

FILED

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

OCT 10 1986

RICHARD R. RUSH,
Plaintiff,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,
Defendant.

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

86-C-208-E

ORDER

The court having denied plaintiff's application to proceed in forma pauperis, it is hereby ordered that the Clerk administratively terminate this action without prejudice to the rights of the plaintiff to refile upon proper proof of pauper status or upon payment of the required filing fees.

It is so Ordered this 10th day of October, 1986.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE

FILED

OCT 10 1986

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

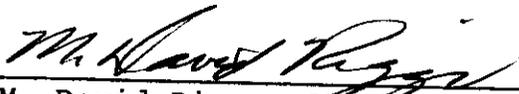
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LIDA BEGHTEL,)
)
 Plaintiff,)
)
 vs)
)
 CHARLES L. JOHNSON, M.D.,)
)
 Defendant.)
 _____)

Case No. 85-C-407-E

STIPULATION OF DISMISSAL

COMES NOW the Plaintiff, Lida Beghtel, and does hereby dismiss without prejudice her cause of action against the defendant herein, Charles L. Johnson, M.D.


M. David Riggs, OBA#7583
Chapel, Wilkinson, Riggs & Abney
502 W. Sixth Street
Tulsa, Oklahoma 74119
918-587-3161
Attorney for Plaintiff

APPROVED:


Joseph F. Glass
Best, Sharp, Thomas, Glass & Atkinson
507 S. Main, Suite 300
Tulsa, Oklahoma 74103
918-582-8877
Attorney for Defendant

Entered

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

FILED

WILLIAM I. SOLBERG,)
)
 Plaintiff,)
)
 v.)
)
 READING & BATES CORPORATION,)
 a Delaware corporation,)
 READING & BATES PETROLEUM,)
 CO., a Texas corporation,)
)
 Defendants.)

SEP 9 1986

No. 85-C-158-B

ORDER OF DISMISSAL

This matter comes before the Court on the Joint Application for Dismissal of the parties. The parties represent to the Court that they have entered into an agreement for an order of dismissal in this matter. In furtherance of the agreement of dismissal between the parties, it is stipulated and expressly found by this Court that Plaintiff's lawsuit was brought in good faith but that Plaintiff's claims for violation of the Age Discrimination in Employment Act and wrongful termination, including Plaintiff's allegation that the conduct of Defendants constituted a pattern and practice of age discrimination are wholly without merit. Finally, it is agreed that the obligations and requirements assumed by the parties in their Mutual, General and Complete Release shall be entered and made part of the instant Order.

IT IS THEREFORE ORDERED that this matter is dismissed with prejudice. Each party shall bear its own attorney fees and costs.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

*October 9, 1986 -
Submitted by stipulation
of parties.*

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

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

No. 84-C-62-E

FILED

OCT 9 1986

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

JUDGMENT

Upon the request of Plaintiff and the Court being fully advised in the premises, Count III of the Complaint having been dismissed with prejudice by Order of June 28, 1985, Count I of the Complaint having been dismissed without prejudice by Order of March 27, 1986, and the Court having heretofore granted partial summary judgment in favor of Plaintiff with respect to Count II of the Complaint by Order dated August 9, 1985,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against Defendant Continental Casualty Company declaring that the limit of liability under the subject insurance contract between Plaintiff and Defendant is \$40,000 for each individual claim against Plaintiff and the aggregate limit of the policy is \$40,000 multiplied by the number of claims against Kunkel.

DATED this 8th day of October, 1986.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

OCT 9 1986

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

SYLVIA D. HARRIS,)
)
Plaintiff,)
)
vs.)
)
FOURTH NATIONAL BANK OF TULSA,)
)
Defendant.)

No. 84-C-625-E

JUDGMENT

This action came on for trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered pursuant to the Findings of Fact and Conclusions of Law entered this date,

IT IS ORDERED AND ADJUDGED that the Plaintiff Sylvia D. Harris take nothing from the Defendant Fourth National Bank of Tulsa, that the action be dismissed on the merits, and that the Defendant Fourth National Bank of Tulsa recover of the Plaintiff Sylvia D. Harris its costs of action.

DATED at Tulsa, Oklahoma this 8th day of October, 1986.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

SEP 9 1985

IN RE:)
HESTON OIL COMPANY,)
)
)
 Debtor.)

85-C-929-B

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

ORDER

Creditor-Appellant Genave Rogers Palmer (Rogers) brought this appeal from an order of the Bankruptcy Court for the Northern District of Oklahoma declaring that an oil and gas lease is not an executory contract or unexpired lease subject to the provisions of 11 U.S.C. §365(d)(2).

Rogers is the owner of all the oil, gas, and mineral rights lying under a section of Seminole County, Oklahoma. On July 8, 1977, Rogers executed an oil and gas lease covering her oil and gas interests in the above land, which lease was subsequently acquired in equal shares by Heston Oil Co. and Marsh Oil & Gas Co.

On February 14, 1983, Debtor Heston Oil filed its Petition for Bankruptcy under Chapter 11 of the Bankruptcy Code. Since that time Heston has neither assumed nor rejected its oil and gas lease. Marsh Oil & Gas released its interest in the lease on April 26, 1985.

Rogers filed a motion urging the Bankruptcy Court to fix a time to assume or reject lease pursuant to 11 U.S.C. §365.

Following a hearing on the motion the Bankruptcy Court ruled that an oil and gas lease is not an executory contract or

unexpired lease within the scope of §365. Rogers now seeks reversal of that ruling.

On appeal this court must address two issues: (1) whether the Bankruptcy Court's order is final and appealable, and (2) whether the Bankruptcy Court's finding that oil and gas leases are not unexpired leases or executory contracts under 11 U.S.C. §365 was erroneous.

Heston contends that the Bankruptcy Order in this case was discretionary in nature and is not final and appealable under 28 U.S.C. §158. No legal authority is cited in support of this position. The Bankruptcy Court's decision on Rogers' motion, however, was not a matter of discretion. 11 U.S.C. §365 provides:

(2) In a case under chapter 9, 11, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of the debtor at any time before the confirmation of a plan, but the court, on request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

The bankruptcy judge decided as a matter of law that oil and gas leases do not fall within the purview of §365. Therefore, the court did not exercise its discretion with regard to whether the Heston trustee should be required to determine within a specific time period whether to assume or reject the Rogers-Heston oil and gas lease. The court finds that the order entered in this case is appealable.

The terms "unexpired lease" and "executory contract" are not defined by either the Bankruptcy Code or State law. The Oklahoma

Supreme Court in several cases has considered the characteristics of an oil and gas lease and has found that use of the term "lease" is more in "deference to custom" than a description of the legal relationship involved. Hinds v. Phillips Petroleum Company, 591 P.2d 697 (Okla. 1979).

The interests arising from an oil and gas lease are more akin to a profit à prendre and are generally considered as estates in real property having the nature of a fee. Shields v. Moffitt, 683 P.2d 530, 532-533 (Okla. 1984).

The interest represented is one in land, although the lease itself does not operate as a conveyance of any oil or gas in situ but constitutes merely a right to search for and reduce to possession such of these substances as may be found. Rather than a true lease, it is really a grant in praesenti of oil and gas to be captured in the lands described during the term demised and for so long thereafter as these substances may be produced.

683 P.2d at 532.

Rogers has no persuasive authority that oil and gas leases are contemplated by §365. The only case cited by appellant holding such instruments subject to §365 is J. H. Land & Cattle Co., 8 Bankr. 237 (W.D.Okla. 1981). There Judge Kline of the Western District of Oklahoma held that under Kansas law an oil and gas lease is within the reach of §365, and may be rejected by a debtor with court approval. Id. at 239. This court finds the reasoning in J. H. Land & Cattle Co. to be questionable, and in any event contrary to the position taken by the Oklahoma Supreme Court.

The Tenth Circuit has defined an executory contract as one where "neither party [has] completely performed and the obliga-

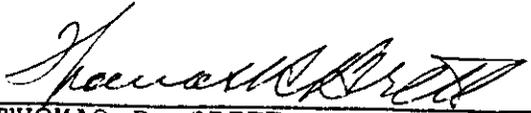
tions of each [remain complex]." Workman v. Harrison, 282 F.2d 693, 699 (10th Cir. 1960). Breach of contractual obligations by one party would excuse performance by the other party. Cf. Jones, Rejections of Unexpired Oil and Gas Leases in Bankruptcy Proceedings: In Re J. H. Land & Cattle Co., 19 Tulsa L.J. 68 (1983).

This court agrees with the Bankruptcy Court's ruling that the nature of this oil and gas lease is not that of an executory contract. Rogers' only obligations under the contract is to defend her title to the leased land and not to interfere with the lessors' drilling operation. Breach of these duties would not excuse performance by Heston, but would merely abate Heston's obligation for so long as Rogers was in breach. See, Jones v. Moore, 338 P.2d 872 (Okla. 1959); Chapman v. Bowers, 67 P.2d 788 (Okla. 1937).

Based upon the above the court finds that the oil and gas lease was not an unexpired lease or executory contract under 11 U.S.C. §365.

It is therefore Ordered that the decision of the Bankruptcy Court be and is hereby affirmed.

Dated this 9th day of October, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

F I L E D

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

OCT - 8 1986

GORDON ROBERTS OLSON,)
)
 Plaintiff,)
)
 vs.)
)
 HARTFORD INSURANCE COMPANY,)
 et al.,)
)
 Defendants.)

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

No. 86-C-115-E

O R D E R

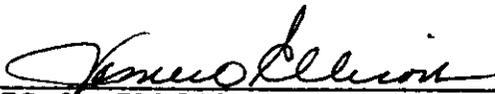
The Court has before it for its consideration the motions to dismiss of Defendants Dan Holmes, the Oklahoma State Bureau of Investigation and Al Abernathy, Hartford Insurance Company and the Federal Bureau of Investigation. Plaintiff's action was filed in forma pauperis pursuant to 28 U.S.C. §1915. Under §1915(d) the Court may dismiss the case if the action is frivolous. An action is frivolous if a Plaintiff cannot make a rational argument on the law or facts in support of his claims. Wiggins v. New Mexico State Supreme Court Clerk, 664 F.2d 812 (10th Cir. 1981).

This action is clearly frivolous. The Plaintiff alleges that Defendants failed to investigate a burglary of his parent's home in Tulsa, Oklahoma in 1980. Plaintiff's complaint was filed in this Court on February 12, 1986, clearly more than two years after the events of which he complains occurred. Thus, aside from any other basis, Plaintiff's claim is barred by the two-year statute of limitations applicable to 42 U.S.C. §1983. In addition, Plaintiff has failed to allege any facts indicating

that his personal constitutional rights were violated. Therefore, Plaintiff is unable to make a rational argument on the law or the facts that would support a claim under 42 U.S.C. §1983, and Plaintiff's claim must be dismissed as frivolous. Lady Ann's Oddities, Inc. v. Macy, 519 F.Supp. 1140 (W.D. Okl. 1981).

Accordingly, this action in its entirety is dismissed with prejudice.

DATED this 7th day of October, 1986.



JAMES G. ELLISON
UNITED STATES DISTRICT JUDGE

entered

FILED
OCT 7 1986
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

EXHIBIT B TO AGREEMENT OF COMPROMISE,
SETTLEMENT AND RELEASE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CENTURY EQUIPMENT LEASING CORPORATION,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 85-C-815B
)	
AMERICAN NATIONAL BANK & TRUST COMPANY,)	
)	
Defendants.)	

Notice of DISMISSAL

IT IS HEREBY STIPULATED by and between Plaintiff, Century Equipment Leasing Corporation, and Defendant, American National Bank and Trust Company, by and through the undersigned counsels, that the above entitled action be discontinued and dismissed with prejudice, each party to bear its own costs.

This stipulation is entered into because the parties have settled the above entitled action.

DATED this 7th day of ^{October} ~~August~~, 1986.

LOEFFLER AND ALLEN

BY *Sam T. Allen, IV*
Sam T. Allen, IV
Attorney for Defendant

DATED this ____ day of August, 1986.

DOYLE, HARRIS & RISELING

BY



Steven M. Harris
Michael D. Davis
P.O. Box 1679
Tulsa, Oklahoma 74127
Attorneys for Plaintiff

276-001:080186:rb

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

UNITED STATES OF AMERICA, AND)
TAMMY HARRIS, Special Agent)
for the Internal Revenue)
Service,)
)
Plaintiffs,)
)
vs.)
)
COMMUNITY BANK AND TRUST)
COMPANY AND NETTIE ROBINSON,)
Vice President/Cashier,)
)
Defendants.)

No. 82-C-1153-E

JACOB G. STEINBERG, CLERK
U.S. DISTRICT COURT

OCT - 7 1986

FILED

ORDER

NOW on this 7th day of October, 1986 comes on for hearing the above styled case and the Court, being fully advised in the premises finds as follows:

Following receipt of mandate from the Tenth Circuit Court of Appeals and pursuant to that mandate this Court has reviewed the application for attorney fees and held evidentiary hearing on the application and concludes Defendants' application should be granted in the amount of \$5,081.25. The Court finds the testimony of Mr. McKinney and Mr. Eagleton was that the issues raised in this case arose from a common core of facts and were so intertwined as to be impossible to break down. However, Mr. McKinney testified the client was actually billed substantially in excess of the original amount sought and in affidavit filed immediately after the issuance of the mandate, Mr. McKinney specifically excluded from his request time spent on issues on

which the Court found the government to be substantially justified.

The Plaintiff urges no fee should be awarded because the time sheets presented do not allow a separation of the issues and that no fee is awardable as to certain issues or in the alternative, no fee should be granted because the issues are so related that sovereign immunity precludes an award. This Court generally would agree with the position urged, however, the Tenth Circuit clearly manifested an intent that a fee be awarded on those issues on which Defendant prevailed. There is no dispute as to the reasonableness of the hourly rates charged. The Court concludes that the hours urged by Defendant in its affidavit of August 29 are reasonable.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant recover of Plaintiff the sum of \$5,081.25 as attorney fees.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

OCT -7 1986

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

JAMES R. MILLS,
Plaintiff,

vs.

MARGARET M. HECKLER,
Secretary of Health
and Human Services,

Defendant.

No. 85-C-291-E

ORDER

The Court has before it for consideration the Plaintiff's objections to the Findings and Recommendations of the Magistrate filed on June 5, 1986 in which it is recommended that Plaintiff's claim for benefits under the Social Security Act be denied and that judgment be entered for the Defendant.

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 Plaintiff is not entitled to disability benefits under the Social Security Act and that judgment be and hereby is entered for the Defendant.

DATED this 7th day of October, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

BVW/ja

06/09/86

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

FILE

ALL AMERICAN INSURANCE, CO.,)

Plaintiff,)

v.)

DAVID L. BURNS, et al.,)

Defendants.)

Case No. 85-C-821-E

Judge Clerk
U.S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

BE IT REMEMBERED on this 6th day of June, 1986, the above styled cause comes on for hearing before the undersigned Judge pursuant to the Court's Order for preliminary Pre-trial Conference. All parties appeared by and through their attorneys of record except David L. Burns, who, though properly served with Summons and Plaintiff's Motion For Summary Judgment, failed to appear, either in person or by counsel and who failed to file any pleading in opposition to Plaintiff's Motion. The Court, having examined the Plaintiff's Motion For Summary Judgment and the Defendants' Responses, having reviewed the authorities presented, and the arguments of counsel, finds that the Plaintiff's Motion For Summary Judgment should be sustained. The Court was persuaded by the Arkansas Supreme Court Case of CNA v. McGinnis, 666 S.W.2d, 689 (Ark. 1984), to the effect that for an insured to claim that he did not expect or intend to cause injury in such an action, that forms the basis of this complaint, flies in the face of all reason, common sense and experience. Exceptions should be granted to all parties adversely effected by this ruling.

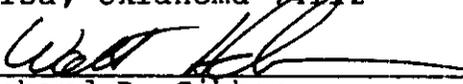
IT IS THEREFORE ORDERED, ADJUDGED and DECREED by the Court that the Motion For Summary Judgment of the Plaintiff, All American Insurance Company, is sustained. As such, Plaintiff, All American Insurance Company does not afford any liability insurance coverage to the Defendant, David Lee Burns, as a result of the lewd molestation or sexual abuse of Brandy Erbe and/or Jamie Janice Wilde. Further, Plaintiff is not obligated to defend the said David Lee Burns in case numbers CJ-85-02423 and CJ-85-02424 presently pending in the District Court of Tulsa County,

State of Oklahoma as a result of said David Lee Burns' intentional and unlawful acts and further, that Plaintiff's insurance policy is not applicable for the payment of any claims of indemnity, contribution or damages against David L. Burns by any of the Defendants herein. Exceptions allowed.

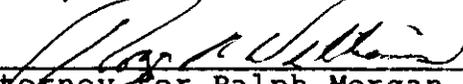
S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

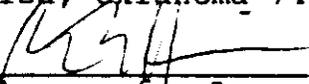
Richard D. Gibbon
1611 South Harvard
Tulsa, Oklahoma 74112


Richard D. Gibbon
Attorney for LeRoy Hall

Roger R. Williams
1605 South Denver
Tulsa, Oklahoma 74119


Attorney for Ralph Morgan
and Floyd Martin

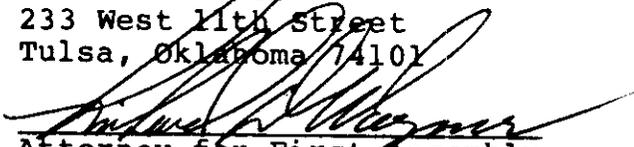
Steven R. Hickman
1700 S. W. Boulevard
P. O. Box 799
Tulsa, Oklahoma 74101


Attorney for Larry Erbe
and James O. Wilde

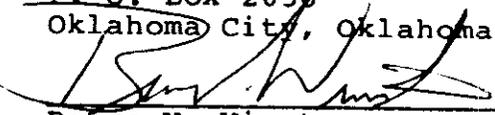
John H. Tucker
2800 Fourth National Bldg.
Tulsa, Oklahoma 74119


Attorney for Preferred Risk
Mutual Insurance Company

Richard D. Wagner
P. O. Box 2635
233 West 11th Street
Tulsa, Oklahoma 74101


Attorney for First Assembly
of God Church, Inc.

Stewart & Elder
1329 Classen Drive
P. O. Box 2056
Oklahoma City, Oklahoma 73101


Bruce V. Winston,
Attorney for Plaintiff

Best, Sharp, Thomas Glass & Atkinson
300 Oil Capitol Building
507 South Main
Tulsa, Oklahoma 74103


Walt Haskins, Attorney
for Defendant, Leroy Hall

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

LAWSON CHEMICAL PRODUCTS)
CO. OF OKLAHOMA, a)
California corporation,)
)
Plaintiff,)
)
vs.)
)
RANDY FUNSTON, ERNEST DIVIN,)
and EDWARD COOPER, a/k/a)
GEORGE E. COOPER,)
)
Defendants.)

No. 84-C-849-~~EE~~ **FILED**
OCT 15 1986
JAMES O. ELLISON
U.S. DISTRICT COURT

ORDER

This matter came on before this Court this 17th day of October, 1986, pursuant to the Joint Motion of Plaintiff, Lawson Chemical Products Co. of Oklahoma, and Defendants, Ernest Divin and Edward Cooper, a/k/a George E. Cooper, to dismiss Divin's and Cooper's Counterclaim against Lawson with prejudice and to dismiss Lawson's Complaint against Divin and Cooper only, with prejudice. The Court, having reviewed the pleadings, finds that Divin's and Cooper's Counterclaim against Lawson should be dismissed with prejudice and Lawson's Complaint against Divin and Cooper only should be dismissed with prejudice. Lawson's Complaint against the remaining Defendant, Randy Funston, is not dismissed.

IT IS SO ORDERED.

S/ JAMES O. ELLISON
JUDGE OF THE DISTRICT COURT

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

FILED

OCT 21 1986

U.S. District Court
Northern District of Oklahoma

REMCO ENERGY CORPORATION,)
INC., et al.,)
)
Plaintiffs,)
)
vs.)
)
HARVARD OIL OPERATING, INC.,)
)
Defendant.)

Case No. 85-C-253-E

ORDER

NOW ON this 16th day of October, 1986, pursuant to Joint Stipulation of the parties, and good cause being shown therefor, IT IS ORDERED that this matter be, and the same is hereby, DISMISSED WITH PREJUDICE, with each party to bear its own costs.

S/ JAMES O. ELLISON
JUDGE OF THE U. S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
OKLAHOMA

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

RANDALL JAY BRUNER, SR.;)
TERESA S. BRUNER; BRIERCROFT)
SERVICE CORPORATION; COUNTY)
TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)

Defendants.)

CIVIL ACTION NO. 86-C-601-E

FILED

SEP 11 1986

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

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 3rd day
of October, 1986. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Susan K. Morgan, Assistant District Attorney,
Tulsa County, Oklahoma; the Defendants, Randall Jay Bruner, Sr.
and Teresa S. Bruner, appear by their attorney, James E. Pohl;
and the Defendant, Briercroft Service Corporation, appears not,
but makes default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Randall Jay Bruner, Sr.
and Teresa S. Bruner, were served with a Summons and Complaint on
August 6, 1986; that Defendant, Briercroft Service Corporation,

acknowledged receipt of Summons and Complaint on June 27, 1986; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 26, 1986; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 26, 1986.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on July 14, 1986; and that the Defendant, Briercroft Service Corporation, has failed to answer and its default has been entered by the Clerk of this Court on July 30, 1986.

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

Lot Seventeen (17), Block Five (5), HOMESTEAD ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on April 24, 1985, the Defendants, Randall Jay Bruner, Sr. and Teresa S. Bruner, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their mortgage note in the amount of \$38,400.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Randall Jay Bruner, Sr. and Teresa S. Bruner, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a mortgage dated April 24, 1985, covering the above-described property. Said mortgage was recorded on April 26, 1985, in Book 4859, Page 492, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Randall Jay Bruner, Sr. and Teresa S. Bruner, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Randall Jay Bruner, Sr. and Teresa S. Bruner, are indebted to the Plaintiff in the principal sum of \$38,970.75, plus interest at the rate of twelve and one-half percent (12.5%) per annum from July 1, 1985 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Randall Jay Bruner, Sr. and Teresa S. Bruner, in the principal sum of \$38,970.75, plus interest at the rate of twelve and one-half percent (12.5%) per annum from July 1, 1985 until judgment, plus interest thereafter at the current legal rate of 5.79 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer, Tulsa County, Oklahoma, Board of County Commissioners, Tulsa County, Oklahoma, and Briercroft Service Corporation, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Randall Jay Bruner, Sr. and Teresa S. Bruner, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

JAMES E. POHL
1612 South Cincinnati
Tulsa, Oklahoma 74119
Attorney for Defendants,
Randall Jay Bruner, Sr. and
Teresa S. Bruner

Randall Jay Bruner, Sr.
RANDALL JAY BRUNER, SR.
Route 1, Box 3622
Jennings, Oklahoma 74038

Teresa S. Bruner
TERESA S. BRUNER
Route 1, Box 3622
Jennings, Oklahoma 74038

- Entered -

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT - 1986

Jack C. Stovall
U.S. DISTRICT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
CLARENCE H. FOGLE; BARBARA E.)
FOGLE; COUNTY TREASURER,)
Washington County, Oklahoma;)
BOARD OF COUNTY COMMISSIONERS,)
Washington County, Oklahoma,)
)
Defendants.)

CIVIL ACTION NO. 86-C-422-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this _____ day
of _____, 1986. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendant, County Treasurer, Washington County, Oklahoma,
appears by Lewis B. Ambler, Assistant District Attorney,
Washington County, Oklahoma; and the Defendants, Clarence H.
Fogle, Barbara E. Fogle, and Board of County Commissioners,
Washington County, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Clarence H. Fogle and
Barbara E. Fogle, acknowledged receipt of Summons and Complaint
on May 19, 1986; that Defendant, County Treasurer, Washington
County, Oklahoma, acknowledged receipt of Summons and Complaint
on May 1, 1986; and that Defendant, Board of County
Commissioners, Washington County, Oklahoma, acknowledged receipt
of Summons and Complaint on September 2, 1986.

It appears that the Defendants, County Treasurer, Washington County, Oklahoma, filed its Answer herein on May 5, 1986; and that the Defendants, Clarence H. Fogle, Barbara E. Fogle, and Board of County Commissioners, Washington County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court on September 25, 1986.

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

Lot Forty-six (46), Eastman Second Addition to Ochelata, Washington County, Oklahoma.

The Court further finds that on May 6, 1980, the Defendants, Clarence H. Fogle and Barbara E. Fogle, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$30,400.00, payable in monthly installments, with interest thereon at the rate of eleven percent (11%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Clarence H. Fogle and Barbara E. Fogle, executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated May 6, 1980, covering the above-described property. Said mortgage was recorded on May 6, 1980, in Book 737, Page 1027, in the records of Washington County, Oklahoma.

The Court further finds that the Defendants, Clarence H. Fogle and Barbara E. Fogle, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Clarence H. Fogle and Barbara E. Fogle, are indebted to the Plaintiff in the principal sum of \$31,178.31, plus accrued interest in the amount of \$2,870.69 as of January 24, 1985, plus interest accruing thereafter at the rate of 11 percent per annum or \$9.3962 per day, until judgment, plus interest thereafter at the legal rate until fully paid.

The Court further finds that the Defendant, County Treasurer, Washington County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of real property taxes in the amount of \$159.70, plus accruing interest at the rate of eighteen percent (18%) per annum as of April 1, 1986. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Washington County, Oklahoma, is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Clarence H. Fogle and Barbara E. Fogle, in the principal sum of \$31,178.31, plus accrued interest in the amount of \$2,870.69 as of January 24, 1985, plus interest accruing thereafter at the

rate of eleven percent (11%) per annum or \$9.3962 per day, until judgment, plus interest thereafter at the current legal rate of 5.79 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Washington County, Oklahoma, have and recover judgment in the amount of \$159.70, plus accruing interest at the rate of eighteen percent (18%) per annum as of April 1, 1986, for real property taxes.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Washington County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Clarence H. Fogle and Barbara E. Fogle, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of the Defendant, County Treasurer, Washington County, Oklahoma, in the amount of \$159.70, plus penalties and interest, for real property taxes which are presently due and owing on said real property;

Third:

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

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

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

S/ JAMES O. ELLISON

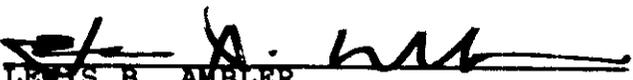
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney



PHIL PINNELL
Assistant United States Attorney



LEWIS B. AMBLER
Assistant District Attorney
Attorney for Defendant,
County Treasurer,
Washington County, Oklahoma

entered

FILED

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

OCT -3 1985

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

WILLIAM CHRIS BOHANNON,)
a minor, by his next friend,)
MICKEY BOHANNON,)
)
Plaintiff,)
vs.)
)
JAMES F. HUBBARD, et al.,)
)
Defendants.)

No. 85-C-993-C

O R D E R

Now before the Court for its consideration is the motion of defendants James Hubbard and Jennings Independent School System to dismiss pursuant to Rule 12(b)(6) F.R.Cv.P.

This action was brought pursuant to 42 U.S.C. §1983 and §1985(3). The complaint alleges that the nine-year-old plaintiff, a student at Jennings Elementary School, was ordered by two teachers to sit in a cardboard enclosure with a single opening facing the blackboard, during schoolroom hours from February, 1985 to May, 1985. The complaint alleges that such action violated certain constitutional rights of the plaintiff. Defendant Hubbard was at all relevant times the principal of Jennings Elementary School, part of the Jennings Independent School System, also named as a defendant.

Defendants should be dismissed on the ground that one in a supervisory position is not liable under the facts of the case at

bar. The appropriate standard was stated in McClelland v. Facteau, 610 F.2d 693 (10th Cir. 1979):

This Court has held that [respondeat superior] cannot be used to hold liable under section 1983 superior officers who have no affirmative link with the misconduct. Id. at 695.

The Court continued:

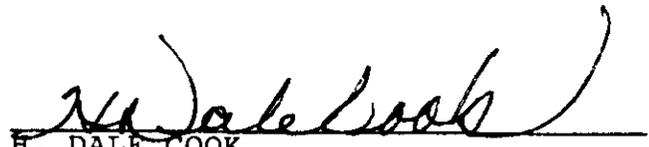
We agree with those courts that have found a cause of action under section 1983 when the defendant was in a position of responsibility, knew or should have known of the misconduct, and yet failed to act to prevent future harm. Id. at 697.

The Complaint has stated no circumstances indicating that the application of respondeat superior is appropriate to either defendant. The McClelland court stated that a superior may be sued under a theory of direct liability under the following standard:

Under direct liability, plaintiff must show the supervisor breached a duty to plaintiff which was the proximate cause of the injury. Id. at 695.

Accordingly, it is the Order of the Court that the motion for dismissal of defendants James F. Hubbard and Jennings Independent School System should be and hereby is granted.

IT IS SO ORDERED this 31st day of October, 1986.


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

Entered

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

FILED

OCT -3 1988

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

KENNETH E. BRADLEY,)
)
 Petitioner,)
)
 v.)
)
 R. B. DICK,)
)
 Chief of Police,)
 City of Tulsa, OK.,)
)
 RICHARD KALLSNICK,)
)
 City Prosecutor,)
 Tulsa, OK.,)
 and)
)
 THE CITY OF TULSA, OKLAHOMA,)
 a municipal corporation,)
)
 Respondents.)

No. 86-C-907-B

O R D E R

This matter comes before the Court on petition for writ of habeas corpus, and application for stay of execution.

The Court reads petitioner's briefs and petition as claiming a denial of his right to a speedy trial. The Court of Criminal Appeals expressed itself clearly on the issue and found no speedy trial right violated.

The claim that the Court of Criminal Appeals based its decision on erroneous facts is without merit given the court's opinion of January 21, 1986, where it affirmed the denial of post-conviction relief, stating:

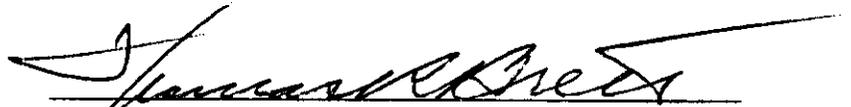
"The finding by this Court on the speedy trial issue remains the same notwithstanding the problems on the date references and is res judicata . . ." Bradley v. State of Oklahoma, Okla. Cr. No. PC-85-760 (emphasis added).

6

The Court believes that the Court of Criminal Appeals had the proper factual matters before it on rehearing when it concluded that no speedy trial right was violated. In addition, the petitioner's brief describes numerous court records as supportive of his cause but has not attached such support to his petition.

Irrespective of the purported erroneous factual basis of the State appellant court relative to failure to appear at a trial setting rather than an arraignment setting, the conclusion of that court that no constitutional speedy trial violation occurred over the nine-month period involved has ample support. See, Barker v. Wingo, 407 U.S. 514, 530 (1971); United States v. McDonald, 102 S.Ct. 1497 (1982); Gilbreath v. State, 651 P.2d 699 (Okla.Cr. 1982) (citing Wingo and its progeny); and Jones v. State, 595 P.2d 1344 (Okla.Cr. 1979). The stay and petition for writ of habeas corpus is hereby denied.

DATED this 3rd day of October, 1986.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

OCT 3 1986

BESSIE B. CAUTHON,)
)
Plaintiff,)
)
v.)
)
SAFEWAY STORES, INC., a)
Maryland corporation,)
)
Defendant.)

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

No.: 85-C-113-E

STIPULATION FOR DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff and her attorney and Defendant's counsel and would show the Court that this matter has been compromised and settled and therefore move the Court for an Order of Dismissal with Prejudice.

Bessie B. Cauthon

Bessie B. Cauthon

E. Terrill Corley

E. Terrill Corley
Attorney for Plaintiff

Paul T. Boudreaux

Paul T. Boudreaux
Attorney for Defendant

ORDER OF DISMISSAL

Now on this 30th day of Oct., 1986, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

Jack C. Silver

United States District Judge

Inc. (Hillcrest defendants). The Hillcrest defendants allege three grounds for dismissal. First, under Rule 12(b)(6) F.R.Cv.P., they assert plaintiffs' claims brought pursuant to 18 U.S.C. §1962(b)(c) and (d) Racketeer Influenced and Corrupt Organization Act (RICO) fail to state a claim upon which relief can be granted. Second, under Rule 8(e) F.R.Cv.P., they assert plaintiffs' claims are not presented in a simple, concise and direct manner. Third, under Rule 9(b), they assert plaintiffs' failure to plead fraud with sufficient particularity.

Plaintiffs are two doctors which were hired in 1982 by Hillcrest Medical Center to establish and operate a clinic for patients who were apparently infertile. Treatment at the clinic was to include use of a recently developed medical technology known as in vitro fertilization and embryo transfer techniques.

It is alleged that in the summer of 1981, plaintiff Bundren was chief OB-GYN resident at the Eastern Virginia Medical School where he was involved in pioneering in vitro fertilization and embryo transfer. Plaintiff Wortham was also then in Virginia, first doing anti-sperm antibody testing at a laboratory he founded in Norfolk, then serving as director of the in vitro fertilization lab that defendant Howard Jones helped establish.

Plaintiffs allege they were desirous of relocating their lab at the conclusion of plaintiff Bundren's residency and made contact with several entities, including Hillcrest.

Plaintiffs contend thereafter negotiations commenced and certain of the Hillcrest defendants made false promises and representations to plaintiffs to induce them to come to

Hillcrest. These purported inducements included an offer to join Hillcrest in a "proposed enterprise", which later became Hillcrest Infertility Center, and offers of positions at Oklahoma University's Tulsa Medical School. Other alleged inducement offers included a plan for plaintiffs to buy stock in the new corporation and other various attractive fringe benefits.

Plaintiffs assert they rejected many other attractive offers and accepted Hillcrest's positions to their detriment. Plaintiffs contend that upon moving to Tulsa, Hillcrest failed to keep these various promises and representations. Plaintiffs allege they were misled by these defendants from 1982 through 1985 by the Hillcrest defendants' fraudulent promise to mediate their differences. Further they allege during this same timeframe, plaintiffs maintained the belief that these defendants were acting and negotiating in good faith, when in fact the Hillcrest defendants never intended to fulfill the promises or representations.

Federal jurisdiction is premised on the claim that the defendants, individually and as members of a conspiracy, committed civil RICO violations by transmitting these various promises through use of interstate mail and telephonic communications, and by the offer to purchase stock in the newly formed Hillcrest Infertility Center, Inc. Plaintiffs also assert various state law pendent claims of fraud, breach of contract, intentional interference with business relationships and wrongful discharge.

In their motion to dismiss under Rule 12(b)(6) F.R.Cv.P., the Hillcrest defendants contend that plaintiffs' substantive

RICO claim is defective in that plaintiffs failed to show that the Hillcrest defendants engaged in a pattern of racketeering activity as required under RICO, 18 U.S.C. §1962(c). This Court agrees.

In Sedima v. Imrex Co., 105 S.Ct. 3275 (1985), the court stated that a plaintiff seeking to state a claim based on a violation of §1962(c) must allege 1) conduct 2) of an enterprise 3) through a pattern 4) of racketeering activity. Id. at 3285. The plaintiff must, of course, allege each of these elements to state a claim. The Court finds that plaintiffs have failed to properly allege a "pattern of racketeering activity", an essential element of a RICO cause of action. Plaintiffs argue that the commission of two or more predicate acts can constitute a pattern of racketeering activity. Mail fraud (18 U.S.C. §1341), wire fraud (18 U.S.C. §1343) and securities fraud (15 U.S.C. §78j(b)) are predicate acts which constitute racketeering activity under 18 U.S.C. §1961(1). Under RICO, a pattern "requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years ... after the commission of a prior act of racketeering activity" 18 U.S.C. §1961(5). Plaintiffs allege that the Hillcrest defendants offered securities and made false representations through the use of federal mail or wire on more than one occasion within a ten-year period of time. However, mere commission of the predicate acts is not sufficient to state a claim under RICO. In Sedima, the court said, "conducting an enterprise that affects interstate commerce is obviously not

in itself a violation of §1962, nor is mere commission of the predicate offenses." Id. at 3285. In support of their position plaintiffs rely on federal cases which were decided prior to Sedima. However, in Sedima the Supreme Court elaborated on the requirement of "pattern" by stating:

The legislative history supports the view that two isolated acts of racketeering activity do not constitute a pattern. As the Senate Report explained: "The target of [RICO] is thus not sporadic activity. The infiltration of legitimate business normally requires more than one 'racketeering activity' and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern." (citation omitted). Similarly, the sponsor of the Senate bill, after quoting this portion of the Report pointed out to his colleagues that "[t]he term 'pattern' itself requires the showing of a relationship So, therefore, proof of two acts of racketeering activity, without more, does not establish a pattern" (citation omitted). Sedima at 3285 f.n.14.

In Professional Assets Management, Inc. v. Penn Square Bank, 616 F.Supp. 1418 (W.D.Okla. 1985), the court had before it an alleged illegal scheme in an accounting firm's preparation and issuance of a single audit report on Penn Square Bank. It was alleged that defendants employed the mails and wire or telephonic communications in interstate commerce on more than one occasion to carry out this scheme. In citing footnote 14 in Sedima, the court held that although many constituent actions were necessary to prepare the audit report, it was a single, unified transaction and therefore no "pattern" of activity was shown. The court dismissed the complaint as insufficient, reasoning that a pattern cannot arise simply from one engagement to perform one audit of

Penn Square. Penn Square Bank, 616 F.Supp. at 1422. Proper emphasis must be placed on "pattern" as an independent component of a RICO claim.

Similarly, in a recent opinion of United States District Judge Thomas R. Brett of the Northern District of Oklahoma in Kirk v. General Signal Corp., No. 85-C-48-B, filed March 20, 1986, defendants filed a Rule 12(b)(6) motion to dismiss plaintiff's RICO fraud claim for failure to allege a "pattern of racketeering activity". In Kirk, plaintiffs alleged that defendants made numerous fraudulent representations, both before and after the signing of a written stock purchase agreement, to induce plaintiffs to sell their stock to defendants. Plaintiffs claimed that these false representations, made through the mails and wire communications as part of a scheme to induce them to part with their stock, violated the RICO statute.

After an exhaustive analysis of the authorities addressing the RICO pattern requirement, Judge Brett concluded that plaintiffs' complaint failed to properly plead the required "pattern of racketeering activity". Judge Brett stated:

One gets tangled in semantics when such terms as scheme, activity, transaction, effort, or episode are employed in the continuity and relationship analysis. Each factual situation must be examined to determine whether or not there is a sufficient number of independent criminal acts to satisfy the "continuity" factor of Sedima. In the case before the court there is but a single alleged criminal activity which is the acquisition of the plaintiff's stock as is evidenced by the written contract. The wire and mail communications were each sent incident to carrying out the stock (security) acquisition. (Slip Opinion p.12).

In dismissing plaintiffs' complaint under Rule 12(b)(6), Judge Brett elaborated on the policy reasons why plaintiffs' complaint should be dismissed:

Such a single contractual transaction, brought about by various mail and wire communications incident thereto, does not provide the required RICO "pattern of racketeering activity". If it does, every contract to purchase or sell a thing of value where wire or mail communication are employed in the consummation of the transaction, provides the potential for a viable RICO claim. The Court does not believe such would comport with the intent of Congress. (Slip Opinion p.13).

The Tenth Circuit has not had the occasion to review this RICO issue since the issuance of Sedima. However, the Eighth Circuit has adopted the "single scheme" analysis in rejecting claims brought under RICO which involve a single unified event involving more than one predicate act. The Eighth Circuit discussed the parameters of "pattern" in Superior Oil Co. v. Fulmer, 785 F.2d 252 (8th Cir. 1986). In Superior Oil, the court held that several related acts of mail and wire fraud as part of a single scheme to divert natural gas from Superior Oil's pipeline did not amount to a pattern of racketeering activity. There was no evidence suggesting that such activities had occurred previously or that the individuals involved were engaged in other illegal activities prohibited under RICO.

Therefore, under the facts set forth in plaintiffs' complaint, the Court finds plaintiffs have not properly set forth a cause of action under RICO rendering the complaint fatally defective.

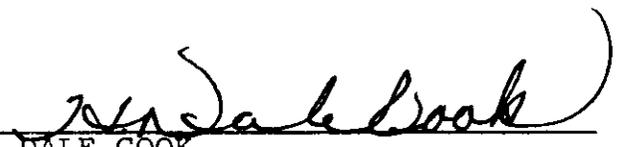
Under plaintiffs' RICO conspiracy claim, the Court is cognizant that plaintiffs have alleged that the Hillcrest defendants conspired with each other and other named defendants in furtherance of an alleged fraudulent scheme. Under 18 U.S.C. §1962(d) a plaintiff must allege that a pattern of racketeering activity was contemplated by the parties. RICO conspiracy does not require the commission of the illegal acts, only contemplation of a pattern of activity. Plaintiffs allege that the Hillcrest defendants conspired to induce plaintiffs to Tulsa, under false pretenses, with no intention of fulfilling their representations. The conspiracy alleged is the inducement by false representation. However, RICO conspiracy requires the objective manifestation of an agreement to participate in a pattern of racketeering activity. The racketeering activities alleged are the predicate acts of mail, wire and securities fraud. The complaint is void of any allegations that the Hillcrest defendants agreed or contemplated participating in a pattern of wire, mail or securities fraud previously to or after the one isolated scheme set forth in the substantive RICO count. The Court finds the complaint silent as to any allegations of a continuing racketeering conspiracy and therefore insufficient to state a claim under 18 U.S.C. §1962(d).

Whereas the Court finds the Hillcrest defendants' motion to dismiss under Rule 12(b)(6) F.R.Cv.P. meritorious, it is unnecessary to address the issues raised under defendants' additional grounds for dismissal Rules 9(b) and 8(e) F.R.Cv.P.

Federal jurisdiction is premised upon 18 U.S.C. §1965, and federal question jurisdiction under 28 U.S.C. §1331. Diversity does not exist between the parties; therefore, plaintiffs' pendent claims are dismissed for lack of jurisdiction.

WHEREFORE, premises considered, it is the Order of the Court that the motion to dismiss brought by defendants Hillcrest Medical Center, Hillcrest Services Company, Hillcrest Medical Center Foundation, Inc., John C. Goldthorpe, Mark Ambrosius, Ira Schlezinger, James K. Tanner, James D. Harvey, Timothy Driskill, Steven Landgarten, Donald R. Tredway, Everett E. Graff, Blair R. Suellentrop, Barry M. Davis and Hillcrest Infertility Center, Inc., is hereby granted over and against the plaintiffs J. Clark Bundren and J. W. Edward Wortham, Jr.

IT IS SO ORDERED this 3rd day of October, 1986.



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

Entered

FILED

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

OCT - 2 1986

CHERRY LANE MUSIC PUBLISHING)
CO., INC., et al.,)
)
Plaintiffs,)
)
vs.)
)
STEPHEN M. LOVELY,)
)
Defendant.)

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

No. 86-C-145-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 Plaintiffs recover judgment pursuant to 17 U.S.C. § 504(c)(1) in the amount of \$1,500 for each of the four causes of action alleged for a total damage award of \$6,000 with interest thereon at the rate of 5.79 per cent as provided by law, and their costs of action.

IT IS FURTHER ORDERED that the Defendant, and all parties acting under his direction, control, permission or license, be enjoined from publicly performing the musical compositions entitled "My Sweet Lady", "Speak Softly Love (Love Theme from the Godfather)", "Still", and "The Way We Were"; and from causing or permitting these compositions to be publicly performed in the Defendant's premises, or in any place owned, controlled or conducted by Defendant, and from aiding or abetting the public performance of such compositions in any such place or otherwise.

IT IS FURTHER ORDERED that Plaintiffs recover attorney fees

in the above styled case upon proper application.

DATED at Tulsa, Oklahoma this 2^d day of October, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

OCT -2 1986

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

SUPERIOR FIRE PROTECTION,)
INC., a corporation,)
)
Plaintiff,)
)
v.)
)
INTERNATIONAL FITNESS CENTER)
OF TULSA, INC.,; DAVID J.)
GALLI d/b/a INTERNATIONAL)
FITNESS CENTERS,)
)
Defendant.)

Case No. 86-C-44 C

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled and therefore, it is not necessary that this action remain upon the calender of the Court.

IT IS ORDERED that this action is dismissed with prejudice, the Court having been advised that the parties have fully negotiated and settled all claims between the parties.

IT IS FURTHER ORDERED that the clerk forthwith served copies of this judgment by United States Mail upon the attorneys for the parties appearing in this action.

Dated this 2 day of ^{oct} ~~September~~, 1986.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

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

OCT - 2 1986

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

J. TOWNLEY PRICE,)
)
Plaintiff,)
)
vs.)
)
OKLAHOMA COLLEGE OF OSTEOPATHIC)
MEDICINE & SURGERY, et al.,)
)
Defendants.)

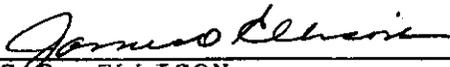
No. 85-C-600-E

ADMINISTRATIVE CLOSING ORDER

The Defendants having filed motion for abstention 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 twenty (20) days of a final adjudication of the state court 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 2^d day of October, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

OCT 2 1986

af

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

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

JAMES BRUNO,)
)
 Plaintiff,)
)
 vs.)
)
 GTE PRODUCTS CORPORATION,)
)
 Defendant.)

No. 83-C-637-E ✓

O R D E R

NOW on this 1st day of October, 1986 comes on for hearing
the above captioned matter and the Court, being fully advised in
the premises finds:

Motion of Plaintiff's attorney to dismiss is granted.

It is so Ordered.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

OCT -1 1986

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

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

JAMES H. BULLARD and COYWILLOW F.)
BULLARD,)

Plaintiffs,)

v.)

No. 86-C-732-B

COLLINS INDUSTRIES, INC., a New)
Jersey Corporation, a/k/a)
COLLINS COMPANY, LTD.,)

Defendants.)

JOURNAL ENTRY OF JUDGMENT

Now, on this 1st day of October, 1986,
upon the Application of the plaintiffs and supporting Affidavit
in the above-entitled cause, and pursuant to Rule 55(b)(1) of the
Federal Rules of Civil Procedure; further, upon the finding of
the failure of defendant to plead or otherwise defend in this
action, and its default having been entered herein, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiffs have and
recover judgment against the defendant in the sum of \$500,000.00,
together with costs, and such other relief as the Court may deem
proper.

ENTERED this 1st day of October, 1986.

JACK SILVER, CLERK,
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

By J. Cleveland
Deputy

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

FILED

OCT - 1 1986

RICKY B. HAMMILL,)
)
 Plaintiff,)
)
 vs.)
)
 RALSTON PURINA COMPANY,)
)
 Defendant and Third)
 Party Plaintiff,)
)
 vs.)
)
 ABBCO INDUSTRIAL CONSTRUCTION)
 INC.,)
)
 Third Party Defendant.)

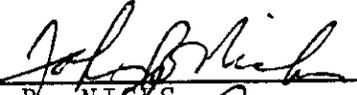
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Case No: 85-C-146-E

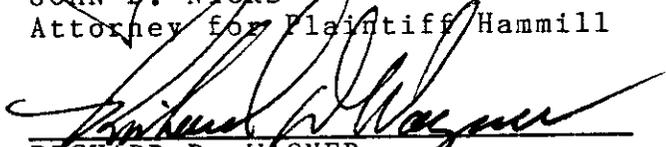
STIPULATION ^{OF} FOR DISMISSAL

It is hereby stipulated that the above entitled action may be dismissed with prejudice. Said dismissal shall operate as to Ricky Hammill's claim against Ralston Purina Company and Ralston Purina Company's claim against Abbco Industrial Construction, Inc. Each party to bear his own costs.

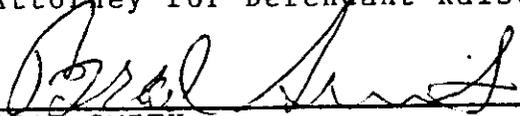
DATED this 30 day of Sept, 1986.



JOHN B. NICKS
Attorney for Plaintiff Hammill



RICHARD D. WAGNER
Attorney for Defendant Ralston Purina



BRAD SMITH
Attorney for Third Party Defendant Abbco

