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05-15-87

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

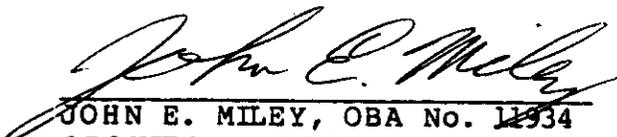
FILE  
MAY 20 1987  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

SOGELEASE CORPORATION, )  
a Delaware corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WILLIAM J. PENNINGTON, )  
individually and d/b/a )  
Flash Photo, )  
 )  
Defendants. )

No. 86-C-863-E

OF  
STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

SOGELEASE CORPORATION, and WILLIAM J. PENNINGTON, pursuant to Rule 41(a)(1) of the Fed. R. Civ. P. hereby stipulate to the dismissal of the claims of SOGELEASE CORPORATION against WILLIAM J. PENNINGTON in this action without prejudice and mutually release each other from liability for costs, attorneys' fees or other expenses incurred in this action to date.

  
JOHN E. MILEY, OBA No. 11934  
ABOWITZ & WELCH  
15 North Robinson, 10th Floor  
Post Office Box 1937  
Oklahoma City, Oklahoma 73101  
(405) 236-4645  
Attorney for Plaintiff

  
GRAYSON L. RICE  
2300 East 14th Street, Ste. 210  
Tulsa, Oklahoma 74104  
(918) 749-0493

Attorney for Defendant

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

FILED

MAY 20 1987  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

DAVID W. REYNOLDS,  
Plaintiff,  
vs.  
THE HARTFORD LIFE  
INSURANCE COMPANY,  
Defendant.

No. 86-C-752-E

ORDER OF DISMISSAL

On this 19<sup>th</sup> day of May, 1987, upon written application of the parties for an order of dismissal with prejudice of the Petition and all causes of action, the Court, having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Petition and have requested the Court to dismiss the Petition with prejudice to any future action, and the Court, being fully advised in the premises, finds that said Petition should be dismissed; it is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the Petition and all causes of action of the Plaintiff filed herein against the Defendant be and the same are hereby dismissed with prejudice to any future action.

57 JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

MAY 20 1987

BOBBY J. RICHARDS and  
JOAN R. RICHARDS,  
  
Plaintiffs,  
  
vs.  
  
AMERICAN FIRE AND CASUALTY  
COMPANY OF THE OHIO CASUALTY  
GROUP OF INSURANCE COMPANIES,  
  
Defendants.

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

Case No. 86-C-666-C

APPLICATION OF PLAINTIFFS TO DISMISS THIS ACTION  
WITH PREJUDICE

Come now the plaintiffs, Bobby J. Richards and Joan R. Richards, and respectfully show the Court as follows:

1. That on the 20th day of May, 1987, the District Court of Tulsa County, State of Oklahoma, vacated, set aside, and held for naught the default judgment rendered on June 3, 1986, in Cause No. CJ-86-02969 in said Court.

2. The basis for this suit has been extinguished.

3. Plaintiffs have compromised and settled all of their claims and causes of action which they had against the defendants and have executed a general release.

4. That this action should be dismissed with prejudice.

WHEREFORE, plaintiffs, Bobby J. Richards and Joan R. Richards, pray that this action be dismissed by the Court with prejudice.

*Bobby J. Richards*  
BOBBY J. RICHARDS, Plaintiff  
*Joan R. Richards*  
JOAN R. RICHARDS, Plaintiff  
*Louis C. Pappas*  
LOUIS C. PAPPAS, Attorney for  
Plaintiffs. *DBA No. 6887*

NDG:kb

05-11-87 **F I L E D**

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

MAY 20 1987

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

OVID L. PATTERSON and )  
NORMA J. PATTERSON, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
FIBREBOARD CORPORATION, )  
et al., )  
 )  
Defendants. )

No. 85-C-909-B

ORDER OF DISMISSAL

Now on this 19<sup>th</sup> day of May, 1987, 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 ARMSTRONG WORLD INDUSTRIES, INC., a/k/a Armstrong Cork.

  
UNITED STATES DISTRICT JUDGE

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

FILED

BRAD MOHON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MELINDA FOSTER, Individually, )  
 and as County Assessor of )  
 Rogers County, Oklahoma, )  
 )  
 Defendant. )

No. 86-C-610-B

MAY 20 1987  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

Now on the 19th day of May, 1987, upon consideration of the joint motion for dismissal with prejudice filed by the parties hereto,

IT IS HEREBY ORDERED that on the above styled and numbered cause of action be and the same is hereby dismissed with prejudice and that each party bear their own attorney's fees, costs and expenses.

S/ THOMAS R. BRETT  
U. S. DISTRICT JUDGE



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

FILED

CHERRY LANE MUSIC PUBLISHING )  
CO., INC., et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
PETROLEUM CLUB OF TULSA, )  
INC., )  
 )  
Defendant. )

MAY 20 1987

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

No. 87-C-174-B

ORDER OF DISMISSAL

This matter comes on for consideration on the application of the parties for an Order of Dismissal in this action, based upon the parties' settlement. The Court finds that this application should be approved, and this action dismissed.

IT IS SO ORDERED this 19<sup>th</sup> day of May, 1987.

S/ THOMAS R. BRETT

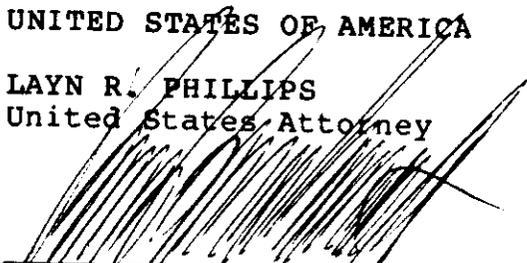
UNITED STATES DISTRICT JUDGE



APPROVED AS TO FORM AND CONTENT:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

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

  
EUGENE ROBINSON  
P.O. Box 2619  
Tulsa, Oklahoma 74101-2619  
(918) 584-3391  
Attorney for Plaintiff  
RANDOLPH W. WALKER

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 20 1987

U.S. DISTRICT COURT

M. T. WARD and DANIEL V. WARD, )  
d/b/a WARD'S RESTAURANT , )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 THE ST. PAUL INSURANCE COMPANY, )  
 a foreign corporation, )  
 )  
 Defendant. )

Case No. 85-C-663-E

JUDGMENT

On the 10th day of April, 1987, the matter of the Defendant's Offer to Confess Judgment and Plaintiffs' Notice Of Acceptance of Judgment filed pursuant to FRCivP 68 on April 10, 1987, comes on to be heard by the Court, and upon consideration thereof, the Court finds that judgment should be entered thereon;

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiffs M. T. Ward and Daniel V. Ward d/b/a Ward's Restaurant be and they are hereby granted judgment against the Defendant, The St. Paul Insurance Company, a corporation, for all claims plead in the Plaintiffs' complaint filed herein for the sum of \$202,000.00, together with accrued interest in the amount of \$71,142.27 through and including April 10, 1987, and interest thereafter accruing at the per diem rate of \$83.01 until all the principal, interest, costs and Plaintiffs' reasonable attorneys fees shall be fully paid, for costs of the Plaintiffs in the sum and amount of \$13,000, and Plaintiffs' reasonable attorneys fees to be determined by agreement of the parties on or before April 20, 1987, and failing such agreement to then be set and determin-

ed, after notice and hearing, by the Court on motion of the Plaintiffs, for all of which let general execution issue.

DATED: <sup>May</sup> ~~April~~ \_\_, 1987.

*JAMES O. ELLISON*

James O. Ellison,  
United States District Judge

APPROVED:

*Jack N. Herrold*  
\_\_\_\_\_  
Jack N. Herrold OBA#4141  
Herrold, Gregg & Herrold, Inc.  
1719 East 71st Street  
Tulsa, Oklahoma 74136  
Attorneys for Plaintiffs

*Tom E. Mullen*  
\_\_\_\_\_  
Tom E. Mullen OBA#6500  
Fenton, Fenton, Reneau, Smith  
& Moon  
One Leadership Square, Suite 800  
211 North Robinson  
Oklahoma City, Oklahoma 73102  
Attorneys for Defendant

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

OSAGE COUNTY CONSERVATION )  
DISTRICT, A Governmental )  
Subdivision of the State of )  
Oklahoma, and a public body )  
politic, )

Plaintiff, )

vs. )

SURFACE INTEREST ONLY OF )  
200 ACRES OF LAND DESCRIBED )  
AS: Site 22 the Southeast )  
Quarter of the Southeast )  
Quarter of Section 22, and the )  
Northeast Quarter, Section 27 )  
more or less, all in Township )  
28 North, Range 11 East, )  
Osage County, Oklahoma, )  
Owner: IRA G. KENNEDY, JR. )  
Lessee: BILL STROM, )

and THE UNITED STATES OF )  
AMERICA, )

Defendants. )

CIVIL ACTION NO. 85-C-957-E

FILED

MAY 19 1987

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

STIPULATION OF DISMISSAL

Pursuant to Rule 71A(i)(2) of the Federal Rules of Civil Procedure the Plaintiff, Osage County Conservation District, by its attorney of record, William H. Castor, and the Defendant, United States of America, acting as a Trustee for the Defendant, Ira G. Kennedy, Jr., through Phil Pinnell, Assistant United States Attorney, having fully settled all claims asserted by the Plaintiff in this litigation, hereby stipulate to the dismissal of all such claims with prejudice.

