

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

FILED

MAR 5 1986

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

THE B.F. GOODRICH COMPANY,)
A New York Corporation,)
)
Plaintiff,)

-vs-)

No. 82-C-1211-C

MANLEY TRUCK LINE, INC., a)
Missouri Corporation, and)
HAYES MOTOR FREIGHT, INC.,)
an Oklahoma Corporation, and)
L & L MOTOR FREIGHT, INC.,)
)
Defendants,)

and)

HARTFORD INSURANCE COMPANY)
and CNA INSURANCE COMPANY,)
)
Garnishee.)

AGREED STIPULATION ^{ob} FOR DISMISSAL

COMES NOW the garnishor/defendant Manley Truck Lines, Inc. and the garnishee Hartford Insurance Company and the garnishee CNA Insurance Company and jointly requests that the above captioned matter be dismissed as the issues have been settled.

The garnishor/defendant, Manley Truck Lines, Inc. has agreed to accept \$19,000.00 in full settlement of this garnishment action with garnishee Hartford Insurance Company paying \$14,675.00 and CNA Insurance Company paying \$4,375.00 to the garnishor Manley Truck Lines, with the stipulation that CNA will not seek subrogation from garnishee Hartford Insurance Company.

WHEREFORE all parties agree and stipulate that the afორereferenced matter should be dismissed.

Respectfully submitted,

WILBURN, MASTERSON & HOLDEN

BY *Michael J. Masterson*
MICHAEL J. MASTERSON OBA # 5769
Attorney for Defendant Manley

2512-E East 71st Street
Tulsa, Oklahoma 743136
(918)-494-0414

John R. Dunnery
JOHN DUNNERY
Attorney for Garnishee
CNA Insurance Company

Robert Taylor
ROBERT TAYLOR
Attorney for Garnishee
Hartford Insurance Company

CERTIFICATE OF MAILING

I, Michael J. Masterson, hereby certify that on the 11 day of March, 1986, I mailed a true and correct copy of the above and foregoing Agreed Stipulation for Dismissal with proper postage thereon fully prepaid to John Dunnery, 1515 E. 71st Street, Suite 200, Tulsa, OK 74136, Robert Taylor, 2421 E. Skelly Drive, 26 Oaks Office Park, Tulsa, OK and Patrick Kernan, 2840 E. 51st Street, Brittany Square, Suite 180, Tulsa, Oklahoma 74105.

Michael J. Masterson
MICHAEL J. MASTERSON

IN THE DISTRICT COURT FOR THE NORTHERN DISTRICT,
STATE OF OKLAHOMA

LINDA WHITAKER,

Plaintiff,

vs.

R. L. CLARK DRILLING COMPANY,
a Corporation,

Defendant.

No. 86-C-180 E

APPLICATION FOR DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff and states to the Court that R. L. Clark Drilling Company of Mansfield, Missouri, was the named owner on the accident report, a copy of which is attached hereto.

The Plaintiff has been informed and proof shown that R. L. Clark Drilling Company is not the owner, but that Thornton Drilling Company, Bartlesville, Oklahoma, is the owner, and therefore said cause should be dismissed without prejudice to refileing said cause.

FILED

MAR 31 1986

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



Charles E. Daniel
Attorney for Plaintiff
128 East Broadway
Drumright, Oklahoma 74030
918/352-9504

ORDER OF DISMISSAL

For good cause shown, the above-styled cause is ordered dismissed without prejudice to refileing against the proper party.

DATED this 28th day of March, 1986.

57 JAMES O. ELLISON

U. S. DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 5 1986

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ATLAS CABLE TELEVISION,)
INC., et al.,)
)
Defendants.)

CIVIL ACTION NO. 85-C-1081-C

STIPULATION OF DISMISSAL

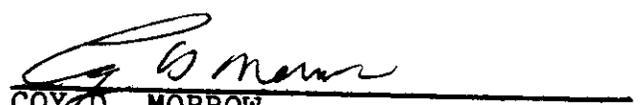
COME NOW the Plaintiff, United States of America, and the Defendants appearing herein, by their respective counsel and hereby stipulate and agree that Plaintiff's Second Cause of Action is dismissed pursuant to Rule 41 of the Federal Rules of Civil Procedure.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney


JAMES R. MEREDITH
Attorney, Atlas Cable
Television, Inc.


COY D. MORROW
Attorney, Welch State Bank



CHARLES A. BAMSEY
Assistant District Attorney
Board of County Commissioners
County Treasurer
Mayes County, Oklahoma



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

FILED

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

MAR 31 1986

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

JAMES F. THOMPSON,)
)
 Plaintiff,)
)
 vs.)
)
 WESTINGHOUSE ELECTRIC CORPORATION,)
)
 Defendant.)

No. 85-C-388-E

ORDER OF DISMISSAL WITHOUT PREJUDICE

It appearing to the Court that the above entitled action has been fully settled and compromised between the parties and based upon the stipulation filed in the matter;

IT IS ORDERED, ADJUDGED AND DECREED that the above entitled action be and it is hereby dismissed without cost to either party and without prejudice to the Plaintiff.

Dated this 31st day of March, 1986.

UNITED STATES DISTRICT JUDGE

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

MAR 31 1986

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JIMMIE DARRILL SUMNER,
CHARLES GARDINER and
LINDA GARDINER,

Plaintiffs,

v.

CITY OF COLLINSVILLE,
Collinsville, Oklahoma.

No. 86-C-307-B

O R D E R

This matter comes before the Court on Plaintiffs' Motion for Temporary Restraining Order pursuant to F.R.Civ.P. 65(b). The Court, sua sponte, dismisses this matter for lack of subject matter jurisdiction.

Plaintiffs own land adjacent to property owned by the City of Collinsville, Oklahoma. Plaintiffs allege that the City of Collinsville has dumped waste run-off water on their property thereby causing flooding and erosion and damaging them. Plaintiffs bring this action before this Court alleging a violation of 42 U.S.C. §1983.

To state a claim for relief under §1983, a plaintiff must show that he was deprived of a right secured by the laws of Constitution of the United States, and that such deprivation was carried out under color of law. Paul v. Davis, 424 U.S. 693 (1975); Adickes v. Kress & Co., 398 U.S. 144 (1970). The right violated must be specifically identified. Conclusory allegations are not sufficient to support a claim under §1983. Brice v. Day, 604 F.2d 664 (10th Cir. 1979), cert. denied, 444 U.S. 1086 (1980). Here,

the alleged violation is the dumping of waste water on Plaintiffs' land by the city of Collinsville. The alleged wrongdoing is a trespass under 51 O.S. §156.

Section 1983 imposes liability for violation of rights protected by the U.S. Constitution or laws of the United States, not for violations of duties arising out of tort law. Baker v. McCollan, 443 U.S. 137 (1979); Wise v. Bravo, 666 F.2d 1328 (10th cir. 1981) ["Remedies for (violations of duties arising from tort law) must be sought in the state court under the traditional tort-law principles." Id. at 1333.] A trespass to property, such as Plaintiffs allege herein, is a common law tort, not a violation of the federal constitution. Id. at 1335. Thus, Plaintiffs have failed to allege an element essential to their cause of action. Although dismissal for failure to state a claim and dismissal for lack of subject matter jurisdiction are not equivalent, the same factors - absence of state action, a protected right or color of state law - which result in failure to state a claim under the Civil Rights Act of 1871 also result in a lack of subject matter jurisdiction under 28 U.S.C. §1343(3). Gresham Park Community Organization v. Howell, 652 F.2d 1227, 1237 n. 26 (5th cir. 1981). Because Plaintiffs do not allege deprivation of a federally protected right, but only violation of a duty arising out of tort law, Plaintiffs' claim must be dismissed.

IT IS SO ORDERED, this 31ST day of Mar, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 26 1986

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

CITY INSURANCE COMPANY, a)
 New Jersey corporation,)
)
 Plaintiff,)
)
 vs.)
)
 CLYDE PETROLEUM, INC., an)
 Oklahoma corporation, et al.,)
)
 Defendants,)

Case No. 84-C-405-E

ORDER OF DISMISSAL

WHEREAS, all remaining parties to this action have stipulated to dismissal without prejudice as to all defendants excepting Wachob Industries, Inc.

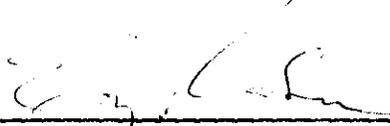
IT IS THE ORDER OF THE COURT that this action be and is hereby dismissed without prejudice as to all remaining defendants with the exception of Wachob Industries, Inc. The cause between plaintiff and Wachob Industries, Inc. continues in its present state on appeal to the Tenth Circuit Court of Appeals.

IT IS SO ORDERED.

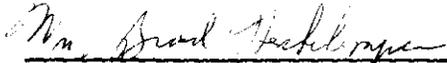
Dated this 28th day of March, 1986.

S/ JAMES O. ELLISON
U. S. DISTRICT JUDGE

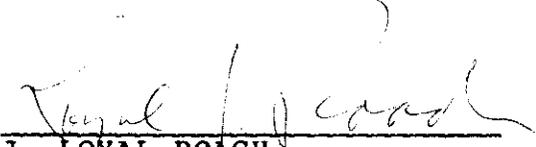
APPROVED:



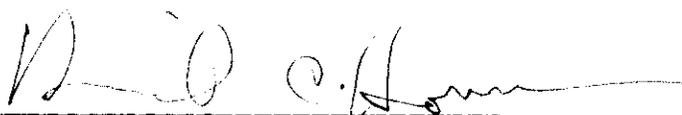
EUGENE ROBINSON
PAUL V. MCGIVERN, JR.
Attorneys for Plaintiff



WILLIAM BRAD HECKENKEMPER
Attorney at Law



J. LOYAL ROACH
Attorney at Law



RICHARD C. HONN
Attorney at Law

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

ELMER M. KUNKEL,)
)
Plaintiff,)
)
vs.)
)
CONTINENTAL CASUALTY COMPANY,)
et al.,)
)
Defendants.)

No. 84-C-62-E

FILED

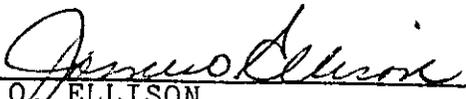
MAR 28 1986

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

O R D E R

The Court has before it Plaintiff's Motion to Voluntarily Dismiss Count I Without Prejudice. The Court finds, under the authority submitted by Defendant, that the answer and affirmative defenses filed by Defendant are not a counterclaim as to Count I. Having considered the further arguments of the parties, the Court finds Plaintiff's motion should be granted.

It is so ORDERED this 27th day of March, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED
MAR 23 1984
PLAINTIFF

BETTY MEIXNER, ET AL.

VS.

CIVIL ACTION NO. 84-C-911-E

AC & S, INC., ET AL.

DEFENDANTS

O R D E R

Upon motion of the Plaintiff, the above cause of action against Defendant Charter Consolidated is hereby dismissed.

IT IS SO ORDERED.

S/ JAMES O. ELLISON

JUDGE

DATED: 3/23/84

Entered

FILED

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

MAR 28 1986

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

THOMAS PATE,)
)
 Plaintiff,)
)
 vs.)
)
 NIAGARA MACHINE AND TOOL)
 WORKS, INC., a corporation,)
)
 Defendant.)

Case No. 85-C-150-B

ORDER OF DISMISSAL WITH PREJUDICE

This matter coming on for hearing before the Court on this 28 day of March, 1986, upon the Application of the plaintiff for Order of Dismissal with Prejudice in this cause, plaintiff appearing by counsel, Patrick E. Carr, and the defendant appearing by counsel, Dale F. McDaniel, and the Court being advised in the premises and having examined the Application of the plaintiff herein, finds that all issues of law and fact heretofore existing between the parties have been settled, compromised, released and extinguished, for valuable consideration flowing from plaintiff to defendant and from defendant to plaintiff, and further finds that there remains no issue of law or fact to be determined in this cause. The Court further finds that plaintiff desires to dismiss its cause to future actions for the reasons stated, and that its Application should be granted.

Entered

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

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
vs.)
)
LOCAL 798 OF THE UNITED)
ASSOCIATION OF JOURNEYMEN AND)
APPRENTICES OF THE PLUMBING AND)
PIPE FITTING INDUSTRY OF)
THE U.S.A. AND CANADA, AFL-CIO,)
)
Defendants.)

No. 84-C-730-C

ORDER

Now before the Court for its consideration is the motion of defendants Delta Pipeline Contractors, Inc. ("Delta"), Milten Pipelines, Inc., J. B. Miller, Inc. and Henkels & McCoy, Inc. to correct clerical mistake in dismissal.

On July 30, 1985, a motion to dismiss was filed on behalf of the Pipe Line Contractors Association ("PLCA") and a group of 34 individual pipeline contractor companies ("PLCA group"). A list of the members of the PLCA group was attached to the motion, which list did not include Delta. The motion was granted by this Court's Order filed December 23, 1985. The Order listed the parties dismissed. Delta was not named, and the names of the PLCA group members Milten Pipelines, Inc., J. B. Miller, Inc., and Henkels & McCoy, Inc. were inadvertently misspelled. The present motion characterizes all of the above as clerical mistake

or "scribner's [sic] error," and seeks the dismissal of Delta and correction of spelling of the names of the other three movants.

With regard to the dismissal of Delta, the Court again notes that this party was not listed in the motion to dismiss of July 30, 1985, as a member of the PLCA group. The motion was never properly amended to reflect Delta's membership. The fact that Delta's name is mentioned as a PLCA group member in a few other pleadings is irrelevant. Therefore, the fact that Delta was not dismissed by this Court's Order of December 23, 1985, is not attributable to a clerical error by this Court. However, solely because it is apparently undisputed that Delta is a member of the PLCA group, and it is represented that there are no objections to the present motion, the Court shall treat it as a motion to dismiss, and hereby rules that Delta should be dismissed at this time based upon the reasoning and authorities recited in this Court's Order of December 23, 1985, dismissing the PLCA and PLCA group.

This Court further notes that scrivener's errors did occur in the spelling of the names of three parties dismissed by the Court's same Order of December 23, 1985. The Court hereby rules that that Order should be amended nunc pro tunc.

Accordingly, it is the Order of the Court that Delta Pipeline Contractors, Inc. is hereby dismissed from this action.

It is the further Order of the Court that this Court's Order of December 23, 1985, regarding dismissal of the PLCA and PLCA group is hereby amended nunc pro tunc as follows: the name

appearing as "J. B. Milten, Inc.," should read J. B. Miller, Inc.; the name appearing as "Henkels I. McCoy, Inc." should read Henkels & McCoy, Inc.; the name appearing as "Miller Pipelines" should read Milten Pipelines, Inc.

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


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

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

ROY D. QUICK, NO. 91711,)

Plaintiff,)

vs.)

No. 83-C-612-E)

GEORGE SHAMPINE, Jailer, O. C.)

RUSH, Undersheriff, FLOYD)

INGRAM, Sheriff,)

Defendants.)

O R D E R

FILED

SEP 28 1986

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

The Court has before it the Defendants' Motion to Dismiss. Being fully advised in the premises the Court makes the following findings:

- (1) On April 30, 1985, the Defendants filed a Motion to Dismiss or in the alternative Motion for Summary Judgment;
- (2) Plaintiff did not respond to that motion;
- (3) Although the Court could have granted the Defendants' motion under Local Rule 14, the Court took into consideration that Plaintiff was proceeding pro se; therefore, on August 11, 1985, the Court ordered Plaintiff to respond within thirty (30) days to Defendants' motion for summary judgment and directed him to Rule 56 of the Federal Rules of Civil Procedure;
- (4) On September 30, 1985, Defendants filed their pending Motion to Dismiss. On October 23, 1985, Plaintiff filed his Response to that motion. That response is untimely

and pursuant to Local Rule 14(a) the matters contained in Defendants' Motion to Dismiss are confessed;

- (5) Further, the Plaintiff's Response cannot be read as a response to Defendants' Motion for Summary Judgment. Not only was it filed more than seventy (70) days after the August 11, 1985, order of this Court, but it does not in any manner comport with the requirements of Rule 56. Thus, to date, no response to the motion for summary judgment has been filed by Plaintiff and pursuant to Rule 56 and Local Rule 14, summary judgment is granted in favor of Defendants.

IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment is granted.

DATED this 27th day of March, 1986.



JAMES D. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 23 1986

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

WESLEY R. MCKINNEY,
Plaintiff,

v.

THE HONORABLE MICKEY D. WILSON,
UNITED STATES BANKRUPTCY JUDGE,

Defendant.

No. 86-C-264-E

DISMISSAL OF COMPLAINT
FILED MARCH 20, 1986

Pursuant to Rule 41 of the F.R.Civ.P., the Plaintiff, Wesley R. McKinney (hereafter "McKinney") hereby files a dismissal of the Complaint for mandamus which McKinney filed on March 20, 1986. McKinney sought mandamus to obtain a ruling by the Honorable Mickey D. Wilson on McKinney's Motion to Dismiss the Republic Trust & Savings Company bankruptcy proceedings (Case No. 84-01461 in the United States Bankruptcy Court for the Northern District of Oklahoma). Judge Wilson filed his ruling on March 20, 1986.

Wherefore, McKinney hereby dismisses the Complaint filed by McKinney on March 20, 1986.

J. BRUNE & ASSOCIATES, INC.

By Judith S. Brune
Judith S. Brune
1801 East 71st Street
Tulsa, Oklahoma 74136
918/492-2977

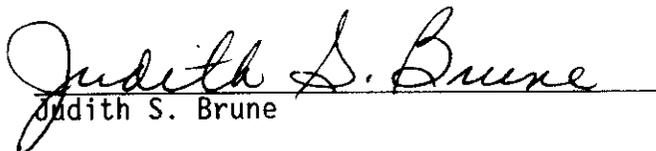
Certificate of Mailing

I, Judith S. Brune, hereby certify that on this 28th day of March, 1986 I placed in the United States mails at Tulsa, Oklahoma a true and correct copy of the within and foregoing document, with proper postage prepaid thereon, addressed to:

The Honorable Mickey D. Wilson
United States Bankruptcy Judge
United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103

Edwin Meese
United States Attorney General
Department of Justice
Tenth and Constitution Avenue
Washington, D.C. 20530

Layn R. Phillips
United States Attorney
United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103


Judith S. Brune

Entered

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

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
vs.)
)
LOCAL 798 OF THE UNITED)
ASSOCIATION OF JOURNEYMEN AND)
APPRENTICES OF THE PLUMBING AND)
PIPE FITTING INDUSTRY OF)
THE U.S.A. AND CANADA, AFL-CIO,)
et al.,)
)
Defendants.)

No. 84-C-730-C

J U D G M E N T

This matter came on for consideration of the motion for summary judgment of defendants Snelson Companies and TriCo Contracting, Inc. The issues having been duly considered and a decision having been duly rendered in accordance with the Order filed March 5, 1986,

IT IS THEREFORE ORDERED AND DECREED that judgment is hereby entered for defendant as against plaintiff, and that plaintiff take nothing by way of this action.

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


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

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

SEARS, ROEBUCK AND CO.,)
a New York corporation,)
)
Plaintiff,)
)
v.)
)
COLEMAN-ERVIN-JOHNSTON, INC.,)
formerly known as)
COLEMAN-ERVIN & ASSOCIATES,)
an Oklahoma corporation,)
)
Defendant.)

No. 85-C-685-B ✓

FILED

MAR 27 1985

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

O R D E R

This matter comes before the Court on the motion for summary judgment of defendant Coleman-Ervin-Johnston, Inc. ("Coleman"). For the reasons set forth below, defendant's motion is denied as to plaintiff's contract and implied warranty claims and granted as to plaintiff's tort claim.

On October 30, 1974, plaintiff Sears, Roebuck & Company ("Sears") contracted with defendant Coleman, a Tulsa, Oklahoma architectural firm, to provide architectural designs for the construction of a Sears store at Woodland Hills Mall in Tulsa, Oklahoma. The building was substantially completed on June 1, 1976.¹ The first indication of problems with the building allegedly occurred during the summer of 1980 when plaintiff

¹ The parties are in apparent agreement as to the June 1, 1976 date. See Brief in Opposition to Defendant's Motion for Summary Judgment, pp. 3, 6. Sears' Project Manager, Louis D. Smith, sets the date at November 16, 1976, however. Exhibit "B", Deft.'s materials submitted in support of brief in opposition.

discovered a leak in the south basement wall. Plaintiff claims that serious design flaws subsequently became evident in November of 1982 when the south basement wall began leaning inward. Interior columns and the building's juncture with the mall also indicated structural movement.

Plaintiff asserts two causes of action herein. The first is for an alleged tortious breach of duty in the preparation of designs and specifications for the basement wall of the Tulsa-Woodland Hills store. Plaintiff's second cause of action is for breach of an architectural services contract.

Defendant Coleman moves for summary judgment on the ground that the applicable statutes of limitations have run on plaintiff's claims. Defendant argues that the limitations periods began to run on June 1, 1976, the date of substantial completion. Defendant contends that the case of Wills v. Black and West, Architects, 344 P.2d 581 (Okla. 1959), is controlling. In Wills, the Court noted that under Oklahoma law:

"Where an architect agrees to prepare plans and specifications for the construction of a building, he is required to exercise ordinary professional skill and diligence and to conform to accepted architectural standards; but his undertaking does not imply or guarantee a perfect plan or satisfactory results, and he is liable only for failure to exercise reasonable care and professional skill."

344 P.2d at 584, quoting Smith v. Goff, 325 P.2d 1061, 1062 (Okla. 1958). In Wills, the contract had provided that "the architect will endeavor to guard...but does not guarantee the performance." 344 P.2d at 584. The Court therefore concluded

that the architects did not warrant satisfactory results and were liable only if they failed to exercise reasonable care and professional skill in performing their architectural services.

The Court then stated:

"If a cause of action existed at any time, it accrued at the time the building was completed and accepted by the plaintiff and since the plaintiff accepted the building in August, 1946, the breach of duty, if any, occurred at that time and the statutes of limitations began running unless the defendants were guilty of false and fraudulent representation which tolled the statute." Id.

More recently, the Oklahoma Supreme Court explained that in Wills, the Court had "looked to the contract to determine the responsibilities of the architect." Waggoner v. W & W Steel Co., 657 P.2d 147 (Okla. 1982). The Court quoted 5 Am.Jur.2d Architects §5 (1962) for the proposition that "[t]he employment of an architect is ordinarily a matter of contract between the parties, and the terms of such employment are governed by the terms of the contract into which they entered." 657 P.2d at 149. The following provisions of the contract between plaintiff Sears and defendant Coleman are relevant herein:

"ARCHITECT shall be responsible to SEARS for the accuracy, suitability and completeness of the work of ARCHITECT and his or its employees and all consulting structural, mechanical, electrical and other engineers and Resident Construction Superintendents employed by ARCHITECT in connection with the design, construction and final acceptance of the project covered by this appointment."

Agreement for Services of Architect, Article I, ¶1(b), Exhibit "A" to Plaintiff's Response Brief.

"ARCHITECT hereby covenants that any and all designs, plans, drawings, specifications, materials and contractors recommended or submitted by ARCHITECTS in connection with the work covered by this Agreement shall, in the opinion of the ARCHITECT, be suitable for said work."

Id., Article III, ¶16. Under this second contractual provision, the architect merely covenants that the designs, etc. will be suitable "in the opinion of the architect." Such a covenant is substantially similar to the duty imposed upon the architect in Wills to exercise ordinary professional skill and diligence and to conform to accepted architectural standards. If a right of action for breach of Article III, ¶16 existed, "it accrued at the time the building was completed and accepted by the plaintiff" because "the breach of duty, if any, occurred at that time." Wills, 344 P.2d at 584.

Article I, Paragraph 1(b) of the Agreement distinguishes this matter from Wills since the architects here contractually agreed to be responsible for the suitability of their architectural work. The question of suitability of design remains here as an issue of fact for the jury. In Wills, where the architects had not guaranteed the performance of their plans, but were only liable to exercise reasonable care and professional skill in performing their services, the cause of action accrued at the time the building was completed and accepted, since any breach could have occurred, at the latest, at that time. Here, however, where the architect agreed to be responsible for the suitability of design, a breach may occur at a later date. "Generally, a statute of limitations begins to run when a cause

of action accrues, and a cause of action accrues at the time when a plaintiff first could have maintained his action to a successful conclusion." Oklahoma Brick Corporation v. McCall, 497 P.2d 215, 217 (Okla. 1972); Sherwood Forest No. 2 Corp. v. City of Norman, Okla., 632 P.2d 368, 370 (Okla. 1980); Moore v. Delivery Services, Inc., 618 P.2d 408, 409 (Okla. 1980). Because defendant architectural firm agreed that it would be responsible for the suitability of its design for the purpose intended, the statute of limitations begins to run when plaintiff might have first prosecuted its action. The evidence before the Court indicates that the parties first became aware of structural movement of the wall and building in November of 1982. There has been no evidence presented which would indicate that structural problems should have been detected at the time of the leaks in the summer of 1980. This action was filed July 22, 1985. The applicable limitations period on "any contract, agreement, or promise in writing" is five years. 12 Okla.Stat. Ann. §95(First) (West Supp. 1985). It is clear, therefore, that plaintiff's contract cause of action was filed within the period of limitations, if computed from the November 1982 accrual date.

The applicable limitations period on plaintiff's tort cause of action is two years. 12 Okla.Stat. Ann. §95 (Third) (West Supp. 1985). Under Wills, the limitations period accrued on the June 1, 1976 date of completion, the latest date of commission of the alleged tort. Plaintiff claims that defendant's false and fraudulent concealment of its own negligent design tolled the

running of the statute. Any concealment first began in the last months of 1982, however. The alleged misrepresentations occurred on December 13, 1982 in an engineering inspection report submitted by C. Bruce Ervin, Senior Vice President of defendant Coleman. The report concluded that:

"It is our opinion the structure has been subjected to higher lateral forces than designed to withstand, primarily due to hydro static pressure along the south wall. The structure has undergone some localized structural failures due to these forces having been imposed over a period of years."

Exhibit "E", Defendant's Response to Plaintiff's Motion for Summary Judgment. Sears claims that Coleman's negligence came to Sears' attention in an independent report submitted by Carver Hunt, Inc., an engineering firm, on October 10, 1984. Id., Exhibit "D". The letter suggested a possible design defect resulting from defendant's failure to use methods commonly used in the profession for providing resistance to horizontal pressure from earth. Carver Hunt states in his affidavit that "It is my opinion that the architects became aware of the design problem when the wall started to move." Id. The wall started to move in November, 1982. Because the two-year statute of limitations ran in 1978, the alleged misrepresentations could not have tolled the limitations statute on the tort claim.

Plaintiff attempts to persuade the Court that Oklahoma courts have moved away from the accrual rule announced in Wills and have joined the trend applying the "discovery rule" in malpractice actions against professionals, though plaintiff

admits Wills has not been overturned. Plaintiff's Brief in Opposition, p. 7. In the case of City of Aurora, Colorado v. Bechtel Corp., 599 F.2d 382, 387 (10th Cir. 1979), the United States Court of Appeals for the Tenth Circuit concluded that under Colorado law, a cause of action against an engineer or architect does not accrue until the plaintiff knows, or should know, all material facts essential to show the elements of that cause of action. In that case, however, no controlling Colorado case law existed on the subject. 599 F.2d at 386. Because Wills stands as binding Oklahoma precedent, this Court will not reject its application in relevant factual situations.² As pointed out above, however, the contractual obligations assumed in Wills and the instant matter are distinguishable.

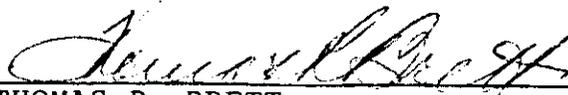
Plaintiff's complaint does not specifically allege a cause of action based on a theory of implied warranty, but plaintiff discusses such a theory of recovery on pages 15-17 of its brief in opposition to the motion for summary judgment. An action for breach of an implied warranty herein is brought within the applicable limitations period based on the accrual of limitations

² The statutory language used in 12 Okl.St. Ann. §§ 109 and 110 does not necessarily imply the demise of the accrual rule announced in Wills. Section 109, which places an absolute ten year bar on tort actions for any deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property, can be read to establish a limit within which fraudulent concealment can toll the two-year statute. Because under Wills the breach of duty to exercise reasonable care and professional skill in performing architectural services occurs at the time of substantial completion and acceptance, the two-year tort limitations period ran in 1978. Section 110 does not apply because there has been no injury to persons or property alleged.

periods in actions brought on implied warranties. An architect "impartially warrants the sufficiency of the overall construction plan..." and "the person who designs the structure is responsible for insufficiencies in the effectiveness for the purpose intended." Kelly v. Bank Building and Equipment Corp. of America, 453 F.2d 774, 777 (10th Cir. 1972). In Oklahoma, where an implied warranty relates to a future event, before which the defect cannot be discovered with reasonable diligence, the warranty is prospective in character and the applicable period of limitations runs from the time of that event. Sampson Construction Co. v. Farmers Coop. Elevator Co., 382 F.2d 645, 648 (10th Cir. 1967), citing Hepp Bros. Inc. v. Evans, 420 P.2d 477 (Okla. 1966). In the present case, the statute of limitations for breach of the implied warranty began to run in November of 1982 when Sears discovered the structural movement. The action was filed within the three year statute for breach of an implied warranty. 12 Okl.Stat. Ann. §95 (Second)(West Supp. 1985).

Defendant's motion for summary judgment is denied as to plaintiff's causes of action for breach of contract and any breach of implied warranty claim, but granted as to plaintiff's alleged tort cause of action.

IT IS SO ORDERED this 26th day of March, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

FILED

MAR 27 1986

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

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

BEATRICE M. IMBRIANO,)
)
 Plaintiff,)
)
 v.)
)
 SOUTHPARK CERAMIC ARTS, INC.,)
 a corporation; and NATIONAL)
 DENTEX CORPORATION, a corporation,)
)
 Defendants.)

Case No. 85-C-731-B

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 26th day of March, 1986, the Court having heard the parties Stipulation of Dismissal, and being well advised in the premises does hereby order the above-captioned action to be dismissed with prejudice.

THOMAS R. BRETT

The Honorable Thomas R. Brett

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 27 1986

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RICHARD L. BROWN,)
)
 Defendant.)

JACK C. SILVER, CLERK
DISTRICT COURT

CIVIL ACTION NO. 86-C-246-B

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 27 day of March, 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 27 day of March, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Richard L. Brown, 304 North Carlsbad, Owasso, Oklahoma 74055.

Phil Pinnell

Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
EDWARD D. BUNTIN, et al.,)
)
Defendants.)

MAR 27 1986

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

CIVIL ACTION NO. 85-C-872-B ✓

AMENDED JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 27th day
of March, 1986. The Plaintiff appears by Layn R. Phillips,
United States Attorney for the Northern District of Oklahoma,
through Phil Pinnell, Assistant United States Attorney; the
Defendants, Edward D. Buntin, Terry B. Buntin, County Treasurer,
Osage County, Oklahoma, and Board of County Commissioners, Osage
County, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant Board of County
Commissioners, Osage County, Oklahoma, acknowledged receipt of
Summons and Complaint on September 19, 1985; that the Defendant
County Treasurer, Osage County, Oklahoma, acknowledged receipt of
Summons and Complaint on September 19, 1985; that the Defendant
Edward D. Buntin acknowledged receipt of Summons and Complaint on
September 20, 1985; and that the Defendant Terry B. Buntin was
served with Summons and Complaint on November 6, 1985. It
further appears that the Defendants, Edward D. Buntin, Terry B.
Buntin, Board of County Commissioners, Osage County, Oklahoma and

County Treasurer, Osage County, Oklahoma have failed to answer. The default of the Defendants Edward D. Buntin and Terry B. Buntin has been entered by the Clerk of this Court on February 24, 1986. The default of the Defendants County Treasurer and Board of County Commissioners, Osage County, Oklahoma has been entered by the Clerk of this Court on March 12, 1986.

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

Lot 6, Block 2, Hillview Addition to Skiatook, Osage County, Oklahoma, according to the official survey thereof, Subject to, however, all valid outstanding easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record.

That on April 11, 1980, Edward D. Buntin and Terry B. Buntin executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$29,500.00, payable in monthly installments, with interest thereon at the rate of 10 percent per annum.

That as security for the payment of the above-described promissory note, Edward D. Buntin and Terry B. Buntin executed and delivered to the United States of America, acting through the Farmers Home Administration a real estate mortgage dated April 11, 1980, covering the above-described property. Said mortgage was recorded on April 11, 1980, in Book 578, Pages 661-664, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Edward D. Buntin and Terry B. Buntin, made default under the terms of the aforesaid promissory note and mortgage, by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendants, Edward D. Buntin and Terry B. Buntin, are indebted to the Plaintiff in the principal sum of \$30,577.94, plus accrued interest of \$7,519.81 as of January 9, 1986, plus interest thereafter at the rate of \$8.3766 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Edward D. Buntin and Terry B. Buntin, in the principal amount of \$30,577.94 plus accrued interest of \$7,519.81 as of January 9, 1986, plus interest thereafter at the rate of \$8.3766 per day until judgment plus interest thereafter at the legal rate of 7.06 percent per annum until paid, plus costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, have no right, title, or interest in the real property which is the subject of this foreclosure action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Edward D. Buntin and Terry B. Buntin, 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:

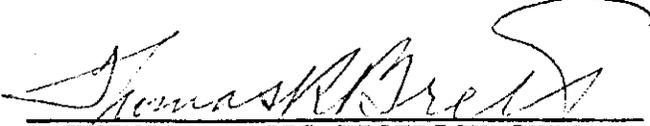
In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

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

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


PHIL PINNELL
Assistant United States Attorney

Entered

FILED

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

MAR 27 1986

HERNDON DRILLING CO., MICHAEL C.)
HERNDON, PATRICIA HERNDON SHADDAY,)
and JUDITH ELISE COWAN,)

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

Plaintiffs)

vs.)

Case No. 84-C-971-B ✓

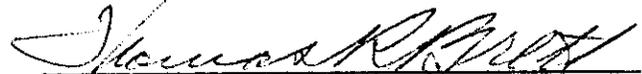
NORTHERN NATURAL GAS COMPANY,)

Defendant.)

ORDER

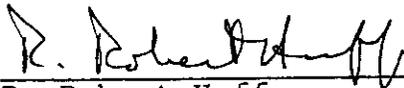
Upon stipulation between the parties, the Motion and Petition for Further Relief is hereby dismissed without prejudice as to Michael C. Herndon, Patricia Herndon Shadday, and Judith Elise Cowan. The Motion and Petition for Further Relief remains pending with respect to the Plaintiff, Herndon Drilling Co.

DATED this 26th day of March, 1986.



Thomas R. Brett
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



R. Robert Huff
Attorney for Plaintiffs



William L. Peterson
Attorney for Defendant

F.R.Civ.P. 59(e) states:

"A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment."

Judgment on the attorneys' fee and costs award against Robinson was entered March 6, 1986. Thus, Robinson had until March 16, 1986, to serve his motion for a new trial or to amend/alter the judgment. Service of Robinson's Application for an Enlargement of Time was made on March 17, 1986, by mail. Thus, Robinson has failed to serve his Motion for New Trial or to Alter/Amend within the required 10-day period. Robinson asserts that he did not receive the Judgment of the court until March 12, 1986. This still allowed him adequate time to serve his motions, even requesting additional time to file supplemental briefs. If a motion for new trial is not timely, the trial court is obligated to deny the motion for lack of power to grant new trial relief. 6A Moore's Federal Practice ¶59.09[3]. The 10-day period to move for new trial cannot be extended. Tarlton v. Exxon, 688 F.2d 973 (5th Cir. 1982), cert. den. sub nom Diamond M Drilling Co. v. Tarlton, 463 U.S. 1206 (1983). The Motion for New Trial must be served within 10 days. Clayton v. Douglas, 670 F.2d 143 (10th Cir.), cert. den., 457 U.S. 1109 (1982). Likewise, a Motion to Amend/Alter Judgment must be filed within 10 days. In some cases, the court may treat an untimely motion under Rule 59 as one for relief under Rule 60. But the 10-day time period for filing motions under Rule 59 can't be extended if the facts alleged do not warrant relief under Rule 60.

Here, Robinson has stated he did not receive the court's Judgment until March 12, 1986. The apparent reason is that the Judgment was mailed to Robinson's former mailing address and then forwarded to

a new address. These circumstances are not sufficient to bring Robinson under Rule 60. The delay in getting the Judgment to Robinson was not due to clerical error, mistake, inadvertence or other excusable neglect. As the court has already noted, even with receipt on March 12, 1986, Robinson still had adequate time to serve his Motions for New Trial or to Amend/Alter the Judgment. Since this case does not fall within Rule 60, the Application for an Extension of Time to file motions under Rule 59 must be denied.

IT IS SO ORDERED, this 27th day of March, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

EDWARD E. GRUMBEIN and
CAROL L. GRUMBEIN, Husband
and Wife,

Plaintiffs,

v.

CANDACE MASTERS and
TOM MCHARGUE, Husband and
Wife,

Defendants.

No. 85-C-669-B ✓

FILED

MAR 27 1986

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

JUDGMENT ON JURY VERDICT

In keeping with the verdict of the jury rendered herein on March 21, 1986, Judgment is hereby entered in favor of the plaintiffs, Edward E. Grumbein and Carol L. Grumbein, and against the defendants, Candace Masters and Tom McHargue for violation of 15 U.S.C. §1981 et seq. The jury having returned a verdict in the amount of \$1,000.00 in favor of plaintiffs, the Court hereby trebles said award pursuant to 15 U.S.C. §1989(a)(1) and therefore enters judgment in favor of plaintiffs, Edward E. Grumbein and Carol L. Grumbein, and against the defendants, Candace Masters and Tom McHargue, in the amount of \$3,000.00, plus costs and attorneys fees if timely applied for under the local rule.

DATED this 27th day of March, 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

MAR 27 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-C

FINAL JUDGMENT AS TO CLAIM PRESENTED
AGAINST RAYMARK INDUSTRIES, INC.

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's Order of January 7, 1986 granting said motion, and the application of defendant Raymark Industries for entry of a final judgment, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. And the Court, being duly advised in the premises and finding that there is no just reason for delay, grants the defendant's application and directs the entry of a final judgment as to the claim presented by plaintiffs Charles Frederick Fisher and Billie Jean Fisher against defendant Raymark Industries, Inc.

IT IS SO ORDERED this 26 day of March, 1986.

(Signed) H. Dale Cook

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

Final

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

GOODYEAR TIRE & RUBBER CO., INC.)
Plaintiff,)

vs.)

WILDE, MICHAEL, JANIE WILDE,)
EUGENE SNELLING AND VIRGINIA)
SNELLING)

Defendants)

No. 85-C-1067-B

FILED

MAR 27 1986

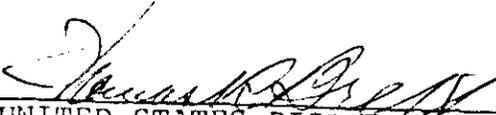
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The defendants having filed ^{their} ~~its~~ petitions in bankruptcy and these proceedings 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 purpose 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 27 day of March, 1986.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

Motion for Summary Judgment is hereby sustained.

IT IS SO ORDERED, this 21st day of March, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JAMES H. LAUDERBACK, III,)

Plaintiff,)

vs.)

AMERICAN AIRLINES, INC.,)
a Delaware corporation,)

Defendant.)

No. 84-C-945-C

FILED

MAR 26 1986

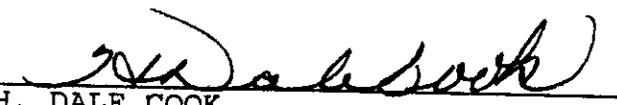
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

This matter came on before the Court for nonjury trial on March 10, 1986, and concluded on March 13, 1986. The issues having been duly tried and a decision having been duly rendered in accordance with the Findings of Fact and Conclusions of Law filed simultaneously herein,

THE COURT HEREBY ORDERS, ADJUDGES AND DECREES that plaintiff James H. Lauderback, III, take nothing by way of his complaint as against defendant American Airlines, Inc., and that judgment is hereby entered on behalf of defendant.

IT IS SO ORDERED this 26th day of March, 1986.


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

Entered

K11.3-1

FILED

MAR 26 1986

MARK O. SILVER, CLERK
DISTRICT COURT

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

| | |
|----------------------------|---|
| JOSEF E. KERCSO, et al., |) |
| |) |
| Plaintiffs, |) |
| |) |
| vs. |) |
| |) |
| NICHOLS PETROLEUM COMPANY, |) |
| et. al., |) |
| |) |
| Defendants, |) |
| |) |
| vs. |) |
| |) |
| De HAYDU INVESTMENTS |) |
| SECURITIES, et. al., |) |
| |) |
| Third Party Defendants. |) |

Case No. 84-C-837-C

STIPULATION OF DISMISSAL

Plaintiffs and Defendant Steven M. Wood, having compromised and settled all matters and controversies arising from the subject matter of this litigation, hereby stipulate that the above entitled action be dismissed only as to those claims asserted against Steven M. Wood with prejudice to their right to refile the same and without effect to the right of

Plaintiffs to fully prosecute all claims asserted against the remaining Defendants herein.

DATED ^{March} January - 13, 1986.

Respectfully submitted,

OWENS & MCGILL, INC.

By *Dona K. Broyles*
Ben K. McGill #005989
Dona K. Broyles #010222

1606 First National Bank Building
Tulsa, Oklahoma 74103
(918) 587-0021

ATTORNEYS FOR PLAINTIFF

RUNNING AND CULVER

By *Jon R. Running*
Jon R. Running

1700 Bank of Oklahoma Tower
One Williams Center
Tulsa, OK 74172

ATTORNEYS FOR STEVEN M. WOOD

1819h/CLW
2-12-86/mmh

Follow

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

FILED

MAR 26 1986

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

THRIFTY RENT-A-CAR SYSTEM,
INC., an Oklahoma
corporation,

Plaintiff,

vs.

KEN HART, an individual, and
HART TO HART MOTOR CAR CO.,
INC., a California
corporation,

Defendants.

No. 85-C-538 B

JUDGMENT

NOW on this 24th day of March, 1986, this matter comes on for trial. Thrifty Rent-A-Car System, Inc. ("Thrifty"), appears by and through its attorney, Donald L. Kahl of Hall, Estill, Hardwick, Gable, Collingsworth & Nelson, Inc. Defendants, and each of them have failed to appear. This Court, having examined the pleadings filed in this action, having considered the presentation of counsel and being fully advised in the premises, finds as follows:

1. This Court has in personam jurisdiction over the parties herein and subject matter jurisdiction over plaintiff's causes of action.

2. Service of process has been properly effected as to both defendants pursuant to Fed. R. Civ. P. 4.

3. Venue is properly laid in this District.

4. A scheduling order setting this matter for trial was duly and proper filed on the 7th day of February, 1986, thereby putting defendants and each of them on notice that this matter would be tried to the Court on this date.

5. Thrifty is entitled to judgment by default herein pursuant to Fed.R.Civ.P. 55.

6. Thrifty is entitled to an award of reasonable attorneys' fees pursuant to the terms of the Agreements, the Promissory Notes and statute.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff Thrifty Rent-A-Car System, Inc., be, and hereby is, awarded judgment in its favor against defendant Ken Hart and Hart to Hart Motor Car, Inc., and each of them as follows:

(A) In the amount of Fifteen Thousand Five Hundred Forty-One and 22/100 Dollars (\$15,541.22), plus interest at the rate of Forty-Five percent (45%) per annum from March 24, 1986 on their San Rafael Promissory Note with Thrifty;

(B) In the amount of Seventeen Thousand Eight Hundred Fifty and 39/100 Dollars (\$17,850.39), plus interest at the rate of Forty-Five percent (45%) per annum from March 24, 1986 on their Fresno Promissory Note with Thrifty;

(C) In the amount of Four Thousand Four Hundred Sixty Three and 08/100 Dollars (\$4,463.08), plus interest at the rate

of Forty-Five percent (45%) per annum from March 24, 1986 on their Napa Promissory Note with Thrifty;

(D) In the amount of Four Thousand Four Hundred Sixty-Three and 08/100 Dollars (\$4,463.08), plus interest at the rate of Forty-Five percent (45%) per annum from March 24, 1986 on their Vallejo Promissory Note with Thrifty;

(E) In the amount of Four Thousand Four Hundred Sixty-Three and 08/100 (\$4,463.08), plus interest at the rate of Forty-Five percent (45%) per annum from March 24, 1986 on their Woodland Promissory Note with Thrifty;

(F) In the amount of Two Thousand Four Hundred Forty-Two and 75/100 Dollars (\$2,442.75), plus interest at the rate of Forty-Five percent (45%) per annum from March 24, 1986 for their breach of the San Rafael, Fresno, Napa, Vallejo and Woodland License Agreements with Thrifty;

(G) Interest on the above amounts at the contract rate of Forty-Five percent (45%) per annum from the date of this judgment until paid;

(H) The License Agreements between Thrifty and Hart were duly and properly terminated by Thrifty; and

(I) Thrifty's costs expended herein and reasonable attorneys' fees in an amount to be determined at a subsequent hearing, if timely applied for under the Local Rules.

DATED this 26th day of March, 1986.


Thomas R. Brett
United States District Judge

FILED

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

MAR 26 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

ORDER OF DISMISSAL

NOW on this 25th day of March, 1986, the Court, being advised that plaintiffs George Thomas Pitner and Nelda Gene Pitner and defendant Raymark Industries, Inc. have filed a stipulation of dismissal signed by their respective attorneys, which states that the dismissal of the plaintiffs' claims against said defendant are to be dismissed with prejudice, hereby ORDERS that the claims presented by the plaintiffs against defendant Raymark Industries, Inc. in the above-styled case shall be, and are hereby, dismissed with prejudice.

[Signature]
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GLORIA GARDNER, Administratrix)
and Personal Representative)
of the Estate of Darnell Gardner,)
Deceased; MONIQUE RIVERA,)
Administratrix and Personal)
Representative of the Estate)
of Refugio Rivera, Deceased;)
and JEAN M. SIMPSON, Administra-)
trix and Personal Representative)
of the Estate of James E. Simpson,)
Deceased;)

Plaintiff,)

v.)

TK INTERNATIONAL, INC., an)
Oklahoma corporation; and)
NORDAM CORPORATION, a Delaware)
corporation;)

Defendant.)

FILED

MAR 26 1986

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

Docket No. 85-C-849-C

JUDGMENT

J U D G M E N T

This action came on for hearing February 13, 1986 before the Court, Honorable H. Dale Cook, Chief District Judge, presiding, and a Minute Order having been duly entered on such date, the Court hereby finds and concludes:

1. The Court has lawful jurisdiction over the subject matter of this action and the persons affected by this Judgment.
2. On December 18, 1985, Defendant Nordam Corporation filed a Motion For Summary Judgment Dismissing Nordam Corporation From This Action, together with a Brief In Support Of Motion For Summary Judgment Dismissing Nordam Corporation From This Action. The Brief was appended by the Affidavit of Robert G. Roderick.

Both the Motion and the Brief were duly accompanied by a Certificate of Service on Plaintiffs' attorneys.

3. Local Rule 14(a), Rules of the United States District Court for the Northern District of Oklahoma, provides that a party wishing to oppose a motion for summary judgment must respond within 10 days after filing of the motion sought to be opposed. Rule 14(a) also provides that failure to respond timely constitutes the noncomplying party's confession of the motion.

4. Plaintiffs neither filed nor produced any counter-affidavit or other opposition to the Motion and Brief of Defendant Nordam Corporation.

5. Accordingly, the Court on February 13, 1986 entered a Minute Order granting Defendant Nordam Corporation summary judgment pursuant to Local Rule 14(a) for failure of the Plaintiffs to timely respond.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

- (A) Defendant Nordam Corporation be, and the same hereby is, dismissed from this action, such dismissal to be with full prejudice; and
- (b) the Clerk of the Court be, and he hereby is, directed to enter such judgment of dismissal forthwith, with costs to be hereafter taxed against Plaintiffs on application by Defendant Nordam Corporation.

Dated this 25th day of March, 1986.

(Signed) H. Dale Cook

Hon. H. Dale Cook
Chief District Judge

FILED

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

MAR 25 1986

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

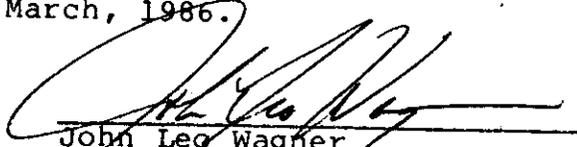
MELVIN CHAD MAHORNEY,)
)
 Petitioner,)
)
 v.)
)
 MACK ALFORD,)
)
 Respondent.)

No. 86-C-84-E

ORDER

Comes now before the Magistrate Petitioner Melvin Chad Mahorney's Motion to Dismiss this action without prejudice and for good cause shown the Magistrate finds that the motion should be and is hereby granted.

Dated this 25th day of March, 1986.


John Leo Wagner
United States Magistrate

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

MAR 25 1986

CLERK
U.S. DISTRICT COURT

JIMMY ODELL WHITEIS, On his own)
behalf,)
SANDRA KAY WHITEIS, On her own)
behalf and as mother and next)
friend of Sonya Christine Graham,)
SONYA CHRISTINE GRAHAM, a minor,)
by her mother and next friend,)
Plaintiffs,)

-v-

Case No. 84-C-957B

CITY OF SAND SPRINGS, a municipal)
Corporation,)
ODEAN HELM, In his Official)
Capacity as Police Officer for)
the City of Sand Springs,)
OFFICER HELM, In his Official)
Capacity as Police Chief for the)
City of Sand Springs,)
OFFICER R. G. FLANAGAN,)
LT. D. L. BRADLEY,)
OFFICER RICHARD KROUSE,)
OFFICER D. L. GRAHAM,)
OFFICER JOHN DOE, an unknown)
police officer of the Sand)
Springs Police Department,)
all individually and as Police)
Officers of the City of)
Sand Springs,)
Defendants.)

ORDER

This matter comes before the Court on March 17, 1986 on the Court's regular trial docket. Pending before the Court are two Motions to Dismiss on behalf of Defendants City of Sand Springs and

Police Chief Odean Helm. Filed contemporaneously with the second Motion to Dismiss is the Defendants' Motion In Limine seeking to exclude any testimony from certain named witnesses who were not provided prior to the day set by this Court as the day upon which all witnesses and exhibits were to be listed. Specifically, in this regard Defendants seek to exclude witnesses Jerry Hail, Clara Hail, and Bennie Hail as untimely listed witnesses.

The Court specifically finds that the Hail witnesses were not listed in accordance with the order of this Court, nor were they timely provided to the Defendants. Defendants were made aware of the existence of these witnesses for the first time on March 3rd, 1984, two weeks prior to trial. This case has been pending since December, 1984 and there have been numerous continuances and extensions of time granted by the Court. Accordingly, the Court finds that the Hail witnesses should not be permitted to testify and Defendants' Motion in Limine is hereby sustained.

Upon sustension of Defendants' Motion in Limine, the Plaintiff made an offer of proof as to what the Hail witnesses would have testified to if permitted. Upon conclusion of this offer of proof, the Defendants, City of Sand Springs and Odean Helm, moved to dismiss all claims against them based upon Plaintiffs' failure to produce any proof that there existed a "pattern, practice or policy" which was causally related to alleged constitutional deprivations of the Plaintiffs. Plaintiffs' counsel, Mr. Earl Wolfe, has noted on the record that the Plaintiffs have no proof of such a "pattern,

practice or policy" save and except for the offered testimony of the Hails.

The Court is of the opinion that, even admitting into evidence the testimony of the Hail witnesses, Plaintiff could, under no conceivable set of circumstances, establish the requisite "pattern, practice or policy" to establish liability against the City of Sand Springs or Chief Helm. The incident of alleged police misconduct regarding which the Hails were to testify took place in 1975, was different in its circumstance than the present case, and Plaintiff has offered no proof of commonality of municipal leadership between 1975 and the date of the incident at bar which occurred in 1984. In the absence of any commonality between these two occurrences and in light of the passage of 9 years between the two incidents and further taking into consideration the fact that Plaintiffs only have evidence of one prior alleged incident of police misconduct, the Court is persuaded that no proof of a "pattern, practice or policy" can be presented by the Plaintiffs and that the Motions to Dismiss of the City and Chief Helm should be considered as Motions for Summary Judgment under Federal Rule of Civil Procedure 56(b) and sustained.

Counsel for R. G. Flanagan has likewise moved this Court for dismissal of claims against him, adopting the Motions and arguments of the City of Sand Springs and Odean Helm. The Court is advised and finds that Defendant Flanagan is sued by the Plaintiffs in both his administrative capacity as Assistant Chief of Police for

the City of Sand Springs, as well as for his personal involvement in the incidents complained of. To the extent that Defendant Flanagan is sued under the "policy, practice or pattern" theory of liability and in his capacity as a police administrator and supervisor, those claims against him are likewise dismissed and judgment is granted to him in that regard only.

IT IS THEREFORE ORDERED that all claims of the Plaintiffs against the City of Sand Springs and Odean Helm are hereby dismissed and judgment is granted in favor of those Defendants. Further, it is ordered that all claims against Defendant R. G. Flanagan which arise out of and are based upon Defendant Flanagan's position as Assistant Chief of Police and as a police administrator and supervisor are likewise dismissed and partial summary judgment is granted to him.

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


UNITED STATES DISTRICT COURT JUDGE

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff, Lottie C. Blair, against the Defendants, McDonalds Corporation and J-Mac, Inc. be and the same hereby are dismissed with prejudice to any future action.

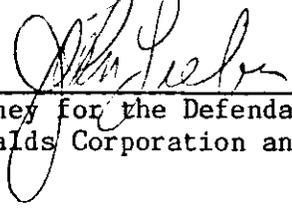

JUDGE OF THE UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT OF OKLAHOMA

Approvals:

CRAIG TWEEDY


Attorney for the Plaintiff, Lottie C. Blair

JOHN HOWARD LIEBER


Attorney for the Defendants,
McDonalds Corporation and J-Mac, Inc.

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

FILED

MAR 25 1986

RAYMOND JORDAN,)
)
 Plaintiff,)
)
 vs.)
)
 MARGARET M. HECKLER, Secretary)
 of Health and Human Services,)
)
 Defendant.)

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

No. 85-C-290-C

O R D E R

Now before the Court for its consideration is the objection of plaintiff to the Findings and Recommendations of the Magistrate, said objection filed herein February 21, 1986.

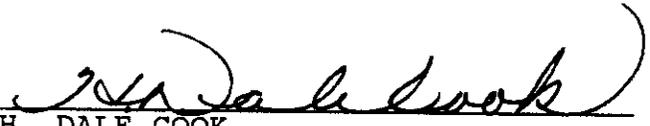
Plaintiff brought an action pursuant to Title 42 U.S.C. §405(g) for judicial review of the final decision of the Secretary of Health and Human Services, denying plaintiff's application for disability insurance benefits under 42 U.S.C. §§416(1) and 423. The Magistrate held a hearing on the matter and applied the proper standard of review; i.e., whether the record as a whole contains substantial evidence to support the Secretary's decision.

Specifically, plaintiff complains of the finding by the Magistrate and the Secretary that he did not have a nonexertional impairment. He also complains that the A.L.J. did not ask the vocational expert a proper hypothetical question regarding pain and, therefore, the A.L.J. did not properly satisfy its heightened duty to develop plaintiff's case for him as appearing pro se.

After careful consideration of the record and the issues, the court concludes that the Findings and Recommendations of the Magistrate are proper and as such should be and hereby are affirmed and adopted by the Court as its own.

IT IS THEREFORE ORDERED that the decision of the Secretary, denying plaintiff's application for disability insurance benefits and for supplemental security income benefits, should be and hereby is affirmed.

IT IS SO ORDERED this 25th day of March, 1986.


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

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

FILED

MAR 25 1986

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

CAROLYN MARLER

Plaintiff(s),

vs.

No. 85-C-510-C

LIFE STYLE HOMES, INC.

Defendant(s).

ADMINISTRATIVE CLOSING ORDER

The defendants having filed its petition in bankruptcy and these proceedings 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 purpose required to obtain a final determination of the litigation.

IF, within 60(sixty) 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 25 day of March, 1986.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE
H. DALE COOK

Entered

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

FILED

MAR 25 1986

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

ELAINE MARIE CLAYTON WELCH,)
)
 Plaintiff,)
)
 -vs-)
)
 FRANK THURMAN, Sheriff of Tulsa)
 County, Oklahoma, successor to)
 DAVE FAULKNER, et al.,)
)
 Defendants.)

Case No. 81-C-154-B

ORDER OF DISMISSAL WITH PREJUDICE

It appearing to the satisfacton of this Court that all matters in controversy regarding money damages have been compromised by and between the parties, as evidenced by the signatures of each of the parties and the attorney for Defendants on the Stipulation for Dismissal filed herein on the 21st day of March, 1986.

IT IS ORDERED that the Plaintiff's above styled and numbered cause of action for money damages be, and the same is hereby, dismissed with prejudice, without effect on the pending class action causes for injunctive relief. The court costs of this action, if any, are taxed to the Defendants.

DATED this 24th day of March, 1986.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

Elaine Marie Clayton-Welch
ELAINE MARIE CLAYTON WELCH
Pro Se Plaintiff

Dick A. Blakeley
DICK A. BLAKELEY
ASSISTANT DISTRICT ATTORNEY
Attorney for the Defendants

September 4, 1985; the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 26, 1985; and the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 27, 1985.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their answers on August 14, 1985, and on September 16, 1985; and that the Defendant, SHELTER AMERICA CORPORATION, a Colorado corporation, filed its Disclaimer on September 30, 1985, disclaiming any right, title, or interest in the real property which is the subject of this action, and consenting that this suit may proceed without further notice to this Defendant.

The Court further finds that the Defendants, CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR, were served by publication. The Court finds that Plaintiff has caused to be obtained an evidentiary affidavit from Standard Abstract & Title Company, a corporation, a bonded abstracter, as to the last addresses of CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR, which affidavit was filed on September 19, 1985; that the necessity and sufficiency of Plaintiff's due diligence search with respect to ascertaining the name and address of the Defendants, CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR, 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 parties served by publication, with their 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 Defendants 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 Tulsa Daily Business Journal & Legal Record, a newspaper authorized by law to publish legal notices, printed in Tulsa County, Oklahoma, a newspaper of general circulation in Tulsa County, State of Oklahoma, for six (6) consecutive weeks commencing on January 17, 1986, and ending on February 21, 1986, by which said Defendants, CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR, were 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 Tulsa Daily Business Journal & Legal Record filed herein on February 27, 1986.

The Court finds that the Defendants, CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR, have failed to answer and their default has been entered by the Clerk of this Court on March 18, 1986.

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

Lot Seventeen (17), Block Five, TWIN CITIES SUBDIVISION, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on January 15, 1982, CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR executed and delivered to the United States of America, acting through the Veterans Administration, their promissory note in the amount of \$28,500.00, payable in monthly installments, with interest thereon at the rate of fifteen and one-half (15-1/2) percent per annum.

The Court further finds that as security for the payment of the above described note, CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR executed and delivered to the United States of America, acting through the Veterans Administration, a real estate mortgage dated January 15, 1982, and recorded on January 22, 1982, in Book 4591, Page 1000, in the records of Tulsa County, Oklahoma, covering the above described real property.

The Court further finds that the Defendants, CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR, made default under the terms of the aforesaid promissory 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, CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR, are indebted to the Plaintiff in the principal sum of \$28,490.58, plus interest at the rate of fifteen and one-half (15-1/2) percent per annum from July 1, 1984, 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, SHELTER AMERICA CORPORATION, a Colorado corporation, does not have any title, right, or interest in the subject real property.

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, Tulsa County, Oklahoma, the sum of \$ 0.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR, in the principal amount of \$28,490.58, plus interest at the rate of fifteen and one-half (15-1/2) percent per annum from July 1, 1984, until judgment, plus interest thereafter at the current legal rate of 7.06% 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 Defendant, SHELTER AMERICA CORPORATION, a Colorado corporation, does not have any title, right, or interest in the subject real property.

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 \$ 0 to the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the Defendants, CLAUDE ERVIN BARBOUR and TERESA LEE BARBOUR, 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 appraisalment 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, Tulsa County, Oklahoma, in the amount of

\$ 0 _____, ad valorem taxes which are presently due and owing on said real property; and

Third:

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

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.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

PETER BERNHARDT
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463
Attorney for Plaintiff

DAVID MOSS
District Attorney

BY:

Susan K. Morgan

SUSAN K. MORGAN
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

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

FILED

MAR 24 1986

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

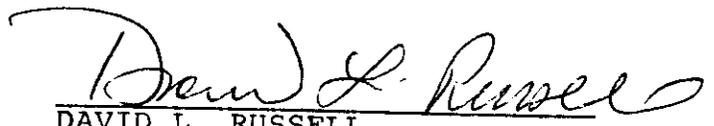
KAREN HAMMOND)
)
 Plaintiff,)
)
 -vs-)
)
 WALDO BALES and ROGER HAMMOND,)
)
 Defendants.)

CIV 85-C-205-R ✓

J U D G M E N T

In accordance with its Order issued on the 17th day of March, 1986, it is ORDERED, ADJUDGED and DECREED that the Defendant Waldo Bales have judgment in his favor on his Motion for Summary Judgment and that the Defendant Roger Hammond have judgment in his favor on his Motion for Summary Judgment.

Dated this 21th day of March, 1986.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 21 1986

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

SOUTHERN SATELLITE SYSTEMS, INC.,)
a Georgia corporation, and)
SATELLITE SYNDICATED SYSTEMS, INC.,)
an Oklahoma corporation,)

Plaintiffs,)

vs.)

SEABOARD SURETY COMPANY,)
a foreign insurer,)

Defendant.)

No. 85-C-322-E

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED AND AGREED by and between the plaintiffs, Southern Satellite Systems, Inc. and Satellite Syndicated Systems, Inc., and the defendant, Seaboard Surety Company, that this action and all claims asserted herein are dismissed without costs as between the parties and with prejudice to the renewal, recommencement or institution of the lawsuit or of any other action or proceeding by the plaintiffs upon any claim that has been, or may have been, raised in connection with those matters and allegations asserted in this case.



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

816 Enterprise Building
Tulsa, Oklahoma 74103
Telephone: 918/583-7129

ATTORNEYS FOR PLAINTIFFS

Ann M. Threlkeld
Roy J. Davis
Ann M. Threlkeld
ANDREWS DAVIS LEGG BIXLER MILSTEN
& MURRAH
500 West Main
Oklahoma City, Oklahoma 73102
Telephone: 405/272-9241

ATTORNEYS FOR DEFENDANT.

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

FILED

MAR 21 1986

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

No. 85-C-995-E

BOBBY E. MOFFITT,)
)
 Petitioner,)
)
 v.)
)
 STATE OF OKLAHOMA and DAVID)
 MOSS, District Attorney,)
)
 Respondents.)

ORDER

Comes now before the Magistrate Petitioner Bobby E. Moffitt's Application for a Writ of Habeas Corpus attacking a detainer issued by the District Court of Tulsa County, Oklahoma in Case No. CRF-83-4499. Petitioner was charged by a four count indictment of the offenses of robbery with a firearm, first degree murder, kidnapping and larceny of a motor vehicle. Moffitt was transported pursuant to the state's detainer from federal authorities at Leavenworth Penitentiary where he was serving sentences on other charges. He was brought back to Oklahoma to stand trial in Case No. 83-4499. Petitioner was received by Tulsa County authorities from the Leavenworth Penitentiary on or about June 4, 1985. He was arraigned before a Magistrate on June 7th and appeared for preliminary hearing on August 5, 1985. It appears that the delay prior to the preliminary hearing was due to the unavailability of the state medical examiner who was recovering from a heart attack and heart surgery. Following the August 5th preliminary hearing, Petitioner was ordered bound over to the District Court on all charges.

On August 12, 1985, Petitioner was present in District Court for arraignment and his attorney requested a continuance until August 30th for a hearing on motions. The August 30th hearing was passed to September for completion of a transcript. On September 13, a hearing was held concerning a motion to quash the preliminary hearing and a motion to produce evidence. Counsel for petitioner requested a continuance to prepare and submit additional motions. The Court, having granted additional time to both sides to file and respond to motions, passed this case until November 22, 1985. Until this time Petitioner had made no written or oral request for relief pursuant to the Interstate Agreement on Detainers Act.

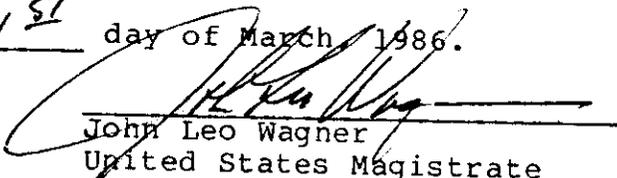
The Interstate Agreement on Detainers Act found at Title 22 O.S. §§ 1347 - 1349, provides that a detainee must be brought to trial within 180 days after appropriate demand or within 120 days of detainee's arrival in the receiving state. The Act further provides that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction may grant any necessary or reasonable continuance. Petitioner claims that he made a demand for a fair and speedy trial on April 19, 1985. Petitioner arrived in Oklahoma, the receiving state, on June 5, 1985. Trial in this matter was not held within either the 120 or 180 day time requirements as described above. Respondents contend that Petitioner never made a demand for disposition of the charges against him. The Magistrate finds, however, that even assuming that an appropriate demand was made, the continuances requested by and granted to both Petitioner and the State

in this matter have been for good cause and comply with the guidelines for continuances found in the Interstate Agreement on Detainers Act.

Additionally, Petitioner, in open court and with the advice of counsel, plead guilty to all charges pending in case No. 83-4499 on January 6, 1986. His plea of guilty in state court operated as a waiver of any alleged procedural violations otherwise accruing under the Interstate Agreement on Detainers Act. Perry v. Carter, 514 F.Supp. 19 (W.D. Okla. 1980); see also United States v. Palmer, 574 F.2d 164 (3rd Cir. 1979) cert. denied, 437 U.S. 907; United States v. Hobson, 686 F.2d 628 (8th Cir. 1982).

It is therefore Ordered that the Petition for Writ of Habeas Corpus in the above styled matter be and is hereby denied.

It is so Ordered this 21ST day of March, 1986.


John Leo Wagner
United States Magistrate

Entered

FILED

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

MAR 21 1986

JOHN G. SIMMER, CLERK
DISTRICT COURT

CURTIS J. MULLINS,)
)
Plaintiff,)
)
vs.)
)
FLAGSHIP INTERNATIONAL, INC.,)
a Delaware Corporation,)
formerly d/b/a SKY CHEFS)
CORPORATION,)
)
Defendant.)

Case No. 83-C-815-C

ORDER

There comes before the Court the Application of the Plaintiff, Curtis J. Mullins, pro se, applying to the Court for an Order dismissing the above captioned matter with prejudice as settled pursuant to the Settlement Conference proceedings of this Court, and it is hereby ORDERED that:

The above captioned action is dismissed with prejudice to the refiling of any action or claim.

DATED this 20 day of March, 1986.

(Signed) H. Dale Cook

JUDGE OF THE DISTRICT COURT

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

JIMMY ODELL WHITEIS, on his)
own behalf; SANDRA KAY WHITEIS,)
on her own behalf and as mother)
and next friend of SONYA CHRISTINE)
GRAHAM; SONYA CHRISTINE GRAHAM, a)
minor, by her mother and next)
friend,)

Plaintiffs,)

v.)

OFFICER R. G. FLANAGAN;)
LIEUTENANT D. L. BRADLEY;)
OFFICER RICHARD KROUSE; and)
OFFICER D. L. GRAHAM,)

Defendants.)

FILED

MAR 21 1986

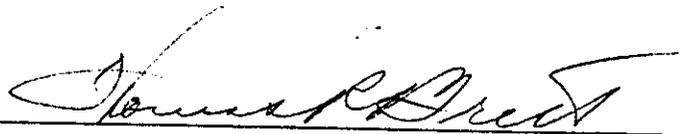
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 84-C-957-B

JUDGMENT ON JURY VERDICT

This action came on for trial before the Court and a jury, Honorable Thomas R. Brett, United States District Judge, presiding. The issues having been duly tried and the jury having duly rendered its verdict this 21st day of March, 1986, IT IS ORDERED AND ADJUDGED Judgment is hereby granted for the defendants, Lt. D. L. Bradley and Officers R. G. Flanagan, Richard Krouse and D.L. Graham, against the plaintiffs Jimmy Odell Whiteis; Sandra Kay Whiteis, on her own behalf and as mother and next friend of Sonya Christine Graham, a minor. The plaintiffs are to take nothing against said defendants, said action is hereby dismissed with costs assessed against the plaintiffs. IT IS FURTHER ADJUDGED, the Court having previously sustained a directed verdict on behalf of the defendants City of Sand Springs and Odean Helm that said

defendants are granted judgment against the plaintiffs, and that the action of plaintiffs against said defendants be dismissed, with costs assessed against the plaintiffs.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

M-1269-C

CIVIL ACTION FILE NO.

INDEMNITY INSURANCE COMPANY OF
NORTH AMERICA

vs.

SKELLY DRILLING COMPANY, INC., ET AL

85 CIVIL 8349 PNL
DEFAULT
JUDGMENT

#86,0245

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

I, RAYMOND F. BURGHARDT

....., Clerk of the United States District Court for
the SOUTHERN District of NEW YORK

do hereby certify the annexed to be a true and correct copy of the original judgment entered in the
above entitled action on January 31, 1986, as it appears of record in my office,
and that

- Said judgment having been entered on default of the
defendant(s) in appearing herein and no application having
been made to vacate said judgment.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said
Court this 5th day of March, 19 86.

RAYMOND F. BURGHARDT, Clerk

By Ralph Louza Deputy Clerk

* When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on [insert date] upon the entry of [If no motion of the character described in Rule 73(a) F.R.C.P. was filed, here insert 'the judgment', otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.] If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on [insert date] and the judgment was affirmed by mandate of the Court of Appeals issued [insert date]" or "a notice of appeal from the said judgment was filed in my office on [insert date] and the appeal was dismissed by the [insert 'Court of Appeals' or 'District Court'] on [insert date]", as the case may be.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOC # 5

INDEMNITY INSURANCE COMPANY OF
NORTH AMERICA,

85 Civ. 8349 (PNL)

Plaintiff,

DEFAULT JUDGMENT

- against -

86,0245

SKELLY DRILLING COMPANY, INC.,
VERN O. COLLUM and CRAIG O. COLLUM,

Defendants.

U.S. DISTRICT COURT
FILED
JAN 30 1986

This action having been commenced by the filing of a complaint and the issuance of a summons on October 23, 1985, and a copy of the summons and complaint having been served pursuant to Rules 4(d)(3) and 4(e) of the Federal Rules of Civil Procedure upon defendants Skelly Drilling Company, Inc. and Craig O. Collum, on November 7, 1985, and defendants Skelly Drilling Company, Inc. and Craig O. Collum, not having appeared, answered or moved with respect to the complaint, and their time for appearing, answering or moving with respect to the complaint having expired, and pursuant to Rule 54(b) of the Federal Rules of Civil Procedure there being no just reason for delay

NOW, on motion of Cole & Deitz, attorneys for plaintiff, Indemnity Insurance Company of North America, it is

ORDERED, ADJUDGED and DECREED that plaintiff Indemnity Insurance Company of North America have judgment joint and several against defendants Skelly Drilling Company, Inc. and Craig O. Collum in the liquidated amount of \$536,000.00 with

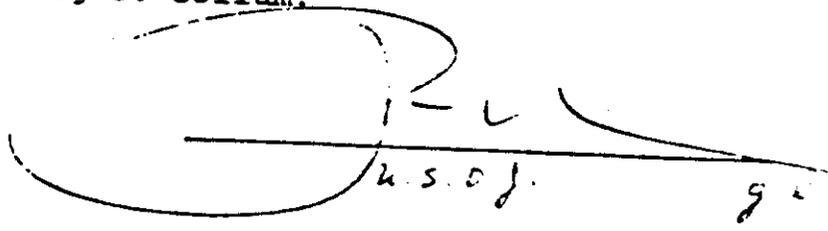
WITNESSED BY
JAN 13 1986

interest thereon from August 26, 1985 at the rate of 12.5% per annum through December 18, 1985 in the amount of \$21,216.54; plus \$335,030.00 with interest thereon from October 3, 1985 at the rate of 12.5% per annum through December 18, 1985 in the amount of \$8,840.32; plus \$1,352,500.00 with interest thereon from November 2, 1985 at the rate of 12.5% per annum through December 18, 1985 in the amount of \$21,602.06; plus the costs and disbursements of this action in the amount of \$400.00 amounting in total to \$2,275,588.92 and plaintiff have execution therefor, and it is further

ORDERED, ADJUDGED and DECREED, that the second, fifth and eighth claims for relief be severed and continued against defendant Vern O. Collum and it is further

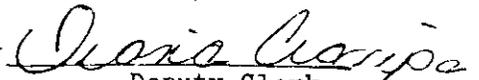
ORDERED, ADJUDGED and DECREED, that the tenth claim for relief requesting the recovery of reasonable attorneys fees be severed and continued against defendants Skelly Drilling Company, Inc., Vern O. Collum and Craig O. Collum.

DATED: JAN 25/1986


u.s.d.j. 9

A TRUE COPY

RAYMOND F. BURGHARDT, Clerk

By 
Deputy Clerk

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FILED

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

MAR 20 1986

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

KAREN HAMMOND)
)
 Plaintiff,)
)
 -vs-)
)
 WALDO BALES and ROGER HAMMOND,)
)
 Defendants.)

CIV 85-C-205-R

O R D E R

This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff-Karen Hammond seeks damages from Defendant-Waldo Bales, an assistant district attorney for Delaware County, Oklahoma, and from Defendant-Roger Hammond, a private citizen. Roger Hammond, Plaintiff's former father-in-law, filed a criminal complaint against Plaintiff for larceny from the house (which was later changed to embezzlement by bailee). Defendant-Roger Hammond accused Plaintiff of removing certain property allegedly owned by Roger Hammond from a residence owned by Plaintiff and her former husband, Dennis Hammond.

Plaintiff had a preliminary hearing. After probable cause was established, Plaintiff was bound over for arraignment. Before trial, Defendant-Bales and Plaintiff's attorney entered into plea bargaining discussions. Defendant-Bales agreed to request that the Court dismiss the criminal charge in exchange for Plaintiff executing a release of civil liability in favor of Roger Hammond. The Court allowed the charge to be dismissed.

Plaintiff claims that Defendant-Bales violated Plaintiff's constitutional right to sue Roger Hammond for malicious prosecution by requiring that Plaintiff sign the release of civil liability. In a previous Motion to Dismiss, Defendant-Bales claimed that since he was a prosecutor this action against him was barred by absolute immunity. The Motion to Dismiss was denied.

Defendant-Bales then filed a Motion for Summary Judgment on the basis that no issue of material fact exists as to whether Defendant-Bales enjoyed absolute immunity, or in the alternative, qualified immunity. For the reasons set forth below, Defendant-Bales' Motion for Summary Judgment is granted for Defendant-Bales.

Defendant-Roger Hammond also filed a Motion for Summary Judgment on the basis that no facts support the claim that he conspired to deprive Plaintiff of her constitutional rights. Defendant-Roger Hammond's Motion for Summary Judgment is granted for Defendant-Roger Hammond.

Waldo Bales

The issue presented by this case is whether Defendant-Bales' conduct in obtaining the release is covered by absolute immunity; not whether the release is valid.

The impropriety of extracting a release from civil liability in exchange for the dismissal of criminal charges is reasonably well established. Use of a criminal complaint to coerce a release from civil liability has been held to be a deprivation of Fourteenth Amendment due process. Lusby v.

T.G. & Y. Stores, Inc., 749 F.2d 1423, 1431 (10th Cir. 1984), vacated sub nom. Lawton v. Lusby, 106 S.Ct. 40, 88 L.Ed.2d 33, 54 U.S.L.W. 3221 (1985) (remanded for reconsideration in light of City of Oklahoma City v. Tuttle, 105 S.Ct. 2407, 85 L.Ed.2d 791, 53 U.S.L.W. 4639 (1985)). The major evil of such a release is the potential for abuse in using it to bar meritorious civil suits or, failing to extract a release, in prompting retaliatory prosecution of nonmeritorious criminal charges. Dixon v. District of Columbia, 394 F.2d 966, 969 (D.C. Cir. 1968); Hoines v. Barney's Club, Inc., 28 Cal.3d 603, 620 P.2d 628, 638, 170 Cal. Rptr. 42, (1980) (Tobriner, J., dissenting).

Because of the possibility of abuse, courts generally do not enforce releases of civil liability executed in exchange for dismissal of criminal charges. Dixon, 394 F.2d at 969; MacDonald v. Musick, 425 F.2d 373, 375 (9th Cir. 1970), cert. denied, 400 U.S. 852, 91 S.Ct. 54, 27 L.Ed.2d 90 (1970). Such releases are particularly disfavored when they are raised as a defense in civil rights suits. Rumery v. Town of Newton, 778 F.2d 66, 70 (1st Cir. 1985); Horne v. Pane, 514 F.Supp. 551, 552 (S.D.N.Y. 1981); contra, Hoines, 620 P.2d at 635.

Despite the impropriety of conditioning a dismissal on the signing of a release and the probable ineffectiveness of such a release, the claim against

Defendant-Bales is barred by absolute immunity.¹

The Court in Imbler v. Pachtman, 424 U.S. 409, 423, 96 S.Ct. 984, 991, 47 L.Ed.2d 128, 139 (1976), noted that the purpose of prosecutorial immunity was to prevent unfounded and harassing litigation that might unduly influence the exercise of independent judgment. The Court held that "in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under § 1983." Imbler, 424 U.S. at 431. While the Court held that absolute immunity protected a prosecutor's activities intimately associated with the judicial phase of the criminal process, it reserved judgment on whether such immunity extended to those activities of the prosecutor "that cast him in the role of an administrator or investigative officer rather than that of advocate." Imbler, 424 U.S. at 430-31.

Plaintiff claims that Defendant-Bales' conduct in requiring a release of liability for Defendant-Roger Hammond was administrative, rather than advocacy in nature. Plaintiff makes this assertion based on Defendant-Bales' deposition testimony that one reason he requested a release was his concern that a civil suit against Roger Hammond

1. The claim against Defendant-Bales, in his official capacity, may be barred in federal court by the Eleventh Amendment; this issue was not raised by Defendant-Bales. Since it is not necessary to address the issue in view of the application of absolute immunity, the Court will not decide the question here.

would make demands on the time of Defendant-Bales, the District Attorney's office, and the Sheriff's office. (Deposition of Waldo Bales, taken October 10, 1985, p. 57, lines 15-22.)

The courts have followed a functional approach to determining whether a particular conduct is absolutely immune. Harlow v. Fitzgerald, 457 U.S. 800, 811 & n. 16, 102 S.Ct. 2727, 73 L.Ed.2d 396, 406 & n. 16 (1982). While a prosecutor enjoys absolute immunity for that conduct which occurs in the "advocatory" function, delineating the precise scope of protected advocatory conduct beyond the boundaries established in Imbler has proved to be exceedingly difficult. Gray v. Bell, 712 F.2d 490, 498-99 (D.C. Cir. 1983), cert. denied, 465 U.S. 1100, 104 S.Ct. 1593, 80 L.Ed.2d 125 (1984). The general considerations employed in analyzing whether prosecutorial conduct can properly be categorized as advocatory are: (1) when the challenged conduct occurred in relation to the filing of formal criminal charges against the person seeking redress, and (2) whether safeguards existed at that stage which would mitigate prosecutorial abuse and minimize the need for civil damage suits. Gray, 712 F.2d at 500-01; Higgs v. District Court, No. 83SA493, slip opinion (Colo. Dec. 2, 1985).

The first consideration focuses on whether the conduct occurred at a phase of the proceedings which was sufficiently adversarial to evoke strong resentment against the prosecutor. The special nature of the prosecutor's

responsibilities requires that he be accorded absolute immunity when he participates in the judicial process. Fear of retaliatory suits could deter a prosecutor from initiating prosecutions except in the most "air-tight" cases. Marrero v. City of Hialeah, 625 F.2d 499, 507 (5th Cir. 1980), cert. denied sub nom. Rashkind v. Marrero, 450 U.S. 913, 101 S.Ct. 1353, 67 L.Ed.2d 337 (1981). In the present case, a formal criminal charge had been filed against Plaintiff, a preliminary hearing had been held, and Plaintiff was awaiting trial. It was at this point in the process that Defendant-Bales negotiated for the release of civil liability in exchange for dismissal of the charge. By then, sufficient accusatory actions had been directed at Plaintiff to incite retaliatory action such as this against Defendant-Bales.

The second consideration is whether safeguards existed to mitigate prosecutorial abuse and to minimize the need for a civil suit. Judicial supervision of actions taken by the prosecutor during the criminal proceedings serves to restrain and mitigate prosecutorial abuse. Marrero, 625 F.2d at 509. There were sufficient safeguards here to prevent prosecutorial abuse. Defendant-Bales agreed just to make application to the Court that the charge against Plaintiff be dismissed. By Oklahoma statute, only the Court could dismiss criminal charges, and then only after hearing the reasons for the requested dismissal.

22 O.S. § 815.² The Court approved the dismissal of the criminal charge against Plaintiff.

In light of both considerations, Defendant-Bales' conduct of requesting the release in exchange for the dismissal is advocatory in nature. However, Plaintiff argues that obtaining a release of civil liability for a third-party, such as Roger Hammond, is outside the duties of a prosecutor, and Defendant-Bales should not be shielded by absolute immunity. A criminal defendant's decision to assert a civil rights claim is not a factor which the prosecutor should consider in deciding whether to proceed with a prosecution. Rumery, 778 F.2d at 70. Neither is it the function of the prosecutor to decide whether a criminal defendant's potential civil suit has merit. Hoines, 620 P.2d at 638 (dissent). Furthermore, it is not a proper function of the prosecutor to consider the personal advantages that might accrue to third parties from securing a release in exchange for dismissing charges. Hoines, 620 P.2d at 635 (dissent).

Deposition testimony of Defendant-Bales is that he considered the ability to obtain the release as only one of

2. 22 O.S. § 815:

The court may either of its own motion or upon the application of the county attorney, and the furtherance of justice, order an action or indictment to be dismissed; but in that case the reasons of the dismissal must be set forth in the order, which must be entered upon the minutes.

several factors in deciding not to pursue the prosecution.³ The fact that it was not a proper factor for consideration does not remove the decision from the advocatory function; nor does it remove the shield of absolute immunity. McGruder v. Necaize, 733 F.2d at 1146, 1148 (5th Cir. 1984). See also, Martinez v. Winner, 771 F.2d 424, 437 (10th Cir. 1985), on rehearing, 778 F.2d 553 (10th Cir. 1985) (prosecutor's conduct in conspiring with the court to declare a mistrial was improper, but immune). So long as the actions were performed as part of the prosecution of the case, immunity attaches; it is immaterial that those actions could also be characterized as administrative. Condos v. Conforte, 596 F. Supp. 197, 200 (D.Nev. 1984); Demery v. Kupperman, 735 F.2d 1139, 1143 (9th Cir. 1984); see Coleman v. Turpen, 697 F.2d 1341, 1344 & 1346 (10th Cir. 1982) (held prosecutor's conduct in handling evidence used in the presentation of the case subject to absolute immunity, while prosecutor's conduct in handling evidence not used in the case was administrative and subject only to qualified

3. The factors Defendant-Bales considered significant to his decision to dismiss the criminal charge were:

- 1) Request by Karen Hammond's attorney for a dismissal,
- 2) Number of cases on the jury docket of a more immediate and serious concern to the public,
- 3) Cost of a trial,
- 4) Ability of the defense attorney,
- 5) Probability of successful prosecution,
- 6) Best interest of the public in avoiding a civil trial which would involve county officials, including himself, as witnesses.

(Deposition of Waldo Bales, taken October 10, 1985; p. 57, lines 7-22; p. 73, lines 11-25; p. 74, lines 1-9).

immunity.)

A decision not to prosecute is similar to a decision to prosecute, and, regardless of the basis for the decision, is immune for the same purpose of guaranteeing the prosecutor unlimited independence in the discharge of his duties. Dohaish v. Tooley, 670 F.2d 934, 938 (10th Cir. 1982), cert. denied, 459 U.S. 826, 103 S.Ct. 60, 74 L.Ed.2d 63 (1982). Defendant-Bales is immune from liability for monetary damages under § 1983 because dismissing the criminal charge in exchange for the release was within the advocatory function of the prosecutor. Boyd v. Adams, 513 F.2d 83, 86 (7th Cir. 1975) (anticipating the Imbler decision); McGruder, 733 F.2d at 1148.

Roger Hammond

Defendant-Roger Hammond filed a Motion for Summary Judgment on the grounds that there were no facts to support Plaintiff's claim that Defendant-Roger Hammond conspired with Defendant-Bales.

One of the requisite elements of a § 1983 claim is that the defendant acted under color of state law. Norton v. Liddel, 620 F.2d 1375, 1379 (10th Cir. 1980). When a plaintiff in a § 1983 action attempts to assert the necessary state action by implicating a state official in a conspiracy with a private defendant, the pleadings must specifically present facts tending to show agreement and concerted action. Sooner Products Co. v. McBride, 708 F.2d 510, 512 (10th Cir. 1983). The standard is even stricter

where the state official allegedly involved in the conspiracy is immune from suit. Sooner Products at 512. The test to determine whether a private individual has actively conspired with an immune state official is:

Has the plaintiff demonstrated the existence of a significant nexus or entanglement between the absolutely immune state official and the private party in relation to the steps taken by each to fulfill the objects of their conspiracy?

Norton, 620 F.2d at 1380.

While caution is advised in any pretrial disposition of conspiracy allegations in civil rights actions, Clulow v. Oklahoma, 700 F.2d 1291, 1303 (10th Cir. 1983), Plaintiff has failed to produce any evidence that Defendant-Roger Hammond actively conspired with Defendant-Bales. There is no dispute that Defendant-Bales was aware that Plaintiff intended to file a civil suit against Defendant-Roger Hammond and that Defendant-Bales considered that fact in deciding to request Plaintiff sign a release of civil liability in favor of Defendant-Roger Hammond. However, the mere fact that Defendant-Bales considered that information supports no inference of concerted activity. See, Clulow, 700 F.2d at 1303.

In response to Defendant-Roger Hammond's Motion for Summary Judgment, Plaintiff filed only her own affidavit stating that Defendant-Roger Hammond told Plaintiff that he was a good friend of Defendant-Bales. While Defendant-Bales disputes that he was good friends with Roger Hammond, the

fact is immaterial.⁴ Even if Defendant-Bales and Defendant-Roger Hammond were good friends, that does not give rise to a reasonable inference that Defendant-Roger Hammond actively conspired with Defendant-Bales to deny Plaintiff her constitutional rights.

Plaintiff's evidence fails to demonstrate the existence of a "significant nexus or entanglement" between Defendant-Bales, an immune state official, and Defendant-Roger Hammond, a private party, which is necessary to support a § 1983 action.

Accordingly, both Defendant-Bales' Motion for Summary Judgment and Defendant-Roger Hammond's Motion for Summary Judgment are granted in favor of the respective Defendants.

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


 DAVID L. RUSSELL
 UNITED STATES DISTRICT JUDGE

4. Summary judgment is only inappropriate if the disputed facts are material. Phillips Machinery Co. v. LeBlond, Inc., 494 F. Supp. 318, 325 (N.D. Okla. 1980).

FILED

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

MAR 20 1986

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

SCOT WILLIAM JOHNSON,

Plaintiff,

vs.

No. 85-C-974-E

AMERICAN DRAG RACING
ASSOCIATION, A Washington
corporation,

Defendant.

JUDGMENT

The Defendant, American Drag Racing Association, a Washington corporation, having failed to plead or otherwise defend in this action and its default having been entered,

Now, upon application of the Plaintiff, upon affidavits and after a hearing on the matter herein held on March 10, 1986, this Court finds that Defendant has been defaulted for failure to appear and that Defendant is not an infant or incompetent person, and is not in the military service of the United States, and Plaintiff is entitled to relief as follows:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff recover of Defendant the sum of \$40,500.00 in actual damages, plus \$20,000.00 as exemplary damages; plus interest at the rate of 7.06% per annum from the time judgment is rendered until time judgment is satisfied; plus an attorney's fee to be set upon application; plus the costs of the action.

DATED this 20th day of March, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED
MAR 20 1986

EVANSTON INSURANCE COMPANY, a)
foreign corporation,)
)
Plaintiff,)
)
vs.)
)
DONALD EICHHORN, an individual,)
et al,)
)
Defendants.)

No. 85-C-492-E

ORDER OF DISMISSAL

This matter came on for consideration on this 20th day of March, 1986, upon the Joint Application for Dismissal With Prejudice filed herein. 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 dismissed with prejudice to a refileing.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Joint Application for Dismissal With Prejudice by the parties be, and the same is hereby approved, and the above styled and numbered cause of action, Complaint and Counterclaims are dismissed with prejudice to a refiling.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

FILED

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

MAR 20 1986

ALAN L. SMITH,)
)
 Plaintiff,)
)
 v.)
)
 MARGARET M. HECKLER, Secretary)
 of Health and Human Service,)
)
 Defendant.)

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

No. 84-C-992-E

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed February 21, 1986 in which the Magistrate recommended that the decision of the Secretary be affirmed. 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 the decision of the Secretary denying Plaintiff's application for disability insurance benefits be and is hereby affirmed.

Dated this 19th day of March, 1986.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered copy

FILED

MAR 20 1986

WILLIAM P. SILVER, CLERK
U.S. DISTRICT COURT

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

| | | |
|--------------------------------------|---|---------------------|
| Tri-State Drilling and Equipment Co. |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 85-C-895 C |
| |) | |
| Tower Fabricators, Inc. and MCI |) | |
| Telecommunications Corporation, |) | |
| |) | |
| Defendants. |) | |

ORDER OF DISMISSAL, TRI-STATE AND MCI

Now on this 20 day of March, 1986, pursuant to Stipulation of Tri-State Drilling and Equipment Company ("Tri-State") and MCI Telecommunications Corporation ("MCI"), and for good cause shown, IT IS HEREBY ORDERED that Tri-State's Complaint as against MCI and its Motion for Summary Judgment against MCI are dismissed without prejudice and at Tri-State's own cost and legal expense; and that MCI's Motion for Summary Judgment against Tri-State is dismissed without prejudice and at MCI's own cost and legal expense, neither recovering an attorney fee and costs against the other.

(Signed) H. Dale Cook

H. DALE COOK
Chief Judge

O. K.

Byrne A. Bowman

BYRNE A. BOWMAN, OBA #1008
Attorney for Plaintiff

Timothy T. Trump

TIMOTHY T. TRUMP, OBA #10684
Attorney for MCI

should be dismissed pursuant to said application.

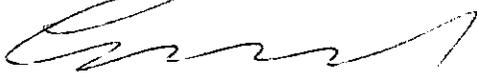
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs, Bobbie Giles and Gwendolyn Giles, individually and as husband and wife, against the Defendants, The Schnucks Transportation Co., United States Fire Insurance Company and Roblyn Transportation Co. be and the same hereby are dismissed with prejudice to any future action.



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

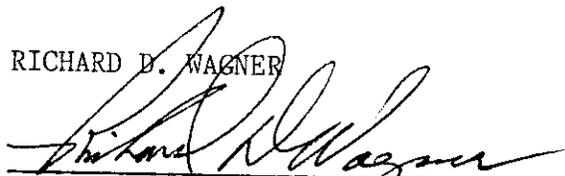
Approvals:

EDWIN W. ASH



Attorney for the Plaintiffs, Bobbie Giles
and Gwendolyn Giles, individually and as
husband and wife,

RICHARD D. WAGNER



Attorney for the Defendants, The Schnucks
Transportation Co., United States Fire
Insurance Co., and Roblyn Transportation
Co.

Entered COPY

FILED

MAR 19 1986

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

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

| | | |
|-------------------------|---|---------------|
| ALI DAEMI, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | No. 84-C-99-C |
| |) | |
| CHURCH'S FRIED CHICKEN, |) | |
| |) | |
| Defendant. |) | |

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came on before the Court for nonjury trial on December 2, 3, and 4, 1985 and March 10, 1986. Plaintiff Ali Daemi brought this suit against defendant Church's Fried Chicken under several causes of action. First, plaintiff claims he was unlawfully discriminated against on the basis of his national origin by reason of defendant's discriminatory treatment and harassment of him during his employment, culminating in a wrongful constructive termination of his employment in violation of Title VII of the Civil Rights Act of 1964, 42 United States Code Section 2000e, et seq. Second, plaintiff claims defendant violated his contract rights under Title 42 U.S.C. §1981 by reason of the termination, the harassment plaintiff was allegedly subjected to during employment, and by the denial of employment opportunities, all based on his national origin. Plaintiff also brings pendent claims for breach of contract damages for wrongful

termination and intentional infliction of severe emotional distress. Defendant Church's denies any form of discrimination, harassment, breach of contract, wrongful termination, or intentional infliction of mental distress, and asserts plaintiff voluntarily resigned from defendant's employment.

The parties have submitted trial briefs and proposed findings of fact and conclusions of law. As such, the matter is now ready for disposition on the merits. After considering the pleadings, testimony, exhibits admitted at trial, all of the briefs and arguments presented by counsel for both parties, and being fully advised in the premises, the Court enters the following findings of fact and conclusions of law pursuant to F.R.Cv.P. 52(a).

FINDINGS OF FACT

A. Jurisdiction and Venue

1. Plaintiff Ali Daemi, a former citizen of Iran, who was naturalized as a U. S. citizen on October 9, 1984, resided in Tulsa, Oklahoma within the Northern District of Oklahoma, during the pertinent time periods involved in this action. Plaintiff was employed by defendant Church's Fried Chicken (Church's) from approximately June 9, 1980 to January 20, 1981 and from approximately June 20, 1981, to approximately June 29, 1983.

2. Defendant Church's is a Texas corporation, doing business within the State of Oklahoma, and is an employer within the meaning of Title VII, and was such an employer at all times relevant to the action herein. The defendant employed fifteen (15) or more employees for each working day in each of the twenty

(20) or more calendar weeks in the calendar years relevant to plaintiff's causes of action.

3. The Court is vested with jurisdiction of this matter pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 United States Code Section 2000e, 42 United States Code Section 1981, and 28 United States Code Sections 1331, 1337, and 1343(4).

4. Venue is proper in this federal judicial district pursuant to 28 United States Code Section 1391.

5. Plaintiff timely filed a charge of discrimination on the basis of national origin with the Equal Employment Opportunity Commission (EEOC). This action was brought within ninety (90) days of the EEOC notification of his right to sue.

6. The allegedly unlawful employment practices, which are the subject of this action, were committed in Tulsa, Oklahoma, within the Northern District of Oklahoma.

B. Liability of Defendant Church's Fried Chicken

7. Plaintiff Daemi was first employed by defendant Church's as a team member in Joplin, Missouri. In 1980, he was promoted to assistant manager of store #619 in Tulsa. Plaintiff quit in January 1981, citing lack of assistance as the reason. On November 16, 1981, Church's offered plaintiff an area manager position in Illinois, which he accepted. In May of 1982, he was transferred to Tulsa under district manager Glen Huffman and, after Huffman's departure, Mr. Robert Vines.

8. During the 11 months that plaintiff worked with Huffman, Huffman spoke derogatory words about plaintiff and

others, but did not take any discriminatory actions against plaintiff nor cause an adverse effect on his present or future employment. Huffman told plaintiff he was a "damn Irish" or "damn Iranian" and that if he wanted to keep his job he should get rid of Iranians in his market. At a St. Louis seminar meeting, Huffman was served some Iranian food and vocalized his dislike for it. Huffman openly admitted he disliked Iranians and blacks. Within a year of plaintiff's firing, Mr. Huffman was terminated by Church's for his abusive style of supervision and for instructing plaintiff to submit a bill to Church's for payment on an air conditioner motor Huffman ordered and procured for his home use. Huffman never reimbursed Church's for the motor.

9. Plaintiff's experiences with Huffman's replacement, Robert Vines, were perceived by plaintiff to be discriminatory and harassing, in that plaintiff thought Vines was abusive and unfriendly to him, while being friendly to the white employees. Plaintiff felt Vines thought he was "stupid" and was embarrassed to ask Vines questions or ask him for help. Plaintiff also felt slighted by Vines' not mentioning his name at the Master Merchant meeting in Oklahoma City in early June of 1983, the purpose of which was to recognize store managers, not area managers.

10. Plaintiff reported what he perceived to be Vines' discriminatory treatment of him to higher Church's officials. His attempted transfer out from under Vines' supervision was not allowed.

11. It seems apparent to the Court that a great amount of the trouble regarding discrimination or perceived discrimination in defendant's organization was the complete failure of Church's to have any effective training or monitoring system to prevent and identify discriminatory practice. It is also apparent that Huffman created the conditions that caused minorities to perceive certain practices, which the evidence indicates were standard and applied to all employees equally, to be prejudicial and unlawfully discriminatory. There are times when some people perceive prejudice, though it may be a very innocent act, especially in instances where the work environment is conducive to these beliefs and perceptions and magnifies them.

From observation of the witness, it is apparent that Mr. Vines has a rather direct and assertive manner which, by a sensitive person, could be misinterpreted as gruff and unfriendly. It is equally apparent that Mr. Vines projects this manner with all persons with whom he deals, including the attorneys involved in this case.

12. The Court finds the actual situation existing between Vines and plaintiff to be that Robert Vines simply found plaintiff's job performance to be unsatisfactory. Plaintiff had no Master Merchant stores in his area when Vines replaced Huffman. Vines found plaintiff unable to hire personnel, and in response Vines conducted a special weekend hiring session with plaintiff so that he could improve that skill. In the stores plaintiff was in charge of, Vines observed excessive employee turnover, cash

shortages, merchandise shortages, unclean premises, and a general lack of training of the employees.

13. Vines contacted his superior, Ed Marlette, in spring of 1983, regarding his problems with plaintiff. Vines initially thought that perhaps he had a communication problem and that Marlette could intercede between plaintiff and Vines. Marlette spoke to plaintiff and asked him to listen to Vines and follow his suggestions and orders. Plaintiff was agreeable to this suggestion and responded by working self-inflicted long overtime hours. His efforts did not produce results. Plaintiff worked hard, but did not work smart, in the opinion of Ed Marlette.

14. Vines had plaintiff take a polygraph examination after investigation and interviews of other employees yielded information that led Vines to believe plaintiff might have been involved in or might have known something about a robbery of defendant's stores that took place while plaintiff was away on vacation. Plaintiff passed the examination.

15. In late June, 1983, Vines gave plaintiff the opportunity of taking a demotion to store manager or quitting. He recognized plaintiff's efforts, but explained that the lack of results led him to conclude that plaintiff, who was an excellent store manager, was perhaps overplaced as an area manager. He cited the benefits of the job change such as more family time, one store to be responsible for as opposed to several, plaintiff's proven ability as a store manager, opportunity in plaintiff's future to return to area manager position, and the continued availability of the Step-13 Program of promotion and eventual store ownership.

Plaintiff reacted to the meeting with shock, and rejected the first store Vines suggested he manage. They agreed, however, on another store, #827, and agreed on the date plaintiff was to report to work. Plaintiff had worked only two days at #827 when Vines received plaintiff's letter of resignation.

16. The Court finds the plaintiff had difficulty controlling his area, had insufficient management skills, and had communicative difficulties.

17. When plaintiff resigned, eight other Iranians were still employed in his area.

18. There is no written employment contract between the parties. The writings evidencing an agreement are the Church's Fried Chicken handbooks and manuals supplied to plaintiff.

CONCLUSIONS OF LAW

Title VII Claim

A. Jurisdiction and Venue

1. All filing requirements of Title VII of the Civil Rights Act of 1964, as amended in 1972 (Title VII), which are a prerequisite to the jurisdiction of this Court, have been satisfied by plaintiff herein. Title 42 U.S.C. §2000e-5(e), (f) (1).

2. The defendant herein is an employer subject to the provisions of Title VII. 42 U.S.C. §2000e(b), (h).

3. Venue properly lies within this Court. 42 U.S.C. §2000e-5(f) (3).

B. Liability of Defendant Church's

4. The defendant did not commit an unlawful employment practice and did not discriminate against nor harass the plaintiff on the basis of his national origin in connection with its activities at issue in this action.

5. The test most often used for determining whether a plaintiff has proved a prima facie case of employment discrimination was set forth by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Plaintiff can establish a prima facie case by proving: "(i) that he belongs to a [protected] minority; (ii) that he applied for and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications."

6. While the McDonnell Douglas test above applied specifically to hiring discrimination, the same general test has been applied in cases involving discrimination in working conditions.

7. The four-element McDonnell Douglas test is by no means the only way of proving a prima facie case of discrimination. As the Supreme Court noted in McDonnell Douglas, supra, "The facts necessarily will vary in Title VII cases; and the specification above of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations." McDonnell Douglas, supra note 13, at 802.

8. The Supreme Court has recognized two separate theories under which plaintiff may be entitled to relief under Title VII: (1) disparate treatment and (2) disparate impact. International Brotherhood of Teamsters v. United States, et al., 431 U.S. 324 (1977). "Disparate treatment", which involves situations in which an employer treats some employees less favorably than others because of race, color, religion, sex, or national origin, requires proof of discriminatory motive, which can, in some instances, "be inferred from the mere fact of differences in treatment." Teamsters, supra note 15, at 335.

9. As set forth in McDonnell Douglas Corp. v. Green, supra, the allocation of burdens and order of presentation of proof is as follows: First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." Id. p.802. Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not true reasons, but were a pretext for discrimination. Id. p.804. Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

10. "The burden of establishing a prima facie case of disparate treatment is not onerous. The plaintiff must prove by a preponderance of the evidence that [he] applied for an available position for which [he] was qualified, but was rejected

under circumstances which give rise to an inference of unlawful discrimination." Texas Dept. of Community Affairs, supra at 253.

11. Plaintiff was not harassed in his employment; neither was plaintiff terminated. He resigned.

12. National origin harassment includes ethnic slurs and other verbal or physical conduct relating to an individual's national origin when the conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment, has the purpose or effect of unreasonably interfering with an individual's work performance, or otherwise adversely affects an individual's employment opportunities. Title 29 C.F.R. §1606.8(b).

13. Title 29 C.F.R. §1606.8(c) states that "an employer is responsible for its acts and those of its agents and supervisory employees with respect to harassment on the basis of national origin regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence...."

14. Title 29 C.F.R. §1606.8(d) states that "with respect to conduct between fellow employees, an employer is responsible for acts of harassment in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action."

15. Plaintiff has not established a prima facie case of harassment regarding working conditions based on national origin. The record in this case clearly shows Huffman's discriminatory comments to plaintiff did not unreasonably interfere with his work performance nor adversely affect his employment opportunities. The record is also clear that Robert Vines did not unlawfully discriminate against plaintiff. Plaintiff's work record as an area manager was poor. Vines offered plaintiff continued employment with Church's in a capacity in which plaintiff could succeed.

16. Plaintiff is not entitled to recover under this cause of action.

§1981 Claim

A. Jurisdiction and Venue

1. Jurisdiction properly lies within this Court, pursuant to 28 U.S.C. §1343, to consider the cause of action brought pursuant to the Civil Rights Act of 1866, 42 U.S.C. §1981.

2. Venue properly lies within this federal judicial district.

3. Title 42 U.S.C. §1981 provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

4. Section 1981 of Title 42 affords a federal remedy against national origin discrimination in private employment.

B. Liability of Defendant Church's

5. In order to establish a prima facie case under 42 U.S.C. §1981, plaintiff must show evidence of the same elements delineated in McDonnell Douglas, supra.

6. Discriminatory intent must also be proved in §1981 cases. Gen. Bldg. Contractors Assoc. v. Pennsylvania, 458 U.S. 375 (1982).

7. Plaintiff has failed to establish a prima facie case of national origin discrimination, culminating in a discharge from employment under Title 42 U.S.C. §1981. Plaintiff resigned, effectively rejecting an offer of continued employment. Plaintiff is entitled to no recovery on this cause of action.

Breach of Contract/Wrongful Termination Claim

A. Jurisdiction and Venue

1. The Court invokes pendent jurisdiction of this claim pursuant to United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966).

2. Venue properly lies within this Court.

B. Liability of Church's

3. In Oklahoma, the provisions of an employee handbook can constitute a contract between the employer and employee and define the employer-employee relationship for as long as those provisions are in effect and the employee provides consideration for the benefits provided by the handbook, which can consist of the employee continuing to work and foregoing the option of

quitting. Vinyard v. King, 728 F.2d 428 (10th Cir. 1984); Langdon v. Saga Corp., 569 P.2d 524 (Okla.App. 1976).

4. The Church's employee handbooks and manuals constitute a contract between the parties in this case. No written employment contract, other than the handbooks and manuals, exists.

5. Church's did not breach the contract nor wrongfully terminate plaintiff. Plaintiff has no recovery under this cause of action.

Intentional Infliction of Mental Distress Claim

A. Jurisdiction and Venue

1. The Court invokes pendent jurisdiction of this claim and venue properly lies within this Court.

B. Liability of Church's

2. Oklahoma recognizes the tort of intentional infliction of emotional distress and Section 46 of the Restatement of Torts (Second) (1977), which provides, in pertinent part:

(1) One who by extreme or outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

3. Plaintiff did not establish the elements of this cause of action by a preponderance of the evidence and thus is entitled to no recovery on this cause of action. See Eddy v. Brown, et al., _____ P.2d _____, 57 O.B.J. 522 (February 25, 1986).¹

¹Liability for this tort does not extend to mere insults, indignities, threats, annoyances, petty oppressions, nor to every abusive outburst.

Attorney Fees - All Claims

The defendant herein, as the prevailing party, is not entitled to the award of a reasonable attorney fee pursuant to Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978). Defendant is entitled to and is hereby granted costs.

IT IS SO ORDERED this 18th day of March, 1986.


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

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

JOSEF E. KERCSO, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 NICHOLS PETROLEUM COMPANY,)
 et al.,)
 Defendants,)
)
 vs.)
)
 DEHAYDU INVESTMENT)
 SECURITIES, et al,)
)
 THIRD PARTY DEFENDANTS.)

No. 84-C-837-C

ORDER

It appearing to the satisfaction of this Court that all matters and controversies have been compromised by and between all remaining Plaintiffs and Third Party Defendants Irene deHaydu and Zoltan deHaydu, as evidenced by the signatures of their attorneys on the stipulation filed herein; therefore,

IT IS ORDERED that the Plaintiffs' action against Third Party Defendants Irene deHaydu and Zoltan deHaydu be, and the same is hereby, dismissed with prejudice only as to Irene deHaydu and Zoltan deHaydu; and

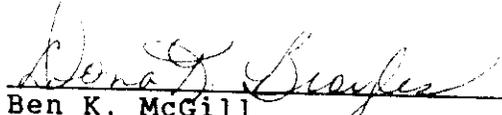
IT IS FURTHER ORDERED, that each party shall be responsible
for his own costs and attorney fees.

DATED ^{March} February 18, 1986.

(Signed) H. Dale Cook

H. Dale Cook
Judge of the District Court

Approved as to form:


Ben K. McGill
Dona K. Broyles

Attorneys for Plaintiffs


Andrew S. Hartman

Attorneys for Third Party Defendants
Irene deHaydu and Zoltan deHaydu

0864k/DKB
2/19/86

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

MAR 19 1986

HAROLD EUGENE ERWIN,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

JAMES D. BLY, CLERK
U.S. DISTRICT COURT

No. 85-C-792-C
84-CR-61-C

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on March 3rd, 1986 in which the Magistrate recommends that Petitioner's Motion to Vacate, Set Aside or Correct Sentence 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, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted.

It is therefore Ordered that Petitioner's Motion to Vacate, Set Aside or Correct Sentence be and is hereby denied.

It is so Ordered this 18th day of March, 1986.


H. DALE COOK
CHIEF JUDGE

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

FILED

MAR 19 1986

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

ALI DAEMI,

Plaintiff,

vs.

CHURCH'S FRIED CHICKEN,

Defendant.

No. 84-C-99-C

J U D G M E N T

This matter came on before the Court for nonjury trial. The issues having been duly tried and a decision having been duly rendered pursuant to the Findings of Fact and Conclusions of Law filed simultaneously herein, the Court hereby enters Judgment in favor of defendant Church's Fried Chicken and against plaintiff Ali Daemi.

Further, it is the Judgment of the Court that the defendant herein, as the prevailing party, is not entitled to the award of a reasonable attorney fee pursuant to Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978). Defendant is hereby granted Judgment for costs of this action.

IT IS SO ORDERED this 18th day of March, 1986.


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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

ONE (1) IBM PERSONAL COMPUTER)

(Serial No. 0135305; Display)

Serial No. 0427511), ONE (1))

HAYES DC SMART MODEM (Serial)

No. 231094337), ONE (1) TEC)

DAISY WHEEL PRINTER (Serial)

No. C007975), AND SOFTWARE,)

Defendants.)

CIVIL ACTION NO. 83-C-92-C

JUDGMENT

By Minute Order, served on the parties, the Court on February 12, 1986, gave the parties 20 days in which to show cause why judgment should not be entered on behalf of the plaintiff in the above-captioned case. This order was issued after several dates for the filing of various pleadings were missed or ignored by the intervening defendant, Mr. Thomas J. Rinkel, by and through his attorney, Mr. Robert A. Flynn.

The Court would also note that default judgment was previously entered on behalf of the plaintiff in this matter on April 18, 1983. Said default judgment was set aside, over a year later, upon motion of counsel for the intervening defendant. Although an Answer was thereafter filed by counsel for defendant on September 11, 1984, no subsequent efforts, pleadings, or responses to the Court's directions have been forthcoming from counsel for the intervening defendant since that date in this case.

WHEREFORE, no cause having been shown why judgment should not be entered for plaintiff, within the prescribed 20 days from February 12, 1986, or in fact up until and including the date of this order, the Court hereby enters judgment for the plaintiff, United States of America, on its Complaint in rem, filed January 28, 1983, for forfeiture of the above-described defendant property, which property had been previously seized by the plaintiff, under the authority of Title 26, United States Code, Section 7302, due to breach of the provisions of Title 26, United States Code, Sections 7201 and 7206(2), in that the defendant was used or intended for use in violation of the Internal Revenue Laws of the United States.

DATED this 18 day of March 1986.

(Signed) H. Dale Cook

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 19 1986

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JAIME M. SMITH,)
)
 Defendant.)

CIVIL ACTION NO. 86-C-68-E

DEFAULT JUDGMENT

This matter comes on for consideration this 18th day of March, 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, Jaime M. Smith, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Jaime M. Smith, acknowledged receipt of Summons and Complaint on February 10, 1986. 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,

Jaime M. Smith, for the principal sum of \$1,025.84, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from August 6, 1984, until judgment, plus interest thereafter at the current legal rate of 7.06 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Entered

FILED

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

MAR 19 1986

JEFF HELLARD and KATHY)
 HELLARD,)
)
 Plaintiff,)
)
 vs)
)
 FARMERS INSURANCE COMPANY,)
 INC., a foreign corporation,)
)
 Defendant.)

Case No. C-84-980-B

ORDER

NOW on this 18th day of March, 1986, plaintiff's Application to Dismiss with Prejudice came on for hearing. The Court being fully advised in the premises finds that said Application should be sustained and the defendant, Farmers Insurance Company, Inc., should be dismissed from the above entitled action with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff's Application to Dismiss with Prejudice be sustained and the above captioned action be dismissed with prejudice as to defendant Farmers Insurance Company, Inc.

S/ THOMAS R. BRETT

 JUDGE OF THE UNITED STATES DISTRICT
 COURT FOR THE NORTHERN DISTRICT

Entered

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

GEORGE E. CUMMINS,)
)
 Plaintiff,)
)
 v.)
)
 SANTA FE-ANDOVER OIL COMPANY,)
)
 Defendants.)

No. 85-C-850-B

FILED

MAR 19 1986

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

O R D E R

This matter comes before the Court on the motion to dismiss of defendant Santa Fe-Andover Oil Company ("Andover"). For the reasons set forth below, the motion is granted.

In his Amended Complaint of December 27, 1985, plaintiff alleges he is the surface owner of a tract of land located in Osage County, Oklahoma. The mineral interests underlying the surface estate are owned by the Osage Indians. Plaintiff alleges he has the right to conduct rock quarry operations on the surface estate by virtue of a rock quarry lease from the Osage Tribe. Andover operates gas wells in the vicinity and has placed a gas compressor plant on the surface estate. Plaintiff claims Andover's placement and operation of the compressor plant on the surface estate is an "excessive use" for which Andover should pay plaintiff fair rental value. Plaintiff further alleges that defendant has polluted, damaged, and committed waste to the surface estate by spilling noxious fluids thereon, for which plaintiff seeks damages.

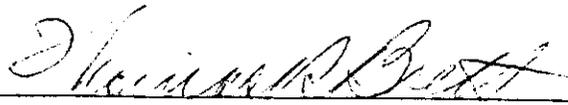
Defendant claims that federal regulations define the right and duties of the parties with respect to the placement of the

gas compressor plant and damages to the surface estate since plaintiff's surface estate is located over Osage minerals. The regulation specifies that the Osage Agency Superintendent shall have authority to determine the proper placement of appliances necessary for gas production operations and marketing when the Osage Indian lessee and the surface owner are unable to agree as to proper placement. 25 C.F.R. §226.19(a). The regulations also specify that, absent agreement, compensation for surface damages shall be determined by arbitration conducted under the auspices of the Osage Agency. 25 C.F.R. §§226.20 and 226.21. This matter must therefore be dismissed for plaintiff's failure to exhaust his administrative remedies. McKart v. U.S., 395 U.S. 185 (1969). The surface owner may seek legal review in a court of competent jurisdiction "if he is dissatisfied with the amount of the award." 25 C.F.R. §226.20(a).

Plaintiff's argument that his allegation of "waste" makes the pollution issue a legal one which should not be resolved by the arbitration procedure is unavailing. The question is whether plaintiff is entitled to money damages for the alleged pollution to the surface estate.

Defendant's motion to dismiss is granted for failure to exhaust administrative remedies.

IT IS SO ORDERED, this 18th day of March, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

FILED

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

MAR 19 1986

HETTIE NELSON, Surviving Spouse)
of FLOYD NELSON, deceased,)
))
Plaintiff,))
))
v.))
))
SCHNUCKS TRANSPORTATION CO.,)
ROBLYN TRANSPORTATION CO., and)
UNITED STATE FIRE INSURANCE COMPANY,)
))
Defendants.)

CASE NO.: 85-C-347-B

ORDER OF DISMISSAL

On This 18th day of March, 1986, upon the written application of the Plaintiff, Hettie Nelson, surviving spouse of Floyd Nelson, Deceased, and the Defendants, Schnucks Transportation Co., United State Fire Insurance Company, and Roblyn Transportation Co. for a Dismissal with prejudice of the Complaint of Nelson v. Schnucks and all causes of action therein, 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 Hettie Nelson and Danny Darrel Nelson are the sole heirs at law of Floyd Nelson, deceased, and said settlement is to the best interest of said Hettie Nelson and Danny Darrel Nelson.

THE COURT FURTHER FINDS that said Complaint in Nelson v. Schnucks

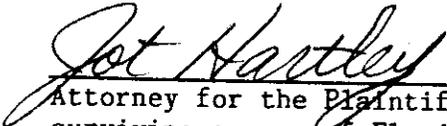
should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff, Hettie Nelson, surviving spouse of Floyd Nelson, deceased, and all causes of action of Hettie Nelson and Danny Darrel Nelson, as sole surviving heirs at law and next of kin to Floyd Nelson, deceased, against the Defendants, Schnucks Transportation Co., United State Fire Insurance Company and Roblyn Transportation Co. be and the same hereby are dismissed with prejudice to any future action.

ST. THOMAS R. BRET
JUDGE OF THE UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT OF OKLAHOMA

Approvals:

JOT HARTLEY



Attorney for the Plaintiff, Hettie Nelson,
surviving spouse of Floyd Nelson, Deceased.

RICHARD D. WAGNER

Attorney for the Defendants, Schnucks
Transportation Co., United State Fire
Insurance Co., and Roblyn Transportation
Co.

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

FILED

MAR 19 1986

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

JERRY WAYNE BROWN, a/k/a JERRY)
GRANT, a/k/a JOHN BERNARD GRANT,)
Petitioner,)
v.)
DAVID MILLER, Warden, et al.,)
Respondents.)

No. 85-C-535-E

ORDER

Comes now before the Magistrate Petitioner Jerry Wayne Brown's Application for a Writ of Habeas Corpus pursuant to Title 28 U.S.C. § 2254. Petitioner is presently incarcerated in the Oklahoma Department of Corrections Facility at Granite, Oklahoma, pursuant to a judgment and sentence rendered by the District Court of Tulsa County, Oklahoma in Case Nos. CRF-79-396 and CRF-81-341. Petitioner was convicted of the crimes of robbery with firearms after former conviction of a felony and larceny of automobile after former conviction of a felony. Denial of Petitioner's Application for Post-Conviction Relief was affirmed on appeal before the Oklahoma Court of Criminal Appeals in Case No. PL-85-169.

Petitioner alleges three separate grounds as a basis for habeas corpus relief: denial of effective assistance of counsel, involuntary guilty plea, and conspiracy to alter his judgment and sentence. Having carefully examined the record in this matter, the Magistrate finds that this action must be dismissed as Petitioner has failed to exhaust his available state remedies.

Title 28, § 2254 provides in part:

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the state, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

In Rose v. Lundy, 102 S.Ct. 1198 (1982) the Supreme Court of the United States held that a district court must dismiss a petition for writ of habeas corpus if it contains both unexhausted and exhausted claims. In considering whether a particular claim has been exhausted § 2254 requires that the habeas petitioner have "fairly presented" to the state courts the "substance" of his federal habeas corpus claim. Anderson v. Harless, 459 U.S. 4, 6 (1982) (citing Picard v. Connor, 404 U.S. 270, 275 (1971)). It is not enough that all the facts necessary to support his claim are presented in the state court or that a similar claim was made in a state court. 404 U.S. at 277.

In the application now before the court Petitioner's second ground for relief states that his plea of guilty was not voluntarily and knowingly entered. He contends that the plea was unlawfully induced as a result of misrepresentations by the district attorney to the effect that the sentences he would receive for his convictions in CRF-79-369 and CRF-81-341 would run concurrently with a ten year sentence he was already serving for a conviction on another charge. As his third ground for

relief Petitioner states that he was denied due process and equal protection because the terms of the plea bargain were amended without his being given notice and an opportunity to be heard or in the alternative to withdraw his plea. He further claims that there was a conspiracy among the prosecutor, trial judge and the Connor Correctional Center officials to alter the terms upon which the plea of guilty was based.

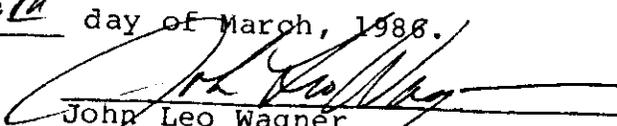
The Magistrate finds that Petitioner has exhausted his state remedies as pertaining to his first claim, denial of effective assistance of counsel. However, in his application for post-conviction relief in the District Court of Ottawa County and in his appeal from the denial of such application, Petitioner did not raise the issues which he now sets forth in Grounds two and three of his Petition for federal habeas corpus relief.

In his Application for Post-conviction Relief, Petitioner attempted to set forth what representations he relied upon in entering his guilty plea. At Paragraph IV Petitioner stated that he "had been advised that this sentence in Case No. CRF-_____ would be run concurrently with any sentence imposed by the District Court of Ottawa County." From the blank space in this sentence, the District Court believed Petitioner to be complaining that his sentences in Cases No. CRF-79-396 and CRF-81-341 were not running concurrently. The Court never addressed the issue of a misrepresentation that these two sentences would run concurrently with a sentence he was then serving. Therefore the Magistrate finds that Petitioner has not exhausted his state remedies regarding his claim based on an involuntary guilty plea.

Petitioner's application for state relief contained a claim that the Ottawa County District Attorney had modified the judgment and sentence in CRF-81-341 and CRF-79-396. In response the District Court of Ottawa County explained that the judgment and sentence was modified by the court, not the District Attorney, to reflect that Defendant's sentence in these cases would commence after he had served the time required for a sentence from another jurisdiction. Such action was taken by the court in accordance with Title 22 O.S. § 976. The Court of Criminal Appeals summarily affirmed this conclusion. The Magistrate finds that while it is arguable that this claim is based upon the same facts alleged in his claim of denial of due process through a conspiracy to alter his judgment and sentence, the due process and equal protection claim now before the Court has not "in substance" been considered by the state court and therefore Petitioner has failed to exhaust his available state remedies with regard to this claim.

Because two of the three claims presented in Petitioner's Application for Writ of Habeas Corpus have not been exhausted in the state courts, the Magistrate finds that the Petition must be dismissed under the ruling of Rose v. Lundy.

It is so Ordered this 19th day of March, 1988.


John Leo Wagner
United States Magistrate

Entered

JHL:bmc

FILED

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

MAR 19 1986

W. G. PERKINS, Administrator)
of the Estate of Roger Lee Perkins,)
Deceased,)
Plaintiff,)
vs.)
FRANK THURMAN, et al.,)
Defendants.)

Case No.: 84-C-346-B

ORDER OF DISMISSAL WITH PREJUDICE

Upon application of the parties and for good cause shown, the Court hereby orders the above case dismissed with prejudice.

By THOMAS R. BRETT
JUDGE OF THE DISTRICT COURT

Entered

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

BOBBIE GILES and GWENDOLYN GILES,
Husband and Wife,

Plaintiffs,

v.

THE SCHNUCKS TRANSPORTATION CO., a
Foreign Corporation, UNITED STATES
FIRE INSURANCE COMPANY, a Foreign
Insurance Corporation, and
ROBLYN TRANSPORTATION CO., a
Foreign Corporation,

Defendants.

95 C-347-B ✓
Consol -
CASE NO.: 85-C-401-B

FILED

MAR 19 1986

Jack C. Silver, Clerk

ORDER OF DISMISSAL

On This 17th day of March, 1986, upon the written application of the Plaintiffs, Bobbie Giles and Gwendolyn Giles, individually, and as husband and wife, and the Defendants, The Schnucks Transportation Co., United States Fire Insurance Company, and Roblyn Transportation Co. for a Dismissal with prejudice of the Complaint of Giles v. Schnucks and all causes of action therein, 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 said settlement is to the best interest of said Bobbie Giles and Gwendolyn Giles.

THE COURT FURTHER FINDS that said Complaint in Giles v. Schnucks

should be dismissed pursuant to said application.

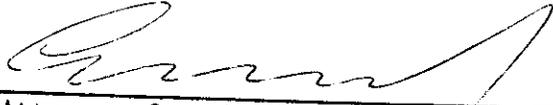
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs, Bobbie Giles and Gwendolyn Giles, individually and as husband and wife, against the Defendants, The Schnucks Transportation Co., United States Fire Insurance Company and Roblyn Transportation Co. be and the same hereby are dismissed with prejudice to any future action.

ST. THOMAS R. GLETT

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

Approvals:

EDWIN W. ASH



Attorney for the Plaintiffs, Bobbie Giles
and Gwendolyn Giles, individually and as
husband and wife,

RICHARD D. WAGNER

Attorney for the Defendants, The Schnucks
Transportation Co., United States Fire
Insurance Co., and Roblyn Transportation
Co.

FILED

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

MAR 18 1986

C.I.T. FINANCIAL SERVICES CORPORATION,
Plaintiff,
vs.
W. G. MORRIS DEVELOPMENT CO.,
INC., d/b/a Morris Homes,
et al.,
Defendants.

No. 84-C-1012-E

U.S. DISTRICT COURT

ORDER

Consistent with the order of the Court entered herein March 7, 1986, the Court finds, orders, adjudges and decrees that summary judgment is granted herein in favor of the Plaintiff against the Defendants as hereinafter set forth.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, C.I.T. Financial Services Corporation, have and recover judgment against W. G. Morris Development Co., Inc., Johns Park Development Co., Inc., and Warren G. Morris in the sum of \$149,000.00, jointly and severally, together with interest thereon from June 1, 1985, at the rate of 15% per annum, the costs of this action, and a reasonable attorney's fee to be set upon application.

Dated this 17TH day of March, 1986.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SOUTHERN AGRICULTURE, INC.,)
 a corporation, and NOLAN L.)
 GROSS, D.V.M., and GINGER L.)
 GROSS, individuals,)
)
 Defendants.)

Civil No. 86-C-30-C ✓

FILED

MAR 18 1986

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

CONSENT DECREE OF PERMANENT INJUNCTION
OF NOLAN L. GROSS, D.V.M., and GINGER L. GROSS

Plaintiff, United States of America, having filed its complaint on the 13th day of January, 1986, and defendants, Nolan L. Gross, D.V.M., and Ginger L. Gross, individuals, having appeared and having consented to entry of this decree without contest and before any testimony has been taken, and the United States of America having consented to this decree and to each and every provision thereof, and having moved this Court for this injunction,

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

I. That this Court has jurisdiction of the subject matter herein and of all persons and parties hereto, and the complaint states a cause of action against the defendants under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.

II. That the defendants, Nolan L. Gross, D.V.M., and Ginger L. Gross, individuals, and each and all of their officers, agents, servants, employees, assigns, and attorneys, and those persons in active concert or participation with them or any of them are perpetually restrained and enjoined under the provisions of 21 U.S.C. § 332(a) from directly or indirectly doing or causing to be done any of the following acts:

A. Introducing or delivering for introduction into interstate commerce, or holding for sale or selling after receipt in interstate commerce, any prescription veterinary drug unless and until:

1. The defendants establish procedures to assure that said drugs are stored in an area which is accessible only to employees of the firm.

2. The defendants establish and maintain methods and controls for the sale and distribution of prescription veterinary drugs that will assure that the drugs are not distributed in any unlawful manner, which methods and controls shall include, but not be limited to:

(a) The establishment and maintenance of records that will document the sale of every prescription veterinary drug sold by defendants;

(b) A method of obtaining, for each sale of a veterinary prescription drug, documentation establishing that there is a prescription or other order therefor, written or otherwise, issued by a licensed veterinarian;

(c) The establishment and maintenance of a written inventory record for each prescription veterinary drug that defendants receive, which record shall include the name of the drug, as shown on the drug's label, the amounts of drug received and the dates received, and the name of each account or individual to whom the drug is shipped, sold, or otherwise dispensed; and

(d) The implementation of an employee training program adequate to assure that all employees understand the differences between prescription and non-prescription drugs, appreciate the special procedures governing the handling of prescription veterinary drugs, and are capable of complying with the controls established under this decree.

3. The defendants report in writing to the Dallas District Office, U.S. Food and Drug Administration (FDA), 3032 Bryan Street, Dallas, Texas, 75204, the measures they have taken, including a copy of their standard operating procedures, to assure that the requirements of subparagraphs 1 and 2 of paragraph A have been met.

4. The FDA notifies the defendants in writing that their efforts to comply with subparagraphs 1 and 2 of paragraph A are satisfactory. In order to evaluate the defendants' procedures and issue the requisite notification, FDA may undertake investigations and inspections, as it deems necessary, as provided in paragraph IV of this decree.

B. After all of the provisions of paragraph A have been satisfied, selling or offering for sale any prescription veterinary drug, unless and until:

1. There is a valid prescription or other order of a licensed veterinarian covering such sale of the drug; and

2. For any prescription issued by any licensed veterinarian (including the defendant Nolan L. Gross) who is employed by the defendants, or who is acting as a consultant to the defendants, or who has written a prescription or order to a client referred by the defendants, there is documentation that such order or prescription was to be used in the course of the veterinarian's professional practice. This documentation must reflect that:

(a) the veterinarian is supervising the use of the drug;

(b) the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal(s) and the need for medical treatment, and the client (owner or other caretaker) has agreed to follow the instructions of the veterinarian;

(c) there is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian has recently seen and is personally acquainted with the keeping

and care of the animal(s) by virtue of an examination of the animal(s), or by medically appropriate and timely visits to the premises where the animal(s) is kept; and

(d) the practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy.

III. That, after compliance with the requirements of subparagraphs A and B of paragraph II, the defendants and all those acting in concert with them, as described in paragraph II, are permanently enjoined from directly or indirectly introducing into, delivering for introduction into, or offering for sale in interstate commerce any veterinary drug and from directly or indirectly offering for sale after its shipment in interstate commerce any veterinary drug, unless the sales, labeling, and promotion of the drug conform to the requirements of and procedures established pursuant to subparagraphs A and B of paragraph II above.

IV. That FDA representatives are authorized to make such investigations and inspections of the facilities and operations of the defendants as are deemed necessary in order to determine that the requirements of this decree are met. The inspections may extend to all equipment and drugs, and all the records of veterinary drug receipt, sale, and shipment. This inspection authority is apart from, and in addition to, the authority to make inspections under 21 U.S.C. § 374. The costs of such inspections are to be borne

by the defendants at the rate of \$37.00 per hour and fraction thereof per representative for inspectional work, \$44.00 per hour and fraction thereof per representative for analytical work, 20.5 cents per mile for travel expenses, and \$75.00 per day per person for subsistence expenses where necessary.

V. That the defendants:

A. Serve a copy of this decree, by personal service or registered mail, upon all of their officers, agents, servants, employees, and assigns; and

B. File an affidavit of compliance with this Court, with a copy to the plaintiff's attorneys, within 60 days after the date of entry of this decree, stating the fact and manner of compliance with paragraph A above, identifying the names, addresses, and positions (if appropriate) of all persons so notified, and attesting that they have been served with a copy of this decree.

VI. That the defendants shall notify the District Director, Dallas District Office of FDA, at least ten (10) days before any change in ownership or change in character of their business such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any change in the corporate structure of Southern Agriculture, Inc., that may affect compliance obligations arising out of this decree.

VII. That this Court retains jurisdiction of this proceeding for the purpose of modifying this decree and for the purpose of granting such additional relief as may hereafter be necessary or appropriate.

VIII. That each party shall bear its own costs and attorneys' fees.

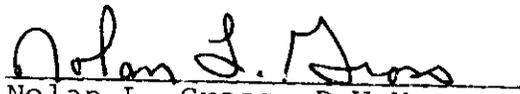
Dated: March 17, 1986

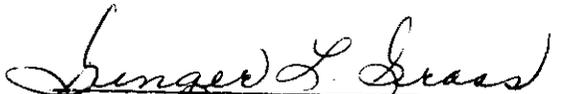

UNITED STATES DISTRICT JUDGE

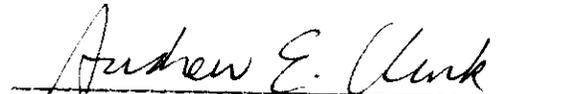
We hereby consent to the entry of the foregoing decree:

Layn R. Phillips
United States Attorney

By: 
PHIL PINNELL
Assistant U.S. Attorney
Room 3600
United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103


Nolan L. Gross, D.V.M.,
Defendant


Ginger L. Gross, Defendant


ANDREW E. CLARK
Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044
(202) 724-6168

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

CURB-IT CORPORATION, an Oklahoma
corporation,)
)
)
Plaintiff,)
)
)
v.)
)
)
LMC COMMUNICATIONS, INC., a)
California corporation,)
)
Defendant.)

MAR 18 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT
No. 85-C-1107 C

ORDER

Comes now the Court in the above-styled matter and hereby grants Plaintiff's Dismissal Without Prejudice against the Defendant, LMC Communications, Inc.

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

(Signed) H. Dale Cook

Judge

CERTIFICATE OF SERVICE

I, J. Stephen Welch, Attorney for Plaintiff, Curb-It Corporation, certify that I have on this ___ day of March, 1986, duly served a copy of the foregoing Order on all parties, by mailing with sufficient postage attached, a copy of same to:

Alvin G. Greenwald
GREENWALD & THOMPSON
6300 Wilshire Blvd., 12th Floor
Los Angeles, CA 90048

J. Stephen Welch

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

GRANT FREDERICK GONYER, JR.,)
)
Plaintiff,)
)
HOME INDEMNITY COMPANY,)
)
Intervenor,)
)
vs.)
)
GEORGIA PACIFIC CORPORATION,)
)
Defendant,)
)
vs.)
)
BLACK CLAWSON CO., INC.,)
)
Third Party Defendant.)

Case No.: 83-C-325 E

FILED

MAR 18 1986

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

ORDER OF DISMISSAL

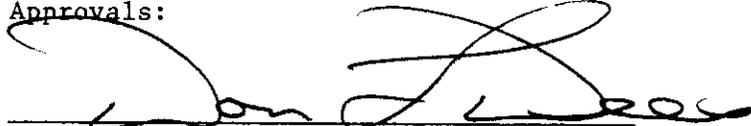
ON This 17 day of March, 1986, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint 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.

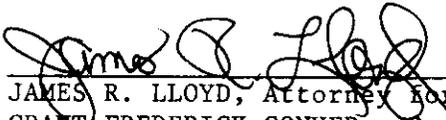
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff, Grant Frederick Gonyer, Jr., and the Intervenor, Home Indemnity Company, filed herein against the Defendant, Black Clawson Company, Inc., be and the same hereby are dismissed with prejudice to any future action.

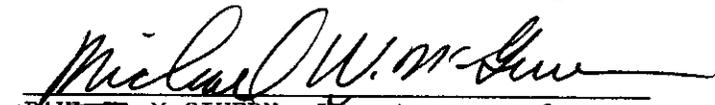
S/ JAMES O. ELISON

JUDGE, UNITED STATES DISTRICT COURT FOR
NORTHERN DISTRICT OF OKLAHOMA

Approvals:


DON L. DEES, Attorney for the Plaintiff,
GRANT FREDERICK GONYER, JR.,


JAMES R. LLOYD, Attorney for the Plaintiff,
GRANT FREDERICK GONYER, JR.,


MICHAEL W. MCGIVERN, ~~McGIVERN~~, Attorney for
Intervenor, HOME INDEMNITY COMPANY,


STEPHEN C. WILKERSON, Attorney for the
Defendant, BLACK-CLAWSON COMPANY, INC.

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

FILED

MAR 18 1986

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

DALTON LANGLINAIS and BARBRA BEGLEY,
parents and surviving
kin of GWILA LANGLINAIS, deceased,
Plaintiffs,

VS.

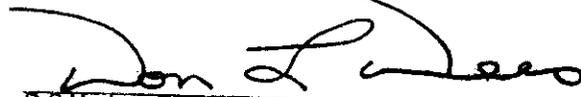
NO. 84-C-797-C

NATIONAL CONSTRUCTION CO., INC., et al.,
Defendants.

Notice of
DISMISSAL

Comes now the plaintiff, Barbra Begley, and herewith dismisses her cause of action with prejudice to its being refiled and agrees to be bound by the results of this pending case.

DON L. DEES, INC.



DON L. DEES, Attorney for the Plaintiffs
23 West 4th Street - Suite 700
Tulsa, Oklahoma 74103
(918) 583-0121

MAILING CERTIFICATE

I, Don L. Dees, do hereby certify that on this 17th day of March 1986, I did mail a true, correct, and exact copy of the foregoing Dismissal to Mr. John R. Woodard, III, Attorney at Law, 816 Enterprise Building, Tulsa, Oklahoma 74103; Mr. James K. Secrest, II, Attorney at Law, 1515 East 71st Street, Tulsa, Oklahoma 74136; and to Mr. Jack E. Gordon, Sr., Attorney at Law, 212 South Missouri, Claremore, Oklahoma 74017; with sufficient postage prepaid.


DON L. DEES

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

CHARLES R. BENSON,
Plaintiff,

vs.

THE SKIL CORPORATION,
a foreign corporation,
Defendant.

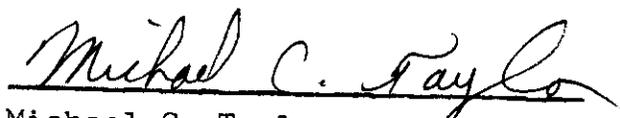
Case No. 85-C-549-C

JOINT DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff and the Defendant, by and through their respective counsel of record, and hereby inform this Honorable Court that an agreement has been reached to settle the above-captioned matter.

WHEREFORE, premises considered, these parties jointly DISMISS the above-captioned matter With Prejudice.

DATED this 17th day of March, 1986.


Michael C. Taylor
Attorney for Charles R. Benson,
Plaintiff


Ronald N. Ricketts
Attorney for The Skil Corporation,
Defendant

E I L E D

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

MAR 17 1986

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

PEAVEY COMPANY,)
)
Plaintiff,)
)
v.)
)
RICHARD D. COLLINS,)
)
Defendant.)

No. 84-C-259-E

JUDGMENT

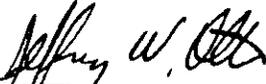
Upon application and representation of the parties that after discovery and partial trial proceedings and after an examination of the law, it has been agreed by the parties that judgment in the sum of \$11,490.23 should be taken against the Defendant, Richard D. Collins, and in favor of the Plaintiff, Peavey Company, by reason of Plaintiff's Complaint, and that the Defendant take nothing by reason of his Counterclaim.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered against the Defendant and in favor of the Plaintiff in the sum of \$11,490.23, which sum shall include attorneys' fees and litigation costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant take nothing by reason of his Counterclaim on file herein.

S/ JAMES C. ELLISON
James O. Ellison
United States District Judge

APPROVED:



Elsie Draper
Jeffrey W. Otto
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR PLAINTIFF, PEAVEY
COMPANY



Kenneth G. Shouse
Center Office Building
707 South Houston
Suite 408
Tulsa, Oklahoma 74127

ATTORNEY FOR DEFENDANT, RICHARD
D. COLLINS

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

FILED

MAR 17 1986

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

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

Plaintiff,

vs.

MICHAEL CURTIS GEIGER,
BILL L. VINSON, BOB VINSON AND
VINSON CONSTRUCTION COMPAY,

Defendants.

NO. 85-C-678-B

O R D E R

Upon the application of the parties and for good cause shown, this cause of action and Complaint is hereby dismissed with prejudice.

Entered this 17th day of March, 1986.

Howard R. Boyd
UNITED STATES DISTRICT COURT

NOTE: THIS ORDER IS TO BE MAILED
BY MAIL TO ALL COUNSEL AND
PROSE LITIGANTS IMMEDIATELY
UPON RECEIPT. *by Joe Polk*