truthfully. Petitioner cites nine inconsistencies in the witness' testimony at preliminary hearing and at trial. Petitioner complains that the State did not revoke the grant of immunity to Ms. Wolfe in light of these inconsistencies. This is not grounds for habeas corpus relief. Under 28 U.S.C. §2254, petitioner may seek relief only on the grounds that she is in custody in violation of the Constitution or laws or treaties of the United States. Petitioner cites cases outlining the duty of the prosecution to disclose to the defense the existence of any promise of immunity in exchange for testimony. But there is no allegation in the petition that information regarding Ms. Wolfe's immunity was withheld from the defense. Nor is there any allegation that inconsistencies in Ms. Wolfe's testimony were withheld from the defense. The jury at petitioner's trial were aware of inconsistencies in Ms. Wolfe's testimony. The defense knew of these inconsistencies and had full opportunity to use them to impeach her. (T.R. pp. 156-157, 162-163, 170-171, 174-177, 194-195) Thus, there is nothing with respect to this claim of petitioner that entitles her to habeas corpus relief.

Petitioner's second complaint is that Leroy Dearmond was not questioned by the prosecution or charged as an accessory to the murder of Fred Rame. According to testimony, Dearmond was passed out in the back of the Wolfes' car when Fred Rame was murdered. Again, petitioner has failed to state a basis for habeas corpus relief. The decision whether or not to prosecute a criminal charge

is a decision which rests within the prosecutor's discretion. U.S. v. Batchelder, 442 U.S. 124 (1978). The decision in the instant case not to prosecute Leroy Dearmond is of no relevance to petitioner's claim that her conviction is invalid. Petitioner knew that Mr. Dearmond was a passenger in the Wolfe car and was present when the murder was committed, for her attorney questioned Mr. Wolfe about this matter during petitioner's July 9, 1981, preliminary hearing. (Transcript of Preliminary Hearing, July 9, 1981, p. 20) Therefore, the existence of a possible exculpatory witness was not withheld from the defense. The Court finds no prejudice to petitioner in the state's failure to prosecute Leroy Dearmond as an accessory to murder. Therefore, petitioner's application for a writ of habeas corpus on this ground is denied.

Petitioner next complains that the State presented perjured testimony on eight occasions at trial. Although petitioner refers to the disputed testimony as "perjured", the better description is "conflicting." For example, petitioner asserts that James R. Looney, a firearm and tool mark examiner with the Oklahoma State Bureau of Investigation, testified at the April 16, 1981, preliminary hearing of Willie Wolfe that the murder weapon was a .410-gauge shotgun capable of holding three shells. (Transcript of Preliminary Hearing, April 16, 1981, p. 91) At the petitioner's trial, however, Willie Wolfe testified that the murder weapon was a seven-shot .410 shotgun. (T.R. p. 80) Petitioner offers this as an example of "perjured" testimony. Similarly, petitioner claims that discrepancies in the trial testimony of Willie and Carol Wolfe constitute use of "perjured" testimony. Petitioner overstates her

case. The mere fact of inconsistencies in testimony is not sufficient to prove perjury. U.S. v. Sloan, 465 F.2d 406 (9th Cir. 1972). Inconsistencies in the testimony of the Wolfes and other witnesses were brought out at petitioner's trial. Thus, the jury had a full opportunity to assess these inconsistencies in evaluating the credibility of the witness. Factual determinations made by the trial court are accorded a presumption that they are correct. Sumner v. Mata, 449 U.S. 539 (1981). The burden is on the petitioner to prove by clear and convincing evidence all of her allegations questioning the validity of the judgment against her. Christakos v. Hunter, 161 F.2d 692 (10th Cir. 1947), cert. denied, 332 U.S. 801; Pangos v. U.S., 324 F.2d 764 (10th Cir. 1963). After reviewing the full record in this matter, the Court is not convinced that petitioner was convicted through perjured testimony. Petitioner's attorney pointed out to the jury at trial the inconsistencies in the testimony of various witnesses. The jury was then left to resolve these factual inconsistencies. This Court cannot substitute its judgment on these matters for that of the trial court. Petitioner has failed to show by clear and convincing evidence that perjured testimony was presented at her trial. Therefore, petitioner's application for a writ of habeas corpus on this ground is denied.

Petitioner's fourth complaint is that the state failed to disclose evidence favorable to the defense. Petitioner contends that the State's failure to call Sam Parks, Henry Parks, James Looney, Lela and John Dixon, Ralph Lovett, Larry Boyles, Wayne Rice, Michael Hicks or Jerry (Mike) Cass to testify at trial constituted failure

to disclose evidence favorable to the defense which denied petitioner a fair trial. Petitioner is mistaken. The decision who to call as a witness is a matter which rests within the sound discretion of a prosecutor. Petitioner makes no claim that any of these potential witnesses possessed evidence favorable to the defense which was not disclosed by the prosecution. Petitioner merely complains that these people were not called by the prosecution at trial. This is not grounds for habeas corpus relief. Had the defense chosen, it could have called as defense witnesses any of the people petitioner has identified. The State is not obligated to prove the defendant's case. Absent any proof that petitioner was denied evidence favorable to her case, her application for a writ of habeas corpus must be denied concerning the fourth ground.

Petitioner next complains the State used "an unlawful identification procedure" to identify suspects and cars seen at the crime scene. Petitioner claims that Michael Hicks, who was hunting near the murder scene on the day of the crime, identified Eugene McDonough as the man he saw at the scene. Petitioner contends that five months later Hicks identified Willie Wolfe from a photographic lineup as the man he saw at the crime scene. Hicks testified at the preliminary hearing of Willie Wolfe, but did not testify at petitioner's trial. Petitioner makes no allegation that the inconsistencies in Hicks' identification were withheld from the defense in violation of Brady v. Maryland, 373 U.S. 83. Under Brady, the State must disclose to the defense any evidence favorable to the accused. Failure to disclose such

evidence violates due process "where the evidence is material either to guilt or to punishment irrespective of the good or bad faith of the prosecution." Id. at 87. Petitioner makes no claim and offers no support for any allegation that the prosecution violated her right to due process of law by failing to disclose evidence favorable to her defense. Therefore, petitioner's application for a writ of habeas corpus on this ground is denied.

Petitioner next complains that the trial judge allowed the prosecutor to reopen his opening statement to read the information to the jury. Title 22 Okl.St. Ann. §831 provides:

"The jury having been impaneled and sworn, the trial must proceed in the following order:

1. If the indictment or information is for a felony, the clerk or county attorney must read it, and state the plea of the defendant to the jury. . . .
2. The county attorney . . . must open the case and offer the evidence in support of the indictment or information."

Petitioner contends that this procedure was not followed at her trial. The prosecutor completed his opening statement without reading the information and stating petitioner's plea. The prosecutor then moved to reopen his opening statement in order to read the information. The motion was granted over objection of the defense.

The Oklahoma Court of Criminal Appeals has held that the provisions of 22 Okl.St. Ann. §831 are "directory and not mandatory." Ethridge v. State, 418 P.2d 95 (Okl.Cr. 1966). In Ethridge, as in the instant case, the prosecutor concluded his opening statement to the jury without reading the information to the jury. The trial judge overruled a motion for a mistrial and allowed the prosecutor to reopen his opening statement to read the information. The Court

of Criminal Appeals noted that the purpose of 22 Okl.St. Ann. §831 is to ensure that the jury "is advised of the charges against the defendant so that they will understand the issues of the case." Id. at 99. Obviously, this purpose was accomplished when the trial judge allowed the prosecutor to reopen and read the information. In any event, even though the letter of 22 Okl.St. Ann. §831 may not have been followed, petitioner was not prejudiced thereby. Therefore, petitioner's application for a writ of habeas corpus on this ground is denied.

