

Entered

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

IMPACT SYSTEMS, INC., an)
Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
COLOR COMMUNICATIONS, INC.)
d/b/a THE LEARNING SHOP, a)
Florida corporation,)
)
Defendant.)

No. 86-C-1029-B

F I L E D

JUL 10 1987

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

ORDER OF DISMISSAL WITH PREJUDICE

Now, on this 10th day of ~~June~~ ^{JULY}, 1987 came on for consideration the Stipulation of the parties for dismissal of the above-styled and numbered cause with prejudice, submitted to the Court pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. The Court finds that such Stipulation should be approved, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-styled and numbered cause, and all claims asserted therein, be dismissed with prejudice to the refiling thereof.

S/ THOMAS R. BRETT

THOMAS R. BRETT
Judge of the United States
District Court for the Northern
District of Oklahoma

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

FILED

JUL 10 1987

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

HOMER Z. and MARGARET E. GOATCHER,)
Husband and Wife.)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

Civil Action No. 87-C-280-E

Notice of

VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiffs, Homer Z. and Margaret E. Goatcher,
by and through their counsel, and dismiss their Complaint without
Prejudice.

Respectfully submitted,

HOUSTON AND KLEIN, INC.

Charles D. Harrison

Charles D. Harrison - 3921
320 S. Boston, Suite 700
Tulsa, Oklahoma 74103
(918) 583-2131

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that service of the foregoing Voluntary
Dismissal without Prejudice has this 10th day of July, 1987 been
made upon counsel for Defendant, by mailing a copy thereof,
postage prepaid to: Cary L. Jennings, Attorney, Tax Division,
Department of Justice, Room 5B31, 1100 Commerce Street, Dallas,
Texas 75242-0599.

Charles D. Harrison

Charles D. Harrison

Entered copy

FILED

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

JUL 10 1987

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

THE ESTATE OF JAMES)
LITTLETON DANIEL, JR.,)
JOHN D. McCARTNEY and)
DAVID S. JAMES,)
)
Plaintiffs,)
)
vs.)
)
BOWDEN ATHERTON, et al.,)
)
Defendants.)

No. 85-C-590-C

ORDER

Now before the Court for its consideration are the separate motions of defendant Gill Savings Association (Gill) and defendant Colwell Financial Corporation (Colwell) for partial summary judgment. Gill and Colwell seek summary judgment in their favor as to all plaintiffs' claims against them; their motions are for partial summary judgment because they do not seek summary judgment as to their counterclaims against plaintiffs. The plaintiffs having responded, the issues are now ready for this Court's determination.

This is an action brought by the plaintiffs, the Estate of James Littleton Daniel, Jr. (Daniel), John D. McCartney (McCartney), and David S. James (James), arising out of an agreement by plaintiffs to invest in a real estate venture. The plaintiffs allege that representatives of Paragon Financial Corporation and its subsidiaries (Paragon) (which are now in

bankruptcy) fraudulently induced plaintiffs to agree to invest in a real estate venture in Texas. Plaintiffs further allege that, as part of the scheme, Paragon and individual defendants altered powers of attorney signed by plaintiffs and forged plaintiffs' signatures on earnest money contracts, powers of attorney, and other documents. The plaintiffs further allege that Paragon and the individual defendants used the forged and altered documents to purchase real estate in Texas in plaintiffs' names and to borrow \$5,035,634 in plaintiffs' names.

As to Gill and Colwell specifically, the plaintiffs allege that they aided and abetted the fraudulent scheme perpetrated on plaintiffs by Paragon and the individual defendants. Plaintiffs allege that Gill and Colwell provided substantial assistance to the scheme by loaning money for acquisition of property and by dealing with Paragon as plaintiffs' purported representatives without confirming plaintiffs' agreement to participate in the various transactions and without confirming the purported authority of Paragon officers to act as agent and attorney-in-fact for plaintiffs. Plaintiffs contend that Gill and Colwell, in order to make the loans and earn profits on the loans made in plaintiffs' names, acted recklessly by failing to ascertain if plaintiffs were aware of the transactions, consented to the transactions, and had, in fact, authorized Paragon officers to act as their agent and attorney-in-fact.

Plaintiffs claim that the real estate investments proposed to them by Paragon constitute securities, and that Paragon and the individual defendants committed fraud. The plaintiffs allege

that Gill and Colwell aided and abetted the commission of the fraudulent securities scheme. The plaintiffs also claim that Gill and Colwell have committed common law fraud, and conspiracy to commit fraud. Also, plaintiffs claim that the securities laws violations, or alternatively, wire fraud and mail fraud, committed by Gill, Colwell, and the other defendants constitute a pattern of racketeering activity giving rise to liability under the RICO Act. The three categories of plaintiffs' allegations as to Gill and Colwell -- (1) securities claims, (2) fraud claims, and (3) RICO claim -- shall be addressed in turn.

In their motions, Gill and Colwell assert that they are entitled to judgment as a matter of law on plaintiffs' securities claims because (a) no security is involved, (b) there was no sale or purchase of a security, and (c) Gill and Colwell have no aider and abettor liability. Because the Court finds that the last issue is clearly dispositive, it will not address the first two issues.

The four alleged violations of the securities laws by Gill are (1) violation of Section 12(1) of the Securities Act of 1933 (15 U.S.C. §771(1)); (2) violation of Section 12(2) of the same act (15 U.S.C. §771(2)); (3) violation of Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. §78j(b)) and Rule 10b-5 (17 C.F.R. §240.10b-5); (4) violation of Section 17(a) or (b) of the Securities Act of 1933 (15 U.S.C. §77q(a) or (b)). The Court will first deal with alleged Section 12 liability. Section 12(1) provides that any person who offers or sells a security in violation of section 5 (15 U.S.C. §773) is liable in a

civil action to the purchaser; section 12(2) creates an express private remedy for material misstatements or omissions in connection with the sale or offer for sale of a security. Both sections are limited to liability of sellers and on their face impose a strict privity requirement. See generally, T. Hazen, The Law of Securities Regulation, §§7.2, 7.5 (1985). However, some courts have -- through interpretation -- expanded the term "seller" to encompass others than those who directly pass title to a buyer. The most common theory of secondary liability is that the defendant was a substantial factor in causing the sale. See generally, Davis v. Avco Financial Services, Inc., 739 F.2d 1057, 1063-1068 (6th Cir. 1984), cert. denied, 472 U.S. 1012 (1985). Another, arguably more liberal, rationale in expanding liability is viewing the defendant as aiding or abetting the sale. While the cases are not uniform, the better-reasoned view is that, where a financial institution has been shown to have done no more than loan money in its ordinary course of business, it is neither a substantial factor in the sale nor may be said to have aided and abetted the sale in such a fashion as to impose liability. See e.g., Wright v. Schock, 571 F.Supp. 642 (N.D.Cal. 1983). Accordingly, Gill is entitled to judgment as to the plaintiff's Section 12 claims.

As to Section 10(b), aiding and abetting is recognized as a proper basis for liability. See e.g., Cleary v. Perfecture, 700 F.2d 774 (1st Cir. 1983). Generally, the elements which must be proven to establish such liability are

- (1) a securities law violation by a primary wrongdoer,
- (2) knowledge of the violation by the person sought to be charged, and
- (3) proof that the person sought to be charged substantially assisted in the primary wrongdoing.

Armstrong v. McAlpin, 699 F.2d 79, 91 (2nd Cir. 1983). Assuming, without finding, that a securities law violation was committed by Paragon, the Court finds no evidence that the second and third elements listed above have been satisfied in this case.

The "acts" of Gill for which plaintiffs seek to impose §10(b) liability are (1) Gill's failure to personally contact plaintiffs prior to advancing funds under the loan documents, (2) failure to advise them that one of Gill's subsidiaries was a limited partner in the limited partnership that owned the Deer Oaks property purchased by Paragon. As to (1), Gill responds that a party dealing with an agent has no duty to protect the principal from the agent's wrongful acts, citing Delaney v. Blunt, Ellis & Loewi, 631 F.Supp. 175 (N.D.Ill. 1986). The Court finds this case persuasive as to the lack of liability of either Gill or Colwell. As for (2), Gill has responded that Paragon was fully aware of this relationship and that this knowledge is imputed to plaintiffs as principals. The plaintiffs have not contradicted this last point. Unlike Section 12, liability under Section 10(b) requires a showing of scienter on the defendant's part. Regarding aider and abettor liability, it has been held that

[t]he scienter requirement scales upward when activity is more remote; therefore, the assistance rendered should be both substantial and knowing. A remote party must not only be aware of his role, but he should also know when and to what degree he is furthering the fraud.

Woodward v. Metro Bank of Dallas, 522 F.2d 84, 95 (5th Cir. 1975). The record before the Court indicates that these loans were made in the regular course of business and that, as was customary, Gill and Colwell relied on title companies as escrow agents to verify the validity of the Powers of Attorney. Plaintiffs have presented no evidence from which a reasonable juror could infer that Gill and Colwell knew of a scheme to defraud the plaintiffs or that Gill and Colwell substantially advanced such a scheme. Neither is there any evidence of the severe recklessness which some courts have held to satisfy the scienter requirement. See, e.g., Woods v. Barnett Bank of Ft. Lauderdale, 765 F.2d 1004 (11th Cir. 1985). Therefore, Gill and Colwell are entitled to judgment as to the Section 10(b) claim.

As to plaintiffs' Section 17(a) claim, the courts are divided as to whether this section gives rise to a private cause of action. Neither the United States Supreme Court nor the Tenth Circuit has spoken on the issue. However, the same aider and abettor analysis is appropriate to this claim as to the Section 10(b) claim. See Cleary, supra, 700 F.2d at 779-80. Accordingly, Gill and Colwell are also entitled to judgment as to the Section 17(a) claim.

The plaintiffs have also asserted claims under the Oklahoma Securities Act. They assert that Paragon violated 71 O.S. §301

(registration requirements) and §401 (fraud in the sale of securities), and that Gill and Colwell aided and abetted that fraud. Because the Oklahoma statutes are analogous to the federal statutes already discussed, these claims must also fail.

The plaintiffs have also asserted claims against Gill and Colwell for the aiding and abetting of common law fraud. The Oklahoma Supreme Court has held that a person cannot be liable for a fraudulent misrepresentation unless he made it himself or authorized another to make it for him or in some way participated therein. Occidental Life Ins. Co. v. Minton, 73 P.2d 440 (Okla. 1937). Again, on the record before the Court, we cannot say that the plaintiff has presented sufficient evidence to raise a genuine issue of material fact. Gill and Colwell are therefore entitled to judgment on this issue. The plaintiffs' claims of statutory fraud and for contract rescission (also based on fraud) fail on the same basis.

Plaintiffs have also asserted claims against Gill and Colwell based upon the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§1961 et seq. While Gill and Colwell have launched many attacks on this aspect of the Complaint, the Court finds one issue dispositive and will therefore not address the others raised. Civil liability under RICO requires the defendant to have committed at least two predicate offenses detailed in the Act. See 18 U.S.C. §1961(5). Violations of the securities laws may function as predicate offenses, but for the reasons detailed above, the Court finds no such violation on Gill and Colwell's part. The plaintiffs have

alleged that Gill and Colwell committed acts of wire fraud and mail fraud. These crimes require a finding of intent. See United States v. Gann, 718 F.2d 1502 (10th Cir. 1983), cert. denied, 469 U.S. 863 (1984). The plaintiffs' allegations regarding mail fraud refer to Paragon's use of the mails to transport Powers of Attorney and financial statements to plaintiffs to be executed in blank. There is no evidence that Gill or Colwell were even aware of any transactions between plaintiffs and Paragon prior to Gill or Colwell loaning the funds. Because the Court finds no evidence to raise a genuine issue of fact as to defendant's intent, as discussed above, the Court rules that no predicate offenses were committed and that civil liability does not lie as to Gill and Colwell.

Finally, Colwell has moved for summary judgment as to the affirmative defenses of fraud and lack of consideration which the plaintiffs have raised to Colwell's counterclaims. The discussion above demonstrates that, even if plaintiffs were defrauded by Paragon, there is no evidence that Colwell or Gill knew of or participated in the fraud. Therefore Colwell's motion is granted on this point, and the Court sua sponte dismisses the affirmative defense of fraud as to Gill. As to lack of consideration, the plaintiffs deny that they received any money or property from Colwell or Paragon. This issue is tangential to the plaintiffs' claims for relief addressed here, and is better reserved for the context of the trial regarding plaintiffs' liability, if any, on the promissory notes themselves. This aspect of the motion shall therefore be denied.

It is the Order of the Court that the motions of Gill Savings Association and Colwell Financial Corporation for partial summary judgment are hereby GRANTED as to all claims of plaintiffs.

It is the further Order of the Court that the motion for partial summary judgment of Colwell Financial Corporation as to the plaintiffs' affirmative defense of fraud is hereby GRANTED, and that this same defense is dismissed as to Gill Savings Association.

It is the further Order of the Court that the motion for partial summary judgment of Colwell Financial Corporation as to the plaintiffs' affirmative defense of lack of consideration is hereby DENIED.

IT IS SO ORDERED this 9th day of July, 1987.


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

Entered

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

July 10, 1987

JACK C. SILVER
CLERK

(518) 581-
(FTS) 736-

TO: Counsel/Parties of Record

RE: Case # 86-C-694-C

David v. Simplec Manuf. Co.

This is to advise you that Chief Judge H. Dale Cook entered the following Minute Order this date in the above case:

The motion of the plaintiff for new trial, filed on May 7, 1987, is hereby denied.

Very truly yours,

JACK C. SILVER, CLERK

By: *P. Jones*
Deputy Clerk

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE 10 1987
NORTHERN DISTRICT OF OKLAHOMA

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

THE ESTATE OF JAMES)
LITTLETON DANIEL, JR.,)
JOHN D. McCARTNEY and)
DAVID S. JAMES,)
)
Plaintiffs,)
)
vs.)
)
BOWDEN ATHERTON, et al.,)
)
Defendants.)

No. 85-C-590-C

O R D E R

Now before the Court for its consideration is the motion of the plaintiffs to strike the amended answer and counterclaims of defendant Colwell Financial Corporation (Colwell), and the application of Colwell for clarification of order.

On October 22, 1986, the United States Magistrate filed his Report and Recommendation on pending motions. The Report and Recommendation stated that Colwell should be granted leave to file its amended answer and counterclaim upon the condition that all Texas litigation arising from "these circumstances" be dismissed with prejudice. No objections were filed to the Report and Recommendation. On November 10, 1986, this Court entered its Order granting leave for Colwell to file its first amended answer and counterclaim on the condition expressed in the Magistrate's recommendation. The Texas litigation referred to is based upon the same promissory notes upon which the counterclaims are based.

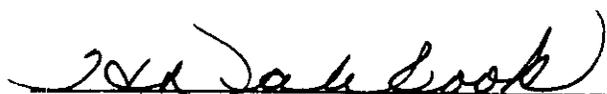
On December 8, 1986, Colwell filed its application for clarification of order, in which it requests the Court to rule that the Texas litigation need not be dismissed with prejudice until the final resolution of the claims in this action. On December 10, 1986, the plaintiffs filed their motion to strike the amended answer and counterclaim, on the grounds that it had been filed in disobedience of this Court's Order of November 10, 1986, because the Texas litigation had not been dismissed.

The clear intent of the Magistrate's Recommendation and this Court's Order of November 10, 1986, was to prevent litigation of the same issues to proceed simultaneously in two forums, and not to create any potential impediment to litigation of these issues.

It is the Order of the Court that the motion of the plaintiffs to strike is hereby DENIED.

It is the further Order of the Court that Colwell need not dismiss its claims in Texas against plaintiffs arising from these circumstances until final resolution of the claims in the United States District Court for the Northern District of Oklahoma.

IT IS SO ORDERED this 10th day of July, 1987.


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

Entered

FILED

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

JUL 10 1987

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

ACQUISITIONS, INC., MICHAEL)
T. MURPHY, and JOHN D. HYATT,)
)
Plaintiffs,)
)
vs.)
)
CENTRAL BANK AND TRUST OF TULSA,)
)
Defendant.)

No. 86-C-943-C

O R D E R

Upon Application of the Federal Deposit Insurance Corporation, the substituted defendant herein, and there being no response or objection filed by plaintiffs, the Court finds that the Federal Deposit Insurance Corporation is awarded an attorney fee in the sum of \$4,950.00. Said attorney fee is awarded defendant as prevailing party under its counterclaim and in accordance to the Journal Entry of Judgment entered herein on June 8, 1987.

IT IS SO ORDERED this 9th day of July, 1987.

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

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

SOONER FEDERAL SAVINGS AND
LOAN ASSOCIATION, a federal
savings and loan association,

Plaintiff,

vs.

MCCOMBS PROPERTIES VIII, LTD., a
California limited partnership,
AETNA LIFE INSURANCE COMPANY, a
Connecticut corporation, and
LINCOLN PROPERTY COMPANY TEXAS,
INC., a Texas corporation,

Defendants.

Civil Action No. 87-C-50 B

FILED

JUL 10 1987

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

ORDER OF DISMISSAL

Pursuant to the Motion for Dismissal Without Prejudice
filed herein by Plaintiff, Sooner Federal Savings and Loan
Association, the Court hereby orders that this proceeding should
be and is hereby dismissed without prejudice.

SO ORDERED the 8th day of July, 1987.

S/ THOMAS R. BRETT

DISTRICT JUDGE

FILED #012117

IN THE UNITED STATES DISTRICT COURT FOR THE 10 1987

NORTHERN DISTRICT OF OKLAHOMA JACK D. SILVER, CLERK
U.S. DISTRICT COURT

PERFECT INVESTMENTS, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 AETNA CASUALTY AND SURETY)
 COMPANY,)
)
 Defendant.)
)
 vs.)
)
 WADE FARNAN,)
)
 Third-Party Defendant.)

No. 86-C-369-C

ORDER VACATING JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

Upon Motion of Perfect Investments, Inc. for an Order vacating the judgment dismissing the action due to settlement, and the court finding that there is good cause shown and no objection from Aetna Casualty and Surety Company,

IT IS THEREFORE ORDERED by the Court that the judgment of March 17, 1987, dismissing the action by reason of settlement is vacated, and the action is reopened for further litigation.


H. Dale Cook
United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA JUL 10 1987

LARRY JAMES GAMBLE,)
)
 Petitioner,)
vs.)
)
 TED WALLMAN, Warden and)
 Attorney General of the)
 State of Oklahoma,)
)
 Respondent.)

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

No. 86-C-1052-C

O R D E R

Before the Court are the objections to the Findings and Recommendations of the Magistrate filed by the petitioner Larry James Gamble. The Magistrate has recommended to this Court that the petitioner's application for writ of habeas corpus be dismissed for failure to exhaust state remedies.

According to the petition filed herein, Larry Gamble was found guilty by a jury of possession of marijuana and for illegal gambling activities in Osage County District Court. Petitioner was sentenced on March 22, 1985 to a prison term of three years and ten years to be served consecutively. Counsel from the Appellate Public Defender's Office was appointed, July 1985, to represent petitioner in filing his appeal to the Oklahoma Court of Criminal Appeals. Since that time the public defender has filed six applications for extension of time in which to file petitioner's appellate brief. On October 20, 1986, petitioner filed a writ of habeas corpus with the Oklahoma Court of Criminal Appeals, which was denied. Petitioner has filed two previous federal habeas corpus petitions which were denied on the basis

that petitioner has failed to exhaust his state remedies. Petitioner has served nearly twenty-eight months of his sentence at a correctional institution while awaiting his right to direct appeal of his conviction.

In his current application for writ of habeas corpus before this Court, petitioner asserts that he is being denied due process of law by the unreasonable delay in this appeal process caused by ineffective assistance of counsel.

In answer to these allegations, respondents argue that the state is not responsible for the delay in processing petitioner's appeal, rather the sole cause of the delay is the heavy caseload in the Appellate Public Defender's Office.

The Court has carefully reviewed all pleadings and applicable law, and finds that the appropriate course of action would be for petitioner to file, in state court, an application for appointment of new appellate counsel from the public sector. If this motion is denied, the Court will grant petitioner leave to reurge his habeas corpus application. The heavy workload may well explain the delay, but it does not excuse it.

Accordingly, it is the Order of the Court that the petition for writ of habeas corpus filed by Larry James Gamble is DENIED at this time, reserving the right to reurge, as set forth above.

IT IS SO ORDERED this 9th day of July, 1987.


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

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

ROBERT CAPALDI,
Plaintiff,

v.

HISSOM MEMORIAL CENTER,
et al.,

Defendants.

No. 86-C-690-B

F I L E D

JUL 10 1987

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

O R D E R

Before the Court is the Motion for Summary Judgment of all Defendants except Dr. Heriberto Martinez.* Defendants contend that they are immune from suit under the Eleventh Amendment doctrine of sovereign immunity. Defendants originally brought their motion as a Motion to Dismiss. On May 5, 1987, after an evidentiary hearing on this issue, the Court converted the Motion to Dismiss to a Motion for Summary Judgment pursuant to Fed.R.Civ.P. 12(b). The parties were to supplement their briefs and evidentiary exhibits by May 15, 1987. Neither party has so supplemented the record. For the reasons set forth below, the Motion for Summary Judgment is sustained with respect to Defendant Hissom Memorial Center and Defendants Reginald Barnes, Jane Hartley, W.E. Farha, R.M. Greer, Albert Furr, John Orr, Travis Harris, Wayne Chandler, Patty Eaton, Robert Fulton, Jean Cooper, James Borren, Fred Overstreet and Tom Tucker (in their representative capacities only), and sustained with respect to the Oklahoma Department of Human Services.

* The Court was advised at the April 3, 1987, Evidentiary Hearing that Dr. Martinez has filed a petition in bankruptcy and has been discharged from this matter.

This is a civil rights action brought pursuant to 42 U.S.C. §1983. Plaintiff Robert Capaldi was employed at the Hissom Memorial Center, Sand Springs, Oklahoma, from August 1982 to June 1984. The Plaintiff contends that he was terminated by the Defendants in violation of his civil rights under the Fifth and Fourteenth Amendments to the United States Constitution. Plaintiff also brings pendent state claims for breach of contract, bad faith breach of contract, and intentional infliction of emotional distress. Defendants' Motion for Summary Judgment¹ seeks judgment against the Plaintiff insofar as he seeks relief against the governmental defendants and money damages against the individual defendants in their official capacities.

Defendants contend that the State of Oklahoma is immune from suit in federal court under the Eleventh Amendment to the U.S. Constitution. Under Pennhurst v. Halderman, 465 U.S. 89 (1984), state officials are immune from suit in federal court when that suit is, in fact, against the state itself. This is so regardless of whether the Plaintiff seeks money damages or injunctive relief. Id. at 102. A state's immunity can be waived, but such waiver must be express and unequivocal. Edleman v. Jordan, 415 U.S. 651 (1974). With respect to those rights protected by the Fourteenth Amendment, Congress has power to abrogate state immunity, Fitzpatrick v. Bitzer, 427 U.S. 445 (1976), but the Supreme Court has held that 42 U.S.C. §1983 does not override the States' Eleventh Amendment immunity. Quern v. Jordan, 440 U.S. 332 (1979). The central issue before this court, therefore, is whether the real party in interest herein is the State of Oklahoma, rather than the named defendants. At the evidentiary hearing held April 3, 1987,

¹ The pending motion is more properly designated a Motion for Partial Summary Judgment since it addresses only this Eleventh Amendment immunity issue.

the Court heard testimony concerning the relationship between the State of Oklahoma and the Department of Human Services and Hissom Memorial Center. The question now before the Court is whether the Department of Human Services ("DHS") and Hissom Memorial Center ("Hissom") are arms of the State of Oklahoma and, therefore, protected by immunity, or whether these entities are akin to political subdivisions to which immunity may not extend. See, Mt. Healthy City School Bd. of Ed. v. Doyle, 429 U.S. 274 (1977). After reviewing the briefs herein and the evidence presented at the April 3, 1987, hearing, the Court concludes that DHS and Hissom are arms of the State of Oklahoma and, therefore, protected from suit by the doctrine of sovereign immunity. This immunity extends to the individual defendants insofar as they are sued in their representative or official capacities.

The DHS and the Commission for Human Services were created by the Oklahoma Constitution to administer and execute State laws enacted:

"[T]o promote the general welfare of the people of the State of Oklahoma and for their protection, security, and benefit . . . for the relief and care of needy, aged persons who are unable to provide for themselves, and other needy persons who, on account of immature age, physical infirmity, disability, or other cause, are unable to provide or care for themselves" Article XXV §1 Oklahoma Constitution

Section 2 of Article XXV of the Oklahoma Constitution further requires DHS to "perform such other duties as may, from time to time, be prescribed by law." Clearly, operation of Hissom Memorial Center is a duty falling within the ambit of Article XXV §1. See, City of Sand Springs v. Dept. of Pub. Wel., 608 P.2d 1139 (Okl. 1980). In 1961, the Legislature appropriated \$5 million for construction and equipping

of the Hisson Memorial Center for care of the mentally retarded. See, 43A O.S. 1961 §401, repealed by Laws 1983, c.304, §182, eff. July 1, 1983. Authorization of the Hisson Center was in keeping with Article XXI §1 of the Oklahoma Constitution which requires the State to establish and support institutions for the insane, blind, deaf and mute, "and such other institutions as the public good may require." In 1963, Hisson was transferred from the control of the Mental Health Board and the Department of Mental Health and Mental Retardation to the Oklahoma Public Welfare Commission (now the Commission for Human Services). See, 10 Okl.St. Ann. §1406, renumbered from 56 Okl.St. Ann. §301 by Laws 1982, c.312, §48. The Department of Human Services receives an annual State appropriation of roughly \$350 million to \$400 million, largely from earmarked state sales tax revenue. DHS also receives some \$700 million in federal revenues received as matching funds for DHS's various entitlement programs. [Testimony of Russell Hall, Assistant General Counsel for the Legal Division of DHS, p. 9 of Transcript of Evidentiary Hearing of April 3, 1987 (hereafter, "Transcript")]. Under the provisions of the Oklahoma Constitution cited above and the related state statutes, it is clear that the DHS, Commission for Human Services and Hisson Memorial Center are arms of the State of Oklahoma carrying out mandated functions of the State for the good of its citizens. Funding is provided by the State of Oklahoma and policies are promulgated by the Commission for Human Services pursuant to statutory authority. Article XXV §3, Oklahoma Constitution. Operation of Hisson Memorial Center is a governmental function. See, Neal v. Donahue, 611 P.2d 1125 (Okla. 1980); Williams v. State, 678 P.2d 259 (Okla. 1984); Garrett v. State ex rel.

Department of Human Services, No. 62,546 (Okla. January 16, 1986); Cook v. Department of Public Welfare, No. CJ-84-5304 (Tulsa County District Court December 12, 1984). Accordingly, the Court concludes that the Eleventh Amendment to the U.S. Constitution bars this suit under 42 U.S.C. §1983 against DHS, the Commission for Human Services and the Hissom Memorial Center.

The next question before the court is whether the Eleventh Amendment immunity afforded the governmental defendants extends to the individual defendants herein. The individual defendants consist of the nine appointed member of the Commission for Human Services (Reginald Barnes, Jane Hartley, W.E. Farha, R.M. Greer, Albert Furr, John Orr, Travis Harris, Wayne Chandler and Patty Eaton), the Director of DHS (Robert Fulton), Assistant Director for Developmental Disability Services (Jean Cooper), Superintendent of Hissom (James Borren), Deputy Superintendent of Hissom (Fred Overstreet) and an attorney for the DHS (Tom Tucker). Whenever a government official is sued in federal court under §1983 either for money damages or declaratory and injunctive relief, the court must determine whether the lawsuit is, in fact, against the state. If a governmental body is the real defendant, resolution of the Eleventh Amendment immunity issue "turns on whether the [body] is to be treated as an arm of the State. . . ." S. Nahmod, Civil Rights and Civil Liberties Litigation §5.08 at 287 (2d ed. 1986) (quoting Mt. Healthy City School Bd. of Educ. v. Doyle, *supra*, at 280). The Court has already determined that the real party in interest herein is the State of Oklahoma and that the governmental bodies named as defendants are arms of the State. The individual defendants, sued in their official capacities, are nominal defendants because the real claim herein is

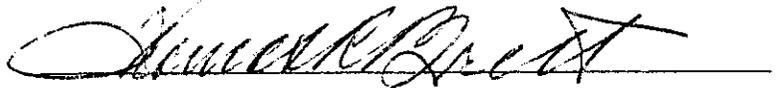
against the state. "[W]here a government official is the nominal defendant in a suit for damages, but the action is really against the state because the demand is for state money or property, it is clear that such a suit is barred by the Eleventh Amendment." Nahmod, supra, at 286-86. See, Governor of Ga. v. Madrazo, 26 U.S. (1 Pet.) 110 (1828); Ford Motor Co. v. Department of Treasury, 323 U.S. 459 (1945); Maestas v. Bd. of Educ. of Mora Indep. Sch. Dist., 749 F.2d 591, 592 (10th Cir. 1984) (individual school board members, when sued in their official capacities came within the Eleventh Amendment). Thus, Eleventh Amendment immunity extends to the individual capacities. However, the Eleventh Amendment does not immunize state officials sued individually for money damages. Nahmod, supra, at 291. And Eleventh Amendment immunity does not bar claims for prospective injunctive relief. Ex Parte Young, 209 U.S. 123 (1908); Edelman v. Jordan, supra, at 664-69. Thus, Plaintiff's claims for prospective injunctive relief and claims against the Defendants individually for money damages are not affected by today's ruling.²

IT IS FURTHER ORDERED that within 10 days from the date herein Plaintiff is to amend his Complaint in accordance with this Order. Defendants are to file their Answers within 15 days thereafter. This matter is set for jury trial on December 21, 1987, at 9:30 a.m. Discovery is to be completed by October 23, 1987. Dispositive

² At the Evidentiary Hearing held April 3, 1987, Plaintiff's counsel requested five days within which to amend his Complaint and ten days within which to amend his brief herein to state what claims would survive an order sustaining this Motion for Summary Judgment. Plaintiff has filed neither matter, thus, the Court has set forth the claims it concludes survive today's Order.

motions shall be filed by November 6, 1987. Responses shall be filed November 16, 1987, and Replies, if any, should be filed by November 27, 1987. The parties are to exchange the names and addresses, in writing, of all witnesses by October 9, 1987. Parties should include a brief description of the testimony of any witness whose deposition has not been concluded. Final pretrial conference and hearing re dispositive motions is set for December 4, 1987, at 8:45AM Proposed voir dire, instructions and trial briefs, if any, are to be filed by December 14, 1987. An agreed Pretrial Order is to be filed by December 7, 1987. Parties should exchange all pre-marked exhibits at that time.

IT IS SO ORDERED, this 9th day of July, 1987.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.)
)
LOYD A. DAVIS, JR.; DONNA B.)
DAVIS; COUNTY TREASURER, Mayes)
County, Oklahoma; and BOARD OF)
COUNTY COMMISSIONERS, Mayes)
County, Oklahoma,)
)
Defendants.)

FILED

JUL 9 1987

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

CIVIL ACTION NO. 87-C-70-B

ORDER

Upon the Motion of the United States of America acting through the Farmers Home Administration by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, to which no objections have been filed, it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 30th day of June, 1987.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

Paul Parnell
for NANCY NESBITT BLEVINS
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

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

FILED

JUL 9 1987

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

GINA MANDERS and VINNIE PAYTON HOOVER,)
)
Plaintiffs,)
)
v.)
)
STATE OF OKLAHOMA EX REL DEPARTMENT)
OF MENTAL HEALTH and EASTERN STATE)
HOSPITAL, and LA ROE HANEY,)
)
Defendants.)

No. 86-C-436-B
No. 86-C-437-B

J U D G M E N T

In accordance with the Findings of Fact and Conclusions of Law awarding attorneys fees to the Defendants State of Oklahoma ex rel Department of Mental Health and Eastern State Hospital, entered the 8th day of July, 1987, the Court enters judgment in favor of the Defendants State of Oklahoma ex rel Department of Mental Health and Eastern State Hospital and against the Plaintiffs' attorney, Steven R. Hickman, in the amount of Six Hundred Seventy-Seven Dollars (\$677.00), with interest thereon from this date at 6.64%.

DATED this 8th day of July, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

JUL 9 1987

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

GINA MANDERS and VINNIE PAYTON HOOVER,)
)
 Plaintiffs,)
)
 v.)
)
 STATE OF OKLAHOMA EX REL DEPARTMENT)
 OF MENTAL HEALTH and EASTERN STATE)
 HOSPITAL, and LA ROE HANEY,)
)
 Defendants.)

No. 86-C-436-B
No. 86-C-437-B

J U D G M E N T

In accordance with the Findings of Fact and Conclusions of Law awarding attorneys fees to the Defendants State of Oklahoma ex rel Department of Mental Health and Eastern State Hospital, entered the 8th day of July, 1987, the Court enters judgment in favor of the Defendants State of Oklahoma ex rel Department of Mental Health and Eastern State Hospital and against the Plaintiffs' attorney, Steven R. Hickman, in the amount of Six Hundred Seventy-Seven Dollars (\$677.00), with interest thereon from this date at 6.64%.

DATED this 8th day of July, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

F I L E D

LARRY HUTCHINGS and)
AMY HUTCHINGS,)
)
Plaintiffs,)
)
v.)
)
HARRISBURG TRUCK BODY)
COMPANY,)
)
Defendant,)
and)
)
CONTINENTAL CASUALTY COMPANY,)
)
Intervenor.)

JUL 9 1987

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

86-C-66-E

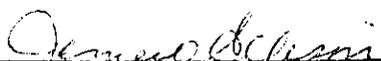
ORDER

The Court has for consideration the Supplemental Report and Recommendation of the Magistrate filed June 11, 1987, in which the Magistrate recommended that this action be transferred to the United States District Court for the Middle District of Pennsylvania. 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 this action is transferred under 28 U.S.C. 1406(a) to the United States District Court for the Middle District of Pennsylvania.

Dated this 9th day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

JUL 9 1987

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

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

PATRICK B. BEVENUE,)
Plaintiff,)
-VS-)
AMULCO CONSTRUCTION CO., INC.)
Defendant.)

NO. 86-C-1130-E

STIPULATION AND ORDER OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Patrick B. Bevenue, and the Defendant through its Attorney, Richard T. Garren and stipulate that the above entitled cause shall be dismissed with prejudice for the reason that the parties have reached an agreement for the settlement of the claim by paying the sum of \$500.00 to Plaintiff. I, Patrick B. Bevenue, understand this stipulation for dismissal means I will not be able to refile this claim against the Defendant. The parties each stipulate they will bear their respective costs and fees.

IT IS THEREFOR ORDERED that the complaint of Plaintiff herein be and the same is dismissed with prejudice, each party to bear his/its own costs of suit.

Dated this 9th day of July, 1987.

S/ JAMES O. ELISON

United States District Judge

APPROVED:

Patrick B. Bevenue
Plaintiff, Pro se

Richard T. Garren, OBA #3252
P.O. Box 52400
Tulsa, Oklahoma 74152
Attorney for Defendant

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

FILED

JUL 9 1987

EDWIN JOHNSON

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

Plaintiff(s),

vs.

No. 86-C-722-E

(CO-WORKERS) TULSA ADULT DETENTION CENTER

Defendant(s).

O R D E R

Rule 36(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may, in the Court's discretion be entered.

In the action herein, notice pursuant to Rule 36(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on June 2, 1987. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 9th day of July, 1987.

James Allen
UNITED STATES DISTRICT JUDGE

E I L E D

JUL 4 1987

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

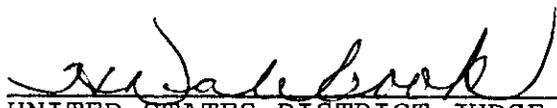
**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

THELMA VIOLET BREWER,Plaintiff,)	
)	
v.)	ECO Control
)	No. 86-0021774
)	
UNITED STATES POSTAL)	
SERVICE, and UNITED)	
STATES OF AMERICA, ex)	No. <u>86-C-1028C</u> ✓
rel., DEPARTMENT OF)	
LABOR,Defendants.)	

ORDER OF DISMISSAL

NOW, on this 27 day of June, 1987, upon written application of Plaintiff for an order of dismissal without prejudice of her complaint herein, the Court, being fully advised in the premises, finds that such dismissal should be allowed, and pursuant thereto,

IT IS THEREFORE ORDERED by the Court that Plaintiff's Complaint as filed herein against the Defendants be, and the same is hereby dismissed without prejudice to any further action.


UNITED STATES DISTRICT JUDGE

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

FILED

GLENN LAY, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)

No. 86-C-281-B

JUL 9 1987

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

O R D E R

This matter comes before the Court on Defendant's Motion to Dismiss and Motion for Summary Judgment. For the reasons set forth below, the Motion to Dismiss is granted and the Motion for Summary Judgment is denied.

Plaintiffs bring this action under the Federal Tort Claims Act, 28 U.S.C. §1346(b). Plaintiffs allege that in May 1983, agents of the Bureau of Alcohol, Tobacco and Firearms ("ATF") approached Plaintiff Glenn Lay for assistance in a criminal investigation. ATF agents asked Lay for the use of his mechanic's garage to make a planned arrest. Lay consented and on May 18, 1983, authorities arrested Jack Michael King in connection with possession of explosives which authorities believed were to be used in an organized crime power struggle in Kansas City, Missouri. In September 1983, Glenn Lay was assaulted and severely injured by two men. Plaintiffs contend that this assault was in retaliation for Lay's cooperation in the arrest of Jack Michael King. Plaintiffs contend that ATF agents misrepresented to Glenn Lay the potential danger of the operation

to be conducted at his garage and that the Plaintiffs were injured as a result of the negligence of ATF and its agents in failing to warn the Lays and protect them against those dangers.

The Defendant's Motion for Summary Judgment is based on two exceptions to the Federal Tort Claims Act: 28 U.S.C. §§2680(a) and (h). The Federal Tort Claims Act provides that the United States may be held liable for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act of any employee of the Government while acting in the scope of his employment "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. §2680(a) provides an exception for any claim "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." Defendant contends that the decisions by ATF agents as to how much information to tell Plaintiff Glenn Lay about their investigation and how best to conduct that investigation fall within the discretionary function exemption to the Tort Claims Act. Defendant also contends that §2680(h) provides an exception to liability under the facts herein. That section provides an exception for any claim "arising out of ... misrepresentation ..." to the extent that Plaintiffs' claims herein allege ATF agents misrepresented the nature of their investigation to Glenn Lay, Defendant contends those claims are barred by §2680(h).

Summary judgment must be denied if a genuine issue of material fact is presented to the trial court. Exnicious v. United States, 563 F.2d 418, 425 (10th Cir. 1977). In making this determination, the court must view the evidence in the light most favorable to the party against whom judgment is sought. National Aviation Underwriters, Inc. v. Altus Flying Service, Inc., 555 F.2d 778, 784 (10th Cir. 1977). Factual inferences tending to show triable issues must be resolved in favor of the existence of those issues. Lockett v. Bethlehem Steel Corp., 618 F.2d 1373, 1377 (10th Cir. 1980).

28 U.S.C. §1346(b) and 28 U.S.C. §2671 et seq. are a limited waiver of sovereign immunity making the federal government liable to the same extent as a private party for certain torts of federal employees acting in the scope of their employment. United States v. Orleans, 425 U.S. 807 (1976). However, the Federal Tort Claims Act waives sovereign immunity of the United States only to the extent that a private person in like circumstances could be found liable in tort under local law. Art Metal-U.S.A., Inc. v. United States, 753 F.2d 1151 (D.C.Cir. 1985). Thus, the first issue before this court is whether a private person could be found liable in tort under Oklahoma law for similar actions as those alleged against ATF and its agents herein. While Oklahoma courts have not specifically addressed the issue, The Restatement (Second) of Torts provides that under certain circumstances a duty to aid or protect another from a third person or a duty to control the conduct of a third person

may arise. Restatement (Second) of Torts §§ 314A, 315. See, Hergenrether v. East, 61 Cal.2d 440, 393 P.2d 164 (1964). Many courts have adopted this special relationship exception, e.g., Swanner v. United States, 309 F.Supp. 1183 (M.D.Ala. 1970); Miller v. United States, 561 F.Supp. 1129 (E.D.Pa. 1983); Huey v. Cicero, 41 Ill.2d 361, 243 N.E.2d 214 (1968); Henderson v. St. Petersburg, 247 So.2d 23 (Fla. App. 1971); Gardner v. Chicago Ridge, 71 Ill.App.2d 373, 219 N.E.2d 147 (1966); Schuster v. New York, 5 N.Y.2d 75, 180 N.Y.S.2d 265, 154 N.E.2d 534 (1958). Oklahoma courts have recognized that the nature of the relationship between the parties and the general nature of the risks involved determine whether or not there is a duty to exercise reasonable care. Brown v. C. H. Guernsey & Co., 533 P.2d 1009, 1013 (Okla.App. 1973). The court concludes that under Oklahoma law, depending on the nature of the relationship between them, there may be a duty on the part of one person to warn or protect another concerning the conduct of a third person. Where law enforcement officials are involved, this special relationship has generally arisen where the plaintiff is a government informant or witness in a pending criminal investigation. See, Swanner, supra; Miller, supra. However, this special relationship may arise in other contexts, e.g., Yates v. United States, 497 F.2d 878 (10th Cir. 1974) (breach of duty to warn by air traffic controller). In the instant case, the court is persuaded that several factors require the imposition of a duty owed to Plaintiffs by the Defendant: ATF agents knew that Jack

Michael King sought explosives to be taken to Kansas City, Missouri, for use in a gangland retaliation. (David E. Roberts Deposition, p. 44, Exhibit D to Plaintiffs' Brief in Response to Defendant's Motion for Summary Judgment.) ATF agent David Roberts believed there would be retaliation by King against those who set him up for arrest. (Roberts Deposition, pp. 74-84). The arrest of Jack Michael King was to be made on and around Glenn Lay's property. Under the circumstances, the court concludes that the Government owed a duty to use reasonable care to protect Plaintiffs and/or warn them of possible retaliation by Jack Michael King.

Having concluded that Defendant owed the Plaintiffs herein a duty, breach of which could result in liability under the Federal Tort Claims Act, the court must next examine whether the actions of the Defendant herein fall within the claimed exceptions to the Tort Claims Act. The court concludes the so-called discretionary exception claimed herein is inapplicable because that exception applies only to government action at the "planning" and not "operational" level. Dalehite v. United States, 346 U.S. 15, 42 (1953); Indian Towing Co. v. United States, 350 U.S. 61, 64 (1955); Madison v. United States, 679 F.2d 736 (8th Cir. 1983). Defendant ATF agents herein had discretion in planning how to carry out the arrest of Jack Michael King, but that does not release the Defendant from liability for alleged negligence in carrying out that plan. For this reason, the court concludes that the discretionary function exception under 28 U.S.C. §2680(a) does not apply under the circumstances herein.

The court concludes, however, that to the extent Plaintiffs' complaint herein states a claim for misrepresentation, this claim is barred by the exception contained in 28 U.S.C. §2680(h). Although the exclusions contained in this section apply to the so-called "intentional torts," courts have held that claims arising out of negligent as well as intentional misrepresentation are barred by this provision. Fitch v. United States, 513 F.2d 1013, cert. denied, 423 U.S. 866 (1975); Reynolds v. United States, 643 F.2d 707, 711-13, cert. denied, 454 U.S. 817 (1981); United States v. Neustadt, 366 U.S. 696, 706 (1961). Thus, any claim arising out of misrepresentation is barred by 28 U.S.C. §2680(h).¹ This does not bar Plaintiffs' distinct claim for negligence, however. Block v. Neal, 460 U.S. 289, 298 (1983).

Defendant also seeks to dismiss Plaintiff Laura Lay's claim for loss of parental consortium for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6). Laura Lay is the stepdaughter of Plaintiff Glenn Lay. Oklahoma has not recognized a claim for loss of parental consortium. See, Annotation, Child's Right of Action for Loss of Support, Training, Parental Attention, or the Like, Against A Third Person Negligently Injuring Parent, 11 A.L.R. 4th 549 (1982). A claim for loss of consortium has been narrowly construed in Oklahoma. For example, before 32 O.S. §15 was amended in 1973, Oklahoma did not even recognize the right of

¹ In their Brief in Response to Defendant's Motion for Summary Judgment, Plaintiffs state that they are not seeking to base the Government's liability herein on alleged misrepresentations of David E. Roberts. Thus, it appears this issue is moot.

a wife to sue for loss of consortium because of negligent injury to her husband. Duncan v. General Motors Corporation, 499 F.2d 835, 837 (10th Cir. 1974). Plaintiffs cite 10 O.S. §§ 6, 8 and 9 as the basis for their parental consortium claim. 10 O.S. §6 deals with custody of an illegitimate child. Section 8 deals with a parent's control over a child's property. Section 9 deals with abuse of parental authority. Clearly, these statutes establish no claim for loss of "parental consortium." Plaintiffs also contend that the "overwhelming trend" in other jurisdictions is to recognize a claim for loss of parental consortium. However, this contention is grossly overstated. The majority of courts which have addressed the issue have traditionally denied the existence of a cause of action for loss of parental consortium. See, 11 A.L.R. 4th 549, §4. The court concludes that at this time Oklahoma has not recognized a cause of action for loss of parental consortium. Any such cause of action should be created by the state legislature, not by this court. In 1973, the legislature specifically amended Oklahoma Statutes to provide a cause of action for loss of consortium by a wife due to negligent infliction of injury to her husband by a third person. Similarly, creation of a cause of action for loss of parental consortium is a matter best left to the state legislature. For this reason, Defendant's Motion to Dismiss Plaintiff Laura Lay's claim for loss of parental consortium is sustained.

In summary, the court today denies Defendant's Motion for Summary Judgment based on the discretionary function exception

contained in 28 U.S.C. §2680(a), grants Defendant's Motion for Summary Judgment pursuant to 28 U.S.C. §2680(h) insofar as Plaintiffs have alleged a claim for misrepresentation, and sustains Defendant's Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) with respect to Plaintiff Laura Lay's claim for loss of parental consortium.

IT IS SO ORDERED, this 8th day of July, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IT IS FURTHER ORDERED that this matter is set for non-jury trial on November 23, 1987, at 9 a.m. Parties should submit proposed Findings of Fact and Conclusions of Law and any Motions in Limine by November 16, 1987. Parties should file their agreed pre-trial order and exchange all pre-marked exhibits by November 9, 1987. Discovery is to be completed by October 9, 1987. Parties should exchange the names and addresses, in writing, of all witnesses, including experts, by September 25, 1987. Parties should include a brief description of the testimony of any witness whose deposition has not been taken by that time.

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 89 cardboard cases, more or less, of)
 an article of food, coded VIRL1, each)
 containing 60 foil lined paper)
 pouches, labeled in part:)
)
 (case))
)
 "ROCKLAND WHEY MILK FLAVOR *** 60,)
 5-OZ. EA. ROCKLAND CORPORATION 12215)
 E. SKELLY DR. TULSA, OK 74128")
)
 (pouch))
)
 "ROCKLAND WHEY ARTIFICIALLY MILK)
 FLAVORED BEVERAGE MIX *** NET WT.)
 5 OZ. *** Distributed by: THE)
 ROCKLAND CORPORATION *** Tulsa, Okla.)
 74128 ***",)
)
 Defendant.)

CIVIL ACTION NO. 87-C-104 B ✓

DEFAULT DECREE OF
CONDEMNATION AND DESTRUCTION

F I L E D

JUL 8 1987

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

On February 11, 1987, a complaint for forfeiture against the above-described article was filed in this Court on behalf of the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, and Catherine J. Hardin, Assistant United States Attorney.

The complaint alleges that the article is a food which was adulterated when introduced into and while in interstate commerce and is adulterated while held for sale after shipment in interstate commerce within the meaning of the Federal Food, Drug, and Cosmetic Act (the Act), 21 U.S.C. 342(b)(1), and was misbranded when introduced into and while in interstate commerce and is misbranded while held for sale after shipment in interstate commerce within the meaning of the Act, 21 U.S.C. 343(a)(1), 343(f), 343(i)(2) and 343(e)(2).

Pursuant to a warrant for arrest issued by this Court, the United States Marshal for this District seized the article on February 20, 1987.

It appearing that process was duly issued in this action and returned according to law; that public notice of the seizure of the article was given according to law; and that no person has appeared to claim the article within the time specified by the applicable rule, Rule C(6) of the Supplemental Rules for certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure;

THEREFORE, on motion of the plaintiff United States of America for a default decree of condemnation and destruction, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the default of all persons having any right, title, or interest in the article under seizure be and is hereby entered; and it is further

ORDERED, ADJUDGED, AND DECREED that the article seized is a food that is adulterated and misbranded when introduced into and while in interstate commerce and is adulterated and misbranded while held for sale after shipment in interstate commerce, within the meaning of 21 U.S.C. 342(b)(1), 343(a)(1), 343(f), 343 (i)(2) and 343(e)(2), as alleged in the complaint, and is therefore condemned pursuant to 21 U.S.C. 334(a); and it is further

ORDERED, ADJUDGED, AND DECREED that pursuant to 21 U.S.C. 334(d), the United States Marshal for this district shall destroy forthwith the condemned article and make due return to this court.

Dated this 8th day of July, 1987


UNITED STATES DISTRICT JUDGE

RLM:vb

FILED

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

JUL -8 1987

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

STEPHANIE D. RILEY, a minor child,)
now deceased, and CARLA WILSON)
RILEY, natural mother and next of)
kin of Stephanie D. Riley,)

Plaintiff,)

-vs-)

DAVID LEE CALVERT, and)
KIM B. PALMER,)

Defendants,)

and)

NORTH RIVER INSURANCE)
COMPANY, INC.,)

Garnishee.)

Case No. 87-C-151 C

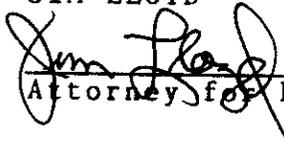
APPLICATION TO DISMISS WITHOUT PREJUDICE

COMES NOW the Plaintiff, Stephanie D. Riley, a minor child, now deceased, and Carla Wilson Riley, natural mother and next of kin of Stephanie D. Riley, and Defendants David Lee Calvert, and Kim B. Palmer, and Garnishee, North River Insurance Company, Inc., by and through their respective attorneys, and move this Court to dismiss all causes of action of Plaintiff against Defendants and Garnishee without prejudice, for the reason that all of the matters, causes of action and issues in this Garnishment action have been settled, compromised and released herein.

WHEREFORE, premises considered, the Plaintiff, Stephanie D. Riley, a minor child, now deceased, and Carla Wilson Riley, natural mother and next of kin of Stephanie D. Riley, and the Defendants,

David Lee Calvert and Kim B. Palmer, and Garnishee, North River Insurance Company, Inc., and each of them do move the Court to order a dismissal with prejudice of all matters, causes of action and issues in the Garnishment action in the above styled and numbered matter.

JIM LLOYD



Attorney for Plaintiff

RICHARD L. MORROW

Attorney for Defendants

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

F I L E D

JUL - 8 1987

IN RE:)
)
ROBERT E. BRESNAHAN,)
)
) Appellant,)
)
v.) No. 86-C-1104-B
)
)
FRED W. WOODSON, TRUSTEE,)
)
) Appellee.)

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

O R D E R

This matter comes before the Court on appeal from an order of the Bankruptcy Court by Debtor, Robert E. Bresnahan. Debtor filed his voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code on August 1, 1986. On that date Appellant filed his Schedule B-4 with the court wherein he claimed as exempt property under 31 O.S. §1(a)(7) four art works. Subsequently, the Trustee in Bankruptcy filed a motion for the Bankruptcy Court to disallow the Debtor's claim of exemption. In response, on November 7, 1986, Debtor filed an amendment to his Schedule B-4 stating that his claim of exemption was made pursuant to 31 O.S. §§ 1(a)(7) and (3). On December 5, 1986, the Bankruptcy Court denied the Debtor's claim of exemption. Debtor appeals from that ruling. For the reasons set forth below, the ruling of the Bankruptcy Court denying Debtor's claim of exemption is affirmed.

This court has jurisdiction over this matter pursuant to 28 U.S.C. §158(a). The Appellant, Robert E. Bresnahan, frames the question on appeal as follows:

"Whether paintings that hang on the walls of the Debtor's residence, which are for his personal use and were not acquired and have not been pledged as a result of any of the Debtor's business dealings, are exempt from sale for the payment of debt."

The art works at issue herein consist of a water color painting by Maher Morcos, originally purchased by the Appellant for \$1,248.00, an oil painting by Maher Morcos, originally purchased for \$250.00, and two pen and ink drawings by Tiger, originally purchased for \$35.00. All four of these art works were purchased prior to January 29, 1978. The parties have stipulated to the following: The four pictures at issue have been used by the Debtor personally and have always hung on the walls of his residence. None of the pictures have been pledged by the Debtor for a business debt. None of the pictures was acquired by the Debtor in payment of a business loan. The Bankruptcy Court held that while the Debtor had established that the paintings at issue were used for his personal use, Debtor did not establish that they were "reasonably necessary" for the maintenance of his home. The Bankruptcy Court further found that the pictures at issue had "possible investment potential" and that the art work was distinguishable from paintings and/or pictures of family members.

Bankruptcy Rule 8013 provides:

"On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy court's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses."

A bankruptcy court's findings should not be disturbed absent

"the most cogent reasons appearing in the record." In re Reid, 757 F.2d 230, 233 (10th Cir. 1985) (quoting Kansas Federal Credit Union v. Niemeier, 227 F.2d 287, 291 (10th Cir. 1955)). However, this "clearly erroneous" standard does not apply to questions of law or to mixed questions of fact and law. Here, the district court may make an independent examination and determination of the ultimate legal conclusions to follow from the facts. Stafos v. Jarvis, 477 F.2d 369 (10th Cir. 1973), cert. denied, 414 U.S. 944 (1973); Matter of Am. Beef Packers, Inc., 457 F.Supp. 313 (D.Nebr. 1978); In re Hammons, 438 F.Supp. 1143 (S.D.Miss. 1977), rev'd on other grounds, 614 F.2d 399 (5th Cir. 1980).

Appellant contends that the paintings herein are exempt from forced sale as pictures pursuant to 31 O.S. §1(A)(7) or as household furniture pursuant to 31 O.S. §1(A)(3). Appellee contends that the paintings are not pictures within the meaning of §1(A)(7) and that even if these paintings are pictures within the meaning of the statute, they are not exempt from forced sale because they constitute an investment in original paintings contrary to the intended meaning of the statute. Appellee also contends that the paintings are not exempt household furniture under §1(A)(3).

31 O.S. §1(A) provides in pertinent part:

"Except as otherwise provided in this title and notwithstanding subsection B of this section, the following property shall be reserved to every person residing in the state, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as herein provided:

* * *

3. All household and kitchen furniture held primarily for the personal, family or household use of such person or a dependent of such person;

* * *

7. All books, portraits and pictures, and wearing apparel, that are held primarily for the personal, family or household use of such person or a dependent of such person ..."

The spirit and purpose of the homestead exemption is "to protect the entire family in its occupancy from improvidence and the urgent demands of creditors." Matter of Estate of Wallace, 648 P.2d 828, 831-32 (Okla. 1982). While exemption laws such as homestead laws, should be liberally construed to comport with their beneficial spirit of protecting the family home, a liberal construction cannot be the means of defeating a positive law or a rule established by judicial precedent. Matter of Estate of Wallace, supra, at 833-34. In Security Building & Loan Ass'n v. Ward, 174 Okl. 238, 50 P.2d 651 (1935), the Oklahoma Supreme Court held that the statutory exemption for household and kitchen furniture was limited to that "being used for maintaining the home or which is intended to be so used and reasonably necessary for such use." The court noted that the purpose of the exemption statute was to prevent inconsiderate creditors from depriving a debtor of the "necessities of life." Id. at 657. Appellant contends that the Oklahoma Supreme Court has held that the words "furniture" and "furnishings" are synonymous. The Oklahoma Supreme Court did make that statement in the context of a contract for sale of an apartment building and furnishings, Swisher v. Clark, 209 P.2d 880, 886 (Okla. 1949), but Appellant has offered no cases adopting such a liberal construction of the

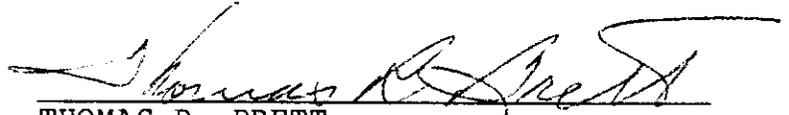
word "furniture" in the statute at issue. The court concludes that the paintings herein do not constitute "furniture" for purposes of 31 O.S. §1(A)(3). Even were they considered furniture, the court concludes they are not reasonably necessary to maintenance of a home.

The predecessor of 31 O.S. §1(A)(7) exempted from forced sale "all family portraits and pictures." Clearly, that statute was confined to pictures/portraits of family sentimental value. The present statute exempts all portraits and pictures held primarily for personal, family or household use. The pictures at issue herein all depict Indian scenes. Appellant makes no assertion that the paintings are family portraits. No reported Oklahoma decision has interpreted "pictures" under §1(A)(7) and determined the breadth of its applicability. In In re Goldberg, 59 B.R. 201 (Bankr. N.D.Okla. 1986), the court adopted a narrow construction of the term "wearing apparel" interpreting another portion of §1(A)(7). The court found that a debtor's watch was wearing apparel for exemption purposes, but that a gold chain and gold Ten Dollar gold pendant represented an investment and thus did not qualify as exempt wearing apparel. In arriving at this conclusion, the court noted that the basis for exemption laws is that by allowing a debtor to retain a minimum amount of property, the debtor and his family will not be completely destitute and become a burden to society. Id. at 208. Relying on the same reasoning, this court concludes that while the art work at issue may constitute "pictures" for purposes of §1(A)(7), the art work

is more than mere pictures of family or sentimental value. The pictures represent a significant investment which should not be afforded the protection of exemption under §1(A)(7). Denial of debtor's exemption claim does not violate the spirit of the exemption statute. Denial of debtor's claim will not subject him to the demands of inconsiderate creditors seeking to deprive him of the necessities of life. Security Building & Loan Ass'n, supra, at 657. In In re Reid, supra, the Tenth Circuit Court of Appeals affirmed a decision that certain religious paintings were not held primarily for personal family or household use. The Bankruptcy Court found that although the paintings were located in the debtor's home, their most important use was as collateral for commercial loans. Appellant argues that if the paintings are held solely in the debtor's home, not pledged for commercial loans, and not received as payment in commercial transactions, then they should qualify for the exemption under §1(A)(7). Appellant reads the Reid decision too broadly. As the court there noted not all items of personal property that a debtor uses in his home need fall within the statutory exemptions. "Each case will be evaluated on its merits with regard to its own particular facts and circumstances to prevent abuses by either creditors or debtors." In re Reid, supra, at 236 (quoting In re Fisher, 11 B.R. 666, 669 (Bankr. W.D.Okla. 1981). Examining the particular facts and circumstances herein, the court concludes that the decision of the Bankruptcy Court to deny debtor's exemption claim was correct. The objective is to provide the

debtor a fresh start "not a head start." Goldberg, supra, at 208.
For these reasons, the decision of the Bankruptcy Court is
affirmed.

IT IS SO ORDERED, this 8th day of July, 1987.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

nm

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

FILED

JUL - 8 1987

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

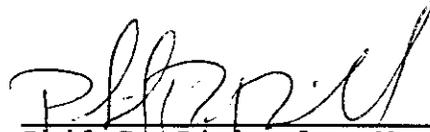
IMPACT SYSTEMS, INC., an)
Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
COLOR COMMUNICATIONS, INC.)
d/b/a THE LEARNING SHOP, a)
Florida corporation,)
)
Defendant.)

No. 86-C-1029-B ✓

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, Impact Systems, Inc., and Defendant, Color Communications, Inc., by and through their attorneys of record, and do herein stipulate pursuant to Rule 41(a) of the Federal Rules of Civil Procedure that the above-styled and numbered cause, and all claims asserted therein, be dismissed with prejudice to the refiling thereof.

Respectfully submitted,



Phil R. Richards, OBA #10457

ATTORNEY FOR PLAINTIFF
IMPACT SYSTEMS, INC.

Of Counsel:
RICHARDS, PAUL & WOOD
9 East 4th Street, Suite 400
Tulsa, Oklahoma 74103
(918) 584-2583



D. E. Hammer
Tom Mason

ATTORNEYS FOR DEFENDANT
COLOR COMMUNICATIONS, INC. D/B/A
THE LEARNING SHOP

Of Counsel:
SANDERS & CARPENTER
624 South Denver, Suite 205
Tulsa, Oklahoma 74119
(918) 582-5181

F I L E D

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

JUL 7 1987

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

TRANSBRASIL S/A LINHAS)
AEREAS, a Brazilian)
corporation,)
)
Plaintiff,)
)
vs.)
)
INTERSIM, INC.,)
)
Defendant.)

Case No. 87-C-303-E

ORDER of
DISMISSAL WITH PREJUDICE

Upon the review of the Stipulated Motion for Dismissal
filed by the Plaintiff and Defendant herein,

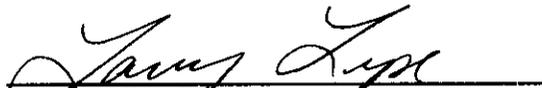
IT IS HEREBY ORDERED that this lawsuit be dismissed
with prejudice.

DATED this 7th day of July, 1987.

57 JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:



Larry B. Lipe
Timothy T. Trump
COMFORT, LIPE & GREEN, P.C.
2100 Mid-Continent Tower
401 South Boston
Tulsa, Oklahoma 74103
Attorneys for Plaintiff

Neal Tomlins

Neal Tomlins
BAKER, HOSTER, McSPADDEN,
CLARK, RASURE & SLICKER
800 Kennedy Building
Tulsa, Oklahoma 74103
Attorneys for Defendant

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

FILED

JUL 7 1987

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

CANADIAN OCCIDENTAL OF)
CALIFORNIA, INC.,)
)
Plaintiff,)
)
vs.)
)
UNITED GAS PIPE LINE COMPANY,)
)
Defendant.)

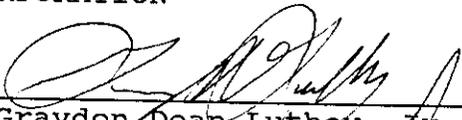
No. 85-C-874-B

AMENDED STIPULATED DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Canadian Occidental of California, Inc., by and through its counsel, Graydon Dean Luthey, Jr., and the Defendant, United Gas Pipe Line Company, by and through its counsel, John L. Arrington, Jr., and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby dismiss the above-styled and numbered cause with prejudice to any further action. It is stipulated by the parties that they shall each bear their own attorneys' fees and costs.

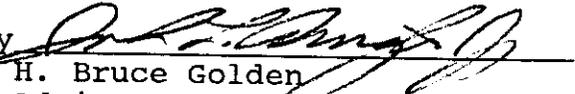
Dated this 29 day of June, 1987.

CITIES SERVICE OIL AND GAS
CORPORATION

By 
Graydon Dean Luthey, Jr.
JONES, GIVENS, GOTCHER, BOGAN
& HILBORNE
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

UNITED GAS PIPE LINE COMPANY

By


H. Bruce Golden
Adrian L. Steel, Jr.
MAYER, BROWN & PLATT
700 Louisiana Street
3600 RepublicBank Center
Houston, Texas 77002
(713) 221-1651

John L. Arrington, Jr.
Robert A. Huffman, Jr.
HUFFMAN ARRINGTON KIHLE GABERINO
& DUNN
1000 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 585-8141

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

FILED

JUL 7 1987

OXY PETROLEUM, INC.,)
)
Plaintiff,)
)
vs.)
)
UNITED GAS PIPE LINE COMPANY,)
)
Defendant.)

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

No. 85-C-605-B

AMENDED STIPULATED DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Cities Service Oil and Gas Corporation, successor to the interests of Oxy Petroleum, Inc., by and through its counsel, Graydon Dean Luthey, Jr., and the Defendant, United Gas Pipe Line Company, by and through its counsel, John L. Arrington, Jr., and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby dismiss the above-styled and numbered cause with prejudice to any further action. It is stipulated by the parties that they shall each bear their own attorneys' fees and costs.

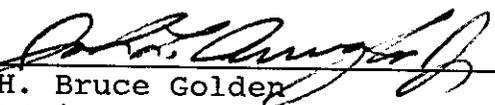
Dated this 29 day of June, 1987.

CITIES SERVICE OIL AND GAS CORPORATION

By 
Graydon Dean Luthey, Jr.
JONES, GIVENS, GOTCHER, BOGAN
& HILBORNE
3800 First National Tower
Tulsa, Oklahoma 74103
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Robert A. Huffman, Jr.
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& DUNN
1000 ONEOK Plaza
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(918) 585-8141

Judge

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA JUL -6 1987

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

TOMMY REDMON,)
)
Petitioner,)
)
vs.)
)
WILLIAM YEAGER,)
)
Respondent.)

No. 86-C-966-C

O R D E R

Now before the Court for its consideration is the "response to rulings of the Court ..." filed by petitioner herein.

On October 29, 1986, the petitioner filed his petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. On January 22, 1987, the United States Magistrate issued his Report and Recommendation, recommending that petitioner's application be dismissed. No objection was filed to the Report and Recommendation, and on February 9, 1987, this Court issued its Order dismissing the application. On February 19, 1987, the petitioner filed his response, which is essentially an objection to the Recommendation, and on March 24, 1987 filed a motion to enter evidence in support of his objections. Rule 32(c)(2) of the Local Court Rules provides in pertinent part that "[a]ny party objecting to said report and recommendation may file his objections within ten (10) days after the report and recommendation is filed with the Clerk ... [and] [a]ny objections not so made

shall be deemed waived" The United States Supreme Court, in reviewing such a rule, has noted that "[t]here is no indication that Congress, in enacting [28 U.S.C.] §636(b)(1)(C), intended to require a district judge to review a magistrate's report to which no objections were filed." Thomas v. Arn, 106 S.Ct. 466, 473 reh'g denied, 106 S.Ct. 899 (1985).

It is the Order of the Court that the petitioner's "response to rulings of the court" and motion to enter evidence are hereby denied.

IT IS SO ORDERED this 2nd day of July, 1987.



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

May

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA JUL -6 1987

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

TOMMY REDMON,)
)
Petitioner,)
)
vs.)
)
WILLIAM YEAGER,)
)
Respondent.)

No. 86-C-966-C

O R D E R

Now before the Court for its consideration is the "response to rulings of the Court ..." filed by petitioner herein.

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It is the Order of the Court that the petitioner's "response to rulings of the court" and motion to enter evidence are hereby denied.

IT IS SO ORDERED this 2nd day of July, 1987.


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

Entered copy

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA JUL -6 1987

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

TOMMY REDMON,)
)
 Petitioner,)
)
 vs.)
)
 WILLIAM YEAGER,)
)
 Respondent.)

No. 86-C-966-C

O R D E R

Now before the Court for its consideration is the "response to rulings of the Court ..." filed by petitioner herein.

On October 29, 1986, the petitioner filed his petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. On January 22, 1987, the United States Magistrate issued his Report and Recommendation, recommending that petitioner's application be dismissed. No objection was filed to the Report and Recommendation, and on February 9, 1987, this Court issued its Order dismissing the application. On February 19, 1987, the petitioner filed his response, which is essentially an objection to the Recommendation, and on March 24, 1987 filed a motion to enter evidence in support of his objections. Rule 32(c)(2) of the Local Court Rules provides in pertinent part that "[a]ny party objecting to said report and recommendation may file his objections within ten (10) days after the report and recommendation is filed with the Clerk ... [and] [a]ny objections not so made

shall be deemed waived" The United States Supreme Court, in reviewing such a rule, has noted that "[t]here is no indication that Congress, in enacting [28 U.S.C.] §636(b)(1)(C), intended to require a district judge to review a magistrate's report to which no objections were filed." Thomas v. Arn, 106 S.Ct. 466, 473 reh'g denied, 106 S.Ct. 899 (1985).

It is the Order of the Court that the petitioner's "response to rulings of the court" and motion to enter evidence are hereby denied.

IT IS SO ORDERED this 2nd day of July, 1987.



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

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

FILED

JUL 6 1987

VERNELL MCKNIGHT, JR.,
Petitioner,
v
TOM WHITE, Warden, et al.,
Respondents.

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

No. 86-C-558-E

O R D E R

This habeas corpus case is before the Court for consideration of Objections to the Findings and Recommendations of the Magistrate with regard to a Petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. The Petitioner attacks the validity of his plea of guilty to a charge of First Degree Manslaughter. By a Supplement to his Petition, Petitioner states that he does not wish to undergo a second trial, nor to withdraw his plea of guilty, but seeks to "have his conviction reduced to Second Degree Manslaughter, with time cut and time served." Petitioner claims that his present conviction was obtained without due process because he was not adequately informed of the constitutional rights he was waiving by entering a plea of guilty, and because of other claimed errors by the trial court which accepted his guilty plea. Petitioner also claims ineffective representation of counsel.

The Magistrate recommended that a writ of habeas corpus be granted, and that the case be remanded to Tulsa County District Court for a new plea hearing. The Magistrate found merit in only one of Petitioner's arguments--that his plea was not made voluntarily because there was insufficient evidence in the statements made by Petitioner to the state trial court indicating that he was intelligently and voluntarily waiving his rights. The Magistrate found that the plea hearing did not satisfy the requirements of Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969), Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938), and McCarthy v. United States, 394 U.S. 459, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969) because there was nothing in the record to affirmatively show that Petitioner knew the nature or elements of the charge of First Degree Manslaughter in a Cruel and Unusual Way, or that Petitioner understood the law in relation to the facts of his case.

The underlying facts of the offense committed by the Petitioner are set forth by Petitioner in a copy of his Brief in Support of Application for Post Conviction Relief which he attached to his habeas corpus Petition. Petitioner admits therein "dousing his spouse with gasoline from a 8 Fluid ounce pickle jar" in order to coerce her into having sexual relations with him. He also admits that "the fumes from the gasoline ignited, causing an explosion when Petitioner flicked the 'bic lighter' which set his spouse afire."

This Court has carefully reviewed the transcript of the proceedings before the Tulsa County District Court in which the Petitioner entered

his plea of guilty. With regard to the factual basis for the plea, the transcript contains the following exchange:

(The Court): Are you guilty of Manslaughter, First Degree in a cruel and unusual way?

(Petitioner): Yes, to a certain degree.

The judge asked no further questions regarding the acts committed by the Petitioner, and did not seek to clarify his answer.

The State contends that the plea is sufficient under Marshall v. Lonberger, 103 S. Ct. 843, 459 U.S. 422, 74 L. Ed. 2d 646 (1983) and Henderson v. Morgan, 426 U.S. 637, 96 S. Ct. 2253, 49 L. Ed.2d 108 (1976). In Marshall v. Lonberger the United States Supreme Court stated that there is a presumption that the defendant has been informed of the nature of the offense in sufficient detail to give the defendant notice of what he is being asked to admit. However, the problem presented under these facts is that Petitioner did not unequivocally confess his guilt, but instead stated, "Yes, to a certain degree." This statement is insufficient to establish that Petitioner understood the application of the law to the facts of his case as required by McCarthy v. United States. Therefore this Court can not find that the Petitioner's plea was knowing and voluntary as required under Moore v. Anderson, 474 F.2d 1118 (10 Cir. 1973).

With regard to the other grounds raised by the Petitioner, the Court has carefully reviewed the transcript and King v. State, 553 P.2d 529 (Ok. Cr. 1976) and finds that the questions of the trial

court adequately addressed all areas of inquiry thereby.

IT IS THEREFORE ORDERED that the Findings and Recommendations of the Magistrate with regard to the writ of habeas corpus are accepted, that the Objections thereto are overruled, that the writ of habeas corpus be granted, and that Petitioner's previous plea of guilty be set aside, and the case remanded to the Tulsa County District Court for further proceedings therein.

Date: July 6th, 1987



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 6 1987

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

UNITED STATES OF AMERICA, and MARJORIE)
HARPER CLARK, Mother and Next Friend of)
STEPHEN HARPER, a Minor Child,)
)
Plaintiffs,)
)
v.)
)
F. ROLLIN BLAND, M.D.; U. DUANE SMITH,)
M.D.; and F. ROLLIN BLAND, INC.,)
)
Defendants.)

No. 86-C-691-E

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 6th day of July, 1987, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ JAMES O. ELNISON

United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUL 6 1987

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 VAN R. SIMMONS; TERESA R.)
 SIMMONS; SERVICE COLLECTION)
 ASSOCIATION, INC.; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

CIVIL ACTION NO. 87-C-263-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 6th day
of July, 1987. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Doris L. Fransein, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendants, Van R. Simmons
and Teresa R. Simmons, appear by their attorney Walter M.
Benjamin; and the Defendant, Service Collection Association,
Inc., appears not, having previously filed its Disclaimer.

The Court being fully advised and having examined the
file herein finds that the Defendants, Van R. Simmons and
Teresa R. Simmons, acknowledged receipt of Summons and Complaint

on May 8, 1987; that Defendant, Service Collection Association, Inc., acknowledged receipt of Summons and Complaint on April 24, 1987; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 15, 1987; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 15, 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 May 4, 1987; that the Defendants, Van R. Simmons and Teresa R. Simmons, filed their Answer on May 14, 1987; and that the Defendant, Service Collection Association, Inc., filed its Disclaimer on May 1, 1987.

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

Lot Eleven (11), in Block Two (2), in
SUBDIVISION OF BLOCK 3, PROSPECT PLACE
ADDITION to Tulsa, Tulsa County, State of
Oklahoma, according to the recorded plat
thereof.

The Court further finds that on September 23, 1985, the Defendants, Van R. Simmons and Teresa R. Simmons, 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 \$26,000.00, payable in monthly installments, with

interest thereon at the rate of eleven and one-half percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Van R. Simmons and Teresa R. Simmons, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated September 23, 1985, covering the above-described property. Said mortgage was recorded on September 26, 1985, in Book 4894, Page 2144, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Van R. Simmons and Teresa R. Simmons, 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, Van R. Simmons and Teresa R. Simmons, are indebted to the Plaintiff in the principal sum of \$26,175.12, plus interest at the rate of eleven and one-half percent (11.5%) per annum from July 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

The Court further finds that the Defendant, Service Collection Association, Inc., disclaims any interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Van R. Simmons and Teresa R. Simmons, in the principal sum of \$26,175.12, plus interest at the rate of eleven and one-half percent (11.5%) per annum from July 1, 1986 until judgment, plus interest thereafter at the current legal rate of 10.64 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, and Service Collection Association, Inc., 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, Van R. Simmons and Teresa R. Simmons, to satisfy the judgment in rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

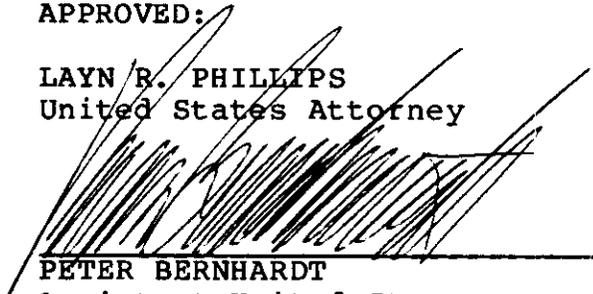
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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.

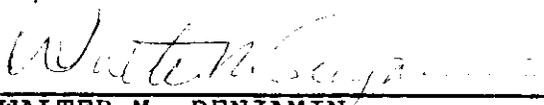
~~UNITED STATES DISTRICT JUDGE~~
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


PETER BERNHARDT
Assistant United States Attorney


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


WALTER M. BENJAMIN
Attorney for Defendants,
Van R. Simmons and Teresa R. Simmons

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

DONALD EDWARD BREEN,)
)
 Petitioner,)
)
 v.)
)
 LARRY MEACHUM, Director,)
 Oklahoma Department of)
 Corrections, and)
 JOHN BROWN, Warden,)
)
 Respondents.)

85-C-236-E

F I L E D

JUL 6 1987

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

FINDINGS AND RECOMMENDATIONS OF MAGISTRATE

Petitioner seeks federal habeas corpus relief pursuant to Title 28 U.S.C. §2254 on the grounds that his guilty plea in Mayes County District Court Case No. CRF-82-195, was not knowing and voluntary. At the time he entered his plea, petitioner was undergoing treatment for drug withdrawal.

Following an evidentiary hearing on the issue of whether the drug withdrawal treatment given petitioner affected his capacity to understand the consequences of entering a guilty plea, the Assistant Attorney General urged the court to dismiss petitioner's habeas corpus application on the grounds that his claim is barred by a procedural default in state court.

Upon receipt of the Attorney General's motion, the Magistrate ordered the State to submit authority on the issue of whether the State, by previously conceding that petitioner had exhausted his state remedies, is estopped from raising its dismissal motion.

✓

A further examination of the record, however, clearly establishes that there has been no procedural default which requires this court to dismiss petitioner's application. Such a default occurs where petitioner's constitutional claims have not been considered on the merits in state court due to petitioner's failure to raise them there as required by state procedure. Wainwright v. Sykes, 433 U.S. 72, 87, 97 S.Ct. 2497, 2507, 53 L.Ed.2d 594, 608 (1977). In this case on April 4, 1986, the Mayes County District Court considered and rejected the merits of petitioner's claim regarding his guilty plea. The Oklahoma Court of Criminal Appeals affirmed the trial court's action on May 12, 1986, in Case No. PC-86-271.

Because the state courts have considered petitioner's claims on the merits, and because petitioner has exhausted all his available state remedies, this court may properly entertain petitioner's application for federal habeas relief.

A guilty plea is more than a confession; it is a conviction. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). By pleading guilty a defendant waives several fundamental constitutional rights. The standard for an effective waiver of a federal constitutional right is a matter of federal law. Douglas v. Alabama, 380 U.S. 415, 422, 85 S.Ct. 1074, 1078, 13 L.Ed.2d 934, 939 (1965). To pass constitutional scrutiny, the record must establish "that the defendant voluntarily and understandingly" entered his guilty plea. Boykin, 395 U.S. at 246. The determination of whether there has been an intelligent

and voluntary guilty plea must depend upon the facts and circumstances of each case.

Having considered all the evidence in this case, the Magistrate finds that Breen's guilty plea on October 8, 1982, was not voluntarily and understandingly entered. Shortly before his plea, he was hospitalized and treated for drug addiction at Eastern State Hospital, Vinita, Oklahoma, and at the time of his plea hearing Breen was undergoing drug withdrawal treatment at Grand Valley Hospital. Mr. Breen testified that he pled guilty because he had been assured that if he were in the state penal system he would be given medical treatment for his drug addiction. He testified further that his only concern on October 8, 1982 was to get the plea hearing over so he could get back to the hospital for another shot of drugs.

At the evidentiary hearing the court heard testimony of two medical experts who both concluded that, based on Breen's medical records, Mr. Breen was not competent so as to be able to understand the consequences of his guilty plea. Doctors Goodman and O'Carroll testified that in October, 1982, Breen was addicted to narcotics such that he needed the drugs to maintain his normal body functions; that the withdrawal treatment given Breen was wholly inadequate; that Mr. Breen was under the influence of his drug addiction on the date of his plea hearing; and, that as a result of his addiction and the drugs administered to him by Eastern State Hospital and Grand Valley Hospital, Breen was not competent to enter a plea of guilty.

Having concluded that petitioner's guilty plea on October 8, 1982 was not voluntarily and understandingly entered, it is the Magistrate's recommendation that petitioner's application for a writ of habeas corpus be granted.

Dated this 6th day of ~~June~~^{July}, 1987.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE

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

FILED

JUL -2 1987 *ml*

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

TRANSWESTERN MINING COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
VANNOY HILDEBRAND, Individually)
and as Administratrix of the)
Estate of Howard Hildebrand;)
et al.,)
)
Defendants)

No. 86-C-477-B ✓

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed June 12, 1987. 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 the Motion for Partial Summary Judgment of Defendants, Frederick M. Hartley and Tedde R. Hartley, be granted and funds presently on deposit with the Clerk of this Court be disbursed as follows:

- (i) The sum of \$144,246.26 to Frederick M. Hartley and Tedde R. Hartley; *+ \$4,823.75 int = \$149,070.01*
 - (ii) The sum of \$3,842.51 to the plaintiff, Transwestern Mining Company; and *+ \$128.77 int = \$3,971.28*
- Total \$153,041.29*

NOTE: THIS ORDER IS TO BE MAILED BY ~~THE COURT~~ *plaintiff* TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

OK-NIN 7M

(iii) Any accrued interest shall be divided between the parties on a pro-rata basis - 2.6% to the plaintiff and the balance of 97.4% to Frederick M. Hartley and Tedde R. Hartley.

The Court is advised that the parties are agreeable that the funds can be withdrawn prior to the maturity date of the existing bank certificate of deposit.

It is further Ordered that the remaining motions for summary judgment are rendered moot and that the plaintiff, Transwestern Mining Company, be discharged of any liability in connection with interpleaded funds as to all defendants.

It is further Ordered that the discovery cutoff date will be set at a status conference which the Court will schedule to resolve the issues which are presenting pending as to the remaining parties. Those remaining parties may pursue discovery pending the status and scheduling conference.

Dated this 2nd day of July, 1987.


THOMAS R. BRETT,
UNITED STATES DISTRICT JUDGE

IT IS FURTHER ORDERED that the case is set for status conference on July 17, 1987 at 8:45 a.m.

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

FILED

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
)
 Plaintiff,)

vs.)

No. 86-C-1030-E

CITY OF TULSA, et al.,)
)
)
 Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
)
 Plaintiffs,)

vs.)

No. 86-C-1031-E

CITY OF TULSA, et al.,)
)
)
 Defendants,)

and

LYDIA SWANSON,)
)
)
 Plaintiff,)

vs.)

No. 86-C-1032-E

CITY OF TULSA, et al.,)
)
)
 Defendants,)

and

BRENDA JO GREGG,)
)
)
 Plaintiff,)

vs.)

No. 86-C-1033-E

CITY OF TULSA, et al.,)
)
)
 Defendants,)

and

JOE R. ZIEGLER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1038-E

and

JEWELL L. JOHNSON, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1039-E

and

LEE L. FINCANNON, et ux.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1040-E

and

LAWRENCE J. FRENCKEN, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1041-E

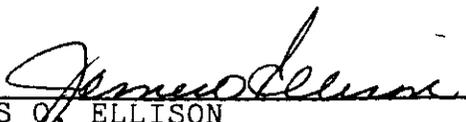
JUDGMENT

This action came on for hearing before the Court, Honorable James

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Fincannon, Emma Fincannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
Plaintiffs,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

LYDIA SWANSON,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

BRENDA JO GREGG,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

No. 86-C-1030-E

No. 86-C-1031-E

No. 86-C-1032-E

No. 86-C-1033-E

JOE R. ZIEGLER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1038-E

and

JEWELL L. JOHNSON, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1039-E

and

LEE L. FINCANNON, et ux.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1040-E

and

LAWRENCE J. FRENCKEN, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1041-E

JUDGMENT

This action came on for hearing before the Court, Honorable James

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Fincannon, Emma Fincannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
Plaintiff,)

vs.)

No. 86-C-1030-E

CITY OF TULSA, et al.,)
)
Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
Plaintiffs,)

vs.)

No. 86-C-1031-E

CITY OF TULSA, et al.,)
)
Defendants,)

and

LYDIA SWANSON,)
)
Plaintiff,)

vs.)

No. 86-C-1032-E

CITY OF TULSA, et al.,)
)
Defendants,)

and

BRENDA JO GREGG,)
)
Plaintiff,)

vs.)

No. 86-C-1033-E

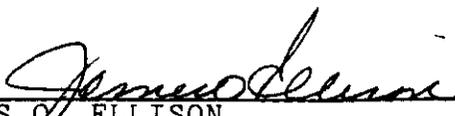
CITY OF TULSA, et al.,)
)
Defendants,)

and

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Fincannon, Emma Fincannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

F I L E D

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

JUL 2 1987 *f*

SCOTT MARTIN,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES WALLACE,)
)
 Defendant.)

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

No. 86-C-1128-E
Bankruptcy No.
84-00052 (Chapter 11)
Adversary No. 86-37

O R D E R

The Court has before it for its consideration an appeal from a final judgment of the Bankruptcy Court requiring that James L. Wallace specifically perform a contract to purchase real estate which was sold at a bankruptcy sale. The issue presented by this appeal is whether the Trustee can convey marketable title, free and clear of encumbrances by selling the property at a bankruptcy sale.

The facts of the case are undisputed. At the bankruptcy sale Mr. Wallace agreed to purchase the property under the terms of a contract between the Trustee and another bidder, Doyle James. This contract provided in pertinent part:

First party shall within a reasonable time hereafter furnish second parties with a current certified abstract of title to the real estate above described showing fee simple merchantable title in the first party free and clear of any liens and encumbrances ...In the event first party is unable or unwilling within a reasonable time to provide merchantable title to the property as herein contemplated then in that event upon written demand first party shall promptly return the down payment above set out to second parties.

The Court asked the Trustee whether he recommended that the

property be sold subject to title requirements, even though it was not a binding contract on Mr. Wallace. The Trustee recommended that it be sold in this fashion, and the Court then indicated he did not have any objection to such terms. The property had been used as a service station for many years and Mr. Wallace's intent was to operate it as a service station. After the hearing but before receipt of the abstracts, Mr. Wallace learned from a representative of the Department of Transportation for the State of Oklahoma that the concrete islands and gasoline pumps at the service station encroached on a state highway right-of-way and that to operate the property as a service station the pumps and islands would have to be moved so far back from the highway easement that it would require the Defendant to relocate the service station building. When Mr. Wallace refused to go through with the sale on the basis of no merchantable title, the Trustee brought an adversary action against him and the Bankruptcy Court determined that the Trustee could convey merchantable title to the property because it was being sold free and clear of liens under §363 of the Bankruptcy Code. The Court then awarded specific performance in the full amount of the purchase price, plus interest to the Trustee.

11 U.S.C. §363(f) provides as follows:

The Trustee may sell property under section (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate only if ...

(1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;

- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of such interest;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Thus, a Trustee may sell property in a bankruptcy sale free and clear of liens or interests in property by persons other than the estate. This section does not deal with the problem of whether the Trustee can sell property free and clear of encumbrances of a non-monetary nature. Here, the encumbrance was a state highway easement which greatly devalued the property because of the need to relocate the service station building in order to operate the property as a service station.

Marketable title is defined under Oklahoma law in Standard 4.1 of the Title Examination Standards set forth in Title 16, Chapter 1, Appendix as follows: "A marketable or merchantable title is synonymous with a perfect title or clear title of record; and is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record." The Court's research has disclosed no cases decided by Oklahoma courts addressing an encumbrance of this nature, and the parties have cited none. However the Supreme Court of Texas addressed the issue in Bowen v. Briscoe, 543 S.W. 2d 287 (Tex. 1970). In Bowen the plaintiffs brought suit for specific performance of a contract to sell a service station. The defendants had refused to perform the

contract because part of the property was encumbered by a highway easement, which covered an area occupied by the service station's concrete driveway. The contract between the parties provided that plaintiffs were to furnish defendants with a marketable title, free and clear of any and all encumbrances. The court found that the existence of the encumbrance prevented the passage of marketable title, even though it did not affect the ability of the purchasers to operate the service station. The Court also held that the substantial difference in the unencumbered area conveyed precluded specific performance.

Although bankruptcy sales are normally conducted on a caveat emptor basis, In re Rigdon, 795 F.2d 732 (9th Cir. 1986); In re Governor's Island, 45 B.R. 247 (E.D. N.C. 1984) the Court in this instance specifically indicated to Mr. Wallace that he would not be bound if after examination of the abstract, there was not marketable title. Here the existence of the highway easement precluded marketable title in a fashion which was not curable by the Bankruptcy Court sale. Therefore the Bankruptcy Court erred in upholding the contract of sale and granting specific performance.

Accordingly, the judgment entered by the Bankruptcy Court decreeing specific performance of the contract of sale is hereby reversed, and this case is remanded to the Bankruptcy Court for further proceedings herein.

DATED this 2^d day of July, 1987.



JAMES G. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 2 1987

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

THE HANOVER INSURANCE COMPANY,)
a Massachusetts Corporation,)

Plaintiff,)

vs.)

UNITED OKLAHOMA BANK, an)
Oklahoma Corporation,)

Defendant.)

No. 86-C-991-E

ORDER OF TRANSFER

Pursuant to Stipulation of the parties, venue in this action
is hereby transferred to the Western District of Oklahoma.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

F I L E D

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

JUL 2 1987

BOB J. GREER AND JEAN V. GREER,)
husband and wife,)
)
Plaintiffs,)
)
vs.)
)
CITY OF TULSA, a municipal)
corporatin, et al.,)
)
Defendants.)

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

No. 86-C-857-E

O R D E R

This matter is before the Court on Defendants' Motions to Dismiss and for Summary Judgment, all essentially contending that the Court should abstain from hearing Plaintiffs' action at this time.

Plaintiffs have brought this action pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1343, alleging that Defendants' actions in seeking to acquire real property owned by Plaintiffs through urban renewal condemnation proceedings are in violation of due process of law because Defendants have sought to obtain the property for an inadequate price and Defendants are essentially using the condemnation proceedings to benefit private development.

It is uncontroverted that the state court condemnation action is still pending in the District Court in and for Tulsa County in Case No. CJ 84-6416, Tulsa Urban Renewal Authority v. Bob J. Greer, et al., that monies have been deposited with the Court in the amount of the appraisal by Commissioners, that Plaintiffs have an Answer, a Request for Jury Trial, and an

Exception to the Report of Commissioners which entitles Plaintiffs to contest the condemnation itself and the value of the land taken. It is also undisputed that an appeal is currently pending before the Oklahoma Supreme Court in Tulsa Urban Renewal Authority v. Harold W. Slagle, et al., involving identical issues of state law concerning Tulsa Urban Renewal Authority's powers of eminent domain under 11 O.S. §38-101, et seq.

In these circumstances the Defendants contend that this Court should abstain from interfering with the ongoing state condemnation based on the principles of comity and federalism established in Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) and Huffman v. Pursue Ltd., 420 U.S. 592, 43 L.Ed.2d 482, 95 S.Ct. 1200 (1969). They also assert that the Court should abstain under Railroad Comm. of Texas v. Pullman Company, 61 S.Ct. 643, 312 U.S. 496, 85 L.Ed. 971 (1941); Burford v. Sun Oil Co., 63 S.Ct. 1098, 319 U.S. 315, 87 L.Ed. 1424 (1943), and Louisiana Power & Light Co. v. City of Thibodaux, 79 S.Ct. 1070, 380 U.S. 25 (1959). Plaintiffs respond that civil rights suits constitute expressly authorized exceptions to abstention principles.

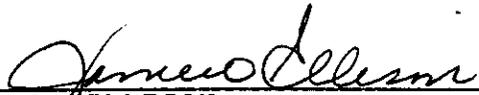
In Louisiana Power & Light Co. v. City of Thibodaux, supra, the United States Supreme Court considered whether a federal district court should abstain from hearing a condemnation suit brought by the City of Thibodaux asserting a taking of the land, buildings, and equipment of Louisiana Power & Light Company. The district court stayed the action until the Louisiana Supreme

Court had been afforded an opportunity to interpret the Louisiana statute on which the condemnation was based. In holding that the district court was correct in its decision to abstain, the Supreme Court noted that condemnations are exercises of state sovereignty and therefore,

"the considerations that prevailed in conventional equity suits for avoiding the hazards of serious disruption of federal courts of state government or needless friction between state and federal authorities are similarly appropriate in a state eminent domain proceeding brought in, or removed to, a federal court." (Louisiana at 1073)

This reasoning is controlling under the facts of this case. Rather than stay the action, the Court will dismiss it without prejudice. If further proceedings are required Plaintiffs may refile the action within three (3) months of receiving a final determination from the Oklahoma appellate courts on the issues which they have raised herein.

DATED this 12th day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

JUL 2 1987

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

EDGAR LAYTON, JUNIOR,)
)
 Plaintiff,)
)
 vs.)
)
 JUDGE WILLIAM H. BLISS,)
)
 Defendant.)

No. 87-C-85-E

O R D E R

The Court has before it for consideration Plaintiff's Motion for Appointment of Counsel. Plaintiff brings this action pursuant to 42 U.S.C. § 1983, alleging that Judge William Bliss discriminated against him and lied to him regarding the possible sentence he could receive when the Judge sentenced him to a term of imprisonment of ten years to life imprisonment for second degree murder. The Court allowed Plaintiff to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

The Court, at this time, is not convinced that the appointment of counsel is warranted in this case.

In Bethea v. Crouse, 417 F.2d 504 (10th Cir. 1969), the Court noted:

We have often said, and it seems to be universally agreed, that no one has a constitutional right to assistance of counsel in the prosecution or defense of a civil action. See Flowers v. State of Oklahoma, 356 F.2d 916 (10th Cir. 1966); Knoll v. Socony Mobil Oil Co., Inc., 369 F.2d 425 (10th Cir. 1966); Garrison v. Lacey, 362 F.2d 798 (10th Cir. 1966); Lee v. Crouse, 284 F.Supp. 541 (D. Kan. 1967); United States ex rel. Gardner v.

Madden, 352 F.2d 792 (9th Cir. 1965). We have said so in a constitutionally based civil rights action. See Lee v. Crouse, supra. In a forma pauperis action under 28 U.S.C. § 1915(d), the trial court may but is not required to appoint counsel.

417 F.2d at 505. In Bounds v. Smith, 430 U.S. 817, 827, 97 S.Ct. 1491, 1498, 52 L.Ed.2d 72 (1977), the Supreme Court held that an incarcerated pro se litigant had a fundamental constitutional right of access to the courts through the access to an adequate law library or from the adequate legal assistance of persons trained in the law. However, the decision was clearly in the disjunctive, and the litigant does not have a right to both. Thus, the Plaintiff's request for appointment of counsel is hereby denied.

Furthermore the Court also has before it the Defendant's Motion to Dismiss which is based on judicial immunity under Dennis v. Sparks, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d (1980); Supreme Ct. of Virginia v. Consumers Union, 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980); Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 33 (1978); and Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967). It is well established that judges are immune for damages for acts undertaken in their judicial capacity. Therefore Plaintiff's action is frivolous and should be dismissed. If Plaintiff wishes a reduction in sentence rather than damages he should consider habeas corpus relief.

IT IS THEREFORE THE ORDER of this Court that Plaintiff's motion for appointment of counsel be, and the same hereby is, denied, that Defendant's Motion to Dismiss is granted and

Plaintiff's remaining motions denied as moot.

It is so ORDERED this 15th day of June, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
Plaintiffs,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

LYDIA SWANSON,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

BRENDA JO GREGG,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

No. 86-C-1030-E

No. 86-C-1031-E

No. 86-C-1032-E

No. 86-C-1033-E

JOE R. ZIEGLER, et al.,)
)
 Plaintiffs,)
)
 vs.) No. 86-C-1038-E
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

and

JEWELL L. JOHNSON, et al.,)
)
 Plaintiffs,)
)
 vs.) No. 86-C-1039-E
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

and

LEE L. FINCANNON, et ux.,)
)
 Plaintiffs,)
)
 vs.) No. 86-C-1040-E
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

and

LAWRENCE J. FRENCKEN, et al.,)
)
 Plaintiffs,)
)
 vs.) No. 86-C-1041-E
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

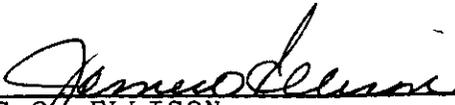
JUDGMENT

This action came on for hearing before the Court, Honorable James

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Fincannon, Emma Fincannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
Plaintiffs,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

LYDIA SWANSON,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

BRENDA JO GREGG,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

No. 86-C-1030-E

No. 86-C-1031-E

No. 86-C-1032-E

No. 86-C-1033-E

JOE R. ZIEGLER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1038-E

and

JEWELL L. JOHNSON, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1039-E

and

LEE L. FINCANNON, et ux.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1040-E

and

LAWRENCE J. FRENCKEN, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1041-E

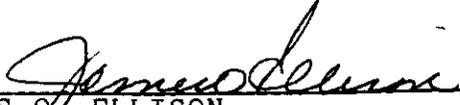
JUDGMENT

This action came on for hearing before the Court, Honorable James

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Finconnon, Emma Finconnon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
Plaintiffs,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

LYDIA SWANSON,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

BRENDA JO GREGG,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

No. 86-C-1030-E

No. 86-C-1031-E

No. 86-C-1032-E

No. 86-C-1033-E

JOE R. ZIEGLER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1038-E

and

JEWELL L. JOHNSON, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1039-E

and

LEE L. FINCANNON, et ux.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1040-E

and

LAWRENCE J. FRENCKEN, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1041-E

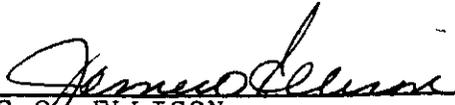
JUDGMENT

This action came on for hearing before the Court, Honorable James

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Fincannon, Emma Fincannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
Plaintiffs,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

LYDIA SWANSON,)
)
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vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

BRENDA JO GREGG,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

No. 86-C-1030-E

No. 86-C-1031-E

No. 86-C-1032-E

No. 86-C-1033-E

JOE R. ZIEGLER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1038-E

and

JEWELL L. JOHNSON, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1039-E

and

LEE L. FINCANNON, et ux.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1040-E

and

LAWRENCE J. FRENCKEN, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1041-E

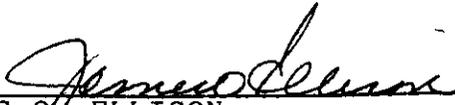
JUDGMENT

This action came on for hearing before the Court, Honorable James

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Finannon, Emma Finannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
Plaintiffs,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

LYDIA SWANSON,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

BRENDA JO GREGG,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

No. 86-C-1030-E

No. 86-C-1031-E

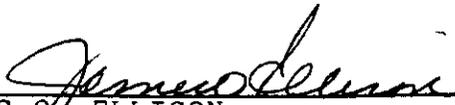
No. 86-C-1032-E

No. 86-C-1033-E

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Fincannon, Emma Fincannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
Plaintiff,)

vs.)

No. 86-C-1030-E

CITY OF TULSA, et al.,)
)
Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
Plaintiffs,)

vs.)

No. 86-C-1031-E

CITY OF TULSA, et al.,)
)
Defendants,)

and

LYDIA SWANSON,)
)
Plaintiff,)

vs.)

No. 86-C-1032-E

CITY OF TULSA, et al.,)
)
Defendants,)

and

BRENDA JO GREGG,)
)
Plaintiff,)

vs.)

No. 86-C-1033-E

CITY OF TULSA, et al.,)
)
Defendants,)

and

JOE R. ZIEGLER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1038-E

and

JEWELL L. JOHNSON, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1039-E

and

LEE L. FINCANNON, et ux.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1040-E

and

LAWRENCE J. FRENCKEN, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1041-E

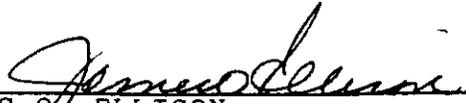
JUDGMENT

This action came on for hearing before the Court, Honorable James

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Fincannon, Emma Fincannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
 Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
 Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
 Plaintiffs,)

vs.)

CITY OF TULSA, et al.,)
)
 Defendants,)

and

LYDIA SWANSON,)
)
 Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
 Defendants,)

and

BRENDA JO GREGG,)
)
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CITY OF TULSA, et al.,)
)
 Defendants,)

and

No. 86-C-1030-E

No. 86-C-1031-E

No. 86-C-1032-E

No. 86-C-1033-E

JOE R. ZIEGLER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1038-E

and

JEWELL L. JOHNSON, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1039-E

and

LEE L. FINCANNON, et ux.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1040-E

and

LAWRENCE J. FRENCKEN, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1041-E

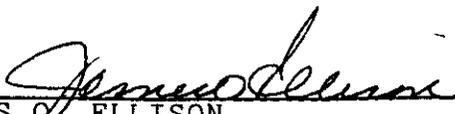
JUDGMENT

This action came on for hearing before the Court, Honorable James

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Fincannon, Emma Fincannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

NORTHEAST PETROLEUM CORPORATION,
a Massachusetts corporation,

Plaintiff,

v.

CASE NO. C-78-228-C ✓

APCO OIL CORPORATION, a Delaware
corporation, RIFFE PETROLEUM
COMPANY, an Illinois corporation,
and TOTAL PETROLEUM, INC., a Michigan
corporation,

Defendants,

v.

TOTAL PETROLEUM, INC., and TOTAL
PETROLEUM (NORTH AMERICA) LTD., a
Canadian corporation,

Cross-Defendants.

FILED

JUL 2 - 1987

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

ORDER OF DISMISSAL

The parties hereto having settled and fully and finally resolved all of the disputes outstanding between them, and the parties hereto, through their respective counsel, having stipulated to the entry hereof (said stipulation being made a part of this Order), and the Court being otherwise duly advised in the premises,

NOW, THEREFORE, IT IS ORDERED that this action be, and hereby is, dismissed with prejudice and without costs or attorney fees.

Date:

July 21, 1987

Jack C. Silver
UNITED STATES DISTRICT COURT

**STIPULATION FOR ORDER
OF DISMISSAL**

Entry of the foregoing Order of Dismissal is hereby approved,
and notice of hearing thereon waived.

CROWE & DUNLEVY

DYKEMA, GOSSETT, SPENCER,
GOODNOW & TRIGG

By:

Clyde A. Muchmore

Clyde A. Muchmore
Individually and for the Firm
Attorneys for Apco Oil
Corporation
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102

By:

Ronald S. Holliday

Ronald S. Holliday
Individually and for the Firm
Attorneys for Total Petroleum,
Inc., and Total Petroleum,
(N.A.), Ltd.
720 South Orange Avenue
Sarasota, FL 33577

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

FILED

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
)
 Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
)
 Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
)
 Plaintiffs,)

vs.)

CITY OF TULSA, et al.,)
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)
 Defendants,)

and

LYDIA SWANSON,)
)
)
 Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
)
 Defendants,)

and

BRENDA JO GREGG,)
)
)
 Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
)
 Defendants,)

and

No. 86-C-1030-E

No. 86-C-1031-E

No. 86-C-1032-E

No. 86-C-1033-E

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Fincannon, Emma Fincannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

LDS OF TULSA, INC., et al.,)
)
Plaintiff,)
)
v.)
)
MINORU YAMASAKI & ASSOCIATES,)
)
Defendant.)

No. 85-C-562-B

FILED
JUL 2 1987

J U D G M E N T

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

In accordance with the jury's verdict rendered July 2, 1987,
IT IS HEREBY ORDERED AND ADJUDGED that Judgment is entered in favor
of the Defendant, Minoru Yamasaki & Associates, and against the
Plaintiff, St. Paul Mercury Insurance Company, on Plaintiff's claim
herein and Plaintiff is to take nothing thereby. Any application for
costs and/or attorney fees should be timely filed pursuant to the
local rules.

DATED, this 2nd day of July, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUL -2 1987

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

G. H. NICHOLS, MIDWESTERN)
PRODUCTS, INC., and MIDCO,)
INC.,)
)
Plaintiffs,)
)
vs.)
)
MESSER GRIESHEIM)
INDUSTRIES, INC.,)
)
Defendant.)

No. 86-C-723-C

J U D G M E N T

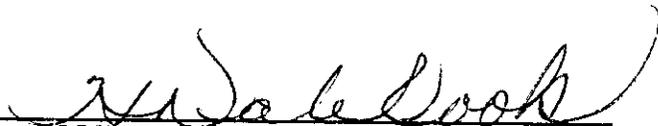
This action came on for nonjury trial before the Court, the issues having been duly tried and a decision having been duly rendered in accordance with the Findings of Fact and Conclusions of Law filed simultaneously herein,

IT IS ORDERED AND ADJUDGED that the defendant, Messer Griesheim Industries, Inc., recover over and against the plaintiffs, G. H. Nichols, Midwestern Products, Inc., and Midco, on plaintiffs' claim for breach of contract and recovery of sales commissions.

IT IS FURTHER ORDERED AND ADJUDGED that the defendant, Messer Griesheim Industries, Inc., recover over and against the plaintiff, G. H. Nichols, on its counterclaim, the sum of TWO THOUSAND ONE HUNDRED FIFTY DOLLARS AND NO CENTS (\$2,150.00),

together with post-judgment interest provided by law, and costs of this action.

IT IS SO ORDERED this 2nd day of July, 1987.


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

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 2 1987

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

THE SOUTHLAND CORPORATION,)
a Texas corporation;)
)
Plaintiff,)
)
v.)
)
MOHAMMED H. QURESHI, d/b/a)
LUCKY-7, an individual,)
)
Defendant.)

Civil Action No. 87-C-125
Hon. Thomas R. Brett, U.S.D.J.

CONSENT JUDGMENT

This case having come before the Court for entry of final judgment by and with the consent of all parties, the Court having been advised in the premises, it is hereby ORDERED, ADJUDGED and DECREED:

1. The Court has jurisdiction over the subject matter of this action and the parties hereto.
2. Since prior to the acts of defendant which are the subject of the present litigation, plaintiff, The Southland Corporation, has continuously and widely used its 7-ELEVEN name and mark to identify its convenience store services and goods offered through said convenience stores.
3. Plaintiff, The Southland Corporation, owns federal service mark and trademark registrations for its 7-ELEVEN mark, including the following:

<u>Reg. No.</u>	<u>Date</u>	<u>Goods or Services</u>
718,016	7/04/61	Retail Grocery Service
896,654	8/11/70	Retail Grocery Service
920,897	9/21/71	Retail Grocery Service
961,594	6/19/73	Various flavors of soft drinks
1,035,454	3/09/76	Sandwiches
1,288,594	8/07/84	Gasoline
1,402,425	7/22/86	Soft drinks for consumption on or off premises

Registrations nos. 718,016; 896,654; 920,897; 961,594 and 1,035,454 are now incontestable in accordance with 15 U.S.C. §§ 1065 & 1115(b).

4. Subsequent to Southland's aforesaid adoption of its 7-ELEVEN name and mark, defendant, Mohammed H. Qureshi, d/b/a LUCKY-7, has engaged in the business of providing convenience store services in the State of Oklahoma under the LUCKY-7 name and mark.

5. Defendant's aforesaid use of the name and mark LUCKY-7 infringes plaintiff's rights in its aforesaid 7-ELEVEN name and mark.

6. Defendant, his agents, servants, employees, and attorneys, and all persons in active concert or participation with him, are hereafter permanently enjoined and restrained from:

a. using the name or mark LUCKY-7 for convenience store services, including, but not limited to, grocery and gasoline sale services;

b. using any other name or mark which uses a numerical "7" or "SEVEN" as an element thereof, or is a reproduction, counterfeit, copy or colorable imitation of Southland's 7-ELEVEN name and mark for convenience store services, including, but not limited to, grocery and gasoline sale services;

c. doing any act or thing likely to confuse, mislead or deceive others into believing that defendant, or products or services offered or sold by him, emanate from, are connected with, sponsored by or approved by, The Southland Corporation or any of its subsidiaries; and,

d. assisting, aiding or abetting any other person or business entity in engaging in any of the activities prohibited in subparagraphs a, b, and c above.

7. Notwithstanding the provisions of paragraph 6, defendant shall have three (3) months from the date of entry of this Consent Judgment to replace his present signage and inventory of goods and materials bearing the LUCKY-7 name and mark. Defendant, however, shall make reasonable commercial efforts to replace his present signage and inventory of goods and materials bearing the LUCKY-7 name and mark prior to that date. At that time, defendants shall file with the Court and serve plaintiff with an affidavit confirming that defendant is in compliance with the provisions of paragraph 6 herein.

8. The parties shall bear their own costs and attorneys' fees.

Dated: July 27th 1957

[Signature]
United States District Judge

CONSENTED TO:

PATTISHALL, McAULIFFE & HOFSTETTER

Charles R. Mandly, Jr.

Craig S. Fochler
Charles R. Mandly, Jr.
33 West Monroe Street
Chicago, Illinois 60603
(312) 641-1500

LANEY, DOUGHERTY, HESSIN & BEAVERS

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One West Third Street
Tulsa, Oklahoma 74103

Attorneys for Plaintiff

KIVELL & MUNDELL

Lynn A. Mundell

Lynn A. Mundell
Triad Center, Suite 240
7666 East 61st Street
Tulsa, Oklahoma 74133
(918) 254-0626

Attorneys for Defendant

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

FILED

JUL -2 1987, *rmc*

TRANSWESTERN MINING COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
VANNOY HILDEBRAND, Individually)
and as Administratrix of the)
Estate of Howard Hildebrand;)
et al.,)
)
Defendants)

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

No. 86-C-477-B ✓

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed June 12, 1987. 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 the Motion for Partial Summary Judgment of Defendants, Frederick M. Hartley and Tedde R. Hartley, be granted and funds presently on deposit with the Clerk of this Court be disbursed as follows:

(i) The sum of \$144,246.26 to Frederick M. Hartley and Tedde R. Hartley;

(ii) The sum of \$3,842.51 to the plaintiff, Transwestern Mining Company; and

8/11.83.7-13-87 T=149,081.84
+ \$4,823.75 int = \$149,070.01

8/32.7-13-87 T=3,971.60 Total
+ \$128.77 int = \$3,971.28 \$153041.29
+12.15
add'l
int rec'd 7-9-87
153,053.44

NOTE: THIS ORDER IS TO BE WELF
BY plaintiff AS SOON AS POSSIBLE AND
PRO SE PERSONS IMMEDIATELY
UPON RECEIPT.

OK-NR-7/11

(iii) Any accrued interest shall be divided between the parties on a pro-rata basis - 2.6% to the plaintiff and the balance of 97.4% to Frederick M. Hartley and Tedde R. Hartley.

The Court is advised that the parties are agreeable that the funds can be withdrawn prior to the maturity date of the existing bank certificate of deposit.

It is further Ordered that the remaining motions for summary judgment are rendered moot and that the plaintiff, Transwestern Mining Company, be discharged of any liability in connection with interpleaded funds as to all defendants.

It is further Ordered that the discovery cutoff date will be set at a status conference which the Court will schedule to resolve the issues which are presenting pending as to the remaining parties. Those remaining parties may pursue discovery pending the status and scheduling conference.

Dated this 2nd day of July, 1987.


THOMAS R. BRETT,
UNITED STATES DISTRICT JUDGE

IT IS FURTHER ORDERED that the case is set for status conference on July 17, 1987 at 8:45 a.m.

2. In August, 1981 Plaintiff became interested in leasing space in the Gilcrease Hills Shopping Center.
3. Plaintiff discussed with George Logan, real estate agent with Moskowitz Realtors, his desire to lease a business location at the Center.
4. The Plaintiff arranged with Dr. Thomas Wren, who is a dentist from Kansas City, Missouri, to borrow \$24,000.00 plus any additional amount needed to finance his business enterprise. The monies were to be repaid out of the first profits of the business. This arrangement was made in September and October of 1981.
5. On October 7, 1981, a lease was signed by Plaintiff and submitted to George Logan, leasing agent for the Defendants.
6. A few days later Logan asked Plaintiff for a financial statement and assisted Plaintiff in preparation of one which reflected an \$89,000.00 net worth. This net worth was based on Plaintiff's estimation of home equity of \$54,000, personal property equity of \$11,500, a \$24,000 check from Dr. Wren, and stock worth \$875. Thereafter Michael Dorne, TPO Vice-President, rejected Plaintiff's offer to lease. The Plaintiff then called and asked for a meeting with Mr. Dorne.
7. Tom Stiff is Vice-President of TPO and is a certified public accountant. He serves as the financial advisor for the Defendants. Mr. Stiff reviewed Plaintiff's financial statement and found it inadequate to justify

- the lease because the \$24,000 in cash could not be verified, and the Plaintiff's debt service was too high.
8. In November, 1981 Plaintiff and Dorne had a meeting at which Plaintiff refused to verify the \$24,000.00 cash item on his financial statement. Mr. Dorne told the Plaintiff during this meeting that TPO needed security and documentation showing Plaintiff's program for running the business.
 9. By the letter of December 28, 1981 Dorne notified Plaintiff that his lease application had been rejected based upon weak financial showing. Plaintiff then returned to Logan, the leasing agent, for advice and assistance and was advised by Logan that Plaintiff needed stronger financial backing. The financial statement of Dr. Wren was submitted to Dorne, but Dorne considered this useless because there was no indication that Dr. Wren would do more than loan money to the Plaintiff. No written guaranty from Dr. Wren was ever submitted to Defendants.
 10. Plaintiff filed a complaint with the Human Rights Commission in February of 1982.
 11. In March of 1983 there was determination of probable cause by the Human Rights Commission.
 12. In June of 1984 the Defendants leased the premises desired by Plaintiff to Mr. Jackson, a black man, for a liquor store. Jackson's financial statement reflected \$10,000.00 cash on hand, a \$25,000.00 loan and

\$420,000.00 net worth.

13. The Defendants' evidence clearly shows that Defendants were justified in finding Plaintiff financially unqualified to support the leasehold operations.
14. Plaintiff's rejection from the shopping center space was not based upon racially motivated reasons but was based upon financial requirements.
15. Plaintiff's evidence failed to establish that Defendants' asserted reasons were only pretextual.

Conclusions of Law

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1343 and 28 U.S.C. §1331.
2. Venue is proper in this district pursuant to 28 U.S.C. §1391(b).
3. Plaintiff brought this action pursuant to 42 U.S.C. §1981 and §1982.
4. 42 U.S.C. §1981 provides:

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

5. 42 U.S.C. §1982 provides:

All citizens of the United States shall

have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

6. 42 U.S.C. §1981 and §1982 apply to the actions of private individuals and no state action is required as is the case under 42 U.S.C. §1983. Jones v. Alfred H. Mayer Co., 88 S. Ct. 2186, 392 U.S. 409, 20 L.Ed.2d 1189 (1968).
7. Proof of discriminatory motive is an essential element of a claim brought pursuant to 42 U.S.C. §1981 and §1982. General Building Contractors v. Pennsylvania, 458 U.S. 375, 73 L.Ed.2d 835, 102 S. Ct. 3141 (1982); Washington v. Davis, 426 U.S. 229, 96 S. Ct. 2040, 48 L.Ed.2d 597 (1976); Denny v. Hutchinson Sales Corp., 649 F.2d 816 (10th Cir. 1981).
8. In order to establish a prima facie case under 42 U.S.C. §1981 and 42 U.S.C. §1982 the Plaintiff must prove each of the following elements by a preponderance of the evidence:
 - 1) that Defendant or its agent placed property on the open market for rental;
 - 2) that Plaintiff was willing to rent the property on terms specified by the Defendant;
 - 3) that Plaintiff communicated this willingness to the Defendant at the time the property was available for rent;
 - 4) that the Defendant refused to lease the property to

the Plaintiff;

- 5) that there is no apparent reason for the refusal of the Defendant to lease the property to Plaintiff other than Plaintiff's race.

Houston v. Benttree, Ltd., 637 F.2d 739 (10th Cir. 1980); Duckett v. Silberman, 568 F.2d 1020 (2nd Cir. 1978); Morgan v. Parcener's Ltd., 493 F.Supp. 180 (W.D. Ok. 1978).

9. Because the Court has previously found that the Defendants rejected the Plaintiff's lease application on the basis of insufficient financial strength to operate the business, the Plaintiff has failed to prove the essential element of intent to discriminate on the basis of race, and judgment should be rendered for Defendants, and against the Plaintiff.

ORDERED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 2 1987

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

JOHN W. CARTER, et al.,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

TOMMY G. THOMPSON, et ux.,)
)
Plaintiffs,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

LYDIA SWANSON,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

BRENDA JO GREGG,)
)
Plaintiff,)

vs.)

CITY OF TULSA, et al.,)
)
Defendants,)

and

No. 86-C-1030-E

No. 86-C-1031-E

No. 86-C-1032-E

No. 86-C-1033-E

JOE R. ZIEGLER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1038-E

and

JEWELL L. JOHNSON, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1039-E

and

LEE L. FINCANNON, et ux.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1040-E

and

LAWRENCE J. FRENCKEN, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF TULSA, et al.,)
)
 Defendants,)

No. 86-C-1041-E

JUDGMENT

This action came on for hearing before the Court, Honorable James

O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs John W. Carter, Gladys D. Carter, John W. Carter, Jr., Machine Engineering, Inc., Tommy G. Thompson, Barbara Thompson, Lydia Swanson, Brenda Jo Gregg, Clarence L. Hendrickson, Jacqueline Diane Hendrickson, Clinton Johnston, Paul J. Johnston, Charles L. Johnston, Tulsa Tractor Co., Inc., R. E. Bright, Foundation Control Systems, Inc., Jack M. Jackson, Imogene E. Jackson, Ornamental Iron Door Company, Inc., Joe R. Ziegler, Joyce F. Ziegler, Jewell L. Johnson, Norman Louise Bridges, Lee L. Fincannon, Emma Fincannon, Lawrence J. Frencken, Carolyn Sue Frencken and Contact Electric Co., Inc. take nothing from the Defendants City of Tulsa, Oklahoma, Tulsa Airport Authority, and United States of America (substituted as a party defendant for the United States Army Corps of Engineers), that the action be dismissed on the merits, and that each party bear its own costs.

DATED this 2^d day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

SAMSON RESOURCES COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
NORTHERN NATURAL GAS COMPANY,)
a division of Enron)
Corporation, et al.,)
)
Defendants.)

JUL -1 1987

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

No. 85-C-911-E

O R D E R

The Court has before it for its consideration the Defendants' Motion to Dismiss Plaintiff's Seventh Cause of Action pursuant to RICO.

RICO Claim

The Plaintiff, Samson Resources Company ("Samson"), has asserted a RICO claim pursuant to 18 U.S.C. §1961, et seq. against Defendants Enron, Hollinger, Dienstbier and Dempster alleging that the individual Defendants violated RICO by devising a scheme or artifice to obtain money or property from Samson by attempting to extort renegotiation of the Abraham Guenzel contract. In support of Plaintiff's RICO claim it has filed a RICO case statement as required by this Court's Order of April 2, 1987.

Having reviewed Plaintiff's RICO statement, it is clear that Plaintiff has failed to state a claim upon which relief can be

granted under RICO because it has failed to allege a pattern of racketeering activity as that term has been defined by case law in the United States Supreme Court and within the Tenth Circuit. In Sedima, S.P.R.L. v. Imrex Company, Inc., 105 S.Ct. 3275 (1985) the United States Supreme Court, in discussing the meaning of the term "pattern of racketeering activity" stated "the target of RICO is thus not sporadic activity. The infiltration of legitimate business normally requires more than one racketeering activity and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern." United States Court of Appeals for the Tenth Circuit in Condict v. Condict, 815 F.2d 579 (10th Cir. 1987) and Torwest DBC, Inc. v. Dick, 810 F.2d 925 (10th Cir. 1987) wrestled with the meaning of the term continuity plus relationship. In Torwest, the Court said:

It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of Sedima. ... However, to establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, the threat of continuing activity. ...

The continuity requirement has been the source of considerable difficulty. Courts generally agree that to make an adequate showing of continuity under Sedima, a plaintiff must demonstrate some facts from which at least a threat of ongoing illegal conduct may be inferred. A scheme to achieve a single discreet objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished. Courts that have considered a RICO claim grounded on this type of scheme have therefore required some additional evidence showing that the scheme was not an isolated occurrence. (Torwest, at 928-929)

The allegations in Plaintiff's RICO statement are insufficient to establish the continuity required under Sedima and the Tenth Circuit decisions discussed above. Plaintiffs cite four letters, a mailgram, two invoices, and a remittance statement sent from Defendants to Plaintiff concerning the take-or-pay obligations in question. At most, these communications represent several predicate acts all related to one common scheme. Therefore no continuity is shown which would indicate a pattern of racketeering activity.

Because a pattern of racketeering activity is an essential element of all claims under RICO, the Court concludes that Plaintiff has failed to state a claim under RICO against these Defendants. Accordingly, Defendants' Motion to Dismiss Plaintiff's Seventh Cause of Action is granted.

DATED this 13th day of July, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

FILED

JUL -1 1987

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

CIVIL ACTION NO. 86-C-790-E

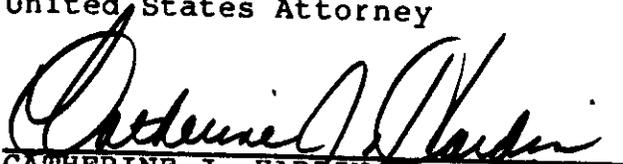
STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1(ii) of the Federal Rules of Civil Procedure the Plaintiff, United States of America, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Catherine J. Hardin, Assistant United States Attorney, and the Claimant, Manufacturers Hanover Mortgage Corporation, hereby stipulate to dismissal against the Defendant Property, known as Residence at 4120 North Frankfort, with prejudice, and without costs, pursuant to the terms and

conditions of the Release of Claim of Seized Property and
Indemnity Agreement entered into by the parties on

June 30, 1987.

LAYN R. PHILLIPS
United States Attorney



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



STEPHEN J. MORIARTY
Attorney for MANUFACTURES
HANOVER MORTGAGE CORPORATION

Entered copy

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

F I L E D

INTERNATIONAL UNION, et al,)
)
 Plaintiffs,)
)
 v.)
)
 ROCKWELL INTERNATIONAL CORP.,)
)
 Defendant.)

JUL 1 1987

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

86-C-901-C

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed June 9, 1987, in which the Magistrate recommended that plaintiffs' motion to compel be granted in part. 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 plaintiffs' motion to compel is granted as to Requests 1, 2, 5, 6, 7, and 37, subject to the following discovery plan:

1) Within fifteen days defendant is to provide plaintiffs a written statement of the locations of all documents set out in Requests 1, 2, 5, 6, 7, and 37.

2) Following receipt of defendant's statement, plaintiffs have ten days to access and inspect such documents. The defendant may reasonably supervise plaintiffs' inspection, and plaintiffs shall have full access to the document locations at reasonable times.

3) Following the completion of inspection, plaintiffs have ten days to notify the defendant, in writing, which documents plaintiffs wish to copy. To facilitate this process, plaintiffs may designate the documents to be copied during inspection, but such designation shall not foreclose plaintiffs from further identification of documents to be copied within the time period stated.

4) Following written notification by plaintiffs, defendant is to allow plaintiffs full access to all documents designated for copying and plaintiffs shall have ten days to copy same. All copying is to be done on site or off premises, as may be convenient to the defendant's business operation and the needs of plaintiffs within the aforesaid time frame.

It is further Ordered that this case is set for further Discovery Conference on August 25, 1987, at 1:30 p.m., ^{before Mag. Wolfe} at which time each side is to produce detailed bills of actual costs incurred in producing the aforesaid documents. All remaining Requests shall be considered at that time.

Dated this 30th day of June, 1987.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

Entered

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

CERTAIN UNDERWRITERS AT LLOYDS OF)
LONDON, SUBSCRIBING TO POLICY NO.)
EE08782A830000-500 and Endorsement No.)
508,)

Plaintiff,)

vs.)

Case No. 86-C-1007B ✓

LEE ANN EVANS, Personal Representative)
of the Estate of ANDREW GLEN EVANS,)
Deceased; HURLEY K. BOEHLER; RICHARD)
HAMM, individually and RICHARD HAMM,)
d/b/a UNITED AVIATION; HARVEY YOUNG)
AIRPORT, INC., an Oklahoma corporation,)

Defendants.)

FILED

JUL 1 1987

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

DEFAULT JUDGMENT

NOW on this 30th day of June, 1987, there came for consideration before the undersigned judge of the United States District Court for the Northern District of Oklahoma, to enter judgment against Defendant, Harry K. Boehler, pursuant to Rule 55 of the Federal Rules of Civil Procedure for failure to answer and defend the Complaint against him.

This Court finds that judgment should be entered in favor of Plaintiff, Certain Underwriters at Lloyds of London, Subscribing to Policy No. EE08782A830000-500 and Endorsement No. 508, and against the Defendant, Harry K. Boehler, upon Plaintiff's Complaint. Specifically, this Court finds that:

1. The rights and other legal obligations of the Plaintiff and the Defendant, Hurley K. Boehler, by reason of the policy of insurance attached as Exhibit 1 and the endorsement attached as Exhibit 1;

2. That the Underwriters of Lloyds of London subscribing to the policy of insurance described herein are not obligated under the policy to afford coverage to Hurley K. Boehler or to pay any damages which may be assessed against him arising out of the lawsuit brought by Defendant Lee Ann Evans, Personal Representative of the Estate of Andrew Glen Evans, Deceased;

3. That the Underwriters of Lloyds of London subscribing to the policy of insurance described herein are not obligated under this policy of insurance to provide any defense or pay any costs or attorney fees for the defense of Hurley K. Boehler;

4. That the Defendant Hurley K. Boehler, has no right, interest, or other entitlements under the policy of insurance described herein and attached as Exhibit 1.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered against Defendant, Harry K. Boehler, pursuant to Rule 55 of the Federal Rules of Civil Procedure and in favor of Plaintiff, Certain Underwriters at Lloyds of London, Subscribing to Policy No. EE08782A830000-500 and Endorsement No. 508, as follows:

1. The rights and other legal obligations of the Plaintiff and the Defendant, Hurley K. Boehler, by reason of the policy of insurance attached as Exhibit 1 and the endorsement attached as Exhibit 1;

2. That the Underwriters of Lloyds of London subscribing to the policy of insurance described herein are not obligated under the policy to afford coverage to Hurley K. Boehler or to pay any damages which may be assessed against him arising out of the lawsuit brought by Defendant Lee Ann Evans, Personal Representative of the Estate of Andrew Glen Evans, Deceased;

3. That the Underwriters of Lloyds of London subscribing to the policy of insurance described herein are not obligated under this policy of insurance to provide any defense or pay any costs or attorney fees for the defense of Hurley K. Boehler;

4. That the Defendant Hurley K. Boehler, has no right, interest, or other entitlements under the policy of insurance described herein and attached as Exhibit 1.


JUDGE OF THE UNITED DISTRICT COURT

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

FILED

JUL 1 1987

UTICA NATIONAL BANK & TRUST CO.,)
a national banking association,)

Plaintiff,)

vs.)

CALVIN RANSOM, et al.,)

Defendants.)

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

No. 85-C-537-C

JOURNAL ENTRY OF JUDGMENT

Utica National Bank & Trust Co., Plaintiff, and G. Wayne Callister, Defendant, having agreed to the entry of the following judgment as evidenced by his consent attached hereto, it is

ORDERED, ADJUDGED AND DECREED that Plaintiff, Utica National Bank & Trust Co., have judgment on its claim herein against Defendant, G. Wayne Callister, for the sum of \$17,634.12 with interest thereon from this date until paid at the legal rate of interest.

Dated this 30 day of June, 1987.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

CONSENT

The foregoing judgment is hereby consented to and approved.

G. Wayne Callister
G. WAYNE CALLISTER

UTICA NATIONAL BANK & TRUST CO.

By: T. L. Callister
Vice President

APPROVED:

Thomas H. Dahlk
Thomas H. Dahlk
Fitzgerald & Brown
1000 Woodmen Tower
Omaha, Nebraska 68102

ATTORNEY FOR DEFENDANT

Charles V. Wheeler
Charles V. Wheeler
Gable & Gotwals
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT JUL 1 1987

FOR THE NORTHERN DISTRICT OF OKLAHOMA Jack C. Silver, Clerk
U.S. DISTRICT COURT

TakeCare Corporation

Plaintiff,

vs.

TAKECARE of Oklahoma, Inc.,

Defendant.

NO. 84-CV-763-E

JUDGMENT OF PERMANENT INJUNCTION

This matter was tried to the Court without a jury on October 7 thorough 9, 1985. The Court, upon consideration of the trial testimony, the exhibits, the pleadings, the post-trial filings and arguments of counsel, on June 18, 1987, entered its Findings of Fact and Conclusions of Law.

Pursuant to such Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED and DECREED:

1. That defendant, its officers, agents, servants, employees, attorneys, or any of them, and all persons acting in concert or participation with defendant, or with any of the foregoing, be and hereby are permanently enjoined:

(a) from using the word or words TAKECARE or any other word or words which is or are confusingly similar to TAKECARE as or as part of any service mark, trademark, trade name, brand name, or other business or commercial designation, on or in connection with the sale of services, the offering of services, the performance of services, and/or the advertising or promotion of services in connection with

1 a health maintenance organization, or otherwise in health
2 care related fields;

3 (b) from representing by words or conduct that
4 any product or service offered for sale, sold, advertised,
5 provided, or rendered by defendant is authorized, sponsored,
6 or endorsed by, or otherwise connected with plaintiff.

7 2. That defendant will be permitted a period of up
8 to and including the 18th of September, 1987, within which to
9 dispose of any printed material or other literature having the
10 name or mark TAKECARE (or any other word or words which is or
11 are confusingly similar thereto), and to withdraw any adver-
12 tising using any reference to TAKECARE (or any other word or
13 words which is or are confusingly similar thereto.)

14 3. That defendant shall file with the court and
15 serve on plaintiff on or before October 18, 1987, a report in
16 writing and under oath, setting forth in detail the manner
17 and form in which defendant has complied with the injunctive
18 provisions of the judgment.

19 4. That no recovery of damages or profits is
20 awarded.

21 5. That plaintiff recover of the defendant
22 plaintiff's attorney fees under 15 U.S.C. § 1117. UPON APPLICATION

23 6. That plaintiff recover of the defendant the
24 costs in this action.

25 DATED: July 1, 1987
26 H. Kay Sledge-Riley
27 Approved as to Form

James O. Ellison
UNITED STATES DISTRICT JUDGE

28 William S. Dorman
Attorney for Defendant

Dated: July 1, 1987

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES R. DAVIDSON,)
)
 Defendant.)

FILED
JUL 1 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 86-C-455-E

ORDER OF DISMISSAL

Now on this 1st day of July, 1987, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, James R. Davidson, be and is dismissed without prejudice.

S/ JAMES O. ELSON

UNITED STATES DISTRICT JUDGE