Dated this 18<sup>th</sup> day of May, 1987.

RORSCHACH, PITCHER,  
CASTOR & HARTLEY

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

*Wm H. Castor*

WILLIAM H. CASTOR  
Vinita Professional Bldg.  
244 South Scraper Street  
Vinita, Oklahoma 74301-0492  
(918) 256-3660  
Attorney for Plaintiff  
OSAGE COUNTY CONSERVATION  
DISTRICT

*Phil Pinnell*

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

FILED

MAY 15 1987

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

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

RACO CAR WASH SYSTEMS, INC.,

Plaintiff,

v.

JOE BLEVINS, d/b/a SPOT-LESS CAR WASH,

Defendant.

No. 86-C-116-E

CONSENT DECREE  
(FINDINGS OF FACT, CONCLUSIONS OF LAW,  
and  
JUDGMENT)

Now, on this 14<sup>th</sup> day of May, 1987, being a judicial day of Court, comes on for hearing the above-styled Cause. The Plaintiff appears by and through its counsel, Mr. Fred P. Gilbert, of Head, Johnson & Stevenson, P.A., of Tulsa; and the Defendant appears by and through his counsel, Mr. Marion M. Dyer, of Broken Arrow.

The Court is informed that the Parties have reached a tentative settlement, subject to the Court's approval. The Court has examined the proposed settlement, and finds it to be fair and just under the circumstances of this case. Based on the Parties' own stipulations, then, the Court FINDS:

1. The Plaintiff is a Missouri corporation with its head offices and principal place of business situated outside of Oklahoma. The Defendant is a resident of, and this Cause has arisen in, Tulsa County, State of Oklahoma, and within the territorial jurisdiction of the Northern District of Oklahoma.

2. The Plaintiff is the owner of U.S. Trademark Registration No. 1,180,871, in and to its own corporate name of "RACO," and logo.
3. The Plaintiff is the owner of U.S. Service Mark Registration No. 1,222,083, for "Spot-Not," and U.S. Trademark Registration No. 1,356,013, for "No Spot Rinse System," and Oklahoma Trademark Registration No. 20370, for "No Spot," and No. 20424, for "No Spot Rinse System."
4. The Plaintiff has copyrighted its instructional materials and placards.
5. There is association in the public's mind between the aforesaid tradename and service- and trademarks, and the Plaintiff as the source of the corresponding goods and services.
6. The Defendant has used and continues to use the Plaintiff's corporate name of "RACO" and logo, the terms "Spot-Not" and "No Spot," and the word "Spot" in a color and style of print which is confusingly similar to the Plaintiff's aforesaid marks.
7. By the Defendant's use of the Plaintiff's corporate name "RACO" and logo, of the Plaintiff's trademarks "Spot-Not" and "No Spot," of the word "Spot" in a mode confusingly similar to the Plaintiff's marks "Spot-Not" and "No Spot," a likelihood of confusion exists in the mind of the public that the Defendant's products and services are derived from the Plaintiff.
8. The Defendant has copied or has had copied, and has displayed and continues to display placards containing instructional materials and text either identical or substantially similar to the matter protected by the Plaintiff's aforesaid copyright.
9. By agreement of the Parties, no damages for the foregoing acts are found by the Court.

Based on the foregoing Findings, the Court therefore CONCLUDES:

1. This Court has personal and subject-matter jurisdiction, both diversity and Federal, over the Parties and the Cause herein.
2. The Plaintiff's U.S. Trademark Registration No. 1,180,871, in and to its corporate name of "RACO," and logo, is lawful, valid and enforceable.
3. The Plaintiff's U.S. Service Mark Registration, No. 1,222,063, for "Spot-Not," and U.S. Trademark Registration No. 1,356,013, for "No Spot Rinse System," and Oklahoma Trademark Registrations, No. 20370, for "No Spot," and No. 20424, for "No Spot Rinse System," are lawful, valid and enforceable.
4. The Plaintiff's copyright in its instructional materials and placards and text is lawful, valid and enforceable.
5. The acts of the Defendant complained of herein constitute infringement of the Plaintiff's trade name and logo, of the Plaintiff's service- and trademarks, and of the Plaintiff's copyright, and unfair competition with the Plaintiff.
6. The Plaintiff is entitled to a permanent writ of injunction, enjoining the Defendant from the further unauthorized use (1) of the Plaintiff's corporate name of "RACO" and logo, (2) of the Plaintiff's marks "Spot-Not" and "No-Spot," (3) of the word of "Spot" in a mode, particularly in color and style of type or font, confusingly similar to that employed by the Plaintiff for its marks of "Spot-Not" and "No-Spot," (4) of any names or marks confusingly similar thereto; and (5) from the further unauthorized copying, use or display of the placards, text or materials covered by the Plaintiff's copyright.
7. The Plaintiff is entitled to all its costs herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED By the Court that:

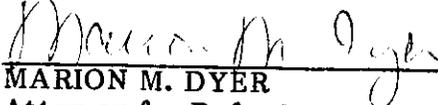
1. The Defendant is hereby permanently enjoined from any and all further use (1) of the Plaintiff's corporate name "RACO" and logo; (2) of the Plaintiff's marks "No Spot" and "Spot-Not"; (3) of the word "Spot" in a mode, particularly in color and style of type or font, confusingly similar to that used by the Plaintiff for its marks "Spot-Not" and "No-Spot"; (4) of any other names or marks confusingly similar to "RACO," "Spot-Not," or "No Spot"; and (5) from the further unauthorized copying, use or display of the placards, text or materials covered by the Plaintiff's copyright.
2. This Judgment shall constitute the Court's Writ of Injunction. By agreement, the Defendant's attorney shall accept receipt of this Judgment as service on his client.
3. The Plaintiff is entitled to its costs herein, for which let execution lie.

IT IS SO ORDERED, this 14<sup>th</sup> day of May, 1987.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO CONTENT AND FORM:

  
FRED P. GILBERT  
Attorney for Plaintiff

  
MARION M. DYER  
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EMERY F. THOMPSON, )  
 )  
 Defendant. )

FILED

MAY 15 1987

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

CIVIL ACTION NO. 86-C-891-C

ORDER OF DISMISSAL

Now on this 15 day of May, 1987, it appears  
that the Defendant in the captioned case has not been located  
within the Northern District of Oklahoma, and therefore attempts  
to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against  
Defendant, EMERY F. THOMPSON, be and is dismissed without  
prejudice.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

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

MAY 15 1987

Travis Jerome Brooks

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

VS

Case No. 86-C-597-C

Ottawa County Sheriff

REPORT AND RECOMMENDATION OF U.S. MAGISTRATE

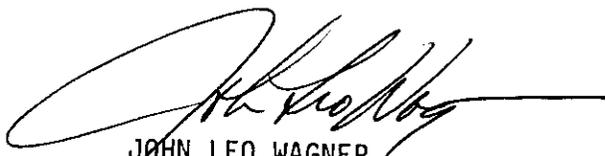
On the 12 day of May, 1987, this matter came  
on for hearing before Magistrate John Leo Wagner on  
Status Conference

The following recommendations were made by the Magistrate:

Upon agreement of the parties, case to be dismissed without  
prejudice.

Pursuant to Local Rule 32(c)(2), parties are given ten (10)  
days from the above filing date to file any objections with  
supporting brief.

Dated May 13, 1987

  
JOHN LEO WAGNER  
UNITED STATES MAGISTRATE

Copies to be sent to all counsel of record. \_\_\_\_\_

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 \$2,448.00 in United States )  
 Currency; 1972 Chevrolet )  
 El Camino; Ranch at 2450 West )  
 43rd Street North, Tulsa, )  
 Osage County, Oklahoma; )  
 Condominium at 13510 East )  
 30th Place, #B, Tulsa, Tulsa )  
 County, Oklahoma; Strip )  
 Shopping Center at 3636 North )  
 Peoria, Tulsa, Tulsa County )  
 Oklahoma; Fast Track Lounge )  
 a/k/a Foxtrot Club at 2530 )  
 Mohawk Boulevard, Tulsa, Tulsa )  
 County, Oklahoma; Residence )  
 at 4120 North Frankfort Place, )  
 Tulsa, Tulsa County, Oklahoma; )  
 and Residence at 332 Mohawk )  
 Boulevard, Tulsa, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants. )

FILED

MAY 15 1987

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

CIVIL ACTION NO. 86-C-790-E

JUDGMENT OF FORFEITURE

This cause having come before this Court upon Plaintiff's Application for Default Judgment and being otherwise fully apprised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that judgment be entered against the Defendant Property, Residence at 332 Mohawk Boulevard, Tulsa, Tulsa County, Oklahoma, and against all persons interested in such property other than the joint Claimants, Cherry Foster and Raymond Foster, and that the said property be

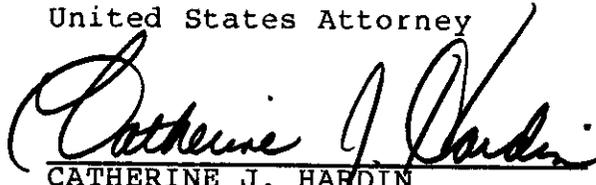
and the same is hereby forfeited to the United States of  
America.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

  
CATHERINE J. HARDIN  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 \$2,448.00 in United States )  
 Currency; 1972 Chevrolet )  
 El Camino; Ranch at 2450 West )  
 43rd Street North, Tulsa, )  
 Osage County, Oklahoma; )  
 Condominium at 13510 East )  
 30th Place, #B, Tulsa, Tulsa )  
 County, Oklahoma; Strip )  
 Shopping Center at 3636 North )  
 Peoria, Tulsa, Tulsa County )  
 Oklahoma; Fast Track Lounge )  
 a/k/a Foxtrot Club at 2530 )  
 Mohawk Boulevard, Tulsa, Tulsa )  
 County, Oklahoma; Residence )  
 at 4120 North Frankfort Place, )  
 Tulsa, Tulsa County, Oklahoma; )  
 and Residence at 332 Mohawk )  
 Boulevard, Tulsa, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants. )

CIVIL ACTION NO. 86-C-790-E

FILED

MAY 15 1987

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

JUDGMENT OF FORFEITURE

This cause having come before this Court upon  
Plaintiff's Application for Default Judgment and being otherwise  
fully apprised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that judgment be entered  
against the Defendant Property, Ranch at 2450 West 43rd Street,  
Tulsa, Osage County, Oklahoma, and against all persons interested  
in such property other than the joint Claimants, Steve Cowen and

Cecil Drummond, and that the said property be and the same is hereby forfeited to the United States of America.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

---

CATHERINE J. HARDIN  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 \$2,448.00 in United States )  
 Currency; 1972 Chevrolet )  
 El Camino; Ranch at 2450 West )  
 43rd Street North, Tulsa, )  
 Osage County, Oklahoma; )  
 Condominium at 13510 East )  
 30th Place, #B, Tulsa, Tulsa )  
 County, Oklahoma; Strip )  
 Shopping Center at 3636 North )  
 Peoria, Tulsa, Tulsa County )  
 Oklahoma; Fast Track Lounge )  
 a/k/a Foxtrot Club at 2530 )  
 Mohawk Boulevard, Tulsa, Tulsa )  
 County, Oklahoma; Residence )  
 at 4120 North Frankfort Place, )  
 Tulsa, Tulsa County, Oklahoma; )  
 and Residence at 332 Mohawk )  
 Boulevard, Tulsa, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants. )

FILED

MAY 15 1987

J. H. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 86-C-790-E

JUDGMENT OF FORFEITURE

This cause having come before this Court upon  
Plaintiff's Application for Default Judgment and being otherwise  
fully apprised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that judgment be entered  
against the Defendant Property, The Fast Track Lounge at 2530  
Mohawk Boulevard, Tulsa, Tulsa County, Oklahoma, and against all  
persons interested in such property, and that the said property

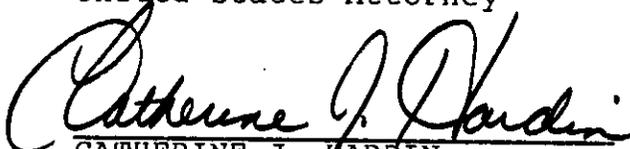
be and the same is hereby forfeited to the United States of  
America.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

  
CATHERINE J. HARDIN  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 \$2,448.00 in United States )  
 Currency; 1972 Chevrolet )  
 El Camino; Ranch at 2450 West )  
 43rd Street North, Tulsa, )  
 Osage County, Oklahoma; )  
 Condominium at 13510 East )  
 30th Place, #B, Tulsa, Tulsa )  
 County, Oklahoma; Strip )  
 Shopping Center at 3636 North )  
 Peoria, Tulsa, Tulsa County )  
 Oklahoma; Fast Track Lounge )  
 a/k/a Foxtrot Club at 2530 )  
 Mohawk Boulevard, Tulsa, Tulsa )  
 County, Oklahoma; Residence )  
 at 4120 North Frankfort Place, )  
 Tulsa, Tulsa County, Oklahoma; )  
 and Residence at 332 Mohawk )  
 Boulevard, Tulsa, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants. )

FILED  
MAY 15 1987  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

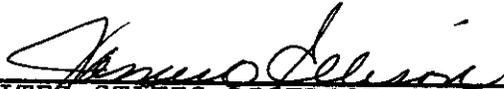
CIVIL ACTION NO. 86-C-790-E

JUDGMENT OF FORFEITURE

This cause having come before this Court upon  
Plaintiff's Application for Default Judgment and being otherwise  
fully apprised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that judgment be entered  
against the Defendant Property, the Strip Shopping Center at 3636  
North Peoria, Tulsa, Osage County, Oklahoma, and against all  
persons interested in such property, and that the said property

be and the same is hereby forfeited to the United States of America.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

  
CATHERINE J. HARDIN  
Assistant U.S. Attorney

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

CHARLES EDISON OVERSTREET, )  
JR., )  
 )  
Petitioner, )  
 )  
v. )  
 )  
THOMAS WHITE and THE ATTORNEY )  
GENERAL OF THE STATE OF )  
OKLAHOMA, )  
 )  
Respondents. )

87-C-343-B

FILED

MAY 14 1987

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

ORDER

Petitioner Charles Edison Overstreet Jr.'s application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is now before the court for initial consideration. Petitioner was convicted of Larceny of an Automobile After Former Conviction of Two or More Felonies, in Tulsa County District Court Case No. CRF-84-2565. His conviction was affirmed on appeal by the Oklahoma Court of Criminal Appeals, Case No. F-85-350. Petitioner has not sought relief under the Oklahoma Post-Conviction Procedure Act, 22 O.S. §§1080-1088.

Title 28 U.S.C. §2254 provides in part:

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

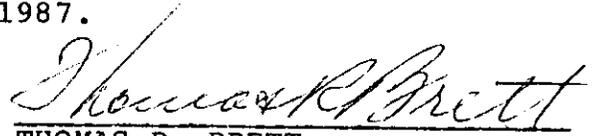
(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if

he has the right under the law of the State to raise, by any available procedure, the question presented.

Because petitioner has not exhausted the state remedies available to him, this court will not entertain his application for federal habeas corpus relief. See, Rose v. Lundy, 445 U.S. 509, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982); Duckworth v. Serrano, 454 U.S. 1, 102 S.Ct. 18, 70 L.Ed.2d 1 (1981).

It is therefore Ordered that petitioner's application be denied and this case be dismissed.

Dated this 16 day of May, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

STATE FARM MUTUAL AUTOMOBILE )  
INSURANCE COMPANY, )  
 )  
Plaintiff, )  
 )  
v. )  
JEFFREY ROEDER, )  
 )  
Defendant and Third- )  
Party Plaintiff, )  
 )  
v. )  
DAIRYLAND INSURANCE CO., )  
 )  
Third-Party Defendant)

No. 86-C-508-B

FILED

MAY 14 1987

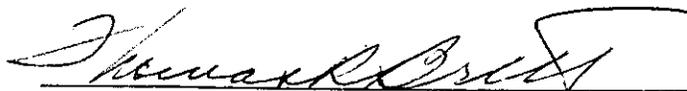
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered herein this date, Judgment is hereby granted to the plaintiff, State Farm Mutual Automobile Insurance Company, and against the defendant and third-party plaintiff, Jeffrey Roeder, and against the defendant and third-party defendant, Dairyland Insurance Company. The Court finds herein that there is no insurance coverage under State Farm Mutual Automobile Insurance Company's policy No. 197 4689 E22 36, issued to Margie Starnes, as the owner of a 1972 Ford pickup truck, extended to either James Thomas or Eddie Merrill as a result of a vehicle accident occurring on February 18, 1985, involving the defendant, Jeffrey Roeder, and the Starnes' 1972 Ford pickup truck. The parties should pay their own respective

costs and attorneys fees.

DATED this 14<sup>th</sup> day of May, 1987.

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

THOMAS R. BRET  
UNITED STATES DISTRICT JUDGE

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

ROBERT M. KAYE and PLANNED  
RESIDENTIAL COMMUNITIES  
MANAGEMENT CO. OF OKLAHOMA,  
INC.,

Plaintiffs,

v.

JULIUS BECTON, JR.,  
Director of the Federal  
Emergency Management  
Agency,

Defendant.

No. 85-C-447-B

J U D G M E N T

In accordance with the Order entered this date,  
IT IS HEREBY ORDERED AND ADJUGED that Judgment be entered in favor  
of the Plaintiff, Robert M. Kaye, and against the Defendant, Julius  
Becton, Jr., Director of the Federal Emergency Management Agency,  
in the amount of \$2,010.00. It is further ORDERED AND ADJUGED  
that the Defendant, Julius Becton, Jr., Director of the Federal  
Emergency Management Agency, pay \$600.00 to the Court Clerk for costs  
incurred as a result of Defendant's failure to comply with the  
Settlement Conference Order herein.

DATED, this 14<sup>th</sup> day of May, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

ROBERT M. KAYE and PLANNED  
RESIDENTIAL COMMUNITIES  
MANAGEMENT CO. OF OKLAHOMA,  
INC.,

Plaintiffs,

v.

JULIUS W. BECTON, JR.,  
Director of the Federal  
Emergency Management  
Agency,

Defendant.

No. 85-C-447-B

*May 14, 1987*

O R D E R

The Court has before it the Report and Recommendation of the United States Magistrate, filed January 30, 1987, recommending that Defendant be ordered to pay a total of \$2,610.00 in costs associated with a settlement conference herein at which Defendant's counsel did not have full settlement authority. For the reasons set forth below, the recommendation of the Magistrate is adopted.

This matter was set for settlement conference before the Magistrate on May 29, 1986. Notice of the settlement conference was mailed to all parties on April 10, 1986. This notice provided:

"In addition to counsel who will try the case being present, a person with full settlement authority must likewise be present for the conference. This requirement contemplates the presence of your client or, if a corporate entity, an authorized representative of your client. Counsel appearing without their clients (whether or not you have been given settlement authority) will cause the conference to be cancelled or rescheduled. The noncomplying party, attorney, or both may be assessed the costs and expenses incurred by other parties and the court as a result of such cancellation, as well as any additional sanctions deemed appropriate by the judge to whom the case is assigned."

Plaintiff Robert M. Kaye traveled to the settlement conference from New Jersey. Local representatives of the plaintiff and counsel traveled from Oklahoma City to Tulsa for the conference. Defendant Silberman-Braun Insurance Associates was represented by counsel and someone with full settlement authority. The government was represented by Assistant U.S. Attorney Nancy Nesbitt Blevins. The Magistrate specifically asked if Ms. Blevins had full settlement authority and she replied that she had been told that she had full authority for both the U.S. Department of Justice and the Federal Emergency Management Agency ("FEMA"). After several hours of discussion, all parties agreed to disposition recommended by the Magistrate. Ms. Blevins asked to report her agreement to settle to the Justice Department and FEMA. Ms. Blevins then reported to the Magistrate that although she understood she had been given full settlement authority FEMA was unwilling to approve the settlement and the Justice Department was unwilling to authorize the settlement absent FEMA approval. Therefore, Ms. Blevins said she could no longer agree to the proposed settlement.\* The May 29, 1986, settlement conference did, ultimately, result in settlement of the claims between Plaintiffs and Silberman-Braun Insurance Associates, however, this settlement was achieved only after additional efforts by the Magistrate and the complying parties. These additional efforts would not have been necessary had FEMA participated in the original settlement conference in good faith.

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\*

The Magistrate's Report and Recommendation emphasizes that Ms. Blevins participated in the settlement conference in the belief that she had full settlement authority for FEMA and the Department of Justice. There is nothing in this record to indicate Ms. Blevins in any way misrepresented the scope of her authority.

In accordance with the Settlement Conference Order, the Magistrate assessed costs against the government for failure to comply with that Order and send a representative to the settlement conference who had full settlement authority. FEMA first objects to the imposition of costs on the grounds that Judgment herein has been entered in favor of FEMA and against the Plaintiffs. Accordingly, FEMA contends that costs are inappropriate since Plaintiffs are not "prevailing parties" herein. While fees and costs may be awarded to the prevailing party in any civil action brought by or against the U. S. government, this is not the basis of the cost assessment herein. Fed.R.Civ.P. 16(f) provides:

(a) Pretrial Conferences; Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

\* \* \*

(5) facilitating the settlement of the case.

Rule 16(f) provides:

"If a party or a party's attorney fails to obey a scheduling or pretrial order . . . the judge, upon motion of his own initiative, may make such orders with regard thereto as are just. . . . In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing him or both to pay the reasonable expenses incurred because of any noncompliance with this rule. . . ."

Thus, FEMA's reliance on 28 U.S.C. §2412 as the basis for the cost assessment herein is misplaced. Costs were not awarded to Plaintiffs as prevailing parties. Rather, costs were assessed as a sanction for Defendant's failure to abide by the Settlement Conference Order.

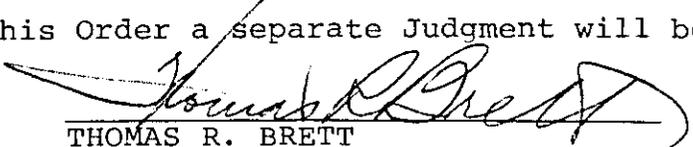
Defendant also contends that costs may only be assessed if a party's failure to comply with the Settlement Conference Order forces cancellation of the conference. To interpret the settlement conference

notice this restrictively would lead to absurdity. Thus, where a settlement conference is cancelled because one party is not represented by someone with full settlement authority, sanctions would be appropriate. However, under Defendant's logic, where a party is represented at a settlement conference but that representative lacks full settlement authority and this fact does not become known until the end of the settlement conference, no sanctions would be permissible. The flawed reasoning in this contention is readily apparent. Further, Rules 16 and 37 (as incorporated into Rule 16(f)), grant broad discretionary authority to impose sanctions where a court's order is disobeyed.

Finally, Defendant contends that it was represented at the May 29, 1986, settlement conference by someone with full settlement authority. Defendant contends, however, that "when the client agency would not agree to the settlement proposal, counsel for the Director could not exercise her authority, even though she still possessed such authority." The Court finds this exercise in Catch-22 logic wholly without merit. Accordingly, for the reasons set forth above, the Court hereby adopts the Report and Recommendation of the Magistrate with respect to costs assessed for failure to comply with the Settlement Conference Order.

IT IS SO ORDERED, this 14<sup>th</sup> day of May, 1987.

In accordance with this Order a separate Judgment will be entered this date.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 14 1987

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

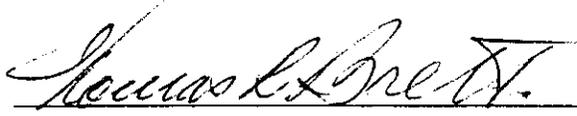
GOMER EVANS and- )  
GOMER EVANS, JR., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
THE THREADNEEDLE INSURANCE )  
COMPANY LIMITED, a foreign )  
insurance company, )  
 )  
Defendant. )

No. 86-C-951-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Plaintiffs, Gomer Evans and Gomer Evans, Jr., and against the Defendant, The Threadneedle Insurance Company Limited, a foreign insurance company, in the amount of Fifty Thousand Dollars (\$50,000.00), plus prejudgment interest from June 6, 1986, in the amount of 6% per annum until this date, and post-judgment interest at the rate of 7.02% per annum from the date hereon. Plaintiffs are further entitled to payment of their costs and a reasonable attorney's fee if timely application is made herein pursuant to Local Rules. The Plaintiffs' claim for punitive damages against the Defendant is hereby denied.

DATED this 14<sup>th</sup> day of May, 1987.

  
\_\_\_\_\_  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 14 1987

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

86-C-873-B

ANTHONY VINCENT LUDWICK, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 DAN LAWRENCE and the )  
 ATTORNEY GENERAL OF THE )  
 STATE OF OKLAHOMA, )  
 )  
 Respondents. )

ORDER

Petitioner Anthony Vincent Ludwick's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is now before the court for determination. Petitioner pled guilty to the charges of Second Degree Burglary AFCF and Possession of a Firearm While Committing a Felony AFCF, in Tulsa County District Court, Case Nos. CRF-85-415 and CRF-85-475. He was sentenced to ten years imprisonment on each charge, to run concurrently. Respondents concede that petitioner has exhausted his available state remedies with respect to the allegations raised in his §2254 application.

As his first ground for relief petitioner contends that the trial court improperly used his previous Arkansas convictions to enhance his punishment in CRF-85-415 and CRF-85-475. Under petitioner's argument, the Arkansas convictions should be considered null and void in this state because petitioner was a juvenile at the time of the prior convictions and because if the Arkansas crimes had been committed in Oklahoma, petitioner would have to have been certified as an adult prior to conviction.

Therefore, petitioner asserts that the Arkansas convictions are invalid in Oklahoma and may not be used to enhance his punishment. Title 21 O.S. §54 provides:

Every person who has been convicted in any other state, government or country of an offense which, if committed within this state, would be punishable by the laws of this state by imprisonment in the penitentiary, is punishable for any subsequent crime committed within this state, in the manner prescribed in the last three sections, and to the same extent as if such first conviction had taken place in a court of this state.

The argument raised by petitioner has previously been rejected by the Oklahoma Court of Criminal Appeals in Collums v. State, 654 P.2d 1070 (Okla.Crim. 1982). Collums contended that his prior Texas conviction could not be used to enhance punishment under 21 O.S. 1981 §54 because he was sixteen years old at the time of conviction and was treated as an adult under Texas law. Had Collums been charged under Oklahoma law he would have been treated as a juvenile unless he was properly certified as an adult. In overruling Collum's theory the court explained the requirements of 21 O.S. §54 as follows:

This section merely requires that the out-of-state conviction be punishable as a felony if committed in this state. Here, the appellant's Texas conviction is "burglary of a building." Burglary if committed in Oklahoma would be punishable by imprisonment in the penitentiary. The fact that the appellant may not have been certified in Oklahoma is irrelevant under Section 54. The characterization under Oklahoma law is determined by the out-of-state conviction. Therefore, the Texas conviction for burglary was properly admitted to enhance punishment.

Petitioner's first asserted ground for relief does not constitute a federal question cognizable for §2254 habeas review. The question of interpretation of a state statute is properly

left for the determination of state courts. Ratley v. Crouse, 365 F.2d 320 (10th Cir. 1966) (citing Richie v. Patterson, 360 F.2d 161 (10th Cir. 1966) and Pearce v. Cox, 354 F.2d 884 (10th Cir. 1965)).

As his second ground, petitioner asserts that because his attorney did not raise the argument at trial that the Arkansas convictions could not be used for enhancement of sentence, he was denied effective assistance of counsel. In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), the Supreme Court set forth the standard by which to judge Sixth Amendment claims of ineffective counsel. Under the Strickland test petitioner must first show that counsel committed such serious errors "that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." 104 S.Ct. at 2064. Second, petitioner must demonstrate that counsel's deficient performance so prejudiced the defense as to deprive the petitioner of a fair trial. Id. The reviewing court "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance...." Id. at 2066.

The Collums case being binding precedent in Oklahoma, counsel's conduct in not challenging the use of petitioner's Arkansas convictions was not unreasonable under the prevailing professional norms. See, Strickland at 2065.

Based on the above, it is Ordered that petitioner's application for a writ of habeas corpus be and is hereby denied.

Dated this 14<sup>th</sup> day of May, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 14 1987

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

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

No. 86-C-324-B

DEFAULT JUDGMENT

On May 5, 1987, this cause came on to be heard upon an application duly filed herein by the plaintiffs Joan James and Mary Haskew requesting this Court to enter a Default Judgment herein as against Castle Mortgage Company.

Counsel for Plaintiffs, Stephen C. Stapleton, appeared on behalf of plaintiffs; Defendant Castle Mortgage Company appeared not.

The Court, upon hearing statements of counsel for the plaintiffs, finds that the Complaint was filed herein on April 2, 1986; the Court further finds that Defendant Castle Mortgage was served on November 19, 1986 through personal service on its registered agent Alexander Savory as indicated by a copy of the Return of Service attached to the Application for Entry of Default filed herein by the Plaintiffs.

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

The Court further finds that due to the Defendant's default, pursuant to Rule 55(a)(1) of the F.R.C.P., all issues herein have been confessed by the Defendant Castle Mortgage Company and in favor of the Plaintiffs.

IT IS THEREFORE ORDERED that the Defendant, Castle Mortgage Company, 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, Castle Mortgage Company, in the amount of Two Hundred Ten Thousand and no/100 Dollars (\$210,000.00) plus interest thereon accruing at the statutory rate per annum from the date of this judgment.

DATED this 14 day of May, 1987.

S/ THOMAS R. BRETT  
\_\_\_\_\_  
JUDGE OF THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

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

LDS OF TULSA, INC., and )  
ST. PAUL MERCURY INSURANCE )  
COMPANY, )

No. 85-C-562-B

Plaintiffs, )

v. )

SAM P. WALLACE, INC., a )  
corporation; CONTINENTAL )  
MECHANICAL CORPORATION, )  
a corporation; HENRY C. )  
BECK COMPANY, a corporation; )  
FLINTCO, INC., a corporation, )  
d/b/a BECK-FLINTCO, a joint )  
venture; and MINORU YAMASAKI )  
& ASSOCIATES, a corporation, )

Defendants. )

FILED  
MAY 14 1987  
U.S. DISTRICT COURT

O R D E R

This matter comes before the Court on the Motion for Summary Judgment of Defendant Minoru Yamasaki & Associates ("YAMASAKI")\*. For the reasons set forth below, the motion is sustained in part and denied in part.

In its Order of March 13, 1987, regarding the Motions for Summary Judgment of Defendants Henry C. Beck Company and Flintco, Inc., d/b/a Beck-Flintco, a joint venture, and Continental Mechanical Corporation, this Court sustained the Defendants' motion with respect to Plaintiffs' claim for breach of implied warranty of fitness for use. The Court concluded that such a claim has been extended to owners of a building and subsequent purchasers, but not lessees. Yamasaki now

---

\* Defendants Henry C. Beck Company and Flintco, Inc., d/b/a Beck-Flintco, a joint venture, have joined in Yamasaki's Motion for Summary Judgment. However, the court has been advised that settlement has been reached with respect to these Defendants. Accordingly, the court will address the Motion for Summary Judgment only with respect to Yamasaki.

moves for summary judgment on Plaintiffs' claim for breach of implied warranty of fitness for use. For the reasons set forth at pages 4-5 of its March 13, 1987, Order, Yamasaki's motion for summary judgment on this claim is sustained.

Plaintiffs herein seek compensation for damage to LDS's telecommunications equipment from a water leak occurring May 27, 1984, at the One Williams Center Building. Plaintiffs allege the leak was caused by improper design and installation of a drain pipe from the building's roof. Plaintiff St. Paul Mercury Insurance Company ("ST. PAUL") indemnified LDS for its damages pursuant to their insurance policy.

Summary judgment must be denied if a genuine issue of material fact is presented to the trial court. Exnicious v. United States, 563 F.2d 418, 425 (10th Cir. 1977). In making this determination, the Court must view the evidence in the light most favorable to the party against whom judgment is sought. National Aviation Underwriters, Inc. v. Altus Flying Service, Inc., 555 F.2d 778, 784 (10th Cir. 1977). Factual inferences tending to show triable issues must be resolved in favor of the existence of those issues. Lockett v. Bethlehem Steel Corp., 618 F.2d 1373, 1377 (10th Cir. 1980). The party moving for summary judgment has the burden of showing that there is no genuine issue regarding the legal dispute. The party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials contained in his pleading. The nonmovant must set forth specific facts with supporting material showing that there is a genuine issue for trial. Celotex Corporation v. Catrett, 477 U.S. --, 106 S.Ct. 2548, (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. --, 106 S.Ct. 2505 (1986); Widon Third Oil and Gas. F.D.I.C., 805 F.2d 342 (10th Cir. 1986).

Yamasaki contends there is no issue of fact concerning negligent design of the drain pipe which separated at a joint during a torrential rain, causing water to leak into the One Williams Center Building. Yamasaki contends that Plaintiffs' own expert witness, Jim D. Medlin, testified at deposition that Yamasaki's plans concerning the drain pipe did not depart from accepted engineering practice. However, Plaintiffs have submitted an Affidavit from Mr. Medlin in which he states that at the time of this deposition he had not analyzed the 1970 BOCA Code as it relates to design of roof storm drainage systems and determination of proper pipe size. After reviewing this code, Mr. Medlin states that the drain pipe specified and installed in the Williams Center Building was undersize. This opinion is in line with those offered by Paul Gordon, expert witness of Defendant Beck-Flintco, and Thomas Konen, expert witness of Defendant Continental Mechanical Corporation. Thus, the court finds that there is a genuine issue of material fact with respect to the design of the roof storm drainage system.

Yamasaki also contends that it had no contractual duty to see that the contractor constructed the subject building according to Yamasaki's plans and specification. Accordingly, Yamasaki contends, it cannot be held liable for negligence in this regard since it had no duty. Yamasaki relies on §1.1.14 of the contract herein, which provides in pertinent part:

"The Architect shall make periodic visits to the site . . . to determine in general if the Project is proceeding in accordance with the Contract Documents. . . . The Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Contractor's work on the Project . . . and he shall not be responsible for the Contractor's failure to carry out his work in accordance with the Contract Documents."

While this section of the contract seems to relieve the Architect from responsibility for non-conforming work performed by the contractor, Plaintiffs point to section 1.1.17, which provides:

"The Architect shall reject Work which does not conform to the Contract Documents. . . ."

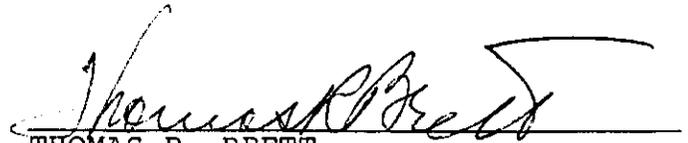
In addition, section 1.1.18 provides:

"The Architect shall review shop drawings, samples and other submissions of the Contractor for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents, and approval."

Thus, under these provisions, the Architect has an affirmative duty to reject work which does not conform to the Contract Documents and to review submissions of the Contractor for compliance with those documents and for approval. The Court concludes that there is a conflict between these contract provisions. Construction of an unambiguous contract is a matter of law for the court to decide. City of Hobart v. Dailey, 170 Okl. 107, 39 P.2d 44 (1935). However, if the meaning of an ambiguous contract is in dispute, evidence of extrinsic evidence is admissible to determine the parties' intent and the matter then becomes a mixed question of law and fact which should be submitted to the jury. Altshuler v. Malloy, 388 P.2d 1 (Okl. 1963). Since the interpretation of the contract provisions set forth above may involve extrinsic evidence, the Court concludes that summary judgment is not appropriate on this issue.

For the reasons set forth above, the Motion for Summary Judgment is sustained with respect to Plaintiffs' claim for breach of implied warranty and denied with respect to Plaintiffs' negligence claims herein.

IT IS SO ORDERED, this 14 day of May, 1987.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 14 1987

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

ARVLE E. MEDLIN,

Plaintiff,

v.

FRANK THURMAN, Tulsa County  
Sheriff, et al.,

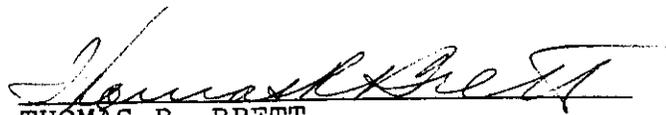
Defendants.

No. 86-C-681-B

J U D G M E N T

In accordance with the Order entered this date,  
IT IS HEREBY ORDERED AND ADJUDGED that Judgment is entered in favor  
of the Defendants Town of Skiatook, Oklahoma, and Dean Taylor and  
Paul Floyd, police officers of Skiatook, Oklahoma, and against the  
Plaintiff, Arvle E. Medlin, on all of Plaintiff's claims herein and  
that Plaintiff is to take nothing therefrom.

DATED this 14 day of May, 1987.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 \$2,448.00 in United States )  
 Currency; 1972 Chevrolet )  
 El Camino; Ranch at 2450 West )  
 43rd Street North, Tulsa, )  
 Osage County, Oklahoma; )  
 Condominium at 13510 East )  
 30th Place, #B, Tulsa, Tulsa )  
 County, Oklahoma; Strip )  
 Shopping Center at 3636 North )  
 Peoria, Tulsa, Tulsa County )  
 Oklahoma; Fast Track Lounge )  
 a/k/a Foxtrot Club at 2530 )  
 Mohawk Boulevard, Tulsa, Tulsa )  
 County, Oklahoma; Residence )  
 at 4120 North Frankfort Place, )  
 Tulsa, Tulsa County, Oklahoma; )  
 and Residence at 332 Mohawk )  
 Boulevard, Tulsa, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants. )

CIVIL ACTION NO. 86-C-790-E

FILED  
MAY 12 1987  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

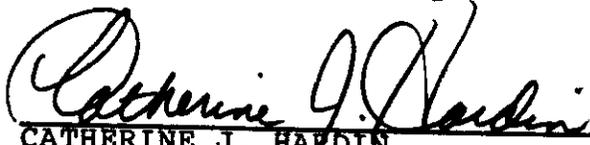
STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1(ii) of the Federal Rules of Civil Procedure the Plaintiff, United States of America, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Catherine J. Hardin, Assistant United States Attorney, and the Claimant, Mortgage Clearing Corporation, hereby stipulate to dismissal against the Defendant Property, Condominium at 13510 East 30th Place, #B, Tulsa, Tulsa County, Oklahoma, with prejudice, and without costs, pursuant to the terms and conditions of the Release of Claim of Seized Property

and Indemnity Agreement entered into by the parties on

May 8, 1987.

LAYN R. PHILLIPS  
United States Attorney

  
CATHERINE J. HARDIN  
Assistant United States Attorney  
Attorney for UNITED STATES  
OF AMERICA

  
JOHN B. NICKS  
Attorney for MORTGAGE  
CLEARING CORPORATION

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

FILED  
MAY 11 1987  
James O. Ellison, Clerk  
U.S. DISTRICT COURT

HENRY H. WOLF, Special )  
Administrator of the Estate )  
of Sharon R. Wolf, Deceased, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WILLIAM R. REID, M.D., AND )  
ST. JOHN MEDICAL CENTER, INC., )  
 )  
Defendants. )

No. 85-C-317-E

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiff Henry H. Wolf, as Special Administrator of the Estate of Sharon R. Wolf, Deceased, recover of the Defendant St. John Medical Center, Inc. the sum of \$164,193.84 with interest thereon at the rate of 6.30 per cent as provided by law, and his costs of action.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, William R. Reid, M.D. recover judgment against the Plaintiff, Henry H. Wolf, as Special Administrator of the Estate of Sharon R. Wolf, Deceased, and his costs of action.

DATED at Tulsa, Oklahoma this 12<sup>th</sup> day of May, 1987.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

TSC LEASING, INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
DALE'S AUTOMOTIVE, INC., an )  
Oklahoma corporation, and )  
DALE WYGANT, an Oklahoma )  
resident, )  
)  
Defendants. )

Case No. 87-C-77-C

**FILED**

**MAY 12 1987**

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

CONSENT JUDGMENT

The parties in the above-styled case hereby agree and stipulate that judgment shall be entered in the above-styled case against Dale's Automotive, Inc. and Dale Wygant in favor of T.S.C. Leasing, Inc. in the amount of \$23,389.94. The parties further agree that this stipulated amount includes all damages, penalties, pre-judgment interest, pre-judgment attorneys' fees and pre-judgment costs arising from the allegations in Plaintiff's Complaint.

IT IS THEREFORE ORDERED that judgment be entered against the Defendants Dale Wygant and Dale's Automotive, Inc. in favor of T.S.C. Leasing, Inc., for \$23,389.84.

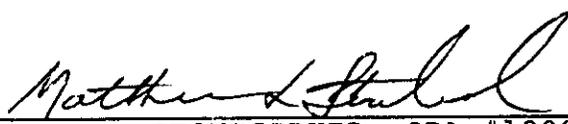
DATED this 12 day of May, 1987.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

  
PATRICK O'CONNOR  
Moyers, Martin, Santee, Imel  
& Tetrick  
320 S. Boston Bldg, Suite 920  
Tulsa, OK 74102  
(918) 583-5281  
ATTORNEYS FOR DEFENDANTS

  
MARK K. STONECIPHER, OBA #12001  
MATTHEW L. STANDARD, OBA #10483  
- of -  
KIRK & CHANEY  
Suite 1300 Midland Center  
134 Robert S. Kerr  
Oklahoma City, OK 73102  
(405) 235-1333  
ATTORNEYS FOR PLAINTIFF

*Entered*

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

**MAY 12 1987**

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

ERNESTINE BRISON and	)
SHIRLEY SNIDER,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
RICKELSON OIL AND GAS	)
COMPANY, an Oklahoma	)
corporation; R. P. CLINTON,	)
SR.; and ELEANOR CLINTON,	)
	)
Defendants.	)

No. 86-C-378-*EC*

ORDER OF DISMISSAL

NOW on this 12 day of May, 1987, there comes on for consideration the Joint Application for Dismissal With Prejudice in the above referenced action, and for good cause shown,

IT IS HEREBY ORDERED that this matter be dismissed with prejudice pursuant to the Joint Application for Dismissal With Prejudice filed herein on the 6 day of May, 1987.

SUCH IS THE ORDER OF THE COURT.

(Signed) H. Dale Cook

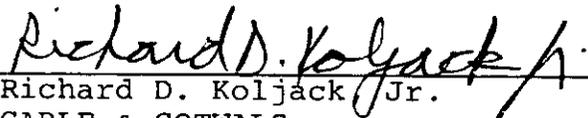
United States District Judge

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

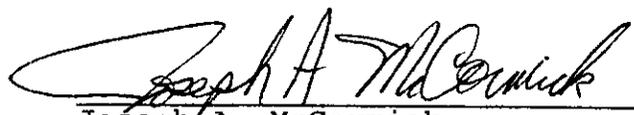
H & W DRILLING FLUIDS, INC.,     )  
  )  
                                  Plaintiff,     )  
  )  
vs.                                     )     No. 86-C-603-B  
  )  
VSM DEVELOPMENT COMPANY,         )  
  )  
                                  Defendant.     )

STIPULATION OF  
DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, all parties in the above-styled case hereby file this Stipulation of Dismissal with Prejudice.

  
Richard D. Koljack Jr.  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF, H & W  
DRILLING FLUIDS, INC.

  
Joseph A. McCormick  
McCORMICK, ANDREW & CLARK  
Suite 100, Tulsa Union Depot  
111 East First Street  
Tulsa, Oklahoma 74103

ATTORNEYS FOR DEFENDANT, VSM  
DEVELOPMENT COMPANY

JEM/nef

3/9/87

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

FILED

MAY 11 1987

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

SOGLEASE CORPORATION, a )  
Delaware corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CAROLINE M. BURD, )  
Individually and d/b/a )  
FASTBACK PHOTO, )  
 )  
Defendant. )

No. 86-C-1165 E

DEFAULT JUDGMENT

Application having been made by the plaintiff, SOGLEASE CORPORATION, for the entry of default judgment against the defendant, CAROLINE M. BURD, d/b/a FASTBACK PHOTO, and default against said defendant having been entered by the Clerk in this cause, the Court finds:

1. The Complaint of said plaintiff was filed herein and Summons to said defendant issued thereon on December 31, 1986.
2. Service of said Summons and Complaint was made on said defendant on February 5, 1987.
3. No answer or other response to said Complaint has been filed by said defendant, and the time for responding to the Complaint has expired.
4. Plaintiff has alleged that it is entitled to recover from defendant the exact sum of \$33,731.79 and has submitted to the Court an Affidavit attached as Exhibit 1 to plaintiff's Application for Entry of Default Judgment swearing to the truth of plaintiff's

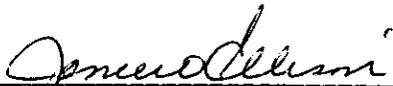
allegation of the obligation of defendant to plaintiff for said sum certain.

5. Plaintiff is entitled to recover court costs in the amount of \$60.00, consisting of fees of the Clerk charged in this action.

6. Plaintiff is entitled to recover attorney fees incurred to date in the amount of \$ 772.50 as additional costs pursuant to 12 O. S. Section 936.

WHEREFORE, pursuant to Rule 55(b) of Fed. R. Civ. P., judgment is hereby entered in favor of plaintiff, SOGELEASE CORPORATION, against defendant, CAROLINE M. BURD, d/b/a FASTBACK PHOTO, in the sum of \$33,731.79; plus court costs expended herein in the the amount of \$60.00; plus attorney fees incurred to date; post-judgment interest accruing from and after the date hereof at a rate of 6.30%, which is the interest rate for fifty-two week U.S. Treasury Bills as of Apr. 10, 1987 and which is the interest rate authorized to be paid on money judgments pursuant to 28 U.S.C. Section 1961.

This default judgment entered this 8<sup>th</sup> day of May, 1987.

  
UNITED STATES DISTRICT JUDGE



the federal courts on habeas corpus is not defeated by an applicant's procedural defaults during the state court proceedings, the federal habeas judge may, in his discretion, deny relief to an applicant who has deliberately bypassed state procedure and thereby has forfeited his state remedies. In explaining its holding the Court stated:

If a habeas applicant, after consultation with competent counsel or otherwise, understandingly and knowingly forewent the privilege of seeking to vindicate his federal claims in the state courts, whether for strategic, tactical, or any other reasons that can fairly be described as the deliberate by-passing of state procedures, then it is open to the federal court on habeas to deny him all relief if the state courts refused to entertain his federal claims on the merits -- though of course only after the federal court has satisfied itself, by holding a hearing or by some other means, of the facts bearing upon the applicant's default.

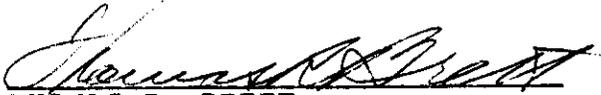
372 U.S. at 439.

In this case the court has examined the transcript of the trial court and finds that petitioner was fully advised of his right to appeal. At the time of his plea, petitioner was thirty years of age and had two years of college education. After explaining the procedure petitioner would have to follow to perfect an appeal, the court asked petitioner if he understood what was required to appeal. Petitioner responded that he understood. Therefore, the court concludes that petitioner was aware of the availability of a state remedy and made a decision not to avail himself of such remedy. Petitioner's conduct constitutes a deliberate bypass under the standards employed by the Tenth Circuit. See, Angle v. Laird, 429 F.2d 892, 894 (10th Cir. 1970), cert. denied 401 U.S. 918, 91 S.Ct. 900, 27 L.Ed.2d

819; Patterson v. Brown, 393 F.2d 733 (10th Cir. 1968); Bradley v. Crouse, 373 F.2d 11 (10th Cir. 1967).

Based upon the above it is hereby Ordered that petitioner Keith George Strimple's application for a writ of habeas corpus be denied.

It is so Ordered this 6<sup>th</sup> day of May, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

GLENDON EUGENE SHAFER; CINDI )  
SHAFER; COUNTY TREASURER, Tulsa )  
County, Oklahoma; and BOARD OF )  
COUNTY COMMISSIONERS, Tulsa )  
County, Oklahoma, )

Defendants. )

CIVIL ACTION NO. 86-C-543-E

FILED

MAY 11 1987

U.S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 8<sup>th</sup> day  
of May, 1987. 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 Doris L. Fransein, Assistant District  
Attorney, Tulsa County, Oklahoma; and the Defendants, Glendon  
Eugene Shafer and Cindi Shafer, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Glendon Eugene Shafer, was  
served with a Summons and Complaint on February 20, 1987; that  
Defendant, Cindi Shafer, was served with a Summons and Complaint  
on March 31, 1987; that Defendant, County Treasurer, Tulsa  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on June 11, 1986; and that Defendant, Board of County

Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 10, 1986.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on June 24, 1986; and that the Defendants, Glendon Eugene Shafer and Cindi Shafer, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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 One (1), and the West Five (5) feet of Lot Two (2), Block Two (2), a Resubdivision of Tracts 16, 17, 18, 19, 20 and 21 of VINEYARD ADDITION to the City of Skiatook, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 4, 1985, the Defendants, Glendon Eugene Shafer and Cindi Shafer, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$25,500.00, 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, Glendon Eugene Shafer and Cindi Shafer, executed and delivered to the United States of America, acting on behalf of the Administrator

of Veterans Affairs, a mortgage dated May 4, 1985, covering the above-described property. Said mortgage was recorded on May 6, 1985, in Book 4860, Page 2421, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Glendon Eugene Shafer and Cindi Shafer, 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, Glendon Eugene Shafer and Cindi Shafer, are indebted to the Plaintiff in the principal sum of \$26,033.51, 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 and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Glendon Eugene Shafer and Cindi Shafer, in the principal sum of \$26,033.51, 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 6.30 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes,

insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, 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, Glendon Eugene Shafer and Cindi Shafer, to satisfy the judgment in rem 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.

*19 11 15 7 11 11 11 11*  

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UNITED STATES DISTRICT JUDGE

APPROVED:

*[Signature]*  
LAYN R. PHILLIPS  
United States Attorney

*[Signature]*  

---

PETER BERNHARDT  
Assistant United States Attorney

*[Signature]*  

---

DORIS L. FRANSEIN  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

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

**F I L E D**

MAY 11 1987

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

RUSSELL SAWYER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
WORLD PUBLISHING CO., TOM	)	
CARTER, SWANSON BROADCASTING,	)	
INC. d/b/a KRMG RADIO STATION	)	
JOHN ERLING, KOTV, INC.,	)	
SCRIPPS HOWARD BROADCASTING	)	Case No. 87-C-295 B
d/b/a KJRH and CBS, INC.,	)	
	)	Case No. C-87-170
Defendants.	)	(D.C. Creek County, Okla.)

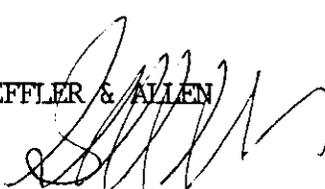
DISMISSAL WITHOUT PREJUDICE  
BY JOINT STIPULATION

Come now the plaintiff, Russell Sawyer, and the defendants, Swanson Broadcasting Inc. d/b/a KRMG Radio Station, John Erling and KOTV, Inc., by and through their respective attorneys of record and do hereby jointly stipulate pursuant to the provisions of Rule 41 of the Federal Rules of Court Procedures that the case at bar may be dismissed without prejudice to refileing it at a later date.

This Dismissal has been executed by counsel for the parties in counterpart.

LOEFFLER & ALLEN

By

  
\_\_\_\_\_  
Sam T. Allen, IV O.B.A 232  
Attorney for Plaintiff

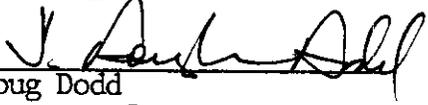
APPROVED:

\_\_\_\_\_  
Doug Dodd  
Attorney for KOTV, INC.

  
\_\_\_\_\_  
John Henry Rule  
Attorney for Swanson  
Broadcasting, Inc. and John  
Erling

Dismissal Without Prejudice by Joint Stipulation in  
Sawyer v. World Publishing Co., et al., No. 87-C-295-B,  
United States District Court for the Northern District  
of Oklahoma

APPROVED:

  
\_\_\_\_\_  
Doug Dodd  
Attorney for KOTV, INC.

\_\_\_\_\_  
John Henry Rule  
Attorney for Swanson  
Broadcasting, Inc. and John  
Erling

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

CREDIT ALLIANCE CORPORATION, )  
 )  
Plaintiff, )  
 )  
-vs- ) No. 86-C-149-B  
 )  
FLOYD PORTER, )  
 )  
Defendant. )

NOTICE OF DISMISSAL PURSUANT TO FED.R.CIV.P. 41(a)

The Plaintiff, Credit Alliance Corporation, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, hereby gives notice of dismissal with prejudice of the Complaint in this action against the Defendant, Floyd Porter.

*David L. Bryant*  
\_\_\_\_\_  
David L. Bryant  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201  
ATTORNEY FOR PLAINTIFF

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

KEY FINANCIAL SERVICES, )  
INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
EQUITY GROUP PARTNERSHIP, )  
FREDERICK H. NORTHROP, )  
HARRIS J. MORELAND, )  
CHRISTOPHER D. GRISEL, and )  
THE FIRST INTERSTATE BANK )  
OF OKLAHOMA, N.A., )  
administrator of the estate )  
of Glenn C. Ball, )  
 )  
Defendants. )  
 )  
v. )  
 )  
EQUITY GROUP PARTNERSHIP, )  
by and through FREDERICK )  
H. NORTHROP and HARRIS J. )  
MORELAND, general partners, )  
 )  
Third-Party Plaintiffs, )  
 )  
v. )  
 )  
A.G. GROUP, INC., and )  
CHRISTOPHER D. GRISEL, )  
 )  
Third-Party Defendants.)

No. 87-C-30-B

FILED  
JUL 11 1987  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
MUSKOGEE

O R D E R

Now before the Court for disposition are Plaintiff's Motion to Dismiss the Cross-Claim and Third-Party Complaint of Defendants Equity Group Partnership ("EQUITY"), Frederick H. Northrop ("NORTHROP"), and Harris J. Moreland ("MORELAND"), the Third-Party Defendants' Motion to Dismiss the Third-Party Complaint, and Defendant Christopher D. Grisel's Motion to Dismiss the Cross-Claim.

For the reasons set forth below, the motions to dismiss the cross-claim are denied. The motions to dismiss the third-party complaint are sustained.

The Plaintiff's Motion to Dismiss the Cross-Claim herein and the Defendant Christopher D. Grisel's Motion to Dismiss the Cross-Claim both seek dismissal pursuant to Fed.R.Civ.P. 13(g). For purposes of this Order, the motions will be addressed together. Rule 13(g) provides:

"A pleading may state as a cross-claim any claim by one party against a co-party arising out of the same transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or a part of a claim asserted in the action against the cross-claimant."

The general policy behind allowing cross-claims is to avoid multiple lawsuits and encourage determination of the entire controversy among the parties before the court with a minimum of procedural steps. Wright & Miller, Federal Practice and Procedure: Civil 2d §1431 (1971). See, Providential Dev. Co. v. U.S. Steel Co., 236 F.2d 277 (10th Cir. 1956). Courts have generally interpreted Rule 13(g) liberally in order to settle as many claims as possible in one action. Providential Dev. Co., supra.

In the instant case, Plaintiff has initiated this action to collect on a promissory note. As security for the note, the Plaintiff was granted a security interest in a 1969 B-E90 King Air aircraft, Serial No. LJ-437, N90DN. Cross-claimants have sued Christopher D. Grisel and First Interstate Bank of Oklahoma ("FIRST INTERSTATE"). Cross-claimants seek to have Grisel and First Interstate held jointly and severally liable as general partners of Equity for any liability resulting from the Plaintiff's claims herein. The

Cross-claimants also seek indemnification from Grisel for liabilities incurred by Equity as lessor to A.G. Group Inc. of the B-E90 King Air aircraft. Cross-claimants also have made demand on Grisel for accounting of their capital contributions to Equity and an accounting of partnership funds. The court concludes that under a liberal construction of Rule 13(g), the Cross-claim herein arises out of the same occurrence and concerns the same property that is the subject of the original action. Therefore, the Motion to Dismiss the Cross-claim is denied.

The Plaintiff's Motion to Dismiss the Third-Party Complaint and the Third-Party Defendants' Motion to Dismiss the Third-Party Complaint both seek dismissal pursuant to Fed.R.Civ.P. 14(a). In addition, both claim there is no independent jurisdictional basis over the Third-Party Complaint. Therefore, for purposes of this Order, the Motions to Dismiss the Third-Party Complaint will be addressed together. Rule 14(a) provides:

"At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons to be served upon a person not a party to the action who is or may be liable to him for all or a part of the plaintiff's claim against him."

A third-party claim may be asserted under Rule 14(a) only when the third party's liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to the defendant. Wright & Miller, supra, §1446. Third-Party Plaintiffs have sued the Third-Party Defendants herein for breach of a lease agreement on the B-E90 King Air aircraft. Third-Party Plaintiffs contend that their Complaint is sustainable under Rule 14(a)

because of a right to indemnification contained in the aircraft lease agreement. The agreement provides:

"The Lessee agrees to hold Lessor exempt and harmless against and from any and all claims by or on behalf of any person . . . arising from or based upon the manufacture, selection, delivery, possession, actual or implied use, maintenance, condition (including without limitation latent and other defects and whether or not discoverable by Lessee), operation, delivery or transportation of the Equipment, including all costs, counsel fees, expenses and other liabilities incurred by Lessor as a result of any such claim or action or proceeding being brought against Lessor. . . ."

The critical characteristic of impleader is that the original Defendant is seeking to transfer to the third-party defendant the liability asserted against him by the original plaintiff.

U.S. Fidelity & Guar. Co. v. American State Bank, 372 F.2d 449 (10th Cir. 1967). Here, the Third-Party Complaint is wholly independent of the Plaintiff's claim against the Defendants.

The underlying cause of action concerns a promissory note and a security agreement. The lease agreement between Equity and A.G. Group, Inc., and Christopher Grisel is not directly related to that note. Clearly, liability under the lease is not contingent or dependent on liability on the note. For this reason, the Motions to Dismiss the Third-Party Complaint are sustained.

IT IS SO ORDERED, this 8<sup>th</sup> day of May, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 11 1987

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

DAVID BEUMELER and )  
MICHAEL C. THOMAS, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
CITY OF GROVE, OKLAHOMA, )  
a municipal corporation, et al. )  
 )  
Defendants. )

No. 87-C-254-E

ORDER OF DISMISSAL

Now on this 8th day of May, 1987, this cause comes on upon the motion for dismissal without prejudice as to David McPhail, only, filed by the parties herein and the Court having reviewed such motion finds that the case should be ordered dismissed and for good cause shown;

IT IS THEREFORE ORDERED that the above styled and numbered case be and the same is hereby dismissed without prejudice as to David McPhail, only.

*JAMES C. BURTON*

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT