

FILED

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

SEP 30 1987

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

PAUL A. HANER,)	
)	
Plaintiff,)	
)	
vs.)	No. 87-C-95-C
)	
CITY OF VINITA, OKLAHOMA,)	
et al.,)	
)	
Defendants.)	

O R D E R

Now before the Court for its consideration is the motion of the defendant, City of Vinita, to dismiss the complaint for failure to state a claim upon which relief can be granted pursuant to F.R.Cv.P. 12(b)(6).

Plaintiff was a police officer for the City of Vinita, Oklahoma and was a member of the Police Pension and Retirement system. He had been hired June 24, 1984 on a one-year's probation. On July 9, 1985, the City Council terminated his employment without a prior notice, a hearing, or an opportunity to refute any of the charges. Plaintiff contends that he had a property interest in his employment, and that since he had no hearing as to the propriety of the termination, he was deprived of this property without due process of law, in violation of his constitutional rights under Title 42 U.S.C. Section 1983, which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of

any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Plaintiff also contends that the defendants' actions deprived him of a constitutionally-protected liberty interest.

I

It is well settled that a prerequisite to establishing a denial of constitutionally-protected procedural due process is a showing by the plaintiff that he possessed a protected property interest in such employment. Board of Regents v. Roth, 408 U.S. 564 (1972). A property interest is defined as an actual entitlement to continued employment, rather than a mere unilateral expectation of continuing in that position. Williams v. West Jordan City, 714 F.2d 1017, 1019-20 (10th Cir. 1983). Actual entitlement can be shown by express provisions in state law. Bishop v. Wood, 426 U.S. 342, 344 (1970). Here, plaintiff asserts that his property interest emanates from 11 O.S. §9-117 which states that plaintiff could only be terminated "for the good of the service". This language, in Hall v. O'Keefe, 617 P.2d 196 (Okla. 1980), was held not to vest the employee with a constitutionally-protected property interest. Therefore, this Court finds that no property interest is created by 11 O.S. §9-117.

Plaintiff next relies on 11 O.S. §50-123(B) in asserting his property interest. That section provides that "no member may be

discharged except for cause", and that any officer who is discharged may appeal to a board of review. It has been held in Bailey v. Kirk, 777 F.2d 567 (10th Cir. 1985) that a provision which states that employment cannot be terminated "except for good and sufficient cause" effectuates actual entitlement to continued employment, therefore implicating a property interest.

The question now becomes whether 11 O.S. §50-123(B) is applicable to this case. In Morgan v. Wilson, 450 P.2d 902 (Okla. 1969), plaintiff wanted a hearing before a board of review to evaluate his termination as police chief. Since there was no pension and retirement plan in that municipality, and therefore, no pension rights were involved, the court refused to require establishment of such a board. The court held that the 11 O.S. 541s provision (the predecessor of 50-123(B)) does not apply in all cases where a policeman is discharged, but only in cases where pension rights are involved.

In accord with Morgan is Spence v. Norick, 513 P.2d 1295 (Okla. 1973) where the court refused to establish a board to review plaintiff's allegedly improper discharge as policeman. Although a pension and retirement system was in existence at plaintiff's workplace, and plaintiff was a member, the court held that since there were no pension rights involved in this case, no hearing board need be established. If it were true, as plaintiff contends, that the "cause" provision applies not only where pension and retirement rights are at issue, but in all cases of discharge of a member, the Spence court would have granted a hearing by creating a hearing board. Rather, the court refused

to grant such a hearing and reaffirmed Morgan, applying 541s only to cases where pension or retirement are in issue. The court stated:

The fact that he had worked for Oklahoma City for about five years during which he had paid the required amount into the System and thereafter refused to accept the return of his accrued interest when it was tendered to him falls far short of establishing that he had acquired any pension or retirement rights under the cited sections of the statute.

Id. at 1297.

From these cases, the Court concludes that the Oklahoma Supreme Court has construed the statute 11 O.S. §50-123(B) to apply only in cases in which a dispute as to pension or retirement rights is involved. Although plaintiff is a member of the pension and retirement system, there is no issue in this case as to any of his rights within that system. There has been no showing of any vested rights in the system.

The question that remains is of what effect is the first sentence of §50-123(B): "No member may be discharged except for cause", where there is no dispute or issue regarding the pension and retirement system. Following the logic of Spence and Morgan, we can conclude that under this section, "cause" is only an issue when pension rights are involved, so that one cannot be divested of any pension rights without cause, with disputes as to cause being heard by the board of review. Such a narrow construction would limit any property right to some facet of the pension or retirement system, and would not be an umbrella provision to bestow property rights in the employment itself.

Since no property interest has been created, we do not reach the question of plaintiff's being, or not being, a probationary employee. Although the one-year probationary period had lapsed, it is not clear whether he automatically became a permanent employee, or whether he held the status of an "at-will employee". Courts have held that at-will employees do not have the same legitimate claim of entitlement to their employment. Brown v. Rearden, 770 F.2d 896, 904 (10th Cir. 1985). Likewise, the conclusion of a lack of a property interest eliminates the question concerning what process is due.

II

It has been held that to establish a deprivation of liberty interest, plaintiff must show that the discipline resulted in the publication of information which was false and stigmatizing. Asbill v. Housing Authority of the Choctaw Nation of Oklahoma, 726 F.2d 1499, 1503 (10th Cir. 1984). Miller v. City of Mission, 705 F.2d 368, 373 (10th Cir. 1983) further explains the circumstances in which a public employee's liberty interest may be violated by the manner of termination:

The concept of liberty recognizes two particular interests of a public employee: (1) the protection of his good name, reputation, honor and integrity, and (2) his freedom to take advantage of other employment opportunities. The manner in which a public employee is terminated may deprive him of either or both of these liberty interests. When the termination is accompanied by public dissemination of the reasons for dismissal, and those reasons would stigmatize the employee's reputation or foreclose future employment opportunities, due process requires that the employee be provided a

hearing at which he may test the validity of the proffered grounds for dismissal.

Id. at 373 (citations omitted).

In regard to the "publication" requirement of the above rules, the complaint does not make any allegation that false and stigmatizing statements were published outside the police force or city council conducting the discussions of termination, as to plaintiff's discharge. Such intra-agency or intra-government dissemination falls short of the Supreme Court's notion of publication, "to be made public". Bishop v. Wood, 426 U.S. 341 (1976).

Further, the complaint does not reveal what, if any, statements were made publicly, so as to adjudge whether they were stigmatizing, assuming further that the statements were false. To be stigmatizing, the Supreme Court has indicated they must rise to such a serious level as to place the employee's good name, reputation, honor, or integrity at stake, Board of Regents v. Roth, 408 U.S. 564, 573, (1971), analogous to a badge of infamy. Although it is true that the mere fact of an involuntary discharge may create questions in the minds of future employers, rational explanation might cushion its effect. The Supreme Court has indicated that circumstances which make an employee "somewhat less attractive" to employers would hardly establish the kind of "foreclosure of opportunities amounting to a deprivation of liberty". Id. at 574, note 13.

Therefore, the bare fact of an involuntary discharge on one's record, in and of itself, does not amount to a publication

of information which is false and stigmatizing to which a court will give constitutional protection. In this case, plaintiff has failed to allege facts sufficient to assert a deprivation of a liberty interest.

In deciding further to grant plaintiff's motion to dismiss under F.R.Cv.P. 12(b)(6), failure to state a claim upon which relief can be granted, the standard to be applied is quite high.

[I]t must appear beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief. All well-pleaded facts, as distinguished from conclusory allegations, must be taken as true. All reasonable inferences must be indulged in favor of the plaintiff, ... and the pleadings must be liberally construed.

Swanson v. Bixler, 750 F.2d 810, 813 (10th Cir. 1984) (citations omitted).

Even so, this plaintiff has not stated such a claim, and therefore, premises considered, it is the Order of the Court that the motion of the defendant, City of Vinita, to dismiss over and against the plaintiff, Paul A. Haner, is hereby GRANTED.

It is the further Order of the Court that, as plaintiff has demonstrated no deprivation of a constitutionally-protected interest, the remaining defendants are hereby dismissed sua sponte.

IT IS SO ORDERED this 30th day of September, 1987.


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

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

FILED

SEP 30 1987

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

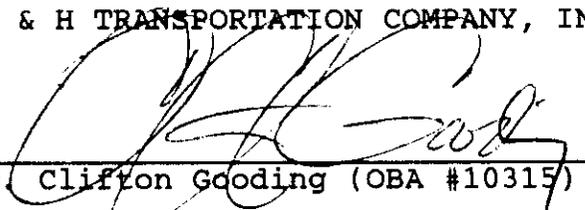
C & H TRANSPORTATION COMPANY, INC.)
)
)
 Plaintiff,)
)
 vs.)
)
)
 HYDRO DYNE COMPANY, a corporation,)
 and ENERFIN INCORPORATED, a corporation,)
)
 Defendant.)

No. 87-C-657 B

JOINT STIPULATION OF DISMISSAL

It is hereby stipulated that pursuant to the Rule 41(A)(1), the above entitled action as the Defendant, Enerfin Incorporated, is to be dismissed, with prejudice, with each party to bear their own costs and attorney fees.

C & H TRANSPORTATION COMPANY, INC.

By: 
Clifton Gooding (OBA #10315)

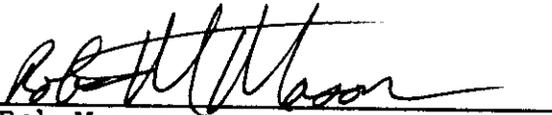
Of the Firm:

DERRYBERRY, QUIGLEY, PARRISH,
GOODING & NANCE
4800 N. Lincoln Blvd.
Oklahoma City, OK 73105
(405) 528-6569

Attorney(s) for Plaintiff
C & H TRANSPORTATION COMPANY, INC.

ENERFIN INCORPORATED

By:


Bob Mason

ENERFIN INCORPORATED

P. O. Box 282

Broken Arrow, OK 74013

(918) 258-3571

9-21-87

Entered
Copy

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 PATRICK K. BROWN and ASSUNTA)
 BROWN, husband and wife;)
 EDWARD LEO FREEMAN, a single)
 person; PAUL B. NAYLOR as)
 Trustee for Edward Leo)
 Freeman, Jr.; EDWARD LEO)
 FREEMAN, JR.; STATE OF)
 OKLAHOMA, ex rel. Oklahoma)
 Tax Commission; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma; BARBARA CYRUS and)
 LEON JOHNSON, as co-guardians)
 for Edward Leo Freeman, Jr.,)
)
 Defendants,)

84-C-867-C ✓

FILED
 SEP 30 1987
 Jack C. Silver, Clerk
 U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed September 8, 1987, in which the Magistrate recommended that Plaintiff's Motion to Confirm Sale be granted. 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 issued, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that Plaintiff's Motion to Confirm Sale be granted.

~~UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF OKLAHOMA
 TULSA, OKLAHOMA
 SEP 30 1987
 JACK C. SILVER, CLERK~~

Dated this 29th day of September, 1987.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

Entered

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 GARY W. GATES, JR.; MELISSA)
 V. GATES; MINNIE PEARL WARD;)
 JOHN DOE, Tenant; and DIVERSIFIED)
 PROPERTY INVESTMENTS, an)
 Oklahoma limited partnership,)
 Defendant,)

85-C-797-C

FILED
SEP 30 1987

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

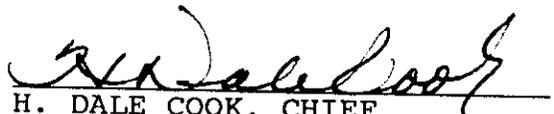
ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed September 8, 1987, in which the Magistrate recommended that Plaintiff's Motion to Confirm Sale be granted. 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 issued, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that Plaintiff's Motion to Confirm Sale be granted.

Dated this 29 day of September, 1987.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

GENERAL ELECTRIC COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 W. M. SMITH ELECTRIC COMPANY)
 OF OKLAHOMA, INC., an Oklahoma)
 corporation, W. M. SMITH)
 ELECTRIC COMPANY, a Texas)
 corporation, POWER ELECTRIC)
 COMPANY, INC., a Mississippi)
 corporation, EVANS ELECTRIC,)
 INC., an Oklahoma corporation,)
 MID-AMERICA'S PROCESSING)
 SERVICES, INC., an Oklahoma)
 corporation, RELIANCE ELECTRIC)
 COMPANY, a Delaware corporation,)
 CARL PONS ELECTRIC MOTOR SERVICE,)
 INC., a Texas corporation, ALLEN)
 M. GRAYSON, JR., ALLEN M. GRAYSON,)
 III, LYNN WHITEFIELD, TERRY RHINE,)
 and BRIAN JACOBS,)
)
 Defendants.)

FILED

SEP 30 1987

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

No. 83-C-1069-E

JUDGMENT

On May 18, 1987, this action came on for trial before the Court and a jury, Honorable James O. Ellison, District Judge, presiding. The issues, having been duly tried and the jury having duly rendered its verdict on July 2, 1987,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the Plaintiff, General Electric Company, recover of the Defendant, W.M. Smith Electric Company of Oklahoma, Inc., an Oklahoma corporation, the sum of One Hundred Thousand Five

Hundred Dollars (\$100,500.00), which sum represents nominal damages in the amount of \$500.00 and punitive damages in the amount of \$100,000.00, with interest thereon at the rate of 6.64% as provided by law.

2. That the Plaintiff, General Electric Company, recover of the Defendant, Terry Rhine, the sum of One Thousand Dollars (\$1,000.00), which sum represents actual damages in the amount of \$500.00 and nominal damages in the amount of \$500.00, with interest thereon at the rate of 6.64% as provided by law.

3. That the Plaintiff, General Electric Company, recover of the Defendant, Lynn Whitefield, the sum of Five Hundred Dollars (\$500.00), which sum represents nominal damages, with interest thereon at the rate of 6.64% as provided by law.

4. That the Plaintiff, General Electric Company, recover of the Defendant, Power Electric Company, Inc., a Mississippi corporation, the sum of Five Hundred Dollars (\$500.00), which sum represents nominal damages, with interest thereon at the rate of 6.64% as provided by law.

5. That the Plaintiff, General Electric Company, take nothing against the Defendant, W.M. Smith Electric Company, a Texas corporation, on all claims, and that the action be dismissed on the merits.

6. That the Plaintiff, General Electric Company, take nothing against the Defendant, Allen M. Grayson, Jr. on all claims, and that the action be dismissed on the merits.

7. That the Plaintiff, General Electric Company, take nothing against the Defendant, Allen M. Grayson, III on all claims, and that the action be dismissed on the merits.

8. That the Plaintiff, General Electric Company, take nothing against the Defendant, Carl Pons Electric Motor Services, Inc., a Texas corporation, on all claims, and that the action be dismissed on the merits.

9. The Court is taking under advisement and reserving decision on the issues of the parties' respective entitlements to attorneys' fees and/or costs. Any party claiming an award of attorneys' fees and/or costs is directed to file a Statement of Claim, within twenty (20) days of this date, together with a brief addressing the factual basis and legal authorities in support of the claim. A hearing on the claims of the parties is hereby ordered before Magistrate Wolfe at 10:30 A m. on the 10th day of November, 1987. The parties shall refrain from filing bills of costs and supporting documents until further Order of the Court.

10. The Court has ruled, in the Order filed contemporaneously herewith that Plaintiff, General Electric Company, shall not receive injunctive relief in this case. Such denial of injunctive relief is further made part of this Judgment.

11. This Judgment shall constitute a final Judgment in all respects and the time for filing post-trial motions shall appropriately commence running from the date of this Judgment.

DATED this 30th day of September, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 RALPH A. ELLIOTT; CAROLYN SUE)
 ELLIOTT; COUNTY TREASURER,)
 Tulsa County, Oklahoma; BOARD)
 OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants,)

86-C-733-C ✓

FILED
SEP 30 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed September 8, 1987, in which the Magistrate recommended that Plaintiff's Motion to Confirm Sale be granted. 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 issued, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that Plaintiff's Motion to Confirm Sale be granted.

Dated this 29th day of September, 1987.

H. Dale Cook
H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

GERALD E. and ALMA B. MOORE)

Plaintiffs)

v.)

UNITED STATES OF AMERICA,)

Defendant)

9-29-87
CIVIL NO. 83-C-1070-B

JUDGMENT

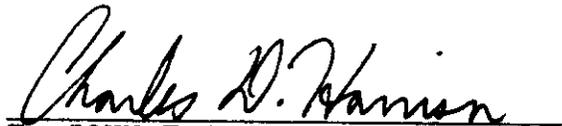
Pursuant to the prior stipulations of the parties and for good cause shown, it is hereby

ORDERED, that judgment be and hereby is rendered in favor of the plaintiffs, Gerald E. and Alma B. Moore in the amount of \$22,661.01, plus interest as provided by law. Each side shall bear their own costs, including any attorneys' fees or other costs to this action.

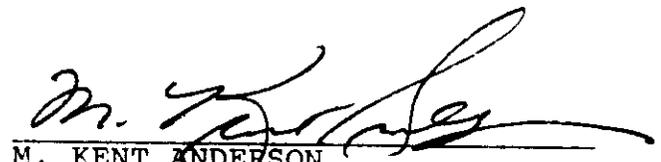
ENTERED this 28th day of September, 1987.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

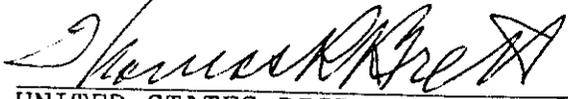

E. JOHN EAGLETON
Charles D. Harrison
HOUSTON AND KLEIN
320 South Boston, Suite 700
Tulsa, Oklahoma 74103

ATTORNEY FOR PLAINTIFFS

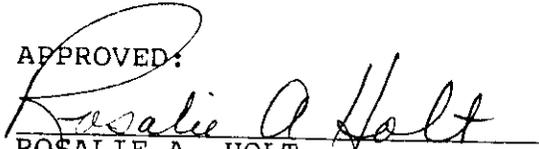

M. KENT ANDERSON
Attorney, Tax Division
Department of Justice
Room 5B31, 1100 Commerce Str.
Dallas, Texas 75242

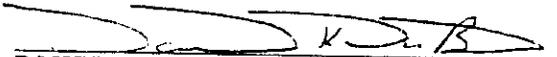
ATTORNEY FOR UNITED STATES

Dated this 15 day of ^{Sept.} ~~August~~, 1987.

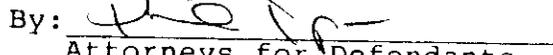

UNITED STATES DISTRICT JUDGE

APPROVED:

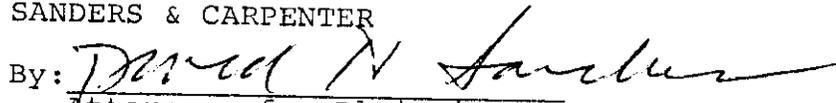

ROSALIE A. HOLT


DAVID K. DUBOIS

DAVIS & THOMPSON

By: 
Attorneys for Defendants.

SANDERS & CARPENTER

By: 
Attorneys for Plaintiff.

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

SEP 29 1987

THE BOARD OF TRUSTEES OF PIPE)
FITTERS LOCAL 205 HEALTH AND)
WELFARE FUND,)
)
Plaintiffs,)
)
v.)
)
JAMES P. EDWARDS COMPANY, INC.,)
)
Defendant.)

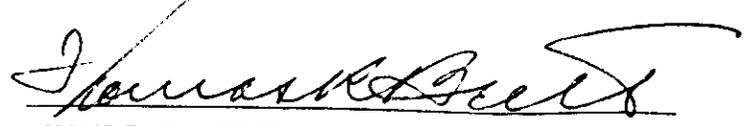
No. 87-C-325-B

J U D G M E N T

In accord with the entry of default judgment filed August 31, 1987, the Court hereby enters Judgment in favor of Plaintiffs for the sum of Three Thousand Four Hundred Forty Five and 05/100 Dollars (\$3,445.05), with post-judgment interest at a rate of 7.22% per annum from this date until paid, against James P. Edwards Company, Inc., said defendant having failed to plead or otherwise defend.

A reasonable attorney fee and court costs will be considered upon proper application under the Local Court Rules.

ENTERED this 29 day of September, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

DONALD G. and HELEN REYBURN,)
)
 Plaintiffs,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)

Civil No. 83-C-928-B

FILED

SEP 29 1987

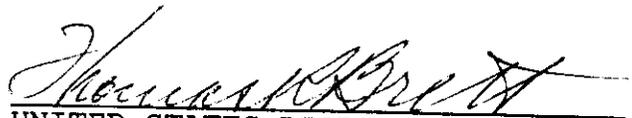
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

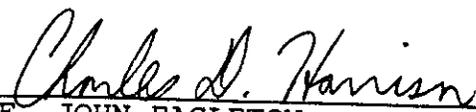
Pursuant to the prior stipulations of the parties and for good cause shown, it is hereby

ORDERED, that judgment be and hereby is rendered in favor of the plaintiffs, Donald G. and Helen Reyburn in the amount of \$22,661.00, plus interest as provided by law. Each side shall bear their own costs, including any attorneys' fees or other costs to this action.

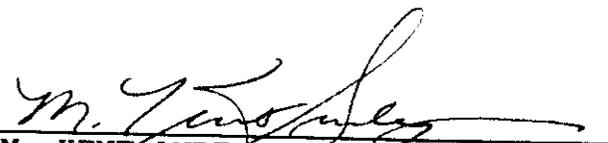
ENTERED this 28 day of Sept., 1987.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:


E. JOHN EAGLETON
Charles D. Harrison
HOUSTON AND KLEIN, INC.
320 S. Boston, Suite 700
Tulsa, Oklahoma 74103

ATTORNEY FOR PLAINTIFFS


M. KENT ANDERSON
Attorney, Tax Division
Department of Justice
Room 5B31, 1100 Commerce Street
Dallas, Texas 75242

ATTORNEY FOR UNITED STATES

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DEBORAH J. KERR,)
)
 Defendant.) CIVIL ACTION NO. 87-C-675-B

AGREED JUDGMENT

This matter comes on for consideration this 29th
of September, 1987, the Plaintiff appearing by Tony M. Graham,
United States Attorney for the Northern District of Oklahoma,
through Phil Pinnell, Assistant United States Attorney, and the
Defendant, Deborah J. Kerr, appearing pro se.

The Court, being fully advised and having examined the
file herein, finds that the Defendant, Deborah J. Kerr,
acknowledged receipt of Summons and Complaint by telephone on
August 20, 1987. The Defendant has not filed an Answer but in
lieu thereof has agreed that she is indebted to the Plaintiff in
the amount alleged in the Complaint and that judgment may
accordingly be entered against her in the amount of \$955.92,
plus interest of \$289.64 as of July 10, 1987, plus interest
thereafter at the rate of 7 percent per annum until judgment,
plus interest thereafter at the legal rate of 7.22 percent
until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Deborah J. Kerr, in the amount of \$955.92, plus interest of \$289.64 as of July 10, 1987, plus interest thereafter at the rate of 7 percent per annum until judgment, plus interest thereafter at the legal rate of 7.22 percent until paid, plus the costs of this action.

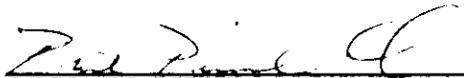
S/ THOMAS R. BRETT

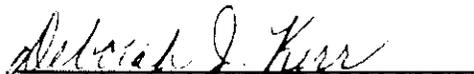
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


PHIL PINNELL
Assistant U.S. Attorney


DEBORAH J. KERR

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

AMERICAN INTERINSURANCE)
EXCHANGE,)
)
PLAINTIFF,)
)
v.) CASE NO. 86-C-148-B
)
JOHN G. CLARY,)
)
DEFENDANT.)

STIPULATION OF DISMISSAL WITH PREJUDICE

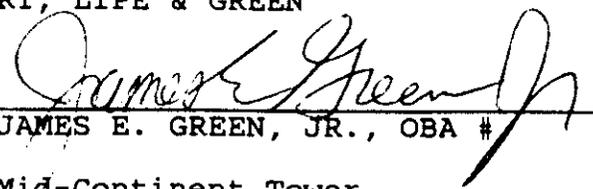
Plaintiff and Defendant, John G. Clary, by and through their respective counsel, hereby stipulate to a dismissal with prejudice of Plaintiff's claims against John Clary, with each side to bear its own costs, and Plaintiff does hereby dismiss, with prejudice, its claims against Defendant John Clary.

HOUSTON AND KLEIN, INC.

By: 

TODD MAXWELL HENSHAW, OBA #4114
320 South Boston, Suite 700
Tulsa, Oklahoma 74103
(918) 583-2131
ATTORNEYS FOR PLAINTIFF

COMFORT, LIPE & GREEN

By: 

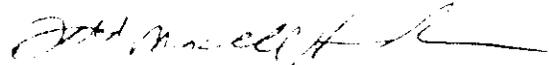
JAMES E. GREEN, JR., OBA #
2100 Mid-Continent Tower
Tulsa, Oklahoma 74103
(918) 599-9400
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the above and foregoing Stipulation for Dismissal With Prejudice was served upon the following counsel of record, at the address indicated, by first class mail, postage prepaid, on this 29th day of September, 1987:

William J. Bergner
501 N.W. 13th
P. O. Box 61190
Oklahoma City, OK 73146

Joseph F. Clark
Roger R. Williams
Williams, Clark, Baker & Earl
1605 S. Denver
Tulsa, OK 74119



Todd Maxwell Henshaw
James E. Green, Jr.

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

SEP 29 1987

LEE R. OSBAN,)
)
 Plaintiff,)
)
 vs.)
)
 MISSOURI PACIFIC RAILROAD COMPANY,)
)
 Defendant.)

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

No. 87-C-112-E

ORDER DISMISSING CASE WITH PREJUDICE

This matter came on before me, the undersigned Judge, on the Parties' Joint Stipulation for Dismissal with Prejudice. The Court, being fully advised in the premises, finds that the above captioned action has been settled and compromised by the Parties.

IT IS THEREFORE ORDERED that the same be dismissed with prejudice as to the refiling of same.

DATED this 28th day of September, 1987.

United States District Court Judge

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,)

v.)

LEE ANN EVANS, Personal Representa-)
tive 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.)

No. 86-C-1007-B

F I L E D

SEP 28 1987

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

J U D G M E N T

In accord with the Order Sustaining the Motion for Summary Judgment of the Plaintiff, Certain Underwriters at Lloyds of London, Subscribing To Policy No. EE08782A830000-500 and Endorsement No. 508 signed this date, Judgment is hereby entered in favor of said Plaintiff and against the Defendants, Lee Ann Evans, Personal Representative of the Estate of Andrew Glen Evans, Deceased, Richard Hamm, individually, Richard Hamm, d/b/a United Aviation, and Harvey Young Airport, Inc., an Oklahoma corporation. The parties are to be responsible for their own costs and attorney fees.

DATED this 25th day of September, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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,)

v.)

No. 86-C-1007-B

LEE ANN EVANS, Personal Representa-)
tive 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.)

F I L E D

SEP 28 1987

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

O R D E R

Oral arguments were heard on all pending motions in this case on September 16, 1987. Based upon the arguments and authorities and statements of counsel at the hearing, the Court finds that the Plaintiff's motion for summary judgment should be sustained.

Defendant Lee Ann Evans has filed a motion to set aside default judgment, motion to alter or amend judgment, and motion to gain relief from a default judgment entered against co-defendant Hurley K. Boehler entered July 1, 1987. Defendant Evans sought the relief as she feared that the default judgment against Hurley Boehler would finally determine certain issues in the case against her without the opportunity to litigate those issues. Based upon the representations of counsel at the

September 16, 1987 hearing, the Court finds that the judgment against Hurley Boehler would not have a preclusive effect on the Defendant Evans and therefore the Defendant Evans' motions to set aside the default judgment are overruled.

This is a declaratory judgment action brought by the Plaintiff insurer seeking a declaration that the insurer is not obligated under an insurance policy for the consequences of an airplane crash on May 22, 1983. Plaintiff is an underwriter at Lloyds of London who has subscribed to a policy of insurance with the Experimental Aircraft Association, Inc. (EEA) to provide insurance for air shows, fly-ins, and other aircraft exhibitions. Under the terms of the blanket policy the EEA was authorized to provide insurance to certain of its chapters and sanctioned events for limited periods upon the payment of reduced premiums. This action arises from an aircraft crash that occurred on May 22, 1983, allegedly in conjunction with a fly-in held at the Harvey Young Airport in Tulsa, Oklahoma.

Plaintiff's Complaint contains three counts. Count I alleges that the accident which took place on May 22, 1983, did not occur in connection with the air meet held at the Harvey Young Airport from May 20 through May 22, 1983. Count II pleads in the alternative that even if the accident did occur in connection with the air meet, the passenger exclusion in the policy bars coverage to any of the Defendants for claims arising from the crash of the aircraft. Count III alleges that the insurance premium on the subject insurance policy was never paid and therefore the policy was never put into force and effect.

The Plaintiff has moved for summary judgment on all three counts of the Complaint.¹ The Defendant Lee Ann Evans has responded and has filed a motion for summary judgment on the same issues presented by the Plaintiff's motion for summary judgment.

Because the Court finds that summary judgment as to Count II of the Complaint is dispositive of this lawsuit, the Court will not discuss the allegations of Counts I or III. Instead, the Court assumes for the purposes of this order that the accident in question took place in connection with the Harvey Young air meet, that premiums for the policy were properly paid and that the policy was in force.

Count II of the Plaintiff's Complaint alleges that even if the accident took place in connection with the air meet that there is an exclusion that operates to deny coverage for this accident. Page 2 of the policy of insurance attached as Exhibit A to the Complaint states the following:

"EXCEPTIONS.

"The Underwriters will not indemnify the insured in respect of liability consequent upon

(a) death of or bodily injury to, or illness of

* * *

(iv) any passenger in or intending passenger of any aircraft or vehicle which is used directly in the event covered herein."

¹ Defendants Richard Hamm, as an individual, and Richard Hamm, d/b/a United Aviation, and Defendant Harvey Young Airport Inc., have not responded to the Plaintiff's Motion for Summary Judgment. The Court therefore deems the Plaintiff's Motion for Summary Judgment confessed pursuant to Local Rule 14(a) of the Rules of the United States District Court for the Northern District of Oklahoma.

The key issue for purposes of this motion for summary judgment is the construction to be placed on the term "passenger" in the Exclusion portion of the insurance policy. The Defendant Evans takes the position that the term "passenger" is undefined in the policy and is ambiguous. The Defendant then urges the Court to look to Oklahoma case law to determine what the term "passenger" means. Defendant maintains that a "passenger" under Oklahoma law is one that pays for the ride while a guest rides for free. Defendant urges the Court that the term "passenger" is ambiguous and should be interpreted against the party that created the ambiguity, here the Plaintiff, and that the decedent Andrew Glen Evans should be deemed a guest and not a passenger as used in the policy.

Predictably, the Plaintiff finds the term "passenger" unambiguous and argues that the term "passenger" must be interpreted according to its plain and ordinary meaning.

The Court notes that no genuine issue remains as to the operative facts in this case and therefore summary judgment would be proper. See, Commercial Iron and Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973). The remaining task is for the Court to interpret the term "passenger" in the subject insurance policy.

Under Oklahoma law, the terms of an insurance policy are to be examined in their plain and ordinary sense and construed to effectuate its purpose. Continental Oil Co. v. National Fire

Insurance Co. of Connecticut, 541 P.2d 1315 (1975). The Defendant Evans contends that the word "passenger" ordinarily conveys the idea of one who, for hire, has taken a place in a public conveyance for the purpose of being transported from one place to another. Defendant urges that the term "passenger" as undefined in the policy is ambiguous and therefore the Court should construe the term against the drafter. Defendant's analysis of the definition of a "passenger" involves a number of Oklahoma cases which have evaluated whether a rider was a guest or passenger in the context of automobile guest statutes. See, Derryberry v. Derryberry, 358 P.2d 819 (Okla. 1961); Disney v. Cook, 457 P.2d 552 (Okla. 1969), and Matchen v. McGahey, 455 P.2d 52 (Okla.S.Ct. 1969).

The Court finds the automobile cases inapplicable here as no distinction has to be made regarding the decedent's paying status, to determine if he was a "passenger" as described in the policy. It is clear from the evidence submitted by the parties in support of their motions for summary judgment that the decedent rode in the rear or second seat in the aircraft (Hamm Depo. at page 83), and had no access to the controls. (Hamm Depo. at page 77, lines 1-8).

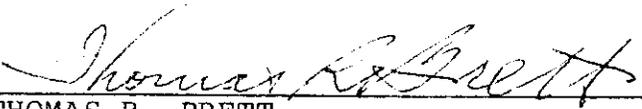
The Court is unpersuaded that the term "passenger" as set forth in the subject insurance policy is ambiguous. Therefore, the Court need not strain to attach a meaning on the term "passenger" beyond its ordinary and plain usage. As pointed out by the Plaintiff, the term "passenger" is commonly defined as "a

person who travels in a train, airplane, ship, bus, or other conveyance, without participating in its operation." The American Heritage Dictionary of English Language, Houghton Mifflin Company (New York, 1969), and "a traveler, especially by some conveyance." The Webster Encyclopedia Dictionary, New American Edition (Ottenheimer Publishers, Inc. 1983).

The Court finds that the decedent was a "passenger" as he was a traveler in the airplane with no control over the aircraft's operation. Therefore, in the plain and ordinary meaning of the term "passenger" the decedent is excepted from coverage under the previously cited exclusion clause of the insurance policy. If the language of a contract is free and clear of ambiguity, the Court is to interpret it as a matter of law. Mercury Inv. Co. v. F. W. Woolworth Co., 706 P.2d 523 (Okla. 1985), and Walker v. Telex Corp., 583 P.2d 482 (Okla. 1978). The Court finds the language of the exclusion clause to be without ambiguity and refuses to find ambiguity where none exists. Young v. Fidelity U. Life Ins. Co., 597 F.2d 705 (10th Cir. 1979).

Based upon the clear language of the exclusion clause the Court finds that the Plaintiff is entitled to summary judgment on its Complaint for declaratory judgment. Summary judgment is hereby entered in favor of the Plaintiff and against the Defendant Lee Ann Evans, Personal Representative of the Estate of Andrew Glen Evans, Deceased; Richard Hamm, individually, and Richard Hamm, d/b/a United Aviation; Harvey Young Airport Inc., an Oklahoma corporation. A separate Judgment in keeping with this order is entered herewith.

IT IS SO ORDERED, this 25th day of September, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

SEP 26 1987
CLERK
COURT

UTICA NATIONAL BANK & TRUST)
CO., a national banking)
association,)
)
Plaintiff,)
)
vs.)
)
DON R. ODLE,)
)
Defendant.) Case No. 87-C-7-B

STIPULATION OF DISMISSAL

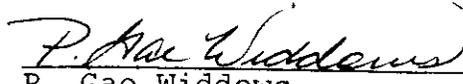
PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claim against Don R. Odle asserted herein are hereby dismissed with prejudice, each party to bear its/his own costs incurred herein.

DATED this 25 day of ~~August~~ ^{September}, 1987.



Charles V. Wheeler
GABLE & GOTWALS
2000 Fourth National Bank
Tulsa, Oklahoma 74119
(918) 582-9201

Attorneys for Plaintiff



P. Gae Widdows
HOWARD & WIDDOWS, P.C.
2021 South Lewis
Suite 570
Tulsa, Oklahoma 74104

Attorneys for Defendant

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

FILED

SEP 28 1987

TOBIN DON LEMMONS,)
)
 Plaintiff,)
)
 v.)
)
 PAWNEE COUNTY JAIL, LEROY)
 BRYANT and DEWAYNE BELCHER,)
)
 Defendants.)

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

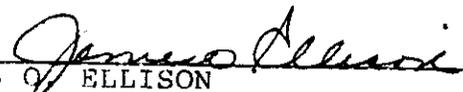
87-C-204-E

ORDER

On August 31, 1987, the court entered an order that defendants' motion to dismiss plaintiff's civil rights claim would be granted if plaintiff failed to respond to such motion within ten (10) days of August 31, excluding weekends and holidays.

The ten-day period having run and plaintiff having failed to respond to the motion, or to seek any extention of time in which to respond, it is hereby ordered that defendants' motion to dismiss be granted and that plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983 be dismissed.

It is so Ordered this 25th day of September, 1987.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVALS:

EUGENE ROBINSON



Attorney for the Plaintiff

RICHARD L. MORROW



Attorney for the Defendant

F I L E D

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

SEP 28 1987

PAUL GILMORE, JAMES MORRIS, and)
DECOR ESPANOL, INC.,)
)
Plaintiffs,)
)
vs.)
)
SOUTHWESTERN BELL MEDIA, INC.,)
)
Defendant.)

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

No. 85-C-1027-E

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiff Decor Espanol, Inc. recover of the Defendant Southwestern Bell Media, Inc. the sum of \$363.00.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Southwestern Bell Media, Inc., recover judgment against the Plaintiffs, Paul Gilmore and James Morris.

DATED at Tulsa, Oklahoma this 25th day of September, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

SEP 28 1987

UTICA NATIONAL BANK & TRUST)
 COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 UNION TEXAS PETROLEUM)
 CORPORATION,)
)
 Defendant and Third)
 Party Plaintiff,)
)
 vs.)
)
 CLARK RESOURCES, INC., et al.,)
)
 Third Party Defendants.)

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

No. 85-C-413-E

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiff Utica National Bank & Trust Company take nothing from the Defendant Union Texas Petroleum Corporation, that the action be dismissed on the merits, and that the Defendant Union Texas Petroleum Corporation recover of the Plaintiff Utica National Bank & Trust Company its costs of action.

IT IS FURTHER ORDERED that the third party claim of Union Texas Petroleum Corporation having been for contribution and indemnity, and no liability having been found in favor of Plaintiff and against Defendant, that summary judgment is also entered against the Defendant Union Texas Petroleum Corporation

and in favor of the Third Party Defendants Clark Resources, Inc.
and Texas Gulf Petroleum, Inc.

DATED at Tulsa, Oklahoma this 25th day of September,
1987.

••



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 23 1987

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

CAESAR C. LATIMER,)
)
 Appellant,)
)
 vs.)
)
 ANDREA VANDYKE,)
)
 Appellee.)

No. 86-C-1070-E

O R D E R

This matter is an appeal from an order of the United States Bankruptcy Court for the Northern District of Oklahoma denying a discharge to debtor Caesar C. Latimer pursuant to 11 U.S.C. §727(a)(2)(A) on the basis that Mr. Latimer transferred real property within a year of the filing of his bankruptcy petition for the purpose of defrauding creditors. The Appellant contends that the Bankruptcy Court erred in determining that the property transferred was property of the debtor, and erred in finding fraudulent intent. The Appellee responds that the evidence of fraudulent transfer of the debtor's property was clear and convincing.

In its Order denying discharge the Bankruptcy Court found that Defendant conveyed five properties to his wife on May 3, 1985 and another property to his wife and mother on May 10, 1985, that Defendant did not receive any consideration for the transfers, and that Defendant filed his bankruptcy petition on October 4, 1985. The Court also found that Defendant introduced insufficient evidence to prove that the properties were originally purchased with funds primarily provided by other

family members. Based on the transfers of property to family members without consideration during the pendency of litigation, the Bankruptcy Judge found that the conveyances to the debtor's wife were made with an intent to defraud creditors.

Under Bankruptcy Rule 8013 this Court must accept the findings of the Bankruptcy Judge unless they are clearly erroneous. The Court has reviewed the transcript of the hearing and reviewed the exhibits. Based on the evidence adduced at trial this Court is satisfied that the findings of fact made by the Bankruptcy Court are correct. The six properties were held in the name of the debtor, Caesar Latimer. Although Mr. Latimer testified that these properties were either given to him by his mother or that he purchased them with funds belonging to his wife, he also admitted that he had put his own money into some of the properties. Furthermore, in a writing introduced as Plaintiff's exhibit 9 Mr. Latimer stated, "I conveyed the property back to my mother in May 1985 under a threat of federal tax liens." Considering the fact that Mr. Latimer was a defendant in a law suit which went to trial shortly after the conveyances to his wife were executed, that he received no consideration for the transfers, and that he admitted holding legal title and having some equitable interest in the property, the bankruptcy court was justified in finding that the conveyances were made for the purpose of defrauding Mr. Latimer's creditors.

Under 11 U.S.C. §727(a)(2)(A) the Court may deny a discharge to a debtor who has transferred property of the debtor's estate

with an intent to hinder, delay or defraud a creditor, and such transfer has occurred within one year of the filing of the petition. On the basis of the Bankruptcy Court's finding of the fraudulent transfer of the property within one year of the date of the filing of the debtor's petition, the Bankruptcy Court correctly denied the debtor's discharge.

Accordingly, for the reasons previously discussed herein, the order of the Bankruptcy Court entered November 25, 1986 is hereby affirmed.

ORDERED this 25th day of September, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

KEY FINANCIAL SERVICES,
INC., a corporation,)

Plaintiff,)

vs.)

CASE NO. 87-C-30-B

EQUITY GROUP PARTNERSHIP,
an Oklahoma partnership;)
FREDERICK H. NORTHROP, an)
individual; HARRIS J. MORELAND,)
an individual; CHRISTOPHER D. GRISEL,)
an individual; THE FIRST)
INTERSTATE BANK OF OKLAHOMA,)
N.A., Administrator of the)
Estate of Glenn C. Ball,)

Defendants,)

vs.)

EQUITY GROUP PARTNERSHIP,
by and through FREDERICK H.)
NORTHROP and HARRIS J. MORELAND,)
General Partners,)

Third-Party Plaintiffs,)

vs.)

A. G. GROUP, INC., an)
Oklahoma corporation; and,)
CHRISTOPHER D. GRISEL,)

Third-Party Defendants.)

FILED

SEP 25 1987

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

JOINT DISMISSAL WITHOUT PREJUDICE

COME NOW Defendants, Frederick H. Northrop and Harris J. Moreland,
individually and as general partners of Defendant Equity Group Partnership; and,
Defendant, Christopher D. Grisel, and hereby dismiss without prejudice, each to
the other, the following:

1. Cross-Claim filed on February 2, 1987, and March 9, 1987,
by Defendants, Frederick H. Northrop and Harris J. Moreland, individually and as general partners of Defendant

Equity Group Partnership; and,

2. Cross-Claim filed on June 30, 1987, by Defendant, Christopher D. Grisel.

DATED: September 25, 1987.

Respectfully submitted,

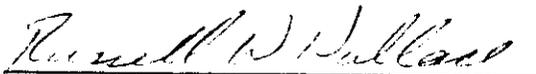
THORNTON, WAGNER & THORNTON,
a Professional Corporation,

By:


David M. Thornton,
O.B.A. No. 8999
525 South Main Street, Suite 660
Tulsa, Oklahoma 74103
Telephone: (918) 587-2544

Attorneys for Defendants,
FREDERICK H. NORTHROP and
HARRIS J. MORELAND.

By:

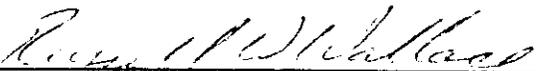

Russell W. Wallace,
O.B.A. No. 9313
1875 East 71st Street
Tulsa, Oklahoma 74136
Telephone: (918) 492-2336

Attorney for Defendant,
CHRISTOPHER D. GRISEL.

CERTIFICATE OF MAILING

We, David M. Thornton and Russell W. Wallace, hereby do certify that on this date, September 25, 1987, a true and correct copy of the foregoing Joint Dismissal Without Prejudice was mailed to Plaintiff's counsel of record, Benjamin C. Faulkner, English, Jones & Faulkner, 1701 Fourth National Bank Building, Tulsa, Oklahoma 74119, by depositing same in the U. S. Mail with proper postage thereon, fully prepaid.


David M. Thornton


Russell W. Wallace

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

F I L E D

SANDRA FAYE JONES and JAMES)
P. JONES, her husband,)
)
Plaintiffs,)
)
-vs-)
)
RONALD ERVIN FOX and)
FARMERS INSURANCE CO., INC.)
)
Defendant.)

SEP 24 1987

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

No. 87-C-249-C

O R D E R

NOW on this 24 day of Sept, 1987,
plaintiff's Application to Dismiss with Prejudice came on for
hearing. The Court being fully advised in the premises finds
that said Application should be sustained and the defendants,
should be dismissed from the above entitled action with
prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that
plaintiff's Application to Dismiss With Prejudice be sustained
and the above captioned action be dismissed with prejudice as to
defendants.

(Signed) H. Dale Cook

HONORABLE H. DALE COOK, Judge
JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT

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

FILED

SEP 24 1987

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

MELBA MARKEETA GILLEAN and)
ANNETTE JETT,)
)
Plaintiffs,)
)
vs.)
)
DON ROBERT HEFNER, et al.,)
)
Defendants.)

No. 85-C-98-E

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiff Melba Markeeta Gillean take nothing from the Defendants Town & Country Bank, Robert Elliott and William Jacobus, that the action be dismissed on the merits, and that the Defendants Town & Country Bank, Robert Elliott and William Jacobus recover of the Plaintiff Melba Markeeta Gillean their costs of action. All other portions of this law suit have previously been dismissed or determined by the Court to involve defunct parties.

DATED at Tulsa, Oklahoma this 23^d day of September, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE **F I L E D**
NORTHERN DISTRICT OF OKLAHOMA

SEP 24 1987

BENNY W. TATE,
Plaintiff,
vs.
TEXACO, INC., et al,
Defendants.

)
)
)
)
)
)
)
)
)
)
)

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

Case No. 86-C-587-B

ADMINISTRATIVE CLOSING ORDER

TEXACO, INC.

The DEFENDANT/ having filed its petition in bankruptcy and as to all Defendants by agreement of these proceeding being stayed thereby/ it is hereby ordered that the Parties the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other propose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 24 day of SEPTEMBER, 19 87.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

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

HILTI, INC.,

Plaintiff,

vs.

CHEQUE-RITE, INC.,

Defendant.

)
)
)
)
)
)
)
)
)
)

Case No. 87-C-594-B

F I L E D

SEP 24 1987

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

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 24th day of SEPTEMBER, 1987.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

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

F I L E D

SEP 24 1987

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

MICHAEL MILLIGAN,)
)
 Plaintiff,)
)
 vs.)
)
 SHEARSON/AMERICAN EXPRESS,)
 INC., et al,)
)
 Defendants.)

Case No. ⁸⁶ ~~87~~-C-773-B

ADMINISTRATIVE CLOSING ORDER

The Parties having been ordered to arbitration and these proceedings have been stayed thereby, at the suggestion of the Court and by agreement of the Parties, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the Parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within 60 days of a final adjudication of the arbitration proceedings, the Parties have not by an appropriate motion to reopen for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 24 day of SEPTEMBER, 1987.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

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

THE UPJOHN COMPANY,

Plaintiff,

v.

TULSA INTERTRADE, INC. and
LESTER DAVID SPARKS,

Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO.

87-C-372 B

F I L E D

SEP 24 1987

CONSENT JUDGMENT

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

Plaintiff The Upjohn Company ("Upjohn") has brought the above captioned civil action against Defendants Tulsa Intertrade, Inc. ("Intertrade") and Lester David Sparks ("Sparks") charging the Defendants with infringement of Upjohn's U.S. Patent Nos. 4,139,619 and 4,596,812.

WHEREAS Plaintiff and Defendants have agreed to settle this action on the basis of the following STIPULATED FACTS and this CONSENT JUDGMENT and the Court being fully advised;

THE UPJOHN COMPANY, TULSA INTERTRADE, INC. AND LESTER DAVID SPARKS STIPULATE THAT:

1. Plaintiff is the sole owner of all rights, title and interest in and to U.S. Patent Nos. 4,139,619 ('619 patent) and 4,596,812 ('812 patent) and has the legal right to assert these patents against infringers.

2. The '619 and '812 patents were duly and legally issued to Plaintiff and are valid and enforceable against Defendants.

3. Both the '619 and '812 patents provide two types of claims:

- (a) product claims for a topical composition containing an effective amount of a minoxidil compound to be applied to mammalian skin, including a human scalp; and
- (b) method claims for promoting hair growth and treating alopecia (baldness) through the topical application of an effective amount of a minoxidil compound.

4. The subject matter of the '619 and '812 patents is based on the discovery that topical application of minoxidil compounds can produce hair growth in certain types of baldness. The compound minoxidil, per se, is a drug which originally was discovered to have blood pressure lowering properties. Upjohn markets oral tablets of minoxidil for hypertension treatment under the trademark LONITEN.

5. Under the Federal Food, Drug & Cosmetic Act, 21 U.S.C. § 355, minoxidil may not be sold in interstate commerce without prior FDA approval, except to be taken orally in the treatment of hypertension. Based on the subject matter claimed in the '619 and '812 patents and pending Food and Drug Agency

("FDA") approval, Upjohn is preparing to market a prescription drug product called ROGAINE, a topical solution containing minoxidil for the treatment of baldness and regrowth of hair.

6. Approval for a new drug or a new indication for a previously approved drug requires submission to the FDA of substantial scientific evidence and detailed clinical evaluation to assure the products' safety and efficacy for the proposed use. FDA approval of a New Drug Application ("NDA") is limited to the company making the application and to the purposes specifically approved by the FDA.

7. Upjohn submitted an NDA for its topical minoxidil solution on December 19, 1985. The NDA encompassed at least eight years of developmental work including human clinical studies, animal studies, and related scientific studies. Over the last several years, Upjohn expended over \$30 million in clinical studies concerning topical application of minoxidil for promoting hair growth.

8. Although the FDA has not yet approved its NDA for topical minoxidil solution, Upjohn has committed \$35 million for plant and equipment for its commercial production. The company, as well as outside analysts, expect the United States market for topical minoxidil for promoting hair growth to be very substantial. Upjohn intends to satisfy market demand from its own production facilities and will not issue licenses to manufacture under its '619 or '812 patents.

9. Defendant Intertrade, an Oklahoma corporation, was formed in 1986 by Lester David Sparks of Tulsa, Oklahoma. Sparks formed Intertrade expressly to operate as a repackager and a wholesale distributor to retail pharmacies of smaller quantities (less than 1,000 g) of minoxidil powder for use in the preparation of topical minoxidil compositions. The minoxidil sold by Intertrade was manufactured abroad and imported by Intertrade through various agencies.

10. In approximately June, 1986, Tulsa Intertrade, Inc. ceased importing, repackaging and distributing minoxidil powder. Sparks continued the business of repackaging and distributing minoxidil powder as a sole proprietorship under the name "T.I. Company," which business has been maintained from approximately June of 1986 to date.

11. Defendants Intertrade and the T.I. Company advertised their products by "word of mouth", letting it be known at trade shows and other meetings of pharmacists that they had powdered minoxidil available for purchase in small quantities. Orders were called in to an office in Tulsa from pharmacists across the country and shipped out by express delivery directly from Tulsa.

12. From February through June of 1986, Defendant Intertrade repackaged and sold, in 5 g and 25 g units, approximately 9,500 grams of minoxidil powder. Over the 12

month period ending June 1987 the T.I. Company shipped directly to pharmacies approximately 50,000 grams of minoxidil powder in packages as small as 5 grams.

13. The above-described acts were carried out by Defendants with full knowledge that Plaintiff Upjohn owned patents covering the manufacture, sale and use of topical minoxidil compositions for treating baldness and that Plaintiff intended to enforce its rights under said patents.

14. The above-described acts are deemed for purposes of this Consent Judgment to constitute direct infringement, contributory infringement and active inducement of infringement of the '619 and '812 patents.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court has jurisdiction over the parties and the subject matter of this action.

2. Plaintiff has agreed to waive its right to collect damages for past infringement from the defendants and their agents, servants, employees, assigns, successors, and all persons controlled by or in privity with Defendants or acting in concert with Defendants for patent infringement of the '619 and '812 patents, and each party has agreed to bear its own costs and attorney fees.

3. Defendants and their agents, servants, employees, assigns, successors, and all persons controlled by or in privity with Defendants or acting in concert with Defendants, are hereby

permanently enjoined in the United States from making or directing the manufacture of, selling, prescribing or promoting the sale of, using or promoting the use of any formulation of minoxidil covered by any of the claims of United States Patent Nos. 4,139,619 or 4,596,812 without authorization from Upjohn for so long as United States Patent Nos. 4,139,619 or 4,596,812 are enforceable.

4. The jurisdiction of this Court continues for the purpose of making any further orders necessary or proper relating to this judgment.

5. No appeal shall be taken by the parties to this judgment.

6. There are no oral understandings or undertakings between the parties separate from this written Consent Judgment. The parties have entered into a written settlement understanding, not inconsistent with this Consent Judgment which has not been filed with the Court.

APPROVED AND CONSENTED TO:

Date: Sept 1987

THE UPJOHN COMPANY

By: Gerard Thomas

Gerard Thomas

Title: Vice President, Secretary and
General Counsel

TULSA INTERTRADE, INC.

By: Lester David Sparks

Lester David Sparks
LESTER DAVID SPARKS

APPROVED AND IT IS SO ORDERED this 24 day of September 1987.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entry of the foregoing Consent Judgment is consented to by the parties.

Date: 9/22/87

Kenneth E. Kuffner
Kenneth E. Kuffner
Patricia K. Breland
ARNOLD, WHITE & DURKEE
P. O. Box 4433
Houston, Texas 77210
(713) 787-1400

Elsie C. Draper
Elsie C. Draper
GABLE & GOTWALS
2000 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR PLAINTIFF
THE UPJOHN COMPANY

Date: 9/17/87

Alan I. Robbins
Alan I. Robbins
DUNCAN, ALLEN AND MITCHELL
1575 Eye Street, N.W.
Suite 300
Washington, D.C. 20005
(202) 289-8400

ATTORNEYS FOR DEFENDANTS

FILED

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

SEP 24 1987

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

MCC REAL ESTATE COMPANY,)
)
Plaintiff,)
)
vs.)
)
E. CHARLES SHAFER and THOMAS)
WENKSTERN and PARIS SAVINGS &)
LOAN ASSOCIATION,)
)
Defendant.)

No. 85-C-950-E

ORDER AND JUDGMENT

This matter comes on for decision on the Motion for Summary Judgment of Paris Savings & Loan Association, and the Motion for Partial Summary Judgment of Paris Savings & Loan Association and defendants Thomas H. Wenkstern and E. Charles Shafer. Pursuant to the Report and Recommendations of the Magistrate and the Order of this Court dated September 10, 1987, and after an examination of the pleadings and careful consideration of the arguments of counsel and the papers on file herein, the Court finds and orders as follows:

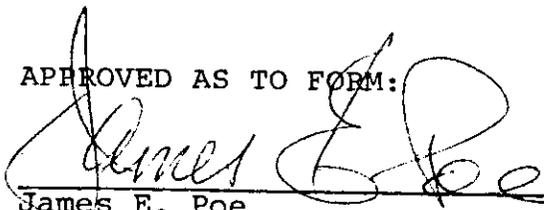
1. The burden of proof with regard to the impracticability or extreme difficulty in determining damage remains with the plaintiff herein, and, at the trial of this matter, it will be the burden of plaintiff to prove either the amount of its damages or the impracticability or extreme difficulty in determining same, in which case the liquidated damages clause of the contract will be operative.

2. There is no issue as to any material fact with respect to the liability of Paris Savings & Loan Association herein. The Motion for Summary Judgment of Paris Savings & Loan Association is granted in all respects and a judgment is hereby entered in favor of Paris Savings & Loan Association and against plaintiff on all three causes of action asserted by plaintiff and against Paris Savings & Loan Association herein.

Dated this ____ day of September, 1987.

 s/ JAMES O. ELLISON
JAMES O. ELLISON,
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



James E. Poe
Poe & Covington
740 Granston Bldg.
Tulsa, OK 74103

Attorney for Plaintiff,
MCC Real Estate Company



Terry M. Thomas
NORMAN, WOHLGEMUTH & THOMPSON
909 Kennedy Bldg.
Tulsa, OK 74103

Attorneys for Defendants,
E. Charles Shafer, Thomas
Wenkstern and Paris Savings &
Loan Association

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DALE A. BULLARD; SHAWNA R.)
BULLARD; COUNTY TREASURER,)
Ottawa County, Oklahoma; and)
BOARD OF COUNTY COMMISSIONERS,)
Ottawa County, Oklahoma,)
)
Defendants.)

F I L E D

SEP 23 1987

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

CIVIL ACTION NO. 87-C-654-B

O R D E R

Upon the Motion of the United States of America acting on behalf of the Administrator of Veterans Affairs by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, to which no objections have been filed, it is hereby ORDERED that this action shall be dismissed without prejudice.

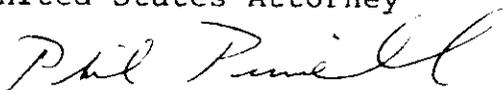
Dated this 23rd day of Sept, 1987.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney



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

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

JOHN M. DENHAM and ANN)
DENHAM,)
)
Plaintiffs,)
)
vs.)
)
FLUOR CONSTRUCTORS, INC.,)
a foreign corporation,)
)
Defendant.)
)
SUN COMPANY, INC.)
)
Intervenor.)

F I L E D

SEP 23 1987

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

CASE NO. 86-C-896-B

O R D E R

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

DATED this 23 day of ^{September}~~August~~, 1987.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

SEP 23 1987

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

BURLINGTON NORTHERN RAILROAD
COMPANY,

Plaintiff,

vs.

LESLIE ELTON DALLAS,

Defendant.

No. 86-C-683-B

ORDER

Upon stipulation of the parties and for good cause shown,
plaintiff's cause of action against the defendant is dismissed
with prejudice to the refiling of said action.

IT IS SO ORDERED this 23 day of September, 1987.

S/ THOMAS R. BRETT
United States District Judge

FILED

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

SEP 23 1987

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

JOHN C. BUMGARNER, JR.,)
)
 Plaintiff,)
)
 -vs-)
)
 INTERNATIONAL HOUSE OF PANCAKES,)
 INC.,)
)
 Defendant.)

Case No. 87-C-278-E

ORDER OF DISMISSAL

The parties hereto having filed this 21st day of September, 1987, their Stipulation of Dismissal, reflecting their agreement that the plaintiff's Petition, as removed, shall be dismissed pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, and the Court having reviewed the Stipulation and approved same, hereby orders that this cause be dismissed and directs that each party bear its own costs and attorneys' fees.

DATED this 23rd day of September, 1987.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Entered

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

DRUSCILLA GILLIAM, mother and)
next of kin to ALAN BRITT GILLIAM,)
deceased,)
)
Plaintiff,)
)
v.)
)
CITY OF SAPULPA, a municipal)
corporation, and RON SIERER,)
an individual,)
)
Defendants.)

Case No. 87-C-625-C

FILED

SEP 22 1987

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

ORDER OF DISMISSAL WITH PREJUDICE

Upon the Application of the Plaintiff, the Court hereby orders that this action be, and the same hereby is Dismissed with Prejudice to its refiling as to all Defendants on all counts.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

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

SEP 22 1987

U.S. DISTRICT COURT

CONLEY CORPORATION, an Oklahoma Corporation,)

Plaintiff,)

vs.)

PLASTIC ENGINEERED PRODUCTS, INC., a New Jersey Corporation,)

Defendant.)

No. 86-C-999 B

ORDER OF DISMISSAL WITH PREJUDICE

Upon the Joint Application of Dismissal With Prejudice filed by the parties, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-captioned action be dismissed with prejudice to the refiling of this claim in the future.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

entered

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

ROBIN JOHN ERICKSON; ELLEN
ELIZABETH ERICKSON; AMBER
PATRICIA ERICKSON, a Minor,
Who Sues By ROBIN JOHN
ERICKSON, as Next Friend; and
KARYN MICHELLE ERICKSON, a
Minor, Who Sues by ROBIN
JOHN ERICKSON, as Next
Friend,

Plaintiffs,

vs.

FRONTIER AIRLINES, INC.;
PEOPLE EXPRESS, INC.; and
TEXAS INTERNATIONAL AIRLINES,
INC.,

Defendants.

No. 87-C-511-C

FILED

SEP 22 1987

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

ORDER

The Court, having considered the Motion for Stay of Proceedings filed by the defendant, Frontier Airlines, Inc., finds that pursuant to Title 11 U.S.C. § 362, the defendant's motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that this action against defendant, Frontier Airlines, Inc., is hereby stayed pursuant to 11 U.S.C. § 362 and that plaintiffs are enjoined from proceeding further with this action.

Dated this 22 day of Sept, 1987.


UNITED STATES DISTRICT JUDGE

THIS ORDER IS TO BE MAILED
TO ALL PARTIES AND
COPIES TO ALL PARTIES IMMEDIATELY
UPON RECEIPT.

4

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

SEP 22 1987

TRANSMISSION STRUCTURES
LIMITED,

Plaintiff,

vs.

TOM (ASHLEY THOMAS)
JOYNER, an individual;
JOYNER BROADCASTING
CORPORATION, a North
Carolina corporation;
POWER BROADCASTING, INC.,
a North Carolina
corporation; JOYNER
MANAGEMENT COMPANY, a
North Carolina corporation;
JOYNER COMMUNICATIONS, INC.,
a North Carolina
corporation; and ATLANTIC
BROADCASTING CORPORATION,
an Illinois corporation,

Defendants.

JACK JOYNER, CLERK
U.S. DISTRICT COURT

Case No. 87-C-543-B

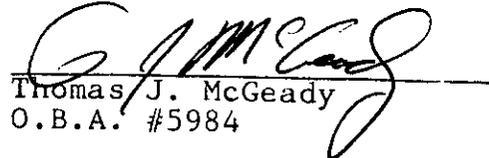
PARTIAL DISMISSAL WITHOUT PREJUDICE

COMES NOW, the Plaintiff, and pursuant to Rule 41(a)(1),
dismisses without prejudice the Defendants Joyner Management
Company and Atlantic Broadcasting Corporation.

LOGAN, LOWRY, JOHNSTON,
SWITZER, WEST & McGEADY
P. O. Box 558
Vinita, Oklahoma 74301
(918) 256-7511

Attorneys for Plaintiff

By:


Thomas J. McGeady
O.B.A. #5984

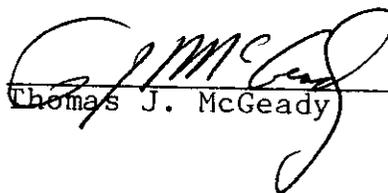
CERTIFICATE OF MAILING

I, Thomas J. McGeady, do hereby certify that on this 21st day of September, 1987, I mailed a true and correct copy of the above and foregoing "Partial Dismissal Without Prejudice" to:

John Henry Rule, II, Esquire
Gable & Gotwals
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119

James R. Prochnow, Esquire
Ms. Christine O'Connor
303 East 17th Avenue
Suite 1100
Denver, Colorado 80203

with proper postage thereon fully prepaid.


Thomas J. McGeady

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

FILED

SEP 21 1987

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

VICTORY NATIONAL BANK)
)
 Plaintiff,)
)
 v.)
)
 THOMAS L. WOOD and IDA)
 JEAN WOOD,)
)
 Defendants.)

87-C-535-B ✓

ORDER

Upon notice debtors notice to dismiss the appeal of creditor, Victory National Bank of Nowata, (#2) came on for hearing. Appearing for debtors is Mr. Joe L. White. Appearing for creditor is Mr. Darrell Ford and Mr. John Smart.

Title 28 U.S.C. Section 158(a) states, in part, as follows:

The District Courts of the United States shall have jurisdiction to hear appeals for final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under Section 157 of this Title. (Emphasis added).

Creditor, Victory National Bank ("Victory") timely filed its notice of appeal from a "order" of the Bankruptcy judge, entered June 26, 1987:

[G]ranteeing in part debtors' motion to avoid liens and denying in part the objection of Victory National Bank to debtors' exemptions.

In response, debtors filed their Motion to Dismiss alleging that the appeal was taken prematurely. Debtors specifically assert that the "order" does not, in fact, at the present time, exist. In support of their contention debtors point to the

transcript of the Court's ruling on June 26, 1987. At that time, the Court rendered its decision as to applicable law (See transcript, p.10). The Court further made a preliminary ruling as to the status of debtors as "farmers" (See transcript, p.10). However, the Court specifically withheld making a ruling on the application of the law, to wit: identifying those items to be exempted pursuant to the Court's ruling. At page 11 of the transcript of the hearing of June 26, 1987, the Court, in part, stated:

To be fair to all parties I must have additional evidence as to the duplications involved herein ... I am hopeful that the parties will get together. I have indicated that some of the larger matters and I have made rulings herein which shall, of course, stand, and that the parties may get together to determine the needs and necessities to farm property owned by these debtors or leased by these debtors, in a minimal amount, so as they may continue to be farmers, stated to be 640 acres.

Let me give you an example and we can get into alot of expense here as to experts, and the like, and if the parties cannot agree under the Federal Rules of Evidence 706, the Court may appoint its own expert witness, and that might be the best thing to do as to determine the needs and necessities for these particular items upon which said items will be allowed to be claimed as exempt, and accordingly, avoided ... I do not know how many types of augers, drills, as I say, and the like so that matter will be continued for further evidence, to be reset by the Court. I will be hopeful that next week, after the impact of this Court's decision on Victory, as well as this Court's decision on the debtors, that the parties have their attorneys in telephone conversation, all four of us on the line to see where you are, at which time the Court can determine whether it needs to appoint someone or that you can get together.

Mr. Jarboe, I am going to direct that you draw

an order incorporated by reference the Court's statements.

(Transcript, p. 13) (Emphasis added).

No such order yet appears. A draft is currently being circulated, but both parties indicate to the Court that there is substantial disagreement, most likely to be resolved by the Bankruptcy Court in further hearing, as set forth above.

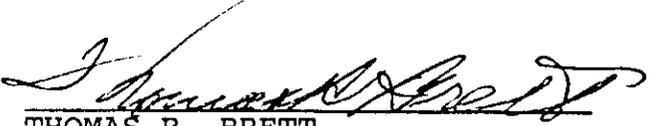
Clearly, the Court outlined the parameters of applicable law and classification of the debtors but withheld ruling on the specific implements to be incorporated as "exempt property" pursuant to its ruling. Therefore, it is plain no final order has been entered in this case. Indeed, absent a determination of specific property to be included as "exempt", the purported order of the Bankruptcy Court is a preliminary ruling, the nature of which cannot be determined absent review of its application.

Until the Bankruptcy Court, in fact, decides which property is to be exempted, no appealable order exists. While an order within a larger bankruptcy case is considered final and appealable (In Re American Colonial Broadcasting Corp. 758 F.2d 794 (1st Cir. 1985)), no such resolution is reached by the current ruling of the Bankruptcy Court. Here, the Bankruptcy Court has not finally disposed of what property is to be exempt and what property is to be non-exempt. Thus, while the grant or denial of a claimed exemption in a bankruptcy proceeding is a final appealable order (Sumy v. Schlossberg, 777 F.2d 921 (4th Cir. 1985)), no final decision has been reached here as to specific

The Bankruptcy Court has indicated it intends to extend an exemption to certain classes of property but has not otherwise determined the specific items to fall within that class. Until such time as the Bankruptcy Court identifies property and enters an order to that effect, the issue cannot be reached for purposes of appeal (Title 28 U.S.C. Section 158).

Victory's appeal is thus premature and should be dismissed. Accordingly, it is the Order of the Court that debtors' Motion to Dismiss be granted and that the matter be remanded to the Bankruptcy Court.

It is so ORDERED this 21ST day of September, 1987.

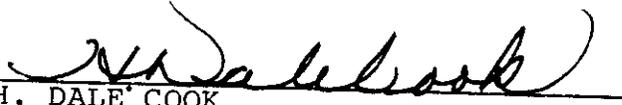

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

The Court has concluded that the answer which was filed did not violate Rule 11.

Plaintiff seeks sanctions against Urban's second counsel on the ground that counsel opposed plaintiff's motion for summary judgment with two defenses which the Court found legally insufficient. In reviewing the circumstances of the case, the Court concludes that the opposition of summary judgment does not rise to the level of a Rule 11 violation.

It is the Order of the Court that the motion of the plaintiff for sanctions is hereby denied.

IT IS SO ORDERED this 21st day of September, 1987.


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

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

VICTORY NATIONAL BANK)
)
Plaintiff,)
)
v.) 87-C-535-B
)
THOMAS L. WOOD and IDA)
JEAN WOOD,)
)
Defendants.)

1987
JUN 21 1987
U.S. DISTRICT COURT

ORDER

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Let me give you an example and we can get into alot of expense here as to experts, and the like, and if the parties cannot agree under the Federal Rules of Evidence 706, the Court may appoint its own expert witness, and that might be the best thing to do as to determine the needs and necessities for these particular items upon which said items will be allowed to be claimed as exempt, and accordingly, avoided ... I do not know how many types of augers, drills, as I say, and the like so that matter will be continued for further evidence, to be reset by the Court. I will be hopeful that next week, after the impact of this Court's decision on Victory, as well as this Court's decision on the debtors, that the parties have their attorneys in telephone conversation, all four of us on the line to see where you are, at which time the Court can determine whether it needs to appoint someone or that you can get together.

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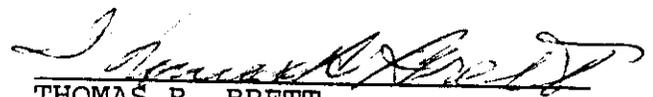
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Victory's appeal is thus premature and should be dismissed. Accordingly, it is the Order of the Court that debtors' Motion to Dismiss be granted and that the matter be remanded to the Bankruptcy Court.

It is so ORDERED this 21st day of September, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ONE PARCEL OF REAL PROPERTY)
 KNOWN AS ALL OF LOT NO. 68,)
 LLANO GRANDE SUBDIVISION,)
 HIDALGO COUNTY, TEXAS,)
)
 Defendant.)

F I L E D

SEP 21 1987

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

CIVIL ACTION NO. 87-C-366-B

JUDGMENT OF FORFEITURE AND
ORDER FOR SUBSTITUTION OF PUBLISHER'S AFFIDAVIT
ON PROOF OF PUBLICATION

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

ORDERED, ADJUDGED, AND DECREED that judgment be entered against the Defendant, One Parcel of Real Property known as all of Lot No. 68, Llano Grande Subdivision, Hidalgo County, Texas, and against all persons interested in such property, and that the said property be and the same is hereby forfeited to the United States of America for disposition according to law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the correct publisher's affidavit be substituted on the Proof of Publication.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

CATHERINE J. DEPEW
Assistant United States Attorney

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

FILED

SEP 21 1937

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

RUTH MOORE,

Plaintiff,

vs.

MATNEY, et al

Defendants.

No. 81 C 477 E

STIPULATION OF DISMISSAL

The above styled action is hereby dismissed against defendant Milton E. Gunnarson by stipulation of all parties who have appeared in this action.

Mandy Welch

MANDY WELCH
Payne & Welch, Lawyers
P. O. Box 785
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Attorney for Plaintiff

David Pauling

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Tulsa, OK 74103

Attorney for defendants
Gunnarson, Gardner, Uhless,
Hudson, Umholtz, and City of
Tulsa.

Richard Blakely

Richard Blakely
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, OK 74103

Attorney for defendants Matney,
Leedy, Parker and County of
Tulsa

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA SEP 18 1987

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

DAVID KEITH JOHNSTON,)
)
 Movant,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

87-C-323-C
84-CR-125-01-C

ORDER

The court has for consideration the Findings and Recommendations of the Magistrate filed August 24, 1987, in which the Magistrate recommended that movant's Motion to Vacate, Set Aside or Correct Sentence be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that movant David Keith Johnston's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. §2255 is summarily dismissed pursuant to Rule 4(b) of the Rules Governing Section 2255 Cases.

Dated this 18 day of September, 1987.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

Handwritten mark: a circled 'X' followed by '2/28/80'.

FILED

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

SEP 18 1987

JACKSON, CLERK
U.S. DISTRICT COURT

GWENT, INC., a Connecticut corporation,
Plaintiff,
vs.
THE TELEX CORPORATION, a Delaware corporation, and
TELEX COMPUTER PRODUCTS, INC., an Oklahoma corporation,
Defendants.

No. 86-C-1058-C

O R D E R

Now before the Court for its consideration are the cross motions for summary judgment of the plaintiff, Gwent, Inc., (Gwent), and the defendants, The Telex Corporation (Telex) and its wholly owned subsidiary, Telex Computer Products (TCP).

Gwent is an "intermediary" or "business broker", which brings together potential sellers and purchasers of major business operations. The sole shareholder of Gwent is Colin Gabriel (Gabriel). The Complaint alleges that on or about November 14, 1980, Gwent and Telex entered into an agreement which provided that Telex would pay a brokerage fee to Gwent for Gwent's arranging to put Telex in touch with businesses to be acquired by Telex. It is further alleged that on or about November 1, 1985, Gwent brought to the attention of Telex the opportunity of a potential acquisition of certain assets of United Technologies

Communications Corporation (UTCC). The Complaint alleges that, pursuant to an agreement dated as of December 27, 1985, Telex, itself and by and through its wholly-owned subsidiary TCP, acquired these assets of UTCC. Finally, Gwent alleges that Telex has refused to pay a commission of \$340,000 which is due and owing, thereby breaching the agreement between Gwent and Telex. The plaintiff seeks this amount for the alleged breach of contract; in the alternative, Gwent seeks recovery from TCP on the basis of quantum meruit.

No formal contract between the parties was executed. Gwent bases its claim on a November 14, 1980 letter addressed to Gabriel. The letter is on the stationery of Phoenix Resources, Inc. (Phoenix), and is signed by Roger M. Wheeler (Wheeler) as Chairman of the Board of Phoenix. At the time, Wheeler was also Chairman of the Board of Telex. The pertinent paragraph is the letter's first, which is quoted below:

My secretary was instructed to mail you information on Jai-Alai and Certified Appliance. We, or the sellers or the buyers as they [sic] case may be, would be willing to pay the standard 5-4-3-2-1 on acquisitions or purchases of companies we own which you bring to us, but only one fee to be paid on the deal. If one or more brokers are involved in the deal you bring to us you would have to share the fee between you and the other brokers. If you reveal to us a company which we have already been in touch with then, of course, we will tell you and we will not pay a fee.

The "standard 5-4-3-2-1" is a formula for computing brokerage commissions. On June 22, 1981, after Wheeler's death, Gabriel

wrote a letter to Stephen L. Jatras (Jatras), the President of Telex. The body of the letter is quoted in full below:

I exchanged voluminous correspondence with the late Roger Wheeler concerning acquisition opportunities.

I had a written arrangement with him whereby I was assured the usual contingent fee of 5-4-3-2-1 if I were the intermediary for a deal that was completed.

Mr. Wheeler expressed interest in a manufacturer [sic] of audio visual equipment: I am developing this situation, and expect to be in a position to present details in a month or so. May I ask you to confirm that you would compensate me according to the 5-4-3-2-1 formula if I initiate this transaction for you?

If you could send me anything outlining your acquisition interests I might be able to introduce other opportunities.

A 5-4-3-2-1 commission is a commission formula utilized by some business brokers whereby the broker receives five percent (5%) of the first million dollars on the purchase price, four percent (4%) of the second million, three percent (3%) on the third, two percent (2%) on the fourth and one percent (1%) on the remainder of the purchase price. On July 15, 1981, E. G. Frank (Frank), a vice president of Telex, wrote a letter to Gabriel, the body of which states:

Your letter of June 22, 1981 to Mr. S. J. Jatras has been forwarded to me for answering.

We confirm the compensation arrangement you mentioned in your letter is satisfactory should we consummate a deal.

You mention a possible situation concerning audio visual equipment which would be of possible interest to our Communication

subsidiary. Please forward any information on this directly to Mr. Ansel Kleiman, President, Telex Communications, Inc., 9600 Aldrich Avenue South, Minneapolis, Minnesota 55420, Phone (612) 884-4051.

This letter was written on Telex stationery. Gabriel contacted Kleiman of Telex Communications, Inc. (TCI), another wholly-owned subsidiary of Telex and non-party to this lawsuit. On October 1, 1982, TCI acquired some of the assets of Singer's Education Systems Operation (Singer). It is undisputed that this was the acquisition regarding "audio visual equipment" referred to in the Gabriel letter of June 22 and the Frank letter of July 15. It is also undisputed that Gwent received a brokerage fee from TCI for its part in the acquisition.

On February 17, 1984 Gabriel again wrote to Frank and made the following inquiry: "Do you still encourage intermediaries to submit opportunities to you?" On February 29, 1984, Frank responded that TCP did not particularly encourage such transactions, and stated: "I would suggest you correspond with Ansel [Kleiman] directly on things you think would be of interest to him for TCI." On October 17, 1985, Gabriel wrote Kleiman seeking a written agreement with TCI:

I would like to have something in writing on this, so that I can truthfully assure a seller that I have a formal arrangement with you.

Through subsequent letters, an agreement between Gwent and TCI was achieved with the express reservation that if TCI had prior notice or information about the company to be acquired, TCI need not pay a brokerage fee to Gwent. On October 28, 1985, Gabriel

wrote to the vice president of UTCC regarding acquisition opportunities. It is undisputed that, prior to Gabriel's October 28 letter, TCP's management had seen articles regarding UTCC's intention to sell its telecommunications business. TCP ultimately made the acquisition regarding UTCC. On January 8, 1986, Frank wrote a letter to Gabriel on Telex stationery, the body of which provides:

Please refer to our Mr. Roger M. Wheeler's letter to you dated November 14, 1980 and my letter to you of July 15, 1981, both involving potential acquisition activities.

Both of the aforementioned letters are hereby terminated, and you are not to undertake any potential acquisition activities henceforth on behalf of The Telex Corporation.

The plaintiff contends that a contract existed between Gwent and Telex, as reflected in the November 14, 1980 letter. Plaintiff emphasizes the reference in the letter to "companies we own". Since Wheeler was also Chairman of the Board of Telex at the time, plaintiff argues that Wheeler intended to bind Telex as well, and that it is irrelevant that Wheeler wrote on Phoenix stationery. Further, plaintiff characterizes the July 15, 1981 letter from Frank to Gabriel as confirming the arrangement between Gwent and Telex. Finally, plaintiff asserts that Frank's letter of January 8, 1986 demonstrates the belief of Telex that the agreement was still in effect, and that the agreement was not terminated until that date.

In response, defendants argue that the agreement reflected in the November 14, 1980 letter is between Gwent and Phoenix. The letter makes no mention of Telex or TCP. Further, neither

Telex nor its subsidiaries maintained the letter in their records or knew of its existence prior to this litigation. As for the July 15, 1981 letter from Frank to Gabriel, defendants assert that, read in its context as a response to Gabriel's letter of June 22, 1981 to Jatras, it is a confirmation limited to the audio visual acquisition (i.e., Singer) ultimately made by TCI in 1982.

The Court finds that the issue of the existence of a contract cannot be resolved by way of summary judgment. The reference to "companies we own" is ambiguous, and makes possible more than one reasonable inference. See Ins. Co. of State of Pa. v. J. L. Kelly, Inc., 612 F.Supp. 1196, 1197 (S.D.N.Y. 1985) (existence of a contract should not be resolved as a matter of law when it depends upon a choice among reasonable inferences). Cf. Morris Mfg. Co. v. Kales Stamping Co., 239 P. 564, 565 (Okla. 1925) (construction of contract, expressed in letters which are clear and unambiguous is for the court to determine).

In the alternative, plaintiff seeks recovery from TCP on the basis of quantum meruit. One court has provided the following definition:

"Reasonable compensation," or "quantum meruit," refers to that class of obligations imposed by law, without regard to the intention or assent of the parties bound, for the reasons dictated by reason and justice.

Hillyer v. Pan American Petro. Corp., 225 F.Supp. 425, 434 (N.D.Okla. 1963).

Gwent argues that Telex and its alter ego, TCP, knowingly accepted the benefits of Gwent's services and reaped the benefits

of those services, and further that Telex controlled the transaction and directed the placement of the assets in its TCP subsidiary. As demonstrated on pages 10 and 11 of defendants' Trial Brief, plaintiff has presented inadequate evidence of such alter ego liability. See Rea v. An-Son Corp., 79 F.R.D. 25 (W.D.Okla. 1978). There has been no showing of any fraud on the part of Telex. However, the Court makes no conclusion as to unjust enrichment. In order to recover for services on the theory of an implied contract it is ordinarily deemed essential to show that the services were rendered with the reasonable expectation that they would be paid for. Cavanaugh v. Old Rep. Credit Life Ins. Co., 354 P.2d 432, 436 (Okla. 1960). The Court has concluded that the determination of whether such a reasonable expectation existed in the case at bar is properly one for the jury.

It is the Order of the Court that the motion of the plaintiff for summary judgment is hereby DENIED.

It is the Further Order of the Court that the motion of the defendants for summary judgment is hereby DENIED.

IT IS SO ORDERED this 18 day of September, 1987.


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

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

HESTON OIL COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 F. HOWARD WALSH,)
)
 Defendant,)
)
 v.)
)
 DOME PETROLEUM CORP.,)
)
 Third-Party Defendant.)

86-C-268-C ✓

F I L E D

SEP 18 1987 A

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

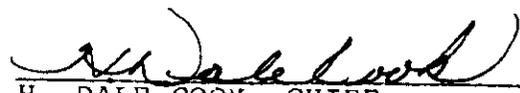
ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed August 11, 1987, in which the Magistrate recommended that Plaintiff's Motion to Substitute be granted. 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 Plaintiff's Motion to Substitute (pleading #22) is granted and Chase Manhattan Bank, N.A. is hereby substituted as party plaintiff, and Heston Oil Company is dismissed from this action pursuant to Federal Rules of Civil Procedure Rules 17 and 21.

Dated this 18 day of September, 1987.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 18 1987

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

RONALD A. SPELMAN, et al.,)
)
Plaintiffs,)
)
v.)
)
THE F&M BANK AND TRUST)
COMPANY, et al.,)
)
Defendants.)

Case No. 80 C 106 Bt

ORDER OF DISMISSAL WITH PREJUDICE

There comes on for consideration the Motion to Dismiss pursuant to Rule 41(a)(2), Federal Rules of Civil Procedure, of the Plaintiffs and Defendants, Andrew J. Haswell and J. Dell Gordon. The Court being fully advised and for good cause shown finds that the Complaint of Plaintiffs as against Andrew J. Haswell and J. Dell Gordon should be dismissed with prejudice, each party to bear respective costs and attorney's fees.

IT IS SO ORDERED.

DATED this 18 day of September, 1987.

S/ THOMAS R. BRETT

Thomas R. Brett
UNITED STATES DISTRICT JUDGE

John D. Echols by Eugene M. Gluck
John D. Echols
One of the Attorneys for Plaintiffs
law clerk

John R. Woodard, III
John R. Woodard, III
One of the attorneys for
Andrew J. Haswell and J. Dell Gordon

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

VINCENT LYLE PROVENCE; LUCINDA
LEA PROVENCE; JEAN ANN REEVES,
a/k/a JEAN ANNE REEVES; COUNTY
TREASURER, Ottawa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Ottawa County,
Oklahoma,

Defendants.

FILED

SEP 17 1987

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

CIVIL ACTION NO. 86-C-904-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17 day
of September, 1987. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Ottawa County,
Oklahoma, and Board of County Commissioners, Ottawa County,
Oklahoma, appear by David L. Thompson, District Attorney, Ottawa
County, Oklahoma; the Defendant, Jean Ann Reeves, a/k/a Jean Anne
Reeves, appears not having previously filed her Disclaimer; and
the Defendants, Vincent Lyle Provence and LuCinda Lea Provence,
appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Vincent Lyle Provence, was
served with Summons and Complaint by certified mail, return
receipt requested, on June 25, 1987 and Defendant, LuCinda Lea

Provence, acknowledged receipt of Summons and Complaint on July 24, 1987, which service was approved by this Court in its Order of August 13, 1987; that the Defendant, County Treasurer, Ottawa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 1, 1986; and that the Defendant, Board of County Commissioners, Ottawa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 13, 1986.

On April 22, 1987, the Plaintiff, United States of America, filed its motion for an order granting permission to proceed with foreclosure pursuant to Section 302(3) of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 App. U.S.C. § 532(3). On April 27, 1987, this Court entered its Order permitting the Plaintiff, United States of America, to proceed with foreclosure pursuant to 50 App. U.S.C. § 532(3) and ordering the United States to file a return with the Court for approval showing attempts of service upon the Defendants, Vincent Lyle Provence and LuCinda Lea Provence, and indicating what service, if any, was obtained. On August 6, 1987, the United States filed its Return of Service which was approved by this Court on August 13, 1987.

It appears that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer herein on October 20, 1986; that the Defendant, Jean Ann Reeves a/k/a Jean Anne Reeves, filed her Disclaimer herein on January 14, 1987; and that the Defendants, Vincent Lyle Provence and LuCinda Lee Provence, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Three (3), in Block Two (2) in GOODVIEW ADDITION TO THE City of Miami, Ottawa County, Oklahoma, according to the recorded Plat thereof.

The Court further finds that on July 26, 1983, the Defendants, Vincent Lyle Provence and LuCinda Lea Provence, 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 \$28,000.00, 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, Vincent Lyle Provence and LuCinda Lea Provence, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated July 26, 1983, covering the above-described property. Said mortgage was recorded on July 27, 1983, in Book 424, Page 473, in the records of Ottawa County, Oklahoma.

The Court further finds that the Defendants, Vincent Lyle Provence and LuCinda Lea Provence, 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, Vincent Lyle Provence and LuCinda Lea Provence, are indebted to the Plaintiff in the principal sum of \$27,466.49, plus interest at the rate of eleven and one-half percent (11.5%) per annum from February 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, Ottawa County, Oklahoma, claim no interest in the subject real property.

The Court further finds that the Defendant, Jean Ann Reeves a/k/a Jean Anne Reeves, disclaims any right, title, or interest in or to the subject real property and consents that judgment may be entered in this case without further notice.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Vincent Lyle Provence and LuCinda Lea Provence, in the principal sum of \$27,466.49, plus interest at the rate of eleven and one-half percent (11.5%) per annum from February 1, 1986 until judgment, plus interest thereafter at the current legal rate of 7.22 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, Jean Ann Reeves a/k/a Jean Anne Reeves, and County

Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

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

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

for Thomas Nesbitt Blewins
PETER BERNHARDT
Assistant United States Attorney

David L. Thompson
DAVID L. THOMPSON
District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Ottawa County, Oklahoma

PB/css

FILED

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

SEP 17 1987

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

INTERNATIONAL TOURS,
a Colorado corporation,

Plaintiff,

-vs-

DONNA LEEWRIGHT, MIKE LEEWRIGHT,
and RIDON, INC., doing business
as International Tours of Owasso,

Defendants.

No. 87-C-642-B

PRELIMINARY INJUNCTION

This matter came on to be heard on International Tours, Inc.'s, the Plaintiff herein, Motion for Preliminary Injunction to enjoin and restrain Donna Leewright, Mike Leewright, and Ridon, Inc., doing business as International Tours of Owasso, the Defendants, from using the International Tours' trademarks, as described in said Motion for Preliminary Injunction, on the agreements of counsel that such Preliminary Injunction should in fact be issued, with Chapel, Wilkinson, Riggs & Abney by Benjamin P. Abney appearing as counsel for Plaintiff and Larry L. Oliver & Associates by Larry L. Oliver appearing as counsel for Defendants. Now, having heard and considered such Motion, and the agreements of counsel to entering this Preliminary Injunction, the Court hereby finds that the Preliminary Injunction should be issued as ordered hereinafter.

IT IS HEREBY ORDERED that the Plaintiff's Motion for Preliminary Injunction be, and it is hereby, granted and that Donna Leewright, Mike Leewright, and Ridon, Inc., doing business as International Tours of Owasso, their agents, employees and attorneys, and all those in active concert or participation with them, be, and they are hereby, enjoined and restrained from using the International Tours' trademarks or any word, words, symbol, symbols, design, designs, phrase or term confusingly similar thereto alone or prominently displayed in promotional materials, advertisements, signs, or in any way in connection with the advertising, distribution, offering or sale, or sale of any travel services or related products, and from displaying in labels, promotional materials, advertisements, signs or in any other way, the International Tours' trademarks or any word, words, symbol, symbols, design, designs, phrase or term confusingly similar thereto in connection with travel services or related products, from infringing the International Tours' trademarks, until the final hearing and determination of the merits of the above-entitled action.

IT IS FURTHER ORDERED that this Preliminary Injunction shall be granted without the requirement of the Plaintiff giving any bond or security.

IT IS FURTHER ORDERED, pursuant to the agreement of the parties, that during the pendency of this Preliminary Injunction the Plaintiff herein shall not license or franchise any travel

agencies to operate in the following territory: North of 56
Street North, Tulsa County

DATED September 10, 1987.

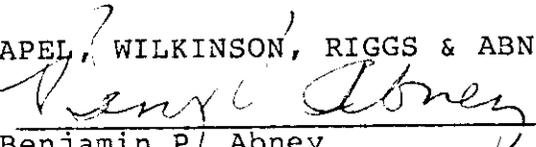


Judge of the District Court

**IT IS FURTHER ORDERED that this case is set for status/schedule
conference on September 30, 1987 at 8:45 a.m.**

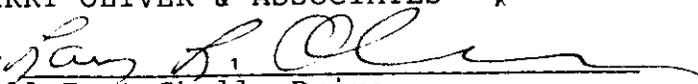
APPROVED:

CHAPEL, WILKINSON, RIGGS & ABNEY

By 

Benjamin P. Abney
502 West Sixth Street
Tulsa, Oklahoma 74119-1010
918-587-3161
ATTORNEYS FOR PLAINTIFF

LARRY OLIVER & ASSOCIATES

By 

2211 East Skelly Drive
Tulsa, Oklahoma 74105-5913
918-745-6084
ATTORNEYS FOR DEFENDANTS

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

F I L E D

SEP 17 1987

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

JOHN M. DENHAM and ANN
DENHAM,

Plaintiffs,

vs.

FLUOR CONSTRUCTORS, INC.,
a foreign corporation,

Defendant.

SUN COMPANY, INC.,

Intervenor.

CASE NO. 86-C-896-B

O R D E R

Upon the application of the intervenor and for good
cause shown, intervenor's action against the defendant is
dismissed with prejudice.

DATED this 17 day of ^{September}~~August~~, 1987.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

SEP 16 1987

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
HARVEY SIXKILLER and)
WAITE SIXKILLER, a/k/a)
WATIE SIXKILLER,)
)
Defendants.)

CIVIL ACTION NO. 87-C-431-E

DEFAULT JUDGMENT
AND ORDER OF EJECTMENT

Sept This matter comes on for consideration this 16th day
of ~~July~~, 1987, the Plaintiff appearing by Tony M. Graham, United
States Attorney for the Northern District of Oklahoma, through
Nancy Nesbitt Blevins, Assistant United States Attorney, and the
Defendants, Harvey Sixkiller and Waite Sixkiller, a/k/a Watie
Sixkiller, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendants, Harvey Sixkiller and Waite
Sixkiller, a/k/a Watie Sixkiller, were served with Complaint and
Summons on June 17, 1987. The time within which the Defendants
could have answered or otherwise moved as to the Complaint has
expired and has not been extended. The Defendants have not
answered or otherwise moved, and default has been entered by the
Clerk of this Court. Plaintiff is entitled to Judgment as a
matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that
the Plaintiff have and recover judgment against the Defendants,

Harvey Sixkiller and Waite Sixkiller, a/k/a Watie Sixkiller, as prayed for in its Complaint for the possession of the following described real property:

The NE/4 of the SE/4, Section 6, Township 28 North, Range 24 East of the Indian Meridian, Ottawa County, State of Oklahoma, containing 40 acres, more or less,

and for its costs and attorney fees herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants are hereby enjoined from returning to, or further occupying, the house located on the above-described property.

IT IS SO ORDERED this 16th day of ~~July~~^{Sept}, 1987.

OF JAMES G. HARRIS

UNITED STATES DISTRICT JUDGE

NNB:bcs

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

SEP 16 1987

JACK CLAYTON, CLERK
U.S. DISTRICT COURT

KEITH GRAYSON,
Plaintiff,
vs.
AMERICAN AIRLINES, INC.,
a corporation,
Defendant.

No. 83-C-298-C ✓

O R D E R

Now before the Court for its consideration is the motion of the defendant for summary judgment. The plaintiff having responded, the issues are now ready for the Court's determination.

Plaintiff originally filed this action claiming (1) breach of employment contract and (2) promissory fraud. On June 14, 1984, United States District Judge Thomas R. Brett granted defendant's motion for summary judgment as to both counts. During the pendency of plaintiff's appeal, the Supreme Court of Oklahoma rendered its decision in Hall v. Farmers Ins. Exchange, 713 P.2d 1027 (Okla. 1986). Relying upon its interpretation of Hall, the United States Court of Appeals for the Tenth Circuit affirmed the district court as to promissory fraud, but reversed as to breach of employment contract. Grayson v. American Airlines, Inc., 803 F.2d 1097 (10th Cir. 1986). The appellate court rejected defendant's argument that "the covenant of good faith

dealing is operable only if the employee has been denied some earned benefits to be paid in the future." Id at 1099. Rather, the court viewed Hall as indicating that "good faith is mandated in all contracts." Id.

Following Judge Brett's recusal, the defendant has now moved this Court to again grant summary judgment as to the plaintiff's contract claim, in light of Hinson v. Cameron, 58 O.B.J. 1666 (June 9, 1987). The central passage in Hinson states:

The appellate court's reversal of summary judgment against Hinson rests on Hall v. Farmers Ins. Exchange. Hall came to be perceived as creating a new cause of action in favor of an at-will employee discharged in "bad faith". As we view Hall it stands for the rule that an agent may recover from the principal when the latter has, in bad faith, deprived him of the fruit of his own labor. The relationship between the Hospital and Hinson as that of master and servant, not principal and agent. Hinson is not claiming the Hospital deprived her of any earned income. In short, the facts and the legal relations dealt with in Hall are clearly distinguishable from those in the present case.

Id at 1667 (footnotes omitted). Defendant argues that Hinson has limited Hall to principal/agent relationships and to claims for the unconscionable denial of earned benefits. Defendant asserts that plaintiff was defendant's employee, not its agent, that he has made no claim of deprivation of earned benefits, and that therefore summary judgment should be granted.

In response, plaintiff does not dispute that his cause of action regarding "bad faith" discharge is no longer viable. However, he focuses on the discussion in Hinson of "implied

contract" to argue that he has a cause of action on that basis.

The Hinson court stated:

Under the implied contract restrictions of the freedom to discharge an at-will employee, courts have found from particular facts that the parties had intended a contract of permanent employment or one of tenured job security. Factors which have been isolated as critical to evaluate whether an implied contract right to job security exists are (a) evidence of some "separate consideration" beyond the employee's services to support the implied term, (b) longevity of employment, (c) employer handbooks and policy manuals, (d) detrimental reliance on oral assurances, pre-employment interviews, company policy and past practices and (e) promotions and commendations.

Id at 1668 (footnote omitted). The plaintiff recites these factors in his response but does not provide evidence or elaboration as to their applicability in the case at bar. In any event, courts which have recognized the implied contract theory have held that the implied contract required good cause for the employee's termination. See, e.g., Touissant v. Blue Cross and Blue Shield of Michigan, 292 N.W.2d 880 (Mich. 1980). The Tenth Circuit Court of Appeals has already found that the defendant had good cause to terminate plaintiff. See 803 F.2d at 1099.

Plaintiff lists three "controverted facts" in his opposition to defendant's motion: (1) defendant's knowledge of plaintiff's intention to take early retirement; (2) an oral promise was made to plaintiff by an official of defendant that, if plaintiff would transfer to a temporary assignment in Toronto, plaintiff would have a position with defendant in Tulsa upon his return; (3) plaintiff's performance as an employee of defendant. This Court

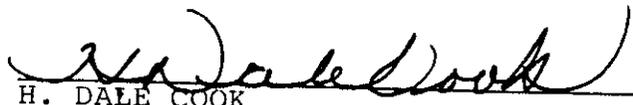
agrees with the defendant that all three contentions were considered by the Tenth Circuit Court of Appeals and were resolved against plaintiff in the appellate court's finding that he was terminated for good cause. See 803 F.2d at 1099. In other words, even if the three "controverted facts" listed above did convert plaintiff's status from that of an at-will employee to one who could only be terminated for good cause, the finding of good cause by the appellate court forecloses plaintiff from recovery.

The defendant has lucidly stated the conclusion which the Court reaches:

[U]nder the law of the case doctrine the only issue remanded to the District Court for trial relates to the cause of action for breach of the implied covenant of good faith and fair dealing under Hall v. Farmers Insurance Exchange. With Hinson v. Cameron, that issue has been decided in AMERICAN's favor and the case is now over.¹

It is the Order of the Court that the motion of the defendant for summary judgment should be and hereby is GRANTED.

IT IS SO ORDERED this 15th day of September, 1987.


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

¹Defendant's Response to Plaintiff's July 10, 1987 motion for relief at 6 n.5.

FILED

SEP 16 1987

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

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

DIONICIO AGUIRRE VILLANUEVA,)
)
Plaintiff,)
)
vs.)
)
JACK COWLEY, et al.,)
)
Defendants.)

No. 86-C-918-E /

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed May 15, 1987. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

It is so Ordered this 16th day of September, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 16 1987

JACK D. SIVYER, CLERK
U.S. DISTRICT COURT

ROYCE GAY NAPIER and)
CARL E. NAPIER,)
)
Plaintiffs,)
)
v.) No. 87-C-153-B
)
EL CHICO CORPORATION, a)
Texas corporation,)
)
Defendant.)

J U D G M E N T

In keeping with the Court's Order sustaining the motion for summary judgment of Defendant, El Chico Corporation, a Texas corporation, judgment is hereby entered in favor of El Chico Corporation and against Plaintiffs, Royce Gay Napier and Carl E. Napier, with costs assessed against the Plaintiffs.

ENTERED this 16th day of September, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 16 1987

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

ROYCE GAY NAPIER and)
CARL E. NAPIER,)
)
Plaintiffs,)
)
v.) No. 87-C-153-B
)
EL CHICO CORPORATION, a)
Texas corporation,)
)
Defendant.)

O R D E R

This matter comes before the Court on Defendant El Chico Corporation's motion for summary judgment. The Court finds there is no issue of fact in dispute and summary judgment is appropriate.

The Court has fully reviewed Plaintiff's deposition submitted by Defendant. The Court finds the deposition is such that reasonable men, in the exercise of fair and impartial judgment, could not reach a different conclusion that Defendant owed no duty to Plaintiff. White v. Wynn, 708 P.2d 1126 (Okla. 1985).

The deposition reflects that on May 12, 1985, at approximately 4:30 P.M., Plaintiff fell and injured her ankle outside Defendant's restaurant. Plaintiff testified that after leaving the restaurant and entering the parking lot she, instead of walking behind a row of parked cars to get to her car, chose to walk down a narrow passage between the front of the parked cars and a 45° lava rock wall. Plaintiff testified there was no

walkway where she was proceeding. Plaintiff also testified that while she was walking down this narrow passage she stepped up on the lava wall to get around a car. (Tr. 39). The rock she stepped on came loose and she fell. (Tr. 45). Plaintiff testified she knew she was not on a walkway when she stepped up on the curbed wall. (Tr. 46). Plaintiff also testified she had seen children fall off this rock wall before and kept her children off the wall.

Defendant has a duty to exercise reasonable care to keep his premises in a reasonably safe condition and to warn invitees of conditions which are hidden dangers, traps, or snares. However, all normal or ordinary risks incident to the use of the premises are assumed by the invitee. Rogers v. Hennessee, 602 P.2d 1033 (Okla. 1979). The invitor has no duty to protect from or even to warn about dangers which are so apparent and readily observable that one would reasonably expect them to be discovered. Nicholson v. Tacher, 512 P.2d 156 (Okla. 1973). In the present case, there was no deceptively innocent appearance. Plaintiff knew of the dangers concerning the lava rocks. No liability arises for any injury so apparent or readily observable. Rogers v. Hennessee, 602 P.2d 1033 (Okla. 1979). Defendant herein owed no duty to Plaintiff.

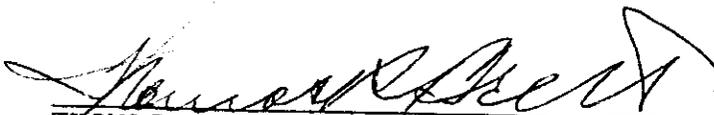
"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56.

The nonmovant must set forth specific facts with supporting material showing that there is a genuine issue for trial. Windon Third Oil

and Gas v F.D.I.C., 805 F.2d 342 (10th Cir. 1986) citing, Celotex Corporation v. Catrett, 477 U.S. _____, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Plaintiff's original petition (this case was removed from State Court) did not make clear where Plaintiff was when she fell. At the pretrial conference and hearing on this motion, her attorney conceded that if Plaintiff did step on the lava wall at the time of the fall, he would have a difficult time proving negligence. Several times in Plaintiff's response to Defendant's motion for summary judgment it is stated Defendant failed to maintain a safe sidewalk. Plaintiff's own deposition states again and again Plaintiff was not on nor near a sidewalk when the lava rock came loose. She had stepped up on the curbed wall. This was the very area that she had warned her children about. Plaintiff has failed to provide specific facts showing there is a genuine issue of fact. Celotex Corp. v Catrett, Supra.

Therefore, summary judgment is granted in favor of the Defendant, El Chico Corporation.

IT IS SO ORDERED, this 16th day of September, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 16 1987

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

JEAN ANNETTE KROUSE BAKER,
and PHILLIP L. BAKER,
Husband and Wife,

Plaintiffs,

v.

No. 86-C-28-E

UNITED STATES BEEF CORPORA-
TION, BOB GUNTER and PAT
DESHOTEL,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, JEAN ANNETTE KROUSE BAKER, and PHILLIP L. BAKER, and the Defendants, UNITED STATES BEEF CORPORATION, BOB GUNTER, and PAT DESHOTEL, and stipulate pursuant to Federal Rules of Civil Procedure Rule 41 that this action be dismissed with prejudice for the reason that this action has been settled.



Greg Morris
Attorney for Plaintiffs



Richard M. Eldridge
Attorney for Defendants