

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

GOLDEN T. KELLY, JR.)
)
 Plaintiff,)
)
 v.)
)
 JUDY E. ANTHONY and DAVID MOSS,)
)
 Defendants.)

87-C-973-B

DEC 11 1987

ORDER

Plaintiff's Motion to Proceed in forma pauperis was granted and was filed on the 11th day of December, 1987. Plaintiff brings this action pursuant to 42 U.S.C. §1983.

The Complaint is now to be tested under the standard set forth in 28 U.S.C. §1915(d). If the Complaint is found to be obviously without, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the Plaintiff can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986). Applying the test to Plaintiff's claims, the Court finds that the instant action should be dismissed as obviously without merit for the following reasons.

In Count I of the Complaint Plaintiff attempts to set forth a cause of action for denial of his right to fair trial, against Defendant, Judy Anthony. However, Plaintiff alleges only that Defendant Anthony was a state witness against Plaintiff. In Bennett v. Passic, 545 F.2d 1260 (10th Cir. 1976), the Tenth Circuit Court of Appeals noted that "witnesses who testify at

trial are not acting under color of state law." Id. at 1264. Since the trial judge alone had the duty and power to determine what portions of the witness' testimony should be admitted or excluded, Defendant Anthony could not have violated Plaintiff's civil rights. Id. Any claim that she did so by virtue of her testimony is frivolous. Id.

Count II of the Complaint is titled "Conspiracy." In support, Plaintiff alleges the following.

Miss Anthony said District Attorney's office made her no promise, but how could Miss Anthony make a statement as to Plaintiff would never get out, without some kind of communication with the District Attorney's office, when statement was made In Preliminary The District Attorney's office made no move to clear there (sic) office of such communication with Miss Anthony.

A review of the supporting allegations discloses that Plaintiff has failed to sufficiently allege Defendant Anthony actually conspired with a state actor to warrant a threshold claim of §1983 liability. Dennis v. Sparts, 449 U.S. 24 (1980). Count II must also be viewed as frivolous.

Count III of the Complaint is titled "Maladministration". In essence, Plaintiff complains that the District Attorney's office, after filing charges against Defendant Judy Anthony, would not prosecute Anthony and would not explain its reasons for declining to prosecute. The actions alleged, simply do not constitute a cognizable claim for relief under 42 U.S.C. §1983. Imbler v. Pachtman, 424 U.S. 409, 430-31 (1976). Furthermore, Plaintiff can make no rational argument on the law or facts to support his claim of maladministration.

Therefore, Plaintiff's complaint against Defendants Anthony and Moss should be summarily dismissed as without merit pursuant to 28 U.S.C. §1915(d). Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986).

Accordingly, it is the Order of this Court that the Plaintiff's complaint be summarily dismissed as frivolous pursuant to 28 U.S.C. §1915(d).

Dated this 16 day of December, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT COURT

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

F I L E D

DEC 14 1987

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

TRACY E. MANN,
Plaintiff,

vs.

CHAD ALLEN COLE and
RANDELL C. COLE,
Defendants.

No. 87-C-344-E

and

JACKIE L. THOMPSON, JR.,
et al.,
Plaintiffs,

vs.

CHAD ALLEN COLE, et al.
Defendants.

No. 87-C-480-E
(Consolidated)

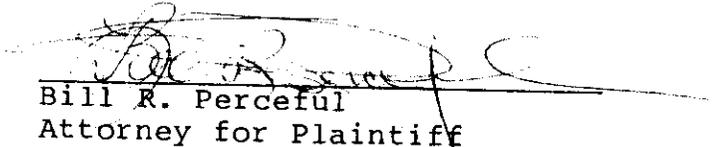
O R D E R

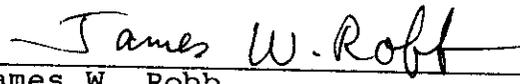
Upon application of these parties, the claim of Tracy E. Mann vs. Chad Allen Cole and Randell C. Cole is hereby dismissed with prejudice, each party to bear its own costs. That the claims of Jackie L. Thompson, Jr., et al. vs. Chad Allen Cole, et al., Case No. 87-C-480-E, shall proceed accordingly before this Court.

Dated this 11th day of December, 1987.

United States District Judge

APPROVED:


Bill R. Perceful
Attorney for Plaintiff


James W. Robb
Attorney for Plaintiff


Jeffrey A. King
Attorney for Defendants
Chad Allen Cole & Randell C. Cole

FILED

DEC 11 1987

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

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

WESLEY COOPER,)	
)	
Plaintiff,)	
)	
v.)	No. 87-C-746-B L
)	
CONDRIN OIL COMPANY,)	
)	
Defendant.)	

O R D E R

This matter comes before the Court on Plaintiff Wesley Cooper's motion to remand filed October 5, 1987. Also pending before the Court is the Defendant's motion to dismiss under Fed.R.Civ.P. 12(b)(6). For the reasons set forth below, the Plaintiff's motion to remand is granted and the Defendant's motion to dismiss is considered moot.

On August 13, 1987, the Plaintiff filed a petition in the District Court of Osage County, State of Oklahoma, seeking \$1520.00 for hay, water hauling, and labor which he alleged were incurred due to the Defendant's negligent acts in allowing salt water to escape from an oil well located in Osage County, Oklahoma. The parties agree that the land in question is subject to a treaty between the United States of America and the Osage Tribe of Indians and that mineral operations in the area are controlled by acts and regulations of the United States Congress.

The Defendant removed this matter from the District Court of Osage County, State of Oklahoma, on September 8, 1987, alleging that jurisdiction was proper in this court since the issue in

controversy arises under 25 C.F.R., Indians, Chapter 1, Part 183, and was thus removable under 28 U.S.C. §1441(b) (1976). Defendant filed a \$500.00 bond in connection with the removal proceedings.

The Plaintiff's petition filed in the state court alleges a claim for \$1520.00 for expenses incurred for penning cattle, hauling water and purchasing hay and asserts that the Defendant is liable for negligence per se pursuant to 52 Okl.St. Ann. §296. The Plaintiff makes no claim for injury to the surface of the land or for damage to crops. As noted by the Plaintiff, the Court must look solely at the Plaintiff's complaint to determine whether federal question jurisdiction is present. See, Mountain Fuel Supply Co. v. Johnson, 586 F.2d 1375 (10th Cir. 1978). It is equally clear that the Court cannot base federal question jurisdiction on a defense that the Defendant might assert in its answer. Louisville v. Mottley, 211 U.S. 149 (1908).

The statute relied upon by the Defendant in seeking a removal, 25 C.F.R., Indians, Chapter 1, Part 183.20, provides in pertinent part:

"(a) Lessee or geophysical permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages as may be occasioned by operations...."

Review of the Plaintiff's complaint makes clear that no damages are being alleged that deal with growing crops, improvements to the land, or surface type damages. As such, the Court finds that jurisdiction is lacking and that this case must be remanded to the state court.

In ordering that the instant case be remanded, the Court notes that even a modest research effort on the part of the Defendant would have revealed cases which have interpreted the scope of the federal statutes relating to damage to surface land in the Osage Nation. See, Annotations to 52 Okl.St. Ann. §296; Galt-Brown Co. v. Lay, 80 P.2d 567 (Okl. 1938) and Texas Co. v. Taylor, 61 P.2d 574 (Okl. 1936). Likewise, the Oklahoma Supreme Court in Phillips Petroleum Co. v. Sheel, 243 P.2d 726 (Okl. 1952), after reviewing numerous cases which interpreted the scope of the federal surface damage regulations stated:

"We are inclined to agree that the decisions above cited tend to support the claim of defendant that the injuries to the cattle in this case do not fall within the provisions of the lease and regulations imposing liability upon the defendant for damages, but that damages therein contemplated were damages to growing crops and to improvements on the land, and that the phrase 'all other damages as may be occasioned by reason of operations' referred to damages of a similar nature, that is to the land itself or vegetation thereon or other similar damages."

The above-quoted language is also dispositive of the Plaintiff's assertion in its reply brief that jurisdiction might also be founded upon 25 C.F.R. Ch. 1, §214.15(a) (1985). Therefore, the Court remands this matter to state court pursuant to 28 U.S.C. §1447(c). Further, the Court in exercising its discretion under the statute awards costs to the Plaintiff as it considers the nonremovability of the instant action to be obvious. See, Lee v. Volkswagen of America, Inc., 429 F.Supp. 5 (W.D.Okl. 1976), and Dunkin Donuts of America v. Family Enterprises, Inc., 381 F.Supp. 371 (D.Md. 1974).

IT IS THEREFORE ORDERED that this action be remanded to the District Court in and for Osage County, Oklahoma. The Plaintiff may make application to the Court for costs expended in connection with removal of this action (excluding attorney's fees) within ten (10) days from the date of this order.

IT IS SO ORDERED this 11th day of December, 1987.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

DEC 11 1987

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

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

JEFF HALL,)
)
 Appellant,)
)
 vs.)
)
 HERMAN S. EDGE, et al.,)
)
 Appellees,)

No. 86-C-1161-E

O R D E R

The Court has before it for its consideration an appeal from interlocutory orders of the Bankruptcy Court denying the Appellant's motion to examine the debtor's transaction with his attorneys and the Appellant's motion to remove Trustee. The Appellant claims that he was denied due process by the actions of the Bankruptcy Judge at the December 22, 1986 hearing, claims that the Bankruptcy Court's rulings on the pending motions are erroneous, and claims that the Bankruptcy Court's award of sanctions against Appellant pursuant to Bankruptcy Rule 9011 are not supported by the evidence and were imposed without a finding concerning the Appellant's knowledge, information and belief formed after reasonable inquiry.

A short factual statement is helpful to an understanding of the issues of the case. Debtor Herman S. Edge was a general partner of several limited partnerships engaged in drilling oil and gas wells. These limited partnerships brought a securities action against other persons who are not parties to these proceedings. The Appellant's motion to examine the debtor's

transactions with his attorney and motion to remove Trustee are both related to a settlement of the securities litigation brought in part by one of the debtors, Herman Edge. This litigation and settlement occurred prior to the filing of the Edge bankruptcy petition. James Beauchamp served as attorney for the debtor in connection with the securities case, and received settlement payments as escrow agent for the Plaintiffs.

The Appellant sought to have the Trustee file a preference action to recover the settlement proceeds, and also contested the reasonableness of the fees charged by Mr. Beauchamp for services provided to the debtor in connection with the securities action, and a related lien foreclosure action, both of which were completed prior to the filing of the bankruptcy. On April 28, 1986 the Trustee filed a pleading setting forth his determinations concerning the debtor's assets which indicated that the sums from the securities litigation were payable to parties other than the debtors because the debtors were required to divest themselves of ownership in the limited partnership ventures. This determination was substantiated by a notice of termination of limited partnership executed by debtor Herman S. Edge which is attached as an exhibit to the Trustee's report. In the notice, the debtor, Herman Edge, agreed to relinquish all right, title and interest in and to the partnership assets. In addition, the Trustee's pleading reflected that the Trustee had conferred with James Beauchamp concerning the services provided to the debtor and believed that the sums for services rendered were reasonable. Furthermore, in his response to the Appellant's

motion to remove Trustee, the Trustee stated that he had conferred with the Appellant and attorney Beauchamp, the debtors, and the debtors' counsel and found no reasonable evidence upon which to maintain litigation by adversary or other proceedings.

The first issue is whether the Bankruptcy Court erred in denying Appellant's motion to remove Trustee. 11 U.S.C. §324(a) provides that the Court, after notice and a hearing, may remove a Trustee, other than a United States Trustee, or an examiner, for cause. It is well established that cause for removal of a Trustee is not shown by the Trustee's exercise of his discretion and judgment. In re: Hartley, 50 B.R. 852 (Bkrctcy. of N.D. Ohio 1985). The Hartley case is similar to the case before the Court in that the Trustee declined to file a preference action on the basis that a preference could not be proved and that the cost in time and expense would far outweigh any judgment granted. The Court in that case found that the Trustee's action in declining to pursue the preference was analogous to a business judgment, and that the Court would not entertain objections to the Trustee's conduct of the estate where the conduct involves a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the code.

The Court has carefully reviewed the record to determine whether there was in fact a basis for a preference action which should have been pursued by the Trustee. However, it is clear that the debtor, Herman S. Edge, had no interest in the settlement proceeds of the securities litigation which the Appellant has urged the Trustee to pursue. The record is also

clear that the fees for services rendered by attorney Beauchamp on behalf of the debtor and other investors were reasonable. Therefore the Court finds no error in the denial of the Appellant's motion to remove Trustee.

In regard to the motion for examination of debtor's transactions with his attorney, Rule 2017 of the Bankruptcy Rules allows the Court to determine whether a debtor has transferred property or money to an attorney for services rendered in an excessive amount in contemplation of the filing of a petition in bankruptcy. This rule has no application to the services rendered by Mr. Beauchamp in that it deals with fees charged for the rendition of bankruptcy services. Because the services in question on the motion to examine debtor's transactions with his attorney concern only the services performed in connection with the securities and lien foreclosure actions, the Bankruptcy Court did not err in denying the motion.

The next issue before the Court is whether the Bankruptcy Court erred in imposing a sanction on the Appellant pursuant to Bankruptcy Rule 9011 which provides in pertinent part as follows:

... The signature of an attorney or a party constitutes a certificate by him that he has read the document; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harrass, to cause delay, or to increase the cost of litigation. ...

After denying the Appellant's motions the Bankruptcy Court addressed the Appellant stating that the motion to remove Trustee

contained improper allegations which were not supported by the record, the filings, the previous testimony given by the parties, and statements of counsel, that the Court had previously considered the preference claim in conjunction with a related adversary proceeding, and the attack on the Trustee was without merit, was vindictive, not well grounded in fact and was imposed for an improper purpose. The Court issued sanctions against the Appellant in the sum of \$275.00.

The imposition of sanctions pursuant to Bankruptcy Rule 9011 is a two-step process. The Court must first decide whether the claims advanced are reasonably supported by the law. If the claims lack any color, the Court must also determine whether they were advanced for an improper purpose such as to harass, delay, or increase the cost of litigation. Buy N Save, Cash & Carry v. Underwriter's Insurance Co., 56 B.R. 644 (Bkrty. S.D. N.Y. 1986). Although determination of whether a claim has a legal basis is an issue of law, the determination of whether the claims have been made for an improper purpose is an issue of fact which is governed by clearly erroneous standard pursuant to Bankruptcy Rule 8013. In re: Reed, 757 F.2d 230 (10th Cir. 1985). In applying the clearly erroneous standard for reviewing the findings of fact with the Bankruptcy Judge, the findings should not be disturbed absent "the most cogent reasons appearing in the record." In re: Reed, supra. Wolfe v. Tri-State Insurance Co., 407 F.2d 16 (10th Cir. 1969).

The Bankruptcy Court found that the Appellant's claims were imposed for an improper purpose, but did not state the factual

basis for this conclusion. The Court has carefully reviewed the record and notes that the Appellant aggressively pursued his objective, which was to get a preference action filed regarding the securities litigation settlement and to obtain recovery of pre-petition attorney's fees paid by the debtors to Mr. Beauchamp in connection with his prosecution of the securities claim and his defense of the lien foreclosure actions.

In determining whether the actions of the Appellant were undertaken for an improper purpose, the Court notes that the Appellant is an engineer rather than a lawyer. The provisions of Bankruptcy Rule 9011 are applicable both to attorneys and to pro se litigants. However the Court must take into consideration the concerns of Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed. 652 (1972) in which the United States Supreme Court held that pro se pleadings are to be liberally construed. Furthermore, federal courts have historically exercised great tolerance to insure that an impartial forum remains available to litigants invoking the jurisdiction of the Court without the guidance of trained counsel. Young v. IRS, 596 F.Supp. 141 (N.D. Ind. 1984). In determining whether the Appellant acted reasonably under the circumstances, the Court may take into consideration that he is not an attorney, and that the preference issues and the issues as to the reasonableness of Mr. Beauchamp's fees are not legal principles generally within the knowledge of the average layman.

The record reflects a certain relentlessness on the part of the Appellant, but it does not support a finding that the

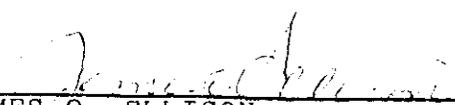
Appellant was seeking to achieve an improper purpose, delay the litigation, or to act out of vindictiveness against the debtor or the Trustee. Rather it reflects that he was vigorously pursuing his collection case. The Court is also troubled that the Bankruptcy Judge did not make specific findings of fact or references to the record to support his finding that the Appellant was acting to achieve an improper purpose. Therefore this Court must conclude that the Bankruptcy Court's determination that sanctions could be properly imposed under the facts before it was clearly erroneous and should be reversed.

The remaining issues raised by the Appellant concern the Bankruptcy Court's denial of the Appellant's request to call witnesses in support of his motions, and its refusal to allow Appellant to address the sanctions issues. In order to comply with due process, the procedure used in conducting a hearing must be appropriate, fair, adequate, and such as is practicable and reasonable in the particular case. Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 97 S.Ct. 2094, 53 L.Ed.2d (1977). In determining whether the procedure employed is sufficient to satisfy due process, the Court must consider the private interest to be effected, the risk of an erroneous deprivation of such interest through the procedures used and the burdens that the additional procedural requirement would entail. Smith, supra; Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Here, the Court had no need to receive further evidence in order to determine the Appellant's motions. The pleadings set forth sufficient information by which

the Court could determine that the Appellant's motion to remove Trustee was frivolous. Furthermore, the Appellant's motion to examine debtor's transactions with his attorney was frivolous as a matter of law. Therefore the Court concludes that the Appellant was not deprived of due process by the Bankruptcy Judge's refusal to hear the testimony which the Appellant requested to present. However the Court determines that the Bankruptcy Judge's refusal to allow the Appellant to address the issue of whether sanctions should be imposed against him constitutes a denial of due process, and further invalidates the imposition of sanctions.

For the foregoing reasons, the Court affirms the order of the Bankruptcy Court of December 30, 1986 which denied the motion to examine the debtor's transactions with his attorney, and affirms that portion of the Order of the December 31, 1986 which denies the Appellant's motion to remove Trustee. However the Court reverses that portion of the Order of December 31, 1986 which imposes the sanction in the sum of \$275.00 against Appellant, Jeff Hall, pursuant to Bankruptcy Rule 9011.

DATED this 11th day of December, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

THE CHASE MANHATTAN BANK, N.A.,
(formerly Heston Oil Company
as named Plaintiff),

Plaintiff,

vs.

F. HOWARD WALSH, JR.,

Defendant and
and Third-Party
Plaintiff,

vs.

DOME PETROLEUM CORPORATION,

Third-Party
Defendant.

No. 86-C-268-C ✓

FILED

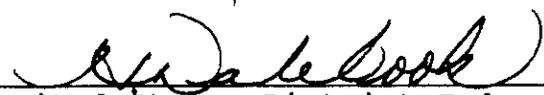
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ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to a Joint Motion for Dismissal With Prejudice filed by all of the parties in the above referenced action and for good cause shown, this Court hereby:

ORDERS, ADJUDGES AND DECREES that the above referenced action, together with all counterclaims and third-party claims are hereby dismissed with prejudice to the refiling of the same, with each party to bear its own costs and expenses incurred herein.

DATED this 10th day of December, 1987.


United States District Judge
for the Northern District of
Oklahoma

APPROVED AS TO FORM AND CONTENT:



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ATTORNEYS FOR DOME
PETROLEUM CORPORATION

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

HELEN SINGER,

Plaintiff,

v.

FEDERATED DEPARTMENT STORES, INC., a
Delaware Corporation d/b/a SANGER HARRIS,

Defendant.

No. 87-C-595-C

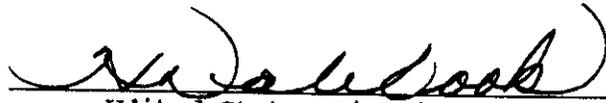
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DEC 11 1987

U.S. District Court
Northern District of Oklahoma

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 10 day of Dec, 1987, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

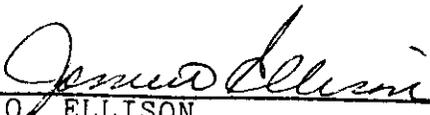

United States District Judge

- (1) that the prosecutor's improper remarks during closing argument denied Petitioner a fair trial;
- (2) that the prosecutor's improper remarks during voir dire denied Petitioner a fair trial; and
- (3) that an invalid identification denied Petitioner a fair trial.

The Court has reviewed the briefs, exhibits, the record below, and the Magistrate's Report and Recommendation, and has further conducted research on the issues presented. The Court is satisfied that the findings of the Magistrate are supported by the evidence presented and that the Magistrate's recommendations are fully supported by the applicable rules of law. Therefore, the Magistrate's Report and Recommendation should be adopted as the findings and order of this Court.

IT IS THEREFORE ORDERED that Petitioner's Application for Extension of Time is granted, and Petitioner's Application for a Writ of Habeas Corpus be denied.

ORDERED this 11th day of December, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

HAROLD GLOVER, d/b/a HAROLD GLOVER TAX
CONSULTANT AND ACCOUNTANT,

Plaintiff,

v.

UNITED STATES FIRE INSURANCE COMPANY, a
New York company,

Defendant and
Third-Party Plaintiff,

v.

REED, SMITH, & REED, INC., an Oklahoma
corporation; BOB REED and ROBERT REED,
JR., individuals, as officers, and/or
board members of REED, SMITH & REED,
INC.; PRICE, CHEW, TUCKER INSURANCE, INC.,
an Oklahoma corporation; PRICE & CHEW
INSURANCE AGENCY, INC., an Oklahoma
corporation; and GEORGE SMITH, individual,

Third-Party Defendants.)

No. 87-C-281-C

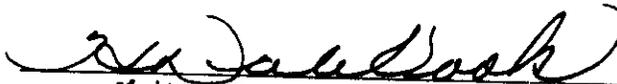
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DEC 14 1987

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 18 day of Dec, 1987, it appearing to the Court that this
matter has been compromised and settled, this case is herewith dismissed with
prejudice to the refiling of a future action.


United States District Judge

F I L E D

DEC 10 1987

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

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

IONE BOSS, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 84-C-269-E
)	AND 84-C-147-E
G.P.P.A.W. -- EMPLOYERS)	(Consolidated)
RETIREE TRUST, et al.,)	
)	
Defendants.)	

O R D E R

The Court has before it for its consideration the application of the individual Plaintiffs in Case No. 84-C-269-E to dismiss their claims without prejudice to either refiling the case or to receiving the benefit of any order issued in the companion case, 84-C-147-E. In response, the Defendants request the Court to dismiss the case with prejudice, or to impose upon the Plaintiffs the attorney's fees and expenses of the Defendants as a condition to dismissal, or by conditioning a refiling of the action upon payment of Defendants' attorney's fees and expenses.

Under Rule 41(a)(2) an action shall not be dismissed at the Plaintiff's instance except upon order of the Court and upon such terms and conditions as the Court deems proper. In determining whether conditions of dismissal are required, the Court must consider the interest of both the Plaintiffs and the Defendants. 5 Moore's Federal Practice, ¶41.05[1] (2nd Ed. 1987). Although the Court may impose the payment of Defendants' attorney's fees and costs as a condition for dismissal, a

dismissal with prejudice is not justified unless the Defendant will suffer some prejudice other than the mere prospect of a second lawsuit. 5 Moore's Federal Practice, ¶41.05[1], supra. Spencer v. Moore Business Forms, Inc., 87 F.R.D. 118 (N. D. Ga. 1980). Because no dispositive motion has been granted in favor of the Defendants and against the individual Defendants, there is no basis for the Court to dismiss the action with prejudice. Furthermore, because of the participation of Liberty Glass in the filing of the action, the Court believes it would be unjust to impose the payment of the Defendants' attorney's fees and costs upon the individual Plaintiffs.

Accordingly, the application for dismissal of claims of the individual Defendants is granted without prejudice. The Court having previously held that the state fiduciary claims are preempted under ERISA, and having held that Plaintiff Liberty Glass Company has no standing to maintain the action under ERISA, Liberty Glass is no longer a party to the action. Therefore, the action numbered 84-C-269-E is dismissed in its entirety.

DATED this 9th day of December, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

EVELYN L. BAKER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 THE SHERWIN-WILLIAMS CO.,)
)
 Defendant.)

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

No. 86-C-431-E

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed August 19, 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, with the following corrections as to dates involved in the case:

Defendant's motion for summary judgment is denied and granted in parts. The Court finds that there was a valid sublease through February 28, 1986, although renewal, to be timely, had to be accomplished by December 31, 1985. The Defendant failed to timely renew. There was no lease after February 28, 1986, and Defendant became a month-to-month tenant. Defendant is, therefore, not liable for any percentage rents past 1985. Subsequent to the termination of the sublease on February 28, 1986, Defendant continued to hold over and pay the amount of rent required under the sublease. There was no agreement to pay additional rent. Although demand for additional

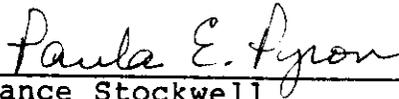
rent was made, no effort was made to remove Defendant from the premises upon its failure to agree to pay the higher rent demanded. There are no damages awardable under these circumstances.

It is so Ordered this 10th day of December, 1987.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Approved as to Form:



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ATTORNEYS FOR DEFENDANTS
JAMES A. PAYNE AND VIVIAN S. PAYNE

ejj

#5026

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its corporate)
capacity,)

Plaintiff,)

vs.)

BILL R. ESTEP, PHILMORE COX,)
and JAMES E. PARKER,)

Defendants,)

vs.)

KEN HELTERBRAND, HELTERBRAND)
ENERGY CORPORATION and)
MARK MITCHELL,)

Third Party Defendants.)

Case No. 86-C-720-C

ORDER OF DISMISSAL

THIS CAUSE coming on before me, the undersigned Judge of the United States District Court for the Northern District of Oklahoma, being fully advised in the premises herein, finds as follows:

1. The Defendants hereto, Philmore Cox and James E. Parker, have been dismissed from this action pursuant to a Stipulation of Dismissal filed herein on the 17th day of November, 1987.

2. Mr. Cox and Mr. Parker were additional Third Party Plaintiffs in this action, naming Ken Helterbrand, Helterbrand Energy Corporation and Mark Mitchell as Third Party Defendants.

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

3. The effect of this Dismissal is to leave standing a suit wherein Oklahoma residents are suing other Oklahoma residents and Companies whose primary places of business are in Oklahoma. Therefore, the Court finds that it no longer has jurisdiction over this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Third Party Petition filed in this matter shall be dismissed immediately without prejudice as to refiling.

(Signed) M. Dale Cook

JUDGE OF THE UNITED STATES DISTRICT COURT

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

THE BOARD OF TRUSTEES OF THE
PIPELINE INDUSTRY BENEFIT FUND,

Plaintiff

vs.

Civil No. 87-C-939 B

UTILITY CONSTRUCTION, INC.,

Defendant

AGREED DISMISSAL ORDER

THIS cause came upon the joint motion of the parties to dismiss this action on the ground that all matters alleged in Plaintiff's Complaint have been compromised and settled, it is therefore

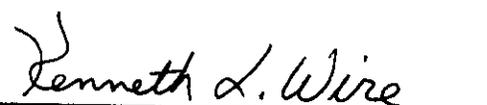
ORDERED, ADJUDGED and DECREED that the action be dismissed with prejudice as settled.

ENTER:

S/ THOMAS R. BRETT
United States District Court Judge

AGREED:


Charles J. Zauzig, IP
Attorney for Defendant
2026-C Opitz Blvd
Woodbridge, VA 22191
703-494-3250


Kenneth L. Wire
Attorney for Plaintiff
100 West Fifth Street
Tulsa, OK 74103
918-587-0141

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

FILED

DEC 10 1987

U.S. DISTRICT COURT

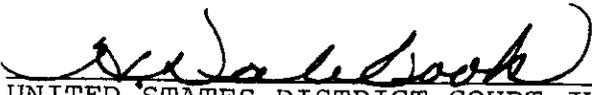
PRINCIPAL MUTUAL LIFE)
INSURANCE COMPANY,)
)
Plaintiff,)
)
vs.)
)
GREGORY DIXON,)
)
Defendant.)

No. 87-C-417-C /

ORDER OF DISMISSAL WITH PREJUDICE

On this 10th day of Dec., 1987, upon written application of the parties for an order of dismissal with prejudice of the Petition and all causes of action, the Court, having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Petition and have requested the Court to dismiss the Petition with prejudice to any future action and, the Court, being fully advised in the premises, finds that said Petition should be dismissed; it is, therefore,

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


UNITED STATES DISTRICT COURT JUDGE

FILED

DEC 10 1987

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

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

IONE BOSS, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 G.P.P.A.W. -- EMPLOYERS)
 RETIREE TRUST, et al.,)
)
 Defendants.)

No. 84-C-269-E
AND 84-C-147-E
(Consolidated)

O R D E R

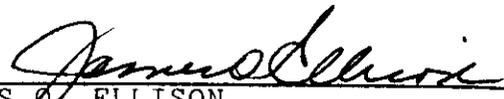
The Court has before it for its consideration the application of the individual Plaintiffs in Case No. 84-C-269-E to dismiss their claims without prejudice to either refileing the case or to receiving the benefit of any order issued in the companion case, 84-C-147-E. In response, the Defendants request the Court to dismiss the case with prejudice, or to impose upon the Plaintiffs the attorney's fees and expenses of the Defendants as a condition to dismissal, or by conditioning a refileing of the action upon payment of Defendants' attorney's fees and expenses.

Under Rule 41(a)(2) an action shall not be dismissed at the Plaintiff's instance except upon order of the Court and upon such terms and conditions as the Court deems proper. In determining whether conditions of dismissal are required, the Court must consider the interest of both the Plaintiffs and the Defendants. 5 Moore's Federal Practice, ¶41.05[1] (2nd Ed. 1987). Although the Court may impose the payment of Defendants' attorney's fees and costs as a condition for dismissal, a

dismissal with prejudice is not justified unless the Defendant will suffer some prejudice other than the mere prospect of a second lawsuit. 5 Moore's Federal Practice, ¶41.05[1], supra. Spencer v. Moore Business Forms, Inc., 87 F.R.D. 118 (N. D. Ga. 1980). Because no dispositive motion has been granted in favor of the Defendants and against the individual Defendants, there is no basis for the Court to dismiss the action with prejudice. Furthermore, because of the participation of Liberty Glass in the filing of the action, the Court believes it would be unjust to impose the payment of the Defendants' attorney's fees and costs upon the individual Plaintiffs.

Accordingly, the application for dismissal of claims of the individual Defendants is granted without prejudice. The Court having previously held that the state fiduciary claims are preempted under ERISA, and having held that Plaintiff Liberty Glass Company has no standing to maintain the action under ERISA, Liberty Glass is no longer a party to the action. Therefore, the action numbered 84-C-269-E is dismissed in its entirety.

DATED this 9th day of December, 1987.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

DEC - 9 1987

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

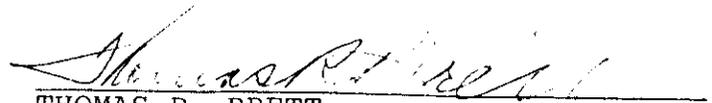
WILLIAM A. GENT,)
)
 Plaintiff,)
)
 v.)
)
 ALLIED-SIGNAL, INC., a)
 Delaware corporation, as)
 successor in interest to)
 Warner & Swasey Company)
 Employee Benefit Plan,)
)
 Defendant.)

No. 87-C-397-B

J U D G M E N T

In keeping with the Order Sustaining the Motion for Summary Judgment of the Defendant Allied-Signal, Inc., as successor in interest to Warner & Swasey Company Employee Benefit Plan, Judgment is hereby entered in favor of Allied-Signal, Inc. and against the Plaintiff, William A. Gent, and Plaintiff's action is hereby dismissed. Costs, if timely applied for, pursuant to Local Rules are to be assessed against the Plaintiff, William A. Gent. The parties are to pay their own respective attorney fees.

DATED this 9th day of December, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

TUBULAR CORPORATION OF AMERICA,)
INC., an Oklahoma corporation,)
)
Plaintiff,)

vs.)

Case No. 87-C-31-E

SOCIETA EUROPEA TUBIFICI E)
ACCIAIERIE s.p.a., an Italian)
corporation, and S.E.T.A. US Ltd.,)
a Delaware corporation,)

Defendants.)

FILED

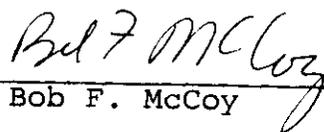
DEC - 9 1987

JOINT STIPULATION OF DISMISSAL ^{Jack C. Silver, Clerk}
WITH PREJUDICE U.S. DISTRICT COURT

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii),
the parties to the captioned action hereby dismiss the captioned
action with prejudice.

BOB F. McCOY
GEORGE H. LOWREY

By


Bob F. McCoy

2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff
TUBULAR CORPORATION OF AMERICA, INC.

OF COUNSEL:

CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

KENT L. JONES
DONALD L. KAHL

By  _____

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
4100 Bank of Oklahoma Tower
Tulsa, Oklahoma 74172
(918) 588-2700

Attorneys for Defendants
SOCIETA EUROPEA TUBUFICI E
ACCIAIERIE s.p.a. and
S.E.T.A. US LTD.

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

FILED

DEC -8 1987

JACK G. HOLT AND BILLIE J. HOLT)
)
Plaintiffs,)
v.)
)
THE INDEPENDENT ORDER OF FORESTERS,)
A Fraternal Association,)
)
Defendant,)

No. 87-678-B

CLERK
U.S. DISTRICT COURT

ORDER TO CLERK TO DISTRIBUTE FUNDS
AND FOR DISMISSAL WITH PREJUDICE

Pursuant to agreement made between the parties at the settlement conference on the 6th day of November, 1987, the Court Orders the Clerk of the United States District Court to distribute the sum of \$1,337.50¹⁵ together with interest thereon, to JACK G. HOLT and BILLIE J. HOLT. This sum represents the entire balance of the moneys deposited with the Clerk by the Independent Order of Foresters on the 23rd day of October, 1987, with interest.

The Court further Orders that upon receipt of said distribution from the Clerk and the receipt of the additional sum of \$2,519.70 from the Independent Order of Foresters, that the Plaintiffs, JACK G. HOLT and BILLIE J. HOLT, shall dismiss this action with prejudice, with the costs paid by the Defendant.

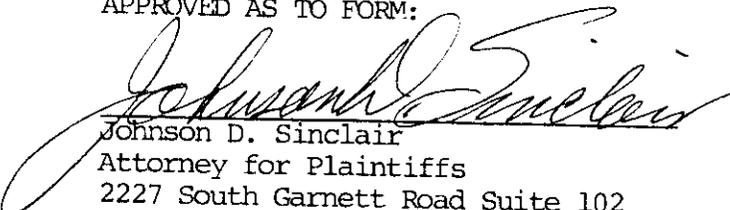
It is ordered that counsel presenting this order shall serve a copy thereof upon the Clerk of this Court or his Chief Deputy. Absent the aforesaid service the Clerk is hereby relieved of any personal liability relative to compliance with this order.


JUDGE, UNITED STATES DISTRICT COURT

Handwritten initials

Order to clerk to distribute Funds
and dismissal with prejudice

APPROVED AS TO FORM:


Johnson D. Sinclair

Attorney for Plaintiffs
2227 South Garnett Road Suite 102
Tulsa, Oklahoma 74129


Elsie Draper

Gable & Gotwals
Attorney for Defendant
2000 Fourth National Bank Building
Tusla, Oklahoma 74119

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

FILED

DEC - 9 1987

WILLIAM A. GENT,

Plaintiff,

v.

ALLIED-SIGNAL, INC., a Delaware
corporation, as successor in
interest to Warner & Swasey
Company Employee Benefit Plan,

Defendant.

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

No. 87-C-397-B

ORDER SUSTAINING MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT

Before the Court for decision herein are the motions for summary judgment filed by both the Plaintiff William A. Gent ("Gent") and the Defendant Allied-Signal, Inc. ("Allied").¹ By the Court's Order of September 22, 1987, the motion to dismiss the Plaintiff's first amended complaint filed by Allied was overruled. The Court concluded in said Order that under the facts presented herein, including the relevant provisions of the plan summary, the Plaintiff was probably entitled to the hospitalization and medical benefits claimed. However, upon further reflection and study of the briefs filed by the parties and the record before the Court, the Court concludes the plan administrator's interpretation that the Plaintiff is not entitled to the hospitalization and medical insurance benefits claimed is a reasonable interpretation.

¹ Allied-Signal, Inc., Plaintiff's employer, is the successor in interest to the Warner & Swasey Company Employee Benefit Plan.

The facts that are not in dispute in the record are as follows: The Plaintiff, Gent, terminated his employment with the Warner & Swasey Company in 1980 at the age of 48 with more than ten (10) years of credited service. When Gent became age 55 in 1986, approximately six (6) years after he had terminated his employment, he applied for pension benefits and hospitalization and medical expense insurance benefits. Warner & Swasey honored Gent's request for pension benefits which he began receiving in December 1986. Gent's claim for hospitalization and medical expense insurance benefits was denied by the Warner & Swasey Company because it was contended such were not provided by the provisions of the plan.

Relevant provisions of the plan summary description which was provided Gent and employees are as follows (Exhibit "A" to Plaintiff's original petition):

"INTRODUCTION

* * *

Hospitalization and medical insurance are also provided by W/S under separate medical insurance plans for eligible retirees to supplement Medicare protection.

"EARLY RETIREMENT -- 55/10 PROVISION

You can retire at age 55 with 10 years of credited service. (Page 4)

* * *

"OTHER RETIREMENT BENEFITS

HOSPITALIZATION INSURANCE

* * *

If you retire under the early retirement or disability retirement provision of the plan and are receiving a pension from W/S, the company will provide hospital insurance (365-day, semi-private service) for you and your eligible dependents.

Then, at age 65, W/S will provide hospital insurance to supplement Medicare hospital insurance protection.

MEDICAL EXPENSE INSURANCE

* * *

If you retire under the early retirement or disability provision of the plan and are receiving a pension from W/S, the company will pay for medical expense insurance for you and your eligible dependents. This covers usual, reasonable, and customary charges for surgery, x-rays, diagnostic tests and anesthesia. Then, at age 65, W/S will provide medical expense insurance to supplement Medicare protection.

The medical expense insurance protection also includes Major Medical Coverage with a \$50,000 life-time maximum. (Pages 8 and 9).

* * *

**"VESTING--
YOUR RIGHTS WHEN YOU LEAVE**

If you have ten years or more of credited service at the time you leave, your pension rights will be vested. You will be eligible to apply for and receive a pension when you reach age 65, or an actuarially reduced pension when you reach age 55 or any time thereafter." (Page 16)

* * *

"YOU MUST APPLY

* * *

If you are entitled to a vested pension benefit from W/S, your right to that pension is not forfeitable, even if you leave W/S before retirement. * * * (Page 17).

The plan administrator interprets the Warner & Swasey (Allied-Signal) plan to provide that only eligible retirees, which would include early retirees, disability retirees, and those who retire at normal retirement age, are entitled to hospitalization and medical expense insurance benefits. This interpretation is a reasonable interpretation of the summary plan description which states that "hospitalization and medical insurance are also provided by W/S under separate medical

insurance plans for eligible retirees", and that these benefits are available to those who "retire under the early retirement ... provisions of the plan." (Exhibit "A" to Complaint, "Introduction", page iii, pages 8-9) As the Plaintiff terminated his employment at age 48 in 1980, and did not terminate his employment at early retirement age of 55, the Plaintiff was not a retired employee or an early retiree, and thus not eligible for hospitalization and medical insurance benefits as an early retiree.²

Cases involving similar plan interpretations that support the plan administrator's interpretation herein are Apponi v. Sunshine Biscuits, Inc., 809 F.2d 1210, 1219 (6th Cir. 1987), cert. denied, 56 U.S.L.W. 3243 (October 5, 1987), and Gratian v. General Dynamics, Inc., 587 F.2d 121 (2d Cir. 1978).

The threshold question is whether the summary plan description is "written in a manner calculated to be understood by the average plan participant ..." and does "reasonably apprise

² Under the plan the Plaintiff is properly characterized a vested pension beneficiary. While the plan administrator's interpretation is reasonable, the summary plan description could be made clearer if it stated:

A vested pension beneficiary employee who terminates employment under the plan before age 55, is not considered an early retiree and is therefore not entitled to hospitalization and medical insurance benefits under the plan.

The record indicates that Plaintiff, prior to terminating his employment with the Defendant, contacted the personnel manager and was advised that he would receive hospitalization and medical insurance when he became eligible to start drawing his pension at age 55. The Plaintiff should have contacted the plan administrator as he is the one to properly interpret the plan.

such participants ... of their rights and obligations under the plan." 29 U.S.C. §1022(a)(1).

The summary plan description does not state that vested pension beneficiaries, such as the Plaintiff, are entitled to hospitalization and medical insurance benefits if they terminate their employment previous to retirement age under the plan. The summary plan description states that "Other retirement benefits" are available, and that if participants "retire under the early retirement provisions of the plan, the company will provide hospitalization insurance" and "the company will pay for medical expense insurance." (Exhibit "A" to Plaintiff's complaint, "Other Retirement Benefits", pages 8-9).

Under the Employment Retirement Income Security Act (ERISA), 29 U.S.C. §1132, the Court's review herein is limited to determining whether Allied-Signal acted arbitrarily or capriciously, in bad faith, or contrary to law. Carter v. Central States, Southeast and Southwest Areas Pension Plan, 656 F.2d 575, 576 (10th Cir. 1981). See also, Crouch v. Mo-Kan Iron Workers Welfare Fund, 740 F.2d 805, 808 (10th Cir. 1984), and Peckham v. Board of Trustees, 653 F.2d 424, 426 (10th Cir. 1981). Deference is to be granted to plan trustees and administrators in their interpretations and in deciding questions of eligibility. Hancock v. Montgomery Ward Long-Term Disability Trust, 787 F.2d 1302, 1307 (9th Cir. 1986); Moore v. Provident Life & Accident Insurance Co., 786 F.2d 922 (9th Cir. 1986), and Lucash v. Strick Corp., 602 F.Supp. 430, 434 (E.D.Pa. 1984), aff'd without opinion, 760 F.2d 259 (3rd Cir. 1985).

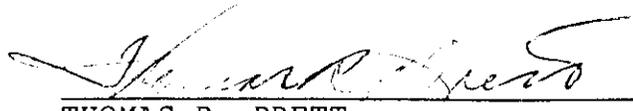
Plaintiff is urging that 29 U.S.C. §1056(a) is authority for his contention that upon reaching age 55 he was entitled to receive hospitalization and medical expense insurance benefits available to early retirees. The import of §1056 requires pension plans to provide pension benefits at an actuarially reduced rate for vested beneficiaries who do not meet the age requirements for early retirement, but who are entitled to receive pension benefits from the company. See, Burch v. Firestone Tire & Rubber Co., 640 F.Supp. 519, 528 (E.D.Pa. 1986), aff'd in part, rev'd in part, 828 F.2d 134 (3rd Cir. 1987). Section 1056 is a procedural requirement for employee benefit plans to provide similar pension benefits to different classes of beneficiaries, and does not confer upon participants substantive rights to pension or insurance benefits. Phillips v. Amoco Oil Company, 799 F.2d 1464 (11th Cir. 1986).

Plaintiff attaches to his response brief filed November 10, 1987, three letters from Defendant relative to his pension benefits. Two of the letters (Exhibit B and C) have the salutation "Dear Mr. Gent" and one (Exhibit D), "Dear Retiree". Letter Exhibit C concludes, "Best wishes for a long and happy retirement". Letter Exhibit B explains pension actuarial computations reduced from retirement age 65 back to early retirement age of 55. These letters and the references to retiree and retirement are not determinative of Plaintiff's rights to hospitalization and medical insurance herein. Such must be determined from the summary plan description provided Plaintiff. (Exhibit A to Plaintiff's Complaint).

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Where there is an absence of material issues of fact, then the movant is entitled to judgment as a matter of law. Celotex Corporation v. Catrett, 477 U.S. ____, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. ____, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986); Commerical Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); and Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973). Therefore, as stated above, the Defendant Allied-Signal, Inc.'s motion for summary judgment is hereby sustained and the Plaintiff William A. Gent's motion for summary judgment is hereby overruled.

A separate judgment shall be entered contemporaneous herewith in favor of Allied-Signal, Inc., and against William A. Gent.

DATED this 9th day of December, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.)
)
ARLIS F. GRAYSON; ANNA GRAYSON;)
COUNTY TREASURER, Rogers County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Rogers County,)
Oklahoma,)
)
Defendants.)

FILED

DEC - 9 1987

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

CIVIL ACTION NO. 87-C-317-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 9th day
of December, 1987. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Rogers County,
Oklahoma, and Board of County Commissioners, Rogers County,
Oklahoma, appear by Ernest E. Haynes, Jr., Assistant District
Attorney, Rogers County, Oklahoma; and the Defendants, Arlis F.
Grayson and Anna Grayson, appear by their attorney Ralph Gabel.

The Court being fully advised and having examined the
file herein finds that the Defendants, Arlis F. Grayson and Anna
Grayson, were served copies of Summons and Complaint on
October 1, 1987; that Defendant, County Treasurer, Rogers County,
Oklahoma, acknowledged receipt of Summons and Complaint on May 5,
1987; and that Defendant, Board of County Commissioners, Rogers
County, Oklahoma, acknowledged receipt of Summons and Complaint
on May 5, 1987.

It appears that the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer herein on May 12, 1987; and that the Defendants, Arlis F. Grayson and Anna Grayson, filed their Answer on October 2, 1987, but agree to entry of judgment in the following particulars.

On June 15, 1987, the Defendants, Arlis F. Grayson and Anna Grayson, filed a petition for relief under Chapter 7 of the Bankruptcy Code, Case No. 87-01600, Northern District of Oklahoma. On August 17, 1987, the Bankruptcy Court entered its Order Granting Relief From Automatic Stay and For Abandonment with regard to the subject property.

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 Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Seven (7), Block Two (2), MIDWESTERN HEIGHTS ADDITION, Rogers County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on December 27, 1984, the Defendants, Arlis F. Grayson and Anna Grayson, 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 \$48,800.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Arlis F. Grayson and Anna Grayson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated December 27, 1984, covering the above-described property. Said mortgage was recorded on December 28, 1984, in Book 693, Page 791, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendants, Arlis F. Grayson and Anna Grayson, 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 there is now due and owing under the note and mortgage the principal sum of \$49,411.53, plus interest at the rate of twelve and one-half percent (12.5%) per annum from May 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, Rogers County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Arlis F. Grayson and Anna Grayson, in the principal sum of \$49,411.53, plus interest at the rate of twelve and one-half percent (12.5%) per annum from May 1, 1986 until

judgment, plus interest thereafter at the current legal rate of 6.93 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

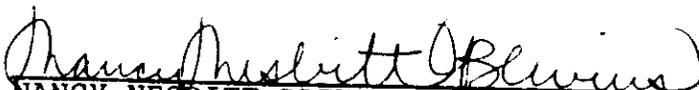
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under

and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

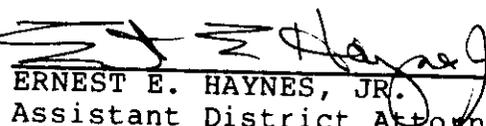
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney


RALPH GRABEL
Attorney for Defendants,
Arlis F. Grayson and Anna Grayson


ERNEST E. HAYNES, JR.
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Rogers County, Oklahoma

NNB/css

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

FILED

DEC - 9 1987

LDS OF TULSA, INC., et al.,)
)
Plaintiff,)
)
vs.)
)
SAM P. WALLACE, et al.,)
)
Defendant.)

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

No. 85-C-562-B

JUDGMENT

In accordance with the Stipulation of the Parties filed herein the 13th day of October, 1987, wherein the plaintiff St. Paul Mercury Insurance Company agreed to pay defendant Minoru Yamasaki & Associates, Inc.'s attorney's fees in the sum of \$34,000.00,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the court that the defendant Minoru Yamasaki & Associates, Inc. have and recover from the plaintiff St. Paul Mercury Insurance Company the sum of \$34,000.00.

Dated the 9th day of December, 1987.

Thomas R. Brett
United States District Judge

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

CAROLYN BERNICE HAYES,

Plaintiff,

vs.

KENNETH WILBURN MOORE,

Defendant,

and

THE NATIONAL LABOR RELATIONS
BOARD,

Garnishee.

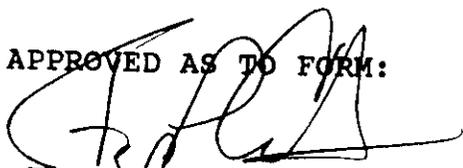
Case No. CV-87-C-745B

STIPULATION ^{OF} ~~TO~~ DISMISSAL

IT IS HEREBY stipulated by and between the parties to the above entitled action by their respective attorneys of record, that Plaintiff's action for garnishment be, and is, dismissed without prejudice to all parties.

Dated this 8TH day of December, 1987.

APPROVED AS TO FORM:

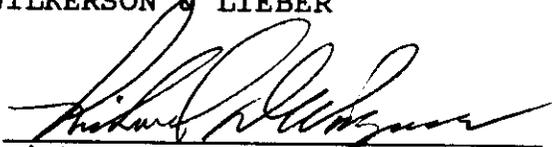

STEPHEN P. CORTRIGHT #1931
Attorney for Plaintiff
400 N. Main, Suite 4
Broken Arrow, Oklahoma 74012
(918)258-5541


PHIL PENNELL
Assistant U.S. Attorney
Northern District of Oklahoma
Attorney for Garnishee

DATED this 8th day of December, 1987.

Respectfully submitted,

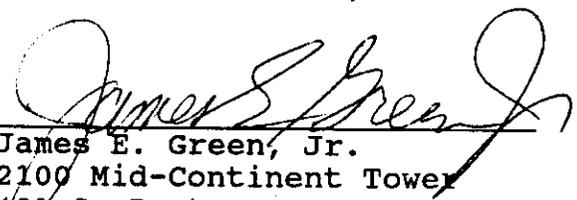
KNIGHT, WAGNER, STUART,
WILKERSON & LIEBER

By: 

Richard D. Wagner
P. O. Box 1560
Tulsa, Oklahoma 74101-1560
(918) 584-6457

ATTORNEYS FOR PLAINTIFF,
NORTH AMERICAN BUILDING
PRODUCTS, INC.

COMFORT, LIPE & GREEN, P.C.

By: 

James E. Green, Jr.
2100 Mid-Continent Tower
401 S. Boston
Tulsa, Oklahoma 74103
(918) 599-9400

ATTORNEYS FOR DEFENDANT,
TULOMA STEVEDORING, INC.

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

F I L E D

KEVIN ROSS LACEY,)
)
 Plaintiff,)
)
 v.)
)
 JUDGE JOE JENNINGS,)
 DAVID MOSS, et al,)
)
 Defendants.)

87-C-825-B

DEC - 8 1987

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

ORDER

Plaintiff's Motion to Proceed in forma pauperis was granted and Plaintiff's complaint was filed on the 6th day of November, 1987. Plaintiff brings this action pursuant to 42 U.S.C. §1983. The Complaint is now to be tested under the standard set forth in 28 U.S.C. §1915(d). If the Complaint is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the Plaintiff can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986). Applying the test to Plaintiff's claims, the Court finds that the instant action should be dismissed for the following reasons.

In his single count complaint, Plaintiff alleges that he was unlawfully detained without due process of law. Plaintiff's factual allegations show that he was arrested and held for at least 50 days on the basis of an arrest warrant issued in 1984. The allegations further show that underlying charge had been "disposed of and satisfied" previously on October 23, 1985.

Plaintiff's complaint does not, however, indicate the identity of the person or persons whose actions allegedly effected Plaintiff's unlawful detention. Damages may be awarded on the basis of 42 U.S.C. §1983 against "every person who ..." caused Plaintiff to be deprived of his Constitutional rights. Without an allegation identifying the "person" whose actions deprived the Plaintiff of his rights, Plaintiff's §1983 action must fail.

Construing the Complaint liberally, however, the Court notes that in the jurisdictional section of his complaint, Plaintiff does name as defendants Tulsa County District Judge Joe Jennings and Tulsa County District Attorney David Moss. As to District Judge, Joe Jennings, Plaintiff alleges only that Jennings presided over his case. As the Supreme Court stated in Stump v. Sparkman, 435 U.S. 349, 357, 98 S.Ct. 1099, 55 L.Ed.2d 33', reh'g denied, 436 U.S. 951, 98 S.Ct. 2862, 56 L.Ed.2d 795 (1978), judges cannot be held responsible to private parties in civil actions for their judicial acts however injurious may be those acts. Here, Defendant Jennings absolute immunity precludes a rational argument on the law and facts of Plaintiff's claim, and therefore Plaintiff's complaint against Defendant Jennings should be dismissed pursuant to 28 U.S.C. §1915(d). Yellen v. Cooper, No. 86-1430, slip opinion (10th Cir. September 9, 1987).

As to Tulsa County District Attorney David Moss, Plaintiff alleges only that Moss is the District Attorney who filed charges against Plaintiff. Where, as here, the alleged wrongful actions

of a prosecutor are "intimately associated with the judicial phase of the criminal process", the Supreme Court has recognized an absolute immunity attaches. Imbler v. Pachtman, 424 U.S. 409, 424, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). Thus, Defendant Moss is shielded by absolute immunity for his decision to file charges against Plaintiff, which precludes a rational argument on the law and facts against this Defendant. Imbler v. Pachtman, 424 U.S. at 431. Therefore, Plaintiff's claim against Defendant Moss should also be dismissed pursuant to 28 U.S.C. §1915(d). Yellen v. Cooper, supra.

Accordingly, it is the order of this Court that the Plaintiff's complaint be summarily dismissed as without merit pursuant to 28 U.S.C. §1915(d).

It is so ORDERED this 8 day of Dec, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

alleges defendant Moss permitted perjured testimony to be heard during preliminary hearing.

In the case of Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976), the Supreme Court held that the same public policy considerations underlying the common-law rule of absolute immunity for prosecutorial conduct, also applied to shield prosecutors from civil liability under 42 U.S.C. §1983. Pachtman, 424 U.S. at 427. Consequently, since the allegedly violative conduct was an aspect of Defendant Moss' role as an advocate, Defendant Moss is entitled to absolute immunity. Pachtman, 424 U.S. at 430-31. Thus, Plaintiff (Gleason) can make no rational argument on the law and facts against this Defendant and the action against Defendant Moss should be dismissed pursuant to 28 U.S.C. § 1915(d). Yellen v. Cooper, No. 86-1430, slip opinion (10th Cir. September 9, 1987).

In Count II of the Complaint, Plaintiff (Linebarger) realleges the same violative conduct of Defendant Moss, and further alleges Defendant Moss knowingly used evidence obtained through illegal search and seizure. In the Pachtman decision, the Supreme Court noted a possible distinction between a prosecutor acting in the role of an investigator, and a prosecutor acting in the role of an advocate. Where, as here, Defendant Moss was acting as an advocate during presentation of evidence as a part of the presentation of the state's case, he is immune from a civil suit for damages under §1983. Pachtman, 424 U.S. at 431. In light of the Defendant's absolute immunity,

Plaintiff (Linebarger) is unable to make a rational argument on the law and facts of his claim; and his complaint against Defendant Moss should be dismissed pursuant to 28 U.S.C. §1915(d). Yellen v. Cooper, supra.

Accordingly, it is the order of this Court that the Plaintiffs' complaint be summarily dismissed as without merit pursuant to 28 U.S.C. §1915(d).

It is so ORDERED this 8 day of Dec, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

COSEC INTERNATIONAL, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
v.)
)
MILTON C. BEAVERS, a/k/a)
CURTIS BEAVERS, an individual,)
)
Defendant.)

No. 87-C-647-B

O R D E R

Plaintiff sues Defendant on a promissory note allegedly signed by Defendant in the amount of \$18,500.00. Plaintiff contends Defendant is in default.

On September 10, 1982, Defendant filed a motion to dismiss the complaint alleging this court does not have subject matter jurisdiction or in personam jurisdiction over the Defendant.

In reviewing the file the Court notes Plaintiff failed to allege jurisdiction in its complaint and has failed to respond to the motion. Under Local Court Rule 14, an objection to the motion must have been filed within 10 days or failure to do so constitutes a waiver of objection and a confession of the matters raised. Therefore, the motion to dismiss is granted this 8th day of December, 1987. Costs are assessed against the Defendant as provided in Local Rule 6(e). If the Plaintiff is claiming an attorney's fee herein, such application should be made in keeping with Local Rule 6(f).



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

TJ's TRANSPORTATION, INC.,)
an Oklahoma corporation,)

Plaintiff,)

v.)

No. 87-C-626-B

TREESWEET MARKETING, INC., a)
Texas corporation, d/b/a)
TREESWEET COMPANIES,)

Defendants.)

J U D G M E N T

In keeping with the Order filed this date, Judgment is entered in favor of Plaintiff, TJ's Transportation, Inc., and against Defendant Treesweet Marketing, Inc., a Texas corporation, d/b/a Treesweet Companies, in the amount of Eleven Thousand Seven Hundred Seventy Seven and 30/100 Dollars (\$11,777.30), with interest thereon at the rate of 6.93% per annum from this date, and prejudgment interest at 6% from February 28, 1987 to this date.

DATED this 8th day of December, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC - 8 1987
CLERK
COURT

RANDY ARNOLD,

Plaintiff,

Vs.

JACK MCKENZIE, individually and offici-
ally as Chief of Police, City of Sapulpa;
ROGER MINER, individually and officially
as the City Manager, City of Sapulpa;
THE CITY OF SAPULPA; LANTZ McCLAIN,
individually and officially as District
Attorney of Creek County; BOARD OF
COUNTY COMMISSIONERS, CREEK COUNTY; and
BOARD OF COUNTY COMMISSIONERS, OKFUSKEE
COUNTY,

Defendants.

No. 87-C-955 B

ORDER OF DISMISSAL

NOW on this 17th day of December, 1987, upon the written application of the plaintiff, Randy Arnold, and the defendants, Jack McKenzie, individually and officially as Chief of Police, City of Sapulpa; Roger Miner, individually and officially as the City Manager, City of Sapulpa; and the City of Sapulpa, Creek County, Oklahoma, a municipal corporation, only, for a dismissal with prejudice as to the complaint of Randy Arnold in the above-encaptioned matter as to said defendants only, and all causes of action therein, and the Court having examined said application, finds that said parties have entered into a compromise settlement.

covering all claims involved in the complaint against said defendants and have requested the Court to dismiss said complaint with prejudice to any future action, as against said defendants. The Court being fully advised in the premises, finds said settlement is to the best interest of said plaintiff.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the complaint and all causes of action of the plaintiff, Randy Arnold, against the defendants, Jack McKenzie, individually and officially as Chief of Police, City of Sapulpa; Roger Miner, individually and officially as the City Manager, City of Sapulpa; and the City of Sapulpa, Creek County, Oklahoma, a municipal corporation, only, be and the same are hereby dismissed with prejudice to any future action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the parties aforementioned shall each bear their own separate attorney fees and court costs in the above-encaptioned matter.

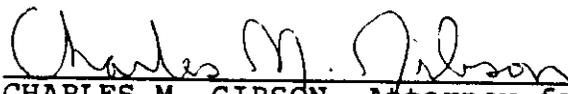
S/ THOMAS R. BRETT

THOMAS R. BRETT, JUDGE OF THE
UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:



CHADWICK SMITH, Attorney for Plaintiff



CHARLES M. GIBSON, Attorney for Defend-
ants, JACK MCKENZIE, individually and
officially as Chief of Police, City of
Sapulpa; ROGER MINER, individually and
officially as the City Manager, City
of Sapulpa; and THE CITY OF SAPULPA,
CREEK COUNTY, OKLAHOMA, a municipal
corporation

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

TRANSWESTERN MINING COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
VANNOY HILDEBRAND, et al.,)
)
Defendants.)

Case No. 86-C-477-B

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW Plaintiff Transwestern Mining Company and Defendants Jot Hartley, Clay Hartley, Phoenix Coal Company, Vinita Finance Company, and Vinita Flag & Apron Company, pursuant to Federal Rule of Civil Procedure 41, and hereby stipulate as to the dismissal with prejudice of all of the claims in this action of the foregoing Defendants, with each party to bear its own costs and attorneys' fees.

Dated this 4th day of December, 1987.

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: Richard H. Foster

Richard P. Hix
Richard H. Foster
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Plaintiff
Transwestern Mining Company

RORSCHACH, PITCHER, CASTOR
& HARTLEY

By: Jot Hartley
Jot Hartley
244 South Scrapper
Vinita, Oklahoma 74301-0492
(918) 256-7501

Attorneys for Defendants
Jot Hartley, Clay Hartley,
Phoenix Coal Company, Vinita
Finance Company and Vinita
Flag & Apron Company

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

F I L E D

DEC - 4 1987

JOHANNA R. MILES,

Plaintiff,

v.

WILLIAM P. SWIECH and
ALAN L. CIGICH,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

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

No. 87-C-781-B

O R D E R

This matter comes before the Court after removal from the District Court of Tulsa County, State of Oklahoma, asserting claims for relief arising out of an employment relationship between the Plaintiff and Defendants. Now pending before the Court for disposition are the Plaintiff's motion to remand and motion for Rule 11 sanctions, the Defendants' motion to dismiss Plaintiff's application for temporary restraining order/injunction and Plaintiff's motion for leave to file a second amended complaint. In addition, the Defendants have moved to quash certain subpoenas and moved for a protective order concerning discovery. As set forth below, the Court's decision on the Plaintiff's motion for remand makes all pending motions moot.

In support of the Plaintiff's motion to remand the Plaintiff asserts in both the briefs and oral argument that the instant action is purely of state concern between nondiverse parties. Defendants' removal was based on the assertion that the

Plaintiff's state complaint was in fact an age discrimination claim pursuant to 29 U.S.C. §1621 et seq., a Title VII claim pursuant to 42 U.S.C. §2000e et seq. and a claim for benefits under the Employment Retirement Income Security Act, 29 U.S.C. §1001 et seq ("ERISA"), dressed up as a state tortious interference claim.

The ambiguous claims in both the original state petition and the first amended complaint filed herein are ample justification for the Defendants' petition for removal. Under the Federal Rules of Civil Procedure the Defendants are entitled to be informed as to what they are being sued for and should not be required to decipher the Plaintiff's complaint to define possible statutory claims.

The Plaintiff's original petition filed in the state court styled Johanna R. Miles, Plaintiff v. William P. Swiech and Alan L. Cigich, No. CJ-87-5814, is an obviously disingenuous effort to allege a tortious interference with contract rights claim against fellow supervisory employees. The employer, Rockwell International Corporation ("Rockwell") is not a named defendant. The Plaintiff, through her counsel, asserts that her claim in the state court is solely one for tortious interference with contract rights, not one for alleged sexual discrimination under Title VII, age discrimination under the Age Discrimination in Employment Act ("ADEA"), and/or an ERISA claim.

It is clear from the petition filed that much of the Plaintiff's requested relief could not be granted without the

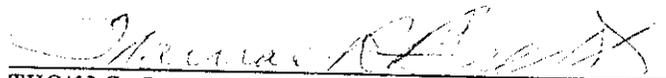
employer, Rockwell, being joined as a party. This obvious flaw in the Plaintiff's petition will certainly not escape the attention of the state court.

It is further clear that the Defendant employees were disclosed agents of Rockwell at the time alleged in Plaintiff's petition and it is probable that the Defendant supervisors were acting within the scope of their employment at the time. As cast, the original petition simply attempts to allege a state claim absent diversity of citizenship. Removal jurisdiction is to be determined from the allegations in the petition in the state court. Seneca Nursing Home v. Kansas State Bd. of Social Welfare, 490 F.2d 1324 (10th Cir. 1974), cert. denied, 95 S.Ct. 72, 419 U.S. 841, 41 L.Ed.2d 69; Duff v. Aetna Casualty & Surety Company, 287 F.Supp. 138 (N.D.Okla. 1968); and Aetna Insurance Company v. Chicago, Rock Island & P.R.Co., 127 F.Supp. 895 (D.C.Kan. 1955) aff'd 229 F.2d 584. If and when the Plaintiff alleges a claim involving federal constitutional or statutory relief or a claim with parties supporting diversity of citizenship jurisdiction, jurisdiction would then lie in the federal court, and then for the first time the case would be removable. As for now, the Plaintiff should proceed with her single dubious theory in the state court.

The Plaintiff, at least implicitly, has acknowledged the ill-conceived concept of the initially filed petition, and is now attempting to join the employer Rockwell by a second amended petition. Such request is denied because the court was without jurisdiction as explained above when the case was first removed.

The matter is hereby remanded to the District Court in and for Tulsa County, State of Oklahoma. The Plaintiff's motion to remand is hereby granted and motion for Rule 11 sanctions is denied. All other pending motions are moot.

IT IS SO ORDERED, this 14th day of December, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED
DEC 04 1987
DEC 01 1987

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

MONARCH INVESTMENTS, INC.)
d/b/a BASEBALL CARD COMPANY,)
an Oklahoma corporation,)
Plaintiff,)

vs.)

DAN J. SCHMIDER, individually)
and d/b/a BASEBALL CARDS, ETC.,)
Defendant and)
Third-Party Plaintiff,)

vs.)

BRIAN J. O'SHAUGHNESSY,)
Third-Party Defendant.)

No. 87-C-429-E

STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE

Following a settlement conference before Magistrate Jeffrey S. Wolfe on December 19, 1987, the Court finds that the parties have stipulated and agreed to the following in full settlement of this matter:

1. Plaintiff is to obtain possession and ownership of the one hundred (100) cases of 1987 Fler Vending baseball cards which are the subject of this suit and which are currently warehoused at Award Moving and Storage in Newberry Park, California.

2. Plaintiff is to obtain possession and ownership of the thirty (30) cases of 1987 Fleer Commemorative baseball cards which are the subject of this suit and which are currently warehoused at Award Moving and Storage Newberry, Park, California.

3. The funds (\$30,100.00) currently on deposit with the Court Clerk are to be released and disbursed to the parties as follows:

a. Twenty-seven thousand one hundred and no/100 dollars (\$27,100.00) jointly to plaintiff Monarch Investments, Inc. and plaintiff's counsel Hall, Estill, Hardwick, Gable, Golden & Nelson; and

b. Three thousand and no/100 dollars (\$3,000.00) to the defendant, Dan J. Schmider.

4. The defendant is to obtain possession and ownership of fifty (50) newly-manufactured, unopened cases of 1987 Donruss Wax baseball cards, which are to be delivered by plaintiff to defendant at 801 Los Angeles Avenue, Simi Valley, California 93065, on or by December 1, 1987. Prior to shipment, Mark S. Rains, as defendant's counsel, is to inspect the product for defects. The costs of shipping the product are to be paid by plaintiff.

5. All claims by and between the parties are to be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that plaintiff shall obtain possession and ownership of the one hundred

(100) cases of 1987 Fleer Vending baseball cards currently warehoused at Award Moving and Storage in Newberry Park, California.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff shall obtain possession and ownership of the thirty (30) cases of 1987 Fleer Commemorative baseball cards currently warehoused at Award Moving and Storage in Newberry Park, California.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the funds (\$30,100.00) currently deposited with the Court Clerk shall be released and disbursed to the parties as follows:

a. Twenty-seven thousand one hundred and no/100 dollars (\$27,100.00) jointly to plaintiff Monarch Investments, Inc. and plaintiff's counsel Hall, Estill, Hardwick, Gable, Golden & Nelson; and

b. Three Thousand and no/100 dollars (\$3,000.00) to defendant, Dan J. Schmider.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant is to obtain possession and ownership of fifty (50) newly-manufactured, unopened cases of 1987 Donruss Was baseball cards, which shall be delivered by plaintiff to defendant at 801 Los Angeles Avenue, Simi Valley, California 93065, on or by December 1, 1987; that prior to shipment, Mark S. Rains, as counsel for defendant, shall inspect the product for defects; and that the cost of shipping the product shall be paid by plaintiff.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all claims by and between the parties are hereby dismissed with prejudiced.

DATED: 4th day of December, 1987.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO CONTENT AND FORM:

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON

By: Claire V Eagan
Claire V. Eagan
Susan L. Jackson
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR PLAINTIFF AND
THIRD-PARTY DEFENDANT

ROSENSTEIN, FIST & RINGOLD

By: Mark S. Rains
J. Douglas Mann
Mark S. Rains
525 South Main, Suite 300
Tulsa, Oklahoma 74103
(918) 585-9211

ATTORNEYS FOR DEFENDANT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 04 1987

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ROY W. PLATT, JR. and)
BEVERLY A. PLATT,)
)
Defendants.)

CIVIL ACTION NO. 86-C-1009-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 4th day of December, 1987. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; and the Defendants, Roy W. Platt, Jr. and Beverly A. Platt, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Roy W. Platt, Jr., was served with Summons and Complaint on November 3, 1987.

The Court further finds that the Defendant, Beverly A. Platt, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning December 8, 1986, and continuing to January 12, 1987, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does

not know and with due diligence cannot ascertain the whereabouts of the Defendant, Beverly A. Platt, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known address of the Defendant, Beverly A. Platt. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as the subject matter and the Defendant served by publication.

On December 9, 1986, Roy W. Platt, Jr. filed a petition for relief under Chapter 13 of the Bankruptcy Code, Case No. 86-03396, Northern District of Oklahoma. On June 9, 1987, the Bankruptcy Court entered its Order Dismissing Case and Notice Thereof.

It appears that the Defendants, Roy W. Platt, Jr. and Beverly A. Platt, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Eleven (11), Block Forty-eight (48),
VALLEY VIEW ACRES THIRD ADDITION to the City
of Tulsa, Tulsa County, State of Oklahoma,
according to the recorded plat thereof.

The Court further finds that on September 22, 1975, the Defendants, Roy W. Platt, Jr. and Beverly A. Platt, 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 \$10,150.00, payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Roy W. Platt, Jr. and Beverly A. Platt, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated September 22, 1975, covering the above-described property. Said mortgage was recorded on September 26, 1975, in Book 4184, Page 625, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Roy W. Platt, Jr. and Beverly A. Platt, 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, Roy W. Platt, Jr. and Beverly A. Platt, are indebted to the Plaintiff in the principal sum of \$9,168.51, plus interest at the rate of eight and one-half percent (8.5%) per annum from November 1, 1985 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Roy W. Platt, Jr. in personam and Beverly A. Platt in rem, in the principal sum of \$9,168.51, plus interest at the rate of eight and one-half percent (8.5%) per annum from November 1, 1985 until judgment, plus interest thereafter at the current legal rate of 6.93 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 upon the failure of said Defendants, Roy W. Platt, Jr. and Beverly A. Platt, to satisfy the judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney

NNB/css

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

FILED

DEC -4 1987

WHAM,)
)
 Plaintiff,)
)
 v.)
)
 FINA OIL AND CHEMICAL COMPANY,)
)
 Defendant,)
)
 v.)
)
 OAKLAND PETROLEUM OPERATING)
 COMPANY, INC.,)
)
 Additional Party)
 to Counterclaim.)

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

No. 86-C-818-B

O R D E R

This matter comes before the Court on Plaintiff's motion for summary judgment on its request for specific performance in its first cause of action and on Defendant's motion for judgment¹ concerning Plaintiff's second, third and fourth causes of action.

In January 1985, Fina Oil and Chemical Company (formerly American Petrofina Co. of Texas) ("Fina") offered for sale "its interest in certain oil properties together with its interest in all wells, property and equipment." In a document entitled "Procedures, terms and conditions of offering," it is stated "Fina agrees to assign the leasehold interests described on the

¹ Defendant's motion is styled Motion for Judgment on the Pleadings. However, Defendant requests and the Court chooses to treat it as a motion for partial summary judgment.

attached Exhibit A." Exhibit A has lists of properties identified by a lease number, a lease name (often a well name), the name of an operator, the county and state of the property, the field name and a percentage entitled "W.I." and a percentage entitled "R.I." No other limitations are on this document. No legal description of the property is included.

In March 1985, Oakland Petroleum Operating Company's ("Oakland") bid to purchase the offered leases for \$510,000 was accepted. Oakland paid Fina the required 10% of the purchase price by cashier's check. The effective date of the sale was to be January 1, 1985. Subsequently, Oakland received Fina's consent to assign all Oakland's interest in the purchased leases to Wham, an Oklahoma general partnership. The parties agreed at the hearing before this Court on December 3, 1987, that Wham is the assignee of Oakland's interest concerning the properties being litigated in this lawsuit and therefore Wham stands in the shoes of Oakland. Further, it was agreed by counsel for Wham, that Wham is bound by the agreement made between Oakland and Fina.

Wham has filed this diversity action suit contending both Wham and Oakland have performed their obligations under the agreement except performance which has been refused by Fina. Wham's complaint contains four causes of action basically requesting:

1. Specific performance or judgment in the amount of \$1,000,000.00;
2. Unascertained amount for bad faith failure to

transfer;

3. Unascertained amount for Fina's breach of fiduciary duty to Wham; and
4. Punitive damages of \$500,000 for bad faith breach.

Fina contends Oakland understood prior to paying the 10% of the purchase price that it would receive an assignment "insofar only as such leases covered the proration units and the producing formations." Fina claims Wham is "estopped to deny that interpretation since Fina was prejudiced by its rejection of other bids." Fina also requests rescission based on mutual mistake of the agreement. Further, Fina argues there was no meeting of the minds of Fina and Oakland.

Plaintiff's motion for summary judgment on its request for specific performance is overruled. The Court finds there are genuine issues of material fact for trial under Fed.R.Civ.P. 56. Both parties agree, if Plaintiff is entitled to recover, Plaintiff is entitled to specific performance. However, a trial is necessary to determine what property is to be conveyed. After these issues are determined, another trial may be necessary for determination of an accounting and damages.

The Court sustains Defendant's motion for judgment on Plaintiff's second, third and fourth causes of action. This action is clearly one for breach of contract. Under Oklahoma law bad faith breach of contract claims have been recognized in the insurance industry. McCorkle v. Great Atlantic Ins. Co., 637 P.2d 583 (Okla. 1981). However, even if we were to adopt a tortious breach of contract cause of action for cases concerning

lease purchases, this case falls within a recognized exception. Where there is a legitimate dispute a bad faith breach claim will not lie. Manis v. Hartford Fire Insurance, 680 P.2d 760 (Okla. 1984). Based on the record before us, the Court finds there is a legitimate dispute. Summary judgment on this issue is sustained.

Further, there is no fiduciary duty between these parties. Although Wham does cite several cases which explain the general rule that a "vendor is trustee of the land for the purchaser, and the purchaser is trustee of the purchase money for the vendor," Dunn v. Yakish, 10 Okla. 388, 61 P.2d 926 (Okla. 1900), Leedy v. Ellis County Fair, 110 P.2d 1099 (Okla. 1941), the cases are inapplicable to the cause of action Wham tries to assert herein. Summary judgment is sustained for Defendant on Plaintiff's third cause of action.

Finally, the Court finds punitive damages are not recoverable in this contract case. 23 Okl.St. Ann. §9; Burton v. Juzwik, 524 P.2d 16 (Okla. 1974). The cases cited by Plaintiff are inapplicable herein. Judgment for Defendant on Plaintiff's fourth cause of action is hereby sustained.

Nonjury trial is set for March 28, 1988, at 9:00 A.M.

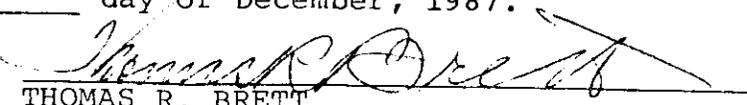
Parties are to exchange witness lists by February 2, 1988.

Discovery cut-off is February 16, 1988.

The parties are to file an agreed pretrial order and to exchange pretrial numbered exhibits by March 14, 1988.

Proposed Findings of Fact and Conclusions of Law along with any desired trial brief and motions in limine are to be filed by March 21, 1988.

IT IS SO ORDERED, this 4th day of December, 1987.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

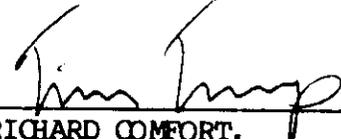
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TRW, INC., REDA PUMP DIVISION,)
)
 Plaintiff,)
)
 vs.) Case No. 81-C-77-B
)
 S & N PUMP COMPANY, INC,)
)
 Defendant.)

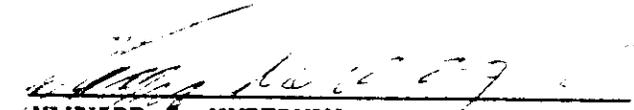
JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, TRW, Inc., Reda Pump Division, and Defendant S & N Pump Company, Inc., and the parties having compromised all issues herein, stipulate and agree that Plaintiff's cause be and the same is hereby dismissed with prejudice against Defendant S & N Pump, Inc., and that Defendant's Counter-Claim and the same is hereby dismissed with prejudice against TRW, Inc., Reda Pump Division.

Done and dated this 12 day of December 1987.



RICHARD COMFORT,
Attorney for Plaintiff, TRW, Inc.,
Reda Pump Division



MAYNARD I. UNGERMAN,
Attorney for S & N Pump Company, Inc.

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of DECEMBER, 1987, true and correct copies of the foregoing document were mailed, postage prepaid, to all counsel of record herein.



RICHARD COMFORT

LAW OFFICES
UNGERMAN,
CONNER &
LITTLE

MIDWAY BLDG.
2727 EAST 21 ST.
SUITE 400

P. O. BOX 2099
TULSA, OKLAHOMA
74101

B14/24

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

FILED

DEC - 4 1987

UNIT RIG & EQUIPMENT CO., INC.,)
a Texas corporation,)

Plaintiff,)

vs.)

GENERAL G.M.C., INC., a)
Delaware corporation,)

Defendant.)

Clerk
COURT

No. 87-C-806-B

JUDGMENT

NOW, on this 4th day of December, 1987, the above-styled and numbered cause comes on before me, the undersigned Judge of the above-entitled Court pursuant to the parties' stipulation and confession of judgment.

Plaintiff appears by and through its attorneys of record, Blackstock Joyce Pollard & Montgomery, by Brian J. Rayment. Defendant appears by and through its attorneys of record, Sneed, Lang, Adams, Hamilton & Barnett, by James C. Lang.

The Court, upon due consideration, finds that this Court has jurisdiction over the subject matter hereof and the parties hereto, and that judgment should be entered for plaintiff as prayed for in plaintiff's Complaint.

IT IS, THEREFORE, ORDERED that plaintiff, Unit Rig & Equipment Co., Inc., have and recover judgment against the defendant, General G.M.C., Inc., in the principal sum of \$59,369.80, accrued interest through October 4, 1987, in the

amount of \$22,852.61, interest on the principal sum at the rate of 18% per annum from October 4, 1987, through the date of payment, and the costs of this action, accrued and accruing, including a reasonable attorney's fee of \$7,500.00.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVAL AS TO CONTENT AND FORM:

Brian J. Rayment
Brian J. Rayment
Attorney for Plaintiff

James C. Lang
James C. Lang
Attorney for Defendant

David B. Rosenbaum
David B. Rosenbaum
Attorney for Defendant

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

FILED

DEC -4 1987

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

JOHN C. OXLEY; JOHN T. OXLEY;
BOCA POLO, INC., a Nevada
corporation; CAROL ANNE
OXLEY; THOMAS E. RAINS; and
RUSSELL H. HARBAUGH, JR. as
Trustee for four separate
trusts expressly created
and existing under the
law of the State of Oklahoma,

Plaintiffs,

vs.

Case No. 86-C-1043B

DELHI GAS PIPELINE
CORPORATION, a Delaware
corporation; TXO GAS
MARKETING CORPORATION,
a Delaware corporation;
and TEXAS OIL AND GAS
CORPORATION, a Delaware
corporation,

Defendants.

STIPULATION OF DISMISSAL
WITH PREJUDICE PURSUANT TO RULE
41(a)(1)

The above captioned Plaintiffs and Defendants who
constitute all of the parties who have appeared in this
action, hereby stipulate pursuant to Fed. R. Civ. P. 41(a)(1)
to dismiss the above captioned action with prejudice.

J. DAVID JORGENSON
WADE A. HOEFLING
GEORGE H. LOWERY

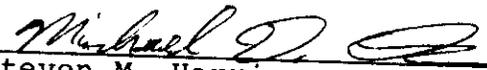
By: Wade A. Hoefling
Wade A. Hoefling, OBA# 4263

CONNER & WINTERS
2400 1st National Tower
Tulsa, Oklahoma 74103

(918) 586-8961

ATTORNEYS FOR PLAINTIFFS,
John C. Oxley, John T. Oxley,
Boco Polo, Inc., Carol Anne
Oxley, Thomas E. Rains and
Russell H. Harbaugh as Trustee
for four separate Trusts
expressly created and existing
under the law of the State
of Oklahoma

DOYLE & HARRIS


For Steven M. Harris
William P. McGinnies
P.O. Box 1679
Tulsa, Oklahoma 74101

(918) 582-0090

ATTORNEYS FOR DEFENDANTS,
Delhi Gas Pipeline Corporation,
a Delaware corporation; TXO
Gas Marketing Corporation;
and Texas Oil & Gas Corporation,
a Delaware Corporation

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

FILED

DEC - 4 1987

JOHANNA R. MILES,

Plaintiff,

v.

WILLIAM P. SWIECH and
ALAN L. CIGICH,

Defendants.

)
)
)
)
)
)
)
)
)
)

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

No. 87-C-781-B

O R D E R

This matter comes before the Court after removal from the District Court of Tulsa County, State of Oklahoma, asserting claims for relief arising out of an employment relationship between the Plaintiff and Defendants. Now pending before the Court for disposition are the Plaintiff's motion to remand and motion for Rule 11 sanctions, the Defendants' motion to dismiss Plaintiff's application for temporary restraining order/injunction and Plaintiff's motion for leave to file a second amended complaint. In addition, the Defendants have moved to quash certain subpoenas and moved for a protective order concerning discovery. As set forth below, the Court's decision on the Plaintiff's motion for remand makes all pending motions moot.

In support of the Plaintiff's motion to remand the Plaintiff asserts in both the briefs and oral argument that the instant action is purely of state concern between nondiverse parties. Defendants' removal was based on the assertion that the

Plaintiff's state complaint was in fact an age discrimination claim pursuant to 29 U.S.C. §1621 et seq., a Title VII claim pursuant to 42 U.S.C. §2000e et seq. and a claim for benefits under the Employment Retirement Income Security Act, 29 U.S.C. §1001 et seq ("ERISA"), dressed up as a state tortious interference claim.

The ambiguous claims in both the original state petition and the first amended complaint filed herein are ample justification for the Defendants' petition for removal. Under the Federal Rules of Civil Procedure the Defendants are entitled to be informed as to what they are being sued for and should not be required to decipher the Plaintiff's complaint to define possible statutory claims.

The Plaintiff's original petition filed in the state court styled Johanna R. Miles, Plaintiff v. William P. Swiech and Alan L. Cigich, No. CJ-87-5814, is an obviously disingenuous effort to allege a tortious interference with contract rights claim against fellow supervisory employees. The employer, Rockwell International Corporation ("Rockwell") is not a named defendant. The Plaintiff, through her counsel, asserts that her claim in the state court is solely one for tortious interference with contract rights, not one for alleged sexual discrimination under Title VII, age discrimination under the Age Discrimination in Employment Act ("ADEA"), and/or an ERISA claim.

It is clear from the petition filed that much of the Plaintiff's requested relief could not be granted without the

employer, Rockwell, being joined as a party. This obvious flaw in the Plaintiff's petition will certainly not escape the attention of the state court.

It is further clear that the Defendant employees were disclosed agents of Rockwell at the time alleged in Plaintiff's petition and it is probable that the Defendant supervisors were acting within the scope of their employment at the time. As cast, the original petition simply attempts to allege a state claim absent diversity of citizenship. Removal jurisdiction is to be determined from the allegations in the petition in the state court. Seneca Nursing Home v. Kansas State Bd. of Social Welfare, 490 F.2d 1324 (10th Cir. 1974), cert. denied, 95 S.Ct. 72, 419 U.S. 841, 41 L.Ed.2d 69; Duff v. Aetna Casualty & Surety Company, 287 F.Supp. 138 (N.D.Okla. 1968); and Aetna Insurance Company v. Chicago, Rock Island & P.R.Co., 127 F.Supp. 895 (D.C.Kan. 1955) aff'd 229 F.2d 584. If and when the Plaintiff alleges a claim involving federal constitutional or statutory relief or a claim with parties supporting diversity of citizenship jurisdiction, jurisdiction would then lie in the federal court, and then for the first time the case would be removable. As for now, the Plaintiff should proceed with her single dubious theory in the state court.

The Plaintiff, at least implicitly, has acknowledged the ill-conceived concept of the initially filed petition, and is now attempting to join the employer Rockwell by a second amended petition. Such request is denied because the court was without jurisdiction as explained above when the case was first removed.

The matter is hereby remanded to the District Court in and for Tulsa County, State of Oklahoma. The Plaintiff's motion to remand is hereby granted and motion for Rule 11 sanctions is denied. All other pending motions are moot.

IT IS SO ORDERED, this 11th day of December, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

DEC - 4 1987

ADAM WAYNE STERLING,)
)
 Petitioner,)
)
 v.)
)
 SHERIFF OF TULSA COUNTY,)
 OKLAHOMA,)
)
 Defendant.)

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

86-C-665-B

ORDER

Petitioner Adam Wayne Sterling's application for a writ of habeas corpus pursuant to §2254 is before the court for determination. Petitioner's application states that he is incarcerated in the Tulsa County Jail under charges filed against him the District Court of Tulsa County in Cases No. CRF-85-2738 and CRM-85-437. Petitioner seeks habeas corpus relief on numerous grounds, including denial of his right to a speedy trial, improper revocation of bond amounting to a denial of bond, failure of the Tulsa County District judges to disqualify themselves from the trial of his case, and conspiracy to violate his civil and constitutional rights.

Notwithstanding the above, the petitioner's application and attached narrative statement and court records also state that he entered voluntary guilty pleas in Tulsa County District Court Case Nos. CRF-85-2738 and CRM-85-437, and was sentenced in the state district court on the misdemeanor counts of obtaining cash by bogus check and defrauding a rental unit.

Title 28 U.S.C. §§2254(a) and (b) provide:

- (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain

an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

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

A review of the district court transcript in Case Nos. CRF-85-2738 and CRM-85-437 shows that the judge advised the petitioner of his rights, petitioner pled guilty to the misdemeanor charges, and the judge found him guilty of each count and sentenced him to six months on each count in the Tulsa County Jail (Tr. 3). However, the judge then gave him credit for time served and released him into federal custody. Thus, he is no longer in State custody for the convictions and cannot meet the threshold consideration required to challenge the constitutionality of the convictions.

The transcript of those proceedings reveals the following colloquy between petitioner and the judge:

THE COURT: How do you plead, Mr. Sterling, to these amended charges? They are reduced down to misdemeanors.

THE DEFENDANT: Okay. I waive filing of the amended Information and plead guilty to the misdemeanor charges in CRF-85-2738, which are now misdemeanors, two counts, and the other one is CRM-85-0437. I plead guilty on all the charges.

. . . .

THE COURT: Are you ready for immediate sentencing in both of these?

THE DEFENDANT: Yes, sir.

THE COURT: And the recommendation was six months; is that correct?

MR. BRANDON: Yes. Six months to do in the County Jail.

THE COURT: I will find the defendant guilty of each count and sentence the defendant to six months in each count in the Tulsa County Jail and I will suspend -- well, no, no. I will just give the defendant time for time served. He will get the benefit for the time served and that should release him automatically at this time, but I understand there is a federal hold on him.

MR. BRANDON: Yes, sir.

THE COURT: From the judgment and sentence in each case the defendant is entitled to file an appeal. He has ten days from this date to file written application with this Court to have the judgment and sentences withdrawn and ninety days from this date to file writ of certiorari with the Court of Criminal Appeals.

THE DEFENDANT: I will waive all that.

THE COURT: Waive your right to appeal? Very well. ...

. . . .

THE COURT: ... That will be the order.

An application for federal habeas corpus relief will not be granted unless the applicant has exhausted the remedies available in the state courts. A habeas petitioner is not deemed to have exhausted his state remedies if there is any available state procedure by which he has the right to bring his claim before a state court. 28 U.S.C. §§2254(b) and (c).

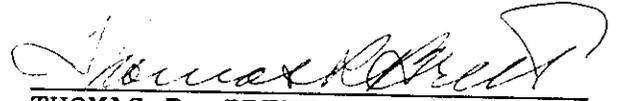
It appears that petitioner has not sought a direct appeal, nor has he availed himself of the post-conviction remedies available under the Post-Conviction Procedures Act. 22 O.S. §§1080-1088. Petitioner cannot obtain federal review of his application for habeas corpus relief unless it appears that he has first exhausted his available state remedies.

Petitioner claims that circumstances exist which relieve him of his duty to first exhaust his state remedies. An exception to the exhaustion rule, however, is made "only if there is no opportunity to obtain redress in state court or if the corrective process is so clearly deficient as to render futile any effort to obtain relief". Duckworth v. Serrano, 454 U.S. 1, 102 S.Ct. 18, 70 L.Ed.2d 1 (1981). As petitioner has shown no set of circumstances which would entitle him to an exception from the exhaustion rule, the court finds petitioner's application for a writ of habeas corpus should be dismissed.

In conclusion, the court finds from the face of petitioner's application and the trial records that petitioner is not entitled to relief in this court. It is therefore Ordered that this

application be dismissed pursuant to Rule 4 of the Rules
Governing Section 2254 cases.

It is so Ordered this 17th day of December, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

F I L E D

DEC 04 1987

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

JIMMIE J. JOHNSON,
Plaintiff,

vs.

CASE NO. 86-C-183 E

HYDRO-AIR ENGINEERING, INC.,
LIBBY OWENS FORD COMPANY,
SPERRY CORPORATION and
VICKER'S, INC., d/b/a
SPERRY VICKERS, d/b/a
SPERRY VICKERS CORP.,

Defendants,.

WAUSAU UNDERWRITERS INSURANCE
COMPANY,

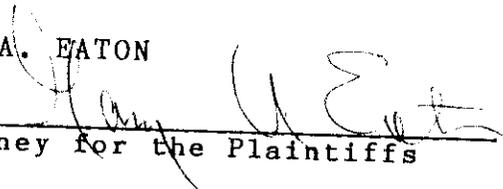
Intervenor.

JUDGMENT

THIS MATTER comes on before the Court on the Motion for Summary Judgment of the Defendants, Libby Owens Ford Company, Sperry Corporation, and Vickers, Inc. as against the Plaintiff, Jimmie J. Johnson, and the Intervenor, Wausau Underwriters Insurance Company. The Plaintiff and the Intervenor have declined to respond or oppose the Motion of said Defendants. Court proceeds to examine the affidavits and testimony presented by said Defendants in support of their Motion for Summary Judgment and being fully advised in the premises finds that there is no genuine issue as to any material fact and that the moving Defendants are entitled to a judgment as a matter of law. The Motion for Summary Judgment of said Defendants is therefore sustained by the Court.

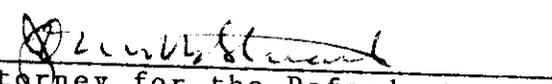
APPROVALS:

GARY A. EATON



Attorney for the Plaintiffs

JOHN B. STUART



Attorney for the Defendant

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

SAMUEL MORGAN, a minor, and MONICA
DEE MORGAN, parent and next friend
of Samuel Morgan,

Plaintiff,

v.

SEARS, ROEBUCK & CO., a New York
corporation, HAMILTON BEACH, INC.,
and WALTER KIDDE & COMPANY, a
Delaware corporation,

Defendants.

No. 86-1088-C

JOURNAL ENTRY OF JUDGMENT

FILED
DEC 9 1987
U.S. DISTRICT COURT

NOW on this 23rd day of November, 1987, the above-captioned case comes on for hearing before me, the Honorable H. Dale Cook, Chief Judge of the United States District Court for the Northern District of Oklahoma. The Plaintiff, Samuel Morgan, a minor, appears by and through his parent and next friend, Monica Dee Morgan, Monica Dee Morgan appears individually, and both Plaintiffs appear by and through their attorneys of record, Timothy Gilpin and Richard Marrs. The Defendants, Sears, Roebuck & Company and Hamilton Beach, Inc., appear by and through their attorney of record, Gregory D. Nellis. Both parties announce that a settlement had been reached in the matter, a jury trial was waived, evidence was presented through the testimony of Monica Dee Morgan, representations were made by counsel for the Plaintiffs and Defendants, and the Court being fully advised in the premises, finds that the Plaintiffs have sustained the allegations of their complaint and are entitled to judgment. The Court further finds that Monica Dee Morgan, as parent and next friend of Samuel Morgan, a minor, has knowingly, willingly, and voluntarily caused this action to be prosecuted and has been advised of the consequences thereof. The Court therefore finds that the Plaintiff, Samuel Morgan, a minor, receive judgment in his favor and against the Defendants in the amount of Sixty-five Thousand and 00/100 dollars (\$65,000).

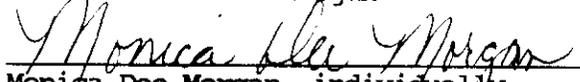
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by this Court, that the Plaintiff on his cause of action contained in the complaint herein have and recover from the Defendants the total sum of Sixty-Five Thousand and 00/100 (\$65,000) dollars. The Court further finds that the sum of Fifteen Thousand Forty-Three and 08/100 (\$15,043.08) dollars has been expended as costs in the prosecution of this matter. There also exists a medical/hospital lien which has been compromised to the amount of Fourteen Thousand and 00/100 (\$14,000) dollars. Further, the Court finds that a contingency fee contract existed between the Plaintiffs and their attorneys and as a result the attorneys are entitled to attorneys' fees in the amount of Seventeen Thousand Four Hundred Eighty-Four and 92/100 (\$17,484.92) dollars. The Court further finds that this leaves a balance of Eighteen Thousand Four Hundred Seventy-Two and 00/100 (\$18,472.00) dollars, which being in excess of One Thousand and 00/100 (\$1,000.00) dollars shall be deposited as required by Title 12 O.S. § 83 in a trust account for the benefit of Samuel Morgan.

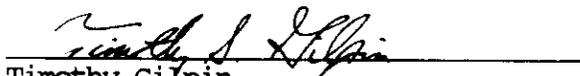
(Signed) H. Dale Cook

The Honorable H. Dale Cook
Chief Judge for the United States District
Court for the Northern District of
Oklahoma

APPROVED AS TO FORM AND CONTENT:


Monica Dee Morgan, parent and next
friend of Samuel Morgan


Monica Dee Morgan, individually


Timothy Gilpin
Attorney for Plaintiffs


Gregory D. Nellis
Attorney for Defendant

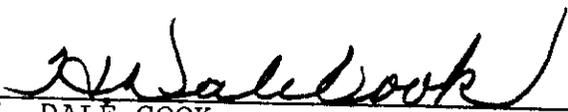
different statute of limitation. Therefore for practical considerations and uniformity of application, the court held that all §1983 claims will be governed by the same limitation period regardless of the common-law tort allegedly violated.

In Oklahoma, 12 O.S. §95(3) is the applicable statutory period for all §1983 claims. This is the most analogous Oklahoma statute providing for a two-year limitation period for injury to rights of another, and it has been interpreted by the Tenth Circuit as characteristic of an action for injury to personal rights. See Abbitt v. Franklin, 731 F.2d 661 (10th Cir. 1984). Plaintiff relies on Shah v. Halliburton Co., 627 F.2d 1055 (10th Cir. 1980) in support of a three-year statutory period for §1981 claims. The Court finds that Shaw v. Halliburton is no longer controlling in view of the subsequent opinions of Wilson v. Garcia, supra, and Goodman v. Lukens Steel Co., 107 S.Ct. 2617 (1987).

The Court has independently reviewed the pleadings, briefs and applicable law and concludes that the Report and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that the motion to dismiss brought by the defendants is hereby GRANTED.

IT IS SO ORDERED this 3rd day of December, 1987.


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

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

DONALD SCOTT and ADA SCOTT
husband and wife; MICHAEL S.
BEARD and MARSHA S. BEARD,
husband and wife; BRUCE JOLE
and SHARON JOLE, husband and
wife; and KAREN SCOTT a single
person.

Plaintiffs,

vs.

No. 87-C-739-B ✓

DEC 3 1987 m

R. LEE TUCKER,

Defendant.

ORDER FOR DISMISSAL

Now before the Court for its consideration is the motion of the parties to dismiss the above entitled matter by stipulation and agreement. The Court, upon reviewing the files and records in this matter, finds that the motion to dismiss of the parties is hereby granted.

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

Thomas P. Drost
UNITED STATES DISTRICT JUDGE

APPROVED:

Michael G. Beard
MICHAEL G. BEARD
Attorney for Plaintiffs

Earl P. Daniel III
EARL P. DANIEL III
Attorney for Defendant

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

FILED

ALBERT BAKER,

Plaintiff,

vs.

BURLINGTON NORTHERN RAILROAD,

Defendant.

DEC 03 1987

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

No. 86-C-606-E

ORDER

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

IT IS SO ORDERED this 3rd day of December, 1987.

James O. Ellison

James O. Ellison
United States District Judge

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

WILLIAM CHRIS BOHANNON, a minor, by)
 his next friend, MICKEY BOHANNON,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES F. HUBBARD, BANETHA BUCHANAN,)
 CATHY WOODRELL, KIM HEFLEY, JOHN FOLKS,)
 RALPH TEAGUE, LLOYD GRAHAM, and)
 JENNINGS DEPENDENT SCHOOL SYSTEM,)
)
 Defendants.)

No. 85-C-993-C

FILED

DEC 3 1987

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

JOURNAL ENTRY OF COMPROMISE SETTLEMENT
AND DISMISSAL WITH PREJUDICE

This cause came on for hearing pursuant to an agreement of the parties on the 20th day of November, 1987, at which time the minor Plaintiff, William Chris Bohannon, appeared by and through his father and next friend, Mickey Bohannon, and by his attorney of record, Larry L. Oliver, and Defendants Banetha Buchanan, Kim Hefley and Cathy Woodrell appeared by and through their attorneys of record, Richards, Paul & Wood by Nancy Jane Siegel and Ronald D. Wood.

Both Plaintiff and Defendants waived the right to trial by jury, and all parties announced ready to proceed. The Court then heard the testimony of Mickey Bohannon, father and next friend of the minor Plaintiff, and Larry L. Oliver, and being fully advised in the premises, finds as follows:

1. This action was instituted by the Plaintiff, pursuant to 42 U.S.C.S. §§ 1983 and 1985, for violations of the minor

Plaintiff's constitutional rights during his attendance at Jennings Elementary School in the 1984-85 school year.

2. The Defendants have expressly denied liability to the minor Plaintiff for any wrongdoing or constitutional violation as alleged by the Plaintiff.

3. The Court finds that the parties hereto have entered into an agreement to settle this doubtful and disputed claim and to buy peace. More specifically, the parties have agreed as follows, to-wit:

Minor Plaintiff William Chris Bohannon, by and through his father and next friend, Mickey Bohannon, has agreed to accept, and Defendants have agreed to pay to the minor Plaintiff, by and through his father and next friend, Mickey Bohannon, the sum of TWENTY-ONE THOUSAND DOLLARS (\$21,000).

4. The Court further finds that of the entire settlement amount, Larry L. Oliver, attorney for minor Plaintiff, William Chris Bohannon, shall be paid directly, and the Court shall approve payment to him in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000) for legal expenses incurred in the prosecution of this lawsuit; and the minor Plaintiff, by and through his father and next friend, Mickey Bohannon, shall be paid the remaining SIX THOUSAND DOLLARS (\$6,000) for medical expenses incurred to date arising from the allegations of injury to the minor Plaintiff as more specifically set out in the Complaint.

5. The Court further finds that the provisions of 12 O.S. §83 have thus been satisfied.

6. The Court incorporates herein the testimony given in this cause on the 20th day of November, 1987, as if set forth verbatim herein, and further incorporates and reiterates herein

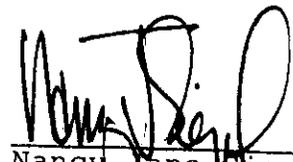
the findings and conclusions made by the Court during said hearing.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the above and foregoing compromise settlement is in the best interests of the minor Plaintiff, William Chris Bohannon, and the Defendants, and that the findings hereinabove made are hereby adopted, and the above styled and numbered cause of action and Complaint is dismissed with prejudice to a refiling.


United States District Judge
Magistrate

APPROVED AS TO FORM AND CONTENT:


Larry L. Oliver
Attorney for Plaintiff


Nancy Jane Siegel
Attorney for Defendants

FILED

DEC 03 1987

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

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

TELEVISION COMMUNICATIONS, INC.,
a Michigan corporation, Plaintiff,

v.

WILSA TV 41, a/k/a TV 41, an
Oklahoma Joint Venture composed
of Satellite Television Systems,
an Oklahoma Limited Partnership
composed of Satellite Syndicated
Systems, Inc., its general
partner, and Green Country
Television, Inc., an Oklahoma
corporation; and LEONARD W.
ANDERSON, individually and
d/b/a Green Country Television,
Inc., Defendants.

No. 86-C-98-E

ORDER OF DISMISSAL

Upon application of the Plaintiff herein, the above-
captioned case is hereby dismissed without prejudice,
all parties to bear their own costs.

DATED this 3rd day of December, 1987.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

the claim on the premise that the occurrence was not a covered loss.

From a review of the petition, plaintiffs have plead two distinct causes of action. The first claim is for breach of contract, seeking recovery of the policy limits. The second claim is for bad faith breach, seeking punitive damages. Plaintiffs also seek damages for their alleged emotional distress. Although plead by plaintiffs as a third cause of action, emotional distress is an element of damages under the tort of bad faith breach, rather than an independent cause of action.

In his motion, defendant Thomas Abbott seeks dismissal pursuant to Rule 12(b)(6) asserting that plaintiffs have failed to state a cause of action against him since he was not a party to the insurance contract. The contract was entered into between defendant State Farm and plaintiffs Claude and Linda Rhine.

It is axiomatic that defendant Thomas Abbott could not be held liable under plaintiffs' first cause of action for breach of contract since he was not a party to the contract. An insurance agent, acting on behalf of a disclosed carrier principal in procuring insurance policies for a client, does not become a party to the insurance contract and may not be liable for damages caused by the insurance company. See Emerson, Ltd. v. Max Wolman Co., 388 F.Supp. 729, 735 (D.D.C. 1975) aff'd 530 F.2d 1093 (D.C. Cir. 1976). Defendant State Farm is solely liable under the contract. Id. See also, Appleman's Insurance Law and Practice, §8832 at p.30.

Similarly the Oklahoma Supreme Court has held that agents for the insurer cannot be held liable under the tort of bad faith breach if it is determined that the agent was not a party to the contract. Timmons v. Royal Globe Insurance Co., 653 P.2d 907, 912 (Okla. 1982).

In their motion to remand, plaintiffs characterize their petition as having stated a claim for intentional infliction of emotional distress. Although Oklahoma courts recognize the tort of intentional infliction of emotional distress as an independent cause of action, plaintiffs did not allege sufficient facts to state such a claim. See e.g. Breeden v. League Services Corp., 575 P.2d 1374 (Okla. 1978). The Court must review the sufficiency of a petition by the allegations contained therein, not by recharacterization of the language contained with a motion. Therefore defendant Thomas Abbott's motion to dismiss is hereby granted.

The Court will next consider plaintiffs' motion to remand. On August 6, 1987, defendant State Farm filed its petition for removal asserting therein that it was "the actual and only true defendant" in the case seeking removal. State Farm asserted that the Court had subject matter jurisdiction under diversity of citizenship. State Farm alleged that Thomas Abbott who was joined as a party-defendant by plaintiffs in state court was not a proper party under the allegations as contained in the state court petition, and therefore the naming of this improperly

joined defendant did not defeat removal or subject matter jurisdiction.

As a general rule, the right of removal is decided by the pleadings, viewed at the time the petition for removal is filed. See, Jacks v. Torrington Co., 256 F.Supp. 282, 284 (D.S.C. 1966). However, as an exception to this general rule of law, it has been held that where the complaint failed to state a cause of action against the sole resident defendant, joinder of such defendant is to be regarded as fraudulent joinder for the purpose of defeating the jurisdiction of the court. Panamerican Pharmaceutical Inc. v. Sherman Laboratories, Inc., 293 F.Supp. 713 (D.Puerto Rico 1968). As stated in Jacks, supra at 285:

The issue is one of fraud in a legal sense and in no way involves the integrity of plaintiffs or the professional conduct of their counsel. The issue is, rather, whether the futile joinder of a party against whom no valid claim for relief is stated will be permitted to defeat diversity jurisdiction which would otherwise exist against the remaining defendant.

In denying the motion to remand, the court added that in the absence of allegations setting forth violation of any legal duty, joinder of that defendant is improper and does not defeat removal. The court also noted that "[i]f an action is removable as of the time the petition for removal is filed, subsequent action by plaintiff cannot defeat removability ... and the case is not to be remanded ..." Id. at 287.

Therefore, since this Court has concluded that no legally cognizable cause of action was set forth in the petition against

Thomas Abbott, removal was proper; and therefore, plaintiff's motion to remand to state court is denied.

WHEREFORE, premises considered, it is the Order of the Court that the motion of defendant Thomas Abbott is GRANTED.

It is the further Order of the Court that the motion of plaintiffs to remand to state court is DENIED.

IT IS SO ORDERED this 3rd day of December, 1987.


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

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

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

TONYA HALL, by and through her)
parents BART AND CHARLOTTE)
HALL, and CHARLOTTE HALL,)
)
Plaintiffs,)
)
vs.)
)
ELEANOR POPE, an individual;)
PAM COSGROVE, an individual;)
and BIXBY PUBLIC SCHOOLS,)
)
Defendants.)

No. 87-C-185-C ✓

J U D G M E N T

This matter came before the Court on motion for summary judgment, the issues having been duly considered and a decision having been rendered,

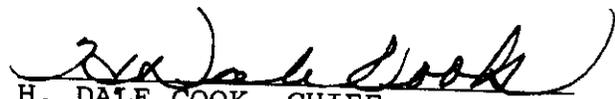
It is Ordered and Adjudged that defendant Bixby Public Schools is entitled to Judgment over and against the plaintiffs Tonya Hall, by and through her parents Bart and Charlotte Hall, and Charlotte Hall, on their cause of action under 42 U.S.C. §1983.

IT IS SO ORDERED this 3rd day of December, 1987.


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

53

Dated this 2nd day of Feb. ~~November~~, 1987.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

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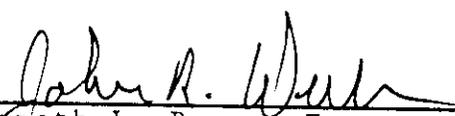
WALDRON FOREST PRODUCTS, INC.,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
GREGORY SUTTON, an individual,)
)
Defendant.)

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

Case No. 87-C-765-B

DISMISSAL AS TO SECOND CAUSE OF ACTION

Plaintiff Waldron Forest Products, Inc., hereby dismisses with prejudice its Second Cause of Action only against Defendant Gregory Sutton. This dismissal applies only to the Second Cause of Action and not as to any of the remaining causes of action the plaintiff may have against the defendant herein.



Kenneth L. Brune, Esq.
John R. Decker, Esq.
700 Sinclair Building
Six East Fifth Street
Tulsa, Oklahoma 74103

ATTORNEY FOR PLAINTIFF
WALDRON FOREST PRODUCTS, INC.

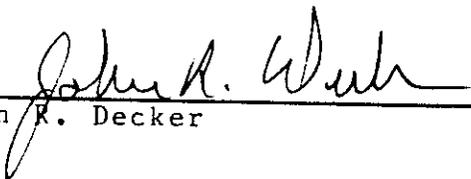
OF COUNSEL:

BRUNE, PEZOLD, RICHEY & LEWIS
700 Sinclair Building
Six East Fifth Street
Tulsa, Oklahoma 74103
(918) 584-0506

CERTIFICATE OF MAILING

I, John R. Decker, hereby certify that on the 2nd day of December, 1987, I placed in the United States mails at Tulsa, Oklahoma, a true and correct copy of the above and foregoing document with correct postage fully prepaid thereon, addressed to the following:

George R. Hooper, Esq.
5310 East 31st Street, Suite 600
Tulsa, OK 74135-5014



John R. Decker

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

FILED

DEC. 02 1987

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

THE NINTH DISTRICT PRODUCTION)
CREDIT ASSOCIATION,)
)
Plaintiff,)
)
)
vs.)
)
MASHBURN PARTNERSHIP, et al.,)
)
Defendant.)

No. 87-C-341-E

ORDER

Upon consideration of the Motion to Dismiss of the plaintiffs and the defendant, United States of America, ex rel, the Bureau of Indian Affairs, Department of Interior, the Court finds the motion should be granted accordingly, to the extent that this action purports to assert a claim against the defendant, United States of America, ex rel. the Bureau of Indian Affairs, Department of Interior, said action is hereby dismissed with prejudice.

IT IS SO ORDERED this 2^d day of December, 1987.


UNITED STATES DISTRICT JUDGE

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

DONALD SCOTT and ADA SCOTT,)
husband and wife; MICHAEL J.)
BEARD and MARSHA S. BEARD,)
husband and wife; BRUCE COLE)
and SHARON COLE, husband and)
wife: and KAREN SCOTT, a single)
person,)
)
Plaintiffs,)
)
vs.) No. 87-C-739-B
)
R. LEE TUCKER,)
)
Defendant.)

ORDER FOR DISMISSAL

Now, before the Court for its consideration is the motion of the parties to dismiss the above entitled matter by stipulation and agreement. The Court, upon reviewing the files and records in this matter, finds that the motion to dismiss of the parties is hereby granted.

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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

Michael J. Beard
MICHAEL J. BEARD
Attorney for Plaintiffs

Sam P. Daniel III
SAM P. DANIEL III
Attorney for Defendant

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

FEDERAL DEPOSIT INSURANCE
CORPORATION, as liquidating
agent for CENTRAL BANK &
TRUST OF TULSA, OKLAHOMA,

Plaintiff,

VS.

JAMES W. BARLOW AND
CHARLES R. COX, individually
and as General Partners of
BARLOW & COX, a General
Partnership,

Defendants.

No. 87-C-624-B

JOURNAL ENTRY OF JUDGMENT

Now on this 1st day of December, 1987, the above styled cause comes on before the Court. The Plaintiff appears by and through its attorney, Joel R. Hogue, and the Defendants appear by and through their attorney, Thomas E. English. The Court being fully advised and having reviewed the pleadings on file herein, finds as follows:

1. That the defendant Barlow & Cox (the "Partnership"), is a general Oklahoma partnership whose general partners are the defendants, Charles Robert Cox ("Cox") and James Worton Barlow ("Barlow").

2. That on or about June 20, 1986, the Partnership in exchange for good and valuable consideration executed and delivered to Central Bank & Trust Company of Tulsa ("Central Bank"), a promissory note (the "Note"), in the principal sum of \$110,000.00 payable on demand together with accrued interest, but in any event on or before September 19, 1986.

3. That contemporaneously with the Note's execution, the Partnership executed and delivered to Central Bank a security agreement and financing statement pledging all of the Partnership's Accounts Receivables to Central Bank to secure the debt owed to

Central Bank by the Partnership. Central Bank perfected its security interest by filing UCC-1 forms with the Oklahoma County Clerk's office.

4. That the Partnership is in default upon its obligations under the Note and Security Agreement and there is currently past due and owing upon the note the principal sum of \$108,000.00 together with accrued interest to November 1, 1987 of \$23,961.10. Interest continues to accrue at the rate of \$51.75 per diem.

5. That prior to the execution and delivery of the Note, Barlow executed his guaranty agreement whereby he agreed to guarantee all the indebtedness owed by Barlow & Cox to Central Bank which Barlow & Cox was at that time or thereafter obligated to Central Bank.

6. That despite the default on the note by the Partnership and demand therefor, Barlow has not honored his obligation under his guaranty agreement.

7. That the Note provides that "[a]ll parties agree to pay reasonable costs of collection, including an attorney's fee of 15% of all sums due upon default."

8. That on September 11, 1986, the Oklahoma State Banking Commissioner closed the Central Bank and assumed exclusive custody and control of the property and affairs of Central Bank, pursuant to Okla. Stat. tit. 6 § 1202(b).

9. That subsequently the Commissioner tendered to the FDIC appointment as the liquidating agent of the Bank pursuant to Okla. Stat. tit. 6 § 1205(b). As liquidating agent the FDIC became possessed of all assets, business, and property of the Central Bank pursuant to Okla. Stat. tit. 6 § 1205(c). Certain assets of the Bank were sold and transferred by the liquidating agent to the FDIC, in its corporate capacity, pursuant to agreements approved by the District Court of Tulsa County.

10. That among the assets purchased by the FDIC are the assets involved in this action and the FDIC in its corporate capacity is now the owner and holder of the Note, security agreement and guaranty described above and is the real party in interest herein and is empowered to bring this action.

11. That the defendant, Cox, filed a petition in bankruptcy on November 13, 1987 thus staying this cause as to him.

12. That there is no question of material fact and the FDIC is entitled to judgment as a matter of law against the defendants Barlow and the Partnership, jointly and severally, together with interest of \$23,961.10 to November 1, 1987 and continuing interest accruing at the rate of \$51.75 per diem, plus an attorney's fee of 15% of all sums due upon default.

13. That by virtue of the defaults described above, the FDIC is entitled to foreclose its security interest and lien sued upon in this cause, as against Barlow and the Partnership and each of them and that the right, title, or interest claimed by Barlow or the Partnership in the accounts receivable is subject, junior and inferior to the lien of the FDIC under its security agreement.

14. That this Court has jurisdiction of this proceeding by virtue of 12 U.S.C. § 1819 and 28 U.S.C. § 1331 and § 1345. Venue is properly laid in this district pursuant to 28 U.S.C. § 1391(b).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by this Court that the FDIC have and recover judgment in its favor and against the defendant Barlow in his individual capacity and against the Partnership, with Barlow and the Partnership being jointly and severally liable in the principal amount of \$108,000.00 together with accrued interest to November 1, 1987 of \$23,961.10 with interest accruing at the rate of \$51.75 per diem until paid, costs of this action totaling \$120.00 and an attorney's fee of 15% of all sums due upon default totaling \$16,200.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the security interest and lien of the FDIC be and it is hereby foreclosed against the interests of Barlow and the Partnership, and each of them, as to the accounts receivable of the Partnership and the FDIC is entitled to the proceeds of the accounts receivable and may sell or otherwise dispose of the accounts receivable in a commercially reasonable manner and the proceeds of any disposition shall be applied to:

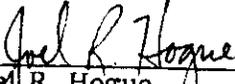
- a. The reasonable expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by the FDIC; and
- b. the satisfaction of the indebtedness secured by the security interest under which the disposition is made.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the date of the sale or other disposition of the accounts receivable of the Partnership or the receipt of proceeds thereof the interest of Barlow and the Partnership, and both of them, shall be forever barred and foreclosed of and from any claim or lien upon the accounts receivable adverse to the right and title of the purchase at such sale.

s/ THOMAS R. BRETT

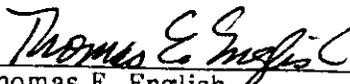
Thomas R. Brett
United States District Judge

APPROVED AS TO FORM AND CONTENT:



Joel R. Hogue
GABLE & GOTWALS
2000 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR FEDERAL DEPOSIT
INSURANCE CORPORATION, in its
corporate capacity



Thomas E. English
ENGLISH, JONES & FAULKNER
1700 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119

ATTORNEYS FOR JAMES W. BARLOW
AND CHARLES R. COX

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

FILED

DEC 02 1987

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

GINA GERMANY,)
)
Plaintiff,)
)
vs.)
)
SMITH MECHANICAL)
CONTRACTORS, INC.,)
BILL SWEETMAN and)
BEN MATHEWSON,)
)
Defendants.)

No. 86-C-192-E

ORDER FOR DISMISSAL WITH PREJUDICE
AS TO THE DEFENDANT BILL SWEETMAN ONLY

Upon the joint application and stipulation of the Plaintiff, Gina Germany, and the Defendant Bill Sweetman, the Court orders that this action be dismissed with prejudice as to the Defendant Bill Sweetman only. The parties named will each bear full responsibility for their respective costs, fees and other expenses related to this litigation.

Witness my hand this 2nd day of Dec, 1987.

JAMES O. ELLISON,
United States District Judge

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

GINA GERMANY,)
)
Plaintiff,)
)
vs.) No. 86-C-192-E
)
SMITH MECHANICAL)
CONTRACTORS, INC.,)
BILL SWEETMAN and)
BEN MATHEWSON,)
)
Defendants.)

FILED
DEC 02 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER FOR DISMISSAL WITH PREJUDICE
AS TO THE DEFENDANT SMITH MECHANICAL CONTRACTORS, INC. ONLY

Upon the joint application and stipulation of the Plaintiff, Gina Germany, and the Defendant Smith Mechanical Contractors, Inc., the Court orders that this action be dismissed with prejudice as to the Defendant Smith Mechanical Contractors, Inc., only. The parties named will each bear full responsibility for their respective costs, fees and other expenses related to this litigation.

Witness my hand this 2nd day of Dec., 1987.

JAMES O. ELLISON,
United States District Judge

