

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

AETNA CASUALTY AND SURETY
COMPANY,

Plaintiff,

v.

ROBERT HASTY, MARIANNE HASTY,
BEQUETTA JEAN CROWE, OPAL MAE
CROWE, JOAN KAREN MEIER, GALAN
LEON MEIER, and FARMERS
INSURANCE COMPANY, INC.,

Defendants.

No. 86-C-708-B

FILED

MAY 29 1986

O R D E R

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

This matter comes before the Court on the Motion to Dismiss of Defendants Opal Mae Crowe and Bequetta Crowe. Defendant Marianne Hasty has joined in the Motion to Dismiss. Plaintiff has responded thereto. For the reasons set forth below, the Motion to Dismiss is sustained.

Plaintiff brings this Interpleader action pursuant to 28 U.S.C. §1335. This action arises out of an automobile accident in Tulsa, Oklahoma, in January 1986. A car driven by Robert Hasty and in which Marianne Hasty was riding collided with an auto driven by Bequetta Crowe and in which Opal Crowe, Joan Meier, and Galan Meier, were riding. Plaintiff contends that Defendant Farmers Insurance Co. has provided insurance for some of the individual defendants.

Bequetta Crowe had an insurance policy with Plaintiff which provides \$50,000.00 liability coverage per accident, \$2,000.00

medical payment per person, and \$50,000.00 underinsured motorist coverage per accident. The policy provides that Plaintiff "will settle or defend, as we consider appropriate, any claim . . . Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted." Plaintiff contends that \$48,572.00 of Bequetta Crowe's liability coverage remains and that the outstanding claims by the Defendants exceeds this amount. Plaintiff has tendered the \$48,572.00 to the Court Clerk and asks that it be relieved of further liability herein.

Defendants Bequetta and Opal Crowe move to dismiss this action on the grounds that the interpleader action does not address the underinsured motorist coverage provided by the subject policy. Bequetta Crowe also moves for dismissal on the ground that Plaintiff has a duty to defend her in an action filed by Marianne Hasty in the District Court of Tulsa County, Oklahoma, Case No. CJ-86-2128. The Plaintiff has asked that this court stay the action in Tulsa County District Court pending resolution of this interpleader action.

Interpleader affords a party who fears that he may be subjected to defending multiple claims to a limited fund that is under his control a procedure by which the controversy may be settled in one proceeding. Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §1704 (1986). Interpleader, whether pursuant to Fed.R.Civ.P. 22 or 28 U.S.C. §1335, is remedial in character and should be applied liberally. State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 533 (1967); Wright, Miller and Kane, supra. A court may look to criteria other than the threat of multiple lawsuits in deciding whether to allow interpleader. A court may deny interpleader, for example, where

it feels "no good will flow from its order." National Surety Corp. v. Globe Indemnity Co., 331 F.Supp. 208, 210 (E.D.Pa. 1971). Thus, interpleader will be denied where there are suits pending by claimants between themselves and against the stakeholder independent of the fund sought to be interpleaded. 21 FedProc, L.Ed. §49:15 (1984). Interpleader may be denied where it will not settle the many claims outstanding among the parties to the suit. Bechtel Power Corp. v. Baltimore Contractors, Inc., 579 F.Supp. 648, 651 (E.D.Pa. 1981); National Surety, supra. Here, the interpleader action sought would resolve only those claims concerning liability coverage under the insurance policy between Plaintiff and Bequetta Crowe. It would not resolve matters concerning the underinsured motorist coverage provided by the same policy. Suits with respect to that coverage could proceed without regard to the determination made in this action. Thus, this one action will not settle the claims outstanding among the parties to this suit. Under these circumstances, the Court concludes that this Interpleader action should be dismissed.

IT IS SO ORDERED, this 29 day of May, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

DORA ANN SUPERNAW,)
)
Plaintiff,)
)
v.)
)
WAL-MART STORES, INC.,)
a Delaware corporation do-)
ing business in Oklahoma,)
)
Defendant.)

No. 86-C-971-B

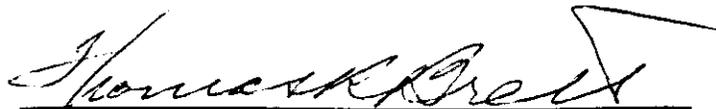
FILED

MAY 29 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT
J U D G M E N T

In accord with the Order entered May 21, 1987, the Court hereby enters judgment in favor of the defendant, Wal-Mart Stores, Inc., a Delaware corporation, and against the plaintiff, Dora Ann Supernaw, on her claim for negligence; said plaintiff to take nothing on her claim and the costs of the action are hereby assessed against the plaintiff.

DATED this 29th day of May, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JKS/sc

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

LDS-TULSA, INC., and)
ST. PAUL MERCURY INSURANCE)
COMPANY,)
)
Plaintiffs,)
)
vs.)
)
SAM P. WALLACE, INC., a)
corporation; CONTINENTAL)
MECHANICAL CORPORATION,)
a corporation; HENRY C. BECK)
COMPANY, a corporation; and)
FLINTCO, INC., a corporation,)
d/b/a BECK-FLINTCO, a joint)
venture; MINORU YAMASAKI &)
ASSOCIATES, a corporation,)
)
Defendants.)

NO. 85-C-562-B

FILED
MAY 29 1985
John C. Smith, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE
OF DEFENDANTS CONTINENTAL, BECK, FLINT, d/b/a BECK-FLINTCO ONLY

There comes on for consideration and application of the plaintiff, St. Paul Mercury Insurance Company, and the co-defendants, Henry C. Beck Company and Flintco, Inc., d/b/a Beck-Flintco, a joint venture, and Continental Mechanical Corporation, dismissing the plaintiff's complaint against said defendants and the Cross Petition of the defendants, Henry C. Beck Company, Flintco, Inc., d/b/a Beck-Flintco, a joint venture, against the co-defendant, Continental Mechanical Corporation, with prejudice, and the Court being fully advised and having considered the stipulations of the parties advising the Court of their settlement and compromise finds and it is ordered:

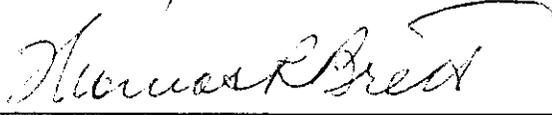
That plaintiff's complaint against said defendants and

each and every cause of action and claim for release set forth therein in the above captioned action should be and is hereby dismissed with prejudice and each party hereto shall bear its own costs and attorney's fees.

That the Cross Petition of the defendants, Henry C. Beck Company, Flintco, Inc., d/b/a Beck-Flintco, a joint venture, against the co-defendant, Continental Mechanical Corporation, should be and is hereby ordered dismissed, with prejudice, and that each of said parties is to bear their own costs and attorney's fees.

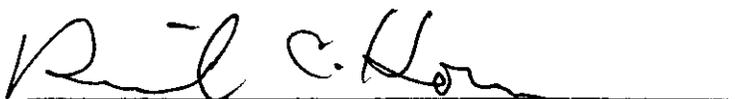
This case shall continue as between St. Paul Mercury Insurance Company and Minoru Yamasaki & Associates.

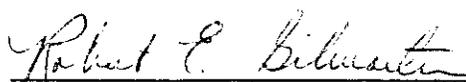
Dated this 29 day of May, 1987.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


JAMES K. SECREST, II
Attorney for Defendant, Henry C. Beck Company and Flintco, Inc., d/b/a Beck-Flintco, a joint venture


RICHARD C. HONN
Attorney for Continental Mechanical Corporation


ROBERT E. GILMARTIN
Attorney for Plaintiff,
St. Paul Mercury Insurance Company

Entered

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

JOEY L. BRASHEAR,)
)
 Plaintiff,)
) No. 86-C-607-E
 vs.)
)
 BURLINGTON NORTHERN RAILROAD,)
 COMPANY,)
)
 Defendant.)

ORDER of Dismissal

Upon stipulation of the parties and for good cause shown, plaintiff's causes of action against the defendant, Burlington Northern Railroad Company, are hereby dismissed with prejudice to the refiling of such actions.

IT IS SO ORDERED this 29 day of May, 1987.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

JUDGMENT ON JURY VERDICT

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

MARY BRAS, Administratrix of Estate
of Glenn E. Bras, deceased,

CIVIL ACTION
FILE NO.

83-C-848-C

vs.

VINITA M. GIBSON, individually and
as Executrix of the Estate of
O. D. Bras,

FILED

MAY 29 1987 *rm*

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

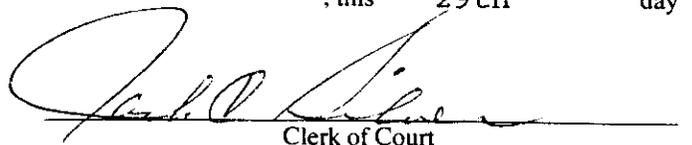
This action came on for trial before the Court and a jury, Honorable H. Dale Cook

, United States District Judge, presiding.

The issues having been duly tried and the jury having duly rendered its verdict, it is ordered and adjudged
that judgment be entered in favor of the plaintiff and against the
defendant in the amount of \$6,198.60.

Dated at Tulsa, Oklahoma
of May, 1987.

, this 29th day


Clerk of Court

Jack C. Silver

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RICHARD "DRAGON" GREEN,
MONICA GREEN, COUNTY TREASURER,
Tulsa County, Oklahoma,
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,
Defendants.

FILED
MAY 27 1987
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-520-E

DEFICIENCY JUDGMENT

Now on this 27th day of May, 1987, there came on for hearing the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment herein, said Motion being filed on April 28, 1987, and a copy of said Motion being mailed to Richard "Dragon" Green, 408 East 59th North, Tulsa, Oklahoma 74126. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma through Phil Pinnell, Assistant United States Attorney, and the Defendant, Richard "Dragon" Green, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Amended Judgment rendered herein on September 26, 1986, in favor of the Plaintiff United States of America, and against the Defendants, Richard "Dragon" Green in personam and Monica Green in rem, with interest and costs to date of sale is \$35,944.05.

The Court further finds that the appraised value of the real property at the time of sale was \$26,625.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Amended Judgment of this Court entered September 26, 1986, for the sum of \$23,763.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 20th day of May, 1987.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Richard "Dragon" Green, as follows:

Principal Balance as of 02/24/87	\$26,165.78
Interest	8,644.54
Late Charges	339.76
Appraisal	125.00
Management Broker Fees	540.00
Court Costs	<u>128.97</u>
TOTAL	\$35,944.05
Less Credit of Appraised Value	- <u>26,625.00</u>
DEFICIENCY	\$ 9,319.05

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Amended Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Administrator of Veterans Affairs have and recover from Defendant, Richard "Dragon" Green, a deficiency judgment in the amount of \$9,319.05, plus interest at the legal rate of 7.02 percent per annum on said deficiency judgment from date of judgment until paid.

UNITED STATES DISTRICT JUDGE

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

WILLIAM HENRY SANDERS,)
)
 Petitioner,)
)
 v.)
)
 DOCTOR CHARLES BUCKHOLTZ)
 and The Attorney General of)
 the State of Oklahoma,)
)
 Respondents.)

86-C-1084-C

FILED

MAY 28 1987

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

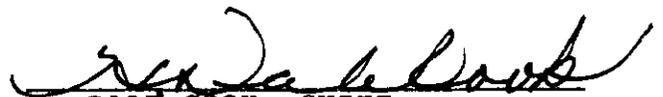
ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed May 6, 1987, in which the Magistrate recommended that petitioner's application for federal habeas corpus relief be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that petitioner William Henry Sanders' application for federal habeas corpus relief is dismissed for failure to exhaust his available state remedies.

Dated this 28th day of May, 1987.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

GWEN KRESS,

Plaintiff,

vs.

WAL-MART STORES, INC., a
foreign corporation,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

No. 87-C-133-B

FILE
MAY 28 1987
John L. Smith, Jr.
U. S. DISTRICT COURT

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

The plaintiff, Gwen Kress, and the defendant, Wal-Mart Stores, Inc., advise the Court of the settlement agreement between the parties and pursuant to Rule 41(a)(1)(ii), Federal Rules of Civil Procedure, jointly stipulate that plaintiff's complaint against the defendant, Wal-Mart Stores, Inc., be dismissed with prejudice, the parties to bear their respective costs, including all attorney fees and expenses of this litigation.

Dated this 21st day of May, 1987.

ROSENSTEIN, FIST & RINGOLD

By Jon B. Comstock
Jon B. Comstock, OBA #1311
525 S. Main, Suite 300
Tulsa, OK 74103
(918) 585-9211
Attorneys for Wal-Mart Stores,
Inc.

Michael C. Taylor
Michael C. Taylor
1625 S. Boston
Tulsa, OK 74119
Attorney for Plaintiff, Gwen
Kress

Entered

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

COLUMBUS E. JOHNSON,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF TULSA, OKLAHOMA, TULSA,)
 OKLAHOMA CITY POLICE DEPARTMENT,)
 OFFICER, JIM HUNTER, BOB DICK,)
 CHIEF OF POLICE, ET AL,)
)
 Defendants.)

86-C-1048-B ✓

FILED

MAY 28 1987

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

ORDER

Plaintiff Columbus E. Johnson's action under 42 U.S.C. §1983 for the alleged violation of his civil rights is now before the court on the defendants' motion to dismiss or in the alternative, motion for summary judgment. Defendants' motion was filed January 26, 1987. Plaintiff did not respond to the motion and on March 20, 1987, the U.S. Magistrate ruled that in the interest of justice, plaintiff be given additional time to respond to such motion notwithstanding the ten day response time provided for in Local Rule 14(a) of this judicial district. Plaintiff was advised that should he fail to respond within the extended time provided, the court would address the merits of defendants' motion without the benefit of his argument.

The time period for response having long since lapsed, the court now proceeds in its consideration of defendant's motion. Having duly examined the motion and brief in support, the court finds as follows:

Defendants' motion to dismiss should be granted as to defendants' City of Tulsa, Tulsa Police Department and Police Chief R.N. Dick. While the City of Tulsa is listed as a defendant, the complaint contains no reference whatsoever to any action or policy of the City of Tulsa which violated plaintiff's constitutional rights. The mere fact that another named defendant is a city employee does not render the City liable under §1983. Monell v. Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.E.d 2d 611 (1978).

Likewise there is no allegation in the complaint against defendant Tulsa Police Department. Defendants ask the court to take judicial notice of the fact that the Police Department is merely a division of the City of Tulsa and therefore is a legal non-entity not amenable to suit. Whether or not this is the case, the court finds that plaintiff's failure to allege any action, policy or procedure of the Tulsa Police Department which would even arguably be the basis of a civil rights claim necessitates the dismissal of the complaint against the Police Department. Both the Supreme Court and the Tenth Circuit Court of Appeals have held that Federal jurisdiction does not lie where a purported civil rights claim is simply unsubstantial. Hagans v. Lavine, 415 U.S. 528, 536 (1973); Smart v. Villar. 547 F.2d 112 (10th Cir. 1976); Wells v Ward, 470 F.2d 1185, 1187 (10th Cir. 1972).

As for the sufficiency of the complaint against Tulsa Police Chief R.N.Dick, a police chief or supervisor may be held liable for the unconstitutional misconduct of a subordinate only if

there is an affirmative link between the supervisor's personal conduct and the alleged misconduct of the subordinate. In other words, the supervisor must have participated or acquiesced in the constitutional deprivation which forms the basis of the complaint. Rizzo v. Goode, 432 U.S. 362, 98 S.Ct. 598, 46 L. Ed. 2d 561 (1976). Kite v. Kelley, 546 F.2d 334, 337 (10th Cir. 1976). There is no allegation in the complaint of any conduct on the part of defendant R.N. Dick. The court finds that plaintiff has failed to state a claim against this defendant.

Finally, with regard to defendant Police Officer Jim Hunter, Plaintiff alleges that a police officer arrested him in the Golden Nugget club and charged him with unlawfully distributing drugs. Plaintiff's civil rights action is premised on his assertion that this arrest occurred without probable cause. His conclusion that no probable cause existed is apparently based upon the fact that the charges against him were ultimately dropped.

Appended to defendants' motion are numerous affidavits and police documents detailing the facts surrounding Plaintiff's arrest and the subsequent dismissal of the criminal charge. The Court finds that these materials would aid in the just disposition of this matter; therefore, defendants' motion to dismiss the complaint as to Officer Hunter is hereby converted to a motion for summary judgment under Rule 12(c) of the Federal Rules of Civil Procedure.

Police officers sued under §1983 for false arrest are qualifiedly immune. Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213,

18 L.Ed.2d 288 (1967). In Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982), the Supreme Court defined the parameters of qualified immunity by holding that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional principles of which a reasonable prudent person would have known." 457 U.S. at 818, 102 S. Ct. at 2738, 73 L.Ed. at 410.