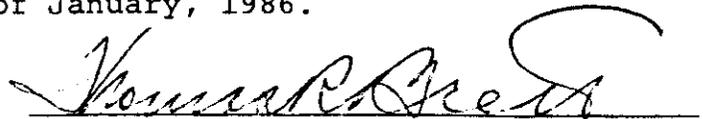
Finally, petitioner complains that two jurors "perjured" themselves by stating during voir dire that they knew petitioner only slightly. Petitioner contends both of these jurors knew her well, but petitioner makes no claim that the jurors' presence on the jury panel in some way prejudiced her. Petitioner makes no allegation of bias on the part of these jurors. A criminal defendant has a constitutional right to a trial by a panel of competent and impartial jurors. Irvin v. Dowd, 366 U.S. 717 (1961); Brinlee v. Crisp, 608 F.2d 839, cert. denied, 444 U.S. 1047 (1980). Petitioner is entitled to federal habeas relief only upon a showing that a juror was actually biased or incompetent. Smith v. Phillips, 455 U.S. 209 (1982). Petitioner received a hearing on this allegation upon her application for post-conviction relief in the District Court for Craig County, Oklahoma, and this matter was reviewed by the Oklahoma Court of Criminal Appeals. Petitioner knew of the alleged perjury of the jurors at the time of trial, but did not seek to have them removed from the jury panel. The failure to

properly preserve such an issue results in its being barred from review unless there is strong justification for the failure. Maines v. State, 597 P.2d 774 (Okl.Cr. 1979). Here, petitioner has failed to offer any justification for not objecting to seating of these jurors. Further, petitioner makes no claim that she was in any way prejudiced by their presence on the jury panel. Thus, petitioner has not demonstrated she is entitled to habeas corpus relief. Therefore, the petition for writ of habeas corpus is denied.

In passing on petitioner's application for relief in this habeas corpus action, the critical inquiry for this Court is whether, after reviewing 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. Jackson v. Virginia, 443 U.S. 307, 319 (1979). Having reviewed the record in considerable detail, the Court finds that the evidence therein is amply sufficient to support a finding of guilt beyond a reasonable doubt by a rational trier of fact. See, Jones v. Perini, 599 F.2d 129, 130 (5th Cir.) cert denied, 444 U.S. 918 (1979). Accordingly, the Court concludes the petition for writ of habeas corpus must be denied.

IT IS THEREFORE ORDERED petitioner's petition for a writ of habeas corpus is hereby denied and this proceeding dismissed.

ENTERED this 6th day of January, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JAN 6 1986

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

RONNIE RUSSELL,)
)
 Plaintiff,)
)
 v.)
)
 BRENT FATKINS, et al.,)
)
 Defendant.)

No. 85-C-503-C

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on December 11, 1985 in which the Magistrate made recommendations on pending motions. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that Plaintiff's Motion for Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction is hereby denied. Plaintiff's Motion to Allow Service by Mail and to Dispense with Requirement for Security is therefore rendered moot.

Dated this 31 day of December, 1985.


H. DALE COOK
CHIEF JUDGE

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

FILED

RONNIE RUSSELL,)
)
 Plaintiff,)
)
 v.)
)
 BRENT FATKINS, et al.,)
)
 Defendant.)

DEC 11 1985 *rm*

JACK C. SILVER, CLERK
U.S. DISTRICT COURT
No. 85-C-503-C

PRELIMINARY FINDINGS AND RECOMMENDATIONS

The Magistrate has considered Plaintiff's Motion for Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction, together with Plaintiff's concurrently filed Motion to Allow Service by Mail and to Dispense with Requirement for Security. The Magistrate has also reviewed the Plaintiff's Affidavit attached to such motions. The Magistrate has also considered Defendant's Response to Plaintiff's Motion for Temporary Restraining Order.

Plaintiff's underlying civil rights complaint alleges that he was improperly disciplined at the Conner Correctional Facility, which resulted in a reduction in good time credits and transfer to the John Louie Correction Center.

The Magistrate finds that the Plaintiff has an adequate remedy at law, and has failed to establish that he will be irreparably harmed if injunctive relief is not provided. The Magistrate further finds that the alleged injury to Plaintiff by virtue of his transfer pales in comparison to the potential harm that such an injunction may inflict upon the defendants and the Oklahoma Department of Corrections.

Public policy considerations require the Court to defer to the Oklahoma Department of Corrections when it comes to the day to day management of prison inmates. Unless the inmate demonstrates that irreparable harm will accrue to him as a result of the Department of Correction's abuse of fundamental constitutional rights, injunctive relief will not be forthcoming. Plaintiff has made no such showing.

Plaintiff's Motion for Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction should be denied. Plaintiff's Motion to Allow Service by Mail and to Dispense with Requirement for Security would therefore be rendered moot.

Dated this 11th day of December, 1985.


John Leo Wagner
United States Magistrate

Entered

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

A.F.L. FALCK, S.p.A.,)
)
 Plaintiff,)
)
 v.)
)
 FOUR-EM ENTERPRISES and)
 E. H. McKEE,)
)
 Defendants.)

No. 85-C-7-B ✓

FILED

JAN 6 1986

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

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter comes before the Court upon the parties' joint waiver of jury trial. The parties have submitted this matter to the Court for determination upon the facts stipulated to in their May 17, 1985, Joint Stipulation. Plaintiff's claim for breach of contract arises from an agreement entered into by the parties on April 13, 1983. Under the terms of the agreement, defendant Four-Em Enterprises was to pay plaintiff a fixed sum of money to settle its account with plaintiff. Plaintiff contends defendants have not abided by this agreement. Defendants assert that the final payment to plaintiff was made conditional upon Four-Em receiving full payment on its own accounts and that since this full payment was not made, defendants are not obligated to make their final payment to plaintiff. After considering the record before the Court, the arguments of counsel and the applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

FINDING OF FACT

1. The plaintiff, A.F.L. Falck, S.p.A., is a corporation organized under the laws of Italy, with its principal place of business in Milan, Italy.

2. Defendant, Four-Em Enterprises, is a corporation organized and existing under the laws of the State of Oklahoma, with its principal place of business in Tulsa, Oklahoma.

3. Defendant, E. H. McKee, is a citizen of Oklahoma, residing in Tulsa, Oklahoma.

4. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.

5. On April 13, 1983, Four-Em Enterprises, by and through its Vice President, defendant E. H. McKee, entered into an agreement with Falck for payment of a debt arising from and relating to the sale of certain goods by Falck to Four-Em. The April 13th Agreement obligated Four-Em to make to Falck:

"[A] final payment of 20,000 U.S. dollars to be made by February 29, 1984, (this last payment contingent upon Four-Em Enterprises receiving this last payment from its clients)"

6. The April 13th Agreement was reduced to writing and transcribed by defendant E. H. McKee.

7. The corporate charter of defendant Four-Em Enterprises, filed with the State of Oklahoma, was suspended by the Oklahoma Tax Commission on February 14, 1983, and remained suspended on April 13, 1983.

8. E. H. McKee, by signing the April 13th Agreement, permitted Four-Em Enterprises to incur the debt evidenced thereby with his knowledge, consent and approval.

9. The only "clients" of Four-Em Enterprises, as referred to in Paragraph 2 of the April 13th Agreement, are Jo-Way Tool Company ("Jo-Way Tool"), and Let Machine Product Company ("Let Machine"), two corporate entities.

10. Prior to April 29, 1983, Jo-Way Tool owed Four-Em Enterprises \$304,000 for goods purchased by Jo-Way Tool from Four-Em Enterprises. The goods sold to Jo-Way Tool were purchased by Four-Em Enterprises from Falck and the payment for these goods is the subject matter of this action.

11. On or about April 29, 1983, Four-Em Enterprises entered into an agreement, by and through its Vice President, E. H. McKee, with Jo-Way Tool ("the April 29th Agreement"), under which Jo-Way Tool was to pay \$200,000 to discharge its \$304,000 debt to Four-Em Enterprises.

12. Jo-Way Tool has paid Four-Em Enterprises the full \$200,000 required pursuant to the April 29th Agreement. The April 29th Agreement has been fully performed and Four-Em Enterprises has released and discharged Jo-Way Tool from any further liability for payment of the aforementioned \$304,000 debt.

13. The Jo-Way Tool account with Four-Em has been fully paid and no amount remains outstanding, due or owing to Four-Em from Jo-Way Tool.

14. Prior to April 5, 1983, Let Machine owed Four-Em \$67,000 for goods purchased by Let Machine from Four-Em. The goods sold to Let Machine were purchased by Four-Em Enterprises

from Falck and payment for these goods is the subject matter of this action.

15. On or about April 5, 1983, Four-Em Enterprises entered into an oral agreement, by and through defendant E. H. McKee, with Let Machine ("the April 5th Agreement"), under which Let Machine was to pay Four-Em \$45,000 to discharge its \$67,000 debt.

16. Let Machine has paid Four-Em the \$45,000 required pursuant to the April 5th Agreement. The April 5th Agreement has been fully performed and Four-Em Enterprises has released and discharged Let Machine from any further liability for payment of the aforementioned \$67,000 debt.

17. The Let Machine account with Four-Em has been fully paid and no amount remains outstanding, due or owing to Four-Em from Let Machine.

18. The April 13th Agreement provided that Four-Em would pay Falck \$75,000 upon execution of the agreement, which amount has been paid, plus an additional \$25,000 to be paid December 31, 1983, which amount has been paid, plus a final payment of \$20,000, which amount has not been paid and which defendants contend is not due and owing to Falck.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action under the provisions of 28 U.S.C. §1332(a)(2).

2. Any Finding of Fact that might properly be characterized a Conclusion of Law is incorporated herein.

3. The substantive law of the State of Oklahoma is applicable to the construction and interpretation of the April 13th Agreement as well as the parties' performance thereunder.

4. The Court finds that the April 13th Agreement is valid and binding on Falck and Four-Em Enterprises.

5. The Court finds that E. H. McKee, by signing the April 13th Agreement, permitted Four-Em Enterprises to incur the debt evidenced thereby with his knowledge, consent and approval.

6. The Court finds that E. H. McKee signed the April 13th Agreement as agent for Four-Em Enterprises and that on April 13, 1983, the license of Four-Em to do business in the State of Oklahoma had been suspended by the Oklahoma Tax Commission. Under 68 Okl.St. Ann. §1212(c), if an officer or director of a corporation whose license has been forfeited by the state knowingly incurs or creates a debt by the corporation, said officer or director may be held personally liable on the debt. The Court finds, however, that E. H. McKee did not incur or create a debt on behalf of Four-Em. McKee signed an agreement for settlement of a preexisting debt. Therefore, the Court holds that McKee's actions do not fall within 68 Okl.St. Ann. §1212(c) and he is not personally liable for the final payment of \$20,000. See, Henn & Alexander, Law of Corporations §73 (1983): "Directors, officers and other corporate personnel acting in their representative capacities are not personally liable on corporate contracts...." Hall v. Sullivan-Dollars Inc., 471 P.2d 453 (Okl. 1970).

7. The Court finds that the phrase, "this last payment contingent upon Four-Em Enterprises receiving this final payment from its clients," as found in the April 13th Agreement, is ambiguous in that "this last payment" may or may not refer to \$20,000 U.S. dollars." The Court finds that the intent of the parties was that said final payment would be due if and only if Four-Em Enterprises received payment of \$304,000 from its client Jo-Way Tool Company and \$67,000 from its client Let Machine Product Company. The Court further finds, however, that Four-Em Enterprises has received \$200,000 from Jo-Way and \$45,000 from Let Machine and that Four-Em has affirmatively and voluntarily released and discharged both of its clients from any further legal obligation to pay Four-Em Enterprises. Therefore, the Court finds that the condition precedent as stated in the April 13th Agreement must be deemed to have been fully performed and satisfied, and that plaintiff is entitled to judgment against defendant Four-Em Enterprises, in the principal amount of \$20,000 plus interest at the rate of six percent (6%) per annum from February 29, 1984, to date of judgment, and at the legal rate of six percent (6%) per annum thereafter.

8. The Court finds that the April 13th Agreement is a contract relating to the purchase or sale of goods under Oklahoma law. The April 13th Agreement is not a note as defined in 12A Okl.St. Ann. §3-104, because the promise to pay is not unconditional as required by 12A Okl.St. Ann. §3-104(1)(b). The agreement is not a "non-negotiable" note under 12A Okl.St. Ann.

§3-805. The Court finds the April 13th Agreement is a contract for the settlement of accounts between the parties. Under 12 Okl.St. Ann. §939, an attorney fee may be granted the prevailing party in a suit on a contract "relating to the purchase or sale of goods, wares or merchandise." Here, the April 13th Agreement was a contract to settle accounts between the parties for the purchase of goods. Therefore, the Agreement falls within the terms of 12 Okl.St. Ann. §936 and an attorney fee is proper. Therefore, plaintiff shall be allowed a reasonable attorney fee if timely application is made, pursuant to Local Rule 6(f). The Court further finds that all other costs are properly awarded to plaintiff.

In accordance with the Findings of Fact and Conclusions of Law entered herein, a judgment will be entered contemporaneously.

DATED this 6th day of January, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

CAROLEN CLARK MAJORS,

Plaintiff,

vs.

COOK-WAITE LABORATORIES, INC.,
A CORPORATION: AND BRYAN
INSTITUTE, INC., a corpor-
ation,

Defendants.

Case No.: 85-C-443-C

FILED

JAN 6 1986

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

ORDER OF DISMISSAL

ON This 31 day of Decembr, 1985, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

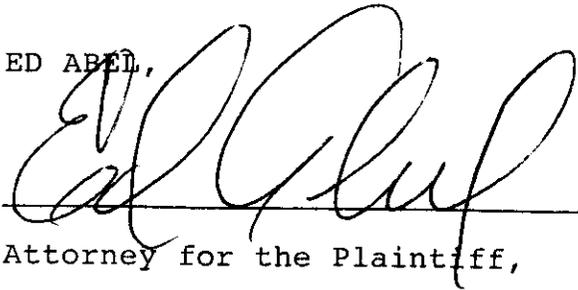
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the Defendants be and the same hereby are dismissed with prejudice to any future action.

s/H. DALE COOK

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

APPROVALS:

ED ABEL,

A large, stylized handwritten signature in black ink, appearing to read 'Ed Abel', is written over a horizontal line.

Attorney for the Plaintiff,

STEPHEN C. WILKERSON,

Attorney for the Defendant,
BRYAN INSTITUTE, INC.,

BERT JONES,

Attorney for the Defendant,
COOK-WAITE LABORATORIES, INC.

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

SOUTHWESTERN BELL TELEPHONE
COMPANY, a Missouri
corporation,

Plaintiff,

v.

ARKANSAS VALLEY PETROLEUM
INCORPORATED, an Oklahoma
Corporation, RAPID LUBE & OIL
OF TULSA, INC. a Corporation;
RAPID LUBE & OIL OF ST. LOUIS,
INC., a Corporation; RAPID LUBE
& OIL, INC., a Corporation; and
RAPID LUBE OF AMERICA, INC., a
corporation.

Defendants.

No. 84-C-564-C

FILED

JAN 6 1986

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

ORDER OF DISMISSAL

NOW ON THIS 4 day of January, 1986, upon the
written application of the parties for a Dismissal with
Prejudice of the Complaint and all causes of action,
the Court having examined said Application, finds that
said parties have entered into a compromise settlement
covering all claims involved in the Complaint and have
requested the Court to dismiss said Complaint with
prejudice to any future action. The Court being
fully advised in the premises finds that said Complaint
should be dismissed pursuant to said Application.

The Court further finds that as part and
parcel of the consideration for settlement herein that
the plaintiff agrees that in the future plaintiff will
not make any claims and/or assess any charges against

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

FILED

JAN 6 1986

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

UTICA NATIONAL BANK & TRUST)
CO., a national banking)
association,)
)
Plaintiff,)
)
vs.) No. 85-C-537-C
)
CALVIN RANSOM, et al.,)
)
Defendants.)

JOURNAL ENTRY OF JUDGMENT

Utica National Bank & Trust Co., a national banking association, filed its Complaint in this action on May 24, 1985. Service was obtained on the defendant, Charles I. McBride, by leaving a copy of the Summons and Complaint with him, personally, on October 10, 1985, pursuant to Rule 4 of the Federal Rules of Civil Procedure.

After being properly served, defendant, Charles I. McBride, has failed to plead or otherwise defend. Upon plaintiff's request and pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Clerk of this Court on December 13, 1985, entered the default of Charles I. McBride.

The Court having considered the record in this case, and having reviewed the pleadings, finds that plaintiff is entitled to judgment and hereby grants plaintiff the relief

prayed for in its Complaint against the defendant, Charles I. McBride.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, Utica, have judgment against the defendant, Charles I. McBride for the sum of \$56,303.36 with interest thereon at the rate of 6% per annum from the 15th day of May, 1985, until judgment is entered, for its attorneys fees in the amount of \$450.00 and for the costs of this action, with interest on such amounts at the rate of 7.87 % per annum from the date of judgment until paid.

s/H. DALE COOK

JUDGE OF THE UNITED STATES
DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 REBECCA YOUNGER,)
)
 Defendant.)

JAN 6 1986

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

CIVIL ACTION NO. 85-C-744-C

DEFAULT JUDGMENT

This matter comes on for consideration this 31 day of December, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Rebecca Younger, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Rebecca Younger, acknowledged receipt of Summons and Complaint on September 19, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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 the Defendant, Rebecca Younger, for the principal sum of \$1,279.52, plus accrued interest of \$67.52 and administrative costs of \$11.42 as of June 9, 1985; plus interest thereafter at the rate of 9 percent per

annum and administrative costs of \$.63 per month from June 9, 1985, until judgment, plus interest thereafter at the current legal rate of 7.57 percent from date of judgment until paid, plus costs of this action.

DALE COOK

UNITED STATES DISTRICT JUDGE

Entered

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

A.F.L. FALCK, S.p.A.,
Plaintiff,
v.
FOUR-EM ENTERPRISES and
E. H. MCKEE,
Defendants.

No. 85-C-7-B ✓

FILED

JAN 6 1986 *ag*

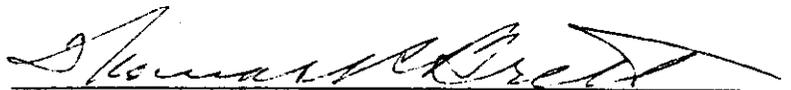
Jack C. Silver, Clerk

J U D G M E N T U. S. DISTRICT COURT

This matter was submitted to the Court by the parties upon stipulated facts. The Court having reviewed the record and proposed Findings of Fact and Conclusions of Law and the issues having been duly heard, IT IS ORDERED AND ADJUDGED,

That the plaintiff, A.F.L. Falck, S.p.A., recover of the defendant, Four-Em Enterprises, the sum of \$20,000, with interest thereon at the rate of six percent (6%) per annum from February 29, 1984, to date of judgment, and at the legal rate of 7.57% per annum thereafter, and plaintiff's costs of action. Further, plaintiff shall be allowed a reasonable attorney fee if timely application is made, pursuant to Local Rule 6(f).

DATED this 6th day of January, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

DALTON LANGLINAIS, parent and surviving
kin of GWILA LANGLINAIS, deceased,
Plaintiff,

VS.

NATIONAL CONSTRUCTION COMPANY, INC.,
et al.,
Defendants.

NO. 84-C-797-C

FILED

JAN 6 1986

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

ORDER

Upon the Application of the plaintiff in this matter dismissing individual defendants, there being no objection by other defendants;

IT IS HEREBY ORDERED that the following individuals be dismissed as defendants in this matter:

- Cussie Bentley
- Debbie Bentley
- Melissa Bentley
- Patti Halfhill
- Don Halfhill

s/H. DALE COOK

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

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

FILED

JAN -3 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

LAMONT CALVIN COLFORD SCOTT,)
by and through his Guardian ad)
Litem BOBBI SCOTT,)

Plaintiff,)

vs.)

Case No. 84-C-687-E

UNIVERSAL RECREATION, LTD.,)
a limited partnership, and its)
general partner, UNIVERSAL)
RECREATION, INC., an Oklahoma)
corporation, and MURPHY)
ENTERPRISES, INC., a Nebraska)
Corporation, d/b/a BIG SPLASH,)
and HERMAN JIMERSON, JR.,)

Defendants.)

JOURNAL ENTRY OF JUDGMENT

The above styled cause coming on for trial this 3rd
day of January, 1986, before the undersigned Magistrate of the
Federal Court. The Plaintiff appearing by and through his
attorneys of record, Kevin M. Abel and Elaine K. Semler, and
the Defendants appearing by and through their attorneys of
record, Paul Boudreaux and Richard Wassall. The Court being
advised that the parties have come to an agreed settlement and
that both parties waive their right to jury trial or a trial by
the Court. Whereupon, the Court heard testimony of certain
witnesses and being fully informed in the premises, finds the
following:

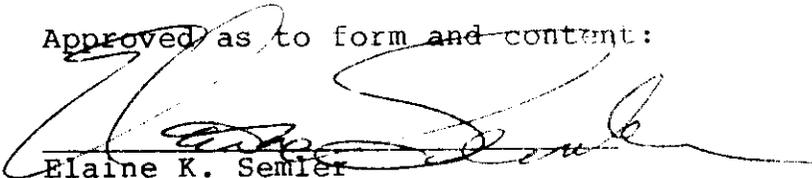
- (1) the Court finds for the Plaintiff on
all of the material allegations con-
tained in their Petition,
- (2) that Plaintiff is entitled to
judgment against the Defendants,

- (3) that pursuant to the settlement agreement entered into between the parties, the Plaintiff, Lamont Calvin Colford Scott, is to receive the amount of \$11,500.00 for the payment of his medical expenses, pain and suffering, emotional distress and all other injuries incurred due to the accident herein involved,
- (4) that medical bills of \$871.51 have been paid to date; and medical liens remain totalling \$850.24,
- (5) that attorney's fees of \$4,600.00 will be deducted from said settlement,
- (6) that litigation expenses of \$1,224.13 will be deducted from said settlement,
- (7) that pursuant to 12 O.S. 1984 §83 \$1,000.00 will be deducted and paid directly to Plaintiff,
- (8) the remaining figure of \$3,825.63 will be placed in a trust account on Plaintiff's behalf in a Federal Savings & Loan institution, and shall remain in said trust account until the minor Plaintiff reaches the age of 18 or until further order of this Court,
- (9) that this settlement constitutes the full settlement between the parties pursuant to this judgment, and that this settlement was fully and freely entered into by each of the parties,
- (10) the Court finds that this settlement should be approved as to the minor Plaintiff, Lamont Calvin Colford Scott.

THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED
that the Plaintiff have judgment against the Defendants
pursuant to the settlement agreement that the parties have
reached.

S/John L. Wagner
U.S. Magistrate
MAGISTRATE OF THE UNITED
STATES DISTRICT COURT

Approved as to form and content:


Elaine K. Semler
Attorney for Plaintiff

Richard Wassall
Attorney for Defendant,
Herman Jimerson, Jr.

Paul Boudreaux
Attorney for Defendant,
Big Splash

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE,

TULSA, OKLAHOMA 74103

January 2, 1986

JACK C. SILVER
CLERK

(918) 581-7796
(FTE) 736-7796

TO: COUNSEL/PARTIES OF RECORD

RE: Case # 84-C-743-C; DEL & BETTY TORRANCE, et al
vs ROBERT LEE KOSNOSKI, et al

This is to advise you that Chief Judge H. Dale Cook entered the following Minute Order this date in the above case:

"It is ordered upon plaintiff's application to dismiss their complaint against all the defendants is hereby granted. Case is dismissed as to all defendants this date."

Very truly yours,

JACK C. SILVER, CLERK

By:

Anita M. Murrice

Deputy Clerk

cc: Mr. Ed Parks
Mr. Ray Wilburn
Mr. William Wooten
Mr. Franklyn Casey
Mr. Walter Haskins

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

FILED

JAN -2 1986

UNITED FEATURE SYNDICATE,
INC.,

Plaintiff,

v.

WILBER HOLBERT and IRENE
HOLBERT d/b/a PASTRY MAID
et al.,

Defendants.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CASE NO. 85-C-116-B

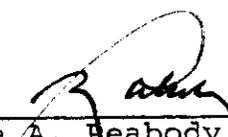
ORDER OF DISMISSAL

Defendants Wilber Holbert and Irene Holbert d/b/a Pastry Maid hereby dismiss their Counterclaims, Cross-Claims, and Third Party Complaint with prejudice, each party to pay its own costs and attorney fees.

IT IS SO ORDERED:



Judge



Bruce A. Heabody
510 S. Cherokee Suite 5
Bartlesville, Oklahoma 74003
(918) 336-4100

Attorney for Defendants
Wilber and Irene Holbert



Charles S. Plumb
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorney for Plaintiff
United Feature Syndicate

FILED

JAN -2 1985

JACK D. SILVER, CLERK
U.S. DISTRICT COURT

Entered

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

-----X		
UNITED FEATURE SYNDICATE,	:	CIVIL ACTION NO.
INC.	:	85-C-116-B
	:	
Plaintiff,	:	JUDGE THOMAS R. BRETT
	:	
vs.	:	<u>CONSENT JUDGMENT</u>
	:	<u>AND PERMANENT</u>
WILBUR HOLBERT AND IRENE	:	<u>INJUNCTION AGAINST</u>
HOLBERT d/b/a PASTRYMAID,	:	<u>DEFENDANTS WILBUR HOLBERT</u>
et al.	:	<u>AND IRENE HOLBERT d/b/a</u>
	:	<u>PASTRY MAID</u>
Defendants.	:	
-----X		

Plaintiff UNITED FEATURE SYNDICATE, INC., (hereinafter "Plaintiff"), having filed its Complaint herein on February 8, 1985 against Defendants WILBUR HOLBERT and IRENE HOLBERT d/b/a PASTRY MAID (hereinafter "Defendants"), and Defendants having agreed to pay a sum of money as damages to Plaintiff, and Defendants having consented to the entry of this Consent Judgment and Permanent Injunction without notice, to be binding on Defendants' agents, employees, and representatives and all persons in active concert or participation with Defendants who receive notice thereof:

NOW, THEREFORE, upon the consent of the parties hereto,

IT IS ORDERED, ADJUDGED and DECREED that final judgment in favor of Plaintiff and against Defendants be entered as follows:

1. This Court has jurisdiction of the subject matter of all counts of this action and over all the parties hereto.

2. The copyrights of Plaintiff described in the Complaint filed in this action (which Complaint and all exhibits thereto are incorporated herein and made a part hereof), are good, valid and enforceable in law, and Plaintiff is the sole proprietor of all right, title and interest in and to said copyrights.

3. Count I of the Complaint states a claim against Defendants for infringement of Plaintiff's rights protected under Section 43(a) of the Federal Trademark Act (15 U.S.C. §1125(a)).

4. Counts II and III of the Complaint state claims for copyright infringement against Defendants under the Federal Copyright Act.

5. Counts IV and V of the Complaint state claims against Defendants for unfair competition arising under the Oklahoma Deceptive Trade Practices Act and the common law of the State of Oklahoma.

6. Defendants, shall pay to United Feature Syndicate, Inc., \$5,000.00.

7. Defendants and Defendants' respective successors, assigns, affiliates, agents, servants, employees and representatives, and all persons, firms and corporations in active concert or participation with Defendants who receive notice hereof, be and are hereby enjoined and restrained:

(a) from directly or indirectly infringing the copyrights of Plaintiff or the trademark and proprietary rights of Plaintiff in any manner and by means of any activities, including but not limited to, manufacturing, distributing, selling, offering for sale or disposing of or causing to be manufactured, distributed, sold, offered for sale or disposed of:

(i) cakes bearing the likeness of the PEANUTS and GARFIELD characters "Lucy " and "Garfield" (hereinafter "Cakes") as pictured in Exhibits 7 and 8 of the Complaint (attached hereto and made a part hereof);

(ii) any other cakes or other unauthorized products which copy or bear a substantial similarity to "Lucy" and "Garfield" or any other PEANUTS and GARFIELD characters or any

representations confusingly similar to the likenesses of any of the PEANUTS and GARFIELD characters; and

(iii) any unauthorized advertising or promotional materials, labels, packaging or containers or other unauthorized products picturing, reproducing or utilizing the likenesses of "Lucy" and "Garfield" or of any other PEANUTS and GARFIELD characters or any representation confusingly similar to the likenesses of any of the PEANUTS and GARFIELD characters;

(b) from engaging in any other conduct that tends to falsely represent that, or is likely to confuse, mislead and deceive purchasers, Defendants' customers or members of the public into believing that said Cakes or other unauthorized products of Defendants originate from Plaintiff or that said Cakes, Defendants' other unauthorized products, or Defendants themselves has been sponsored, approved or licensed by Plaintiff or are in some way affiliated or connected with Plaintiff or the PEANUTS and GARFIELD comic strip in any way whatsoever.

8. Defendants shall promptly deliver up to Plaintiff for destruction any remaining inventory of the Cakes pictured in Exhibits 7 and 8; any other Cakes or other

unauthorized products which copy or bear a substantial similarity to "Lucy" and "Garfield" or any other PEANUTS and GARFIELD characters or any representation confusingly similar to one or more of said characters.

9. Defendants' Counterclaims are dismissed with prejudice.

10. Defendants' third-party Crossclaims are dismissed with prejudice.

11. Each party shall pay its or his own costs and attorneys' fees.

12. The Court shall retain jurisdiction to construe, enforce, or implement this Consent Judgment and Permanent Injunction upon the application of any party.

DATED: January 2, 1986

Approved:

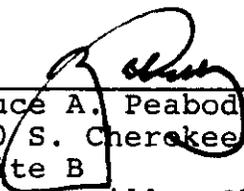
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

By: 

Charles S. Plumb
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Plaintiff

By: 

Bruce A. Peabody
510 S. Cherokee
Suite B
Bartlesville, Oklahoma 74003
(918) 336-4100

Attorneys for Defendants

MSC2(Y)
dar 9-19-85



EXHIBIT 7

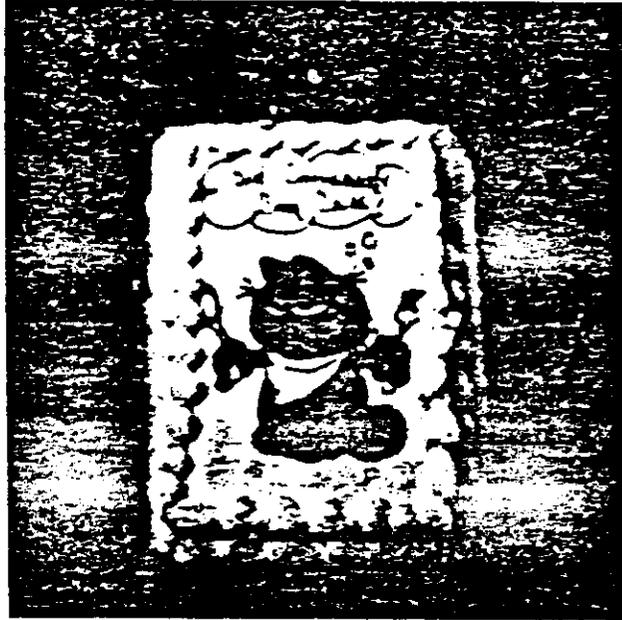


EXHIBIT 8

Entered

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

FILED

JAN -2 1986

CLARENCE W. HAACK, individually)
and on behalf of himself and all)
other shareholders of International)
Metal Co., similarly situated,)
Plaintiff,)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

vs.)

CIVIL ACTION NO. 84-C-24-B

INTERNATIONAL METAL CO., DAVID H.)
BURTON, CHARLES R. BENJAMIN, and)
CREEKHOMA DEVELOPMENT COMPANY, a)
partnership composed of DAVID H.)
BURTON and CHARLES R. BENJAMIN,)
Defendants.)

INTERNATIONAL METAL CO.,)
DAVID H. BURTON, and)
CHARLES R. BENJAMIN,)
Counter-Plaintiffs,)

v.)

CLARENCE W. HAACK,)
Counter-Defendant.)

ORDER APPROVING DISMISSAL

On this 2nd day of January, 1986, there comes

before the Court the Joint Stipulation of Dismissal With Prejudice and Motion for Order Approving Dismissal (the "Joint Stipulation and Motion") filed in the above-entitled action by the Plaintiff, Clarence W. Haack, and the Defendants, International Metal Co., David H. Burton, Charles R. Benjamin and Creekhoma Development Company. The Court, having reviewed the Joint Stipulation and Motion and being fully advised in the

premises, finds that no notice of the Joint Stipulation and Motion need be given to the shareholders of International Metal Co. and thus that the Joint Stipulation and Motion should be granted.

IT IS THEREFORE ORDERED that the joint dismissal with prejudice reflected in the Joint Stipulation and Motion be and hereby is approved in all respects and that the above-entitled action, and each and every claim for relief asserted therein, whether as a counterclaim or otherwise, be and is hereby dismissed with prejudice, each party to bear his or its own costs, expenses and attorneys' fees.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN -2 1985

LEROY ROBERTSON,

Plaintiff,

vs.

MARGARET M. HECKLER,
Secretary of Health and
Human Services,

Defendant.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 84-C-203-B

O R D E R

Upon the Motion of the Defendant, Secretary of Health and Human Services, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and for good cause shown, pursuant to the Social Security Disability Benefits Reform Act of 1984, it is hereby ORDERED that this case be remanded to the Secretary for readjudication.

Dated this 31st day of December, 1985.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins
NANCY NESBITT BLEVINS
Assistant U.S. Attorney

Entered

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

FILED

JAN -2 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN RE:)
)
 GENE E. WILLIAMS,)
)
 Debtor,)
)
 PATRICIA ANN WILLIAMS,)
)
 Plaintiff,)
)
 v.)
)
 GENE E. WILLIAMS,)
)
 Defendant.)

No. 84-C-379-E
 Consol.
 No. 84-C-282-BT ✓

O R D E R

This matter consists of cross-appeals from the judgment entered by the United States Bankruptcy Court for the Northern District of Oklahoma in case number 82-00813, adversary number 82-0483. The cross-appeals, 84-C-282-B and 84-C-379-E, were consolidated for the Court's consideration. For the reasons set forth below, the decision of the Bankruptcy Court is hereby affirmed.

Plaintiff Patricia Ruth Williams and defendant/debtor Gene E. Williams were divorced pursuant to a June 17, 1982 decree of the District Court in and for Tulsa County, Oklahoma. The decree awarded Gene Williams the couple's homestead and the 125 acres of land upon which it was located, subject to the mortgage indebtedness existing on the property. Patricia Ruth Williams was awarded \$167,000 in alimony, payable in monthly installments over a period of nine years. She was also awarded a judgment for \$130,000 "as a further division of property" (later reduced to \$127,000), operating as a lien against the 125 acres and payable within one year. Plaintiff was also awarded 35 acres of land, which the parties stipulate

is not at issue herein.

On July 16, 1982, less than one month later, Gene Williams filed a voluntary Chapter 7 petition for relief. He claimed his homestead as exempt pursuant to 31 O.S. §1(1), which has not been challenged. The plaintiff commenced the adversary proceeding asserting that the \$127,000 award is in the nature of alimony, maintenance, or support and is therefore nondischargeable under 11 U.S.C. §523(a)(5)(B). Plaintiff also contends that the lien granted by the district court against the 125 acres is not avoidable. Defendant maintains that the \$127,000 debt is in the nature of a property settlement and is dischargeable and that the lien is a judicial lien subject to avoidance under 11 U.S.C. §522(f)(1). Defendant/debtor does not contest the non-dischargeability of the \$167,000 alimony award.

On March 20, 1984, the Bankruptcy Court found that the \$127,000 award was not one for alimony, maintenance, or support and was therefore dischargeable in bankruptcy. As for the lien, the Bankruptcy Court found that it was not avoidable. In re Williams, 38 R.R. 224 (Bankr. N.D.Okla. 1984).

Appellant Patricia Ruth Williams' brief in support of the appeal limits itself to the argument that defendant's notice of appeal was not timely filed. Plaintiff presumably takes issue with the Bankruptcy Court's determination that the \$127,000 award was in the nature of a property settlement and thus dischargeable. Defendant contends in this appeal that the Bankruptcy Court erred in concluding that the lien was not dischargeable as it impairs the exemption of homestead property.

By failing to brief the issue on appeal, Patricia Ruth Williams has waived her argument that the \$127,000 award was for alimony, maintenance, or support. Further, the Bankruptcy Court's finding that the award was in the nature of a property settlement was not clearly erroneous and is therefore affirmed. Rule 8013, Rules of Bankruptcy Procedure; Frank v. Arnold, 717 F.2d 100 (3rd Cir. 1983).

The remaining issue is whether the Bankruptcy Court erred in concluding that plaintiff retains a lien against the real property awarded defendant in the divorce proceeding.

As the Bankruptcy Court observed below, the majority view affirms the survivability of unvoided and unvoided liens, leaving intact the creditor's right to proceed in rem. In re Weathers, 15 B.R. 945, 948 (Bank. D. Kan. 1981). Section 524(a)(2) "does not prevent post-discharge enforcement of a valid lien on property of the debtor existing at the time of the entry of the order for relief, providing such lien was not avoided under the Code" "[P]roperty of the debtor' in §524(a)(2) necessarily refers to property acquired after the filing of the petition commencing the Title 11 case." In re Smiley, 26 B.R. 680, 682 (Bankr. D. Kan. 1982). Thus, given the majority view that a lien can be survivable in bankruptcy, the survivability of this particular lien rests on whether it is avoidable.

Section 522(f) (1) of the Bankruptcy Code provides:

"(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such a lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is --

(1) a judicial lien" [emphasis added]

A judicial lien that arises contemporaneously with a conveyance of property does not fall under the provisions of section 522.

"The language of §522(f) states that a Debtor can avoid 'the fixing of a lien on an interest in property of the debtor.' The use of the word 'fixing' rather than 'fixed' and the phrase 'an interest in the debtor' rather than 'property of the debtor' prohibits the avoidance of a lien which has attached prior to the debtor's acquisition of the property. In other words, 'Congress intended the avoidance of liens that become fixed 'after' the debtor acquired the interest upon which they became fixed.'" [Emphasis added]

In re McCormick, 18 B.R. 911, 914 (Bankr. W.D. Pa. 1982) aff'd 22 B.R. 997 (W.D. Pa. 1982). The McCormick court announced the rule, with which the Bankruptcy Court below concurred, that "a judicial lien which attached to an interest in property prior to the debtor's acquisition of that interest is not avoidable pursuant to §522(f) (1)" since "[t]he legislative history and the language of the section indicate that the phrase 'an interest of the debtor in property' refers to an unencumbered interest at the time of acquisition." In re McCormick, 18 B.R. at 914. The debtor's interest in the property herein was encumbered at the acquisition of the property pursuant to the divorce decree. When the state district court granted debtor the interest in the 125 acres, the conveyance was made subject to the lien. Though the

judicial lien here did not attach prior to the debtor's acquisition, but rather attached contemporaneously, the rule of McCormick still applies as the debtor's interest was encumbered at the time of acquisition.

Defendant contends he had a joint interest in the property prior to the divorce and decree and that this fact rescues him from McCormick. However, a new, undivided interest in the property was created upon the conveyance under the decree. As for debtor's contention that the ruling below deprives him of his homestead exemption as provided by Title 31 Okla.Stat. Ann. §1 (1981), the homestead exemption applies only insofar as the interest he acquired by the divorce decree.

The Bankruptcy Court properly found that the lien may not be avoided and therefore survives with the plaintiff's in rem rights intact, though the personal obligation secured by the lien was discharged. In re Weathers, 15 B.R. 945 (Bank.D.Kan. 1981).

The decision of the United States Bankruptcy Court is affirmed.

IT IS SO ORDERED this 2nd day of January, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

JAN -2 1986 *af*

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN RE:)
)
 GENE E. WILLIAMS,)
)
 Debtor,)
)
 PATRICIA ANN WILLIAMS,)
)
 Plaintiff,)
)
 v.)
)
 GENE E. WILLIAMS,)
)
 Defendant.)

No. 84-C-379-E
Consol.
No. 84-C-282-BT

O R D E R

This matter consists of cross-appeals from the judgment entered by the United States Bankruptcy Court for the Northern District of Oklahoma in case number 82-00813, adversary number 82-0483. The cross-appeals, 84-C-282-B and 84-C-379-E, were consolidated for the Court's consideration. For the reasons set forth below, the decision of the Bankruptcy Court is hereby affirmed.

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3

is not at issue herein.

On July 16, 1982, less than one month later, Gene Williams filed a voluntary Chapter 7 petition for relief. He claimed his homestead as exempt pursuant to 31 O.S. §1(1), which has not been challenged. The plaintiff commenced the adversary proceeding asserting that the \$127,000 award is in the nature of alimony, maintenance, or support and is therefore nondischargeable under 11 U.S.C. §523(a)(5)(B). Plaintiff also contends that the lien granted by the district court against the 125 acres is not avoidable. Defendant maintains that the \$127,000 debt is in the nature of a property settlement and is dischargeable and that the lien is a judicial lien subject to avoidance under 11 U.S.C. §522(f)(1). Defendant/debtor does not contest the non-dischargeability of the \$167,000 alimony award.

On March 20, 1984, the Bankruptcy Court found that the \$127,000 award was not one for alimony, maintenance, or support and was therefore dischargeable in bankruptcy. As for the lien, the Bankruptcy Court found that it was not avoidable. In re Williams, 38 R.R. 224 (Bankr. N.D.Okla. 1984).

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By failing to brief the issue on appeal, Patricia Ruth Williams has waived her argument that the \$127,000 award was for alimony, maintenance, or support. Further, the Bankruptcy Court's finding that the award was in the nature of a property settlement was not clearly erroneous and is therefore affirmed. Rule 8013, Rules of Bankruptcy Procedure; Frank v. Arnold, 717 F.2d 100 (3rd Cir. 1983).

The remaining issue is whether the Bankruptcy Court erred in concluding that plaintiff retains a lien against the real property awarded defendant in the divorce proceeding.

As the Bankruptcy Court observed below, the majority view affirms the survivability of unvoided and unvoided liens, leaving intact the creditor's right to proceed in rem. In re Weathers, 15 B.R. 945, 948 (Bank. D. Kan. 1981). Section 524(a)(2) "does not prevent post-discharge enforcement of a valid lien on property of the debtor existing at the time of the entry of the order for relief, providing such lien was not avoided under the Code" "[P]roperty of the debtor' in §524(a)(2) necessarily refers to property acquired after the filing of the petition commencing the Title 11 case." In re Smiley, 26 B.R. 680, 682 (Bankr. D. Kan. 1982). Thus, given the majority view that a lien can be survivable in bankruptcy, the survivability of this particular lien rests on whether it is avoidable.

Section 522(f)(1) of the Bankruptcy Code provides:

"(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such a lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is --

(1) a judicial lien" [emphasis added]

A judicial lien that arises contemporaneously with a conveyance of property does not fall under the provisions of section 522.

"The language of §522(f) states that a Debtor can avoid 'the fixing of a lien on an interest in property of the debtor.' The use of the word 'fixing' rather than 'fixed' and the phrase 'an interest in the debtor' rather than 'property of the debtor' prohibits the avoidance of a lien which has attached prior to the debtor's acquisition of the property. In other words, 'Congress intended the avoidance of liens that become fixed 'after' the debtor acquired the interest upon which they became fixed.'" [Emphasis added]

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judicial lien here did not attach prior to the debtor's acquisition, but rather attached contemporaneously, the rule of McCormick still applies as the debtor's interest was encumbered at the time of acquisition.

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The Bankruptcy Court properly found that the lien may not be avoided and therefore survives with the plaintiff's in rem rights intact, though the personal obligation secured by the lien was discharged. In re Weathers, 15 B.R. 945 (Bank.D.Kan. 1981).

The decision of the United States Bankruptcy Court is affirmed.

IT IS SO ORDERED this 2nd day of January, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

JAN -2 1986 *uf*

CALVIN R. WALTERS,)
)
 Plaintiff,)
)
 v.)
)
 B. F. GOODRICH COMPANY, a New)
 York corporation domesticated)
 and going business in the)
 State of Oklahoma,)
)
 and)
)
 INTERNATIONAL UNION OF THE)
 UNITED RUBBER, CORK, LINOLEUM)
 AND PLASTIC WORKERS OF)
 AMERICA AFL-CIO-CLC LOCAL NO.)
 318,)
)
 Defendants.)

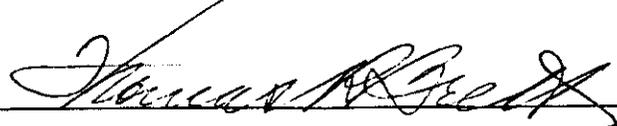
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 84-C-581-B ✓

J U D G M E N T

In keeping with the Order filed this date sustaining the motions for summary judgment of defendants, IT IS HEREBY ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendants, B. F. Goodrich Company and International Union of the United Rubber, Cork, Linoleum and Plastic Workers of America AFL-CIO-CLC Local No. 318, recover of the plaintiff their costs of action.

DATED this 2nd day of January, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

JAN -2 1985

af

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CALVIN R. WALTERS,)
)
 Plaintiff,)
)
 v.)
)
 B. F. GOODRICH COMPANY, a New York)
 corporation domesticated and doing)
 business in the State of Oklahoma,)
)
 and)
)
 INTERNATIONAL UNION OF THE UNITED)
 RUBBER, CORK, LINOLEUM AND PLASTIC)
 WORKERS OF AMERICA AFL-CIO-CLC)
 LOCAL NO. 318,)
)
 Defendants. .)

No. 84-C-581-B ✓

O R D E R

This matter comes before the Court on the motion to dismiss and/or motion for judgment on the pleadings of defendant International Union of the United Rubber, Cork, Linoleum and Plastic Workers of America AFL-CIO-CLC Local No. 318 ("Union") and the motion for summary judgment of defendant B. F. Goodrich Co. ("Goodrich"). Because the issues raised in both motions are essentially identical and since Goodrich and the plaintiff have brought in matters outside the pleadings for the Court's consideration, the motion to dismiss is converted to one for summary judgment. For the reasons set forth below, the Court concludes the motions for summary judgment should be granted.

Defendant Goodrich suspended plaintiff Calvin R. Walters ("Walters") from employment on July 8, 1982, after plaintiff

refused to sign a letter acknowledging his allegedly insubordinate and disrespectful conduct and also acknowledging that Walters would be immediately discharged upon any further act of insubordination or disrespect. In its July 8, 1985 letter to Walters, Goodrich offered to re-employ Walters if he would obtain certification from a psychologist or psychiatrist that he was able to return to work. Walters consulted a psychologist, produced a letter indicating that he had no significant emotional problems, and returned to work on August 9, 1982.

Plaintiff requested the Union to file a grievance to obtain back-pay for the period of suspension. The Union advised Walters in November of 1982 that no grievance would be filed. Walters filed this action on June 25, 1984.

Plaintiff's first claim is based on section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. §185. Plaintiff claims that the defendant union failed to provide adequate representation by refusing to file a grievance to obtain back-pay for the period of suspension. Complaint and Proposed Amended Complaint, paragraph XI. Plaintiff also alleges that Goodrich and the Union breached a collective bargaining agreement which provides for a five-step grievance procedure and that Goodrich and the Union conspired to deprive plaintiff of his employment. The five additional counts are pendent claims. Plaintiff dropped the second count, libel, in his amended complaint of March 17, 1985. In the third count, plaintiff states that the Union interfered with plaintiff's rights to

benefits under the collective bargaining agreement since it failed to provide plaintiff with the proper forum in which to air his grievance. Plaintiff's other stated causes of action are intentional infliction of emotional distress (Count IV), intentional tort (Count V), and wrongful discharge (Count VI).

Defendants seek summary judgment on the ground that plaintiff's claims under the LMRA are governed by the six-month statute of limitations adopted in DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983) and that the pendent claims are preempted by federal labor law.

DelCostello held that the six-month limitation period in section 10(b) of the National Labor Relations Act, 29 U.S.C. §160(b), governs claims against both an employer for breach of a collective bargaining agreement and a union for breach of the union's duty of fair representation.

An employee's right of action against his union and his employer in a "hybrid" action such as this accrues, for limitations purposes, on the date when the union rejected his grievance. Lincoln v. District 9 of International Ass'n of Machinists and Aerospace Workers, 723 F.2d 627 (8th Cir. 1983); Wilcoxon v. Kroger Food Stores, 723 F.2d 626 (8th Cir. 1983).

The parties agree that in November, 1982, the Union Vice-President rejected plaintiff's request that a grievance be filed to obtain back pay for the period of suspension. The six month limitations period expired in April, 1983. Plaintiff filed this action in June of 1984.

Plaintiff argues that the statute of limitations was tolled by his filing of a complaint with the Oklahoma Human Rights Commission ("OHRC") and the Equal Employment Opportunity Commission ("EEOC") on July 22, 1983. The Title VII claim and the breach of the duty of fair representation claim are each independent of the other. Pickens v. Nicolet Paper Co., 1116 LRRM 3028 (E.D.Wisc. 1984). Plaintiff's filing of the EEOC charge against Goodrich did not, therefore, toll the running of his claim against Goodrich or the Union.

In the alternative, plaintiff contends that the doctrine of equitable tolling should apply here. Such a position runs contrary to the strong federal policy favoring relatively rapid resolution of labor disputes. DelCostello, 462 U.S. at 168. Further, plaintiff was represented by counsel throughout the EEOC proceedings and thus is charged with presumptive knowledge of the six-month limitations period enunciated in DelCostello on June 8, 1983. Plaintiff filed this action more than a year later. Though plaintiff contends he had a good faith belief he was exhausting administrative remedies, such a belief was unreasonable. One need not exhaust remedies on a discrimination claim before pursuing a hybrid claim for breach of adequate representation and breach of a collective bargaining agreement. Equitable tolling in this case would be inconsistent with federal labor law policies and is inappropriate under these facts. Boyd v Teamsters Local Union 553, 589 F.Supp. 794 (S.D.N.Y. 1984).

With respect to plaintiff's allegations of "continuing violations" of the collective bargaining agreement, Goodrich refers the court to plaintiff's deposition. After a thorough review of the deposition and plaintiff's affidavit, the court concludes no material issue of fact remains. The motions for summary judgment are granted.

First, plaintiff does not tie any of the alleged "continuing violations" to his suspension of July 8 to August 9, 1982. Said continuing violations cannot resurrect plaintiff's claim for back-pay for the 1982 suspension. At most, said continuing violations would constitute separate and independent violations of the agreement.

Second, plaintiff's deposition reveals that plaintiff at no time actually filed a grievance for said alleged continued harassment with his Union within six months of the filing of the complaint. Furthermore, although plaintiff contends that he attempted to file grievances with the Union, but was not allowed to do so (Walters Affidavit and Walters Deposition pp. 45, 46, 47, 55, 98; Memorandum in Support of Plaintiff's Response to Goodrich's Motion for Summary Judgment, p. 14), plaintiff has failed to produce any evidence that such attempts were made within six months of the filing of the complaint. Because there are no alleged breaches of the collective bargaining agreement before the court which occurred within the six months prior to the filing of the complaint, plaintiff's §301 claim is barred. The remainder of the claims are dismissed for lack of subject matter jurisdiction.

On September 10, 1984, plaintiff filed an application to amend his complaint in order to allege "continuing violations" which he contends would extend the limitations period. In the proposed second amended complaint, plaintiff makes the general allegation that he has been subjected to incidents of harassment since his return to work, and that the Union has refused to help him. Plaintiff does not allege that the continuing violations somehow relate back to the initial suspension or refusal to file a grievance and does not allege that the incidents or refusals occurred within six months of the filing of the complaint. General, unspecified allegations of continuing violations cannot extend the limitations period relative to plaintiff's claim of the Union's November, 1982 failure to provide adequate representation or his claim for an alleged breach of the collective bargaining agreement relative to the July, 1982 suspension. In comparing the proposed second amended complaint with its predecessor, the Court observes that plaintiff does not seek any additional damages for the newly alleged "continuing violations," indicating that the proposed second amended complaint is an attempt to rescue the initial complaint from the limitations bar. Plaintiff's application to amend complaint must be denied, as it, too, is insufficient to save the claim from the six-month limitations period. King & King Enterprises v. Champlin Petroleum Co., 446 F.Supp. 906, 908-9; 3 Moore's Federal Practice §15.08[4] (3d Ed. 1985).

For the reasons set forth above, plaintiff's motion to amend complaint is denied, defendant Union's motion to dismiss is

converted to one for summary judgment, and defendants' motions for summary judgment are granted.

A Judgment consistent herewith will be filed on this date.

IT IS SO ORDERED, this 2nd day of January, 1986.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

FILED

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

JAN -2 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

MINOLTA CORPORATION,)	
)	
Plaintiff,)	
-vs-)	Case No. 85-C-478-B
)	
)	
STANDARD OFFICE SUPPLY)	
OF TULSA, INC., WILLIAM)	
L. MOORE III and TERESA)	
L. MOORE,)	
)	
Defendants.)	

ORDER DISMISSING ACTION AS TO
TERESA L. MOORE, NOW KNOWN AS BARKER,
ONLY, WITHOUT PREJUDICE

NOW on this 2nd day of January, 1986,
this matter coming on for consideration before the under-
signed United States District Judge upon the joint appli-
cation and stipulation of Plaintiff, Minolta Corporation,
and Defendant, Teresa L. Moore, now known as Barker, for
entry of an order of dismissal without prejudice as to
Defendant, Teresa L. Moore, now known as Barker, only,
the Court finds that said motion is made for good cause
shown, and the same should be, and is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
this action is dismissed, without prejudice, as to
Defendant, Teresa L. Moore, now known as Barker, only.

S/ THOMAS R. BRETT

HONORABLE THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE