

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

FILED

JUN 30 1986

HOLD OIL CORP., a Florida
corporation,

Plaintiff,

vs.

DAVID E. MORGAN, INC.,

Defendant.

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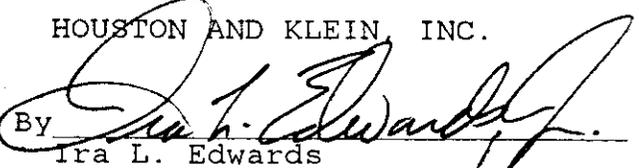
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Case No. 85-C-1015-C

STIPULATION OF MUTUAL
DISMISSAL WITH PREJUDICE

The Plaintiff, Hold Oil Corp., and Defendant, David E. Morgan, Inc., hereby stipulate to the dismissal of the Petition and Counterclaim filed in the above-styled and numbered cause with prejudice for the reason that the parties have reached a settlement of all claims set forth therein.

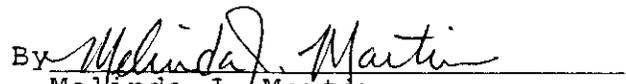
HOUSTON AND KLEIN, INC.

By 

Ira L. Edwards
1722 South Carson, Suite 3200
P. O. Box 2967
Tulsa, Oklahoma 74101
(918) 583-2131

Attorneys for Plaintiff,
Hold Oil Corp.

SNEED, LANG, ADAMS,
HAMILTON, DOWNIE & BARNETT

By 

Melinda J. Martin
Sixth Floor
114 East Eighth Street
Tulsa, Oklahoma 74119
(918) 583-3145

Attorneys for Defendant,
David E. Morgan, Inc.

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

ANGELA NEY AND JAMES NEY,)
)
 Plaintiff,)
)
 vs.)
)
 FARMERS INSURANCE GROUP,)
)
 Defendant and Third)
 Party Plaintiff,)
)
 vs.)
)
 RONALD CONLEY AND OKLAHOMA)
 FARMERS UNION INSURANCE)
 COMPANY,)
)
 Third Party)
 Defendants.)

No. 85-C-393-E

E I L E D
JUN 30 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

NOW on this 21st day of June, 1986, comes on for hearing the above styled case and the Court, being fully advised in the premises finds:

Third party Defendants Ronald Conley and Oklahoma Farmers Union Insurance Co. filed motion for summary judgment seeking dismissal of third party complaint. Third party Defendants urge that neither Plaintiffs nor Defendant has a valid claim against third party Defendants as a result of a release previously executed by Plaintiffs. The release is urged by Defendant as a defense to any claim made by Plaintiffs against Defendant, Plaintiffs' own uninsured motorist carrier. Defendant also seeks judgment against third party Defendant Conley should Plaintiffs prevail on their primary action. Defendant is not seeking summary judgment at this time.

In an apparent attempt to avoid summary judgment as to third party Defendants, Plaintiffs filed motion to set aside release. Plaintiffs also filed motion to remand to Creek County District Court.

The facts which are undisputed are that Plaintiff Angela Ney was injured in a collision on January 27, 1983 while a passenger in third party Defendant Ronald Conley's pickup. Third party Defendant Ronald Conley is her son-in-law. Third party Defendant Oklahoma Farmers Union Insurance Company paid Plaintiff Ney the \$10,000 liability limit and obtained a comprehensive release of claims on behalf of its insured, Ronald Conley. Plaintiffs paid bills with the money and thereafter were informed by their insurance company, Defendant Farmers, that the release entered into between Plaintiffs and third party Defendant Oklahoma Farmers Union Insurance Company would bar payment under its uninsured motorist. Plaintiffs then went to their attorney accompanied by third party Defendant Ronald Conley and signed an agreement in which third party Defendant Ronald Conley waived all rights to assert the release as a defense to any suit filed against him by Plaintiffs or by Defendant Oklahoma Farmers Union Insurance Company. The purpose of this agreement was obviously to allow Plaintiffs to recover uninsured motorist coverage from either or both insurance companies.

The release was signed March 23, 1983. At that time the Oklahoma Supreme Court had not addressed the issue of uninsured motorist coverage for a guest passenger. The law was clear however that Plaintiffs could have proceeded at that time against

their own uninsured motorist coverage. On April 2, 1985, the Oklahoma Supreme Court issued Heavner v. Farmers Ins. Co., 663 P.2d 730 (Okla. 1983) in which uninsured motorist coverage on a host driver's car was extended to guest a passenger.

The Court finds the release is a valid and binding contract and is unambiguous and that the \$10,000 payment made pursuant to the release was received by Plaintiffs. No attempt has been made to rescind the release and Plaintiffs have not tendered the amount paid under the release. The release in this case bars any further claims by Plaintiffs against third party Defendants Ronald Conley and Oklahoma Farmers Union Insurance Company. The release destroyed the subrogation rights of third party Defendant Oklahoma Farmers Union Insurance Company. The Court further finds the agreement entered into between Plaintiffs and third party Defendant Ronald Conley is collusive and may not be asserted as a waiver of this release as to third party Defendant Oklahoma Farmers Union Insurance Company. The Court finds there is a fact issue as to what the agent of third party Defendant Oklahoma Farmers Union Insurance Company, Larry Watts, told Plaintiffs, if anything, at the time the release was signed regarding how it would affect their uninsured motorist coverage. However, as to third party Defendant Oklahoma Farmers Union Insurance Company that fact is not material. Even if he emphatically told Plaintiffs they could not recover under third party Defendant Oklahoma Farmers Union Insurance Company's policy for uninsured motorist coverage, that would have been a correct assessment of Oklahoma law at that time.

Finally in arguments before the U.S. Magistrate Plaintiffs urge that granting summary judgment as to third party Defendants effectively destroys their cause of action. The question of whether the subrogation rights of Defendant Farmers have been destroyed is not now before the Court and this ruling does not address the effect of third party Defendant Ronald Conley's apparent attempt to waive the defense of release as to Defendant Farmers.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that third party Defendants Ronald Conley and Oklahoma Farmers Union Insurance Company's motion for summary judgment is granted; Plaintiffs' motion to set aside release is denied; and Plaintiffs' motion to remand is denied.

It is so Ordered.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

JUN 27 1986

AMCOLE ENERGY CORPORATION,)
)
 Plaintiff,)
)
 v.)
)
 TRIOK, INC., an Oklahoma)
 corporation,)
)
 Defendant.)

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

No. 84-C-215-E

ORDER AMENDING JUDGMENT

NOW ON this 27th day of June, 1986, there came on for consideration before the Court the Motion to Alter or Amend Judgment filed by the Plaintiff herein on November 27, 1985, and the Court, after considering the Brief of the Plaintiff in Support of said Motion, and considering the failure of the Defendant to in any way object or respond to the Plaintiff's Motion, pursuant to Rule 14(a), Rules of the United States District Court for the Northern District of Oklahoma, enters the following Order:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Court's Judgment in the above-captioned case, filed on November 19, 1985, be and is hereby amended by decreeing, in addition to the terms of said Judgment filed on November 19, 1985, that the prejudgment rate of interest on the principal sum of the Judgment shall be at the rate of six percent (6%) per annum; and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff be and is hereby entitled to recover its reasonable attorneys' fees for the prosecution of the above-captioned matter, and is hereby directed to file with the Court within ten (10) days of the entry of this Order Amending Judgment its Application for such

attorneys' fees together with an Affidavit setting forth all information such Applicant wishes the Court to consider in determining such fees, in accordance with the provisions of Rule 6(f), Rules of the United States District Court for the Northern District of Oklahoma.

DATED this 27th day of June, 1986.

S/ JAMES O. ELLISON

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

Entered

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

FILED

JUN 27 1985

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

GEORGE MICHAEL BRIDGEMAN,)
and FRED A. BRIDGEMAN,)
husband and wife,)
)
Plaintiffs,)
)
v.)
)
LELAND EQUIPMENT COMPANY, a)
foreign corporation, and)
GROVE MANUFACTURING COMPANY,)
a division of KIDDE, INC.,)
a foreign corporation,)
)
Defendants.)

No. 85-C-323-B

ORDER OVERRULING PLAINTIFFS' MOTION FOR
RELIEF FROM JUDGMENT AND TO REMAND BAS-
ED ON LACK OF DIVERSITY OF CITIZENSHIP

This alleged personal injury action seeking compensatory and punitive damages sounding in product liability, express and implied warranty, and negligence was commenced in the District Court of Creek County, Sapulpa, Oklahoma, on March 8, 1985. The petition in the state court contains no allegations relative to the state of incorporation or principal place of business of the corporate defendants. It is alleged that the corporate defendants placed in commerce the alleged defective crane that injured plaintiff, George Michael Bridgeman, in Creek County, Oklahoma on July 18, 1983.

On April 1, 1985, the defendant Grove Manufacturing Company ("Grove") filed a petition for removal to this court which was subsequently joined in by the defendant Leland Equipment Company ("Leland"). Grove and Leland stated that Leland is a dissolved

corporation incorporated under the laws of the State of Delaware with its principal place of business, if one exists, in Delaware. Grove was alleged to be a New Jersey corporation with its principal place of business in New Jersey. As the plaintiffs are Oklahoma citizens, Grove and Leland asserted federal court jurisdiction by reason of diversity of citizenship, 28 U.S.C.A. §1332.

In the pretrial order filed in this court on January 8, 1986, approved as to form and content by the parties, it is stated:

"Federal jurisdiction is invoked upon the grounds of diversity and the amount sued for which is in excess of \$10,000.00. The Plaintiff is a resident of the State of Oklahoma, the Defendant Grove is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business being in New Jersey. The defendant Leland Equipment Company is a dissolved Delaware corporation that no longer conducts any business. Leland's only principal place of business would be in the State of Delaware if it had one."

The case was tried to a jury and on February 5, 1986, the jury returned a verdict for the plaintiff George Michael Bridgeman for \$57,372.35 plus pre and post judgment interest and costs, and awarded the plaintiff Freda B. Bridgeman no money damages.

Following the Court's overruling of plaintiffs' motion for new trial, plaintiffs filed a motion for relief from judgment and to remand based on lack of diversity of citizenship. The gist of plaintiffs' claim is that although Leland Equipment Company was in the process of dissolution under Delaware law, at the time of

the commencement of this action, Leland was still engaging in business activity in Oklahoma sufficient for Oklahoma to be its principal place of business and thereby defeat diversity under 28 U.S.C.A. §1332.

The relevant dissolution facts concerning Leland Equipment Company are as follows:

1) Leland Equipment Company maintained an office in Tulsa, Oklahoma until approximately October 1, 1984.

2) On October 24, 1984, Leland Equipment Company and its shareholders executed a contract whereby Leland Equipment Company agreed to distribute all its assets and liabilities to its shareholders pursuant to a plan of liquidation. (See PX-3, Hastings Deposition). A second instrument simultaneously transferred the right to such assets subject to the discharging of all liabilities and performing all obligations associated with such assets from the shareholders to the Leland general partnership. (See PX-2, Hastings Deposition).

A relevant paragraph of plaintiff's Exhibit 2 states:

"The Leland General Partnership hereby accepts the above and foregoing transfer, assignment and contribution to capital and agrees to assume and discharge all liabilities and perform all obligations associated with such assets, including without limitation Leland Equipment Company's former obligations to Connecticut Mutual Life Insurance Company and Bank of Oklahoma, N.A."

3) On November 19, 1984, Leland Equipment Company filed a certificate of dissolution with the office of the Secretary of State of the State of Delaware. (DX-1)

4) On December 14, 1984, Leland Equipment Company filed a certificate of withdrawal as a domesticated corporation in the State of Oklahoma. (DX-1)

5) On March 8, 1985, the plaintiffs commenced this action against the defendants in the District Court of Creek County, State of Oklahoma.

Section 278 of the Delaware Corporation Law Annotated states:

"§278. Continuation of corporation after dissolution for purposes of suit and winding up affairs

All corporations, whether they expire by their own limitation or are otherwise dissolved, shall nevertheless be continued, for the term of three years from such expiration or dissolution or for such longer period as the Court of Chancery shall in its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to their stockholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit, or proceeding begun by or against the corporation either prior to or within three years after the date of its expiration or dissolution, the corporation shall, for the purpose of such actions, suits or proceedings, be continued bodies corporate beyond the three-year period and until any judgments, orders, or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Court of Chancery." [Emphasis supplied]

The date the action is filed is pertinent concerning a corporation's principal place of business. Inland Rubber Corporation v. Triple A Tire Service, Inc., 220 F.Supp. 490 (D.C.N.Y. 1963).

Subject matter jurisdiction cannot be waived, even though the plaintiffs herein concurred in the pretrial order that the Leland Equipment Company was a Delaware corporation with its principal place of business there, if one existed. Basso v. Utah Power & Light Co., 495 F.2d 906 (10th Cir. 1974).

The burden of proof herein is upon the plaintiff who is belatedly attempting, after the entry of a final judgment pursuant to the verdict of a jury, to establish that diversity is lacking. Messinger v. United Canso Oil & Gas Ltd., 80 F.R.D. 730 (D.C.Conn. 1978).

Determining a corporation's principal place of business is usually a factual question centered in where the corporation conducts its principal business activity. Guarantee Acceptance Corporation v. Fidelity Mortgage Investors, 544 F.2d 449 (10th Cir. 1976).

The situation herein, however, is not that of an active ongoing corporation continuing its business under its charter. Before plaintiffs commenced this action, Leland had filed its articles of dissolution in the State of Delaware and had withdrawn its domestication in the State of Oklahoma. All assets and liabilities had been assigned to a new legal entity, Leland General Partnership. When this lawsuit was filed on March 8, 1985, Leland Equipment was in the process of winding down in the three-year period provided in §278 of the Delaware corporate code.

The case closest in point appears to be Gavin v. Read, 356 F.Supp. 483 (E.D.Pa. 1973). Therein, Read Corporation sold "... all of the assets, properties, business and good will of Transferor of every kind and description ..." to another corporation as of August 6, 1968. Approximately 18 months later an alleged product liability personal injury suit was commenced against Read in the Pennsylvania federal court by a Pennsylvania plaintiff. Read asserted its principal place of business remained in York, Pennsylvania following the August 6, 1968 sale so diversity was lacking. The court said at page 485:

"...After August 6, 1968, the only assets that were retained by Read consisted of the Agreement itself, the shares of Teledyne, Inc., which Read received and which it completely distributed to its shareholders and cash not in excess of \$10,000 to pay the costs and expenses of carrying out the Agreement' including the subsequent dissolution and liquidation of transferor.' For sometime after August 6, 1968, the entire activities of Read essentially consisted of one officer forwarding correspondence and preserving the books and records of Read. Since August 6, 1968, there have been no formal meetings of officers or directors in Pennsylvania."

The court concluded that Read's principal place of business and state of incorporation, Delaware, were the same in stating (p. 486-487):

"... Furthermore, the Court is of the opinion that the situation where a corporation is first formed and granted a charter, but has not commenced business, is not too much different, for purposes of 28 U.S.C. §1332(c), from the facts and circumstances of the instant case where a corporation has ceased all of its business activities, has sold all of its assets, and is in the process of winding up. In both instances the corporation is deemed to be a citizen only of the state of incorporation...."

* * * *

"... The Court is satisfied that there has been a sufficient showing that as of January 14, 1970, Read was a citizen only of Delaware where it had its only real existence by virtue of its incorporation in that state and by virtue of its not having its principal place of business elsewhere..."

As Read's principal place of business was York, Pennsylvania before the August 6, 1968 sale, Leland's principal place of business was in Tulsa, Oklahoma before the events of the sale and dissolution stated above. Read had not proceeded with dissolution under the law of Delaware but Leland Equipment Company had. Plaintiff urges that lawsuits commenced by Leland Equipment Company following dissolution, and other acts of receiving or expending monies in the name of Leland Equipment Company, established that Leland continued its principal place of business in Tulsa, Oklahoma and creates an estoppel in that regard.

Section 278 of the Delaware code, quoted above, specifically provides that even though dissolved, a Delaware corporation remains a body corporate for three years for purposes of prosecuting or defending suits. Oklahoma law holds that the prosecution of a lawsuit is not an act of doing business in Oklahoma. Ohio Casualty Insurance Company v. First National Bank of Nicholasville, Ky., 425 P.2d 934 (Okla. 1967) and Iola State Bank v. Kissee, 363 P.2d 368 (Okla. 1961).

The record reflects that Leland Equipment Company at the time of the commencement of the instant action by the plaintiffs had no employees, officers or directors, owned no real property in Oklahoma, and did not maintain an office in Oklahoma. The

winding up of business of Leland Equipment Company was being conducted by Leland General Partnership on behalf of Leland Equipment Company.

The plaintiff has not sustained its burden of establishing that Leland Equipment Company had its principal place of business in Oklahoma when the instant action was commenced. United Nuclear Corporation v. Moki Oil and Rare Metals Co., 364 F.2d 568 (10th Cir. 1966); Messenger v. United Canso Oil & Gas Ltd., 80 F.R.D. 730 (D.C.Conn. 1978). As was determined in Gavin v. Read Corporation, supra, the probable principal place of business of Leland Equipment Company in March 1985 was the State of Delaware.

Delaware corporation law provides that Leland Equipment Company can be sued as an entity for three years following the date of dissolution. Therefore, Leland Equipment Company is a proper party defendant herein. Under Fed.R.Civ.P. 19, it cannot be concluded that Leland General Partnership is an indispensable party to this action in the sense that the case cannot proceed without Leland General Partnership or that a final determination without Leland General Partnership would be inconsistent with equity and good conscience. Bennie v. Pastor, 393 F.2d 1 (10th Cir. 1968); Thomas v. Colorado Trust Deed Funds, Inc., 366 F.2d 140 (10th Cir. 1966); Williams v. Pacific Royalty Co., 247 F.2d 672 (10th Cir. 1957); Skelly Oil Co. v. Wickham, 202 F.2d 442 (10th Cir. 1953); and Carter Oil Co. v. Crude Oil Co., 201 F.2d 547 (10th Cir. 1953). The Court has previously determined that Leland Equipment Company is to be indemnified by the

co-defendant, Grove Manufacturing Company, a division of Kidde, Inc.

Because of the assignment (PX-2) of all assets to Leland General Partnership, a judgment creditor could look to Leland General Partnership to pay a judgment. Investors Preferred Life Insurance Co. v. Abraham, 375 F.2d 291 (10th Cir. 1967), and Jones v. Eppler, 266 P.2d 451 (Okla. 1953), 48 ALR2d 333.

Plaintiffs could have perhaps joined Leland General Partnership as a permissive party defendant at the outset and thereby have defeated diversity because there are Oklahoma partners. In the affidavit of plaintiffs' counsel (PX-A) it is stated:

"Plaintiffs' attorney further asserts that the evidence shedding light on the lack of jurisdiction of this Court came to his attention subsequent to trial after due diligence was asserted on his part to discover all relevant evidence relating to this action. The evidence so discovered was material and would necessarily produce a different result in this action."

However, the affiant's statements in reference to due diligence relate to post-trial. The record before the Court reflects that plaintiffs' counsel made no specific inquiry concerning the facts of corporate dissolution of Leland Equipment Company and took no timely discovery prior to the jury trial on the subject. The record does not reflect due diligence prior to the trial of the case nor is it asserted such due diligence was exercised. Timely inquiry and/or discovery would have disclosed the facts of dissolution and the assignment evidenced by PX-2 and 3.

For the reasons stated above, plaintiffs' motion for relief from judgment and to remand based on lack of diversity of citizenship is hereby overruled.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

JUN 27 1986

CLERK
DISTRICT COURT

JOHN REIDEL,

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)
)
)
)

Plaintiff,

vs.

ELIZABETH DOLE, et al

No. 86-C-474-B

PLAINTIFF'S PARTIAL DISMISSAL

COMES NOW Plaintiff and dismisses his Fourth Claim (Condemnation of Plaintiff's Homestead) (Par VI.) contained in Par. Nos. 47-52 of the Complaint filed herein on May 14, 1986 without prejudice.

LOUIS LEVY, INC.

By

LOUIS LEVY - OBA #5396
5200 South Yale Avenue
Suite 100
Tulsa, Oklahoma 74135
(918) 496-9258

Attorney for Plaintiff John Reidel

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

FILED

JUN 27 1986

BETTY MEIXNER, Individually and as
personal representative of the heirs
and estate of KARL MEIXNER, Deceased,

Plaintiff,

vs.

A C & S, INC., et al.,

Defendants.

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

No. 84-C-911-E

ORDER

Now on this 27th day of June, 1986, the Application of the parties for dismissal with prejudice of the above-entitled matter came on for hearing. Upon consideration of the merits, the Court finds that the above-entitled matter should be dismissed with prejudice and hereby dismisses the above-entitled matter with prejudice to the future filing thereof.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT COURT JUDGE

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

FILED

JUN 23 1986

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

ROBERT EACHUS, and TERESA EACHUS,)
Husband and Wife, Individually and)
as Parents and Next Friends of)
CASSANDRA EACHUS, a minor child,)
Plaintiffs,)

v.)

CASE NO.: 85-C-924-C

JIMMIE DALE STOKER, JERI MICHAEL)
GOEN, WILBURN J. HOPE, INC., and)
NATIONAL INDEMNITY COMPANY, a)
corporation,)
Defendants.)

ORDER OF DISMISSAL

On This 26 day of June, 1986, upon the written application of the Plaintiffs, Robert Eachus and Teresa Eachus, individually, and as husband and wife, and as Parents and Next Friends of Cassandra Eachus, a minor child, and the Defendants, Jimmie Dale Stoker, Jeri Michael Goen, Wilburn J. Hope, Inc., and National Indemnity Company, for a Dismissal with prejudice of the Complaint of Eachus v. Stoker 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 Robert Eachus and Teresa Eachus and the minor child, Cassandra Eachus,

THE COURT FURTHER FINDS that said Complaint in Eachus v. Stoker

should be dismissed pursuant to said application.

THE COURT FURTHER FINDS that the Cross Petition of Jimmie Dale Stoker and Jeri Michael Goen against each other 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, Robert Eachus and Teresa Eachus, individually, and as husband and wife, and Parents and Next Friends of Cassandra Eachus, a minor child against the Defendants, Jimmie Dale Stoker, Jeri Michael Goen, Wilburn J. Hope, Inc., and National Indemnity Company be and the same hereby are dismissed with prejudice to any future action.

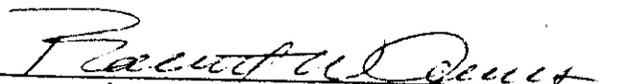
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Cross Claims of Co-Defendants, Jimmie Dale Stoker and Jeri Michael Goen against each other be and the same hereby are dismissed with prejudice to any future action.

s/H. DALE COOK

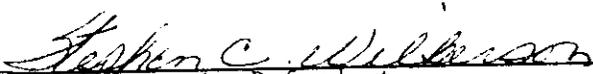
JUDGE OF THE UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT OF OKLAHOMA

Approvals:

ROBERT W. AMIS

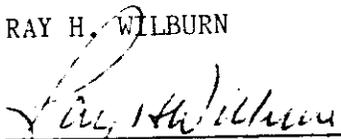

Attorney for the Plaintiffs, Robert Eachus
and Teresa Eachus, individually and as
husband and wife, and as Parents and Next
Friend of Cassandra Eachus, a minor child,

STEPHEN C. WILKERSON



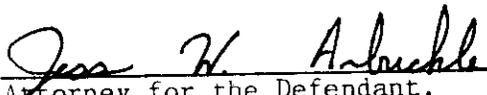
Attorney for the Defendant,
Jimmie Dale Stoker,

RAY H. WILBURN



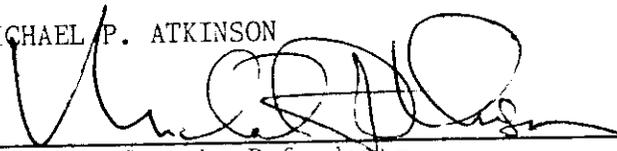
Attorney for the Defendant,
Jeri Michael Goen,

JESS ARBUCKLE



Attorney for the Defendant,
Jeri Michael Goen,

MICHAEL P. ATKINSON



Attorney for the Defendants,
Wilburn J. Hope, Inc. and National
Indemnity Company.

FILED

JUN 26 1986

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

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

NORTHEAST MISSOURI EXPLORATION)
 COMPANY, a Delaware Corporation,)
)
 Plaintiff,)
)
 v.)
)
 KENNETH ALAN WEIKEL, an individual)
 and WEIKEL & ASSOCIATES,)
)
 Defendants.)

No. 86-C-200-C

ORDER OF DISMISSAL

Based on the Application for Dismissal of Plaintiff by and through counsel of record, the above-entitled cause is hereby dismissed without prejudice and with each party to bear their own attorney's fees.

DATED this 26 day of June, 1986.

s/H. DALE COOK

Judge of the District Court

Entered

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

FILED

JUN 26 1986

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

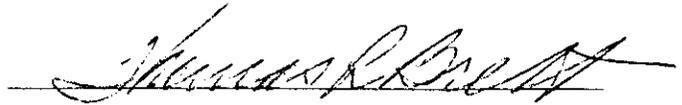
DAVID W. COPPLE and LOLA G.)
COPPLE,)
)
Plaintiffs,)
)
vs.)
)
COMMERCIAL CARTAGE COMPANY,)
and FRANK C. CONNER,)
)
Defendants.)

No. 84-C-591-B

O R D E R

On April 4, 1986, defendant Frank Conner filed a motion to dismiss for lack of diversity jurisdiction. Conner contended that at the time this action was filed on June 27, 1984, he was, like plaintiffs, a resident of the State of Oklahoma. At the status conference held in this matter on June 4, 1986, the Court granted plaintiffs an additional 20 days to respond to the motion. No response has been filed. Pursuant to Rule 14(a) of this Court, the motion to dismiss is deemed confessed. Plaintiffs' complaint is hereby dismissed without prejudice.

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



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

JUN 26 1986

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

RUSSELL BOARDMAN,
Plaintiff,

vs.

NATIONAL CAR RENTAL SYSTEMS,
INC., et al.,

Defendants.

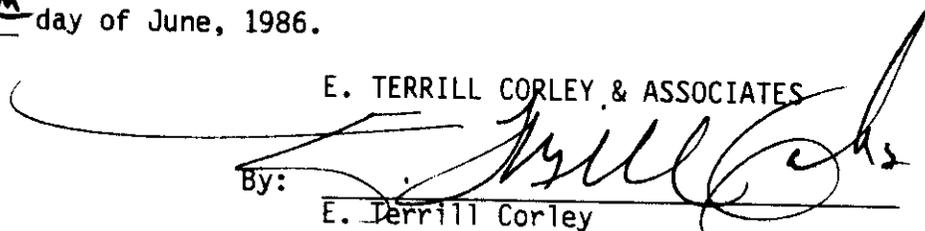
No. 85-C-309-B

STIPULATION OF DISMISSAL WITH PREJUDICE

Come now plaintiff Russel Boardman, by and through his attorney, and defendants National Car Rental Systems, Inc. and Household International, by and through their attorney, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, and stipulate and agree to a dismissal with prejudice of the claims presented in the above-styled and numbered action.

Dated this 25th day of June, 1986.

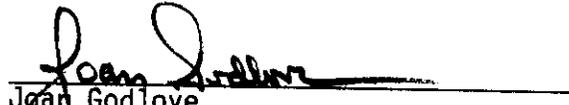
E. TERRILL CORLEY & ASSOCIATES

By: 

E. Terrill Corley
1809 East 15th Street
Tulsa, Oklahoma 74104
Telephone: (918) 744-6641

ATTORNEY FOR PLAINTIFF

JONES, GIVENS, GOTCHER, BOGAN &
HILBORNE, A Professional Corporation

By: 

Joan Godlove
201 West Fifth Street, Suite 400
Tulsa, Oklahoma 74103
Telephone: (918) 581-8200

ATTORNEY FOR DEFENDANTS

Jon S. Black, for the principal sum of \$661.20, plus interest at the rate of 9 percent per annum and administrative costs of \$.68 per month from November 13, 1984, until judgment, plus interest thereafter at the current legal rate of 7.03 percent per annum until paid, plus costs of this action.

SEALS OF THE COURT

UNITED STATES DISTRICT JUDGE

Entered

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

JUL 26 1986

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

No. 85-C-678-B

HELEN MILLS, Administratrix of the Estate of Louis L. Dewey and Maggie M. Dewey, Deceased,

Plaintiff,

v.

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

Defendants.

ORDER

This matter comes before the Court on the Motion for Summary Judgment by Defendant Vanguard Milk Producers Coop of Missouri ("Vanguard") against Cross-Defendants Michael Curtis Geiger, Bill L. Vinson d/b/a Vinson Construction Company, Bob Vinson, Dan Vinson, Bill L. Vinson, Jr., and Pat Vinson ("Cross-Defendants"). For the reasons set forth below, the Motion for Summary Judgment is sustained in part and denied in part.

On or about March 3, 1983, Vanguard entered into a hauling contract with Cross-Defendant Bob Vinson whereby Bob Vinson agreed to pick up and haul milk to designated haulers. This contract contained the following provision:

"HAULER will acquire and maintain required liability insurance and will hold VANGUARD harmless from damages from liability arising out of the operating of vehicles."

The Amended Complaint filed by Plaintiff herein alleges that Plaintiff's decedents were killed on May 3, 1984, in a collision with a milk truck operated by Michael Curtis Geiger, acting as

CH

agent and employee of Bob Vinson and acting within the scope of his employment at the time of the accident. The Amended Complaint named Vanguard as a Defendant apparently on a theory of vicarious liability. On January 28, 1986, the action against Vanguard was dismissed with prejudice by the Plaintiff, each party agreeing to bear its own costs and attorney fees. Vanguard has cross-claimed against the Cross-Defendants for reimbursement of costs and attorney fees pursuant to the hold harmless clause in the hauling contract between Vanguard and Bob Vinson.

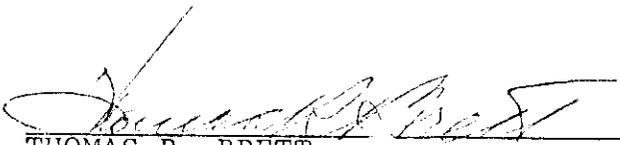
The hauling contract at issue was entered into between Vanguard and Bob Vinson. Bob Vinson did not sign the contract in a representative capacity, therefore, any liability under the hold harmless clause was incurred only by Bob Vinson and not the other Cross-Defendants. For this reason, the Motion for Summary Judgment against Cross-Defendants Michael Curtis Geiger, Bill Vinson d/b/a Vinson Construction Company, Dan Vinson, Bill L. Vinson Jr., and Pat Vinson, is hereby denied. With respect to Bob Vinson, the issue before the court is whether reimbursement for costs and attorney fees is covered by the hold harmless clause herein. Cross-Defendant contends that only "damages" are covered by the contract provision and that attorney fees are not within the definition of damages. While there is some support for Cross-Defendant's position, the issue has been resolved by the Oklahoma Supreme Court in American First Title & Trust Co. v. First Federal Savings & Loan Association of Coffeyville, 415 P.2d 930 (Okla. 1965). There, the court adopted the proposition that:

As a general rule an indemnitee is entitled to recover, as a part of the damages, reasonable attorney's fees, and reasonable and proper legal costs and expenses, which he is compelled to pay as a result of suits by or against him in reference to the matter against which he is indemnified. . . .

42 C.J.S. Indemnity §13. The passage quoted above goes on to state that where there is an express contractual provision regarding indemnification for attorney fees, that provision controls the extent to which the indemnitee may recover such fees. However, the general principle adopted by the Oklahoma Supreme Court is that an indemnitee may recover attorney fees and costs, as a part of damages, even where the indemnification clause does not expressly mention attorney fees and costs. For this reason, Vanguard's Motion for Summary Judgment with respect to reimbursement for attorney fees and costs is sustained with respect to Cross-Defendant Bob Vinson.

A hearing on the amount of attorney fees and costs incurred by Vanguard is set for 1:30 p.m. on the 23rd of July, 1986.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 26 1986

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

CLARK EQUIPMENT CREDIT)
CORPORATION,)
)
Plaintiff,)
)
-vs-)
)
LARRY WALLEN,)
)
Defendant.)

No. 86-C-315-E

DEFAULT JUDGMENT

On the 26th day of June, 1986, at Oklahoma City, Oklahoma in said District this cause came on for hearing upon the Complaint of Clark Equipment Credit Corporation, Plaintiff in the above-styled cause, for default judgment, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, 28 U.S.C., and it appearing to the Court that the Complaint in the above cause was filed in this Court on March 31, 1986, and that the Summons and a copy of the Complaint were served by the private process on the Defendant Larry Wallen at Owasso, Oklahoma. That no answer or other defense has been filed by the said Defendant and that default was entered on the _____ day of June, 1986 as against Defendant Larry Wallen, in the office of the Clerk of this Court and that no proceedings have been taken by said Defendant since said default was entered, it is hereby

ORDERED, ADJUDGED AND DECREED that the Plaintiff, Clark Equipment Credit Corporation have and recover of and from the Defendant Larry Wallen the sum of \$12,815.22, with interest as

provided by the contracts of the parties, a reasonable attorney's fee ^{upon proper application} in the amount of \$ _____ as provided by law, the costs of this action in the amount of \$60.00 and all accruing costs;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as an incident of the foreclosure of its security interest securing the indebtedness described above, the Plaintiff, Clark Equipment Credit Corporation, be and it is hereby granted judgment for the permanent possession of the following described property, to-wit: One 1980 Great Dane Refrigerated Trailer, serial number 99739 and one 1976 Thermoking Model SNWD Refrigeration Unit, serial number 1168100672, all for which let execution issue.

DATED this 26 day of June, 1986.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

JAMES H. BELLINGHAM of the firm of
McCLELLAND, COLLINS, BAILEY,
BAILEY & MANCHESTER
OBA ID #000682
15 North Robinson
11th Floor, Colcord Building
Oklahoma City, Oklahoma 73102
(405) 235-9371

Attorney for Plaintiff
Clark Equipment Credit Corporation

McCLELLAND, COLLINS,
BAILEY, BAILEY &
MANCHESTER

11th FLOOR - COLCORD BUILDING
OKLAHOMA CITY, OKLA.
73102

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 06 1986

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TOMMY L. CHRISTMAS,)
)
 Defendant.)

CIVIL ACTION NO. 86-C-300-E

DEFAULT JUDGMENT

This matter comes on for consideration this 26 day of June, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Tommy L. Christmas, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Tommy L. Christmas, was served with Summons and Complaint on May 6, 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,

Tommy L. Christmas, for the principal sum of \$460.67, plus interest at the rate of 9.00 percent per annum and administrative costs of \$.68 per month from November 30, 1984, and \$.67 per month from February 1, 1985 until judgment, plus interest thereafter at the current legal rate of 203 percent per annum until paid, plus costs of this action.

ST JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

JUN 20 1986

CLERK
DISTRICT COURT

CHRISTIAN ALLAN JOHNSTON, a minor,)
by and through Alta L. Johnston,)
his mother and natural guardian)
and next friend, and ALTA L.)
JOHNSTON,)

Plaintiffs,)

vs.)

No. 85-C-429-B

10 ACRE RECREATION, INC., a)
corporation, RON WILLSON, an)
Individual, GARY WAYNE WILLSON,)
an Individual, ROBERT DWIGHT)
WILLSON, an Individual, and ROLAND)
BAHLMANN, Architect, an Individual,)

Defendants.)

STIPULATION OF DISMISSAL

Come now the Plaintiffs, Christian Allan Johnston, a minor, by and through Alta L. Johnston, his mother and natural guardian and next friend, and Alta L. Johnston, by and through their attorney of record, Alan R. Carlson; and the Defendants, 10 Acre Recreation, Inc., Ron Willson, Gary Wayne Willson, and Robert Dwight Willson, by and through their attorney of record, Richard M. Eldridge; and the Defendant Roland Bahlmann, by and through his attorney of record, Jack Heskett, and do hereby stipulate to the dismissal with Prejudice of the above-entitled cause against

the Defendants, 10 Acre Recreation, Inc., Ron Willson, Gary Wayne Willson, and Robert Dwight Willson, and Roland Bahlmann.

ALAN R. CARLSON, Attorney for
Plaintiffs

RICHARD M. ELDRIDGE, Attorney for
Defendants, 10 Acre Recreation,
Inc., Ron Willson, Gary Wayne
Willson, and Robert Dwight Willson

JACK HESKETT, Attorney for
Defendant Roland Bahlmann

RME1/009
nw

Entered

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

FILED

JUN 26 1986

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

CHRISTIAN ALLAN JOHNSTON, a minor,)
by and through Alta L. Johnston,)
his mother and natural guardian)
and next friend, and ALTA L.)
JOHNSTON,)

Plaintiffs,)

vs.)

No. 85-C-429-B

10 ACRE RECREATION, INC., a)
corporation, RON WILLSON, an)
Individual, GARY WAYNE WILLSON,)
an Individual, ROBERT DWIGHT)
WILLSON, an Individual, and ROLAND)
BAHLMANN, Architect, an Individual,)

Defendants.)

JOURNAL ENTRY OF JUDGMENT

Now on this 26th day of June, 1986, this cause comes on for hearing pursuant to regular setting. Plaintiff, Christian Allan Johnston, appeared personally and by his mother and natural guardian and next friend Alta L. Johnston, and his attorney Alan Carlson; Defendants, 10 Acre Recreation, Inc., Ron Willson, Gary Willson and Robert Willson appeared by their attorneys of record, Rhodes, Hieronymus, Jones, Tucker & Gable, by Richard M. Eldridge; Defendant Roland Bahlmann appeared by his attorney of record Jack Heskett.

All parties in open court waived their rights of trial by jury and agreed to submit to a trial by the Court.

Whereupon, after hearing, the Court finds as follows:

That this action has been regularly and properly brought on behalf of the minor, Christian Allan Johnston, by and through his mother, natural guardian and Next Friend, Alta L. Johnston, and that this Court has jurisdiction of the parties and the subject matter involved herein.

The Court finds that the settlement agreement reached by the parties is a fair settlement and in the best interest of said minor plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Plaintiff, Christian Allan Johnston, a minor under the age of eighteen (18) years, who sued by his mother, natural Guardian and Next Friend, should be and he is hereby awarded judgment against the Defendants 10 Acre Recreation Inc., Ron Willson, Gary Willson and Robert Willson in the sum of One Hundred and Twenty One Thousand Four Hundred and Fifty-two Dollars (\$121,452), and against the Defendant Roland Bahlman in the sum of Seven Thousand Dollars (\$7,000).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that after the deduction of expenses and attorneys fees in the amount of \$74,118.⁷³, the balance of said sums shall

be deposited in First Nat. Bank of Redwoodville, Ok pursuant to the requirement of 12 O.S. § 83. Said balance being \$54,433.²⁷/₁₀₀.

Thomas R. Grett
U.S. MAGISTRATE
JUDGE

Approved As To Form:

Alan Carlson
ALAN CARLSON
Attorney for Plaintiff

Richard M. Eldridge
RICHARD M. ELDRIDGE
Attorney for Defendants
10 Acre Recreation, Inc.; Ron
Willson, Gary Willson, and
Robert Willson

Jack Heskett
JACK HESKETT Attorney for
Defendant Roland Bahlmann

RME1/007
nw

Interest

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

CANADIAN PETROLEUM RESOURCES,)
INC., et al.,)
)
Plaintiffs,)
)
v.)
)
CLARENCE R. WRIGHT, an)
individual, et al.,)
)
Defendants.)

FILED
JUN 26 1936
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 85-C-603-BT

O R D E R

This matter comes before the Court on Defendants' Motion to Dismiss for Improper Venue or, in the alternative, to Transfer Case pursuant to 28 U.S.C. §1404(a). For the reasons set forth below, the Motion to Dismiss is denied, and the Motion to Transfer is sustained.

Defendants assert that there is no proper basis for review in the Northern District of Oklahoma. They contend that neither the plaintiffs nor defendants reside in the Northern District and that the cause of action herein did not arise in the Northern District. They further assert that neither of the Plaintiff corporations "have had any significant presence in the Northern District of Oklahoma," and that defendants have had no contacts with the Northern District.

Plaintiffs bring this action asserting violations of Section 26 of the Securities Exchange Act of 1934, as amended, 15 U.S.C. §78 et seq., 15 U.S.C. §78aa, and pendent state claims. Jurisdiction is premised on 28 U.S.C. §1331, alleging claims arising under the laws of the United States.

28 U.S.C. §1391(a) provides:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all of the defendants reside, or in which the claims arose, except as otherwise provided by law.

15 U.S.C. §78aa provides in pertinent part:

"Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business. . . ."

The Court has before it for consideration the Affidavits of Don Mount, an employee of C. R. Wright Associates Management, Inc., and Ken Holmquist, president and chief executive officer of Canadian Petroleum Resources, Inc. Mr. Mount asserts that the United States District Court for the Western District of Oklahoma in Oklahoma City, Oklahoma, is the most convenient forum for this matter. Mount further asserts that to the best of his knowledge, "no stock of Canadian [Petroleum Resources, Inc.] or Canadarko [Resources, Lt.] was sold to Plaintiffs in the Northern District of Oklahoma and no representation in connection with any sale was made in the Northern District of Oklahoma."

However, Mr Holmquist asserts a portion of the investments made on behalf of Plaintiff Canadian Petroleum Resources, Inc., were funds deposited with Dalco Petroleum Corporation (Dalco), and that "Dalco was, at the time of the investment, located in Tulsa, Oklahoma. That witnesses to the Dalco transaction are located in Tulsa, Oklahoma. That all or most of the documents relative to the Dalco transaction are located in Tulsa, Oklahoma."

Under 28 U.S.C. §1391(b) and 15 U.S.C. §78aa, venue is proper in the district where all defendants reside or in which the claim arose. It appears from the record herein that all of the defendants reside in the Western District of Oklahoma. It is unclear where

Plaintiffs' claims arose. The Complaint states that "The acts complained of herein occurred either within this district, the Western District of Oklahoma, or within British Columbia, Canada." Thus, Plaintiffs allege that their claims arose in two judicial districts, the Northern District of Oklahoma and the Western District of Oklahoma. 28 U.S.C. §1391(b) was not intended to give a plaintiff "an unfettered choice among a host of different districts." Leroy v. Great Western United Corporation, 443 U.S. 173, 185 (1979).

The court went on to state:

"In our view, therefore, the broadest interpretation of the language of §1391(b) that is even arguably acceptable is that in the unusual case in which it is not clear that the claim arose in only one specific district, a plaintiff may choose between those two (or conceivably even more) districts that with approximately equal plausibility -- in terms of the availability of witnesses, the accessibility of other relevant evidence, and the convenience of the defendant (but not of the plaintiff) -- may be assigned as the locus of the claim."

Id. There are allegations of acts occurring in the Western District of Oklahoma, such as the release of \$397,220 by Yukon Bank, allegedly without authorization, for payment of an eight-well drilling package. This specific allegation could be the basis of venue in the Western District on the theory that that is where the Plaintiffs' claim arose. Venue in the Northern District is premised on the fact that a portion of the investments made on behalf of Canadian Petroleum Resources, Inc., were deposited with Dalco Petroleum, a Tulsa company, and that this investment was the result of meetings between Dalco officials and the Defendants in Tulsa. It is unclear, however, that the mere fact that Dalco is a Tulsa company and that the investment in Dalco was the result of meetings between Dalco officials and defendants, are sufficient to make venue in the Northern District proper. Although meetings between Dalco officials and Defendants may have occurred in

the Northern District of Oklahoma, it is not clear that these meetings constitute the basis of Plaintiffs' claims of wrongdoing. However, considering the briefs submitted on this issue and the affidavits in support thereof, the Court is unable to conclude that Defendants have established a defect in venue in the Northern District. Therefore, the Motion to Dismiss for improper venue is denied. However, assuming that venue is proper in the Northern District, after assessing the considerations noted in Leroy for determining which of two or more districts may be assigned as the locus of the claim, it is clear that the Western District of Oklahoma is the more appropriate choice. Clearly, acts involving the Yukon National Bank occurred in the Western District. All Defendants reside in the Western District. Many of the witnesses to be called in this case reside in the Western District and pertinent records of Defendants Clarence Wright, Ray Wright, Yukon National Bank and Wright Associates Management are located in the Western District. For these reasons, pursuant to 28 U.S.C. §1404(a), for the convenience of the parties and witnesses, and in the interest of justice, this case is hereby transferred to the Western District of Oklahoma.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JUN 26 1986

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

HANOVER INSURANCE COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED OKLAHOMA BANK,)
)
 Defendant.)

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

No. 85-C-898-E

ORDER

The Court has before it for its consideration the Defendant's motion to dismiss, or, in the alternative, motion to transfer. The Defendant has moved the Court to dismiss Plaintiff's action on the basis that venue is improper under 28 U.S.C. § 1391(a) and § 1391(c) for the reason that the Defendant banking corporation has no offices in the northern judicial district. The Plaintiff opposes Defendant's motion to dismiss, claiming that "Defendant is an Oklahoma banking corporation and is therefore subject to venue of the Court in the Northern District of Oklahoma as well as the Western District."

28 U.S.C. § 1391(a) provides as follows:

A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, or in which the claim arose.

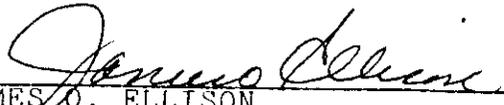
28 U.S.C. § 1391(c) defines the place of residency of a corporation as follows:

A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business,

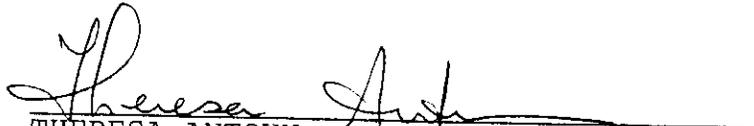
and such judicial district shall be regarded as the residence of such corporation for venue purposes.

In First Security Bank of Utah v. Aetna Casualty & Surety Co., 541 F.2d 869 (10th Cir. 1976) the United States Court of Appeals for the Tenth Circuit held that Aetna Casualty & Surety Co. could be sued in any judicial district in the State of Utah under 28 U.S.C. § 1391(c) because it was licensed to do business in the entire State of Utah. However, this Court believes that First Security Bank of Utah, supra, is distinguishable from the case now before the Court because the Defendant, United Oklahoma Bank, under 6 Okla.Stat. § 501 may do business only in Oklahoma City or within twenty-five (25) miles of Oklahoma City. This distinguishes it from other types of corporations which could transact business at any location within the state. Therefore the Court finds that venue is not properly laid in this district.

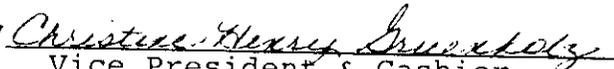
Accordingly, it is hereby ordered that this action be transferred to the United States District Court for the Western District of Oklahoma.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

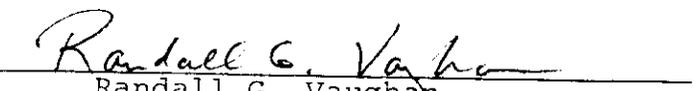

THERESA ANTOUN

UTICA NATIONAL BANK & TRUST
COMPANY

By 
Vice President & Cashier
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By 
Linda C. Martin
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211
Attorneys for Defendant

PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

By 
Randall G. Vaughan
900 Oneok Plaza
Tulsa, Oklahoma 74103
Attorneys for Plaintiff

FILED

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

JUN 26 1986

TELEVISION COMMUNICATIONS,)
INC.,)
)
Plaintiff,)
)
vs.)
)
TULSA TV 41 a/k/a TV 41,)
et al.,)
)
Defendants.)

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

No. 86-C-98-E

O R D E R

This case is before the Court on consideration of the motion to dismiss of Defendants Tulsa TV 41 ("TV 41") and Satellite Television Systems ("STS"). These Defendants have moved the Court to dismiss Plaintiff's complaint for the reason that TV 41 and STS never agreed to the alleged contract upon which Plaintiff's claim is based, because the alleged modification of a prior contract was not in writing, because Plaintiff is not entitled to specific performance nor punitive damages, and because Plaintiff's allegations do not state a claim in negligence.

Having reviewed the documents attached to the Plaintiff's complaint as well as the allegations of the complaint, the Court finds that the Plaintiff appears to be pleading inconsistent factual allegations when it alleges that the Defendants were acting both individually and in their corporate capacities. The Court cannot determine based upon Plaintiff's allegations whether the Plaintiff is alleging that Defendant Leonard Anderson

intended to enter into a contract with the Plaintiff as a party in addition to TV 41, or whether Leonard Anderson was acting as an agent on behalf of TV 41. Based on Plaintiff's allegations, it is not demonstrated that persons with authority to bind Tulsa 41 executed documents sufficient to constitute a contract. However the Court is hesitant to dismiss those Defendants from this action without being satisfied that the Plaintiff can prove no set of facts in support of its claims. Accordingly, the Plaintiff is given twenty (20) days from the date of this Order to eliminate its inconsistent factual allegations and to plead sufficient facts to support its claim against Tulsa TV 41 and STS.

Defendants also claim that Plaintiff's second cause of action for gross negligence fails to state a claim upon which relief can be granted. The doctrine of negligence under Oklahoma law has been extended under Keel v. Titan Construction Corp., 639 P.2d 1228 (Okla. 1982) and Bradford Securities v. Plaza Bank & Trust, 653 P.2d 188 (Okla. 1982) to create liability in negligence wherever injury was reasonably foreseeable to the tortfeasor. However, both of these cases involved contractual relationships in which the tortfeasor was rendering a service, and would have reason to know that if he negligently performed, the beneficiaries of his service would suffer. This situation is far different from persons negotiating a commercial contract who may know that if they breach the contract, the other party will be injured. To so hold would transform every contract case into a negligence case, which this Court declines to do. Therefore, the

Court grants Defendants' motion to dismiss Plaintiff's second cause of action for negligence.

Finally, Defendants claim that Plaintiff's request for specific performance of the contract and punitive damages are not allowable as a matter of law. Certainly specific performance is a remedy which is available for breach of contract under some circumstances. Here, the Court does not yet have sufficient information to determine whether these damages would be available to Plaintiff in this case, and therefore declines Defendants' suggestion that the specific performance request be stricken at this stage of the litigation. With regard to the punitive damages request, the Court notes that the punitive damages were requested in conjunction with Plaintiff's fraud claim. At this point, the Plaintiff is entitled to alternatively plead breach of contract and fraud and to request punitive damages in conjunction with the fraud claim. Therefore the Court declines to strike Plaintiff's punitive damage claim as urged by Defendants.

IT IS THEREFORE THE ORDER OF THIS COURT that Defendants' motion to dismiss be granted in part to the extent that Plaintiff's negligence claim is hereby dismissed, but that the Defendants' motion to dismiss be denied in part with regard to Plaintiff's request for specific performance and punitive damages, and that Plaintiff be given twenty (20) days from the date of this Order to file an amended complaint clarifying the capacity in which Leonard Anderson is alleged to have acted, clarifying what persons, if any, negotiated on behalf of Defendants TV 41 and STS, and further describe in the alleged transaction in

question so that the Court can determine as a matter of law whether the Plaintiff is able to state a claim against any of the Defendants.

DATED this 26th day of June, 1986.



JAMES J. ELLISON
UNITED STATES DISTRICT JUDGE

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

ROBERTA G. McCLAIN,
Plaintiff,

vs.

OSTEOPATHIC HOSPITAL
FOUNDERS ASSOCIATION,
d/b/a OKLAHOMA
OSTEOPATHIC HOSPITAL,
Defendant.

FILED

JUN 25 1986

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

NO. 85-C-412 E

ORDER OF DISMISSAL

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

DATED this 25th day of June, 1986.

57 JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

certificate of title, and the required fee. Commercial received a Vehicle Certificate of Title pertaining to the subject vehicle with a lien noted on the face of the certificate. Debtor, Snelling, subsequently filed a Voluntary Petition for Relief under Chapter 11 and the Bankruptcy Court entered an Order for Relief. On November 27, 1984 Snelling instituted an action in the bankruptcy court seeking to avoid the right, title, and interest of Commercial in the subject vehicle, pursuant to 11 U.S.C. § 544(a) (1984).

The bankruptcy court held that delivery to the Oklahoma Tax Commission of a manufacturer's certificate of origin, an application for certificate of title, and the required fee, without a lien entry form, failed to perfect a security interest in the subject motor vehicle pursuant to Okla. Stat. tit. 47, § 23.2b(A)(1) (1980). Judgment was entered in favor of Snelling.

The single issue raised on appeal is whether Okla. Stat. tit. 47, § 23.2b(A)(1) (1980) required Commercial to present to the Oklahoma Tax Commission, or one of its motor license agents, a lien entry form in addition to the manufacturer's certificate of origin, application for certificate of title, and the required fee in order to perfect a secured interest in the subject motor vehicle.

Rule 8013 of the Bankruptcy Reform Act of 1978 requires the District Court to accept the Bankruptcy Court's findings of fact unless they are clearly erroneous. 1 Collier On Bankruptcy Paragraph 3.03(7) (15th ed.1985). This rule accords to the findings of a bankruptcy judge the same weight given to the

findings of a District Judge under Fed. R. Civ. P. 52. Applying this standard to the case at bar the Court finds that the decision of the bankruptcy court should be affirmed. Although the statutory language is admittedly ambiguous, it should not be read to omit what appears to be a specific prerequisite to the perfection of a security interest and it does not appear that the findings of fact entered below are clearly erroneous.

Okla. Stat. tit. 47, § 23.2b(A)(1) (1980) provides:

A. 1. Except for a security interest in vehicles held by a dealer for sale or lease, as defined in Section 1-112 of this title, a security interest, as defined in Section 1-201 of Title 12A of the Oklahoma Statutes, in a vehicle as to which a certificate of title may be properly issued by the Tax Commission shall be perfected only when a lien entry form, which shall be upon a form prescribed by the Commission, and the existing certificate of title, if any, or application for a certificate of title and manufacturer's certificate of origin containing the name and address of the secured party and the date of the security agreement and the required fee are delivered to the Oklahoma Tax Commission or one of its motor license agents. For purposes of this section, the term "vehicle" shall not include special mobilized machinery, machinery used in highway construction or road material construction and rubber-tired road construction vehicles including rubber-tired cranes. The filing and duration of perfection of a security interest provisions of Title 12A of the Oklahoma Statutes, including, but not limited to, Section 9-302, shall not be applicable to perfection of security interests in vehicles as to which a certificate of title may be properly issued by the Tax Commission, except as to vehicles held by a dealer for sale or lease and except as provided in subsection D of this section. In all other respects Title 12A of the Oklahoma Statutes shall be applicable to such security interests in vehicles as to which a certificate of title may be properly issued by the Tax Commission.

Appellant claims that the bankruptcy court erred in

interpreting Okla. Stat. tit. 47, § 23.2b(A)(1) (1980) to require the filing of a lien entry form as the only method of perfecting a security interest in a motor vehicle. Appellant contends that the language in Okla. Stat. tit. 47, § 23.2b(A)(1) (1980) should be interpreted to allow perfection of a security interest in a motor vehicle either by filing a lien entry form and an existing certificate of title or by filing an application for certificate of title and a manufacturer's certificate of origin containing the name and address of the secured party and the date of the security agreement.

In support of its argument disputing the need for a lien entry form in all situations, Appellant asserts:

- (a) A lien entry form is unnecessary since the manufacturer's certificate of origin must contain information comparable and equivalent to that required on a lien entry form and should be sufficient to constitute notice to interested third persons;
- (b) Although the lien entry form, unlike the manufacturer's certificate of origin, has a place for the signature of the secured party, absence of the secured party's signature on the lien entry form does not result in an unperfected secured interest. The lien entry form, therefore, serves no greater purpose than the manufacturer's certificate of origin; and
- (c) A lien entry form is not intended as notice to third persons since the form is returned to the creditor.

As an alternative argument Appellant contends that the bankruptcy court erred by not applying the substantial compliance policies of the Uniform Commercial Code (UCC) to determine whether a security interest was perfected. In this regard,

Appellant asserts:

- (a) The Oklahoma Supreme Court, in response to two certified questions, found that the UCC policy of substantial compliance may be used to interpret the perfection of a vehicle security interest under Okla. Stat. tit. 47, § 23.2b(A)(1) (1980);
- (b) Since a lien entry form under Okla. Stat. tit. 47, § 23.2b(A)(1) (1980) provides the name and address of the secured party and the date of the security agreement, the filing of a manufacturer's certificate of origin containing the same information constitutes substantial compliance with the statute; and
- (c) A filing substantially complies with the statutory requirements if it contains 'minor errors' which are not "seriously misleading". Since there are no significant differences between the information provided by each of the two documents, the filing of a manufacturer's certificate of origin, rather than a lien entry form, is not "seriously misleading". The filing of a manufacturer's certificate of origin and application for certificate of title, therefore, substantially complies with the requirements of Okla. Stat. tit. 47, § 23.2b(A)(1) (1980).

Appellee argues that delivery to the Oklahoma Tax Commission of a lien entry form, in addition to a manufacturer's certificate of origin and application for certificate of title, is essential to perfect a security interest in a motor vehicle under

applicable Oklahoma law. Appellee also contends, focusing on the express language of the statute, that Appellant's failure to submit a lien entry form to the Oklahoma Tax Commission should result in an unperfected security interest in the subject vehicle.

Appellee claims that the statutory language indicates there are two distinct ways to perfect a security interest in a motor vehicle depending on whether there is an existing title to the vehicle: (1) when there is no existing certificate of title, a security interest must be perfected by delivering to the Oklahoma Tax Commission (i) a lien entry form, (ii) an application for a certificate of title, (iii) the manufacturer's certificate of origin, and (iv) the required fee; (2) when there is an existing certificate of title, a security interest must be perfected by delivering to the Oklahoma Tax Commission (i) a lien entry form, (ii) the existing certificate of title, and (iii) the required fee. The presentment of a lien entry form is always necessary to perfect a security interest in a motor vehicle.

Appellee emphasizes that language found elsewhere in the statute further supports the proposition that a lien entry form is required to perfect a security interest under Okla. Stat. tit. 47, § 23.2b(A)(1) (1980). Appellee cites first to Okla. Stat. tit. 47, § 23.2b(A)(2) (1980), which provides:

...

The secured party shall deliver the lien entry form and the required lien ... filing fee ... with certificate of title or the application for certificate of title and the manufacturer's certificate of origin to the Commission ... If the lien entry form, the

required ... lien filing fee and the certificate of title or application for certificate of title and the manufacturer's certificate of origin are delivered to the Commission ... within ten (10) days after the date of the lien entry form, perfection of the security interest shall begin from the date of the execution of the lien entry form, but, otherwise, perfection ... shall begin from the date of the delivery to the Commission...

Appellee argues that the filing of a lien entry form is the essential act which perfects the security interest.

Appellee further cites to Okla. Stat. tit. 47, § 23.2b(A)(3)(a) (1980), which provides:

Upon the receipt of the lien entry form and the required fees with either the certificate of title or an application for certificate of title and manufacturer's certificate of origin, the Commission ... shall ... record the date and number ... on each of these instruments.

Appellee also cites In re Haning, 35 Bankr. 242, 246 (Bankr. W.D. Okla. 1983), where the court concluded that "... perfection of a security interest in [the subject vehicle] can be obtained only by filing a lien entry form with the Oklahoma Tax Commission or one of its motor license agents."

In response to Appellant's substantial compliance argument, Appellee claims that the defect in filing in this case was too great to find substantial compliance with the statutory requirements. Appellee contends that the statute expressly requires the filing of a lien entry form with the Oklahoma Tax Commission as an absolute prerequisite to the perfection of a security interest and that the notation of a security interest on the face of the certificate of title is insufficient to provide notice of the lien to interested third parties. Pursuant to

Okla. Stat. tit. 47, § 23.2b(C) (1980), the lien entry form is the document which verifies perfection and the date of perfection. Without it any party could fraudulently type its name on the face of the vehicle certificate of title as a representation of perfection.

Verification can only be accomplished by the inspection of the lien entry form, a copy of which is in possession and on file with the Oklahoma Tax Commission. Although the manufacturer's certificate of origin and lien entry form contain the same information, the time of perfection may be ascertained only by reference to the lien entry form. The lien entry form is necessary since it contains the name and address of the secured party and the date of the security agreement.

In reply, Appellant disputes Appellee's interpretation of Okla. Stat. tit. 47, § 23.2b(A)(1) (1980). Although Appellant agrees there are two methods by which to perfect a security interest depending on the existence of a certificate of title, Appellant does not agree that a lien entry form is required under both. Appellant offers several rebuttal arguments.

First Appellant contends that Okla. Stat. tit. 47, § 23.2b(A)(2) (1980) should be interpreted as follows: Perfection of a security interest begins at one time (date of execution of lien entry form) if perfection is made by filing a lien entry form, but at a different time (date of delivery of the required documents, not to include a lien entry form) if the security interest is perfected by the other method.

Secondly, Appellant urges that In re Haning should be

limited as precedent to the issues addressed therein; (i) whether "trailer" is a "vehicle," and (ii) whether filing a financing statement perfects a security interest.

Appellant further asserts a lien indicated on the face of the certificate of title is sufficient notice that a security interest is present. Verification can be made by inspection of the manufacturer's certificate of origin which contains the same information provided by a lien entry form.

Finally, Appellant states that the filing of a lien entry form, as opposed to a manufacturer's certificate of origin, would not prevent a party from fraudulently typing its name on the face of the certificate of title.

Appellant cites to a recent holding by the bankruptcy court to support its interpretation of Okla. Stat. tit. 47, § 23.2b(A)(1) (1980). In Hughen v. Paul Arpin Van Lines, Inc., 38 Bankr. 13 (Bankr. W.D. Okla. 1983), the court indicated that, in order to avail oneself of the minor errors language of the UCC, one must "have attempted to meet the minimum requirement of delivering to the Tax Commission a lien entry form or application for title." (emphasis added) Appellant claims the Hughen case clearly suggests that either delivery of a lien entry form or an application for certificate of title will meet the minimum statutory requirements.

However, this Court finds In re Chief Freight Lines Co., 37 Bankr. 436 (Bankr. W.D. Okla. 1984), more persuasive. In Chief Freight the bankruptcy court found that the defendant's failure to comply with the express statutory requirements for perfection

was "fatal to their alleged perfection of security interests." The Chief Freight decision supports a finding that a lien entry form is an indispensable document for perfection of a security interest.

Appellant would argue that the "or" which precedes "application for certificate of title and manufacturer's certificate of origin" provides for the filing of those two documents as a distinct and separate method for perfection (to the exclusion of a lien entry form). Although Appellant offers a logical interpretation of subsection (A)(1) of the statute, language found elsewhere in the statute is clearly inconsistent with that interpretation.

In particular, subsection (A)(3)(a) of the statute supports Appellee's contention that a lien entry form is essential to perfection. In reference to the recording of the documents, that provision states: "Upon the receipt of the lien entry form and required fees with either the certificate of title or an application for certificate of title and manufacturer's certificate of origin, the Commission ... shall ... record the date and number ... on each of these instruments." Okla. Stat. tit. 47, § 23.2b(A)(3)(a) (1980) (emphasis added). The lien entry form and fees are, undoubtedly, required. The remaining documents are required on an "either/or" basis.

Subsection (A)(2) of the statute indicates that the execution and delivery of a lien entry form are necessary to ascertain the exact time perfection of a security interest occurs. Perfection begins from the date of execution of the lien

entry form if the required documents and fee are delivered to the Oklahoma Tax Commission within ten (10) days of that execution date. If delivery is made at any time thereafter, perfection begins from the date of delivery. Therefore, the time of perfection may be determined only upon examination of the lien entry form and its execution date.

Appellant also fails in its alternative argument that the bankruptcy court should have found substantial compliance with the Oklahoma statute based on UCC policies. Appellant contends that the filing substantially complied with the statutory requirements since it contained only "minor errors which were not seriously misleading".

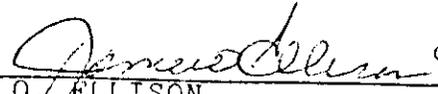
The Oklahoma Supreme Court, in response to a certified question from the Western District of Oklahoma in 1981, permitted the application of UCC substantial compliance policies to interpret the perfection of a vehicle security interest under Okla. Stat. tit. 47, § 23.2b. In re Cook, 637 P.2d 588 (1981). In Cook, a lien entry form had been filed but reflected the wrong date. The court concluded that "whether the filing requirements have been substantially complied with so as to give requisite notice to other creditors depends on the facts of each case." Id. at 590. The court did not address the question of failure to file a lien entry form.

Appellant relies heavily upon language found in the Hughen case to show that the absence of a lien entry form was a "minor error, not seriously misleading." The Hughen court stated that "to benefit from minor errors which are not seriously misleading

language," a secured party under the Oklahoma statute "must at least have attempted to meet the minimum requirement of delivering to the Tax Commission a lien entry form or application for title." 38 Bankr. at 16.

Although the court's language implies that either a lien entry form or an application for title would be sufficient to perfect, the court did not so hold. In Hughen the creditor failed to deliver any document to the Tax Commission and, therefore, failed to perfect a secured interest in the vehicle. The Hughen court refused to find substantial compliance noting that, although UCC principles may aid in interpreting the statute, "the liberal construction provisions of the UCC regarding perfection of security interest do not totally abrogate the clear procedural requirements of the Certificate of Title Statute." 38 Bankr. at 15.

IT IS THEREFORE ORDERED that the Order and Judgment rendered by the U.S. Bankruptcy Court for the Northern District of Oklahoma is affirmed.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 25 1986

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 STEPHEN W. ETTER,)
)
 Defendant.)

CIVIL ACTION NO. 86-C-209-E

DEFAULT JUDGMENT

This matter comes on for consideration this 25 day of June, 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, Stephen W. Etter, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Stephen W. Etter, was served with Summons and Complaint on May 19, 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,

Stephen W. Etter, for the principal sum of \$307.80, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from August 2, 1984, until judgment, plus interest thereafter at the current legal rate of 2.03 percent per annum until paid, plus costs of this action.

S/ JAMES O. ALLISON

UNITED STATES DISTRICT JUDGE

FILED

JUN 25 1986

United States District Court

WESTERN

DISTRICT OF

OKLAHOMA

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

1289
M-1285

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

ROY SCOVIL, et al

v.

DAVE CARSON, et al

Case Number: CIV-84-104R

I, Robert D. Dennis, Clerk of this United States District Court

certify that the attached judgment is a true and correct copy of the original judgment entered in this action on April 18, 1985, as it appears in the records of this court, and that

* no notice of appeal from this judgment has been filed, and no motion of any kind listed in Rule 4(a) of the Federal Rules of Appellate Procedure has been filed.

IN TESTIMONY WHEREOF, I sign my name and affix the seal of this Court on

June 18, 1986

Date

Robert D. Dennis

Clerk

Stacy Oels

(By) Deputy Clerk

Insert the appropriate language: . . . "no notice of appeal from this judgment has been filed, and no motion of any kind listed in Rule 4(a) of the Federal Rules of Appellate Procedure has been filed." . . . "no notice of appeal from this judgment has been filed, and any motions of the kinds listed in Rule 4(a) of the Federal Rules of Appellate Procedure [] have been disposed of, the latest order disposing of such a motion having been entered on [date]." . . . "an appeal was taken from this judgment and the judgment was affirmed by mandate of the Court of Appeals issued on [date]." . . . "an appeal was taken from this judgment and the appeal was dismissed by order entered on [date]."

[*Note: The motions listed in Rule 4(a), Fed. R. App. P., are motions: for judgment notwithstanding the verdict; to amend or make additional findings of fact; to alter or amend the judgment; for a new trial; and for an extension of time for filing a notice of appeal.]

DUCKETED
FILED

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

APR 18 1985

ROY SCOVIL, LUCILE SCOVIL,
JACK MITCHELL, MINTAHOYA
MITCHELL, and ROBERTA BRIGHAM,

Plainiffs,

vs.

DAVE CARSON, GERALD
GEARHART, MARCYLE GEARHART,
JACK SCHLEUNING, GLENN MARESCH,
and D&J PRODUCERS, INC.,

Defendants.

FRANCIS G. BANISIERO
CLERK U.S. DISTRICT COURT
BY *Christina P. Smith*
DEPUTY

No. CIV-84-104-R

JOURNAL ENTRY OF JUDGMENT

NOW ON THIS 18th day of March, 1985, this cause came on to be heard in its regular order, the plaintiffs appearing by and through their attorney of record, Henry W. Kappel; Glenn Maresch appearing pro se; and defendants Dave Carson, Gerald Gearhart, and D&J Producers, Inc., appearing by and through their attorney of record, Cyrus Northrup; whereupon the parties announced a settlement which the court, being fully advised in the premises, granted said settlement and finds as follows:

1. That plaintiffs are entitled to a judgment of Three Thousand Dollars (\$3,000.00) against defendant Glenn Maresch.

2. That plaintiffs are entitled to a judgment, jointly and severally, of Twenty Thousand Dollars (\$20,000.00) against defendants Dave Carson, Gerald Gearhart, and D&J Producers, Inc.

44

3. That defendant D&J Producers, Inc., as part of this settlement, is to dismiss its cause of action against plaintiffs filed in the Oklahoma District Court for Tulsa County, No. CJ-84-06549.

4. That plaintiffs, as part of this settlement, are to assign all their interests, without warranty, in the Dobrinski leasehold and all personal property to include well equipment that they may have in and under the Dobrinski #1 Well to defendants Dave Carson, Gerald Gearhart, and D&J Producers, Inc. *or their assignee. En*

5. That defendant Glenn Maresch is to pay Fifteen Hundred Dollars (\$1,500.00) within five (5) days of the date of this Journal Entry, i.e. March 23, 1985, and the remaining Fifteen Hundred Dollars (\$1,500.00) no later than forty-five (45) days from the date of this Journal Entry, i.e. May 2, 1985.

6. That defendants Dave Carson, Gerald Gearhart and D&J Producers, Inc., are to pay Five Thousand Dollars (\$5,000.00) no later than thirty (30) days from the date of this Journal Entry, i.e. April 17, 1985; and are to pay the remaining Fifteen Thousand Dollars (\$15,000.00) no later than six (6) months from the date of this Journal Entry, i.e. September 18, 1985.

7. That upon full payment by defendants Glenn Maresch, Dave Carson, Gerald Gearhart, and D&J Producers, Inc., plaintiffs shall release their judgment against said defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiffs are entitled to judgment for Three Thousand Dollars (\$3,000.00) against defendant Glenn Maresch and Twenty Thousand Dollars

(\$20,000.00), jointly and severally, against defendants Dave Carson, Gerald Gearhart, and D&J Producers, Inc.

IT IS FURTHER ORDERED that plaintiffs shall assign to defendants Dave Carson, Gerald Gearhart and D&J Producers, Inc., ^{or their assignee,} any interests and rights, without warranty, they might have in the Dobrinski leasehold and in any personal property to include well equipment in the Dobrinski #1 Well.

IT IS FURTHER ORDERED that defendant D&J Producers, Inc., shall dismiss its cause of action against plaintiffs filed in the Oklahoma District Court for Tulsa County, No. CJ-84-06549.

THE COURT FURTHER ORDERS, ADJUDGES AND DECREES that defendant Glenn Maresch shall pay to plaintiffs Fifteen Hundred Dollars (\$1,500.00) by March 23, 1985, and the remaining Fifteen Hundred Dollars (\$1,500.00) due on this judgment no later than May 2, 1985.

THE COURT FURTHER ORDERS, ADJUDGES AND DECREES that defendants Dave Carson, Gerald Gearhart and D&J Producers, Inc., shall pay to plaintiffs Five Thousand Dollars (\$5,000.00) by April 17, 1985, and the remaining Fifteen Thousand Dollars (\$15,000.00) by September 18, 1985.

THE COURT FURTHER ORDERS that upon full payment by defendants Glenn Maresch, Dave Carson, Gerald Gearhart, and D&J Producers, Inc., plaintiffs shall release judgment against said defendants.

ENTERED IN JUDGEMENT DOCKET ON

APR 18 1985


JUDGE OF THE UNITED STATES
DISTRICT COURT, WESTERN
DISTRICT OF OKLAHOMA
APPROVED: true copy of the original
Robert D. Dennis, Clerk
By: 
Deputy

APPROVED:


HENRY W. KAPPEL
Attorney for Plaintiffs


GLENN MARESCH
Pro Se


CYRUS NORTHRUP
Attorney for Defendants
Dave Carson, Gerald
Gearhart and D&J Producers,
Inc.

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

FILED

JUN 25 1986

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

IBM CREDIT CORPORATION,)
)
Plaintiff,)
)
v.)
)
CHAMPION SECURITY)
SYSTEMS, INC.,)
)
Defendant.)

No. 86-C-190-E

DEFAULT JUDGMENT

Judgment is hereby entered in favor of IBM Credit Corporation and against Champion Security Systems, Inc., in the amount of \$104,628.20.

S/ JAMES O. ELLISON

THE HONORABLE JAMES O. ELLISON
Judge of the District Court

TENDERED BY:

MACK J. MORGAN III
-Of the Firm-
CROWE & DUNLEVY
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102
(405) 235-7700

ATTORNEY FOR PLAINTIFF

to Local Rule 14(a) the Court finds these motions should be granted.

Defendant filed motion to dismiss which was mooted by amended complaint. Defendant then reurged motion to dismiss as to the amended complaint listing thirteen (13) grounds. Outside the statutory provisions, Defendant cites authority for only two of the issues raised.

Defendant first urges failure of Plaintiff to file consents to sue as to two Plaintiffs. The Court notes one such Plaintiff is dismissed by this Order leaving only the question of the status of Jim Goodlander. Plaintiff Goodlander signed an employment contract relating to this case but did not file a separate consent. The contract obviously relates to the filing of this action. However, in light of the statutory requirement of 29 U.S.C. § 216(b) Plaintiff Jim Goodlander is given fifteen (15) days within which to file formal consent to supplement the employment contract already on file in order to perfect the record.

Defendant's contention that Plaintiff Wayne Cox seeks no relief is mooted by the dismissal of Wayne Cox.

Defendant next contends the action is barred by the statute of limitations. 29 U.S.C. § 255(a) provides:

Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages - may be commenced within two years after the cause of action accrued, and ... shall be barred forever unless commenced within two years after the cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued. (emphasis

added)

Plaintiffs have alleged willful violations which may bring them under the three year statute of limitations. The standard for willfulness of violations is described as those committed knowingly, as opposed to merely negligently or accidentally, and those which are committed with at least a general awareness that the requirements of the law were in the picture. Careless disregard of the requirements of the law are deemed willful. The evidence will eventually determine which statute of limitations will apply to this case and this is more appropriately addressed by summary judgment at the conclusion of discovery under these circumstances.

Defendant's remaining claims are directed to the provisions of the Portal to Portal Act, 29 U.S.C. § 251. Defendant attaches affidavits in support of these claims which remain uncontroverted by Plaintiff. The Court finds the affidavits go beyond matters raised by the pleadings and that these issues should be more appropriately considered by summary judgment. The Court therefore finds Defendant's motion to dismiss based upon provisions of the Portal to Portal Act is converted to motion for summary judgment pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. Plaintiff has, by failing to respond to the affidavits, technically confessed these issues. However, in light of the legal abhorance of forfeiture, Plaintiff will be given ten (10) days within which to file supplemental response to Defendant's motion.

IT IS THEREFORE ORDERED that Defendant's first motion to

dismiss is denied as moot; Defendant's second motion to dismiss is denied in part and converted in part to summary judgment; Plaintiff Dave Hemington is dismissed with prejudice; Plaintiff Wayne Cox is dismissed without prejudice; Plaintiff Jim Goodlander is given fifteen (15) days within which to file formal consent or he will be deemed dismissed; Plaintiff is given ten (10) days to supplement response to those issues now converted to summary judgment.



JAMES E. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 24 1986

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

PETERS-KERNAN GOLD PARTNERSHIP,)
an Oklahoma joint venture,)
)
Plaintiff,)

vs.)

Case No. 85-C-594-E

RICH INTERNATIONAL ENERGIES, INC.,)
a corporation; J. KEITH MCKAY, an)
individual; DUANE F. BONEHAM, an)
individual; DENNIS N. JOHNSTONE,)
an individual; LAWRENCE P. VARDY,)
an individual; AL VARDY, an)
individual,)
)
Defendants.)

DISMISSAL OF ACTION

The plaintiff, Peters-Kernan Gold Partnership, an Oklahoma joint venture, pursuant to Rule 41(2), Federal Rules of Civil Procedure, and the Court's previous order entered herein on January 22, 1986, hereby dismisses the above styled and numbered action against defendants J. Keith McKay, Duane F. Boneham, Dennis N. Johnstone, Lawrence P. Vardy, and Al Vardy, without prejudice to the refileing of the same action against these defendants at a later date.

PATRICK H. KERNAN, OBA #4983
2825 East Skelly Drive, Suite 826
Tulsa, Oklahoma 74105
(918) 747-6820
Attorney for Plaintiffs

ff:dr

Entered

FILED

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

JUN 24 1986

DON SIDES,)
)
 Plaintiff,)
)
 v.)
)
 OTIS R. BOWEN, M.D., Secretary)
 of Health and Human Services,)
)
 Defendant.)

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

No. 85-C-620-B

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed on May 30, 1986, in which it is recommended that this case be remanded to the Secretary for further administrative proceedings. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is hereby Ordered that this case be remanded to the Secretary for further proceedings consonant with the Findings and Recommendations of the Magistrate.

Dated this 24th day of June, 1986.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 24 1986

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

VIOLET L. DOBSON and JAMES K.
DOBSON,

Plaintiffs,

vs.

SAGA CORPORATION, a New York,
corporation, and SAGA FOOD
SERVICES, INC., a Texas
corporation,

Defendants,

No. 85-C-354-C

ORDER OF DISMISSAL

On this 24 day of June, 1986, upon the written application of the Plaintiffs, Violet L. Dobson and James K. Dobson, and the Defendants, Saga Corporation and Saga Food Services, Inc., for a dismissal with prejudice of the Complaint of Dobson v. Saga Corporation and Saga Food Services, Inc., 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 Plaintiffs.

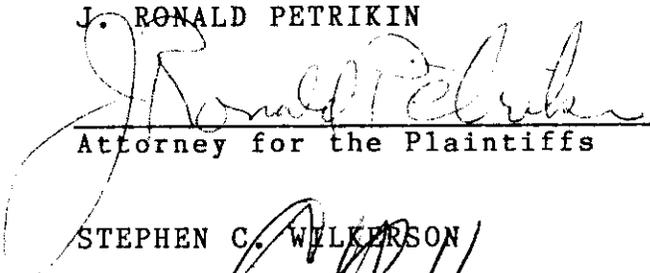
THE COURT FURTHER FINDS that said Complaint in Dobson v. Saga Corporation and Saga Food Services, Inc., should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs, Violet L. Dobson and James K. Dobson, against the Defendants, Saga Corporation and Saga Food Services, Inc., be and the same hereby are dismissed with prejudice to any future action.

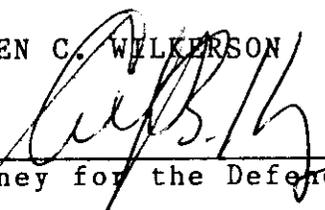
(Signed) H. Dale Cook
JUDGE OF THE UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

J. RONALD PETRIKIN


Attorney for the Plaintiffs

STEPHEN C. WILKERSON


Attorney for the Defendants

Entered

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

ARVALAINE STILES,)
)
 Plaintiff,)
)
 v.)
)
 GRAND LAKE MENTAL HEALTH CENTER,)
 INC., a corporation, et al,)
)
 Defendants.)

No. 86-C-86-B ✓

FILED

JUN 24 1986 *af*

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

ORDER

This matter comes before the Court on plaintiff's application for dismissal without prejudice or for appointment of counsel in this employment discrimination action. Defendants have no objection to dismissal, but ask that plaintiff be required to pay costs and attorney fees defendants have incurred.

Plaintiff has no right to counsel in a civil case. Hopkins v. Anderson, 507 F.2d 530, 533 (10th Cir. 1974). The Court dismisses the action without prejudice, the parties to pay their own fees and costs.

DATED this 24th day of June, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JUN 24 1986

U. S. DISTRICT COURT

SANTA FE ENERGY COMPANY,
a corporation,

Plaintiff,

vs.

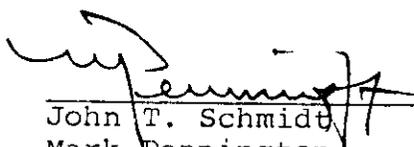
TERRY PALMER, an individual,

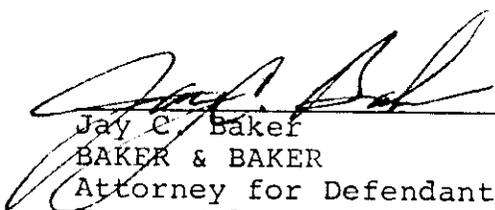
Defendant.

No. 84-C-839-C

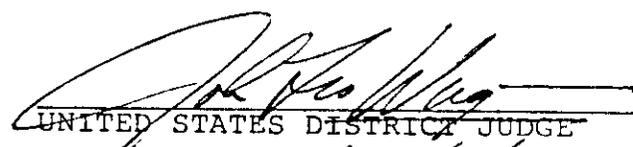
STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW Plaintiff Santa Fe Energy Company and Defendant Terry Palmer, both the parties which have appeared herein, and by and through their undersigned attorneys, stipulate pursuant to Fed. R. Civ. P. 41(a)(1)(ii) that Plaintiff's action in the above entitled and numbered case is hereby dismissed with prejudice, with each party to bear its own costs and attorneys' fees.


John T. Schmidt
Mark Pennington
HALL, ESTILL, HARDWICK, GABLE,
COLLINGSWORTH & NELSON, INC.
Attorneys for Plaintiff
Santa Fe Energy Company


Jay C. Baker
BAKER & BAKER
Attorney for Defendant
Terry Palmer

SO ORDERED, this 24th day of June, 1986.


UNITED STATES DISTRICT JUDGE
Magistrate

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

FILED

JUN 24 1986

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

Midwestern Pipeline Products
Company

Plaintiff(s),

vs.

Womble Company, Inc., and
John K. Womble, individual

Defendant(s).

No. 84-C-634-C ✓

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 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 24th day of June, 1986.


UNITED STATES DISTRICT JUDGE

Entered

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

FILED

| | |
|----------------------------------|---|
| THRIFTY RENT-A-CAR SYSTEM, INC., |) |
| |) |
| Plaintiff, |) |
| |) |
| vs. |) |
| |) |
| KEN HART and HART TO HART |) |
| MOTOR CAR CO., INC., |) |
| |) |
| Defendants. |) |

JUN 24 1986

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

No. 85-C-538 B

JUDGMENT

NOW on this 24th day of June, 1986, plaintiff's request for assessment of costs and attorneys' fees comes on for consideration. Defendants have not responded to plaintiff's request and did not attend the hearing thereon, conducted, after notice, on June 6, 1986. The Court has reviewed the request and has considered the evidence submitted in support thereof, and having considered the brief and argument of plaintiff's counsel, and being fully advised in the premises, the Court finds that plaintiff should be awarded its costs herein in the amount of \$224.85, and its attorneys' fees in the amount of \$7,503.51, which judgment should be entered against both defendants, jointly and severally.

IT IS THEREFORE ORDERED AND ADJUDGED that plaintiff, Thrifty Rent-A-Car System, Inc., is granted a judgment for costs in its favor, and against defendants, Ken Hart, an

individual, and Hart to Hart Motor Car Co., Inc., a corporation,
jointly and severally, in the amount of \$7,728.36.

DATED this 24 day of June, 1986.

/s/ Thomas R. Brett
UNITED STATES DISTRICT JUDGE

*Entered
CPT*

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA JUN 24 1986

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

IN RE)
)
 NORTHWEST EXPLORATION COMPANY,)
)
 Debtor,)
)
 BUFFALO ROYALTY CORP. and)
 IVORY AND SIME (Oil and Gas),)
 INC.,)
)
 Appellants,)
)
 vs.)
)
 THOMAS E. ENGLISH, TRUSTEE)
 FOR THE NORTHWEST EXPLORATION)
 COMPANY CREDITORS TRUST,)
)
 APPELLEE.)

No. 85-C-886-C
No. 85-C-887-C
(consolidated)

O R D E R

This is an appeal from an Order incorporating the Findings of Fact and Conclusions of Law entered by the United States Bankruptcy Court for the Northern District of Oklahoma granting the relief requested by the Northwest Exploration Company Creditors Trust in its Alternative Application Regarding Confirmed Plan of Reorganization. The plan of reorganization addressed in the Application is the Second Amended and Restated Chapter 11 Plan filed on February 7, 1984 by the Creditors Committee for Northwest Exploration Company and confirmed by Order Confirming Plan dated and entered March 19, 1984.

The initial issue raised was the type of proceeding before the Bankruptcy Court. The Bankruptcy Court determined that the matter before it was a core proceeding. Appellant now contends that the hearing was a non-core proceeding. There is no indication that the Appellant raised this issue on motion or objection to the Bankruptcy Court. This Court is not required to consider an issue newly raised on appeal. See Grundy v. United States, 728 F.2d 484, 488 (10th Cir. 1984). Consequently, the standard of review from a core proceeding is that the Bankruptcy Court's findings of fact will be accepted unless clearly erroneous and the conclusions of law will be subject to de novo review.

The issue before the Bankruptcy Court concerned the construction of Article 4 paragraph 4.02 of the Confirmed Plan. Paragraph 4.02 contained language to the effect that upon confirmation, certain mortgages, held by Union Bank of Oklahoma City, shall be released. Appellee's Application before the Bankruptcy Court challenged the literal construction of this language, alleging it was ambiguous when read together with Article 5 paragraph 5.05 and urged the court to construe paragraph 4.02 as allowing the subject mortgages to become part of the trust estate along with the debt it secured.

In its findings, the Bankruptcy Court determined that paragraph 4.02 of Article 4 was ambiguous and inconsistent with paragraph 5.05 and the overall terms and conditions of the Plan. The court determined that the overall intent and purpose of the Plan would be realized by sustaining the Appellee's Alternative Application.

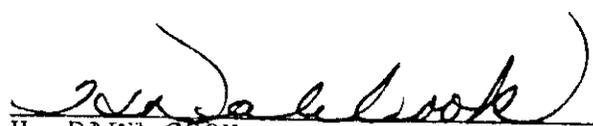
Appellant argues that paragraph 4.02 is not ambiguous and that the Bankruptcy Court, in effect, modified a Plan which had been confirmed two years previous to the Application. Appellant further argues that the modification failed to comply with the provisions of 11 U.S.C. §1127(b) which provides that modification must meet the procedural requirements of 11 U.S.C. §§1122, 1123 and 1125 and such modification may not occur after the plan has been substantially consummated.

The Bankruptcy Court did not make specific findings regarding modification nor substantial consummation. Rather the Bankruptcy Court concluded that it had jurisdiction pursuant to 28 U.S.C. §157 and the duty to interpret Confirmed Plans whenever it is found that ambiguities and inconsistencies exist within the Plan.

In reviewing the record, pleadings, briefs and applicable law, this Court concludes that the findings of the Bankruptcy Court are not clearly erroneous.

Accordingly, it is the Order of the Court that the appeal from the Bankruptcy Court is hereby denied. The Order of the Bankruptcy Court filed on September 12, 1985 is hereby affirmed in all respects.

IT IS SO ORDERED this 24th day of June, 1986.


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

Entered

FILED

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

JUN 24 1986

af

MARK NORMAN KILGUS,)
)
 Plaintiff,)
)
 v.)
)
 TULSA COUNTY JAIL MEDICAL)
 FACILITY, et al.,)

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

No. 85-C-1065-B ✓

O R D E R

Plaintiff brought this action under Title 42 U.S.C. § 1983 for alleged violation of his constitutional rights. Plaintiff contends that while incarcerated in the Tulsa County Jail he was denied the right to see a doctor, and that his requests for medical attention were ignored by jail officials.

Defendants seek summary judgment or dismissal of plaintiff's complaint and have submitted official medical records which indicate that plaintiff received daily medical care during the time period in question.

Prisoners are entitled to basic medical care. The Supreme Court in Estelle v. Gamble, 429 S.Ct. 97, 77 S.Ct. 286 (1976) held that indifference to a prisoner's serious medical needs constitutes a violation of the 8th Amendment. 429 U.S. at 104. A difference of opinion over the care provided, however, is not actionable under § 1983. Smart v. Villar, 547 F.2d 112 (10th Cir. 1976).

Summary judgment should be granted only if the record shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Federal Rules of Civil Procedure, Rule 56. Bushman Construction Company v.

11

Conner, 307 F.2d 888 (10th Cir. 1962). The documentation in the record clearly establishes that plaintiff was not denied his constitutional right to adequate medical treatment.

It is therefore Ordered that Defendants' Motion for Summary Judgment be and is hereby granted.

It is further Ordered that Defendant be awarded costs and attorney fees under 42 U.S.C. § 1988 as plaintiff's claim is patently groundless and frivolous. Hughes v. Rowe, 449 U.S. 5, 101 S.Ct. 173 (1980).

It is so Ordered this 24 day of June, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 24 1986

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

ALAN T. DAVIS,

Plaintiff,

vs.

No. 86-C-342-C

LOTUS PERFORMANCE CARS,
L.P., a New Jersey Limited
Partnership; LOTUS CARS
LIMITED, a British corporation;
and JOHN HOKE & CO.,
LTD., an Oklahoma
corporation,

Defendants.

ORDER OF DISMISSAL

Pursuant to motions filed by Lotus Performance Cars, L.P., and John Hoke & Co., Ltd., pursuant to Local Rule 14(a) of the Rules for the Northern District of Oklahoma, pursuant to 28 U.S.C. §1332, and for good cause shown, this Court does hereby:

ORDER, ADJUDGE AND DECREE that the above referenced action is dismissed without prejudice to any party's rights herein.

DATED this 24 day of June, 1986.

(Signed) H. Dale Cook

H. Dale Cook
United States District Judge
for the Northern District
of Oklahoma

entered

LDO:lc
6/18/86

FILED

JUN 24 1986

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

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

| | |
|---------------------------------|---|
| LOWELL VERNER, Special |) |
| Administrator of the Estate of |) |
| HAZEL P. JEFFERSON, Deceased, |) |
| |) |
| Plaintiff, |) |
| |) |
| vs. |) |
| |) |
| DOCTOR'S MEDICAL CENTER, INC.; |) |
| LLOYD RUFF, M.D.; THOMAS L. |) |
| ASHCRAFT, M.D.; and ASSOCIATES, |) |
| INC., an Oklahoma corporation; |) |
| and THOMAS L. ASHCRAFT, M.D., |) |
| individually, |) |
| |) |
| Defendants. |) |

No. 84-C-866-C

JOURNAL ENTRY OF JUDGMENT

Pursuant to Order dated August 9, 1985, judgment is hereby entered
in favor of defendant, Doctors Medical Center, and against plaintiff.

(Signed) H. Dale Cook

H. DALE COOK
JUDGE OF THE DISTRICT COURT

FILED
JUN 23 1986

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

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

SUNDOWN EXPLORATION COMPANY,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
SCANDRILL, INC.,)
a New York corporation,)
)
Defendant.)

86-c-424-E ✓
~~86-c-191-C~~
No. 86-C-191-C

NOTICE OF PLAINTIFF'S
VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COMES NOW the plaintiff, SunDown Exploration Company,
by its attorneys, and pursuant to Rule 41(a) of the Federal Rules
of Civil Procedure voluntarily dismisses the above-captioned
civil action, without prejudice to the plaintiff's right to
hereafter refile the claims for relief set forth in the Complaint
filed herein.

Gene C. Buzzard

Gene C. Buzzard, OBA #1396

WADDEL & BUZZARD
1500 One Boston Plaza
20 East 5th Street
Tulsa, Oklahoma 74103

(918) 583-5985
ATTORNEYS FOR PLAINTIFF

1954-430

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

JUN 23 1986

JACK P. HUNTER, CLERK
U.S. DISTRICT COURT

BUTTONWOOD PETROLEUM, INC.,)
an Oklahoma corporation,)

Plaintiff,)

vs.)

ARKLA ENERGY RESOURCES, a)
division of ARKLA, INC., a)
Delaware corporation,)

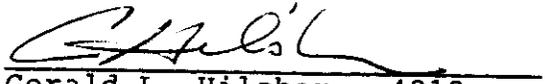
Defendant.) No. 85-C-618-E

NOTICE OF DISMISSAL

COMES NOW Plaintiff, Buttonwood Petroleum, Inc., and pursuant to Rule 41(1) of the Federal Rules of Civil Procedure, dismisses its action against Henry B. Kelsey with prejudice. Plaintiff would state that Henry B. Kelsey has not been served with process in this matter nor has he filed an Answer or a Motion for Summary Judgment.

DATED this 20th day of June 1986.

BARROW, GADDIS, GRIFFITH & GRIMM

By: 
Gerald L. Hilsher 4218
610 South Main, Suite 300
Tulsa, OK 74119
(918) 584-1600

ATTORNEYS FOR PLAINTIFF

GLH2/pb: BANOD

[Faint, mostly illegible text at the bottom of the page, possibly a footer or additional legal notes.]

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

2 6 1 7
1986
1986
1986

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
BRUCE WILLIAMS AND)
LILLIE MAY WILLIAMS,)
)
Defendants.)

CIVIL ACTION NO. 86-C-197-B

DEFAULT JUDGMENT

This matter comes on for consideration this 23rd day of June, 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 Defendants, Bruce Williams and Lillie May Williams, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Bruce Williams and Lillie May Williams, were served with Summons and Complaint on May 19, 1986. The time within which the Defendants could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendants have 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 Defendants,

Bruce Williams and Lillie May Williams, for the principal sum of \$3,322.26, plus accrued interest of \$20.29 as of June 30, 1981, plus interest thereafter at the rate of 4 percent per annum until judgment, plus interest thereafter at the legal rate until paid, plus costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

FILED

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

JUN 23 1986

DAVID AND DEBBIE COX,
Individually, and as parents
and next friends of Donnie Cox,
a minor,

Plaintiffs,

vs.

TREASURE LAKE VACATION
RESORT, a partnership, and
CREATIVE RECREATIONS, INC.,

Defendants.

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

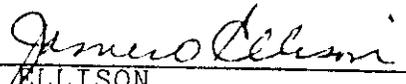
No. 86-C-104-E

ORDER

There being no response to the motion to dismiss of Treasure Lake Vacation Resort, more than ten (10) days having passed since the filing of the motion to dismiss and no extension of time having been sought by the Plaintiffs, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiffs have therefore waived any objection or opposition to the motion to dismiss. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The motion to dismiss of Defendant Treasure Lake Vacation Resort is therefore granted.

ORDERED this 23rd day of June, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

JOHN ERNEST FISHER and)
SUSAN RUTH FISHER,)
)
Plaintiffs,)
)
vs.)
)
FIBREBOARD CORPORATION, et al.,)
)
Defendants.)

No. 85-C-751-B

ORDER OF DISMISSAL

NOW, on this 23rd day of June, 1986, the Court being advised that the issues between the Plaintiffs and the named Defendant have been resolved, and those parties stipulating to a Dismissal with Prejudice, the Court,

ORDERS that the captioned case be Dismissed with Prejudice as to Raymark Industries, Inc.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

LAW OFFICES

UNGERMAN,
CONNER &
LITTLE

MIDWAY BLDG.
2727 EAST 21 ST.
SUITE 400

P. O. BOX 2099
TULSA, OKLAHOMA
74101

Entered

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

LOUIS JANOSKY,
Plaintiff,

VS.

ALLIED VAN LINES, INC., and
HODGES MOVING AND STORAGE,
INC.,
Defendants.

No. 85-C-928-B

ORDER OF DISMISSAL WITH PREJUDICE

Upon application by the parties, and for good cause shown, the Court finds that the above styled and numbered cause of action should be dismissed with prejudice to refiling in the future.

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

S/ THOMAS R. BRETT

THOMAS R. BRETT
United States District Judge

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

JUN 23 1986

TAMMYE SUE MAY,)
)
Plaintiff,)
)
vs.)
)
VAN NORMAN MACHINE TOOL CO.,)
INC., a Massachusetts corpor-)
ation d/b/a WINONA VAN NORMAN)
MACHINE COMPANY, LIMITED, INC.)
and ERNEST-EICHMAN MACHINERY)
CO., INC., a Missouri corpor-)
ation,)
)
Defendants.)

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

Case No. 86-C-518-C

NOTICE OF DISMISSAL WITHOUT PREJUDICE OF
DEFENDANT VAN NORMAN MACHINE TOOL CO.,
INC., a Massachusetts Corporation d/b/a
WINONA VAN NORMAN MACHINE COMPANY, LIMITED, INC.

COMES NOW the Plaintiff, TAMMYE SUE MAY, and dismisses without prejudice the Defendant, VAN NORMAN MACHINE TOOL CO., INC., a Massachusetts Corporation d/b/a WINONA VAN NORMAN MACHINE COMPANY, LIMITED, INC.

FELDMAN, HALL, FRANDEN,
WOODARD & FARRIS

BY:

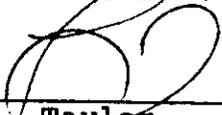

Larry G. Taylor, OBA #8872
816 Enterprise Building
522 S. Boston
Tulsa, Oklahoma 74103-4609
(918) 583-7129
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that a true, correct and complete copy of the above and foregoing was mailed on the 23 day of June, 1986, to the following, with sufficient postage prepaid thereon:

Mr. Scott T. Knowles
KNOWLES AND KING
2807 East 51st Street
Tulsa, Oklahoma 74105

Mr. James E. Green, Jr.
HALL, ESTILL, HARDWICK, ET AL.
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172



Larry G. Taylor

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

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

JUN 23 1986

FILED

TRI-AM ACID &)
FRACTURING SERVICE, INC.,)
)
Plaintiff,)
)
vs.)
)
HAL TAINES, et al,)
)
Defendants.)

No. 86-C-529-E

NOTICE OF DISMISSAL WITHOUT PREJUDICE AND
WITHDRAWAL OF MOTION TO REMAND.

Comes now the Plaintiff herein and due to the subsequent
action of the Defendant, S & J Operating Company, the Plaintiff does
hereby dismiss without prejudice Bigheart Pipeline Corporation and
withdraws its motion to remand.

Bruce W. Gambill

By: Bruce W. Gambill OBA No. 3222
Attorney for Plaintiff
KELLY & GAMBILL
P.O. Box 329
Pawhuska, Oklahoma 74056
(918) 287-4185

CERTIFICATE OF MAILING

I, Bruce W. Gambill, do hereby certify that on the 19th
day of June, 1986, I duly mailed a true and correct copy of the
foregoing instrument to:

Mike Barkley
Jay White
BARKLEY, ERNST, WHITE, HARTMAN, & RODOLF
410 Oneok Plaza
100 West 5th Street
Tulsa, Oklahoma 74103

with postage prepaid thereon.


Bruce W. Gambill

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

SANDERS-ENGLAND INVESTMENTS,)
an Oklahoma General)
Partnership,)
)
Plaintiff,)
)
v.)
)
THE CITY OF TULSA OKLAHOMA,)
an Oklahoma municipal)
corporation, et al.,)
)
Defendant.)

No. 85-C-350-E

ORDER

The Court having been advised that a settlement has been reached in this case and that a stipulation for dismissal has been filed, orders this case to be dismissed with prejudice as to each and every Defendant.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case be dismissed with prejudice as to all Defendants.

Dated this 20th day of June, 1986.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge

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

RICHARD L. HANNON,)
)
 Plaintiff,)
)
 vs.)
)
 AUTOMATION TECHNIQUES, INC.,)
 an Oklahoma corporation,)
 and ERNEST DENT, an individual,)
)
 Defendants.)

No. 85-C-823-E

E I L E D
JUN 20 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for its consideration the Defendants' Motion to Dismiss for lack of jurisdiction and for failure to state a claim. The Defendants, Automation Techniques, Inc. and Ernest Dent, argue that this Court lacks subject matter jurisdiction over Plaintiff's claims, and that Plaintiff has failed to state a claim against them for wrongful discharge under Oklahoma law. The Plaintiff responds that this Court has federal question jurisdiction under 28 U.S.C. § 1331 because Plaintiff claims that his former employer violated his right to freedom of speech under the First Amendment to the Constitution.

The First Amendment provides as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (Emphasis added)

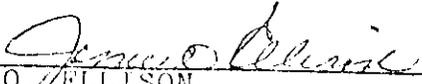
It is well established that the First Amendment prohibits only governmental action. Massachusetts Universalist Convention v. Hildreth & Rogers Co., 183 F.2d 497 (1st Cir. 1950); Russell

v. Town of Mamaroneck, 440 F.Supp. 607 (S.D.N.Y. 1977); American Civil Liberties Union of Georgia v. Rabun County Chamber of Commerce, Inc., 510 F.Supp. 886 (D.C.Ga. 1981). Here, Plaintiff alleges no facts whatsoever which indicate that any governmental action affected his rights. Because only private action is alleged, Plaintiff has failed to allege facts which bring his claim within the federal question jurisdiction established in 28 U.S.C. § 1331. Russell v. Town of Mamaroneck, supra.

Neither the Plaintiff nor the Defendants have contended that there is any basis for diversity jurisdiction under 28 U.S.C. § 1332, and the returns of service and the allegations of the Complaint indicate that at the time the suit was filed, all parties were citizens of Oklahoma. Thus, diversity jurisdiction does not exist.

Accordingly, this action is dismissed for lack of subject matter jurisdiction.

DATED this 20th day of June, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E
JUN 20 1986

RICHARD L. STILES,

Plaintiff,

Jack C. Smith, Jr.
U. S. DISTRICT JUDGE

-vs-

No. 85-C-641-C

THE CITY OF VINITA, OKLAHOMA,
A Municipal Corporation, et al.,

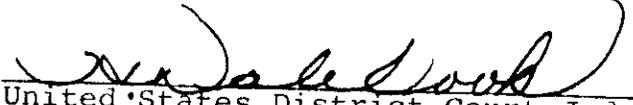
Defendants.

ORDER DISMISSING CASE WITH PREJUDICE

COMES ON before the Court the date below written the Parties Joint Stipulation for Dismissal (the "Stipulation"). The Court, having considered the Stipulation, hereby approves said Stipulation as to both form and substance.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff's Complaint and all claims for relief that have been or could ever be based thereon and the Defendants' counterclaims and all claims for relief that have been or could ever be based thereon are dismissed with prejudice, with each party to bear its own costs, expenses and attorneys fees.

DATED: This 19th day of June, 1986.


United States District Court Judge

Entered.

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

RICHARD ALLEN HAMPTON,)
)
 Plaintiff,)
)
 v.)
)
 HARRY W. STEGE, Chief of)
 Police, TULSA WRECKER OWNERS)
 ASSOCIATES, INC., DETECTIVE SAM)
 COX, DETECTIVE NELSON, CITY OF)
 TULSA, a municipal corporation,)

No. 84-C-890-C

JUN 20 1986

JACK C. SWAN
U. S. DISTRICT COURT

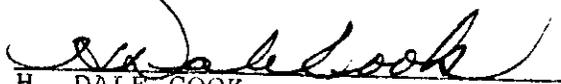
ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on June 3, 1986 in which the Magistrate recommended that Plaintiff's claim against defendant Tulsa Wrecker Owners Association, Inc. be dismissed pursuant to Rule 4(j). 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 Plaintiff's claim against defendant Tulsa Wrecker Owners Association, Inc. be and is hereby dismissed pursuant to Rule 4(j).

It is so Ordered this 19 day of June, 1986.


H. DALE COOK
CHIEF JUDGE

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

LONG DISTANCE SAVERS
OF TULSA, INC.,

Plaintiff,

vs.

Case No. 86-C-447-E

THE ST. PAUL COMPANIES, INC.,
a Minnesota corporation;
ST. PAUL FIRE AND MARINE
INSURANCE CO., a Minnesota
corporation; ST. PAUL MERCURY
INSURANCE CO., a Minnesota
corporation; ST. PAUL SURPLUS
LINES INSURANCE CO., a Delaware
corporation; ACORN INSURANCE
AGENCY, INC., a Colorado
corporation; ACORN-LILLEY
INSURANCE AGENCY; and
CRAIG LILLEY, an individual,

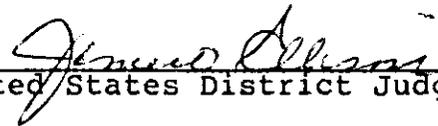
Defendants.

JUL 1 9 1986

O R D E R
OF DISMISSAL

For good cause shown, the Application for Dismissal Without Prejudice of the Defendants St. Paul Insurance Companies, Inc., St. Paul Fire and Marine Insurance Company, and St. Paul Surplus Lines Insurance Company is hereby granted.

DATED this 19th day of June, 1986.


United States District Judge

United States Bankruptcy Court

For the SOUTHERN District of FLORIDA

Case Nos. 83-00754-BKC-SMW
83-00755-BKC-SMW
83-00756-BKC-SMW

In the matter of:

THE INTERNATIONAL GOLD BULLION EXCHANGE,
INC., a Florida corporation, et al.,

Adv. No. ~~85-0594-BKC-SMW-A~~

Debtors.

EARL FAIRCLOTH, Trustee,

M-1287-E ✓

Plaintiff,

v.

WILLIAM F. CHURCHWELL,

JUL 19 1986

LEON C. ...
U. S. DISTRICT COURT

Defendant

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

I, DAVID D. BIRD

, Clerk of the United States Bankruptcy Court

for the

SOUTHERN

District of

FLORIDA

do hereby certify the annexed to be a true and correct copy of the original judgment entered in the above
entitled proceeding on August 15, 1985, as it appears of record in my office,

and that* no notice of appeal from the said judgment has been filed
in my office and the time for appeal commenced to run on
August 20, 1985, upon the entry of the judgment.



DAVID D. BIRD

Clerk of Bankruptcy Court

By: [Signature]
Deputy Clerk

*If 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 the judgment". 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 Appellate Court 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 Appellate Court on [insert date]".

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

IN PROCEEDINGS UNDER CHAPTER 11

CASE NOS. 83-00754-BKC-SMW
83-00755-BKC-SMW
83-00756-BKC-SMW

ADV. NO. 85-0594-BKC-SMW-A

In the Matter of:

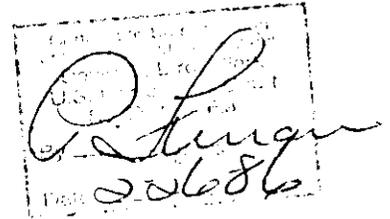
THE INTERNATIONAL GOLD
BULLION EXCHANGE, INC., a
Florida corporation, et al.,

Debtors.

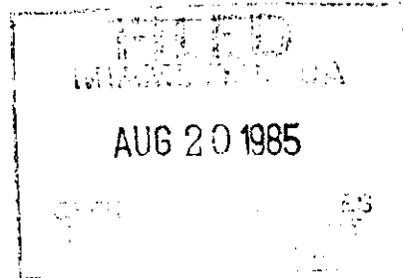
EARL FAIRCLOTH, Trustee,
Plaintiff,

vs.

WILLIAM F. CHURCHWELL,
Defendant(s).



FINAL DEFAULT JUDGMENT



THIS MATTER coming on to be heard at non-jury trial before this Honorable Court on June 19, 1985 at 1:30 o'clock P.M., in Room 206A, 299 East Broward Boulevard, Fort Lauderdale, Florida, and the Court taking note that no answer or other response to Plaintiff's Complaint having been filed by the Defendant, and the Court taking note that the Defendant, WILLIAM F. CHURCHWELL, was absent from these proceedings, and the Court taking note that there exists no pending motion by the Defendant, WILLIAM F. CHURCHWELL, to continue the trial of this cause, and the Court having entered a Default on June 18, 1985, and having received into evidence the Affidavit of Glen R. Miller, the



Plaintiff's employee, establishing value of precious metals, pursuant to Rule 902(6), Federal Rules of Evidence, and the Court being otherwise fully advised, it is hereby,

ORDERED and ADJUDGED as follows:

1. The transfer of the Debtor's assets to Defendant, WILLIAM F. CHURCHWELL, consisting of 9 one ounce Gold Maple Leafs and 1 1/2 ounce Gold Krugerrand is declared an avoidable preferential transfer under Section 547 of the Bankruptcy Code.

2. The Defendant be and is hereby ordered to return the aforescribed property of the Debtor to the Plaintiff within ten (10) days from the date of this Order.

3. Failure by the Defendant to return to the Plaintiff the aforescribed precious metals within ten (10) days from the date of this Order shall, upon ex parte application by the Plaintiff, result in final judgment in favor of the Plaintiff for the sum of \$4,094.50 as determined by the Affidavit to Establish Value of Precious Metals Pursuant to Rule 902(6), Federal Rules of Evidence, which Affidavit is submitted herewith, together with interest, for which Final Judgment LET EXECUTION ISSUE FORTHWITH.

DONE and ORDERED this 15 day of August, 1985.


UNITED STATES BANKRUPTCY JUDGE

Copies furnished:

JPC 8/15/85
Stewart P. Chambers, Esq.
William F. Churchwell

United States Bankruptcy Court

For the SOUTHERN District of FLORIDA

Case Nos. 83-00754-BKC-SMW
83-00755-BKC-SMW
83-00756-BKC-SMW
Adv. No. 85-0733-BKC-SMW-A

In the matter of:

THE INTERNATIONAL GOLD BULLION EXCHANGE,
INC., a Florida corporation, et al.,

Debtors.

EARL FAIRCLOTH, Trustee,

M-1288-C

Plaintiff,

v.

C. B. PATEL,

Defendant

FILED

JUN 19 1986

J. C. ...
U. S. DISTRICT COURT

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

I, DAVID D. BIRD

, Clerk of the United States Bankruptcy Court

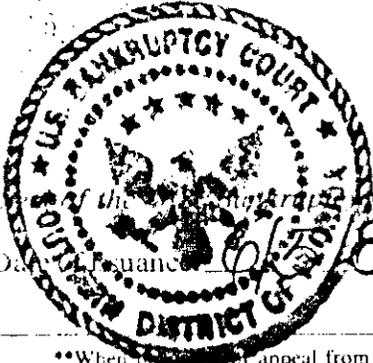
for the SOUTHERN

District of

FLORIDA

do hereby certify the annexed to be a true and correct copy of the original judgment entered in the above
entitled proceeding on October 21, 1985, as it appears of record in my office,

and that* no notice of appeal from the said judgment has been filed
in my office and the time for appeal commenced to run on
October 21, 1985, upon the entry of the judgment.



DAVID D. BIRD

Clerk of Bankruptcy Court

By

Joseph Kasep
Deputy Clerk

**When an 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 the judgment". 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 Appellate Court 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 Appellate Court on [insert date]".

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

IN PROCEEDINGS UNDER CHAPTER 11

CASE NOS. 83-00754-BKC-SMW
83-00755-BKC-SMW
83-00756-BKC-SMW

ADV. NO. 85-0733-BKC-SMW-A

In the matter of: :
THE INTERNATIONAL GOLD :
BULLION EXCHANGE, INC., a :
Florida corporation, et al., :

Checked to the true and
correct copy of the original.
Deborah A. Clark
U.S. Bankruptcy Court
Southern District of Florida
By: *Deborah A. Clark*
Date: 9-27-86

Debtors.

FINAL DEFAULT JUDGMENT

EARL FAIRCLOTH, Trustee,

Plaintiff,

vs.

C. B. PATEL,

Defendant.

FILED
MIAMI, FLORIDA
OCT 21 1985
CLERK, UNITED STATES
BANKRUPTCY COURT
SO. DIST. OF FLORIDA

THIS MATTER coming on to be heard at non-jury trial before this Honorable Court on October 9, 1985 at 1:30 P.M. in Room 206A, 299 East Broward Boulevard, Fort Lauderdale, Florida, and the Court taking note that no answer or other response to Plaintiff's Complaint having been filed by the Defendant, and the Court having entered a Default on September 17, 1985, and having received into evidence the Affidavit of Glen R. Miller, the Plaintiff's employee, Establishing Value of Precious Metals Pursuant to Rule 902(6), Federal Rules of Evidence, and the Court being otherwise fully advised, it is hereby,

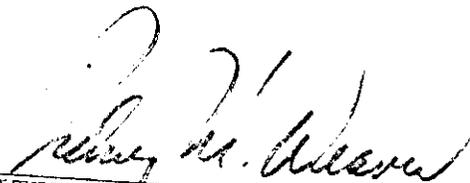
ORDERED and ADJUDGED as follows:

1. The transfer of the Debtor's assets to Defendant, C. B. PATEL, consisting of 5 one ounce Englehard gold bars is declared an avoidable preferential transfer under Section 547 of the Bankruptcy Code.

2. The Defendant be and is hereby ordered to return the
aforescribed property of the Debtor to the Plaintiff within ten (10)
days from the date of this Order.

3. Failure by the Defendant to return to the Plaintiff the
aforescribed precious metals within ten (10) days from the date of
this Order shall, upon ex parte application by the Plaintiff, result
in final judgment in favor of the Plaintiff for the sum of \$2,528.50,
as determined by the Affidavit to Establish Value of Precious Metals
Pursuant to Rule 902(6), Federal Rules of Evidence, which Affidavit is
submitted herewith, together with interest, for which Final Judgment
LET EXECUTION ISSUE FORTHWITH.

DONE and ORDERED this 21st day of October, 1985.


UNITED STATES BANKRUPTCY JUDGE

Copies furnished:

PS
10/21/85
Stewart P. Chambers, Esq.

C.B. Patel
c/o Mrs. Hansa Patel
1300 Washington Blvd.
Bartlesville, OK 74003

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

JOAN JAMES and MARY HASKEW,)
)
Plaintiffs,)
)
vs.)
)
CHARLES TURNER and CASTLE)
MORTGAGE COMPANY,)
)
Defendants.)

No. 86-C-324-B

FILED
JUN 19 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT

DEFAULT JUDGMENT

On the 2nd day of April, 1986, a complaint was filed herein alleging various causes of action;

The Court finds that defendant Charles Turner was provided notice of the filing of said Complaint by personal service effectuated on the 7th day of April, 1986;

The Court further finds that although defendant Turner was provided with said notice, defendant Turner has failed and refused to answer said Complaint and is therefore in default thereof.

The Court further finds that due to defendant's default, pursuant to Rule 55(a)(1) of the F.R. Civ. P., all issues herein have been confessed by the defendant Turner in favor of the Plaintiffs.

IT IS THEREFORE ORDERED that the defendant, Charles Turner is in default and pursuant to said default has confessed all issues in favor of the plaintiffs;

IT IS FURTHER ORDERED that judgment be rendered in favor of plaintiffs and against the defendant, Charles Turner in the amount of One Million Two Hundred and Ten

- Thousand and no/100 Dollars (\$1,210,000.00), plus interest thereon accruing at the rate of fifteen percent (15%) per annum from the date of this judgment.

IT IS FURTHER ORDERED that plaintiff recover a reasonable attorney's fee and the costs of such action.

DATED this 18 day of June, 1986.

S/ THOMAS R. BRETT
Judge of the United States District
Court

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

PAC-LANTIC INSURANCE ADMINISTRATOR,)
INC.,)

Plaintiff,)

v.)

CASE NO.: 85-C-642-E

RICHARD W. SLEWMAKER, III,)
individually, and d/b/a THE)
INSURANCE COMPANY,)

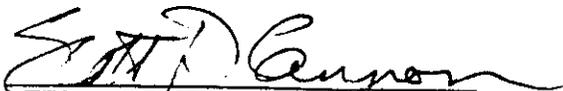
Defendant.)

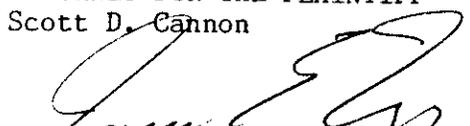
ORDER OF DISMISSAL WITH PREJUDICE

NOW ON THIS 19th day of June, 1986, there came on for hearing the Application of Plaintiff and Defendant for an Order dismissing with prejudice the above styled cause of action. Finding that the parties have agreed to settle this matter as per the terms and conditions of the agreed settlement memorandum executed by the parties, the Court finds that the Application for an Order of Dismissal should be granted, and that all causes of action asserted by each party against the other are dismissed with prejudice, each party paying its own attorneys' fees and costs.

57 JAMES W. WEGER
JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL AS TO FORM:


ATTORNEY FOR THE PLAINTIFF
Scott D. Cannon


ATTORNEY FOR THE DEFENDANT
James Weger

Entered

FILED

JUN 19 1986

OBA # 9645 JACK C. SILVER, CLERK
U.S. DISTRICT COURT

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

LONGHURST OIL AND GAS, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
B & W DRILLING COMPANY, INC.,)
a Kansas corporation,)
)
Defendant.)

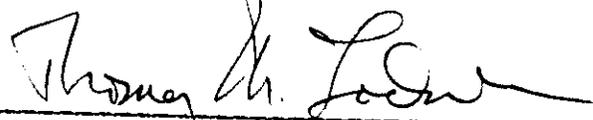
No. 85-C-733-C

JOINT AND MUTUAL DISMISSALS

Comes now the plaintiff, Longhurst Oil and Gas, Inc., an Oklahoma corporation, by and through its attorney of record, Gerald G. Williams, and the defendant, B & W Drilling Company, a Kansas Corporation, by and through its attorney of record, Thomas M. Ladner, and hereby mutually dismiss their claims with prejudice against each other.

Dated this 19th day of June, 1986.


GERALD G. WILLIAMS
Attorney for Plaintiff
Longhurst Oil and Gas, Inc.


THOMAS M. LADNER
Attorney for Defendant
B & W Drilling Company, Inc.

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

LETHA M. MITCHELL,)
)
 Plaintiff,)
)
 vs.)
)
 B. J. KRUEGER, et al.,)
)
 Defendants.)

No. 85-C-694-E

JUN 16 1986
U.S. DISTRICT COURT

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff, Letha M. Mitchell, take nothing from the Defendant, Jane Phillips Episcopal-Memorial Medical Center, and that the Defendant, Jane Phillips Episcopal-Memorial Medical Center, recover of the Plaintiff its costs of action.

DATED at Tulsa, Oklahoma this 19th day of June, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

JUN 19 1986

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

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

FORD MOTOR CREDIT COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 FRED EARL STONEMAN, et al.,)
)
 Defendants.)

No. 85-C-479-E ✓

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff Ford Motor Credit Company recover of the Defendants Fred Earl Stoneman and Marian Gayle Stoneman the sum of \$147,126.97 with interest thereon at the rate of 7.03 per cent as provided by law, and his costs of action.

DATED at Tulsa, Oklahoma this 18th day of June, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

W. B. BYRD,)
)
 Plaintiff,)
)
 vs.) Case No. 84-C-683-E
)
 JACK V. BLAKE; et al.,)
)
 Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE

THIS MATTER comes before the Court on the stipulation of the parties to dismiss said action and for good cause shown, the Court, after due consideration, finds that said Dismissal with Prejudice should be approved.

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

BY JAMES O. HILGERS

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

2. Plaintiff was employed by Western Pacific Financial Corporation ("Western Pacific"), Defendant's predecessor, in Denver in 1978 and subsequently transferred to its Tulsa office.

3. In 1978, Plaintiff and Defendant entered into a written agreement, setting forth his compensation and bonus schedule as a Loan Officer for Western Pacific.

4. Plaintiff's compensation was based on commissions received for loans originated and closed by Plaintiff which were recorded in Western Pacific's name.

5. Plaintiff's employment with Western Pacific terminated on June 30, 1980. Plaintiff acknowledged in deposition that upon his termination, he was paid commissions and bonus on all loans which had closed prior to his termination date.

6. Although Plaintiff alleged existence of a later written contract, he was unable to produce same. Both Western's then Branch Manager, Tom Pinkley, and office supervisor, Jaye Paige, filed affidavits affirming that the only contract under which he was employed was the 1978 contract.

7. Plaintiff was paid all commissions and bonuses due him under the contract at the time of termination.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter of this litigation based upon the diversity of the citizenship of these parties involved in a dispute in excess of \$10,000. 28 U.S.C.A. §1332.

2. Venue of this action is properly laid in the Northern District of Oklahoma.

3. Plaintiff's conclusory allegations that he was not paid all due him, without support of the record, are insufficient to create an issue of fact. Sabin v. Home Owners' Loan Corporation, 151 F.2d 541 (10th Cir. 1945), cert. denied, 328 U.S. 840 (1946).

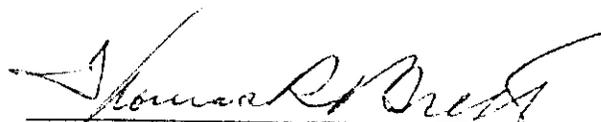
4. Because there exists no genuine issue as to any material fact, Defendant is entitled to summary judgment. Fed.R.Civ.P. 56.

5. Since Plaintiff was paid all commissions and bonuses due him under the agreement, judgment should be entered for Defendant.

6. In the event that any of the foregoing Findings of Fact also constitute Conclusions of Law, they are adopted as such. In the event any of the foregoing Conclusions of Law constitute Findings of Fact, they are adopted as such.

7. A separate Judgment for Defendant against Plaintiff in keeping with these Findings of Fact and Conclusions of Law shall be entered this date.

IT IS SO ORDERED, this 18 day of June, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA JUN 18 1986

DONALD EUGENE HAWKS,)
)
 Petitioner,)
)
 v.)
)
 BILL YEAGER, et al.,)
)
 Respondents.)

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

No. 86-C-170-B ✓

O R D E R

Petitioner's Application for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 is now before the Court for decision on the merits.

Petitioner is incarcerated at the Conner Correctional Center, Hominy, Oklahoma, following conviction in Osage County District Court, Case Nos. CRF-79-37 and CRF-79-38 of First Degree Rape, after former conviction of a felony, and assault and battery with intent to kill, after former conviction of a felony. His conviction was affirmed by the Oklahoma Court of Criminal Appeals, Case No. F-80-250.

Petitioner raises three grounds upon which he seeks habeas corpus relief. As his first ground Petitioner asserts that the trial court erred in failing to suppress evidence obtained as the result of the execution of a search warrant issued by the District Court for Calley County, Kansas. The record indicates that State's Exhibit No. 25 (the search warrant in question) was introduced and admitted into evidence during an in camera hearing. It further appears that during the same hearing the state withdrew its Exhibit No. 25 from evidence. Neither the

warrant nor any evidence procured under it was presented to the jury. Therefore, no prejudice could possibly have resulted from the search warrant. The Court further finds that petitioner's first ground for relief arises under the Fourth Amendment and that because the state has provided petitioner an opportunity for "full and fair litigation of his Fourth Amendment claim" petitioner is not entitled to federal habeas corpus review on this ground. Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037 (1976).

As his second ground for relief Petitioner alleges that he has been deprived of due process and equal protection under the Fourteenth Amendment because of various evidentiary rulings in the trial court. A state prisoner is not entitled to federal habeas relief unless he demonstrates state court errors which deprived him of fundamental rights guaranteed by the United States Constitution. Brinlee v. Crisp, 608 F.2d 839 (10th Cir. 1979). Federal habeas courts generally will not intervene to correct procedural state law errors or evidentiary rulings unless such errors result in fundamental unfairness. See Cox v. Montgomery, 718 F.2d 1036 (11th Cir. 1983); See also Pulley v. Harris, 465 U.S. 37 (1984). The Court finds that the alleged errors raised by petitioner are not of such a magnitude as to have deprived Petitioner of a fundamentally fair trial.

The first alleged error involves the testimony of "the witnesses Weaver". Petitioner states no reason why the Court erred in permitting this testimony or that any prejudice resulted therefrom. Petitioner next asserts that he was prejudiced because the jury was allowed to view his car. Again he fails to

demonstrate any resulting prejudice. Petitioner's third complaint is that evidence of anal and oral sex which were performed upon the victim were improperly admitted as evidence of other crimes. Oklahoma law allows such testimony to be admitted in rape cases because it is evidence of a continuing course of events. Wade v. State, 556 P.2d 275 (Okl. Cr. 1976). Petitioner's final evidentiary argument is that the trial court erred in excluding testimony concerning prior sexual relations between prosecutrix and other men. The reputation of a rape victim for unchastity or specific acts of sexual intercourse are not admissible under Oklahoma law. Shepard v. State, 437 P.2d 565 (Okl. Cr. 1967). The court finds that the above evidentiary rulings did not deprive Petitioner of any fundamental right guaranteed by the U.S. Constitution.

As his third ground for habeas relief, Petitioner asserts that the Court erred in giving Instruction No. 11 regarding circumstantial evidence. Habeas corpus proceedings are not the proper forum for setting aside convictions based upon erroneous jury instructions unless use of the challenged instruction denied petitioner of a fundamentally fair trial. See Brinlee v. Crisp, 608 F.2d 839 (10th Cir. 1979). The State is required to prove guilt of the defendant beyond a reasonable doubt. In re: Winship 397 U.S. 358 (1978). This standard requires "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." Id at 364. As to proof of individual facts, including inferences from circumstantial evidence, the Constitution only requires that the jury be

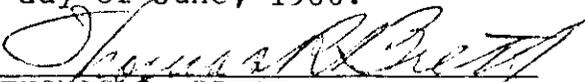
persuaded beyond a reasonable doubt, not that circumstantial evidence "must be such as to exclude every reasonably hypothesis other than that of guilt." Holland v. United States, 348 U.S. 121, 139-40 (1954). Instruction No. 11 as given by the trial court reads as follows:

"The State relied in part for a conviction in this case upon what is known as circumstantial evidence; and in this connection you are instructed that to warrant a conviction upon circumstantial evidence each fact necessary to the conclusion sought to be established, that is, the guilt of the defendant, must be proved by legal and competent evidence beyond a reasonable doubt; and all the facts and circumstances proved must not only be consistent with the guilt of the accused, but consistent with each other, and inconsistent with any other reasonable hypothesis or inclusion (sic) than that of his guilt and must be sufficient to convince you to a reasonable moral certainty that the accused committed the offenses charged against him. You are instructed that when the circumstances are sufficient, in your mind under the rule given herein to you, then they are competent and may be regarded by the jury as competent evidence for your guidance as direct evidence."

The Court finds that the jury instruction given in this case suffered no constitutional defect.

It is therefore Ordered that Petitioner's Application for Writ of Habeas Corpus be and is hereby denied.

It is so Ordered this 18 day of June, 1986.


THOMAS R. BRETT
UNITED STATES MAGISTRATE

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

SAMSON RESOURCES COMPANY, a)
corporation,)
)
Plaintiff,)
)
vs.)
)
COLUMBIA GAS TRANSMISSION)
CORPORATION, a corporation,)
)
Defendant.)

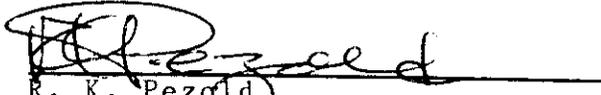
Case No. 86-C-411 E

FILED

JUN 18 1986

PLAINTIFFS NOTICE OF DISMISSAL WITH PREJUDICE Jack C. Silver, Clerk
U. S. DISTRICT COURT

COMES NOW Plaintiff, Samson Resources Company, and serves notice on this Court pursuant to Rule 41 of the Federal Rules of Civil Procedure of a dismissal with prejudice of Plaintiff's claims filed in the above-captioned matter, as the matter has been settled and all parties are in agreement.


R. K. Pezold
700 Sinclair Building
Six East Fifth Street
Tulsa, Oklahoma 74103
(918) 584-0506

OF COUNSEL:

BRUNE & PEZOLD
700 Sinclair Building
Six East Fifth Street
Tulsa, Oklahoma 74103
(918) 584-0506

APPROVED AS TO FORM:

Richard A. Paschal

Richard A. Paschal, OBA #6927
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172

Attorneys for Defendant

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

JUN 18 1986

STONEBRIDGE MUSIC, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 WILLIAM K. OLSEN, d/b/a)
 CONCILIATE COIN & OLSEN'S)
 FLYING SERVICE,)
)
 Defendant.)

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

No. 86-C-314-E

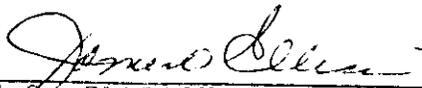
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within sixty (60) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 18th day of June, 1986.



JAMES C. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

JUN 18 1986

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

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

PHOENIX COAL COMPANY, INC.,)
)
 Plaintiff,)
)
 v.)
)
 DONALD P. HODEL, SECRETARY OF)
 INTERIOR, et al.,)
)
 Defendant.)

No. 85-C-903-E

O R D E R

Defendant's Motion for Summary Judgment is before the court for decision. Defendant contends that Plaintiff's failure to exhaust the administrative remedies available to challenge the abatement order and civil penalty assessed by the Secretary precludes Plaintiff from now challenging the merits of those actions. Plaintiff contends that due process considerations mandate that it be provided further judicial review of the Secretary's decision, despite its failure to exhaust administrative remedies.

The doctrine of exhaustion of administrative remedies is given flexibility depending on the circumstances of the case. See Jette v. Bergland, 579 F.2d 59 (10th Cir. 1978). If an agency clearly acts in excess of its statutory authority during the course of the proceedings, courts have interfered despite the lack of exhaustion of administrative remedies. See, e.g., Coca Cola Co. v. FTC, 475 F.2d 299 (5th Cir.), cert. denied, 414 U.S. 877 (1973); General Financial Corp. v. FTC, 700 F.2d 366 (7th Cir. 1983).

✓

However, an agency has the right to determine its jurisdiction if the enabling act creates that duty in the agency Secretary. In Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 508, 63 S.Ct. 339, 343, 87 L.Ed. 424, 429 (1943), the Supreme Court held that an agency Secretary who has the authority to investigate an alleged violation of an act would also have the authority to determine who was covered by the Act.

The duties of the Secretary of the Interior, pursuant to 30 U.S.C. § 1211(c), include the authority to investigate, issue subpoenas, and conduct hearings. Those duties, coupled with the purpose of the Act as set out in 30 U.S.C. § 1202(e) (to "assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations"), indicate that the Secretary has the authority to determine who is covered by the Act.

The court finds that the Office of Surface Mining acted within its statutory authority and that Phoenix had an obligation to exhaust its administrative remedies before seeking relief in the district court. Plaintiff's failure to submit the amount of the proposed assessment following the cessation order is deemed to be a waiver of all legal rights to contest the violation alleged or amount of penalty assessed. 30 U.S.C. § 1268(c).

Neither the U.S. Supreme Court nor the Tenth Circuit has interpreted 30 U.S.C. § 1268(c) regarding the waiver of "all legal rights" if an assessed penalty for violation of the Surface Mining Act is not prepaid. However, persuasive precedent is available on that issue from other courts of appeals and district

courts. See Blackhawk Mining Co. v. Andrus, 711 F.2d 753 (6th Cir. 1983); B & M Coal Corp. v. Office of Surface Mining Reclamation & Enforcement, 699 F.2d 381 (7th Cir. 1983). In particular, the Third Circuit has addressed the issue in a case with facts similar to the case at bar. See Graham v. Office of Surface Mining Reclamation and Enforcement, 722 F.2d 1106 (3rd Cir. 1983).

In the Graham case, the mine operator was a permittee. However, the violations with which the Office of Surface Mining charged him were committed in areas not covered by his permit. This makes Graham factually similar to the case at bar, because Plaintiff is operating without a permit. When Graham was assessed a proposed penalty, he did not deposit it into escrow. As was Plaintiff in the present case, he was granted an informal assessment conference, but was denied a formal review because of the absence of prepayment. The district court then granted summary judgment to OSM after Graham petitioned that court for review. The court of appeals affirmed that decision and presented a well-reasoned opinion affirming the constitutionality of 30 U.S.C. § 1268(c).

The Third Circuit interpreted the expansive language of 30 U.S.C. § 1268(c) as an intention by Congress that the waiver include rights raised in the courts as well as during OSM appeal procedures. 722 F.2d at 1112, n. 8. The court held that 30 U.S.C. § 1268(c) does not violate due process because of other review procedures which are available to a mine operator without prepayment of the penalty. The mine operator may (1) submit

written information after the issuance of the Notice of Violation for the purposes of determining the amount of the penalty (30 C.F.R. § 723.17(a)); (2) ask for a formal public hearing before an administrative law judge (30 U.S.C. § 1275(a)); (3) request an informal review of a cessation order (30 C.F.R. § 722.15); and (4) obtain an informal assessment review conference following notice of the proposed penalty assessment (30 C.F.R. § 723.18). Id. at 1110. Only after the informal assessment review conference must the operator prepay the assessed penalty in order to appeal further before an Administrative Law Judge. Failure to prepay at that point would result in a waiver of all further legal rights to contest the violation or the amount of the penalty. Id.

Monetary prerequisites to court access are not unconstitutional unless the right sought to be enforced is fundamental and the courts are the only means of enforcing that right. See Ortwein v. Schwab, 410 U.S. 656, 93 S.Ct. 1172 (1973).

The court finds the reasoning of Graham to be sound and concurs in the determination that waiver under 30 U.S.C. § 1268(c) includes rights raised in the courts as well as those raised during agency appeal procedures.

The court further finds that Plaintiff failed to exhaust its administrative remedies and cannot now seek to invoke the jurisdiction of this court to determine its legal rights in relation to the Notice of Violation and cessation order issued by

the Secretary. It is therefore ordered that Defendant's Motion for Summary Judgment be and is hereby granted.

Dated this 18th day of June, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA JUN 18 1986

HELEN LEVINE AND ISIDORE LEVINE,)
)
 Plaintiffs,)
)
 vs.)
)
 TRADE WINDS MOTOR HOTEL EAST,)
 INC., d/b/a TRADE WINDS CENTRAL)
 INN, AND BEST WESTERN INTERNA-)
 TIONAL, INC.,)
)
 Defendants,)

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

Case No. 86-C-426-~~DE~~

ORDER OF DISMISSAL

On this 10th day of June, 1986, the above matter comes on for hearing upon the written Application to Dismiss Without Prejudice Against Defendant, BEST WESTERN INTERNATIONAL, INC., Only, of the Plaintiffs herein. The Court having examined said Application, and being fully advised in the premises, finds that Defendant, BEST WESTERN INTERNATIONAL, INC., should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that Defendant, BEST WESTERN INTERNATIONAL, INC., in the above-entitled cause of action be and it is hereby dismissed without prejudice.

JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

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

JUN 17 1985

CLERK
U.S. DISTRICT COURT

JIMMY ODELL WHITEIS, et al.,)
)
Plaintiffs,)
)
v.) No. 84-C-957-B ✓
)
CITY OF SAND SPRINGS, et al.,)
)
Defendants.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW
CONCERNING DEFENDANTS' APPLICATION FOR
ATTORNEYS' FEES

Following review of the application for attorneys' fees of the defendants, the briefs in support and opposition thereto, the relevant evidence, as well as the statements and arguments of counsel, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. This case was filed on December 3, 1984, by attorneys Thomas E. Salisbury and William R. Edmison, against the defendants, City of Sand Springs, Police Chief Odean Helm, Officer (sic) R. G. Flanagan, Lt. D. L. Bradley, Officer Richard Krouse, Officer (sic) D. L. Graham, and Officer John Doe. The action was filed on behalf of the three plaintiffs, Jimmy Odell Whiteis, Sandra Kay Whiteis, and Sonya Christine Graham, a minor, for alleged violations of constitutional rights and for declaratory relief. The eleven-page complaint alleges violations of the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments to the United States Constitution because of the

alleged improper detention of the plaintiff Sonya Christine Graham and Sandra Kay Whiteis and the alleged improper arrest and prosecution of plaintiff Jimmy Odell Whiteis, for child abuse in the State court. The criminal case against Jimmy Odell Whiteis was dismissed due to lack of evidence. Jimmy Odell Whiteis' wife, the plaintiff Sandra Kay Whiteis, would provide no corroborative testimony against the defendant Jimmy Odell Whiteis. His step-daughter, the plaintiff Sonya Christine Graham, changed her testimony from that of the evening in question, and would not support her previous statement that Jimmy Odell Whiteis had struck her in the face.

2. In late fall of 1985, plaintiffs' original counsel, Salisbury and Edmison, withdrew from the case due to a potential conflict of interest wherein they might have to testify, and a new counsel, Earl Wolfe, entered his appearance on behalf of the plaintiffs.

3. The case came on for trial to a jury on March 17, 1986, and the trial proceeded for five days. At the outset of the trial the Court sustained a motion in limine regarding newly added witnesses on the custom and policy issue against the City of Sand Springs and the defendant, Assistant Chief Flanagan. Plaintiff attempted to add these witnesses after the discovery cutoff date and after the witness exchange date, as is reflected in the Court's Order of March 25, 1986. Plaintiffs' counsel admitted that the case could not go forward against the City of Sand Springs and the defendant Flanagan on the issue of custom

and policy without the late designated witnesses, so said defendants' motions for summary judgment were sustained relative to the custom and policy issue.

4. The principal evidence in support of the plaintiffs' various claims herein was that the criminal child abuse claim against Jimmy Odell Whiteis in the State court was dismissed; the minor plaintiff would no longer state, as she did on the evening of the incident, that her step-father had struck her in the face; and an employee of the Oklahoma Department of Human Services testified the minor plaintiff exhibited no signs of physical abuse when she saw her hours after the incident. Relative to the latter point there was considerable evidence in the record to the contrary from witnesses present at the trailer park on the evening of the incident. At the close of the evidence the jury retired and returned its unanimous verdict for the remaining defendant officers of the Sand Springs Police Department in the case.

5. While the evidence was ultimately nonexistent as to the custom and policy issue alleged against the City of Sand Springs and Assistant Chief Flanagan, and the evidence was very weak in support of the plaintiffs' alleged \$1983 claims against the other defendants, it cannot be concluded the case was frivolous or brought in bad faith. This conclusion is supported by the affidavits of attorneys Salisbury, Edmison and Wolfe.

CONCLUSIONS OF LAW

1. While the defendants herein are the prevailing parties, it cannot be concluded that the plaintiffs' actions are frivolous or were commenced in bad faith. 42 U.S.C. §1988; Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980); and Christiansburg Garment Co. v. E.E.O.C., 434 U.S. 412, 422 (1978).

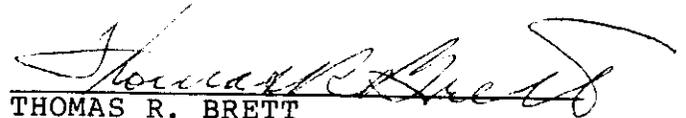
2. Plaintiffs' counsel have not been guilty herein of conduct violating 28 U.S.C. §1927. United States v. Ross, 535 F.2d 346 (6th Cir. 1976); Dreiling v. Peugeot Motors of America, Inc., 768 F.2d 1159 (10th Cir. 1985); Kiefel v. Las Vegas Hacienda, Inc., 404 F.2d 1163 (7th Cir. 1968); and West Virginia v. Charles Pfizer & Co., 440 F.2d 1079 (2nd Cir. 1971).

3. The case of Tuttle v. Oklahoma City, 728 F.2d 456 (10th Cir. 1984) rev'd 105 S.Ct. 2427 (1985) was not ultimately decided until after this action was originally filed. The case of Malley v. Briggs, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986) was handed down approximately two weeks previous to the trial of the instant case.

4. Under Fed.R.Civ.P. 11 pleading based upon information and belief, if done after reasonable inquiry and/or in good faith, is not characterized as vexatious or frivolous. Elliott v. Perez, 751 F.2d 1472 (5th Cir. 1985); Computer Place, Inc. v. Hewlett-Packard Co., 607 F.Supp. 822 (N.D.Cal. 1984); and Florida Monument Builders v. All Faiths Memorial Gardens, 605 F.Supp. 1324 (S.D.Fla. 1984); Perington Wholesale, Inc. v. Burger King Corp., 631 F.2d 1369 (10th Cir. 1980); and Tankersley v. Albright, 514 F.2d 956 (7th Cir. 1975).

5. The defendants' claims for attorneys' fees as against both the plaintiffs and/or their counsel of record is hereby denied.

DATED this 17th day of June, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

| | |
|-----------------------------------|---|
| SAND SPRINGS HOME, |) |
| |) |
| Plaintiff, |) |
| |) |
| v. |) |
| |) |
| INTERPLASTIC CORPORATION; |) |
| GENERAL ELECTRIC COMPANY; |) |
| REID SUPPLY COMPANY, INC.; |) |
| BOEING MILITARY AIRPLANE COMPANY, |) |
| a division of The Boeing Company; |) |
| CESSNA AIRCRAFT COMPANY; |) |
| and |) |
| DOES 1-50, inclusive, |) |
| |) |
| Defendants. |) |

Case No. 86-C-85-B ✓

FILED

JUN 17 1986 *ef*

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

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the Stipulation for Dismissal with Prejudice, filed herein by Plaintiff, Sand Springs Home and Defendant, Cessna Aircraft Company.

Being advised in the premises and for good cause shown, the Court hereby dismisses this action as to the Defendant, Cessna Aircraft Company, with prejudice to refile; provided, that by Stipulation of Plaintiff, Sand Springs Home, and Defendant, Cessna Aircraft Company, only the claims specifically alleged in the Complaint on file in this action are dismissed as to Defendant, Cessna Aircraft Company, and that claims for payment or contribution to payment of the costs or types of costs specified in subparagraphs a), b) and c) of Article IV. of that certain Settlement Agreement

between Sand Springs Home and certain "Settling Companies," entered into on or about January 31, 1986, under which Settlement Agreement the Defendant, Cessna Aircraft Company, became a party and "Settling Company" by execution of an Addendum No. 3 to Settlement Agreement on or about MAY 27, 1986, are not dismissed with prejudice hereby or in any way compromised, settled or otherwise affected hereby, all rights and claims with respect thereto having been expressly reserved by Plaintiff, Sand Springs Home.

It is further ordered that Plaintiff, Sand Springs Home, and Defendant, Cessna Aircraft Company, shall each bear its own attorneys' fees and costs.

SO ORDERED THIS 16 DAY OF June, 1986.



THOMAS R. BRET
United States District Judge

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

FILED

JUN 17 1986

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

INTERNATIONAL NAVIGATION, LTD.,)
)
Plaintiff,)
)
vs.)
)
SUNBELT HOLDING CORP., an)
Oklahoma corporation, d/b/a)
TULOMA STEVEDORING,)
)
Defendant.)

No. 85-C-581-C

ORDER OF DISMISSAL

THIS MATTER having come before the Court on the 16 day of June, 1986, on the Stipulation to Dismiss filed June 12, 1986, by the parties hereto, and the Court being fully advised in the premises, the Court hereby finds:

1. The parties hereto have agreed to settle this matter.
2. As part of the settlement, the parties have agreed that this matter be dismissed with prejudice with each party to bear its own costs, including attorneys' fees.

IT IS THEREFORE ORDERED that the within action be and it hereby is dismissed with prejudice.

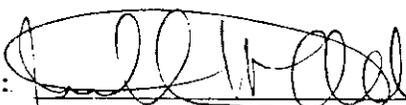
IT IS FURTHER ORDERED that each party hereto shall bear its own costs, including attorneys' fees.

DATED: June 19, 1986

Jack C. Sizer
U. S. DISTRICT COURT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

HALL, ESTILL, HARDWICK, GABLE,
COLLINGSWORTH & NELSON

By: 

James E. Green, Jr.
Jonathan H. Alden
One Williams Center
4100 Bank of Oklahoma Tower
Tulsa, Oklahoma 74172
(918) 588-4065

ATTORNEYS FOR DEFENDANT

PRAY, WALKER, JACKMAN, WILLIAMSON
& MARLAR

By: 

J. Philip Adamson
James F. Bullock
9000 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 584-4136

ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 17 1986

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

HOWARD M. McCULLY, JR.)

Defendant.)

CIVIL ACTION NO. 86-C-185-C

DEFAULT JUDGMENT

This matter comes on for consideration this 13 day of June, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Howard M. McCully, Jr., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Howard M. McCully, Jr., was served with Summons and Complaint on April 16, 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,

Howard M. McCully, Jr., for the principal sum of \$416.10, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from March 19, 1984, until judgment, plus interest thereafter at the current legal rate of 7.03 percent per annum until paid, plus costs of this action.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

VICKI A. THOMPSON,

Plaintiff,

v.

THE DANIEL COMPANY and
KENNETH DON DIXON,

Defendants,

v.

CHARLES DEES,

Additional Defendant.

No. 84-C-816 B ✓

FILED

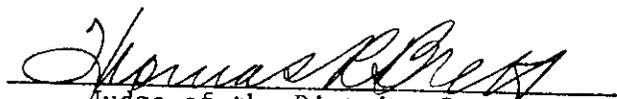
JUN 17 1986

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

ORDER

AND NOW on this 16th day of ~~April~~^{June}, 1986, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, a stipulation of the parties hereto of dismissal, the parties hereto having advised the Court that all disputes between the parties have been settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above styled cause be and the same is hereby dismissed with prejudice to the right of the plaintiff to bring any future action arising from said cause of action.



Judge of the District Court for
the Northern District of
Oklahoma

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

FILED

JUN 17 1986

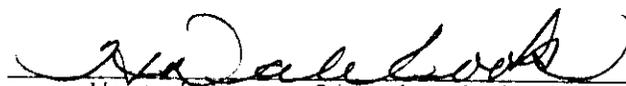
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CHARLES FREDERICK FISHER and)
BILLIE JEAN FISHER,)
)
Plaintiffs,)
)
vs.)
)
FIBREBOARD CORPORATION, et al.,)
)
Defendants.)

No. 85-C-379-C ✓

ORDER OF DISMISSAL

Now on this 16 day of June, 1986, the Court being advised that a compromise settlement having been reached between the plaintiffs and the named defendants, and those parties stipulating to a dismissal with prejudice, the Court orders that the captioned case be dismissed with prejudice as to OWENS-ILLINOIS, INC., OWENS-CORNING FIBERGLAS CORPORATION, FIBREBOARD CORPORATION, EAGLE-PICHER INDUSTRIES, INC., CELOTEX CORPORATION, KEENE CORPORATION, H.K. PORTER COMPANY, NATIONAL GYPSUM COMPANY, ROCK WOOL MANUFACTURING COMPANY, PITTSBURGH-CORNING CORPORATION, GAF CORPORATION, NICOLET INDUSTRIES, INC. and FLINTKOTE COMPANY.


United States District Judge

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

ALTA L. MAY,)
)
 Plaintiff,)
)
 vs.)
)
 TELEX COMPUTER PRODUCTS,)
 INC.,)
)
 Defendant.)

No. 86-C-261-C

FILED

JUN 16 1986

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

JUDGMENT

This matter came on before the Court for determination of Defendant's Motion for Summary Judgment. Being that the Plaintiff failed to comply with local Rule 14(b); and a decision having been duly rendered in accordance with the Order granting summary judgment herein,

IT IS ORDERED AND ADJUDGED that the Defendant, Telex Computer Products, Inc., is entitled to judgment against the Plaintiff, Alta L. May.

IT IS SO ORDERED this 13 day of June, 1986.

H. Dale Cook

H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

UNITED STATES OF AMERICA,)
)
Plaintiff(s),)
)
vs.)
)
101.20 acres of land, et al.,)
Osage County,)
)
Defendant(s).)

FILED

JUN 16 1986

No. 84-C-156-C

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

JUDGMENT APPROVING STIPULATION, REVESTING TITLE,
AND DISMISSING ACTION

This matter is before the court on the date hereinafter stated for hearing the "Joint Motion For Dismissal". Plaintiff appears by Layn R. Phillips, United States Attorney by Phil Pinnell, Assistant United States Attorney and defendant The John Zink Foundation appears by its attorney, Ronald G. Raynolds. The court being fully advised and having considered the "Stipulation for Exclusion of Property and Revestment of Title" filed jointly by the parties this date and being fully advised, finds that the "Joint Motion for Dismissal" should be sustained.

IT IS THEREFORE ORDERED, that the "Stipulation for Exclusion of Property and Revestment of Title" filed by the parties this date be and the same is hereby approved by the court; that title to the land which is the subject matter of this action be and the same is hereby revested in the defendant The John Zink Foundation; and this action is hereby dismissed.

The date of this order is June 13, 1986.

s/H. DALE COOK
United States District Judge

Approved.

UNITED STATES OF AMERICA
LAYN R. PHILLIPS
United States Attorney



PHIL PINNELL
Assistant United States Attorney



RONALD G. RAYNOLDS
Attorney for THE JOHN ZINK
FOUNDATION

FILED

JUN 16 1986

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

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

MIDWESTERN UNITED LIFE)
INSURANCE COMPANY,)
)
Plaintiff,)

vs.)

DANIEL E. FAIRCHILD, as Trustee)
of THE SUSAN MARIE "SUMI")
MILLER TRUST, et al.,)
)
Defendants.)

No. 85-C-1074-B ✓

con. sd.

85-C-1089-B

FIREMAN'S FUND AMERICAN LIFE)
INSURANCE COMPANY,)
)
Plaintiff,)

vs.)

DANIEL E. FAIRCHILD, as Trustee)
of THE SUSAN MARIE "SUMI")
MILLER TRUST, et al.,)
)
Defendants.)

ORDER

This matter comes before the Court upon request of all parties to this action. The Court finds as follows:

1. The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1335.

2. By Order dated December 18, 1985, this Court permitted the plaintiff, Midwestern United Life Insurance Company ("Midwestern"), to deposit into Court the sum of \$1,362,342.17.

OK-NRM
57

3. This sum was placed into a Certificate of Deposit which matures on the 16th day of June, 1986.

4. The sum of \$1,360,697.82 consists of the proceeds, with applicable interest, of two insurance policies issued by Midwestern. The proceeds of Policy No. 638203 are \$1,154,531.48; the proceeds of Policy No. 638202 are \$206,166.34.

5. Disclaimers as to any right or claim to the insurance policies listed below have been filed by the following defendants:

| <u>Name</u> | <u>Policy as to Which Disclaimer Filed</u> |
|--|--|
| Daniel E. Fairchild, as Executor and Personal Representative of the Estate of Susan Marie Miller | Midwestern 638203 Midwestern 638202 |
| Ethel Marie Kembro | Midwestern 638203 Midwestern 638202 |
| Ben K. and Laura McGill | Midwestern 638203 Midwestern 638202 |
| Telecommunications Management and Resources, Inc. | Midwestern 638202 |

6. By Answers filed herein, the following defendants make claims as to proceeds making up the sums on deposit with the Court:

| <u>Name</u> | <u>Policy as to Which Claim Made</u> |
|--|--|
| Daniel E. Fairchild, as Trustee of the Susan Marie Miller Trust | Midwestern 638202 Midwestern 638203 |
| Telecommunications Management and Resources, Inc. | Midwestern 638203 |

7. There is no dispute as to the ownership of Midwestern Policy No. 638202 and, therefore, the proceeds which were deposited into Court, and accrued interest thereon, should be paid to Daniel E. Fairchild, as Trustee of the Susan Marie Miller Trust. Payment shall be made upon maturity of the Certificate of Deposit into which said proceeds were placed.

8. The following are the undisputed facts which have been placed before the Court with regard to Midwestern Policy No. 638203:

a. Daniel E. Fairchild, as secretary/treasurer of Telecommunications Management and Resources, Inc., did assign Midwestern Policy No. 638203 on December 18, 1984 to Susan Marie Miller while acting in good faith and with no intent to defraud the Corporation. However, as secretary/treasurer of said Corporation he had no power or authority, inherent or express, to assign, sell or convey to Susan Marie Miller said Midwestern Policy No. 638203 on December 18, 1984; and

b. In entering into the Agreement dated June 14, 1985, Daniel E. Fairchild, as Trustee of the Susan Marie Miller Trust, and the Board of Directors of Telecommunications Management and Resources, Inc., were acting under mistaken beliefs. Daniel E. Fairchild, as Trustee of the Susan Marie Miller Trust, was acting under the good faith mistaken belief that the assignment of December 18, 1984, had been effectively executed by him because he believed in good faith that as secretary/treasurer of the corporation he had the authority to assign the policy. In fact, he had no such authority. The Board of Directors of Telecommunications Management and Resources, Inc., was acting under the mistaken belief that the assignment of December 14, 1984, had been effectively executed because they believed the assignment had been executed by the president of Telecommunications Management and Resources, Inc., Susan Marie Miller. In fact, it had not been.

9. Based upon the facts stated in paragraph 8, the Court finds as follows:

a. The purported assignment of December 18, 1984, of Midwestern Policy No. 638203 to Susan Marie Miller is void, invalid and ineffective;

b. The parties to the June 14, 1985, agreement were operating under a mutual mistake of fact, i.e., that the December 18, 1984, assignment had been effectively executed. Because there was no meeting of the minds of the parties no agreement was reached;

c. Because of the material mutual mistake of fact on the part of both parties in entering into the Agreement dated June 14, 1985, the Agreement is hereby set aside as void and held for naught; and

d. For these reasons, the proceeds of Midwestern Policy No. 638203 which were deposited into Court, and accrued interest thereon, shall be paid to Telecommunications Management and Resources, Inc. Payment shall be made upon maturity of the Certificate of Deposit into which such proceeds were placed.

10. Due to its deposit into Court of the sum of \$1,362,342.17, Midwestern is discharged from any and all further liabilities herein.

11. Midwestern is entitled to an award of attorneys fees in the amount of \$3,400.00, the judgment for said fee to be against the defendant, Telecommunications Management and Resources, Inc. in the amount of \$2,138.74 and against defendant Daniel E. Fairchild as Trustee of the Susan Marie Miller Trust in the amount of \$1,261.26. Each party to Case No. 85-C-1074-B prior to its consolidation with Case No. 85-C-1089-B shall bear its own costs.

12. There is no just reason to delay entry of a final judgment as to the findings of the Court herein.

13. Entry of final judgment is directed as follows:

a. Judgment for Daniel E. Fairchild, as Trustee of the Susan Marie Miller Trust, in the amount of the proceeds of Midwestern Policy No. 638202, plus accrued interest since December 11, 1985, being the sum of \$221,967.81, less proportionate share of Midwestern's attorney fee for a total amount of \$220,706.55;

b. Judgment for Telecommunications Management and Resources, Inc., in the amount of the proceeds of Midwestern Policy No. 638203, plus accrued interest since December 11, 1985, being the sum of \$1,190,610.72³, less proportionate share of Midwestern's attorney fee for a total amount of \$1,188,471.98₉;

c. Judgment for Midwestern in the amount of \$3,400.00.

14. The Court Clerk for the United States District Court is hereby ordered to make disbursements pursuant to this judgment as follows: / 6-16-86 j

a. To the law firm of Chapel, Wilkinson, Riggs & Abney, attorneys for Daniel E. Fairchild, as Trustee of the Susan Marie Miller Trust, the sum of \$220,706.55;

b. To the law firm of Pray, Walker, Jackman, Williamson & Marljar, attorneys for Telecommunications Management & Resources, Inc., the sum of \$1,188,471.98₉;

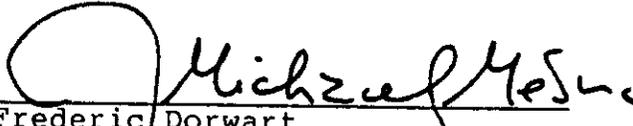
c. To the law firm of Holliman, Langholz, Runnels & Dorwart, attorneys for Midwestern United Life Insurance Co., the sum of \$3,400.00.

Dated this 16TH day of June, 1986.

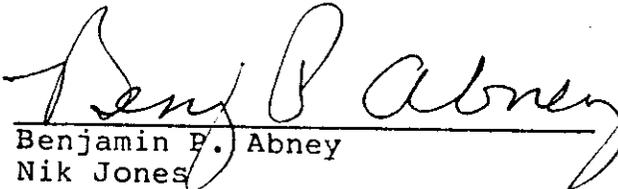

Thomas R. Brett

United States District Judge

APPROVED AS TO FORM AND CONTENT:



Frederic Dorwart
J. Michael Medina
HOLLIMAN, LANGHOLZ, RUNNELS
& DORWART
700 Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103
(918) 584-1471
Attorneys for Plaintiffs



Benjamin P. Abney
Nik Jones
CHAPEL, WILKINSON, RIGGS,
ABNEY & HENSON
502 West Sixth Street
Tulsa, Oklahoma 74119
(918) 587-3161
Attorneys for Daniel E.
Fairchild, as Trustee of The
Susan Marie "Sumi" Miller Trust



Floyd L. Walker
J. Warren Jackman
PRAY, WALKER, JACKMAN
WILLIAMSON & MARLAR
Oneok Plaza, 9th Floor
Tulsa, Oklahoma 74103
(918) 584-4136
Attorneys for Telecommunications
Management and Resources, Inc.

Entered

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

FILED

JUN 16 1985

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

J. L. BRIEN,)
)
 Plaintiff,)
)
 v.)
)
 A & W PRODUCTION COMPANY,)
 a Wyoming corporation, et al.,)
)
 Defendant.)

No. 84-C-601-B ✓

ORDER REMANDING CASE TO STATE COURT

This action was commenced by the plaintiff against the defendants in the District Court of Pawnee County, State of Oklahoma, on June 1, 1984, Case No. C-84-96. Following service of summons in the State court action on the defendants, they filed a petition for removal of the State court action to this court on June 29, 1984. The basis for removal was diversity of citizenship. The plaintiff allegedly being a citizen of Pawnee County, Oklahoma, and the defendant, A & W Production Company, a corporation incorporated under the laws of the State of Wyoming with its principal place of business allegedly in West Palm Beach, Florida. (Defendant's Petition for Removal filed June 29, 1984). The individual defendant, Johnson, was allegedly a citizen of West Palm Beach, Florida. Subsequently, in October 1984, the action was dismissed against the individual defendant and proceeded only against the corporate defendant, A & W Production Company.

In the pretrial order filed May 19, 1986, the parties stipulated that defendant A & W is incorporated under the laws of the State of Wyoming but further stipulated that A & W has its principal place of business in Enid, Garfield County, Oklahoma. The parties also so state in their respective requested Findings of Fact.

The citizenship of a corporation is determined by both its state of incorporation or its principal place of business. 28 U.S.C. §1332(c). The party invoking jurisdiction of the court has the duty to establish that federal jurisdiction does exist. Basso v. Utah Power & Light Company, 495 F.2d 906 (10th Cir. 1974). Whenever want of diversity jurisdiction appears, the Court has the duty on its own motion to dismiss the action. Reed v. Robilio, 248 F.Supp. 602 (D.C.Tenn. 1965).

Therefore, the plaintiff and defendant are both citizens of Oklahoma so the Court is without subject matter jurisdiction, as there is no diversity of citizenship. The case was tried to the Court on the 27th day of May, 1986, and neither did the evidence presented establish diversity of citizenship.

IT IS THEREFORE ORDERED that this case is remanded to the District Court of Pawnee County, Oklahoma.

DATED this 16th day of June, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

504 78 1986

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

| | |
|---|---|
| CENTURY EQUIPMENT LEASING CORPORATION, |) |
| |) |
| Plaintiff, |) |
| |) |
| v. |) |
| |) |
| AMERICAN NATIONAL BANK & TRUST COMPANY, |) |
| |) |
| Defendant. |) |

No. 85-C-815-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date in reference to the motion of the defendant to impose sanctions on the plaintiff, IT IS HEREBY ADJUDGED that the defendant, American National Bank & Trust Company, is granted judgment against the Century Equipment Leasing Corporation as and for attorney fees in the amount of One Thousand Three Hundred Dollars (\$1,300.00).

DATED this 16th day of June, 1986.

Thomas R. Brett

 THOMAS R. BRETT
 UNITED STATES DISTRICT JUDGE

Continued

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

THE LAW COMPANY, INC.,
Plaintiff,
vs.
JOHN E. MCGREGOR,
Defendant.

No. 85-C-449-C ✓

FILED

JUN 16 1986, *gf*

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

COURT'S FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Finds that The Law Company, Inc. is a corporation organized under the laws of the State of Kansas and is licensed to do business in the State of Oklahoma, with its home office and principal place of business located in Wichita, Kansas. The defendant, John E. McGregor, is a citizen of the City of Tulsa, County of Tulsa, State of Oklahoma, residing in the Northern Judicial District. This is an action for money judgment. The amount involved, exclusive of interest, costs, and penalties is in excess of \$10,000.00 and this Court has diversity jurisdiction of the parties hereto and of the subject matter hereof.

2. Finds that on February 17, 1984, the defendant, John E. McGregor, as subcontractor, entered into a subcontract with the plaintiff, The Law Company, Inc., to perform certain

portions of the constuction of a contract that the plaintiff had with Willow Springs Apartments, Ltd., to construct an apartment complex at Pasadena, Texas, and that the defendant assumed all the obligations that the plaintiff had to the owner in the construction of the portion of the work that the defendant agreed to perform, which basically covered the framing, walls, siding, and roof decking.

3. Finds that the contract was originally for the sum of \$289,819.00 and that by change orders, it totals the sum of \$290,253.18.

4. Finds that on May 4, 1984, the defendant sublet the balance of his subcontract to one, Larry Stover, and that the superintendent of the plaintiff, Mike Herman, approved the subletting to Larry Stover as required by the subcontract, but that it was made very clear that in no way was John E. McGregor being relieved of any of his responsibility under the contract.

5. Finds that Larry Stover stayed on the job until approximately July 25, 1984, at which time he abandoned the job and that the plaintiff notified the defendant of the abandonment of the job by Stover and that Stover had left unpaid bills and gave the defendant an opportunity to come down and pick up the job and complete the obligations he had under the subcontract.

6. Finds that upon Stover's abandonment that the defendant sent one, John Rogers, to the jobsite to assess the situation and to take pictures, and that John Rogers confirmed

unto the defendant that some of the workers under Stover had not been paid.

7. Finds that the defendant, John E. McGregor, from all practical aspects, abandoned the job when Stover left in that he did not pay the workers and assume control of the job, and discharge his duties under the contract, and in the alternative if he did not abandon it when Stover left, that he did completely abandon it when he recalled John Rogers from the job on or about *July* 26, 1984.

8. Finds that the plaintiff, upon defendant's abandonment of the job, paid the outstanding wages to employees of Larry Stover and expended monies in completing work which the defendant failed to complete and expended monies for labor and materials to correct work which had been defectively installed by the defendant, and that all of said sums expended were reasonable and necessary to complete the subcontract of the defendant in keeping with the plans and specifications.

9. Finds that the plaintiff paid for direct labor costs in the sum of \$85,005.78, the sum of \$23,580.18 for direct labor contracts, and the sum of \$9,022.21 for materials, for the total sum of \$117,608.17.

10. Finds that by stipulation of the parties the defendant has been paid the sum of \$255,593.80 and that had the defendant completed his subcontract, he would have been entitled to the additional sum of \$34,569.38, and that when said sum is

deducted from \$117,608.17, there is a balance of \$82,948.79 which the plaintiff is entitled to receive.

CONCLUSIONS OF LAW

1. Holds that the defendant breached his subcontract with the plaintiff by abandonment.

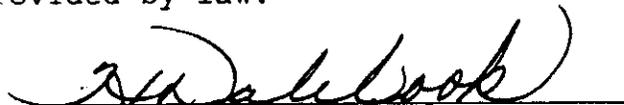
2. Holds that a three (3) day notice provision of the contract applies in instances where the subcontractor is on the job and there is something that the contractor or owner believes needs to be changed or is not conforming, and that in such event, the subcontractor should be given written notice to change or conform, however, notice is irrelevant in this instance in that it would be a useless and vain thing to give the defendant notice to fix something when he is not on the project and has abandoned his subcontract.

3. Holds that it would have been a vain thing to have required the plaintiff-contractor to have given the defendant-subcontractor notice after the defendant had abandoned the project and the subcontract as the law does not require the doing of vain things.

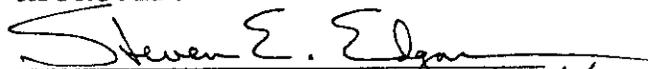
4. Holds that the contract between the owner and the plaintiff-contractor, and between the plaintiff and the defendant-subcontractor provide that all installment payments are made expressly without an acceptance of the work paid for and without relieving the defendant of his obligation to perform his subcontract to comply with the plans and specifications and,

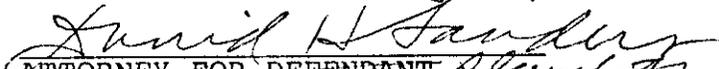
therefore, the plaintiff is not estopped from recovering its costs incurred to complete the defendant's subcontract.

5. Holds that judgment should be entered in favor of the plaintiff and against the defendant for the sum of \$82,948.79, with interest from December 31, 1984, to date hereof at the rate of 6% for the sum of \$7,185.86, for the total sum of \$90,134.65, and thereafter as provided by law.


H. DALE COOK, CHIEF JUDGE

APPROVED:


ATTORNEY FOR PLAINTIFF *Edgar*


ATTORNEY FOR DEFENDANT *Sandberg*

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

CHARLES FREDERICK FISHER and)
BILLIE JEAN FISHER,)
)
Plaintiffs,)
)
vs.)
)
FIBREBOARD CORPORATION, et al.,)
)
Defendants.)

FILED

No. 85-C-379-C

JUN 16 1986

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

ORDER OF DISMISSAL

The above cause comes on for hearing upon the Application of the Plaintiffs, Charles Frederick Fisher and Billie Jean Fisher, and their attorney of record for a dismissal without prejudice of the above and foregoing action as to the Defendants, Forty-Eight Insulation, Inc. and Ryder Industries, Inc. only, and the Court being well advised in the premises, finds the Order of Dismissal should issue.

IT IS THEREFORE ORDERED that the above entitled cause is hereby dismissed without prejudice as to a future action as against the Defendants, Forty-Eight Insulation, Inc. and Ryder Industries, Inc., only.

Dated this 13 day of June, 1986.

s/H. DALE COOK

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

LAW OFFICES

UNGERMAN,
CONNER &
LITTLE

MIDWAY BLDG.
2727 EAST 21 ST.
SUITE 400

P. O. BOX 2099
TULSA, OKLAHOMA
74101

RECEIVED
JUN 16 1986
PRO SE LITIGANTS DEPARTMENT
UPON RECEIPT

F I L E D

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

JUN 16 1986

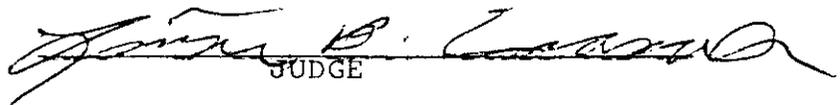
Jack C. Silver, Clerk
U.S. DISTRICT COURT

| | |
|-----------------------------|---|
| W. DAVID HOLLOWAY, M.D., |) |
| et al., |) |
| |) |
| Plaintiffs, |) |
| |) |
| vs. |) |
| |) |
| PEAT, MARWICK, MITCHELL & |) |
| CO., a partnership, et al., |) |
| |) |
| Defendants. |) |

Case No. 84-C-814-Eu ✓

ORDER DISMISSING TIMOTHY SULLIVAN AS A DEFENDANT

Upon the joint motion of Plaintiffs and Defendant, TIMOTHY SULLIVAN, the Court hereby finds and ORDERS that TIMOTHY SULLIVAN should be dismissed as a defendant herein without prejudice.


JUDGE

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

CHARLES FREDERICK FISHER and)
BILLIE JEAN FISHER,)
)
Plaintiffs,)
)
vs.)
)
FIBREBOARD CORPORATION, et al.,)
)
Defendants.)

No. 85-C-379-C

FILED

JUN 16 1986

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

ORDER OF DISMISSAL

The above cause comes on for hearing upon the Application of the Plaintiffs, Charles Frederick Fisher and Billie Jean Fisher, and their attorney of record for a dismissal with prejudice of the above and foregoing action as to the Defendant, Standard Manufacturing and Insulating Company, and the Court being well advised in the premises, finds the Order of Dismissal should issue.

IT IS THEREFORE ORDERED that the above entitled cause is hereby dismissed with prejudice as to a future action as to the Defendant, Standard Insulation and Manufacturing Company, only.

Dated this 13 day of June, 1986.

H. DALE COOK

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

LAW OFFICES

UNGERMAN,
CONNER &
LITTLE

MIDWAY BLDG.
2727 EAST 21 ST.
SUITE 400

P. O. BOX 2099
TULSA, OKLAHOMA
74101

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

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

FILED

JUN 10 1986 *jm*

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

| | |
|--------------------------|---|
| THE BOARD OF TRUSTEES |) |
| OF THE PIPELINE INDUSTRY |) |
| BENEFIT FUND and |) |
| THE BOARD OF TRUSTEES |) |
| OF THE PIPELINE INDUSTRY |) |
| PENSION FUND, |) |
| |) |
| Plaintiffs, |) |
| |) |
| vs. |) |
| |) |
| WILLIE EARL HATCHER, |) |
| |) |
| Defendant. |) |

No. 83-C-512-C ✓

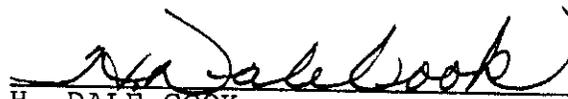
J U D G M E N T

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

THE COURT HEREBY ORDERS, ADJUDGES AND DECREES that plaintiffs take nothing pursuant to their theory of recovery for fraudulent representations and punitive damages. Plaintiff Benefit Fund is hereby awarded judgment on its theory of unjust enrichment as against defendant Hatcher in the amount of \$1,937.86, together with interest thereon. Plaintiff Pension Fund is hereby awarded judgment on its theory of unjust enrichment as against defendant Hatcher in the amount of \$4,403.00, together with interest thereon.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each party bear their own attorney fees and costs of this action.

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



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