In a recent Supreme Court case the Court addressed the issue of immunity from suit where plaintiff alleged that the police officer caused plaintiff to be unconstitutionally arrested by presenting to a judge a complaint and supporting affidavit which failed to demonstrate probable cause. Malley v. Briggs, 475 U.S. ___, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986). Ruling that the officer was entitled to qualified immunity, the court explained that qualified immunity under the Harlow standard would leave the police with ample room for mistaken judgments while at the same time motivate an officer to reflect before submitting a request for a warrant on whether he has an objectively reasonable basis for believing that his affidavit establishes probable cause. 106 S.Ct. at 1097, 89 L.Ed. 2d at 280.

The affidavits attached to defendants' motion clearly show that the police officers had probable cause to arrest plaintiff. The police were aware that gambling and drug dealing occurred at the Golden Nugget Club, 2701 Mohawk in Tulsa. For this reason the police regularly checked on the activity at the Golden

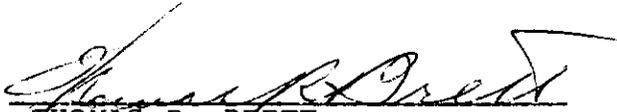
Nugget. (Affidavit of Officer V.V. Lester, Jr.) On the night of January 31, 1985 Officer Lester arrived at the Golden Nugget and having witnessed suspicious behavior of a white male named Nelson Box, and finding illegal drugs on his person, arrested Box. Box informed the police that he had purchased the drugs from a man inside the club. Using the description given by Box, the police officers entered the club and found plaintiff to be the only person fitting Box's description. Plaintiff had a bottle of demerol in his possession. Box positively identified plaintiff as the man who had sold the demerol to him. Plaintiff was then arrested.

The fact that the charges against plaintiff were subsequently dismissed does not prove that plaintiff's arrest was effected without probable cause. The affidavit of Jim Brandon, the District Attorney responsible for the case, indicates that the decision to drop the charges was totally unrelated to any belief on the District Attorney's part that probable cause for plaintiff's arrest was lacking. Instead, it was based upon considerations of Box's credibility as a witness and the fact that the demerol sold to Box was a different strength than the demerol found on plaintiff.

Plaintiff has not shown any facts which amount to even a scintilla of evidence that his January 31, 1985 arrest was effected without probable cause. The court therefore concludes that a reasonable jury could not find for plaintiff and that summary judgment is appropriate in favor of defendant Officer Jim Hunter. See Anderson v. Liberty Lobby, ___, U.S. ___, 106 S.Ct.

2505, 91 L.Ed.2d 202 (1986).

It is ordered that defendants' motion to dismiss be granted as to defendants City of Tulsa, Tulsa Police Department, and Police Chief R.N. Dick. It is further ordered that defendants' motion for summary judgment be granted as to defendant Police Officer Jim Hunter.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

UNITED STATES FIRE INSURANCE
COMPANY,

Plaintiff,

vs.

MARY LYNN BURGESS, and
RIC BURGESS,

Defendants.

No. 86-C-942-C

F I L E D

MAY 28 1987

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

JUDGMENT

This action came on for hearing on Application for Money Judgment of the plaintiff, United States Fire Insurance Company, before the Court, Honorable H. Dale Cook, District Judge, presiding, and the Court having found that the Clerk of Court entered the default of the defendants, Mary Lynn Burgess and Ric Burgess on April 28, 1987,

IT IS ORDERED AND ADJUDGED that the plaintiff, United States Fire Insurance Company, recover of the defendant, Mary Lynn Burgess, the sum of \$131,167.15, with interest thereon at the statutory rate of 7.02%, and her costs of action.

IT IS FURTHER ORDERED AND ADJUDGED that the plaintiff, United States Fire Insurance Company, recover of the defendants, Mary Lynn Burgess and Ric Burgess, jointly and severally, the sum of \$201,981.14, with interest thereon at the statutory rate of 7.02%, and her costs of action.

DATED at Tulsa, Oklahoma this 28 day of May, 1987.

(Signed) H. Dale Cook

H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

LARRY CARTER,)
)
 Plaintiff,)
)
 vs.)
)
 BURLINGTON NORTHERN RAILROAD,)
 and PEABODY COAL COMPANY,)
)
 Defendants.)

No. 86-C-495-C **F I L E D**

MAY 28 1987

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

ORDER

Upon stipulation of the parties and for good cause shown, plaintiff's causes of action against the defendants, Burlington Northern Railroad Company and Peabody Coal Company, are hereby dismissed with prejudice to the refiling of such actions.

IT IS SO ORDERED this 28th day of May, 1987.


United States District Judge

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

IN RE:)
)
REPUBLIC TRUST & SAVINGS)
COMPANY, (d/b/a Western)
Trust and Savings Company),)
)
Debtor,)
)
R. DOBIE LANGENKAMP,)
Successor Trustee,)
)
Plaintiff,)
)
vs.)
)
LOUIS H. FRITS and)
GENEVA FRITS,)
)
Defendants.)

No. 87-C-195-C

F I L E D

MAY 27 1987

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

O R D E R

Now before the Court for its consideration is the application for leave to appeal interlocutory order filed by the defendants herein. On February 26, 1987, the United States Bankruptcy Court for the Northern District of Oklahoma entered an order denying the defendants' demand for jury trial. The defendants ask this Court pursuant to 28 U.S.C. §158(a) to grant them leave to appeal from this order.

To the Court's knowledge, two district courts have addressed this precise issue. In Matter of Kenval Marketing Corp., 65 B.R. 548 (E.D.Pa. 1986), the Court provided the following rationale:

Because consideration of the appeal at this juncture would lead to a more expeditious disposition of the case, and postponement of

the appeal until the entry of a final order in the bankruptcy court would necessitate a retrial, if the order was ultimately determined to be erroneous, I will exercise the discretion vested in me by 28 U.S.C. §158(a) and grant leave to appeal.

Id at 549. The Kenval court did not expressly apply the factors traditionally used in making a determination under 28 U.S.C. §158(a). These factors are "(1) that the order involves a controlling question of law (2) as to which there is substantial ground for difference of opinion and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation." In re Chandler, 66 B.R. 334, 336 (N.D.Ga. 1986). These factors are derived by analogy to 28 U.S.C. §1292(b).

In In re Southern Indus. Banking Corp., 70 B.R. 196 (E.D.Tenn. 1986), the court employed the factors listed above in denying leave to appeal denial of jury trial. While finding that the order involved a controlling question of law, (a determination with which this Court concurs), the Southern court concluded that the second factor was not present. The court stated:

While this Court is aware of the historical differences of opinion surrounding the right to trial by jury in preference actions, the Court does not find a substantial ground for dispute such as to require an appeal from the bankruptcy court's interlocutory order.

Id at 201. (citation omitted). This Court must respectfully disagree. The recent discussion in In re Adams, Browning & Bates, Ltd., 70 B.R. 490 (Bankr. E.D.N.Y. 1987), makes plain the "two clear lines of authority" on the issue. Id at 494. The second of the three determinative factors is therefore present.

Finally, the Court must determine if an immediate appeal might materially advance the ultimate termination of the litigation. This factor has not been subject to uniform interpretation under 28 U.S.C. §1292(b). However, some courts have considered proximity and complexity of trial, in comparison with the estimated time required to dispose of the appeal. The court then determines whether an appeal at the present juncture may materially advance the litigation. See, e.g., Design Consultants Eng'r Corp. v. Security Ins. Co., 309 F.Supp. 1141, 1144 (W.D.Pa. 1970) (denial of certification where suit is premised on simple contract, there are few factual issues, and trial should be brief); United States v. International Bus. Machines Corp., 406 F.Supp. 184, 185-86 (S.D.N.Y. 1975) (certification only proper where immediate appeal might avoid protracted and costly litigation); Wm. Passalacqua Builders, Inc. v. Resnick Developers South, 611 F.Supp. 281, 284-85 (S.D.N.Y. 1985) (certification not warranted because case almost ready for trial and a three-week trial is not "protracted" litigation). Discussion of this "net saving" concept appears in Note, Interlocutory Appeals in the Federal Courts under 28 U.S.C. §1292(b), 88 Harv.L.Rev. 607, 627-28 (1975).

So far as this Court has been informed, the case at bar is a simple preference action presently fixed for trial on June 1, 1987. The trial will be conducted and a final order issued by the Bankruptcy Court before the parties could complete the briefing for an interlocutory appeal, and well before this Court could issue a comprehensive order on this difficult issue. The

Court is particularly concerned about delay under the two-tier appellate process from the Bankruptcy Court. Should this Court grant leave to appeal, and issue an order on the jury trial issue, the losing party might well seek appeal to the United States Court of Appeals for the Tenth Circuit. Despite the language of 28 U.S.C. §158(d) limiting appellate jurisdiction to final orders, an advocate might argue that 28 U.S.C. §1292(b) is an exception to this language. Having already employed the §1292 factors in granting leave to appeal, it would be logically inconsistent for the district court to decline certification. In any event, the result would be still more delay. To hold this action and its companion preference actions in limbo in order that the appellate process may run its course as to a single issue is not justified under the circumstances.

Declining to permit interlocutory appeal in no way prevents the defendants from raising the issue on an appeal from the Bankruptcy Court's final judgment, if indeed the defendants choose to appeal. This Court's concerns are reflected in the following discussion of the "final judgment" rule:

The rule respects the responsibilities of the trial court by enabling it to perform its function without a court of appeals peering over its shoulder every step of the way. It preserves scarce judicial resources that would otherwise be spent in costly and time-consuming appeals. Trial court errors become moot if the aggrieved party nonetheless obtains a final judgment in his favor, and appellate courts need not waste time familiarizing themselves anew with a case each time a partial appeal is taken.

. . .

In many cases in which a claim of right to immediate appeal is asserted, there is a sympathetic appellant who would undoubtedly gain from an immediate review of his individual claim. But lurking behind such cases is usually a vastly larger number of cases in which relaxation of the final judgment rule would threaten all of the salutary [sic] purposes served by the rule.

Mitchell v. Forsyth, 472 U.S. 511, 544 (1985) (Brennan, J., concurring in part and dissenting in part). 28 U.S.C. §1292 provides a safeguard against undue interference by providing that the trial court must certify the question to the appellate court. 28 U.S.C. §158 does not require such certification, but leaves the matter within the discretion of the district court. See In re Huff, 61 B.R. 678, 682 (N.D.Ill. 1986). Contra, In re United Press Intern., Inc., 60 B.R. 265, 275 (Bankr. D.D.C. 1986). Therefore, the district court must be circumspect in reviewing an application such as the present one, in order to prevent ongoing bankruptcy litigation becoming mired because of piecemeal, two-tier appeals. The Court has concluded that the case at bar is not an appropriate one in which to exercise its discretion in permitting interlocutory appeal.

Accordingly, it is the Order of the Court that defendants' application for leave to appeal interlocutory order denying jury trial is hereby denied.

IT IS SO ORDERED this 26th day of May, 1987.



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

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

FILED

MAY 27 1987

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

EDWARD V. QUATRINI,)
)
 Plaintiff,)
)
 v.)
)
 OTIS R. BOWEN, Secretary of)
 Health and Human Services,)
)
 Defendant.)

No. 86-C-819-B ✓

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on April 9, 1987, in which it is recommended that this case be remanded to the Secretary for further administrative proceedings. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is hereby Ordered that this case be remanded to the Secretary for consideration of the combined effect of plaintiff's impairments and for complete testimony by a vocational expert regarding plaintiff's ability to perform any substantial gainful activity in light of his exertional and non-exertional impairments.

Dated this 27th day of May, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

file for
4-23-87

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

APR-8
U.S. DISTRICT COURT

EDWARD V. QUATRINI,)
)
 Plaintiff,)
)
 v.)
)
 OTIS R. BOWEN, Secretary of)
 Health and Human Services,)
)
 Defendant.)

No. 86-C-819-B ✓

FINDINGS AND RECOMMENDATIONS OF MAGISTRATE

Plaintiff brought this action pursuant to 42 U.S.C. §405(g) for judicial review of the final decision of the Secretary of Health and Human Services (Secretary) denying plaintiff's application for disability insurance benefits under 42 U.S.C. §§416(i) and 423. This matter is before the Court for decision after a hearing in open court. The Magistrate has carefully considered all pleadings filed in this case as well as the oral arguments of the parties.

Plaintiff filed an application for Social Security disability benefits on February 4, 1982, alleging disability beginning August 3, 1979. Following a hearing on December 1, 1983, an Administrative Law Judge ("ALJ") determined that plaintiff was disabled within the meaning of the Social Security Act. The case was subsequently remanded by the Appeals Council for redetermination, whereupon a second ALJ also adjudged plaintiff to be disabled. The case was once again remanded with directions to employ the services of a medical advisor. The third hearing was conducted on April 18, 1985. Following this hearing the ALJ submitted interrogatories to a vocational expert.

Based upon the vocational expert's answers, the ALJ issued his decision on January 13, 1986, finding plaintiff not disabled. The Appeals Council denied plaintiff's request for review and the ALJ's decision became the final decision of the Secretary. From this decision plaintiff appeals.

The only issue now before the Court is whether there is substantial evidence in the record to support the final decision of the Secretary that plaintiff is not disabled within the meaning of the Social Security Act.

Judicial review of the Secretary's determination is limited in scope by 42 U.S.C. §405(g). The Court's sole function is to determine whether the record as a whole contains substantial evidence to support the Secretary's decision. The Secretary's findings stand if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citing Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)). In deciding whether the Secretary's findings are supported by substantial evidence, the Court must consider the record as a whole. Hephner v. Mathews, 574 F.2d 359 (6th Cir. 1978).

On appeal plaintiff first contends that the ALJ erred in not considering all of plaintiff's impairments in combination. 20 C.F.R. §404.1523 requires that the Secretary consider the combined effect of all of a claimant's physical and/or mental impairments without regard to whether any such impairment, if

considered separately, would be of sufficient severity to render claimant disabled.

In this case, the ALJ found that Mr. Quatrini had the following impairments: degenerative arthritis of his right wrist; osteochondroma of his left forearm requiring surgical excision; status post open reduction and internal fixation of a left radius fracture; degenerative arthritis of his knee; obstructive and restrictive pulmonary disease, with a history of asthma; diabetes mellitus; obesity; hypertension; peptic ulcer disease; and a depressive reaction, by history. (Tr. 12-13.)

A review of the record shows that the ALJ considered each of plaintiff's impairments separately and found that no one impairment met the severity requirements of the Social Security Regulations. There is no evidence, however, that the ALJ considered plaintiff's disability status arising from the combined effect of plaintiff's many impairments. See, Bowen v. Heckler, 748 F.2d 629 (11th Cir. 1984); Strickland v. Harris, 615 F.2d 1103 (5th Cir. 1980).

Additionally, the interrogatories submitted to the vocational expert did not mention all of plaintiff's physical and mental impairments. The vocational expert was only advised of plaintiff's physical impairment in his right wrist and arm and osteochondroma of his left forearm. No mention was made of plaintiff's arthritic knees, pulmonary disease, asthma, diabetes, obesity, hypertension, peptic ulcer or depression. (Tr. 234-241.)

The Magistrate finds that the ALJ erred in not considering plaintiff's impairments in combination. Additionally, in light

of the incomplete interrogatories, the vocational expert's responses cannot provide the basis for a finding that plaintiff retained the functional capacity to engage in employment as a hotel or motel manager or an operations officer. See, Podedworny v. Heckler, 745 F.2d 210 (3rd Cir. 1984); Ulrick v. Heckler, 780 F.2d 1381 (8th Cir. 1985).

It further appears that the ALJ did not adequately consider plaintiff's allegations of pain. The ALJ's decision contains no finding regarding pain or any other non-exertional impairment. Neito v. Heckler, 750 F.2d 59, 61 (10th Cir. 1984); Byron v. Heckler, 742 F.2d 1232, 1235 (10th Cir. 1984).

The Magistrate finds that the Secretary's decision that Mr. Quatrini was not disabled is not supported by substantial evidence. It is therefore the Magistrate's recommendation that this case be remanded to the Secretary for consideration of the combined effect of plaintiff's impairments and for complete testimony by a vocational expert regarding plaintiff's ability to perform any substantial gainful activity in light of his exertional and non-exertional impairments.

Dated this 8th day of April, 1987.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE

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

IN RE:)

REPUBLIC TRUST & SAVINGS)
COMPANY, (d/b/a Western)
Trust and Savings Company),)

Debtor,)

R. DOBIE LANGENKAMP,)
Successor Trustee,)

Plaintiff,)

vs.)

HERBERT LINDLEY d/b/a L.B.L.)
OIL COMPANY, W. R. LAWS;)
L.B.L. 80 COMPANY, LTD.;)
G. E. McELFREE; and)
L.B.L. OIL CORPORATION,)

Defendants.)

No. 87-C-168-C

FILED

MAY 27 1987

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

ORDER

Now before the Court for its consideration is the application for leave to appeal interlocutory order filed by the defendants herein. On February 26, 1987, the United States Bankruptcy Court for the Northern District of Oklahoma entered an order denying the defendants' demand for jury trial. The defendants ask this Court pursuant to 28 U.S.C. §158(a) to grant them leave to appeal from this order.

To the Court's knowledge, two district courts have addressed this precise issue. In Matter of Kenval Marketing Corp., 65 B.R. 548 (E.D.Pa. 1986), the Court provided the following rationale:

Because consideration of the appeal at this juncture would lead to a more expeditious disposition of the case, and postponement of the appeal until the entry of a final order in the bankruptcy court would necessitate a retrial, if the order was ultimately determined to be erroneous, I will exercise the discretion vested in me by 28 U.S.C. §158(a) and grant leave to appeal.

Id at 549. The Kenval court did not expressly apply the factors traditionally used in making a determination under 28 U.S.C. §158(a). These factors are "(1) that the order involves a controlling question of law (2) as to which there is substantial ground for difference of opinion and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation." In re Chandler, 66 B.R. 334, 336 (N.D.Ga. 1986). These factors are derived by analogy to 28 U.S.C. §1292(b).

In In re Southern Indus. Banking Corp., 70 B.R. 196 (E.D.Tenn. 1986), the court employed the factors listed above in denying leave to appeal denial of jury trial. While finding that the order involved a controlling question of law, (a determination with which this Court concurs), the Southern court concluded that the second factor was not present. The court stated:

While this Court is aware of the historical differences of opinion surrounding the right to trial by jury in preference actions, the Court does not find a substantial ground for dispute such as to require an appeal from the bankruptcy court's interlocutory order.

Id at 201. (citation omitted). This Court must respectfully disagree. The recent discussion in In re Adams, Browning & Bates, Ltd., 70 B.R. 490 (Bankr. E.D.N.Y. 1987), makes plain the "two clear lines of authority" on the issue. Id at 494. The second of the three determinative factors is therefore present.

Finally, the Court must determine if an immediate appeal might materially advance the ultimate termination of the litigation. This factor has not been subject to uniform interpretation under 28 U.S.C. §1292(b). However, some courts have considered proximity and complexity of trial, in comparison with the estimated time required to dispose of the appeal. The court then determines whether an appeal at the present juncture may materially advance the litigation. See, e.g., Design Consultants Eng'r Corp. v. Security Ins. Co., 309 F.Supp. 1141, 1144 (W.D.Pa. 1970) (denial of certification where suit is premised on simple contract, there are few factual issues, and trial should be brief); United States v. International Bus. Machines Corp., 406 F.Supp. 184, 185-86 (S.D.N.Y. 1975) (certification only proper where immediate appeal might avoid protracted and costly litigation); Wm. Passalacqua Builders, Inc. v. Resnick Developers South, 611 F.Supp. 281, 284-85 (S.D.N.Y. 1985) (certification not warranted because case almost ready for trial and a three-week trial is not "protracted" litigation). Discussion of this "net saving" concept appears in Note, Interlocutory Appeals in the Federal Courts under 28 U.S.C. §1292(b), 88 Harv.L.Rev. 607, 627-28 (1975).

So far as this Court has been informed, the case at bar is a simple preference action presently fixed for trial on June 1, 1987. The trial will be conducted and a final order issued by the Bankruptcy Court before the parties could complete the briefing for an interlocutory appeal, and well before this Court could issue a comprehensive order on this difficult issue. The Court is particularly concerned about delay under the two-tier appellate process from the Bankruptcy Court. Should this Court grant leave to appeal, and issue an order on the jury trial issue, the losing party might well seek appeal to the United States Court of Appeals for the Tenth Circuit. Despite the language of 28 U.S.C. §158(d) limiting appellate jurisdiction to final orders, an advocate might argue that 28 U.S.C. §1292(b) is an exception to this language. Having already employed the §1292 factors in granting leave to appeal, it would be logically inconsistent for the district court to decline certification. In any event, the result would be still more delay. To hold this action and its companion preference actions in limbo in order that the appellate process may run its course as to a single issue is not justified under the circumstances.

Declining to permit interlocutory appeal in no way prevents the defendants from raising the issue on an appeal from the Bankruptcy Court's final judgment, if indeed the defendants choose to appeal. This Court's concerns are reflected in the following discussion of the "final judgment" rule:

The rule respects the responsibilities of the trial court by enabling it to perform its function without a court of appeals peering

over its shoulder every step of the way. It preserves scarce judicial resources that would otherwise be spent in costly and time-consuming appeals. Trial court errors become moot if the aggrieved party nonetheless obtains a final judgment in his favor, and appellate courts need not waste time familiarizing themselves anew with a case each time a partial appeal is taken.

. . .

In many cases in which a claim of right to immediate appeal is asserted, there is a sympathetic appellant who would undoubtedly gain from an immediate review of his individual claim. But lurking behind such cases is usually a vastly larger number of cases in which relaxation of the final judgment rule would threaten all of the salutary [sic] purposes served by the rule.

Mitchell v. Forsyth, 472 U.S. 511, 544 (1985) (Brennan, J., concurring in part and dissenting in part). 28 U.S.C. §1292 provides a safeguard against undue interference by providing that the trial court must certify the question to the appellate court. 28 U.S.C. §158 does not require such certification, but leaves the matter within the discretion of the district court. See In re Huff, 61 B.R. 678, 682 (N.D.Ill. 1986). Contra, In re United Press Intern., Inc., 60 B.R. 265, 275 (Bankr. D.D.C. 1986). Therefore, the district court must be circumspect in reviewing an application such as the present one, in order to prevent ongoing bankruptcy litigation becoming mired because of piecemeal, two-tier appeals. The Court has concluded that the case at bar is not an appropriate one in which to exercise its discretion in permitting interlocutory appeal.

Accordingly, it is the Order of the Court that defendants' application for leave to appeal interlocutory order denying jury trial is hereby denied.

IT IS SO ORDERED this 20th day of May, 1987.



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

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

TOMMY REDMON,)	
)	
Plaintiff,	)	FILED
)	
v.	)	86-C-7-B MAY 27 1987
)	
LT. REEVES, TULSA COUNTY)	
JAIL,	)	Jack C. Silver, Clerk
	)	U.S. DISTRICT COURT
Defendant.	)	Consolidated with
)	
TOMMY REDMON,)	
)	
Plaintiff,)	
)	
v.	)	86-C-39-B
)	
DR. BARNES and SUSAN ESMONDS,)	
)	
Defendants.	)	Consolidated with
)	
TOMMY REDMON,)	
)	
Plaintiff,)	
)	
v.	)	86-C-165-B
)	
WILLIAM T. REAVES, TULSA)	
COUNTY JAIL,)	
)	
Defendant.)	

ORDER

Plaintiff filed the above-styled actions seeking relief for the alleged violation of his civil rights under 42 U.S.C. §1983. These cases have been consolidated for the purpose of review and are now before the court for consideration.

On September 8, 1986, pursuant to court order, defendants submitted a special report addressing plaintiff's specific allegations. Simultaneously, defendants filed a motion to dismiss the complaints for failure to state a claim upon which

relief may be granted. Alternatively, defendants seek summary judgment on the grounds that the information contained in the special report establishes that there exists no genuine issue of material fact regarding any of plaintiff's claims and that defendants are entitled to judgment in their favor. The court treated the defendants' alternative motion as one for summary judgment and ordered the plaintiff to respond by February 20, 1987. The plaintiff then requested an extension which was granted to May 13, 1982.

On or about May 6, 1987 the court received a filing from the plaintiff entitled "Response to Court Order, Motion for Appointment of Counsel, Motion for Enjoinment of U.S. Court with Plaintiff, Motion for Declarative and Injunctive Relief to gain access to the courts via Law Library Usage."

Plaintiff's filing does not address the defendants' motion for summary judgment but reasserts the argument set forth in case No. 86-C-7-B that he is being denied adequate access to a law library. Plaintiff also requests appointment of counsel to aid his legal preparation. Plaintiff seeks a court order enjoining correction officials from denying him access to the courts.

The court finds plaintiff's assertions without merit. See Twyman, infra. Plaintiff has not demonstrated sufficient merit to his claim to justify appointment of counsel in these consolidated civil actions. See United States v. Masters, 484 F.2d 1251, 1253 (10th Cir. 1973). The plaintiff's failure to respond and the authorities set forth below require a finding that the defendants' motion for summary judgment should be granted.

The allegations of the various suits will be considered in turn.

Case No. 86-C-7-B contains two counts. In Count I, plaintiff alleges that he has been denied access to a law library and has thereby been prevented from preparing a legal defense to claims against him. The constitutional right of access to the courts "requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1491, 1498, 52 L.Ed.2d 72, 83 (1977). Prison regulations which reasonably limit the times, places, and manner in which inmates may engage in legal research and preparation of legal papers do not rise to violations of constitutionally protected rights so long as the regulations do not frustrate access to the courts. See, Twyman v. Crisp, 584 F.2d 352, 357 (10th Cir. 1978). The special report contains numerous requests for legal materials which were provided plaintiff. The prison records document twenty-six (26) trips to the law library. Plaintiff was allowed to check out over sixty (60) law books. Additionally, plaintiff is represented by court-appointed counsel; it is clear that plaintiff was not denied access to the court. Plaintiff claims that his counsel is not providing effective assistance. This, however, does not give rise to a §1983 action. It is well established that an attorney, whether retained or court-appointed, does not act "under color of state law" in representing his client for the purpose of an action

under §1983. See, Polk County V. Dodson, 454 U.S. 312, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981); Henderson v. Fisher, 631 F.2d 1115 (3rd Cir. 1980); Harkins v. Eldredge, 505 F.2d 802 (8th Cir. 1974); Espinoza v. Rogers, 470 F.2d 1174, 1175 (10th Cir. 1972).

As his second count in Case No. 86-C-7-B, plaintiff claims that he has been denied hygiene articles such as toothbrush, toothpaste, razor and shampoo. Pursuant to the policy of the Tulsa County Jail, each inmate is provided with a bar of soap, which is replaced as needed. Other toiletry items are provided for inmates who cannot otherwise afford them. When plaintiff was placed into custody he had \$94.00 in his prison account. Thereafter, \$300.00 was placed in his account. Various hygiene items (including shampoo, razors, deodorant, etc.) are available for purchase in the jail commissary, as well as cigarettes, snacks, etc. The commissary slips attached to defendants' special report indicate that plaintiff spent large sums of money for tobacco and snacks. He had more than enough money to purchase whatever personal hygiene products he needed or wanted. The court finds nothing in Count II of this action which constitutes cruel and unusual punishment under the Eighth Amendment.

Plaintiff's allegations in Case No. 86-C-39-B pertain to the medical care afforded during his incarceration in the jail. The Supreme Court has declared that insufficiency of medical treatment will not amount to cruel and unusual punishment in violation of the Eighth Amendment unless there has been "deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Negligence or

malpractice will not suffice to sustain a claim under 42 U.S.C. §1983. Smart v. Villar, 547 F.2d 112 (10th Cir. 1976). Plaintiff must allege and prove exceptional circumstances and conduct so grossly incompetent, inadequate or excessive so as to shock the conscience or to be intolerable to basic fairness. Dewell v. Lawson, 489 F.2d 877 (10th Cir. 1974).

Plaintiff raises three incidents in which he claims he was denied medical care. He first states that he was administered several bottles of eye drops for his glaucoma, the expiration dates of which had either passed, been torn off or tampered with. He also claims that he was denied urethral dilation and that his requests to see a urologist were denied. Finally, plaintiff claims that he was refused medical treatment when he burned his hand with boiling water. The jail records, however, contain no requests for or complaints concerning any medical treatment afforded him while incarcerated in the Tulsa jail. Even assuming that plaintiff's allegations are true, his claims of inadequate medical care do not indicate a deliberate indifference to any serious medical needs. Estelle v. Gamble, supra.

The complaint in Case No. 86-C-165-B involves two counts. As his first count, plaintiff states that the jail facilities were being repainted and that because of inadequate ventilation the paint fumes caused "headaches, serious nasal problems, nausea, throwing-up and serious killing of brain cells." Although plaintiff had the opportunity and means to communicate any complaint of discomfort from paint fumes, there is no record that plaintiff filed such a grievance. This court has previously

found that the general sanitary and health conditions of the Tulsa County Jail comport with constitutional standards. See, Clayton v. Thurman, Case No. 79-C-723-B. The allegations in Count I simply do not rise to the level of a constitutional deprivation.

In Count II of Case No. 86-C-165-B, plaintiff claims that the jail cells are unsanitary and that the inmates are forced to wear unclean clothes. Pursuant to jail policy, the inmates' clothes are cleaned and re-issued once a week. Mops and brooms are issued several times a day. Inmates are responsible for cleaning their own cells. Prisoners have no constitutional right to maid service. As mentioned above, the sanitary conditions of the jail have been found to meet constitutional requirements.

Based on the foregoing, the court finds no genuine issue of material fact relating to plaintiff's claims and further finds that defendants are entitled to judgment as a matter of law.

It is therefore Ordered that defendants' motion for summary judgment be and is hereby granted as to the complaints in Case Nos. 86-C-7-B, 86-C-39-B, and 86-C-165-B.

It is so Ordered this 26 day of May, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

TOMMY REDMON,)	
)	
Plaintiff,)	
)	
v.)	86-C-7-B
)	MAY 27 1987
LT. REEVES, TULSA COUNTY)	
JAIL,)	Jack C. Silver, Clerk
)	U.S. DISTRICT COURT
Defendant.)	Consolidated with
)	
TOMMY REDMON,)	
)	
Plaintiff,)	
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WILLIAM T. REAVES, TULSA)	
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Defendant.)	

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The complaint in Case No. 86-C-165-B involves two counts. As his first count, plaintiff states that the jail facilities were being repainted and that because of inadequate ventilation the paint fumes caused "headaches, serious nasal problems, nausea, throwing-up and serious killing of brain cells." Although plaintiff had the opportunity and means to communicate any complaint of discomfort from paint fumes, there is no record that plaintiff filed such a grievance. This court has previously

found that the general sanitary and health conditions of the Tulsa County Jail comport with constitutional standards. See, Clayton v. Thurman, Case No. 79-C-723-B. The allegations in Count I simply do not rise to the level of a constitutional deprivation.

In Count II of Case No. 86-C-165-B, plaintiff claims that the jail cells are unsanitary and that the inmates are forced to wear unclean clothes. Pursuant to jail policy, the inmates' clothes are cleaned and re-issued once a week. Mops and brooms are issued several times a day. Inmates are responsible for cleaning their own cells. Prisoners have no constitutional right to maid service. As mentioned above, the sanitary conditions of the jail have been found to meet constitutional requirements.

Based on the foregoing, the court finds no genuine issue of material fact relating to plaintiff's claims and further finds that defendants are entitled to judgment as a matter of law.

It is therefore Ordered that defendants' motion for summary judgment be and is hereby granted as to the complaints in Case Nos. 86-C-7-B, 86-C-39-B, and 86-C-165-B.

It is so Ordered this 26 day of May, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

TOMMY REDMON,)	
)	
Plaintiff,)	
)	
v.	)	86-C-7-B
	)	MAY 27 1987
LT. REEVES, TULSA COUNTY)	
JAIL,	)	Jack C. Silver, Clerk
	)	U.S. DISTRICT COURT
Defendant.	)	Consolidated with
)	
TOMMY REDMON,)	
)	
Plaintiff,)	
)	
v.	)	86-C-39-B
)	
DR. BARNES and SUSAN ESMONDS,)	
)	
Defendants.	)	Consolidated with
)	
TOMMY REDMON,)	
)	
Plaintiff,)	
)	
v.	)	86-C-165-B
)	
WILLIAM T. REAVES, TULSA)	
COUNTY JAIL,)	
)	
Defendant.)	

ORDER

Plaintiff filed the above-styled actions seeking relief for the alleged violation of his civil rights under 42 U.S.C. §1983. These cases have been consolidated for the purpose of review and are now before the court for consideration.

On September 8, 1986, pursuant to court order, defendants submitted a special report addressing plaintiff's specific allegations. Simultaneously, defendants filed a motion to dismiss the complaints for failure to state a claim upon which

relief may be granted. Alternatively, defendants seek summary judgment on the grounds that the information contained in the special report establishes that there exists no genuine issue of material fact regarding any of plaintiff's claims and that defendants are entitled to judgment in their favor. The court treated the defendants' alternative motion as one for summary judgment and ordered the plaintiff to respond by February 20, 1987. The plaintiff then requested an extension which was granted to May 13, 1982.

On or about May 6, 1987 the court received a filing from the plaintiff entitled "Response to Court Order, Motion for Appointment of Counsel, Motion for Enjoinment of U.S. Court with Plaintiff, Motion for Declarative and Injunctive Relief to gain access to the courts via Law Library Usage."

Plaintiff's filing does not address the defendants' motion for summary judgment but reasserts the argument set forth in case No. 86-C-7-B that he is being denied adequate access to a law library. Plaintiff also requests appointment of counsel to aid his legal preparation. Plaintiff seeks a court order enjoining correction officials from denying him access to the courts.

The court finds plaintiff's assertions without merit. See Twyman, infra. Plaintiff has not demonstrated sufficient merit to his claim to justify appointment of counsel in these consolidated civil actions. See United States v. Masters, 484 F.2d 1251, 1253 (10th Cir. 1973). The plaintiff's failure to respond and the authorities set forth below require a finding that the defendants' motion for summary judgment should be granted.

The allegations of the various suits will be considered in turn.

Case No. 86-C-7-B contains two counts. In Count I, plaintiff alleges that he has been denied access to a law library and has thereby been prevented from preparing a legal defense to claims against him. The constitutional right of access to the courts "requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1491, 1498, 52 L.Ed.2d 72, 83 (1977). Prison regulations which reasonably limit the times, places, and manner in which inmates may engage in legal research and preparation of legal papers do not rise to violations of constitutionally protected rights so long as the regulations do not frustrate access to the courts. See, Twyman v. Crisp, 584 F.2d 352, 357 (10th Cir. 1978). The special report contains numerous requests for legal materials which were provided plaintiff. The prison records document twenty-six (26) trips to the law library. Plaintiff was allowed to check out over sixty (60) law books. Additionally, plaintiff is represented by court-appointed counsel; it is clear that plaintiff was not denied access to the court. Plaintiff claims that his counsel is not providing effective assistance. This, however, does not give rise to a §1983 action. It is well established that an attorney, whether retained or court-appointed, does not act "under color of state law" in representing his client for the purpose of an action

under §1983. See, Polk County V. Dodson, 454 U.S. 312, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981); Henderson v. Fisher, 631 F.2d 1115 (3rd Cir. 1980); Harkins v. Eldredge, 505 F.2d 802 (8th Cir. 1974); Espinoza v. Rogers, 470 F.2d 1174, 1175 (10th Cir. 1972).

As his second count in Case No. 86-C-7-B, plaintiff claims that he has been denied hygiene articles such as toothbrush, toothpaste, razor and shampoo. Pursuant to the policy of the Tulsa County Jail, each inmate is provided with a bar of soap, which is replaced as needed. Other toiletry items are provided for inmates who cannot otherwise afford them. When plaintiff was placed into custody he had \$94.00 in his prison account. Thereafter, \$300.00 was placed in his account. Various hygiene items (including shampoo, razors, deodorant, etc.) are available for purchase in the jail commissary, as well as cigarettes, snacks, etc. The commissary slips attached to defendants' special report indicate that plaintiff spent large sums of money for tobacco and snacks. He had more than enough money to purchase whatever personal hygiene products he needed or wanted. The court finds nothing in Count II of this action which constitutes cruel and unusual punishment under the Eighth Amendment.

Plaintiff's allegations in Case No. 86-C-39-B pertain to the medical care afforded during his incarceration in the jail. The Supreme Court has declared that insufficiency of medical treatment will not amount to cruel and unusual punishment in violation of the Eighth Amendment unless there has been "deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Negligence or

malpractice will not suffice to sustain a claim under 42 U.S.C. §1983. Smart v. Villar, 547 F.2d 112 (10th Cir. 1976). Plaintiff must allege and prove exceptional circumstances and conduct so grossly incompetent, inadequate or excessive so as to shock the conscience or to be intolerable to basic fairness. Dewell v. Lawson, 489 F.2d 877 (10th Cir. 1974).

Plaintiff raises three incidents in which he claims he was denied medical care. He first states that he was administered several bottles of eye drops for his glaucoma, the expiration dates of which had either passed, been torn off or tampered with. He also claims that he was denied urethral dilation and that his requests to see a urologist were denied. Finally, plaintiff claims that he was refused medical treatment when he burned his hand with boiling water. The jail records, however, contain no requests for or complaints concerning any medical treatment afforded him while incarcerated in the Tulsa jail. Even assuming that plaintiff's allegations are true, his claims of inadequate medical care do not indicate a deliberate indifference to any serious medical needs. Estelle v. Gamble, supra.

The complaint in Case No. 86-C-165-B involves two counts. As his first count, plaintiff states that the jail facilities were being repainted and that because of inadequate ventilation the paint fumes caused "headaches, serious nasal problems, nausea, throwing-up and serious killing of brain cells." Although plaintiff had the opportunity and means to communicate any complaint of discomfort from paint fumes, there is no record that plaintiff filed such a grievance. This court has previously

found that the general sanitary and health conditions of the Tulsa County Jail comport with constitutional standards. See, Clayton v. Thurman, Case No. 79-C-723-B. The allegations in Count I simply do not rise to the level of a constitutional deprivation.

In Count II of Case No. 86-C-165-B, plaintiff claims that the jail cells are unsanitary and that the inmates are forced to wear unclean clothes. Pursuant to jail policy, the inmates' clothes are cleaned and re-issued once a week. Mops and brooms are issued several times a day. Inmates are responsible for cleaning their own cells. Prisoners have no constitutional right to maid service. As mentioned above, the sanitary conditions of the jail have been found to meet constitutional requirements.

Based on the foregoing, the court finds no genuine issue of material fact relating to plaintiff's claims and further finds that defendants are entitled to judgment as a matter of law.

It is therefore Ordered that defendants' motion for summary judgment be and is hereby granted as to the complaints in Case Nos. 86-C-7-B, 86-C-39-B, and 86-C-165-B.

It is so Ordered this 26 day of May, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

IN RE:)

REPUBLIC TRUST & SAVINGS)
COMPANY, (d/b/a Western)
Trust and Savings Company),)

Debtor,)

R. DOBIE LANGENKAMP,)
Successor Trustee,)

Plaintiff,)

vs.)

C. A. CULP, JULIA CULP, and)
CULP DISTRIBUTING COMPANY,)

Defendants.)

No. 87-C-166-C

FILED

MAY 27 1987

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

ORDER

Now before the Court for its consideration is the application for leave to appeal interlocutory order filed by the defendants herein. On February 26, 1987, the United States Bankruptcy Court for the Northern District of Oklahoma entered an order denying the defendants' demand for jury trial. The defendants ask this Court pursuant to 28 U.S.C. §158(a) to grant them leave to appeal from this order.

To the Court's knowledge, two district courts have addressed this precise issue. In Matter of Kenval Marketing Corp., 65 B.R. 548 (E.D.Pa. 1986), the Court provided the following rationale:

Because consideration of the appeal at this juncture would lead to a more expeditious disposition of the case, and postponement of

the appeal until the entry of a final order in the bankruptcy court would necessitate a retrial, if the order was ultimately determined to be erroneous, I will exercise the discretion vested in me by 28 U.S.C. §158(a) and grant leave to appeal.

Id at 549. The Kenval court did not expressly apply the factors traditionally used in making a determination under 28 U.S.C. §158(a). These factors are "(1) that the order involves a controlling question of law (2) as to which there is substantial ground for difference of opinion and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation." In re Chandler, 66 B.R. 334, 336 (N.D.Ga. 1986). These factors are derived by analogy to 28 U.S.C. §1292(b).

In In re Southern Indus. Banking Corp., 70 B.R. 196 (E.D.Tenn. 1986), the court employed the factors listed above in denying leave to appeal denial of jury trial. While finding that the order involved a controlling question of law, (a determination with which this Court concurs), the Southern court concluded that the second factor was not present. The court stated:

While this Court is aware of the historical differences of opinion surrounding the right to trial by jury in preference actions, the Court does not find a substantial ground for dispute such as to require an appeal from the bankruptcy court's interlocutory order.

Id at 201. (citation omitted). This Court must respectfully disagree. The recent discussion in In re Adams, Browning & Bates, Ltd., 70 B.R. 490 (Bankr. E.D.N.Y. 1987), makes plain the "two clear lines of authority" on the issue. Id at 494. The second of the three determinative factors is therefore present.

Finally, the Court must determine if an immediate appeal might materially advance the ultimate termination of the litigation. This factor has not been subject to uniform interpretation under 28 U.S.C. §1292(b). However, some courts have considered proximity and complexity of trial, in comparison with the estimated time required to dispose of the appeal. The court then determines whether an appeal at the present juncture may materially advance the litigation. See, e.g., Design Consultants Eng'r Corp. v. Security Ins. Co., 309 F.Supp. 1141, 1144 (W.D.Pa. 1970) (denial of certification where suit is premised on simple contract, there are few factual issues, and trial should be brief); United States v. International Bus. Machines Corp., 406 F.Supp. 184, 185-86 (S.D.N.Y. 1975) (certification only proper where immediate appeal might avoid protracted and costly litigation); Wm. Passalacqua Builders, Inc. v. Resnick Developers South, 611 F.Supp. 281, 284-85 (S.D.N.Y. 1985) (certification not warranted because case almost ready for trial and a three-week trial is not "protracted" litigation). Discussion of this "net saving" concept appears in Note, Interlocutory Appeals in the Federal Courts under 28 U.S.C. §1292(b), 88 Harv.L.Rev. 607, 627-28 (1975).

So far as this Court has been informed, the case at bar is a simple preference action presently fixed for trial on June 1, 1987. The trial will be conducted and a final order issued by the Bankruptcy Court before the parties could complete the briefing for an interlocutory appeal, and well before this Court could issue a comprehensive order on this difficult issue. The

Court is particularly concerned about delay under the two-tier appellate process from the Bankruptcy Court. Should this Court grant leave to appeal, and issue an order on the jury trial issue, the losing party might well seek appeal to the United States Court of Appeals for the Tenth Circuit. Despite the language of 28 U.S.C. §158(d) limiting appellate jurisdiction to final orders, an advocate might argue that 28 U.S.C. §1292(b) is an exception to this language. Having already employed the §1292 factors in granting leave to appeal, it would be logically inconsistent for the district court to decline certification. In any event, the result would be still more delay. To hold this action and its companion preference actions in limbo in order that the appellate process may run its course as to a single issue is not justified under the circumstances.

Declining to permit interlocutory appeal in no way prevents the defendants from raising the issue on an appeal from the Bankruptcy Court's final judgment, if indeed the defendants choose to appeal. This Court's concerns are reflected in the following discussion of the "final judgment" rule:

The rule respects the responsibilities of the trial court by enabling it to perform its function without a court of appeals peering over its shoulder every step of the way. It preserves scarce judicial resources that would otherwise be spent in costly and time-consuming appeals. Trial court errors become moot if the aggrieved party nonetheless obtains a final judgment in his favor, and appellate courts need not waste time familiarizing themselves anew with a case each time a partial appeal is taken.

. . .

In many cases in which a claim of right to immediate appeal is asserted, there is a sympathetic appellant who would undoubtedly gain from an immediate review of his individual claim. But lurking behind such cases is usually a vastly larger number of cases in which relaxation of the final judgment rule would threaten all of the salutary [sic] purposes served by the rule.

Mitchell v. Forsyth, 472 U.S. 511, 544 (1985) (Brennan, J., concurring in part and dissenting in part). 28 U.S.C. §1292 provides a safeguard against undue interference by providing that the trial court must certify the question to the appellate court. 28 U.S.C. §158 does not require such certification, but leaves the matter within the discretion of the district court. See In re Huff, 61 B.R. 678, 682 (N.D.Ill. 1986). Contra, In re United Press Intern., Inc., 60 B.R. 265, 275 (Bankr. D.D.C. 1986). Therefore, the district court must be circumspect in reviewing an application such as the present one, in order to prevent ongoing bankruptcy litigation becoming mired because of piecemeal, two-tier appeals. The Court has concluded that the case at bar is not an appropriate one in which to exercise its discretion in permitting interlocutory appeal.

Accordingly, it is the Order of the Court that defendants' application for leave to appeal interlocutory order denying jury trial is hereby denied.

IT IS SO ORDERED this 20th day of May, 1987.


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

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

JACK LARRY HARRIS,)
)
 Petitioner,)
)
 v.)
)
 GARY MAYNARD, et al,)
)
 Respondents.)

86-C-1089-C **FILED**

MAY 27 1987

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

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed May 5, 1987, in which the Magistrate recommended that petitioner's application for a writ of habeas corpus be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that petitioner Jack Larry Harris's application for a writ of habeas corpus is denied.

Dated this 26 day of May, 1987.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA FOR)
THE USE AND BENEFIT OF)
KENNETH WATKINS DOING)
BUSINESS UNDER THE ASSUMED)
NAME AND STYLE OF WATKINS)
ROOFING,)

Plaintiff,)

vs.)

WEBSTER CONSTRUCTION, INC.)
and TRAVELERS INDEMNITY)
COMPANY,)

Defendants.)

FILED

MAY 27 1987

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

No. 86-C-380-B -

ORDER OF DISMISSAL WITH PREJUDICE

Now on the 27 day of May, 1987, upon consideration of the joint motion of the use plaintiff and the defendant, Travelers Indemnity Company for dismissal of the above styled and numbered case with prejudice, it appearing that the said parties have reached a settlement agreement regarding all claims of the Use plaintiff in his complaint and that the settlement agreement reached before the Honorable John Leo Wagner, U.S. Magistrate, on May 11, 1987, has been fully performed,

IT IS HEREBY ORDERED that the use plaintiff's complaint insofar as it alleges causes of action against Travelers Indemnity Company 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

THOMAS R. BRETT
U. S. DISTRICT JUDGE

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

ALAN T. DAVIS,)
)
 Plaintiff,)
)
 vs.)
)
 LOTUS CARS LIMITED, a British)
 corporation; LOTUS PERFORMANCE)
 CARS, L.P., a New Jersey)
 limited partnership; and)
 JOHN HOKE & CO., LTD.,)
 an Oklahoma corporation,)
)
 Defendants.)

No. 86-C-528-C

F I L E D

MAY 27 1987

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

O R D E R

Now before the Court for its consideration is the motion of defendants Lotus Cars Limited and Lotus Performance Cars, L.P., for attorney fees. This Court granted the defendants' motion for summary judgment on February 19, 1987, in this action under the Magnuson-Moss Federal Warranty Act, 15 U.S.C. §§2301, et seq. On March 6, 1987, the present motion was filed, to which the plaintiff has not responded.

The Court has reviewed the time records submitted by the defendants and finds the claimed amount of \$4,000.68 to be reasonable.

Therefore, it is the Order of the Court that the defendants' motion for attorney fees should be and hereby is granted, and that defendants Lotus Cars Limited and Lotus Performance Cars,

L.P. are hereby entitled to a fee award against plaintiff Alan T. Davis in the amount of \$4,000.68.

IT IS SO ORDERED this 26th day of May, 1987.



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

Entered copy

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION,)
)
Plaintiff,)
)
vs.)
)
BILL R. ESTEP, PHILMORE COX,)
and JAMES E. PARKER,)
)
Defendants.)

No. 86-C-720-C

FILED
MAY 27 1987

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

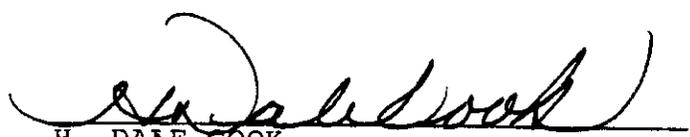
ORDER

Now before the Court for its consideration is the motion of the plaintiff for attorney fees in connection with the default judgment entered by this Court against defendant Bill R. Estep on December 17, 1986. No response to the motion has been filed.

The Court has reviewed the time records submitted by the plaintiff and finds the requested amount of \$122.50 to be reasonable.

Therefore, it is the Order of the Court that the plaintiff's motion for attorney fees should be and hereby is granted, and that plaintiff is hereby entitled to a fee award against defendant Bill R. Estep in the amount of \$122.50.

IT IS SO ORDERED this 26 day of May, 1987.


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

FILED

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

MAY 27 1987

James H. King, Clerk
U.S. DISTRICT COURT

FREDDIE SCOTT,)	
)	
Plaintiff,)	
)	
vs.	)	No. 86-C-509-E
	)	and 86-C-546-E
UNITED STATES OF AMERICA,	)	(Consolidated)
)	
Defendant.)	

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed January 28, 1987. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

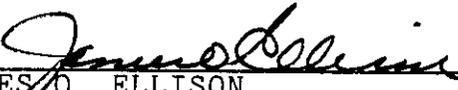
IT IS THEREFORE ORDERED that Defendant's motion for summary judgment is granted on the issue of the propriety of the \$6702 frivolous penalty assessed based on Plaintiff's 1984 tax return.

IT IS FURTHER ORDERED that Plaintiff's claim for wrongful levy, injunctive relief and damages under the RICO Act is dismissed.

Defendant's application for attorney's fees will be considered upon Defendant's submission of time records indicating the amount of time spent in defending this matter, the fees incurred, and the reasonableness of such fees. Defendant is further ordered to submit to the Court the legal authority on which it relies in support of its claim of entitlement to

attorney's fees.

DATED this 27th day of May, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MARC ALAN THOMPSON; SULTRA JEAN)
THOMPSON; COUNTY TREASURER,)
Tulsa County, Oklahoma; and)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,)
)
Defendants.) CIVIL ACTION NO. 87-C-76-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27 day of May, 1987. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, 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, Marc Alan Thompson and Sultra Jean Thompson, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Marc Alan Thompson, acknowledged receipt of Summons and Complaint on February 9, 1987; that Defendant, Sultra Jean Thompson, acknowledged receipt of Summons and Complaint on April 27, 1987; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 3, 1987; and that Defendant,

Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 3, 1987.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma and the Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on February 23, 1987; and that the Defendants, Marc Alan Thompson and Sultra Jean Thompson, 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:

The East 82.6 feet of the following described tract of land: Beginning 445 feet South and 165 feet West of the Northeast Corner of the South Half of the Southeast Quarter of the Northwest Quarter (S/2 SE/4 NW/4) thence South 165 feet; thence West 200 feet; thence North 165 feet and East 200 feet to the point of beginning, all in Section 24, Township 18 North, Range 12 East of the Indian Base Meridian, Tulsa County, State of Oklahoma.

The Court further finds that on May 9, 1985, the Defendants, Marc Alan Thompson and Sultra Jean Thompson, 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 \$79,500.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Marc Alan Thompson and Sultra Jean Thompson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated May 9, 1985, covering the above-described property. Said mortgage was recorded on May 10, 1985, in Book 4861, Page 1679, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Marc Alan Thompson and Sultra Jean Thompson, 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, Marc Alan Thompson and Sultra Jean Thompson, are indebted to the Plaintiff in the principal sum of \$80,890.26, plus interest at the rate of twelve and one-half percent (12.5%) per annum from August 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 on February 20, 1986, the Defendants, Marc Alan Thompson and Sultra Jean Thompson, filed their voluntary petition in bankruptcy in Chapter 7. On August 20, 1986, the United States Bankruptcy Court in the Western District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362. The order modified the stay by ordering the abandonment of the real property subject to this foreclosure action.

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 the Defendants, Marc Alan Thompson and Sultra Jean Thompson, in the principal sum of \$80,890.26, plus interest at the rate of twelve and one-half percent (12.5%) per annum from August 1, 1985 until judgment, plus interest thereafter at the current legal rate of 7.02 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, Marc Alan Thompson and Sultra Jean Thompson, to satisfy the 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. ELISON

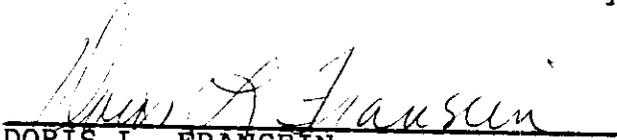
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney



PHIL PINNELL
Assistant United States Attorney



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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

GREGORY A. WYNKOOP; MARJORIE D.)

WYNKOOP; SOVRAN MORTGAGE)

CORPORATION; COUNTY TREASURER,)

Creek County, Oklahoma; and)

BOARD OF COUNTY COMMISSIONERS,)

Creek County, Oklahoma,)

Defendants.)

CIVIL ACTION NO. 86-C-926-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27th day
of May, 1987. 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, Sovran Mortgage Corporation, appears not having
previously filed its Disclaimer; and the Defendants, County
Treasurer, Creek County, Oklahoma, Board of County Commissioners,
Creek County, Oklahoma, Gregory A. Wynkoop, and Marjorie D.
Wynkoop, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Sovran Mortgage
Corporation, acknowledged receipt of Summons and Complaint on
December 10, 1986; that Defendant, County Treasurer, Creek
County, Oklahoma, acknowledged receipt of Summons and Complaint
on October 8, 1986; and that Defendant, Board of County

Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on November 26, 1986.

The Court further finds that the Defendants, Gregory A. Wynkoop and Marjorie D. Wynkoop, were served by publishing notice of this action in the Sapulpa Legal News, a newspaper of general circulation in Creek County, Oklahoma, once a week for six (6) consecutive weeks beginning March 12, 1987, and continuing to April 16, 1987, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Since counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Gregory A. Wynkoop and Marjorie D. Wynkoop, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known addresses of the Defendants, Gregory A. Wynkoop and Marjorie D. Wynkoop. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through

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

It appears that the Defendant, Sovran Mortgage Corporation, filed its Disclaimer on December 23, 1986, disclaiming any right, title, or interest in or to the subject real property; and that the Defendants, County Treasurer, Creek County, Oklahoma, Board of County Commissioners, Creek County, Oklahoma, Gregory A. Wynkoop, and Marjorie D. Wynkoop, 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 Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

The South Half of Lot Three (3), Block Eighty-six (86), of the Original Town of Sapulpa, in Creek County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on May 31, 1984, the Defendants, Gregory A. Wynkoop and Marjorie D. Wynkoop, 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 \$23,750.00, payable in monthly installments, with interest thereon at the rate of thirteen percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Gregory A. Wynkoop and Marjorie D. Wynkoop, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated May 31, 1984, covering the above-described property. Said mortgage was recorded on June 7, 1984, in Book 164, Page 1116, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Gregory A. Wynkoop and Marjorie D. Wynkoop, 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, Gregory A. Wynkoop and Marjorie D. Wynkoop, are indebted to the Plaintiff in the principal sum of \$23,789.16, plus interest at the rate of thirteen percent (13%) per annum from November 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, Creek County, Oklahoma, are in default and have no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Sovran Mortgage Corporation, disclaims any right, title or interest in or to the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Gregory A. Wynkoop and Marjorie D. Wynkoop, in the principal sum of \$23,789.16, plus interest at the rate of thirteen percent (13%) per annum from November 1, 1985 until judgment, plus interest thereafter at the current legal rate of 7.02 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, Creek County, Oklahoma, and Sovran Mortgage 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, Gregory A. Wynkoop and Marjorie D. Wynkoop, 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.

ST. JAMES O. HENNING

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

Phil Pinnell

PHIL PINNELL
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAM THEODORE EDWARDS, JR.,)
 a/k/a WILLIAM THEODORE EDWARD,)
 JR.; MARION M. EDWARDS, a/k/a)
 MARION M. EDWARD, a/k/a MARION)
 MARIE EDWARDS, a/k/a MARION)
 MARIA EDWARDS; WESTERN AUTO)
 SUPPLY COMPANY; EMPIRE)
 FURNITURE, INC.; and ROSS DRUG)
 STORES OF BROKEN ARROW,)
)
 Defendants.)

FILED

MAY 27 1987

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

CIVIL ACTION NO. 85-C-770-C

DEFICIENCY JUDGMENT

Now on this 29th day of April, 1987, there came on for hearing the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment herein, said Motion being filed on February 17, 1987, and a copy of said Motion being mailed to William Theodore Edwards, Jr. and Marion M. Edwards, 11417 South 193rd East Avenue, Broken Arrow, Oklahoma 74014. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma through Peter Bernhardt, Assistant United States Attorney; the Defendant, William Theodore Edwards, Jr., a/k/a William Theodore Edward, Jr., appeared pro se; and the Defendant, Marion M. Edwards, a/k/a Marion M. Edward, a/k/a Marion Marie Edwards, a/k/a Marion Maria Edwards, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on July 31, 1986, in favor of the Plaintiff United States of America, and against the Defendants, William Theodore Edwards, Jr., a/k/a William Theodore Edward, Jr., and Marion M. Edwards, a/k/a Marion M. Edward, a/k/a Marion Marie Edwards, a/k/a Marion Maria Edwards, with interest and costs to date of sale is \$102,253.15.

The Court further finds that the appraised value of the real property at the time of sale was \$65,200.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered July 31, 1986, for the sum of \$57,735.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on 18th day of February, 1987.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, William Theodore Edwards, Jr., a/k/a William Theodore Edward, Jr., and Marion M. Edwards, a/k/a Marion M. Edward, a/k/a Marion Marie Edwards, a/k/a Marion Maria Edwards, as follows:

Principal Balance as of 11/20/86	\$ 85,889.00
Interest	<u>16,364.15</u>
TOTAL	\$102,253.15
Less Credit of Appraised Value	- <u>65,200.00</u>
DEFICIENCY	\$ 37,053.15

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Administrator of Veterans Affairs have and recover from Defendants, William Theodore Edwards, Jr., a/k/a William Theodore Edward, Jr., and * Marion M. Edwards, a/k/a Marion M. Edward, a/k/a Marion Marie Edwards, a/k/a Marion Maria Edwards, a deficiency judgment in the amount of \$37,053.15, plus interest at the legal rate of 7.02 percent per annum on said deficiency judgment from date of judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

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

FILED

PATRICIA BURRITT,

Plaintiff,

vs.

No. 85-C-661-E

MAY 27 1987
F. J. ...
U.S. DISTRICT COURT

K-MART CORPORATION, a Michigan corporation; TULSA EMERGENCY MEDICAL CENTER, INC., an Oklahoma corporation; DR. JAMES KING; and DOES 1 thru 15, inclusive,

Defendants.

ORDER OF DISMISSAL

On this 27th day of May, 1987, upon the written application of the Plaintiff, Patricia Burritt, and the Defendant, K-Mart Corporation, for a Dismissal with Prejudice as to all claims and causes of action against the Defendant K-Mart Corporation only, involved in the Complaint of Burritt v. K-Mart, et al., and the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint against K-Mart Corporation only, and have requested the Court to Dismiss said Complaint with prejudice, as to Defendant K-Mart Corporation only, to any future action, reserving all rights of the Plaintiff to proceed against Tulsa Emergency Medical Center, Dr. James King, and Does 1 thru 15. The Court being fully advised in the premises finds said settlement is to the best interest of said Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all claims and causes of action of the Plaintiff, Patricia Burritt, against the Defendant, K-Mart Corporation only, be and the same hereby

are dismissed with prejudice to any future action, reserving all rights of the Plaintiff to proceed against Tulsa Emergency Medical Center, Dr. James King, and Does 1 thru 15.

JAMES O. ELISON

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

APPROVALS:

RICHARD E. STAITON

Attorney for the Plaintiff

HARRY A. PARRISH

Attorney for the Defendant

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

FILED

MAY 27 1987

J. R. ...
U.S. DISTRICT COURT

MELBA MARKEETA GILLEAN and)
ANNETTE JETT,)
)
Plaintiffs,)
)
vs.)
)
DON ROBERT HEFNER, DARRELL)
WOLFF, GILLEAN & JETT, INC.,)
TOWN AND COUNTRY BANK, ROBERT)
ELLIOTT and WILLIAM JACOBUS,)
)
Defendants.)

Case No. 85-C-98-E

ORDER OF PARTIAL DISMISSAL

The Plaintiff, Annette Jett, and the Defendants, Don Robert Hefner, Town & Country Bank, Robert Elliott and William Jacobus having, pursuant to Rule 41 of the Federal Rules of Civil Procedure, stipulated to the dismissal of the Complaint, as amended, of the Plaintiff, Annette Jett, the Counterclaim of the Defendant, William Jacobus, and the Counterclaim of the Defendant, Town & Country Bank, against the Plaintiff, Annette Jett, it is

ORDERED AND ADJUDGED that the Complaint, as amended of the Plaintiff, Annette Jett, be and the same hereby is dismissed with prejudice. It is further

ORDERED AND ADJUDGED that the Counterclaim of the Defendant, William Jacobus, be and the same hereby is dismissed, with prejudice. It is further

ORDERED AND ADJUDGED that the Counterclaim of the Defendant, Town & Country Bank, be dismissed, only with respect to the

Plaintiff, Annette Jett, said dismissal to be without prejudice. It is further

ORDERED AND ADJUDGED that each party shall bear its own costs in this action.

DONE AND ORDERED this 27th day of May, 1987.

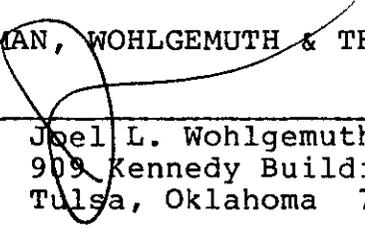

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:


R. Brent Blackstock
5310 East 31st Street
Tulsa, Oklahoma

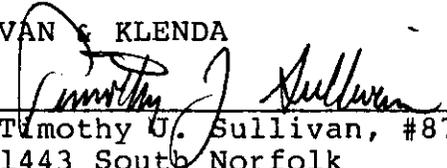
Attorney for Plaintiff, Annette Jett

NORMAN, WOHLGEMUTH & THOMPSON

By: 
Joel L. Wohlgemuth
909 Kennedy Building
Tulsa, Oklahoma 74103

Attorneys for Defendants,
Town & Country Bank and
Robert Elliott

SULLIVAN & KLENDIA

By: 
Timothy J. Sullivan, #8759
1443 South Norfolk
Tulsa, Oklahoma 74120
(918) 592-3100

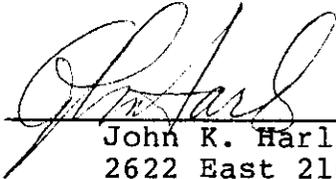
Attorneys for Defendants,
Town & Country Bank and
Robert Elliott

BOONE, SMITH, DAVIS & HURST

By: 

Reuben Davis
500 Oneok Plaza
Tulsa, Oklahoma 74103

Attorneys for Defendant,
William Jacobus



John K. Harlin, Jr.
2622 East 21st
Tulsa, Oklahoma

Attorneys for Defendant,
Don Robert Hefner

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

FILED

MAY 26 1987

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

COINTEL COMMUNICATIONS, INC.,
a Nevada corporation,

Plaintiff,

Case No. 86-C-748 C

SEISCOR TECHNOLOGIES, INC., a
Delaware corporation; SWITCHCRAFT,
INC., a Delaware corporation,
RATES TECHNOLOGY, INC., a New
York corporation; ADVANCED TELE-
COMMUNICATIONS & MANUFACTURING
CORPORATION, a corporation; CSI,
INC., an Oregon corporation; COTS,
INC., a Michigan corporation;
TRIDENT INDUSTRIES, INC., a New
Jersey corporation; RAYTRONICS,
INC., a New York corporation;
PAY-COM, INC., a Florida corpo-
ration; GERALD WEINBERGER, an
individual; WILLIAM SULLIVAN, an
individual; CLYDE HUSSEY, an
individual; and IRA TODD KLEIN,
an individual.

Defendants.

DEFENDANT/CROSS CLAIMANT'S STIPULATION OF DISMISSAL

Defendant/Cross Claimant, Rates Technology, Inc., hereby stipulates to the dismissal of Clyde Hussey from all claims asserted in its Cross Claim filed in this matter.

BRIGGS AND MORGAN
Attorneys for Seiscor
Technologies, Inc.,
Switchcraft, Inc.,
and Clyde Hussey
2400 IDS Center
Minneapolis, MD. 55402
Telephone: (612) 339-0661

MERSON, SAWYER, JOHNSTON,
DUNWODY & COLE
Attorneys for Defendants Rates
Technology, Inc., Gerald
Weinberger and William Sullivan
200 South Biscayne Boulevard
4500 Southeast Financial Center
Miami, Florida 33131-2387
Telephone: (305) 358-5100

By: 
J. PATRICK McDAVITT

By: 
STEPHEN M. CORSE

and

JOSEPH L. HULL, III
Attorney for Seiscor
Technologies, Inc.,
Switchcraft, Inc.,
and Clyde Hussey
1717 South Cheyenne
Tulsa, Oklahoma 74119
Telephone: (918) 582-8252

CONNOR & WINTERS
Co-Counsel for Defendants Rates
Technology, Inc., Gerald
Weinberger and William Sullivan
2400 First National Tower
Tulsa, Oklahoma 74013
Telephone: (918) 586-5711

By: 
JOSEPH L. HULL, III

By: 
DOUGLAS P. WINTERS

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 26th day of May, 1987 to the following parties:

Gene C. Buzzard, Esquire
Patricia Ledvina Himes, Esquire
Waddel & Buzzard
1500 One Boston Plaza
20 East 5th Street
Tulsa, Oklahoma, 74103

Joel L. Wohlgemuth, Esquire
Norman, Wohlgemuth & Thompson
909 Kennedy Building
Tulsa, Oklahoma, 74103

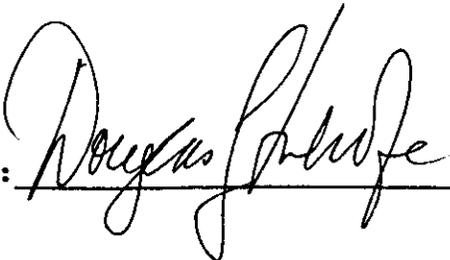
Christopher I. Brain, Esquire
Tousley, Brain, Reinhardsen & Block
Suite 1700, 720 Olive Way
Seattle, Washington, 98101

Robert Zeller, Esquire
83 Summitt Avenue
Hackensack, New Jersey 07601

Joseph L. Hull, III, Esquire
1717 South Cheyenne
Tulsa, Oklahoma, 74119

Patrick McDavitt, Esquire
Jeffrey F. Shaw, Esquire
Mark G. Schroeder, Esquire
Briggs & Morgan
2400 IDS Center
Minneapolis, Minnesota, 55402

Louis J. Petta, Esquire
1435 10th Street
Fort Lee, New Jersey, 07024

By:  _____

FILED

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

MAY 26 1987

CHARLES FREDERICK FISHER AND)
BILLIE JEAN FISHER,)
)
Plaintiffs,)
)
vs.)
)
OWENS-CORNING FIBERGLASS)
CORPORATION, et al.,)
)
Defendants.)

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

No. 86-C-735-E

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed February 25, 1987. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

IT IS THEREFORE ORDERED that the Motions to Dismiss of all Defendants are hereby granted.

It is so Ordered this 21st day of May, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

MAY 26 1987

ELLIS M. STATON,)
)
 Plaintiff,)
)
 vs.)
)
 FARMERS INSURANCE COMPANY, INC.,)
)
 Defendant and Third-)
 Party Plaintiff,)
 vs.)
)
 CURTIS R. WHEATLEY,)
)
 Third-Party Defendant.)

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

Case #85-C-812-E

ORDER APPROVING SETTLEMENT AND DISMISSAL WITH PREJUDICE

NOW on this 26th day of May, 1987, upon the written Joint Application of the parties for Dismissal with Prejudice of the Complaint of E. Michael Staton and the Third Party Complaint of Farmers Insurance Company, Inc., the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in or which could be involved in the Complaint and Third Party Complaint and have requested the Court to Dismiss said Complaint and Third Party Complaint with prejudice to any future action. The Court finds from the representations counsel has made herein as well as the Joint Application for Court approval of settlement, that the settlement herein is reasonable and proper and that the parties have been fully apprised of their legal rights and those which are being terminated by this settlement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action against the defendant

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

MAY 26 1987

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

CONSOLIDATED GRAIN & BARGE CO.,)	
)	
Plaintiff,)	
	)	No. 85-C-285-E
vs.)	
)	
MUSKOGEE MARINE SUPPLY, INC.,)	
et al.,)	
Defendants.)	

DISMISSAL STIPULATION

Come now the parties and state:

1. All matter in dispute have been settled and resolved by the parties.
2. Plaintiff dismisses its complaint with prejudice.
3. Defendants dismiss their counter claim with prejudice.
4. All parties are to bear their own costs.

GOLDSTEIN and PRICE
and Gary T. Sacks
and Simon Tonkin
1300 Paul Brown Building
818 Olive Street
St. Louis, Missouri 63101
(314)421-0710

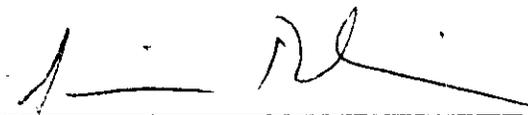
LAKE, TINDALL, HUNGER & THACKSTON
and Mr. C.W.Walker, III
127 South Poplar
P.O. Box 918
Greenville, Mississippi 38701
(601)378-1212

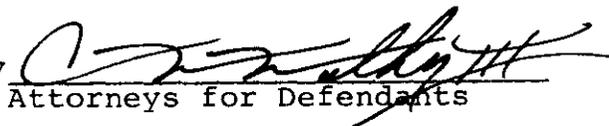
and

and

JOHN J. LIVINGSTON
525 South Main, Suite 201
Tulsa, Oklahoma 74103
(918)-592-1812

Mr. Larry B. Lipe
Comfort, Lipe Green, P.C.
2100 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103

By 
Attorneys for Plaintiffs

By 
Attorneys for Defendants

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

PENTECO CORPORATION LIMITED
PARTNERSHIP - 1985 A, an
Oklahoma limited partnership,

Plaintiff,

v.

UNION GAS COMPANY, INC., a
Kansas Corporation,

Defendant.

FILED
MAY 26 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT
No. 85-C-1076-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 Penteco Corporation Limited Partnership - 1985 A, an Oklahoma limited partnership, and against Union Gas System, Inc., a Kansas corporation, in the amount of One Hundred Eighty Five Thousand Seven Hundred Eleven and 08/100 Dollars (\$185,711.08), plus the costs of this action, if timely applied for pursuant to Local Rule, and post-judgment interest at the rate of 7.02% per annum from this date. The plaintiff is entitled to an award of a reasonable attorney's fee as the prevailing party herein if timely applied for pursuant to Local Rule.

DATED this 26th day of May, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT MAY 26 1987
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

SAMUEL B. WINTERS,)
)
 Plaintiff,)
)
 vs.)
)
 ROCKWELL INTERNATIONAL)
 CORPORATION, et al.,)
)
 Defendants.)

No. 87-C-54-E

O R D E R

NOW on this 21st day of May, 1987 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that the cause of action against Rockwell as a diverse corporate defendant for breach of contract is "separate and independent" as that phrase is utilized in Title 28 U.S.C. §1441(c) and analyzed in the line of cases which construe such section, from the cause of action against White and Roslansky as non-diverse Defendants for tortiously inducing the breach of contract. This Court therefore finds that Plaintiff's Motion to Remand should be and is hereby denied.

The Court further finds that there being no response to the Motion of Defendant Roslansky to dismiss the fifth cause of action, Motion of Defendant White to dismiss the fourth cause of action, or Motion of Defendant Rockwell to dismiss the second and third causes of action, and more than ten (10) days having passed since the filing of said motions to dismiss on February 23, 1987, and no extension of time having been sought by Plaintiff Samuel B. Winters, the Court, pursuant to Local Rule 14(a), as amended

effective March 1, 1981, concludes that Plaintiff Samuel B. Winters has therefore waived any objection or opposition to the said motions to dismiss. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964). The Motion of Defendant Roslansky to dismiss the fifth cause of action, Motion of Defendant White to dismiss the fourth cause of action, and Motion of Defendant Rockwell to dismiss the second and third causes of action are therefore granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Remand is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Motion of Defendant Roslansky to dismiss the fifth cause of action, Motion of Defendant White to dismiss the fourth cause of action, and Motion of Defendant Rockwell to dismiss the second and third causes of action are hereby granted and that Defendant Rockwell is given ten (10) days to submit a judgment reflecting the above order to this Court for its approval.

DATED this 21st day of May, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 22 1987

GARY W. LEITCH,)
)
 Plaintiff,)
)
 v.)
)
 PIZZA HUT, INC., a Delaware)
 corporation, and PIZZA HUT)
 OF AMERICA, INC., an Oklahoma)
 corporation,)
)
 Defendants.)

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

CIVIL ACTION No. 87-C-115-B

O R D E R

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiff's third claim for relief under Fed.R.Civ.P. 12(b)(6), or in the alternative, Motion to Strike punitive damages claim pursuant to Fed.R.Civ.P. 12(f). For the reasons set out below, Defendants' Motion to Dismiss is granted.

In order to prevail on a Motion to Dismiss, a defendant must establish that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Haines v. Kerner, 404 U.S. 519 (1972). In deciding the motion the Court must assume the allegations contained in the complaint are true. Gardner v. Toilet Goods Ass'n., 387 U.S. 167 (1957).

This is an action arising out of the termination of Plaintiff after some thirteen years of employment with the Defendant. Plaintiff alleges three causes of action: (1) violation of Title VII; (2) intentional infliction of emotional distress; and (3) bad faith. Defendants' Motion to Dismiss concerns only the third claim.

In his third cause of action, Plaintiff claims that Defendant terminated his employment unfairly and arbitrarily, thereby breaching the implied covenant of good faith and fair dealing in his employment contract. Plaintiff alleges that the Defendant wrongfully terminated him for investigating and reporting allegations of sexual harassment by a fellow employee of Defendant corporation.

Defendant contends that Plaintiff's tort claim for bad faith breach of the implied covenant of good faith and fair dealing in the employment contract must be dismissed because no such cause of action exists under Oklahoma law. In Hall v. Farmers Ins. Exchange, 713 P.2d 1027 (Okla. 1985), the court held that the covenant of good faith, implied in all contracts in Oklahoma, extends to a covenant not to wrongfully resort to the termination-at-will clause in an employment contract. However, Hall does not establish a tort cause of action for bad faith breach of this covenant. In Solberg v. Reading and Bates Corporation, No. 85-C-158-B (N.D.Okla. November 18, 1985) (order overruling a motion to dismiss in part and sustaining the motion in part), this court dismissed a wrongful discharge tort claim asserted under Hall. The court noted:

"The plaintiff in Hall did not pursue a cause of action sounding in tort. Further, the Oklahoma Supreme Court's recognition of an implied covenant of good faith between the parties to every contract does not create tort damages for breach thereof."

Thus, Plaintiff has no tort claim for bad faith breach under Hall. However, under Christian v. American Home Assurance Co., 577 P.2d

899 (Okla. 1977), and its progeny, under certain circumstances, a tort cause of action exists for breach of the implied duty to act in good faith and deal fairly. Christian dealt with the specific obligation of an insurer to its insured. Plaintiff contends that reading Christian in conjunction with Hall, particularly in light of the recent Oklahoma Court of Appeals decision in Hinson v. Cameron, 57 O.B.J. 1229 (May 15, 1986), establishes that Oklahoma now recognizes a tort cause of action for breach of the duty of the parties to an employment contract to deal fairly and in good faith with reference to termination.

20 O.S. 1981 §30.5 provides in part:

"No opinion of the Court of Appeals shall be binding or cited as precedent unless it shall have been approved by the majority of the Justices of the Supreme Court for publication in the official reporter. The Supreme Court shall direct which opinion or decision, if any, of the Court of Appeals shall be published in the unofficial reporter. Opinions of the Court of Appeals which apply settled precedent and do not settle new questions of law shall not be released for publication in the official reporter."

The Court of Appeals decision in Hinson has not yet been approved for publication in the official reporter. Therefore, the opinion is not binding precedent at this time. Hinson does not cite Hall as authority for a tort cause of action. Consequently, this Court is not required to follow the principle of law announced in Hinson and declines to extend the tort cause of action recognized in Christian beyond the facts of that case.

Therefore, Defendants' Motion to Dismiss Plaintiff's tort claim for bad faith breach of the implied contractual covenant is

granted. In light of the court's ruling on Defendants' Motion to Dismiss, the Motion to Strike is moot.

IT IS SO ORDERED, this 22nd day of May, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JIMMY DALE BARRETT,)
)
) Petitioner,)
)
 v.) No. 86-CR-24-B
)
) UNITED STATES OF AMERICA,)
) No. 87-C-129-B
) Respondent.)

FILED

MAY 22 1987

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

ORDER

This matter comes before the Court on the petition for writ of habeas corpus filed by Jimmy Dale Barrett, an inmate at the Federal Correctional Institution in Fort Worth, Texas. Barrett challenges a decision of the United States District Court for the Northern District of Oklahoma concerning his sentence upon conviction under Section 495 of Title 18, United States Code. For the reasons set forth below, the petition for a writ of habeas corpus is dismissed.

On June 17, 1986, this court sentenced petitioner to 6 years imprisonment under Section 495 of Title 18, United States Code, for fraudulently endorsing and uttering a United States Treasury Check. Title 18, U.S.C. §495 provides:

"Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money -

Shall be fined not more than \$1000 or imprisoned not more than ten years, or both."

Petitioner now moves this court under 28 U.S.C. §2255; and in addition Rule 35, permitting correction of an illegal sentence. Petitioner contends that the sentence should be in accord with 18 U.S.C. §510(c):

"If the face value of a Treasury check or bond or security of the United States of the aggregate face value, if more than one Treasury check or bond or security of the United States, does not exceed \$500, in any of the above mentioned offenses, the penalty shall be a fine of not more than \$1000 or imprisonment for not more than one year or both."

The amount of the check in question was \$236.38.

The question of whether Section 510 impliedly repealed Section 495 has not yet been addressed by the Tenth Circuit Court of Appeals. However, the effect of Section 510 upon Section 495 has been reviewed by Courts of Appeals from the Second, Seventh, and Ninth Circuits. Each Circuit Court has concluded that Section 510 provides the government with the option of prosecuting forged Treasury Check violations as a felony under Section 495, or as a misdemeanor under Section 510.

Recently, the Ninth Circuit considered the interrelationship of Sections 495 and 510 in United States v. Edmonson, 792 F.2d 1492 (9th Cir. 1986). The Edmonson court reviewed several district courts' conclusions that Section 510 impliedly repealed Section 495, at least insofar as it applied to the forgery of endorsements of Treasury Checks having a face value of \$500 or less. The Ninth Circuit found that Section 510 did not repeal Section 495 stating that:

"[A] finding of implied repeal by Section 510 of Section 495 requires that we first find an irreconcilable conflict between two statutes. We find no such conflict here. The fact that there are two criminal statutes applying to exactly the same criminal conduct, and one provides a different penalty from the other, does not create irreconcilable conflict to support a claim of implied repeal. It merely brings into play the rule that the government has the election of which statute it will charge."

Id. at 1497-1498.

The Ninth Circuit stated that nothing in the legislative history of Section 510 indicated that it was to prevail over Section 495 - in whole or in part. The court also cited its previous opinion in United States v. Fields, 783 F.2d 1382 (9th Cir. 1986), which noted that "a purpose in enacting Section 510 was to close a loophole, because Section 495 had been held inapplicable to stolen Treasury Checks that were not falsely endorsed." Id. at 1498.

Finally, the Edmonson court rejected the argument that the "rule of lenity" required the court to resolve the issue in favor of Section 510. As noted by the court:

"[It] is accepted that where there is ambiguity in a criminal statute requiring judicial interpretation, a court should resolve the ambiguity in favor of lenity. We find no basis for statutory interpretation of Sections 495 and 510. Absent ambiguity in them, either in their internal text, or between them as they are read together, there is no occasion for such statutory interpretation."

Id. at 1498.

In United States v. Jackson, 805 F.2d 457 (2nd Cir. 1986), the Second Circuit held that Congress did not intend Section 510

to repeal 18 U.S.C. §641; a felony statute proscribing conversion of United States property. The court held that Congress in enacting §510 did not intend to repeal §641, thus allowing the court to charge under either statute. In so ruling, the court also analogized the interrelationship between Sections 495 and 510, recognizing relevant principles covering a situation in which two statutes enforce the same conduct but provide different punishments. The court examined the Senate report discussing the relationship between Sections 495 and 510, to which the court commented as follows:

"Section 495, enacted in 1948, is a broadly worded felony statute which prohibits the forgery of writings for the purpose of obtaining from the United States any sum of money. It does not explicitly encompass offenses related to Treasury checks, but false endorsements on Treasury checks have long been prosecuted under Section 495 and its predecessor. Sensing gaps in the wording of Section 495 by which certain conduct such as stealing and cashing an already endorsed Treasury check would go unpunished, Congress enacted Section 510 to close loopholes in Section 495. A Congressional intent to bridge gaps in an earlier statute by enacting a later statute is not indicative of intent to supercede the earlier statute."

Id. at 462.

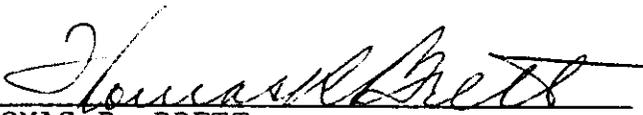
The court concluded that Section 510 was intended to fill legislative loopholes in Section 641 as was the case with Section 495.

Lastly, the Seventh Circuit in Edwards v. United States, 814 F.2d 486 (7th Cir. 1987) recognized how vigorously the Supreme Court enforces the maxim against implied repeal in the case of overlapping criminal statutes. The court relied upon U.S. v.

Batchelder, 442 U.S. 114 (1979), in which the Supreme Court, relying on the maxim against implied repeal, held that two overlapping provisions of the Criminal Code were both enforceable. Id. at 489.

The court is persuaded by the analysis of the interrelationship of Sections 495 and 510, as discussed above. Therefore, the court finds that the petitioner was properly charged and sentenced under 18 U.S.C. §495 and hereby dismisses the petition for writ of habeas corpus; for the same reasons the Rule 35 motion, permitting the reduction of an illegal sentence, is also dismissed.

ENTERED this 22nd 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 22 1983
JAMES S. BROWN, CLERK
U.S. DISTRICT COURT

J. B. HALL and LIBBY A. HALL,)
husband and wife,)
)
Plaintiffs,)

vs.)

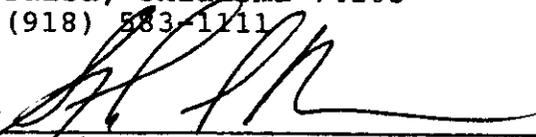
Case No. 83-C-178-B

THE MINNESOTA MUTUAL LIFE)
INSURANCE COMPANY DEFINED)
BENEFIT PENSION PLAN)
PATTERN PLAN - DA as)
adopted by GROUP HOSPITAL)
SERVICE OF OKLAHOMA,)
GROUP HOSPITAL SERVICE, d/b/a)
BLUE CROSS BLUE SHIELD OF)
OKLAHOMA, an Oklahoma)
insurance corporation, et al.)
)
Defendants.)

JOINT STIPULATION OF DISMISSAL
OF THE DEFENDANT, RALPH S. RHOADES

COME NOW the Plaintiffs, J. B. HALL and LIBBY A. HALL, by and through their undersigned attorney of record, and Defendant, RALPH S. RHOADES, by and through his undersigned attorney of record, and jointly advise the Court that Plaintiffs' cause of action or actions against the Defendant RALPH S. RHOADES in the above-styled cause is dismissed with prejudice, with each party bearing their own costs and attorneys' fees.

MCCORMICK, ANDREW & CLARK
A Professional Corporation
Attorneys for Plaintiffs
Suite 100, Tulsa Union Depot
111 East First Street
Tulsa, Oklahoma 74103
(918) 583-1111

By 
Stephen L. Andrew (OBA# 294)

-and-

PRAY, WALKER, JACKMAN, WILLIAMSON
& MARLAR
A Professional Corporation
Attorneys for Defendant,
Ralph S. Rhoades
900 Oneok Plaza
Tulsa, Oklahoma 74103
(918) 584-4136

By 
Floyd L. Walker

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on this 27th day of May, 1987, I caused to be mailed a true and correct copy of the above and foregoing Joint Stipulation of Dismissal of Defendant Ralph S. Rhoades to the following, with proper postage affixed thereto:

Mr. J. Patrick Cremin
Hall, Estill, Hardwick, Gable
Collingsworth & Nelson
Attorneys for Defendant, Group
Hospital Service
4100 Bank of Oklahoma Tower
Tulsa, Oklahoma 74172

Mr. James L. Kincaid and
Mr. Henry Will
Conner, Winters, Ballaine,
Barry & McGowen
Attorneys for the Trustees
2400 First National Tower
Tulsa, Oklahoma 74103

Mr. Floyd L. Walker
Pray, Walker, Jackman, Williamson
& Marlar
Attorneys for Defendant,
Ralph S. Rhoades
900 Oneok Plaza
Tulsa, Oklahoma 74103


Stephen L. Andrew

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

FILED

MAY 22 1987

U.S. DISTRICT COURT

J. B. HALL and LIBBY A. HALL,)
husband and wife,)
)
Plaintiffs,)
)
vs.)
)
THE MINNESOTA MUTUAL LIFE)
INSURANCE COMPANY DEFINED)
BENEFIT PENSION PLAN)
PATTERN PLAN - DA as)
adopted by GROUP HOSPITAL)
SERVICE OF OKLAHOMA,)
GROUP HOSPITAL SERVICE, d/b/a)
BLUE CROSS BLUE SHIELD OF)
OKLAHOMA, an Oklahoma)
insurance corporation, et al.)
)
Defendants.)

Case No. 83-C-178-B

JOINT STIPULATION OF DISMISSAL
OF THE DEFENDANT TRUSTEES

COME NOW the Plaintiffs, J. B. HALL and LIBBY A. HALL, by and through their undersigned attorney of record, and Defendant Trustees, JOHN A. BLASCHKE, M.D., C. F. BREESE, SISTER ROSANNA CARTER, JAMES E. COSTELLO, FORREST S. FUQUA, L. BRYAN GIBSON, H. ZEINE GOATCHER, FRANK W. HERALD, ROBERT B. HOWARD, M.D., LAWRENCE A. LANGFORD, RICHARD C. LUTTRELL, ROBERT D. McCULLOUGH, D.O. (now deceased), JOHN B. McMILLEN, T. D. NICKLAS, WALTER A. O'BANNON, JR., JOHN A. PEARCE, ROBERT G. PERRYMAN, VENCENT F. SNIDER, J. HAROLD TISDAL, M.D., and EDWIN E. VINEYARD, Ed.D., by and through their undersigned attorney of record, and jointly advise the Court that Plaintiffs' cause of action or actions against the Defendant Trustees in the above-styled cause is

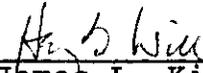
dismissed with prejudice, with each party bearing their own costs and attorneys' fees.

MCCORMICK, ANDREW & CLARK
A Professional Corporation
Attorneys for Plaintiffs
Suite 100, Tulsa Union Depot
111 East First Street
Tulsa, Oklahoma 74103
(918) 583-1111

By 
Stephen L. Andrew (OBA# 294)

-and-

CONNER, WINTERS, BALLAINE,
BARRY & MCGOWAN
Attorneys for the Trustees
2400 First National Tower
Tulsa, Oklahoma 74103

By 
James L. Kincaid
Henry Will

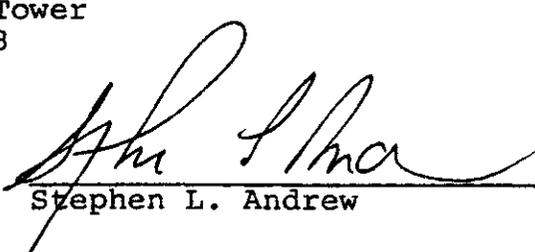
CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on this 22nd day of May, 1986, I caused to be mailed a true and correct copy of the above and foregoing Joint Stipulation of Dismissal of Defendant Trustees to the following, with proper postage affixed thereto:

Mr. J. Patrick Cremin
Hall, Estill, Hardwick, Gable
Collingsworth & Nelson
Attorneys for Defendant, Group
Hospital Service
4100 Bank of Oklahoma Tower
Tulsa, Oklahoma 74172

Mr. Floyd L. Walker
PRAY, WALKER, JACKMAN, WILLIAMSON
& MARLAR
Attorneys for Defendant,
Ralph S. Rhoades
900 Oneok Plaza
Tulsa, Oklahoma 74103

Mr. James L. Kincaid and
Mr. Henry Will
Conner, Winters, Ballaine,
Barry & McGowen
Attorneys for the Trustees
2400 First National Tower
Tulsa, Oklahoma 74103



Stephen L. Andrew

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

W.T. SANDERS, SR., and
ODESSA R. SANDERS,

Petitioners,

v.

MICHAEL H, FREEMAN,

Respondent.

No. 87-C-161-B

FILED

MAY 21 1987

Jack F. Clark, Clerk
U.S. DISTRICT COURT

O R D E R

This matter comes before the Court on Defendant's Motion to Refer case to the Bankruptcy Court, or, in the Alternative, to Dismiss, pursuant to Fed.R.Civ.P. 12(b)(1) and (6). For the reasons set forth below, the Motion to Dismiss is sustained.

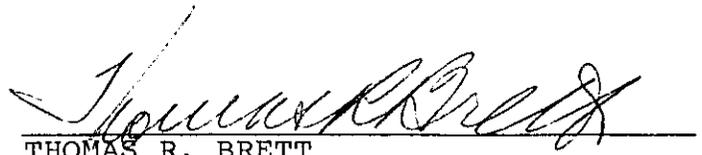
Petitioners are debtors before the United States Bankruptcy Court for the Northern District of Oklahoma in a pending Chapter 7 case, In Re: W.T. Sanders and Odessa R. Sanders, Case No. 85-02113. Stockton Oil and Gas Co., Inc., is presently before the Bankruptcy Court in a pending Chapter 11 matter, In Re: Stockton Oil and Gas Co., Inc., Case No. 85-01974. W.T. Sanders is president of Stockton Oil and Gas. Respondent was appointed trustee in the above cases by the Bankruptcy Court on December 16, 1985. The Petitioners herein have brought this action regarding Respondent's actions as trustee in bankruptcy. Petitioners initiated this action on March 9, 1987. On March 31, 1987, Respondent filed his Motion to Refer this case to Bankruptcy Court or, in the Alternative, to Dismiss. Petitioners have not responded to this motion.

Rule 14(a) of the United States District Court for the Northern District of Oklahoma provides that memoranda in opposition to a motion or application "shall be filed within ten (10) days after the filing of the motion...." The Rule further provides:

"Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings."

By failing to respond to the Respondent's motion, Petitioners have confessed the matters raised therein. Thus, the Respondent's Motion to Dismiss is sustained for Peitioners' failure to comply with Rule 14(a).

IT IS SO ORDERED, this 22nd day of May, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JIMMY DALE BARRETT,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

No. 86-CR-24-B
No. 87-C-129-B ✓

FILED

MAY 22 1987

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

O R D E R

This matter comes before the Court on the petition for writ of habeas corpus filed by Jimmy Dale Barrett, an inmate at the Federal Correctional Institution in Fort Worth, Texas. Barrett challenges a decision of the United States District Court for the Northern District of Oklahoma concerning his sentence upon conviction under Section 495 of Title 18, United States Code. For the reasons set forth below, the petition for a writ of habeas corpus is dismissed.

On June 17, 1986, this court sentenced petitioner to 6 years imprisonment under Section 495 of Title 18, United States Code, for fraudulently endorsing and uttering a United States Treasury Check. Title 18, U.S.C. §495 provides:

"Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money -

Shall be fined not more than \$1000 or imprisoned not more than ten years, or both."

Petitioner now moves this court under 28 U.S.C. §2255; and in addition Rule 35, permitting correction of an illegal sentence. Petitioner contends that the sentence should be in accord with 18 U.S.C. §510(c):

"If the face value of a Treasury check or bond or security of the United States of the aggregate face value, if more than one Treasury check or bond or security of the United States, does not exceed \$500, in any of the above mentioned offenses, the penalty shall be a fine of not more than \$1000 or imprisonment for not more than one year or both."

The amount of the check in question was \$236.38.

The question of whether Section 510 impliedly repealed Section 495 has not yet been addressed by the Tenth Circuit Court of Appeals. However, the effect of Section 510 upon Section 495 has been reviewed by Courts of Appeals from the Second, Seventh, and Ninth Circuits. Each Circuit Court has concluded that Section 510 provides the government with the option of prosecuting forged Treasury Check violations as a felony under Section 495, or as a misdemeanor under Section 510.

Recently, the Ninth Circuit considered the interrelationship of Sections 495 and 510 in United States v. Edmonson, 792 F.2d 1492 (9th Cir. 1986). The Edmonson court reviewed several district courts' conclusions that Section 510 impliedly repealed Section 495, at least insofar as it applied to the forgery of endorsements of Treasury Checks having a face value of \$500 or less. The Ninth Circuit found that Section 510 did not repeal Section 495 stating that:

"[A] finding of implied repeal by Section 510 of Section 495 requires that we first find an irreconcilable conflict between two statutes. We find no such conflict here. The fact that there are two criminal statutes applying to exactly the same criminal conduct, and one provides a different penalty from the other, does not create irreconcilable conflict to support a claim of implied repeal. It merely brings into play the rule that the government has the election of which statute it will charge."

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The Ninth Circuit stated that nothing in the legislative history of Section 510 indicated that it was to prevail over Section 495 - in whole or in part. The court also cited its previous opinion in United States v. Fields, 783 F.2d 1382 (9th Cir. 1986), which noted that "a purpose in enacting Section 510 was to close a loophole, because Section 495 had been held inapplicable to stolen Treasury Checks that were not falsely endorsed." Id. at 1498.

Finally, the Edmonson court rejected the argument that the "rule of lenity" required the court to resolve the issue in favor of Section 510. As noted by the court:

"[It] is accepted that where there is ambiguity in a criminal statute requiring judicial interpretation, a court should resolve the ambiguity in favor of lenity. We find no basis for statutory interpretation of Sections 495 and 510. Absent ambiguity in them, either in their internal text, or between them as they are read together, there is no occasion for such statutory interpretation."

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to repeal 18 U.S.C. §641; a felony statute proscribing conversion of United States property. The court held that Congress in enacting §510 did not intend to repeal §641, thus allowing the court to charge under either statute. In so ruling, the court also analogized the interrelationship between Sections 495 and 510, recognizing relevant principles covering a situation in which two statutes enforce the same conduct but provide different punishments. The court examined the Senate report discussing the relationship between Sections 495 and 510, to which the court commented as follows:

"Section 495, enacted in 1948, is a broadly worded felony statute which prohibits the forgery of writings for the purpose of obtaining from the United States any sum of money. It does not explicitly encompass offenses related to Treasury checks, but false endorsements on Treasury checks have long been prosecuted under Section 495 and its predecessor. Sensing gaps in the wording of Section 495 by which certain conduct such as stealing and cashing an already endorsed Treasury check would go unpunished, Congress enacted Section 510 to close loopholes in Section 495. A Congressional intent to bridge gaps in an earlier statute by enacting a later statute is not indicative of intent to supercede the earlier statute."

Id. at 462.

The court concluded that Section 510 was intended to fill legislative loopholes in Section 641 as was the case with Section 495.

Lastly, the Seventh Circuit in Edwards v. United States, 814 F.2d 486 (7th Cir. 1987) recognized how vigorously the Supreme Court enforces the maxim against implied repeal in the case of overlapping criminal statutes. The court relied upon U.S. v.

Batchelder, 442 U.S. 114 (1979), in which the Supreme Court, relying on the maxim against implied repeal, held that two overlapping provisions of the Criminal Code were both enforceable. Id. at 489.

The court is persuaded by the analysis of the interrelationship of Sections 495 and 510, as discussed above. Therefore, the court finds that the petitioner was properly charged and sentenced under 18 U.S.C. §495 and hereby dismisses the petition for writ of habeas corpus; for the same reasons the Rule 35 motion, permitting the reduction of an illegal sentence, is also dismissed.

ENTERED this 22nd day of May, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

JANET BINGHAM, individually, and)
 as Personal Representative of)
 the Estates of Vernon Bingham,)
 Jason Bingham and Greg Bingham,)
 and CASEY BINGHAM and SETH)
 BINGHAM, by and through their)
 mother and next friend, JANET)
 BINGHAM, Plaintiffs,)
)
 v.)
)
 JAMES MAUDLIN, JAMES MCCARLEY,)
 INDEPENDENT FREIGHTWAY, INC.,)
 and AMERICAN CASUALTY COMPANY,)
 Defendants.)

FILED

MAY 24 1987

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

No. 87-C-98-B

ORDER

Upon Application of the parties, this action is hereby
dismissed with prejudice, each party to bear its own costs.

Dated this 22nd day of May, 1987.

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

Approved:

TRUMAN B. RUCKER, Attorney for Plaintiff

JOHN H. TUCKER, Attorney for Defendants

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

JIMMY LEE COLE,)
)
 Petitioner,)
)
 v.)
)
 DAVID C. MILLER and)
 THE ATTORNEY GENERAL of)
 the State of Oklahoma,)
)
 Respondents.)

No. 86-C-1069-B

FILED
MAY 22 1981
U.S. DISTRICT COURT
JANET B. STINEBAUGH, CLERK

ORDER

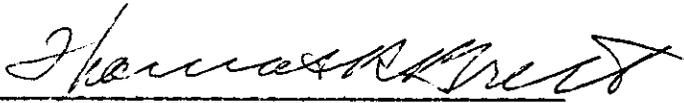
Petitioner Jimmy Lee Cole's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is now before the court for determination. Petitioner pled guilty to the charge of Larceny of an Automobile in the District Court of Osage County, Case No. CRF-77-109. Petitioner was given an eighteen-month deferred sentence. In February, 1978, the sentence was accelerated. Petitioner received a two-year sentence with the last six months suspended. Upon his release he was convicted of two other crimes which he began to serve before he completed the term under CRF-77-109. Petitioner contends that he was denied due process because his judgment and sentence in CRF-77-109 was not referred to the Lexington Assessment and Reception Center until April, 1981.

A writ of habeas corpus will issue to a state prisoner only if the prisoner can demonstrate that the state court deprived him of a fundamental right secured by the United States Constitution. Brinlee v. Crisp, 608 F.2d 839 (10th Cir. 1979). Matters of

sentencing are more properly the concern of state law. See, Niemann v. Parratt, 596 F.2d 316 (8th Cir. 1979).

The court concludes that petitioner has failed to state a claim cognizable under §2254. It is therefore ordered that the application for a writ of habeas corpus in this matter be denied.

It is so Ordered this 21 day of May, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

CALVIN J. JUMP, JR., and)
CARLA K. JUMP,)
) No. GJ-87-1-B
Petitioners.)

FILED
MAY 22 1987
JAMES P. STUBBS, CLERK
U.S. DISTRICT COURT

O R D E R

This matter comes before the Court on Petitioners' request for an order requiring the Court Clerk to receive and file exculpatory material. In their petition, the Petitioners seek to file certain exculpatory materials under seal to be presented to the grand jury in the event a grand jury investigation takes place in the future into alleged criminal violations of the Internal Revenue Code.

The Court finds the Petitioners' request to file exculpatory material in anticipation of a possible grand jury investigation without merit. Petitioners offer no legal authority under the federal rules or case law which would allow the relief requested here. Petitioners claim in their brief they have a right to demand the United States Attorney to present exculpatory materials to any grand jury empanelled to investigate allegations against them. Contrary to the Petitioners' assertion, the courts have uniformly held that a prosecutor is not required to present exculpatory evidence to the grand jury on a petitioner's behalf. See, United States v. Cederquist, 641 F.2d 1347 (9th Cir. 1981); United States v. Ruyle, 524 F.2d 1133 (6th Cir. 1975), cert. denied, 425 U.S. 934. Exceptions to the general rule have been

allowed in a few cases where the prosecutor was actually aware of substantial evidence negating guilt and might reasonably lead the grand jury not to indict. See, United States v. Ciambrone, 601 F.2d 616 (2d Cir. 1979), and United States v. Boffa, 89 F.R.D. 523 (D.Delaware 1981).

The Court finds the Petitioners' request purely anticipatory and unsupported by legal authority and hereby denies the petition.

IT IS SO ORDERED, this 22nd day of May, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

DORA ANN SUPERNAW,)
)
 Plaintiff,)
)
 v.)
)
 WAL-MART STORES, INC.,)
 a Delaware corporation doing)
 business in Oklahoma,)
)
 Defendant.)

No. 86-C-971-B

FILED

MAY 21 1987

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

O R D E R

This matter comes before the Court on Defendant Wal-Mart Stores, Inc.'s Motion for Summary Judgment. The Court has heard oral argument on the instant motion, has reviewed the applicable legal authority and finds that the Defendant's Motion for Summary Judgment should be sustained.

This case arises from a slip and fall at the Defendant's store in Cleveland, Oklahoma, on June 18, 1986. Plaintiff alleges that the Defendant was negligent in failing to clean up a slick substance on the floor and further alleges that the Defendant had actual or constructive notice of the offending material on the floor. Plaintiff alleges that the Defendant was negligent and failed to provide a systematic inspection of the premises to insure the safety of the public and seeks money damages for her injuries.

STANDARD OF SUMMARY JUDGMENT

Summary judgment may be granted only where the record establishes that "there is no genuine issue as to any material

fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Courts should approach the disposition of Rule 56 motions with caution. Madison v. Deseret Livestock Co., 574 F.2d 1027, 1037 (10th Cir. 1978). The "*** ultimate purpose of summary judgment is to pierce the allegations of the pleadings to show that there are no genuine issues of material fact. If there is an absence of material issues, then the movant is entitled to judgment as a matter of law." Commercial Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973).

Summary judgment is appropriate where there are no triable issues and a trial on the merits would therefore be fruitless. Webbe v. McGhie Land Title Co., 549 F.2d 1358, 1360-1 (10th Cir. 1977); Frey v. Frankel, 361 F.2d 437, 442 (10th Cir. 1962); Traverse v. World Service Life Ins. Co., 436 F.Supp. 810, 811 (W.D. Okla. 1977). Summary judgment is inappropriate, notwithstanding the existence of uncontroverted facts, where the reasonable inferences to be drawn from those facts are in dispute. Londrigan v. Federal Bureau of Investigation, 670 F.2d 1164, 1171 n. 37 (D.C.Cir. 1981); Luckett v. Bethlehem Steel Corp., 618 F.2d 1373, 1377 (10th Cir. 1980); Mustang Fuel Corp. v. Youngstown Sheet & Tube Co., 536 F.2d 336, 339 (10th Cir. 1976).

Recent United States Supreme Court cases discussing the application of Fed.R.Civ.P. 56 are Celotex Corporation v. Catrett, 477 U.S. _____, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274

(1986), and Anderson v. Liberty Lobby, Inc., 477 U.S. _____, 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986). A Tenth Circuit Court of Appeals case post-Celotex is Winton Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986).

In support of its Motion for Summary Judgment, the Defendant sets forth numerous undisputed material facts supported by affidavits and deposition testimony. Plaintiff's response fails to set forth a concise statement of material facts about which a genuine issue exists. Rule 14 of the Rules of the United States District Court for the Northern District of Oklahoma provides that all material facts set forth in the statement of the movant shall be deemed admitted for the purposes of summary judgment unless specifically controverted by the statement of the opposing party. While not in compliance with Local Rule 14, the Court has examined the response and will not deem the uncontroverted matters confessed.

The Plaintiff does not allege that the Defendant was responsible for creating the condition that caused her to fall or that the Defendant had "actual notice" of the offending fluid on the floor. Plaintiff argues that the Defendant should have been aware of the spillage and failed to adequately inspect its premises. Plaintiff contends that under the recent decisions of White v. Wynn's, 708 P.2d 1126 (Okla. 1985); Lingerfelt v. Winn-Dixie Texas, Inc., 645 P.2d 485 (Okla. 1982); and Cobb v. Skaggs Companies, Inc., 661 P.2d 73 (Okl.App. 1982), a plaintiff is not required to prove actual or constructive notice of a

substance on the floor if material facts remain regarding the store's inspection or sweeping program. The Plaintiff argues that the question of whether Wal-Mart negligently failed to adequately inspect the premises is a question for the jury and that summary judgment is improper. The Court disagrees. In Safeway Stores v. Feedback, 390 P.2d 519 (Okla. 1964), the court, citing Safeway Stores, Inc. v. Criner, 380 P.2d 712 (Okla. 1963), stated:

"Unless it is established that customer slipped on floor through negligence of store owner's employees, or because of condition of which owner had actual or constructive notice, there can be no recovery."

The Court finds that the cases cited by the Plaintiff do not dispense with the actual or constructive notice requirements set forth in Feedback, under the circumstances present here. White, Lingerfelt and Cobb all reveal situations where a store's conduct had created a foreseeable, unreasonable risk and a showing of actual or constructive notice was deemed unnecessary.

The instant case is clearly distinguishable from the White decision. The small patch of fluid found in the area where the Plaintiff fell was clear and odorless. See Deposition of Wooten, page 11, lines 20-25, and Deposition of Shelton, page 11, lines 12-22. It is also uncontroverted that the fluid did not come from any of the products on display in the vicinity of the fall. See Affidavit of Reeves, ¶13. In addition, due to physical obstructions, none of the Defendant's employees could see the location of the fluid from their normal work stations. Affidavit

of Reeves, ¶ 19 and 20, and Affidavit of Shelton, ¶4. In White a controversy existed as to whether the spillage was residue from thawing meat (resulting from the negligent packaging, handling, or removal of frozen meat from a vacant unit), or if the substance were spilled coffee. The key analysis in White was whether the alleged spillage was due to the inoperative refrigeration unit which might have furnished grounds that the store had allowed a situation of foreseeable unreasonable risk to occur. Likewise, Lingerfelt weighed the traditional notice requirement for storekeepers in situations where a business invitor has created a foreseeable and unreasonable risk. In Lingerfelt the court found that when the shopper has shown that circumstances (e.g. uncovered, heaped strawberries) were such as to create the reasonable probability that a dangerous condition could occur, invitee need not also prove that the business proprietor had notice of the specific hazard, citing Bozza v. Vornado, Inc., 42 N.J. 335, 200 A.2d 777 (1964).

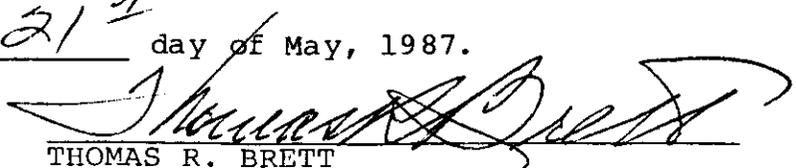
The instant case is clearly distinguishable. The Plaintiff herein wholly fails to offer evidence that the spillage in this case is attributable to the negligence of the store owner or that conditions were present creating a foreseeable, unreasonable risk. As such, the general rule requiring actual or constructive notice must be met to prevail.

Having determined that the Plaintiff must show actual or constructive notice to maintain this action, the extent of Defendant's knowledge must be assessed. The following facts are uncontroverted:

- (1) The substance upon which the Plaintiff fell was not placed on the floor by a Defendant employee (Affidavit of Reeves, Ex. H of Defendant's Brief);
- (2) The Defendant first became aware the fluid was present after the Plaintiff fell (Deposition of Reeves, Ex. B of Defendant's Brief; Wooten Deposition, Ex. C of Defendant's Brief);
- (3) The location of the fall was in an area where dry goods were displayed (Reeves Affidavit, Ex. H, ¶13, Defendant's Brief);
- (4) The source of the liquid spillage was never discovered (Reeves Affidavit, Ex. H, Defendant's Brief);
- (5) None of the Defendant's employees could see the location of the fluid from their normal work stations (Affidavit of Pam Shelton, Ex. G, Defendant's Brief);
- (6) The offending liquid was difficult to detect even upon close inspection of the floor by Defendant employees and a witness (Deposition of Dora Ann Supernaw, Ex. A, Defendant's Brief; Deposition of Shelton, Ex. E, Defendant's Brief);
- (7) Defendant has a "safety sweep program" by which they have an employee sweep the entire store with a dry mop twice each business day. This sweeping is in addition to the floor cleaning by the evening crew. (Deposition of Foote, Ex. D; Foote Affidavit (Ex. I); Reeves Affidavit, Ex. H, Defendant's Brief). The time clock for June 18, 1986, reflects the morning safety sweep was performed at the hour of 10:92 A.M. and ended at 11:96 A.M. (Reeves Affidavit, Ex. H; Foote Affidavit, Ex. I, Defendant's Brief);
- (8) The fluid was not present on the floor at the time of the morning safety sweep. (Foote Affidavit, Ex. I, Defendant's Brief). The Plaintiff's fall occurred at approximately 1:40 P.M. (Reeves Depo., Ex. B; Wooten Depo., Ex. C; Reeves Affidavit, Ex. H);
- (9) In addition to the safety sweep, the Defendant had a policy that required each employee to monitor the conditions of his or her work area and note any possible dangers. (Reeves Affidavit, Ex. H; Foote Affidavit, Ex. I).

In support of its response to the motion for summary judgment, the Defendant offers the deposition testimony of Defendant employee Thomas C. R. Foote, for the proposition that two or three times a week employees had to sweep up slippery substances on the floor in the snack bar area. The Court finds this testimony insufficient to create an issue of fact as to whether the Defendant had constructive notice of the clear, oily substance which caused the Plaintiff's fall. The undisputed facts and uncontroverted testimony offered by the Defendant demonstrate that the patch of fluid upon which the Plaintiff slipped was clear, odorless and difficult to detect. Further, the twice daily sweeping and lack of evidence of any improperly displayed items do not create an inference that the Defendant had notice of the offending substance. The Plaintiff has offered absolutely no evidence that would justify a conclusion that Wal-Mart should have known of the fluid's presence on the floor. The parties agree that the substance could have been placed on the floor at any time between the last sweeping at noon and the Plaintiff's fall at 1:40 P.M. Given the hard to detect nature of the oily substance and lack of evidence of when or how the spillage might have occurred, the Court finds that no inference can be drawn from the facts here present which creates a genuine issue of material fact. The Defendant's Motion for Summary Judgment is hereby granted.

IT IS SO ORDERED this 21st 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 21 1987

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

DANIEL SINGLETON,

Plaintiff,

CASE NO: 86-C-60-E

-vs-

THE BENNETT PUMP COMPANY,

Defendant.

Mr. Thomas J. Mulder (P-18056)
Varnum, Riddering, Schmidt & Howlett
800 Prime Bank Building
171 Monroe, N.W.
Grand Rapids, Michigan 49503
616/459-4186

Mr. Charles S. Plumb
Doerner, Stuart, Saunders, Daniel & Anderson
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

Mr. G. Steven Stidham
Sneed, Lang, Adams, Hamilton, Downie
& Barnett
Sixth Floor
114 East Eighth Street
Tulsa, Oklahoma 74119
918/583-3145

STIPULATION AND ORDER OF DISMISSAL

WITH PREJUDICE

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

DANIEL SINGLETON,

Plaintiff,

CASE NO: 86-C-60-E

-vs-

THE BENNETT PUMP COMPANY,

Defendant.

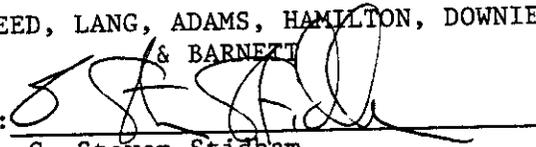
Mr. Thomas J. Mulder (P-18056)
Varnum, Riddering, Schmidt & Howlett
800 Prime Bank Building
171 Monroe, N.W.
Grand Rapids, Michigan 49503
616/459-4186

STIPULATION

The above-captioned matter having been amicably resolved by the parties,
it is hereby agreed and stipulated that the above-captioned matter be dismissed
with prejudice and without costs.

Dated: ~~April~~ ^{MAY} 14, 1987

SNEED, LANG, ADAMS, HAMILTON, DOWNIE
& BARNETT

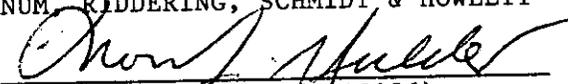
By: 

G. Steven Stidham
Attorney for Plaintiff

Business Address:
6th Floor, 114 E. Eighth Street
Tulsa, Oklahoma 74119
918/583-3145

Dated: ~~April~~ ^{MAY} 14, 1987

VARNUM, RIDDERING, SCHMIDT & HOWLETT

By: 
Thomas J. Mulder (P-18056)

Attorneys for Defendant
Business Address:
800 Prime Bank Building
Grand Rapids, Michigan 49503
616/459-4186

ORDER

The Court having considered the above stipulation of the parties by and through their respective legal counsel,

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the above-captioned matter be and hereby is dismissed with full prejudice and without costs.

Dated: ~~April~~ ^{May 27}, 1987

S/ JAMES O. ELLISON

Honorable James O. Ellison
United States District Court for the
Northern District of Oklahoma

FILED

MAY 17 1987

J. ... Clerk
U.S. DISTRICT COURT

Entered

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

MAY 21 1987

DARLA TRIPP,)
)
 Plaintiff,)
)
 vs.)
)
 AIR POWER SYSTEMS COMPANY,)
 an Oklahoma corporation,)
)
 Defendant.)

U.S. District Court

Case No. 87-C-186-E

JUDGMENT

Defendant Air Power Systems Company having filed a Motion to Strike Certain of Plaintiff's Claims and there being no response to defendant's Motion and more than ten (10) days having passed since the filing of the Motion to Strike and plaintiff's only extension of time to respond having expired on April 27, 1987 the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that plaintiff Darla Tripp has therefore waived any objection or opposition to the Motion to Strike Certain of Plaintiff's Claims. See Woods Construction Company v. Atlas Chemical Indus., Inc. 337 F.2d 888, 890 (10th Cir. 1964).

The Motion to Strike Certain of Plaintiff's Claims is therefore granted and plaintiff's claim for \$100,000 in punitive damages and plaintiff's demand for a jury trial is hereby stricken.

Judgment for defendant Air Power Systems Company is hereby entered consistent with the above and with this Court's Order of May 7, 1987.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE